


FORM OF ORDER SHEET

Court of _____

Appeal No. 455/2024

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. Sardeep Kumar 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</p>  <p>REGISTRAR</p>

ذاتہ مسترد کیا

... received today i.e on 05.03.2024 is incomplete on ... to the counsel for the appellant for completion and ...

✓ ... of rule-C of Khyber Pakhtunkhwa Service Tribunal rules ... unnecessary/improper parties, in light of the rules ... the written direction of the Worthy Chairman the above mentioned ... deleted/struck out from the list of respondents.

✓ ... of the appeal is incomplete.

✓ ... been flagged/marked with annexures marks.

0 ... referred to in the memo of appeal are not attached with ...

... of appointment order and order dated 17.10.2017 attached with the ... illegible which may be replaced by legible/better one.

... documents that are to be provided must be readable/illegible.

518
6/3

[Handwritten signature]

[Handwritten signature]
6/3/24

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Resubmitted after completion *[Handwritten signature]*

22 ³/₂₀₂₄ Resubmitted after filing judgment rendered in

Appeal No 1054 dated 28-4-2022
2019

[Handwritten signature]

22/4/2024

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

Service Appeal No. 455 /2024

Dr. Sardeep Kumar Appellant

VERSUS

Govt of Khyber Pakhtunkhwa & Others Respondents

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⑦ Judgment of this Honorable Court

13-18
Appellant

Through

Malak Akhtar Ali Khan
Malak Akhtar Ali Khan

Advocate at Mardan

Cell: 0302-8192993

0346-4984757

Dated: _____

Appeal

07/07

BEFORE THE KHYBER PAKHTUNKHWA
TRIBUNAL, PESHAWAR

VICE

Service Appeal No. 455 /2024

Dr. Sardeep Kumar,

Ex-Senior Medical Officer,

THQ Pacha Kalay District Buner

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 4,
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

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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

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

GROUNDS:

- 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*.

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- 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

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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

Malak Akhtar Ali Khan
 Appellant
Malak Akhtar Ali Khan
 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 before this Honorable Tribunal, on the subject matter. *which has been Dismissed By this Court with Exemption of Pensionary Benefits*

Malak Akhtar Ali Khan
 ADVOCATE

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

Service Appeal No. _____/2024

Dr. Sardeep Kumar Appellant

VERSUS

Govt of Khyber Pakhtunkhwa & Others Respondents

AFFIDAVIT

I, Dr. Sardeep Kumar, Ex-Senior Medical Officer, THQ Pacha Kalay District Buner, 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.


DEPONENT



(7)

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

Service Appeal No. _____/2024

Dr. Sardeep Kumar Appellant

VERSUS

Govt of Khyber Pakhtunkhwa & Others Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

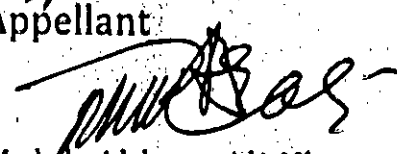
Dr. Sardeep Kumar,
Ex-Senior Medical Officer,
THQ Pacha Kalay District Buner

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: _____

(8)

The Secretary to Health Department
Civil Secretariat, Peshawar

Through : Proper Chanel

Subject : DEPARTMENTAL APPEAL/REPRESENTATION

R/SIR

- 1 That the appellant was appointed in Health Department as Medical Officer on 18-12-1995 on contract basis.
- 2 That the appellant served the department without any break on contract basis till dated.
- 3 That there is no adverse remarks or any complaint against the present appellant.
- 4 That on the appellant was regularized with effect from 1-07-2001.
- 5 That the appellant was serving since 18-12-1995 therefore appellant should have been regularized from initial appointment i.e. 18-12-1995.
- 6 That in view of judgment of APEX Court 2014 SCMR 1289 , 2018 SCMR 380 Seniority will be reckoned from initial appointment whether that appointment is on adhoc basis, contract or temporary basis.

It is therefore humbly prayed that on acceptance on this appeal, the appellant intervening period of Contract may kindly be consider for seniority and other benefits available under the law to the petitioner.


DR SARDEEP KUMAR

SMO THQ Pacha Kalay Distt; Buner

18/3/19

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HEALTH DEPARTMENT
No. 32867/1

2/2/05

To: Sardar Kumer Singh
Hukam Chand

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 GDS-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 be posted to D.H.O. Peshawar.
- This contract appointment is not transferable.
- This contract appointment is subject to your physical fitness 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.

M. Azmat Khan Afridi
(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR

- No. E-I dated Peshawar the 12/1998 /12/1998
- Copy forwarded to the:-
- Secretary to Government of NWFP, Health Department Peshawar for information with reference to his letter No. SOH-IV/3-12/93 dt. 12/12/93
 - Medical Superintendent, Malakand Agency for information and necessary action.
 - Divisional Director Health Services, Malakand Agency
 - District Health Officer/Agency Surgeon, Malakand Agency
 - Accountant General NWFP, Peshawar.
 - District/Agency Accounts Officer, Peshawar for information and necessary action.

M. Azmat Khan Afridi
(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 17th October, 2017

NOTIFICATION

NO. SO(E)II-II/3-18/2016. In pursuance of Judgment of Peshawar High Court Peshawar dated 10/11/2004 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 writ of 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 / 13-1966	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. Riaz Ahmed S/O Rehmatullah MBBS	Mohmand / 15-8-1951	23-11-1995	01-07-2001
6	Dr. Alamgir Khan S/O Darwesh Khan MBBS	Mohmand / 16-04-1962	23-11-1995	01-07-2001
7	Dr. Muhammad Ajmal Khan S/O Zaria Khan MBBS	Mohmand / 10-04-67	23-11-1995	01-07-2001
8	Dr. Fazal Rehman S/O Muhammad Amir Khan MBBS/ MPH	Mohmand / 28-04-1966 Agency	23-11-1995	01-07-2001
9	Dr. Mustafa S/O Behramand MD	Swat / 01-03-1961	24-11-1995	01-07-2001

Section Officer
Health Department
Govt of Khyber Pakhtunkhwa

(11)

No.	Name	Qualification	Date	Date
	Muhammad M.D	Swat/	25.01.2003	25.01.2003
	Dr. Samia Habib d/o Rabibur Rehman MBBS	Swat/ 4.1.1975		
490	Dr. Samia Saeed d/o Muhammad Saeed MBBS	Kohat/ 10.12.1974	25.01.2003	25.01.2003
491	Dr. Wali Khan s/o Mamir Khan MBBS	Kohat/ 2.3.1978	04.09.2002	04.09.2002
492	Dr. Samina Afridi d/o Ghulam Nabi MBBS	FR/Kohat/ 29.7.1973	25.01.2003	25.01.2003
493	Dr. Robina Gul D/o Badshah Gul MBBS	Bajaur/ 29.03.1973	25.01.2003	25.01.2003
494	Dr. Sardeep Kumar s/o Hukem Chand, attached to THQ Hospital, Pacha- Kalay Buner	02.01.1983 /Swat	18.12.1995	01.07.2001
495	Dr. Ghazala Hidayat d/o Muhammad Ajmal MBBS	Tank/ 16.4.1974	25.01.2003	25.01.2003
496	Dr Behroz Khan S/O Shah Raza Khan, MBBS	01.01.1968 / Buner.	25.01.2003	25.01.2003
497	Dr. Abdul Ghafoor s/o Badshah Khan M.D	Swat/ 15.06.1964	25.01.2003	25.01.2003
498	Dr. Hidayat Ullah Khalil S/O Amanullah MBBS	Peshawar/ 7.4.1968	25.01.2003	25.01.2003
499	Dr. Umar Khan S/O Muhammad Roshan Khan	01.03.1978 / Swat	25.01.2003	25.01.2003
500	Dr. Sohail Altaf S/O Altaf Ahmad	28.11.1973 / Peshawar	16.03.2003	16.03.2003
501	Dr. Zameen Qazi D/O Qazi Muhammad Yousaf	15.02.1977 / Peshawar	16.01.2004	16.01.2004
502	Dr. Sadia Nawaz Durrani D/O Nawaz Ahmad Durrani	15.10.1978 / Peshawar	16.01.2004	16.01.2004
503	Dr. Gulmeen Liaqat D/O Liaqat Ali Shah	07.07.1977 / Peshawar	16.01.2004	16.01.2004
504	Dr. Shazia Iftikhar	04.04.1971	16.01.2004	16.01.2004

Director General
Health Services
Islamabad

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Sl. No.	Name	DOB	08/03/2005	08/03/2005
001	Dr. Ali Akbar Khan B.A.S. No. 1001	04/04/1974	08/03/2005	08/03/2005
002	Dr. Asad Ali Khan B.A.S. No. 1002	12/12/73	08/03/2005	08/03/2005
003	Dr. Asim Khan B.A.S. No. 1003	15/10/78	08/03/2005	08/03/2005
004	Dr. Asim Khan B.A.S. No. 1004	12/12/73	08/03/2005	08/03/2005
005	Dr. Asim Khan B.A.S. No. 1005	12/12/73	08/03/2005	08/03/2005
006	Dr. Asim Khan B.A.S. No. 1006	12/12/73	08/03/2005	08/03/2005
007	Dr. Asim Khan B.A.S. No. 1007	12/12/73	08/03/2005	08/03/2005
008	Dr. Asim Khan B.A.S. No. 1008	12/12/73	08/03/2005	08/03/2005
009	Dr. Asim Khan B.A.S. No. 1009	12/12/73	08/03/2005	08/03/2005
010	Dr. Asim Khan B.A.S. No. 1010	12/12/73	08/03/2005	08/03/2005
011	Dr. Asim Khan B.A.S. No. 1011	12/12/73	08/03/2005	08/03/2005
012	Dr. Asim Khan B.A.S. No. 1012	12/12/73	08/03/2005	08/03/2005
013	Dr. Asim Khan B.A.S. No. 1013	12/12/73	08/03/2005	08/03/2005
014	Dr. Asim Khan B.A.S. No. 1014	12/12/73	08/03/2005	08/03/2005
015	Dr. Asim Khan B.A.S. No. 1015	12/12/73	08/03/2005	08/03/2005
016	Dr. Asim Khan B.A.S. No. 1016	12/12/73	08/03/2005	08/03/2005
017	Dr. Asim Khan B.A.S. No. 1017	12/12/73	08/03/2005	08/03/2005
018	Dr. Asim Khan B.A.S. No. 1018	12/12/73	08/03/2005	08/03/2005
019	Dr. Asim Khan B.A.S. No. 1019	12/12/73	08/03/2005	08/03/2005
020	Dr. Asim Khan B.A.S. No. 1020	12/12/73	08/03/2005	08/03/2005

SECRETARY HEALTH

- 1. Director, Provincial Health Services, Islamabad
- 2. Director, Provincial Health Services, Faisalabad
- 3. Director, Provincial Health Services, Lahore
- 4. Director, Provincial Health Services, Rawalpindi
- 5. Director, Provincial Health Services, Sialkot
- 6. Director, Provincial Health Services, Multan
- 7. Director, Provincial Health Services, Gujranwala
- 8. Director, Provincial Health Services, Bahawalpur
- 9. Director, Provincial Health Services, Hyderabad
- 10. Director, Provincial Health Services, Sukkur
- 11. Director, Provincial Health Services, Mirpur Khas
- 12. Director, Provincial Health Services, Thatta
- 13. Director, Provincial Health Services, Karachi
- 14. Director, Provincial Health Services, Balochistan
- 15. Director, Provincial Health Services, Gilgit-Baltistan
- 16. Director, Provincial Health Services, FATA

P/S

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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 Khilla, 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

ATTESTED

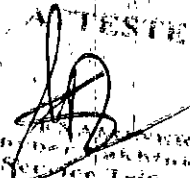
(u)

"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. Faridoon 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

Services Tribunal
Peshawar

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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

ADVISOR
[Signature]

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".*

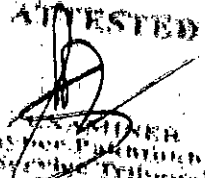
Explanation-I, ---.....

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

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

(2).....

[(3).....]

ATTESTED

 SECRETARY
 GOVERNMENT OF KHYBER PAKHTUNKHWA
 PESHAWAR

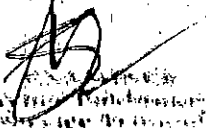
8. While going through clause-b of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules,

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-a-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

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 Director
 Public Service Commission
 Islamabad

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".

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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

Handwritten signature of Mian Muhammad

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

Handwritten signature of Salah-Ud-Din

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Handwritten signature and stamp of an official

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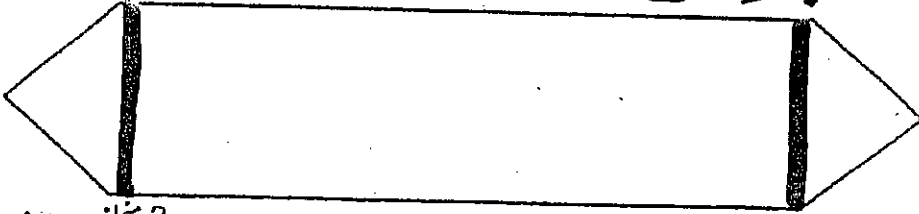
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محترم صاحب مقررہ
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مقدمہ
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جزم

باعث تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام کے لیے

مقرر کر کے اتر کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ 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 کسی دہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جاند التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

الرقوم _____ ماہ _____ 20

واہ العبد

مقام کے لیے منظور ہے۔

کے لیے منظور ہے۔