

27.	Mr. Muhammad Anwar, Assistant Professor of Maths (BS-18), Govt. Post Graduate College, Swabi.	Associate Professor (BS-19), Govt. Post Graduate College, Swabi.	Against vacant post
28.	Mr. Muhammad Hanif, Assistant Professor of History (BS-18), Govt. Post Graduate College, Bannu.	Associate Professor (BS-19), Govt. Post Graduate College, Bannu.	Against vacant post
29.	Mr. Sharif Gul, Assistant Professor of Economics (BS-18), (Project Director, Quality Education Opportunities, FATA).	Associate Professor (BS-19), his services are placed at the disposal of Secretary A & C, FATA for his further posting.	
30.	Mr. Manzoor Ali, Assistant Professor of Economics (BS-18), Govt. Post Graduate College, Mardan.	Associate Professor (BS-19), Govt. Post Graduate College, Mardan.	Against vacant post
31.	Mr. Mir Ghulam Khan, Assistant Professor of Biology (BS-18), Govt. Post Graduate College, Kohat.	Associate Professor (BS-19), Govt. Post Graduate College, Kohat.	Against vacant post
32.	Mr. Muhammad Ismail, Assistant Professor of Physics (BS-18), Govt. Post Graduate Jehanzeb College, Saidu Sharif, Swat.	Associate Professor (BS-19), Govt. Post Graduate Jehanzeb College, Saidu Sharif, Swat.	Against vacant post
33.	Mr. Roshamali Khan, Assistant Professor of Maths (BS-18), Govt. Post Graduate College, Karak.	Associate Professor (BS-19), Govt. Post Graduate College, Karak.	Against vacant post
34.	Mr. Rehmat Karim, Assistant Professor of Statistics (BS-18), Govt. Post Graduate College, Timergara, Dir Lower.	Associate Professor (BS-19), Govt. Post Graduate College, Timergara, Dir Lower.	Against vacant post
35.	Mr. Nowsherawan, Assistant Professor of Statistics (BS-18), Govt. Degree College, Dagger, Buner.	Associate Professor (BS-19), Govt. Degree College, Dagger, Buner.	Against vacant post
36.	Mr. Muhammad Anwar-ul-Haq, Assistant Professor of English (BS-18), Govt. Post Graduate College, Mardan.	Associate Professor (BS-19), Govt. Post Graduate College, Mardan.	Against vacant post
37.	Mr. Sher Bahadar Khan, Assistant Professor of Statistics (BS-18), Govt. Degree College, Khanpur, Haripur.	Associate Professor (BS-19), Govt. Degree College, Khanpur, Haripur.	Against vacant post
38.	Mr. Abdul Hadi, Assistant Professor of English (BS-18), Govt. Post Graduate College, Timergara, Dir Lower.	Associate Professor (BS-19), Govt. Post Graduate College, Timergara, Dir Lower.	Against vacant post
39.	Mr. Inayat-ur-Rehman, Assistant Professor of Islamiyat (BS-18), Govt. Post Graduate College, Mardan.	Associate Professor (BS-19), Govt. Post Graduate College, Mardan.	Against vacant post
40.	Mr. Fazal Wahab, Assistant Professor of Urdu (BS-18), Govt. Degree College, Thana, Malakand Agency.	Associate Professor (BS-19), Govt. Degree College, Thana, Malakand Agency.	Against vacant post
41.	Mr. Izhar-ul-Haq, Assistant Professor of Arabic (BS-18), Govt. Degree College, Lahor, Swabi.	Associate Professor (BS-19), Govt. Degree College, Lahor, Swabi.	Against vacant post
42.	Mr. Sakhi Muhammad Khan, Assistant Professor of Islamiyat (BS-18), Govt. Post Graduate College, Bannu.	Associate Professor (BS-19), Govt. Post Graduate College, Bannu.	Against vacant post

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Service Appeal No. 1471/2022 filed "Mumtaz Bibi versus PS to Secretary Health, Government of Khyber Pakhtunkhwa Peshawar and others", decided on 18.04.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN... MEMBER (Executive)

Service Appeal No, 1471/2022

Date of presentation of Appeal.....12.10.2022

Date of Hearing.....18.04.2024

Date of Decision.....18.04.2024

Mst. Mumtaz Bibi (Ex-Lady Health Worker), wife of James Masih,
R/o Mohallah Saray Chatar Singh Thall District
Hangu.....*Appellant*

Versus

1. PS to Secretary Health, Government of Khyber Pakhtunkhwa Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa.
3. District Health Officer Hangu.
4. District Accounts Officer, Hangu.(*Respondents*)

Present:

Mr. Muhammad Salah-ud-Din, Advocate.....For the appellant

Mr. Umair Azam, Additional Advocate General,.....For respondents

.....
**SERVICE APPEAL UNDER SECTION 4 OF SERVICE
TRIBUNAL ACT 1974.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Appellant was appointed as Lady Health Worker in the National Program vide order dated 29.07.2006 on contract basis. Her services were regularized vide order bearing No. 274-310 dated 19.04.2014 with effect from 01.07.2012. On attaining the age of superannuation, the appellant was retired from service vide order dated 10.07.2020 but without any pensionary benefits, therefore, the appellant approached the Peshawar High Court, Peshawar through Writ Petition, which



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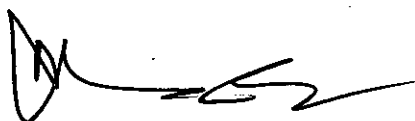
Service Appeal No.1471/2022 titled "Munira Bibi versus PS to Secretary Health, Government of Khyber Pakhtunkhwa Peshawar and others", decided on 18.04.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

was converted into departmental appeal, hence this appeal on the grounds that as per Rule-2.3 of West Pakistan Pension Rules, 1963, temporary and officiating services are to be counted for the purposes of calculating the length of service to get pensionary benefits as well as in light of the judgment passed by Peshawar High Court, Peshawar in Writ Petition No. 5551-P of 2019 dated 01st October 2020, the appellant is entitled to get pensionary benefits.

2. On admission of the appeal for regular hearing, notices were issued to the respondents. Respondent No. 4 contested the appeal by way of filing para-wise comments, while rest of respondents have failed to submit their reply/comments, therefore, their right for submission of reply/comments was struck of vide order dated 29.05.2023 passed by this Tribunal. Respondent No. 4 had taken the main ground in his para-wise reply that the services of the appellant were regularized with effect from 01.07.2012 and she had retired from service vide order dated 10.07.2020 on attaining the age of superannuation, therefore, her regular services were less than ten years, hence, she was not entitled for any pensionary benefits under the Pension Rules.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order (s). The learned Additional Advocate



General relied on the judgment of Supreme Court of Pakistan reported as 2021 SCMR 767 titled "*Province of Punjab Vs Dr. Javid Iqbal*". But that pertains to the retrospective regularization whereas the instant case is to count contractual service of the appellant to grant her pension benefits under Rule 2.3 (ii) of the West Pakistan Civil Services Pension Rules, 1963.

5. This Tribunal had on 17.06.2022 already decided a similar nature Appeal No. 6573/2021 titled "*Mst. Naheed Begum Vs The Secretary Health Department Khyber Pakhtunkhwa, Peshawar and others*" in the following manner:-

05. As a matter of the record, it is not disputed that the appellant was initially appointed as LHW on contract basis vide order dated 07.02.1996 and there is no service break in her service till regularization w.e.f. 01.07.2012 under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and Employees (Regularization and Standardization) Act, 2014. Since then she has rendered 08 years, 10 months and 02 days regular service which is less than 10 years of required service for pensionary benefits. It is, however, of importance to make reference to Rule 2.3 (ii) of the West Pakistan Civil Services Pension Rules, 1963 which stipulates;

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 shall count such service for the purpose of pension or gratuity; and*
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.*

In the above scenario, the 16 years admitted contractual service of appellant was followed by regularization through enactment of provisional legislation which allows her to stand on the pedestal of eligibility and entitlement for the said

2

Service Appeal No.1471/2022 titled "Munir Ribi versus PS to Secretary Health, Government of Khyber Pakhtunkhwa Peshawar and others" decided on 18.04.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

benefits. The august Supreme Court of Pakistan in its judgment reported as 2010 PLC 354, has laid down the cordinal principle as follows:


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

06. In view of the provision of Rule 2.3 (ii) of the West Pakistan Civil Services Pension Rules, 1963 as well as 2010 PLC 354, the contractual period of service of the appellant has been followed by regularization under special law but w.e.f. 01.07.2012. The contractual period of the appellant is therefore countable towards pension and she is entitled for pensionary benefits. The appeal in hand is, therefore, allowed and the respondents are directed to release pension to the appellant as per her due rights and entitlement w.e.f. 04.05.2021. Parties are left to bear their own costs. File be consigned to the record room."

6. The case of the appellant is no different than the above, therefore, it is decided accordingly by allowing the same in the terms, the above appeal was allowed. Costs shall follow the event. Consign.

7. Pronounced in open Court at Peshawar, and given under our hands and the seal of the Tribunal on this 18th day of April, 2024.


KALIM ARSHAD KHAN
Chairman


MUHAMMAD AKBAR KHAN
Member (Executive)

Nasim Amin

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Service Appeal No. 1471/2022 titled "Mst. Mumtaz Bibi Versus PS to Secretary Health, Government of Khyber Pakhtunkhwa Peshawar and others".

ORDER

18th April, 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the case of the appellant is no different than the Appeal No. 6573/2021 titled "*Mst. Naheed Begum Vs The Secretary Health Department Khyber Pakhtunkhwa, Peshawar and others*" decided on 17.06.2022, therefore, it is decided accordingly by allowing the same in the terms, the above appeal was allowed. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 18th day of April, 2024.*

(Muhammad Akbar Khan)
Member (Executive)

(Kalim Arshad Khan)
Chairman

Naem Amin

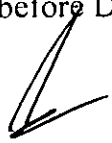
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(9)

2nd Nov, 2023

1. Clerk to counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for the respondents present.
2. Clerk to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 20.12.2023 before D.B. P.P given to the parties.

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Peshawar



(Muhammad Akbar Khan)
Member (E)



(Rashida Bano)
Member (J)

kamranullah

- 20.12.2023
1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
 2. Learned counsel for the appellant requested for adjournment on the ground that he has not prepared the brief. Adjourned. To come up for arguments on 18.04.2024 before D.B. P.P given to the parties.

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Peshawar


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

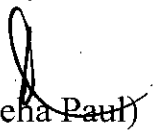
KaleemUllah

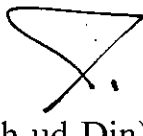
29.05.2023

Learned counsel for the appellant present. Mr. Safiullah, Focal Person and Mr. Laeeq Khan, Computer Operator alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

On previous date too, last chance was granted to respondents No. 1 to 3 for submission of reply/comments with the observation that if they failed to submit reply/comment, their right shall be deemed as struck of. The respondents No. 1 to 3 have failed to submit reply/comments, therefore, their right for submission of reply/comments stands struck of. To come up for arguments on 29.08.2023 before the D.B. Parcha Peshi given to the parties.

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(Fareeha Paul)
Member (E)

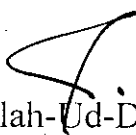

(Salah-ud-Din)
Member (J)

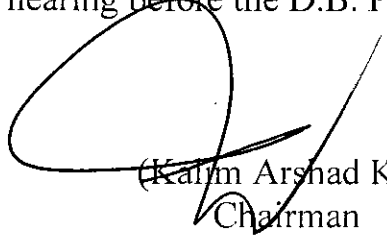
Naeem Amin

29th Aug. 2023 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for respondents present.

2. Learned counsel for the appellant stated that similar nature cases are fixed on 02.11.2023, therefore, this case might also be fixed for the said date. Request is acceded to.

3. Adjourned to 02.11.2023 for hearing before the D.B. P.P given to the parties.


(Salah-Ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

*Mutazem Shah *

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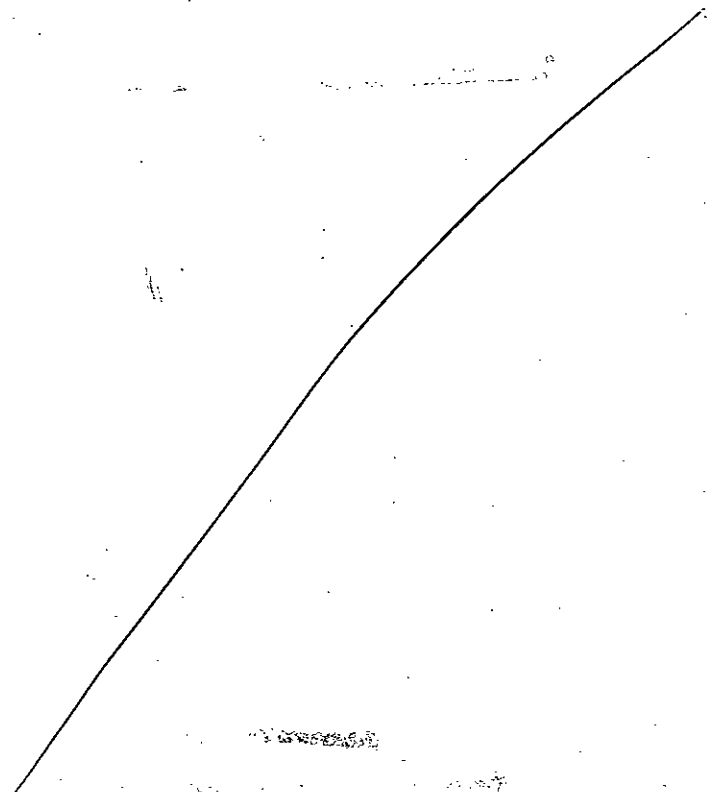
06:03,2023

James Masih, Husband of the appellant present. Mr. Muhammad Riaz Khan, Painsdakhel, Assistant Advocate General alongwith Mr. Safiullah, Focal Person Mr. Laeeq Khan, Computer Operator for the respondents present.

Reply/comments on behalf of respondents No. 4 have already been submitted. Reply/comments on behalf of respondents No. 1 to 3 are still awaited. Representative of the respondents requested for time to submit reply/comments. Last opportunity is granted to respondents No. 1 to 3 for submission of reply/comments, failing which their right for submission of reply/comments shall be deemed as struck off. To come up for reply/comment as well as arguments on 29.05.2023 before D.B.P.P given to the parties.

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Peshawar

(Muhammad Akbar Khan)
Member (E)



21st Dec, 2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl:AG alongwith Mr. Muhammad Tufail, Assistant for respondents present.

Written reply on behalf of the respondents has not submitted. Representative of the respondents seeks time. Respondents are directed to submit written reply/comments on 23.01.2023 before S.B.

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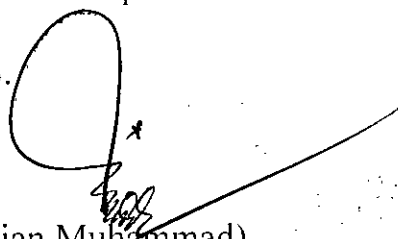
(Kalim Arshad Khan)
Chairman

23.01.2023

Learned counsel for the appellant present. Mr. Amjad Rehman, Sub-Accountant on behalf of respondent No. 3 alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General present.

Para-wise comments on behalf of respondent No. 3 submitted, while learned Assistant Advocate General seeks further time for submission of reply/comments on behalf of remaining respondents. Adjourned. To come up for submission of reply/comments on behalf of respondents No. 1, 2 & 4 on 06.03.2023 before the S.B.

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Peshawar



(Mian Muhammad)
Member (Executive)

22.11.2022

Counsel for the appellant present.

Preliminary arguments heard. Record perused.

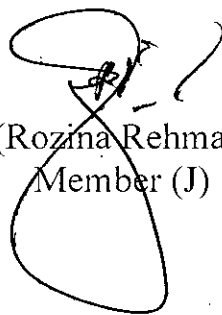
Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments in office within 10 days of the receipt of notices, positively. To come up for written reply/comments on 21.12.2022 before S.B.

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KPST
Peshawar

Local respondents were put on notice while out district was

Rs-100/- nit.
Appellant Deposited Security & Process Fee

A. J. / 13/12/22


(Rozina Rehman)
Member (J)

21st Dec, 2022

Appellant in person present. Mr. Muzammar Arif and Arif Durrani, Addl. AG along with Mr. Sardar Daud, Assistant and Mr. Wahid Ullah, Assistant for respondents present.

Written reply on behalf of the respondents have not been submitted. Representatives of the respondents are directed to submit written reply/comments on 23.01.2023 before S.B.

(Kalim Arshad Khan)
Chairman

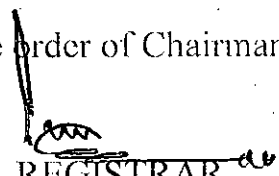
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Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1471 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/10/2022	<p>The appeal of Mst. Mumtaz Bibi presented today by Mr. Muhammad Salah ud Din Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>19-10-22</u> Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p> <p>18th Oct., 2022</p> <p>Nemo for the appellant.</p> <p>Notices be issued to appellant and his counsel for the date fixed To come up for preliminary hearing on 22.11.2022 before S.B.</p> <p>(Fareeha Paul) Member(E)</p>

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KPST
Peshawar

Counsel was informed telephonically for the date fixed

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST

Case Title: Mst Mumtaz Bibi vs DHO Hangu etc

Sl No	CONTENTS	YES	NO
1	This Appeal has been presented by:		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?		✓
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On		
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On		
26	Whether copies of comments/reply/rejoinder submitted? On		
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: M. Salah-Ud-Din

Signature: [Signature]

Dated: 04/10/2022



IN THE SERVICE TRIBUNAL KP PESHAWAR

In Re. Appeal No. 1471 /2022

Mst. Mumtaz Bibi

**SCANNED
KPST
Peshawar**

VERSUS

District Health Officer Hangu and Others

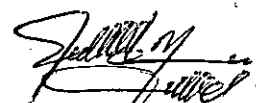
INDEX

S #	Description of Documents	Annex	Pages
1.	Appeal		1-3
2.	Addresses of Parties		4
3.	Affidavit		5
4.	Copy of Service Book with Regularization Order	"A-B"	6-12
5.	Copies of the representation and Order	"C"	13-16
6.	Copy Judgment of High Court dated: 01-10-2020	"D"	17-18
7.	Special Power of attorney	"E"	19-20
8.	Attested Copy of Writ Petition No. 1905.P/2022	"F"	21-25
9.	Wakalatnama		26

Dated: 03-10-2022

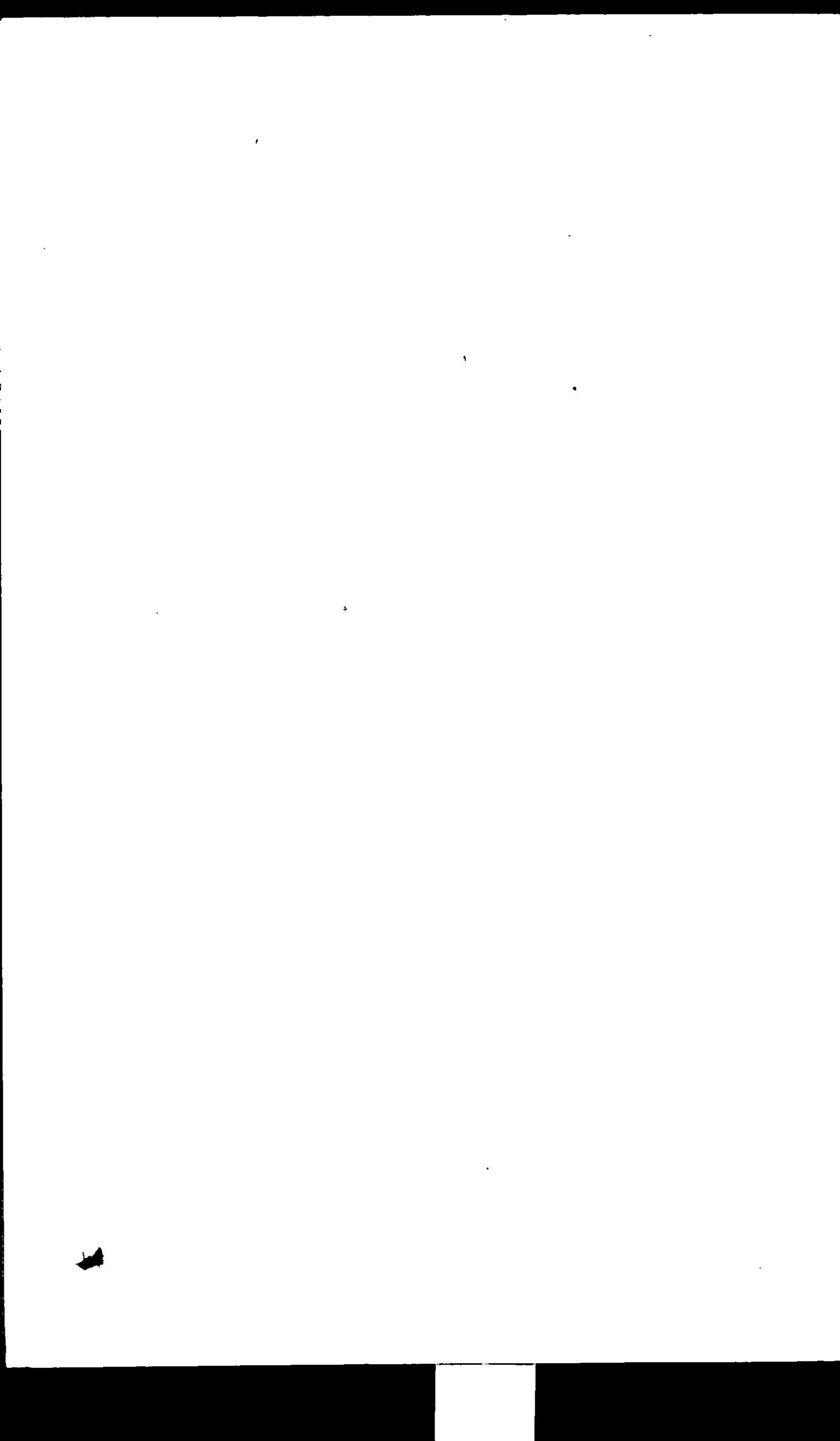
Appellant

Through


Muhammad Salah Ud Din
Advocate, High Court
Peshawar

Cell No. 0334-9171064

Email: mswildan90@gmail.com



In The Service Tribunal KP Peshawar

In Re: Appeal No. 1471 Of 2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1572

Dated 12-10-2022

Mst. Mumtaz Bibi (Ex. Lady Health Worker), wife of James Masih resident of
Mohallah Saray Chatar Singh Thall District Hangu

Appellant

Versus

1. PS to Secretary Health, Govt. of Khyber Pakhtunkhwa Peshawar
2. Director General Health Services Khyber Pakhtunkhwa
3. District Health Officer Hangu
4. District Account Officer, Hangu

Respondents

Filed to-day
Registrar

**Service appeal under section 4 of the
Service Tribunal Act 1974**

12/10/22
Prayer,

On acceptance of this appeal, the respondents may be directed to allow pensionary Benefits to the appellant by counting her length of service from the date of her initial appointment i.e. 27/ 07/ 2006. Refusal as such on the part of the respondents may be declared as without lawful authority, without jurisdiction of no legal effect and ineffective upon the valid and legal rights of the appellant. With grant of additional relief, not specifically prayed for but is available for the appellant to avail, in the ends of justice.

Respectfully submitted,

1. The appellant at very intrinsic was appointed as lady health worker on 29/ 07/ 2006 vide order No. 611/NP in the national program, on contractual bases, however, later on, her services were regularized vide order bearing No. 274-310 dated 19/ 04/ 2014 with effect from 01/ 07/ 2012. (Copy of the service Book with regularization order annexed as annexure A and B).

2. After successful completion, the appellant got retired from service on superannuation vide order No. 4154-58/LHW dated 10/07/2020.
3. Retirement, when was conveyed the appellant applied for pension, but the respondents, refused as the services of the appellant was counted from her regularization leaving the contractual period of her service to be counted for the purposes of pension. (Copies of the representation and order it upon is annexure C)
4. A Writ Petition was filed by appellant before the Honorable Peshawar High Court Peshawar, which was converted into departmental appeal, hence this appeal on the following grounds inter alia

Grounds,

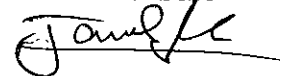
- A. Impugned refusal of the respondents to grant the pensionary benefits to the appellant is an act without jurisdiction, without lawful authority of no legal effect and is liable to be declared as such
- B. Per West Pakistan Civil Services Pension Rules, 1963, specifically its rule 2.3, temporary and officiating services are to be counted for the purposes of calculating the length of service to get pensionary benefits but presently the respondents having denied the same have violated this basic rule of law, have committed an act against law and justice
- C. Precedents are available in the matter, in shape of judgment passed by this Hon' able Court bearing WP No. 5551-P of 2019 dated 1st October 2020, in such reference the appellant has been discriminated which is grave miscarriage of justice
- D. Pension is the vested right of the appellant which is protected by the law and rules as referred which cannot be denied by the respondents and they are legally bound to grant the benefits of pension as prayed for
- E. Law, facts, circumstances and justice dully incline in favor of grant of this Petition

F. The Appellant seeks leave of this Hon' able Court to raise/ argue additional grounds at the time of arguments.

It is therefore prayed that On acceptance of this Appeal, an appropriate order may kindly be issued, by directing the respondents, to allow pensionary Benefits to the appellant by counting her length of service from the date of her initial appointment i.e. 29/ 07/ 2006. Refusal as such on the part of the respondents may be declared as without lawful authority, without jurisdiction of no legal effect and ineffective upon the valid and legal rights of the appellant. With grant of additional relief, not specifically prayed for but is available for the appellant to avail, in the ends of justice.

Appellant

Mst. Mumtaz Bibi



Through

Muhammad Salah-Ud-Din

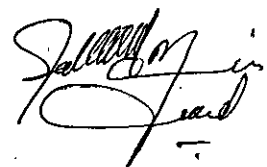
Advocate High Court



Law Books,

1. Constitution of Pakistan 1973
2. West Pakistan Civil Services Pension rules, 1963
3. Other relevant law in the matte if needed

Advocate



In The Service Tribunal KP Peshawar

In Re: Appeal No. Of 2022

Mst. Mumtaz Bibi (Ex. Lady Health Worker), wife of James Masih resident of
Mohallah Saray Chatar Singh Thall District Hangu

Appellant

Versus

1. District Health Officer Hangu
2. District Account Officer, Hangu

Respondents

Addresses of parties

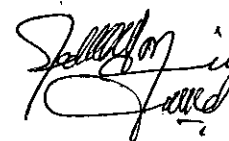
Respectfully submitted

Addresses of parties are submitted as above


Appellant

Mst. Mumtaz Bibi

Through


Muhammad Salah-Ud-Din

Advocate High Court

In The Service Tribunal KP Peshawar

In Re: Appeal No. Of 2022

Mst. Mumtaz Bibi.....Appellant

Versus

District Health Officer Hangu.....Respondents

AFFIDAVIT

I, James Masih (Special Attorney for appellant) Son of Boota Masih, R/o Mohallah Saray, Chatar Singh, Thall District Hangu, do hereby solemnly affirm and declare on oath that the contents of the accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by

James Masih

DEPONENT

CNIC No:14101-9259868-1

Cell No.0301-5087120

Muhamad Salah-Ud-Din
Advocate High Court

Muhamad Salah-Ud-Din

03 OCT 2022



Note: The entries should be made in every 5 hours and the signature in lines 9 and 10.

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This page should be renewed or re-aggasted at least every 5 hours and the signature in lines 9 and 10 should be dated. Finger prints need not be filled in this rule.

DISTRICT HEALTH OFFICER, HANGU

Signature

(Signature)

10. Signatures and designation of the Head of the Office or other Approving Officer.

Munir

9. Signature of Govt. Servant (if any).

Munir
DISTRICT HEALTH OFFICER, HANGU

Fore Finger (انگشت اول)

Little Finger (انگشت کوچک)

Ring Finger (انگشت حلقه)

Middle Finger (انگشت میانی)

Thumb (انگشت بزرگ)

8. Left and right hand thumb and finger impressions of (Non-gazetted officers).

7. Personal mark of identification (نشان شخصی)

6. Exact height by measurement (ارتفاع دقیق)

5. Date of birth Christian era as nearly as can be ascertained (تاریخ تولد)

4. Father's Name and Residence (نام و محل اقامت پدر)

3. Residence (محل اقامت)

2. Nationality and Religion (قومیت و دین)

1. Name (نام)

(Amertuwa: A)

6

1	Name of Post	مدرس
2	Whether Substantive or officiating any whether permanent or temporary	مدرسی ثابت
3	(1) substantive appointment or (ii) whether service counts for pension under C.S.R. (Pb) rule 3-20 Volume II	مدرسی ثابت حساب می آید
4	Pay in substantive position	1800/- پ. م.
5	Additional emoluments for officiating	
6	Date of appointment	29/3/07
7	Signature of government servant	مدرس
8	Signature of L.M.O. Officer	مدرس

L.H.W BPS-05
5400-260-13200

L.H.W
Fixed Pay

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Revised BPS 05
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- do -

Rs 5660/-

12/2 PM

- do -

Rs 5400/-

1/2

L.H.W BPS-05
5400-260-13200

Rs 5400/-

1/2

Rs 1800/-
P. M.

29/3/07

9 Signature and designation of the Head of the office or other attesting officer in attestation of column 1 to 8 دستخط افسر مجاز	10 Date of termination or appointment تاریخ انقطاع ملازمت	11 Reason of termination (such as promotion transfer, dismissal etc.) درجات انقطاع ملازمت ترقی تدارک بازگشتی	12 Signature of the officer or other Attesting Officer دستخط افسر مجاز	13 Nature and duration of leave taken رضیت نوبت وسعیار	14 Allocation of period of leave of average pay for to four months (or less than 4 months) to which leave salary is debitable in another Government office other attesting officer Period Government to which debitable دوره وزارت	15 Signature of the Head of the office or other attesting officer DISTRICT HEALTH OFFICER HANGU	Reference to any recorded punishment or reward or praise of the Government servants کارکردی کا ریکارڈ
---	---	---	---	--	---	--	---

Appointed as L.H.O. in the National Programme vide DHO Hangu office order No 1811/AN Dated 29-07-2013 and accordingly submitted her arrival report of 04 Thail for Duty

Service verified up to 30/06/2012
Zehman-khalid
 DISTRICT HEALTH OFFICER, HANGU

Service regularized w.e.f 1st July 2012 vide DHO Hangu Notification Dated 19/9/2014 In view of approval granted by the P.C.LHWs Programme 74-310 KPK vide letter NO 1340/PC Dated 22/06/2014.

Service verified up to 30-11-2012
Zehman-khalid
 DISTRICT HEALTH OFFICER, HANGU

30/11/13 AN ANN. INC GRANTED Service verified up to 30-11-2013

Zehman-khalid
 DISTRICT HEALTH OFFICER, HANGU

30/11/14 AN ANN. INC GRANTED Service verified up to 30-11-2014

Zehman-khalid
 DISTRICT HEALTH OFFICER, HANGU

Revised Pay Scale vide Govt of KPK Finance Department Notification no ED (PRC) 1-1/15 Dated 29-07-2015
Zehman-khalid
 DISTRICT HEALTH OFFICER, HANGU

ATTESTED
[Signature]

ATTESTED
[Signature]

1 Name of Post	2 Whether Substantive or officiating in which any additional temporary	3 If officiating in which any additional temporary	4 Pay in substantive position	5 Additional pay for officiating	6 Date of appointment in the month	7 Signature of government servant
BPS-05	8985-340-1785		Pay Rs	8005/om	1-12-15	✓
Revised BPS-05	8590-420-2190		Pay Rs	9850/om	1-7-16	✓
Revised BPS-05	10360-500-3520		Pay Rs	1521/om	1-7-20	✓
Revised BPS-05	10360-500-3520		Pay Rs	1521/om	1-7-20	✓

✓
1-7-20

✓
1-7-20

✓
1-7-16

8005/om

Pay Rs

Pay Rs

Pay Rs

Pay Rs

Pay Rs

1-7-20

1-7-20

1-7-16

1-7-16

1-12-15

1-7-20

Signature of government servant

Date of appointment in the month

Additional pay for officiating

Pay in substantive position

Whether Substantive or officiating in which any additional temporary

Name of Post

9 Signature and designation of the Head of the office or other attesting officer in attestation of column 1 to 8	10 Date of termination or appointment	11 reason of termination (such as promotion transfer, dismissal etc.)	12 Signature of the head of the office or other Attesting Officer	13 Nature and duration of leave taken	13 Allocation of period of leave or average pay up to four months (or earned leave not exceeding 120 days) to which leave money is debitable to another Government	14 Signature of the Head of the office other attesting officer	15 Reference to any recorded punishment, or award, or granted to the Government servants
دستخط افسر مجاز	30-11-15 AN	انجمن	دستخط افسر مجاز	Service verified up to	30-11-15	دستخط افسر مجاز	Reference to any recorded punishment, or award, or granted to the Government servants
ANNING GRANTED		DISTR. HEALTH OFFICER, HANGU		DISTR. HEALTH OFFICER, HANGU		DISTR. HEALTH OFFICER, HANGU	
<p>Revised Pay Scale vide Govt of KPK Finance Dept. Memo Notification No FD (PRC) 1-1/2016 Dated 19-07-2016</p> <p>دستخط افسر مجاز</p> <p>DISTR. HEALTH OFFICER, HANGU</p>							
ANNING GRANTED		DISTR. HEALTH OFFICER, HANGU		DISTR. HEALTH OFFICER, HANGU		DISTR. HEALTH OFFICER, HANGU	
<p>Revised Pay Scale vide Govt of KPK Finance Department Notification No FD/50 (SK-2) 1-1/2017 dated 12-7-2017</p> <p>دستخط افسر مجاز</p> <p>DISTR. HEALTH OFFICER, HANGU</p>							
ANNING GRANTED		DISTR. HEALTH OFFICER, HANGU		DISTR. HEALTH OFFICER, HANGU		DISTR. HEALTH OFFICER, HANGU	
<p>Paid arrears on account of pay & allowances w.e.f 01-07-2012 to 30-11-2015 amounting to Rs. 163,866/-</p> <p>Finance Officer LHW Program K.P.A. Peshawar</p>							

Attested
Jalil

ATTESTED

16260-500-25260
 1977
 13760/PM 1-12-77
 15260-500-25260
 01-12-77
 BPS-05
 Pay Rs 13260/PM 01-12-77

(Signature)
 (Circular Stamp)
 1977

(Signature)
 (Circular Stamp)

(Signature)

do

1	2	3	4	5	6	7
Name of Post	Whether Substantive appointment or (i) whether officiating state	(ii) whether appointment of counts for position under C.S.R. (PB) Volume II	Pay in substantive position	Additional pay for officiating	Date of appointment	Signature of government servant

9

9	10	11	12	13	14	15
Signature and designation of the Head of the office or other attesting officer in attestation of column 1 to 8	Date of termination or appointment of Head of the office (such as promotion, transfer, dismissal, etc.)	Signature of the Head of the office	Nature and duration of leave taken	Allocation of period of average pay up to four months (or same rate of average pay up to four months) to which leave is payable to another Government servant	Signature of the Head of the office or other attesting officer	Reference to any recorded or punishment or award, or punishment of Government servants raised or raised o the
30-11-2018 (ANN) ANN/INC	DISTRICT HEALTH OFFICER, HANGU	DISTRICT HEALTH OFFICER, HANGU	ANN/INC	Service verified up to 30-11-2018	DISTRICT HEALTH OFFICER, HANGU	ANN/INC
30-11-2019 (ANN) ANN/INC	DISTRICT HEALTH OFFICER, HANGU	DISTRICT HEALTH OFFICER, HANGU	ANN/INC	Service verified up to 30-11-2019	DISTRICT HEALTH OFFICER, HANGU	ANN/INC
No. 4154-58/58(HM) dated 10/07/2020	DISTRICT HEALTH OFFICER, HANGU	DISTRICT HEALTH OFFICER, HANGU	ANN/INC	Service verified up to 30-11-2019	DISTRICT HEALTH OFFICER, HANGU	ANN/INC

ATTESTED

[Signature]

DISTRICT HEALTH OFFICER, HANGU

[Signature]

[Signature]

Attested the age of Government servant on 30-06-2020 (ANN) and struck off from the strength of Health Department vide this order No. 4154-58/58(HM) dated 10/07/2020

ent of

15		Reference to any recorded or unishment of censura, or reward, or praise of the Government servants	14		Signature of the Head of the office other attesting officer	13		Allocation of period of leave of average pay-up to four months (or earned leave not exceeding 120 days) to which leave is debitable to another Government servant	12		Signature of the head of the office other attesting officer	11		Date of termination or promotion (such as transfer, etc.)	10		Signature and designation of the Head of the office or other attesting officer	9		Signature and designation of the Head of the office or other attesting officer (column 1 to 8)

TESTED

18/11/21
12-333

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Bill raised for Rs. 42,600/-
to pay for the...

Handwritten notes:
18/11/21

Signature and designation of the Head of the office or other attesting officer (column 1 to 8)

Signature and designation of the Head of the office or other attesting officer (column 1 to 8)

10

DISTRICT PROGRAM IMPLEMENTATION UNIT 27

Phone: 0925-624621. Fax: 0925-623773

Email: dpiuhangu@yahoo.com

(Annexure-B)

274-310/DPIUHGU

Dated: 19/09/2014

NOTIFICATION

In terms of Section 4 (1) read with 1st Proviso there under, of the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act 2014, services of the following Lady Health Workers Program employees of district Hangu Khyber Pakhtunkhwa are hereby regularized w.e.f. 1st July 2012. Their terms and conditions of service will be governed under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014 and rules to be made there under.

Sr. No	Name of Community Embedded Employee	Father Name	Husband Name	Date of appointment	FLCF	Name of Catchment Area	Desig:
1	Fauzia	Liaq Din		01/11/2005	Type D Hospital Thall	Type D Hospital Thall	LHS
2	Yasreen Bibi	Jamil Din	Umar Din	15/10/2001	Type D Hospital Thall	Mohallah Hamzani Sahebzada Razeq Noor Thall	LHW
3	Zahida Bibi	Abdul Wahed	Gul Akbar	15/10/2001	Type D Hospital Thall	Mohallah Haji Essa Khan Sara Ghundi Thall	LHW
4	Nazreena Begum	Anwar Shah		15/10/2001	Type D Hospital Thall	Mohallah Amir Shah Thall	LHW
5	Mussarat Shaheen	Sher Mohammad	Saleem Khan	09/06/2003	Type D Hospital Thall	Mohallah Doubayan Thall	LHW
6	Samina Begum	Rehmat Khan		09/06/2003	Type D Hospital Thall	Mohallah Cheno Thall	LHW
7	Shahana	Burhan-u-din	Islam-u-din	01/07/2004	Type D Hospital Thall	1200 Muhallah Exchange Sara Ghundi	LHW
8	Hameeda Bano	Janat Shah	Islam Badshah	01/07/2004	Type D Hospital Thall	Mohallah Bazokot	LHW
9	Gul Ranga	Kamal Badshah	Sahadat Gul	01/07/2004	Type D Hospital Thall	Mohallah Yousaf Khel Thall	LHW
10	Zohra Khatoon	Selah-u-din	Naimat Ullah	01/07/2004	Type D Hospital Thall	Mohallah Gul Amer Bano Road Thall	LHW
11	Zulfan Bibi	Haji Rahim Khan		01/07/2004	Type D Hospital Thall	Mohallah Munir Muhammad Sara Gunde	LHW
12	Amna Kamil	Kamil Badshah		01/07/2004	Type D Hospital Thall	1340 Mohallah Parachgan Thall	LHW
13	Fatima Bibi	Nasib Khan		01/07/2004	Type D Hospital Thall	Mohallah Tandaro Thall	LHW
14	Shamim Begum	Haji Per Bat Khan	Sujja-u-ddin	15/07/2005	Type D Hospital Thall	Mohallah Suhbat Khan Thall	LHW
15	Roshia Habib	Habib Ullah Khan		15/07/2005	Type D Hospital Thall	Mohallah Zander Khel Thall	LHW
16	Mumtaz	Roshan Masih	James Masih	01/08/2006	Type D Hospital Thall	Mohallah Saray Chatar Singh Thall	LHW
17	Nasreen Maryum	Inayat Masih	Ilyas Masih	01/08/2006	Type D Hospital Thall	Sabze Mande Thall	LHW
18	Safina Begum	Faqir Muhammad Khan		01/08/2006	Type D Hospital Thall	Mohallah Kotki Gharsa Khan Thall	LHW
19	Bibi Zuhra	Muhammad Karim		01/08/2006	Type D Hospital Thall	Mohallah Mursallen Sara Gunde	LHW
20	Asma Naurcen	Noor Bad Shah	Anjum Salahuddin	01/08/2006	Type D Hospital Thall	Mohallah Daruloullum Thall	LHW
21	Alia Begum	Liaq Din		01/08/2006	Type D Hospital Thall	824 Muhallah Usmer Din Thall	LHW
22	Rahat Begum	Muhammad Ibrahim		01/08/2006	Type D Hospital Thall	Mohallah Rehmat Shah Thall	LHW
23	Nusrat Naz	Usman Khan		01/08/2006	Type D Hospital Thall	Mohallah Shadat Wakeel Masjid Usman Thall	LHW
24	Sema Begum	Wahid Shah		01/08/2006	Type D Hospital Thall	Faqir Shah	LHW

TESTED

Attested

25.	Zubaida Begum	Haji Habib Shah	Tariq Shah	02/04/2007	Type D Hospital Thall	Mohallah Bajra Abbas Thall	LHW
26.	Mumtaz	Mumtaz Muhammad		02/04/2007	Type D Hospital Thall	Mohallah Humzani Thall	LHW
27.	Huma Mehan	Mehan-u-ddin		02/04/2007	Type D Hospital Thall	Mohallah Nadan Baba Thall	LHW
28.	Suria Begum	Abdul Bad Shah		02/04/2007	Type D Hospital Thall	New Yousaf Khel	LHW
29.	Saiqa Hatton	Salah-ud-din	Iltaf-u-rehman	15/07/2009	Type D Hospital Thall	Mohallah Haji Shakeel Thall	LHW
30.	Chand Bibi	Sardar Shah		15/07/2009	Type D Hospital Thall	Mohallah Ghafor Khan Thall	LHW
31.	Adnan-uddin	Liaq Din		13/06/2008	Type D Hospital Thall	Mohallah Ghafor Khan Thall	Driver

In exercise of powers conferred under sub section (2) of the Section ibid, the above Community Embedded Employees are placed in the following pay scales as mentioned against their respective designations.

Name of Post	Basic Pay Scale
Lady Health Supervisor	7
Lady Health Worker	5
Driver	4

--- S/d ---
**DISTRICT HEALTH OFFICER
HANGU**

C.c:

1. PS to Secretary Health, Govt. of Khyber Pakhtunkhwa Peshawar
2. The Director General Health Services Khyber Pakhtunkhwa.
3. The Director Health Services, Health Directorate, Peshawar.
4. Provincial Coordinator LHWs Programme Khyber Pakhtunkhwa Peshawar
5. District Account Officer for information
6. Incharge Concerned FLCF
7. Official concerned

*Attested
Jalir*

Zohman Khalid
**DISTRICT HEALTH OFFICER
HANGU**

[Signature]
ATTESTED

بخدمت جناب ڈسٹرکٹ ہیلتھ آفیسر صاحب، ہنگو

(Annexure:- C)

ناب عالی! سائلہ حسب ذیل عرض رساں ہوں۔

یہ کہ سائلہ محکمہ ہذا میں مورخہ 01-08-2006 کو بحیثیت لیڈی ہیلتھ ورکر بھرتی ہوئی اور نہایت خوش اسلوبی سے اپنی ڈیوٹی سرانجام دیتی رہی۔

یہ کہ من سائلہ کو ایک مجریہ 201G کی شن نمبر (ا) کے تحت معاہدہ کی بنیاد پر کام کرنے والے ملازمین کو 01-07-2012 مستقل تصور کیا گیا۔ (نوٹیفیکیشن نمبر 274-310)

یہ کہ اب مئی 2020 من سائلہ کو عمر 60 سالہ کی بنیاد پر بغیر پنشن دیئے ریٹائرڈ کیا گیا جو من سائلہ کے ساتھ بہت ظلم اور نا انصافی ہے۔

یہ کہ چند اشخاص نے پشاور ہائی کورٹ پشاور میں مقدمہ دائر کیا تھا۔ رٹ پٹیشن نمبر 3394P جو پشاور ہائی کورٹ میں رٹ پٹیشن منظور ہوئی ہے۔ جس میں ریٹائرڈ اشخاص کو حقدار قرار دیا گیا۔ (نقل فیصلہ و حکم پشاور ہائی کورٹ پشاور لف ہذا درخواست ہے)۔

یہ کہ دوسری رٹ پٹیشن بنام احمد ارخان ولد صاحب خان سکندہ نوشہر خواجی محکمہ سے ریٹائر ہوا۔ اس کی رٹ پٹیشن مورخہ 01-10-2020 کو منظور ہوئی ہے۔ پٹیشن نمبر 5551/P2019 اور جناب احمد ارخان کے حق میں فیصلہ ہوا ہے۔ اور

عدالت کے فیصلے کے مطابق وہ پنشن کا حقدار ٹھہرایا گیا ہے۔ جو کہ عدالت ہائی کورٹ پشاور نے دوسری درخواست منظور کی ہے۔ اور من سائلہ بھی پنشن کی حقدارہ ہے۔ (نقل رٹ پٹیشن زیر آرٹیکل 199 آئین اسلامی جمہوریہ پاکستان 1973 کے تحت عارضی معاہدہ ایڈ ہاک اور مقررہ تنخواہ کی بنیاد پر کام کرنے والوں کو پنشن کا حقدار ٹھہرایا گیا ہے۔ لہذا سائلہ کی پچھلی سروس کو مد نظر رکھتے ہوئے پنشن کا حقدارہ ٹھہرانا درکارا مطلوب ہے۔

لہذا استدعا کی جاتی ہے کہ سائلہ کو پنشن کا حقدارہ ٹھہرانے کے احکامات صادر فرمائیں جس کیلئے سائلہ آپ کو ہمیشہ ترقی و عمر درازی کی دعائیں دیتی رہے گی۔

مورخہ 04-08-2021

العارض

محمد مسیح

ATTESTED



31
OFFICE OF THE DISTRICT
HEALTH OFFICER HANGU
PH# +92-925-623034
E-mail: edohealthhangu@gmail.com

15

Ref: # 8732 / 1 PF / Dated Hangu the 05-10-2021

To

The District Account Officer
Hangu

Subject: Application for Retirement Pension
Memo

With Reference to this office letter No. 7690/PF Dated 23-08-2021, The undersigned submitted self explanatory application which is submitted by Mst. Mumtaz W/O James Masih Ex-LHW R/O Chatar Sing Thall City for your kind information with remarks to guide the undersigned that whether she is eligible for pension or not.

DISTRICT HEALTH OFFICER
HANGU

Ref: # _____ / _____ / Dated Hangu the _____

Copy forwarded to

1. Mst. Mumtaz Ex LHW for information with reference to her application as quoted above.

Attested
Jalir

DISTRICT HEALTH OFFICER
HANGU

ATTESTED
JP



Office of the
**DISTRICT ACCOUNTS
OFFICER HANGU**
Khyber Pakhtunkhwa

No. *S* HU/Pension./2020-2021

Dated: 22/11/2021

To,
The District Health Officer,
Hangu.

Subject:- **APPLICATION FOR RETIREMENT PENSION.**

Please refer to your letter No.8732/P.F, dated 05.10.2021 on the above noted subject, the case is returned in original with the remarks that the subject mentioned applicant is not entitled for pension.

[Signature] 25/11/21

**DISTRICT ACCOUNTS OFFICER,
HANGU.**

*Attested
[Signature]*

[Signature] 22/11/21

ATTESTED
[Signature]

(Annexure:- D)

-1-

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
JUDICIAL DEPARTMENT.



Writ Petition No.5551-P of 2019

J U D G M E N T

Date of hearing : 1st October, 2020
Petitioner : By Mr. Wali Khan Afridi;
(Rahamdad Khan) Advocate.
Respondents : By Syed Sikandar Hayat Shah,
(Provincial Government etc.) Additional Advocate General

QAISER RASHID KHAN, J.- The petitioner, through the instant writ petition, has asked for the issuance of an appropriate writ seeking directions to the respondents to grant him pensionary benefits forthwith.

*Attested
Jlin*

2. As per averments in the petition, on 21.09.1995, the petitioner was initially appointed as a driver in the health department on temporary basis and thereafter pursuant to notification dated 19.09.2014, his services were regularized in the light of the Khyber Pakhtunkhwa Regularization of Lady Health Workers Program and Employees Act (Regularization and Standardization) Act, and on attaining the age of superannuation stood retired from service on 15.07.2019 and the reluctance of the respondents to finalize his pension papers, prompted him to file the instant writ petition.

3. Arguments heard and the available record perused.

ATTESTED
Peshawar High Court

4. The moot question before us is that as to whether the petitioner is entitled to get the pensionary benefits. It is not disputed that the petitioner was initially appointed on temporary basis. It is also not disputed that his services were subsequently regularized under the Act *ibid* and stood retired from service on attaining the age of superannuation.

5. It is by now settled that, after regularization, the total continuous service of an employee is to be computed towards his pension and, in this regard, his date of first appointment, temporary or otherwise, would be reckoned as envisaged under Rule 2.2 of the West Pakistan Civil Services Pension Rules, 1963. When the case of the petitioner is seen on the touchstone of the *ibid* settled principle, then, we come to the safe conclusion that being a vested right conferred by law itself, he cannot be deprived of the pensionary benefits.

*Attested
Jalir*

Rel. 2010 PLC 354 & 2019 PLC (CS) 1065.

6. Accordingly, we admit and allow this writ petition in terms of directing the respondents to consider the case of the petitioner for pensionary benefits and complete the entire process as early as possible in accordance with law as the bread and butter of his family members is involved.

Announced
01. 10. 2020

SENIOR PUISNE JUDGE

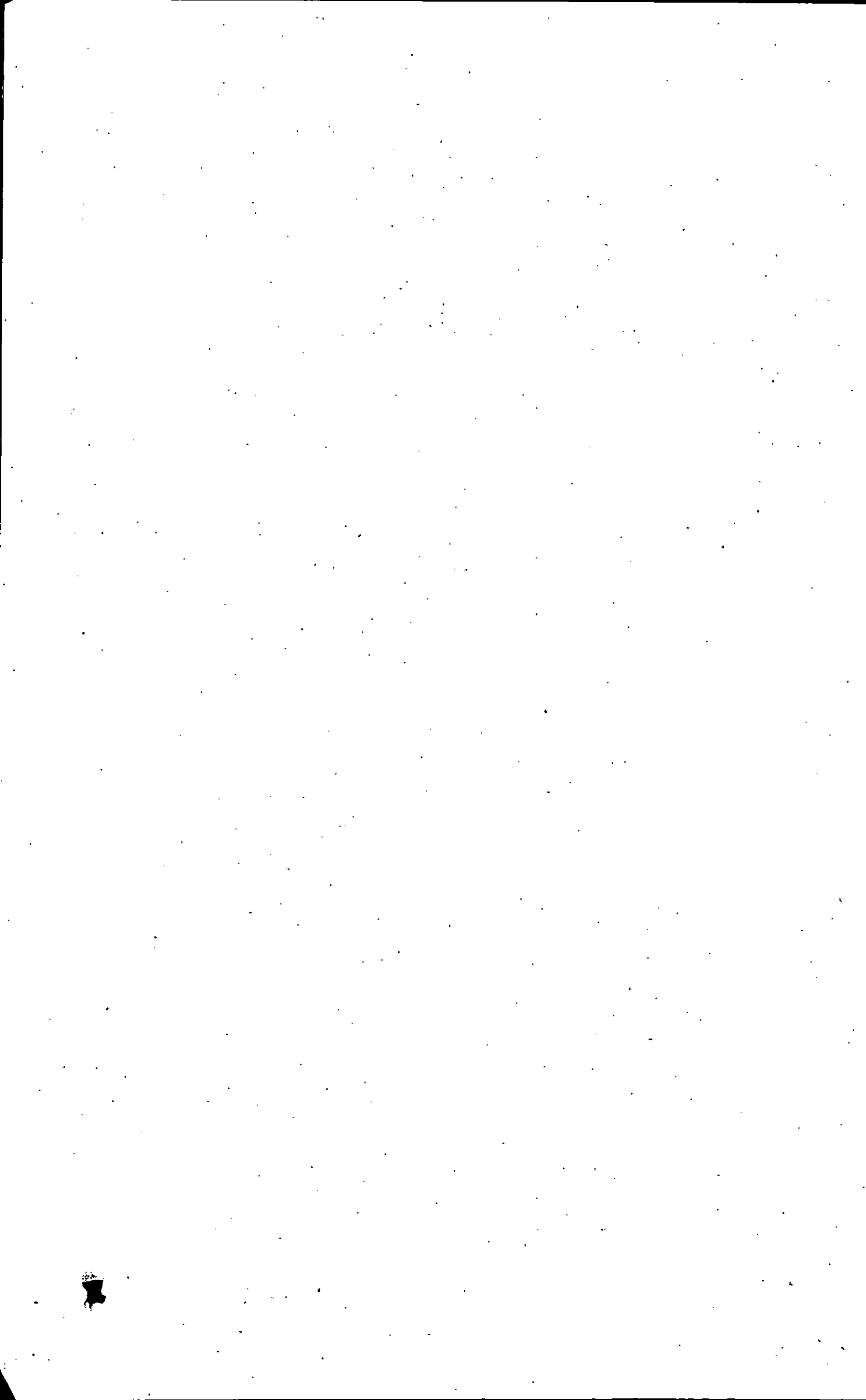
JUDGE

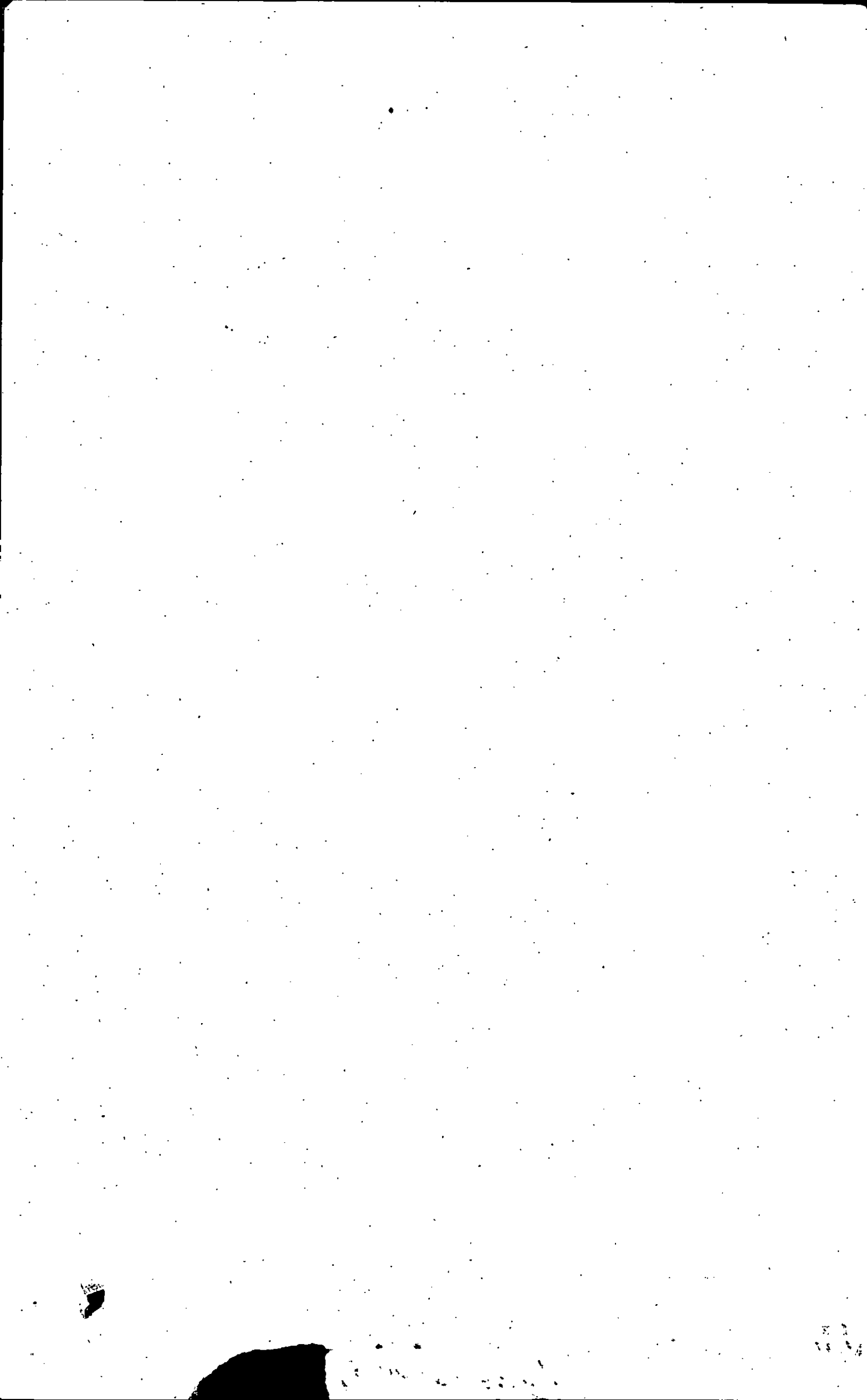
(Fayaz) (D.B.) Justice Qaiser Rashid Khan & Justice Ijaz Anwar

[Signature]
CERTIFIED TO BE TRUE COPY

EXAMINED
Lawyer High Court, Islamabad
Authorised Under Article 17 of
the Constitution of Pakistan, 1973

02 SEP 2021



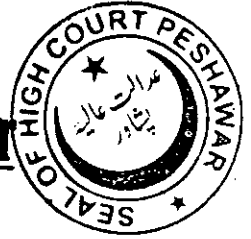


(Annexure:- F)

37

21

In the Peshawar High Court Peshawar



In Re: Writ Petition No. 1905-P of 2022

Mst. Muntaz Bibi (Ex. Lady Health Worker), wife of James Masih resident of Mohallah Saray Chatar Singh Thal District Hangu

Petitioner

Versus

1. District Health Officer Hangu
2. District Account Officer, Hangu

Respondents

Writ petition under article 199 of the constitution of Islamic Republic of Pakistan 1973 as amended up to date

RE-FILED TODAY

Deputy Registrar

26 MAY 2022

Prayer,

On acceptance of this Petition, an appropriate Writ May kindly be Issued, by directing the respondents, to allow pensionary Benefits to the petitioner by counting her length of service from the date of her initial appointment i.e. 27/ 07/ 2006. Refusal as such on the part of the respondents may be declared as without lawful authority, without jurisdiction of no legal effect and ineffective upon the valid and legal rights of the petitioner. With grant of additional relief, not specifically prayed for but is available for the petitioner to avail, in the ends of justice.

Respectfully submitted,

FILED TODAY

Deputy Registrar

23 MAY 2022

ATTESTED
EXAMINER
Peshawar High Court

1. The petitioner at very intrinsic was appointed as lady health worker on 29/ 07/ 2006, vide order No. 611/NP in the national programme, on contractual bases, however, later on, her services were regularized vide order bearing No. 274-310 dated 19/ 04/

- 2014 with effect from 01/ 07/ 2012. (Copy of the service Book with regularization order annexed as annexure A and B)
2. After successful completion, the petitioner got retired from service on superannuation vide order No. 4154-58/LHW dated 10/ 07/ 2020.
 3. Retirement, when was conveyed the petitioner applied for pension, but the respondents, refused as the services of the petitioner was counted from her regularization leaving the contractual period of her service to be counted for the purposes of pension. (Copies of the representation and order it upon is annexure C)
 4. The order and refusal as such is not sustainable per law, there is no quick, proper and adequate remedy available for the petitioner to avail, hence this constitutional petition on the following grounds inter alia

Grounds,

- A. Impugned refusal of the respondents to grant the pensionary benefits to the petitioner is an act without jurisdiction, without lawful authority of no legal effect and is liable to be declared as such
- B. Per West Pakistan Civil Services Pension Rules, 1963, specifically its rule 2.3, temporary and officiating services are to be counted for the purposes of calculating the length of service to get pensionary benefits but presently the respondents having denied the same have violated this basic rule of law, have committed an act against law and justice
- C. Precedents are available in the matter, in shape of judgment passed by this Hon' able Court bearing WP No. 5551-P of 2019 dated 1st October 2020, in such reference the petitioner has been discriminated which is grave miscarriage of justice
- D. Pension is the vested right of the petitioner which is protected by the law and rules as referred which cannot be denied by the respondents and they are legally bound to grant the benefits of pension as prayed for
- E. Law, facts, circumstances and justice dully incline in favor of grant of this Petition
- F. The Petitioner seeks leave of this Hon' able Court to raise/ argue additional grounds at the time of arguments

ILEEM OJAY
Deputy Registrar
23 MAY 2022

ATTESTED
EXAMINER
Peshawar High Court

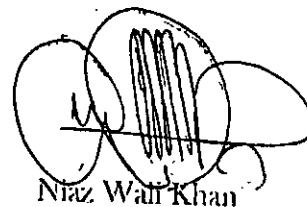
It is therefore prayed that On acceptance of this Petition, an appropriate Writ May kindly be issued, by directing the respondents, to allow pensionary Benefits to the petitioner by counting her length of service from the date of her initial appointment i.e. 29/ 07/ 2006. Refusal as such on the part of the respondents may be declared as without lawful authority, without jurisdiction of no legal effect and ineffective upon the valid and legal rights of the petitioner. With grant of additional relief, not specifically prayed for but is available for the petitioner to avail, in the ends of justice

Petitioner



Mst. Mumtaz Bibi

Through



Niaz Wali Khan

ASC Peshawar

Certificate

It is certified that no writ petition of such kind has been filed before any Court of law except the present one.



Advocate

Law Books,

1. Constitution of Pakistan 1973
2. West Pakistan Civil Services Pension rules, 1963
3. Other relevant law in the matte if needed

ATTESTED
EXAMINER
Peshawar High Court



Advocate

FILED
Deputy Registrar
23 MAY 2022

In the Peshawar High Court Peshawar

In Re: Writ Petition No. 1905-P of 2022

Mst. Mumtaz Bibi.....Petitioner

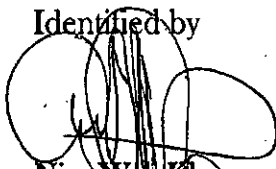
Versus

District Health Officer Hangu.....Respondents

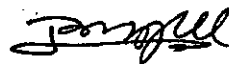
AFFIDAVIT

I, James Masih (Special Attorney for petitioner) Son of Boota Masih, R/o Mohallah Saray, Chatar Singh, Thal District Hangu, do hereby solemnly affirm and declare on oath that the contents of the accompanying Writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by



Niaz Wali Khan
Advocate High Court



DEPONENT
CNIC No:14101-9259868-1 ✓
Cell No.0301-5087120

FILED TODAY
Deputy Registrar
23 MAY 2022

No. 10084.....

Certified that the above was verified on solemnly affirmation before me in office, this.....21..... day of May..... at James Masih s/o Boota Masih who resides at Hangu Thal District Hangu Who is personally known to me

District Commissioner
Peshawar
21/05/2022

MAILED TO BE TRUE COPY

Deputy Registrar, Peshawar High Court, Peshawar
Under Article 87 of the Constitution of Pakistan
Order 195

04 JUL 2022

PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'
FORM OF ORDER SHEET



Date of order.	Order or other proceedings with the order of the Judge
29.06.2022	<p><u>W.P No. 1905-P of 2022.</u></p> <p>Present: Mr. Niaz Wali Khan, Advocate for petitioner.</p> <p>Mr. Muhammad Riaz, AAG for respondents.</p> <p>---</p> <p><u>LAL JAN KHATTAK, J.-</u> At the very outset, learned counsel for the petitioner stated that the petitioner would be satisfied and would not press this petition anymore if same is treated as her departmental appeal and sent to the respondent No. 1 for decision at the earliest to which, the learned AAG present in court in different matters, got no objection.</p> <p>2. In view of above, we dispose of this petition in terms of sending it to the respondent No.1 (District Health Officer, Hangu) to look into the petitioner's grievance at his end and decide the same as per rules and policy.</p> <p>Announced: 29.06.2022.</p> <p style="text-align: right;"><i>[Signature]</i> JUDGE</p> <p style="text-align: right;"><i>[Signature]</i> JUDGE</p>

43378

(DB) (Hon'ble Mr. Justice Lal Jan Khattak & Hon'ble Mr. Justice Mohammad Ibrahim Khan, JJ.)

Date of Presentation of Application..... 4-7-22

No of Pages..... 5

Copying fee.....

Total..... 20

Date of Preparation of Copy..... 4-7-22

Date of Delivery of Copy..... 4-7-22

Received By..... *[Signature]*

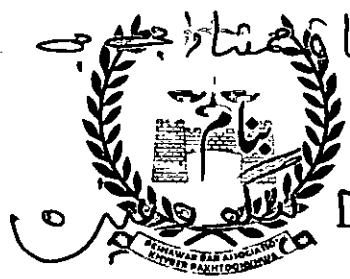
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High Court, Peshawar
Article 87 of
Constitution of Pakistan Order 198

04 JUL 2022

قیمت 50 روپے	40737	 	
M. Salah-Ud-Din Advocate High Court Peshawar	ایڈوکیٹ:		
14-4758	بار کونسل/ایسوسی ایشن نمبر:	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	
0334-9171065	رابطہ نمبر:		

بعدالت جناب: سر و سٹریٹ ایجوٹل خیبر پختونخواہ پشاور

مخانب: ایپلائٹ	دعویٰ: ایپل ڈیپرفیو 4
مسما	علت نمبر: ---
	مورخہ: ---
	جرم: ---
DHO	تھانہ: ---

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
آن مقام ایڈووکیٹ ایم صلاح الدین ایڈووکیٹس کو وکیل مقرر
کر 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 ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا ایپل کی برآمدگی اور سٹیوٹی، نیز
وائر کرنے ایپل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا اجزائی
کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا سبب پر دستخط منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جہانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب یا بندہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم: 23/09/2023
PESHAWAR BAR ASSOCIATION
KHYBER PAKHTOONKHWA

المقوم: 23/09/2023
PESHAWAR BAR ASSOCIATION
KHYBER PAKHTOONKHWA

استقامت پشاور کے لیے منظور ہے

Attested by
Accepted by
محمد علی

نوٹ: اس وکالت نامہ کو کوئی ناقابل قبول ہوگی

43

SCANNED
KPST
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal No. 1471/2022

Mst. Mumtaz Bibi.....APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Health Secretary.....RESPONDENTS

INDEX

S. No	Description of Departments	Annex	Pages
01	Para wise Comments / Reply		1-2
02	Affidavit		3


DEPONENT

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.****Appeal No. 1471/2022**

Mst. Mumtaz Bibi.....APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa through Health Secretary.....RESPONDENTS

(Para wise reply on behalf of Respondent No 3)**Preliminary Objection:-**

- A. That the APPELLANT has no cause of action.
- B. That the APPELLANT has no locus standi.
- C. That the APPELLANT has not come to this court with clean hands.
- D. That the instant petition is barred by law.
- E. No comment.

Respectfully Sheweth:-

1. Relates to record, however, liable to be proved by the appellant.
2. Relates to record, however, liable to be proved by the appellant.
3. That Respondent No. 3 is bound to follow the rules and instruction issued by the Provincial Govt. of Khyber Pakhtunkhwa from time to time. Hence it is pertinent to mention here that as the appellant was regularized w.e.f 01-07-2012 and her time period of regular service is less than ten years, she is not entitled for pension under the pension rules.
4. No comments.

Grounds:-

- A. That respondent No. 3 is bound to follow the rules and instructions issued by the Provincial Govt. of Khyber Pakhtunkhwa from time to time and not violated any rule of Laws.
- B. Correct to the extent that after to Promulgation of an Act 2012, the APPELANT was regularized w.e.f 01.07.2012 and after her regular service till the age of superannuation i.e. 10.07.2020 according to the office order hereby No. 4154-58/LHW dated 10.07.2020 her services is less than ten years. Hence she is not entitled for pension under the rules.
- C. No Comments.
- D. As mentioned in Para "B" above.
- E. As mentioned in Para "B" above.
- F. No Comments.

Keeping in view the above mentioned facts it is, therefore, humbly prayed that the appeal in hand having no merits may be dismissed with cost.


DISTRICT ACCOUNTS OFFICER
HANGU

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal No. 1471/2022

Mst. Mumtaz Bibi.....APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Health Secretary.....RESPONDENTS

AFFIDAVIT

I Amjad Ur Rehman Sub-Accountant office of the District Accounts Officer, Hangu do hereby solemnly affirm that the contents of Para wise Comments/reply submitted on behalf of respondent No.03 are true and correct to the best of my Knowledge and belief and nothing has been concealed from this honorable court.



DEPONENT

CNIC # 17301-7313492-7

CELL#0333-9077305

Identified by

Advocate General
Khyber Pakhtunkhwa
Peshawar.



AUTHORITY

Mr. Amjad Ur Rehman of this office is hereby authorized to submit the Para wise Comments/reply in the Honorable Service Tribunal Peshawar appeal **No. 1471/2022** titled Mst. Mumtaz Bibi VS Govt. of Khyber Pakhtunkhwa through Health Secretary.



**DISTRICT ACCOUNTS OFFICER
HANGU**

Pension

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

W.P No.289-M/2021

**Muhammad Saeed Vs. Govt. of Khyber Pakhtunkhwa
through Chief Secretary and others**

Present: Petitioner in person.
Khwaja Salah-ud-Din, A.A.G for official Respondents.

Date of hearing: 04.04.2023

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- Muhammad Saeed, the widower/ husband of late Mst. Saeed Bibi, by invoking the writ jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has filed the instant petition with the prayer that the respondents may be directed to grant and provide all back benefits of late Mst. Saeeda Bibi in the shape of family pension etc. on the ground that his late wife Mst. Saeeda Bibi was incipiently appointed as LHW in Health Department on 06.10.2010 on contract basis/fixed pay, however, her services were later on regularized vide office order dated 20.09.2014 but w.e.f. 1st July, 2012 and then she died during service on 20.09.2020.

2. Though Mr. Momin Khan, Advocate who is representing the petitioner has submitted an application for adjournment, however, the petitioner present in person before the Court stated at the bar that he has not only submitted written arguments but will also

with the directions of this Court

department in permanent establishment under the Government of Khyber Pakhtunkhwa and continuously served w.e.f. 06.10.2010 till 30.06.2012 (01-year 08-months and 21-days) and after her regularization till her death for 08-years 02-months and 14-days, hence, the total length of service of the deceased employee from her initial appointment till her death was 09-years 11-months and 14-days. He added that in accordance with the provisions of rules 2.2 & 2.3 of the West Pakistan Civil Service Pension Rules, 1963, he is entitled for pensionary benefits of deceased Mst. Saeeda Bibi, being her husband/widower. He further added that under Family Pension Rules, article 358, 361, 361-A and 423 (i) of Civil Service Regulation (CSR) in juxtaposition with judgment titled "Sher Afzal Khan Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education and others" (PLC 2019 CS 1065); W.P. No.269-M/2019, "Secretary Ministry of Finance, Islamabad and others Vs. Tayyaba Halim Subhani and others" (2022 SCMR 77), "WAPDA through Chairman and another Vs. Mst. Parizada" (2018 SCMR 1542), "Amir Zeb widower of Mst. Asia vs. The District Account Officer Nowshera and 5 others" (Writ Petition No. 3394-P of 2016) decided on 22.06.2017 and LHW Regularization Act, 2014 and Rules 2015, the status of the deceased employee was of a regular/confirmed employee. Lastly, he submitted that for the purpose of pensionary

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services for completing the eligibility criteria of 10 years qualifying service as held by this Court in numerous cases.

3. On the other hand, the learned A.A.G representing the official respondents submitted that since the deceased has rendered 08-years 02-months and 19-days service after her regularization and having not crossed the eligibility criteria of qualifying service for pension under the pension rules, thus, was not entitled for pensionary benefits. He prayed for dismissal of the instant petition, being not maintainable.

4. Arguments heard and record perused.

5. During the course of arguments, on 27.09.2022, this Court has framed certain points/ issues and directed both the parties to assist this Court in consonance with the law as reflected in the said order sheet. The questions and law, on which, the assistance of the parties was required in the matter in hand, are reproduced as under:

- 1) Whether without completion of 10 years qualifying service, the service on fixed pay or contract followed by regularization could be counted for pensionary benefits?
- 2) Whether the provisions of pension rules or Article 371-A of Civil Service Regulations (C.S.R.) would be beneficial only if the employee was otherwise entitled for pensionary benefits on completion of qualifying service?
- 3) Whether the word "count" could be interpreted to add the length of qualifying service to hold entitled a civil or Government servant for pensionary benefit when he

enunciated by the Hon'ble Supreme Court as well as by this Court in the cases of:

- (i) Muhammad Nawaz Special Secretary Cabinet Division through his legal heirs vs. Ministry of Finance Government of Pakistan through its Secretary Islamabad (1991 SCMR 1192);
- (ii) Mst. Rashida Khatoon and 2 others Vs. District Education officer (Male) and 3 others (2016 PLC(CS) 308).
- (iii) Mudassar Termizi and others vs. Peshawar High Court through Registrar, Peshawar and others (2021 PLC(CS) 441);
- (iv) Secretary, Ministry of Finance, Islamabad and others vs Tayyaba Halim Subhani and others (2022 SCMR 77) & 2022 P L C (C.S.) 514;
- (v) Ministry of Finance through Secretary and others Vs Syed Afroz Akhtar Rizvi and others [2022 PLC (CS) 22, Peshawar];
- (vi) Mst. Islam-Bibi Vs. Government of Pakistan through Secretary State and Frontier Regions Division, Islamabad and 3 others [2022 PLC (CS) 1196 of the Larger Bench of this Court]; and
- (vii) Amir Zeb widower of Mst. Asia vs. The District Account Officer Nowshera and 5 others (Writ Petition No. 3394-P of 2016) dated 22.06.2017.

Office is directed to issue notice to the petitioner, Mr. Momin Khan, Advocate & learned AAG for 20th of December 2022."

6. Insofar as the question of maintainability of the instant petition filed by the widower/husband of namely Mst. Saeeda Bibi, who was a regular civil servant is concerned, in the case of

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through its Secretary Islamabad" (1991 SCMR 1192), it was held by the apex Court that:

"A right of appeal under the Service Tribunals Act of 1973 has been given to a civil servant aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service. The appellants admittedly are the legal heirs of the deceased civil servant and there being no provision in the Service Tribunals Act of 1973 to provide any remedy to the successors-in-interest of a civil servant, of the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained."

Thus, the petitioner, being the husband/legal heir of deceased civil servant could not seek his remedy from the Tribunal constituted under the provisions of Khyber Pakhtunkhwa Services Tribunal Act, 1974 and as such, the petition in hand was rightly filed before this Court. In the case of "Mst. Islam Bibi Vs. Government of Pakistan through Secretary State and Frontier Regions Division, Islamabad and 3 others" [2022 PLC (CS) 1196], this Court has held that: "legal heirs of civil servant can validly file a writ petition before the High Court for pensionary benefits of his/her predecessor in interest, who was a civil servant". Reliance may also be placed on the case of "Mst. Rashida Khatoon and 2 others Vs. District Education officer (Male) and 3 others" [2016 PLC(CS) 308]. Hence, the objection of

is held that the instant petition was competently filed by the petitioner before this Court for the relief claimed therein.

7. The pivotal question for determination in the instant petition is as to whether in accordance with rules 2.2 & 2.3 of the Pension Rules in juxtaposition article 371-A of CSR, the services rendered on contractual side/ fixed pay by the late civil servant could be calculated towards her regular service for completing qualifying service for the purpose of pensionary benefit. In order to determine the above formulated question, at first instance, the matter was heard by the apex Court in the case of "Mir Ahmad Khan Vs. Secretary to Government and others" (1997 SCMR 1477), wherein it was held that:

“Admittedly, the appellant put in more than ten years’ temporary service before his services were terminated, he was, therefore, entitled to pensionary benefits under Regulation 371-A(i) of Civil Service Regulations. It appears that this provision of the Civil Service Regulation was not cited before the Tribunal otherwise the observation to the contrary could not have been made in the impugned judgment. Resultantly, the appellant and similarly placed other employees of the Afghan Refugees Organization, being Government civil servants, are held entitled to pensionary benefits if their cases are covered by Regulation No. 371-A of Civil Service Regulations. We allow this appeal, set aside the impugned judgment of the Federal Service Tribunal with no order as to costs.”

The afore-mentioned principle laid down in Mir Ahmad

Government of Pakistan Islamabad and others Vs. Shah Jehan

Shah" (PLD 2016 SC 534), where the judgment in the case of *Mir*

Ahmad Khan (*supra*) has been declared as *per incuriam* by

holding that:

"7. It is not disputed that the respondent rendered continuous temporary service and that his length of service was continuous and for more than five years. However, the question that needs to be answered is whether he was working in a "temporary establishment" or not. "Temporary establishment" has not been defined in the CSR, the Fundamental and Supplementary Rules issued by the Government of Pakistan, the ESTA Code or the Compendium of Pension Rules and Orders. In this context Article 369 of the CSR mentions temporary establishment but only explains what it is not and thus is not very helpful. Therefore, as mentioned earlier in the opinion, as per the settled rules of interpretation, the dictionary meaning of the words has to be resorted to. The Concise Oxford Dictionary (6th Ed.) has defined "temporary" as "lasting, meant to last, only for a time", and "establishment" as an "organized body of men maintained for a purpose". Chambers 21st Century Dictionary defines "temporary" as "lasting, acting or used, etc for a limited period of time only", and "establishment" as "a public or government institution". Oxford Advanced Learner's Dictionary of Current English (7th Ed.) defines "temporary" as "lasting or intended to last or be used only for a short time; not permanent" and "establishment" as "an organisation, a large institution..." In light of the above dictionary meanings, "temporary establishment" can be said to mean an organisation or institution which is not permanent, rather effective for a certain period only. Admittedly the respondent was serving in Pakistan Locomotive Factory Risalpur, Pakistan Railways, which does not

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even then the respondent would not be able to take the benefit of Article 371-A (supra) as he otherwise does not qualify for pensionary benefits having not been subsequently taken into permanent employment, which is sine qua non for the grant thereof.

8. Adverting to the law laid down in the case of Mir Ahmad Khan (supra) wherein it was held: -

"Admittedly the appellant put in more than ten years' temporary service before his services were terminated, he was, therefore, entitled to pensionary benefits under Regulation 371-A(i) of Civil Service Regulations."

In light of the discussion in paragraph No.6, the judgment delivered in Mir Ahmad Khan's case (supra) is declared to be per incuriam."

Thus, the Hon'ble Supreme Court in explicit terms has held that without completion of 10 years qualifying service, the services rendered by an employee on contract/fixed pay could not be counted for pensionary benefits. It was also ruled that a civil servant has to complete 10-year regular qualifying service for pension and thereafter, his services whatever it may be, on contract or daily wages or fixed pay, shall be counted for determination of pensionary benefits but without completion of 10-years qualifying service, the service of an employee rendered on contract or fixed pay could not be added to the service after regularization to complete qualifying 10-year regular service. Since, there were judgments of Division Bench of this Court, whereby the services rendered on contract basis or fixed pay were held to be counted for

cases, a larger Bench was constituted by this Court and in the case of W.P No.3394-P/2016 titled "Amir Zeb Vs. The District Accounts Officer Nowhsera and 05 others" decided on 22.06.2017, while interpreting proviso 2 & 3 of section 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 as added by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013, it was held by this Court that:

"It is manifest that the person selected for appointment on contract basis shall be deemed as regular employee and subsequently were held entitled for pensionary benefits. The deceased employees have completed the prescribed length of service as their service towards pension shall be counted from the first day of their appointment and not from the date of regularization of their service."

However, in the case of "Ministry of Finance through Secretary and others Vs. Syed Afroz Akhtar Rizvi and others" (2021 SCMR 1546), it has been held by the apex Court that:

"In case, an employee had served a government department for the duration of the period qualifying him to receive pension, the period spent as a contractual employee may be added to his regular qualifying service only and only for the purpose of calculating his pension and for no other purpose. The provisions of Article 371-A of Civil Service Regulations (C.S.R.) started with a non obstante clause which meant that the said Article did not relate to the question entitlement or eligibility to receive pension. It was clearly and obviously restricted to counting the period of a minimum of five years which had been rendered by a temporary contractual

those who did not fulfill the requisite conditions for qualifying for pension to bypass such conditions and add up regular and contractual periods of employment for the purpose of meeting the eligibility criterion of ten years of service. Such an interpretation would create absurd situations and would render other provisions and Articles of C.S.R. redundant, unnecessary and surplus. Therefore, Article 371 of C.S.R. did not allow Government Servants rendering temporary service in a temporary establishment for more than 5 years to be entitled for grant of pension rather such period could be counted towards calculation of pension only if otherwise entitled to pension by meeting the criteria of qualifying service."

More-so, this Court in the case of "Inayat Khan Vs. Government of Khyber Pakhtunkhwa through Secretary Frontier Education and others" (W.P No.833-M/2018) decided on 14.02.2023 has held that:

"Being based upon the interpretation of Article 371-A of C.S.R made by the apex Court; it is concluded that the service rendered on contract followed by regularization could only be counted for pensionary benefits provided the civil servant has completed qualifying ten years' service independently. Thus, the contention of learned counsel for petitioner for addition of service of the petitioner rendered on contractual side in the service rendered by him after his regularization for pensionary benefits is misconceived."

8. Admittedly, the deceased wife of the petitioner has not fulfilled the eligibility criteria i.e., 10 years qualifying service for pensionary benefits independently till her death after her

regular service, as such, contention of the petitioner that there are judgments of this Court, whereby the benefits were extended to those who have not completed 10-years independent service on regular side by addition of services rendered on contract, after the decision of the apex Court in supra case reported as **2021 SCMR 1546**, is of any help to the petitioner.

9. Thus, for the reasons discussed above and in view of the principle laid down by the apex Court, it is held that:

- i. Mst. Saeeda Bibi, the deceased wife of petitioner has not completed 10-years qualifying service for pensionary benefits from the date of her regularization till her death;
- ii. Services rendered by the deceased employee on contract/ fixed pay without independently qualifying the eligibility criteria of 10-year service could not be added to her regular service for pensionary benefits; and
- iii. Article 371-A of CSR and rules 2.2 & 2.3 of the Pension Rules shall be interpreted and followed by the Courts in terms of dicta laid down by 2021 SCMR 1546 in juxta position with article 189 of the Constitution of Islamic Republic of Pakistan 1973.

10. When so, the instant petition, being devoid of force, stand dismissed.

Announced.
04.04.2023.


JUDGE

CHAPTER - II

SERVICE QUALIFYING FOR PENSION*

2.1 **Conditions of Qualifications** – The service of a Government Servant does not qualify for pension unless it conforms to the following three conditions: -

First – The Service must be under Government.

Second – the service must not be Non-pensionable.

Third – the service must be paid by Government from the Provincial Consolidated Fund.

* Note – (1) For the previous service of displaced Government servants which qualifies for pension see Chapter – VII.

* Note – (2) Service rendered after retirement on superannuation pension/retiring pension shall not count for pension or gratuity.

2.2 **Beginning of service** – Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.

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 shall count such service for the purpose of pension or gratuity; and

(ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

2.4 **Service in a temporary post on abolition of a permanent post** – If a permanent post, on which a Government servant holds a lien, is abolished under circumstances entitling him to get a compensation pension or gratuity, his service thereafter in a temporary post under Government qualifies for pension.

* Note (1) and (2) Substituted vide notification No. SO(SR) V-915/65 Dated 6th May, 1965

2023 P L C (C.S.) 277 ,

[Peshawar High Court (Mingora Bench)]

Before Ishtiaq Ibrahim and Wiqar Ahmad, JJ

MULTAN SHAH and 2 others

Versus

VICE-CHANCELLOR UNIVERSITY OF MALAKAND and 2 others

Writ Petition No.64-M of 2019, decided on 17th November, 2020.

(a) West Pakistan Civil Services Pension Rules, 1963---

---R.2.3---Temporary and officiating service---Scope---Petitioners were aggrieved of non-payment of pension by the University authorities---Contention of respondents was that the regular service of petitioners was short of minimum qualifying service for the grant of pensionary benefits and that the period for which they had rendered services as temporary employees could not be counted towards service---Validity---Rule 5 of the Service Pension Statutes of University of Malakand provided that the West Pakistan Civil Services Pension Rules, 1963, were applicable to the University employees---Language whereby the pension rules were adopted by the University itself showed that it shall apply in those areas which were not regulated by the Service Pension Statutes---Service Pension Statutes had nowhere provided any special rule for defining the qualifying service for the grant of pension, as well as the length of service entitling an employee to maximum allowable pension and the respective ratios thereof---Counsel for the University argued that R.9 of the Service Pension Statutes fulfilled the purpose but the rule revealed that it basically provided authority to the Syndicate or Vice-Chancellor to condone interruptions and deficiencies in counting of the service for the purpose of pension---Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963, provided for counting of temporary or officiating service for the purpose of pension---Constitutional petition was allowed by directing the respondents to count the temporary service of the petitioners for the purpose of determining their qualification and eligibility for the grant of pension and treat them accordingly.

Raja Ali Shan v. Messrs Essem Hotel Limited and others 2007 SCMR 741; Hakim and 3 others v. Government of Pakistan through Secretary Interior and others PLD 1992 SC 595; Ghulam Murtaza v. Abdul Salam Shah and others 2007 SCMR 1062 and State Life Insurance Corporation of Pakistan through Chairman and others v. Mst. Sardar Begum and others 2017 SCMR 999 ref.

Mst. Khilafat Jan v. Principal Government Higher Secondary School Nizampur District Nowshera and 5 others PLJ 2014 Pesh. 225 rel.

(b) Interpretation of statutes---

---Headings and sub-headings of a section may be referred to in aid of interpretation.

Maxwell on the Interpretation of Statutes Twelfth Edition; R. v. Hare [1934] 1 K.B. 354, at p. 355; Fisher v. Raven 1964 A.C. 210 and Understanding Statutes at p.814 and 815 by Mr. S.M. Zafar rel.

(c) Interpretation of statutes---

---Prefix to sections cannot control the plain words of the provisions but where some ambiguity exists it can safely be referred and relied upon in aid of construction of statute.

Fayaz Muhammad Qazi for Petitioner.

Muhammad Yar Malezai for Respondents.

Date of hearing: 17th November, 2020.

JUDGMENT

WIQAR AHMAD, J.----Petitioners have been former employees of the University of Malakand (hereinafter referred to as University), and are aggrieved of non-payment of pension by the university authorities. They have contended in their writ petition that petitioners Nos. 1 and 2 were appointed as Class-IV employees (Chowkidars) in the University on 13.12.2001 on contract basis, while petitioner No. 3 was also appointed as Class-IV employee on 07.04.2003, on contract basis. All the petitioners were regularized in service of the University vide office order dated 20.07.2007. Petitioner No. 1 retired from service on 10.03.2012, petitioner No. 2 retired from service on 05.01.2014 and petitioner No. 3 got retired from service on 15.01.2016, after all the petitioners obtained the age of sixty years (superannuation).

2. Comments of respondents were called, which have accordingly been submitted wherein assertions in Paras 1 to 4 of the writ petition have been admitted as correct, but they had taken the stance that regular service of petitioners in the University had been falling short of the minimum qualifying service for the grant of pensionary benefits.

3. Learned counsel for petitioners submitted during the course of his arguments that in Rule 5 of the Service Pension Statutes of University of Malakand (hereinafter referred to as "the Service Statutes") it had been provided that the West Pakistan Civil Services Pension Rules, 1963 (hereinafter referred to as "the Pension Rules") shall remain applicable to University employees, wherein Rule 4.4 provided that minimum qualifying service for grant of pension shall not be less than 10 years and that rule 2.3 of the said Rules provided that temporary or officiating service shall be counted toward the total length of service for determining eligibility of a retired employee for the grant of pension. He added that if services of the petitioners were counted from the date of their initial appointments, all the employees were having 10 years service and had therefore been entitled to the grant of pension.

4. Learned counsel appearing on behalf of respondents/University relied upon judgments in the case of "Raja Ali Shan v. Messrs Essem Hotel Limited and others" reported as 2007 SCMR 741, the case of "Hakim and 3 others v. Government of Pakistan through Secretary Interior and others" reported as PLD 1992 Supreme Court, 595 as well as judgment in the case of "Ghulam Murtaza v. Abdul Salam Shah and others" reported as 2007 SCMR 1062 and submitted that Service Statutes of the University should be read as a whole; and when so read entitlement of the petitioners could not be established therein. He referred to sub-rule (ii) of rule 4 as well as Rule 7 of the Service Statutes and submitted that the contract employment of the petitioners could not be counted toward pension. He also referred to Rule 9 of the Service Statutes and contended that the minimum qualifying service for University employee has been twenty-five years. He placed further reliance on judgment of the Hon'ble Supreme Court of Pakistan rendered in the case of "State Life Insurance Corporation of Pakistan through Chairman and others v. Mst. Sardar Begum and others" reported as 2017 SCMR 999 for showing that provisions of special law override the provisions of general law to the extent of any conflict or inconsistency between the two.

5. We have heard arguments of learned counsel for the parties and perused the record.

6. We will first address the contention of learned counsel for respondents that the contract period of an employee cannot be counted towards the period of service for determining the qualifying length of service of pension. It has been provided in rule 5 of the Service Statutes that save as otherwise provided in these statutes, the West Pakistan Civil Services Pension Rules, 1963, as applicable to government servants of the North-West Frontier Province, shall mutatis mutandis apply to University employees. The language where the Pension Rules has been adopted by the University itself shows that it shall apply in those areas which have not been regulated by the Service Statutes. It is quite clear from perusal of the Service Statutes annexed with the comments of respondents, that it has nowhere provided any special rule for defining the qualifying service for the grant of pension, as well as the length of service entitling an employee to maximum allowable pension and the respective ratios thereof. Though learned counsel for University has been arguing that rule 9 of the Service Statutes fulfill the purpose, but we are afraid we would not be able to agree with his contention. Rule 9 basically provides authority of the Syndicate or Vice-Chancellor to condone interruptions and deficiencies in counting of the service for the purpose of pension. Said rule being relevant is reproduced for ready reference;

9. Condonation of interruptions and deficiencies;

(1) The Syndicate or the Vice-Chancellor, as the case may be, may for purpose of pension condone all gaps between the periods for qualifying service of a University employee.

(2) The Syndicate or the Vice-Chancellor, as the case may be, may condone deficiency in qualifying service for pension, up to six months; provided that the service is meritorious, if allowed, will bring the service up to twenty-five completed years of qualifying service."

Heading of the rule is indicative that it aims at providing for condonation of interruptions in service and deficiency in the requisite amount of minimum service. Headings or sub-headings of a section may be referred to in aid of interpretation. "The sections or set of sections" as explained in Maxwell on the Interpretation of Statutes (Twelfth Edition). "in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statutes, but they may explain ambiguous words, a rule which, whatever the assistance which it may render in construction, cannot stand logically with the exclusion of marginal notes, for headings like marginal notes are-as Avory, J. pointed out in R. v. Hare-"not voted on or passed by Parliament, but are inserted after the Bill has become law". Findings of Hon'ble Justice Avory expressed in the case of R. v. Hare ([1934] 1 K.B. 354, at P. 355), that

"headings like marginal notes are not voted on or passed by Parliament, but are inserted after the Bill has become law". were of course valid at the time but can no more be relied upon as headings and sub-headings of sections happen to be part of a statute and are no doubt voted by the respective legislature at the time of its enactment. It was so noted in the case of "Fisher v. Raven" (1964 A.C. 210) by Lord Dilhorne that it should be noted that section 13 of the Debtors Act, 1869 was included in Part 2 of the Act which was headed "Punishment of Fraudulent Debtors." It was also noted that Headings or sub-headings have been part of the statute, which were voted upon and passed along with rest of body of the statute, and may therefore be safely referred in aid of the statute. It has also been explained by Mr. S.M. Zafar in his book "Understanding Statutes" at pages 814 and 815 that the Courts while dealing with delegated legislations apply the same general common law principles of interpretation which apply to interpretation of statute. Relevant part of his opinion is reproduced hereunder for ready reference;

"Unless the contrary intention appears, expression used in subordinate legislation made since 1889 under a power contained in any statute, whenever passed, if used in the statute also, have the same meaning in the instrument as in the statute. Subject to this principle, subordinate legislation is to be construed in accordance with the same general rules as those which govern the interpretation of statutes, i.e. apart from the rule of primary intention, delegated legislation is construed on lines similar to those applicable in the case of Acts. The Courts generally show no disposition to distinguish here, and many of the leading cases on statutory interpretation concern delegated legislation."

We can therefore interpret rule 9 of the Service Statutes, according to the principles of interpretation of statutes. No doubt a judicial consensus has also existed that prefix to sections could not control the plain words of the provisions but where some ambiguity exist it can safely be referred and relied upon in aid of construction of statute. Not only heading of the rule indicates that purpose of imbedding Rule 9 has not been to provide for minimum qualifying service, but its wordings itself shows that its purpose has been no other than providing for condonation of interruptions in service and deficiency in the requisite amount of minimum service.

7. Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963 provides for counting of temporary or officiating service for the purpose of pension. Said rule being relevant is reproduced hereunder for ready reference;

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 yeas continuous temporary service shall count such service for the purpose of pension or gratuity; and
- ii. Temporary and officiating service followed by confirmation shall also count for pension or gratuity."

Like Rule 4.4 of the Pension Rules there has been no rule pari materia to Rule 2.3 of the Pension Rules, available in the Service Statutes, which may have substituted it. Effect has to be given to rule 2.3 of the Pension Rules for the said reason. While interpreting said rule this Court in its earlier judgment rendered in the case of "Mst. Khilafat Jan v. Principal Government Higher Secondary School Nizampur District Nowshera and 5 others" reported as PLJ 2014 Peshawar 225 has allowed counting of ad-hoc/temporary service for the purpose of pension by observing;

"In the case of the petitioner's husband, he was appointed on 7.2.1960 as contingent government servant in Government Higher Secondary School Nizampur while his service was regularized on 1.3.1973. By virtue of above referred rule, his temporary and officiating service which was followed by his regularization shall also be counted for pensionary benefits. As per Chapter-IV, Rule-4.4 of the ibid Rules, a civil servant becomes entitled to pension after qualifying service of not less than 10 years as per formula provided thereunder. As per record, the petitioner resigned from service on 2.10.1976. In this way, his total service turns out to be 16 years, 7 months and 25 days. Thus in view of this backdrop of the facts and law referred to herein above, Makki Khan (Mulki Khan) was entitled to the pensionary benefits as provided in the Rules referred to herein above."

8. For what has been discussed above, we allow the instant petition by directing respondents to count temporary service of the petitioners for the purpose of determining their qualification and eligibility for the grant of pension and treat them accordingly.

SA/33/P

Petition allowed.

CHAPTER – II

SERVICE QUALIFYING FOR PENSION

2.1 **Conditions of Qualifications** – The service of a Government Servant does not qualify for pension unless it conforms to the following three conditions: -

First – The Service must be under Government.

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* Note – (1) For the previous service of displaced Government servants which qualifies for pension see Chapter – VII.

* Note – (2) Service rendered after retirement on superannuation pension/retiring pension shall not count for pension or gratuity.

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- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

2.4 **Service in a temporary post on abolition of a permanent post** – If a permanent post, on which a Government servant holds a lien, is abolished under circumstances entitling him to get a compensation pension or gratuity, his service thereafter in a temporary post under Government qualifies for pension.

* Note (1) and (2) Substituted vide notification No. SO(SR) V-915/65 Dated 6th May, 1965

2023 P L C (C.S.) 277

[Peshawar High Court (Mingora Bench)]

Before Ishtiaq Ibrahim and Wiqar Ahmad, JJ

MULTAN SHAH and 2 others

Versus

VICE-CHANCELLOR UNIVERSITY OF MALAKAND and 2 others

Writ Petition No.64-M of 2019, decided on 17th November, 2020.

(a) West Pakistan Civil Services Pension Rules, 1963---

---R.2.3---Temporary and officiating service---Scope---Petitioners were aggrieved of non-payment of pension by the University authorities---Contention of respondents was that the regular service of petitioners was short of minimum qualifying service for the grant of pensionary benefits and that the period for which they had rendered services as temporary employees could not be counted towards service---Validity---Rule 5 of the Service Pension Statutes of University of Malakand provided that the West Pakistan Civil Services Pension Rules, 1963, were applicable to the University employees---Language whereby the pension rules were adopted by the University itself showed that it shall apply in those areas which were not regulated by the Service Pension Statutes---Service Pension Statutes had nowhere provided any special rule for defining the qualifying service for the grant of pension, as well as the length of service entitling an employee to maximum allowable pension and the respective ratios thereof---Counsel for the University argued that R.9 of the Service Pension Statutes fulfilled the purpose but the rule revealed that it basically provided authority to the Syndicate or Vice-Chancellor to condone interruptions and deficiencies in counting of the service for the purpose of pension---Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963, provided for counting of temporary or officiating service for the purpose of pension---Constitutional petition was allowed by directing the respondents to count the temporary service of the petitioners for the purpose of determining their qualification and eligibility for the grant of pension and treat them accordingly.

Raja Ali Shan v. Messrs Essem Hotel Limited and others 2007 SCMR 741; Hakim and 3 others v. Government of Pakistan through Secretary Interior and others PLD 1992 SC 595; Ghulam Murtaza v. Abdul Salam Shah and others 2007 SCMR 1062 and State Life Insurance Corporation of Pakistan through Chairman and others v. Mst. Sardar Begum and others 2017 SCMR 999 ref.

Mst. Khilafat Jan v. Principal Government Higher Secondary School Nizampur District Nowshera and 5 others PLJ 2014 Pesh. 225 rel.

(b) Interpretation of statutes---

---Headings and sub-headings of a section may be referred to in aid of interpretation.

Maxwell on the Interpretation of Statutes Twelfth Edition; R. v. Hare [1934] 1 K.B. 354, at p. 355; Fisher v. Raven 1964 A.C. 210 and Understanding Statutes at p.814 and 815 by Mr. S.M. Zafar rel.

(c) Interpretation of statutes---

---Prefix to sections cannot control the plain words of the provisions but where some ambiguity exists it can safely be referred and relied upon in aid of construction of statute.

Fayaz Muhammad Qazi for Petitioner.

Muhammad Yar Malezai for Respondents.

Date of hearing: 17th November, 2020.

JUDGMENT

WIQAR AHMAD, J.----Petitioners have been former employees of the University of Malakand (hereinafter referred to as University), and are aggrieved of non-payment of pension by the university authorities. They have contended in their writ petition that petitioners Nos. 1 and 2 were appointed as Class-IV employees (Chowkidars) in the University on 13.12.2001 on contract basis, while petitioner No. 3 was also appointed as Class-IV employee on 07.04.2003, on contract basis. All the petitioners were regularized in service of the University vide office order dated 20.07.2007. Petitioner No. 1 retired from service on 10.03.2012, petitioner No. 2 retired from service on 05.01.2014 and petitioner No. 3 got retired from service on 15.01.2016, after all the petitioners obtained the age of sixty years (superannuation).

2. Comments of respondents were called, which have accordingly been submitted wherein assertions in Paras 1 to 4 of the writ petition have been admitted as correct, but they had taken the stance that regular service of petitioners in the University had been falling short of the minimum qualifying service for the grant of pensionary benefits.

3. Learned counsel for petitioners submitted during the course of his arguments that in Rule 5 of the Service Pension Statutes of University of Malakand (hereinafter referred to as "the Service Statutes") it had been provided that the West Pakistan Civil Services Pension Rules, 1963 (hereinafter referred to as "the Pension Rules") shall remain applicable to University employees, wherein Rule 4.4 provided that minimum qualifying service for grant of pension shall not be less than 10 years and that rule 2.3 of the said Rules provided that temporary or officiating service shall be counted toward the total length of service for determining eligibility of a retired employee for the grant of pension. He added that if services of the petitioners were counted from the date of their initial appointments, all the employees were having 10 years service and had therefore been entitled to the grant of pension.

4. Learned counsel appearing on behalf of respondents/University relied upon judgments in the case of "Raja Ali Shan v. Messrs Essem Hotel Limited and others" reported as 2007 SCMR 741, the case of "Hakim and 3 others v. Government of Pakistan through Secretary Interior and others" reported as PLD 1992 Supreme Court 595 as well as judgment in the case of "Ghulam Murtaza v. Abdul Salam Shah and others" reported as 2007 SCMR 1062 and submitted that Service Statutes of the University should be read as a whole, and when so read entitlement of the petitioners could not be established therein. He referred to sub-rule (ii) of rule 4 as well as Rule 7 of the Service Statutes and submitted that the contract employment of the petitioners could not be counted toward pension. He also referred to Rule 9 of the Service Statutes and contended that the minimum qualifying service for University employee has been twenty-five years. He placed further reliance on judgment of the Hon'ble Supreme Court of Pakistan rendered in the case of "State Life Insurance Corporation of Pakistan through Chairman and others v. Mst. Sardar Begum and others" reported as 2017 SCMR 999 for showing that provisions of special law override the provisions of general law to the extent of any conflict or inconsistency between the two.

5. We have heard arguments of learned counsel for the parties and perused the record.

6. We will first address the contention of learned counsel for respondents that the contract period of an employee cannot be counted towards the period of service for determining the qualifying length of service of pension. It has been provided in rule 5 of the Service Statutes that save as otherwise provided in these statutes, the West Pakistan Civil Services Pension Rules, 1963, as applicable to government servants of the North-West Frontier Province, shall mutatis mutandis apply to University employees. The language where the Pension Rules has been adopted by the University itself shows that it shall apply in those areas which have not been regulated by the Service Statutes. It is quite clear from perusal of the Service Statutes annexed with the comments of respondents, that it has nowhere provided any special rule for defining the qualifying service for the grant of pension, as well as the length of service entitling an employee to maximum allowable pension and the respective ratios thereof. Though learned counsel for University has been arguing that rule 9 of the Service Statutes fulfill the purpose, but we are afraid we would not be able to agree with his contention. Rule 9 basically provides authority of the Syndicate or Vice-Chancellor to condone interruptions and deficiencies in counting of the service for the purpose of pension. Said rule being relevant is reproduced for ready reference;

9. Condonation of interruptions and deficiencies;

(1) The Syndicate or the Vice-Chancellor, as the case may be, may for purpose of pension condone all gaps between the periods for qualifying service of a University employee.

(2) The Syndicate or the Vice-Chancellor, as the case may be, may condone deficiency in qualifying service for pension, up to six months; provided that the service is meritorious, if allowed, will bring the service up to twenty-five completed years of qualifying service."

Heading of the rule is indicative that it aims at providing for condonation of interruptions in service and deficiency in the requisite amount of minimum service. Headings or sub-headings of a section may be referred to in aid of interpretation. "The sections or set of sections" as explained in Maxwell on the Interpretation of Statutes (Twelfth Edition), "in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statutes, but they may explain ambiguous words, a rule which, whatever the assistance which it may render in construction, cannot stand logically with the exclusion of marginal notes, for headings like marginal notes are as Avory, J. pointed out in R. v. Hare-"not voted on or passed by Parliament, but are inserted after the Bill has become law". Findings of Hon'ble Justice Avory expressed in the case of R. v. Hare ([1934] 1 K.B. 354, at P. 355), that

"headings like marginal notes are not voted on or passed by Parliament, but are inserted after the Bill has become law", were of course valid at the time but can no more be relied upon as headings and sub-headings of sections happen to be part of a statute and are no doubt voted by the respective legislature at the time of its enactment. It was so noted in the case of "Fisher v. Raven" (1964 A.C. 210) by Lord Dilhorne that it should be noted that section 13 of the Debtors Act, 1869 was included in Part 2 of the Act which was headed "Punishment of Fraudulent Debtors." It was also noted that Headings or sub-headings have been part of the statute, which were voted upon and passed along with rest of body of the statute, and may therefore be safely referred in aid of the statute. It has also been explained by Mr. S.M. Zafar in his book "Understanding Statutes" at pages 814 and 815 that the Courts while dealing with delegated legislations apply the same general common law principles of interpretation which apply to interpretation of statute. Relevant part of his opinion is reproduced hereunder for ready reference;

"Unless the contrary intention appears, expression used in subordinate legislation made since 1889 under a power contained in any statute, whenever passed, if used in the statute also, have the same meaning in the instrument as in the statute. Subject to this principle, subordinate legislation is to be construed in accordance with the same general rules as those which govern the interpretation of statutes, i.e. apart from the rule of primary intention, delegated legislation is construed on lines similar to those applicable in the case of Acts. The Courts generally show no disposition to distinguish here, and many of the leading cases on statutory interpretation concern delegated legislation."

We can therefore interpret rule 9 of the Service Statutes, according to the principles of interpretation of statutes. No doubt a judicial consensus has also existed that prefix to sections could not control the plain words of the provisions but where some ambiguity exist it can safely be referred and relied upon in aid of construction of statute. Not only heading of the rule indicates that purpose of imbedding Rule 9 has not been to provide for minimum qualifying service, but its wordings itself shows that its purpose has been no other than providing for condonation of interruptions in service and deficiency in the requisite amount of minimum service.

7. Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963 provides for counting of temporary or officiating service for the purpose of pension. Said rule being relevant is reproduced hereunder for ready reference;

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 yeas continuous temporary service shall count such service for the purpose of pension or gratuity; and
- ii. Temporary and officiating service followed by confirmation shall also count for pension or gratuity."

Like Rule 4.4 of the Pension Rules there has been no rule pari materia to Rule 2.3 of the Pension Rules, available in the Service Statutes, which may have substituted it. Effect has to be given to rule 2.3 of the Pension Rules for the said reason. While interpreting said rule this Court in its earlier judgment rendered in the case of "Mst. Khilafat Jan v. Principal Government Higher Secondary School Nizampur District Nowshera and 5 others" reported as PLJ 2014 Peshawar 225 has allowed counting of ad-hoc/temporary service for the purpose of pension by observing;

"In the case of the petitioner's husband, he was appointed on 7.2.1960 as contingent government servant in Government Higher Secondary School Nizampur while his service was regularized on 1.3.1973. By virtue of above referred rule, his temporary and officiating service which was followed by his regularization shall also be counted for pensionary benefits. As per Chapter-IV, Rule-4.4 of the ibid Rules, a civil servant becomes entitled to pension after qualifying service of not less than 10 years as per formula provided thereunder. As per record, the petitioner resigned from service on 2.10.1976. In this way, his total service turns out to be 16 years, 7 months and 25 days. Thus in view of this backdrop of the facts and law referred to herein above, Makki Khan (Mulki Khan) was entitled to the pensionary benefits as provided in the Rules referred to herein above."

8. For what has been discussed above, we allow the instant petition by directing respondents to count temporary service of the petitioners for the purpose of determining their qualification and eligibility for the grant of pension and treat them accordingly.

SA/33/P

Petition allowed.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

9/10/23

Appeal No. 1471/2022

Mst. Mumtaz Bibi.....APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Health Secretary.....RESPONDENTS

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DEPONENT

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SCANNED
KPST
Peshawar

9/10/23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal No. 1471/2022

Mst. Mumtaz Bibi.....APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa through Health Secretary.....RESPONDENTS

(Para wise reply on behalf of Respondent No 04)

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 8188
09/10/23
Dated
Khyber Pakhtunkhwa
Service Tribunal

Preliminary Objection:-

- A. That the APPELLANT has no cause of action.
- B. That the APPELLANT has no locus standi.
- C. That the APPELLANT has not come to this court with clean hands.
- D. That the instant petition is barred by law.

Respectfully Sheweth:-

1. Relates to record, however, liable to be proved by the appellant.
2. Relates to record, however, liable to be proved by the appellant.
3. That Respondent No. 4 is bound to follow the rules and instruction issued by the Provincial Govt. of Khyber Pakhtunkhwa from time to time. Hence it is pertinent to mention here that as the appellant was regularized w.e.f 01-07-2012 and her time period of regular service is less than ten years, she is not entitled for pension under the pension rules.
4. No comments.

Grounds:-

- A. That respondent No. 3 is bound to follow the rules and instructions issued by the Provincial Govt. of Khyber Pakhtunkhwa from time to time and not violated any rule of Laws.
- B. Correct to the extent that after to Promulgation of an Act 2012, the APPELANT was regularized w.e.f 01.07.2012 and after her regular service till the age of superannuation i.e. 10.07.2020 according to the office order hereby No. 4154-58/LHW dated 10.07.2020 her services is less than ten years. Hence she is not entitled for pension under the rules.
- C. No Comments.
- D. As mentioned in Para "B" above.
- E. As mentioned in Para "B" above.
- F. No Comments.

Keeping in view the above mentioned facts it is, therefore, humbly prayed the appeal in hand having no merits may be dismissed with cost.


**DISTRICT ACCOUNTS OFFICER
HANGU**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal No. 1471/2022

Mst. Mumtaz Bibi.....APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Health Secretary.....RESPONDENTS

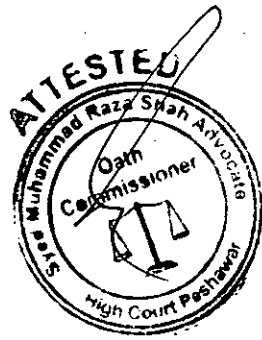
AFFIDAVIT

I Waqas Ahmad Khalil Sub-Accountant office of the District Accounts Officer, Hangu do hereby solemnly affirm that the contents of Para wise Comments/reply submitted on behalf of respondent No.04 are true and correct to the best of my Knowledge and belief and nothing has been concealed from this honorable court. *It is further stated on oath that in this appeal, the answering respondents have neither been placed on file nor their defence has been struck off.*

DEPONENT
CNIC # 17301-6620358-1
CELL#0308-8516520

Identified by

Advocate General
Khyber Pakhtunkhwa
Peshawar.



AUTHORITY

Mr. Waqas Ahmad Khalil of this office is hereby authorized to submit the Para wise Comments/reply in the Honorable Service Tribunal Peshawar appeal **No. 1471/2022** titled Mst. Mumtaz Bibi VS Govt. of Khyber Pakhtunkhwa through Health Secretary.



**DISTRICT ACCOUNTS OFFICER,
HANGU**



MOST IMMEDIATE
COURT MATTER

Reminder

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

NO. SOH (Lit-II)/ S.A: 1471/2022/Mumtaz bibi
Dated the Peshawar 29-05-2023

To

The Director General Health Services,
Khyber Pakhtunkhwa
Peshawar.

The District Health Officer
District Hangu.

✓ District Account Officer,
District Hangu.

SUBJECT: **SERVICE APPEAL NO. 1471/2022 TITLED Mst: MUMTAZ BIBI**
VERSUS GOVT. OF KHYBER PAKHTUNKHWA THROUGH
HEALTH SECRETARY.

I am directed to refer to this department letter of even number dated 15-12-2022 on the subject noted ^{above} and to state that once again to prepare parawise comment in case of Service Appeal No.1471/2022 titled Mst. Mumtaz Bibi (Ex-LHW) versus Govt. of Khyber Pakhtunkhwa through Health Secretary and to this office at the earliest also bring current status of the subject case.

2. **Being Court matter hence may please be treated as Most Urgent.**

Encl: As above

Endst. No. and date even:
Copy forwarded for information to:-

1. The Service Tribunal, Khyber Pakhtunkhwa at camp court Swat.
2. The Section Officer-III, Health Department.
3. PS to the Secretary Health Govt. of Khyber Pakhtunkhwa.
4. P.A to Deputy Secretary (Litigation) Health Department.
5. Master file.

WAO pr-1
U
more to concerned
being the court case
Wafas
Court care
Zahoor sb
19/5

SECTION OFFICER (LIT-II)

ND 2018/04/24, PB 20/12/2023 77
DB Peshawar

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1471 OF 2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11838

Dated 20/3/24

1. Secretary to Govt. of Khyber Pakhtunkhwa Health Department
2. Director General Health Services Khyber Pakhtunkhwa
3. District Health Officer Hangu..... Petitioners

SCANNED
KPST
Peshawar

Versus

Service Appeal No. 1471/2022 Titled Mumtaz Bibi..... Respondents

**PETITION ON BEHALF OF THE RESPONDENTS No. 1, 2 & 3 IN THE
MAIN APPEAL FOR SETTING ASIDE THE ORDER DATED 29/05/2023
OF THE HONORABLE TRIBUNAL WHEREBY THE RIGHT OF
SUBMISSION OF REPLY OF RESPONDENTS STANDS STRUCK OFF.**

Respectfully Sheweth,

1. That the above titled Service Appeal is pending before the Honorable Tribunal which is fixed for hearing on 18/04/2024.
2. That the Respondents received a pre-Admission Notice along with copy of subject Service Appeal for submission of Parawise comments/reply on 13/22/2022 in which date of hearing was fixed as 29/05/2023. (Copy of the Order Sheet is attached as Annex-A).
3. That the representative/focal person of the petitioners namely Mr. Laeeq was engaged before another bench of the Honorable Tribunal in the proceeding of another Service Appeal, however when he attended the bench of Honorable Chairman, he came to know that the right of submission of comments in favor of petitioners has been placed Struck off the Service Appeal was admitted for regular hearing / arguments.
4. That the absence of the representative of the petitioners before the bench of Chairman of the Honorable Tribunal was not intentional/willful but for the reasons mentioned in para-3 above.
5. That there is no Ex-parte judgment but the Ex-parte proceedings have been initiated against the petitioners, therefore the same may be set aside at any time by the Honorable Tribunal in the interest of justice.

6. That in case if the petitioners have not been allowed to defend/submit parawise comments affect/cause an irreparable loss to the public exchequer.
7. That it is a well settle principle of law that cases are to be decided on merits, rather than technicalities.

It is therefore humbly prayed that the Ex-parte order/proceedings dated 29/05/2023 may kindly be set aside in the interest of justice and petitioners may kindly be provided an opportunity of submission of comments/defense in the interest of justice.



(Dr. Shoukat Ali)
Director General Health Services
Khyber Pakhtunkhwa
(Respondent No. 1, 2 & 3)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR
SERVICE APPEAL NO. 1471 OF 2022

Service Appeal No. 1471/2022 Titled Mumtaz Bibi..... Respondents

Versus

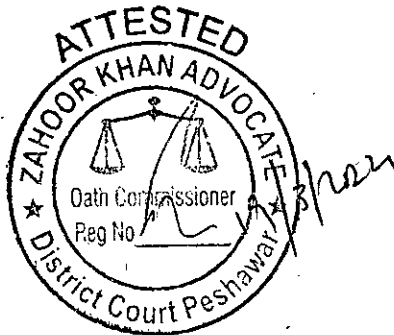
1. Secretary to Govt. of Khyber Pakhtunkhwa Health Department
2. Director General Health Services Khyber Pakhtunkhwa
3. District Health Officer Hangu..... Petitioners

PETITION ON BEHALF OF THE RESPONDENTS No. 1, 2 & 3 IN THE
MAIN APPEAL FOR SETTING ASIDE THE ORDER DATED 29/05/2023
OF THE HONORABLE TRIBUNAL WHEREBY THE RIGHT OF
SUBMISSION OF REPLY OF RESPONDENTS STANDS STRUCK OF.

AFFIDAVIT

I Dr. Shoukat Ali, Director General Health Services Khyber Pakhtunkhwa do hereby state on oath that contents of the above petition is correct to the best of my knowledge and nothing has been concealed.

Deponent



Dr. Shoukat Ali
 Director General Health Services
 Khyber Pakhtunkhwa
 (On behalf of the Petitioners)



**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

*All communications should be addressed to the Director General Health Services
Peshawar and not to any official by name
Office # 091-9210269 Fax # 091-9210230*

AUTHORITY LETTER

Muhammad Yousaf Jamal Focal Person Litigation Section Directorate General Health Services Khyber Pakhtunkhwa is hereby authorized to attend/defend the court cases and file Parawise Comments / Reply on behalf of the undersigned before the Honorable Khyber Pakhtunkhwa Service Tribunal and its Camp Courts.

**Director General Health Services
Khyber Pakhtunkhwa, Peshawar**


18/04/2024


Next D.O.H

2nd Nov, 2023

RECORDED
PESHAWAR

1. Clerk to counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for the respondents present.
2. Clerk to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 20.12.2023 before D.B. P.P given to the parties.



 (Muhammad Akbar Khan)
 Member (E)

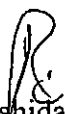

 (Rashida Bano)
 Member (J)

kamranullah

20.12.2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Learned counsel for the appellant requested for adjournment on the ground that he has not prepared the brief. Adjourned. To come up for arguments on 18.04.2024 before D.B. P.P given to the parties.


 (Fareeha Paul)
 Member (E)


 (Rashida Bano)
 Member (J)

Kamranullah

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In The Service Tribunal KP Peshawar

In Re: Appeal No. 1471 Of 2022

Mst. Mumtaz Bibi (Ex. Lady Health Worker), wife of James Masih resident of Mohallah Saray Chatar Singh Thall District Hangu

Appellant

Versus

1. PS to Secretary Health, Govt of Khyber Pakhtunkhwa Peshawar
2. Director General Health Services Khyber Pakhtunkhwa
3. District Health Officer Hangu
4. District Account Officer, Hangu

Respondents

Service appeal under section 4 of the Service Tribunal Act 1974

Prayer,

On acceptance of this appeal, the respondents may be directed to allow pensionary Benefits to the appellant by counting her length of service from the date of her initial appointment i.e. 27/ 07/ 2006. Refusal as such on the part of the respondents may be declared as without lawful authority, without jurisdiction of no legal effect and ineffective upon the valid and legal rights of the appellant. With grant of additional relief, not specifically prayed for but is available for the appellant to avail, in the ends of justice.

Respectfully submitted,

1. The appellant at very intrinsic was appointed as lady health worker on 29/ 07/ 2006 vide order No. 611/NP in the national program, on contractual bases, however, later on, her services were regularized vide order bearing No. 274-310 dated 19/ 04/ 2014 with effect from 01/ 07/ 2012. (Copy of the service Book with regularization order annexed as annexure A and B).

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

84

1

In The Service Tribunal KP Peshawar

In Re: Appeal No. 1471 Of 2022



Mst. Mumtaz Bibi (Ex. Lady Health Worker), wife of James Masih resident of Mohallah Saray Chatar Singh Thall District Hangu.

Appellant

Versus

1. PS to Secretary Health, Govt of Khyber Pakhtunkhwa Peshawar
2. Director General Health Services Khyber Pakhtunkhwa
3. District Health Officer Hangu
4. District Account Officer, Hangu

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Service appeal under section 4 of the Service Tribunal Act 1974

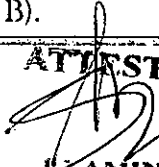
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ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar