

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1458/2022

Mr. Zaheen Khan Ex-Rodman S/o Wali Muhammad R/o Gomail P/o Nizam Pur, Tehsil and District Nowshera

.....Appellant

Versus

1. The Secretary Agriculture Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director Water Farm Management Khyber Pakhtunkhwa, Peshawar.
3. The Director General On Farm Water Management Khyber Pakhtunkhwa Peshawar.

.....Respondents

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DEPONENT

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL

Service Appeal No. 1458/2022

Mr. Zaheen Khan Ex-Rodman S/o Wali Muhammad R/o Gomail P/o Nizam Pur, Tehsil and District Nowshera

.....Appellant

Versus

1. The Secretary Agriculture Department, Khyber Pakhtunkhwa, Peshawar..
2. The Director Water Farm Management Khyber Pakhtunkhwa, Peshawar.
3. The Director General On Farm Water Management Khyber Pakhtunkhwa Peshawar.

.....Respondents

COMMENTS ON BEHALF OF RESPONDENTS NO. 01, 02 & 03

Respectfully Sheweth:

Preliminary Objections

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 13713

Dated 24/6/24

1. That the instant appeal is baseless, frivolous and concocted based on malafide intentions and for ulterior motive, hence not tenable at all.
2. That the appellant wishes to waste the precious time of this Honourable Tribunal by filing the instant appeal.
3. That the appellant has got no prima facie case.
4. That the appellant has deliberately concealed the important facts from this Honorable Tribunal.
5. That the instant appeal is not maintainable in its present form and liable to be dismissed.
6. That the appellant has got no locus standi to file instant appeal.
7. That the appellant has no cause of action against the replying respondents.
8. That the appellant has not approached this Honorable Tribunal with clean hands.
9. That due to concealment of material facts and misstatement the appeal is liable to be dismissed.
10. That the instant appeal is badly time barred as the record reveals that the appellant was terminated from service vide Director Water Management Khyber Pakhtunkhwa, Peshawar **order No. 2545-84/DWM dated 30-04-1999** and now after the lapse of more than **22 years** the appellant has filed the instant appeal before this Hon'ble Tribunal for reinstatement in service.

On Facts

1. Incorrect. The appellant was appointed as Class-IV official (BPS-01) in the office of the Assistant Director Water Management Nowshera as project employee in 1993 and was transferred from Nowshera to the office of Assistant Director Water Management

(OECF Japan Assisted Project) Kohat vide order dated 29-08-1997 and served there till 30-04-1999 (transfer order dated 29-08-1997 attached as **Annex-A**).

2. Pertains to record and not relevant to the instant case.
3. Incorrect. The record reveals that Mr. Zaheen Khan was a project employee of the department and his services were terminated in pursuance to Judgment dated 08-01-1999 of the Khyber Pakhtunkhwa Service Tribunal Appeal No. 1259/1997 and other connected appeals vide Director Water Management order dated 30-04-1999 (copy of termination order & judgment dated 08-01-1999 attached as **Annex-B & C**).

The brief facts of the case are that on 31-05-1997 the services of certain employees of developmental projects of On Farm Water Management department were terminated on completion of the said projects. Aggrieved from their termination order they filed different appeals in Khyber Pakhtunkhwa Service Tribunal which were argued and the honourable Tribunal on 08-01-1999 decided these appeals with the directions that "

- (i) The appellant be re-instated in service and the period of their termination be treated as extra ordinary leave without pay from the date of termination till 20.2.99.
- (ii) The latest seniority list of the persons working in the respective cadres of the appellants vis Rodman, Field Assistants in the On Farm Water Management, be prepared by the Director, On Farm Water Management by 28.2.1999.
- (iii) As per latest seniority list if the appellant is junior most in his cadre and his services if still required to be terminated / may be terminated with the due benefits of pension / gratuity etc.

In pursuance to the above noted decision of the Honourable Khyber Pakhtunkhwa Service Tribunal, seniority list of all employees working in respective cadres were prepared and those who were senior in their respective cadres were reinstated in service while those who were junior most were terminated as per the judgment dated 08.01.1999.

4. Incorrect. The plea of the appellant that his other colleagues were reinstated in service is not based on facts as those terminated employees who were given relief by this Honourable Tribunal agitated their case well in time while the appellant remained silent for more than **22 years** which clearly shows his lack of interest. Now, he only aims to squeeze benefits from the previous judgments of the Honourable Courts. Therefore, the appellant is not entitled for any relief from this Honourable Tribunal. Furthermore, in view of the judgment dated 02-11-2017 in Writ Petition No. 323-P/2017 titled "**Muhammad Suhrab Khan vs Govt. of Khyber Pakhtunkhwa**", wherein, the honorable Court dismissed the plea of such like employees with the direction that "**in such a situation, we are afraid the**

petitioners cannot be treated at par with the other employees in terms of the dictum of the Hon,ble Apex court reported as 2009 SCMR I because law helps the vigilant and not the indolent and the relief granted to the individuals who have pursued their cause in time cannot be granted to those who for reason best known to them did not agitate their claim with the respondents in any manner. Accordingly, the petition both meritless and squarely hit by laches is dismissed (Annex-D) and judgment dated 27-09-2022 of the Hon'ble Peshawar High Court, Mingora bench Dar-ul-Qaza Swat in writ petition No. 658-M/2017 titled "**Muhammad Raees & others vs Govt. of Khyber Pakhtunkhwa**" wherein, the honorable Court dismissed the plea of such like employees with the direction that:

"Para-8..... (iii) A writ petition would only be entertainable and maintainable if the same has been filed within a reasonable time of accruing a cause of action, what should be the reasonable time the Hon'ble Apex Court has held it as 90 days and conversely a High Court is not required to decide the case of the parties on merits if the writ petition is hit by the principle of laches" (Annex-E) and order dated 07-10-2019 of honorable Peshawar High Court Bannu bench in Writ Petition No. 848-B/2016 titled "Muhammad Amin Khan vs Govt. of Khyber Pakhtunkhwa" which was dismissed by the Hon'ble High Court on the ground of laches & upheld by the august Supreme Court of Pakistan vide order dated 21-11-2022 in C.P No. 4855/2019 (copies of orders attached as **Annex-F&G**). Therefore, the appellant is not entitled for any relief from this Honorable Tribunal.

5. Incorrect. The appellant never filed any application before the present respondents.
6. Incorrect. The appellant is not an aggrieved person as explained in the Paras above.


Grounds

- A. Incorrect. The plea of the appellant is not based on facts as the order dated 30-04-1999 was issued in pursuance to judgment dated 08-01-1999 of Khyber Pakhtunkhwa Service Tribunal, therefore, appellant has not been discriminated against in any way.
- B. Incorrect. The principles of fairness, merit and transparency have been adhered to and order dated 30-04-1999 is lawful as explained above.
- C. Incorrect. The codel formalities have been fulfilled and no ruling of the apex Court has been violated.
- D. Incorrect. As explained in above Para the termination order of the appellant was issued in pursuance to judgment dated 08-01-1999 of this Honourable Tribunal and

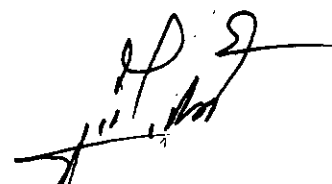
neither discrimination has been done to the appellant nor his fundamental rights have been violated.

- E. Incorrect. The termination order of the appellant was lawful and in pursuance to decision of this Honourable Tribunal, therefore, no violation of fundamental rights have been done.
- F. Incorrect. The appellant never filed any appeal before the respondents, therefore, the plea of the appellant that his departmental appeal was not properly adjudicated is not based on facts.
- G. Incorrect. As explained above.
- H. Incorrect. The impugned order is legal and lawful as explained in the above paras.
- I. Incorrect. As explained in above paras.
- J. As replied in facts.
- K. Incorrect. The appellant was terminated in pursuance to judgment dated 08-01-1999 of this Honourable Tribunal being junior most on the seniority as explained in Para-3 above.
- L. That respondents also seek permission of this Honourable Court to advance further grounds during arguments.

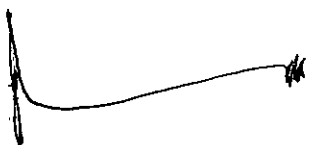
Keeping in view the above facts, it is therefore, humbly prayed that the instant appeal may graciously be dismissed being devoid of merit please.


Secretary
 Govt. of Khyber Pakhtunkhwa
 Agriculture department Peshawar.
(Respondent No.1)

Javed Harwat


Director General
 On Farm Water Management,
 Khyber Pakhtunkhwa, Peshawar
(Respondent No.3)

Naseeb-ur-Rahaman


Director
 On Farm Water Management
 Khyber Pakhtunkhwa, Peshawar
(Respondent No.2)

Dr. Rabnawaz

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1458/2022

Mr. Zaheen Khan Ex-Rodman S/o Wali Muhammad R/o Gomail P/o Nizam Pur, Tehsil and District Nowshera

.....Appellant

Versus

1. The Secretary Agriculture Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director Water Farm Management Khyber Pakhtunkhwa, Peshawar.
3. The Director General On Farm Water Management Khyber Pakhtunkhwa Peshawar.

.....Respondents

AFFIDAVIT

I, Naseeb-ur-Rehman **Director General On Farm Water Management Khyber Pakhtunkhwa, Peshawar** do hereby solemnly declare and affirm that the respondents have not suppressed the facts and factual position of the case from this honourable Tribunal. The contents of reply are true and correct to the best of my knowledge, belief and nothing has been concealed from this Tribunal.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off/cost.

ATTESTED



DEPONENT

NIC No.

14203-4386703-7

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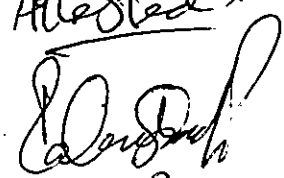
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OFFICE ORDER.

In pursuance of Government of NWFP, Food, Agri: L/Stock and Coop: Deptt: letter No. CPO/AD/WM-4 dated 9/8/1997, the following ~~XXXX~~ BPS-I staff i.e. Rodman/Beldar/Naib Qasid/Chowkidar etc of On-Farm Water Management Projects are hereby re-instated/adjusted/posted against the post noted each official.

Sr. No.	Name of the official and office.	Name of office where adjusted/posted.
1.	Mohammad Sharif, Ex-ADWM Peshawar office.	Against the vacant post of Rodman in Project Director PHLC office, Mardan.
2.	Fazal Karim, Ex-ADWM office Swabi.	Against the vacant post of N/Qasid in Project Director PHLC office, Mardan.
3.	Mukaram Khan, Ex-ADWM Peshawar office.	Against the vacant post of Rodman in Project Director PHLC office, Mardan.
4.	Islamuddin, Ex-ADWM Swabi office.	Against the vacant post of N/Qasid in Project Director PHLC office, Mardan.
5.	Zakirullah, Ex-ADWM Mardan office.	Against the vacant post Rodman in Project Director PHLC office, Mardan.
6.	Kamran Ahmad, Ex-ADWM Mardan office.	-do-
7.	Saiful Islam, Ex-Asstt: Dir: W/M office Mardan office.	Against the vacant post of N/Qasid in Project Director PHLC office, Mardan.
8.	Hazrat Jan, Ex-ADWM Battagram office.	Against the vacant post of Rodman in Project Director PHLC office Mardan.
9.	Fazal Gul, Ex-Asstt: Director of AGL III Swat.	-do-
10.	Rahman Shah, Ex-ADWM Nowshera office.	-do-
11.	Sadiq Ali, Ex-ADWM Nowshera office.	-do-
12.	Azizur Rehman, Ex-ADWM Charsadda office.	-do-
13.	Abdur Rashid, Ex-ADWM Mardan office.	Against the vacant post of Chowkidar in Project Director PHLC office Mardan.
14.	Abdul Ghafter, Ex-ADWM Dargai office.	Against the vacant post of Rodman in Project Director PHLC office Mardan.
15.	Glulam Sarwar, Ex-ADWM Swat office.	-do-
16.	Mohammad Yousaf, Ex-ADWM Peshawar office.	-do-
17.	Mohammad Rafiq, Ex-ADWM Peshawar office.	-do-
18.	Ghaniur Rehman, Ex-ADWM Dir office.	-do-
19.	Abdul Shakoor, Ex-ADWM Charsadda office.	-do-
20.	Shamsur Rehman, Ex-ADWM Charsadda office.	-do-
21.	Nazar Beg, Ex-ADWM Charsadda office.	-do-

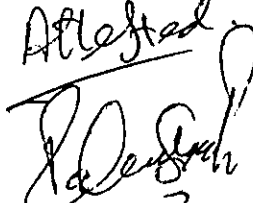
Attested



Deputy Director
(Admin. & Accounts)
Director General of W.M.
Khyber Pakhtunkhwa Peshawar

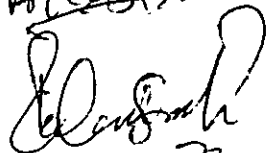
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98/1

Sr. No.	Name of the official and office.	Name of office where adjusted/posted.
22.	Shah Alam, Ex-ADWM Nowshera office.	Against the vacant post of Rodman in Project Director OFWM PHLC office Mardan.
23.	Shah Nazar, Ex-ADWM Bunir office.	-do-
24.	Amir Kamal, Ex-ADWM Swabi office.	-do-
25.	Muzakar Shah, Ex-ADWM Swabi office.	-do-
26.	Zarif Khan, Ex-DDWM ATL-Swat office.	-do-
27.	Hidayatullah, Ex-ADWM Charsadda office.	-do-
28.	Gulzara, Ex-ADWM Charsadda office.	-do-
29.	Abdul Qayum, Ex-ADWM Charsadda office.	-do-
30.	Fazal Mohammad, Ex-ADWM Dargai office.	Against the vacant post of Chowkidar in Project Director OFWM PHLC Mardan office.
31.	Shoabb Khan, Ex-ADWM Charsadda office.	Against the vacant post of Rodman in Project Director OFWM PHLC Office Mardan.
32.	Rajul Haq, Ex-DDWM ATL Peshawar	-do-
33.	Noor Mohammad, Ex-ADWM Mardan office.	-do-
34.	Hidayatullah, Ex-ADWM Haripur office.	-do-
35.	Khan Said, Ex-ADWM Nowshera office.	-do-
36.	Bad Shah Gul, Ex-ADWM Mardan office.	-do-
37.	Abdul Latif, Ex-ADWM Mardan office.	-do-
38.	Mohammad Shakir, Ex-DDWM ATL-A/Abad.	-do-
39.	Attaullah, Ex-ADWM Bunir office.	-do-
40.	Aurang Zeb, Ex-ADWM Mardan office.	-do-
41.	Aman Khan, Ex-DDWM ATL Pesh:office.	-do-
42.	Naqib Khan, Ex-ADWM Charsadda office.	-do-
43.	Rabi Gul, Ex-ADWM Battagram office.	-do-
44.	Mohammad Arif, Ex-ADWM Swabi office.	-do-
45.	Yaqoob Khan, Ex-ADWM Dargai office.	-do-
46.	Ashraf-ud-Din, Ex-ADWM Mardan office.	-do-
47.	Atlas Khan, Ex-PDWM Trg:Centre, DIKhan office.	Against the vacant post Rodman in Asstt: Director W/M OECP/Japan office DIKhan.

Attested

 Deputy Director
 Islamabad
 Director General
 Khyber Pakhtunkhwa Peshawar

C8
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Sr. No.	Name of the official and office.	Name of office where adjusted/posted.
48.	Mohammad Iqbal, Ex-PDWM T.C. DIKhan off:	Against the vacant post of Beldar in Asstt: Director W/M OECF/Japan office. <i>S. Khan</i>
49.	Riaz Hussain, Ex-PDWM T.C DIKhan -do-	-do-
50.	Mohammad Nawaz, Ex-PDWM T.C DIKhan -do-	Against the vacant post of Rodman in Project Coordinator QFWM CRBIP CRBC-III <i>N/A</i> DIKhan office. <i>S. Khan</i>
51.	Nazir Ahmad, Ex-PDWM DIKhan T.C -do-	Against the vacant post Rodman in Asstt: Director W/M OECF/Japan office Bannu.
52.	Niaz Hussain, Ex-PDWM T.C DIKhan -do-	-do-
53.	Shabir Ahmad, Ex-DDWM A/Abad office.	Against the vacant post of Rodman in Asstt: Director W/M OECF/Japan Swat office.
54.	Mohammad Nazir, Ex-ADWM A/Abad office.	Against the vacant post of Beldar in Asstt: Director W/M OECF/Japan Swat office.
55.	Mohammad Sarwar, Ex-ADWM Haripur office.	-do-
56.	Taj Malook, Ex-PDWM T.C. DIKhan -do-	Against the vacant post of Beldar in Asstt: Director W/M OECF/Japan L/Marwat office.
57.	Nazar Mohammad, Ex-ADWM Dargai office.	Against the vacant post of Chowkidar in Asstt: Director W/M OECF/Japan Swat office.
58.	Shah Zarin, Ex-ADWM Dargai office.	-do-
59.	Rozi Khan, Ex-ADWM Battagram -do-	Against the vacant post of Rodman in Asstt: Director W/M OECF Alpori office.
60.	Shamshad Khan, Ex-ADWM Dargai office.	Against the vacant post N/Qasid in Asstt: Director W/M OECF Matta office.
61.	Abdul Qadoos, Ex-ADWM Haripur office.	Against the vacant post of Chowkidar in Asstt: Director W/M OECF Matta office.
62.	Salam Mohammad, Ex-ADWM Mansehra -do-	-do-
63.	Aurangzeb Khan, Ex-ADWM Mansehra -do-	Against the vacant post of Beldar in Asstt: Director W/M OECF Alpori office.
64.	Mohammad Mehraban, EX-ADWM Haripur office.	Against the vacant post of Beldar in Asstt: Director W/M OECF/Japan Alpori office.
65.	Mohammad Sarwar, Ex-ADWM Mansehra office.	Against the vacant post N/Qasid in Asstt: Director W/M OECF/Japan Alpori office.
66.	Mohammad Ishaq, Ex-ADWM Haripur office.	Against the vacant post Rodman in Asstt: Director W/M OECF/Japan office Alpori.
67.	Abdul Tawab, Ex-ADWM Dargai office.	Against the vacant post Beldar in Asstt: Director W/M OECF/Japan Matta office.
68.	Sh: Hafiz Ahmad, Ex-ADWM Haripur -do-	Against the vacant post Chowkidar in Asstt: Director W/M OECF Alpori office.
69.	Rustam Khan, Ex-ADWM Haripur -do-	-do-
70.	Said Ghaffar, Ex-ADWM Dargai office.	Against the vacant post of Rodman in Asstt: Director W/M OECF/Japan Matta office.
71.	Attaullah, Ex-ADWM Nowshera -do-	-do-
72.	Mohammad Shah, Ex-ADWM Peshawar -do-	-do-

Attest

 Deputy Director
 Khyber Pakhtunkhwa

Ca
1003

Sr: Name of the official
No. and office. Name of office where adjusted/pisted.

- 73. Mohammad Hayat,
Ex-ADWM Peshawar office. Against the vacant post Rodman in Deputy Director W/M ADC-SSP office Mardan.
- 74. Masaz,
Ex-ADWM Battagram -do- Against the vacant post of Rodman in Asstt:Director W/M OECE/Japan Alpori office.
- 75. Adam Khan,
Ex-ADWM Swabi office. Against the vacant post of Chowkidar in Asstt:Director W/M OECE/Japan Bannu office.
- 76. Sher Zada,
Ex-ADWM Swabi office. -do-
- 77. Bakhtiar Ahmad,
Ex-ADWM Peshawar -do- Against the vacant post Beldar in Asstt: Director W/M OECE/Japan office Kohat.
- 78. Nisar Ahmad,
Ex-ADWM Peshawar -do- Against the vacant post Rodman in Asstt: Director W/M OECE/Japan Karak office.
- 79. Mohammad Ayub,
Ex-ADWM Dargai office. Against the vacant post Rodman in Asstt: Director W/M OECE/Japan office Kohat.
- 80. Nadar Khan,
Ex-ADWM Nowshera -do- Against the vacant post of Chowkidar in Asstt:Director W/M OECE L/Marwat office.
- 81. Muslim Saah,
Ex-ADWM Peshawar -do- Against the vacant post of Chowkidar in Asstt:Director W/M OECE office Kohat.
- 82. Zaheen Khan,
Ex-ADWM Nowshera -do- Against the vacant post of Beldar in Asstt: Director W/M OECE office Kohat.
- 83. Asghar Khan,
Ex-ADWM Haripur office. Against the vacant post of Beldar in Asstt: Director W/M OECE/Japan office Matta.
- 84. Zaheerud Din,
Ex-Asstt:Dir:Punir -do- Against the vacant post of Rodman in Project Director OFWM PHLC office Mardan.

Office orders issued by this office or subordinate offices of this deptt:regarding termination of their services of the above mentioned officials are hereby withdrawn.

The period from the date of termination to date may be treated as extra ordinary leave (without pay) in respect of the above mentioned officials.

- i) The services of all the above staff shall stand terminated on the completion of the projects.
- ii) No T.A/D.A is allowed to the officials for joining the duties.
- iii) Before submission of arrival report the officials shall attend this office for signing the option.

Sd/- (MUHAMMAD YOUSAF KHATTAK)
DIRECTOR WATER MANAGEMENT,
N.W.F.P, PESHAWAR.

No. 9400-9522 /D.W.M, dated Peshawar, the
Copy to:-

29/8 /1997.

- 1. All officials concerned.
- 2. Accountant General, NWFP, Peshawar.
- 3. All Project Directors W/M in NWFP. (4) The Project Coordinator OFWM CRBIP CRBC-III DIKhan. (5) Programme Coordinator ADC-SSP Mardan.
- 6) All Dy:Directors W/M in NWFP. (7) All Ex-Dy:Directors (W.B.A) in NWFP.
- 8) All Asstt:Directors W/M OECE in NWFP. (9) All Ex-Asstt:Directors (W.B.A) concerned. (10) Field Engineer HRM Hayatabad Peshawar. (11) All
- 11) All District Accounts Officers in NWFP.

for information and necessary action.

Attested
[Signature]
Deputy Director
Director of Water Management
Khyber Pakhtunkhwa Peshawar

[Signature]
DIRECTOR,
WATER MANAGEMENT,
NWFP, PESHAWAR.

(10)
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OFFICE ORDER.

The services of the following Rodman, Beldar, F/Worker N/Qasid and Chowkidar being junior most are hereby terminated with immediate effect due to implementation of Judgement dated 08.01.1999 of NWFP Service Tribunal and non-availability of vacancies.

Sr. No.

- 1- Muhammad Anwar N/Qasid O/O the Asstt: Director On Farm Drainage Component NDP, Peshawar.
- 2- M. Fazal-e-Rehman N/Qasid O/O the Project Coordinator OFWM CRBIP Stage-III D.I. Khan. ✓
- 3 M. Tehsil Khan Chowkidar of Karak O/O the Project Director OFWM, Pehur High Level Canal Project Mardan.
4. M. Asmat Ali Rodman of Karak O/O the Project Director OFWM Pehur High Level Canal Project Mardan.
5. M. Habibullah Chowkidar of L/Marwat O/O the Asstt: Director Water Management (OECF) J/Financed Project Bannu. ✓
6. M. Abdul Wahab Chowkidar of Karak O/O the Project Director OFWM Pehur High Level Canal Project Mardan.
7. M. Zaheen Khan Rodman O/O the Asstt: Director W/M (OECF) Japan Financed Project Kohat.
8. Muhammad Sher Rodman of Nowshera O/O the Project Director OFWM Pehur High Level Canal Project Mardan.
9. ✓ Enzer Gul F/Worker O/O the Project Director OFWM Training Centre D.I. Khan. ✓
- 10 M. Abdullah N/Qasid of Karak O/O the Asstt: Director Water Management (OECF) Japan Financed Project Swat.
11. Aqwal Nawaz Chowkidar of Karak O/O the Asstt: Director Water Management (OECF) Japan Financed Project Kohat
12. Muhammad Ajmal Rodman Nowshera O/O the Project Director OFWM Pehur High Level Canal Project Mardan
13. ✓ M. Salah ud Din N/Qasid of L/Marwat O/O the Asstt: Director W/M (OECF) Japan Financed Project Bannu. ✓
- 14 M. Iftikhar Ahmad Rodman of Swabi O/O the Project Director OFWM Pehur High Level Canal Project Mardan.
- 15 M. Taj Ali Shah Rodman O/O the Dy: Director W/M ADC-SSP Project Mardan.
- 16 M. Irshad Khan Rodman Dy: Director W/M ADC-SSP Project Mardan.
17. Tahirullah Rodman Dy: Director W/M ADC SSP Project Mardan
18. M. Inshahullah Rodman Dy: Director W/M ADC-SSP Proj: Mardan
- 19 M. Azam Jan Rodman Dy: Director W/M ADC SSP Project Mardan.

Atiqul
[Signature]

N.P-2nd.

Sd/-Director,
Water Management
NWFP, Peshawar.

CR
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No. 2545-84 / D.M. dated Peshawar, the

30/4 / 1999

Copy to the:-

- 1- Section Officer (Admn) Government of NWFP
Food Agri: L/S, ook & Coop: Deptt: Peshawar
Endst; No. SOG (AD) 7(7) 2/99/KC dated 28.4.1999.
- 2. Project Coordinator Agriculture Development
Component Swabi Scarp Mardan.
- 3. All District Accounts Officers concerned in NWFP.
- 4. All On Farm Water Management offices concerned
in NWFP.
- 5. All officials concerned.
- 6. Accountant General NWFP, Peshawar.

[Signature]
 Director,
 Water Management
 NWFP, Peshawar.

Attested
[Signature]
 Deputy Director
 Khairatabad, Peshawar

BEFORE THE N.W.F.P. SERVICE TRIBUNAL PESHAWAR.



Appeal No. 1259/1997

Date of institution - 26.6.97

Date of decision - 8.1.99

Shamshad S/O Atlas Khan, R/O Village
Lala Kali Teh: & District Peshawar. (APPELLANT)

VERSUS

1. Assistant Director, Water Management,
Mansehra.
2. Deputy Director (Agriculture), Water
Management ATL-II, Hazara Division,
Abbottabad.
3. Government of NWFP through the
Secretary Agriculture, NWFP Peshawar. (RESPONDENTS)

Mian Fasihul Mulk Advocate.For appellant.
Mr. Mohammad Akram A.G.P.For respondents.

SYED ABID HUSSAIN BOKHARIMEMBER.
MR. MOHAMMAD SHAUKATMEMBER.

JUDGMENT.

SYED ABID HUSSAIN BOKHARI, MEMBER:- This appeal has been filed by Mr. Shamshad Ex-Rodman of On Farm Water Management Deptt; against the order dated 2.5.97 whereby the services of the appellant were terminated w.e.f. 31.5.97. It has been prayed in the appeal that the impugned order dated 2.5.97 may be set aside and he may be re-instated in service with all back benefits.

It is to be noted that similar appeals filed before this Tribunal by other staff namely Rodmens, Field Assistants, Junior Store Keepers, Vehicle Drivers, Naib Qasids and Choskidars, of the On Farm Water Management Department whose services have also been terminated by the Department are being heard today. As all the appeals are of similar nature and the similar question

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Deputy Director
(Admin. & Accounts)
Director General OFWM.
Khyber Pakhtunkhwa Peshawar

APPEALS
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Peshawar.

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of law is involved and the counsel for the appellants and respondent department are common, this single judgments will dispose of this appeal and the other connected appeals, the details of which are noted below :-

1. Appeal No. 1627/97 Mohammad Faqir Vs. Asstt;/Deputy Director, Water Management Mansehra and 2 others.
2. Appeal No. 1302/97 Mohammad Jee Vs. - do -
3. Appeal No. 1330/97 Ashrafuddin Vs. - do -
4. Appeal No. 1622/97 Wiqar Ahmad Vs. - do -
5. Appeal No. 1624/97 Aman Shah Vs. - do -
6. Appeal No. 1580/97 Mohammad Mehraban Vs. - do -
7. Appeal No. 1329/97 Nisar Ahmad Vs. - do -
8. Appeal No. 1289/97 Bakhtiar Ahmad Vs. - do -
9. Appeal No. 1621/97 Mohammad Arif Vs. - do -
10. Appeal No. 1292/97 Wisal Shah Vs. - do -
11. Appeal No. 1297/97 Attaullah Vs. - do -
12. Appeal No. 1306/97 Afsar Syed ✓ Vs. - do -
13. Appeal No. 1319/97 Mohammad Rafiq Vs. - do -
14. Appeal No. 1308/97 Gulzada Vs. - do -
15. Appeal No. 1576/97 Mohammad Ishaq Vs. - do -
16. Appeal No. 1322/97 Fazal Ghufraan Vs. - do -
17. Appeal No. 1258/97 Nazar Mohammad Vs. - do -
18. Appeal No. 1324/98 Mohammad Shaib Vs. - do -
19. Appeal No. 1307/97 Nazar Baig Vs. - do -
20. Appeal No. 1301/97 Mehboob Khan ✓ Vs. - do -
21. Appeal No. 1320/97 Abdul Qayum Vs. - do -
22. Appeal No. 1380/97 Mohammad Nazir ✓ Vs. - do -
23. Appeal No. 1286/97 Mir Kamal Vs. - do -
24. Appeal No. 1321/97 Ayaz Ahmad ✓ Vs. - do -
25. Appeal No. 1294/97 Sultan Mehmood ✓ Vs. - do -
26. Appeal No. 1300/97 Zaroon Khan ✓ Vs. - do -
27. Appeal No. 1284/97 Zakirullah Vs. - do -
28. Appeal No. 1291/97 Jmtiaz Khan Vs. - do -

APPELLANTS
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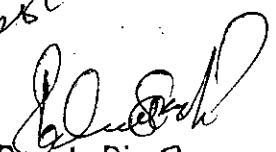
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Director General OFWM,
Khyber Pakhtunkhwa Peshawar

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29. Appeal No. 1318/97 Mukaram Khan Vs. - do -
30. Appeal No. 1626/97 Gul Roz Vs. - do -
31. Appeal No. 1312/97 Badshah Gul Vs. - do -
32. Appeal No. 1331/97 Fazal Gul Vs. - do -
33. Appeal No. 1317/97 Sher Shah ✓ Vs. - do -
34. Appeal No. 1314/97 Abdul Rauf ✓ Vs. - do -
35. Appeal No. 1290/97 Syed Noorullah ✓ Vs. - do -
36. Appeal No. 1326/97 Mohammad Sharif Vs. - do -
37. Appeal No. 1287/97 Sartaj Ahmad ✓ Vs. - do -
38. Appeal No. 1304/97 Fazal Mohammad Vs. - do -
39. Appeal No. 1332/97 Kausar Ali Vs. - do -
40. Appeal No. 1296/97 Saiful Islam Vs. - do -
41. Appeal No. 2248/97 Hazrat Jan Vs. - do -
42. Appeal No. 1625/97 Shamsur Rehman Vs. - do -
43. Appeal No. 1327/97 Azizur Rehman Vs. - do -
44. Appeal No. 1263/97 Shah Zarin Vs. - do -
45. Appeal No. 1684/97 Niaz Hussain Vs. - do -
46. Appeal No. 1264/97 Salam Mohammad Vs. - do -
47. Appeal No. 1262/97 Abdul Tawab Vs. - do -
48. Appeal No. 1682/97 Mohammad Nawaz Vs. - do -
49. Appeal No. 1681/97 Mohammad Iqbal Vs. - do -
50. Appeal No. 1766/97 Mohammad Shabir Vs. - do -
51. Appeal No. 1378/97 Fazal Karim Vs. - do -
52. Appeal No. 1328/97 Amanullah Vs. - do -
53. Appeal No. 1573/97 Abdul Qadoos Vs. - do -
54. Appeal No. 1333/97 Abdul Latif Vs. - do -
55. Appeal No. 1315/97 Hidayatullah Vs. - do -
56. Appeal No. 1266/97 Akbar Ali Vs. - do -
57. Appeal No. 1381/97 Muzakir Shah Vs. - do -
58. Appeal No. 1310/97 Abdur Rashid Vs. - do -
59. Appeal No. 1379/97 Abdul Jalil Vs. - do -
60. Appeal No. 1577/97 Kamran Ahmad Vs. - do -
61. Appeal no. 1382/97 Hidayatullah Vs. - do -
62. Appeal No. 1299/97 Mohammad Yousaf Vs. - do -
63. Appeal No. 1574/97 Zarif Khan Vs. - do -

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(Admin. & Accounts)
Director General OFWM,
Khyber Pakhtunkhwa Peshawar

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- 64. Appeal No. 1261/97 Shamshad Vs. - do -
- 65. Appeal No. 1267/97 Sheikh Hafeez Ahmad Vs. - do -
- 66. Appeal No. 1377/97 Mohammad Shah Vs. - do -
- 67. Appeal No. 1316/97 Ghulam Hussain Vs. - do -
- 68. Appeal No. 1575/97 Ayub Khan Vs. - do -
- 69. Appeal No. 1578/97 Asghar Khan Vs. - do -
- 70. Appeal No. 1303/97 Sahib Shah Vs. - do -
- 71. Appeal No. 1623/97 Adam Khan Vs. - do -
- 72. Appeal No. 1683/97 Riaz Hussain Vs. - do -
- 73. Appeal No. 1572/97 Rozi Khan Vs. - do -
- 74. Appeal No. 1298/97 Noor Mohammad Vs. - do -
- 75. Appeal No. 1288/97 Mohammad Hayat Vs. - do -
- 76. Appeal No. 1571/97 Hidayatullah Vs. - do -
- 77. Appeal No. 1685/97 Nazir Ahmad Vs. - do -
- 78. Appeal No. 1323/97 Sadiq Ali Vs. - do -
- 79. Appeal No. 1313/97 Muslim Shah Vs. - do -
- 80. Appeal No. 1620/97 Islamuddin Vs. - do -
- 81. Appeal No. 1325/97 Abdul Shakoor Vs. - do -
- 82. Appeal No. 1309/97 Rehman Shah Vs. - do -
- 83. Appeal No. 1295/97 Faridullah Shah Vs. - do -
- 84. Appeal No. 1260/97 Rustam Khan Vs. - do -
- 85. Appeal No. 1305/97 Alamzeb Vs. - do -
- 86. Appeal No. 1293/97 Khan Said Vs. - do -
- 87. Appeal No. 1579/97 Mohammad Nazir Vs. - do -
- 88. Appeal No. 1311/97 Bashir Gul Vs. - do -
- 89. Appeal No. 1285/97 Naqib Khan Vs. - do -
- 90. Appeal No. 1265/97 Said Ghaffar Vs. - do -

Brief facts of the case as averred in the memo of appeal are that the appellant was appointed as Rodman in the office of Project Director Water Management Mardan Scarp. The appellant served in the On Form Water Management Wing of the Agriculture Department for 13 years and G.P. Fund was deducted

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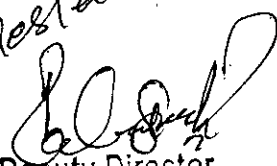

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from the appellant's pay for the purpose of pension etc. The appellant was performing his duties to the entire satisfaction of his superiors when all of a sudden his services were terminated on the pretext of completion of On Form Water Management Phase-III World Bank Financed Project vide order dated 2.5.97. The appellant made a departmental appeal against the aforesaid order which was regretted vide order dated 27.5.97. The appellant being aggrieved of the aforesaid orders of the department has made his appeal before the Service Tribunal on the following grounds.

That the impugned orders are highly illegal, unjust, against the law, rules/regulation and therefore, untenable. The appellant was appointed in On Form Water Management, as Wing of Agriculture Department, as back as in the year 1984 and therefore, the termination of his services in such a manner is not only illegal but unwarranted by law. The appellant has served the department for more than 13 years and he could not be termed as an employee on contract basis or otherwise for any Project. There was nothing adverse against the appellant. The annual Confidential Report of the appellant being maintained in the department would show good remarks against his entire service. The seniority list has also been prepared which is available in the department. The impugned orders have deprived the appellant of his legal/and livelihood of his children without any cogent reasons. No show cause notice was served on the appellant and hence he was condemned unheard which is against the principles of natural justice. The impugned orders are not only unjust, but based on malafide and victimization. That respondent No. 2 did not apply his independent mind to the case of the appellant. Respondent No. 2 not only misconstrued the grounds of appeal but also failed to give any reason justifying the termination order. It is crystal clear from the record that the appellant was lawfully employed in On Form Water Management (Wing of Agriculture Department) having all rights of service.

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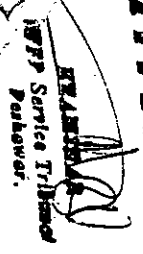
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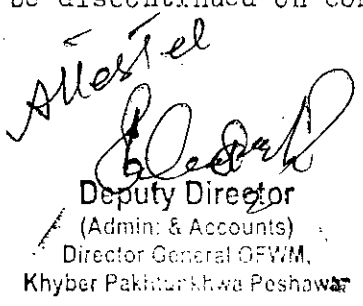
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Notices were issued to the respondents. They appeared through their respective representative/counsel and submitted their joint parawise reply. The respondents raising preliminary objections stated that the appellant has no cause of action; the appeal is time barred; the appellant is estopped by his own conduct to bring the present appeal; the appeal is not maintainable in its present form; the appellant was a temporary Project employee and has no locus standi; the appeal is bad for misjoinder and non-joinder of necessary party and the Tribunal has no jurisdiction. On factual side of the case the respondents have stated that the appellant was appointed as Rodman. However, his appointment was made on temporary basis in Developmental Project which was liable to termination at any time as per terms and conditions of the appointment order. The appellant has served as Rodman in the Developmental Project executed under the On Form Water Management Sub Sector for the last 13 years. The G.P. Fund has been deducted and will be refunded as and when applied for by the appellant. The services of the appellant have been terminated w.e.f. 31.5.97 on the completion of the On Form Water Management Phase-III Project. The appellant has preferred departmental appeal after his termination however, the departmental appeal was considered and as there/^{was}no merit in the appeal it was rejected. On the grounds of appeal made by the appellant, the respondents have stated that the/^{services of the}appellant being a Developmental Project employee have been terminated on the completion of Project under the policy of the Provincial Government vide SOR-III(S&GAD)8/38/86 dated 31.3.89. The termination order is therefore, legal, justified and lawful under the Rules and Regulations of the Provincial Government. The appellant was appointed in Developmental Project in the On Form Water Management Wing of Agriculture Department on purely temporary basis. According to the Government Policy his services were to be discontinued on completion of the Developmental

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Project. Since the World Bank Financed On Form Water Manage-
 ment Phase-III Developmental Project in which the official
 was working has been completed on 31.5.97 and loan closed,
 therefore, the official was terminated under the policy of
 the Provincial Government. The appellant has served as Rodman
 since 27.5.84 in Developmental Project upto 31.5.97 and his
 services have never been converted to current budget due to
 non existence of permanent post. Till the date of his termina-
 tion i.e. 31.5.97 he remained a project employee as is evi-
 dent from his service record. Undoubtedly the appellant earned
 good report while working in the Project and as such he was
 retained till 31.5.97. Had the appellant earned bad reputation/
 performance, he would have been terminated earlier before the
 completion of the Project. The appellant has ^{not} been shown as a
 permanent employee of the project in the seniority list or any
 other documents. In view of the reason explained above, the
 appellant was terminated on 31.5.97 strictly under the policy
 of the Provincial Government. There is no regular post of
 Rodman against which the appellant is considered for adjust-
 ment on permanent basis. The services of the appellant have not
 been terminated under the disciplinary grounds therefore, there
 was no need of any show cause notice to him. However proper
 advance notice for termination of his service w.e.f. 31.5.97
 due to completion of the Project had been given to the appel-
 lant. No malafide intention is involved. The order issued is
 based on fact i.e. the project in which the official/appellant
 was working was completed and Foreign Loan closed. The reason
 for the termination has been given in the advance notice as
 well as termination order. There is no other reason of ter-
 mination except mentioned above. The appellant was employed
 in the Developmental Project and terminated on its completion
 according to the policy of the Provincial Government.

APPEND

GOVERNMENT OF KHYBER PAKHTUNKHWA
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 DEPT. OF SERVICE
 PESHAWAR

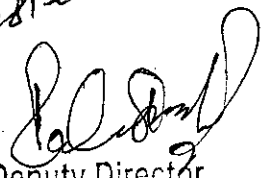
Deputy Director
 (Admin: & Accounts)
 Director General OFWM,
 Khyber Pakhtunkhwa Peshawar

The appellant has submitted his replication and has rebutted all the objections raised in the preliminary objections by the respondent department. The appellant has alleged that the preliminary objections raised by the respondents are factually incorrect and legally untenable. The appellant has a valid cause of action and the appeal is well within time. The appellant is not estopped by his own conduct to bring the instant appeal which is very much maintainable in its present form. All the necessary parties have been arrayed in the appeal and the Tribunal has the jurisdiction to entertain and adjudicate upon the matter.

Arguments heard and record perused.

The counsel for the appellant argued that the appellant was appointed in the On Form Water Management, a Wing of the Agriculture Department. The appellant served the department for more than 13 years as a permanent and regular employee and his services could not be terminated on the so-called ground of completion of some project as he was not a project employee recruited for any specific project. His service Book was maintained by the department and G.P. Fund was properly deducted like all other Government servants. The respondents cannot justify the termination order on the ground of completion of Project. The respondents were duty bound to act in accordance with law, rules & procedure. The impugned orders are unjust and based on malafide and victimization as the services of most of the employees who were junior in the cadre and seniority of Rodmen in the department have not been terminated and are still working in the department. The counsel for the appellant also argued that the impugned order dated 2.5.97 has also not been passed by a competent authority and is irregular. The appointment of the appellant was made by the Director whereas the termination order has been made by the Assistant Director which is wrong. The counsel for the appellant

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 Director General OFWM,
 Khyber Pakhtunkhwa Peshawar

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also stated that the appellant was a Government servant in accordance with the Director Water Management NWFP letter No. 102003/25 dated 1.10.97 addressed to District Accounts Officer Bannu wherein it was stated that the staff working under the department of On Form Water Management are Provincial Government servants and are drawing their salaries from Demand No. 39 and 19. Therefore, the services of the appellant could not be terminated without gratuity/pensionary benefits. The counsel for the appellant also quoted the names of some employees of the Water Management namely M/S Qismat Ali Rodman and Liaqat Ali vehicle driver who have been given pensionary benefits by the department earlier.

The Government Pleader/counsel for the respondent department argued that the appellant was a project employee and his services were terminated on the completion of the Project after serving proper notice on him in accordance with the Government Policy. He stated that the appellant has never been shown as a permanent employee of the project in seniority or any other document. He endorsed the reply made by the respondent department.

The record shows that the On Form Water Management was a Wing /a Directorate of Agriculture Department of Govt; of NWFP at the time when the appellant was appointed as Rodman by the Director On Form Water Management vide his office order No. 8137-39 dated 26.5.84 and the service rules for recruitment for the posts of On Form Water Management namely for the posts of Rodmen, Field Assistants, Vehicles Drivers, Junior Store Keepers, Naib Qasids/Chowkidars etc also existed vide notification No. SOR-II(S&GAD)2-11-1972 dated 1.2.1981. The On Form Water Management Wing/Directorate was later on declared as attached department of the Agriculture Department vide notification No. SO(O&M)S&GAD/2-7/89 dated 11.10.89 and is still

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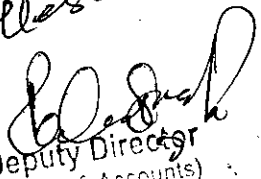
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functioning as such. The appellant was appointed as Rodman in the On Farm Water Management by the Director who was the competent/appointing authority. In accordance with the terms and conditions of his appointment order his appointment was made on temporary basis and there was nothing to show that he was appointed on work charge basis or on contract basis in terms of Section-25 of the Civil Servants Act 1973. Similarly he does not fall in the category of employees mentioned in provision (i) (ii) & (iii) of Sub Section (b) of Section-2 of the Civil Servants Act 1973. The appellant has been getting salary from the Provincial Fund vide Director On Farm Water Management's letter dated 1.10.97 addressed to District Accounts Officer Bannu and the services rendered by the employees in On Farm Water Management from 1981 onwards are countable towards pension vide A.G. NWFP letter dated 25.10.97. The pay roll of the appellant for the month of December 1991 shows the deduction of provident fund and Benevolent Fund from his pay. Similarly the ACKs/Service Book of the appellant was maintained. In view of the aforesaid exposition the appellant was a Government servant. His services could be terminated only if he was junior most employee in his cadre of Rodmen in the On Farm Water Management Department in terms of sub section (2) of Section 11 of the Civil Servants Act 1973, reproduced below :-

"(2) where, on abolition of a post or reduction in the number of posts in a cadre or grade, the services of a civil servant are required to be terminated, the persons whose services are terminated shall ordinarily be the one who is the most junior in such cadre or grade."

It is evident from the seniority list of Rodmen as it stood on 1.12.1996 that the appellant was not junior most in his cadre. He stood at S.No. 92 and his services have been terminated whereas the services of those who stood at S.No. 174, 175, 180, 184 etc junior to him have ^{not} been terminated vide

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 Deputy Director
 (Admin. & Accounts)
 Director General OFWM,
 Khyber Pakhtunkhwa Peshawar

APPENDIX
 NWFP Service Tribunal
 Peshawar

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seniority list as well as office order No. 8723-89/3/99/
vol-19/DWM dated 28.8.98 issued by the Director Water
Management NWFP. The appellant has more than 13 years
service and has not been given any pensionary and other
benefits. The Tribunal therefore, accepts this appeal and
the other connected appeals mentioned above and remands the
case back to the respondent department with the following
directions :-

(i) The appellant be re-instated in service and
the period of their termination be treated
as extra ordinary leave without pay from ^{the} date of
termination till 28.2.99.

(ii) The latest seniority list of the persons
working in the respective cadres of the
appellants viz Rodmen, Field Assistants
in the On Farm Water Management, be pre-
pared by the Director, On Farm Water Manage-
ment by 28.2.1999.

(iii) As per latest seniority list if the appellant
is junior most in his cadre and his services
if still required to be terminated ^{may be terminated} /with the
due benefits of pension/gratuity etc.

No orders as to costs. File be consigned to the
record.

ANNOUNCED.
8.1.1999 .

(SYED ABID HUSSAIN BOKHARI)
MEMBER.

Mohammad Shaukat
(MOHAMMAD SHAUKAT)
MEMBER.

Attest

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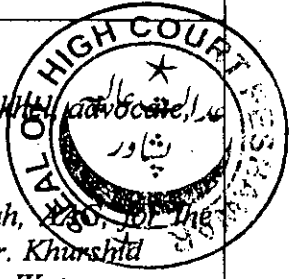
Deputy Director
(Admin: & Accounts)
Director General, OFWM,
Khyber Pakhtunkhwa Peshawar

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OFFICE
PESHAWAR

Date of presentation of application 27-1-99
Number of Words 4420
Cropping fee 13-00
Urgent 2-00
Total 15-00
Name of copier ABD R. Khan
Date of completion of copy 27-1-99
Date of delivery of copy 27-1-99

PESHAWAR HIGH COURT, PESHAWAR
FORM OF ORDER SHEET

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
02.11.2017	<p>W.P No. 323-P of 2017.</p> <p>Present: <i>Mr. Fawad Ahmad Utmani Advocate for the petitioners.</i></p> <p><i>Syed Sikandar Hayat Shah, Advocate for the respondents along with Mr. Khurshid Afridi, Director H/Quarter Water Management, KPK.</i></p> <p>*****</p> <p>QAISER RASHID KHAN, J: - Through the petition in hand, the petitioners seeks the following relief;</p> <p><i>“It is therefore humbly prayed that on acceptance of instant writ petition this Hon’ble court may be pleased to direct the respondents to regularize the petitioners in accordance with law and in the light of judgment of Hon’ble Supreme Court of Pakistan.”</i></p> <p>2. As per averments made in the petition, petitioners No.1, 2 and 3 were appointed against the posts of Rod Man while petitioner No.3 as a sweeper in the years 2005 and 2007 whereafter their services were extended from time to time and finally terminated by the respondents in the year</p>



Attested

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Deputy Director
(Admin & Accounts)
Director General GEWM
Khyber Pakhtunkhwa Feshawar

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EXAMINER
Peshawar High Court
09 NOV 2017

2011. That many other employees of the respondents-department filed writ petitions which were allowed and their services were regularized and that is how the petitioners are before this court seeking regularization of their services.

2. Arguments heard and available record perused

3. The available record unfolds that the petitioners were appointed way back in the years 2005-2007 whereafter their services were extended from time to time and finally terminated in the year 2011. The other employees of the respondent-department filed writ petitions before this court for the regularization of their services which were allowed while the petitioners preferred to stay away from filing any petition or for that matter to submit any application worth the name before the respondents so as to express their grievance against their termination from service or to apply to them for their regularization as was the case with the other employees and instead opted to approach this court after six long years without coming up with any documentary evidence as to what they have been doing for all these years. In such a situation, we are afraid the petitioners cannot be treated at par

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Deputy Director
(Admin. & Accounts)
Director General OFWM
Khyber Pakhtunkhwa Peshawar

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Mr. Justice Qaiser Rashid Khan & Mr. Justice Muhammad Younis Thaheem (DB)

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EXAMINER
Peshawar High Court
2011-2017

with the other employees in terms of dictum of the Hon'ble Apex court reported as 2009 SCMR 1 because law helps the vigilant and not the indolent and the relief granted to the individuals who have pursued their cause in time cannot be granted to those who for reasons best known to them did not agitate their claim with the respondents in any manner.

4. Accordingly, this petition being both meritless and squarely hit by laches is dismissed.

Announced.
02.11.2017.



SA/- Qaiser Rashid Khan
Muhammad Younis Thahem

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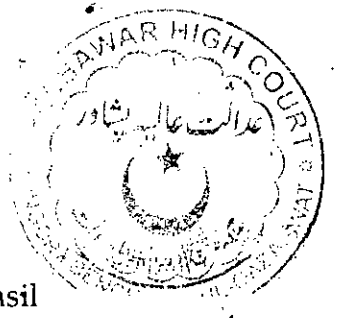
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Date of Delivery of Copy *07/11/17*
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Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan Order 1984
09 NOV 2017

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Deputy Director
(Admin. & Accounts)
Director General OFWM,
Khyber Pakhtunkhwa Peshawar

BEFORE THE PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA) SWAT

W.P.No. 658-M /2017



1. Mohammad Raees s/o Alamgir R/o Village Badwan Bala Tehsil Adenzai District Dir Lower.
2. Dawood Khan s/o Mohammad khan r/o Badwan bala tehsil Adenzai District dir lower
3. Jehan zeb s/o Abdul Khaliq R/o Bathi Town Munda Tehsil Munda District Dir lower
4. Wazir Mohammad s/o Said Umar bacha R/o village Iaram P o Kotigram tehsil Adenzai District dir lower .
5. Mohammad Ayaz s/o Mula jan r/o village Munda Tehsil Munda district dir lower .

.....Petitioners

Versus

1. District officer ON Farm Water Management Department District dir lower.
2. Deputy Commissioner (the then District Coordination officer) District Dir lower.
3. Director ON Farm Water Management Khyber Pakhtoon Khwa at Peshawar.
4. Secretary to government of Khyber pakhtoon Khwa Agriculture, livestock and cooperative Department at Peshawar.
5. Government of Khyber Pakhtoon khwa through its chief Secretary at Peshawar.

Respondents

W.P. under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973

Respectfully Sheweth:

Attest

[Signature]

Deputy Director
(Admin: & Accounts)
Director General OFWM,
Khyber Pakhtunkhwa Peshawar

JUDGMENT SHEET
PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)

W.P. No. 658-M/2017
With Interim Relief



JUDGMENT

Date of hearing: 27.09.2022

Petitioners: - (Muhammad Raees & others) by Muhammad Javaid Shah, Advocate.

Respondents (District Office On-Farm Water Management Dapartment Dir Lower & others) by Mr. Haq Nawaz Khan, Astt: A.G.

MUHAMMAD IJAZ KHAN, J.- Petitioners have filed the instant constitutional petition, under Article 199 of The Constitution of Islamic Republic of Pakistan 1973, with the following prayer;

“In view of the above submissions it is therefore very humbly prayed that on acceptance of the present petition appropriate writ may be issued against the respondents whereby the services of the petitioners may be directed to be continued restored and regularized being as regular employees of the respondents department.”

2. Precisely the case of the petitioners is that they were appointed in the project namely “On-Farm Water Management Project of the Agriculture Department” way back in the year 2004 to 2007 on the contract basis initially for the period of one year which was extended from time to time up to 30.06.2009. It is further pleaded in their petition

Nawab (D.B) Hon'ble Mr. Justice Muhammad Naem Anwar
 Hon'ble Mr. Justice Muhammad Ijaz Khan

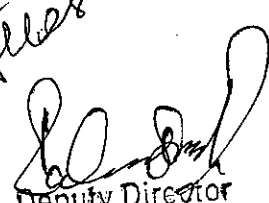
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 Deputy Director
 (Admin: & Accounts)
 Director General OFWM,
 Khyber Pakhtunkhwa Peshawar

ATTESTED
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that their colleagues who were appointed in the same project and on the same terms and conditions had approached to this Court in the year 2007, 2008 and 2009 where favourable orders were passed in their favour whereby their services were regularized and the orders of this Court have also been upheld by the Hon'ble Supreme Court of Pakistan and thereafter the respondents have issued the notifications of their regularization. It is further pleaded in their petition that they have approached the respondents time and again but of no fruitful result, therefore, under compulsion they have approached to this Court for the desired relief.

3. When this case was taken up for hearing, respondents were put on notice and they were directed to file their para-wise comments which they have accordingly submitted where their stance was that since the petitioners were contract employees and their contract period has since been expired and since they have left the services of the respondents and have either proceeded abroad or have joined other services in Pakistan, whereas their colleagues remained on the strength of the respondents

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 (Admin. & Accounts)
 Director General DFWM,
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 Attesting Officer
 District Court Peshawar

4. Arguments of the learned counsel for the parties were heard in considerable detail and the record perused with their able assistance.

5. There is no dispute that the present petitioners were appointed in the project known as On-Farm Water Management Project of Agriculture Department on contract basis and for a specific period and the terms and conditions of their services stipulates that they are to be governed under the Khyber Pakhtunkhwa Regularization of Services in Erstwhile Federally Administered Tribal Areas Act, 2002. The aforesaid policy specifically indicates that the contract employee shall have no right of regularization if the project is converted into a regular side of the budget and since the petitioners have accepted the terms and conditions of their services, therefore, they were bound by the said project policy and as such in view of the above admitted position the petitioners cannot claim the regularization of their services.

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6. It may be noted that a contract employee cannot seek regularization of his service whether he is contract employee of the provincial government or contract employee of the project, the

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Hon'ble Mr. Justice Muhammad Ijaz Khan

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services of such employees are to be governed by the terms and conditions of his/their appointment. It may be noted that a contract/project or *ad-hoc* or temporary employee cannot claim regularization of his service unless and until the same is backed by any law or statute. In the present case, the petitioners could not pointed-out any such law which may provide for the regularization of their services, however, their only plea was that since their similarly placed colleagues have approached to this Court in the year 2007, 2008 and 2009 and who had been granted the desired relief of their regularization, therefore, they also deserved a similar treatment, however, such plea of the petitioners could not be entertained on the following grounds; -

Firstly, that the instant writ petition filed by the petitioners is hit by the principle of laches. It is a matter of record that the petitioners have not remained on the strength of respondents/ department since 2009 but they have approached to this Court after almost nine years in the year 2017, therefore, their very petition is not entertainable. In the case of "Civil Aviation Authority through Director General & 03 others v/s Mir Zulfiqar Ali & another" reported as 2016 SCMR 183, the Hon'ble

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Nawab (D.B) Hon'ble Mr. Justice Muhammad Naeem Afwar
Hon'ble Mr. Justice Muhammad Ijaz Khan

ATTESTED
Perhawar High Court Bench
Muzaffar Khan

Apex Court has held that unfortunately it took the respondent No.1 about 10 years in approaching the High Court, as the petition decided through the impugned order was so filed in the year 2011 only, and as rightly submitted by the Additional Attorney-General the same suffered from laches and ought to have been dismissed for having been filed after a lapse of about 10 years. The respondent No.1, who appeared in person, despite opportunity failed to explain or justify the delay. Since the petition was filed after a lapse of almost 10 years and that too without any justification or explanation for such delay, the same ought to have been dismissed as such on the doctrine of laches. In the case of "Farzand Raza Naqvi & 05 others v/s Muhammad Din through Legal Heirs & others" reported as 2004 SCMR 400, the Hon'ble Apex Court has held that the question of laches in the writ petition is always considered in the light of the conduct of the person invoking the Constitutional jurisdiction of the High Court and the degree of his negligence if any and that if by grant of relief being sought by him no injustice is caused to the opposite-party, the Constitution petition should not be dismissed merely on the ground of laches without examining the dictates of justice. The laches in

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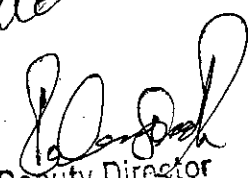
Nawab (D.B) Hon'ble Mr. Justice Muhammad Nazeem Anwar
 Hon'ble Mr. Justice Muhammad Ijaz Khan

ATTESTED
 Examined
 Darul Uloom High Court Bench
 Peshawar District Court


simplest form mean failure of a person to do something which should have been done by him within a reasonable time and is not synonymous with delay alone but it can be worked out to the disadvantage to another person in the matter of his right. In the case of "Muhammad Din v/s Abdul Ghani & another" reported as 2012 SCMR 1004, the Hon'ble Apex Court has held that if a Court comes to the conclusion that the petition was barred by laches, it is not required that it should also decide the issue raised in the petition on merits.

Secondly, as far as the case of the colleagues of the petitioners and that of the present petitioners is concerned, suffice it to say that the Court of law is bound to decide a *lis* pending before it in accordance with law. It is settled law that a contract/project/*ad-hoc* or temporary employee has no right to seek regularization unless and until the same is backed by any statutory provision. The satisfactory performance of the employee or length of service of the employee or conversion of the project into regular side of the budget or creation of seats on the regular side of the budget on which an employee is performing his duty could not be pressed as grounds for seeking regularization. In the case of

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 Director General OFWM,
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Nawab (D.B) Hon'ble Mr. Justice Muhammad Naeem Anwar
 Hon'ble Mr. Justice Muhammad Ijaz Khan

ATTESTED

 Director General
 Khyber Pakhtunkhwa Peshawar

"Khushal Khan Khattak University through Vice-Chancellor & others v/s Jabran Ali Khan & others" reported 2021 SCMR 977 the Hon'ble Apex Court has held that there is no vested right to seek regularization for employees hired on contractual basis unless there was legal and statutory basis for the same. Similarly, in the case of "Government of Khyber Pakhtunkhwa Workers Welfare Board v/s Raheel Ali Gohar" reported as 2020 SCMR 2068 the Hon'ble Apex Court has held that in any case, this Court in recent judgments has unequivocally held that contractual employees have no automatic right to be regularized unless the same has specifically been provided for in a law. Most recently, in a judgment in Civil Petitions Nos. 4504 to 4576, 4588 and 4589 of 2017 dated 08.01.2019 this court has held that having heard the learned counsel for the parties, we find that contractual employees have no right to be regularized until there is a law provided to that effect. They are the contractual employees and they have to serve till the pleasure of their master and in case of any wrongful termination, which according to them has taken place, they cannot seek the reinstatement, at the best, they can only have the compensation for

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 Khyber Pakhtunkhwa Peshawar

Nawab (D.B) Hon'ble Mr. Justice Muhammad Naem Awar
 Hon'ble Mr. Justice Muhammad Ijaz Khan

ATTESTED
 P. M. Khan
 Peshawar High Court
 Peshawar

the wrongful termination by applying to the competent court of law. Similar observations were also recorded by the Hon'ble Apex Court in the case of "Pakistan Telecommunication Company Ltd. v/s Muhammad Sami Ullah" reported as 2021 SCMR 998 that an *ad-hoc*, temporary or contractual appointment does not create any vested right of regularization in favour of the appointee. In the case of "Vice Chancellor Bacha Khan University Charsada, Khyber Pakhtunkhwa & others v/s Tanveer Ahmad & others" reported as 2021 SCMR 1995, the Hon'ble Apex Court has observed that the learned High Court in the impugned judgment has held that the Respondents were appointed through the prescribed manner, albeit, on contract under the KP University Act, 2016. It is settled law that a person employed on contract basis has no vested right to regularization. By mere efflux of time, an employee cannot claim regularization and knock on the door of the High Court for the same. Likewise, in the case of "Govt. of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock & others v/s Saeed-ul-Hassan & others" reported as 2021 SCMR 1376, the Hon'ble Apex Court has observed that the learned High Court in the impugned

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Newab (D.B) Hon'ble Mr. Justice Muhammad Naeem Anwar
 Hon'ble Mr. Justice Muhammad Ijaz Khan

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Secretary
 Ministry of Education
 Government of Khyber Pakhtunkhwa

judgments has held that the Respondents had a vested right to be regularized, on the basis of satisfactory service, because of the conversion of different projects to the regular side. We are unable to agree with the view taken by the High Court for the reason that it is by now a settled principle of law that, long or satisfactory contractual service does not confer a vested right for regularization as conversion from contractual to regular appointment requires statutory support. So, in view of the above settled law the writ petition of the petitioners is neither entertainable nor maintainable as the same being hit by the principle of laches as well as the petitioners could not seek the regularization of their services unless and until the same is backed by any provision of the statute.

7. During the course of arguments, the learned counsel for the petitioners was confronted that as to which of their vested right qua the regularization of their services or termination from their services have been violated, his reply and emphasis was that since the colleagues of the petitioners have earlier approached to this Court and they have been able to get favourable orders

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 Deputy Director
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 Director General GFWA,
 Khyber-Pakhtunkhwa-Peshawar

Nawab (D.B) Hon'ble Mr. Justice Muhammad Nasim Anwar
 Hon'ble Mr. Justice Muhammad Ijaz Khan

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 High Court Bench
 Peshawar

in their favour in the form of regularization of their services, therefore, the present petitioners being similarly placed also deserved alike treatment, and as it confer a right on them to be regularized, however, except this plea they could not pointed-out any of their prescribed rights and thus for maintaining a writ petition, a petitioner has to show that which of his right(s) has been denied to him. It is relevant to mention here that in a broader sense rights could be categorized in three kinds i.e. Fundamental rights are those rights which are conferred upon a citizen by The Constitution of Pakistan, Legal rights are those rights which are conferred upon a person by any law or statute other than The Constitution of Pakistan and Vested rights are those rights which are accrued to a person due to an act or omission, action or inaction of another person. In a writ jurisdiction what the writ petitioners are required is to first establish that they have suffered a "legal grievance" or they have wrongly been deprived or they have wrongly been refused something which they were otherwise legally entitled to, and it is only after the establishment of

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Deputy Director
(Admin: & Accounts)
Director General OFWM,
Khyber Pakhtunkhwa Peshawar

Nawab (D.B) Hon'ble Mr. Justice Muhammad Naeem Anwar
Hon'ble Mr. Justice Muhammad Ijaz Khan

ATTESTED
[Signature]
High Court Bench
Peshawar

such a right, followed by its violation or refusal by a public functionaries, and it would be thereafter that he/they may be held as entitled for the issuance of the desired writ. In the case of "Fazl-e-Haq, Accountant-General, West Pakistan vs. The State" reported as PLD 1960 Supreme Court (Pak.) 295, the Hon'ble Apex Court has held that extraordinary jurisdiction of High Court could only be invoked by a person whose legal right has been denied. This view was also followed in the case of "Mian Fazal Din vs. Lahore Improvement Trust, Lahore and another" reported as PLD 1969 Supreme Court 223, in which it was held that petitioner has to show that he had a personal interest in performance of the legal duty which if not performed or performed in a manner not permitted by law would result in the loss of some personal benefit or advantage.

8. In view of the above we hold and declare as under;

- (i) That the petitioners being project employees their services are to be governed by the project policy which specifically barred the regularization of such employees against a regular post.

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Deputy Director
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Director General QFWM,
Khyber Pakhtunkhwa Peshawar

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Hon'ble Mr. Justice Muhammad Ijaz Khan

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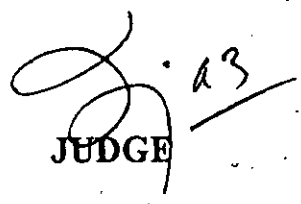
- (ii) That a project/contract/ad-hoc/temporary employee cannot seek regularization of his service unless and until the same is backed by a law or statute or regulation.
- (iii) A writ petition would only be entertainable and maintainable if the same has been filed within a reasonable time of accruing a cause of action, what should be the reasonable time the Hon'ble Apex Court has held it as 90 days and conversely a High Court is not required to decide the case of the parties on merits if the writ petition is hit by the principle of laches.
- (iv) For maintaining a writ petition a writ petitioner has to show that which of his fundamental or legal or vested rights have been violated.

9. With the above observations the instant writ petition being bereft of any merits is hereby dismissed.

ANNOUNCED
Di: 27.09.2022



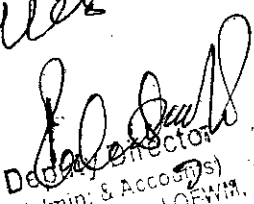
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JUDGE

S.No. 53
 Name of Applicant Rahim Ali
 Date of Presentation of Applicant 3-10-22
 Date of Completion of Copies 2-11-22
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 Director General
 (Admin. & Accounts)
 Director General GFWIA,
 Khyber Pakhtunkhwa Peshawar
 27/10/2022

M. R. Khan
 EXAMINER
 Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
 Appointed Under Article 87 of Constitution of Pakistan
 2/11/22

PESHAWAR HIGH COURT, BANNU BENCH

FORM OF ORDER SHEET

Date of order or proceedings	Order or other proceedings with signatures of Judge (s).
(1)	(2)
07.10.2019	<p><u>COC No. 848-B of 2016</u> <u>Present:-</u> Asghar Ali Khan advocate for petitioner. *****</p> <p><u>MUHAMMAD NASIR MAHFOOZ, J.-</u> Through instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, the petitioner prayed for issuing directions to the respondents to regularize the petitioner on the post of Sub engineer, as on permanent basis.</p> <p>2. Brief facts of the case are that the petitioner was appointed as sub engineer on 16.10.2004 on contract of one year, which was extended time to time, but later was removed from service without any prior notice in the year 2009. Hence, the instant writ petition.</p> <p>3. Arguments of learned counsel for petitioner heard in motion and available record appended with the instant writ petition is perused.</p>

Asghar Ali Khan
Asghar Ali Khan
Deputy Director
(Aum) S.A.
Director
Khyber Pakhtunkhwa P.S.E.T.
Azam Khan/PSET

(D.B) Mr. Justice Muhammad Nasir Mahfooz & Mr. Justice Sahibzada Asadullah

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

4. The petitioner was appointed as sub engineer in a project on contract basis and was removed from service in the year 2009, whereas the petitioner has filed instant writ petition on 31.10.2015, after six years, without furnishing any reason for such inordinate delay, apart from the matter of regularization when he is not even in service. Learned counsel for petitioner could not point out any reason for the same, hence, instant writ petition is hit by laches and is dismissed in limine.

Announced.
07.10.2019

Sd Justice Muhammad Nasir Mahfooz, J
Sd Justice Sahibzada Asadullah, J

CERTIFIED TO BE TRUE COPY

Secretary
Peshawar Bench
Authority of the Bench 37 of
The Qanun-e-Amdad Ordinance 1984

16/11/2020

office
9/10/19

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Asadullah
Deputy Director
(Admin. Services)
Director General
Khyber Pakhtunkhwa Peshawar

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FORM "A"
FORM OF ORDER SHEET

Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
2.	3.
06.11.2019	<p><u>W.P No.848-B/2016</u></p> <p><u>Present:</u></p> <p style="text-align: center;">Mr. Asghar Ali Daim Khel advocate for petitioner.</p> <p style="text-align: center;">*****</p> <p style="text-align: center;"><u>CM No.300-B/2019</u></p> <p><u>MUHAMMAD NASIR MAHFOOZ,J.---</u> Seeks correction of the words "COC" mentioned on the order dated 07.10.2019 passed by this Court inadvertently as the order was passed in the main W.P No.848-B/2016 and not in COC. Learned Addl: A.G present in court accepts notice and also not opposed the CM.</p> <p style="text-align: center;">The request is genuine, the CM is allowed and necessary correction be made accordingly.</p> <p><u>Announced.</u> <i>Sd/Justice Muhammad Nasir Mahfooz,J</i> 06.11.2019. <i>Sd/ Justice Sahibzada Asadullah,J</i></p> <p style="text-align: center;">CERTIFIED TO BE TRUE COPY</p> <p style="text-align: center;"><i>Asadullah</i> <i>Asadullah</i> <i>Asadullah</i></p> <p style="text-align: center;">Deputy Director (Admin. & Accounts) Director General of Welfare Khyber Pakhtunkhwa Peshawar</p> <p style="text-align: center;">Peshawar Bench Authorised under Section 87 of The Qanun-e-Shahadaat Ordinance 1984</p> <p style="text-align: right;"><i>16/11/2020</i></p> <p style="text-align: left;"><i>File</i> <i>7/11/18</i></p>

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUHAMMAD ALI MAZHAR
MRS. JUSTICE ATHAR MINALLAH

CIVIL PETITION No. 4855 OF 2019

(Appeal against the judgment dated 07.10.2019
passed by Peshawar High Court, Bannu Bench in
W.P No.848-B/2016)

Muhammad Amin Khan

...Petitioner

VERSUS

Government through Secretary, Livestock & Co-Operative Department
Peshawar and others

...Respondents

For the Petitioner: Syed Haziq Ali Shah, ASC

For Respondents: N.R

Date of Hearing: 21.11.2022

ORDER

MUHAMMAD ALI MAZHAR J, - The case of the petitioner is that he was employed on contract basis which was extended from time to time, however, he was removed from the contractual engagement in the year 2009. He approached the High Court for regularization of his job after six years by means of writ petition on 31.10.2016. The learned High Court mainly considered the ground of laches and non-suited the petitioner, who approached the Court for relief after deep slumber. No reason or justification for interference is made out. Consequently, this petition is dismissed and leave refused.

Sd/-J
Sd/-J

Certified to be True Copy

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**Senior Court Associate
Supreme Court of Pakistan
Judge Islamabad**

Islamabad the
21st November, 2022

Deputy Director
(Admin. & Gen. Secy)
Director General
Khyber Pakhtunkhwa

GR No. 207-P/2022

Civil/Criminal

Date of Presentation: 29.11.2022

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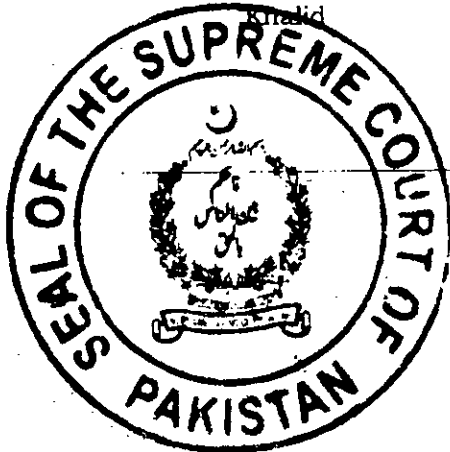
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Date of Delivery of Copy: 13-12-22

Compared by/Printed by: [Signature]

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**DIRECTORATE GENERAL
ON FARM WATER MANAGEMENT
KHYBER PAKHTUNKHWA, PESHAWAR**

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No. _____/DG/OFWM/Estt: dated Peshawar the, _____/2024

AUTHORITY

Mr. Rahat Shah Deputy Director (ADMN) (BPS-18) of the On Farm Water Management department is hereby authorized to submit/file the Para wise comments on behalf of the respondents in Service Appeal No. 1458/2022 – Titled Zaheen Khan Ex-Rodman s/o Wali Muhammad Vs Govt. of Khyber Pakhtunkhwa and Others in Honourable Khyber Pakhtunkhwa, Service Tribunal.

The above named officer is also authorized to attend the honourable Tribunal on each date of hearing & brief the Additional Advocate General Khyber Pakhtunkhwa Service Tribunal regarding facts of the case on behalf of respondents and submit the order/decision, if any, for further necessary action.


Secretary,

Govt. of Khyber Pakhtunkhwa
Agriculture department, Peshawar
(Respondent No.1)


Director General

On Farm Water Management,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.3)