


Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1030/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23/07/2024	<p>The present appellant initially went in Writ Petition before the Hon'ble Peshawar High Court Mingora Bench and the Hon'ble High Court vide its order dated 25.06.2024 while treating the Writ Petition into an appeal and has sent the same to this Tribunal for decision in accordance with law. This case be entered in Institution Register and entrusted to touring Single Bench at Swat for preliminary hearing to be put up there on 03.09.2024. Counsel for the appellant has been informed telephonically.</p> <p style="text-align: right;">By the Order of Chairman  REGISTRAR</p>



THE
PESHAWAR HIGH COURT
MINGORA BENCH, SWAT.

All communication should be
addressed to the Additional
Registrar of this Bench and
not to any official by name

No. 2216 /

Dated: 13.07.2024

To

The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar

Khyber Pakhtunkhwa
Service Tribunal

Duty No. 14444

Dated 23-07-2024

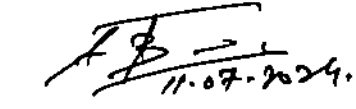
Subject:

TRANSMISSION OF WRIT PETITION 944-M/2022
ALONG WITH C.M 1071-M/2024 TITLED AS "ZIA
UR RAHMAN VS GOVERNMENT OF KHYBER
PAKHTUNKHWA THROUGH SECRETARY E&SE &
OTHERS"

Dear Sir,

I am directed to send herewith the mentioned above case (in original), in compliance with the order dated: 25.06.2024 passed in C.M 1071-M/2024, by the Divisional Bench of this Hon'ble Court, for compliance of the directions contained therein.

Receipt of this letter alongwith enclosures may please be acknowledged.


11.07.2024.
(Arbab Aziz Ahmad)
Additional Registrar

Encl:

1. W.P 944-M/2022 alongwith enclosures 87 Sheets
2. C.M 1071-M/2024 in W.P 944-M/2022 alongwith enclosures 32 Sheets

JUDGMENT SHEET

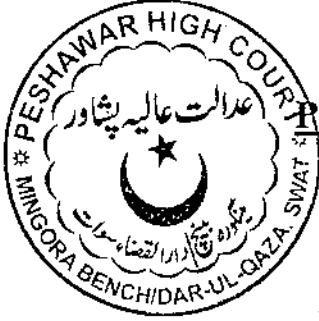
**PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

**C.M No.1071-M/2024
In W.P. No. 944-M/2022**

Zia-ur-Rahman (Petitioner)

vs.

Govt. of Khyber Pakhtunkhwa through
Secretary E&SE and others.....(Respondents)



Present:

Syed Abdul Haq, ASC for the
petitioners.

Mr. Rahimullah Chitrali, Asstt: A.G
for the respondents.

Date of hearing: 25.06.2024

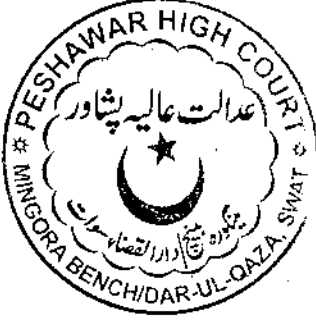
JUDGMENT

SHAHID KHAN, J.- Zia-ur-Rahman, hereinafter the
applicant, has filed the subject miscellaneous
application in writ petition No. 944-M of 2020, titled
'Zia-ur-Rahman vs Government of Khyber
Pakhtunkhwa through Secretary Elementary &
Secondary Education & others', decided
on 05.12.2023. They seek directions of this Court
that the W.P referred to above be treated as service
appeal followed by its sending to the Khyber
Pakhtunkhwa Services Tribunal for disposal in
accordance with law.

2. In essences, the petitioners had filed the
above referred writ petition, which was disposed of by

this Court vide judgment, dated 05.12.2023, with the following observations:

“In view of the above, this aspect shall also be decided by the competent forum keeping in view the initial appointment of the petitioners in juxtaposition with the terms and conditions of their service. Thus, without dilating upon the rest of the merits, both the matters require proper adjudication by the worthy Services Tribunal. The petitioners may approach to the worthy Services Tribunal for redressal of their grievances, if so advised, in accordance with law.”

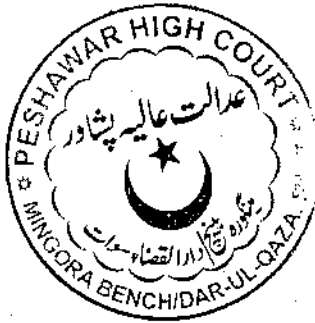


3. Keeping in view the aforesaid observations, the petitioner approached the worthy Khyber Pakhtunkhwa Services Tribunal through filing his appeal but the same was returned to him vide order, dated 02.05.2024, with certain objections including objection No.4 to the effect that copy of the departmental appeal has not been annexed therewith. For the sake of ready reference, relevant part of the aforesaid order is reproduced as under:

“[...] A civil servant may file appeal before the Tribunal after fulfilling the requirements conditionalities enumerated in Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974, wherein, filing at departmental appeal before coming to the Tribunal is a pre-requisite and a step towards filing of appeal, which step has admittedly, not been taken by the appellant in this appeal, therefore, objections sustain and appeal is returned.”

4. It obliged the petitioner to approach this Court through the subject application.

5. Arguments of learned counsel for the petitioner as well as the learned Assistant A.G for the respondents were heard and record gone through with their valuable assistance.



6. At the very outset of the arguments, learned counsel for the petitioner stated at the bar that while passing the judgment, dated 05.12.2023, in W.P No.944-M/2020, the Court observed that the petitioner may approach the worthy Services Tribunal for redressal of his grievances and accordingly, he approached but of no avail. As such, he requested that it would be in the interest of petitioner, if, the main writ petition is ordered to be treated as Service Appeal, followed by its sending to the Khyber Pakhtunkhwa Services Tribunal for disposal in accordance with law.

7. In view of the above, the subject application is disposed of in terms that the main writ petition No.873-M/2020 filed by the petitioner is

ordered to be sent in original alongwith its annexures to the Khyber Pakhtunkhwa Services Tribunal, where it shall be treated as Service Appeal and shall be decided in accordance with law. A copy of the same be retained for office record.



Announced
Dt: 25.06.2024


JUDGE


JUDGE

Certified to be True Copy

EXAMINEE

Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 07 of Qanun-e-Shahadat Order 1984

Office
28/06/2024

File Temp: No. 2024-6506

Case Auto Number: 5-11795-2024

**IN THE PESHAWAR HIGH COURT, MINGORA BENCH/
DAR-UL-QAZA, SWAT**

Civil Miscellaneous (C.M) No. 1071 -M OF 2024

IN W.P.No.944-M of 2022

Zia ur Rahman V/S Govt of KPK through Secretary E& SE & others

This petition has been presented by **Syed Abdul Haq** Advocate
on behalf of the Applicant.

The petition is in proper form, and is accompanied by copies of all necessary documents.

Petition be entered in the relevant register and placed before Hon'ble Court
(.B) for further orders on _____.

Inform Applicant and his Counsel.



READER

Dated: 29/05/2024

COUNTERSIGNED



Additional Registrar,
Peshawar High Court, Mingora
Bench / Dar-ul-Qaza, Swat

Dated: 29/05/2024

Mahammad Idrees

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH

(DARUL QAZA SWAT)

C.M No. 1071 -M/2024

In

W.P No. 944-M/2022

Zia Ur Rahman..... (Petitioner)

VERSUS

Govt of KP & others..... (Respondents)

APPLICATION FOR RESUBMISSION

Respectfully Sheweth:

1. That the above-mentioned CM was filed before this Hon'ble court, which was returned due to objections.
2. That the above delay is not intentionally and willfully but due to unavoidable circumstances.
3. That petitioners valuable rights are connected with writ petition.
4. That for the reason mention above your honor may please condone only 1 day delay and grant permission to re-submit the same.

Re-submission allowed subject to objections by the opposite party / court order. Re-submit today possibly i.e. 29.05.2024.

It is therefore humbly prayed that due to the aforesaid reason the delay may be condoned please.

[Signature]
Additional Registrar
Peshawar High Court Bench
Mingora, Dar-ul-Qaza, Swat.

Petitioner


[Signature]
SYED ABDUL HAQ
ASC

IN THE PESHAWAR HIGH COURT, MINGORA BENCH/ DAR-UL-QAZA, SWAT
OBJECTION SLIP

Zia ur Rahman VERSUS Govt of KPK through Secretary E& SF & others


Receipt No. 2024-5998

1 Copies of annexures/ page # 22,23 along with second copy are not legible.



Reader


Returned with the objections mentioned above. Case be re-submitted on or before 27-05-2024



Additional Registrar
PHC, Mingora Bench

Dated: 17-05-2024

R/S in objection has been
removed.



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URGENT FORM

**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH
/ DAR-UL-QAZA SWAT**

C.M. 1071-M 2024 IN
W.P No. 944-M/2022

Zia Ur Rahman.....**Petitioner**

VERSUS

Govt of KP & others..... **Respondents**

1. Will you kindly treat the accompanying C.M as urgent and in accordance with the provisions of Rules, 9 Chapter 3-A Rules of orders of the High Court, Lahore Volume V.

2. The grounds of urgency are.

That the matter has already been decided by this honorable Court and directed the applicant/petitioner to approached the worthy service tribunal but tribunal cannot entertain the same, so the applicant/petitioner now filing the instant petition just for seeking direction of this honorable Court to transmit the same decided writ petition along with annexures to the Service Tribunal as the applicant/petitioner is arguable case and if the matter was not decided then the petitioners would be failed to get their original position in the matter of promotion, secondly due to summer vacation this case needs its early fixation.

Dated: 17/05/2024
Cell No: 03110950959

YOURS OBEDIENTLY 

Filed Today

17 MAY 2024

Additional Registrar

**BEFORE THE PESHAWAR HIGH COURT MINGORA
BENCH/ DARULQAZA SWAT**

C.M. 1077-M 2024 IN

W.P No. 944-M/2022

Zia Ur Rahman.....**Petitioner**

VERSUS

Govt of KP & others..... **Respondents**

INDEX

S.No.	Description	Annexure	Pages
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2.	Affidavit		6
3.	Copies of writ petition	<u>A</u>	7-14
4.	Copy of the judgment dated 05.12.2023	<u>B</u>	15-21
5.	Copy of the order of Registrar service tribunal dated 04.04.2024	<u>C</u>	22
6.	Copy of order dated 02.05.2024	<u>D</u>	23
7.	Wakalatnama		24

Applicant/petitioner through Counsel

SYED ABDUL HAQ

Advocate Supreme Court

BAR ROOM SWAT

Cell No 0333-9546154

Filed Today

17 MAY 2024

Additional Registrar

Re-Filed Today

29 MAY 2024

Additional Registrar

Noted for

Sign.....

Date.....

17.05.2024

BEFORE THE PESHAWAR HIGH COURT MINGORA
BENCH/ DARULQAZA SWAT

C.M. 1071-M 2024 IN

W.P No. 944-M/2022

Zia Ur Rahman.....*Petitioner*

VERSUS

Govt of KP & others..... *Respondents*

**APPLICATION FOR SEEKING DIRECTIONS OF
THIS HONORABLE COURT THAT THE WRIT
PETITION MENTIONED ABOVE BE TREATED AS
SERVICE APPEAL FOR REMITTING THE SAME TO
THE WORTHY SERVICE TRIBUNAL FOR ITS
DISPOSAL IN ACCORDANCE WITH LAW.**

Respectfully Sheweth;

The facts of the instant application are, as
under.

1. That the applicant/petitioner filed a writ petition
No. 944-M/2022, details has already mentioned
in the said writ petition, however, this honorable
Court on first date of hearing called comments
from the concerned respondents, so they
submitted the same. (Copies of writ petition is
attached as annexure "A")

Filed Today

17 MAY 2024

Additional Registrar

①

**BEFORE THE PESHAWAR HIGH COURT MINGORA
BENCH/ DARULQAZA SWAT**

C.M. 1077-M 2024 IN

W.P No. 944-M/2022

Zia Ur Rahman.....**Petitioner**

VERSUS

Govt of KP & others..... **Respondents**

**APPLICATION FOR SEEKING DIRECTIONS OF
THIS HONORABLE COURT THAT THE WRIT
PETITION MENTIONED ABOVE BE TREATED AS
SERVICE APPEAL FOR REMITTING THE SAME TO
THE WORTHY SERVICE TRIBUNAL FOR ITS
DISPOSAL IN ACCORDANCE WITH LAW.**

Respectfully Sheweth;

The facts of the instant application are, as
under.

1. That the applicant/petitioner filed a writ petition No. 944-M/2022, details has already mentioned in the said writ petition, however, this honorable Court on first date of hearing called comments from the concerned respondents, so they submitted the same. (Copies of writ petition and comments are attached as annexure "A")

Filed Today

17 MAY 2024

Additional Registrar

2. That after hearing this honorable Court has decided the matter mentioned above and stated therein, **"without dilating upon the rest of the merit both the matters require proper adjudication by the service tribunal the petitioners may approach to the service Tribunal for Redressal of their grievance in accordance with law"**. (Copy of the judgment dated 05.12.2023 is attached as annexure "B")

3. That after getting the judgment the petitioner approached the worthy service tribunal as per direction of this honorable Court but the same was returned with certain objections including objection No.4, that department appeal has not attached with the appeal. (Copy of the order of Registrar service tribunal dated 04.04.2024 is attached as annexure "C")

4. That the petitioner removed all the objections but the same was again returned regarding the objection No.4, however, lastly vide order passed by the worthy service tribunal on 02.05.2024 and returned the appeals with the

Filed Today

17 MAY 2024
Additional Registrar

3

observations that the appeal filed by the petitioners are premature and stated therein the petitioner may refile the appeals after fulfilling all the requirement of law. (Copy of order dated 02.05.2024 as annexure "D")

5. That the applicant/petitioner approached the Tribunal as per the direction of this honorable Court but the same was returned, so the petitioners have no other efficacious remedy, except to file the instant Petition on the following grounds.

GROUND

- A. That this honorable Court has ample power to remit the petition to the service tribunal for its disposal in accordance with the law.
- B. That this honorable Court has rightly directed the applicant/petitioner to approach the worthy service tribunal but vide order dated 02.05.2024, where the appeals have been returned and directed the applicant/petitioner to remove the

Filed today

17 MAY 2024

Additional Registrar

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objection, so if the applicant/petitioner was compiled to fulfill the alleged pre-requisite for filing the appeals before the service tribunal then it would become time-barred, so in order to save the lis from the rigor of limitation the writ petition may kindly be converted into appeal and be transmitted along with annexures.

C. That the applicant/petitioner seeking the remittance of the instant petition mentioned above under the mandate of judgment of august Supreme Court of Pakistan reported as **2023 SCMR 1451**, so in this way the applicants/petitioners should not be suffer and such pathway is the safe administration of justice.

D. That in view of the direction of this honorable Court which was binding upon the tribunal. Furthermore, this honorable court has ample power to transmit the petition mentioned above along with its annexure to the tribunal which shall be treated as a service appeal and the Tribunal shall decide the appeal in accordance with law and applicable rules after notice and opportunity

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17 MAY 2024

Additional Registrar

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of hearing to the parties, as it is admitted no person should suffer of a delay and procedure or part of the Court as the act of the Court shall prejudice no one. the same wisdom as rendered by the apex Court in the judgment reported as **2023 SCMR 334.**

- E. That the applicant/petitioner seeks leave of this honourable court to raise/argue any additional point at the time of arguments.

It is, therefore, humbly prayed on acceptance of this application, the matter be remitted to the worthy service Tribunal along with annexures to decide the same in accordance with the law.

Applicant/Petitioner

Through Counsel

SYED ABDUL HAQ

Advocate, Supreme Court

Filed Today

17 MAY 2024

Additional Registrar



PAKISTAN

National Identity Card

ISLAMIC REPUBLIC OF PAKISTAN



Name
Zia Ur Rahman

Father Name
Atiq Ur Rahman

Gender | Country of Stay
M | Pakistan

Identity Number
15101-0333657-5

Date of Birth
09.04.1980

Date of Issue
12.06.2022

Date of Expiry
12.06.2032



Holder's Signature

P
A
K
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T
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N



85204

مرحومہ اہل حقین، پاکستان، تحصیل کارگروہ، ضلع بونیر

15101-0333657-5



مستحقین اہل حقین، پاکستان، تحصیل کارگروہ، ضلع بونیر



Registrar General of Pakistan

101151283381
115-80-199676

گمشدہ کارڈ ملنے پر قریبی لیٹر بکس میں ڈال دیں

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**BEFORE THE PESHAWAR HIGH COURT MINGORA
BENCH/ DARULQAZA SWAT**

C.M. 1071-M 2024 IN

W.P No. 944-M/2022

Zia Ur Rahman.....**Petitioner**

VERSUS

Govt of KP & others..... **Respondents**

AFFIDAVIT

I, **Zia Ur Rahman (applicant/petitioner)**, do hereby solemnly affirm and declare on oath that contents of the above application are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this honourable Court.

DEPONENT



Zia Ur Rahman

S.No. 1931
Certified that the above was verified on Solemn affirmation before me on this 17 day of May 2024
by Zia Ur Rahman
S/o Zia Ur Rahman B/o Baniat
who was identified by self
Who is personally known to me.

Filed Today

17 MAY 2024

Additional Registrar


Oath Commissioner
Peshawar High Court
Mingora Bench/Dar-ul-Qaza, Swat.

(7) (8)

A

ANNEXURE

**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /
DARULQAZA SWAT**

W.P. 944-1 -M/2019

1. Zia ur Rahman (SS IT, BPS-17) Son of Atiq ur Rahman, Resident of Village Bajkata, Tehsil Gagra, District Buner..... **Petitioner**

VERSUS

- 1) Govt of KPK through Secretary Elementary & Secondary Education KPK at Peshawar.
- 2) Secretary Information and Technology Govt of Khyber Pakhtunkhwa, Peshawar.
- 3) Secretary to Government of KPK Finance Department at Peshawar.
- 4) Director Elementary and Secondary Education KPK Peshawar.
- 5) District Education officer District Buner at Daggar.
- 6) District Account Officer, Buner at Daggar..... **Respondents**

**WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN 1973**

Respectfully Sheweth;

The facts of the instant are as under.

That the Petitioner is law abiding citizen, belong to Malakand Division, and his address mentioned against his name is sufficient for service upon him.

1.
FILED TODAY

18 AUG 2022

Additional Registrar

ATTESTED TO BE
TRUE COPY

~~ATTESTED TO BE
TRUE COPY~~

- (8) (9)
2. That the Petitioner was initially appointed as I.T Teacher (BPS-16) under the NWFP/Project establishment of information Technology Government of Khyber Pakhtunkhwa, in Government Higher Secondary School Jowar vide appointment letter dated 26.09.2006 (*Copy of appointment order is attached as annexure-A*).
3. That the petitioner alongwith his colleagues mentioned in appointment letter dated 26.09.2006 and was discontinued from his service, on 30.06.2009, so the colleagues of the petitioner assailed such discontinuation order via Writ Petition bearing No. 2001-P/2009 titled as "*Iftikhar Hussain vs Government*" and subsequently in W.P 2380-P/2009, titled "*Muhammad Azghar vs Govt.*", whereby this honourable Court allowed both the petitions mentioned ibid and directed the respondents to treat the petitioners of both writ petition as regular employees from the date of their services were terminated/discontinued and also directed the competent authority to determine their seniority in accordance with law and rules. (Copies of both judgments are attached).

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(9) (S)

4. That the petitioner having the same case and was entitled for same relief, also invoked the constitutional jurisdiction of this honourable Court, for his re-instatement and regularization via writ Petition bearing No. 530-M/2016, titled as "*Zia ur Rahman vs Govt etc.* " which was allowed by this honourable Court with the directions to the respondents to treat the petitioner as regular employees from the date of his service was discontinued, vide judgment dated 13.03.2017. (Copy of judgment dated 13.03.2017 is attached as annexure-B).

5. That in pursuance of the judgment passed by this honourable Court, mentioned *ibid*, the petitioner was regularized w.e.f 01.07.2009, without any back benefits under the Khyber Pakhtunkhwa Employees Regularization of Service Act, 2009 against the vacant post of (SST IT BPS-16), vide notification dated 16.06.2017 enclosed as annexure-C.

6. That later on the petitioner was promoted to the post of SS IT BPS-17, however he got astonished to get the Tentative Seniority list wherein he has been placed at Serial No. 60, and date of his appointment was shown as 24.10.2009,

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although this honourable Court has clearly directed the respondents to regularized the petitioner w.e.f 01.07.2009. (Copy of tentative seniority SST-IT BPS-16 is attached as annexure-D)

7. That the respondents further prepared a tentative seniority list for SS-IT BPS-17 on the basis of tentative seniority list SST-IT BPS-16, wherein the petitioner has been reflected at serial No. 113. (Copy of tentative Seniority List of SS-IT BPS-17 is attached as annexure-E)

8. That the petitioner was initially inducted under the NWFP, Project Establishment of Information Technology, Govt of KPK while his colleagues of parallel department i.e. Education Department FATA Secretariate as all those were regularized from the date of their initial appointment. (Copy of judgment as well as Notification dated 04.07.2017 is attached).

9. That the petitioner approached the concerned authority to rectify the date of regularization as per judgment of this honourable Court as well as requested for annual increments alongwith adhoc allowances, from 2006 to

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(11) (S)

2009, but they refused, so the petitioner having left no other adequate and efficacious remedy except to file the instant writ petition, inter alia on the following grounds.

GROUNDS

- A. That after induction in service (26.09.2006) the Petitioner served the department till termination and without any fault on his part as the petitioner was selected after complying the codal formalities and the blunder committed by the department which is not only regrettable but against the good governance, based on malafide, highly discriminatory, hence liable to be struck down and the Petitioner is entitled for back benefits from the date of his initial appointment.
- B. That the Petitioner was regularized w.e.f 01.7.2009 while in seniority list his date of appointment/regularization was shown as 24.10.2009 although as per law his seniority be reckoned from the date of initial appointment (i.e. 01.07.2009) and not from the date as reflected in seniority list issued by the official respondents, furthermore, the official respondents are duty bound to

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comply the judgment of this honourable Court in letter and spirit, so any deviation on part of official respondent, amounts to contempt and liable to be struck down.

C. That as per pay slip the length of service has been mentioned according to the initial appointment but on the other hand his seniority has been reckoned from 24.10.2009 which is against the law and liable to be corrected.

D. That this honourable court directed the respondents for regularization of services of employee/Petitioner from the date of his termination (i.e. 30.06.2009) but the respondent on one hand awarded seniority from 24.10.2009 while on the other hand he was kept deprived from national increase of pay from the date of his appointment without any arrears, so such act amounts to discrimination and this honourable court has jurisdiction to entertain the instant petition.

E. That the respondents only granted annual increment for the year 2010, although, the Petitioner is entitled for the same relief since their date of his initial appointment and he was deprived from his legitimate right which affected his

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monthly salary, so the case of Petitioner involved enforcement of guarantee, provided by article 25 of the constitution, so the Petitioner is entitled for annual increments i.e. 2006 to 2009 as well as other adhoc reliefs.

F. That the Petitioner is reinstated in service from the date of termination i.e. 30.06.2009 but it is evident from record that the Petitioner worked with the respondents since 23.09.2006, so the Petitioner is entitled for the back benefits from intervening period i.e. from the date of their initial appointment till date of termination i.e. 30.6.2009 as per judgment bearing C.P # 605/2015 (Copy of judgment C.P 605/2015 is attached may be considered part of this petition).

G. That the Petitioner seek leave of this honourable court to raise/argue any additional point at the time of arguments.

It is, therefore, humbly prayed on acceptance of this writ petition in the light of aforementioned submissions the respondents be directed to reckon his seniority from the date of his initial appointment. OR

The respondents be directed to re-instate/regularize the petitioner

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18 AUG 2022

Additional Registrar


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from 01.07.2009 as per judgment of this honourable Court and his seniority be considered from 01.07.2009 instead of 24.10.2009.

ii. to award all the annual increments as well as adhoc reliefs w.e.f 2006 to 2009 alongwith other reliefs as per his entitlement.

Petitioner
Through
Counsel


Syed Abdul Haq
Advocate, Supreme Court
0311.0950959

INTERIM RELIEF

It is further prayed that the respondents be restrained from awarding further promotions on the strength of allege/impugned seniority list, wherein the petitioner has been regularized w.e.f 24.10.2009 instead of 01.07.2009, till the final disposal of the instant writ petition.


ADVOCATE

CERTIFICATE

As per instruction of my client no such like writ petition, earlier has been filed by the Petitioner on the subject matter before this Hon'able Court.


ADVOCATE

LIST OF BOOKS

1. Relevant law on the subject
2. Constitution of Islamic republic of Pakistan.


ADVOCATE

FILED TODAY

18 AUG 2022

Additional Registrar


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15 (B)

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

B
ANNEXURE

W.P No.944-M/2022

Zia-ur-Rahman Vs. Govt. of KPK through Secretary Elementary and
Secondary Education KPK at Peshawar and others.

Present: Syed Abdul Haq, Advocate for petitioner.
Khwaja Salah-ud-Din, A.A.G for official Respondents.

Date of hearing: 05.12.2023.

SHORT ORDER

MUHAMMAD NAEEM ANWAR, J.- Vide our detailed judgment of today, placed on connected W.P. No.873-M/2020 titled "Muhammad Azhar and 05 others Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education KPK at Peshawar and others", the instant petition is disposed of with the observations recorded therein.

Announced.
05.12.2023.

[Signature]
JUDGE

[Signature]
JUDGE

↑
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Office
23/2/2024

16

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

W.P No. 873-M/2020

**Muhammad Azhar and 05 others Vs. Government of Khyber
Pakhtunkhwa through Secretary Elementary & Secondary
Education Peshawar and 07 others.**

Present: Syed Abdul Haq, Advocate for Petitioners,
Khwaja Salah-ud-Din, A.A.G for official Respondents.

Date of hearing: **05.12.2023**

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- This single judgment in the instant petition shall also decide **W.P No.944-M/2022** titled "**Zia-ur-Rahman Vs. Govt. of KPK through Secretary Elementary and Secondary Education KPK and others**" as an identical question of law and facts is involved in both these petitions. Muhammad Azhar along with 05 others (the petitioners of the instant petition) and Zia-ur-Rahman (the petitioner of connected petition) have approached to this Court under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 seeking the issuance of appropriate writ in terms of directing the respondents to place them in the seniority list with effect from the date of their initial appointment.

2. Facts as per the contents of the petitions are that initially all the petitioners were appointed on 26.9.2006 by the Directorate of Information Technology N.W.F.P, Peshawar on contract basis as I.T. Teachers in the Project with the title of "**Establishment of one Science and one Computer Lab**

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In the School/College of N.W.F.P. Their contracts were extended time and again by the competent authority and lastly, their contracts were extended from 01.07.2008 to 30.06.2009, but later on their services were terminated with effect from 30th June, 2009. They submitted their representations but to no avail. Besides their appointments, Schools & Literacy Department of Government of N.W.F.P had also appointed many I.T. and S.T. Teachers on contract basis on different projects having the same nature of job as the petitioners were performing, but the services of employees of Schools & Literacy Department were converted to regular side on contract basis till the arrival selectees of N.W.F.P Public Service Commission on 05.12.2007. They approached to this Court through W.P No. 2380 of 2009 which was allowed by this Court on 17.05.2012. The respondents filed Civil Appeal No. 113-P of 2013 before the Hon'ble Supreme Court, however, the same was dismissed on 24.02.2016. Thereafter, the respondents through notification dated 04.07.2016 regularized the services of the petitioners with effect from 01.07.2009 without back benefit. Hence, these petitions. Respondents were directed to furnish their para-wise comments, who through their comments, have refuted the contents of petitions and opposed the issuance of writ on different legal issues.

3. Arguments heard and record perused.

4. Admittedly, in earlier round of litigation, the writ of the petitioners was allowed by this Court and for ease the

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operative part of the judgement of this Court is reproduced as under:

"We in the circumstances have no option but to direct the respondents to treat the petitioners as regular employees from the date, their services were terminated/discontinued and their inter se seniority be determined by the competent authority strictly in accordance with law and the rules on the subject. Formal orders in this regard be also issued. However, they will not be entitled to back benefits as they have not served the department. This writ petition is disposed of in above terms."

It appears from the order of this Court that the respondents were directed to determine the *inter se* seniority in accordance with law. The petitioners have not placed on file their seniority list prepared by the respondents in order to determine the validity thereof qua the prayer of the petition. Be that it may be, the seniority of the civil servants is the matter which relates to the terms and condition of their service in view of the dicta laid down by the apex Court in the case of *Khalilullah Kakar Versus Provincial Police Officer, Balochistan and others* (2021 PLC (CS) 1030)

wherein it was laid down that:

"The word 'entertain' used in Article 212(2) of the Constitution is of significance importance. This means that any petition or proceeding relating to the terms and conditions of service even should not be entertained by the High Court in its constitutional jurisdiction under Article 199 of the Constitution. In view of the facts and circumstances of this case, entertaining and then proceeding with the constitutional petitions amounts to defeating the express Constitutional mandate under which Tribunal is vested with jurisdiction to deal with the matters of civil servants. This Court in the case of *Ali Azhar Khan Baloch v. Province of Sindh* (2015 SCMR 456) has held as under: -

"149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated under the said Article is a Constitutional command, and, therefore, of necessity

Sabiz Ali/ (D.B)

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HON'BLE MR. JUSTICE SHAHID KHAN

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restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals."

10. In *Asadullah Rashid v. Muhammad Muneer* (1998 SCMR 2129), this Court held as under: -

"Constitutional petition under Art. 199 of the Constitution is not maintainable by a civil servant in relation to any matter connected with the terms and conditions of service in respect whereof the Service Tribunal has jurisdiction, in view of Art. 212 of the Constitution of Pakistan. Orders, even if mala fide, ultra vires or coram non iudice, fell within the ambit of Service Tribunal and jurisdiction of Civil Courts including High Court is ipso facto ousted as result of barring provision of Art. 212 of the Constitution."

Undoubtedly, the petitioners are civil servants, thus, the seniority *inter se* as per the list if offends the rights of the petitioners they may approach the competent authority for redressal of their grievance.

5. Though, it was not specifically prayed for by the petitioners that they may be awarded increment prior to their regularization, however, in the body of the petition and during the course of arguments, learned counsel for the petitioners also requested that the increment prior to regularization was illegally withheld by the respondents. Insofar as the increment prior to regularization is concerned, that too is the part of terms and conditions of service and requires the decision from the competent forum. It is pertinent to mention that in the case of "*Abdul Hameed and others Vs. Special Secretary Education Government of Punjab Lahore and others*" (2016 SCMR 1611), a set of teachers approached to the High Court for grant of increment prior to their regularization, however, the Hon'ble Lahore High Court treated the writ petitions as appeals and transmitted the same to Punjab Services Tribunal for

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decision thereon alongwith other service appeals, which were already pending adjudication before the worthy Services Tribunal in view of the dicta laid down in the case of "Hameed Akhtar Nhazi Vs. Secretary Establishment Division Government of Pakistan and others" (1996 SCMR 1185), where the service appeals of the teachers were allowed and the teachers were held entitled for the increment prior to their regularization, against which, the department approached to the Hon'ble Supreme Court, where the leave was granted and thereafter, it was observed by the apex Court that:

"From the above provision, it is definite that when a civil servant appointed to a post is entitled to the pay sanctioned for such post then obviously, he would also be entitled to the ancillary privileges of such pay. As such it has been held that when their salaries which they have received prior to their regularization/confirmation were in accordance with law then they are entitled also to the annual increment on the basis of the same no distinction can be drawn between the Un-Trained and Trained Teachers so the findings of the Tribunal by allowing the Teachers to full annual increment for a period of first two years from the date of their original appointment till their regularization/ conformation and restricting them only to 1/2 of the increment for rest of their services would not be just and fair and does not meet the ends of justice.

In the light of the above discussion, Civil Appeals Nos. 398-L to 403-L/2010, filed by the Teachers, are allowed entitling them to receive full annual increments for the whole period prior to their regularization whereas Civil Appeals Nos. 404-L, 405-L/2010, 179-L to 183-L, 231-L, 424 -L, 425-L/2011 and 17 to 23/2012, filed by Department, are dismissed."

In view of the above, this aspect shall also be decided by the competent forum keeping in view the initial appointment of the petitioners in juxtaposition with the terms and conditions of their service. Thus, without dilating upon the

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rest of the merits, both the matters require proper adjudication by the worthy Services Tribunal. The petitioners may approach to the worthy Services Tribunal for redressal of their grievance, if so advised, in accordance with law. Both these petitions are disposed of accordingly.

Announced
05.12.2023.
Released on
23.02.2024.


JUDGE


JUDGE

Office 23/2/2024

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The appeal of Mr. Zia-ur-Rahman received today i.e on 03.04.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days:

- 1- According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondents no. 3, 5 & 6 are un-necessary/improper parties, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent
- 2- Address of appellant is incomplete be completed according to rule 5 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- Copy of termination order mentioned in para-2 of the memo of appeal is not attached with the appeal be placed on it.
- 4- Copy of departmental appeal is not attached with the appeal be placed on it
- 5- Copy of judgment passed by PHC in W.P 2001/2009 mentioned in para-1 of the memo of appeal is not attached with the appeal be placed on it.
- 6- Copies of judgment & notification mentioned in para-8 of the memo of appeal are not attached with the appeal be placed on it.
- 7- Page nos. 27 to 30 of the appeal are illegible be replaced by legible/better one.
- 8- Annexures attached with the appeal are not in sequence

No. 745 /S.T

Di. 3/4 /2024

ANNEXURE

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Abdul Haq Adv.
Supreme Court at Swat.

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Better Copy of page No. 22

The appeal of Mr. Zia Ur Rahman received today i.e on 03.04.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondents no. 3, 5 & 6 are un-necessary/improper parties, in light of the rules ibid and on the written direction of the Worthy Chairman the above-mentioned respondent number be deleted/struck out from the list of respondents.

2. Address of appellant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.

3- Copy of termination order mentioned in para-2 of the memo of appeal is not attached with the appeal be placed on it.

4- Copy of departmental appeal is not attached with the appeal be placed on it.

5. Annexures of the appeal attached with the appeal are not in sequence.

No. 740/S.T,

Dt. 4/4/2024

Registrar
Service tribunal
Khyber Pakhtunkhwa
Peshawar.

Syed Abdul Haq adv.

Supreme Court at Swat.

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Mukhtar Vs. Government of Khyber Pakhtunkhwa

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Mr. Tariq Advocate present on behalf of learned counsel for the appellant 1 and submitted that as to objection No.1 regarding annexing the departmental appeal with the appeal to which he referred to the judgment passed in Writ Petition No.873-M of 2020 titled "Muhammad Azhar and 05 others Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar dated 05.12.2023 and stated that the appellant was left at liberty to approach the Khyber Pakhtunkhwa Service Tribunal for redressal of his grievances. The judgment of the Peshawar High Court has been perused, wherein, although, the petitioner was left at liberty to approach this Tribunal for redressal of his grievances but in accordance with law. A civil servant may file appeal before the Tribunal after fulfilling the requirements/conditionalities enumerated in Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, wherein, filing of departmental appeal before coming to the Tribunal is a pre-requisite and a step towards filing of appeal, which step has admittedly, not been taken by the appellant in this appeal, therefore, objections sustain and appeal is returned. The appellant may refile the appeal after fulfilling the requirements of law.

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ANNEXURE

(Kalim Arshad Khan)
Chairman

CFC

CFC

Mukhtiar VS Government of Khyber Pakhtunkhwa

Mr. Tariq Advocate present on behalf of learned counsel for the appellants and submitted that as to objection No. 4 regarding annexing the departmental appeal with the appeal to which he referred to the judgment passed in Writ Petition No 873-M of 2020 titled Muhammad Azhar and 05 others Vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar dated 05.12.2023 and stated that the appellant was left at liberty to approach the Khyber Pakhtunkhwa Service Tribunal for redressal of his grievances The judgment of the Peshawar High Court has been perused, where, although, the petitioner was left at liberty to approach this Tribunal for redressal of his grievances but in accordance with law. A civil servant may file appeal before the Tribunal after fulfilling the requirements conditionalities enumerated in Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, wherein, filing at departmental appeal before coming to the Tribunal is a pre-requisite and a step towards filing of appeal, which step has admittedly, not been taken by the appellant in this appeal. therefore, objections sustain and appeal is returned. The appellant may refile the appeal after fulfilling the requirements of law.

(Kalim Arshad Khan)

Chairman

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سرٹیل نمبر: 29134

بار کونسل نمبر: BC/10-02-98

بار ایسوسی ایشن کا نمبر:

رابطہ نمبر: 0311 095 0959

پشاور ہائی کورٹ مینگورہ بینچ بار ایسوسی ایشن سوات

پشاور ہائی کورٹ مینگورہ بینچ

نوعیت مقدمہ	منجانب: <u>لسٹریٹس</u>
علت نمبر:	عنوان مقدمہ
مورخ:	ضد: <u>محمد الرحمن بنام حکومت</u>
مزم:	CM — 2024
تھانہ:	In WP 944-M/2022

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے برائے پیروی مقدمہ

آن مقام دارالقضاء سوات کیلئے سید عبدالحق ASE کو 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 بیان بر راضی نامہ دینے و تقرز ثالث کرنے، دعویٰ جواب دعویٰ، جواب الجواب، اقبال دعوائی، درخواست برائے سرسبزی مقدمہ، درخواست پیشگی ڈگری یکطرفہ، جواب درخواست ہائے اختیار ہوگا۔ نیز دائر کرنے اپیل، نگرانی، رٹ پیشکش، نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور مقدمہ مذکورہ کیلئے کل وقتی یا جزوی کارروائی کیلئے کسی دیگر وکیل یا مختار قانون کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ اختیارات حاصل ہوں گے، اور اس کا ساختہ و پرداختہ کارروائی منظور و قبول ہوگا، بدوران مقدمہ جو خرچہ و ہرجانہ کسی بھی سبب سے حاصل ہوگا، وہ وکیل موصوف وصول کرنے کا حقدار ہوگا، کوئی تاریخ پیشی مقام مذکورہ بالا سے باہر ہو، تو وکیل صاحب پیروی مقدمہ کرنے کے پابند نہ ہوں گے، مقدمہ کسی عدالت میں بعد پیروی خارج ہونے یا ڈگری یکطرفہ ہونے کے صورت میں وکیل صاحب ذمہ دار نہیں ہوں گے۔

لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

مقام پشاور ہائی کورٹ مینگورہ بینچ کے لئے منظور ہے۔

ایڈووکیٹ ارشد

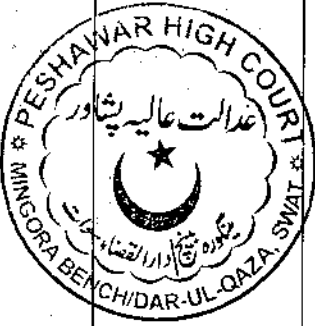

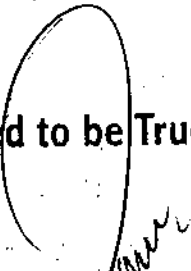

الرقوم: 17-05-2024

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

FORM OF ORDER SHEET

Court of

Case No..... of.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	<p align="center">05.06.2024</p> 	<p><u>C.M 1071-M/2024 in W.P 944-M/2022 (W.P be Treated as Service Appeal)</u></p> <p>Present: Syed Abdul Haq, Advocate for petitioner.</p> <p align="center">***</p> <p>In view of the prayer sought by the petitioner through instant application in juxtaposition with the principle laid down in the reported case 223 SCMR 334. Notice of this application be issued to the respondents for 25.06.2024.</p> <p align="right">  JUDGE </p> <p align="center"> Certified to be True Copy  EXAMINER Peshawar High Court, Mingora/Dar-ul-Qaza, Swat Authorized Under Article 07 of Qanoon-e-Shahadat Order 1984 </p> <p align="right">  JUDGE </p>

07/12/24
B/E