

BEFORE THE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA,

PESHAWAR

Amended Appeal No. 8719/2020

In Order No. 125-P/2020

Service Appeal No. 8719/2020

Order dated 02.06.2020

Alla ud Din,

APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa & others.

RESPONDENTS

I N D E X

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Through

Appellant

Lajbar Khan Khalil

Advocate High Court

Cell: 0333-9133658

Dated: 13.07.2024

Government of Khyber Pakhtunkhwa, through Chief
BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

The Secretary, Health Department, Govt. of Khyber
Amended Appeal as amended, Peshawar
In
Service Appeal No. 8719/2020 Department Govt. of Khyber
Pakhtunkhwa, Civil Secretariat, Peshawar.

Alla-ud-Din S/o Gul Dad Shah, Junior Clinical Technician
(JCT), Radiology, Hayatabad Medical Complex (HMC),
Peshawar. **APPELLANT**

Chief Executive, Hayatabad Medical Complex (HMC),
Peshawar. **VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar. **RESPONDERS**
2. The Secretary, Health Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
SERVICE APPEAL (AS AMENDED) U/S 4 OF THE
KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
3. The Secretary, Finance Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Director General Health, Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar.
5. Chief Executive, Hayatabad Medical Complex (HMC), Peshawar.
6. Senior Manager HR, MTI, Hayatabad Medical Complex (HMC), Peshawar. **RESPONDENTS**

**SERVICE APPEAL (AS AMENDED) U/S 4 OF THE
KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
ACT, 1974 READ WITH ALL OTHER ENABLING
PROVISIONS ON THE SUBJECT.**

PRAYER:

On acceptance of this Service Appeal, this Hon'ble Tribunal may be pleased:-

- a) To declare the office order bearing No.1966-68/E:VI, dated 08.07.2020 issued by respondent No.4 (D.G Health), whereby the departmental appeal was turned down, as illegal, unlawful, without lawful authority, hence liable to be set aside.
- b) To direct the respondents to allow the period of his service before regularization (from 19.10.1996 to 15.02.1999) by counting the same towards his pay protection and pensionary benefits. Furthermore, appropriate order may please be issued to declare the inaction of the respondents not counting the previous service (w.e.f. 19.10.1996 to 15.02.1999) of the appellant towards pay protection, pensionary benefits and promotion as illegal, unconstitutional, arbitrary and exploitation of the past good service of the appellant to meet the ends of justice, principle of equity or any other remedy deem proper, in the circumstances of the case may please be allowed. Furthermore, this Hon'ble Tribunal may be pleased to count the previous service of the appellant for the purpose of seniority as well.

Respectfully Sheweth:

Brief facts giving rise to the present appeal are as under;

3
dated 19.10.1996 with 3 years back pay.
(COPIES OF THE REGULARIZATION ORDER AND NOTIFICATION ARE
1. That, on 19.10.1996, the appellant was initially
appointed as Dark Room Assistant against the
sanctioned posts, which was up-graded as Junior
Clinical Technicians (JCT) in the year 2005 and since
his appointment he is performing his duties upto the
entire satisfaction of his superior officers.

(COPY OF THE ORDER IS ATTACHED AS ANNEX "A").

2. That on 16.02.1999, it was conveyed to the appellant
that the respondents have regularized the services of
the appellant vide Notification No. SOH-III/8-53/96
dated 07.10.1998 with immediate effect.

(COPIES OF THE REGULARIZATION ORDER AND NOTIFICATION
ARE ATTACHED AS ANNEX "B" & "C" RESPECTIVELY).

3. That the appellant is continuously performing his
duties upto the entire satisfaction of their high-ups and
have more than 2 years contract services at their
credit, which were not counted towards his pay and
pension protection hence caused huge financial loss to
the appellant.

4. That the appellant was initially employed against the
sanctioned posts and he was performing his duties
without any break in his services.

5. That the appellant has preferred **W.P. No.5236-P/2019**
before the Hon'ble Peshawar High Court, Peshawar,
and the Hon'ble Peshawar High Court, Peshawar was
pleased to dispose of the same vide order dated
06.11.2019, in terms of treating the same as
departmental appeal and referred the same to

in terms of the order of the respondent No.4 as per information of the appellant. The respondents failed to decide the respondent No.4 with the directions to decide the same in accordance with law within a month.

(COPIES OF WRIT PETITION AND ORDER DATED 06.11.2019 ARE ATTACHED AS ANNEX "D").

6. That as the respondents failed to decide the departmental appeal within the stipulated period as directed by the Hon'ble Peshawar High Court, Peshawar, therefore, the appellant has filed a C.O.C. Petition bearing No.125-P/2020, which was disposed of in terms of the order mentioned therein. It is pertinent to mention here that as per information of the appellant, the respondents failed to decide the departmental appeal till today and therefore, the appellant is approaching this Hon'ble Tribunal.

(COPIES OF THE C.O.C PETITION AND ORDER DATED 02.06.2020 ARE ATTACHED AS ANNEX "E").

7. That in response to the departmental appeal of the appellant, respondent No.4 has decided the same vide office order No.1966-68/E:VI dated 08.07.2020, which was never communicated to the appellant, despite repeated request and Hon'ble Peshawar High Court order in C.O.C No.125-P/2020. However, during pendency of the instant service appeal the respondent No.4 has annexed the same with their comments, which is also impugned herein, with the permission of this Hon'ble Tribunal.

(COPIES OF THE OFFICE ORDER DATED 08.07.2020 AND ORDER SHEET OF THIS HON'BLE TRIBUNAL ARE ATTACHED AS ANNEXURE "K" & "L" RESPECTIVELY).

- F. That the respondents Nos. 1, 5 and 6 have admitted that the appellant has served for more than 2 years on contract basis that is w.e.f. 30.09.1996 to 15.02.1999.
8. That having no other remedy, the appellant is therefore constrained to file the instant appeal, inter alia, on the following grounds:-

GROUND S:-

- A. That the inaction of the respondents and not counting lawful authority and liable to be set aside their previous services of more than 2 years towards the appellant. Furthermore, the order is passed after a delay of more than 06 months and legally the respondents was functus officio at the time of passing the impugned order, hence it is not tenable in the eye of law and is liable to be set at naught.
- B. That, the respondents themselves have admitted that the appellant has served for more than 2 years on contract basis that is w.e.f 30.09.1996 to 15.02.1999, therefore, the appellant is legally entitled to all the benefits of previous service towards pay and pension fixation.
- C. That the impugned order dated 08.07.2020 passed by the respondent No.4 is illegal, unlawful and without lawful authority and liable to be set aside. Furthermore, the order is passed after a delay of more than 06 months and legally the respondents was functus officio at the time of passing the impugned order, hence it is not tenable in the eye of law and is liable to be set at naught.
- D. That as per Rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the temporary and officiating service followed by confirmation/ regularization will be counted towards pension and pay protection. Rule 2.3 of Rules ibid is reproduced for ready reference as under:

“That the period served by the Government Servant on contract basis shall be counted towards his pensionary benefits, after regulation, in accordance with Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963.”

“2.3 Temporary and officiating service - Temporary and officiating service shall count for pension as indicated below:-

(i) Government services borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and

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

F. That the same ratio was also decided by the Hon'ble Peshawar High Court in the case titled **“(COPY OF RELEVANT RULES IS ATTACHED AS ANNEX “F”)** *Peshawar High Court in the case titled “J. Mahmood vs. The Govt. of Punjab through Secretary Finance & two others” (Writ Petition No. 1188-P/2014 decided on 09.09.2014)*. It was held that the previous service of employee has to be counted towards his pay protection and pensionary benefits.

(COPY OF THE JUDGMENT DATED 09.09.2014 IS ATTACHED AS ANNEX “G”)!

F. That the same ratio was also decided by the Hon'ble Peshawar High Court in the case titled **“(COPY OF RELEVANT RULES IS ATTACHED AS ANNEX “F”)** *“Muhammad Arif vs. The Secretary to the Govt. of Khyber Pakhtunkhwa Transport Department & others” (W.P No.361-P/2013 decided on 24.11.2014)*. In the said judgment it has held;

“That the period served by the Government Servant on contract basis shall be counted towards his pensionary benefits, after regulation, in accordance with Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963.”

(COPY OF THE JUDGMENT DATED 24.11.2014 IS ATTACHED AS ANNEX “H”).

- M. That while resolving the identical proposition of law in the above mentioned case, the Hon'ble Bench of the Lahore High Court in the case of *Chief, ENC Branch, General Headquarters (GHQ), Rawalpindi vs. Government & others*, reported in 2012 CLJ 343, the Hon'ble Bench of the Lahore High Court, decided on 01.03.2018, wherein it was held that;

"The facts as well as the legal proposition involved in this case is similar to the one already decided by this court in the above mentioned cases, therefore, this court could not take a different view, therefore, this writ petition is disposed of in the term that

(CO) the services rendered by the appellant as contract employees shall be considered towards their pay and pension."

ATTACHED AS ANNEX "I")

(COPY OF THE JUDGMENT DATED 01.03.2018 IS ATTACHED AS ANNEX "I").

- H. That while resolving the identical proposition of law in the case titled "*Muhammad Fturooq vs. Engineer in Chief, ENC Branch, General Headquarters (GHQ), Rawalpindi*" reported in 2012 CLJ 343, the Hon'ble Bench of the Lahore High Court has held as follows:

"Government Servant continuously remaining in service without break would after his regularization have the right that the period of his service before regularization be counted towards his pay, pension and promotion."

(COPY OF THE JUDGMENT REPORTED IN 2012 CLJ 343 IS ATTACHED AS ANNEX "J").

- I. That in view of the above referred case laws on the subject the appellant has not been treated in accordance with law as mandated by Article-4 of the Constitution of Islamic Republic of Pakistan, 1973. The appellant deserves the same treatment under the principle of equity, equality and principle of consistency.
- J. That non-counting of the previous service of the appellant towards pay and pension fixation is violative of Article 2A, 4, 25 & 38 of the Constitution.

K. That the appellant seeks permission to advance any other grounds and proof at the time of hearing towards his

pay protection and pensionary benefits. It is, therefore most humbly prayed that on acceptance of this Service Appeal, this Hon'ble Tribunal may be pleased:-

- a) To declare the office order bearing No.1966-68/E:VI, dated 08.07.2020 issued by respondent No.4 (D.G Health), whereby the departmental appeal was turned down, as illegal, unlawful, without lawful authority, hence liable to be set aside.
- b) To direct the respondents to allow the period of his service before regularization (from 19.10.1996 to 15.02.1999) by counting the same towards his pay protection and pensionary benefits. Furthermore, appropriate order may please be issued to declare the inaction of the respondents not counting the previous service (w.e.f. 19.10.1996 to 15.02.1999) of the appellant towards pay protection, pensionary benefits and promotion as illegal, unconstitutional, arbitrary and exploitation of the past good service of the appellant to meet the ends of justice, principle of equity or any other remedy deem proper, in the circumstances of the case may please be allowed. Furthermore, this Hon'ble Tribunal may be pleased to count the previous service of the appellant for the purpose of seniority as well.

Through

Appellant

Lajbar Khan Khalil
Advocate High Court

Dated: 13.07.2024

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BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA,
(JCT), Radiology, Hayatabad Medical Complex (HMC),
Peshawar.

solemnly affirm and declare on oath
Amended Appeal of the accompanying Amended Service

In
Service Appeal No.8719/2020

of the
Alla ud Din. **APPELLANT**

VERSUS

Govt. of Khyber Pakhtunkhwa & others. **RESPONDENTS**

AFFIDAVIT

I, Alla-ud-Din S/o Gul Dad Shah, Junior Clinical Technician
(JCT), Radiology, Hayatabad Medical Complex (HMC),
Peshawar, do hereby solemnly affirm and declare on oath
that the contents of the accompanying **Amended Service
Appeal** are true and correct to the best of my knowledge and
belief and nothing has been concealed from this Hon'ble
Tribunal.


DEPONENT

CNIC: 7301-1364415-5

Cell: 0313 9999120

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Alla-ud-Din S/o. Gul Dad Shah, Junior Clinical Technician
 Amended Appeal Hayatabad Medical Complex (HMC),
 Peshawar.

In
 Service Appeal No.8719/2020

RESPONDENTS:

Alla ud Din..... **APPELLANT**
 Government of Khyber Pakhtunkhwa through Chief
 Secretary, Civil Secretariat, Peshawar.

VERSUS

Govt. of Khyber Pakhtunkhwa & others..... **RESPONDENTS**
 1. The Secretary, Health Department, Govt. of Khyber
 Pakhtunkhwa, Civil Secretariat, Peshawar.

ADDRESSES OF THE PARTIES

2. The Secretary, Finance Department, Govt. of Khyber
 Pakhtunkhwa, Civil Secretariat, Peshawar.

APPELLANT: Civil Secretariat, Peshawar.


Alla-ud-Din S/o. Gul Dad Shah, Junior Clinical Technician
 (JCT), Radiology, Hayatabad Medical Complex (HMC),
 Peshawar.

3. Chief Executive, Hayatabad Medical Complex (HMC),
 Peshawar.

RESPONDENTS:

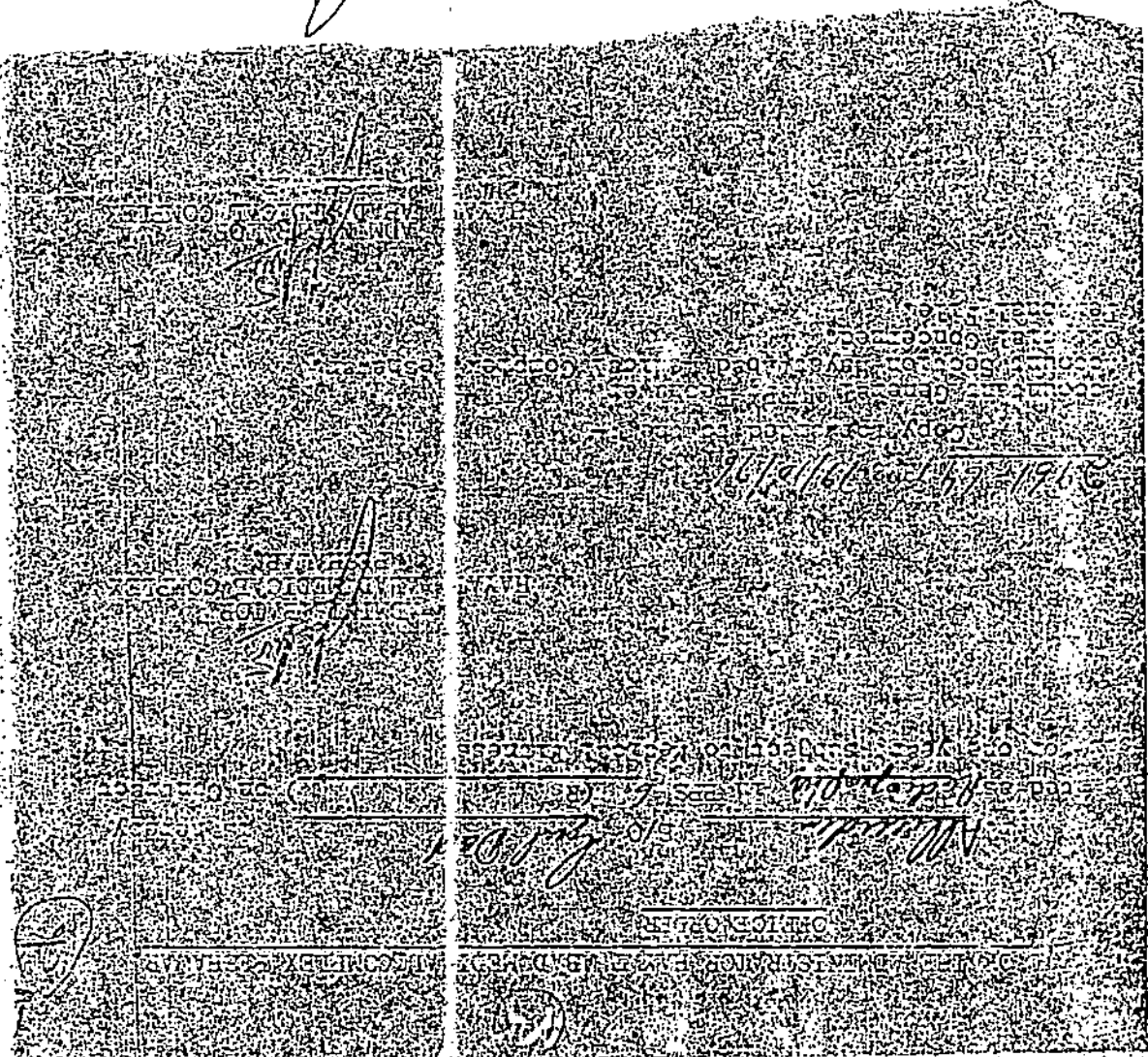
1. Government of Khyber Pakhtunkhwa through Chief
 Secretary, Civil Secretariat, Peshawar.
2. The Secretary, Health Department, Govt. of Khyber
 Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary, Finance Department, Govt. of Khyber
 Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Director General Health, Directorate General Health
 Services, Khyber Pakhtunkhwa, Peshawar.
5. Chief Executive, Hayatabad Medical Complex (HMC),
 Peshawar.

6. Senior Manager HR, MTI, Hayatabad Medical Complex
(HMC), Peshawar.

Through Appellant

Lajbar Khan Khalil
Advocate High Court

Dated: 13.07.2024

ATTACHED



ANNEX A

(12)

7

CA

OFFICE OF THE ADMINISTRATOR HAYAT ABAD MEDICAL COMPLEX, PESHAWAR.

OFFICE ORDER

Mr. Allaudin S/O Gul Dad is hereby appointed as Radiographer, in BPS-6 (Rs. _____) on Contract basis for one year, subject to Medical Fitness.

Sd/-
ADMINISTRATOR
HAYAT ABAD MEDICAL COMPLEX
PESHAWAR

No:2961-64/HMC:19/T0/96

Copy forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. Account Section Hayat Abad Medical Complex, Peshawar.
3. Official Concerned.
4. Personal File.

Sd/-
ADMINISTRATOR
HAYAT ABAD MEDICAL COMPLEX
PESHAWAR

ATTESTED

ANNEX B
8/3

(13)

x-ray done 7/1

**OFFICE OF THE ADMINISTRATOR
HAYAT ABAD MEDICAL COMPLEX, PESHAWAR.**

OFFICE ORDER

Consequent upon the recommendation of the Committee constituted vide Government of NWFP Health Department Notification No. SOH-III/8-53/96, dated 07/10/1998, the services of Mr. Allauddin S/O Gul Dad Shah, Radiographer. (BPS-6) are hereby regularized with immediate effect on the following terms and conditions:-

i. He will be on probation for the period of two years.

ii. His services will be governed by the prevailing rules of the Govt. for the category of the staff to which he belongs.

iii. If he wishes to resign from service, he will have to submit resignation in writing one month in advance and will continue to serve the Government till his resignation is accepted or will have to deposit one-month pay in lieu thereof.

iv. He will be liable to be transferred any where in NWFP.

[Signature]
ADMINISTRATOR
HAYAT ABAD MEDICAL COMPLEX
PESHAWAR

No. *[Signature]* / HMC dated *[Signature]* / 1999

Copy forwarded to the

- i. Accountant General NWFP, Peshawar
- ii. Director General Health Services, NWFP, Peshawar
- iii. Addl. Administrator HMC, Peshawar
- iv. Accounts Officer, HMC, Peshawar
- v. Official Concerned

For information and necessary action.

[Signature]
ADMINISTRATOR
HAYAT ABAD MEDICAL COMPLEX
PESHAWAR

BETTER COPY

13/A

**OFFICE OF THE ADMINISTRATOR
HAYAT ABAD MEDICAL COMPLEX, Peshawar**

OFFICE ORDER

Consequent upon the recommendation of the Committee constituted vide Government of NWFP, Health Department Notification No.SOH-III/8-53/96, dated 07/10/1998, the services of Mr. Allauddin S/O Gul Dad, Radiographer (BPS-6) are hereby regularized with immediate effect on the following terms and conditions:-

- i. He will be on probation for the period of two years.
- ii. His services will be governed by the prevailing rules of the Govt. for the category of the staff to which he belongs.
- iii. If he wishes to resign from service, he will have to submit resignation in writing one month in advance and will continue to serve the Government, till his resignation is accepted or will have to deposit one-month pay in lieu thereof.
- iv. He will be liable to be transferred any where in NWFP.

Sd/-
**ADMINISTRATOR
HAYAT ABAD MEDICAL COMPLEX
PESHAWAR**

No.1974-75/HMC, dated 16/2/1999.

Copy forwarded to the:-

- i. Accountant General, NWFP, Peshawar.
- ii. Director General Health Services, NWFP, Peshawar.
- iii. Adcl. Administrator HMC, Peshawar.
- iv. Accounts Officer, HMC, Peshawar.
- v. Official Concerned.

For information and necessary action.

ATTACHED

Sd/-
**ADMINISTRATOR
HAYAT ABAD MEDICAL COMPLEX
PESHAWAR**

(14)

ANNEX C¹⁹

GOVERNMENT OF NWFP
HEALTH DEPARTMENT

Peshawar the, 7.10.1998

NOTIFICATION.

NO.SOH-III/8-53/96:- The competent authority has been pleased to constitute a committee comprising the following:-

- i. Addl. Secretary (Services), Health Department.
- ii. Administrator, HMC, Peshawar.
- iii. Deputy Secretary-I, Health Department.
- iv. Section Officer-III, Health Department.

2- The Committee shall examine cases of contract employees of the HMC, Peshawar, and shall :-

- a. Ascertain those employees whose performance are good/satisfactory and deserve to be regularized.
- b. Indicate those employees whose performance are average and are expected to improve their work and deserve further extension in contract.
- c. point out those who are below average and have been issued warning/advice and deserve termination.

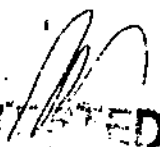
SECRETARY TO GOVT OF NWFP
HEALTH DEPARTMENT

ENDS IN NO. DATE EVEN.

Copy to :-

- 1. The Administrator, HMC, Peshawar.
- 2. P.S. to Secretary Health NWFP.
- 3. P.S. to Addl. Secretary (S) Health Deptt.
- 4. P.A. to Deputy Secretary-I, Health Deptt.


(ALIK MUHAMMAD)
SECTION OFFICER (H-III)


ATTACHED

III
b.3
lc.1c

(14) A

GOVERNMENT OF NWFP
HEALTH DEPARTMENT

Peshawar the, 7.10.1998

NOTIFICATION

NO. SOH-III/8-53/96:- The competent authority has been pleased to constitute a committee comprising the following:-

- i. Addl. Secretary (Services), Health Department.
- ii. Administrator, HMC, Peshawar.
- iii. Deputy Secretary-I Health Department.
- iv. Section Officer-III, Health Department.

2- The Committee shall examine cases of contract employees of the HMC, Peshawar and shall:-

- a. ascertain those employees whose performance are good/satisfactory and deserve to be regularized.
- b. indicate those employees whose performance are average and are expected to improve their work and deserve further extension in contract.
- c. point out those who are below average and have been issued warning/ advice and deserve termination.

SECRETARY TO GOVT OF NWFP
HEALTH DEPARTMENT

ENDST. NO. & DATE EVEN.

Copy to:-

- 1. The Administrator, HMC, Peshawar.
- 2. P.S to Secretary Health NWFP.
- 3. P.S to Addl. Secretary(s) Health Deptt.
- 4. P.A to Deputy Secretary-I, Health Deptt.

Sd/-
(ALI MUHAMMAD)
SECTION OFFICER (H-III)

EXAMINER
Peshawar High Court

ATTESTED

ATTESTED

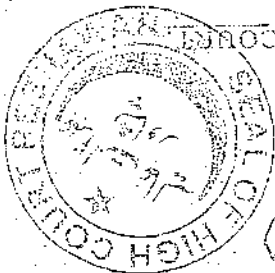
WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973 (AS
AMENDED UP TO DATE)

- RESPONDENTS
1. Ranaullah S/o. Mughrab Shah, Junior Clinician (JCT), Radiology, Hayatabad Medical Complex (HMC), Peshawar.
 2. Ahsan ul Din S/o. Gul Bad Shah, Junior Clinician (JCT), Radiology, Hayatabad Medical Complex (HMC), Peshawar.
 3. Technician (JCT), Radiology, Hayatabad Medical Complex (HMC), Peshawar.
 4. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
 5. The Secretary Health Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 6. The Secretary Finance Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 7. Director General Health, Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar.
 8. Chief Executive, Hayatabad Medical Complex (HMC), Peshawar.
 9. Senior Manager HR, MTR, Hayatabad Medical Complex (HMC), Peshawar.

Writ Petition No. 5936-F/2019

PESHAWAR

BEFORE THE HONOURABLE PESHAWAR HIGH COURT



15

ANNEX

16

Respectfully Sheweth:

Brief facts giving rise to the present petition are as under;

1. That the petitioners were initially appointed as Dark Room Assistant on 30.09.1996 against the sanctioned posts, which was up-graded as Junior Clinical Technicians (JCT) in the year 2005 and since their appointment they are performing their duties upto the entire satisfaction of their superior officers.

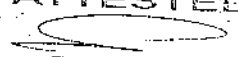
[COPIES OF THE ORDERS ARE ATTACHED AS ANNEX "A"].

2. That the respondents have regularized the services of the petitioners vide Notification No. SCH-III/8-53/96 dated 07.10.1998 with immediate effect and conveyed to the petitioners, vide office orders dated 16.02.1999.

[COPIES OF THE REGULARIZATION ORDER AND NOTIFICATION ARE ATTACHED AS ANNEX "B" & "C" RESPECTIVELY].

3. That the petitioners are continuously performing their duties upto the entire satisfaction of their high-ups and have more than 2 years contract services at


ATTESTED

ATTESTED

EXAMINER
Peshawar High Court

EXAMINER
Peshawar High Court

ATTESTED
[Signature]

ATTESTED

pay and pension fixation
entitled to all the benefits of previous service towards
15.02.1999, therefore, the petitioners are legally
contract basis that is w.e.f 30.09.1996 to
the petitioners have served for more than 2 years on
B. That the respondents themselves have admitted that

principle of justice, fair play, equity and equality.
towards pay and pension protection is against the
counting their previous services of more than 2 years
A. That the inaction of the respondents and not

GRUNDS:

on the following grounds:

continued to file the instant writ petition, inter alia,

3. That having no other remedy, the petitioners are

duties without any break in their services.

the sanctioned posts and they were performing their

4. That the petitioners were initially employed against

financial loss to the petitioners.

pay and pension protection hence caused huge

their credit, which were not counted towards their

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C. That as per Rule 2.3 of West Pakistan Civil Services Pension Rules, 1968, the temporary and officiating service followed by confirmation/regularization will be counted towards pension and pay protection. Rule 2.3 of Rules ibid is reproduced for ready reference as under:

2.3 Temporary and officiating service - Temporary and officiating service shall count for pension as indicated below:

- (i) Government services borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

(COPY OF RELEVANT RULES IS ATTACHED AS ANNEX "D").

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court

EXAMINER
Peshawar High Court

ATTESTED

ATTESTED
[Signature]

ATTACHED AS ANNEX "F".

Copy of the judgment dated 24.11.2014 is

Rules, 1963.

West Pakistan Civil Services Pension
in accordance with Rule 2.3 of the
pensionary benefits, after resignation,
shall be counted towards his
Government Servant on contract basis
that the period served by the

24.11.2014) in the said judgment has held:

(Writ Petition No.361-P/2013 decided on

Pakistan) Transport Department & others

and Mr. The Secretary to the Govt. of Khyber

Honorable Court in the case titled "Muhannad

That the same ratio was also decided by this

ATTACHED AS ANNEX "E".

Copy of the judgment dated 09.09.2014 is

Petition No.1183-P/2014 decided on 09.09.2014.

through Secretary Finance & two others" (Writ

Shah vs. The Govt. of Khyber Pakhtunkhwa

pay and pension protection in case titled "Baqai

and the previous service has been counted towards

10. that this court has already issued orders

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F. That a Writ Petition No.3221-P/2013 titled "*Sultan Muhammad & others vs. Government & others*", decided on 01.03.2018, wherein it was held that;

"the facts as well as the legal proposition involved in this case is similar to the one already decided by this court in the above mentioned cases, therefore, this court could not take a different view, therefore, this writ petition is disposed of in the term that the services rendered by the petitioners as contract employees shall be considered towards their pay and pension."

[COPY OF THE JUDGMENT DATED 01.03.2018 IS ATTACHED AS ANNEX "G"].

G. That while resolving the identical proposition of law in case titled "*Muhammad Farooq vs. Engineer in Chief, ENC Branch, General Headquarters (GHQ), Rawalpindi*" reported in 2012 CLJ 343, the Hon'ble Lahore High Court has held as follows:

ATTACHED

ATTESTED
EXAMINER
Peshawar High Court

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"Government Servant continuously remaining in service without break would after his regularization have the right that the period of his service before regularization be counted towards his pay, pension and promotion."

(COPY OF THE JUDGMENT REPORTED IN 2012-CLJ 343 IS ATTACHED AS ANNEX "H").

H. That in view of the above referred case laws on the subject the petitioners have not been treated in accordance with law as mandated by Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. The petitioners deserve the same treatment under the principle of equity, equality and principle of consistency.

I. That non-counting of the previous service of the petitioners towards pay and pension fixation is violative of Article 2A, 4, 25 & 38 of the Constitution.

J. That the petitioners seek permission to advance any other grounds and proof at the time of hearing.


ATTESTED

ATTESTED
EXAMINER
Peshawar High Court

EXAMINER
Peshawar High Court

ATTESTED

ATTESTED

Dated: 07/09/2019

Tajbar Khan Khattak
Advocate High Court

[Signature]

through

Altaf-Ul-Din

&

Khalidullah

Petitioners

circumstances of the case may please do all over. It is
of equality or any other remedy deem proper in the
the petitioners to meet the ends of justice, principle
arbitrary and exploitation of the past good service of
and pensionary benefits as illegal, unconstitutional
15.02.1999) of the petitioner towards pay protection
counting the previous service (w.e.f. 30.09.1996 to
to declare the inaction of the respondents not
Furthermore, appropriate writ may please be issued
30.09.1996 to 15.02.1999 for the petitioners
pensionary benefits of the past service w.e.f.
please be directed to allow full pay protection and
acceptance of this writ petition, the respondents may
It is, therefore most humbly prayed that on

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CERTIFICATE:

It is certified on the instructions of my clients that no such like Writ Petition has earlier been filed by the petitioners before this Honourable Court regarding the instant matter.

[Signature]
ADVOCATE

LIST OF BOOKS

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Any other law book as per need.

[Signature]
ADVOCATE

[Signature]
CERTIFIED TO BE TRUE COPY

EXAMINER
Punjab High Court, Ferozpur
appointed Under Article 87 of
The Constitution of Pakistan 1973

12 FEB 2020

[Signature]
ATTESTED

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Date of Order of Proceedings	1-
Order or other Proceedings with Signature of Judge	2-
ORDER 06.11.2019 With Petition No. 5236-P/2019	3-
Present: Mr. Rajbar Khan Khatt, Advocate for Rashid Khan et al, petitioners.	4-
OASIER RASHID KHAN, 1-The petitioners,	5-
through the instant writ petition, have asked for the issuance of an appropriate writ seeking directions to the respondents to count their previous service w.e.f. 30.09.1996 to 15.02.1999 towards pay protection and pensionary benefits.	6-
2. At the very outset, the learned counsel for the petitioners frankly submits that being civil servants the petitioners in view of the bar contained under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 cannot seek their remedy before this court but simultaneously requests that this petition be treated as an appeal and sent to the concerned departmental authority to decide the same.	7-
Accordingly, we while disposing of this writ petition, treat it as an appeal before the Director	8-



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EXAMINER
Peshawar High Court

ATTESTED

ATTESTED

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General, Health Services, Government of Khyber
Pakhtunkhwa, Peshawar and direct him to decide the
same in accordance with law within a month. The
office is directed to send this petition to the aforesaid
authority by retaining a copy thereof for record.

Announced
06. 11. 2019

[Signature]
SENIOR PUISNE JUDGE

[Signature]
JUDGE

[Signature]
CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized under Article 27 of
The Lokhit Shikhat Order 1999
12 FEB 2020

No. 25417
Date of Presentation of Application 12/01/2020
No of Pages 11-12
Copying fee 674
Total /
Date of Preparation of Copy 12/01/2020
Date of Delivery of copy 12/01/2020
Received By *[Signature]*

[Signature]
ATTESTED

RESPONDENTS/CONTENDORS

Khyber Pakhtunkhwa, Peshawar.
Directorate General Health Services,
Director General Health,

Mr. Tahir Nadeem,

Civil Secretariat, Peshawar.

Govt. of Khyber Pakhtunkhwa,
Secretary, Health Department,

Mr. *Muhammad Yahya Akhunda*

VERSUS

PETITIONERS

Complex (HMC), Peshawar.

Technician (JCT), Radiology, Hayatabad Medical

Alla-ud-Din S/o Gul Dad Shah, Junior Clinical

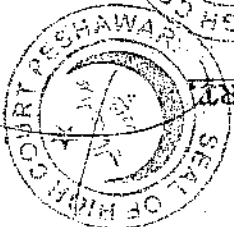
Complex (HMC), Peshawar.

Technician (JCT), Radiology, Hayatabad Medical

Ratnillah S/o Muzarab Shah, Junior Clinical

W.P.No.5236-F/2019

C.O.C.No. 1257/2020



BEFORE THE HONOURABLE PESHAWAR HIGH COURT

AMINEX
66

FILED TODAY
Deputy Registrar
13 FEB 2020

EXAMINER
Peshawar High Court

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PETITION UNDER ARTICLE 204 OF THE
CONSTITUTION OF PAKISTAN, 1973
R/W SECTION 3, 4 & 5 OF THE
CONTEMPT OF COURT OF FINANCE
2003 FOR INITIATING CONTEMPT OF
COURT PROCEEDINGS AGAINST THE
RESPONDENTS / CONTEMNORS FOR
NOT IMPLEMENTING THE JUDGMENT
DATED 06.11.2019 OF THIS
HONOURABLE COURT, PASSE IN WRIT
PETITION NO.5236-P/2019, AND IF
THEY ARE FOUND GUILTY THEN THEY
MAY BE PUNISHED ACCORDINGLY.

Respectfully Sheweth:

1. That the petitioner sought through the said writ petition the directions to the respondents/ contemnors to allow full pay protection and pensionary benefits of the past service w.e.f. 30.09.1996 to 15.02.1999 and this Honourable Court was pleased to issue directions to treat the said writ petition as an appeal before respondent

FILED TODAY
 Deputy Registrar
 13 FEB 2020
 ATTESTED
 EXAMINER
 Peshawar High Court

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No.2 and to decide the same according to law within a month, vide order dated (05.11.2019, but the respondents/ contemnors failed to do the needful. (COPIES OF GROUNDS OF WRIT PETITION AND ORDER DATED 06.11.2019 ARE ATTACHED AS ANNEXURE "A").

2. That while disposing of the said Writ Petition, this Honourable Court was pleased to issue the directions, which are never complied with by the respondents. For ready reference the operative para of the order dated 06.11.2019 is reproduced as under:-

"Accordingly, we while disposing of this writ petition, treat it as an appeal before the Director General, Health Services, Government of Khyber Pakhtunkhwa, Peshawar and direct him to decide the same in accordance with law within a month. The office is directed to send this petition to the aforesaid authority by retaining a copy thereof for record."

FILED TODAY
 Deputy Registrar
 13 FEB 2020

3. That the petitioners have approached the respondents' office time and again to seek the

ATTESTED
 EXAMINER
 Peshawar High Court

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implementation of the order of this Honourable Court dated 06.11.2019, but they are avoiding the implementation on one pretext or the other.

- 4. That respondent No.2 is intentionally and willfully not implementing the judgment of this Honourable Court and today even after the lapse of more than three (03) months, they have not taken a step towards its implementation.
- 5. That the aforesaid conduct of the respondents/contemnors amounts to contempt of court and thus through their inaction, they have held themselves liable to be prosecuted under the Contempt of Court Ordinance, 2003.
- 6. That the inaction/disobedience of the respondent No.2 towards non-implementation of the judgment of this Honourable Court, has lowered the authority of this court in the eyes of public at large in general.

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Deputy Registrar
13 FEB 2020

ADMITTED
EXAMINER
Peshawar High Court

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It is, therefore, prayed that by accepting this petition, contempt of court proceedings may please be initiated against the respondents/contemnors for not implementing the judgment/order of this Honourable Court dated 06.11.2019 passed in Writ Petition No.5236-2/2019 and if they are found guilty, then they may be punished accordingly and they may also be compelled through all coercive measures to implement the order of this Honourable Court, in its letter and spirit.

Through

Petitioners
[Signature]
Lajbar, Shah Khalil
Advocate High Court

Dated: 13.02.2020

FILED TODAY
Deputy Registrar
13 FEB 2020

[Signature]
27 JUL 2020

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PESHAWAR HIGH COURT, PESHAWAR.
FORM "A"
FORM OF ORDER SHEET.



Serial No of order or proceedings	Date of Order or Proceedings	Order or other proceedings with the names of judges or Magistrates of parties or counsel where necessary.
	02.06.2020.	<p>COC No.125-P/2020 & W.P.No.5236-P/2019</p> <p>Present: Mr. Lt. Sar Khan Khattak, Advocate for petitioner.</p> <p>Mr. Rafi Nawaz Khan, A.A.G for the respondents.</p> <p>LAL JAN KHATTAK - The letter submitted before the court that the order of this court dated 06.11.2019 passed in W.P.No.5236-P/2019 will be acted upon by the respondent No.2 on or before 23rd June, 2020.</p> <p>In view of the above commitment of the learned A.A.G, I dispose of this petition by directing the respondent No.2 to live up to his commitment so made by him before the court through the learned A.A.G and comply with the order of this court strictly in accordance with law and rules on the subject without being biased towards the petitioner for his filing this contempt of court petition.</p>

3111
 Date of Preparation of copy 27/7/20
 Date of Printing of copy 27/7/20
 Received by 27/7/20

JUDGE
 JUDGE
 JUDGE
 27 JUL 2020

5.6

West Pakistan Civil Services Pension Rules

ANNEX

32

Note: No pension shall be admissible to a civil servant who is dismissed or removed from service for reasons of discipline, but Government may sanction compassionate allowance to such a civil servant, not exceeding two thirds of the pension or gratuity which would have been admissible to him had he been validated from service on the date of such dismissal or removal.

Section 19(1) of the Khyber

Lakhsankhwa Civil Servants Act, 1973

CHAPTER - II
SERVICE QUALIFYING FOR PENSION

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

First - The Service must be under Government.

Second - the service must not be Non-pensionable.

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

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

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

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

2.3 Temporary and officiating service - Temporary and officiating service shall count for pension as indicated below:-

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

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

* Note (1) and (2) Substituted vide notification No. 50(SR) - 915/65 Dated 6th May, 1965

ATTACHED

ANNEX G
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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P. NO. 1153-P/2014

Baghi Shah S/O Alam Shah (Late)
Village & P.O Urner Payan,
Tehsil & District, Peshawar

.....Petitioner

VERSUS

1. The Government of KPK through Secretary Finance, Civil Secretariat, Peshawar KPK.
2. The Accountant General Khyber Pakhtunkhwa, Peshawar.
3. The Executive Engineer Highway Division, Peshawar.

..... Respondents

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

PRAYER IN WRIT PETITION:

On acceptance of this writ petition the office order No. Pension-11/B-3/2012(W-5/2013)-14 Date: 19.02.2014 may please be set aside, and an appropriate writ may please be issued directing the respondents to finalize the pension case of the petitioner and he be paid his monthly pension or any other remedy deemed proper in the circumstances of the case may also be allowed.

Attested
ATTESTED

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR

W.P. No. 1153 of 2014



JUDGMENT

Date of hearing: 09-09-2014
Petitioner: Baghi Shah S/O Alam Shah
Respondent: The Government of K.P.K. through Secretary Finance

NISAR HUSSAIN KHAN, J. Instant petition has been filed with the following prayer:

"On acceptance of this writ petition, the office order No. Pension-11/B-3/2012(W-5/2013)-14/168, date: 19.2.2014 may please be set aside, and an appropriate writ may please be issued directing the respondents to finalize the pension case of petitioner and he

Attested
Attested
20 SEP 2014

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be paid his monthly pension, or any other remedy deemed proper in the circumstances of the case may also be allowed."

2. Petitioner has averred in his petition that he was initially appointed as Coo / on fixed pay in Highway Division Peshawar on 03.12.1993 and his service was regularized with effect from 1.7.2008 and ultimately retired on 6.1.2013 from the Government service on attaining the age of superannuation; that his case for grant of pension was processed but was objected by the Accountant General office with the plea that the petitioner is not entitled for pension due to lack of fulfillment of prescribed length of service as a permanent employee. He maintained that his similarly placed colleagues have been extended the benefit of pension but discriminatory treatment has been meted out to him, hence the instant petition.

ATTESTED

... S. J. H. ...
... J. H. ...

Attested

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3. Respondents in Para-5 of their comments have stated that pensionary benefits are not admissible to the petitioner under the Rules because he has only four years, 6 month and 4 days regular service on his credit. And by virtue of Finance Department letter No DO 1/1/2/1-2/2008-09, dated 30.7.2008, he is not entitled to the pensionary benefits.

4. Learned counsel for petitioner argued that the respondents have wrongly discriminated the petitioner whereas his similarly placed colleagues have been extended the benefits of pension and by virtue of Rule 2.3 of West Pakistan Civil Service Pensionary Rules 1963, he is entitled for pensionary benefits.

5. Learned AAG vehemently opposed the contentions of learned counsel for petitioner and argued that in view of Section 19(2) of WFP Civil Servants Act, 1973, he is not entitled to pensionary benefits.

ATTESTED

EXAMINER
...
20 SEP 2014

Attested

(37)

We have scanned the entire material available on file in the light of the arguments of the learned counsel for the parties.

7. Admitted facts of the case are that petitioner was initially appointed as Consty on fixed pay in Highway Division, Peshawar on 31.12.1995 and his services were regularized with effect from 1.7.2008, vide Notification No.B.O.1-32/2007-08, dated 29.1.2008. Later he was retired from service, vide office order No.139/8-E, dated 7.7.2013 with effect from 6.1.2013. After retirement, he filed application for pension and gratuity to the concerned office of Assistant Accountant General on 18.11.2013, which was processed. However, it was returned on the objection of the Finance Department that petitioner did not have prescribed length of service qualifying him for pension and gratuity on his credit, so was not entitled for pensionary benefits, vide their letter No. Pension-1/

ATTESTED Attested

THE ACCOUNTANT GENERAL
PESHAWAR
10 FEB 2014

(38)

B-3/2012-B AY-5/2013-14/168, dated 19.2.2014. The petitioner has also raised question of discrimination in Para-7 of the writ petition and the same has also not been specifically denied in their comments and simply stated that since it pertains to the record, hence no comments.

8. To resolve the controversy, Rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, is reproduced herein below:

"Temporary and officiating service"—Temporary and officiating service shall count for pension as indicated below:

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

ATTESTED

THE ACCOUNTANT GENERAL
PESHAWAR
10 FEB 2014

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placed are treated alike. The courts, being the custodian, are to safeguard the inalienable rights of the citizens as enshrined in the Constitution. Whenever any such infringement of rights is brought to the notice of the court, that is to be struck down. Here in the instant case, since respondents have not denied discrimination as averred in the petition, so their act of depriving the petitioner of his pensionary benefits is not conscionable and is liable to be struck down.

10. Thus by accepting the instant petition, the impugned office order of respondents is set aside and they are directed to finalise the pension case of petitioner within a period of two months positively.

*Subject's Petition on Motion
Set aside & Respondents' Benefits*

Office
15/09/2014
9th Sept 2014
Attested
ATTESTED

4/10



BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

ANNEX H

Writ Petition No. 341/2013

Mr. Muhammad Aqif (Retd Driver),
Government Driving Training School,
Peshawar.

PETITIONER

VERSUS

1. The Secretary to Government of KP, Transport Department, Civil Secretariat, Peshawar.
2. The Secretary to Government of KP, Finance Department, Civil Secretariat, Peshawar.
3. The Secretary to Government of KP, Industries, Commerce, Min. Development Labour & Tech. Education Department, Civil Secretariat, Peshawar.
4. The Secretary to Government of KP, Establishment Department, Civil Secretariat, Peshawar.
5. The Director, Transport Directorate Government of KP, Civil Secretariat, Peshawar.

RESPONDENTS

ATTESTED
BY EXAMINER
PESHAWAR HIGH COURT
10 DEC 2014

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF PAKISTAN 1973 AS
AMENDED UPTO DATE.

RESPECTFULLY SHEWETH:

Brief Facts giving rise to the present petition are as under:

1. That the petitioner joined the Government Driving Training School on 1.2.1987 and retired from service on 31.01.2010 on attaining the age of superannua on (60 YEARS). Thus, the petitioner has 23 years service at his credit. Order of Retirement and Granting LPR are attached as Annexure-A and B.
2. That after retirement, the pension papers of the petitioner were prepared and submitted, but those are still not finalized.

ATTESTED

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No. 30 - P2013

JUDGMENT

Date of hearing: 24.1.2014

Petitioners: *By Mr. A. A. Khan, aged 28.5 years of age, Aso*
Respondents: *By Mr. M. P. Khan, Aso*

YAHYA AFRIDI Makimad Amir, the
petitioner, seeks the constitution and jurisdiction of
this Court praying that

"It is, therefore, most humbly prayed
that on acceptance of this writ
petition, the amount of the
respondents is funded in his pension
case and not grant a pensionary
benefit to the petitioner for his 24
years rendered service in an
constitutional, and, fair, illegal,
without lawful authority and
violation of the Honourable Supreme
Court's directions. The respondents
may further please be directed to
finalize the pension case of the
petitioner and to grant the
pensionary benefits to the petitioner
without any further delay. Any other
remedy, not specified, he prayed for,
may also be granted in favour of the
petitioner."

ATTESTED
EXAMINER
PESHAWAR HIGH COURT
10 DEC 2014

9
Attested
ATTESTED

1. In essence, grievance of the petitioner is that
the respondents did not finalize his pension case,
despite the fact that he has served in a department
for 23 years and retired from service on 11.1.2010
after attaining the age of superannuation.

2. At the very outset, learned counsel for the
petitioner stated that the issue involved herein has
already been decided by this Court on 9.9.2012 in
Baqi Shah's case (Writ Petition No. 1188-
P2012). The relevant portion of the said judgment
is as under:

"To resolve the controversy Rule 23 of
West Pakistan Civil Service Pension
Rules, 1963 is reproduced in the below:

Temporary and Abating
Service Temporary and
abating service shall count
for pension as follows:-
(i) Government servants, who have
been employed in temporary or
abating service for more than
two years, shall count such service for the
purpose of pension as if it were
regular service; and
(ii) Temporary and abating
service shall not count for pension or
gratuity.

It is manifest from the cited Rule
that how temporary, and abating
service shall be counted for pension
and gratuity. It is elaborated in
sub-sections that five years

Attested

ATTESTED

continuous temporary service of a civil servant shall count for the purpose of pension and gratuity and by virtue of sub-rule (2) of this Rule, temporary and officiating service followed by continuation shall also count for pension and gratuity".

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4. In view of the above clear findings, this Court also follows the same.
5. Accordingly, this Writ Petition is allowed and the respondents are directed to finalize the pension case of the petitioner in terms of the clear finding of this Court in Writ Petition No. 1188-2014, stated above, within a period of two months, positively.

DI. 24.11.2014.

Sd/- Yahya Afzal
Sd/- Muhammad Younis

JUDGE

Nawab Shah

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Date of Presentation of Application 26/11/2014
No. of Pages 28 P
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Total
Date of Presentation of Copy
Date of Receipt of Copy
Date of Delivery of Copy
Date of Receipt of Copy

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10 DEC 2014

Attested

ATTESTED

ANNEX I
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BEFORE THE PESHAWAR HIGH COURT PESHAWAR

WRIT PETITION NO. 2221 P 2013.

- 1- Sultan Muhammad, Principal, Bajaur Public School Bajaur Agency.
- 2- Khalid Ahmed, SET, Bajaur Public School Bajaur Agency.
- 3- Syed Jehanzeb, SET, Bajaur Public School Bajaur Agency.
- 4- Ujaat Ali Khan, SET, Bajaur Public School Bajaur Agency.
- 5- Nasrum Azinalah, SET, Bajaur Public School Bajaur Agency.
- 6- Muhammad Rahim Jan, SET, Bajaur Public School Bajaur Agency.
- 7- M. Ashfaq Hassan, SET, Bajaur Public School Bajaur Agency.
- 8- Ubaidur Rehman, SET, Bajaur Public School Bajaur Agency.
- 9- Bahadur Khan, SET, Bajaur Public School Bajaur Agency.
- 10- Muhammad Dawood, SET, Bajaur Public School Bajaur Agency.
- 11- Purdil Khan, SET, Bajaur Public School Bajaur Agency.
- 12- Raiz Hussain, CT,



ATTESTED
19 MAR 2015

FILED TODAY
28 NOV 2013

WP3221P2013GROUND

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT



1000/P/2013

JUDGMENT

Date of hearing: 14/03/2013
Petitioner(s): Yaqub Khan
Respondent(s): Government of Punjab

IPERAMULLAH KHAN, J.: Petitioners have filed instant Constitutional petition for issuance of an appropriate writ with the following prayer:-

"On account of this writ petition the respondents of previous service of the petitioners towards protection and pecuniary benefits by the respondents may be declared as illegal, unconstitutional, arbitrary and exploitation of the post good services of the petitioners. The respondents may further be directed to give full pay of the post service rendered by the petitioners to meet the ends of justice and principles of equity. Any other remedy which this court deems fit and not specifically sought for, may also be awarded in favour of petitioners."

2. In essence, petitioners were appointed in the year 1990 and onwards by the Political Agent, Bajaur

Agency as Principal Teachers, Midlevel Staff and Class-IV employees in the Bajaur Public School and College with the condition that they would be allowed pay scales and other allowances admissible to a Civil Servant in Bajaur Agency. Later on, the Bajaur Public School and College was taken into government control by the Federal Government and services of all the employees appointed by the Political Agent, Bajaur Agency on contract basis were made regularized vide Notification issued by the Government of Punjab, Peshawar on March 1, 2013. In pursuance of the Notification, it has been held that all the eligible incumbent teaching and non-teaching staff will be adjusted against the regular positions posts on merit cum seniority in service in the respective scales and categories. As the petitioners were eligible to be regularized, as such, they were adjusted on regular newly created posts with immediate effect vide order dated 20.5.2013, however, the petitioners services rendered by the petitioners were not counted towards their pay and pension by the respondents. Hence, the instant writ petition.

3. Learned counsel for petitioners contended that though the services of petitioners were regularized since 2013 but the respondents have denied

ATTESTED
19-MAR-2013

ATTESTED
19-MAR-2013

the benefit of protection of pay and pensionary benefits to the petitioners on the sole ground that the previous services rendered by them were on contract basis, as such, it could not be counted towards the length of their service, which set of respondents in agreement law.

4. On the other hand, learned counsel for respondents contended that the services of petitioners were not either on contract or ad hoc basis but they were appointed by the Political Agent, Bijapur Agency law on the period of services rendered by the petitioners as the concerned School could not be counted towards their pay and pension, etc.

5. We have heard learned counsel for the parties in light of law and available record.

6. The first appointment orders of the petitioners reveal that though they were appointed by the Political Agent, Bijapur Agency law on the condition that the petitioners will receive all the benefits and allowances admissible under the rules of a Civil Servant. The Notification issued by the worthy Governor, Khyber Pakhtunkhwa itself reveals rather admitted therein that petitioners were on contract basis and their services were regularized. Para 2.1 of Chapter-II (Service Qualifying for Pension) of Civil

ATTESTED
19 MAR 2014

ATTESTED

Service Act, 1971, prescribes conditions of qualifications for pension, which read as:-

Rule 21. Candidates of Qualification:-The services of a Government Servant does not qualify for pension unless it conforms to the following three conditions:-

First:- The Service must be under Government.

Second:- The Service must not be non-pensionable.

Third:- The service must be paid by Government (i.e. the Provincial Government) out of the Provincial Consolidated Fund.

Note-(1) For the purposes of rule of displaced Government Servants which qualifies for pension see Chapter VII.

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

7. The above-mentioned rule admitted shall be applied to the case of petitioners as they were appointed on the conditions applicable to the Civil Servants. This court in Writ Petition No. 118-PT/2014 titled "Baqat Shah Versus The Govt. of KYN through Secretary Finance, Ferozpur and others, decided on 9.9.2014 has held that:-

"The Courts, being the guardian, are to safeguard the unalienable rights of the citizens as enshrined in

ATTESTED
19 MAR 2014

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(50)

the right that the period of his service before regularization be counted towards his pay, pension and gratification."

10. This Court has decided a number of Writ Petitions through its consolidated judgments dated 22.6.2017 delivered in WP No.3394/2016 has held: "that the services rendered by employees, who are engaged both in the field and in the office, shall be treated as regular services and they shall be entitled to regular pay, pension and gratification, etc."

11. The facts as well as the legal proposition involved in this case is similar to the one already decided by this court in the above mentioned cases. Therefore, this court could not take a different view. Therefore, this writ petition is disposed of in the terms that the services rendered by the petitioners as contract employees shall be considered towards their regular service.

APPROVED,
Dated: 01.03.2018

M. M. Khan
M. M. Khan

JAN 2
2018

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No. _____
Date of Presentation _____
No. of Pages _____
Case No. _____
Filed _____
Date of Filing _____
Date of Disposal _____
By _____
1. Read by _____

FILED TO HON'BLE GOVT.
JUDGE
19 MAR 2018

ATTACHED

(119)

the constitution. Whenever any such infringement of rights is brought to the notice of the court that it be struck down. Here in the present case, since respondents have not admitted discrimination as averred in the petition, so their act of depriving the petitioner of his pensionary benefits is not condonable or is liable to be struck down."

8. Similarly, this court while reaching the identical proposition of law in case titled "Muhammad Aarif Versus The Secretary to Government of KP, Transport Dep. Transport, Peshawar and other" decided on 24.11.14 has held: "that the services rendered by a contract employee shall be considered as regular services and they shall be entitled to regular pay, pension and gratification, etc."

9. Likewise, in case titled "M. Ahmad Farooq Versus Engineer in Chief, ENC Branch, General Headquarters (GHQ), Rawalpindi" reported as (2012 CLJ 343), the Honourable Lahore High Court has held as follows:-

"Government servants continue duly remaining in service without break would after his regularization have

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19 MAR 2018

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Furthermore, there is evidence on record that daughter of the petitioner was married to the son of Khuda Baksh, respondent No. 1 but the marriage resulted in divorce prior to the filing of the petitioner's suit. This fact in conjunction with the circumstance that the petitioner did not assail the mutation Esh. P. 5 for almost ten years despite knowledge of the same, shows that the suit was filed on account of the differences which arose between the petitioner and respondent No. 1 as a result of the evidence above.

It is a well-reasoned order. There is no illegality or infirmity in the impugned order. Even otherwise all the three Courts have given findings of fact against the petitioner, therefore, we are not persuaded to upset the same. This petition is devoid of merit and the same is accordingly dismissed and leave to appeal declined. *Leave Refused.*

2012 CLJ 342

Present: Mr. Justice Mian Saqib Nisar
Mr. Justice Asif Saeed Khan Khosa
[Supreme Court of Pakistan]

Civil Review Petition No. 9/L of 2010 in Civil Petition

No. 728-L of 2006 dismissed on 23.2.2011.

On review from the order dated 4.3.2010 of this Court passed

in Civil Petition No. 728-L of 2006.

TMA BAHAWALPUR CITY, ETC. --- Petitioners.

versus

Review before Supreme Court--

Review before Supreme Court does not mean re-hearing of the case. Review petition dismissed as submissions made in support of review petition had already been considered by Supreme Court in judgment under review. (P. 343)

Mian Ashraf Za. ASC for petitioner.

Respondents not represented.

Date of hearing: 23.2.2011.

ORDER

MIAN SAQIB NISAR, J.—Review of the case does not mean re-hearing. The submissions made in support of the petition have already been considered in the judgment under review. The specific reference to section 156 of the Local Government Ordinance for the review has no much relevance and significance for the purpose of this petition. No case made out. Dismissed. *Review Declined.*

2012 CLJ 343

Before Rauf Ahmad Sheikh, J. (Rawalpindi)

Writ Petition No. 2636 of 2010 accepted on 30.1.2012.

MUHAMMAD FAROOQ---Petitioner.

versus

1. ENGINEER IN CHIEF, ENO BRANCH, GENERAL HEADQUARTERS (GHQ), RAWALPINDI
2. DIRECTOR WORKS ENGINEER ARMY, GENERAL HEADQUARTERS (GHQ), RAWALPINDI, Islamabad

(a) Government servant--

Government servant continuously remaining in service without break would after his regularization have the right that the period of his service before regularization be counted towards his pay, pension and promotion but not seniority. Competent authority would not illegally by not counting service before regularization towards pension of petitioner. High Court accepting writ petition with direction to respondents to count service rendered by petitioner prior to his regularization towards his pension. (P. 347, 348, 349)

(b) Constitution of Pakistan, 1973--

Art. 199. Writ petition filed under Art. 199 would not be bad for non-joinder or mis-joinder of parties as provided in rule 2, Order 1, CPC. (P. 348)

(c) Ibid--

Art. 199. Writ petition under Art. 199 would not be barred when appointment letter of petitioner was issued but his service would be governed by Civil Servants Act, 1973 and rules framed thereunder. (P. 347)

(d) Ibid--

Arts. 199, 212. Bar under Art. 212 would not apply when petitioner's right to equal treatment guaranteed under Art. 25 should not be infringed and it is proved on record that petitioner was not treated equally in accordance with fundamental right of equality before law guaranteed under

Muhammad Farooq v. Engineer in Chief, ENO Branch

Rauf Ahmad Sheikh, J. (Rawp.)

Muhammad Haseem Khan for petitioner.

Sardar Masood Hussain, Standing counsel.

ORDER

RAUF AHMAD SHEIKH, J.—The petitioner has prayed that inaction on part of respondents to consider the service rendered by him i.e. 17.2.1979 to 8.5.1987 towards his pay and pension be declared as illegal and they be directed to consider the same for the above-mentioned purposes. It was stated that the petitioner was appointed as Casual Labourer under the respondents on 17.2.1979 and throughout his service worked as Oil Engine Driver and his service was upto the mark & satisfaction of his superiors. He was given appointment letter on 27.4.1987 but his previous service was not counted towards pay and pension so he made repeated requests from time to time but the respondents did not accept his genuine demand without giving any response and passing any order. It was contended that Sher Zaman and Musaddiq of the petitioner, were given the benefit of addition of the service rendered prior to regularization towards pay and pension but in his case the said benefit has been withheld and as such he has not been treated equally with the said employees so his fundamental right as guaranteed under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 has been infringed. With these averments an order as noted above has been prayed for.

2. The respondents contended that the petition was not

non-joinder of necessary parties; that the same is not maintainable under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973; that the petitioner was appointed as casual labourer (RTLE) in 1987 so his salary and pension would be determined from the date of joining the service; that his previous appointment w.e.f. 17.2.1979 was purely of casual nature so the same cannot be counted towards pension and pay as the same is not verified from the Audit and pay bills; that the petitioner was informed through letter dated 20.7.2009 that his request cannot be acceded to and other points mentioned by him were also repelled; that the case of the persons mentioned in the petition was different from that of the petitioner, who was casual labourer appointed on a project and that under the rules, he could have not been given the benefit prayed for.

3. The learned counsel for the petitioner has reiterated the above contentions and vehemently contended that the petitioner had continuous service to his credit w.e.f. ... performed the duties satisfactorily throughout his career; that no doubt the seniority cannot be given to him w.e.f. 17.2.1979 but he is entitled to pay and pension benefit for the period prior to his regularization as was given to other employees, who also started career as casual labourers but their services were subsequently regularized. In support of the contentions raised reliance is placed on 2005 SCMR 100 and 2002 SCMR 574.

4. In the comments the respondents have contended that the petition is barred under Article 212 of the Constitution

of Islamic Republic of Pakistan, 1973; that the petition is not in proper form and the Federal Government could have been implemented only through Secretary to the Government of Pakistan Ministry of Defence; that the petitioner cannot take benefit of the services rendered as casual labourer on a project; that Sher Zaman, etc. were working against permanent posts so after regularization they were given the benefit of the previous service and that the petitioner was a daily wage prior to regularization of his service so can claim benefit for the said period.

5. At the outset the learned Standing Counsel has conceded that the service of the petitioner is governed by the Civil Servants Act as was clearly intimated in his appointment letter Annexure "H" but contended that he had performed his duties as casual labourer before regularization of his service so he cannot take benefit of the service rendered as C.L. The appointment letter does show that his service would be governed by the Civil Servants Act, 1973 and rules made there-under so the petition is not barred under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973. It is an admitted fact that he has been performing duties regularly w.e.f. 17.2.1979. This fact is fortified from the employment certificate Annexure "E" and certificate Annexure "D". It is not denied that he has been regularly and continuously working w.e.f. 17.2.1979. Sher Zaman son of Gul Zaman, who was also working as casual labourer (RTLE) was regularized w.e.f. March, 1987 and admittedly he has been given benefit of his previous service rendered prior to regularization. If the Government servant without break continuously remains in service then after regularization he has

the right that the same be counted towards pay, pension and promotion but not for seniority. In this respect reliance is placed on 2002 SCMR 574. The learned Standing Counsel has vehemently contended that Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 the writ petition is not maintainable and the petitioner should seek remedy before the Federal Service Tribunal. It is proved on record that the petitioner was not treated equally with Sher Zaman, who was placed under similar circumstances on his right of equal treatment as provided under Article 25 of the Constitution stands infringed and he can invoke the Constitutional jurisdiction of this Court. It is not denied that respondents are the authority and appellate authority of the petitioner. According to him he has been making requests time and again but they have shelved the application without passing any order although this contention appears to be ill-founded in view of letter dated 20.7.2009 but even on rejection of this request, he has cause of action. No petition is bad for mis-joinder and non-joinder of parties as provided under Order I, Rule 9, CPC. The concerned authorities, who were competent to pass appropriate orders in accordance with law, and failed to perform their duties so the petitioner rightly opted to file a petition against them. It is true that under section 79 of CPC, the Federal Government can sue and be sued as Federal Government of Pakistan through Secretary of the Government but in this case the petitioner has confined his grievance against respondents Nos. 1 and 2 i.e. the authority and appellate authority in his case. It is an established law that the technicalities should not hamper the course of justice, and may not be used to create hurdles in way of administration of

substantial justice. The petitioner, who has otherwise proved that he has been treated with discrimination and has illegally been deprived of the benefit, which is due to him for spotless and continuous service of 8 years prior to his regularization should not be non-suited and his petition should not be knocked down for technical reason i.e. form of the petition. In this respect reliance is placed on 2003 SCMR 318. For the foregoing reasons, the petition is accepted and respondents are directed to count the service rendered by the petitioner prior to his regularization as has been done in case of Sher Zaman, etc. and all benefits be given to him in the like manner.

Writ Issued.

2012 CLJ 349

Before the Hon. J. (Rawalpindi)

Writ Petition No. 226 of 2009 accepted on 24.1.2012.

SAJJAD AHMED

2. MUHAMMAD ZAFER BHATTI—Petitioners

1. THE CHAIRMAN, BOARD OF INTERMEDIATE & SECONDARY EDUCATION

2. THE SECRETARY, BOARD OF INTERMEDIATE & SECONDARY EDUCATION—Respondents

(a) Board of Intermediate and Secondary Education, Rawalpindi—

Junior and senior clerks of the Board appointed as Data Entry Operators after due process would be entitled to BS-11 as allowed to other Data Entry Operators BS-11 cannot be

**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

All communications Should be Addressed to The Director General
Health Services Peshawar and not to any official by name
Office Ph 0091-9210269 Exchange 091-9210187, 091-9210196 Fax 091-9210230

OFFICE ORDER.

WHEREAS, Mr. Rafiullah Clinical Technician (Radiology) and Mr. Allawuddin Clinical Technician (Radiology) attached to HMC Peshawar filed writ petition before The Peshawar High Court Peshawar for counting grant of 02 years Adhoc service to ward pension and pay.

And WHEREAS, the Peshawar High court Peshawar directed the DGHS KP to decide the case the accordance with law.

And WEREAS, both the above petitioners were personally heard on 28.04.2020 and inform them that the request is not covered under the rules.

The competent authority viz DGHS KP has been pleased to regret the request of the above petitioners being not covered under the rules.

Sd/-
DIRECTOR GENERAL HEALTH
SERVICES, KP, PESHAWAR

No.1966-68/E.IV, Dated Pesh. The 8-7-2020

Copy forwarded to the:-

01. Hospital Director, HMC MTI Peshawar.
02. Assistant Director (Lit:) DGHS KP Peshawar.
03. DA-concerned, DGHS Khyber Pakhtunkhwa Peshawar.

For information and necessary action.

Sd/-
DIRECTOR GENERAL HEALTH
SERVICES, KP, PESHAWAR

ATTESTED

ANNEX 7
55

DIRECTOR GENERAL SERVICE, K.P. PERANGIN
KEMENTERIAN KESEHATAN
REPUBLIC OF INDONESIA
Jalan Jenderal Sudirman Kav. 52-2 Jakarta 10132
Telp. (021) 5200-2000 Fax. (021) 5200-2001
E-mail: dgk@kemkes.go.id

OFFICE ORDER

WHEREAS Mr. Muhammad Cahya Pratomo, Radiologist, at the Department of Clinical Radiology, attached to the Regional General Hospital of Serang, Serang, Banten, is a permanent employee of the Department of Health Services, Serang, Banten, and has been appointed as a Radiologist at the Regional General Hospital of Serang, Serang, Banten, since 2014, and

AND WHEREAS, the fact that Mr. Muhammad Cahya Pratomo, Radiologist, is a permanent employee of the Department of Health Services, Serang, Banten, and has been appointed as a Radiologist at the Regional General Hospital of Serang, Serang, Banten, since 2014, and

AND WHEREAS, the competent authority of the HKS KP has been directed to request that the above positions being not covered under the

54/-
DIRECTOR GENERAL HEALTH SERVICE, K.P. PERANGIN

1760-58 1871. Dated at Serang, 7 July 2024.
To be forwarded to the:
1. Regional Director, BMC MT Pass, Serang, Banten
2. Assistant Director, BMC CONS (P. Perangin)
3. Head of BMC CONS (P. Perangin)
For information and necessary work.

[Signature]
DIRECTOR GENERAL HEALTH SERVICE, K.P. PERANGIN

ANNEX 6
Appel No 8710/2024
Rachidulhikmah is Court

11th July, 2024

Muhammad Jan, District attorney for respondents present,

Learned counsel for the appellants submitted an application for amendment in the memo and grounds of appeal. Application is allowed. Appellant is directed to submit amended appeal within a week. To compare the amended appeal as well as arguments on 31.07.2024 before D.B. as given to the parties.

[Signature]
(Rachidulhikmah)
(Member)

Nalin Veshu/Shera
(Counselor)

[Signature]
12/7/24

12/7/24

Date of the
Number
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