

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 722/2024

MIAN SHER ALI WASHER (BPS-05), PAKISTAN AUSTRIAN INSTITUTE OF TOURISM & HOTEL MANAGEMENT (PAITHOM), CAMP OFFICE, SAIDU SHARIF SWAT

VERSUS

THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH THE SECRETARY CULTURE, TOURISM, ARCHEOLOGY & MUSEUM DEPARTMENT, PESHAWAR

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Deponent

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 722/2024

**MIAN SHER ALI WASHER (BPS-05), PAKISTAN AUSTRIAN INSTITUTE OF
TOURISM & HOTEL MANAGEMENT (PAITHOM), CAMP OFFICE, SAIDU SHARIF
SWAT**

VERSUS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 18659
Dated 10-09-24

**THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH THE SECRETARY
CULTURE, TOURISM, ARCHEOLOGY & MUSEUM DEPARTMENT, PESHAWAR**

**PARAWISE COMMENTS ON BEHALF OF THAT THE RESPONDNET SUBJECT AS
UNDER**

Respectfully Sheweth,

Preliminary objections:

- i. That the appellant has no cause of action to file the instant services appeal.
- ii. That the appeal in hand is not maintainable in its present form.
- iii. That the appeal is bad for mis-joinder/non-joinder of unnecessary and necessary parties.
- iv. That the appeal is based on misrepresentation of facts, hence the appellant is estopped by his conduct to file the appeal.
- v. That the appellant has got all his back benefits along with increments and salaries etc.
- vi. That the appellant has been conditionally regularized vide this department notification dated 21.01.2022 as a washer in BS-05.
- vii. That the appellant has misrepresented the facts.
- viii. That the appellant has not come to the court with clean hands.
- ix. That the appeal is barred by law and limitation.
- x. That the appellant is stopped by his own conduct.
- xi. That the appellant has accepted his present post on stamp.

ON FACTS

1. Pertains to the record.
2. Incorrect. The appellant was an employee of PAITHOM which was a corporate body registered under the Societies Act, 1860 on 4th June 2003 as a Joint Venture between the Government of Pakistan and the Government of Austria which was devolved to the provinces along with its employees. The PAITHOM employees does not fall in the definition of section 11B of the Civil Servants act of 1973 being corporate employees.

Therefore, the relief requested under section 11B (1) of the Civil Servant Act was not applicable in respect of the appellant.

3. The appellant along with other employees of PAITHOM filed WP No. 507-M/2017, which was clubbed with 546-M/2017 and 655-M/2017 and a joint decision was announced on 18.04.2018 directing the Tourism Department to treat them like other regular employees of PAITHOM by extending them the privileges on the analogy of civil servants. The foundation of the judgment is rested on Judgement in WP No. 67-M/2017 (**Annex-A**), wherein Mr. Hurmat Yab Chef instructor, who himself was a corporate employee promised the court that he will regularize the petitioners and thus a wrong order was made a precedent for judgement in 546-M/2017 and other by the appellant (**Annex-B**). The Tourism Department filed CPLA No 556,557 and 558-P of 2018 in the Supreme Court of Pakistan which was time barred by twenty-one days. The operative part of the Judgement of the August Supreme Court of Pakistan is reproduced as below: -

Learned Additional Advocate General further states that before the High court, parties have apparently committed fraud and made a misrepresentation and the High court itself had wrongly exercised jurisdiction under article 199 of the constitution and thus the petitioner will avail remedy by way of an application under section 12/2 CPC to ensure that whatever wrong has been done through the impugned order is corrected. In view of the submission of the learned Additional Advocate General, we find nothing to enter into merits of these cases. All the petitions are therefore dismissed. The applications for condonation of delay are also disposed of (Annex-C).

The department regularized the corporate employees of PAITHOM conditionally on 21st January 2022 (**Annex-D**).

4. Correct to the extent of filing of application under 12/2 CPC in the Peshawar High court on the directions of the Supreme Court of Pakistan. The subject application was converted into WP No. 655-M/2017 (**Annex-E**) in the Peshawar high court which was again clubbed with the COC No. 54-M/2019 filed by the appellant which was dismissed vide detailed judgment in 2-M/2020. (**Annex-F**)
5. Incorrect. The appellant along with in-charge PAITHOM were conditionally regularized on 21st January 2022 on the directions of the Peshawar High court in its judgment issued on 18.04.2018. Mr. Hurmat Yab In-charge PAITHOM illegally issued the promotion notification when he himself was not a regular employee. The Tourism Department ordered a fact-finding inquiry into the illegal orders issued by Mr. Hurmat Yab In-charge PAITHOM, followed by full-fledged inquiry and the allegations were proved against him and penalty was imposed upon him by the Department. The aforementioned promotion notification was frivolous having no legal backing and was therefore held in abeyance by the department. Therefore, how come an order issued by a person who is legally incompetent can be quoted as legal precedent. Therefore, the said notification is illegal and was therefore held in abeyance and later on withdraw by Mr. Hurmat Yab.
6. Incorrect. The appellant along with in-charge PAITHOM were conditionally regularized on 21st January 2022 on the directions of the Peshawar High court in its

judgment issued on 18.04.2018. Mr. Hurmat Yab Chef In-charge illegally issued the notification when he himself was not a regular employee. The Tourism Department ordered a fact-finding inquiry into the illegal orders issued by Mr. Hurmat Yab, followed by full-fledged inquiry and the allegations were proved against him and penalty was imposed upon him according to E&D Rules. The aforementioned promotion notification was frivolous having no legal backing and was therefore held in abeyance by the department. Therefore, how an order issued by a person who is incompetent can be quoted as legal precedent. Mr. Hurmat Yab later on, on 02-01-2024 withdraw his illegal promotion order.

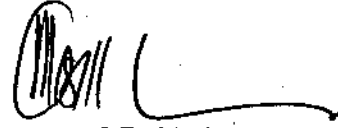
7. Incorrect. The inquiry was concluded and Mr. Hurmat Yab was penalized for issuing illegal promotion orders.
8. Incorrect. The subject promotion order was issued in contravention of rules and regulations therefore, the department held the subject notifications in abeyance and notified a fact-finding inquiry against the in-charge PAITHOM which was followed by a full-fledged inquiry, and all the illegalities committed by him were proved against him and the subject promotion order was cancelled by Mr. Hurmat Yab.
9. Incorrect. As explained above.

REPLY ON GROUNDS

- A. Incorrect. The subject notification was illegal issued by In-charge PAITHOM.
- B. Incorrect. None of the rights of the appellant is violated. The request of the appellant is illegal and baseless.
- C. Incorrect. As explained above the subject notification was illegal issued by In-charge PAITHOM and he was penalized for that as per rules.
- D. Incorrect. As explained above the notification was illegal issued by the In-charge PAITHOM Mr. Hurmat Yab who was not legally competent to issue such orders and he has been awarded penalty.
- E. Incorrect. The appellant is always trying to misguide the court. A proper inquiry was conducted in the ibid illegality of the In-charge PAITHOM Hurmat Yab and he has been awarded penalty. **(Annex-G)**
- F. Incorrect. As explained above.
- G. Incorrect. As explained above.
- H. Incorrect. As explained above.
- I. Incorrect. Pertains to record.
- J. Incorrect. The appellant always misguides the court through wrong statements as respondents have filed CPLAs against the illegal regularization of the appellant in the Supreme Court of Pakistan which are not yet fixed for hearing.
- K. Incorrect. Hence denied.
- L. Incorrect. The appellant has enjoyed the fruit of wrong promotion therefore, he is also liable for omission and commission under the law.
- M. Incorrect. The in-charge PAITHOM was not competent to issue such like illegal orders as explained above.

N. Incorrect. Hence denied.

Therefore, keeping in view the position explained above the appeal may be dismissed as not based on facts, with cost.



(Dr. Muhammad Bakhtiar Khan)
Secretary,
Culture Tourism Archaeology and
Museums Department
Respondent No. 01



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**GOVERNMENT OF, KHYBER PAKHTUNKHWA,
CULTURE & TOURISM DEPARTMENT.**

13-A, KHYBER ROAD, PESHAWAR CANTT:

NO. SO (LIT)/C&TD/1- 565/2023/ Akbar Ali
Dated Peshawar the, 09th September, 2024.

AUTHORITY LETTER

Mr. Arshad Iqbal, Section Officer, is hereby authorized to submit the joint Parawise comments and attend the Service Tribunal, Peshawar in Service Appeal No. 722/2024 titled "Mian Sher Ali vs Govt. of Khyber Pakhtunkhwa & others "on behalf of the undersigned till the final decision of the case.

**Secretary to Govt. of Khyber Pakhtunkhwa,
Culture, Tourism & Museums Department.**

(2)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 722/2024

MIAN SHER ALI WASHER (BPS-05), PAKISTAN AUSTRIAN INSTITUTE OF TOURISM & HOTEL MANAGEMENT (PAITHOM), CAMP OFFICE, SAIDU SHARIF SWAT

VERSUS

THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH THE SECRETARY CULTURE, TOURISM, ARCHEOLOGY & MUSEUM DEPARTMENT, PESHAWAR

Affidavit

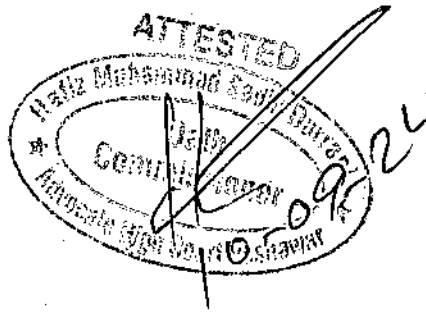
I, Dr. Muhammad Bakhtiar Khan, Secretary, Culture & Tourism Department Khyber Pakhtunkhwa, do hereby solemnly affirm and declare an oath that the contents of Parawise Comments in the above Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal. It is further stated on the oath that in this appeal the answering respondents have neither been placed ex-parte nor their defense is struck off.



DEPENDENT
CNIC
Cell No.

Identified By

LD. ADVOCATE GENERAL
KHYBER PAKHTUNKHWA



(3)

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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. |
|-----------------------------------|------------------------------|--|
| | 17.5.2016 | <p><u>W.P No. 67-M/2011</u> <u>With Interim Relief</u></p> <p>Present: Mr. Aurangzeb, Advocate for the petitioners.</p> <p>Mr. Sabir Shah, A.A.G. for the respondents alongwith Hurmatyab Khan, Incharge PAITHOM in person. ***</p> <p><u>LAL JAN KHATTAK, J.-</u> Petitioners through this petition seek their regularization into service.</p> <p>Facts of the case need no reiteration as the learned A.A.G. alongwith Mr. Hurmatyab Khan, Incharge PAITHOM, stated at the bar that the department is ready to consider the case of petitioners Nasib Gul, Muqarab Shah, Sher Zaman and Mohibullah for their regularization into service while that of petitioners Khadi Gul and Noorullah cannot be considered for their being overaged, to which learned counsel for the petitioners candidly agreed and did not press this petition any more.</p> <p>In view of the above statement of the learned A.A.G. and Incharge PAITHOM, this petition is disposed of with directions to the respondents to consider the case</p> |

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| | | <p>of aforementioned four petitioners for their regularization within a period of one month.</p> <p><u>Announced</u> <u>17.05.2016</u></p> <p><i>[Signature]</i> <u>JUDGE</u></p> <p><i>[Signature]</i> <u>JUDGE</u></p> <p><i>[Signature]</i></p> |
| | | <p><i>[Signature]</i></p> |

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PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA),
SWAT.
FORM "A"
FORM OF ORDER SHEET.

| Serial No of order or proceeding | Date of Order or Proceeding | Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary |
|----------------------------------|-----------------------------|--|
| 1 | 2 | 3 |
| | 18.04.2018 | <p><u>W.P No. 546-M/2017 with IR</u></p> <p><u>Present:-</u> Mr. Khwaja Salahuddin Advocate for the petitioner.</p> <p>Mr. Arshad Ahmad, Additional A.G for respondents.</p> <p>*****</p> <p>MUHAMMAD NASIR MAHFOOZ, J:- Through this single order we shall dispose of instant as well as the connected <u>W.P No. 655-M/2017</u> titled, "<u>Liaqat Raza and other Vs Govt of Khyber Pakhtunkhwa and others</u>" and <u>W.P No. 507-M/2017</u> titled, "<u>Haq Nawaz and others Vs Govt of Khyber Pakhtunkhwa and others</u>". The petitioners prayed that:-</p> <p><i>"On acceptance of this writ petition, this honorable court may graciously be issued writs and direct the respondents to treat the services of petitioner as regular employee from the date of his initial appointment and to issue order/notification for regularization of services of the petitioner by extending all benefits allowed to the regular Government Employees of the Department".</i></p> <p>2. Brief facts of the instant case are that petitioner has the qualification of B.A with Diploma in Hotel management from <i>Pakistan Austrian Institute Of Tourism</i></p> |

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And Hotel Management (herein referred as PAITHOM) and got training at Margala Hotel Islamabad and Sheraz Arena Peshawar. In 2011 the respondents appointed the petitioner as Instructor & House Keeping Incharge on contract basis for six months which was extended from time to time. The respondents assured the petitioner that his services will be regularized but till date no such step has been taken by the respondents and thus the petitioner is on slip foot and at risk beside a having good hands, best performance, dutiful and having no adverse remarks. Petitioner approached the respondents time and again to admit his claim but they refused.

Similarly petitioners in connected W.P No. 507-M/2017 and W.P No. 655-M/2017 alleges that they have been regularized since the year 2011 but they are not being treated as Government Servants at par with others and their pay scales have not been revised since then and due to this reason they are not being held entitled to pensionary benefits and other allowance that is enjoyed by others like health Insurance, Group Insurance, G.P Fund etc, hence the instant writ petition.

[Signature]

3. Respondents were summoned who submitted their comments.

4. Arguments of learned counsel for the petitioners and learned Additional A.G for respondents

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heard and record perused.

5. In the comments of respondents it is mentioned that after serving for 4 years and 7 months in the institute his request for regularization was sent to the department vide letter dated 3.6.2016. He served in Hotel Margala Islamabad and Sheraz Arena for two years and three months and for 1 year in 7 Stars Hotel at Lahore and his services were adjusted in the institute as Housekeeping Incharge on the basis of his good performance. It is also mentioned that other employees of PAITHOM were devolved as regular employees in the institute by the Federal Ministry of Tourism (Defunct) but the petitioner was appointed after devolution so none of his constitutional rights have been violated.

6. The experience required and his past career does not show anything to even impliedly assume to cast any adverse doubts against him. From the year 2011, he is performing duties in PAITHOM on consolidated salary initially for six months and then extended with the passage of time and he has consistently requested for renewal/extension and regularization of his services but the respondents are adamant to appreciate his past career or his services. Petitioner has also relied on Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2015 whereby section 11 (b) has been added relating to

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absorption of appointment of Federal Employees. In accordance with this provision all those employees of the Federal Government who are holding various posts in Federal Government entities on regular basis before the commencement of 18th amendment of the constitution and the said entities has been devolved to province, shall be deemed to be the Civil servants of the province and they shall be absorbed in the relevant cadre in prescribed manner.

7. An office memorandum dated 6.09.2000 regarding policy of the Government about autonomous bodies indicates the intention of Government to either treat them as Government Department or as a company registered under the company laws but no final decision has been annexed with the comments herein. An office order dated 26.09.2016 reveals that the Provincial Government regularized services of Mr. Naseeb Gul, Gardner, Mr. Muqarab Shah, Security Guard and Mr. Mohibullah Security Guard w.e.f 17.05.2016 and that too in pursuance to decision of this Court in W.P No. 67 of 2011 dated 17.05.2016. Similar treatment has been meted to one Sher Zaman Gardner on 18.04.2016. Yet another decision passed by administration of PAITHOM dated 09.02.2011 and 23.02.2011 reveals that services of 20 employees have been regularized who are serving in BPS

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1 to BPS-6. Letter dated 10.04.2004 reveals that 93 posts were newly created in PAITHOM in BPS-16 to BPS-20.

8. Vide notification dated 31.03.2011 Ministry of Tourism, Tourism Division have transferred the employees of PAITHOM to the Government of Khyber Pakhtunkhwa.

9. Honorable Supreme Court of Pakistan in case titled, "Tikka Khan and others vs Syed Muzafar Hssain Shah and others" reported as 2018 SCMR 332, has provided as follows,

"It is not even a case of absorption by any attribute. The case of the respondents precisely is that many ministries were abolished and reorganized in the wake of the Constitution (18th) Amendment Act, 2010 and that they being the employees of the ministry abolished were transferred to the ministry reorganized. Transfer of the respondents to the ministry reorganized cannot be seen through the prism of rule 4 of the rules mentioned above. Their case is fully covered by Serial No.33 (6) of Estacode, Volume 1 Edition 2007. In this context, their case would be more akin to Rule 4A rather than Rule 4 of the Rules. No cannons of interpretation would scratch or strike off their past service when they on abolition of the ministry, were compulsorily transferred to the ministry of Religious Affairs and Interfaith Harmony."

Reference is also made to case titled, "Board of Intermediate and Secondary Education and another Vs Muhammad Altaf and others" reported 2018 SCMR 325

relevant para is reproduced as under,

"The respondents were employed by the petitioner Board, they have been

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working as Drivers, clerks, Naib Qasids and Security Guards for considerable period of time, on daily wages. Some of them have been so working since the year 1996. However, their employment contracts were terminated after every 89 days and were resumed a day thereafter. All of them have certainly served the petitioner Board for not less than 9 months, however, with artificial breaks, as noted above, intent to avoid their regularization."

10. We are constrained to hold that the petitioners deserve to be treated similarly as the other employees of PAITHOM have been treated and regularized and no distinguishing features has been pointed out by the learned A.A.G to deny them the relief asked for. Therefore, the instant writ petition as well as the connected writ petitions are allowed and the respondents are directed to treat the petitioners similarly and allow them the same benefits as regular employees are entitled under the civil servants Act and the rules framed there under as they are regularly performing their duties from the last so many years.

Announced:
18.04.2018


JUDGE


JUDGE

(Sanaullah) *D-5*

Hon'ble Mr. Justice Mohammad Ibrahim Khan
Hon'ble Mr. Justice Muhammad Nasir Mahfooz

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Annex B

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SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

(13)

PRESENT:
Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sajjad Ali Shah

B. C.Ps.No.556-558-P of 2018

(Against the order dated 18.04.2018, passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat in W.P.No.846-M/2017)

**Govt. of KP through Secretary Sports, (in all cases)
Culture, Tourism, Youth Affairs,
Archaeology & Museum Peshawar.**

**Wahneel Murad & another,
Haji Nawaz & others,
Liaqat Raza & another.**

...Petitioner (s)
Vergus
(in CP No.556-P)
(in CP No.557-P)
(in CP No.558-P)
...Respondent(s)

For the Petitioner (s) : Barrister Qasim Wadood, Addl.A.G.
KP
Nisar Muhammad, S.O. Sports &
Tourism

For the Respondent(s) : N.R.

Date of Hearing : 06.01.2020

ORDER

Gulzar Ahmed, CJ: These petitions are barred by 21 days. Though the application for condonation of delay has been filed but the learned Additional Advocates General, states that the ground taken in the application for condonation of delay is that of late supply of documents and lengthy correspondence between various tiers of the department. Such ground has never been accepted by this Court to be a sufficient cause for condonation of delay. Learned Addl.A.G. further states that before the High Court, parties have apparently committed fraud and made a

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Senior Court Associate
Supreme Court of Pakistan
Islamabad

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Po.No.556-338-P/C/2018

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misrepresentation and the High Court itself has wrongly exercised jurisdiction under Article 199 of the Constitution and thus, the petitioner will avail remedy by way of an application under Section 12(2) CPC, to ensure that whatever wrong has been done through the impugned order, is corrected.

2. In view of the submission of the learned Addl.A.G., we find nothing to enter into merits of these cases. All the petitions are, therefore, dismissed. Applications for condonation of delay are also disposed of.



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Sd/-J
Sd/-J

Certified to be True

Senior Court Assy
Supreme Court of Pak
Islamabad

Recd
ISLAMABAD
04.01.2020
REG. OFFICE SUPREME COURT
ISLAMABAD

11/1/20

GR No: 169/20
Date of Presentation: 16-1-20
No of Words: 6
No of Folios: 6
Requisition Fee Rs: 500
Copy Fee in: 300
Court Fee Stamp: 800

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KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, WEDNESDAY, 16th MARCH, 2022.

GOVERNMENT OF KHYBER PAKHTUNKHWA, SPORTS, TOURISM, ARCHAEOLOGY,
MUSEUMS & YOUTH AFFAIRS DEPARTMENT

NOTIFICATION

Dated Peshawar, the 21st January, 2022.

No. SO(Tourism)/5-81/2020/ 4350-88-: Pursuant to the Peshawar High Court Mingora Bench decision in W.P No. 546-M/2017 dated 18.04.2018 read with COC No. 55-M/2019, W.P No. 507-M/2017 dated: 18.04.2018 read with COC No. 54-M/2019, W.P No. 655-M/2017 read with COC No. 53 M/2019 and W.P No. 250-M/2018 and in light of the opinion of Advocate General, Khyber Pakhtunkhwa contained in Letter dated: 25.02.2021 duly endorsed by Law Department, Khyber Pakhtunkhwa vide letter dated 04.03.2021, the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) is pleased to conditionally regularize the services of the following employees of Pakistan Austrian Institute of Tourism and Hotel Management (PAITHOM), Swat as Civil Servants, with effect from the dates mentioned against each, **subject to final decision of the CPLAs No. 108-P/2021, No. 109-P/2021, No. 110-P/2021 and No. 58-P/2021** filed by Sports & Tourism Department, Khyber Pakhtunkhwa in the Supreme Court of Pakistan, under the terms and conditions mentioned below:

| S# | Name of the Employee | Designation with BPS | Date of Regularization |
|----|---|-----------------------------------|------------------------|
| 1 | Mr. Hurmat Yab Khan S/o Hammeeyal Yab Khan | Chief Instructor (BS-19) | 22.10.2007 |
| 2 | Mr. Liaqat Raza S/o Said Raza | Administrative Officer (BS-17) | 17.10.2007 |
| 3 | Mr. Waheed Murad S/o Murad Ali | Instructor (BS-17) | 01.12.2011 |
| 4 | Mr. Haq Nawaz S/o Aziz-ur Rehman | Supervisor (BS-07) | 01.07.2008 |
| 5 | Mr. Ali Shah S/o Habibullah | Waiter (BS-06) | 01.07.2008 |
| 6 | Mr. Akbar Hussain S/o Mohammad Saeed | Waiter (BS-06) | 01.07.2008 |
| 7 | Mr. Akbar Ali Khan S/o Shah Wazir Khan | Waiter (BS-06) | 01.07.2008 |
| 8 | Mr. Nisar Ul Haq S/o Muhammad Rahim | Waiter (BS-06) | 01.07.2008 |
| 9 | Mr. Adil Shah Mian S/o Mian Muazam | Waiter (BS-06) | 01.07.2008 |
| 10 | Mr. Israr Ali S/o Sardar Ali | Waiter (BS-06) | 01.07.2008 |
| 11 | Mr. Abid Shah S/o Mian Muazam | Waiter (BS-06) | 01.07.2008 |

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|----|--|--------------------------|------------|
| 12 | Mr. Javed Iqbal Khan S/o Majeed Ullah Khan | Receptionist (BS-05) | 01.07.2008 |
| 13 | Mr. Nasrullah Khan S/o Shah Rasool | Electrician (BS-05) | 01.07.2008 |
| 14 | Mr. Asghar Shah S/o Farooq Shah | Room Attendant (BS-05) | 01.07.2008 |
| 15 | Mr. Tahir Khan S/o Pir Mohammad Khan | Room Attendant (BS-05) | 01.07.2008 |
| 16 | Mr. Mian Sher Ali S/o Mian Syed Zahir | Washer / Presser (BS-05) | 01.07.2008 |
| 17 | Mr. Arshad S/o Muhammad Zaman | Washer / Presser (BS-05) | 01.07.2008 |
| 18 | Mr. Mehboob-Ur-Rehman S/o Toli Khan | Washer / Presser (BS-05) | 01.07.2008 |
| 19 | Mr. Murad Ali S/o Qubad | Cook (BS-03) | 01.07.2008 |
| 20 | Mr. Mumtaz Ali S/o Gul Rahim | Cook (BS-03) | 01.07.2008 |
| 21 | Mr. Akbar Khan S/o Muhammad Ghani | Cook (BS-03) | 01.07.2008 |
| 22 | Mr. Abdul Khaliq S/o Fazal Muhammad | Office Attendant (BS-03) | 01.07.2008 |
| 23 | Mr. Ghafoor Rehman S/o Fazal-e-Subhan | Helper (BS-03) | 01.07.2008 |
| 24 | Mr. Sher Zaman S/o Muhammad Ghafoor | Gardner (BS-03) | 01.07.2008 |
| 25 | Mr. Naseeb Gul S/o Rozi Gul | Gardner (BS-03) | 01.07.2008 |
| 26 | Mr. Muqarrab Shah S/o Mohammad Qamar | Security Guard (BS-03) | 01.07.2008 |
| 27 | Mr. Mohibullah S/o Muhammad Ismail | Security Guard (BS-03) | 01.07.2008 |

TERMS AND CONDITIONS:

- i. The services of all the employees of Pakistan Austrian Institute of Tourism and Hotel Management (PAITHOM) shall be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and rules framed thereunder.
 - ii. They will be governed by the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 and Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987 and any other instructions which may be issued by the Government from time to time.
 - iii. They will not be entitled to TA / DA on appointment.
2. In case the above terms and conditions are acceptable, an **UNDERTAKING** to this effect on a Judicial Stamp Paper duly attested by the Oath Commissioner should be produced in Sports, Tourism, Youth Affairs, Culture, Archaeology & Museums Department, Khyber Pakhtunkhwa and submit arrival within 15 days on the receipt of this Notification.

**Secretary to Government of Khyber Pakhtunkhwa
Sports, Tourism, Archaeology, Museums & Youth
Affairs Department**

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GOVERNMENT OF KHYBER PAKHTUNKHWA,
SPORTS, TOURISM, ARCHAEOLOGY, MUSEUMS & YOUTH
AFFAIRS DEPARTMENT.

Dated Peshawar 07th November, 2022

NOTIFICATION:

No. SO(Tourism)/5-81/2020/3112-23 :

In continuation of this Department Notification of even No. dated 21-01-2022 and pursuant to the Peshawar High Court Mingora Bench decision in W.P No. 507-M/2017 dated: 18.04.2018 read with COC No. 90-M/2021 in COC No. 54-M/2019 dated 13.04.2022, in light of the opinion of Advocate General, Khyber Pakhtunkhwa contained in letter dated: 25.02.2021 duly endorsed by Law Department, Khyber Pakhtunkhwa vide letter dated 04.03.2021 and Finance Department letter dated 04.08.2022, the Competent Authority (Secretary, Sports & Tourism Department, Khyber Pakhtunkhwa) is pleased to conditionally regularize the services of Mr. Haq Nawaz, House Engineer (BPS-16) of Pakistan Austrian Institute of Tourism and Hotel Management (PAITHOM), Swat as Civil Servant, with immediate effect, **subject to the following conditions:**

TERMS AND CONDITIONS:

- i). Final decision of the CPLA No. 109-P/2021, filed by Sports & Tourism Department, Khyber Pakhtunkhwa in the Supreme Court of Pakistan.
 - ii) The said regularization order will be subject to review / revision / modification in light of consultation with concerned regulatory Departments i.e. Finance, Establishment and Law Departments, wherever deemed necessary.
 - iii) His claim of arrears will be determined in light of advice of Finance Department and findings of Fact Finding Inquiry constituted vide this Department Notification of even number dated 22.09.2022.
 - iv) The services of the said employee of Pakistan Austrian Institute of Tourism & Hotel Management, (PAITHOM) shall be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and rules framed thereunder.
 - v). He will be governed by the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 and Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987 and any other Instructions which may be issued by the Government from time to time.
 - vi). He will not be entitled to TA / DA on appointment.
2. In case the above terms and conditions are acceptable, an **UNDERTAKING** to this effect on a Judicial Stamp Paper duly attested by the Oath Commissioner should be produced in Sports, Tourism, Youth Affairs, Culture, Archaeology & Museums Department, Khyber Pakhtunkhwa and submit arrival report within 15 days on the receipt of this Notification.

-Sd-

Secretary to Government of Khyber Pakhtunkhwa
Sports, Tourism, Archaeology, Museums & Youth
Affairs Department

Endst: No. & Date even:

Copy forwarded to:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Registrar, Peshawar High Court, Mingora Bench, Swat.
3. Secretary, Law Human Rights & Parliamentary Affairs Department, Khyber Pakhtunkhwa.
4. Secretary, Establishment Department, Khyber Pakhtunkhwa.
5. Secretary, Finance Department, Khyber Pakhtunkhwa.
6. Advocate General, Khyber Pakhtunkhwa.
7. Section Officer (Litigation), Sports, Culture & Tourism Department.
8. Chief Instructor / Incharge, Pakistan Austrian Institute of Tourism & Hotel Management (PAITHOM), Mingora, Swat.
9. Director General, Directorate of Tourist Services, Khyber Pakhtunkhwa.
10. District Accounts Officer, Swat
11. PS to Secretary, Sports & Tourism Department.
12. Official concerned.
13. Master File.

SECTION OFFICER (TOURISM-I)

Attested
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GOVERNMENT OF KHYBER PAKHTUNKHWA,
TOURISM, CULTURE, ARCHAEOLOGY & MUSEUMS
DEPARTMENT

(16)

Dated Peshawar 23rd May, 2023

NOTIFICATION:

No. SO(Tourism)/5-81/2020/3284-91:

In pursuant of the judgement of the Peshawar High Court, Mingora Bench in COC No. 90-M/2021 with C.Ms 792, 2308/2022 and 678/2023 in COC No. 54-M/2019 in W.P No. 507-M/2017. dated 26.04.2023, this Department Notification of even number dated 07.11.2022 in favor of Mr. Haq Nawaz S/o Aziz-ur-Rehman, an employee of Pakistan Austrian Institute of Tourism and Hotel Management (PAITHOM) (conditional regularized subject to final decision of the CPLA No. 109-P/2021 filed by the Tourism Department, Khyber Pakhtunkhwa in the Supreme Court of Pakistan) may be read as under instead of immediate effect.

As Supervisor (BS-07) from 01.07.2008 to 30.06.2013

As House Engineer (BS-16) from 01.07.2013

-Sd-

Secretary to Government of Khyber Pakhtunkhwa Culture,
Tourism, Archaeology & Museums Department

Endst: No. & Date even:

Copy forwarded to:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Registrar, Peshawar High Court, Mingora Bench, Swat.
3. Secretary, Law Human Rights & Parliamentary Affairs Department, Khyber Pakhtunkhwa.
4. Secretary, Establishment Department, Khyber Pakhtunkhwa.
5. Secretary, Finance Department, Khyber Pakhtunkhwa.
6. Advocate General, Khyber Pakhtunkhwa.
7. Section Officer (Litigation), Culture & Tourism Department.
8. Chief Instructor / Incharge, Pakistan Austrian Institute of Tourism & Hotel Management (PAITHOM), Mingora, Swat.
9. District Accounts Officer, Swat
10. PS to Secretary, Culture & Tourism Department.
11. Official concerned.
12. Master File.

Attested
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(AKHLAQ AHMAD)
SECTION OFFICER (TOURISM)

(1) (17) E

**BEFORE HON'BLE PESHAWAR HIGH COURT,
MINGORA BENCH/DARUL QAZA SWAT.**

W.P.No. 655 M/2017.

- 1) Liaqat Raza S/O Sayed Raza Admn. Officer PAITHOM,
- 2) Hurmat Yab Khan S/O Hammeeyat Yab Khan Incharge/
Principal PAITHOM Presently Paithom, Camp office
Near City Mill, Amankot, Swat.....Petitioners.

VERSUS

- (1) Government of KPK through Secretary Sports, Youth Affairs,
Tourism, Archaeology & Museum Department, Government of
Khyber Pakhtunkhwa, 13-A, Khyber Road Peshawar.
- (2) Focal Person Paithom, Section Officer, Tourism Department,
13-A, Khyber Road, Peshawar.
- (3) Secretary, Finance Department, Government of Khyber
Pakhtunkhwa, Civil Secretariate Peshawar.
- (4) Secretary Establishment & Administration Department
Regulation, Civil Secretariate, Peshawar.
- (5) Inter ProvooncialCordenation, through its Secretary, Civil
Secretariate, Peshawar..... Respondents.

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

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Respectfully sheweth :

1. *Petitioners are bonafide citizens of Pakistan where in correct addresses of the parties are given in the heading of the petition. (Copies of NICs are Annexure "A").*
2. *That petitioners are employees of Respondent No.1 performing their duties on official/ supervisory posts at Paithom since their recruitment.*
3. *That petitioners were initially recruited on their respective posts on contract basis by the respondents against sanctioned posts at Paithom Swat.*
4. *That on 31-3-2011 through a Notification issued under the Eighteenth Amendment the Federal Ministry of Tourism Division transferred Paithom along with its employees to the Government of Khyber Pakhtunkhwa. Thus Paithom was devolved to KP and the services of the petitioners were linked with the respondent No.1 since then. (Copy of Notification dated 31-3-2011 is Annex. "B")*
5. *That after serving for several years on the respective posts and after devolution of PAITHOM in December 2012, both the petitioners were finally regularized by the respondents vide office order dated 17/12/2012 with a retrospective effect from 22/10/2007 of petitioner No.2 and from 17/10/2017 of the petitioner No.1 and thus*

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were treated as regular Government servants since then. (Copy of office order dated 17-12-2012 is Annex. "C").

6. That respondents upon further proceedings also issued fixation of salary of both the petitioners on 11/01/2013. (Copy of fixation of salary is Annex. "D")
7. That in this respect a verification letter was also issued to the respondents in favour of the petitioners verifying the regularization of the petitioners as Civil Servants. (Copy is Attached as Annex. "E")
8. That the Government of KP accepted the services of the petitioners on 05-4-2011 as employees of Paithom as civil servants. (Copy is Attach as Annex. "F")
9. That although petitioners were regularized by the respondents since 2012 but till date petitioner are not treated as Government servants at par with the other Government servants in other departments.
10. That since the regularization notification of the petitioners they have been assured to be treated as a regular civil servants but in fact petitioners pay scales have not been revised since regularization and they have been refrained from the pensionery amount and other allowances and benefits that a civil servant enjoys during service or by attaining the age of super novation and are also not treating/accommodating the petitioners under the National Pay Scale nor any sort of amount under the

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head of Health Insurance, Group Insurance, GP Fund are deducted from the salaries of the petitioners thus keeping the petitioners in abeyance, otherwise treats them like temporary servants.

11. That petitioners requested respondents for redress of their grievance that they should be treated and dealt as Government servant under the Civil Servant Act.
12. That the petitioners being aggrieved from the above discriminatory attitude of the respondents and also from their reluctance to treat the petitioners as Civil Servants and to issue notification/order in this respect, while having no other adequate remedy except but to approach this Hon'ble Court by filing the instant constitutional petition, inter alia, on the following grounds:

GROUND:

- a. That the act of respondents whereby, the petitioners have been refused to give them the status, benefits and facilities of Civil Servants of the same Pay Scale and refusing the said right of the petitioners, is wrong, discriminatory, against the fundamental rights of the petitioners as guaranteed by the Constitution of Islamic Republic of Pakistan, 1973.
- b. That the petitioner have been appointed on the basis of merit by the respondents against

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sanctioned posts wherein Government of Pakistan created 93 sanctioned posts fro PAITHOM on 10-04-2004 whereby grants were also issued (Copy of the notification dated 10-4-2004 is Annex. "G").

- c. That after completing the probation period petitioners were regularized by the respondents after fulfilling the legal process of law, the petitioners deserve to be treated as Civil Servants at par with the other civil servants of Government departments.
- d. That respondents have issued regularization notification of the petitioners but since then they are not even considering the petitioner for promotion in scale or other benefits that a civil servant has a vested right.
- e. That the PRIME MINISTER SECTRIATE through secretary upon taking action also enquired from the respondents to provide information about the status of the petitioners/ employees of the PAITHOM whether they are working under sanctioned posts if YES then why they should not be treated on regular basis. Respondents replied with no objection upon regularization of the petitioners along with others. (Copies of letter dated 07/02/2009 and reply dated 20-02-2009 are Annex. "H" & "I" respectively).

Attended
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- f. This the status of PAITHOM and all its type of organizations can be defined in words as "That after its establishment of Paithom it was registered under the Societies Registration Act 1860 at Peshawar on 04/01/2003. (Copy of certificate is Annex."J") but after expiry of one year registration it has never been renewed with the society. That a number of autonomous bodies were established by the Federal Government from time to time through Resolutions under which some measure of functional autonomy was allowed to the Board of Governors/Board of Directors for the purpose of effective discharge of their allocated responsibilities. The legal status of such organizations came up for consideration before the Supreme Court in Civil Appeal No.154 of 1988, and it was held by the Court that organizations established through Resolutions were not bodies corporate but Government department, and their employees were held to be civil servants vide Government of Pakistan Cabinet Secretariat (Establishment Division) O.M No.4/1/91-R.7/3 dated 6th September, 2000 and again endorsed vide Government of Pakistan Cabinet Secretariat (Establishment Division) O.M No.4/1/91-R7/R.3 dated 25-04-2009.
- g. That services of the petitioners have been regularized under the Khyber Pakhtunkhwa

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Employees (Regularization of Service) Act, 2009 but they are not treated as the Act directs.

- h. *That in the year 2015, to accomodate recently devolved employees of the federal government under deliberations of 18th Constitutional Ammendment, the Provincial Assembly of Khyber Pakhtunkhwa further amended the Civil Servants Act, 1973 with the insertion of Section 11-B through Civil Servants (Amendment) Act, 2015 vide notification No.PA Khyber Pakhtunkhwa /Bill/2015/12250 dated 23-11-2015 there by stating that "all federal government employees shall be deemed to civil servants of province for all intents and purposes under this act and; All such Federal Government employees; if their relevant cadre is available in Government, shall be absorbed in the said cadre in the prescribed manner; and if no relevant cadre is available in Government, shall be deemed to have been appointed on regular basis to various provided that on such appointment or absorption, as the case may be; their seniority shall be determined in accordance with the provision of this Act; and their liabilities with regard to pension, gratuity, group insurance, benevolent fund and leave encashment shall be proportionally shared between the Federal Government and Government in such a manner as may be agreed upon."*

*Attested
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- i. That the petitioners performed their duties, honestly, zealously to the best of their efficiency with utmost satisfaction of their superiors and there is no hurdle or obstacle that prohibits the petitioners from treating as Civil Servants. So the petitioners deserve to be treated as Civil Servants with all the benefits extended to other government servants.
- j. That the mala fide of the respondents is very much clear from the fact that beside the above mentioned notifications and amendments they are not benefiting the petitioners from the fruitful bunches in the shape of pension and other allowances.
- k. That the aforesaid act of denying petitioners from treating them as civil servants is discriminatory and violative to the basic constitutional rights of the petitioners guaranteed by the Constitution of Islamic Republic of Pakistan, 1973.
- l. That due to the excellent performance of petitioners in their duties, they were regularized by the respondents but still are not obliging their own notification in true sense.
- m. That payments of salaries of the petitioners are paid from the regular budget passed by the

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assembly but do not consider like other civil servants.

- n. That the petitioner has served for a sufficient long period of time in the respondents department and has crossed the super age limit required for appointment and government service and will get retire from this Organization but unfortunately they will go empty handed at the end of their services and their future after retirement age is at high risk if respondents do not resolve the matter.
- o. That any other ground not specifically raised shall be argued at the time of arguments with the leave of this august Court.

It is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously issue writs and direct the respondents to treat the services of petitioner as Civil Servants of Pakistan under the Civil Servant Act, and to issue order/notification for treating services of the petitioner by extending all benefits including back benefits /allowances like other regular civil servants of other Government departments.

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Any other remedy which this Hon'ble Court deems fit to the circumstances of the instant case, may also be granted in favor of the petitioner against the respondents, if not specifically been prayed for by the petitioner but the interest of justice demand so.

Petitioners
Through counsel

ICM

KHWAJA SALAHUDDIN
ADVOCATE HIGH COURT

Khawaja Law Associates, Office No. 56-62, Legal Floor, Sultan Tower, Makan Bagh, Mingora, Swat. Cell No: ~~0307-770506~~
0307-770506

INTERIM RELIEF:

The respondents may graciously be restrained from taking any kind of adverse action against the petitioner, till disposal of instant writ petition.

ICM

KHWAJA SALAHUDDIN
ADVOCATE HIGH COURT

List of Books:

1. The Constitution of Pakistan, 1973.
2. The Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009.
3. The Civil Servants Act.
4. Any other relevant law books, notification and rules.
5. Case law on the subject.

ICM

KHWAJA SALAHUDDIN
ADVOCATE HIGH COURT

Attended
A → J/S

FORM OF ORDER SHEET

Court of

Case No. of

| 1 | Date of Order or Proceedings 2 | Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary. 3 |
|---|-----------------------------------|--|
| | 15-12-2020 | <p><u>C.M No. 2-M/2020</u> <u>In W.P No. 546-M/2017</u></p> <p><i>Present: Mr. Razauddin Khan, Addl:A.G for the petitioner.</i></p> <p style="text-align: center;">*****</p> <p><u>WIQAR AHMAD, J.-</u> This order is directed to dispose of the instant application (C.M No. 2-M/2020) as well as the connected C.M No. 3-M/2020 and C.M No. 4-M/2020, as all these applications are arising out of one and the same consolidated judgment of this Court dated 18.04.2018 passed in W.P No. 546-M/2017.</p> <p>2. Arguments heard and record perused.</p> <p>3. Perusal of record reveals that petitioner has not raised any ground in his applications, nor learned Addl:A.G had been able to raise any ground at the bar, placing their case under any of the categories provided for challenging an order under sub-section 2 of Section 12 CPC. Civil Petitions bearing Nos. 556, 557 and 558-P of 2018 filed by petitioner against judgment of this Court dated 18.04.2018 has already been dismissed by Hon'ble Supreme Court of Pakistan vide its order dated</p> |

Wiqar Ahmad
A. Ahmad

of jurisdiction could be established. The grounds raised in the applications relate to merits of the case but same cannot be allowed to be re-agitated and adjudicated again at this stage. The grounds of fraud, misrepresentation and want of jurisdiction have been lacking in the applications of petitioner filed under section 12 (2) CPC.

4. In light of what has been discussed above, all the applications under section 12 (2) CPC were found to have been lacking any substance and same are accordingly dismissed.

Announced
Dt: 15.12.2020

[Handwritten signature]
JUDGE
[Handwritten signature]
JUDGE

Attested
A → *[Handwritten signature]*



GOVERNMENT OF KHYBER
PAKHTUNKHWA, / 1-16
CULTURE, TOURISM, ARCHAEOLOGY &
MUSEUMS DEPARTMENT

Dated Peshawar the 6th May, 2024

29

ORDER:

No. SO(Tourism)5-81/2022/Vol-III / 1-16 **WHEREAS**, Mr. Hurmat Yab Khan, conditionally regularized as Chief Instructor (BS-19), vide letter No. SO(Tourism)5-81/2020/4350-88 dated 21.01.2022 of Pakistan Austrian Institute of Tourism & Hotel Management (PAITHOM), Culture & Tourism Department was proceeded under the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, for the alleged charges that he promoted 07 employees of PAITHOM illegally without the approval of competent authority and committed the act/omission of misconduct and negligence in the official business.

2. **AND WHEREAS**, for the said act/omission specified in rule-3(b) of the rules ibid, he was served charge sheet/statement of allegations.

3. **AND WHEREAS**, an inquiry committee comprising of Mr. Amer Latif, Inquiry Officer/ Member-1 Board of Revenue & Estate Department was constituted, who submitted the inquiry report wherein the charges were proved against the accused.

4. **AND WHEREAS**, he was provided an opportunity of personal hearing as required under Rule- 15 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 so as to fulfill the legal requirements.

5. **NOW THEREFORE**, the Competent Authority, after having considered charges, material on record, inquiry report of the inquiry committee and explanation of the officer concerned, in exercise of the Powers under Rule- 14 (5)(ii) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the minor penalty of "Withholding of increments and promotion for two years" upon the aforementioned officer.

Secretary to Govt. of Khyber Pakhtunkhwa
Culture & Tourism Department

Endst. No. & date even.

Copy of the above is forwarded to the: -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Secretary, Establishment Department, Khyber Pakhtunkhwa.
3. Mr. Amer Latif, Inquiry Officer/ Member-1 Board of Revenue & Estate Deptt.
4. PSO to Chief Minister, Khyber Pakhtunkhwa.
5. PSO to Chief Secretary, Khyber Pakhtunkhwa.
6. District Accounts Officer, Saidu Sharif, Swat.
7. Admin Officer, PAITHOM for necessary action.
8. Officer concerned.
9. - PS to Secretary Culture & Tourism Department.
10. PA to Additional Secretary, Culture & Tourism Department.
11. Master file.

M. A. Iqbal 6/5/24
Section Officer (Tourism)

Accepted
A. J. Khan