

- 24. Dr Muhammad Ayub Khan S/O Badshah Gul MO SHS Mohmand Agency.
- 25. Dr Fazal Subhan S/O Ghulam Nabi MO THQH Samar Bagh Lower Dir.
- 26. Dr Muhammad Shah Rawan S/O Muhammad Alamzeb AHQH Khar Bajaur Agency.
- 27. Dr Muhammad Tariq S/O Wazir Jang MO SHS Bajaur.
- 28. Dr Noor Muhammad S/O Ahmad Saeed MO AHQH Bajaur.
- 29. Dr Muhammad Karim S/O Saadullah Khan MO AHQH Bajaur.
- 30. Dr Aziz ur Rehman S/O Shah Tarcon MO AHQH Bajaur Agency.
- 31. Dr Gul Rashid S/O Muhammad Gul MO BHU Nitasi North Wqzirstan Agency.
- 32. Dr Najk Amal S/O Milawar Khan MO BHU Bora Khel North Waziristan Agency.
- 33. Dr Khursheed Alam S/O Jan Akbar MO AHQH Miran Shah.
- 34. Dr Pir Muhammad Khan S/O Malik Hazrat MO SHS Miran Shah.
- 35. Dr Badshah Jan S/O Muhammad Jan MO SHS Miran Shah.
- 36. Dr Muhammad Jaffar S/O Sakhi Sardar MO AHQH Miran Shah.
- 37. Dr Mir Qadir S/O Amin Gul MO AHQH Miran Shah.
- 38. Dr Kaleem Ghulam S/O Faqeer Ghulam MO SHS Miran Shah.
- 39. Dr Alif Khan S/O Sajjan Khan MO CH Kalaya Orakzai.
- 40. Dr Jehanzeb Khan S/O Inayatullah MO CH Samana Orakzai.
- 41. Dr Soorat Khan S/O Mardan Shah MO BHU Kasha Orakzai.
- 42. Dr Yousof Jan S/O Zamin Khan MO SHS Miran Shah.
- 43. Dr Izzat Khan S/O Saad Khan MO BHU Kotki Charnang Bajaur.

.....Petitioners

VERSUS

- 1. Government of NWFP through Chief Secretary NWFP, Peshawar.
- 2. Secretary to Government of NWFP Health Department.
- 3. Secretary Establishment Department NWFP.
- 4. Secretary Health Department NWFP, Peshawar.
- 5. Director General Health Services, NWFP, Peshawar

.....Respondents

A. H. Farid

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Judgment Sheet

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IN THE PESHAWAR HIGH COURT, PESHAWAR.

JUDICIAL DEPARTMENT

Writ Petition No.1510 of 2007.

JUDGMENT

Date of hearing.....18-11-2008.....

Petitioners (Dr. Rizwanullah and others) By M. Peshul Amin, Advocate

Respondents (Soni et al.) By M/S. Rasool Rasheed, A.E., Dr. Alam
Dor, Asst. Dir. for Health & Bushdad Shah,
S.O. Health.

DOST MUHAMMAD KHAN, J.-

This single

judgment shall also decide the following connected writ petitions:-

- (i) Writ Petition No. 1509/07,
Dr. Aziz Khan and others
Versus
Government of NWFP and others;
- (ii) Writ Petition No. 1059/07,
Mohammad Khalid and another
Versus
Province of NWFP through Secretary Zakat
and others;
- (iii) Writ Petition No. 1742/07,
Dr. Mumtaz Hussain and another
Versus
Government of NWFP and others;
- (iv) Writ Petition No. 739/08,
Dr. Mansoor Ahmand and others
Versus
Government of NWFP and others;

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- (v) Writ Petition No. 1741/07,
Dr. Ali Muhammad and others
Versus
Government of NWFP and others;
- (vi) Writ Petition No. 1721/07,
Dr. Tehmina Jalil
Versus
Government of NWFP and others;
- (vii) Writ Petition No. 1677/07,
Dr. Mustafa and others
Versus
Government of NWFP and others;
- (viii) Writ Petition No. 1842/07,
Dr. Muhammad Jawad
Versus
Government of NWFP and others;
- (ix) Writ Petition No. 1846/07
Dr. Farkhanda Jabeer
Versus
Government of NWFP and others;
- (x) Writ Petition No. 2088/07,
Dr. Hamidullah
Versus
Government of NWFP and others;
- (xi) Writ Petition No. 1682/07
Dr. Shah Wali Khan
Versus
Government of NWFP and others;

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(xii) Writ Petition No. 27/2008,
Fida Muhammad Khan
Versus
Government of NWFP and others;

(xiii) Writ Petition No. 365/08,
Dr. Saleem Qasim and others
Versus
Government of NWFP and others;

(xiv) Writ Petition No. 460/08,
Abdur Rashid Pharmacist
Versus
Government of NWFP and others;

(xv) Writ Petition No. 908/08,
Dr. Aurangzeb
Versus
Government of NWFP and others;

(xvi) Writ Petition No. 2090/07,
Dr. Shahida Begum
Versus
Government of NWFP and others;

(xvii) Writ Petition No. 242/07
Dr. Abdul Qasim
Versus
Government of NWFP and others;

(xviii) Writ Petition No. 2002/07,
Tauseef Aman
Versus
Government of NWFP and others;

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because identical questions of law having decisive force are involved in all these petitions.

2. Before taking for discussion the law points involved herein, it is deemed proper to mention here that during hearing in the case of Dr. Farmanullah vs. Chief Secretary, Government of NWFP and others (Civil Appeal No. 504/2008) before the Honourable Supreme Court, the learned Additional Advocate General, NWFP made a statement that Writ Petition No. 1510/2007 (the present one) involving similar questions of law was pending before this Court, thus, made a prayer that as a rule of propriety, the above Civil Appeal No. 504/2008 shall be kept pending so that the ibid Writ Petition No. 1510/2007 (of the present petitioner) is disposed of and the Apex Court was pleased to order accordingly. The Registrar of this Court was directed to place the said Writ Petition No. 1510/2007 before the Honourable Chief Justice for expeditious disposal. After receipt of the said order, the Honourable Chief Justice directed listing of all these cases for early disposal.

3. Today preliminary arguments were heard and because 2 judgments of this Court delivered in the case of Miss Shagufta Saved and others vs. Government of N.W.F.P. Writ Petition No. 1711/2006 decided on 11.9.2007 and the other given in the case of Mst. Aayeed Yousaf, PST and 21 others vs. E.D.O. and others Writ Petition No. 1648/07 dated 24.9.2008 was cited at the Bar, therefore, this petition along with the above connected writ petitions were admitted to full

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hearing. The learned Additional Advocate General and the learned counsels representing the petitioners in the above petitions agreed that let all be decided today because of the directions given by the Apex Court and with the consent of the learned Additional Advocate General, the para-wise comments filed in this petition were treated as comments in all the above writ petitions because he did not want to add anything to the already submitted comments in this case. The learned counsels were directed to address the Court after the break.

4. Arguments heard and available record/documents annexed with the said petitions were perused and the admitted position in all these cases on factual side is that all the petitioners in these petitions were initially appointed on contract basis by the departmental heads/departmental selection committees and their appointments were duly notified by the Government.

5. Some of the petitioners were appointed way back in 1995, others in 1999 and their contract period was duly renewed/extended from time to time through various notifications issued by the competent departmental authority. The last one in the series in some cases was issued in the year 2004 while in other cases, the last notifications were issued in the year 2007. Thus the learned Additional Advocate General did not dispute that the present petitioners were holding posts in the Health and other departments as employees appointed on contract basis when the NWFP Civil Servants (Amendment) Act (IX) of 2005 came

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no force on 23rd July, 2005. He also did not controvert that after the notification of the Act in the extra ordinary gazette of N.W.F.P., some of the petitioners were still kept as contract employees by their respective departments, extending the tenure of their contract employment vide different notifications issued from time to time. Thus, it is an established fact that the petitioners in this writ petition and all those in the connected writ petitions, were contract employees working on their respective posts at the time when the NWFP Civil Servants (Amendment) Act (IX) 2005 came into effect.

6. The learned counsel for the petitioners, in all these petitions, raised the following points of law which, may be summed up as follows:-

- (i) this Court in the case of Miss Shagufta Sayed and others vs. Government of N.W.F.P. and others, vide judgment given in Writ Petition No. 1731/2006 dated 11.9.2007 had conclusively decided all the law points involved herein. Thus a subsequent D.B. cannot hold a different opinion from the one already formed;
- (ii) that admittedly the petitioners in all these petitions were contract employees under the Government of NWFP and were serving in different departments when the Amendment Act (IX) of 2005 came into effect. Thus in view of the amendments introduced in S.19 of the NWFP Civil Servants Act XVII of 1973 on the strength of sub-section (2) of Section 2 of the Amendment Act 2005, the contract services of all the petitioners ipso facto stood regularized but the respondents, putting unreasonable and irrational construction on the above provision of law, have refused to regularize their services which is, an act ab initio void and coram non iudice;

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(iii) that all these petitioners were duly selected and appointed in the prescribed manner on contract basis by the competent authority and all of them have successfully undergone written test/interview taken by the departmental selection committees/competent authorities; and

(iv) The contract employment of the petitioners was extended from time to time till the date when they earned the benefit of the provision of the Amendment Act (IX) 2005 and because the Provincial Government has regularized similar contract employees in different Provincial Departments simply through executive orders/notifications but the petitioners herein, are given discriminatory treatment which has been forbidden by the constitutional command contained in Articles 4, 8 and 25 of the Constitution, 1973.

7. The learned Additional Advocate General, raised three-fold contentions with regard to the legal propositions involved herein, which are briefly cited below:-

(i) that all the petitioners were appointed on contract basis under a written agreement as stopgap arrangement and they were supposed to quit the posts they were holding on the arrival of the selectees of the N.W.F.P. Public Service Commission;

(ii) that the petitioners are estopped by their conduct because even after the promulgation/coming into force of the Civil Servants (Amendment) Act (IX) 2005, they sat quiet and did not agitate their grievance with regard to non-regularization of their services. Thus they cannot avail any relief from this Court.

(iii) that rule (4) of the N.W.F.P. Public Service Commission (Functions) Rules, 1983 amended vide Notification No. SOR-1(E&AD)1-99/73 dated 2.11.2002 has impliedly brought the selection of civil servant on contract for BPS-11 and above, within jurisdiction/powers of Public Service Commission, therefore, the petitioners herein were not appointed in the "prescribed manner". Hence, they are not entitled to avail the beneficial provision of subsection (2) of Section 2 of the Amended Act (IX) 2005 because they were selected/appointed by the departmental heads/Selection committees and not by the Provincial Public Service Commission.

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8. The learned Additional Advocate General has laid considerable stress on the amended rule (4) *ibid*, therefore, we have to take up the same for discussion in the first instance as it has incisive and decisive role in determining the eligibility of all the petitioners under the provision of subsection (2) of Section 2 of the Amendment Act (IX) 2005.

9. Under the provision to Section 2 (1) (b) of NWFP Civil Servants Act, 1973 civil servant has been defined and under clause (ii), those employed on contract, or on work charged basis, or those paid from contingencies are excluded from the said definition. Similarly Section 25 of the N.W.F.P. Civil Servant Act (NWFP Act No. XVIII of 1973), has conferred powers on the Governor of the Province or any person authorized by him to appoint persons on contract basis. The same is reproduced below:-

"25. Appointment of persons on contract etc: The Governor or any person authorized by the Governor in that behalf may, on such terms and conditions as he may specify in each case, appoint persons on contract basis, or on work charged basis or who are paid out of contingencies:

Provided that all such employees who were working in any such capacity immediately before the commencement of this Act shall continue to be so employed on the same terms and conditions on which they were appointed."

10. The plea of the learned Additional Advocate General that due to amendment in rule-4 of the NWFP Public Service Commission

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functions) Rules 1983, in 2002, the appointments of persons on contract basis has also been brought within the fold of NWFP Public Service Commission is absolutely untenable in law because firstly the said rule contained a non obstante clause and it has clarified in clauses (i) to (iii) that certain posts shall be outside the purview of the Commission. Even if it is construed in the way, the learned Additional Advocate General desires, it would come in conflict with the clear and explicit provisions of subsection (2) of Section 2 and Section 25 of the N.W.F.P. Civil Servant Act 1973 wherein appointment of persons on contract basis, has been taken out of the purview of Provincial Public Service Commission being not regular civil servants and the Governor or a person authorized by him in this behalf shall be the authority for appointment of persons on contract basis.

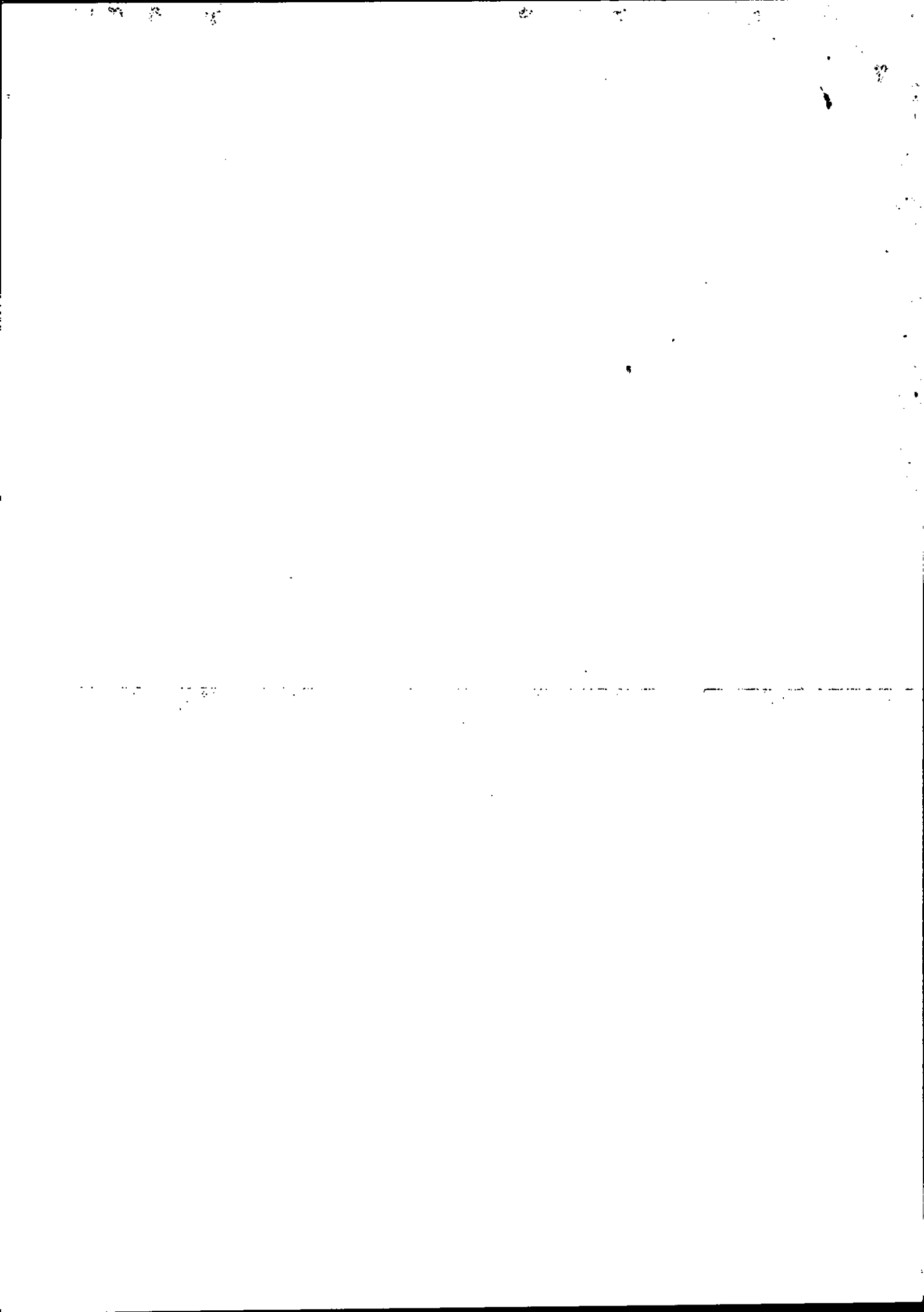
11. It is an ironclad principle with regard to the interpretation of Statute that when any rule/regulation or executive order made/passed by any authority under delegated powers of legislation comes in conflict with the Statute made by the legislature, then it shall be void to that extent and shall give way to the parent Statute which shall have overriding and superimposing effect. In the case of GATRON (INDUSTRIES) LIMITED VS. GOVERNMENT OF PAKISTAN and others (1999 SCMR 1072), it was held by the Apex Court that rights created by a Statute cannot be taken away through executive order of rule making authority. The object of delegation of rule making powers is always aimed at to carry out and achieve the objects and purposes of an

Act of legislature. Thus a rule making authority cannot enact a rule to override or render the main Statute ineffective. Therefore, the view of the learned Additional Advocate General being based on misconception, cannot prevail. Amended rule (4) even if construed the other way as was suggested, is ultra vires being in direct clash/conflict with the main Statute. Section 26 of the NWFP Civil Servants Act 1973 also clearly explains the above position which admits of no doubt nor it suffers from any ambiguity to be debated upon.

12. Under the provision of Section 25 of the NWFP Civil Servants Act, 1973, the Provincial Government, through different notifications/orders/circulars has authorized the administrative secretaries/heads of the attached departments as competent authority for the appointment of persons on contract basis and the table given there under, was not contested by the learned counsel for the Government.

13. The posts which the petitioners are/were holding on contract basis, were duly advertised in the prescribed manner by the competent authority, the petitioners applied for the same, they appeared before the Selection Committees/Departmental Authority in due course and have successfully undergone the tests and interviews, thus, were selected on merits but on contract basis. Their contractual services were consistently renewed from time to time and they retained the said posts till the time when the NWFP Civil Servants (Amendment) Act (IX) 2005 came into force on 23rd July, 2005.

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14. To understand the relevant provisions i.e. subsection (2) of Section 2 of the Amendment Act (IX), the same is reproduced below:-

"Subsection (2). A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on a regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the contributory provident fund, along with the contributions made by Government to his account in the said fund, in the prescribed manner."

15. The language of the above provision is plain and well conceivable, therefore, leave nothing in doubt with regard to the regularization of contractual services of the petitioners. The deeming phrase used therein has put a seal of endorsement on this view. Second part of the above provision has almost conclusively determined the matter in controversy because the two terms used therein i.e. "all such persons and the persons appointed on regular basis to a service or post in the prescribed manner" clearly lays down that the employees on contract basis now regularized and those appointed on regular basis (through Public Service Commission) for all intents and purposes be civil servant except for the purposes of pension and gratuity. A clear line of demarcation has been drawn by the legislature between the two categories of civil servants, the one who are taken on contract basis but regularized through the above provision and those appointed on regular

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basis through the Public Service Commission both have been referred to with clear intents but for the purposes of pensionary benefits. If the legislature intention was that only those persons appointed on regular basis shall be deemed to be a civil servant, then it would have never employed the words all such persons which has direct nexus with the petitioners. Thus the view of the learned counsel for the Government is absolutely misplaced and untenable in law.

16. A bare look at the history of legislation on this subject in the past further reinforced the above view that the petitioners' services have been duly regularized by the legislature and nothing has been left for the executive to notify their names in the official gazette or to pass any executive order. In this regard, the NWFP Adhoc Civil Servants (Regularization of Services) Act-II of 1987 is much relevant wherein a proviso was added to Section 3 thereof to the following effect:-

"Provided that—

- (i) the services of such civil servants shall be deemed to have been regularized under this Act only on the publication of their names in the official Gazette."

In the NWFP Employees on contract basis (Regularization of Services) Act VIII of 1989, S:4 is couched in the following words:-

"S.Regulation of services of certain Civil Servants: (1) Notwithstanding anything in any law for the time being in force, any Civil Servant, who is or has been

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appointed or deemed to have been appointed against any post in any Government Department under Section 3 of this Act shall be deemed to have been regularly appointed from the date of his continuous officiation, subject to eligibility, according to the service rules applicable to the post, verified by the administrative Secretary of the department concerned."

17. Again the same language was used in Section 4 of the N.W.F. Employees on contract basis (Regularization of Services) (Amendment) Act-II of 1990.

18. The relevant provision of the Act (IX), 2005 has been worded almost in a totally different language wherein nothing has been left for the administrative secretaries or the heads of the attached department/competent authorities to issue notification with regard to the regularization of services of contract employees because the object has been clearly accomplished through the plainly understandable words used in S.2 (2) of the Act (IX) 2005. On this analogy all the petitioners stood regularized on coming into force of the Act under discussion and issuance of notification/executive order in this regard would be only a formality for the departmental heads/administrative secretaries. Thus authorities were under statutory obligation to do what is required by the law to do and the petitioners were not required under the said provision to approach them for issuance of such order/notification.

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19. The above discussion and the reproduction of different legislation made from time to time by the Provincial Assembly lead one to a definite conclusion which shall go without any fear of rebuttal that the petitioners' contractual services were duly regularized and the phrase "prescribed manner" so used in the former and for those who are regularly appointed (repeated), would lead to an inference that the Act (IX) has drawn a clear distinction between the petitioners and those who are appointed on regular basis otherwise there was no need to mention both the categories of employees tagged with the words "prescribed manner". Thus the impression given by the learned counsel for the Government is absolutely fallacious and does not stand to reason. As already discussed in the earlier para, the appointment of employees on contractual basis have been taken away from the purview and domain of NWFP Public Service Commission and for such appointments, the above statutory provision has authorized the Governor of the Province or those authorized/appointed by him to be the competent authorities for appointment of contract employees. Therefore, if the amended rule-4 of the NWFP Public Service Commission (Functions) Rules, 1983 is construed in the way adopted by the said counsel, then in that case the rule can be held to be ultra vires because it has been framed/issued by the Government under the delegated powers of legislation, is for all intents and purposes must remain subordinate and subservient to the statutory law and the latest shall override the same for all purposes and intentions.

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20. The two categories of employees i.e. contract employees and regularly appointed employees are thus placed under the domain of two different authorities i.e. the Governor or persons authorized by him and the Provincial Public Service Commission. Thus the statutory law has provided two different channels for appointment of the above two categories of employees. Hence, the appointment of contract employees by the authorities/departmental heads/selection committees etc. authorized by the Governor is an appointment in the "prescribed manner" and similarly for regular appointment of civil servants through Public Service Commission to a post in civil service of the Province is another mode of appointment in the "prescribed manner". Both the matters/channels on no yardstick or legal basis can be intermingled for the purpose of holding the contrary view because both have been placed by the statutory law poles apart. Both the authorities i.e. the one authorized/appointed by the Provincial Government and the Provincial Public Service Commission, under the statutory law have domain over the appointment/selection of two different types/categories of employees. However, to be more clear the appointments of the petitioners were made by the above referred authorities in the "prescribed manner" by the departmental authorities/administrative secretaries in the manner prescribed by the statutory law i.e. in the "prescribed manner". Therefore, the petitioners on the strength of subsection (2) of Section 2 of the Act (IX) 2005 are undoubtedly entitled to regularization of their services and they have been duly regularized under the above provision of law and no executive authority

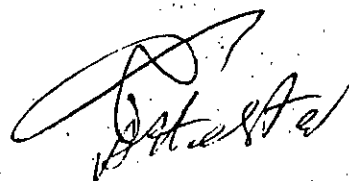
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within the Province has been left with any powers or authority to undo what is intended by the legislature. They have no role to play in the matter except to determine the inter se seniority of such contractual employees/the petitioners on the strength of length of their service.

21. The above discussion and findings would also answer the points raised by the learned Additional Advocate General shown as (i) and (ii) because it is a century old principle of law that no estoppel shall operate against a Statute which aspect is otherwise not established in view of the admitted facts on record. Government and the Authorities concerned can be held responsible in this regard for not complying with the requirements of the Amendment Act (IX) 2005 and the petitioners cannot be blamed for the inaction of the former.

22. This Bench cannot form a different opinion on the law point from the one which has already been enunciated by the former Division Bench of this Court in the earlier cited two cases as the Honourable Supreme Court has consistently held that a subsequent Division Bench cannot differ with the opinion of the earlier Bench on the same point of law and in case it wishes to do so, it may ask the Chief Justice to constitute a larger Bench or to leave the matter for the decision of the Honourable Supreme Court: On this point, the following case law of the Apex Court is relied upon.

- (a) The Province of East Pakistan vs. Dr. Azizul Islam
(PLD 1963 Supreme Court 296 at page-308);
- (b) The Province of East Pakistan vs. Sirajul Haq Patwari
(PLD 1966 Supreme Court 854 at page-920).



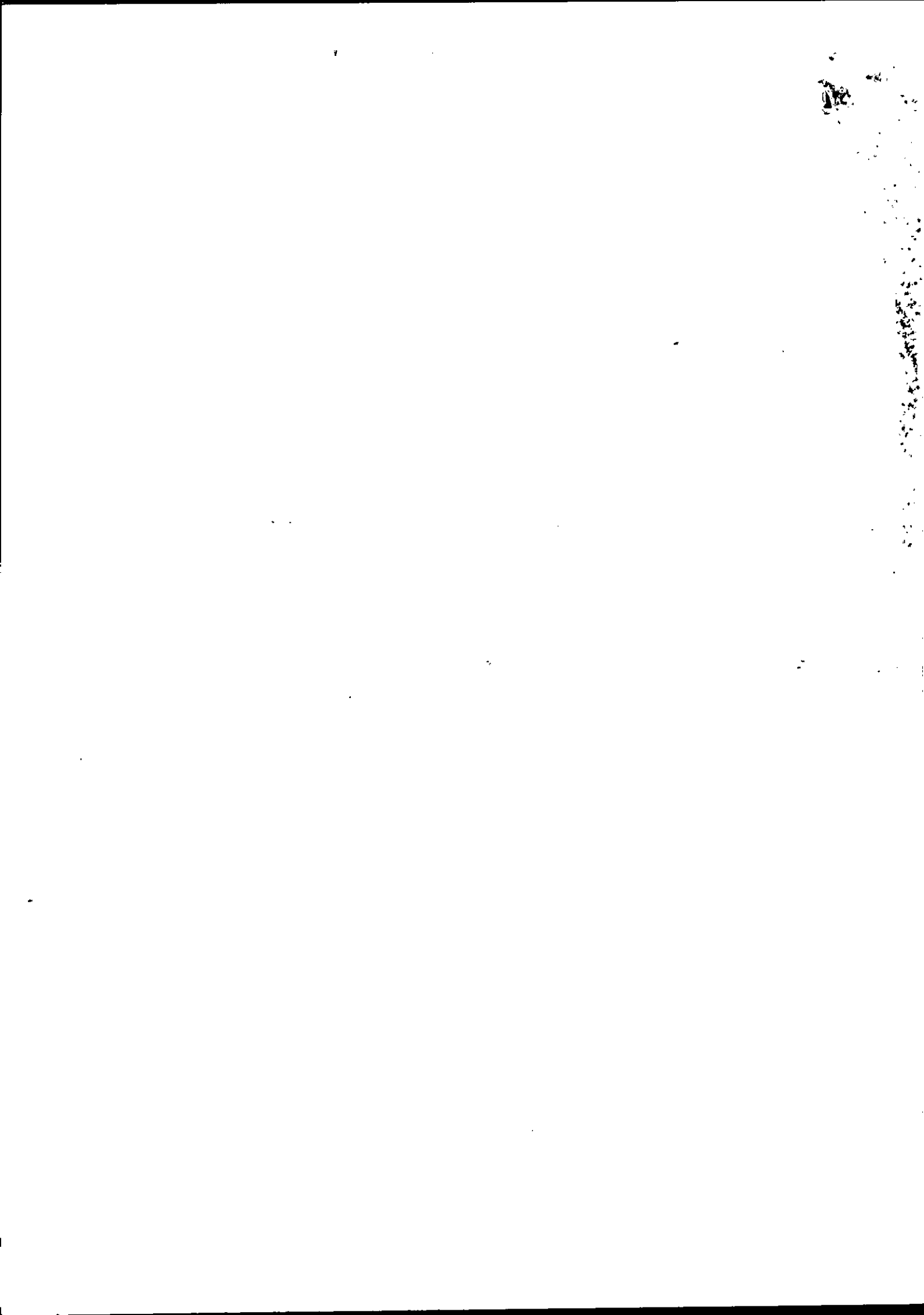
© Multiline Associates vs. Ardeshir Cowasjee and others
(1995 SCMR 423);

(d) Haji Ali Khan and Company, Abbottabad vs. M/s Allied Bank of Pakistan Limited
(PLD 1995 Supreme Court 362)

and the other view held by the Supreme Court of India in the case of Sidheswar Ganguly vs. State of West Bengal (PLD 1958 Supreme Court (India) 337).

23. During the course of hearing, the Court was informed that amongst the petitioners many have appeared in the screening test/interview held by the NWFP Public Service Commission for the same posts they are holding and have remained successful but could not be appointed either for insufficient zonal quota seats or other reasons. This assertion was not controverted/disputed by the learned Additional Advocate General at the Bar.

24. The Court has gone through the comments and the other documents annexed therewith and there is nothing on record to show that the petitioners at any stage were found inefficient or were complained against by their superiors in office almost majority of the petitioners have rendered services in the field for 4 to 10 years continuously. Thus, in all probabilities the petitioners have acquired rich experience in the relevant field and may deliver significant services on this score. Therefore, they would be of much worth in their respective field as compared to the new entrants/selectees of the Provincial Public Service Commission not possessed of such long experience. Therefore,



factor is an additional ground, worth consideration in favour of the petitioners.

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25. For what has been discussed above and in view of the conclusions drawn after interpreting all the provisions of law relevant to the subject, it is held that all the petitioners have been duly regularized in view of the provision of Section 2 subsection (2) of the NWFP Civil Servants (Amendment) Act (IX) 2005, all these petitions are allowed in the above terms and as a mere formality and for the purpose of preparing their service books/record, the appointing authorities/administrative secretaries of the petitioners may issue formal order/orders with regard to their inter se seniority and other relevant particulars required to be entered therein. The needful be done by all concerned by keeping in view the two dates i.e. terminus ad quem and terminus a quo, within a period of a month positively. The authorities/administrative Secretaries/departmental heads of the petitioners shall also create a contributory funds and gratuity funds as is required by the above provision of law and the petitioners shall be directed to contribute towards that besides the Government own share/liability of contribution towards the said fund.

All petitions are allowed.

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23	Dr. Muhammad Ali S/O Khair Muhammad	
24	Dr. Alamgir Khan S/O Darwesh Khan	
25	Dr. Farooq S/o Haji Ashiq Muhammad	
26	Dr. Muhammad Ijaz s/o Shuja Khan	
27	Dr. Sadaf Qazi D/o Qazi Naseer Uld Din	
28	Dr. Amjad Ali Shah	Also appointed through PSC.
29	Dr. Shams-Ur-Rehman s/o Haji Faqir Muhammad	
30	Dr. Fazal Rehman S/O Muhammad Amir Khan	
31	Dr. Muhammad Ajmal Khan s/o Suhbizada Naseer Ahmad	
32	Dr. Fazal Rehman S/O Gul Sheikh	
33	Dr. Zaib Khan S/o Bakht Biland	
34	Dr. Jamil Ahmed S/O Abdullah	
35	Dr. Anwar Ali S/O Dost Muhammad	
36	Dr. Bakht Zada S/O Gul Muhammad	
37	Dr. Saira Gulzar	Also appointed through PSC.
38	Dr. Muhammad Ibrahim	Contract not renewed in 2008.
39	Dr. Spin Gul S/O Haji Lal Buz	
40	Dr. Waqar Ahmad	Contract not renewed in 2008.
41	Dr. Sher Ali Khan s/o Amir Khan	
42	Dr. Ghulam Farooq s/o Ismail Jan	
43	Dr. Shaikat Ali s/o Muhammad Ali	
44	Dr. Aurang Zeb Afridi s/o Ghulam Hussain	
45	Dr. Salceem Qasim S/O Qasim Ali Khan	
46	Dr. Rashida Begum D/O Muhammad Ashraf	
47	Dr. Sher Jan S/O Musharaf Khan	
48	Dr. Abgeena Akhtar D/O Pir Muhammad	
49	Dr. Kamran Yousaf s/o Yousaf Khan	
50	Dr. Mehboob Shuh	Dental Surgeon
51	Dr. Khariun Nabi S/o Gul Nabi	

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52	Dr. Muhammad Draz Khan	
53	Dr. Shah Wali khan	Dental Surgeon.
54	Dr. Furkhanda d/o Fahim Dil	Dental Surgeon.
55	Dr. Rizwanullah S/O Amanullah Khan	
56	Dr. Sharifullah S/O Muhammad Zaman Khan	
57	Dr. Rozat Shah S/O S. Mursaleen Shah	
58	Dr. Zafur Ali Shah S/O S. Badshah	
59	Dr. Tasneem Fatima D/O Muhammad Aslam Malik	
60	Dr. S. M Tamur Shah	
61	Dr. Muhammad Zahid S/O Qaisar Ahmed	Also appointed through PSC.
62	Dr. Zafar Ali S/O Mir Ghawas	
63	Dr. Muhammad Jaseem S/O M. Quresh	
64	Dr. Ajmal Khan S/O Zulqadar Khan	
65	Dr. Muhammad Quresh S/O Mehraban Shah	
66	Dr. Muhammad Ali S/O Abdul Aziz	
67	Dr. Rinz Ali S/O Sher Bahadar	
68	Dr. Dakht Zamin S/O Wali Dad	
69	Dr. Noor Muhammad Khan S/O Shahmat Khan	
70	Dr. Khandad Khan S/O Shaista Khan	
71	Dr. Khalid Mahmood S/O Rehmatullah	
72	Dr. Ibrahim Iqbal S/O Saleh. Khan	
73	Dr. Gulab Khan S/O Inayatullah Khan	
74	Dr. Snid Muhammad S/O Ali Bat Khan	
75	Dr. Wali Muhammad S/O Gul Ghanir Khan	
76	Dr. S. Riaz ud din S/O S. Mir Zaman Shah	
77	Dr. S Luqman Shuaib	
78	Dr. Muhammad Ayub Khan S/O Badshah Gul	Also appointed through PSC.
79	Dr. Fozle Subhan S/O Ghulam Nabi	
80	Dr. Muhammad Shah Rawan S/O Muhammad Alamzeb	

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81	Dr. Muhammad Tariq S/o Wazir Jang	
82	Dr. Noor Muhammad S/o Ahmed Saeed	
83	Dr. Muhammad Karim S/o Samiullah Khan	
84	Dr. Aziz Ur Rehman S/o Shah Tareen	
85	Dr. Gul Rashid S/o Muhammad Gul	
86	Dr. Naik Amal S/o Milawar Khan	
87	Dr. Khurshid Alam s/o Jan Akbar	
88	Dr. Pir Muhammad Khan s/o Malik Hazrat	
89	Dr. Badshah Jan s/o Muhammad Jan	
90	Dr. Muhammad Jaffar S/o Sakhi Sardar	
91	Dr. Mir Qadir s/o Amin Gul	
92	Dr. Hakeem Ghulam S/o Fiqar Ghulam	
93	Dr. Atif Khan S/o Sangeen Khan	
94	Dr. Jehanzeb Khan S/o Inayatullah	
95	Dr. Samad Khan S/o Mardan Shah	
96	Dr. Yousaf Jan s/o Karam Khan	
97	Dr. Izzat Khan S/o Rasool Khan	
98	Dr. Abdul Qasim	Dental Surgeon
99	Dr. Tauseef Aman	Dental Surgeon
100	Dr. Tehmina Jalil D/o Abdul Jalil	
101	Dr. Aziz Khan S/o Jaffar Khan	
102	Dr. Muhammad Parvez Khan S/o Muhammad Nasir	
103	Dr. Sajid Khan S/o Ghafoor Khan	
104	Dr. Fida Muhammad S/o Zarin Khan	
105	Dr. Akbar Khan S/o Abdul Ghafoor	
106	Dr. Muhammad Ayaz S/o Noor Ahmad Shah	
107	Dr. Hanif Afzal S/o Sher Afzal	
108	Dr. Rabnawaz S/o Muhammad Nawaz	
109	Dr. Shah Jehan S/o Muhammad Hanif	

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110	Dr. Abdul Jalil s/o Mohibullah	
111	Dr. Muhammad Azhar Shah S/O Israr Ul Arifeen	
112	Dr. Muhammad Kamal S/O M. Shaukat	
113	Dr. Muhammad Ayaz S/O Zakirullah	
114	Dr. Jehanzeb S/O Nawaz Khan	
115	Dr. Badshah Jan S/O Muhammad Jan	
116	D. Samdana Wahab w/o Dr. Abdul Wahab	

- i. Their inter se seniority shall be determined in accordance with the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.
- ii. They shall be considered junior to all the doctors/civil servants who have been appointed as Medical Officers on the recommendations of the NWFP Public Service Commission before 23rd July 2005.
- iii. As they are working against leave vacancies or vacancies which have occurred due to deputation abroad of doctors, their confirmation will be subject to availability of regular posts in due course of time.

SECRETARY TO GOVT. OF NWFP
HEALTH DEPARTMENT.

Endst. No. & date even.

Copy to the:-

1. Secretary to Govt. of NWFP, Establishment Department.
2. Secretary to Govt. Of NWFP, Education Department.
3. Secretary to Govt. Of NWFP Finance Department.
4. Principal Secretary to Chief Minister NWFP.
5. Secretary to Governor NWFP.
6. Accountant General, NWFP, Peshawar.
7. Registrar Peshawar High Court, Peshawar.
8. Director General, Health Services, NWFP Peshawar.
9. DIIS PATA.
10. All EDOs (H) in NWFP.
11. All Medical Superintendents of Teaching Hospital/DHQH in NWFP
12. All DAOs in NWFP.
13. Computer Section Health Department.
14. Doctors concerned.

(Signature)
 (Muhammad Jamil)
 Section Officer-II

Copy also available on the website www.healthnwfp.gov.pk

(Signature)
Attested

(8)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1915/2009

Date of Institution: 9.12.2009
Date of Decision: 18.1.2013

Dr. Rizwanullah Khan, I/C Medical Officer,
Civil Dispensary, Hussain Abad, Peshawar.

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Health Department, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar etc.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974.

MR. ABDUL MABOOD KHATTAK,
Advocate

For appellant

MR. SHERAFGAN KHATTAK,
Addl. Advocate General

For respondents

MR. SULTAN MAHMOOD KHATTAK,
MR. FAREEDULLAH KHAN,

MEMBER
MEMBER

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER: This appeal has been filed by Dr. Rizwanullah Khan, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against order/notification dated 10.7.2009 after a lapse of statutory period and no response from the respondents. It has been prayed that on acceptance of the appeal, the respondents be directed to regularize services of the appellant with effect from the date of initial appointment as Medical Officer and grant him graded pay and seniority from that date.

2. Our this judgment will ^{also} dispose of service appeal No. 1916/2009 by Dr. Zafar Ali Shah and service appeal No. 1930/2009 by Dr. Farooq, versus Government of Khyber Pakhtunkhwa through its Chief Secretary Peshawar etc involving similar questions of law with exception that Dr. Zafar Ali Khan has

ATTEST
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(9)

filed his departmental appeal on 11.8.2009 which is barred by two days and Dr. Farooq's departmental appeal does not carry any date and his contract was terminated w.e.f. 15.5.2005 and a fresh contract awarded w.e.f. 17.5.2005 vide No. SO(Estab.)H-II/3-18/05 dated 12.12.2005.

2. Brief facts as averred in the memo of appeal are that the appellant was initially appointed as Medical Officer on contract basis in the Health Department in prescribed manner through Departmental Selection Committee on 25.11.1995. The contract appointment of the appellant was renewed/extended from time to time. Vide Khyber Pakhtunkhwa Civil Servant (Amendment) Act 2005, amendments were made in Section 19 of the Khyber Pakhtunkhwa Civil Servants Act 1973, whereby all the employments made between the period of 1.7.2001 to 23.7.2005, were regularized. - In pursuance of the above said amendment, the appellant submitted an application on 13.6.2007 for regularization of his service but no reply received. The appellant along with other colleagues filed a Writ Petition No. 1510/2007 in the Hon'ble Peshawar High Court, which was accepted on 18.11.2008 and the appellant was declared regular employee of the department. The appellant came to know that services of similarly placed person namely Dr. Muhammad Iqbal, Medical Officer, have been regularized from the date of initial appointment, vide notification dated 9.12.2006. But services of the appellant have been regularized w.e.f. 23.7.2005 under sub-Section (2) of Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2005, vide notification dated 10.7.2009. Feeling aggrieved, the appellant filed departmental appeal to the effect that his services be regularized from his initial date of appointment and may be treated at par with his other colleague Dr. Muhammad Iqbal, Medical Officer but the same has not been decided within the statutory period, hence the present appeal.

3. The appeal was admitted to regular hearing 5.3.2010 and notices were issued to the respondents. The respondents No. 2 and 3 have filed their written reply and contested the appeal.

4. Arguments heard and record perused. -

5. The learned counsel for the appellant argued that the appellant was appointed as Medical Officer (BPS-17) against the vacant post on contract basis in the Health Department vide order dated 25.11.1995 by the competent authority on the recommendations of Departmental Selection Committee. He

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was serving continuously in the same capacity without any break. On promulgation of Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2005, his services were regularized with immediate effect. The appellant having the prescribed qualification at the time of initial appointment was entitled for regularization of his service from the date of initial appointment, but has been denied the same benefit for no obvious reason. He relied on 2006-SCMR-1938. The services of the appellant have not been regularized with effect from the date of initial appointment merely on the basis of discrimination, favoritism and nepotism, otherwise, he was entitled to graded pay and seniority from that date. He further argued that the benefit of regularization from the date of initial appointment given to similarly placed person namely Dr. Muhammad Iqbal Medical Officer and the appellant was also entitled to the same treatment but has been discriminated. That the other departments as well as the Autonomous bodies of the province have awarded graded pay, seniority and regularization with effect from the date of their initial appointment, but the appellant was discriminated which is against the fundamental rights enumerated in Constitution of Pakistan 1973. All the citizens are equal before law and should be dealt with equally under Article 4 and 25 of the Constitution of Islamic Republic of Pakistan. The learned counsel for the appellant argued that this Tribunal has the power to hear and decide cases in which the vires of notifications have been challenged on ground of discriminations. He relied on 1991-SCMR-1041. He further argued that the appellant was entitled for regularization of his service from the date when the post was available for him. The respondents adopted the practice of pick and choose. The benefit of regularization given other colleague of the appellant and denial of the same to the appellant is discrimination and against the law. He further argued that seniority in the grade to which a civil servant is promoted shall take effect from the date of regular appointment to the post in that grade. The period during which an employee hold a post as an adhoc appointee can be taken into consideration for pay and pensionary benefits, and as regards promotion and move-over to the next higher grade period for adhoc service followed by regular service in the scale shall also be counted towards length of service provided for promotion or moveover in the higher scale subject to the condition that there is no break of service. The appellant would suffer on these scores if anti-dation of his regularization not allowed. He relied on 1998-SCMR-969. He requested that the appeal may be accepted as prayed for.

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6. The learned AAG argued that the appellant alongwith other doctors were appointed on contract basis on 25.11.1995 against the short terms vacancies

request for condonation made. According to the Health Department's notification No. SO (Estab.) H-IV/3-13/03, dated 8.1.2004, the appellant seem to have been entitled for regularization w.e.f. 1.1.2004 or any other appropriate dates on or in between the two dates as mentioned in Section 19 of the Act: aforesaid subject to the condition that he remained on contract basis on that date. But the appellant has not properly requested for the same neither in his departmental appeal nor in the appeal before the Tribunal. He further stated that this Tribunal has no power to set aside an executive order/notification. He requested that the appeal may be dismissed:

7. In view of the above, the Tribunal while agreeing with the arguments of the learned AAG is of the view that the appellant might have a case of regularization of his service as Medical Officer w.e.f. 1.1.2004 or any other appropriate date on or in between the date mentioned in Section 19 of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2005 subject to the condition that the appellant remained in service on contract basis on that date. But neither the appellant nor the respondents produced any documents to prove that the appellant was in service on contract basis on this date. Moreover, the appellant has not properly prayed for the same either in his departmental appeal nor in the appeal before this Tribunal. The case of Dr. Muhammad Iqbal Medical Officer as referred to by the appellant is altogether a different case and that the said order has not been challenged by the appellant and neither he applied to the competent authority (i.e. the Governor) for similar treatment. The appellant failed to make out a case for indulgence of the Tribunal, so we dismiss the appeal. Parties are left to bear their own costs. File be consigned to the record room.

Sd/ Sultan Mahmood Khattak
Member
Sd/ Fawadullah Khan Mehtar

ANNOUNCED
18.1.2013.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of ... 2000 25/2/13
... 12-00
... 12-00 8
... 11-3-2013
... 11-3-2013

BEFORE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

C.A.No.260-P/2018
OUT OF
C.P.No.132-P/2013

Dr.Rizwanullah Khan Appellant

Versus

Govt. of KPK through its Chief Secretary,
Peshawar & another..... Respondents

Court appealed from **KPK Service Tribunal, Peshawar.**

Counsel for the petitioner: **Muhammad Ajmal Khan,
Advocate-on-Record/ASC
Supreme Court of Pakistan.**

Counsel for the respondents: _____

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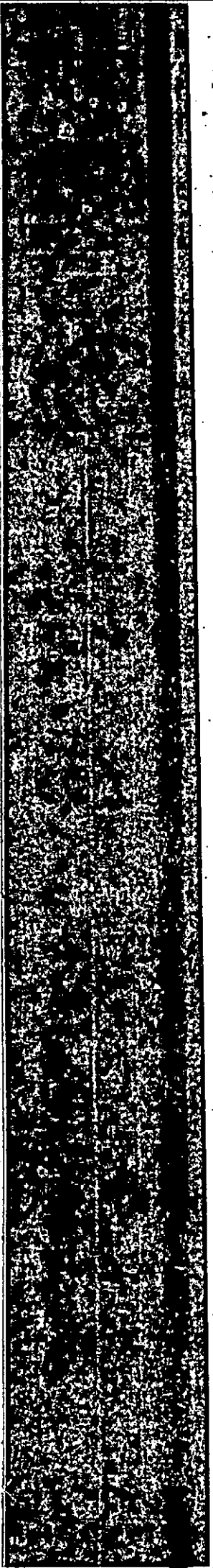
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Certified that the paper book has been prepared by the undersigned in accordance with the rules of the court

Muhammad Ajmal Khan
Advocate-on-Record
Supreme Court of Pakistan



A
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BEFORE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

C.P.LA.No. _____/2013

Dr. Rizwanullah Khan Petitioner

Versus

Govt. of KPK through its Chief Secretary, Peshawar & another..... Respondents

CONCISE STATEMENT

I.	Subject matter and the law	Service matter/ seniority.
II.	Which side filed this petition	The petitioner
III	Court/ Forum	Who filed it with what result.
	a) Filing b) Decision	
A	KPK Service Tribunal, Peshawar.	a) 09.12.2009 b) 18.01.2013.
		Appeal of the petitioner was dismissed.
IV	Point noted in the impugned judgment.	Treatment of the point noted in the impugned judgment and pages.
	<p>Petitioner has been discriminated because benefit of regularization from the date of initial appointment given to similarly placed person namely Dr. Muhammad Iqbal, Medical Officer and the petitioner was also entitled to the same treatment.</p> <p>Petitioner has been discriminated because the other departments as well as the Autonomous bodies of the province have awarded graded pay, seniority and regularization with effect from the date of their initial appointment, which is against the fundamental rights enumerated in Constitution of Pakistan, 1973.</p> <p>Because all the citizens are equal before law and should be dealt with equally under Article 4 and 25 of the Constitution of Islamic Republic of Pakistan.</p>	<p>The Hon'ble Service Tribunal held that, as such the contract doctors used to continue the contractual appointment against the short term vacancies. The services of the petitioner have correctly been regularized in accordance with the amended Civil Servant Act, 2005 and the judgment of the Hon'ble Peshawar High Court, Peshawar. since the petitioner was appointed prior to the promulgation of the Civil Servants Amendment Act, 2005, therefore, his services could only be regularized w.e.f. the date of continuous officiation as Medical Officer from the date falling within these two dates as mentioned. The so-called departmental appeal dated 10.08.2009 does not mention the order against which the same has been filed.</p>
V.	Case/ law Ruling involved on the points.	
	For	Against
	1) Constitution of Pakistan, 1973.	Nil
	2) Rulings/ judgments of superior courts according to need.	

Certified that this concise statement has been prepared by the undersigned in accordance with the rules of the court and is complete and correct in all respects.

(Muhammad Ajmal Khan)
Advocate-on-Record

(T) 66

BEFORE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

C.P.L.A.No. _____/2013

22/03/2013
Dr. Rizwanullah Khan A
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Dr. Rizwanullah Khan, I/C Medical Officer,
Civil Dispensary, Hussain Abad, Peshawar Petitioner

[Signature]

Versus

- 1) Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar.
 - 2) Secretary to Government of Khyber Pakhtunkhwa, Health Department, Peshawar.
 - 3) Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- Respondents

CIVIL PETITION FOR LEAVE TO APPEAL
UNDER ARTICLE 212(3) OF THE
CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN, 1973 AGAINST THE
IMPUGNED JUDGMENT OF THE HON'BLE
SERVICES TRIBUNAL, KPK, PESHAWAR
DATED 18.01.2013, WHEREBY APPEAL
BEARING NO.1915/2009 FILED BY
PETITIONER WAS DISMISSED.

Respectfully Sheweth

THE POINT OF LAW AND GROUNDS INTER-ALIA OF
GENERAL PUBLIC IMPORTANCE, WHICH FALL FOR
DETERMINATION OF THIS AUGUST COURT.

- 1) Whether the impugned order dated 18.01.2013 passed by hon'ble KPK Services Tribunal, Peshawar, is not against law, facts and record of the case; hence untenable?
- 2) Whether the appraisal of evidence and the findings of the hon'ble Tribunal are not arbitrary, suffers from misreading and

non-reading of evidence, misconstruction of materials available on record, misconception of law and legal infirmity?

- 3) Because services of the petitioner have not been regularized with effect from the date of initial appointment merely on the basis of discrimination, favoritism and nepotism, otherwise, he was entitled to graded pay and seniority from that date.
- 4) Whether the petitioner has not been discriminated because benefit of regularization from the date of initial appointment given to similarly placed person namely Dr. Muhammad Iqbal, Medical Officer and the petitioner was also entitled to the same treatment?
- 5) Whether the petitioner has to been discriminated because the other departments as well as the Autonomous bodies of the province have awarded graded pay, seniority and regularization with effect from the date of their initial appointment, which is against the fundamental rights enumerated in Constitution of Pakistan, 1973?
- 6) Because all the citizens are equal before law and should be dealt with equally under Article 4 and 25 of the Constitution of Islamic Republic of Pakistan.
- 7) Whether the hon'ble Services Tribunal has not the power to hear and decide cases in which the vires of notifications have been challenged on ground of discrimination?
- 8) Because the seniority in the grade to which a civil servant is promoted shall take effect from the date of regular appointment to the post in that grade.
- 9) Because period during which an employee hold a post as an contract appointee can be taken into consideration for pay and pensionary benefits and as regards promotion and move-over to the next higher grade period for contract service followed by regular service in the scale shall also be counted towards length of service provided for promotion or move-over in the

higher scale subject to the condition that there is no break of service.

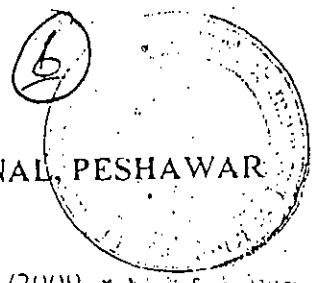
- 10) Because the petitioner having the prescribed qualification at the time of initial appointment was entitled for regularization of his service from the date of initial appointment, but has been denied the same benefit for no obvious reason.
- 11) Because it is pertinent to mention here that on promulgation of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 the services of the petitioner were regularized with immediate effect.
- 12) Whether the impugned notification is not against, law, illegal, without lawful authority, unlawful and without lawful jurisdiction?
- 13) Whether the Hon'ble Tribunal had not failed to appreciate the case in its true perspective by not applying judicial mind, which resulted into grave illegality and injustice?
- 14) Whether the judgment of the hon'ble Tribunal is not fraught with the palpable imprints of legal infirmities culminating in grave miscarriage of justice?
- 15) Whether the hon'ble Service Tribunal has not deviated from the settled principles of law governing the appraisal and evaluation of evidence when undue weight was attached to inadmissible evidence of respondents?
- 16) Whether the impugned order is not violative of section 24-A of General Clauses Act, 1897?
- 17) Whether the hon'ble Service Tribunal has not committed gross illegality and irregularity while dismissing the appeal of the petitioner?
- 18) Error is patent on the face of record.

(4)

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II. THE STATEMENT OF FACTS GIVING RISE TO THE LAW POINTS IS AS UNDER:

- 1) That the petitioner was initially appointed as Medical Officer, on contract basis, in the Health Department in prescribed manner through Departmental Selection Committee on 25.11.1995. The contract appointment of the petitioner was renewed/ extended from time to time. Meanwhile the NWFP Civil Servant Act, 1973 was amended.
- 2) That vide NWFP Civil Servant (Amendment) Act, 2005 published in the official gazette on 23.07.2005, section 19 was amended, whereby all the contract employees made between the period of 01.07.2001 to 23.07.2005 were regularized.
- 3) That in pursuance of the above said amendment, the petitioner submitted an application dated 13.06.2007 to the effect that the Department may be pleased to issue the notification of regularization of the petitioner and to implement the above mentioned Amendment Act, but no reply was given.
- 4) That the petitioner along with other colleague filed writ petition No.1677/2007 in Peshawar High Court, which was accepted on 18.11.2008 and petitioner was declared regular employee. The Department also accepted the decision and did not file appeal before the august Supreme Court of Pakistan, thus the matter attained finality.
- 5) That during pendency of the above said writ petition the petitioner came to know that one Dr.Muhammad Iqbal, who had been granted extension for 3 years with them vide Notification SO(Estab) H-IV/3-18/2003 dated 08.01.2004, has already been regularized vide Notification No.SO(E)H-11/3-18/2006 dated 09.12.2006 w.e.f the initial date of appointment.
- 6) That to the utter surprise of the petitioner his services were regularized with effect from 23rd July 2005 under sub-section (2) of Section 2 of NWFP Civil Servants (Amendment) Act, 2005 vide Notification No.SO(E)H-II/1/31/2009 dated 10th July, 2009.



BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 1915 /2009

Dr Rizwanullah Khan, I/C Medical Officer,
Civil Dispensary, Hussain Abad,
Peshawar.

Service
Entry No 2002
Date 9-12-09
Appellant

Versus

- 1. Government of NWFP Through its Chief Secretary, Peshawar.
- 2. Secretary to Government of NWFP, Health Department.
- 3. Director General Health Services, NWFP, Peshawar.

Respondents

Ex-Parte
disorder sheet
4/8/10
Ex-Parte
order on 21-9-2010

Appeal under section 4 of NWFP Service Tribunal Act, 1974.

Prayer:-

On acceptance of this appeal the respondent be directed to regularize the appellant with effect from the date of initial appointment as Medical Officer and grant them graded pay and seniority with effect from his initial date of appointment.

Respectfully Sheweth,

The appellant respectfully submits as follows:

1. That the appellant was initially appointed as Medical Officer, on contract basis, in the Health Department in prescribed manner through Departmental Selection Committee on 25-11-1995. The contract appointment of the appellant was renewed/extended from time to time. Meanwhile the NWFP Civil Servant Act, 1973 was amended
2. That vide NWFP Civil Servant (Amendment) Act, 2005 published in the official gazette on 23-07-2005, Section 19 was amended, whereby all the contract employments made between the period of 01-07-2001 to 23-07-2005 were regularized.
3. That in pursuance of the above said amendment, the appellant submitted an application dated 13-06-2007 to the effect that the Department may be pleased to issue the notification of regularization

Filed to Govt
Secretary
9/2/09

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18.1.2013.

Appellant with counsel and Mr. Sher Afgan Khattak, AAG for the respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day and placed on file, this appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
18.1.2013.

A Self-Member
Self-Member

Clerk
[Signature]
Khyber Pakhtunkhwa
Services Commission,
Peshawar

400 25/2/13
4.00
4-00
11-3-13
11-3-13

Date of...

EXTRAORDINARY
GOVERNMENT



15
Annex-IV 72
REGISTERED NO. III
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 22ND JANUARY, 2013.

**PROVINCIAL ASSEMBLY SECRETARIAT KHYBER
PAKHTUNKHWA**

NOTIFICATION

Dated Peshawar, the 22nd January 2013.

No. PA/Khyber Pakhtunkhwa/Bills/2013/2048.— The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill, 2013 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 15th January, 2013 and assented to by the Governor of the Khyber Pakhtunkhwa on 17th January, 2013 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

**THE KHYBER PAKHTUNKHWA CIVIL SERVANTS
(AMENDMENT) ACT, 2013**

(KHYBER PAKHTUNKHWA ACT NO. III OF 2013)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa (Extraordinary), dated 22nd January, 2013).

AN
ACT

further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973.

Preamble. WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title and commencement.— (1) This Act may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013.
(2) It shall come into force at once and shall be deemed to have taken effect from 30th day of June, 2001.

Attested
S. S. Dogar

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506 KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 22nd JANUARY, 2013.

2. Substitution of section 19 of Khyber Pakhtunkhwa Act No. XVIII of 1973.---In the Khyber Pakhtunkhwa Civil Servants Act (Khyber Pakhtunkhwa Act NO. XVIII of 1973), for section 19, the following shall be substituted, namely,

"19 Pension and gratuity.--- (1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.

(2) In the event of death of a civil servant, whether before or after retirement, his family shall be entitled to receive such pension or gratuity, or both, as may be prescribed.

(3) 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 civil servant, not exceeding two-third of the pension or gratuity which would have been admissible to him had he been invalided from service on the date of such dismissal or removal.

(4) If the determination of the amount of Pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualifies for pension or gratuity, and any over payment on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family:

Provided that those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis:

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Provided further that the amount of Contributory Provident Fund subscribed by the civil servant shall be transferred to his General Provident Fund.

(5) In case any difficulty arises in giving effect to any of the provisions of this section, the Secretary to Government, Establishment Department shall constitute a Committee comprising of the Secretary to Government, Finance Department, Secretary to Government Law Department and Accountant General, Khyber Pakhtunkhwa for removal of the difficulty."

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

Attested
S. S. S.

(AMANULLAH)
Secretary,
Provincial Assembly of Khyber Pakhtunkhwa.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 528/2018

Dr. Rizwanullah Khan Deputy Director (HRM) DGHS, Peshawar..... Petitioner

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary.
2. Secretary Health Khyber Pakhtunkhwa.
3. Director General Health Services, Khyber Pakhtunkhwa
4. Secretary Establishment Department Peshawar.
5. Secretary Finance Department..... Respondent

PARAWISE COMMENTS. *on behalf of receipts no-2 to*

Preliminary objections.

- I. That the appeal is flawed both in law and on facts thereby making it indefensible.
- II. That the appellant has not approached this Hon'ble Tribunal with clean hands.
- III. That the appellant has got no cause of action, therefore *submitting* the appeal not maintainable under Article 212 of the Constitution of Pakistan, 1973.
- IV. That the appellant has already availed the remedy at this Hon'ble Tribunal and Hon'ble Peshawar High Court Peshawar. —

Respectfully Sheweth:

1. Correct to the extent that the appellant alongwith his other colleagues were appointed as Medical Officer (BS-17) in 1995 on contract basis as stopgap arrangement through Departmental Selection Committee and their contract appointment renewed from time to time till the commencement of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005. Meanwhile, the law with regard to appointment of persons, on regular basis abandoned on 30.6.2001 and the law of appointment on contract basis were adopted on 1.7.2001 throughout the Province, however, on commencement of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, the law of appointment on regular basis was restored with effect from 23.7.2005 i.e from the day of the commencement of the

14/11/2019

Act of 2005. The mechanism for appointment in BS-17 through prescribed manner is reproduced as under:-

"Section 7 of the Khyber Pakhtunkhwa Public Service Commission:- Function of the Commission,--- (1) The function of the commission shall be,-

- (a) To conduct test and examination for recruitment of persons to,--
- (i) The civil services of the province and civil posts in connection with affairs of the Province in basic pay scale 16 and above or equivalent,

2. It is submitted that Sub-Section (2) of Section 2 of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 provides that a person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001 till the commencement of the said Act but appointed on contract basis shall with effect from the commencement of said Act be deemed to have been appointed on regular basis. **(Annex: I)**. Those who were appointed as Medical Officer on contract basis through prescribed manner i.e. on the recommendations of the Khyber Pakhtunkhwa Public Service Commission, were brought on regular basis w.e.f 23.7.2005. The contract services of the appellant (Dr. Rizwanullah Khan) including his colleagues doctors whose appointment were made through Departmental Selection Committee (other than the prescribed manner) as MO on contract basis in 1995, were not regularized by the Department. Hence, a number of petitions (including the appellant) were filed before the Hon'ble Peshawar High Court Peshawar in the year 2007 and 2008 regarding regularization of their contract services. This Hon'ble Court vide judgment dated 18.11.2008 in writ petition No.1510/2007, "Titled Dr. Rizwanullah & others vs Govt of Khyber Pakhtunkhwa alongwith all other similar petitions ordered the regularization w.e.f 23.7.2005, the verdict of which is as follow **(Annex: II)**:-

"after interpreting all the provisions of law relevant to the subject, it is held that the petitioners have been duly regularized in view of the provisions of section-2, sub section-2 of the Amendment Act, 2005, all these petitions are allowed in the above terms and as a mere formality and for the purpose of preparing their service book/record, the appointing authorities/administrative secretaries of the petitioners may issue formal order/orders with regard to their inter-se-seniority and other relevant particulars required to be entered therein. The needful be done by all concerned by keeping the two dates, i.e terminus and quem and terminus a quo, within a period of one month positively."

The above judgment of the Hon'ble High Court was implemented and the services of the appellant (Dr. Rizwanullah Khan) was regularized w.e.f. 23.7.2005

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by extending the provisions of Regularization Act, 2005. The appellant has availed the remedy available to him at the proper forum. Hence, his subsequent appeals filed before this Hon'ble Tribunal is not maintainable under the law.

3. The appellant has concealed the facts from this Hon'ble Tribunal. Though the appellant had already availed the remedy as evident from his writ petition No. 1510/2007," Titled Dr. Rizwanullah & others vs Govt of Khyber Pakhtunkhwa & others the judgment dated 18.11.2008 of the Hon'ble Peshawar High Court ordered thereon, nevertheless, the appellant filed Service Appeal No. 1915/2009, titled Dr. Rizwanullah Khan vs Govt of Khyber Pakhtunkhwa etc wherein the appellant Dr. Rizwanullah prayed for regularization of his contract service from the date of his initial appointment i.e.1995. This Hon'ble Tribunal dismissed the appeal vide judgment dated 18.1.2013 (**Annex: III**). The appellant has filed appeal in the apex court against the judgment dated 18.1.2013 of this Hon'ble Tribunal (**Annex-IV**). The same is still pending in the August Supreme Court of Pakistan.

4. On the commencement of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013, the colleagues of the appellant who were 'petitioners in writ petition No.1510/2007 and connected petitions," Titled Dr. Rizwanullah & others vs Govt of Khyber Pakhtunkhwa and were beneficiary of the judgment dated 18.11.2008 in W.P.1510/2007 again filed writ petitions in the Hon'ble Peshawar High Court, Peshawar for their regularization from 1995 which the Hon'ble Court remanded to the Department for consideration.

The 1st proviso under sub section (4) of Section-2 of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 (**Annex: V**) provides that "those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 to 23.7.2005 on contract basis shall be deemed to have been appointed on regular basis.

Actually this proviso superseded the the provision of Sub Section (2) of Section 2 of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 regarding regularization from 23.7.2005. The proviso of the Civil Servants (Amendment) Act, 2013 has regularized the employees retrospectively from the dated of initial appointment made on or after 01.07.2001 instead of 23.7.2005. But have no retrospective effect before 1.7.2001. It is further submitted that the numerous judgment of the Hon'ble Supreme Court of Pakistan provides that "if the Service Tribunal or Supreme Court decides a point of law relating to the terms and conditions of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by service tribunal/supreme court be extended to other civil servants, who may not be parties to the litigation instead of

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compelling them to approach to service Tribunal or any other forum. (1996 SCMR 1185, 1995 PLC (C.S) 1137, 1984 SCMR, 286, 2006 PLC (CS)11, 2005 PLC (CS)368, 2009 SCMR 1, 2005 SCMR.499).

Keeping in view the judgment dated 18.11.2008 of the Hon'ble High Court in W.P.1510/2007 read with sub section-2 of Section-2 of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 read with 1st proviso under sub section (4) of Section-2 of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013, the services of the appellant and all similarly placed employees (litigant or non-litigant) who were appointed on contract basis in the year 1995, 1996, 1997 as Medical Officers, were regularized w.e.f. 01.07.2001 instead of 23.7.2005 vide Notification dated 17.10.2017. The Notification dated 1.11.2017 issued inadvertently was withdrawn. Hence the regularization order w.e.f 01.7.2001 has been issued under the provisions of law interpreted by the Hon'ble Peshawar High Court, Peshawar vide judgment dated 18.11.2008 in W.P. No.1570/2007.

For the purpose of regularization of contract employees reliance is placed on the case of Govt of Balochistan, Department of Health through Secretary Health vs Dr. Zahida Kakar and 43 others reported in 2005 SCMR 642 (A) which reads:

.....contract appointment,--- Scope,-- such appointment terminates on the expiry of contract or any extended period on the choice of employer or appointing authority,-- prima facie, such appointment does not create any vested right."

In another judgment of the apex court in Suo Moto action regarding regularization of the contract employees reported in 2013 SCMR 304 (b) it has been held:

---Contract employee --- Regular appointment, right of scope--
Contract employees did not have a vested right for regular appointment.

The Hon'ble Supreme Court of Pakistan in a recent judgment dated 3.1.2018 titled Workers Welfare Board, Khyber Pakhtunkhwa vs Nematullah etc has ordered that contractual employees have no right to be regularized until there is a law provided to that effect. (Annex: VI).

5. As explained in the preceding paras.
6. As explained in the preceding paras.
7. As explained in the preceding paras.

GROUND:

- a. Incorrect. As explained in the preceding paras.
- b. Incorrect. As explained in the preceding paras.
- c. Incorrect. As explained in the preceding paras.

LT. 2/14/11/2017

- d. Incorrect. As explained in the preceding paras.
- e. Incorrect. As explained in the preceding paras.
- f. Incorrect. As explained in the preceding paras.

It is therefore humbly prayed that the appeal in hand, being devoid of merit, may graciously be dismissed with cost.

Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.03)

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department.
(Respondent No.02)

Secretary to Govt. of Khyber Pakhtunkhwa
Establishment Department.
(Respondent No.04)

Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department.
(Respondent No.05)

A.A.G.

Submitted for Naating
Please. *[Signature]*
14/11/19

Vetted subject to necessary correction,
attachment of annexures and affidavit.

[Signature]
14/11/2019
Assistant Advocate General
Khyber Pakhtunkhwa
Service Tribunal Peshawar

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____ /20~~18~~²⁰
in
Service Appeal No 528 /2018

Dr Rizwanullah KhanAppellant

Versus

Government of KPK through Chief Secretary & othersRespondents

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S. No	Description of Document	Dated	Annex	Pg No
1.	Copy of application and affidavit			1-2
2.	Copy of Notification	01-11-17	A	3
3.	Copy of Notification	21-11-17	B	4
4.	Copy of Departmental Appeal under RTI Act		C	5

Appellant
Rizwanullah
17/11/20

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____/2020

in

Service Appeal No 528 /2018.

Dr Rizwanullah Khan : versus Govt of KPK through Chief Secty and others

Application for directing the respondents to place on file the approval note of worthy Chief Secretary Khyber Pakhtunkhwa and official correspondence before the issuance of Notification No SOH(E-II)/1-5/2017 dated 01-11-2017 and Notification No SOH(E-II)/1-5/2017 dated 21-11-2017

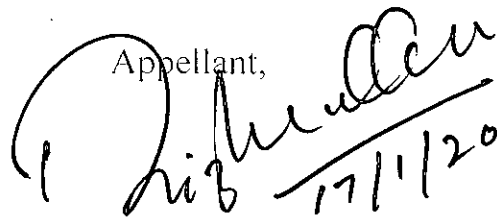
Respectfully Sheweth,

The appellatant submits as follows:

1. That the title Service Appeal is pending adjudication before this Honorable Tribunal and is fixed for hearing today.
2. That in order to arrive at a just and fair conclusion of the title Service Appeal, it is necessary to place on file the approval note of worthy Chief Secretary Khyber Pakhtunkhwa and official correspondence before the issuance of Notification No SOH(E-II)/1-5/2017 dated 01-11-2017 and Notification No SOH(E-II)/1-5/2017 dated 21-11-2017, hence this application for issuing appropriate directions to the respondents. (Copies of Notifications are **Annex-A & B** respectively)

It is, therefore, prayed that on acceptance of this application the respondents may kindly be directed to place on file the approval note of worthy Chief Secretary Khyber Pakhtunkhwa and official correspondence before the issuance of Notification No SOH(E-II)/1-5/2017 dated 01-11-2017 and Notification No SOH(E-II)/1-5/2017 dated 21-11-2017.

Appellant,


17/11/20



12/41
01/11/17

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Amer A

Dated Peshawar the 01st November 2017

~~Amir A~~

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NOTIFICATION

NO.SOH(E-II)/1-5/2017 In pursuance of Khyber Pakhtunkhwa Service Tribunal Appeal No.983/2014 dated 21.04.2017, Khyber Pakhtunkhwa Civil Servant Act 1973 amendment Acts-IX of 2005, III of 2013, read with Govt. of Khyber Pakhtunkhwa Finance Department letter dated 27.02.2013, S&GAD letter dated 15.08.2005, Establishment & Administration Department letter dated 22.07.2014 and further read with Supreme Court of Pakistan Judgment of CA 504 of 2008 dated 18.01.2012, 2014 SCMR 1289, 2016 PLD (SC) 534, 2009 SCMR 1, Peshawar High Court Judgments dated 09.09.2014 in WP No.1188 of 2012 and dated 22.06.2017 in WP No.3394, the service of Dr. Rizwanullah Khan, SMO, BS-18 presently working as Deputy Director (HRM), Directorate General Health Services Khyber Pakhtunkhwa is regularized w.e.f. 01.07.2001 with all back benefits including Pension and seniority w.e.f his initial date of contractual appointment dated 25.11.1995 due to continuous officiating service followed by regularization.

SECRETARY HEALTH
KHYBER PAKHTUNKHWA

Endst. No. & Date even.

Copy to:

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. Section Officer (Lit-II), Health Department.
5. PS to Secretary Health Department.
6. Doctor concerned.

(Jibreez Raza)
SECTION OFFICER (E-II)

OFFICE OF THE DIRECTOR GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR.

No. 2724-31 E-I

Dated Peshawar the 01.11.2017

Copy forwarded to for information & necessary action.

1. Accountant General Khyber Pakhtunkhwa.
2. Additional Director General (HRM) DGHS Office Peshawar.
3. Additional Director General (Admn:) DGHS Office Peshawar.
4. Director (Admn: /HRM) DGHS Office Peshawar.
5. Deputy Director (Accounts) DGHS Office Peshawar.
6. PA to Director General Health Services Khyber Pakhtunkhwa.
7. Doctor Concerned.
8. AE-IV DGHS Office Peshawar

ATTESTED

Additional Director General (HRM)
DIRECTORATE GENERAL HEALTH
SERVICES KHYBER PAKHTUNKHWA PESHAWAR