**IN THE PESHAWAR HIGH COURT, MINGORA BENCH**
**OPENING SHEET FOR WRIT BRANCH**

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| Date of Filing: 27.02.2025 |
| District: MALAKAND |

Case Type: Writ Petition  Nature of Original Proceeding:

Category Code: [ ][ ][ ][ ][ ][ ]

*(Categories & Sub categories are given at the back of the opening sheet)*

Review/ Contempt of Court in respect [ ] of:

Writ of:

| Heabus Corpus | | Prohibition | | Mandamus | | Quo Warranto | | Certiorari | |
|---|---|---|---|---|---|---|---|---|---|

If Certiorari:

| Forum which passed impugned order | Date | (I)nterlocutory/ (F)inal Order |
|---|---|---|
| | | |
| | | |
| | | |

Case Pertains to
☐ SB
☐ DB

| | |
|---|---|
| Petitioner Name | **Zia Ur Rahman** |
| Mobile No. | |
| Address | **Dheri Alladand, Tehsil Batkhela, District Malakand.** |
| CNIC No. | |

| | |
|---|---|
| Counsel for Petitioner (s) | **SHAH FAISAL Adv** |
| Mobile No. | **0312-9992347** |
| Address | **High Court Bench Mingora Swat** |

| | |
|---|---|
| Respondents | **Govt of KP & others** |
| Address | **District Malakand** |

**Original Order/Action/Inaction Complained of:**

**Writ petition against the respondents**

**Prayer:**
For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the impugned office order dated 04.03.2025 whereby Petitioner was retired from service, as without lawful and hence of no legal effect and be set aside, this august Court may further be pleased to direct the Respondents to act in the matter in accordance with law and to re-instate Petitioner into service on the principle of equality in light of office order dated 03.12.2024 (whereby levies personals were reinstated in service in compliance of judgment of this Hon'ble Court) and Writ Petition No. 6593-P/2024 w.e.f. the due date with all consequential back benefits

**Law/Rules/governing the original proceedings/action/Inaction**
**U/S 199 of Constitution of Pakistan.**

**Signature of petitioner or counsel:** _____ **dated:** 26-02-2025

Filed Today

07 MAR 2025

Additional Registrar

**BEFORE THE PESHAWAR HIGH COURT, MINGORA BENCH**

*W.P No. 256 -M/2025*

*Zia Ur Rahman.....(Petitioner)*

***VERSUS***

*Govt of Khyber Pakhtunkhwa & others.....(Respondents)*

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*Petitioners*

*Through*

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***SHAH FAISAL***

***Advocate High Court.***
*Cell No. 0344-9634277*
*Office: District Courts Batkhela*

Noted for
AAG
Sign.....
Date.....

8

(1)

# BEFORE THE PESHAWAR HIGH COURT, MINGORA BENCH

*W.P No.* 256 *-M/2025*

***Zia Ur Rahman son of Badshah Rahman,***

*Resident of Dheri Alladand, Tehsil Batkhela, District Malakand.*

*.....(Petitioner)*

**VERSUS**

1. ***Govt. of Khyber Pakhtunkhwa***

   *through* ***Chief Secretary,***

   *Khyber Pakhtunkhwa at Peshawar.*

2. ***The Secretary Home Department,***

   *Govt of Khyber Pakhtunkhwa at Peshawar.*

3. ***Deputy Commissioner/Commandant,***

   *District Malakand at Batkhela.*

*.....(Respondents)*

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

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**Respectfully Sheweth:**

Brief facts of the instant Writ Petition are as under:

1. That Petitioner being citizen of Pakistan having all the fundamental rights which have been incorporated in the body of the Constitution of Islamic Republic of Pakistan, 1973, and is supposed to be treated in the accordance with and rules.

2. That Petitioner was enlisted into the service way back in the year ~~1988~~ 2009 and thereafter, he was promoted to the rank of Sepoy and enlisted into the Seniority List of Subedars (BPS-16). (Copy of appointment order is attached as Annexure: -A)

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3. That as a matter of fact by virtue of 18th Constitutional Amendment the erstwhile FATA and PATA were merged into the territory of the Khyber Pakhtunkhwa, while as per purview of 25th Constitutional Amendment the Levies Forces underwent various changes in the Rules pertaining to the terms and conditions of the Services of their personals. Copy of the PATA Force Regulation, Rules and Subsequent Amendments made in the rules. (Copy of the Rules is attached is attached as Annex:-B).

4. That under the above-mentioned rules certain employees got retired from services on reaching either a certain age or completing certain length of service or on completion of tenure against the certain posts which was assailed before this Hon'ble Court. During pendency of the petitions the Provincial Assembly was pleased to pass the Act, whereby certain employees already retired from services were re-instated into service. (Copy of Act is attached as Annex:-C)

5. That in this predicament referred Petitioners who were not re-instated into service after retirement invoked the jurisdiction of this Hon'ble Court by way of filing Writ Petitions. After extensive arguments this Hon'ble Court was pleased to allow the Petitions vide consolidated judgment dated 23.11.2022 (Annex:-D). The operative part is being reproduced herein below for ease to reference:-

> ***"Accordingly, both the connected Writ Petitions bearing No. 1281-M/2022 and 1283-M/2022 are allowed and the Petitioners are re-instated in service of the Levies Force with effect from the date of their retirement and it shall be deemed that they have never been retired and consequently the respondents are directed to issue formal orders of their re- instatement in service in light of section 11 of The Act of 2021. Order accordingly".***

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6. The judgment ibid, was complied with by the Respondent Department by re-instating all the employees into service who were retired as is evident from the Office Order dated 04.03.2025. (Copy of the office order dated 04.03.2025 is attached as Annex: -E).

7. That Respondent Department despite the order ibid, wanted to retire Levies Employees from service under the Malakand Levies Amended Rules 2021 and held meeting on 26.09.2023. The employees/colleagues of the Petitioner being disgruntled once again knocked the door the this Hon'ble Court and filed Writ Petitions, wherein Hon'ble Court was pleased to grant interim relief that shall not be retired from service which is evident from the Order Sheets dated 11.10.2023, 20.12.2023 and 21.02.2024 (Copies of meeting held on 26.09.2023 and order sheets are attached as Annex:-F)

8. That the above captioned Writ Petitions came for hearing and disposed off vide of consolidated judgment dated 17.10.2024 (Annex:-G) with the directions to the Provincial Government to adjudicate upon the matter of absorption of Levies Personnel via High Power Committee or place the matter before the Cabinet by invoking the contents of Articles- 4&25 of the Constitution, 1973. Petitioner alongwith others Levies Personals got retired from service under Federal Levies Rules, 2021, Amendment Service Levy Rules 2021 Schedule III vide impugned office order dated 04.03.2025 (Annex:-H) in spite of the judgment and retraining orders of this Hon'ble Court. It is further apprised that Petitioner alongside others availed the remedy of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Service Appeals were decided by virtue of consolidated judgment dated 24.08.2023 (Annex:-I) and it was declared that the subsequent amendment made in the year 2021 does not exist and matter shall be reverted to the amendments made in the year 2020 whereby uniform retirement age of Sixty years for all members of the force.

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9. That as a matter of reference Writ Petition No. 696-M/2024 is pending adjudication before this Hon'ble Court wherein 77 referred Petitioners got retired from their service on 27.11.2024 (Annex:-J), comments were called from them and operation of the impugned order was suspended whereby they got retired from service, order Sheet was provided to the Respondent Department which was complied with by withdrawing the retirement orders till the further orders of the Hon'ble Court/ Provincial Government vide Office Order dated 03.12.2024 (Annex:-K).

10. That similarly placed Levies employee has also brought his grievances in Writ Petition No.6593-P/2024 wherein similar relief was granted vide judgment dated 02.01.2025 (Annex: -L). Petitioner being lamented also submitted application (Annex: -M) for the same relief but no heed was paid.

11. That appellant being mortally discontented of the acts and omissions of the Respondent Department, files this Writ Petition inter-alia on the following grounds: -

**GROUNDS:**

A. That Respondents have not treated Petitioner in accordance withdraw, rules and policy on subject and acted in violation of Articles 4 and 10A of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully refused to extend the benefit of the judgment of this Hon'ble Court, which is unjust, unfair and hence not sustainable in the eye of law.

B. That admittedly Writ Petition No. 1281-M/2022 & 1283-M/2022 decided/allowed on 23.11.2023 by re-instating Levies Employees into services, who were retired under the old rules before reaching to the date of Sixty years. Likewise, similarly placed employees were also granted same relief by means of Order Sheets dated 11.10.2023, 20.12.2023 and 21.02.2024 and office order dated 3.12.2024 whereby in compliance order of this

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Hon'ble Court retirement orders were withdrawn, therefore, Petitioner is also entitled for the same relief being similarly placed under the principle of consistency and equality as per the judgments laid down by Hon'ble Supreme Court of Pakistan in the cases of "Hameed Akhtar Niazi ...Vs... The Secretary Establishment Division, Government of Pakistan and others" reported in 1996 SCMR 1185 and in the case of "Tara Chand and others...Vs... Karachi Water and Sewerage Board, Karachi and others" reported in 2005 SCMR 499 and another Judgment reported in 2009 SCMR 1 wherein it has been laid down that "when a Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covered not only the case of the civil servants who litigated, but also of other civil servants, who might have not taken any legal proceedings, the dictates of justice and rules of good governance demand that the benefits of the decision be extended to the other civil servants, who might not be parties to the litigation instead of compelling them to approach the Tribunal or any other forum."

C. That the Objective Resolution which has been made as substantive part of the Constitution under Article 2A thereof and is considered as sheet anchor of it provides for equality, social justice as enunciated by Islam and guarantees Fundamental Rights and before law, social economic and political justice etc. thus the very scheme of Constitution castes a bounden responsibility on all and sundry about the equality and equal protection of law. Viewed from this angle the refusal on the part of the Respondents to equalize the position of Petitioners with other similarly placed persons is an affront to the Resolution referred above and hence not sustainable.

D. That under Article 8 of the Constitution of the Islamic Republic of Pakistan, 1973 if any law, any custom or usage having the force of law if repugnant to the Fundamental Rights is void to the extent of its inconsistency and State has been prohibited from making law which takes away or abridge such rights. Article 25

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dictates that all are equal before law and entitled to equal protection of law which is also the basic concept of Islam under which all persons similarly placed in similar circumstances must be treated alike and when certain rights were made available to one or more persons similarly placed then all such persons similarly placed with them would stand entitled to such rights. Thus in this backdrop of the matter Petitioners have been highly discriminated, therefore, the acts and actions of the Respondents militate against the concept of equality and equality in service as enshrined in Articles-25&27 of the Constitution of Islamic Republic of Pakistan, 1973.

E. That in the same sequence the Principles of Policy incorporated in Chapter-2 of the Constitution which have also been made the responsibility of each organ and authority of the State to act upon it in so far as the same relate to the functions of the organs or authority, directs for the discouragement inter-alia of the Provincial prejudices amongst the citizens; the promotion with special care of the educational and economic interest of the backward classes; for promotion of social justice and for the eradication of social evils; the promotion of social and economic well- being of the people including equality in earnings of individuals in various classes of the service of Pakistan.

F. That further grounds, with leave of the Hon'ble Court would be raised after adverting the stance of the opposite side.

**For the aforesaid reasons**, it is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the impugned office order dated 04.03.2025 whereby Petitioner was retired from service, as without lawful and hence of no legal effect and be set aside, this august Court may further be pleased to direct the Respondents to act in the matter in accordance with law and to re-instate Petitioner into service on the principle of equality in light of office order dated 03.12.2024 (whereby levies personals were reinstated in service in compliance of judgment of this Hon'ble

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Court) and Writ Petition No. 6593-P/2024 w.e.f. the due date with all consequential back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to Petitioners.

***INTERIM RELIEF:***

*By way of interim relief, the operation of the impugned office order dated 04.03.2025 may graciously be suspended till the final disposal of the instant writ petition.*

*Petitioner*

*Through*

***SHAH FAISAL***

*Advocate High Court*

***CERTIFICATE:***

*Certified that no such like Writ Petition has earlier been filed by the petitioner on the subject matter before this Hon'ble Court.*

***ADVOCATE***

***LAW BOOKS:***

1. *Constitution of Islamic Republic of Pakistan, 1973.*
2. *Any Law Book as per need.*

***ADVOCATE***

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**BEFORE THE PESHAWAR HIGH COURT, MINGORA BENCH**

*W.P No.* 256 *-M/2025*

*Zia Ur Rahman.....(Petitioner)*

***VERSUS***

*Govt of Khyber Pakhtunkhwa & others.....(Respondents)*

**AFFIDAVIT**

**I, Zia Ur Rahman (petitioner)**, do hereby the solemnly affirm and declares that, the contents of this **writ petition** are true and correct to the best of my knowledge and belief and nothing has been kept concealed or withheld from this august court.

*DEPONENT*

**ZIA UR RAHMAN**

S.No 1012
Certified that the above was verified on Solemn affirmation before me on this 07 day of 03-2025
by Zia ur Rehman
S/o Bandeh Ali Rehman R/o Mateera
who was identified by Self
~~Who is personally known to me.~~

07-03-2025
Oath Commissioner
Peshawar High Court
Mingora Bench/Dar-ul-Qaza, Swat.

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**BEFORE THE PESHAWAR HIGH COURT, MINGORA BENCH**

*W.P No. 256 -M/2025*

*Zia Ur Rahman.....(Petitioner)*

***VERSUS***

*Govt of Khyber Pakhtunkhwa & others.....(Respondents)*

## ADDRESSES OF THE PARTIES

**PETITIONER:**

***Zia Ur Rahman son of Badshah Rahman,***

*Resident of Dheri Alladand, Tehsil Batkhela, District Malakand.*

*Cell No.* 0312 9992347 *CNIC:* 15402 2036428-3

**RESPONDENTS:**

1. ***Govt. of Khyber Pakhtunkhwa***

   *through* ***Chief Secretary,***

   *Khyber Pakhtunkhwa at Peshawar.*

2. ***The Secretary Home Department,***

   *Govt of Khyber Pakhtunkhwa at Peshawar.*

3. ***Deputy Commissioner/Commandant,***

   *District Malakand at Batkhela.*

*Petitioners*

*Through*

***SHAH FAISAL***
*Advocate, High Court*

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