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GOVERNMENT OF KHYBER PAKHTUNKHWA

THE KHYBER PAKHTUNKHWA CIVIL SERVANTS ACT, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973)

Compiled by:

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GOVERNMENT OF KHYBER PAKHTUNKHWA

THE ¹KHYBER PAKHTUNKHWA CIVIL SERVANTS ACT, 1973
(Khyber Pakhtunkhwa Act No. XVIII of 1973)

²An Act to regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of the Khyber Pakhtunkhwa.

Preamble- WHEREAS it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons in, the service of the Khyber Pakhtunkhwa, and to provide for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:-

1. Short title, application and commencement:- (1) This Act may be called the Khyber Pakhtunkhwa Civil Servants Act, 1973.

(2) This section and section 25, shall apply to persons employed on contract, or on work charged basis, or who are paid from contingencies, and the remaining provisions of this Act including this section, shall apply to all civil servants wherever they may be.

(3) It shall come into force at once.

CHAPTER-I

PRELIMINARY

2. Definitions:- (1) In this Act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "ad hoc appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method,
- (b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include-
 - (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
 - (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or

¹ For the words "NWFP" or "North-West Frontier Province", wherever occurred, the words "Khyber Pakhtunkhwa" substituted by the Khyber Pakhtunkhwa Laws (Amendment) Act, 2011 (Khyber Pakhtunkhwa Act No. IV of 2011) published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 2nd April, 2011

² Published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 12-11-1973 at pages 287 N-287V

- (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923);
- (c) "Government" means the Government of the Khyber Pakhtunkhwa.
- (d) "Initial appointment" means appointment made otherwise than by promotion or transfer;
- (e) "Pay" means the amount drawn monthly by a civil servant as pay, and includes special pay, personal pay and any other emoluments declared by the prescribed authority to be paid ;
- (f) "Permanent post" means a post sanctioned without limit of times;
- (g) "Prescribed" means prescribed by rules;
- (h) "Province "means the Khyber Pakhtunkhwa;
- (i) "rules" means rules made or deemed to have been made under this Act ;
- (j) "Selection authority" means the Khyber Pakhtunkhwa Public Service Commission, a departmental selection board, departmental selection committee or other authority or body on the recommendations of, or in consultation with which any appointment or promotion, as may be prescribed, is made;
- (k) "temporary post" means a post other than a permanent post.
- (2) For the purpose of this Act, an appointment, whether by promotion or otherwise, shall be deemed to have been made on regular basis if it is made in the prescribed manner.

CHAPTER-II

TERMS AND CONDITIONS OF SERVICE OF CIVIL SERVANTS

- 3. Terms and Conditions:-** The terms and conditions of service of a civil servant shall be as provided in this Act and the rules.
- 4. Tenure of office of civil servants:-** Every civil servant shall hold office during the pleasure of the Governor.
- 5. Appointment:-** Appointment to a civil service of the Province or to a civil post in connection with the affairs of the Province shall be made in the prescribed manner by the Governor or by a person authorized by the Governor in that behalf.
- 6. Probation:-** (1) An initial appointment to a service or post referred to in section 5, not being an ad hoc appointment, shall be on probation as may be prescribed.

(2) Any appointment of a civil servant by promotion or transfer to a service or post may also be made on probation as may be prescribed.

(3) Where, in respect of any service or post, the satisfactory completion of probation includes the passing of a prescribed examination, test or course or successful completion of any training, a person appointed on probation to such service or post who, before the expiry of the original or extended period of his probation, has failed to pass such examination or test or to successfully complete course or the training shall, except as may be prescribed otherwise-

- (a) if he was appointed to such service or post by initial recruitment, be discharged; or
- (b) if he was appointed to such service or post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and against which he holds a lien or, if there be no such service or post, be discharged:

Provided that in the case of initial appointment to a service or post, a civil servant shall not be deemed to have completed his period of probation satisfactorily until his character and antecedents have been verified as satisfactory in the opinion of the appointing authority.

7. Confirmation :- (1) A person appointed on probation shall, on satisfactory completion of his probation, be eligible for confirmation in a service or, as the case may be, a post as may be prescribed.

(2) A civil servant promoted to a post ¹[] on regular basis shall be eligible for confirmation after rendering satisfactory service for the period prescribed for confirmation therein.

(3) There shall be no confirmation against any temporary post.

(4) A civil servant who, during the period of his service, was eligible to be confirmed in any service or against any post retires from service before being confirmed shall not, merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing there-from.

(5) Confirmation of a civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post or from the date of continuous officiation, in such service or post, whichever is later.

8. Seniority:- (1) For proper administration of a service, cadre or ²[post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or ³[post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or ⁴[post] as the case may be.

¹ The words "or grade" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

² The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

³ The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

⁴ The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or ¹[cadre] whether serving the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, ²[cadre] or post shall be determined as may be prescribed.

³(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.

⁴(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

9. Promotion:-(1) A civil servant possessing such minimum qualifications as may be prescribed, shall be eligible for promotion to a ⁵[higher] post for the time being reserved under the rule for departmental promotion in ⁶[] the service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non selection post to which promotion shall be made as may be prescribed-

(a) in the case of a selection post, on the basis of selection on merit; and

(b) in the case of non-selection post, on the basis of seniority-cum-fitness.

10. Posting and Transfer:- Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that, where a civil servant is required to serve in a post outside his service or cadre , his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. Termination of service:- (1) The service of a civil servant may be terminated without notice-

(i) During the initial or extended period of his probation:

¹ The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

² The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

³ Sub section (4) of Sec-8 substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

⁴ Sub section (5) of Sec-8 added by Khyber Pakhtunkhwa Act No. I of 1989

⁵ The word "higher" inserted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

⁶ The words "the higher grade of" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one [service], cadre or post to another [service], cadre or post, his service shall not be so terminated so long as he holds a lien against his former post in such ¹[service] or cadre, but he shall be reverted to his former ²[service], cadre or post, as the case may be;

- (ii) On the expiry of the initial or extended period of his employment; or
- (iii) if the appointment is made ad hoc terminable on the appointment of a person on the recommendation of the selection authority, on the appointment of such person.

(2) Where, on the abolition of a post or reduction in the number of posts in a cadre or grade, the services of a civil servant are required to be terminated, the person whose services are terminated shall ordinarily be the one who is the most junior in such cadre or grade.

(3) Notwithstanding the provisions of sub-section (1), but subject to the provisions of sub-section (2), the service of a civil servant in temporary employment or appointed ad hoc shall be liable to termination on fourteen days' notice or pay in lieu thereof.

³11-A. Absorption of civil servants rendered surplus. Notwithstanding anything contained in this Act, the rules made there-under, any agreement, contract or the terms and conditions of service, a civil servant who is rendered surplus as a result of re-organization or abolition of a department, office or abolition of a post in pursuance of any Government decision may be appointed to a post, carrying basic pay scale equal to the post held by him before such appointment, if he possesses the qualifications and fulfils other conditions applicable to that post:

Provided that, where no equivalent post is available, he may be offered a lower post in such manner and subject to such conditions as may be prescribed, and where such civil servant is appointed to a lower post, the pay being drawn by him in the higher post immediately preceding his appointment to a lower post shall remain protected.

12. Reversion to a lower ⁴post:- A civil servant appointed to a higher post or ⁵[before the commencement of the Khyber Pakhtunkhwa Civil Servants amendment] Ordinance, 1985 to a higher] grade ad hoc or on temporary or officiating basis shall be liable to reversion to his lower post ⁶[] without notice.

⁷12-A. Certain persons to be liable to removal or reversion:- Notwithstanding Notwithstanding anything contained in his terms and conditions of service, a civil servant appointed or promoted during the period from first day of January, 1972 to the fifth day of July, 1977 may be removed from service or reverted to his lower post as the

¹ The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

² The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

³ The new Section "11-A" inserted by Khyber Pakhtunkhwa Ordinance No. VI of 2001

⁴ The words "grade or service" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

⁵ The words inserted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

⁶ The words "or grade" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985

⁷ Section 12A inserted by Khyber Pakhtunkhwa Ordinance No. IX of 1978.

case may be, without notice, by the Governor or a person authorized by him in this behalf, on such date as the Governor or, as the case may be, the person so authorized may, in the public interest, direct.

13. Retirement from service: - (1) A civil servant shall retire from service-

- (a) on such date after he has completed ³[twenty] years of service qualifying for pension or other retirement benefits as the competent authority may, in public interest, direct; or
 - (b) where no direction is given under clause (a), on the completion of sixtieth year of his age.
- (2) No direction under clause (a) of sub-section (1) shall be made until the civil servant has been informed in writing of the grounds on which it is proposed to make the direction, and has been given a reasonable opportunity of showing cause against the said direction.

Explanation: In this section, the expression “competent authority” means the appointing authority prescribed in rule 4 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

14. Employment after retirement:- (1) A retired civil servant shall not ordinarily be re-employed under Government, unless such re-employment is necessary in the public interest and is made with the prior approval of the authority next above the appointing authority:

Provided that, where the appointing authority is the Governor, such re-employment may be ordered with the approval of the Governor.

(2) Subject to the provision of sub-section(1) of section 3 of the Ex-Government Servants (Employment with Foreign Governments) (Prohibition) Act, 1966 (Act XII of 1966), a civil servant may, during leave preparatory to retirement, or after retirement from Government service, seek any private employment:

Provided that, where employment is sought by a civil servant while on leave preparatory to retirement or within two years of the date of his retirement, he shall obtain the prior approval of the prescribed authority.

15. Conduct:- The conduct of a civil servant shall be regulated by rules made, or instructions issued, by Government or a prescribed authority, whether generally or in respect of a specified group or class of civil servants.

16. Disciplinary action:- A civil servant shall be liable to prescribed disciplinary action and penalties in accordance with the prescribed procedure.

17. Pay:- A civil servant appointed to a post ⁴[] shall be entitled, in accordance with the rules, to the pay sanctioned for such post ¹[].

¹ Section 13 substituted vide Khyber Pakhtunkhwa Civil Servants (Amendment) Act 1991(Act III of 1991)

² Section 13 again substituted vide Khyber Pakhtunkhwa Civil Servants (Amendment) Ordinance 2000 (Khyber Pakhtunkhwa Ordinance No. VIII of 2000).

³ The word “twenty-five” years substituted with the words “twenty” in Section 13 vide Khyber Pakhtunkhwa Civil Servants (second amendments) Ordinance 2001.

⁴ The words “or grade” omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

Provided that, when the appointment is made on a current-charge basis or by way of additional charge, his pay shall be fixed in the prescribed manner:

Provided further that where a civil servant has, under an order which is later set aside, been dismissed or removed from service or reduced in rank, he shall, on the setting aside of such order, be entitled to such arrears of pay as the authority setting aside such order may determine.

18. Leave:- A civil servant shall be allowed leave in accordance with the leave rules applicable to him; provided that the grant of leave will depend on the exigencies of service and be at the discretion of the competent authority.

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 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 qualified 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.

20. Provident Fund:- (1) Before the expiry of the third month of every financial year, the Accounts Officer or other officer required to maintain provident fund accounts shall furnish to every civil servant subscribing to a provident fund the account of which he is required to maintain a statement under his hand showing the subscriptions to including the interest accruing thereon, if any, and withdrawals or advances from his provident fund during the preceding financial year.

(2) Where any subscription made by a civil servant to his provident fund has not been shown or credited in the account by the Accounts Officer or other officer required to maintain such account, such subscription shall be credited to the account of the civil servant on the basis of such evidence as may be prescribed.

21. Benevolent Fund and Group Insurance:- All civil servants and their families shall be entitled to the benefits admissible under the West Pakistan Government

¹ The words “or grade” omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

² Section-19 substituted by the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 (Khyber Pakhtunkhwa Act No. III of 2013) published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 22nd January, 2013.

Employees Welfare Fund Ordinance, 1969 (W.P Ord.I of 1969), or the Khyber Pakhtunkhwa Government Servants Benevolent Fund Ordinance, 1972 (Khyber Pakhtunkhwa Ordinance VII of 1972), and the rules made thereunder.

22. Right of Appeal or Representation:- (1) Where a right to prefer an appeal or apply for review in respect of any order relating to the terms and conditions of his service is provided to a civil servant under any rules applicable to him, such appeal or application shall, except as may be otherwise prescribed, be made within thirty days of the date of such order.

(2) Where no provision for appeal or review exists under the rules in respect of any order or class of orders, a civil servant aggrieved by any such order may, within thirty days of the communication to him of such order, make a representation against it to the authority next above the authority which made the order:

Provided that no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade.

CHAPTER-III

M I S C E L L A N E O U S

23. Saving:- Nothing in this Act or in any rule shall be construed to limit or abridge the power of the Governor to deal with the case of any civil servant in such manner as may appear to him to be just and equitable:

Provided that, where this Act or any rule is applicable to the case of a civil servant, the case shall not be dealt with in any manner less favourable to him than that provided by this Act or such rules.

¹23-A Indemnity.- No suit, prosecution or other legal proceedings shall lie against a civil servant for anything done or intended to be done in good faith in his official capacity under this Act or the rules, instructions or direction made or issued thereunder.

²23-B. Jurisdiction barred.—Save as provided under this Act and the Service Tribunal Act, 1974 (Khyber Pakhtunkhwa Act No. 1 of 1974), or the rules made thereunder, no order made or proceedings taken under this Act, or the rules made thereunder by the Governor or any officer authorized by him shall be called in question in any court and no injunction shall be granted by any court in respect of any decision made, or proceedings taken in pursuance of any power conferred by or under this Act or the rules made thereunder.

24. Removal of difficulties:- If any difficulty arises in giving effect to any of the provisions of this Act, the Governor may make such order, not inconsistent with the provisions of this Act, as may appear to him to be necessary for the purpose of removing the difficulty:

¹ Section-23A inserted vide Khyber Pakhtunkhwa Ordinance No. XIV of 2002.

² Section-23B inserted vide Khyber Pakhtunkhwa Ordinance No. XIV of 2002.

Provided that no such power shall be exercised after the expiry of one year from the coming into force of this Act.

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.

26. Rules:- (1) The Governor or any person authorized by the Governor in this behalf, may make such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act.

(2) Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by an authority competent to make them and in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act.

27. Repeal:- The Khyber Pakhtunkhwa Civil servants Ordinance, 1973 (Khyber Pakhtunkhwa Ordinance No. VI of 1973), is hereby repealed.

¹ The Governor Khyber Pakhtunkhwa has authorized the Chief Minister Khyber Pakhtunkhwa to make rules vide Notification No. SOR-I (S&GAD)1-206/74/Vol-V, dated 18-04-1989 read as "In exercise of the powers conferred by sub-Section (1) of Section 26 of the Khyber Pakhtunkhwa Civil Servants Act 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Governor of the Khyber Pakhtunkhwa is pleased to authorize the Chief Minister Khyber Pakhtunkhwa to make rules for carrying out the purpose of the said Act".