07.11.2016

Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader alongwith Mr. Fayazud Din, ADO for respondents present. Arguments heard. Record perused.

Vide our detailed judgment of to-day placed in connected service appeal No. 51/2014, tilted "Khaista Rahman versus District Education Officer (Male) Dir Lower and 3 others", this appeal is also accepted as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.

Member

Chairman
Camp court, Swat

ANNOUNCED
07.11.2016

08.07.2015 Counsel for the appellant is not in attendance due to non-availability of D.B. Mr. Muhammad Zubair, Sr. G.P for respondents present. Adjourned for final hearing before D.B to 8.9.2015 at camp court Swat.

Chairman
Camp Court Swat

08.09.2015 None present for appellant. Mr. Fayaz-ud-Din, ADO alongwith Mr. Muhammad Zubair, Sr. GP for respondents present. Due to non-availability of D.B, case is adjourned to 14.1.2016 for final hearing at Camp Court Swat.

Chairman
Camp Court Swat

14.01.2016 Agent of counsel for the appellant. Mr. Muhammad Idrees, Assistant alongwith Mr. Muhammad Zubair, Sr. GP for respondents present. Due to non-availability of D.B, appeal to come up for final hearing before D.B on 12.7.2016 at Camp Court Swat.

Chairman
Camp Court Swat

12.7.2016 Counsel for the appellant and Mr. Fayaz Din, ADO and Muhammad Irshad, SO alongwith Mr. Muhammad Zubair, Sr.GP for the respondents present. Counsel for the appellant requested for adjournment. To come up for rejoinder and final hearing on 07.11.2016 before D.B at camp court, Swat.

Member

Chairman
Camp Court, Swat

19.1.2015 Mr. Rahmanullah, Clerk of counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Mosam Khan, AD, Khursheed Khan, SO and Muhammad Irshad, Supdt. for the respondents present. Respondents need time to submit written reply, which according to representatives of the respondents is in process. To come up for written reply on 26.3.2015.

MEMBER

26.03.2015 Counsel for the appellant and Mr. Fayaz-ud-Din, ADO alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing. The appeal pertains to territorial limits of Malakand Division and as such to be heard at Camp Court Swat on 6.5.2015.

Chairman

6.5.2015 Counsel for the appellant and Mr.Muhammad Zubair, Sr.G.P for respondents present. Rejoinder submitted. Arguments could not be heard due to non-availability of D.B. To come up for final hearing before D.B on 8.7.2015 at Camp Court Swat.

Chairman
Camp Court Swat

Appeal No. 69/2014.
Mst. Ghuzala Shamas.

6. 12.08.2014

Counsel for the appellant and Mr. Fayaz-Ud-Din, ADEO with Mr. Ziaullah, GP for the respondents present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has prayed for grant of arrears and seniority from the dated of decision Peshawar High Court, Peshawar i.e 28.06.2012. Perusal of the case file reveals that as per judgment of Peshawar High Court dated 28.06.2012 Writ Petition of the appellant was allowed and respondents were directed to appoint the appellant against the post of Drawing Master. Against the said order respondents filed CPLA, however the same was dismissed vide order dated 21.06.2013. Consequent thereof, the appellant was appointed vide office order dated 16.12.2013 but no back benefits were given to him. Appellant filed departmental appeal/application for grant of arrears and seniority from the date of decision of Peshawar High Court, Peshawar but the same was not respondent within the statutory period of 90 days, hence the present appeal on 13.01.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 13.11.2014.

Member

7. 12.08.2014

This case be put before the Final Bench for further proceedings.

Chairman

13.11.2014

Junior to counsel for the appellant, Mr. Muhammad Jan, GP with Ja ved Ahmad, Supdt. for the respondents No. 1 to 3 present. None is available on behalf of respondents. The Tribunal is incomplete. To come up for the same on 19.1.2015.

READER

BEFORE THE SERVIE TRIBUNAL KHYBR PUKTHUN KHWA AT PESHAWAR.

SERVICE APPEAL NO. 69/2014.

Ghazala Shaheen DM, Dir Lower

..... Appellant

VERSUS

The Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar & Others .....Respondents

PARA WISE COMMENTS / REPLY FOR AND ON BEHALF OF THE RESPONDENTS No: 1 &3 .

Respectfully Sheweth:-

Preliminary objections

1. The appellant has no cause of action/locus standi.
2. The instant appeal is badly time barred.
3. The appellant has concealed the material fact from this Honourable Able Tribunal hence liable to be dismissed.
4. The appellant has not come to Honouable Able Tribunal with clean hands.
5. The present appeal is liable to be dismissed for non-joinder/mis-joinder of necessary parties.
6. The appellant has filed the instant appeal on malafide motives.
7. The instant appeal is against the prevailing laws & rules.
8. The appellant is estopped by his own conduct to file in present appeals.
9. The instant appeal is not maintainable in the present form & also in the present circumstances of the issue.

ON FACTS

1 Correct to the extent of office order dated 20/06/2013, however, it is pertinent that the order was issued in compliance with the court decision.

2 Correct. The court decision was followed by the department in letter and spirit.

3 Incorrect. The department followed the codal formalities as it is the duty of the concerned department to apply for CPLA after the decision of every case.

4 Incorrect. No back benefits were given to the appellants in the mentioned case.

5 Incorrect. The respondent department did not receive any application from the appellant. It is rather a manufactured one as it is does not contain any diary number.

6 The department is bound to follow the court decision. In the mentioned period the department applied for CPLA to follow all the codal formalities.

7 Incorrect. The appellant has been treated according to the law and after the decision of the Honorable Court they have been appointed.

8 That the respondent presents the following grounds for the dismissal of the appeal.

ON GROUNDS.

A. Incorrect. That the appellant appeal was fitted for CPLA after the decision of the honorable High Court. As they did not perform any duty in the mentioned period and moreover the department did not make any appointment on the post of DM as there was stay hence the question of seniority is baseless.

B. Needs no comments furthermore no arrears have been given, the statement is not factual.

C. Incorrect. To observe all the codal formalities is not negligence. The case was fitted for CPLA by the law department. Hence the appellant was not allowed to join the duty.

D. Incorrect. The appellant has never been deprived of the service. The department has to follow the rules. After the decision of the august court the appellant has been given his due right.

E. Incorrect .The appellant has been treated according to the law and no discrimination has been practiced in this regard.

F. Incorrect and not admitted. The statement is far away from reality. No nepotism and favoritism is there on the part of the respondent. All the appellants have been treated according to the august Court decision.

G. The respondent will present more grounds during hearing of the case.

In view of the above submission, it is requested that his Hon' able Tribunal may very graciously be pleased to dismiss the appeal with cost in favour of the respondent Department.

Director
Elementary & Secondary Education
Khyber PakhtunkhwaPeshwar.

District Education Officer (M)
E & SE District Dir (Lower)

3.

10.03.2014 Counsel for the appellant present. Preliminary arguments to some extant heard. Pre-admission notice be issued to the GP to assist the Tribunal for preliminary hearing on 30.04.2014.

Member

4.

30.04.2014 Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. The learned Government Pleader requested for time to contact the respondents for production of complete record. Request accepted. To come up for preliminary hearing on 09.06.2014 .

Member

5.

09.06.2014 Counsel for the appellant and Mr. Fayaz-Ud-Din, ADEO with Mr. Ziaullah, GP for the respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 12.08.2014.

Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 69/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	13/01/2014	The appeal of Mst. Ghazala Shams presented today by Mr. Rehman Ullah Shah Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR
2	22-1-2014	This case is entrusted to Primary Bench for preliminary hearing to be put up there on 10-3-2014. CHAIRMAN

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

S. Appeal No. 69 /2014

Mst. GHAZALA SHAMS D/O SHAMS UL HAQ _____ APPELLANT

VERSUS

D E O (FEMALE) DIR LOWER AND OTHERS _____ RESPONDENTS

INDEX OF DOCUMENTS

S.NO	DOCUMENTS	ANNEXURE	PAGES
1	Grounds of Appeal & Affidavit		01 – 06
2	Addresses of the Parties		07
3	Appointment Order	A	08 – 09
4	Copy of Judgment of Hon'ble Peshawar High Court	B	10 – 18
5	Copy of the Order of the worthy Supreme Court	C	19 – 20
6	Copy of the order of the DEO Distt Upper Dir	D	21
7	Departmental Representation/ Appeal	E	22
8	Copy of Pay Slip/ Payroll	F	23
	Wakalatnama		

Ghazala Shams
Appellant

Through:

Rehman Ullah Shah, Atiq Ur Rehman & Ibrahim Shah
MA, LLM

Advocates

Ibn e Abdullah Law Associates
11 Azam Tower University Road, Peshawar
Phone & Fax # 091- 570 2021
www.ibneabdullah.com

(2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 69 /2014

Mst. GHAZALA SHAMS D/O SHAMS UL HAQ
DM, GGMS SHATAI, BALAMBAT, DISTRICT LOWER DIR

APPELLANT

VERSUS

1. DISTRICT EDUCATION OFFICER (FEMALE) DIR LOWER
2. DISTRICT COORDINATION OFFICER, DIR LOWER
3. DIRECTOR (SCHOOL & LITERACY) KHYBER PAKHTUNKHWA, PESHAWAR
4. SECRETARY FINANCE, GOVT OF KHYBER PAKHTUNKHWA, PESHAWAR

RESPONDENTS

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for grant of Arrears and Seniority to the appellant from the date of application i.e. 22/08/2007 for the post or alternatively, from the date of decision of the Hon'ble Peshawar High Court, Peshawar dated June 28, 2012 till June 19, 2013

13/1/14

Respectfully submitted as under:

Brief facts of the case are as follows:

1. That the appellant got appointed with the respondents as DM, BPS-15 vide office order dated 20.06.2013.
(Appointment order is appended herewith as Annexure "A").

2. The appointment of the appellant was the result of the Writ Petition No. 1896/ 2007 titled "Mst. Nagina and Others Vs EDO & Others where the Divisional Bench of Hon'ble Peshawar High Court, Dar Ul – Qaza at

Swat by allowing the writ Petition directed to Respondents to appoint the petitioner against the said post positively.

{Copy of the Judgment of the Hon'ble Bench is annex "B"}

3. That Respondents, feeling aggrieved from the Judgment of the Hon'ble Bench, challenged the same before the worthy Supreme Court. Upon hearing on June 21, 2013, the Hon'ble Supreme Court dismissed the appeals and directed the present Respondents to produce appointment orders of the appellant before the august Court. Hence respondents as per direction of the worthy Supreme Court, issued appointment order to appellant.

{Copy of the Order of the worthy Supreme Court is annexed as "C"}

4. That some of the appellants in the same Writ petitions were considered as appointed from the date of decision of Hon'ble High Court i.e. June 28, 2012 and have been given back benefits and seniority from the aforementioned date.

{Copy of the order of the DEO Distt Upper Dir is annexed as "D"}

5. That the appellant made representation/application to the District Education Officer (Female) on September 20, 2013, for the award of Arrears and Seniority with effect from the date of application/ dated of decision of the Hon'ble Peshawar High Court, but no warn shoulder has been given to the representation of the appellant.

{Copy of the Representation is annexed as "E"}

6. That appellant has been ignored since June 2012 and no Arrears and Seniority has been given to him till date.

{Copy of payroll is annexed as "F"}

7. That the appellant time and again approached Respondent No. 1 for consideration of the departmental representation/ appeal, but the same has not been decided/ considered within the statutory period but till date no positive response is offered by the respondents.

8. That the appellant approaches this Honourable Tribunal for redress, inter-alia on the following

GROUNDS:

A. That the appellant is entitled to be considered for arrears and seniority from the date of his application/ date of decision as deem appropriate by this Hon'ble Tribunal, and as has been held in many cases by this Hon'ble Tribunal and Superior Courts in same like appeals.

B. That numerous teachers in the respondent- department similarly placed have been granted Arrears and Seniority from the date of decision of Writ i.e. June 28, 2012. Hence, the appellant is also entitled to a similar treatment without being discriminated under the law.

C. That negligence lies on the part of Respondents and not on the part of the appellant. The appellant was ready to join the duty from the date when writ was allowed, but respondents avoided to issues and assign duties to appellant. Hence appellant may not be panelized for the negligent acts of the Respondents.

D. That since appellant was kept deprived of the service inpsite of their entitlement by the illegal act of respondents. It is a settled law that grant of back benefits is a Rule and refusal is an exception.

E. That the appellant's case for the subject matter has been pending with the department since long and the respondents do strive to protract the same for no valid reason but to vex the appellant, hence, the indulgence of this Tribunal is need of the situation to curtail the agony of the appellant.

F. That the respondents are following the principle of nepotism and favoritism which is clear violation of Article 4 and 25 of the Constitution of Islamic republic of Pakistan.

G. That the appellant reserves his right to urge further grounds with leave of the tribunal at the time of arguments or when the stance of the Respondents comes in black in white.

It is, therefore, humbly prayed that on acceptance of this appeal this Honourable Tribunal may be pleased to make appropriate orders/directives to the respondents for grant of arrears and seniority to appellant w.e.f date of application i.e. 22.08.2007 or alternatively, from the date of decision/ judgment of Hon'ble High Court, 28.06.2012.

Any other remedy to which the appellant is found fit in law, justice and equity may also be awarded.

Ghazala Shams
Appellant

Through:

Rehman Ullah Shah & Ibrahim Shah
MA, LLM
Advocates

Ibn e Abdullah Law Associates
11 Azam Tower University Road, Peshawar
Phone & Fax # 091- 570 2021
www.ibneabdullah.com

(6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. _____/2014

Mst. GHAZALA SHAMS D/O SHAMS UL HAQ

_____APPELLANT

VERSUS

D E O (FEMALE) DIR LOWER AND OTHERS

_____RESPONDENTS

AFFIDAVIT

I, Advocate Ibrahim Shah on behalf of my client and as per information received from client, do hereby solemnly affirm and declare on oath that the contents of the accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.

KHALID MAHMOOD ADVOCATE
NOTARY PUBLIC ATTESTED
ATTESTED
11-7-14

Deponent

Ibrahim Shah

Advocate

(7)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. _____/2014

Mst. GHAZALA SHAMS D/O SHAMS UL HAQ

_____APPELLANT

VERSUS

D E O (FEMALE) DIR LOWER AND OTHERS

_____RESPONDENTS

MEMO OF ADDRESSES

APPELLANT:

Mst. GHAZALA SHAMS D/O SHAMS UL HAQ
DM, GGMS SHATAI, BALAMBAT, DISTRICT LOWER DIR

RESPONDENTS:

1. DISTRICT EDUCATION OFFICER (FEMALE) DIR LOWER AT TIMERGARA
2. DISTRICT COORDINATION OFFICER, LOWER DIR AT TIMERGARA
3. DIRECTOR (SCHOOL & LITERACY) KHYBER PAKHTUNKHWA, PESHAWAR
4. SECRETARY FINANCE, GOVT OF KHYBER PAKHTUNKHWA, PESHAWAR

Ghazala Shams
Appellant

Through:

Advocates

(Annex-A) (8)

OFFICE OF THE
DISTRICT EDUCATION OFFICER
(FEMALE) DISTRICT DIR LOWER.

Tel: 0945-9250083
0945- 9250082
E. mail: emisdirlower@yahoo.com

Appointment:-

In pursuance of the direction of the Honorable Apex court of Pakistan in CPLA No.456-P/2012 dated 19/6/2013 , the following Female petitioners are hereby appointed as DM In BPS-15 (Rs.8500-700-29500) plus usual allowances as admissible to them under the rules, against the vacant posts at the schools noted against their names from the date decided by August court in the interest of public service, subject to the following terms and conditions.

S#	NAME	FATHERS NAME	RESIDENCE	SESSION	MERIT SCORE	SCHOOL WHERE APPOINTED against vacant post
1	Shahi Parveen	Wasiur Rahman	Saddo	16/05/2005	41.55	GGMS Toormang
2	Gul Naz Begum	Amir Azam Khan	Karzina	16/05/2005	40.16	GGMS Malakand(P)
3	Rabia Sultan	Jehan Badshah	Karzina	16/5/2005	39.46	GGMS Khema
4	Fatima Bibi	Rahman U Ddin	Shalfalam	16/05/2005	39.02	GGMS Shalfalam
5	Tawhid Begum	Noor Ahmad Jan	Koto Shah	16/05/2005	37.83	GGMS Tangai T/gara
6	Nagina	Jehan Zeb	Khungi (B)	16/05/2005	35.94	GGMS Narai Tangai
7	Zahida Begum	Wazir Ahmad	Saddo	16/05/2006	41.49	GGMS Warsak
8	Farha Naz	Sharif Ahamd	Saddo	18/08/2006	48.04	GGMS Hanafia
9	Nuzhat Ali	Khairu Rahman	Timergara	18/08/2006	47.54	GGMS Mandish
10	Najia Bibi	Bahrawar Jan	Shezadi	18/08/2006	46.23	GGMS Sher Khani
11	Ghazala Shams	Shamsul Haq	S.khawra	18/08/2006	46.08	GGMS Shatai
12	Noor Sheeda	Muhammad Zamin	Timergara	18/08/2006	45.88	GGMS Chatpat
13	Farhana Bibi	Gul Nawaz Khan	Shagukas	18/08/2006	42.14	GGMS Bandagai
14	Faryal Bano	M. Akbar Khan	Saddo	18/08/2006	42.07	GGMS Khan Abad
15	Rifat Bibi	Sadullah Khan	Khall	18/08/2006	41.14	GGMS Khall Colony
16	Farida Bibi	Muhammad Gul	Sadugai	18/08/2006	40.8	GGHSS Kumbar
17	Farzana Tabasum	Muhammad Gul	Sadugai	18/08/2006	40.45	GGMS Kotkai (M)
18	Rabia Bibi	Fazal Amin	Adokay	18/08/2006	40.32	GGMS Baroon
19	Hina Sunbal	M.Akbar Khan	Saddo	18/08/2006	39.17	GGMS Kotkai (Phy)
20	Salma Bibi	Muhammad Iqbal	Piato Dara	18/08/2006	38.63	GGMS Malakand (B)
21	Mehnaz	Habib Said	Shekowly	18/08/2006	38.44	GGMS Garrah
22	Shujaat Bibi	Amir Muhammad	Shuntala	18/08/2006	37.2	GGMS Shuntala
23	Hemayat Shaheen	Shamsul Haq	Dehri (T)	18/08/2006	37.1	GGMS Sarai Bala
24	Farah Naz	Habib Said	Shekowly	18/08/2006	36.86	GGMS Makhai

Terms & conditions

1. They will be governed by such rules and regulations as may be prescribed by the government from time to time for the category of government servants to which they belong.
2. Their appointment is purely on temporary basis liable to termination at any time without notice. In case leaving the service, they shall be required to submit one month prior notice OR deposit ~~one month~~'s pay in the government treasury in lieu thereof.

ATTESTED

(9)

3. They are directed to produce their Fitness certificate from the Civil Surgeon Dir lower at Timergara.
4. The appointment of the candidates mentioned above are subject to the condition that they are having domiciled in district Dir lower.
5. NO TA/DA will be paid to her on joining the post.
6. Charge reports should be submitted to all concerned,
7. Drawing & Disbursing Officers concerned are directed to check / verify their documents from the concerned boards / institutions before handing over the charge to them.
8. This order is issued, errors and omissions accepted, as notice only.
9. They will get all the benefits of civil servants except pension & gratuity vide letter No.6.(E&AD)1-13/2006 dated 10-8-2005 and Act 2003 NWFP 23-7-2005.

(SABIRA PARVEEN)
District Education Officer
(F) District Dir Lower

Endst. No 9963-67 Dated Timergara the 20/06/2013.

Copy to:-

1. Additional Registrar Supreme Court of Pakistan.
2. Additional Advocate General Peshawar High Court Peshawar.
3. The District Accounts Officer Dir lower at Timergara.
4. The Principals/Headmistress concerned.
5. The Official concerned.

District Education Officer
(F) District Dir Lower

ATTESTED

(Annex-B) (10)

IN THE PESHAWAR HIGH COURT, PESHAWAR.

W.P.No. 1896 /2007

1. Mst. Nagena D/o Jehanzeb Khan.
2. Mst. Himayat Shaheen D/o Shams-ul-Haq
3. Mst. Norsheeda D/o Muhammad Zamin
4. Mst. Faryal D/o Muhammad Akbar Khan
5. Mst. Hina Sumbil D/o Muhammad Akbar Khan
6. Mst. Farida Bibi D/o Muhammad Gul
7. Mst. Farzana Tabussam D/o Muhammad Gul
8. Mst. Rabia D/o Fazal Amin.
9. Mst. Naizat Ali D/o Khair Rehman
10. Mst. Farah Naz D/o Saraf Ahmad
11. Mst. Shahi Parveen D/o Sami-ur-Rehman.

ATTESTED

FILED TODAY

26 OCT 2007

(11)

12. Farah Naz D/o Habib Said

13. Mst. Mehnaz D/o Habib Said.

14. Mst. Ghazala Shams D/o Shams-ul-Haq

15. Mst. Gul Naz Begum D/o Mir Azam Khan

16. Mst. Shujjat Bibi D/o Ameer Ahmad

17. Mst. Rabia Sultan D/o Jehan Badshah

18. Toheera Begum D/o Noor Ahmad Jan

19. Mst. Najia Bibi D/o Bahrawar Jan

20. Mst. Fatima Bibi D/o Rehman-ud-Din

21. Mst. Zahida Begum D/o Wazir Muhammad

22. Mst. Salma Begum D/o Muhammad Iqbal

23. Mst. Farhma Bibi D/o Gul Nauroz Khan

24. Riffat Bibi D/o Saadullah Khan

All Residents of District Dir Lower.....Petitioners

PESHAWAR HIGH COURT

ATTESTED

VERSUS

1. Executive District Officer (School & Literacy) Dir Lower at Timergara.

vide order of this court dated 23-2-12 the following names are impleaded alongside respondents

P.T.O

26 OCT 2007

2. Director Education, NWFP, Peshawar.

3. Govt. of NWFP through Secretary Education Peshawar.....Respondents

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

Sheweth:

1. That in response to an advertisement appearing in Daily "AAJ" dated 11.02.2007 (Annex-A) the petitioners submitted applications for the posts of Drawing Master (DM). An interview/Merit list (Annex-B) was prepared and displayed by the respondents, wherein names of the petitioners do appear with their respective merit.

2. That after the interview was over, the respondents made an appointment order dated 2.08.2007 (Annexure-C), whereby ten candidates were appointed and rest of the candidates including the petitioners were ignored for reason best known to the respondents.

It worths mentioned that 57 vacancies are still available with the respondents, as transpired by the letter dated 27.09.2007 (Annexure-D) addressed to the District Nazim, Dir Lower.

ATTESTED

FILED TODAY

26 OCT 2007

(13)

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, MINGORA
BENCH (DAR-UL-QAZA), SWAT
(*Judicial Department*)

W.P. No.1896/2007.

JUDGMENT

Date of hearing: 28.6.2012.

~~Appellant~~-Petitioner (Mst. Nagena & others)

by Messrs Rehmanullah & Ibrahim advocates.

Respondent (Govt of NWFP & others)

by Messrs Akhtar Munir Khan Advocate & Ors.

KHALID MAHMOOD, J.- For reasons recorded in the detailed judgment in writ petition No.2093 of 2007, titled "*Khaista Rehman Vs: E.D.E. etc*", this writ petition is allowed in terms of the judgment.

Announced
Dt: 28.6.2012.

JUDGE

JUDGE

Office
20/07/12

Certified to be true copy

EXAMINER
Peshawar High Court, Mingora/Dar-ul-Qaza Bench
Authorized Under Article 87 of the Qanun-e-Shahadat Order 1984
24/7/12

S.No
Name of Applicant
Date of Presentation of Application
Date of Completion of Copies
No. of Copies
Fee Charged
Date of Delivery of Copies

ATTESTED

(14)

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P. No.2093/2007

JUDGMENT

Date of hearing: **28.6.2012.**

~~Appellant~~-Petitioners (Khaista Rehman & others) by Mr. Khalid Rehman Advocate.

Respondent (EDO & others) by Messrs Akhtar Munir Khan Advocate & DAG.

KHALID MAHMOOD, J.- This judgment shall dispose of writ petitions No.2093, 1896 of 2007, 294 of 2008, 3402 of 2009, 3620 & 4378 of 2010, 2288 & 159 of 2011, as same question of law is involved in all these petitions.

2. The brief facts of the case are that in response to advertisement for different posts of teachers in the Education Department, petitioners applied for the same. After conducting the test and interview for the said posts, the petitioners were ignored in the matter of appointment and the appointment orders dated 22.8.2007 etc, issued by the respondents department are illegal, without lawful authority and of no legal effect. According to petitioners, they were not invited for interview, rather vide impugned order dated 22.8.2007, appointment of respondents No.5 to 13 was made.

ATTESTED

Petitioners have prayed for directing the respondents concerned to appoint the petitioners being trained and qualified for the said posts.

3. On 23.02.2012, during course of hearing, this Court come to the conclusion that all the certificates produced by the petitioners with regard to their professional qualification should be examined by Secretary Education, the Province of Sindh as to whether the same are genuine and have been issued by the concerned Institution and also to verify that the certificates produced by the petitioners are equivalent to Drawing Master. The petitioners were also directed to submit their original certificates with the Additional Registrar of this Court within a week time for sending for the above-said purpose. Prior to that comments and rejoinder were filed by the parties concerned.

4. Counsel for petitioners argued that impugned order issued by respondent No.1/ department is against law, without jurisdiction and of no legal effect; that the petitioners were trained drawing masters; that respondent concerned had totally ignored the petitioners while making the impugned order of appointment in spite of the fact that they were placed at high pedestal of merit and qualified for the appointment.

ATTESTED

On the other hand, it was argued on behalf of respondents that all the appointments were made in accordance with law and policy of the Government governing the subject.

5. With the valuable assistance of the counsel for the parties, the record perused.

6. The main grievances of all the petitioners in the present case that all the petitioners had submitted their requisite qualification along with certificate of Drawing Master before the respondent for their appointment. After test and interview, the merit list was prepared by the respondent concerned wherein the petitioners were declared higher in merit but later on instead of appointment of petitioners, the other candidates were appointed on the ground that the Drawing Master certificate obtained by the petitioners from Institutions situated in Jamshoru and Karachi are not equivalent to the certificate which was prerequisite for the post of Drawing Master. Counsel for the petitioners referred to the recruitment policy. He also referred to the advertisement published on 11.02.2007 in which the required qualification was F.A/F.Sc. with certificate of Drawing Master from any recognized institution. According to the recruitment policy as well as said publication petitioners on the patch-

ATTESTED

wise criteria had passed their examined on 31.5.1997. In the first merit list displayed by the respondents, the petitioners had qualified and stood first in the merit list. The respondents on the pretext that the certificate of Drawing Master is not obtained from the recognized institution, who were ignored in the said appointment and the case of the petitioners remained pending after verification of the Drawing Master certificate. Thereafter, the concerned institution wherefrom the petitioners had obtained the D.M. certificate were asked for the verification of the said certificate. This Court too, had directed the concerned institution for the verification of the certificate.

7. In the similar nature case wherein the D.M. certificate was obtained from Jamshoru verified in a case by Abbottabad Bench of this Court, in WP No. 66 of 2009 titled "Muhammad Banaris vs. Govt. of Khyber Pakhtunkhwa" wherein it is held that the D.M. certificate by Jamshoru is competent and the recognized one.

8. In the present case, the D.M. certificate qualify from all corners as a genuine certificate issued by the recognized institution, which was the requirement of the recruitment policy as mentioned above. We have gone through the merit list which clearly indicates that the

ATTESTED

194

petitioners have been deprived on lame excuse on the ground of delaying tactics regarding the verification of D.M. certificate obtained by the petitioners. It was also pointed out that respondent in subsequent appointment had also appointed other candidates who had obtained DM certificates from the same Institutions whereas, petitioners has been deprived though they have also qualified from the same Institutions, hence act of respondents is discriminatory and is utter violation of Article 25 of the Constitution. Instead of petitioners who were at better pedestal in the merit list, the other candidates who were below at the merit list as compared to the petitioners have been appointed which apparently shows the mala fide on the part of respondents. After thrashing the entire record, we have come to the conclusion that petitioners have wrongly been deprived for appointment against the post of D.M. which requires interference by this Court.

In the light above discussions, facts and circumstances of the case, all the writ petitions are allowed and respondents are directed to appoint the petitioners against the said post positively.

Announced.
Dt: 28.6.2012.

JUDGE

JUDGE

ATTESTED

S.No 2044+8
Name of Applicant
Date of Presentation of Application 15-6-12
Date of Completion of Copies 15-6-12
No. of Copies 11
Fee Charged 92
Date of Delivery of Copies 15-6-12

Certified to be true copy

EXAMINER
Peshawar High Court, Bench Mingora/Dar-ul-Qaza, Swat
(Under Article 87 of Qanoon-e-Shahadat Order,1984)

Office
20/07/12

(Annex "C")

19

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE SARMAD JALAL OSMANY

Civil Petitions No. 456-P/12, 7-P to 11-P/2013 and 19- P & 20-P of 2013
Against the judgment dated 28.6.2012 passed by Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in W.Ps No.2093 of 2007, 3402/2009, 3620/2010, 4378/2010, 159/2011, 2288/2011, 1896/2007 and 294/2008.

Executive District Officer, Schools & Literacy District Dir Lower, etc ... Petitioners

VERSUS

Khasista Rehman, etc (in CP 456-P/2012)
Lazim Khan, etc (in CP 456-P/2012)
Mst. Laida Tabassum, etc (in CP 456-P/2012)
Mst. Shagufta Bibi, etc (in CP 456-P/2012)
Shireenzada, etc (in CP 456-P/2012)
Gul Rasool Khan, etc (in CP 456-P/2012)
Mst. Nageena, etc (in CP 456-P/2012)
Ghulam Hazrat (in CP 456-P/2012)

...Respondents

For the Petitioners: Ms. Neelam Khan, AAG, KPK
Ms. Naghmana Sardar, DEO

For the Respondents: (in CPs 8-9& 19-20) Mr. Esa Khan, ASC

Others: N.R

Date of hearing: 21.06.2013

ORDER

Nasir-ul-Mulk, J.- These petitions for leave to appeal have been filed by the Executive District Officer, Schools of three Districts, Dir Lower, Dir Upper and District Bunner against the judgment of the Peshawar High Court, Mingora Bench delivered in writ petition No.2093 of 2007 whereby a number of similar writ petitions were disposed of. The respondents had filed writ petitions challenging the decision of the petitioners for appointment to the post of Drawing Master, who though had

ATTESTED
Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

ATTESTED

Annex-D (21)

OFFICE OF THE DISTRICT EDUCATION OFFICER FEMALE DIR UPPER
PH NO.0944-881900 FAX-0944-880411 Email .demisdirupper@gmail.com

OFFICE ORDER/REVISED.

In continuation of this office appointment order of (Female) Drawing Masters issued vide this office Endst: No.8720-80/F.01(A)/DEO (F)/SEB Dated 20/6/2013.

In the light of the judgment declare d on 22/10/2013, by the Honourable Peshawar High Court Peshawar Review P..No.7-M/2012 in W..P.No.3620-2010 and Review P.No.8-M/2012 in. W.P.No.4378/2010 .The revised appointment order of the following (Female) Drawing Masters in BPS, No.09 Rs,(3820-230-10720) plus usual allowances with effect from 03/02/2009, (without any financial back benefits) up to 28/6/2012 according to the court decision dated 28/6/2012, is hereby ordered in the best interest of public service and their seniority will be considered with effect from 03/02/2009.

S#	Name of Officials	Father's Name	Name of School where adjusted	Remarks
01	Mst: Salma Bibi	Muhammad Yousaf	GGHS, Wari	A. Vacant post
02	Mst: Nasreen Bibi	Abdullah	GGMS, Chapper	-do-
03	Mst: Rabia Bibi	Qari Abdur Rahman	GGMS, Wari (P)	-do-
04	Mst: Jawahira	Arab Said	GGMS, Shinkari	-do-
05	Mst: Laida Tabasum	Mian Shahzada Jan	GGMS, Jughabanj	-do-
06	Mst: Shagufta	Muhammad Rafiq	GGMS, Qulandi	-do-
07	Mst: Shagufta	Shah Nas Khan	GGMS, Gogyal	-do-
08	Mst: Azia Bibi	Sher Zada	GGHS, Sundal	-do-
09	Mst: Perveen Zeb	Mohammad Dost	GGMS, Badalai	-do-

TERMS AND CONDITIONS.

01. The appointees will be on probation for a period of one year in terms of Rule-15(1) of NWFP Civil Servants (Appointment promotion and transfer) Rules 1989..
02. The Certificates/Degrees of the appointees will be verified from the concerned institutions. No pay etc is allowed before verification of certificates/Degrees.
03. Their academic, professional and domicile certificates will be verified on their own expenses from the institutions concerned. If the documents are found fake and bogus, their services will be terminated and proper FIR will be lodged against the accused in the Anti-Corruption Department.
04. Their Services will be considered on regular basis.
05. The appointees will provide Health and age certificates from the concerned Medical Superintendent.
06. Their age should not be less than 18 years and above 35 years.
07. The appointees will be governed by such rules and regulations/polices as prescribed by the Government from time to time.
08. If the appointees fail to take over charge with in fifteen days after issuance of this order, Their appointments may be deemed as automatically cancelled.
09. Charge report should be submitted to all concerned.
10. No TA/DA is allowed.
11. The appointees will strictly abide by the terms and conditions laid down therein.

ATTESTED
ATTESTED

DISTRICT EDUCATION OFFICER
FEMALE DIR UPPER. 11/12/13

Endst: No. 1493-99 / F.No.01(A)/DEO(F)/SEB Dated Dir (U) the: 11/12 /2013.

Copy forwarded to the:-

01. Registrar Supreme Court of Pakistan Peshawar Bench.
02. Registrar High Court Bench Darul Qaza Swat.
03. PS to Secretary Elementary & Secondary Education Department K.P.K. Peshawar.
04. District Accounts Officer Dir Upper.
05. Accountant Middle School (Female) Local Office.
06. Headmistresses concerned.
07. AP EMIS local office.
08. Officials concerned.

DISTRICT EDUCATION OFFICER
FEMALE DIR UPPER. 11/12/13.

(Annex-E) (22)

بحضور جنابہ ڈسٹرکٹ ایجوکیشن آفیسر صاحبہ (F) دیر لوئر ایٹ تیمر گرہ۔

عنوان! درخواست بمراد عطائیگی (Arrear & Senority)

جناب عالیہ

گذارش مئودبانہ یہ ہے۔ کہ سائیلہ نے فروری 2007ء میں ڈی۔ایم پوسٹ کیلئے انٹرویو دی تھی۔ میرٹ لسٹ وغیرہ بننے کی باوجود سائیلہ کی تقرری نہیں ہورہی تھی۔ سائیلہ نے اس ظلم اور ناانصافی کے خلاف عدالت کا دروازہ کھٹکھٹایا۔ 5 سال بعد عدالت عالیہ دارالقضا سوات نے سائیلہ کی حق میں مورخہ 28.6.2012 کو فیصلہ دے دیا۔ پھر بھی محکمہ تعلیم میری تقرری بحیثیت D.M پوسٹ نہ کرسکی۔ اور محکمہ کیس کو طوالت دینے کیلئے عدالت عالیہ سپریم کورٹ چلی گئی۔ لیکن عدالت عالیہ سپریم کورٹ نے دارالقضا سوات 28.6.2012 کا فیصلہ برقرار رکھا۔

لہٰذا آپ صاحبان مہربان کرکے سائیلہ کو مورخہ 22.8.2007 سے (Arrear & Senority) دینے کے احکامات صادر فرماویں۔ سائیلہ تاحیات دعا گو رہی گی۔

فقط زیادہ آداب: مورخہ 20.09.2013

العارضہ

Ghazala Shams

آپ کی تابعدارہ غزالہ شمس D.M گورنمنٹ گرلز مڈل سکول شاٹئی ضلع دیر لوئر۔

ATTESTED

BEFORE THE SERVIE TRIBUNAL KHYBR PUKTHUN KHWA AT PESHAWAR.

SERVICE APPEAL NO. 69/2014.

Ghazala Shaheen DM, Dir Lower

..... Appellant

VERSUS

The Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar & Others .....Respondents

PARA WISE COMMENTS / REPLY FOR AND ON BEHALF OF THE RESPONDENTS No: 1 &3 .

Respectfully Sheweth:-

Preliminary objections

1. The appellant has no cause of action/locus standi.
2. The instant appeal is badly time barred.
3. The appellant has concealed the material fact from this Honourable Able Tribunal hence liable to be dismissed.
4. The appellant has not come to Honouable Able Tribunal with clean hands.
5. The present appeal is liable to be dismissed for non-joinder/mis-joinder of necessary parties.
6. The appellant has filed the instant appeal on malafide motives.
7. The instant appeal is against the prevailing laws & rules.
8. The appellant is estopped by his own conduct to file in present appeals.
9. The instant appeal is not maintainable in the present form & also in the present circumstances of the issue.

ON FACTS

1 Correct to the extent of office order dated 20/06/2013, however, it is pertinent that the order was issued in compliance with the court decision.

2 Correct. The court decision was followed by the department in letter and spirit.

3 Incorrect. The department followed the codal formalities as it is the duty of the concerned department to apply for CPLA after the decision of every case.

4 Incorrect. No back benefits were given to the appellants in the mentioned case.

5 Incorrect. The respondent department did not receive any application from the appellant. It is rather a manufactured one as it is does not contain any diary number.

6 The department is bound to follow the court decision. In the mentioned period the department applied for CPLA to follow all the codal formalities.

7 Incorrect. The appellant has been treated according to the law and after the decision of the Honorable Court they have been appointed.

8 That the respondent presents the following grounds for the dismissal of the appeal.

ON GROUNDS.

A. Incorrect. That the appellant appeal was fitted for CPLA after the decision of the honorable High Court. As they did not perform any duty in the mentioned period and moreover the department did not make any appointment on the post of DM as there was stay hence the question of seniority is baseless.

B. Needs no comments furthermore no arrears have been given, the statement is not factual.

C. Incorrect. To observe all the codal formalities is not negligence. The case was fitted for CPLA by the law department. Hence the appellant was not allowed to join the duty.

D. Incorrect. The appellant has never been deprived of the service. The department has to follow the rules. After the decision of the august court the appellant has been given his due right.

E. Incorrect .The appellant has been treated according to the law and no discrimination has been practiced in this regard.

F. Incorrect and not admitted. The statement is far away from reality. No nepotism and favoritism is there on the part of the respondent. All the appellants have been treated according to the august Court decision.

G. The respondent will present more grounds during hearing of the case.

In view of the above submission, it is requested that his Hon' able Tribunal may very graciously be pleased to dismiss the appeal with cost in favour of the respondent Department.

Director
Elementary & Secondary Education
Khyber PakhtunkhwaPeshwar.

District Education Officer (M)
E & SE District Dir (Lower)

BEFORE THE SERVIE TRIBUNAL KHYBR PUKTHUN KHWA AT PESHAWAR.

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