

16th June, 2022

Counsel for the appellant present.

Learned counsel for the appellant sought adjournment.
Last chance is given. To come up for preliminary hearing
on 04.08.2022 before S.B.

9





(Kalim Arshad Khan)
Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7901/2021

S.No.	Date of order - proceedings	Order or other proceedings with signature of judge
1	2	3
1-	21/12/2021	<p>The appeal of Mr. Abdul Saboor presented today by Mr. Noor Mohammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	11.02.2022	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>11/02/22</u>.</p> <p> CHAIRMAN</p>
	27.04.2022	<p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 27.04.2022 for the same as before.</p> <p> Reader</p> <p>Junior to counsel for appellant present.</p> <p>He made a request for adjournment as senior counsel for appellant is out of station. Adjourned. To come up for preliminary hearing on 16.06.2022 before S.B.</p> <p> (Rozina Rehman) Member (J)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 7901 /2021

ABDUL SABOOR

V/S

EDUCATION DEPTT:

INDEX

S.N @	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	1-3
2	Affidavit	4
3	Appointment order dt: 20.04.1995	A	5
4	Order dt: 13.02.1997	B	6
5	Judgment dt: 19.11.2019	C	7-9
6	Appointment dt: 28.09.2021	D	10-11
7	Charge certificate	E	12
8	Departmental appeal	F	13
9	Wakalat Nama	14

Dated: _____12.2021

APPELLANT

Through:

NOOR MOHAMMAD KHATTAK
ADVOCATE

0345-9383141

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. _____/2021

Mr. Abdul Saboor Khan, Junior Clerk, BPS-11,
GHS Domil, District Lower Chitral.....Appellant

VERSUS

- 1- The Secretary, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The District Education Officer, District Lower Chitral.

.....RESPONDENTS

**APPEAL UNDER SECTION- 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 FOR FIXATION OF PAY IN
BPS-11 w.e.f. 20-04-1995 I.E. FROM THE DATE OF INITIAL
APPOINTMENT TO THE POST OF JUNIOR CLERK AND
AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL
APPEAL OF THE APPELLANT WITHIN THE STATUTORY
PERIOD OF NINETY DAYS.**

PRAYER:

**That on acceptance of this appeal the appellant may kindly
be allowed/granted pay fixation w.e.f. 20-04-1995 with all
back benefits. Any other remedy which this august Service
Tribunal deems fit that may also be awarded in favor of the
appellant.**

R/SHEWETH:

ON FACTS:

**Brief facts giving rise to the present appeal are as
under:**

- 1- That the appellant was initially appointed in the respondent
Department as Junior Clerk BPS-11 vide order dated 20-04-1995.(
Copy of the appointment order is attached as
annexure..... **A)**
- 2- That it is worth mentioning here, that service of the appellant was
dispensed with on the ground that his appointment was illegal
through order dated 13-02-1997. Copy of the order is attached as
annexure.....**B.**
- 3- That it is also worth mentioning, that on promulgation of KP
Sacked Employee Act, 2012 appellant submitted an application for
his reinstatement being covered under the said law but the same
was not considered, hence the appellant filed writ petition no. 12

M/2018 before Peshawar high court Mingora Bench, which was allowed vide judgment dated 19/11/2019. Copy of judgment dated 19/11/2019 is attached as annexure C)

- 4- That in respect to above mentioned Judgment the appellant was appointed as Junior Clerk vide order dated 28/09/2021. That in response the appellant submitted charge report and started his duty quite efficiently and up to the entire satisfaction of his superiors. Copy of the appointment order dated and Charge certificate are attached as annexure D & E)
- 5- That the appellant filed Departmental appeal before respondents for fixation of pay w.e.f. the date of his first appointment i.e. 20/04/1997 but the same has not been responded within stipulated period of ninety days. Copy of departmental appeal is attached as annexure..... F)
- 6- That feeling aggrieved and having no other remedy the appellant filed the instant appeal on following grounds inter alia.

GROUND:

- A- That the inaction of respondents by not allowing pay fixation to the appellant w.e.f. 20-04-1997 is against the law, facts, norms of natural justice and materials on the record.
- B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and mala fide manner by not allowing pay fixation to the appellant w.e.f. 20-04-1997 and as such the inaction of the respondents is violative of law and rules.
- D- That the inaction of the respondents is discriminatory and against the norms of natural justice, therefore not tenable in the eye of law.
- E- That under Article 38 (e) of the Constitution of Pakistan, 1973 state is bound to reduce disparity in the income and earning of the individuals including persons in the various services of Pakistan, therefore in light of the above mentioned Article the appellant is fully entitled for the grant of pay fixation w.e.f. the date of initial appointment.
- F- That promulgation of Sacked Employee Act, 2012 established that dismissal of appellant along with others from services was against the law, hence the appellant is entitled to pay fixation from date of his first appointment.

G- That in light of Rule 2.3 of the West Pakistan, Pension Rules, 1963 the appellant is fully entitle for the grant of pay fixation from the date of initial appointment.

H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated:22.12.2021.

APPELLANT


ABDUL SABOOR KHAN

THORUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

&

UMAR FAROOQ MOHMAND
&

KAMRAN KHAN

ADVOCATES HIGH COURT

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2021

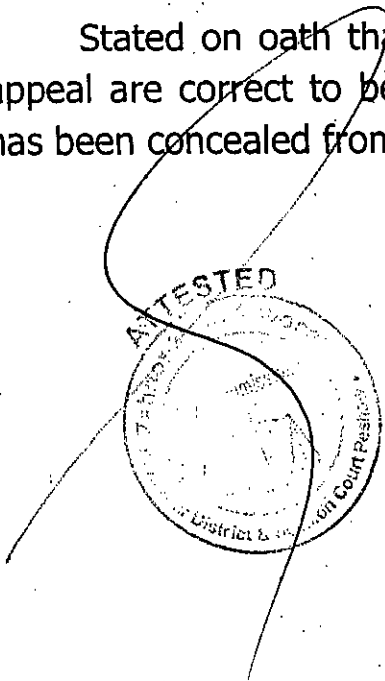
ABDUL SABOOR

VS

EDUCATION DEPTT:

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



Me 1173

DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

CERTIFICATION

[Signature]

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) SECT: CHITRAL.

S

APPOINTMENT:

Mr. Abdul Sabeer Khan S/O Mohammed Wali Khan candidate is hereby appointed as J/Clerk on Rs. 1400/- P.M in EPS No. 5 of B. No. 100-66-2390 plus usual allowance as admissible under the rules with effect from the date of his taking over charge at GHS BHEP against leave vacancy of Mohammad Ibrahim J/Clerk w.e.f. 1-03-1995 to 31-05-1995 under the following terms and conditions:-

TERMS AND CONDITIONS:

1. Charge report should be submitted to all concerned.
2. NO TA/DA is allowed being first appointment.
3. No joining time is allowed except that is absolutely necessary for transfer.
4. The appointment is purely on temporary basis and subject to termination at any time without assigning any reason or prior notice. In case he wishes to leave the post he shall have to submit one month's prior notice or in lieu thereof forfeit one month's pay and allowance to Govt. His educational qualification should be checked before the handing over the charge of the post.
5. He should produce his health and age certificate from the MS GHS Hospital Chitral within Seven days of reporting/arrival for duty as required under the Rules (F.R.10 & S.R.4).
6. In case the candidate fails to take over the charge within 10 days from the date of issue of this letter, his appointment will stand cancelled automatically.
7. The verification roll of character and antecedent should be obtained from the candidate concerned on the prescribed form and submit to the office for further verification and record.
8. He should execute necessary bond in case he is required to handle Government money or property.
9. The pay scale and service Rules would be subject to revision in accordance with order to be passed by the Govt. of NWFP from time to time.
10. On the expiry of leave of the original incumbent the service of Mr. Abdul Sabeer Khan S/O Mohammed Wali Khan J/Clerk will be automatically cancelled.

(ALI AHAR KHAN)
District Education Officer,
(Male) Secondary, Chitral.

B.No. 2391-94 / Dated Chitral the 20th / 1995

Copy to:-

- 1:- The District Accounts Officer Chitral.
- 2:- The Headmaster G.H.S. BHEP.
- 3:- The AUSA (Accounts) Local Office.
- 4:- Candidate concerned.

By: District Education Officer,
(Male) Secondary, Chitral.

B.

ANNEXURE "B"

6

On the perusal of the relevant records, the following Junior Clerks have been found illegal, and their services are, therefore, hereby discontinued with, with immediate effect.

On the perusal of the relevant records, the following Junior Clerks have been found illegal, and their services are, therefore, hereby discontinued with, with immediate effect.

On the perusal of the relevant records, the following Junior Clerks have been found illegal, and their services are, therefore, hereby discontinued with, with immediate effect.

S.No.	Name/Father's name and address.	Post.	Subpost.
1-	Abdul Latif s/o Mohamed Wali [Address]	Junior Clerk.	DMS Binnur Khan.
2-	Asadullah s/o Abaidullah, s/o Sait (Chitral).	Junior Clerk.	Chitral Bannu.

(Signature)
District Accounts Officer,
Chitral, Gilgit Agency, Gilgit.

S.No. 661-V / Date: 04/01/1997 / Date: 04/01/1997

Copy forwarded for information to the:-

- 1- Private Secretary to District Secretary, Chitral.
- 2- Private Secretary to District Secretary, Chitral.
- 3- Director Secretary Chitral.
- 4- Divisional Director of Education, Chitral, Gilgit Agency.
- 5- Headmaster, Sirsa Bazar s/o [Name].
- 6- Concerned remote clerks.
- 7- District Accounts Officer, Chitral.

(Signature)
District Accounts Officer,
Chitral, Gilgit Agency, Gilgit.

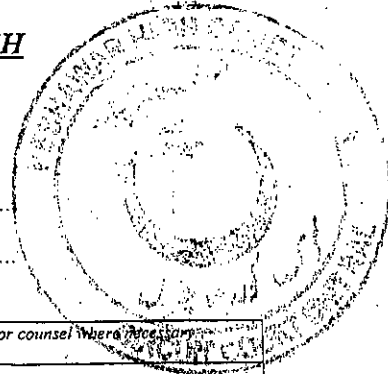
(Signature)

PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of

Case No. of



Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary
1	2	3
	19.11.2019	<p><u>W.P.12-M/2018</u></p> <p>Present: Qazi Muhammad Fayaz Ahmad, Advocate for the Petitioner.</p> <p>Mr. Wilayat Ali Khan, A.A.G for the official Respondents alongwith Mr. Ihsanul Haq, DEO, Chitral.</p> <p align="center">***</p> <p><u>WIOAR AHMAD, J.</u>- Before taking up the main writ petition for hearing, the applications (C.Ms Nos. 152 & 883 of 2019) which are meant for additional documents stand allowed and accordingly documents annexed therewith be considered as part and parcel the main writ petition.</p> <p>2. Through this constitutional petition, the petitioner seeks the constitutional jurisdiction of this Court with the following prayer.</p> <p>“In view of the above mentioned facts and circumstances, it is therefore, most humbly prayed that this writ petition may be accepted in favour of the petitioner against the respondents and following directions be given to the respondents.</p> <ol style="list-style-type: none"> i. To reinstate the petitioner. ii. To grant back benefits to the petitioner for the period, during which he remained terminated/suspended/dismissed illegally from

ATTESTED

SECRETARY
PESHAWAR HIGH COURT
MINGORA BENCH
DAR-UL-QAZA, SWAT

2/12/21

Sibz Ali/*

(D.D)

HON'BLE MR. JUSTICE SYED ARSHAD ALI
HON'BLE MR. JUSTICE WIOAR AHMAD

the service.

- iii. To count the terminated/suspended dismissal period as the period in service of the petitioners and grant him promotion as well as seniority on the basis of the above mentioned period.
- iv. In alternative, the respondents be directed to decide the applications of the petitioner pending before them in accordance with law.
- v. To grant the ad-interim relief under clause (i to iv) of the prayer.
- vi. Any other relief which this Hon'ble Court may deems fit and just may also be granted.
- vii. Grant of cost of this petition.

3. The record would show that pursuant to the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 ("Act"), the present petitioner had filed an application under section 7 of the Act for his reappointment. His name was enlisted in the list of applicants to be reappointed/reinstated under the Act. However, the grievance of the petitioner is that despite his application within time he was ignored by the respondents.

4. Mr. Ihsanul Haq, DEO, Chitral present in the Court alongwith the learned A.A.G has stated that indeed the petitioner had filed an application for his appointment under the Act but he was not appointed/reinstated because he was insisting for his appointment with all back benefits whereas such plea of the petitioner was against the Act itself. He has also stated at the bar that if the petitioner is not insisting for his reappointment with back benefits, he will be

ATTESTED
 2/11/21

appointed/reinstated against 30 percent quota earmarked under the Act for appointment of the sacked employees subject to availability of the vacancy on his own turn.

5. In view of the above, this writ petition is allowed with the directions to the respondents to reinstate/reappoint the petitioner against 30 percent quota reserved under the Act for the appointment of sacked employees subject to availability of the vacancy, strictly in accordance with law, on his own turn.

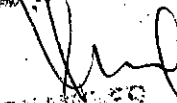
Announced
19.11.2019


JUDGE


JUDGE

S.No 155
 Name of Applicant Abdul saboor
 Date of Filing 2/12/21
 Date of Issuance of Order 2/12/21
 No of Pages 3
 Fee Charged 15
 Date of Delivery of Copies 2/12/21

Certified to be true Copy


EXAMINER
HON'BLE MR. JUSTICE SYED ARSHAD ALI
HON'BLE MR. JUSTICE WIOAR AHMAD
Article 87 of Qanun-e-
1994

Sabz Ali* (D.B) HON'BLE MR. JUSTICE SYED ARSHAD ALI
HON'BLE MR. JUSTICE WIOAR AHMAD

2/12/21

Office
23/11/19



OFFICE OF THE DISTRICT EDUCATION OFFICER (M)

LOWER CHITRAL

Phone: 0943-412627

Email address: deomchitral@gmail.com



10

OFFICE ORDER

In pursuance of Judgment of Honorable Khyber Pakhtunkhwa Peshawar High Court, Mingora Bench, Darul Qaza Swat in writ petition No.12-M/2018 dated 19-11-2019 and on the recommendation of Departmental Selection Committee in its meeting held on 24/08/2021 **Mr. Abdul Saboor Khan S/O Molvi Muhammad Wali** resident of village Azudam Drosh District Lower Chitral is hereby appointed against the vacant post of **Junior Clerk BPS-11 @ Rs(12570-880-38970/-)** plus usual allowances as admissible under the rules at GHS Domil in 30% reserved quota for sacked employees under clause 3,4,5&7 of Khyber Pakhtunkhwa sacked employees(Appointment) ACT NO.XVIII OF 2012 with immediate effect in the interest of public with following terms and conditions.

TERMS & CONDITIONS:

1. He will be on probation period for one year as per section 6(1) of Khyber Pakhtunkhwa Civil Servant Act 1973 and clause 15(1) of APT rules, 1989.
2. His appointment is subject to the condition that the certificates/documents/Equivalency Certificates must be verified from the concerned authorities and if found producing bogus certificates or degrees, his appointment be treated cancelled w.e.f the date of issuance and will be reported to law enforcing agencies for further proceeding under the law and rules.
3. He will not be entitled to claim seniority and other back benefits under clause 5 of sacked employees Act 2012(KPK ACT NO.XVIII OF 2012) as well as Honorable Court Judgment.
4. Pay shall not be drawn until and unless a certificate is issued by this office to the effect that his documents have been verified.
5. He should join the post within 15 days after issuance of this order. In case of failure to join the post within 15 days, his appointment shall be treated automatically cancelled/withdrawn and no subsequent appeal etc shall be entertained.
6. Health & Medical fitness certificate should be produced from the Medical Superintendent DHQ Hospital Chitral before taking over charge under clause 3 of sacked employees Act 2012(KPK ACT NO.XVIII OF 2012).
7. He will be governed by such Rules and Regulations as may be issued for the category from time to time by the Government.
8. Concerned Headmaster is required to verify all the documents (DMCs and Degrees/Certificates/Equivalency certificates from the concerned Board/University) and provide his verified documents to this office for pay release.
9. **Before handing over charge an affidavit be obtained and be placed in his Personal file by HM concerned that if any document is detected fake /bogus at any stage during his service, the appointment be treated as withdrawn w.e.f the date of issuance and all pays drawn will be recovered / deposited by him in Govt treasury. Non compliance will lead to legal proceeding.**
10. Errors and omissions are excepted within the specified period of 15 days.
11. Charge report should be submitted to all concerned.
12. No TA/DA is allowed.

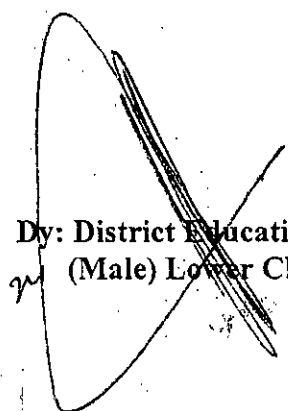
(Muzafar Ali Khan)
District Education Officer
(Male) Lower Chitral

ATTACHED

Endst. No. 15066-76 /EB (M)S-24/Appointment/Sacked Employees Dated 28/9/2021

Copy forwarded to the:-

1. Registrar, Peshawar High Court, Peshawar/ Dar-UI-Qaza Mingora Bench, Swat.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
3. Deputy Commissioner Lower Chitral.
4. District Accounts Officer Lower Chitral.
5. District Monitoring Officer (EMA) Lower Chitral.
6. Headmaster GHS Domil Lower Chitral.
7. Budget & Accounts Officer Local Office.
8. DEMIS of local office.
9. Candidate concerned.
10. PA to DEO(M) Lower Chitral.
11. Office file.


Dy: District Education Officer
(Male) Lower Chitral



CERTIFICATE OF TRANSFER OF CHARGE

1. Certified that I have on the fore/afternoon of this day respectively made over and received charge of the office of Headmaster, GHS Domil vide District Education Officer (M) Chitral Lower E:No.15066-76/EB(M)S-24/Appointment/Aacked Employees, Dated 28/09/2021.
2. Particulars of cash and important secret and confidential documents handed over are noted on the reversre.

Signature of relieved

Govt: servant

Designation Vacant i/c post

Station GHS Domil

Dated / / 2021

Endst: No. 695

Signature of relieving

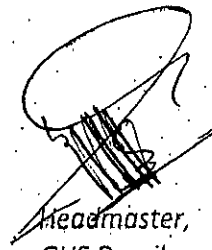
Govt: servant Abdul Saboor Khan

Designation Junior Clerk

Dated: 28 / 09 / 2021.

Copy forwarded to the:-

1. Registrar, Peshawar High Court, Peshawar/ Dar-UI-Qaza Mingora, Swat.
2. Director of Elematory and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (M), Chitral Lower.
4. District Accounts Officer, Chitral Lower.



Headmaster,
GHS Domil.

Head Master/DDO
GHS
Domail Chitral (L)



گھنٹہ وار سیکرٹری صاحب کے دفتر میں آج صبح 10 بجے کو آئی اور
صبراً انتظار کیا اور

حکومت راجھ پور کی وزارت / Pay fixation

جی اے اے

خود کارآمد سیکرٹری ہیں۔ کہ سال 2012ء میں جب کہ
جو سیکرٹری عدالت راجھ پور کے ہیں۔ یہ کہ سال 2012ء میں
جو سیکرٹری عدالت راجھ پور کے ہیں۔ یہ کہ سال 2012ء میں
Act, 2012
یہ کہ سال 2012ء میں جب کہ سال 2012ء میں
12/11/2019
19/11/2019
28/09/2019
20/04/1995
Pay fixation

Date: 06.09.2021

سید محمد علی گھنٹہ وار

سید محمد علی گھنٹہ وار
S.P.S-11
جی اے اے

06.9.2021

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

_____ OF 2021

Abdul Saboor (APPELLANT)
(PLAINTIFF)
(PETITIONER)

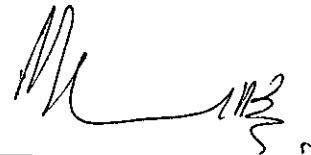
VERSUS

Education Deptt. (RESPONDENT)
(DEFENDANT)

I/We Abdul Saboor

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2021



CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

&

UMAR FAROOQ MOHMAND

SAID KHAN

HAIDER ALI ADVOCATES

OFFICE:

Flat No.4, 2ND Floor, Juma khan plaza near
FATA secretariat, warsak road Peshawar City. Mobile No.0345-9383141