

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1229/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/08/2022	<p>The appeal of Mr. Uzair Khan resubmitted today by Mr. Jehanzeb Khan Khalil Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;">REGISTRAR</p>


This is joint appeal filed by Mr. Uzair Khan & Muhammad Ashfaq today on 27/06/2022 against the order 25/10/2019 against which they preferred/made departmental appeal/ representation on 12.05.2022 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority report as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiencies.

- ① Memorandum of appeal may be got signed by the appellants.
- 2- Affidavit may be got attested by the Oath Commissioner.
- ③ Annexures of the appeal may be attested.
- 4- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- ⑤ Page Nos. 33, 34, 35, 36, 37 & 38 of the appeal are illegible which may be replaced by legible/better one.
- 6- Sub-rule-2 of rule-3 of the appeal rules 1986 requires that every affect civil servant shall prefer the appeal separately. Therefore, the appeal of the above named appellants may be filed separately/individually.
- 7- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent in each appeal may be also submitted with the appeal.

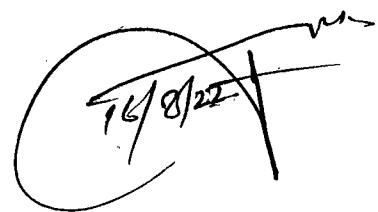
No. 2115 /ST,

Dt. 27/6 /2022.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Jehanzeb Khan Khalil Adv. Pesh.

Sir,
objections has been removed while the time period as per section 4 has been lapsed but as per appellant knowledge no order has been passed yet by the department. The copies of comments and D/1 are eligible and better copies are also attached.


7/6/22

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Uzair etc vs Secretary KP

S/N	CONTENTS	YES	NO
1	This Appeal has been presented by:		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?		
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?		
15	Whether numbers of referred cases given are correct?		
16	Whether appeal contains cutting/overwriting?		
17	Whether list of books has been provided at the end of the appeal?		
18	Whether case relate to this court?		
19	Whether requisite number of spare copies attached?		
20	Whether complete spare copy is filed in separate file cover?		
21	Whether addresses of parties given are complete?		
22	Whether index filed?		
23	Whether index is correct?		
24	Whether Security and Process Fee deposited? On		
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On		
26	Whether copies of comments/reply/rejoinder submitted? On		
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Jehanzeb KHALIL
 Signature: [Signature]
 Dated: 17-03-2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1229 /2022

Uzair Khan.....(Appellant)

V E R S U S

The Secretary, Government of Khyber Pakhtunkhwa, Health Department and others.....(Respondents)

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal with affidavit		1-9
2.	Addresses of the parties		10
3.	Application with affidavit		11-13
4.	Copy of appointment order	A	
5.	Copy of the letter	B	
6.	Copy of Writ Petition	C	
7.	Copies of comments and impugned order dated 25/10/2019	D&D/1	
8.	Copy of order dated 09/05/2022	E	
9.	Copy of departmental appeal	F	
10.	Wakalat Nama		

Appellant

Through

Dated: 15/08/2022

Jehanzeb Khan Khalil
Advocate High Court,
Peshawar.
Cell No: 0333-9366450

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2022

Uzair Khan S/o Gohar Ali R/o Dag Kalay, Warsak Road,
Peshawar.....(Appellant)

V E R S U S

1. The Secretary, Government of Khyber Pakhtunkhwa, Health Department, Civil Secretariat, Peshawar.
2. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. That Director Health Service, Newly Merged Area/ Old FATA, Warsak Road, Peshawar.
4. The District Health Officer, District Khyber at Jamrud.
5. District Account Officer, Khyber at Jamrud....(Respondents)

SERVICE APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974 AGAINST THE ORDER DATED
25/10/2019 AND ANY OTHER ORDER PASSED
BY THE RESPONDENTS UPON THE
DEPARTMENTAL APPEAL FILED BY THE
APPELLANT.

Respectfully Sheweth:

1. That appellant is the permanent and bonafide residents of District Peshawar and has never ever violated any law of the land in his entire life.

2. That Respondents advertised multiple posts inviting applications for various posts of different categories. Appellant having the requisite qualification and fulfilling the terms of advertisement applied for the subject posts. He went through the selection process and successfully qualified and accordingly he was offered appointment against his post i.e. Junior Clerk (BPS-11) at District Khyber. Subsequent to his appointment he was medically examined by the Authorized Medical Officer and was found fit. Eventually submitted his respective Arrival Report and started performing his duty. (Copy of appointment order is attached as annexure "A").

3. That while discharging his duty against the subject post, all of sudden, Respondent No. 4 without showing any reason unlawfully stopped appellant salary from September 2019 till now.

That Appellant feeling dissatisfied of the impugned action, preferred an application for releasing his salaries on 04/06/2020 to the Respondent but to no avail, It is pertinent to mention here that the salaries of the Appellant have unlawfully been

stopped by the Respondents despite the fact that they have been performing his duty without any interruption. (Copy of the letter is attached as annexure "B").

5. That appellant, being aggrieved of the acts and omissions of the Respondents and impugned action filed Writ Petition No. 3066-P/2021 before the Hon'ble Court, Peshawar. (Copy of Writ Petition is attached as annexure "C").

6. That during the pendency of Writ Petition the respondents submitted their comments in which they stated vide order dated 25/10/2019 that the appellant was terminated from the service, hence the appellant came to know about his termination. (Copies of comments and impugned order dated 25/10/2019 are attached as annexure "D" "D/1").

7. — That thereafter the Hon'ble Peshawar High Court, Peshawar disposed the above mentioned Writ Petition vide order dated 09/05/2022 with the direction to the appellant to approach the proper forum. (Copy of order dated 09/05/2022 are attached as annexure "E").

8. That the appellant as per direction of Hon'ble Peshawar High Court, Peshawar tried filed a Departmental Appeal/ representation against the impugned order dated 25/10/2019, but the respondent barbarically refused to received the same but the appellant just for the purpose to bring the law in motion against the respondents and left the departmental appeal upon the table of the competent authority, but till now no proceeding has taken place upon the said departmental appeal.

(Copy of departmental appeal is attached as annexure "F").

9. That now the appellant having no other adequate and efficacious remedy file this Service Appeal inter-alia on the following grounds.

GROUND:

A. That Respondents have not treated appellant in accordance with law, rules and policy and unlawfully stopped appellant salaries, and followed by his termination, which is unconstitutional, unjust, unfair and hence ineffective upon the rights.

B. That the appellant was properly appointed in accordance with law on the recommendation of the properly constituted Selection Committee by the competent authority after observing all the codal formalities. The appointment order of appellant was acted upon, carried into effect and now valuable rights have accrued in favour of appellant, therefore, Appellant is performing his duty and by means of impugned action, Respondents have unlawfully stopped the salaries of Appellant which is against the law.

C. That the whole proceeding of the respondents in shape of show cause notice, explanation letter, so-called inquiry and termination order dated 25/10/2019 was conducted in the absence of the appellant which is fake and fabricated documents having no legal footing, hence liable to be set aside and consequently the appellant is liable to be reinstated with all back benefits.

D. That it is a well settled legal principle of law that salary of an employee cannot be stopped even during the course of his suspension from service,

whereas the salaries of Appellant has illegally been stopped inspite of his performing uninterrupted duty, which amounts to forced labour, therefore, Respondents have violated Article-11 of the Constitution of the Islamic Republic of Pakistan, 1973.

E. That besides it is a settled law that if any irregularity in the process of selection is committed by the competent authority then it is the competent authority who is to be held responsible and for that lapse the poor employees cannot be made to suffer. However, in the case in hand no illegality was found against the competent authority.

F. That the appellant time and again requested the respondents to release the appellant salaries but the respondents with malafide intention concealed the whole inquiry proceeding from the appellant and passed the impugned order in a haphazard manner despite the fact that the other colleagues of the appellant which was appointed with the appellant his salaries was released while the so-called inquiry was initiated against the appellant, hence liable to be set aside.

G. That appellant has been serving the Department to the best of his capabilities with unblemished service record. Throughout his service no complaint whatsoever has been lodged against him, thus the impugned termination letter is without any legal justifications is totally deviation from the law, hence not sustainable in the eye of law.

H. That the act of the respondents is just for accommodate their blue eyed nears and dears; hence needs interference of this Hon'ble Tribunal.

I. That clear violation of Section-24 A of the General Clauses Act, 1897 has been made by not responding to the application of the Appellant which is not sustainable in the eye of law. It is settled law that authorities having statutory powers must exercise the same in fair, just and reasonable manner. The impugned order of the Respondents are unfair, unjust and therefore not maintainable.

J. That appellant would like to offer some additional grounds during the course of arguments when the stance of the Respondents is known to the appellant.

For the, aforesaid reasons, it is, therefore, humbly prayed that on acceptance of this Service Appeal, this Hon'ble Tribunal may graciously be pleased to declare impugned termination order dated 25/10/2019 of the Respondents whereby salaries of the appellant was unlawfully stopped, and the appellant was terminated from his service, as without lawful authority and hence of no legal effect and this Hon'ble Tribunal may further be pleased to direct the Respondents to act in the matter in accordance with law and reinstate the appellant upon his position with all back benefits.

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

Appellant

Through

Dated: 15/08/2022

Jehanzeb Khan Khalil
Advocate High Court,
Peshawar.

Verification:-
16/08/2022
Peshawar

As, verify that the content of this appeal is True and correct to the best of my knowledge.

Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2022

Uzair Khan.....(Appellant)

V E R S U S

The Secretary, Government of Khyber Pakhtunkhwa, Health Department and others.....(Respondents)

AFFIDAVIT

I, Uzair Khan S/o Gohar Ali R/o Dag Kalay, Warsak Road, Peshawar do hereby solemnly affirm and declare on oath that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

[Handwritten Signature]
ATTESTED
Muster
1608
2022
Peshawar

[Handwritten Signature]
DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2022

Uzair Khan.....(Appellant)

V E R S U S

The Secretary, Government of Khyber Pakhtunkhwa, Health
Department and others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

Uzair Khan S/o Gohar Ali R/o Dag Kalay, Warsak Road,
Peshawar.

RESPONDENTS:

1. The Secretary, Government of Khyber Pakhtunkhwa, Health Department, Civil Secretariat, Peshawar.
2. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. That Director Health Service, Newly Merged Area/ Old FATA, Warsak Road, Peshawar.
4. The District Health Officer, District Khyber at Jamrud.
5. District Account Officer, Khyber at Jamrud.

Appellant

Through

Dated: 15/08/2022

Jehanzeb Khan Khalil
Advocate High Court,
Peshawar.

11

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____/2022

In

Service Appeal No. _____/2022

Uzair Khan.....(Appellant)

V E R S U S

The Secretary, Government of Khyber Pakhtunkhwa, Health
Department and others.....(Respondents)

APPLICATION FOR SUSPENSION OF
THE IMPUGNED TERMINATION ORDER
DATED 25/10/2019, TILL THE FINAL
DISPOSAL OF THE MAIN SERVICE
APPEAL.

Respectfully Sheweth:

1. That the above mentioned Service Appeal is being filed before this Hon'ble Tribunal, in which no date of hearing has yet been fixed.
2. That on the face of it, the appellant has got a strong arguable case and is sanguine about its success.

3. That the balance of convenience also in favour of appellant.

4. That if the operation of the impugned termination order dated 25/10/2019 is not suspended that the appellant would sustain an irreparable loss.

It is, therefore prayed that on acceptance of this application, the operation of the impugned termination order dated 25/10/2019 may kindly be suspended and, till the final disposal of the main Service Appeal.

Appellant

Through

Dated: 15/08/2022

Jehanzeb Khan Khalil
Advocate High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____/2022

In

Service Appeal No. _____/2022

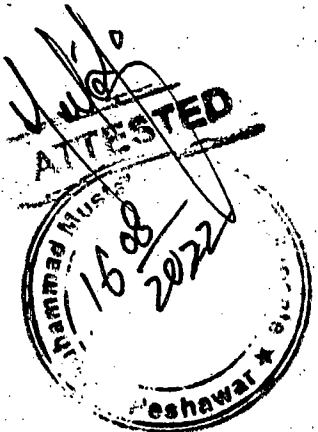
Uzair Khan and another.....(Appellants)

V E R S U S

The Secretary, Government of Khyber Pakhtunkhwa, Health Department and others.....(Respondents)

AFFIDAVIT

I, Muhammad Ashfaq S/o Bashir Muhammad R/o Deh Faqir Garhi Fazil, Peshawar (Appellant No. 2) do hereby solemnly affirm and declare on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



~~DEPONENT~~

16

Annex:- A



OFFICE OF THE AGENCY SURGEON KHYBER DISTRICT AT JAMRUD

OFFICE ORDER

As per recommendation of the Selection Committee Mr. Uzair Khan S/O Gohar Ali District Peshawar is hereby appointed as Junior Clerk BPS-11 (10510-740-32710) at Agency Surgeon office Khyber District with the following terms and conditions :-

1. He is declared medically fit for this job.
2. His appointment is purely on temporary basis.
3. He shall be bound to serve in the Khyber District.
4. He shall not include in any trade / business and any other activity what so ever has been declared prohibited for the Govt Servants in Civil Servant Act.
5. If he wishes to resign the service, a prior notice of 60 days will be submitted or pay of 60 days should be deposited in lieu of resignation in Govt Treasury.
6. The offer shall be automatically held cancelled, if he fail to join the duty within 15 days of receipt of this order.

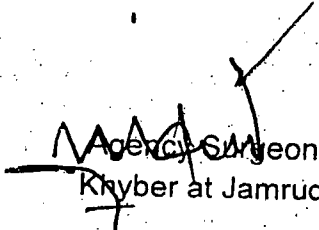
Agency Surgeon
Khyber at Jamrud

Dated 10/11/2019

No: 66-89 /AS/Khy

Copy forwarded to the:-

1. Director Health Services merged areas.
2. Deputy Commissioner Khyber District.
3. District Accounts Officer Khyber at Jamrud.
4. Official concerned


Agency Surgeon
Khyber at Jamrud

Respected DHO Jalandhar, Punjab

Dear Sir,

It is to inform you that

an employee in your department. My salary

has been stopped by the (X-DHO) without

any reason, without my share and advice from

October 2019 upto date. Therefore it is

requested to you that please release

my all salaries from October 2019 till

date. I will be very thankful to you.

Yours

Dear Sir

(Jalandhar)

16
①
Amk D



BEFORE THE HON'BLE PESHAWAR HIGH COURT PESHAWAR

W.P. No. _____/2021

1. Muhammad Ashfaq S/o Bashir Muhammad R/o Deh Faqir Garhi Fazil, Peshawar.
2. Uzair Khan S/o Gohar Ali R/o Dag Kalay, Warsak Road, Peshawar.....(Petitioners)

V E R S U S

1. The Secretary, Government of Khyber Pakhtunkhwa, Health Department, Civil Secretariat, Peshawar.
2. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. That Director Health Service, Newly Merged Area/ Old FATA, Warsak Road, Peshawar.
4. The District Health Officer, District Khyber at Jamrud.
5. District Account Officer, Khyber at Jamrud....(Respondents)

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

Respectfully Sheweth:

1. That all Petitioners are the permanent and bonafide residents of District Peshawar. Both have all rights and liabilities which have been 'guaranteed to them

ATTESTED
EXAMINER
Peshawar High Court

under the Constitution of the Islamic Republic of Pakistan, 1973. (Copies of CNICs of petitioners are attached as annexure "A" & "B").

2. That Respondents advertised multiple posts inviting applications for various posts of different categories. Petitioners having the requisite qualification and fulfilling the terms of advertisement applied for the subject posts. They went through the selection process which they successfully qualified and accordingly they were offered appointment against their respective posts i.e. petitioner No. 2 for the post of Junior Clerk (BPS-11) and Petitioner No. 1 for the post of OTA (BPS-12) at District Khyber. Subsequent to their appointment they were medically examined by the Authorized Medical Officers and were found fit. Eventually submitted their respective Arrival Reports and started performing their duties. (Copies of appointment orders are attached as annexure "C" & "D").

3. That while discharging their duties against the subject posts, all of sudden, Respondent No. 4

ATTESTED
EXAMINER
Peshawar High Court

(B) 20 18

without showing any reason unlawfully stopped petitioner's salaries from September 2019 till now.

4. That Petitioner feeling dissatisfied of the impugned action, preferred an application for releasing their salaries on 04/06/2020 to the Respondent but to no avail, It is pertinent to mention here that the salaries of the Petitioners have unlawfully been stopped by the Respondents despite the fact that they have been performing their duties without any interruption. (Copy of application dated 04/06/2020 is attached as annexure "E").

5. That petitioners, now being aggrieved of the acts and omissions of the Respondents and impugned action, and having no other adequate and efficacious remedy file this constitutional petition inter-alia on the following grounds:

GROUND:

A. That Respondents: have not treated petitioners in accordance with law, rules and policy on 'Subject and acted in violation of Articles 4 of the

ATTESTED
EXAMINER
Peshawar High Court

(21)
(B) [Signature]

must exercise the same in fair, just and reasonable manner. The acts of the Respondents are unfair, unjust and therefore not maintainable.

G. That Petitioners would like to offer some additional grounds during the course of arguments when the stance of the Respondents is known to the petitioners.

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 acts and omissions of the Respondents whereby salaries of the Petitioners were unlawfully stopped, as without lawful authority and hence of no legal effect and this Hon'ble Court may further be pleased to direct the Respondents to act in the matter in accordance with law and release the salaries of Petitioners.

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

ATTESTED
EXAMINER
Peshawar High Court

(#1)

gg

INTERIM RELIEF:

By way of interim relief, the operation 'of the impugned action may graciously be suspended and Respondents may graciously be restrained from taking any adverse action against the Petitioners till the final disposal of the instant Writ Petition.

Petitioners

Through

Dated: 08/07/2021

Ahmed
Jehanzeb Khan Khalil
Advocate High Court,
Peshawar.

CERTIFICATE:

It is certified by no such like Writ Petition has early been filed by the petitioner in this Hon'ble Court. The Writ Petition No. 3728-P/2020 titled "Abdul Qadir..VS. Government" on the same footing has already been decided by this Hon'ble Court. (Attested copy of the Writ Petition along with order of this Hon'ble Court is attached). Further stated that being Writ Petition on the score that since there is no adequate and alternate remedy is available or previously avail or approach lower forum, thus this case may fixed before the Worthy Division Bench (D.B) of this Hon'ble Court.

ADVOCATE

LAW BOOKS:

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

ADVOCATE

Ahmed
-EXHIBIT TO BEHIND CASE-
JAHANZEB KHAN KHALIL
Advocate High Court, Peshawar
The District & Sessions Judge, Peshawar
24 JUN 2022

24 JUN 2022

(11) 23

BEFORE THE HON'BLE PESHAWAR HIGH COURT PESHAWAR

W.P. No. _____/2021

Muhammad Ashfaq and another.....(Petitioners)

V E R S U S

The Secretary, Government of Khyber Pakhtunkhwa, Health Department and others.....(Respondents)

AFFIDAVIT

I, Muhammad Ashfaq S/o Bashir Muhammad R/o Deh Faqir Garhi Fazil, Peshawar, (Petitioner No. 01) solemnly affirm and declare that the contents of the **Writ Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

[Signature]

DEPONENT

CNIC No. 17301-2062768-1 ✓

Cell No. 0333-9261745

[Signature]

Identified by:

Jehanzeb Khan Khalil
Advocate High Court,
Peshawar.

[Signature]

No. 30530

Certified that the above named deponent on solemnly affirmation before me on the 20th day of July 21 at Peshawar who is personally known to me as Muhammad Ashfaq S/o Bashir Muhammad R/o Deh Faqir Garhi Fazil, Peshawar.

[Signature]

Qad. Comm. Peshawar

Nadra Verified 08/07/2021

VERIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 175 of the Constitution of Pakistan 1973

24 JUN 2022

36
IN THE PESHAWAR HIGH COURT, PESHAWAR.
OBJECTION SLIP

Ann 'E'

No: 13921

Muhammad Ashfaq & others V/S Govt of KP & others

10 Copies of annexures are not legible.

Aw 'A', An 'F'

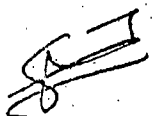
READER

Returned with above mentioned objections for removal to be
re-submitted on or before _____

23/4/2022

08 April 2022


Deputy Registrar/ Incharge
Peshawar High Court, Peshawa

Re submitted
after correction


25

**BEFORE THE HON'BLE PESHAWAR HIGH
COURT PESHAWAR**

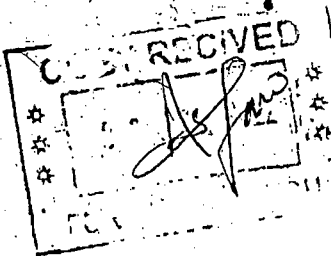
WP No. 3166-P/2021

**Muhammad Ashfaq & othersPetitioners
VERSUS**

Govt of KPK & othersRespondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Comments		1-3
2.	Affidavit		4
3.	Copy of Office Order	A	5
4.	Copy of Explanations, reply, Charge Sheets, Show Cause Notices and Termination order	B to F	6-10



FILED TODAY

Deputy Registrar

08 APR 2022

RE-FILED TODAY

Deputy Registrar

09 APR 2022

26

D

BEFORE THE HONORABLE PESHAWAR HIGH COURT PESHAWAR.

WRIT PETITION NO. 3166-P/2021

Muhammad Ashfaq & one other.....Petitioner

Versus

Govt. of Khyber Pakhtunkhwa through Secretary Health and others Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 2 TO 4.

Respectfully Sheweth:

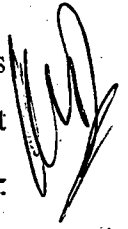
Preliminary Objections:

1. That the petitioners have got neither cause of action nor locus standi to file the instant petition.
2. That the petitioners have deliberately concealed the material facts from the Honorable Peshawar High Court, Peshawar, hence, liable to be dismissed.
3. That the petitioners have filed the instant petition just to pressurize the respondents.
4. That the petitioners have filed the instant petition with mala-fide motives.
5. That the instant petition is against the prevailing Law and Rules.
6. That the petition is not maintainable in its present form and also in the present circumstances of the issue.
7. That the petitioners have not come to this Honorable Court with clean hands.
8. That the petition is bad due to non-joinder of necessary and mis-joinder of unnecessary parties.
9. That the petition is time barred and hit by laches.

ON FACTS:

1. Pertains to record.
2. Incorrect, Petitioner No. 2 Mr. Uzair Khan has concealed the facts from this Honorable Court by producing the fake order of Junior Clerk BPS-11 in fact he was appointed against the post of Junior EPI Technician BPS-12 (Annex-4) while respondent No. 1 was appointed as OT Technician. They were asked time and again to provide relevant diplomas. However, they failed to

FILED TODAY
Deputy Registrar
08 APR 2022



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4

IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P.No.3166-P/2021

Muhammad Ashfaq & others. Petitioners

VERSUS


Govt. of Khyber Pakhtunkhwa & others. . . Respondents

AFFIDAVIT

I, Zafar Ali Khan S/o Nawab Khan Khankhel, District Health Officer, Khyber, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Comments** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by

**Advocate General
Khyber Pakhtunkhwa**



DEPONENT

CNIC: 17301-6312513-5

Cell: 0332-0900090

7734

Certified that the above was verified on solemn affirmation before me in office, this 6th day of April 2022 by Zafar Ali Khan s/o Nawab Khan Khyber who was identified by A.G. Who is personally known to me:

Oath Commissioner
Peshawar High Court, Peshawar

FILED TODAY

Deputy Registrar

08 APR 2022

08/04/22

28/30

(B) Annex A

**OFFICE OF THE AGENCY SURGEON
KHYBER AT JAMRUD**

OFFICE ORDER

As per recommendation of the Selection Committee Mr. Uzair Khan S/O Gohar Ali District Peshawar is hereby appointed as EPI Technician (BPS-12) (13320-880-42120) Khyber District, with the following terms and conditions:-

1. He is declared medically fit for this job.
2. His appointment is purely on temporary basis.
3. He shall be bound to serve anywhere in the Khyber District/KP.
4. He shall not indulge in any trade / business and any other activity what so ever has been declared prohibited for the Govt Servants in Civil Servant Act 1973.
5. If he wishes to resign the service, a prior notice of 60 days will be submitted or pay of 60 days should be deposited in lieu of resignation in Govt Treasury.
6. The offer shall be automatically held cancelled, if he fails to join the duty within 15 days of receipt of this order.

Agency Surgeon
Khyber at Jamrud

No: 249-C /AS/Khy
Copy forwarded to:-

Dated 11/01/2019

1. Director Health Services Tribal District,
2. Deputy Commissioner Khyber District.
3. District Accounts Officer Khyber at Jamrud.
4. Official concerned

Agency Surgeon
Khyber at Jamrud

Shahid
[Signature]
[Signature]

OFFICE OF THE AGENCY SURGEON
KHYBER AT JAMRUD

OFFICE ORDER

As per recommendation of the Selection Committee Mr. Uzair Khan S/o Gohar Ali District Peshawar is hereby appointed as EPI Technician (BPS-12) (13320-960-42120) Khyber District, with the following terms and conditions:-

1. He is declared medically fit for this job.
2. His appointment is purely on temporary basis.
3. He shall be bound to serve anywhere in the Khyber District/KP.
4. He shall not include in any trade/ business and any other activity what so ever has been declared prohibited for the Govt. Servants in Civil Servant Act 1973.
5. If he wishes to resign the service, a prior notice of 60 days will be submitted or pay of 60 days should be disposed in lieu of resignation in Govt. Treasury.
6. The offer shall be automatically held cancelled, if he fail to join the duty within 15 days of receipt of this order.

**AGENCY SURGEON
KHYBER JAMRUD.**

No.249-52/A.S./Khy

Dated 11.01.2019

Copy forwarded to the:

1. Director Health Services Tribal District.
2. Deputy Commissioner Khyber District.
3. District Accounts Officer Khyber at Jamrud.
4. Official concerned.

Sd/-
**AGENCY SURGEON
KHYBER JAMRUD.**



OFFICE OF THE AGENCY SURGEON KHYBER
DISTRICT AT JAMRUD

No. 1673-75 IAS/Khyber

dated. 9/5 /2019.

To

1. Mr. Muhammad Shahzaib Awan OT Technician
2. Mr. Muhammad Ishfaq OT Technician
3. Mr. Uzair Khan Junior EPI Technician

Subject: EXPLANATION.

Memo:

You were directed to provide your original diplomas within a week time but you failed to provide the same till date, therefore you are hereby directed to explain your positions within a week time and in the mean time you are once again directed to provide your original diplomas for verification from the medical faculty Khyber Pakhtunkhwa Peshawar otherwise legal action against you under the rule will be initiated.

Agency Surgeon Khyber
At Jamrud.

No. 1676-78 AS-Khy

Dated: 9/5 /2019

Copy forwarded to the:

1. Director Health Services merged areas.
2. Deputy Commissioner Khyber district.
3. District Accounts Officer Khyber at Jamrud.

Agency Surgeon Khyber
At Jamrud.

330/33

DANOR-E



OFFICE OF THE AGENCY SURGEION KHYBER
DISTRICT AT JAMRUD

No. 3227-29 AS/Khyber

dated. 17/7/2019.

To

- 1. Mr. Muhammad Shahzaib Awan OT Technician
- 2. Mr. Muhammad Ishfaq OT Technician
- Mr. Uzair Khan Junior EPI Technician

Subject: CHARGE SHEET.

Memo:

You are hereby charged that you were failed to produce your original relevant diplomas inspite of directions time and again for onward submission to the medical faculty Khyber Pakhtunkhwa Peshawar for verification.

2. Therefore you appear to be guilty of misconduct under the rule.

3. You are therefore required to submit your written defense within 7 days of the receipt of this charge sheet to an inquiry committee, failing which, it shall be presumed that you have no defense.

4. Intimate whether you to be heard in person

[Signature]
 Agency Surgeon Khyber
 At Jamrud.

[Signature]
[Signature]
 Assistant



OFFICE OF THE AGENCY SURGEION KHYBER
DISTRICT AT JAMRUD

No. 3726-28/AS/Khyber

dated: 25/9/2019.

To

1. Mr. Muhammad Shahzaib Awan OT Technician
2. Mr. Muhammad Ishfaq OT Technician
3. Mr. Uzair Khan Junior EPI Technician

Subject: SHOW CAUSE NOTICE

Memo:

I being the competent authority under the rule do hereby serve you the show cause notice that:

1. That you were failed to produce your relevant original diplomas for verification Purpose.
2. Therefore being competent authority have decided to impose upon you the penalty of Termination as per inquiry report.
3. You are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to heard upon personally.
4. If not replied within 7 days are not more than 15 days of its delivery, it shall be Presumed that you have no defense.

Agency Surgeon Khyber
At Jamrud.

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Handwritten signature

Handwritten signature

Deputy Health Officer
Khyber Pakhtunkhwa

[Handwritten signature]

Deputy Health Officer
Khyber Pakhtunkhwa

[Handwritten signature]

- 1. Director Health Services merged areas Peshawar.
- 2. Deputy Commissioner Khyber District.
- 3. District accounts Officer Khyber Pakhtunkhwa.
- 4. Officials Concerned.

Copy forwarded to the:-
No. 4088-99 JMO/Khyber

S.No	Name	Designation	OT Termination	OT Termination
1	Mr. Muhammad Shafiq	OT Termination	OT Termination	OT Termination
2	Mr. Muhammad Ishaq	OT Termination	OT Termination	OT Termination
3	Mr. Usair Khan	OT Termination	OT Termination	OT Termination

- 1. They failed to produce their original documents/contracts which were duly verified by the medical faculty of the Peshawar Hospital on 15 days.
- 2. Therefore their services are considered terminated.
- 3. They did not perform a single day duty during their tenure.

ALLEGATIONS

1. They failed to produce their original documents/contracts which were duly verified by the medical faculty of the Peshawar Hospital on 15 days.

2. Therefore their services are considered terminated.

3. They did not perform a single day duty during their tenure.

Annex E/1

[Handwritten initials]

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OFFICE OF THE DISTRICT HEALTH OFFICER
KHYBER AT JAMRUD

OFFICE ORDER

The following fresh appointees paramedic staff failed to produce their original Diplomas/ Certificates duly verified from medical faculty Khyber Pakhtunkhwa in spite of time and again directions by this office therefore they the following staff of health facilities Khyber district are hereby terminated with immediate effect due to the following allegations and they are directed to deposit the following amount of pay, which has illegally been drawn by them into Govt. treasury through cheque within 15 days with the receipt of this termination letter:-

ALLEGATIONS:

1. They failed to produce their original diplomas/ certificates duly verified by the medical faculty Khyber Pakhtunkhwa within stipulated period of 15 days.
2. Therefore their diplomas are considered fake.
3. They did not performed a single day duty during their tenure.

S. NO.	Name	Designation	Amount has to be recovered
1	Mr. Muhammad Shanzai Awan	OT Technician	2000
2	Mr. Muhammad Lalog	OT Technician	3000
3	Mr. Uzair	Senior EPI Technician	6684

Sd/-
District Health Officer
Khyber at Jamrud

No. 4083-92/DHO/Khyber

Dated: 25.10.2019

Copy forwarded to:-

1. Director Health Services Merged Areas Peshawar.
2. Deputy Commissioner Khyber District.
3. District Accounts Officer Khyber at Jamrud.
4. Officials concerned.

Sd/-
District Health Officer
Khyber at Jamrud

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any reason unlawfully stopped appellant's salaries from September 2019 till now.

3. That Appellants feeling dissatisfied of the impugned action, preferred an application for releasing their salaries on 04/06/2020 to the DHO Khyber, but to no avail, It is pertinent to mention here that the salaries of the Appellants have unlawfully been stopped by the DHO Khyber despite the fact that they have been performing their duties without any interruption.

4. That appellants, being aggrieved of the acts and omissions of the your department, and impugned action filed Writ Petition No. 3066-P/2021 before the Hon'ble Court, Peshawar.

5. That during the pendency of Writ Petition your department submitted comments, in which stated vide order dated 25/10/2019 that the appellants were terminated from the service, hence the appellants came to know about their termination.

6. That thereafter the Hon'ble Peshawar High Court, Peshawar disposed the above mentioned Writ Petition vide order dated 09/05/2022 with the direction to the

appellants to approach the proper forum, hence this appeal.

It is requested that on acceptance of this appeal, your good-ship may graciously be pleased to declare impugned termination order dated 25/10/2019 of your department whereby salaries of the appellants were unlawfully stopped, and the appellants were terminated from their services as null and void and the appellant may graciously be reinstated upon their positions with all back benefits.

Appellants

1. Uzair Khan S/o Gohar Ali R/o Dag Kalay, Warsak Road, Peshawar.
2. Muhammad Ashfaq S/o Bashir Muhammad R/o Deh Faqir Garhi Fazil, Peshawar.

AMK
12-5-2022

50 روپے

128694



ایڈوکیٹ:
بار کونسل / ایسوسی ایشن نمبر: BC-12-3610
رابطہ نمبر: 0313-9955020

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: خیبر پختونخواہ سروسز ایسوسی ایشن

دعویٰ: <u>سروسز ایسوسی ایشن</u>	منجانب: <u>ایڈوکیٹ</u>
علت نمبر:	
مورخہ:	
جرم:	
تھانہ:	

بامث تحریر آگے

42851
42851

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
 آن مقام کے لیے مقدمہ مندرجہ عنوان کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوفہ و مقدمہ کی کل کارروائی کا مکمل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور سزاؤں، نیز
 داخلہ کرنے اپیل انگریزی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کارروائی کے واسطے اور وکیل یا مختار قانونی نوکری کے ساتھ اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور ان کا مستحقہ پر ادائیگی منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ کر دیا کہ سدر ہے

المرقوم: 2020/6/2

مقام: پشاور

نوٹ: اس وکالت نامہ کی ذمہ داری ناقابل قبول ہوگی۔