

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,**  
**PESHAWAR.**

Service Appeal No. 155/2018

Date of Institution ... 12.01.2018

Date of Decision ... 07.09.2021

Anwar Zeb S/o Sher Rehman, D.M (BPS-15) GHS Hatal Batkool  
Battagram, R/o Afridi Abad Village Kaga Wala Ali Zai P/O Badbher  
Tehsil & District Peshawar.

... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary  
Elementary & Secondary Education, Khyber Pakhtunkhwa,  
Peshawar and two others.

... (Respondents)

MR. YASIR SALEEM,  
Advocate

-----  
--- For appellant.

MR. KABIRULLAH KHATTAK,  
Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN  
MR. ATIQ-UR-REHMAN WAZIR

--- MEMBER (JUDICIAL)  
--- MEMBER (EXECUTIVE)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- The appellant has preferred the instant service appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, challenging the stoppage of his pay with effect from November 2013 till date.

2. Precise facts as alleged in the appeal are that upon the recommendation of District Selection Committee, the appellant was appointed as Drawing Master (BPS-15) vide order dated 16.04.2013 against the vacant post at GHS Hatal Batkool, who is performing his duty with zeal and zest; that the appellant

was paid his salary till the month of October 2013, however his salary was thereafter stopped, despite the facts that the appellant is regularly performing his duty; that the appellant approached august Peshawar High Court, Peshawar through filing of Writ Petition for the release of his salary, however the same was dismissed on the ground of maintainability however, it was ordered that the appellant may approach the Khyber Pakhtunkhwa Service Tribunal, if he was so advised; that the appellant filed departmental appeal, however the same was not responded within the statutory period of 90 days, hence the instant service appeal.

3. Notice was issued to the respondents, who submitted their comments, wherein they mainly alleged that the very appointment letter of the appellant is fake and bogus.

4. Learned counsel for the appellant has contended that the appellant was appointed as Drawing Master (BPS-15) by the competent Authority, after observing of all codal formalities; that the service book of the appellant was prepared and he was being paid salary for some of the months by issuing him personal number; that the appellant is regularly performing his duty, therefore, the stoppage of his salary is wrong and illegal; that the stoppage of salary of the appellant is in violation of section-4 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 as well as violation of Article-4 of the Constitution of Islamic Republic of Pakistan; that neither any disciplinary action has been taken against the appellant nor his services has been terminated, therefore, the respondents are not justified in stoppage of salary of the appellant.

5. On the other hand, learned Additional Advocate General for the respondents while opposing the arguments of learned counsel for the appellant has contended that the appellant has not at all been appointed by the competent Authority and the appointment order so annexed by the appellant with his appeal is fake/bogus and fabricated; that the appellant has neither assumed charge in Government High School Hatal Batkool Battagram nor he has performed any duty in the said

school; that the appellant belong to District Peshawar, therefore, it was not possible that he could be posted against District Cadre post in District Battagram; that the appellant is not at all a civil servant, therefore, he has got no *locus standi* to file the instant appeal; that the appellant was not appointed as civil servant, therefore, there could not arise any question of issuing him charge sheet or show-cause notice; that the appellant has not been appointed by the competent Authority, therefore, he is not entitled to payment of any salary. Reliance was placed on 2007 PLC 715 [Supreme Court of Pakistan], Judgment dated 28.01.2019 passed by this Tribunal in Service Appeal bearing No. 540/2014 titled "Mst. Shehnaz Bibi Versus The Secretary Education (E&SE) Khyber Pakhtunkhwa Peshawar and three others" as well as judgment dated 17.10.2018 passed by this Tribunal in Service Appeal bearing No. 479/2013 titled "Mr. Abid Khan Versus Government of Khyber Pakhtunkhwa the Chief Secretary Khyber Pakhtunkhwa Peshawar and four others".



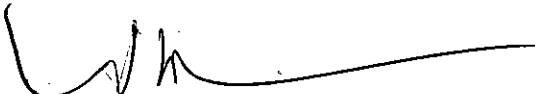
6. We have heard the arguments of learned counsel for the parties and have perused the record.

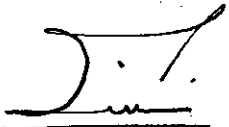
7. The appellant has filed the appeal in hand seeking release of his salary with effect from November 2013 till date by alleging that the appellant was regularly appointed as Drawing Master (BPS-15) vide appointment order dated 16.04.2013 and is regularly performing his duty, however the respondents have illegally stopped his salary. In support of his contention, the appellant has annexed pay slips pertaining to the months of January 2013 and August 2014 as well as copies of his appointment order and service book. On the other hand, the respondents have alleged that the very appointment order of the appellant is fake and bogus. A perusal of the record would show that the departmental appeal of the appellant was forwarded by the office of the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar to the District Education Officer (Male) Battagram vide letter dated 30.07.2015 for inquiry into the matter,

however the respondents have not produced any record, wherefrom the fate of departmental appeal of the appellant could be ascertained. The aforementioned fact indicates that the District Education Officer (male) Battagram did not bother to conduct any inquiry into the matter. In view of divergent contentions of the parties regarding the appointment order of the appellant a full-fledged inquiry is necessary in the matter for ascertaining as to whether the appointment order of the appellant is genuine or otherwise.

8. Consequently, the matter is remitted back to the respondents with the directions to conduct proper inquiry into the same within a period of 90 days from the receipt of copy of this judgment. The appellant shall be associated with the inquiry proceedings by providing him fair opportunity of defending himself. In view of peculiar facts and circumstances of the case, no order for release of salary of the appellant could be passed at this stage, which of course would be subject to outcome of inquiry. The appeal in hand is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
07.09.2021

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

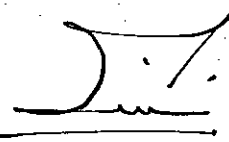
ORDER  
07.09.2021

Appellant alongwith his counsel Mr. Yasir Saleem, Advocate, present. Mr. Nasir Ali, ADO (Litigation) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the matter is remitted back to the respondents with the directions to conduct proper inquiry into the same within a period of 90 days from the receipt of copy of this judgment. The appellant shall be associated with the inquiry proceedings by providing him fair opportunity of defending himself. In view of peculiar facts and circumstances of the case, no order for release of salary of the appellant could be passed at this stage, which of course would be subject to outcome of inquiry. The appeal in hand is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
07.09.2021

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

30.11.2020

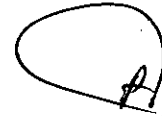
Junior counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Former made a request for adjournment as senior counsel is not available. Adjourned. To come up for arguments on 10.02.2021 before D.B.



(Atiq ur Rehman Wazir)  
Member (E)



(Rozina Rehman)  
Member (J)

10.02.2021

Due to Pandemic of Covid-19, the case is adjourned to 06.05.2021 for the same.



Reader

06.05.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 07.09.2021 for the same as before.

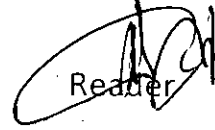


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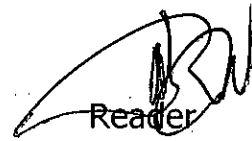
Due to COVID19, the case is adjourned to

28/7/2020 for the same as before.

  
Reader

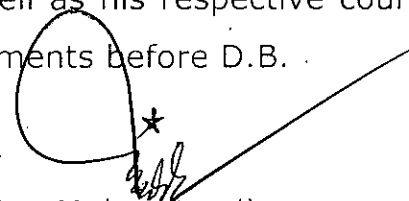
28.07.2020


Due to COVID-19, the case is adjourned. To come for the same on 21.09.2020 before D.B.

  
Reader

21.09.2020

Appellant has not forth come at the moment i.e 01:46 P.M. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is present. The last two adjournments were made on the basis of note Reader due to spread of disease of COVID-19, therefore, in the circumstances we deem it appropriate to issue notice to appellant as well as his respective counsel for 30.11.2020. File to come up for arguments before D.B.

  
(Mian Muhammad)  
Member (Executive)

  
(Muhammad Jamal Khan)  
Member (Judicial)

02.12.2019

Mian Muhammad Imran Advocate Submitted Vakalat Nama in favour of the appellant. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Being freshly engaged, learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 21.01.2020 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

21.01.2020

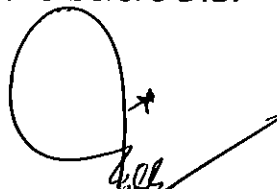
Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Riaz Ahmad Painsakheil, Assistant AG for the respondents present. Adjourned to 09.03.2020 for arguments before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

09.03.2020

Appellant in person present. Addl: AG alongwith Mr. Wali Ur Rehman, ADO for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourned. To come up for arguments on 08.05.2020 before D.B.


  
Member


  
Member



03.07.2019

Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment for arguments. Adjourned to 29.08.2019 for arguments before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

29.08.2019

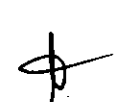
Learned counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 15.10.2019 before D.B.

  
Member

  
Member

15.10.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Wali-ur-Rehman, ADO for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 02.12.2019 for arguments before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

**Service Appeal No. 155/2018**

**01.01.2019**

Appellant in person present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondent No. 4 has already been submitted. Representative of respondents No. 1 to 3 are not present therefore, notice be issued to respondents No. 1 to 3 with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned. To come up for written reply/comments on behalf of respondent No. 1 to 3 on 06.03.2019 before S.B.

  
**Muhammad Amin Khan Kundi**  
Member

**06.03.2019**

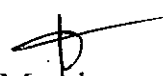
Appellant in person present. Mr. Walk Ullah ADEO representative of the respondents present and submitted written reply/comment. Adjourn. To come up for rejoinder/arguments on 08.05.2019 before D.B

  
Member

**08.05.2019**

Counsel for the appellant and Addl:AG alongwith Mr. Wali-Ur-Rehman, ADEO for respondents present.

Due to paucity of time, the instant matter is adjourned to 03.07.2019 for arguments before D.B.

  
Member

  
Chairman

10.08.2018

Appellant Anwar Zeb in person present. Mr. Kabirullah Khattak, Addl. AG for respondents present. Written reply not submitted. Learned AAG sought some time to submit the same. Granted but as a very last chance. Case to come up for written reply/comments on 09.10.2018 before S.B.

  
Chairman

09.10.2018

Counsel for the appellant Mr. Yasar Saleem, Advocate present. Mr. Kabirullah Khattak, Addl. AG for the respondents present. Written reply not submitted and request made by AAG for further adjournment. Last opportunity granted. To come up for written reply/comments on 13.11.2018 before S.B.

  
Chairman

13.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 01.01.2019. Written reply not received.

  
READER

**24.04.2018** Clerk of the counsel for appellant and Addl: AG alongwith Mr. Saif-ur-Rahman, Assistant Accountant for the respondents No. 4 present. Written reply submitted on behalf of respondent No. 4. Requested for adjournment. Adjourned. To come up for written reply/comments on **07.05.2018** before S.B.

  
Chairman

**07.05.2018** The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on **26.06.2018** before S.B.

  
Reader

**26.06.2018** Clerk of the counsel for appellant present. Mr. Muhammad Jan, DDA for the respondent present. Written reply not submitted. Requested for adjournment. Adjourned. Last opportunity is granted. To come up for written reply/comments on **10.08.2018** before S.B.

  
Member

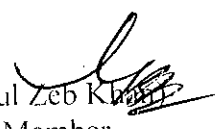
19.02.2018

Learned counsel for the appellant present. Preliminary arguments heard and case file perused.

Learned counsel for the appellant argued that the appellant was initially appointed as Drawing Master (BPS-15) vide order dated 16.04.2013. That ever since his appointment the appellant has been continuously performing his duties with zeal and devotion. That the appellant has been paid his salaries uptill October 2013, however later the payment of salaries have been withheld despite the fact that the appellant has been continuously performing his duties. Further argued that the appellant agitated the matter of his release of salary continuously, but to no avail, he also filed an application to the Respondent No. 2, the same was forwarded to the respondent No. 3 vide letter dated 30.07.2015, however the salary of the appellant has not been released. That the appellant preferred departmental appeal on 15.11.2016 which was not responded within the statutory period of 90 days.


Appellant Deposited  
Security & Process Fee

Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is also directed to deposit security and process within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 09.04.2018 before S.B.

  
(Gul Zeb Khan)  
Member

09.04.2018



Appellant absent. Clerk of the counsel present on behalf of appellant. Mr. Kabir Ullah Khattak, Addl: AG for the respondents No. 4 present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 24.04.2018 S.P.

  
Member

Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_

Case No. 155/2018


| S.No. | Date of order proceedings | Order or other proceedings with signature of judge  |
|-------|---------------------------|---|
| 1     | 2                         | 3   |
| 1     | 01/02/2018                | <p>The appeal of Mr. Anwar Zeb resubmitted today by Mr. Yasir Saleem Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"><br/>REGISTRAR</p> |
| 2-    | 07/02/18.                 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/02/18.</u></p> <p style="text-align: right;"><br/>CHAIRMAN</p>   |

The appeal of Mr. Anwar Zeb son of Sher Rehman DM GHS Hatal Batkool Battagram received today i.e. on 12.01.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Signature of the appellant requires on the memorandum of appeal.
- 2- Affidavit is not dully attested by the Oath Commisisoner.
- 3- Annexures D & E are missing.
- 4- Copies of departmental appeal and comments of department mentioned in the memo of appeal are not attached with the appeal be placed on it.
- 5- Six more copies/sets of the appeal along with annexures i.e complete in all respect to be submitted with the appeal.

No. 112 /S.T,

Dt. 15/01 /2018


  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Yasir Saleem Adv. Peshawar.

Sir

Re Submitted after completion

Please Reat the Court

  
Yasir Saleem  
Advocate  
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 155/2018

**Anwar Zeb S/O Sher rehman, DM BPS-15 Ghs Hutal Batkool  
Batagram R/O afridi abad village kaga wala ali zai P/O badbher  
Tehsil & District peshawar. (Appellant)**

**VERSUS**

**Government of Khyber Pakhtunkhwa through Secretary Elementary  
& Secondary Education, Khyber Pakhtunkhwa, Peshawar and others.  
(Respondents)**

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| 3            | Copy of Service Book   | B               | 6-10           |
| 4            | Copies of salary slips                                       | C               | 11-12          |
| 5            | Copies of the Applications and letter dated 30.07.2015       | D & E           | 13-14          |
| 6            | Copy of the Departmental appeal dated 05.01.2016             | F               | 15             |
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**Appellant**

12/1/2018

Through

**YASIR SALEEM**  
Advocate, Peshawar

&

**JAWAD UR REHMAN**  
Advocate, Peshawar



**BEFORE THE KHYBER PAKHTUNKWA  
SERVICE TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

Appeal No. 155 /2018

Diary No. 37

Dated 12-01-2018

**Anwar Zeb S/O Sher rehman, DM BPS-15 Ghs Hatal Batkool  
Batagram R/O afridi abad village kaga wala ali zai P/O baddher  
Tehsil & District peshawar. (Appellant)**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Batagram.
- ✓4. District Accounts Officer, Batagram.

**(Respondents)**

**Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, for directing the respondents to release salary of the appellant w.e.f November 2013 till date, against which the departmental appeal dated 06.02.2016 despite the lapse of 90 days statutory period.**

Prayer in appeal

**Filed 12/1/18  
Registrar**

**On acceptance of this appeal the respondents may kindly be directed to release the salary of the appellant w.e.f November 2013 till date and onwards with all arrears and back benefits.**

Respectfully submitted,

1. That upon the recommendation of the Departmental District Selection Committee, the appellant was initially appointed as drawing master BPS-15 vide order dated 16.04.2013 against vacant post at GHS Hatal Batkool. *(Copy of the appointment order dated 16.04.2013, is attached as Annexure A)*

Re-submitted to -day  
and filed.

Registrar  
12/1/18

2. That the appellant was also medically examined and when found fit he duly took over charge of his post and started performing his duties. It is pertinent to mention here that the service book of the appellant was also prepared for the purpose of pay and pension. ***(Copy of Service Book is attached as Annexure B)***
3. That ever since his appointment the appellant has been continuously performing his duties with zeal and devotion without any complaint whatsoever regarding his performance.
4. That although initially the appellant has been paid his salaries uptill October 2013, however later the payment of salaries have been withheld despite the fact that the Appellant has been continuously performing his duties. ***(Copies of salary slips are attached as Annexure C)***
5. That the appellant throughout agitated the matter of his release of salary but to no avail, he also filed an applications to the Respondent No. 2, the same was forwarded to the Respondent No. 3 vide letter dated 30.07.2015, however the salary of the appellant has not been released. ***(Copies of the Applications and letter dated 30.07.2015, are attached as Annexure D & E)***
6. That as a last resort the appellant submitted his departmental appeal dated 05.11.2016, however the same has also not been responded the lapse of 90 days hence the instant appeal. ***(Copy of the Departmental appeal dated 05.01.2016 is attached as Annexure F)***
7. That the appellant also filed writ petition No. 344-P/2017 before the Honorable Peshawar High Court Peshawar, wherein the respondents submitted comments. The petition was dismissed due to non maintainability vide order dated 24.10.2017. However the appellant was given liberty that he may approach forum for redressal of his grievances. ***(Copies of writ petition, comments and order dated 24.10.2017 are at attached as Annexure G, H & I)***
8. That the appellant prays for the acceptance of his appeal inter alia on the following grounds:

**GROUND OF DEPARTMENTAL APPEAL**

- A. That the appellant have not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That the appellant was appointed by the competent authority after observing all codal formalities, the appellant duly took over charge of his post and is performing his duties, the order of the appointment is thus acted upon and valuable rights have been created in favor of the appellant the same cannot be undone or snatched away from him illegally.
- C. That the appellant have never been proceeded against, nor any charge sheet or show cause notice has ever been served upon him, his services have not been terminated, he is on the strength of the Respondent Department, since he is regularly performing his duties, therefore withholding of his salary without any reason is illegal unlawful against the law and facts.
- D. That withholding of salary amounts to punishment albeit without any Charge Sheet or Show Cause Notice the salary of the applicant has been withheld since his appointment i.e November 2013.
- E. That the appellant have been denied of his livelihood, which amounts to violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1974.
- F. That not releasing salary of the appellant is also violation of section 4 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, besides violation of his fundamental rights guaranteed and secured to him under the Constitution of Pakistan, 1973.
- G. That the appellant throughout agitated the matter of his release of his salary and continuously approached the Respondent department, however his salary has not been released till date. Since denial of monthly salary to the appellant is a continuous wrong thus being recurring cause of action no period of attracted to the instant case.
- H. That the services of the appellant have not been terminated nor any disciplinary action has ever been initiated against him, he is on the strength of the department and is continuously performing his duties, thus under no circumstances he can be denied of his salary.

- I. That the appellant has never committed any act or omission which could be termed as misconduct albeit the appellant has been deprived from his salary since his appointment for reasons best known to the respondents.
- J. That the appellant belongs to a poor family and has a large family dependent upon him, moreover the appellant have no other source of income, due to the withholding of his salary his whole family is thus suffering.
- K. That the appellant seeks permission of this Honourable court to rely on additional grounds at the time of hearing of the appeal.

*It is, therefore, humbly prayed that on acceptance of this appeal the respondents may kindly be directed to release the salary of the appellant w.e.f November 2013 till date and onwards with all arrears and back benefits.*

*J m zeb*  
Appellant

Through

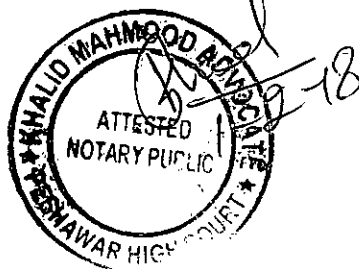
*12-1-2018*

**YASIR SALEEM**  
Advocate, Peshawar

*Per Shah*  
&  
**AWAB UR REHMAN**  
Advocate, Peshawar

**AFFIDAVIT**

*I, Anwar Zeb S/O Sher rehman, DM BPS-15 Ghs Hutal Batkool Batagram,* do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.



*J m zeb*  
Deponent

5

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) BATTAGRAM. "A"

OFFICE ORDER/APPOINTMENT

Consequent upon the recommendation/ approval of the District selection Committee BATTAGRAM in its meeting held on 27.12.2012. the Competent Authority is pleased to appoint the following fresh trained Male DM candidates on merit having the prescribed qualification in BPS 15(Rs.8500-700-29500) plus usual allowances as admissible under the rules against the vacant post of D.M (Male) mentioned against each their names on regular basis under the existing policy of the Provincial Govt: on terms and conditions given below with effect from the date of their taking over charge in the interest of public service.

| S. No | Candidate Name    | Father's Name | Qualification | Score | Address          | School/Station where posted | Remarks        |
|-------|-------------------|---------------|---------------|-------|------------------|-----------------------------|----------------|
| 1     | Naseer Ahmed      | Sher Dad      | MSc. DM       | 80.36 | Ajmera Battagram | GHS Karg                    | Against v/post |
| 2     | Muhammad Ismail   | Abdur Rehman  | MA. DM        | 61.76 | Thakot Battagram | GMS Nehar                   | -do-           |
| 3     | Saleh Ahmad       | Rahim Gul     | MA, DM        | 59.47 | Fashto Allai     | GMS Koshgram                | -do-           |
| 4     | Khurshid Ali Khan | Ahmad Rizwan  | MA, DM        | 59.37 | Ropkani Allai    | GHS Karg                    | -do-           |
| 5     | Anwar Zeb         | Sher Rehman   | BA, DM        | 48.23 | Peshawr          | GHS Hatal Batkool           | -do-           |
| 6     | Saeed             | Hazrati Azam  | MA, DM        | 47.85 | Thakot Battagram | GMS Soorgai                 | -do-           |
| 7     | Rahim Dad         | Muhib Gul     | BA, DM        | 45.11 | Peshawar City    | GHS Asharban                | -do-           |

TERMS AND CONDITIONS:

- 1- Their services will be considered regular but without pension & gratuity in terms of section-19 of the NWFP Civil Servant Act, 1973 as amended vide NWFP Civil Servants (Amendment) Act, 2005. They will however be entitled to Contributory Provident Fund in such a manner and at such rates as prescribed by the Government.
- 2- The appointees who are already in Govt: service and working against a pensionable post on regular basis before 1<sup>st</sup> day of July 2001 without any service break, on application to the Competent Authority/this office through proper channel are appointed and allowed choice of option either to retain benefit of pension and gratuity as allowed to them under their previous terms of appointment or to avail the benefit of contributory provident fund allowed to them under new appointment.
- 3- Their services are liable to termination on one month's notice from either side. In case of resignation without notice, their one month's pay/allowances shall be forfeited to the Government.
- 4- The appointees should join their posts within 15 days of the issuance of this order. The Headmaster Concerned. Would furnish a certificate to the effect that the candidates have joined the posts, otherwise after 15 days of the issuance of this Order, failing which their candidature will expire automatically and no subsequent appeal etc shall be entertained.
- 5- They would be on probation for a period of one year extendable for another one year as provided in NWFP Appointment Promotion and Transfer Rules 1989.
- 6- They will be governed by such rules and regulations as may be issued from time to time by the Government.

**ATTESTED**

ons e ats fluserat re te r nsiu mstical nuda III Barragun aut pasvris ra s samis  
re ms emis ca ms untsu signst.

Muhammad Saeed Khan  
District Education Officer (M&F)  
Battagram.

Encls: No: 5/2013 Dated 16 / 1 / 13 /2013

Copy for information and necessary action to the:-

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1. isruier Acceturis a niesu Barragun.
3. Mstical Supsuinrsntsr III B arragun.
4. Hsat Misrusssss ca eenesumt Senecl.
5. All rsuensus eenesunst.

Signature

*(Signature)*  
Dy: District Education Officer  
(Male & Female) District Battagram

12/1/13

6

Arwaz B<sup>u</sup>

# SERVICE BOOK

~~P. No  
701737~~

~~NIC: 17301-1522341-1~~

OF

Mr. Arwar Zait  
S/o Sheer Rehman  
Designation TDM  
Department Education

Arwar Zait

قیمت - 40 روپے

PRINTED BY MANAGER  
STATIONERY & PRINTING DEPARTMENT, GOVERNMENT OF N.W.F.P, PESHAWAR.

(For use in Police Department only)

Heirs:-

1. Passed SSC Exam from BISE Peshawar  
Roll No 6292 Marks: 465/500  
Session 1991

2.

*Ault*  
HEAD MASTER  
Govt: High School  
Hutal Batkool: Battagram

3.

Verification Roll No. dated received back.  
Passed FSSC Exam from BISE Peshawar  
Under Roll No. 63198 Marks: 485/1100  
Session 1994

*Ault*  
HEAD MASTER  
Govt: High School  
Left Throat Impairment  
Hutal Batkool: Battagram

Passed BA Exam from Peshawar  
University Under Roll No. 26602  
Marks 258/550 Session 1998

| Qualifications                                 | Date | Qualifications   | Date |
|--|------|--|------|
| English  |      | HEAD MASTER<br>Govt: High School<br>Hutal Batkool: Battagram |      |
| Passed DM Exam from Pushto                     |      | B.L. or B.A.   |      |
| Gulf Institute of Modern Technology Rawalpindi |      | Pleadership examination                                      |      |
| In Post Division, Session 2005-06              |      | Training School Final Examination                            |      |
| Finger Print                                   |      | Other Qualifications:-                                       |      |
| Drill Instructing                              |      |  |      |
| Court Duties                                   |      |  |      |
| Reserve Duties                                 |      |  |      |

N.B. - Line to be drawn under the qualification possessed.

*ATTESTED*



Note:- The entries in this page should be renewed or re-attested at least every five years and the Signature to lines 9 and 10 should be dated.

1. Name: ANWAR ZAIB

2. Race: Afghan

3. Residence: Badlabair, Peshawar

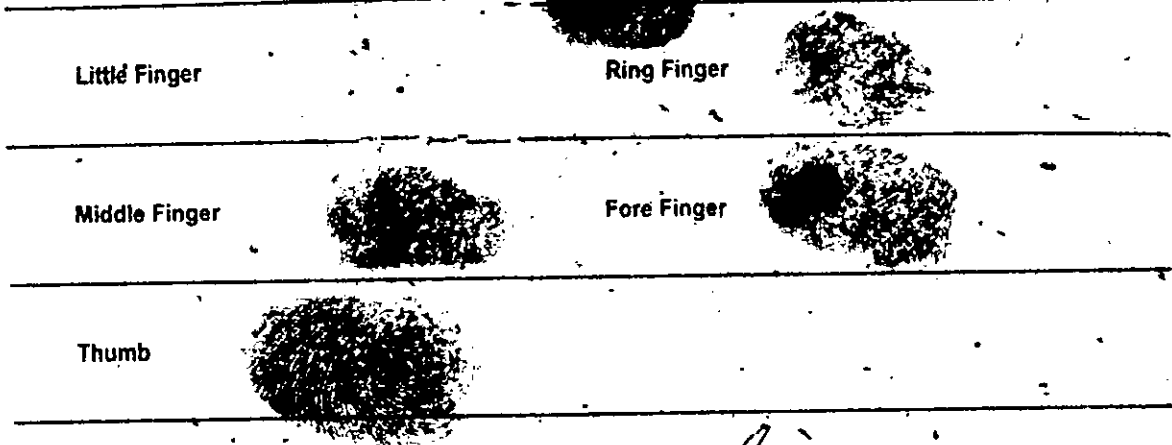
4. Father's name and residence: Sher Rehman  
as above

5. Date of birth by Christian era as nearly as can be ascertained: 02-02-1975  
2nd Feb: MM & Seventy Five

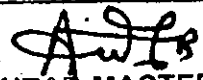
6. Exact height by measurement: 5-8"

7. Personal marks for identification: Nil

8. Left hand thumb and Finger impression of (Non-Gazetted) Officer.



9. Signature of Government Servant: 

10. Signature and Designation of the Head of the Office, or other attesting Officer.  
  
HEAD MASTER  
Govt: High School  
Hutal Batkool: Battagram

  
ATTACHED

| 1                           | 2   | 3  | 4                       | 5                              | 6  | 7                   | 8                               |
|-----------------------------|---|--|-------------------------|--------------------------------|--|---------------------|---------------------------------|
| Name of Post                | Whether substantive or officiating and whether Permanent or temporary | If Officiating state<br>(i) Substantive appointment, or<br>(ii) Whether service counts for pension under Art. 371 C.S.R. | Pay in substantive Post | Additional Pay for officiating | Other emolument falling under the term "Pay" | Date of Appointment | Signature of Government Servant |
| DM<br>GHS<br>Hatal Bhatkool |   | B.P.S. 15-8500-700-28500   |                         |                                |  |                     |                                 |
|                             |   |  |                         | 8500/5                         |  |                     | <i>[Signature]</i>              |
|                             |   |  |                         |                                |  |                     |                                 |
|                             |   |  |                         | 9200/-                         |  | 12/2/13             | <i>[Signature]</i>              |
|                             |   |  |                         |                                |  |                     |                                 |
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|                             |   |  |                         |                                |  |                     |                                 |

ATTACHED  
*[Signature]*



CONSOLIDATED GENERAL WYDER PAKTUNKIWA

PAYMENT ADVICE

F. Sec: 001 Month: June 1975  
BM2082 - PRINCIPAL P. U. S. HIGH BATH

Education Schools

Pin:   
RTR:   
GFF #:   
Old #:

11  
AAKSA

DEPT CODE BM2082

# 00 of 07  
2015-00000  
CREDITED MASTER  
CHILD No 1200111111

THIS INVOICE RELATES TO:  
1. ACCOUNTS RECEIVABLE

- PAYS AND ALLOWANCES
- 0001-Basic Pay
  - 1000-House Rent Allowance
  - 1210-Convey Allowance 2005
  - 1200-Medical Allowance
  - 1923-GRG-GHRS 102(1-15)
  - 1971-Adhoc Allowance 2011@ 15%
  - 1973-Adhoc Allowance 2011@ 50%
  - 2118-Adhoc Relief Allow (2912)

Grass Fee and Allowances

DEDUCTIONS:

- GFF Balance 1,520.00
- 3501-Renevolment Fund
- 3511-Addi Group Insurance
- 3604-Group Insurance

|           |
|-----------|
| 9,500.00  |
| 1,566.00  |
| 2,720.00  |
| 1,000.00  |
| 1,000.00  |
| 783.00    |
| 2,610.00  |
| 1,700.00  |
| 19,879.00 |

Subtr:

|          |
|----------|
| 1,520.00 |
| 180.00   |
| 13.00    |
| 115.00   |

1,828.00

NET AMOUNT PAYABLE

18,051.00

Total Deductions

LFP Quota: Payment through DDO.

D. O. N. 02.02.1975

QUALIFYING SERVICE  
EACH  
00 Years 00 Months 00 Days

ATTESTED

Signature

12

**PAYMENT ADVICE**

P. Sec: 002 Month: August 2014

BR7070 - Head Master GHS Baharijan  
 Min: Education Schools  
 NIN:  
 GPF #:   
 UIN #:

Pers #: 00718906 / Buckle:  
 Name: ANUAR ZAIB /  
 Dse.: DRAWING MASTER  
 ERIC No: 1210185808544  
 GPF Interest Applied

**DEPT CODE**

15 Vocational Temporary

**PAYS AND ALLOWANCES:**

|                                |           |
|--------------------------------|-----------|
| 0001-Basic Pay                 | 9,200.00  |
| 1000-House Rent Allowance      | 1,566.00  |
| 1210-Convey Allowance 2005     | 2,856.00  |
| 1300-Medical Allowance         | 1,200.00  |
| 1923-UAA-OTHER 2011-15)        | 1,000.00  |
| 1971-Adhoc Allowance 2011@ 15% | 780.00    |
| 1973-Adhoc Allowance 2011@ 50% | 2,610.00  |
| 2118-Adhoc Relief Allow (2012) | 1,840.00  |
| 2148-15% Adhoc Relief All-2013 | 1,280.00  |
| Gross Pay and Allowances       | 23,355.00 |

**DEDUCTIONS:**

|                           |          |        |          |
|---------------------------|----------|--------|----------|
| GPF Balance               | 1,520.00 | Subrc: | 1,520.00 |
| 3501-Benevolent Fund      |          |        | 180.00   |
| 3511-Addi Group Insurance |          |        | 13.00    |
| 3604-Group Insurance      |          |        | 115.00   |
| 3990-Emp. Edu. Fund KPK   |          |        | 100.00   |

Total Deductions

**NET AMOUNT PAYABLE**

1,928.00

21,427.00

D. B. B  
 07.01.1991

LFP Rante:  
 Payment through ODD.

01 Years 00 Months 018 Days

*[Handwritten signature and stamp]*

کتابت حنا - ڈائری پلٹ اور لکھنؤ ایئر سٹیشن ڈائری ایئر لائن خیر پختہ کھواں

ANWER-D 13

درخواست مجراء سرد و ملک دوبارہ دالے کے لیے

جون 2013ء تا حال

حنا - علی

یہ کہ مسائل حنا بدل لیں وہاں سے

یہ کہ مسائل حنا کے حوالے سے ایئر لائن 8804-8/16/4/2013ء سے اپریل 2015ء تک ڈائری پلٹ

بہتر بنی ہوں

یہ کہ مسائل حنا اور جی ڈی ایئر لائن کے سر انجام دینے کے لیے 1-11-2014ء سے حنا سے شروع ہو رہی ہے

جو کہ تقریباً پندرہ سال سے چل رہی ہے

حنا یہ کہ حنا کو وہ طوائف کے متعلق مسائل کی بدستور حق تلفی ہو رہی ہے

لہذا حنا سے درخواست ہے کہ حنا کے دائرہ میں لائی جائے

اور تنخواہیں دلا کے انصاف دلا جائے

مسائل حنا سے دیا گیا ہے گا

30-10-2015ء

محمد علی

اللہ

مسائل حنا سے دیا گیا ہے گا اور حنا کے مسائل حنا سے دیا گیا ہے گا

CIVIL No 17301-1522341-1

ATTESTED

محمد علی

Handwritten signature on the right margin

~~SECRET~~  
15

Am - C - C2



صوبہ پنجاب ڈائریکٹر تعلیم ایجوکیشنل ایمنڈمنٹس سکولز ایجوکیشن ڈیپارٹمنٹ لاہور

ذرا فراموش نہ ہو کہ صدر حکم دربارہ دہلی  
پورہ زر ٹنخواں از ماہ جون 2013ء  
تولڈی 2014ء تا ستمبر تا اکتوبر 2014ء  
ٹنخواں وصول ہوئے بعد تاحال کوئی ٹنخواں  
ہیں ملی۔ اس ضمن میں مناسب انٹوائز کریں  
سائل کی فیس کو لکھنی بنا کر العادت دلا جاوے

ADDE  
Please  
into the  
enquiry  
englight  
28/7/15

DD(M)  
28/7

جناب عالی۔ سائل حسب ذیل عرض کرتے ہیں!

نمبر 1۔ یہ کہ سائل کو ایپوائنٹمنٹ <sup>ment</sup> Office order / 16/4/2013  
انڈسٹریل ڈیپارٹمنٹ لاہور

مہینہ نمبر 5 بجٹ ڈرائنگ ماسٹر بھرتی ہو کر گورنمنٹ ہائی سکول ہوش بٹل میں  
بٹلنگ خدمات انجام دے رہا ہے (نیشنل ایمنس آرڈر بہارہ لفٹ)

نمبر 2۔ یہ کہ بموجب حکم مذکور سائل پر دستور خدمات انجام دے رہا ہے لیکن مذکورہ بالا عرصہ میں  
نے صرف دو ماہ کی ٹنخواں لکھی ہیں ستمبر و اکتوبر 2014ء وصول کی ہیں۔ جبکہ گورنمنٹ  
پچیسیس ماہ کی ٹنخواں اپریل سے مئی 2015ء تک پندرہ لاکھ ٹنخواں کے ساتھ ساتھ  
مستحقہ پندرہ لاکھ ٹنخواں کے ساتھ ساتھ پندرہ لاکھ ٹنخواں کے ساتھ ساتھ

نمبر 3۔ یہ کہ مذکورہ حالات کے تناظر میں سائل کی بدستوریوں تکلیفی ہو رہی ہیں۔ لہذا استدعا  
کہ اس ضمن میں مناسب انٹوائز کریں۔ سائل کی فیس کو لکھنی بنا کر العادت دلا جاوے  
ان سائل زندگی بھر کے مائٹرا اور احسان فرماتے ہیں۔ ستمبر 2015ء

ATTESTED

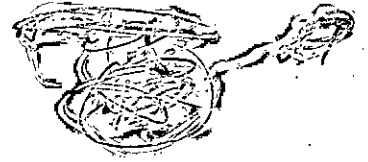
سائل انور زبیر ولد مسعود  
ساکن آنریری آباد گلگولہ علی زئی شہر  
17801-1522341-1

03339129841

14 ANNEX "E"

Registered

16



OFFICE OF THE DIRECTOR ELEMENTARY &  
SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA PESHAWAR  
NO. 6201 / F.No. 504/A-15/KC  
Dated Peshawar the 30/7/2015

To

The District Education Officer  
(Male) Battagram

**SUBJECT:- ENQUIRY AGAINST THE APPOINTMENT ORDER IN RESPECT OF ANWARZEB S/O  
SHER REHMN GHS HUTAL BATKOOL BATTAGRAM.**

Memo:-

I am directed to enclose herewith a copy of appeal alongwith other relevant documents in respect of Anwar Zeb S/O Sher Rehman GHS Hotal Batkool Battagram with the remarks to conduct the enquiry and submit report in duplicate alongwith clear cut recommendation to this office within one week positively for perusal of high ups.

Encls: As Above

29/7/15  
Deputy Director Establishment  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

\*/Noor/15\*

ATTESTED

Attested  
No



گورنمنٹ ہسپتال - ڈاکٹر بلال احمد کھٹک ایڈیٹنگ اور پبلشرنگ کمپنی اور پبلشرنگ کمپنی سے

درخواست نمبر اور صدر حکم دالک کے لئے

صناب عالی

یکم ستمبر 2013ء - ذمہ داران کے لئے

یکم ستمبر 2013ء - 8-88041-8 - 16/4/2013

جسٹس ڈاکٹر بلال احمد کھٹک

یکم ستمبر 2013ء کے لئے درخواست نمبر اور صدر حکم دالک کے لئے

قصر عدالت کے لئے درخواست نمبر اور صدر حکم دالک کے لئے

یکم ستمبر 2013ء کے لئے درخواست نمبر اور صدر حکم دالک کے لئے

یکم ستمبر 2013ء کے لئے درخواست نمبر اور صدر حکم دالک کے لئے

سائنس اور عدالت کے لئے

ATTESTED

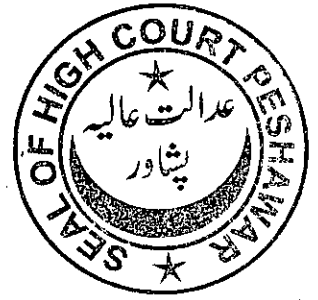
سائنس اور عدالت کے لئے

1522341-1

DATE = 5-11-2016

16  
APRIL 2017 9

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR**



W.P No 344 P /2017

Anwar Zaib S/o Sher Rehman R/o Afridi Abad, Kaga Wala Ali Zai, P/O Badabair, Tehsil & District, Peshawar .....Petitioner

**VERSUS**

- 1) Govt. of K.P.K, through Secretary Education Department, Civil Secreterate, Peshawar
- 2) The Accountant General of K.P.K
- 3) The Director of Education & Secondary Education, G.T Road, Peshawar, K.P.K
- 4) The Deputy Director Establishment Elementary & Secondary Education Khyber Pakhtunekhuwa, Peshawar
- 5) District Education Officer of Education & Secondary Education, G.T Road, Peshawar, K.P.K
- 6) The District Education Officer ( Male) Battagram  
.....Respondents

**WRIT PETITION UNDER ARTICLE 199 OF THE**  
**CONSITUTION OF ISLAMIC REPUBLIC OF**  
**PAKISTAN 1973**

**Respectfully Sheweth:**

1. That the petitioner did B.A from Peshawar University; passed Drying Master (DM) exam from Gulf Institute of Modern Technology, Rawalpindi and has been inducted in Education Department against the as in

FILED TODAY  
Deputy Registrar  
24 JAN 2017

**ATTESTED**

**EXAMINER**  
Peshawar High Court

01 NOV 2017

post (BPS-15) on 16.04.2013 at GHS Hatal Batkool, Tehsil & District Batagram .(Copy of the certificates and appointment letter are attached here with as annexure "A")

2. That the petitioner has served the GHS Hatal Batkool from the day first till present his performance is satisfactory. He has rendered valuable service to the best to the GHS Hatal Batkool, he is dutiful and no adverse remarks ever been passed by the department.
3. That during duty in whole service the petitioner received just 02 months salary under the pers # 00701737, which is June and October of 2013.(Salary slips are attached here with as annexure "B")
4. That the petitioner is continuously giving his services to the GHS Hatal Batkool but of the respondent No.2 accepts the petitioner's salary.
5. That the petitioner did submit applications to the respondents on 28.07.2013, 30.10.2015 and on 05.11.2016, but, nobody paid any heed; which amounts to the denial of the petitioner's right, who otherwise legally fully liable to get monthly his salary like other colleagues.(Copies of the applications dated: 28.07.2013, 30.10.2015 and 05.11.2016 annexure "C-C1-C2")

FILED TODAY

Deputy Registrar

24 JAN 2017

EXAMINER  
Lower High Court

01 NOV 2017

- 18
6. That the petitioner grievances has been considered by the respondent no.04 to some extent, who sent letter no. 6207/F.No 504/A-15/kC on. 30.09.2015 to the respondent No.6, but didn't redress his grievances.(Copy of the letter no. 6207/F.No 504/A-15/kC on. 30.09.2015 as annexure "D")
  7. That the NAB of Khyber Pakhtunkhwa has arrested officials of District Battagram for committing embezzlement, which is reflected from the Daily Newspaper "Aaj" on 12.01.2017. (Copy of the publication dated: 12.01.2017 in Newspaper Aaj is attached as annexure "E").
  8. That the petitioner did approach the respondents with service record regarding his grievances but nobody paid any heed.
  9. That the petitioner feeling aggrieved from the actions and acts of the respondents and finding no other adequate and officious remedy is constrained to file this writ petition inter alias on the following grounds.

**G R O U N D S:**

- A. That the petitioner is giving his services continuously at GHS Hatal Batkool, Tehsil & District Batagram even then the respondents illegally, unlawfully against the rules and policy have stopped the petitioner salary, which is basically the legal right of the petitioner, this is completely

FILED TODAY  
Deputy Registrar  
24 JAN 2017

**ATTESTED**  
EXAMINER  
Peshawar High Court  
01 NOV 2017.

discrimination in the eye of law and thus the respondents have acted in violation of Article (4) of the Constitution of 1973.

- B. That the petitioner was denied his legal right of his salary, which was provided to him under the law and therefore, he was discriminated and not given his due right without any lawful reason.
- C. That the petitioner other colleagues/employees under the same circumstances are taking their salaries, while the petitioner has been denied, which offend article (25) of the constitution of Pakistan 1973.
- D. That to be treated in accordance with law and to enjoy equal protection of law is the inalienable right of every citizen, guarantee by the constitution.
- E. That though the petitioner is giving his services continuously at GHS Hatal Batkool but the respondents did not dealt fairly, justly and was ignored by the respondents for malafide reasons.
- F. That the petitioner is still on the strength of department and performing his duty thus stoppage of salaries will definitely affect his fundamental rights to live as well as the act on the part of respondent's amount to forced

labour.  
**ATTESTED**  
EXAMINER  
Responsible High Court  
01 NOV 2017

**FILED TODAY**  
Deputy Registrar  
24 JAN 2017

- G. That the respondents have acted in a manner, which clearly amounted to the denial of the right of petitioner hence this petition.
- H. That any other relevant ground, which has not been taken in this petition please may be allowed to agitate at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this Writ Petition the act of the respondents not accepting legal right of the petitioner **salary since November 2013 till present i-e (December 2016)** is based on malafide, without lawful authority and of no legal effect, this Honorable Court may be pleased to declare the act of respondents not releasing his salary as unlawful, void ab initio and please may direct the respondent no. 2 that to act in the matter in accordance with law to consider the petitioner genuine matter and to release his salary with arrears accordingly.

Any other relief which this Honorable Court may deem appropriate in circumstances of the case may also be granted to the petitioner.

Petitioner

Through

Dated 18/01/2017

FILED TODAY  
Deputy Registrar  
24 JAN 2017

  
Aamir Ullah Khan Chamkani  
Advocate High Court Peshawar

EXAMINER  
Peshawar High Court  
01 NOV 2017

21

Approved H



**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR**

W.P.No.344/2017.

Mr.Anwar Zaib

Versus

Government of Khyber Pakhtunkhwa etc

**PARA-WSIE COMMENTS ON BEHALF OF DISTRICT  
ACCOUNTS OFFICER, BATTAGRAM**

**RESPECTFULLY SHEWETH:**

**PRELIMINARY OBJECTIONS:**


1. That the petitioner has not come to this Hon'ble Court with clean hand.
2. That the petition is hopeful time barred and is liable to be set aside.
3. That the petitioner is liable to be set aside due to mis-joinder and non joinder of necessary parties.
4. That this Hon'ble Court has no jurisdiction to sue the above titled Writ Petition.

**ON FACTS.**

1. Subject to proof.
2. No Comments
3. That the pays and allowances without proper justification Source-II payment against personal No.00701737 made to the petitioner ghost employee collusively and concerned officials of Education Department i.e. Mr.Ali Rehman Junior Clerk GHS Hatal Batkool and Asharban committed abscension and consequently

**ATTACHED**

22



dismissed from service by the education department likewise the concerned dealing staff of district Accounts Office Battagram misusing authority was dismissed from service by Secretary Finance Department Government of Khyber Pakhtunkhwa Peshawar on 18/01/2017 a case it subjudice NAB Court. {Copies are Annexure "A" & "B"}.

4. That the HR (Human Resources) Master Data is changeable and the concerned key punch operator have illegally paid the salary and allowances to the petitioner at personal No.00718806 at GHS Asharban Allai District Barragram the said K.P.O. on the adaptation of self made/fictitious entry into the SAP system is dismissed from service by the competent authority i.e. Secretary Finance on 18/01/2017 and the case against him is subjudice in the NAB Court.
5. Incorrect. No application has been received by this office.
6. No related to answering respondent.
7. As per narrated para No.4
8. Incorrect
9. Petitioner has no locus standi to file present Writ Petition against respondents.

GROUNDS

- A. Incorrect
- B. As stated above.
- C. As explained in para 3 & 4 above.
- D. No comments.

No Show Cause  
No dismissal order

ATTESTED  




23  
E. Incorrect.

F. The SAP (HR) master data was changed illegally without proper justification submission <sup>un</sup> -II in SAP System made in an authorized payment to the petitioner (Ghost employee). The competent authority <sup>has</sup> imposed Gross penalty against dealing hand on 18-01-2017 on account of misusing authority.

G. Incorrect.

H. No comments

It is therefore submitted as the pray of petitioner is wrong, therefore the writ petition may kindly be dismissed.

*On U Zill*  
DISTRICT ACCOUNT OFFICER  
Battagram. Respondent No.2

**VERIFICATION.**

I Saif-ur-Rehman Assistant Accountant BPS-16 office of the District Account Officer Battagram do hereby verified that the contents of fore -going reply are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this honorable court.

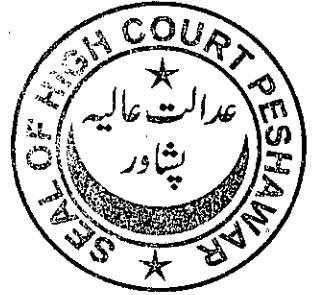
*Saif ur Rehman*  
SAIF UR REHMAN  
(DEPONENT)

*42*  
ATTESTED

24

FILED I

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT



Writ Petition No.344-P/2017.

*Anwar Zeb..Vs.Government of KPK, etc.*

JUDGMENT

Date of hearing: 24.10.2017  
Petitioner(s): By Mr. Amirullah Khan Chamkani, advocate.  
Respondent(s): Mr.Moin-ud-Din Humayun, AAG.

\*\*\*\*\*

IJAZ ANWAR, J. - Through the instant writ petition,  
the petitioner is seeking issuance of a writ to the following  
effect:-

*"It is, therefore, most humbly prayed on acceptance of this writ petition the act of the respondents not accepting legal right of the petitioner salary since November 2013 till present i.e. (December 2016) is based on malafide, without lawful authority and of no legal effect, this Hon'ble Court may be pleased to declare the act of respondents not releasing his salary as unlawful, void ab initio and please may direct the respondent No.2 that to act in the matter in accordance with law to consider the petitioner genuine matter and to release his salary with arrears accordingly".*

**ATTESTED**

**EXAMINER**  
Peshawar High Court

01 NOV 2017

2. Precisely, the facts mentioned in this writ petition are that the petitioner was initially appointed against the post of Drawing Master (BPS-15) dated 16.4.2013. The petitioner has served and performed duties in the Government High School, Hatal Batkool. However, he during his service received salaries for only two months and thereafter the salary of the petitioner was stopped. The petitioner has approached every authority for his release of his salary, but no action was taken thereon hence this petition.

3. The respondents were put to notice, the respondents No.2 and 6 have filed their separate comments. Relevant para 1 and 2 of the comments filed by the respondent No.6 and District Accounts Officer (DAO) are reproduced:-

*"Incorrect. The petitioner was not appointed by the lawful/competent authority and the appointment order (incomplete) annexed by him is fake/bogus and fabricated having no legal sanctity. No appointment order of Drawing Masters (DM) was issued on 16.04.2013 from this office. The petitioner has made tempering in appointment order dated 11.03.2013 wherein no candidate was appointed as DM at GHS Hatal Batkool as the said post was already filled by Fazal Maabood DM. The petitioner's name was even not included in merit list.*

ATTESTED  
EXAMINER  
Punjab High Court  
07 NOV 2017

*Furthermore, how was it possible that a person belonging to District Peshawar could be appointed in District Battagram against district cadre post?*

*Incorrect. The petitioner was neither appointed by the lawful/competent authority nor he served/performed duty for a single day at GHS Hutal Batkool. He never remained on the strength of the said school. He is a stranger and there is no appointment order/service book of the petitioner in that school. He neither took over charge/submitted arrival report nor marked his attendance in school register and even no activation of pay was made by the then DDO. There is no source of his induction in that institution. His salary was activated through mal practices. He is bound to recover the amount go Govt. treasury drawn by him as salaries through mal practices. Moreover the single post of DM at GHS Hutal Batkool was already occupied by Fazal Maaboo DM on 16.04.2013 who remained on the said post w.e.f. 20.09.1992.*



4. Arguments heard and record perused.
5. The perusal of the record reveals that the petitioner has filed this petition for the release of his salary alleging despite his appointment order being intact and performing his duties, he is not being paid the salaries. The respondents have controverted the facts and have attacked the very existence of his appointment on various grounds.
6. We, without going into the merits of the case and the controversy raised in this petition would simply

**ADJESTED**  
JUDGE  
PESHAWAR HIGH COURT  
01 NOV 2017

27

refer to section 17 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, wherein pay has been mentioned as one of the terms and conditions of service as mentioned in Chapter-II of the Khyber Pakhtunkhwa Civil Servants Act, 1973, thus where the petitioner is aggrieved from any of the orders of the department affecting his terms and conditions of service, he has his remedy available by filing appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 besides Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 oust the jurisdiction of this Court in the matters of terms and conditions of service. The August Supreme Court of Pakistan in the case of "Ali Azhar Baloch vs. Province of Sindh etc" reported in 2015 SCMR-456 deprecated the practice of entertaining writ petitions in the matters related to the terms and conditions of service.

7. A request has been made by the learned counsel for the petitioner to treat the instant petition as Service Appeal before the Khyber Pakhtunkhwa Service Tribunal. However, the Khyber Pakhtunkhwa Service Tribunal has its own procedure, besides under the KPK Service Tribunal Rules, 1974 a comprehensive procedure is provided related to form of appeal and other matters

ATTESTED

EXAMINER  
Peshawar High Court

01 NOV 2017

ATTESTED

EXAMINER  
Postman High Court

01 NOV 07

regarding filing of Service Appeal before the Service Tribunal, therefore, it would not be appropriate to transgress upon the powers of the Service Tribunal in sending the instant petition directly.

8. As discussed above, the subject matter of this petition clearly falls within the ambit of terms and conditions of service and can conveniently be dealt with by the Provincial Service Tribunal. Thus, in view of the available adequate remedy to the petitioner, we do not feel inclined to interfere in the matter. This petition is thus dismissed. However, the petitioner may approach the learned Khyber Pakhtunkhwa Service Tribunal, if he is so

advised.

No. 11658

Date of Presentation of Application 30/10/17

No of Pages 27

Copying Fee 4800

Urgent Fee 4800

Total 9600

Date of Preparation of Copy 30/10/17

Date of Delivery 30/10/17

Received by [Signature]

*Sd/- Justice Shahid G*

**CHIEF JUSTICE**

*Sd/- Justice Anwar*

**JUDGE**

Announced.  
Dated: 24.10.2017.

**CERTIFIED TO BE TRUE COPY**

Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Constitution of Pakistan Order 1984

**81 NOV 2017**

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THE DIRECTOR  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C. 20535



**POWER OF ATTORNEY**

In the Court of Justice P. D. Khan (Chief Justice)  
ANWAR ZAIB

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

**VERSUS**

Govt of Khyber Pakhtunkhwa  
and others.

} Defendant  
} Respondent  
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/We, the undersigned, do hereby nominate and appoint

**YASIR SALEEM ADVOCATE, HIGH COURT**

Jawad Wo Rehman my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-pœna and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at Islamabad  
the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_  
Executant/Executants \_\_\_\_\_  
Accepted subject to the terms regarding fee \_\_\_\_\_

**YASIR-SALEEM**

Jawad Wo Rehman  
Neelum  
Peshawar

# REGISTER OF ISSUES

Annexure  
A  
6

| Serial No. | Branch  | Inward Register Daily or General No. | To whom and number of enclosures.             | Subject or File No.                           | Remarks (record reference amount or stamps, etc.) | Stamp Value (Rs.) |
|------------|---------|--------------------------------------|---|---|---|-------------------|
| 8742       | PIA     | 15/4/2013                            | SD EO (M) Pvt. Edu. Battagram                 | Comments Muzafar Khan Pst                     |   |                   |
| 8743       | ASCO    | - do -                               | ASST - Director K.P.R Peshawar                | Verification                                  |   |                   |
| 8744       | PA      | - do -                               | Deputy Commissioner Badli                     | Mutation DEED                                 |   |                   |
| 8745       | ISL     | - do -                               | Controller of Exams Agriculture               | University K.P.R Peshawar                     | Verification                                      |                   |
| 8746-50    | BPA     | - do -                               | All concerned                                 | expand - mt - sanction order                  |   |                   |
| 8751-53    | B/B (M) | - do -                               | All concerned                                 | Recruitment of C.VS                           |   |                   |
| 8754-59    | PA      | - do -                               | All concerned                                 | Suspension order                              |   |                   |
| 8760       | E/B     | - do -                               | Director Edu; Peshawar                        | earned leave in Gp-M-Rafiq SET GHS            |   |                   |
| 8761       | BAA     | 15/4/2013                            | Director (E&SE) K.P.R Peshawar                | Smearment I.P.R. Mr. Syed Muhammad Yusuf Shah |   |                   |
| 8762-66    | E/B     | 16/4/2013                            | All concerned                                 | Circular Textbook Board                       |   |                   |
| 8768-75    | - do -  | - do -                               | All concerned                                 | Appt: Disable T/T/PST                         |   |                   |
| 8776-77    | DEO M   | 16/4/2013                            | NLHD Battagram                                | Releasing of feeder Teachers done             |   |                   |
| 8778-82    | u       | - do -                               | All concerned                                 | Circle level meeting Teachers on Enrollment   |   |                   |
| 8783-84    | u       | u                                    | - do -  | Celebration of 75th Anniversary Day           |   |                   |
| 8785-86    | - do -  | - do -                               | All concerned                                 | - do -  |   |                   |
| 8787       | PA      | 16/4/2013                            | Manager MCB Battagram                         | opening of PTC Account GHS Eday Shop minor    |   |                   |
| 8788       | E/B/E   | - do -                               | District officer Finance & Planning Battagram | in specimen Report R.M. available             |   |                   |
| 8790-92    | A/B     | - do -                               | G.G.H.S. Battagram                            | LPC meet Shahzade Pkren                       |   |                   |
| 8793       | E/B/E   | - do -                               | G.P.F. Sanctum M. Shafiq                      | Assistant local office                        |   |                   |

|         |        |            |                                  |  |                           |
|---------|--------|------------|----------------------------------|--|---------------------------|
| 8785    | EPBE   | 11/14/2013 | Manager MCB Program              | Opening of PIC Account                       | EPBS Relay Showman        |
| 8790-92 | ALB    | 11-        | Sanctions M. Shafigi             | Assessment                                   | based on PPI              |
| 8793    | EPBE   | 11-        | D.A.O. Baiterama                 | Release of Reg. mem. Summer Showman          |                           |
| 8794-97 | AS     | 11-        | All concerned                    | Constitution order                           | AT. no 8718-22-16/11-2013 |
| 8798    | BWA    | 16/4/2013  | Managers HPL Program             | Change of RTI Secretary / Specimen Signature |                           |
| 8799    | BWA    | Do         | Ver Controller of Exam           | Restorer                                     | Variation in P/O          |
| 8800-3  | D.V.D  | 11-        | All concerned                    | Approval of ECE/LEHE Training for Teachers   | Unit is Attached          |
| 8804-8  | EPBE   | 16/4/2013  | All concerned                    | Appointment Order                            | Female TTRPS-15           |
| 8809-15 | 11-    | 11-        | SDCO on Pury Edu. RTM            | Vacant Position                              | Female PST. sheet         |
| 8816    | EPB PM | 17/4/2013  | All concerned                    | Notification of ADDs (M)                     |                           |
| 8817    | 11-    | 11-        | DD Investigation KRKESH          | Notification of Merit Disalle                |                           |
| 8818    | 11-    | 11-        | All concerned / PMA              | Sanction on EPF                              |                           |
| 8819-20 | 11-    | 11-        | All concerned                    | Appt. CIV                                    |                           |
| 8821-25 | 11-    | 11-        | Controller of Examination Hazara | University                                   | Mehar                     |
| 8826    | EPB E  | 18/4/2013  | University                       | Mehar  | C.T. MSE                  |
| 8827    | 11-    | 11-        | 11-                              | Verification                                 | C.T. RA. BSC.             |
| 8828    | 11-    | 11-        | Controller of Examination        | RISE Abbottabad                              | Verification. F.A. 15SC   |
| 8829    | 11-    | 11-        | 11-                              | 11-  | SSC. DMC                  |
| 8830-34 | EPBE   | 18/4/2013  | All concerned                    | Appointment order                            | PTI (Female)              |
| 8835-37 | 11-    | 11-        | 11-                              | Correspondence order                         | no 842-44 Dated 8/3/013   |
| 8838-40 | 11-    | 11-        | 11-                              | 11-  | no 8135-37 Dated 8/3/013  |

(79)

Annexure  
'B'

(8)

~~(8)~~

**OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) BATTAGRAM.**

**OFFICE ORDER/APPOINTMENT**

Consequent upon the recommendation/ approval of the District selection Board BATTAGRAM in its meeting held on 27.12.2012. the Competent Authority is pleased to appoint the following fresh trained Male DM candidates on merit having the prescribed qualification in BPS 15(Rs.8500-700-29500) plus usual allowances as admissible under the rules against the vacant post of DM (Male) mentioned against each their names on regular basis under the existing policy of the Provincial Govt: on terms and conditions given below with effect from the date of their taking over charge in the interest of public service.

| S.No | Candidate Name     | Father's Name | Qualification | Score | Address         | School/Station where posted | Remarks        |
|------|--------------------|---------------|---------------|-------|-----------------|-----------------------------|----------------|
| 1    | Naseer Ahmad       | Sher Dad      | MSc DM        | 80.36 | Ajmera Batagram | GHS Surgai                  | Against v/post |
| 2    | Saleh Ahmad        | Rahim Gul     | M.A DM        | 59.47 | Pashto Allai    | GMS Kosh Gram               | -do-           |
| 3    | Khursheed Ali Khan | Ahmad Rizwan  | M.A DM        | 59.37 | Rup Kani Allai  | GHS Karag                   | -do-           |
| 4-   | Saeed              | Hazrat Alam   | M.A DM        | 57.85 | Thakot Batagram | GMS Bateela                 | -do-           |
| 5-   | Satara Khan        | Abdur Rehman  | M.A DM        | 55.11 | Kohani Batagram | GHS Ashar Ban               | -do-           |

**TERMS AND CONDITIONS:**

- 1- Their services will be considered regular but without pension & gratuity in terms of section-19 of the NWFP Civil Servant Act, 1973 as amended vide NWFP Civil Servants (Amendment) Act, 2005. They will however be entitled to Contributory Provident Fund in Such a manner and at such rates as prescribed by the Government.
- 2- The appointees who are already in Govt: service and working against a pensionable post on regular basis before 1<sup>st</sup> day of July 2001 without any service break, on application to the Competent Authority/this office through proper channel are appointed and allowed choice of option either to retain benefit of pension and gratuity as allowed to them under their previous terms of appointment or to avail the benefit of contributory provident fund allowed to them under new appointment.
- 3- Their services are liable to termination on one month's notice from either side. In case of resignation without notice, their one month's pay/allowances shall be forfeited to the Government.
- 4- The appointees should join their posts within 15 days of the issuance of this order. The Head master Concerned would furnish a certificate to the effect that the candidates have joined the posts, otherwise after 15 days of the issuance of this Order, failing which their candidature will expire automatically and no subsequent appeal etc shall be entertained.
- 5- They would be on probation for a period of one year extendable for another one year as provided in NWFP Appointment Promotion and Transfer Rules 1989.

They will be governed by such rules and regulations as may be issued from time to time by the Government.

- 7- Their services can be terminated at any time, in case their performance is found unsatisfactory during probationary period. In case of misconduct, they will be proceeded against under the (E&D) Rules 2011 and the Rules framed from time to time.
- 8- They will not contribute any amount towards GP Fund; however contribution towards CP fund will be made as per rules.
- 9- They would produce age and health certificate from the concerned Medical Authority.
- 10- If the documents/domicile of the appointee found fake/bogus at any stage, He will be removed from the service immediately and a case will be registered against him in the Anticorruption department.
- 11- The DDO concerned will not activate the pay of the appointees till the verification of all the relevant documents.
- 12- The Competent Authority reserves the right to rectify the errors and omissions if any noted at any stage in the instant order issued erroneously.
- 13- No TA/DA will be allowed to the appointees for joining their duty.
- 14- Charge report should be submitted to all concerned.

Muhammad Saeed  
District Education Officer  
(Male) BATTAGRAM.

Endst: No. 8178-83

Dated: 11/03 /2013

Copy to the:-

- 1- Director E&SE Department Khyber Pakhtunkhwa Peshawar.
- 2- The Deputy Commissioner Battagram.
- 3- District Officer (F&P) Battagram.
- 4- District Accounts Officer Battagram.
- 5- All Headmasters of concerned schools.
- 6- Candidates concerned.
- 7- Office File.

Deputy District Education Officer  
(Male) BATTAGRAM

Annex  
C  
16

OFFICE OF THE DISTRICT EDUCATION OFFICER ELEMENTARY & SECONDARY EDUCATION BATTAGRAM  
REVISED TENTATIVE MERIT LIST OF CANDIDATES APPLIED FOR THE POST OF DM(M).

| S. No | Entry No. | Name of Candidate | Father's Name         | Date of Birth | Domicile  | ACADEMIC & PROFESSIONAL QUALIFICATION |                |                |                         |            |                       | Extra Marks<br>FSc/BSc/<br>M.Sc<br>(5+5+5) | Total<br>Score | In-<br>Service/<br>Fresh | Remarks         |
|-------|-----------|-------------------|-----------------------|---------------|-----------|---------------------------------------|----------------|----------------|-------------------------|------------|-----------------------|--|----------------|--------------------------|-----------------|
|       |           |                   |                       |               |           | SSC<br>(20)                           | FA/FSc<br>(20) | BA/BSc<br>(20) | MA/MSc/<br>M.Ed<br>(15) | DM<br>(20) | M.Phil/<br>PhD<br>(5) |  |                |                          |                 |
| 1     | 2         | 3                 | 4                     | 5             | 6         | 7                                     | 8              | 9              | 10                      | 11         | 12                    | 13   | 14             | 15                       | 16              |
| 1     | 75        | Naseer Ahmed      | Sher Dad              | 06/04/1985    | Battagram | 13.55                                 | 13.07          | 13.05          | 10.75                   | 14.93      | -                     | 15   | 80.36          | -                        |                 |
| 2     | 79        | Muhammad Ismail   | Abdur Rehman          | 05/10/1981    | Battagram | 10.82                                 | 9.40           | 10.44          | 7.27                    | 13.83      | -                     | 10   | 61.76          | (dropped)                | Double domicile |
| 3     | 5         | Saleh Ahmad       | Rahim Gul             | 01/01/1984    | Battagram | 12.31                                 | 9.87           | 9.78           | 8.05                    | 14.46      | -                     | 5  | 59.47          | -                        |                 |
| 4     | 40        | Khursid Ali Khan  | Ahmad Rizwan          | 01/01/1985    | Battagram | 11.65                                 | 12.56          | 10.00          | 9.27                    | 15.88      | -                     | -  | 59.37          | In Service<br>(Qari)     |                 |
| 5     | 10        | Paristan Khan     | Muhammad Miskeen      | 01/04/1983    | Battagram | 11.65                                 | 10.84          | 9.35           | 9.68                    | 16.72      | -                     | -  | 58.23          | Double Domicile          |                 |
| 6     | 80        | Saeed             | Hazrati Azam          | 25/02/1988    | Battagram | 10.93                                 | 11.58          | 10.84          | 9.38                    | 15.12      | -                     | -  | 57.85          | -                        |                 |
| 7     | 26        | Satara Khan       | Abdur Rahman          | 05/08/1979    | Battagram | 12.00                                 | 10.71          | 10.98          | 7.94                    | 13.48      | -                     | -  | 55.11          | -                        |                 |
| 8     | 14        | Ghulam Muhammad   | Abdur Rasheed         | 20/11/1984    | Battagram | 12.21                                 | 9.84           | 11.56          | 8.20                    | 12.98      | -                     | -  | 54.79          | -                        |                 |
| 9     | 28        | Abdul Ghaffar     | Zareen                | 01/03/1985    | Battagram | 10.35                                 | 10.18          | 12.08          | 7.91                    | 14.03      | -                     | -  | 54.56          | -                        |                 |
| 10    | 44        | Tasieem Khan      | Rahim Dad Khan        | 01/01/1984    | Battagram | 9.98                                  | 9.33           | 10.47          | 7.39                    | 16.28      | -                     | -  | 53.45          | In Service<br>(P/Const.) |                 |
| 11    | 34        | Abdus Salam       | Haji Muhammad Ilyas   | 14/06/1972    | Battagram | 10.59                                 | 9.16           | 11.56          | 7.76                    | 14.18      | -                     | -  | 53.25          | -                        | Over Age        |
| 12    | 4         | Abdul Wahid       | Muhammad Rafique      | 01/04/1982    | Battagram | 12.19                                 | 9.44           | 10.44          | 8.09                    | 12.96      | -                     | -  | 53.11          | -                        |                 |
| 13    | 35        | Shah Khalid       | Aziz ur Rehman        | 15/07/1984    | Battagram | 11.32                                 | 9.02           | 8.98           | 8.52                    | 14.85      | -                     | -  | 52.69          | -                        |                 |
| 14    | 38        | Akhtar Nawaz      | Musa Khan             | 03/02/1982    | Battagram | 12.02                                 | 10.76          | 9.53           | -                       | 14.08      | -                     | 5  | 51.40          | -                        |                 |
| 15    | 45        | Babo Khan         | Gul Khan              | 24/06/1972    | Battagram | 9.60                                  | 9.02           | 10.33          | 8.66                    | 13.32      | -                     | -  | 50.92          | -                        | Over Age        |
| 16    | 9         | Shafiq Ur Rehman  | Ghazi Aman Ullah Khan | 10/08/1983    | Battagram | 11.11                                 | 9.29           | 9.38           | 8.14                    | 12.02      | -                     | -  | 49.94          | -                        |                 |
| 17    | 54        | Hazrat Islam      | Muhammad Zanif        | 01/02/1975    | Battagram | 10.52                                 | 11.87          | 12.73          | -                       | 14.07      | -                     | -  | 49.18          | -                        | Over Age        |
| 18    | 65        | Zia Ullah         | Akbar Ali Khan        | 20/09/1988    | Battagram | 10.02                                 | 11.25          | 8.62           | -                       | 14.03      | -                     | 5  | 48.93          | -                        |                 |
| 19    | 32        | Rizwan Ullah      | Abdul Qayyum          | 01/02/1985    | Battagram | 11.08                                 | 11.49          | 12.25          | -                       | 14.04      | -                     | -  | 48.87          | -                        |                 |
| 20    | 17        | Amir Nawaz        | Muhammad Zarin        | 08/10/1986    | Battagram | 12.612                                | 8.4182         | 9.27273        | -                       | 12.54      | -                     | 5  | 47.84          | -                        |                 |

|    |    |                          |                    |            |           |       |       |       |   |       |   |   |       |   |          |
|----|----|--------------------------|--------------------|------------|-----------|-------|-------|-------|---|-------|---|---|-------|---|----------|
| 22 | 1  | Syed Ali Shah            | Syed Rahman Shah   | 03/01/1986 | Battagram | 13.20 | 9.82  | 12.36 | - | 11.98 | - | - | 47.35 | - |          |
| 22 | 1  | Sharif Ullah             | Hussn ul Maab      | 20/05/1978 | Battagram | 11.36 | 11.71 | 10.04 | - | 13.80 | - | - | 46.91 | - |          |
| 23 | 3  | Syed Shujahat Ali Shah   | Shoukat Ali Shah   | 01/03/1990 | Battagram | 10.95 | 9.07  | 10.40 | - | 11.10 | - | 5 | 46.53 | - |          |
| 24 | 24 | Tufail Muhammad          | Musharaf Shah      | 17/09/1989 | Battagram | 11.90 | 9.80  | 9.78  | - | 15.02 | - | - | 46.51 | - |          |
| 25 | 53 | Nisar Ahmad              | Abdul Qayyum       | 28/07/1987 | Battagram | 10.07 | 10.73 | 12.16 | - | 13.47 | - | - | 46.43 | - |          |
| 26 | 6  | Muhammad Mushtaq Khah    | Khushal Khan       | 02/03/1985 | Battagram | 10.24 | 10.05 | 11.84 | - | 14.28 | - | - | 46.42 | - |          |
| 27 | 30 | Farman Ali               | Muhammad Farash    | 01/02/1990 | Battagram | 11.71 | 10.05 | 8.33  | - | 16.20 | - | - | 46.29 | - |          |
| 28 | 50 | Shariz Ullah             | Atibar Khan        | 06/06/1985 | Battagram | 9.41  | 10.96 | 11.69 | - | 13.45 | - | - | 45.51 | - |          |
| 29 | 36 | Muhammad Afsar Shah      | Maqsood Shah       | 04/12/1976 | Battagram | 10.40 | 10.78 | 10.51 | - | 13.75 | - | - | 45.44 | - | Over Age |
| 30 | 63 | Atiq Ur Rehman           | Faiz Muhammad Khan | 22/02/1975 | Battagram | 11.81 | 10.11 | 10.43 | - | 12.57 | - | - | 44.92 | - | Over Age |
| 31 | 7  | Muhammad Naeem           | Abdul Wadood       | 15/03/1983 | Battagram | 12.82 | 9.62  | 9.49  | - | 12.90 | - | - | 44.83 | - |          |
| 32 | 11 | Tahir Mehmood            | Muhammad Shafi     | 20/04/1982 | Battagram | 9.69  | 9.22  | 11.05 | - | 14.20 | - | - | 44.17 | - |          |
| 33 | 8  | Saif Ullah               | Shah Rozam Khan    | 05/03/1991 | Battagram | 10.44 | 9.44  | 9.60  | - | 14.48 | - | - | 43.96 | - |          |
| 34 | 13 | Shah Wali Ullah Muffaker | Atiq Ullah         | 16/06/1989 | Battagram | 10.51 | 10.04 | 8.73  | - | 13.02 | - | - | 42.29 | - |          |
| 35 | 41 | Ikramullah               | Bais Khan          | 04/06/1987 | Battagram | 9.76  | 7.87  | 11.69 | - | 11.08 | - | - | 40.41 | - |          |
| 36 | 52 | Alam Zeb                 | Muhammad Inam      | 19/03/1982 | Battagram | 9.41  | 8.33  | 9.42  | - | 12.47 | - | - | 39.62 | - |          |
| 37 | 60 | Khalid Shah              | Syed Ali Shah      | 13/05/1987 | Battagram | 9.98  | 8.56  | 7.89  | - | 10.12 | - | - | 38.55 | - |          |

Prepared By

*[Signature]*

Checked By

*[Signature]*

Deputy District Education Officer  
Elementary and Secondary Education  
Battagram

Annexure  
'D'



**OFFICE OF THE HEADMASTER GHS HUTAL BATKOO ALLAI BATTAGRAM**

To,

The District Education Officer(M)

Battagram

Subject: **Provision of information of the Ghost employee**

Memo:

According to school record The following employee who received salaries from the cost center of the GHS Hotal Batkool Battagram never remained on the strength of this institution. He is stranger and there is no appointment order/ service book, nor he submitted arrival report neither marked attendance in the school register or any other documents in this office and even no activation of pay was made through source by the then DDO.

| S.No | Personal No | Name of employee | Post | D.O.A      | DDO code |
|------|-------------|------------------|------|------------|----------|
| 1    | 00701737    | Anwar Zeb        | DM   | 16-04-2013 | BM6082   |

Certified that the above noted employee is fake bogus and there is no source of their induction on this institution their salary was activated through mal practices.

More over date 16-04-2013 the original employee Fazal Mabood was working as drawing Master at GHS Hotal Baktool Alli Battagram with effect from 20-09-1992 to 03-08-2014.

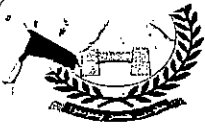
NO. 203

Dated: 22-02-2017

Headmaster 22-2-2017  
GHS Hotal Batkool  
Allai Battagram

Headmaster  
GHS Hotal Batkool  
Battagram





Office of The

**DISTRICT EDUCATION OFFICER(MALE) 'E'**

Email: emisbattagram@yahoo.com **BATTAGRAM** Phone # 0997311439 & 0997310670

Annexure

13

No: 3122 /

Date 28 / 03 / 2017

To

The Head Master  
GHS Hatal Batkool.

Subject: W/P NO. 344-P of 2017 Titled Anwar Zaib VS Govt; of KPK and Others

The subject Writ Petition has been filed by Mr. Anwar Zaib S/O Sher Rahman P/O Badabair Tehsile and District Peshawar in the Hon; Peshawar High Court wherein he admitted/confirmed that he received salaries for the months of June & October 2013 from (cost centre of) GHS Hatal Batkool under Personal NO. 00701737 claiming his appointment at that school.

As the said person is not a civil servant having not been appointed by lawful authority. His appointment order as DM at GHS Hatal Batkool District Battagram is fake, bogus, fabricated and has no legal sanctity. There is no record regarding his appointment order in this office as well as at GHS Hatal Batkool as confirmed by you vide your letter NO. 203 dated 22-02-2017. He is a ghost employee/stranger who never performed duty at GHS Hatal Batkool.

You (being DDO) are therefore directed to calculate total amount released to the said person unlawfully as salaries and approach to Anti Corruption Department to lodge FIR against him i.e Mr. Anwar Zaib as well as the then Drawing Disbursing Officer (DDO) under relevant section of law.

District Education officer (Male)  
Battagram

Endstt. NO. 3123 / 27

Dated 28 / 3 / 2017

Copy for information to the:-

1. Director Elementary & Secondary Education KPK Peshawar.
2. Deputy Commissioner Battagram.
3. Director Anti Corruption KPK Peshawar.
4. District Account Officer Battagram.
5. Circle Officer Anti Corruption Battagram.

District Education officer (Male)  
Battagram

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL PESHAWAR**

Anwar Zeb .....Vs.....Govt of KPK & others

**REJOINDER ON BEHALF OF THE**  
**APPELLANT**

---

**Respectfully Sheweth:**

1. Contents incorrect and misleading, salary of the appellant has illegally stopped despite of he being in service, thus he being an aggrieved civil servant has got the cause of action to file the instant appeal and locus standi as well.
2. Contents incorrect and misleading, nothing has been concealed from this Hon'ble court.
3. Contents incorrect and misleading, appellant has come to this Hon'ble Tribunal with clean hands.
4. Contents incorrect and misleading, there is no malafide on the part of the appellant.
5. Contents incorrect and misleading, the appeal is filed well in accordance with rules and laws.
6. Contents incorrect and misleading, rule of estoppels is not applicable in the instant case.
7. Contents incorrect and misleading, hence denied.

8-9 Contents incorrect and misleading, the appellant was appointed by the competent authority hence valuable rights have been accrued in favor of the appellant.

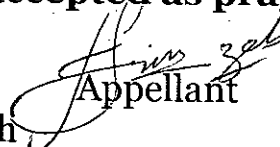
**On Facts**

1. Para No. 01 of the appeal is correct, reply to the para is incorrect hence denied.
  
- 2-6. Para No. 02 of the appeal is correct, reply to the para is incorrect hence denied.
  
- 7-8 In reply to para No. 07 it is submitted that the appellant has the cause of action.

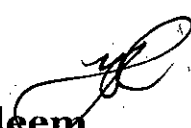
**Grounds:**

A-K Taken in the memo of appeal are legal and will be substantiated at the time of arguments.

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

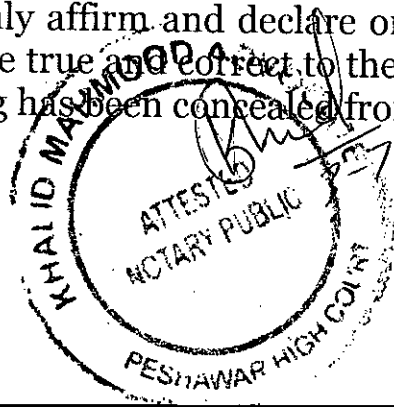
Through   
Appellant

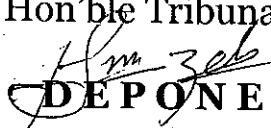
Date: 03.07.2019

  
**Yasir Saleem**  
Advocate, High Court  
Peshawar

**AFFIDAVIT**

It is solemnly affirm and declare on oath that the contents of the **rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



  
**DEPONENT**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Anwar Zeb .....Vs.....Govt of KPK & others

**REJOINDER ON BEHALF OF THE  
APPELLANT**

---

**Respectfully Sheweth:**

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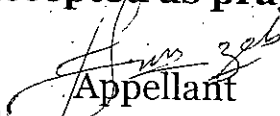
**On Facts**

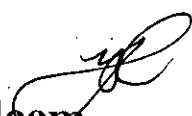
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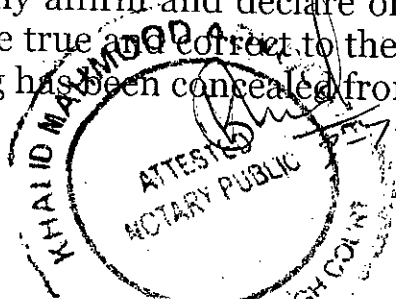
Through   
Appellant


  
**Yasir Saleem**  
Advocate, High Court  
Peshawar

Date: 03.07.2019

**AFFIDAVIT**

It is solemnly affirm and declare on oath that the contents of the **rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



  
**DEPONENT**



**KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

No. 1913 / ST

Dated: 24/09/2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262


To

The District Education Officer Male,  
Government of Khyber Pakhtunkhwa,  
District Battagram.

Subject: JUDGMENT IN APPEAL NO. 155/2018, MR. ANWAR ZEB.

I am directed to forward herewith a certified copy of  
Judgement dated 07.09.2021 passed by this Tribunal on the above subject for  
strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR

*remand*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWA**

**Service Appeal No. 13/2018**

Date of Institution ... 19.12.2017

Date of Decision ... 13.01.2021

Rahim Dad Khan S/O Mohib Gul, Drawing Master, GMS Kayan  
Mansehra.  
R/O Muhallah Hidayat Ullah Shah, G.T Road Peshawar.  
... (Appellant)

VERSUS

Secretary Elementary and Secondary Education, Khyber  
Pakhtunkhwa, Sahibzada Abdul Qayum Road, Civil Secretariat,  
Peshawar and three others.  
... (Respondents)

Mr. MIAN MUHAMMAD IMRAN,  
Advocate

For appellant.

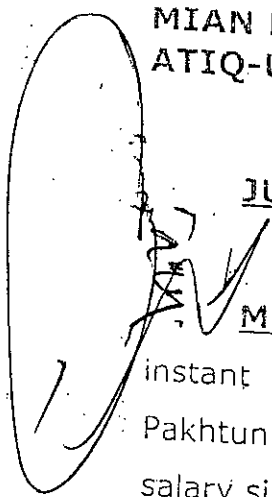
MR. KABIRULLA KHATTAK,  
Additional Advocate General

For respondents.

MUHAMMAD JAMAL KHAN  
MIAN MUHAMMAD  
ATIQU-UR-REHMAN WAZIR

MEMBER (Judicial)  
MEMBER (Executive)  
MEMBER (Executive)

JUDGEMENT:



MUHAMMAD JAMAL KHAN, MEMBER:-

Through the instant Service appeal submitted under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974, the order of stoppage of salary since March 2015 till date has been called in question.

2. According to the appellant being civil servant, he was inducted into service on 16.04.2013 as Drawing Master (BPS-15) at Government High School Asharband, Allai District Battagram. Appellant was transferred from the aforesaid school to Kayan, District Mansehra, on 06.08.2014, in consequence thereof he submitted his charge

relinquishment report on 07.08.2014 and as such reported to GMS Kayan. He rendered his duties efficiently and honestly in a manner becoming of a civil servant and for this reason no adverse remarks were recorded or action was taken, during the course of rendition of services at GMS Kayan he received regular salaries till February 2015 whereafter his salaries were unceremoniously stopped/blocked without tendering any explanation or notice to appellant. It was during this period that he made strenuous efforts to unblock his salaries or to ascertain the reason for its stoppage but did not succeed. After putting in immense efforts he was able to get an un-served show-cause notice in which he has been tentatively imposed major penalty of removal from service for the reason of absence from duty. No statement of allegations was served on appellant nor any inquiry was conducted nor allegiance to the provision of Rule 5, 7 & 9 of Government of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules was made nor he has been handed over any manuscript as to the status of employment of appellant eliciting mala-fide on the part of respondents thus violating the Fundamental Rights of appellant, he made recourse to the Hon'ble Peshawar High Court, Peshawar, through Writ Petition No. 478-P/2017 which was ultimately withdrawn with the direction to make recourse to the proper forum. He made efforts to procure the copies of the relevant documents from the office of District Education Officer concerned through the good offices of RTI but no response was received by him vide his application dated 14.07.2017. The departmental appeal dated 29.06.2017 moved for the purpose proved unsuccessful vide order dated 07.12.2017 followed by the instant service appeal.

3. It is worth to be mentioned that earlier the Hon'ble Members of this Tribunal in their respective judgments differed essentially on the point as to the legal status of appellant one Member declared him as Civil Servant while the other subjected his opinion in this regard to the outcome of the inquiry to be conducted against appellant although both of them respectively concurred on the point of holding of inquiry in the matter thus due to this tie the appeal was referred to the Larger Bench for adjudication.

4. Respondents were summoned in response thereof they attended the Tribunal through their legally authorized representative, vehemently



controverting the claim of appellant by submitting comments/reply wherein certain legal and factual objections were raised, inter-alia, that appellant is not aggrieved person, appellant is estopped by his own conduct, appellant has not come to this Tribunal with clean hand, appellant has no cause of action/locus standi, appeal is against the prevalence law and rules and appellant has concealed the material facts etc.

5. We have heard arguments of the learned counsel representing appellant as well as learned Additional Advocate General representing respondents and were able to go through the record with their assistance.

6. While initiating arguments the learned counsel representing appellant submitted that the moot question for resolution before this bench relates to the release of salary of appellant. While making reference to the split judgment passed earlier by the Hon'ble Members of this Tribunal he submitted that there was complete unanimity regarding conducting of inquiry for ascertainment of the facts. The point at which the worthy Members were at variance was with regard to fact that as to whether appellant is a civil servant or else otherwise. The learned counsel submitted that in case appellant was not a civil servant in that eventuality this Tribunal was divested of jurisdiction and this Tribunal would have returned the very appeal at the very outset. The learned counsel declared that appellant is a civil servant and he has to be dealt with in accordance with the Khyber Pakhtunkhwa Government Servants Efficiency & Discipline) Rules, 2011.

7. On the contrary, the learned Additional Advocate General submitted that there is no order either original or appellate before this Tribunal for adjudication. He referred to the Writ Petition filed in the Hon'ble Peshawar High Court which was withdrawn on 01.06.2017 wherein the learned counsel representing appellant submitted that appellant has been removed from service and he want to approach proper forum, appellant has concealed material facts from this Tribunal. He further contended that no order regarding the release of salary of appellant has been passed which fact was not entertained by the Tribunal rather dismissed the very plea in the judgements pronounced, the appointment of appellant is fake and fabricated the case of

appellant cannot be reckoned to be included in the category of civil servant. He has been removed from service rightly. The appointing authority has not been made party hence, the appeal is bad due to non-joinder of necessary party.

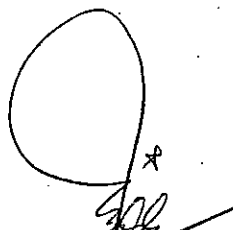
8. The perusal of record would reveal that while conducting post audit process certain irregularities were noticed in the payment of salary made to the appellant upon which his salary was stopped. For ascertainment of the facts the District Education Office (Male) Mansehra, dispatched a letter regarding the veracity of appointment order of appellant to District Education Officer (Male) Battagram, who reportedly was the authority vide letter bearing no. 6851 dated 19.04.2018. In response thereof the District Education Office (Male) Battagram, by virtue of letter dated 03.09.2018 submitted that appellant has not been appointed by his office nor he performed duty at GHS Asharband and it was concluded that the appointment order of appellant was fake and fabricated. Accordingly, his salary was stopped with effect from March 2015, it is worth to be mentioned that appellant did receive his salaries till February 2015 regularly however, he was proceeded against on account of absence from duty. The record on file nowhere mentions that appellant has been proceeded in accordance with the cannon of rules as visualized by the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, nor the matter has been inquired to ascertain as to how the appointment of the appellant was made to the post of Drawing Master (BPS-15) and how he managed to be transferred from the District Cadre post which he held at District Battagram to District Mansehra, how he received salary at the last mentioned place of posting? Appellant claimed to be a civil servant if this plea of appellant is taken into consideration it was incumbent upon the authority at the helm of affairs to have properly initiated departmental proceedings as mandated by the law and as such initiating the same by issuance of show-cause notice alongwith statement of allegations followed by conducting of regular inquiry so that the grain should have been sifted from the chafe. Whatever may be the allegations against the appellant conformity with the rules and following the law in this regard was the only course open for the authorities to have been adopted before initiation of proceedings or making any order adversely affecting his case. The authenticity and

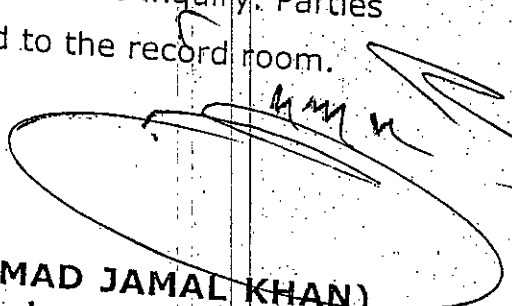
credulity of appointment order could have been established only when full-fledged inquiry in the matter was made as regard the position held by the appellant it has to be ascertained vis-à-vis his appointment order. If it is established that he held the post by a valid appointment order an order with regard to release of salary could be made and the case would be otherwise if the appointment order is invalidated.


9. There could be no second opinion as regard the factum that when no final order is challenged before this Services Tribunal as enunciated by the Hon'ble Supreme Court of Pakistan in its judgement reported as 2006 SCMR 1630 and the unreported judgement of this Tribunal in Service Appeal No. 19/2011 Captioned Mr. Abdul Waheed SET Versus Executive District Officer E&SE Education Department decided on 15.12.2017 however, at the moment the question for determination is the establishment of the veracity and genuineness of appointment order of appellant, the resolution of which is not possible unless and until it is ascertained through a regular inquiry.

10. Resultantly, the appeal is remitted back to the respondents for conducting of regular inquiry in the process of which the appellant has to be associated by providing him fair opportunity of defending himself within a period of 90 days from the date of receipt of copy of this judgement. Keeping in view the circumstances of the instant case no order or reinstatement or release of pay could be passed at this stage which of course would be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

**ANNOUNCED**  
13.01.2021

  
(MIAN MUHAMMAD)  
Member (Executive)

  
(MUHAMMAD JAMAL KHAN)  
Member (Judicial)

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (Executive)

In the exercise of powers conferred on me as an Enquiry officer under rule 7(a) I hold the charges referred to above to have been proved and I propose to impose a minor penalty of withholding of annual increments for three years and also withholding of promotion for one year whenever it becomes due, within the meaning of rule 4(a)(ii) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999. An opportunity should be afforded to the accused Judge of showing cause as to why action proposed by me be not taken. A show-cause notice shall be issued to him to appear on 19-8-2000 at 10 a.m. to show cause why minor penalty indicated above, should not be imposed against him.

Thereafter, show-cause notice was issued to him as to why action proposed by Inquiry Officer be not taken against him and after receiving his reply, learned Inquiry Officer imposed aforesaid penalty. However, Authority did not agree with the opinion of Inquiry Officer and imposed major penalty and dismissed the appellant from service. We have examined the record and find that the appellant was recruited as Additional District and Sessions Judge in the year, 1988 and later on he was promoted as District and Sessions Judge. The complaint was filed against him when he was serving as District and Sessions Judge, Hafizabad in the year, 2000. We have carefully seen ACR dossier of the appellant. His service record throughout was unblemished and earlier he received good reports. There was no adverse entry in his previous ACRs. Learned counsel for the appellant submits that he reached the age of superannuation on 7-8-2004. So, it is clear that if appeal is allowed, he would not be reinstated into service. As stated above, learned Inquiry officer too opted minor penalty keeping in view facts of the case. We have seen the record carefully and we find that imposition of major penalty i.e. dismissal from service is not called for as the same is excessive/harsh. Learned counsel for the appellant has prayed for converting the punishment of dismissal from service to that of compulsory retirement. In our opinion, in the circumstances of the case, his request is reasonable considering the fact that appellant has already retired from service, as also for the reason that learned Inquiry Officer also opted for imposition of a minor penalty. Reliance can be placed upon the case of Fida Muhammad Khan v. Water and Power Development Authority through Chairman, WAPDA, Lahore and another 1996 PLC (C.S.) 1103. This judgment was challenged before Honourable Supreme Court of Pakistan but appeal was dismissed Water and Power Development Authority through Chairman, WAPDA, Lahore and another v. Fida Muhammad Khan 1996 PLC (C.S.) 7000. So, we partly accept this appeal, order of dismissal is modified to that of

compulsory retirement and, in our opinion, this would be in the interests of justice.

No order as to costs.

F.B./M-250/L

Appeal accepted.

2007 P L C 715

[Supreme Court of Pakistan]

Present: Faqir Muhammad Khokhar and Karamat Nazir Bhandari, JJ

Mst. SARWAT QAMAR

versus

PROVINCE OF PUNJAB and others

Civil Petition No. 484-L of 2003, decided on 25th November, 2005.

(On appeal from judgment dated 30-12-2002 passed by the Punjab Service Tribunal, Lahore in Appeal No. 2570 of 2000).

Punjab Civil Servants Act (XIII of 1974)---

---S: 4---Constitution of Pakistan (1973), Art. 212(3)---Removal from service---Petitioner, who was appointed as P.T.C. Teacher, was removed from service on ground that her appointment order was proved to be illegal/bogus being without merit and against Government policy---Departmental Authorities as well as the Service Tribunal had recorded their concurrent findings of fact that petitioner was never selected by District Recruitment Committee, nor her name figured in the merit list and that appointment order of petitioner was a forged document---Finding of fact recorded by competent department forums and the Service Tribunal, could not be reviewed by Supreme Court---Impugned judgment of Tribunal not suffering from any defect or legal infirmity, could not be interfered with by Supreme Court. [p. 716] A & B

Pervaiz Inayat Malik, Advocate Supreme Court with Tanvir Ahmad, Advocate-on-Record for Petitioner.

Nemo for Respondents.

Date of hearing: 25th November, 2005.

JUDGMENT

FAQIR MUHAMMAD KHOKHAR, J.--- The petitioner seeks

leave to appeal from judgment, dated 30-12-2002, passed by the Punjab Service Tribunal, Lahore in Appeal No. 2570 of 2000.

2. The petitioner was appointed as a PTC Teacher. However, she was removed from Service by order, dated 22-5-1999, passed by the District Education Officer, Lodhran, on the grounds that her appointment order, dated 30-12-1992 was proved to be illegal/bogus, being out merit and against the Government policy. Her appeal was also dismissed by the Director of Elementary Education, Multan, by order, dated 2-8-1999. Therefore, the petitioner preferred Service Appeal No. 2570 of 2000, which was dismissed by the Tribunal by the impugned judgment dated 30-12-2002. Hence this petition for leave to appeal.

3. The learned counsel for the petitioner vehemently argued that the order of removal of the petitioner from service was inconsistent with the show-cause notice and that proper inquiry had not been conducted by the departmental authorities. It was further argued that there was nothing on record to show that the order of appointment had not emanated from the competent authority.

4. We have heard the learned counsel for the petitioner at some length and have also gone through the available record. The departmental authorities as well as the Tribunal have recorded their concurrent findings of fact that the petitioner was never selected by the District Recruitment Committee nor did her name figure in the merit list and that the appointment order No. 336 of the petitioner was a forged document as the said number was nowhere found in the dispatch register. We are not expected to review the findings of fact recorded by the competent departmental forums and the Tribunal. The impugned judgment of the Tribunal does not suffer from any defect or legal infirmity so as to warrant interference by this Court.

5. For the foregoing reasons, we do not find any merit in this petition which is dismissed and leave to appeal is refused accordingly.

H.B.T./S-8/SC

Petition dismissed.

2007 P L C (C.S.) 716

[Karachi High Court]

*Before Sarmad Jalal Osmany and Sajjad Ali Shah, JJ*

MUHAMMAD AYAZ KHAN

versus

GOVERNMENT OF SINDH and others

Constitutional Petition No. D-1175 of 2005.

(a) Civil service---

---Promotion, fitness for---Case of the civil servant for promotion was deferred on account of pendency of enquiry by National Accountability Bureau---Contention of the department that case of promotion was to be deferred till such time the enquiry was finalized, could not be substantiated because a person was presumed to be innocent until found guilty---High Court remanded the case of civil servant to the department with directions to decide his case of promotion etc, solely on merit and the Rules without taking into consideration the pendency of the NAB case against him. [p. 718] A

Habib-ur-Rehman v. Defence Secretary, Government of Sindh and others 2003 PLC (C.S.) 56 and I.A. Sherwani and others v. Government of Pakistan 1991 SCMR 1041 ref.

(b) Service Tribunal---

---Jurisdiction---Matter concerning fitness of civil servant for promotion was beyond the jurisdiction of Service Tribunal. [p. 718] A

Habib-ur-Rehman v. Defence Secretary, Government of Sindh and others 2003 PLC (C.S.) 56 and I.A. Sherwani and others v. Government of Pakistan 1991 SCMR 1041 ref.

Rasheed A. Razvi for Petitioner.

Muhammad Ahmed Pirzada, A.A.-G. Sindh.

Ainuddin Khan for NAB (Sindh).

ORDER

Learned counsel for the petitioner submits that vide the impugned order, dated 1-2-2005 the case of the petitioner for promotion was deferred due to the pendency of the NAB enquiry against him. According to learned counsel, this issue cannot be pended indefinitely since though promotion may not be a vested right at least consideration for promotion is a vested right which has been deferred. Learned counsel has, therefore, prayed that although reference has been filed against the petitioner, the matter is yet to go to trial and it is to be determined whether or not he is guilty of the charge levelled against him i.e. of possession of assets which are not proportionate to known source of income and that too subject to final appeal to Honourable Supreme Court. With regard to the jurisdictional issue which was raised on the last date of hearing the learned counsel has relied upon the case of Habib-ur-Rehman v. Defence Secretary, Government of Sindh and others 2003 PLC (C.S.) 56 for the proposition that the fitness of a civil servant vis-a-vis promotion-etc., does not fall within the domain of the Service

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

SERVICE APPEAL NO: 161/2014

Date of institution: 07.02.2014

Date of judgment: 09.08.2017

Rashid Ullah Khan S/o Saad Ullah Khan,  
R/o Ghazni Khel District Lakki Marwat.

(Appellant)

VERSUS

1. Government of KPK, through Secretary Education, Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education, Male Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer Male Elementary & Secondary Education, District Lakki Marwat.
4. Sub-Division Education Officer Primary Male District Lakki Marwat.
5. Deputy Commissioner District Lakki Marwat.
6. District Account Officer, Lakki Marwat.
7. Burhan Ullah S/o Raza Khan PST, G.P.S, Zafar Abad, Lakki Marwat and four other private respondents.

(Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE STOPPAGE OF SALARIES SINCE 23.02.2011 TILL DATE BY THE RESPONDENTS WITHOUT ANY LAWFUL AUTHORITY.

Mr. Aman Ullah Marwat, Advocate.

Mr. Ziaullah, Deputy District Attorney.

For appellant.

For respondents.

MR. MUHAMMAD AMIN KHAN KUNDI  
MR. MUHAMMAD HAMID MUGHAL

MEMBER (JUDICIAL)  
MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: -

This appeal has been filed under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the stoppage of salaries of the appellant since 23-02-2011 till date.

2. Facts of the case as per memo of the appeal are that consequent upon the approval of the competent authority respondent No. 3 appointed the appellant as

AAU

file commitment

part of judgment

9.8.2017



Primary School Teacher against the vacant post in Wanda Alam Shah, Lakki Marwat vide order dated 22.02.2011. That after issuance of appointment order he was medically examined on 22.02.2011 by medical Superintendent DHQ Hospital Lakki Marwat and thereafter he submitted his arrival report in Government Primary School Wanda Alam Shah, Lakki Marwat on 22.02.2011 and since then he is performing his duties in the said school and his attendance in the register are regularly marked in the concerned register but the salaries are not paid to the appellant since his appointment, therefore, he approached the concerned respondents for release of the salaries but the respondents turned down the request of the appellant for release of the salaries. That the appellant filed civil suit but the learned Civil Judge dismissed the suit of the appellant by holding that salary is one of the term and condition of the civil servant, therefore, the appellant filed the present appeal with prayer that the appeal may be accepted and the respondents may be directed to release the salaries of the appellant.

3. The respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was appointed as Primary School Teacher vide order dated 22.02.2011 after observing all codal formalities and performing his duties since the date of his appointment up to the satisfaction of the superior but the respondents are not paying salaries to him. It was further contended that the respondents have released the salaries to other similarly placed persons i.e respondents No. 4 to 11 but they are reluctant to release the salary of the appellant, therefore, the appellant is not treated in accordance with law and rules and the action of the respondents are based on discrimination and not sustainable in the eye of law.

5. On the other hand, learned Deputy District Attorney Mr. Ziaullah opposed the contention of learned counsel for the appellant and contended that the appellant was not appointed in accordance with law and rules, therefore, the appellant is not a civil servant. It was further contended that since the respondents have not appointed the appellant, therefore, there is no need to release his salary. It was further contended that no codal formalities i.e advertisement, test, interview, preparation of merit list and approval of the

*M. H. M. M.*  
*19.8.2017*

departmental selection committee have been observed regarding the appointment of the appellant, therefore, his alleged appointment order is illegal and fake, therefore, the present appeal is also not maintainable. It was further contended that as per memo of appeal the date of appointment of the appellant is 22.02.2011 and as per contention of the appellant the salaries have not been paid to him since the date of appointment but he has filed the present service appeal on 07.02.2014 after four years, therefore, the present appeal is also time barred and prayed for dismissal of appeal.

6. We have heard the arguments on both side and gone through the record available on file

7. Perusal of the record reveals that the appellant has claimed that he was appointed as Primary School Teacher against the vacant post in Government Primary School Wanda Afan Shah, Lakki Marwat by respondent No. 3 but the respondent No. 3 as well as other respondents have denied the claim of the appellant regarding his appointment in the written reply. Record further reveals that there is nothing on the record to show that before the alleged appointment of the appellant any codal formalities i.e. advertisement, test, interview, preparation of merit list and approval of departmental selection committee were observed, therefore, the alleged appointment of the appellant in the absence of the aforesaid codal formalities is also illegal. Furthermore, the appellant has stated in the appeal that he was appointed as Primary School Teacher on 22.02.2011 and since then he is performing his duties but salaries have not been paid to him but he has filed the present service appeal on 07.02.2014 after four years, therefore, the appeal is time barred. As such the appeal has no force which is hereby dismissed with no order as to costs. File be consigned to the record room.

ANNOUNCED  
09/08/2017

  
(MUHAMMAD HAMID MUGHAL)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER



file amendment  
dimora,  
AAG

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:  
MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE JAZ UL AHSAN


CIVIL PETITION NOS. 2238 OF 2018 TO 2263 OF 2018  
AND 2499, 2682, 2778 TO 2781 OF 2018  
AND 3505 OF 2018 TO 3514 OF 2018.

(On appeal from the Judgment/order dated 14.03.2018 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar. Comp. Court. D.L. Khan passed in Appeal Nos.943/2012,1107,1112,1092,1110/2015,1210/2012,946/2012,929/2012,932/2012,949/2012,937/2012,1197/2012,947/2012,938/2012,927/2012,950/2012,957/2012,941/2012,943/2012,955/2012,953/2012,934/2012,928/2012,954/2012,936/2012,1095/2015,557/2015,558/2015,1190/2015,1202/2015,1205/2015,203/2016,573/2015,559/2015,560/2015,562/2015,565/2015,566/2015,568/2015,569/2015,571/2015,1118/2015).

|                        |                          |
|------------------------|--------------------------|
| Rehmat Ullah           | (in C.P. No.2238/2018)   |
| Sibt-ul-Hassan Shah    | (in C.P. No. 2239/2018)  |
| Matiullah (in C.P. No. | (in C.P. No.2240/2018)   |
| Muhammad Shahid        | (in C.P. No. 2241/2018)  |
| Muhammad Ibrahim       | (in C.P. 2242/2018)      |
| Inam Ullah             | (in C.P. No. 2243/.2018) |
| Barkatullah            | (in C.P. No.2244/2018)   |
| Ghazi Marjan           | (in C.P. No.2245/2018)   |
| Mst. Fozia Malik       | (in C.P. No.2246/2018)   |
| Aziz-ur-Rehman         | (in C.P. No.2247/2018)   |
| Muhammad Arif          | (in C.P. No.2248/2018)   |
| Muhammad Azeem         | (in C.P. No.2249/2018)   |
| Hidayatullah           | (in C.P. No.2250/2018)   |
| Muhammad Hassan Khan   | (in C.P. 2251/2018)      |
| Ala-ud-Din             | (in C.P. No.2252/2018)   |
| Noor Aslam             | (in C.P. No.2253/2018)   |
| Samiullah              | (in C.P. No.2254/2018)   |
| Mst. Bibi Ayesha       | (in C.P. No.2255/2018)   |
| Mst. Mehmaz Begum      | (in C.P. No.2256/2018)   |
| Imranullah             | (in C.P. No.2257/2018)   |
| Saleemullah            | (in C.P. No.2258/2018)   |
| Samiullah              | (in C.P. No.2259/2018)   |
| Abdul Qadir            | (in C.P. No.2260/2018)   |
| Ghulam ud Din          | (in C.P. No.2261/2018)   |
| Abdul Jabil            | (in C.P. No.2262/2018)   |
| Kifayatullah           | (in C.P. No.2263/2018)   |
| Shahid Nawaz           | (in C.P. No.2499/2018)   |
| Tabir Bashir           | (in C.P. No.2682/2018)   |
| Ghulam Fareed          | (in C.P. No.2778/2018)   |
| Saifullah Khan         | (in C.P. 2779/2018)      |
| Abdul Rasheed Khan     | (in C.P. No.2780/2018)   |
| Inayat Ullah Khan      | (in C.P. No.2781/2018)   |
| Razia Sultana          | (in C.P. No.3505/2018)   |
| Muhammad Ramzan        | (in C.P. No.3506/2018)   |
| Abdul Ghaffar          | (in C.P. No.3507/2018)   |
| Muhammad Iqbal Khan    | (in C.P. No.3508/2018)   |
| Naeema Sadia           | (in C.P. No.3509/2018)   |
| Nasim Bibi             | (in C.P. No.3510/2018)   |
| Rehana Audateeb        | (in C.P. No.3511/2018)   |
| Muhammad Sohail        | (in C.P. No.3512/2018)   |
| Shazia Malik           | (in C.P. No.3513/2018)   |
| Muhammad Ilyas         | (in C.P. No.3514/2018).  |

...Petitioner(s)

ATTESTED

  
Attesting Officer  
Supreme Court of Pakistan

VERSUS

Director, Elementary and Secondary Education Department,  
Peshawar and others  
(in C.P. Nos. 2238 to 2242/2018)

The Government of KPK thr. its Secretary, Elementary and  
Secondary Education, Peshawar and others  
(in C.P. Nos. 2243 to 2262/2018)

Director, Elementary and Secondary Education Department,  
Peshawar and others  
(in C.P. Nos. 2263, 2499, 2682/2018)

Ministry of Education thr. Secretary Elementary and Secondary  
Education, Peshawar and others  
(in C.P. Nos. 2778-2780/2018)

Director Education (E & SE), KPK, Peshawar and others  
(in C.P. No. 2781/2018)

The Director, Elementary and Secondary Education Department,  
Peshawar and others  
(in C.P. Nos. 3505-3514/2018)

...Respondent(s)

For the petitioner(s) Mian Abdul Rauf, ASC  
(in all cases)

For the respondent(s) N.R  
(in all cases)

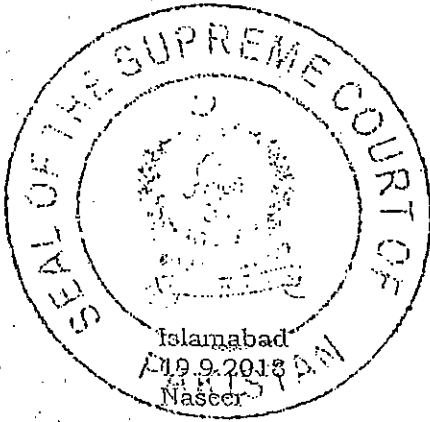
Date of Hearing: 19.09.2018

ORDER

UMAR ATA BANDIAL, J.— The petitioners were terminated firstly in the year 2009 on account of legal defects in their appointments. By order of the Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 27.10.2011 the petitioners underwent another inquiry by a Committee constituted by Provincial Government wherein the termination of services of the petitioners was affirmed on 08.2.2012. The appointments of the petitioners were determined to be in violation of the provisions of Rule 10(2) of the KPK Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, in that, either the advertisement was missing or the Departmental Selection Committee had not been appointed or a merit list of the candidates had not been prepared. The learned Tribunal by the impugned judgment dated 14.3.2018 has upheld the termination of service of the petitioners by holding that the said

defects constituted a failure to comply the mandatory requirement of law.

2. We do not find any ground to interfere with the view taken in the impugned judgment which is based on the record and the correct enunciation of law. For the foregoing reason, all these petitions are dismissed and leave to appeal is refused.



Not approved for reporting

3/14/18

Handwritten initials/signature

Certified to be True Copy

Court Associate  
Supreme Court of Pakistan  
Islamabad

26.12.18

CR No: \_\_\_\_\_ Civil/Criminal

Date of Presentation: 25.10.18

No. of Wards: \_\_\_\_\_

No of Folios: 9

Requisition Fee Rs: \_\_\_\_\_

Copy Fee in: \_\_\_\_\_

Court Fee Stamp: 12.08

Date of Completion of Copy: 26/10/18

Date of delivery of Copy: 27/10/18

Compared by/Prepared by: \_\_\_\_\_

Received by: \_\_\_\_\_

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.**

**Service Appeal No. 13/2018**

Date of Institution ... 19.12.2017

Date of Decision ... 13.01.2021



Rahim Dad Khan S/O Mohib Gul, Drawing Master, GMS Kayan  
Mansehra.

R/O Muhallah Hidayat Ullah Shah, G.T Road Peshawar.

... (Appellant)

**VERSUS**

Secretary Elementary and Secondary Education, Khyber  
Pakhtunkhwa, Sahibzada Abdul Qayum Road, Civil Secretariat,  
Peshawar and three others.

... (Respondents)

Mr. MIAN MUHAMMAD IMRAN,  
Advocate

For appellant.

MR. KABIRULLA KHATTAK,  
Additional Advocate General

For respondents.

MUHAMMAD JAMAL KHAN  
MIAN MUHAMMAD  
ATIQ-UR-REHMAN WAZIR

MEMBER (Judicial)  
MEMBER (Executive)  
MEMBER (Executive)

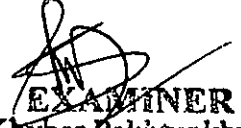
**ATTESTED**

**JUDGEMENT:**

**MUHAMMAD JAMAL KHAN, MEMBER:-** Through

instant Service appeal submitted under Section-4 of the Khyber  
Pakhtunkhwa Services Tribunal Act, 1974, the order of stoppage of  
salary since March 2015 till date has been called in question.


2. According to the appellant being civil servant, he was inducted  
into service on 16.04.2013 as Drawing Master (BPS-15) at Government  
High School Asharband, Allai District Battagram. Appellant was  
transferred from the aforesaid school to Kayan, District Mansehra, on  
06.08.2014, in consequence thereof he submitted his charge

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

relinquishment report on 07.08.2014 and as such reported to GMS Kayan. He rendered his duties efficiently and honestly in a manner becoming of a civil servant and for this reason no adverse remarks were recorded or action was taken, during the course of rendition of services at GMS Kayan he received regular salaries till February 2015 whereafter his salaries were unceremoniously stopped/blocked without tendering any explanation or notice to appellant. It was during this period that he made strenuous efforts to unblock his salaries or to ascertain the reason for its stoppage but did not succeed. After putting in immense efforts he was able to get an un-served show-cause notice in which he has been tentatively imposed major penalty of removal from service for the reason of absence from duty. No statement of allegations was served on appellant nor any inquiry was conducted nor allegiance to the provision of Rule 5, 7 & 9 of Government of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules was made nor he has been handed over any manuscript as to the status of employment of appellant eliciting mala-fide on the part of respondents thus violating the Fundamental Rights of appellant, he made recourse to the Hon'ble Peshawar High Court, Peshawar, through Writ Petition No. 478-P/2017 which was ultimately withdrawn with the direction to make recourse to the proper forum. He made efforts to procure the copies of the relevant documents from the office of District Education Officer concerned through the good offices of RTI but no response was received by him vide his application dated 14.07.2017. The departmental appeal dated 29.06.2017 moved for the purpose proved unsuccessful vide order dated 07.12.2017 followed by the instant service appeal.

3. It is worth to be mentioned that earlier the Hon'ble Members of this Tribunal in their respective judgments differed essentially on the point as to the legal status of appellant one Member declared him as Civil Servant while the other subjected his opinion in this regard to the outcome of the inquiry to be conducted against appellant although both of them respectively concurred on the point of holding of inquiry in the matter thus due to this tie the appeal was referred to the Larger Bench for adjudication.

4. Respondents were summoned in response thereof they attended the Tribunal through their legally authorized representative, veramently

**ATTESTED**  
  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

controverting the claim of appellant by submitting comments/reply wherein certain legal and factual objections were raised, inter-alia, that appellant is not aggrieved person, appellant is estopped by his own conduct, appellant has not come to this Tribunal with clean hand, appellant has no cause of action/locus standi, appeal is against the prevalence law and rules and appellant has concealed the material facts etc.

5. We have heard arguments of the learned counsel representing appellant as well as learned Additional Advocate General representing respondents and were able to go through the record with their assistance.

6. While initiating arguments the learned counsel representing appellant submitted that the moot question for resolution before this bench relates to the release of salary of appellant. While making reference to the split judgment passed earlier by the Hon'ble Members of this Tribunal he submitted that there was complete unanimity regarding conducting of inquiry for ascertainment of the facts. The point at which the worthy Members were at variance was with regard to fact that as to whether appellant is a civil servant or else otherwise. The learned counsel submitted that in case appellant was not a civil servant in that eventuality this Tribunal was divested of jurisdiction and this Tribunal would have returned the very appeal at the very outset. The learned counsel declared that appellant is a civil servant and he has to be dealt with in accordance with the Khyber Pakhtunkhwa Government Servants Efficiency & Discipline) Rules, 2011.

7. On the contrary, the learned Additional Advocate General submitted that there is no order either original or appellate before this Tribunal for adjudication. He referred to the Writ Petition filed in the Hon'ble Peshawar High Court which was withdrawn on 01.06.2017 wherein the learned counsel representing appellant submitted that appellant has been removed from service and he want to approach proper forum, appellant has concealed material facts from this Tribunal. He further contended that no order regarding the release of salary of appellant has been passed which fact was not entertained by the Tribunal rather dismissed the very plea in the judgements pronounced, the appointment of appellant is fake and fabricated the case of

ATTESTED

EXAMINED  
Cyber Pakhtunkhwa  
Service Tribunal  
Peshawar

appellant cannot be reckoned to be included in the category of civil servant. He has been removed from service rightly. The appointing authority has not been made party hence, the appeal is bad due to non-joinder of necessary party.

8. The perusal of record would reveal that while conducting post audit process certain irregularities were noticed in the payment of salary made to the appellant upon which his salary was stopped. For ascertainment of the facts the District Education Office (Male) Mansehra, dispatched a letter regarding the veracity of appointment order of appellant to District Education Officer (Male) Battagram, who reportedly was the authority vide letter bearing no. 6851 dated 19.04.2018. In response thereof the District Education Office (Male) Battagram, by virtue of letter dated 03.09.2018 submitted that appellant has not been appointed by his office nor he performed duty at GHS Asharband and it was concluded that the appointment order of appellant was fake and fabricated. Accordingly, his salary was stopped with effect from March 2015, it is worth to be mentioned that appellant did receive his salaries till February 2015 regularly however, he was proceeded against on account of absence from duty. The record on file nowhere mentions that appellant has been proceeded in accordance with the cannon of rules as visualized by the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, nor the matter has been inquired to ascertain as to how the appointment of the appellant was made to the post of Drawing Master (BPS-15) and how he managed to be transferred from the District Cadre post which he held at District Battagram to District Mansehra, how he received salary at the last mentioned place of posting? Appellant claimed to be a civil servant if this plea of appellant is taken into consideration it was incumbent upon the authority at the helm of affairs to have properly initiated departmental proceedings as mandated by the law and as such initiating the same by issuance of show-cause notice along with statement of allegations followed by conducting of regular inquiry so that the grain should have been sifted from the chafe. Whatever may be the allegations against the appellant conformity with the rules and following the law in this regard was the only course open for the authorities to have been adopted before initiation of proceedings or making any order adversely affecting his case. The authenticity and

ATTESTED

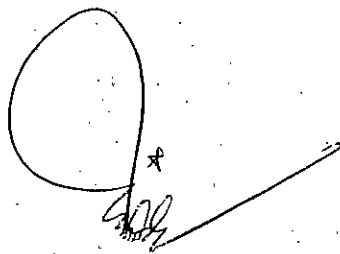
MAJID NER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

credulity of appointment order could have been established only when full-fledged inquiry in the matter was made as regard the position held by the appellant it has to be ascertained vis-à-vis his appointment order. If it is established that he held the post by a valid appointment order an order with regard to release of salary could be made and the case would be otherwise if the appointment order is invalidated.

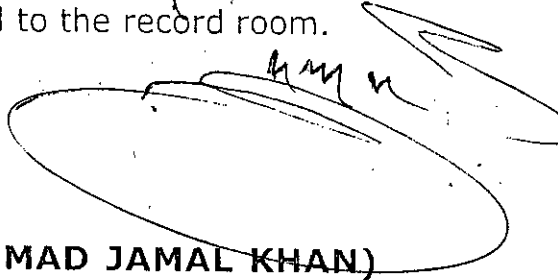
9. There could be no second opinion as regard the factum that when no final order is challenged before this Services Tribunal as enunciated by the Hon'ble Supreme Court of Pakistan in its judgement reported as 2006 SCMR 1630 and the unreported judgement of this Tribunal in Service Appeal No. 19/2011 Captioned Mr. Abdul Waheed SET Versus Executive District Officer E&SE Education Department decided on 15.12.2017 however, at the moment the question for determination is the establishment of the veracity and genuineness of appointment order of appellant, the resolution of which is not possible unless and until it is ascertained through a regular inquiry.

10. Resultantly, the appeal is remitted back to the respondents for conducting of regular inquiry in the process of which the appellant has to be associated by providing him fair opportunity of defending himself within a period of 90 days from the date of receipt of copy of this judgement. Keeping in view the circumstances of the instant case no order or reinstatement or release of pay could be passed at this stage which of course would be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

**ANNOUNCED**  
**13.01.2021**



**(MIAN MUHAMMAD)**  
**Member (Executive)**



**(MUHAMMAD JAMAL KHAN)**  
**Member (Judicial)**



**(ATIQU-UR-REHMAN WAZIR)**  
**MEMBER (Executive)**

**Certified to be true copy**  
**EMAN KHAN**  
**Khyber Pakhtunkhwa**  
**Service Tribunal**  
**Peshawar**



**Date of Presentation of Application** 14/01/2025  
**Number of Words** 2000  
**Copying Charges** 22/-  
**Urgent** \_\_\_\_\_  
**Total** 22/-  
**Name of Candidate** \_\_\_\_\_  
**Date of Completion of Copy** 26/01/2025  
**Date of Delivery of Copy** 26/01/2025

| Sr. No | Date of order/proceedings                     | Order or other proceedings with signature of Judge or Magistrate   |
|--------|---|--|
| 1      | 2   | <p style="text-align: center;"><i>dismissed fake cases</i></p>   |
|        | <p style="text-align: center;">28.01.2019</p> | <p style="text-align: center;"><b>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</b><br/> <b>Service Appeal No. 540/2014</b></p> <p style="text-align: center;">Date of Institution ..... 17.04.2014<br/> Date of Decision ..... 28.01.2019</p> <p>Mst. Shahnaz Bibi, Daughter of Shah Nawaz R/o Khandar Khankheil<br/> Post Office Azeem Kala Jadeed Tehsil &amp; District Bannu.<br/> <b>Appellant</b></p> <p style="text-align: center;"><b>Versus</b></p> <ol style="list-style-type: none"> <li>1. The Secretary Education (E&amp;SE) Khyber Pakhtunkhwa Peshawar.</li> <li>2. Director Education (E&amp;SE) Khyber Pakhtunkhwa Peshawar.</li> <li>3. The DEO (Female) E&amp;SE Bannu.</li> <li>4. The Secretary Finance Department Khyber Pakhtunkhwa Peshawar.</li> </ol> <p style="text-align: right;"><b>Respondents</b></p> <p>Mr. Muhammad Hamid Mughal-----Member (J)<br/> Mr. Ahmad Hassan-----Member (E)</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present.</p> <ol style="list-style-type: none"> <li>2. This single/common judgment in the above captioned appeal, shall also dispose of appeal No. 541/2014 filed by Mst. Sohaila Zafar being identical in nature.</li> <li>3. The appellant has filed the present service appeal u/s 4 of the</li> </ol> |

Khyber Pakhtunkhwa Service Tribunal Act 1974 for the release of her monthly salaries w.e.f 02.11.2009.

4. Learned counsel for the appellant argued that the appellant was appointed as PST vide appointment order date 02.11.2009 and she also performed her duties however she was not paid her monthly salaries.

5. As against that learned Additional Advocate General argued that appointment order relied upon by the appellant is fake, factitious, fabricated, bogus and record less. Further argued that the appellant is not a civil servant/employee of the respondent department and as such she is not entitled to monthly salaries of PST. Further argued that identical nature Service Appeal bearing No.541/2013 filed by Mst. Basreen Bibi has already been rejected by this Tribunal vide judgment dated 08.11.2016.

6. Arguments heard. File perused.

7. Respondent department has totally denied the claim of the appellant regarding her appointment as PST/Civil Servant. The appellant too did not refer to any advertisement of the year 2009 in respect of the vacancy against which she was allegedly appointed. Except the appointment order disowned by the respondent department no other document is in the possession of the appellant to suggest that she submitted application for the post of PST and gone through any test and interview. The appellant allegedly appointed in the year 2009 kept mum for years despite the fact that no salary has ever been paid to her. The appellant has also not brought on record

any malafide on the part of respondent department in rejecting the claim of the appellant. Identical nature Service Appeal as referred to by the learned Additional Advocate General has already been dismissed.

8. As a sequel to above the appellant has not been able to seek indulgence of this Tribunal. Consequently the present service appeal and the connected service appeal bearing No.541/2014 filed by Mst. Sohaila Zafar are dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Ahmad Hassan)  
Member

(Muhammad Hamid Mughal)  
Member

ANNOUNCED  
28.01.2019

6/10/2019

- Fake appointment order - Limitation

Appeal dismissed

| Sr. No   | Date of order/proceedings | Order or other proceedings with signature of Judge or Magistrate |
|--|---------------------------|--|
| 1  | 2                         | 3<br>dismissed. fake case  |
| <p align="center"><b>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</b><br/> <b>Service Appeal No. 479/2013</b></p> <p>Date of Institution ..... 26.0.2013<br/> Date of Decision ..... 17.10.2018</p> <p>Mr. Abid Khan, Computer Operator (BPS-12), Pakhtunkhwa House Islamabad.</p> <p align="right"><b>Appellant</b></p> <p align="center"><b>Versus</b></p> <ol style="list-style-type: none"> <li>The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.</li> <li>The Secretary Administration Department Khyber Pakhtunkhwa Peshawar.</li> <li>The Secretary Finance Department Khyber Pakhtunkhwa Peshawar.</li> <li>The Deputy Secretary (Admn), Administration Department Khyber Pakhtunkhwa Peshawar.</li> <li>The Comptroller Pakhtunkhwa House Islamabad.</li> </ol> <p align="right"><b>Respondents</b></p> <p>Mr. Muhammad Hamid Mughal-----Member (J)<br/> Mr. Hussain Shah-----Member (E)</p> <p align="center"><u>JUDGMENT</u><br/> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Mr. Noor</p> <p>17.10.2018<br/> Muhammad Khattak learned counsel for appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.</p> <ol style="list-style-type: none"> <li>The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for the release of salaries w.e.f 13.04.2009.</li> <li>Learned counsel for the appellant argued that vide order dated</li> </ol> |                           |  |

06.04.2009 the appellant was appointed as Computer Operator (BPS-12) in the Khyber Pakhtunkhwa Administration Department. Further argued that vide order dated 23.05.2009 the appellant was transferred to Pakhtunkhwa House Islamabad and after arrival as per transfer order, the appellant started his duty. Further argued that the appellant requested time and again for release of his salaries but no response was given to him; that the appellant also filed departmental appeal but no reply was received and consequently the appellant filed Writ Petition No.2382/2011 in the Hon'ble Peshawar High Court Peshawar but the same was disposed off on the question of jurisdiction. Learned counsel for the appellant contended that the act of not releasing the monthly salary of the appellant is against the law, facts and norms of natural justice.

4. As against that learned Additional Advocate General argued that both the alleged appointment letters dated 06.04.2009 and alleged transfer order/detailment order dated 23.05.2009 are fake/bogus and hence the appellant is not a civil servant and this Tribunal has got no jurisdiction to entertain the present service appeal. Further argued that otherwise the appellant's service appeal is also time barred. Further argued that since both appointment as well as transfer/detailment orders is fake and bogus therefore the appellant is not entitled to any emoluments.

5. Arguments heard. File perused.

6. Averment of the appellant is that he was appointed as Computer Operator in the Administration Department vide order

No original or Appellate order -  
Appeal Dismissed

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

19/4/2019  
Appeal No. 19/2011

Date of Institution ... 30.12.2010

Date of Decision ... 15.12.2017

Mr. Abdul Waheed, SET, GHS No.3 Abbottbad.

... (Appellant)

VERSUS

1. The Executive District Officer, Elementary and Secondary Education,  
Abbottabad and 4 others.

... (Respondents)

MR. Khaled Rahman,  
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ PAINDAKHEL,  
Assistant Advocate General

--- For respondents.

MR. AHMAD HASSAN,  
MR. MUHAMMAD AMIN KHAN KUNDI

... MEMBER (Executive)  
... MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER. - Arguments of the learned counsel for  
the parties heard and record perused.

FACTS

2. The brief facts are that the appellant was appointed SET on 29.07.1985. The appellant obtained M.Ed on 01.03.2001. As per policy of the government dated 13.07.2002, he was allowed three advance increments on getting higher qualification. That the Finance Department issued notification dated 30.03.2009 by allowing increments for untrained period to the entire teaching community, hence the appellant also benefited from the said notification and reached the maximum of BPS-16. In the light of notification dated 11.08.1991, the appellant

was entitled for personal pay, which has been denied to him. He filed departmental on 27.09.2010, but without any response, hence, the instant service appeal on 30.12.2010.

### ARGUMENTS

3. Learned counsel for the appellant argued that he was appointed as SET on 27.09.1885. That after qualifying M.Ed from Allama Iqbal Open University on 01.03.2001 three advance increments on higher professional qualification were granted/allowed to him vide notification dated 13.07.2002. The Finance Department vide notification dated 30.03.2009 allowed increments for untrained service period to all the teachers serving in the department. That the appellant also benefited from the aforementioned notification and reached the maximum of BPS-16 i.e Rs. 5490 on 01.12.2000. Resultantly increments granted on obtaining M.Ed to the appellant stood usurped. That pay of the appellant should have been fixed as personal pay in the light of notification of the Finance Department dated 11.08.1991. He filed departmental appeal on 02.09.2010 which was not decided within the statutory period, hence the instant service appeal. He further argued that judgment of this Tribunal dated 21.06.2006 passed in service appeal no. 846/2004 was implemented by the Finance Department vide letter dated 10.11.2008. Case of the appellant being identical in nature deserves similar treatment. Reliance was placed on 2005 SCMR 499, 2009 SCMR 01 and Peshawar High Court, Peshawar dated 08.06.2017 passed in writ petition no. 913-P/2014.

4. On the other hand learned Assistant Advocate General argued that a cursory reading of Section-4 of Service Tribunal Act 1974 shows that it is only against a final order, original or appellate that an appeal can be filed in Service Tribunal. In the instant service appeal the appellant has not challenged any



original or appellate order passed by a departmental authority and from which he is aggrieved. Appellant is seeking directions from this Tribunal to the respondents for grant of advance increment on getting higher qualification. Issuance of directions is not the job of Service Tribunal. Moreover, after promulgation of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increment on Higher Qualification Act No. IX-2012, he is not entitled for advance increments. Reliance was placed on 1990 SCMR 1106, 2016 PLC 1042, 2006 SCMR 1630 and judgment of this Tribunal dated 20.09.2017 passed in service appeal no. 467/2012.

#### CONCLUSION.

5. This Tribunal deems it appropriate to first decide the issue of parameters given in Section-4 of Service Tribunal Act 1974 for filing service appeal which is reproduced below:-

*"Any civil servant aggrieved by any order whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may; within days of the communication of such order to him, or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal to the Tribunal."*

Learned counsel for the appellant when confronted on the above mentioned section of law conceded that no original or appellate order passed by the respondents is available to be challenged through the instant service appeal. As he has not challenged any departmental order but seeking directions from this Tribunal to the respondents which is beyond our jurisdiction. In these circumstances no effective remedy can be granted in favour of the appellant. In view of case law reported as 1990 SCMR 1106 the appeal is not maintainable. After having deliberated on the issue of jurisdiction there is hardly any need to touch the merits of the case.

6. As a sequel to above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)  
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

ANNOUNCED  
15.12.2017

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL PESHAWAR**

Anwar Zeb .....Vs.....Govt of KPK & others

**REJOINDER ON BEHALF OF THE**  
**APPELLANT**

---

**Respectfully Sheweth:**

1. Contents incorrect and misleading, salary of the appellant has illegally stopped despite of he being in service, thus he being an aggrieved civil servant has got the cause of action to file the instant appeal and locus standi as well.
2. Contents incorrect and misleading, nothing has been concealed from this Hon'ble court.
3. Contents incorrect and misleading, appellant has come to this Hon'ble Tribunal with clean hands.
4. Contents incorrect and misleading, there is no malafide on the part of the appellant.
5. Contents incorrect and misleading, the appeal is filed well in accordance with rules and laws.
6. Contents incorrect and misleading, rule of estoppels is not applicable in the instant case.
7. Contents incorrect and misleading, hence denied.

8-9 Contents incorrect and misleading, the appellant was appointed by the competent authority hence valuable rights have been accrued in favor of the appellant.

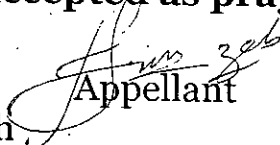
**On Facts**

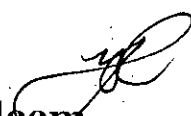
1. Para No. 01 of the appeal is correct, reply to the para is incorrect hence denied.
  
- 2-6. Para No. 02 of the appeal is correct, reply to the para is incorrect hence denied.
  
- 7-8 In reply to para No. 07 it is submitted that the appellant has the cause of action.

**Grounds:**

A-K Taken in the memo of appeal are legal and will be substantiated at the time of arguments.

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

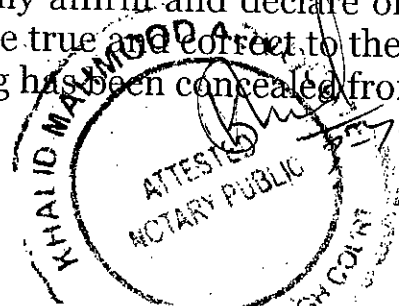
Through   
Appellant

  
**Yasir Saleem**  
Advocate, High Court  
Peshawar

Date: 03.07.2019

**AFFIDAVIT**

It is solemnly affirm and declare on oath that the contents of the **rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



  
**DEPONENT**



BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 155 of 2018

Anwar Zeb S/O Sher Rahman.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary E&SE and others.....Respondents

Index

| S. No | Description /Documents                            | Annexure | Pages  |
|-------|---|----------|--------|
| 1     | Comments  |          | 1 to 4 |
| 2     | Affidavit   |          | 5      |
| 3     | Copy of dispatch register                         | A        | 6, 7   |
| 4     | Original Appointment order of DM dated 19-03-2013 | B        | 8, 9   |
| 5     | Merit List  | C        | 10, 11 |
| 5     | Report of Head Master GHS Hatal Batkool           | D        | 12     |
| 6     | Letter addressed to Head Master GHS Hatal Batkool | E        | 13     |

Respondent

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

**Service Appeal No. 155 of 2018**

Anwar Zeb S/O Sher Rahman.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary E&SE and  
others.....Respondents

**Joint Para-wise Comments /Reply on behalf of  
Respondents NO. 1 to 3**

**Respectfully Sheweth:**

**Preliminary Objections**

1. That the appellant has no cause of action/locus standi to file the instant appeal.
2. That the appellant has concealed the material facts from this Hon'able Tribunal.
3. That the appellant has not come to this Hon'able Tribunal with clean hands.
4. That the appellant has filed the instant appeal on malafide grounds.
5. That the appellant's appeal is against the prevailing law and rules.
6. That the appellant is estopped by his own conduct to file instant appeal.
7. That the claim of the appellant is unlawful; hence the instant appeal is liable to be dismissed.
8. That the appellant was not appointed by lawful/competent authority. The appointment order annexed by him is fake/bogus and fabricated having no legal sanctity; hence the instant appeal is liable to be dismissed without any further proceeding.
9. The appellant has neither taken over charge as DM at GHS Hutal Batkool nor performed duty for a single day. His demand is illegal and respondent are not bound to obey illegal demand of the appellant, hence the instant appeal is liable to be dismissed without any further proceeding.

ON FACTS

1. Para No. 1 of the appeal is incorrect. The appellant was neither recommended by Departmental Selection Committee nor appointed by the lawful/competent authority and the appointment order annexed by him is fake/bogus and fabricated having no legal sanctity. No appointment order of Drawing Masters (DM) was issued on 16-04-2013 from District Education Office (M) Battagram while the post of DM at GHS Hatal Batkool was already filled by Fazal Maabood DM. The appellant has made tempering in appointment order dated 11-03-2013. The appellant's name was even not included in merit list. Furthermore how was it possible that a person belonging to District Peshawar could be appointed in District Battagram against district cadre post? Copies of dispatch register dated 16-04-2013, copy of original appointment order of DM dated 11-03-2013 & merit list are annexed as annexure "A, B & C".
2. Para No. 2 of the appeal is incorrect. The appellant was neither appointed by the lawful/competent authority nor he served/performed duty for a single day at GHS Hatal Batkool. He never remained on the strength of the said school. He is a stranger and there is no appointment order/service book of the appellant in that school. He neither took over charge/submitted arrival report nor marked his attendance in school register and even no activation of pay was made by the then DDO. There is no source of his induction in that institution. His salary was activated through mal practices. He is bound to recover the amount to Govt. treasury drawn by him as salaries through mal practices. Moreover the single post of DM at GHS Hatal Batkool was already occupied by Fazal Maabood DM on 16-04-2013 who remained on the said post w.e.f 20-09-1992 to 03-08-2014. Copy of Service Book attached by him is bogus. Report of Head Master GHS Hatal Batkool is annexed as annexure "D".
3. Para No. 3 of the appeal is incorrect. Detail has been given in preceding Paras.
4. Salary is attached with the work done by a civil servant, if there is no work then there is no pay while the appellant being a non civil servant received salaries (as admitted by him) unlawfully and without performing any duty, hence he is bound to deposit



through mal practices. Head Master (DDO) GHS Hatal Batkool was directed vide letter NO. 3122 dated 28-03-2017 to calculate total amount released to the appellant unlawfully as salaries and to approach to Anti Corruption Department to lodge FIR against him. Letter addressed to Head Master GHS Hatal Batkool is annexed as annexure "E".

- 5. Para No. 5 of the appeal is incorrect. The appellant has neither submitted applications nor his application could be considered/honoured being a non civil servant/employee of this Department. As per letter annexed by the appellant enquiry against the appointment order of the appellant was asked. Whereas it has been confirmed that appointment order of the appellant is fake/bogus/fabricated and was not issued by lawful/competent authority.
- 6. Para No. 6 of the appeal is incorrect. The appellant neither approached to respondents nor has been aggrieved being a non civil servant. Hence he is not entitled for any type of relief.
- 7. Para No.7 of the appeal is correct to the extent that a Writ Petition was filed by the appellant which was dismissed by the Hon'able Peshawar High Court, however the appellant has no cause of action being a non civil servant.
- 8. The appellant has no cause of action.

**ON GROUNDS:**

- A. Ground "A" of the appeal is incorrect. The appellant is a ghost employee, his appointment order is fake/fabricated and he is a stranger, no violation of law has been made nor he has any right under the law in this matter.
- B. Ground "B" of the appeal is incorrect. The appellant was neither appointed by lawful/competent authority nor he took over charge/performed duty for a single day. Detail has been mentioned in previous Paras.
- C. Ground "C" of the appeal is incorrect. The appellant is not a civil servant. He has not been appointed by lawful/competent authority nor he performed duty for a

single day. He is a stranger and has no right to be paid salary.

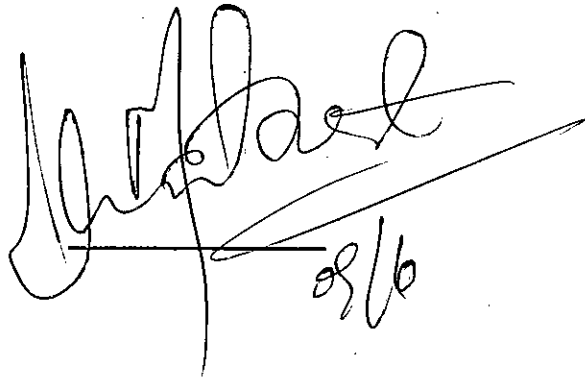
- D. Ground "D" of the appeal is incorrect. The appellant is not employee nor on the record/strength of this Department as stated in detail in preceding Paras, hence there is no need of Charge Sheet or Show Cause Notice.
- E. Ground "E" of the appeal is incorrect. No violation of Law or Rules has been made as the appellant is not employee nor on the record/strength of this Department and is a stranger as stated in detail in preceding Paras .
- F. Ground "F" of the appeal is incorrect. The appellant is neither a civil servant nor he performed duty. No fundamental right of the appellant has been violated.
- G. Ground "G" of the appeal is incorrect. The appellant neither approached to respondent nor has been aggrieved being a non civil servant. Hence he is not entitled for any type of relief.
- H. Ground "H" of the appeal is incorrect. Detail has been given in preceding Paras.
- I. Ground "I" of the appeal is incorrect. The appellant has made tempering in appointment order dated 11-03-2013. He is not a civil servant and drew amount from Govt. exchequer through fraud which needs to recover to Govt. treasury.
- J. Ground "J" is not concerning with respondent Department, hence needs no comments.
- K. The appellant has no cause of action.



It is therefore humbly prayed that on acceptance of above Para-wise comments, the appeal of the appellant may graciously be dismissed with cost and direction to the appellant to deposit the amount into Govt. treasury received by him as salaries unlawfully.

**Respondent NO. 3**

**District Education Officer (M)  
Battagram**



08/6

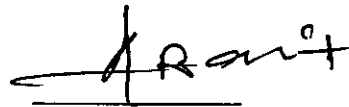
**Respondent NO. 2**

**Director E&SE K.P  
Peshawar**



**Respondent NO. 1**

**Secretary E&SE K.P  
Peshawar**



6

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 155 of 2018

Anwar Zeb S/O Sher Rahman.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary E&SE and  
others.....Respondents

AFFIDAVIT

I Wali ur Rehman Assistant District Education Officer Battagram do hereby affirm and declare on oath that content of the accompanying Joint Para-wise comments are true and correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Tribunal.

ADEO(Lit)  
O/O DEO (M) Battagram CNIC:

6/6/18  
13202-4789969-9

**Before the Honorable Service Tribunal Peshawar  
Khyber Pakhtunkhwa Peshawar**

Appeal No. 155/2018

Mr. Anwar Zeb.....Appellant.

V/S

Government Of Khyber Pakhtunkhwa and Others.....Respondents.

**(Para wise reply on behalf of District Accounts Officer Batagram Respondent No.4)**

**Preliminary Objections.**

- 1). That the Appellant has no cause of action to file the instant Appeal.
- 2). That the Petitioner has not come to this honorable Tribunal with clean hands.
- 3). That the Appellant is Estopped by their own conduct.
- 4). That the instant Appeal is not maintainable, hence liable to be dismissed.

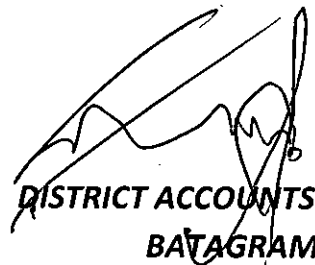
**On Facts:-**

1. Respondent No. 3 may reply.
2. No comments.
3. Respondent No. 3 may Reply.
4. That the pay and allowances without proper justification against the (Personal Number.00701737) made to the petitioner Ghost employee collusively through concerned officials of education Department i.e Mr.Ali Rehman Junior Clerk GHS Hatal Batkool and committed absconsion and consequently dismissed by the Education Department, likewise the concerned staff of District Accounts Office Batagram misusing authority was dismissed from service by the competent authority on 18/01/2017.
5. Respondent No.3 may reply .
6. Respondent No.3 may reply.
7. No Comments.

**GROUND OF DEPARTMENTAL APPEAL:-**

- A:- No Comments.  
B:- Respondent No. 3 may reply .  
C:- Respondent No. 3 may reply .  
D:- Since the Appellant has been dismissed from service and established as ghost employee of the Education Department, Hence there is No Jurisdiction to pay him any salary or other Financial benefits connected to a post.  
E:- No Comments.  
F:- As stated against Para "D" above.  
G:- No Comments.  
H:- Respondent No.3 May Reply .  
I:- Respondent No.3 May Reply .  
J:- No Comments.  
K:- No Commets.

It is therefore submitted that pray of the Petitioner is wrong therefore the Appeal may kindly be dismissed.

  
**DISTRICT ACCOUNTS OFFICER  
BATAGRAM**

**VERIFICATION:-**

I Mr. Saif ur Rehman Assistant Accountant (BTS-16) Office of the District Accounts Officer Batagram , Do hereby verify that the contents of fore going reply are true and correct to the best of my knowledge and belief nothing has been concealed or suppressed from this Honorable Tribunal.



**SAIF UR REHMAN**  
Assistant Account  
Deponent