

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1237/2018

Date of Institution ... 09.10.2018

Date of Decision ... 08.07.2019

Mr. Izat Khan, Chowkidar, GPS Gulmaira, Tehsil Takht Bhai, District Mardan.
... (Appellant)

VERSUS

The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar and two others.
... (Respondents)

MR. MIR ZAMAN SAFI,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

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

JUDGMENT

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

ARGUMENTS

02. Learned counsel for the appellant argued that he joined the Education Department as Chowkidar vide order dated 30.10.2008 and performed duty regularly. That while posted at GPS Kalo Shah, he was transferred to GPS Gulmaira vide order dated 17.11.2008. After submitting arrival report, he performed duty at the said station. That without any justification/reason respondent no.2 stopped salary of the appellant w.e.f January, 2019. Time and again he visited the offices of the respondents for redressal of his grievances but without any positive outcome. As a last resort, he filed departmental appeal on 14.06.2018, which remained unanswered, hence, the present service appeal.

Action on the part of the respondents was based on malafide and ill will against the appellant. Furthermore, he was not allowed to perform duty by the respondents. Reliance was placed on case law reported as 2017 PLC (C.S) 587 and 2015 PLC 1519.

03. Learned Deputy District Attorney raised preliminary objection on the maintainability of the present service appeal. The respondents/competent authority vide order dated 27.02.2009 cancelled all irregular appointments made in violation of recruitment policy / prescribed procedure during the tenure of Ahmad Hussain, the then EDO, E&SE including that of the appellant. Formal order to this effect was issued on 16.03.2009, whereas the appellant filed departmental appeal for release of salary on 14.06.2018, which was badly time barred. Learned counsel for the appellant has not given any application for condonation of delay nor could justify it during the course of arguments. Action against the appellant was taken in accordance with law and rules.

CONCLUSION

04. Initially the appellant was appointed as Chowkidar in the respondent-department vide order dated 30.10.2008. Suddenly, his salary was stopped w.e.f January, 2009, compelling him to file departmental appeal which failed to evoke any response. Plea of the appellant that the respondents were restrained him to perform duty. The respondents had not given any reason/justification regarding stoppage of salary.

05. Perusal of record reveal that respondents vide letter/order dated 27.02.2009 cancelled all illegal/irregular appointments, which were made in contravention of the prescribed procedure/method of recruitment, including that of the appellant. He was required to assail this order at departmental level and other available fora but failed on this account. No plausible explanation was given by the learned counsel for the appellant for not agitating his grievances in time. In addition to above proper application for

condonation of delay has also not been filed. The present appeal is not only barred by time but even merits the same is not worth consideration.

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



(MUHAMMAD HAMID MUGHAL)
MEMBER



(AHMAD HASSAN)
MEMBER

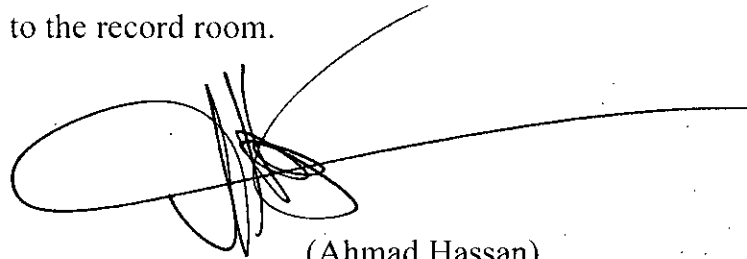
ANNOUNCED
08.07.2019

Order

08.07.2019 Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. M. Sajid, ADO for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the instant appeal is dismissed. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
08.07.2019



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

21.02.2019

Counsel for the appellant and Addl. AG alongwith Sajid Khan, ADO for the respondents present.

Parawise comments submitted by respondents No. 1 & 2 which are placed on record. To come up for arguments before the D.B / on 22.4.2019. The respondent No. 3 may submit reply before the date fixed. The appellant may also furnish rejoinder to the comments by respondents No. 1 and 2 within a fortnight, if so desired.


Chairman

22.04.2019

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Learned counsel for the appellant requests for time to submit rejoinder. Adjourned to 08.01.2019 for argument before D.B. The appellant may submit rejoinder within a fortnight if, so desires


Member


Chairman

19.11.2018

Counsel for the appellant Izzat Khan present. Preliminary arguments heard. It was contended by the learned counsel for the appellant that the appellant was serving in Education Department as Chowkidar. It was further contended that the appellant was transferred from GPS Kalo Shah to GPS Gulmaira and was performing his duty in the said school but despite performing the duty his salary was stopped by the respondent-department. It was further contended that the appellant filed departmental appeal but the same was not responded. It was further contended that financial matter is involved therefore, limitation does not run and the appellant has recurring cause of action. It was further contended that the competent authority and the departmental authority was repeatedly asked to release the salary of the appellant but they were reluctant therefore, the respondent-department was bound to release the salary of the appellant.

The contentions raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 07.01.2019 before S.B.


Appellant Deposited
Security & Process Fee


Muhammad Amin Khan Kundi
Member

07.1.2019

Nemo for appellant. Addl. AG for the respondents present.

Learned AAG states that the requisite reply is in the process of preparation, therefore, requests for further time. Adjourned to 21.02.2019 for written reply/comments before S.B.


Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1237/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/10/2018	<p>The appeal of Mr. Izzat Khan presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 9/10/18</p>
2-	11-10-2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19-11-2018</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1237/2018

IZZAT KHAN

VS

EDUCATION DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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3	Medical Certificate	B	5.
4	Charge report	C	6.
5	Service book	D	7- 10.
6	Transfer order	E	11- 12.
7	Pay roll	F	13.
8.	Departmental appeal	G	14.
9.	Vakalat nama	15.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK,
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1237 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1469

Dated 9-10-2018

Mr. Izat Khan, Chowkidar,
GPS Gulmaira, Tehsil Takht Bhai District Mardan..... **APPELLANT**

VERSUS

- 1- The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The District Education Officer, District Mardan.
- 3- The District Accounts Officer, District Mardan.

..... RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT-1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ALLOWING THE APPELLANT TO PERFORM HIS DUTIES AND NOT RELEASING THE MONTHLY SALARIES OF THE APPELLANT W.E.F. JANUARY, 2009 TILL DATE AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the respondents may be directed to allow the appellant to perform his duty as Chowkidar and release the monthly salaries of the appellant w.e.f. January 2009 till date. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Filed to-day

Brief facts giving rise to the present appeal are as

Registrar under:-

9/10/18

- 1- That appellant was initially appointed as Chowkidar in the respondent Department vide order dated 30.10.2008. That right from appointment the appellant has served the respondent Department quite efficiently and up to the entire satisfaction of his superiors. Copies of the appointment order, Medical Certificate and charge report are attached as annexure..... **A, B & C.**
- 2- That after the taking over charge on the above mentioned post the service book of the appellant was properly prepared by the respondent Department. Copy of the service book is attached as annexure.....**D.**

- 3- That appellant while posted at GPS Kalo Shah the appellant was transferred to GPS Gulmaira vide order dated 17.11.2008 and in response of the said transfer order the appellant submitted his charge report and started performing his duty in the above mentioned School. Copies of the order dated 17.11.2008 and pay roll are attached as annexure.....E.
- 4- That appellant during service at GPS Guulmaira the respondent No.2 stopped the monthly salaries of the appellant w.e.f. January 2009 and restrained the appellant from duty without any reason and clear justification. That appellant time and again visited the concerned quarter for allowing the appellant to continue his duty and release of his salaries but in vain. That appellant time and again visited the concerned quarter for his claim but of no avail.
- 5- That appellant feeling aggrieved from the inaction of the respondents by not allowing the appellant to perform his duty and not releasing the monthly salaries of the appellant filed Departmental appeal but no reply has been received so far. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure.....F.

GROUND:

- A- That the inaction of the respondents by not allowing the appellant to perform his duty and not releasing the monthly salaries of the appellant by the respondents is against the law, facts and norms of natural justice.
- B- That appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and malafide manner by not allowing the appellant to join his duty and not releasing the monthly salaries of the appellant w.e.f. January 2009 till date.
- D- That the inaction of the respondents by not allowing the appellant to join his duty and not releasing the monthly salaries of the appellant is violative of Article 11 of the Constitution of Islamic Republic of Pakistan- 1973.
- E- That the inaction of the respondents by not allowing the appellant to join his duty and not releasing the monthly salaries of the appellant is also violative of the principle of natural justice.
- F- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated:02.10.2018

APPELLANT



IZAT KHAN

THROUGH:



NOOR MOHAMMAD KHATTAK

&



MUHAMMAD MAAZ MADNI
ADVOCATE

BETTER COPY OF PAGE- 4

**OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY &
SECONDARY EDUCATION MARDAN**

APPOINTMENT ORDER:

Mr. Izzat Khan S/O Haider Khan R/O Made Baba, Mardan is hereby appointed as Class-IV in BPS-1 (Rs. 2970-90-5670) plus usual allowances as admissible to him in the light of appointment policy 2005 P.M against the post of Chowkidar at GPS Kalo Shah in the interest of public service with following terms & conditions:-

TERMS & CONDITIONS:

1. His appointment is made purely on temporary basis in the light of appointment Policy 2005 and liable to termination any time without any notice or reason.
2. He is required to produce health and age certificate from the concerned Medical Superintendent before taking overcharge.
3. He is not allowed to take over charge if his age is less than 18 years and not above 45 years.
4. No TA/DA is allowed.
5. He will take over charge of the post within 15 days.
6. If the post is not converted the appointment will be automatically stand cancelled.
7. He is not entitled for pension & gratuity.

(Ahmad Hussain Khan)
EXECUTIVE DISTRICT OFFICER
ELEMENTARY & SEC: EDU: MARDAN

ATTESTED



APPOINTMENT ORDER

A-4

Mr. _____ R/O _____ is hereby appointed as Class -IV in BPS-1(Rs.2970-90-5670)plus

usual allowances as admissible to him in the light of appointment policy 2005 P.M.against the post of _____ in the in the interest of public service with

following terms & conditions: -

TERMS AND CONDITIONS

- 1-His appointment is made purely contemporary basis in the light of appointment policy 2005 and liable to termination any time without any notice or reasons.
- 2-He is required to produce health and age certificate from the concerned Medical Suplt: before taking overcharge.
- 3-He is not allowed to take over charge if his age is less than 18 years and not above 45 years.
- 4-No TA/DA is allowed.
- 5-He will take over charge of the post within 15 days.
- 6.If the post is not converted the appointment will be automatically stand cancelled.
- 7.He is not entitled for pension & gratuity.

(Ahmad Hussain Khan)
EXECUTIVE DISTRICT OFFICER
ELEMENTARY & SECY:EDU:MARDAN.

Enlist. No 13569-G / file AE IV dated 30/10/2008

Copy forwarded for information and necessary action to the: -

- 1-Principal/HM concerned.
2. Dy:D.O.(M/F)Mardan & Tukht Bhal.
- 3-District Accounts Officer, Mardan.
4. Candidate concerned.
- 5.Gen:file.

AH 30.10.2008
Executive District Officer
ELEMENTARY & SECY:EDU:MARDAN

ATTESTED

A

B-5

MEDICAL CERTIFICATE

Name of official Mr. Izat Khan

Class of race Muslim

Pathan name Haidar

Residence village Maday Baba, P.O. Takht Bai, Teh. Takht Bai

Date of birth 01-1-1984 = D.H. Mardan

Exact height by measurement 5-7

Personal mark of identification Cut mark on the Lf. cheek

Signature of the official _____

Signature of head of office _____

Seal of Office _____

I do hereby certify that I have examined Mr. Izat Khan

an candidate for employment in the office of the Schools + Literacy

and cannot discover that he had any disease communicable or other constitutional affection

or bodily infirmity except FIT

I do not consider this as disqualification for employment in the office of the above as

Chowkidar His age according to his own statement 24 years

and by appearance about 24 years.



Left thumb & finger impression.

Dated: 05/11/2008

ATTESTED

[Handwritten signature]

[Handwritten signature]
Medical Superintendent
D.H. Q. Hospital Mardan.
Medical Superintendent
District Hospital Mardan.

6 - ح جارج رور

19/11/08 من ستم عزت خان دم میدان نے آج سوچ

کو آج class کا خانہ عطا کیا اور رقم 14300/-

19/11/08 اور دفتر ای۔ ڈی۔ او۔ کی طرف سے عید کا خانہ

آج صرف 19/11/08 کو قسماً اردو لے لیا۔

جارج گریڈ عزت خان

جسٹس اول صدر کی ریٹائرمنٹ
مکمل ہو گیا۔ (نور محمد)

Head Master
Govt: Elementary School
Gul Maira Lund Khwar

Head Master
Govt: Elementary School
Gul Maira Lund Khwar.

19/11/08

Handwritten signature

(For use in Police Department only).

D-7

Heirs,

- 1.
- 2.
- 3.

Verification Roll No.

dated

received back

Left Thumb Impression



Qualification	Date	Qualification	Date
English		First Arts	
Pushto		B.L. or B.A.	
Urdu		Pleadership examination	
Plan-drawing		Training School Final examination	
Finger Print		Other qualifications	
Drill Instructing			
Court Duties			
Reserve Duties			

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



Note: The entries on 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: IZAT-KHAN ✓

2. Race: Afghan / Islam

3. Residence: Made - Baba Teh. Takht Bhai
Distt: Mardan

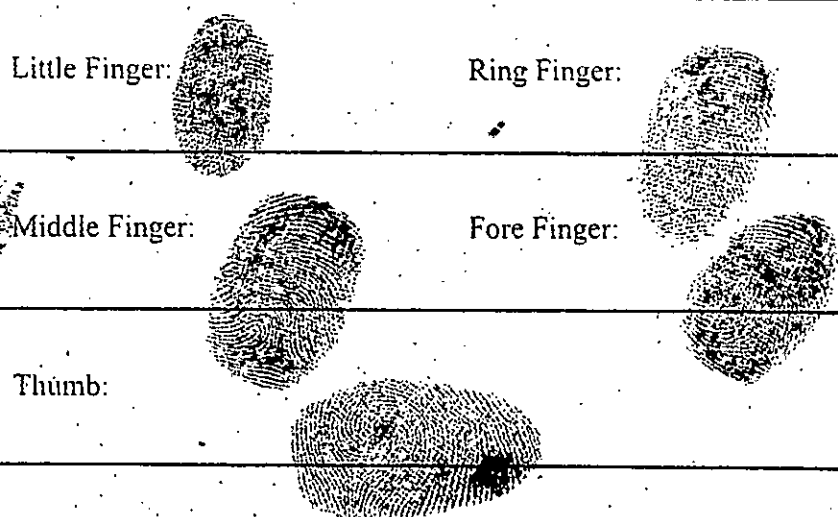
4. Father's name and residence: ✓
Haidar P/o Made Baba Teh. T. Bhai Distt: Mardan

5. Date of birth by Christian era as nearly as can be ascertained: ✓
01-01-1984 1st Jan. NH Eighty-Four

6. Exact height by measurement:
5-7

7. Personal marks for identification:
NIP

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



ATTESTED

9. Signature of Government Servant:

عنایت خان

10. Signature and designation of the Head of the office, or other Attesting Officer.

Dy. Dist. Edu. Officer
(in) P/o: Takht Bhai

1	2	3	4	5	6	7	8	9
Name of Post	Whether substantive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (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	Signature and of the head or other attestation in attestation column
Chowkidar Kalushah G.P.S.		RPS - 01 (2970-90-5670)	Rs 2970/-			5 ¹¹ / ₂ 8	[Signature]	[Signature]
G.E.S Gulmira			Rs 2970/-			19 ¹¹ / ₆ 8	[Signature]	[Signature]
						FOI 21/12/8	[Signature]	[Signature]
						ATTESTED	[Signature]	

9	10	11	12	13		14	15	
				Leave				
Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		Signature of the head of the office or other attesting officer.	Reference to any recorded punishment or censure, or reward or praise of the Government Servant
					Period	Government to Which debitable		
 B.D.O. (M) (M) P. Takht Bhai	18 th / 2/08	Transfer	 B.D.O. (M) (M) P. Takht Bhai		Appointed as chowkidar post at Gpskalo shah T. Bhai in BPS 01 (2970-90-5670) plus usual allow. vide E.O. E/S No. 13569-G/AE-IV dated 30/10/08		 Dy. Dist. Edu. Officer (M) P. Takht Bhai	
 B.D.O. (M) (M) P. Takht Bhai					Notification Conversion of fixed pay chow: into regular B.S. Fund Scheme W.e.f. 01/7/2008 with fixation of pay vide 5-11-08 vide Govt. of India Finance Dept. No. BC 115/M-22-2008-09 Dated 30/07/2008		 Dy. Dist. Edu. Officer (M) P. Takht Bhai	
ATTESTED					Under Taking I Mr. Jat Khan give an Under taking to the effect that due to incorrect appt. I will deposit salary drawn from my own.			
							 Dy. Dist. Edu. Officer (M) P. Takht Bhai	

EXECUTIVE DISTRICT OFFICER (EDUCATION) & SECONDARY EDUCATION WARDAN.

MR. ANSAR/ABUSAMIR

Mr, Izat Khan Chowkidar GPS Kato Shah is hereby transferred /adjusted on his own pay and BRS to GPS Gulmatra againe the vacant chowkidar post in the interest of public service w.e.f t date of his taking over charge.

NO DA/DA is all wed.

Charge report should be submitted to all concerned.

(AHMAD HOSAIN KHAN)
EXECUTIVE DISTRICT OFFICER
ELEMENTARY & SECY: EDUC:

Dated. 17/11/08.

Copy forwarded to the:-

- 1. DDO(N) Primary Dakt Bahi.
- 2. H.M concerned.
- 3. DAO Warden.
- 4. Candidate concerned.

G/D/A DDO M/P T. Bahi

11 BDO TTE Warden

2. 14-02-7. Khawar for OIG

3. HI GES Guld Meeru for Comp Licence

Dr. Distt: Officer (M)
Pvt. T. Bahi (Warden)

[Handwritten Signature]

ATTESTED

[Handwritten Initials]


F-11

(1)

DUTY PERFORMING CERTIFICATE.

(12)

It is certified that Mr Iqbal Khan S/O Haider Khan
resident of village Madi Baba Tehsil Takht Bhai has performed
his duty from 01/01/2009 to 27/01/2009 in the light of
his appointment Order No. 13569-G/File AEIV Dated 30/10/2008.


DY: DISTRICT OFFICER,
(M) PRY: EDU: TAKHT BHAJ.
Dy: Distt: Officer
(M) Pry: T. Bhai.

ATTESTED



GOVERNMENT OF PAKISTAN
 ADMINISTRATION CENTRAL M.W.A.P
 Mardan

F-13

82-1232

P Sec: 003 Month: December 2003
 MR6157 -DY. DISTRICT EDUCATION O
 Min. of Education
 NTN:
 CPF #
 Old # 161020457108

Para #: 004297897 BUCKLE
 Name: ZAT KHAN
 Des. of: CHOUKIDAR
 NIC No. 1610204571083

CPF Interest Free
 01 Regular / Contract

DEBIT CODE MR6157 -3

PAYS AND ALLOWANCES:

0001-Basic Pay	2,970.00
1000-House Rent Allowance	891.00
1300-Medical Allowance	500.00
1516-Dress/ Uniform Allowance	40.00
1567-Washing Allowance	30.00

Gross Pay and Allowances 4,431.00

DEDUCTIONS:

CPF Balance 624.00	Subrc:	312.00
3501-Benevolent Fund		25.00
3511-Addl Group Insurance		3.00
3604-Group Insurance		58.00
3640-Emp. Edu. Fund		3.00

Total Deductions 401.00

NET AMOUNT PAYABLE 4,030.00

QUALIFYING SERVICE YRS MONTH 00 Years 01 Months 028 Days Government Contribution To CPF :	D. O. B 01.01.1984	LFP Quota: Payment through DDO. 312.00
--	-----------------------	--

ATTESTED



To,

The Director (E&SE) Department,
Khyber Pakhtunkhwa, Peshawar.

G-14

**SUBJECT: DEPARTMENTAL APPEAL AGAINST THE INACTION OF
THE RESPONDENTS BY NOT ALLOWING THE
APPELLANT TO PERFORM HIS DUTIES AND NOT
RELEASING THE MONTHLY SALARIES OF THE
APPELLANT W.E.F. JANUARY, 2009.**

RESPECTED SIR,

It is most humbly stated that I was initially appointed as Chowkidar in the respondent Department vide order dated 30.10.2008 and after appointment I was submitted my charge report at the concerned station and started performing duties quite efficiently. I was posted at GPS Kalo Shah and later on transferred to GPS Gulmaira vide order dated 17.11.2008. During performing my duties at GPS Gulmaira the District Education Officer stopped my monthly salaries w.e.f. January 2009 and I was restrained from duty without any reason and clear justification. I was time and again visited the concerned quarter for allowing me to continue my duty and release of my salaries but of no avail. Respected Sir, I am feeling aggrieved and having no other remedy preferred this Departmental appeal before your good self for the release of salaries and to allow me to join my duties.

It is therefore, most humbly requested that on acceptance of this Departmental appeal I may kindly be allowed for duty and to release my salaries w.c.f. January 2009. Any other remedy which your good self deems fit that may also be awarded in my favor.

Dated: 14.06.2018

Attested
[Signature]

عزت خان
Your Obediently

Izzat Khan, Chowkidar,
GPS Gulmaira, Mardan

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

APPEAL No. _____/2018

Izzat Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Izzat Khan

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

Dated. / /2018

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK

MUHAMMAD MAAZ MADNI
ADVOCATES

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar.

29

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1237/2018

Mr. Izzat Khan Chowkidar Government Primary School Gul Maira Tehsil Takht Bhai District Mardan.....Appellant

Versus

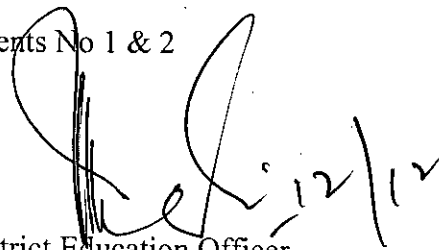
The Director Elementary & Secondary Education KPK Peshawar & Others.....Respondents.

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S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES	
1.	Para wise comments along with affidavit		01	04
2	Copy of cancellation of appointment order	"A"	05	--

Respondents No 1 & 2

Through


District Education Officer
(Male) Mardan

Dated: _____

28

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1237/2018

Mr. Izzat Khan Chowkidar Government Primary School Gul Maira Tehsil Takht Bhai District Mardan.....Appellant

Versus

The Director Elementary & Secondary Education KPK Peshawar & Others.....Respondents.

Para Wise Comments on Behalf of Respondents No 1 & 2

Sheweth, Respectfully

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is incompetent in its present form, hence liable to be dismissed.
3. That the instant appeal is badly time barred.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to this Hon'ble Tribunal with clean hands.
6. That the appellant is estopped by his own conduct.
7. That the appellant has concealed the material facts from this Hon'ble tribunal hence liable to be dismissed.
8. That the instant appeal is based on malafide intention, hence liable to be dismissed.
9. That the instant appeal is against the prevailing law and rules.
10. That the appellant has been treated as per law & rules.
11. That the answering respondent being responsible government officer acted in accordance law and rules.
12. That the instant Appeal is time barred.
13. That the respondent/ competent authority vide Govt of NWFP Elementary & Secondary Education department Peshawar No SO(S)4-17/08/Ahmad Hussain Dated 27-2-2009, the Competent authority cancelled all the irregular appointments made violation of recruitments policy and prescribed procedure i.e. without DSC, Test, Interview, Merit, District/ union Quota etc. during the incumbency of Mr. Ahmad Hussain E.D.O (E&SE) Mardan. (Copy of Cancellation order is as annex A)

FACT:

1. Para No 1 Pertains to record, hence need no comments.
2. Para No 2 Pertains to record, hence need no comments.
3. Para No 3 Pertains to record, hence need no comments.
4. Para No 4 is incorrect, baseless, against facts as the respondent/ competent authority vide Govt of NWFP Elementary & Secondary Education department Peshawar No SO(S)4-17/08/Ahmad Hussain Dated 27-2-2009, the Competent authority cancelled all the irregular appointments made violation of recruitments policy and prescribed procedure i.e. without DSC, Test, Interview, Merit, District/ union Quota etc. during the incumbency of Mr. Ahmad Hussain E.D.O (E&SE) Mardan, hence denied. (Copy of Cancellation order is as annex A)
5. Para No 5 is incorrect, baseless as the answering respondent being competent government officer acted in accordance with law and cancelled the appointment order of the appellant, hence denied.


GROUNDS:

- A. Para A is incorrect, baseless, against facts as the act done by the answering respondents is not against the law, facts and norms of the natural justice, hence need no comments.
- B. Para B is incorrect, baseless against facts, as no any violation of Article 4 and 25 of the constitution of Islamic republic of Pakistan is made on the part of the answering respondents, hence denied.
- C. Para C incorrect, as the respondent/ competent authority vide Govt of NWFP Elementary & Secondary Education department Peshawar No SO(S)4-17/08/Ahmad Hussain Dated 27-2-2009, the Competent authority cancelled all the irregular appointments made violation of recruitments policy and prescribed procedure i.e. without DSC, Test, Interview, Merit, District/ union Quota etc. during the incumbency of Mr. Ahmad Hussain E.D.O (E&SE) Mardan, hence denied. (Copy of Cancellation order is as annex A)
- D. Para D is incorrect, baseless, against facts as the answering respondent is being responsible government officer acted in accordance with law and no any violation of Article 11 of the constitution of Islamic Republic of Pakistan is made on the part of the answering respondents, hence denied.
- E. Para E is incorrect, baseless as no any violation of the principle of justice is made on the part of the answering respondents, hence denied.

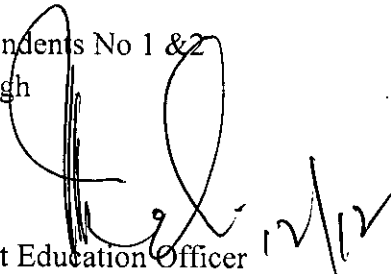
26 ✓

F. That the respondents seek permission to raise additional grounds at the time of arguments.

It is therefore humbly prayed that in the light of above facts, the appeal may please be dismissed with cost.


Director E & S E,
Peshawar.

Respondents No 1 & 2
Through


District Education Officer
(Male) Mardan

28

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1237/2018

Mr. Izzat Khan Chowkidar Government Primary School Gul Maira Tehsil Takht Bhai District
Mardan.....Appellant

Versus

The Director Elementary & Secondary Education KPK Peshawar & Others.....Respondents.

AFFIDAVIT

I, Mr Sajid Khan Litigation Officer Education Department Mardan do hereby solemnly affirm
and declare that the contents of Para Wise Comments submitted by on behalf of Answering
Respondents are true to the best of my knowledge and belief and nothing has been concealed
from this Honourable Court.

Deponent



Sajid Khan

16101-6005318-5

OFFICE ORDER

Annex
(5) A

Dated Mardan The. 16/3/2009

Consequent upon the direction of the Competent Authority vide Govt of NWFP Elementary and Secondary Education Department Peshawar No. SO(S)-17708/Ahmad Hussain dated 27-2-2009, the undersigned is pleased to cancel all the irregular appointments made in violation of recruitments policy and prescribed procedure i.e. without DSC, Test, Interview, merit, District/Union Quota etc. during the incumbency of Mr. Ahmad Hussain EDO (E&SE) Mardan with effect from the date of issue of above mentioned orders

[Signature]
District Coordination Officer,
Mardan.

Endst No. 2454-63 DCO(M)/EA-37

Copy for information and necessary action to:

- 1- Registrar Peshawar High Court Peshawar.
- 2- PS to Chief Secretary Govt of NWFP Peshawar.
- 3- PS. To Minister for Elementary/Secy. Edu: NWFP, Peshawar.
- 4- PS. To Secretary to Govt of NWFP Elementary and Secy. Edu: Deptt. Peshawar.
- 5- Commissioner Mardan Division Mardan.
- 6- District Nazim Mardan.
- 7- Executive District Officer (E&SE), Mardan.
- 8- Comptroller District Accounts Mardan.
- 9- District Officer (Male/Female) (E&SE) Mardan.
- 10- All Deputy District Officer (Male/Female) Mardan/Takht Bhai.

[Signature]
District Coordination Officer,
Mardan

~~G/O THE EXECUTIVE DISTRICT OFFICER ELEMENTARY/SECY MARDAN.~~

Endst. No. 20/2/4

Dated Mardan, the 18/3/2009.

- Copy of the above is forwarded for information and strict compliance to the:-
1. All the Principals/Head masters of GNS/GMS. (Male/Female) in Mdn. District.
 2. All Deputy District Officers (M/F) Mardan /Takht Bhai.
 3. District Accounts Officer Mardan.
 4. P/S. to Secretary to Govt. of NWFP, Elementary/Secy. Edu: Peshawar.
 5. P.A. to Director Elementary/Secy. Edu: NWFP, Peshawar.
 6. All Deuling Asstt local office.

[Signature]
Executive District Officer
Elementary/Secy. Edu: Mardan.

Attested by
[Signature]

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

OF 2019

Izzat Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We *Izzat Khan*

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

Dated. 08 / 07 / 2019

ret

CLIENT

MZS

ACCEPTED
MIR ZAMAN SAFI
ADVOCATES

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Mobile No.0323-9295295

①
Before the N.W.F.P. Service Tribunal, Peshawar

Service Appeal No. 1160 / 2010.



1229
15/6/10

Mr. Noor Rahim P.T.C. Teacher, Government Primary
School Zahirabad Mardan
School _____ Resident of Village Ikrampur District Mardan.

(Appellant)

V E R S U S

1. The Secretary, Literacy and Secondary Education, NWFP, Peshawar.
2. The Executive District Officer, Elementary and Secondary *Mardan*
3. The District Coordination Officer Mardan(Respondents)

Appeal under Section 4 of the N.W.F.P. Service Tribunal Act, 1974 to the effect that the order of the Secretary / Respondent No.1, contained in Notification No.SO(S)4-17/01 Ahmad Hussain dated 27/02/2009, as endorsed by the E.D.O. / Respondent No.2 vide endorsement No.2272/G dated 18/03/2009, whereby all the appointment orders issued during the incumbency of Mr. Ahmad Hussain (E&SE) Mardan, including the Appellant ^{is} cancelled w.e.f. the date of issue, and salary of ~~appellant~~ ^{is} ~~appellant~~ from 13.12.2008 to 09.02.2009 is illegally with-held.

15/6/10

[Handwritten signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1160/2010

Date of Institution ... 15.06.2010

Date of Decision ... 15.01.2019

Mr. Noor Rahim, PTC Teacher, Government Primary School Zahirabad Mardan,
R/o Vilage Ikrampur, District Mardan. (Appellant)

VERSUS

The Secretary, Literacy and Secondary Education, Khyber Pakhtunkhwa, Peshawar
and two others. (Respondents)



MR. MUHAMMAD ADAM KHAN,
Advocate

--- For appellant.

MR. M. RIAZ KHAN 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.

ARGUMENTS

2. Learned counsel for the appellant argued that after fulfillment of codal formalities, the appellant was appointed as PTC Teacher against disabled quota and posted at GPS Zahir Abad, District Mardan vide order dated 05.12.2008. The appellant assumed the charge of the said post and started performing duty. However, vide impugned order dated 16.03.2009 his appointment order was withdrawn on the ground of violation of recruitment policy/rules. Feeling aggrieved, he filed departmental appeal on 11.03.2010, which remained

ATTESTED

MEMBER (JUDICIAL)
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

unanswered. Unilaterally withdrawal of appointment order was sheer violation of principles of natural justice. Due to denial of opportunity of hearing, the appellant was condemned unheard.

3. Earlier the learned counsel for the appellant in view of conflicting judgments of this Tribunal on this issue submitted an application for constitution larger bench. Today he made a written request through which the said application was withdrawn.

4. On the other hand learned Deputy District Attorney argued that some irregular appointments contrary to rules/policies were made by Mr. Ahmad Hassan, EDO (E&SE) Mardan. Through order dated 16.03.2009 the said appointment were withdrawn. As appointments were not made according to the law and rules so were rightly withdrawn by the competent authority. Reliance was placed on judgment of this Tribunal dated 26.11.2012 rendered in service appeal no. 1278/2010.

CONCLUSION

5. This Tribunal would first like to decide the maintainability of the present appeal. Impugned order was passed on 16.03.2009, while departmental appeal was filed on 11.03.2010 but the same remained unanswered. In the present circumstances, the present service appeal was barred by time though an application for condonation of delay has been submitted by the learned counsel for the appellant but justification given therein is not worth consideration. Resultantly, we do not find it appropriate to touch the merits of the case.

ADMITTED

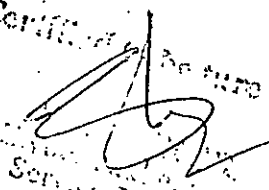
K.


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
15.01.2019

Certified to be true copy

Secretary
Residence

Date of Presentation	22-4-18
Number of sheets	1600
Copying Fee	10/-
Urgent	25
Total	12
Name of Clerk	
Date of Completion	22-4-18
Date of Delivery of Copy	22-4-18

2015 P L C (C.S.) 1519

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali, Ejaz Afzal Khan and Mushir Alam, JJ

Mst. BASHARAT JEHAN

Versus

DIRECTOR-GENERAL, FEDERAL GOVERNMENT EDUCATION, FGEI (C/Q)
RAWALPINDI and others

Civil Appeal No. 1184 of 2011, decided on 11th July, 2014.

(Against judgment dated 14-1-2011 of Federal Service Tribunal, Islamabad passed in Appeal No.325(P)CS/2010)

(a) Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

---R. 3(2)---National Command Authority Rules, Chap.II, para.7(k)---Civil service---Initial appointment---Relaxation in age prescribed for initial appointment--- Typographical error in advertisement for post qua upper age limit of applicant---Vested right of civil servant on issuance of appointment letter and joining of service---Scope--- Appellant applied for the position of Assistant Librarian (BPS-9)---Besides other educational qualifications, upper age limit for the advertised post was mentioned as 35 years, which could only be relaxed in exceptional cases---Appellant, who was 37 years of age, qualified the written test and interview and was selected for the post on merits--- Appellant was issued appointment letter and accordingly joined service---Along with her joining, appellant furnished certificate of age relaxation to the authorities---After joining the service, appellant was issued a show-cause notice and consequently removed from service on the ground of being over age at the time of initial appointment---Contentions of appellant were that she was 37 years of age at the time of applying for the post and was entitled for general relaxation of 5 years of age as per Government Policy, which was applicable on all the departments under the Federal Government[Federal Government notification/Office Memorandum No.F.9/2/9 R5 dated 28th November, 2000; that another applicant, who was 39 years of age at the time of applying for the post, was issued appointment letter without any exception, therefore, present case was one of discrimination---Contentions on behalf of Federal Government were that originally age for the advertised position was 25 years, which was increased to 30 years as per the notification in question; that mentioning of 35 years as the upper age limit for the advertised post was a typo-error, as such appellant could not be extended further age relaxation---Validity---Appellant had not procured her appointment letter through dubious means, and she could not be attributed any wrong on her part---Government department could not be allowed to take benefit of its own oversight, lapse or ignorance of law (i.e. Office Memorandum No.F.9/2/9 R5 dated 28th November, 2000 regarding relaxation of general age)---If the notification/ memorandum in question had gone unnoticed by the Government department, it was not the fault of appellant---Liability for wrongly mentioning the qualifying age in the advertisement as 35 years could not be attributed to the appellant, and no corrigendum was published in the newspapers to such an effect---Appellant had joined the service after appearing in the test and qualifying in the interview---For a period of seven months (i.e. from the last date for applying for the advertised post till date of issuance of appointment letter to appellant), it did not occur to the Government department that appellant was over aged by two years (37 years) as against the age of 35 years as advertised---In terms of Chapter-

II of National Command Authority Rules, para 7(K) for initial appointment the age prescribed was "not less than 18 years or more than 35 years of age"---However it was specifically stipulated in the said Rule that the said age limit "may be relaxed in exceptional cases upto 45 years by the competent authority"---Said Rule was not considered by the Government department in the present case---Government department did not dispute that the appellant did not possess the required qualification for the relevant post and/or that she did not serve the department satisfactorily---Appellant had applied for the advertised post giving her full particulars, including her qualification and age---At the time of joining she submitted the age relaxation certificate---Even if it is presumed that the competent authority over-sighted her age, it would be deemed to have been relaxed in exercise of power vested in the authority---Under the facts and circumstances of the present case, a right had come to vest in the appellant on issuance of appointment letter and more so after joining the service---Another applicant, who was 39 years of age at the time of applying for the post in question, was appointed to the post and no exception to her being over-age was taken by the Government department---Appellant, in such circumstances, was justified to urge that she had been discriminated against---General benefit of age relaxation extended to the employees of the Federal Government across the board, and extended to all departments under the Federal Government pursuant to any policy decision could not be denied on the assumption, that particular department was not bound by such decision as it had its own rules---Nothing was brought on record to show that such directive/policy decision expressed through memorandum/ notification was not applicable to the Government department in question---Supreme Court directed that appellant shall be given joining within one month from date of present judgment; that her seniority would be counted from the date of her appointment letter, and that no back benefit will be extended to her for the period she remained out of office one month from the date of present order---Appeal was allowed accordingly.

Ghulam Murtaza v. Federation of Pakistan 2011 PLC (C.S.) 709; Civil Petitions Nos. 426-K to 436-K of 2008 and Muhammad Farooq M. Memon v. Government of Sindh 1986 CLC 1482 ref.

(b) Civil service---

✓ ---Appointment letter, cancellation of---Scope---Vested right of appointment---Once a person was appointed after fulfilling all the codal formalities and appointment letter was issued, a vested right was created and appointment letter could not be withdrawn.

Ghulam Murtaza v. Federation of Pakistan 2011 PLC (C.S.) 709; Civil Petitions Nos. 426-K to 436-K of 2008 and Muhammad Farooq M. Memon v. Government of Sindh 1986 CLC 1482 ref.

(c) Civil service---

✓ ---Appointment--- Vested right of appointment--- Scope--- Locus poenitentiae, doctrine of---Once a right was accrued to a civil servant by appointment letter issued to him after complying with all the codal formalities, the same could not be taken away on mere assumption, supposition, whims and fancy of any executive functionary---Such right once vested, could not be destroyed or withdrawn as legal bar would come into play under the doctrine of locus poenitentiae.

Director, Social Welfare, N.-W.F.P, Peshawar v. Sadullah Khan 1996 SCMR 1350 ref.

Ghulam Nabi Khan, Advocate Supreme Court for Appellant.

Sajid Ilyas Bhatti, DAG for Respondents.

Date of hearing: 11th July, 2014.

JUDGMENT

MUSHIR ALAM, J.--- Instant Civil Appeal is pursuant to leave granting order dated 7-12-2011 which reads as follows;---

"Inter alia contends that the learned Service Tribunal did not appreciate that in terms of Chapter II of National Command Authority Rules, para 7(k), for initial appointment, the age prescribed was "not be less than 18 years or more than 35 years of age". However, it was specifically stipulated therein that the said limit "may be relaxed in exceptional cases upto the maximum of forty five years by the Competent Authority as mentioned in the Delegation of Powers".

(2) Having heard petitioner's learned counsel at some length, leave is granted inter alia to consider whether while dismissing petitioner's appeal, the learned Tribunal considered the afore-referred."

2. Facts that form basis for the above order appear to be that appellant aggrieved by judgment dated 14-1-2011 passed by the Federal Service Tribunal, Islamabad, whereby Service appeal filed by the appellant, challenging her removal from service vide order dated 20-3-2010 under Removal of Service (Special Power) Ordinance, 2000 (herein after referred as RSO, 2000) on the ground of misconduct for allegedly not providing the proof of relaxation in age limit as required in her appointment letter dated 14-7-2007.

3. In response to advertisement in news papers dated January 2007, appellant applied for the position of Assistant Librarian (BPS-09). Beside other educational qualifications, upper age limit for the said post in the advertisement was 35 years. Last date for the application was 31-1-2007.

4. Appellant applied for the said post, she appeared and qualified the written test, which was held on 18-2-2007. She appeared in interview and was selected on merits. She was issued appointment letter dated 14-7-2007 and accordingly joined the Federal Government Girls High School, Risalpur, along with her joining she furnished certificate of age relaxation to the School, per certificate at (page-60). After joining the School, her qualifications were also got verified on 11-8-2007 (Page-61). It is the case of the appellant, that to her utter surprise she received a letter dated 21-9-2007 notifying cancellation of her appointment on the ground of being over aged. Appellant challenged the order before the Federal Service Tribunal. The Service Tribunal vide its order dated 2-2-2010 set aside the termination order being against the principle of natural justice and without any show-cause notice.

5. Appellant was accordingly issued another Show-Cause Notice dated 20-2-2010 on the same ground as mentioned in preceding paragraph. Appellant in response relied upon Notification dated 28-11-2011 whereby age was generally relaxed by 5 years over and above 35 years of age as advertised against said post. She was however removed from services, under RSO, 2000, which order was also challenged through impugned judgment dated 14-1-2011 passed by learned Federal Service Tribunal, whereby her Service Appeal was dismissed.

6. Learned Advocate Supreme Court for the appellant, contended that as per appointment letter dated 14-7-2007 of which condition Nos.(d) and (f) are relevant reads as follows:

"(d) The appointee will have to provide age relaxation proof (covered under the Federal Government age relaxation Policy) in case he/she is born before 1-8-1978.

(f) The appointees will draw pay/allowances as fixed by the Federal Government and will be regulated by such rules/orders as are in force or may be made by the Federal

Government/Department from time to time." (underlined to emphasize).

7. It was urged by the learned Advocate Supreme Court for the appellant that qualifying age against the subject post of Assistant Librarian (BPS-9), was clearly mentioned in the advertisement as 35 years, which was also as per Notification issued under Civil Servant (Appointment, Promotion and Transfer) Rules, 1973 dated 3rd June, 2004, whereby age limit was revised from 25 years to 35 years (Page-62 of the file).

8. It was urged that the appellant was of 37 years of age at the time of applying for said position and was entitled for general relaxation of 5 years of age as per Government Policy, which was applicable on all the departments under the Federal Government, under Office Memorandum No.F.9/2/9 R5 dated 28th November, 2000. It was further urged that one Shahnaz Parveen appointed as M.TT was 39 years of age at the urdu medium Girls Middle School, Malir Cantt, Karachi was also appointed and no exception to her being over aged was taken, thus appellant is being discriminated.

9. It was argued by the learned Advocate Supreme Court for the appellant that in the first place no relaxation in age was required in view of the policy decision of the Federal Government, through Memorandum mentioned herein. It was next urged that if it was required, such was submitted at the time of joining and so also along with reply to Show Cause Notice (Page-40). It was stated that the policy decision as to age relaxation was being followed by various departments under the Federal Government, including Federal Directorate of Education/respondents. To buttress his arguments he has drawn our attention to various advertisements including those issued by respondents for the similar post for subsequent years to show that maximum age for the appointment to various position including BPS-09, to which post the appellant was appointed as per condition No.6 thereof is 35 years and it was specifically mentioned "maximum age limit is 35 years, as per government policy relaxation of 5 years is given, therefore all such persons who are 40 years of age on the cut off date of application", copies of such advertisements are available at pages Nos.44, 45, 46 and 47. It was argued that Federal Service Tribunal did not advert to such aspect of the matter, which rendered the impugned judgment erroneous.

10. Mr. Sajid Ilyas Bhatti, learned DAG urged that the maximum age for the subject position was 25 years and after giving relaxation of 5 years therefore for the subject post age was 30 years. According to him last date for the receipt of the applications is 31-1-2007, appellant was 37 years 4 months and 14 days. Therefore, on the date of application, she was over aged and was not eligible for the appointment without obtaining age relaxation from the competent authority as required, which she failed. According to learned DAG, appellant was rightly removed from services.

11. When attention of learned DAG was drawn to the order of this Court dated 5-9-2013 which reads as follows;

"We have heard learned counsel for the appellant and learned Deputy Attorney General at some length. Learned Deputy Attorney General has not been able to respond as to how the appellant was overage because admittedly she was 37 years of age at the time of appointment and in terms of the advertisement issued in the newspaper the maximum age limit was 35 years but there was relaxation of five years in terms of the Notification No.F.9/2/9 R5 dated 28-11-2000. Let the concerned official of the Ministry of Defence not below the rank of a Joint Secretary appear in Court for a date in the week commencing from 16-9-2013." (Underlined to add emphasis)

12. In response he has drawn our attention to Cabinet Division's decision dated 10-9-1997 and Notification dated 13-2-2013, respectively made available through C.M.A. No. 2105 of 2014

whereby, through first mentioned decision; the management and control of Educational Institutions which include Schools and Colleges in Cantonment and Garrison, now vest in Director Army Education, GHQ. And as per later Notification dated 13-2-2013, qualifying eligibility for the Librarian is 5 years experience as Assistant Librarian (BPS-09). He has attempted to show by comparative chart placed on record through referred C.M.A. that originally age for the advertised position was 25 years and giving benefit of the subject notification it was 30 years, but in the advertisement by typo error it was mentioned as 35 years, as such petitioner cannot be extended further age relaxation. According to learned DAG, since 10-9-1977 control and management of all the School and Colleges in Cantonment and Garrison have been transferred to the DAE, GHQ Rawalpindi therefore all appointments, transfer and posting are to be carried out under such directive. It may be noted that such placement of Schools and Colleges under the Administrative and Management control of the respondents would not then take them out of the pale of Department of Federal Government; and would be bound by all the policy directive. It is not the case of the respondents that respondents have become autonomous body and therefore not bound by the directives of the Federal Government.

13. The documents as relied upon in the C.M.A. 2105/14 do not answer any quarry raised in the order reproduced in the preceding paragraph nor, as noted in the leave granting order as noted in the opening part of this judgment. Learned DAG admits that the age given against the advertised post of Assistant Librarian (BPS-9) was mentioned in the advertisement was 35 years. It was also admitted that no corrigendum to such purported error was issued. Learned DAG though states that age relaxation of 5 years was given by the Federal Government, but according to him it was already extended to the petitioner and no further age relaxation is possible.

14. As it could be gleaned from the record and as per Notification dated 28-11-2000, referred to in the order of this Court, noted above, age was revised and all the departments of the Federal Government were required to specifically mention such fact in the advertisement. As noted, in various advertisements placed on record, such fact finds mention. Relevant paragraph of the notification reads as follows:--

"The maximum age limit prescribed on initial appointment under any rules for the time being in force shall be relaxed for a period of five years.

(2) the above cited relaxation is with reference to the upper age limit prescribed in the recruitment rules of posts made under sub-rule (2) of rule 3 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and is not applicable to the case of competitive Central Superior Services Examination conducted by the Federal Public Service Commission.

(3) All ministers/Divisions/Departments and the Federal Public Service Commission are, therefore, requested to clearly indicate in their advertisements that government has allowed general relaxation upto five years over the age limit prescribed in the recruitment rules of posts and given in the advertisement."

15. As noted in the narrative above, as per Notification issued under Civil Servant (Appointment, Promotion and Transfer) Rules, 1973 dated 3rd June, 2004, original age limit fixed for the appointment to the post of BPS-9 was 25 years, which was revised to 35 years. In this view of the matter it cannot be said that she was over aged as she did not obtain age relaxation, as none was required. As noted above, if there was any lapse it was on the part of the respondents. If the Notification/ memorandum as noted above had gone unnoticed by them, it is not the fault of appellants. It is not the case of the respondents that she procured the appointment letter through dubious means. Since appellants cannot be attributed any wrong on her part, respondents cannot be

allowed to take benefit of their own oversight, lapse or ignorance of law (i.e. Notification/Memorandum of relaxation of general age dated 28-11-2000).

16. The representation of the appellant was dismissed on the ground inter alia, that the qualifying age was wrongly mentioned in the advertisement as 35 years instead of 25 neither can be attributed to the appellant, nor any corrigendum was published in the newspapers to such an effect. Such position, taken now appears to be an afterthought. Appellant as noted above had joined the services after appearing in the qualifying test and so also qualified the interview. From the date of application dated 31-1-2007 till letter dated 14-7-2007 calling upon her to join and take charge on 1-8-2007 for seven months it did not occur to the respondents that she is over aged by two years (37 years) as against the age of 35 as advertised. We have also noted that in terms of Chapter-II of National Command Authority Rules; para 7(K) for initial appointment the age prescribed was "not less than 18 years or more than 35 years of age". However it was specifically stipulated therein that the said limit "may be relaxed in exceptional cases upto 45 by the competent authority as mentioned in the Delegation of Powers" said Notifications/Policy directives were neither considered by the respondents nor by the Service Tribunal.

17. Appellant served the respondent-department to the satisfaction of the authority. It is not the case of the respondents that the appellant did not possess the required qualification for the relevant post of Librarian and or that she did not serve the department to their satisfaction. She had applied for the advertised post giving her full particulars, including her qualification and age. Even if it is presumed that the competent authority over sighted her age, it would be deemed to have been relaxed in exercise of power vested in the Authority. There is no denial that one Shehnaz Parveen was also appointed as MIT in a school at Malir, Karachi was of 39 years of age and no exception to her being over age was taken. If that be the case, appellant is justified to urge that she has been discriminated, since she was issued joining letter on 14-7-2007 she joined the school at Risalpur on 1-8-2007 as required. At the time of joining she submitted the age relaxation certificate at the time of joining the School, such certificate to such effect was placed on record (page-59).

18. Under these facts and circumstances a right had come to vest in the appellant on issuance of appointment letter and more so after joining the service. In the case of Ghulam Murtaza v. Federation of Pakistan (2011 PLC (C.S.) 709) passed by learned Division Bench of Sindh High Court placing reliance on the case of Jabbar Malik v. Province of Sindh and others, last mentioned judgment was also upheld by this Court in Civil Petitions Nos. 426-K to 436-K of 2008, it was held that once a person is appointed after fulfilling all the codal formalities, appointment letter is issued, it was held that a vested right is created and appointment letter could not be withdrawn. Similar view was taken in the earlier decision of the same Court by another learned Bench reported as Muhammad Farooq Memon v. Government of Sindh (1986 CLC 1482).

19. As noted, above, general benefit of age relaxation extended to the employees of the Federal Government across board and extend to all departments under the Federal government pursuant to any policy decision cannot be denied on the assumption, that particular department is not bound by such decision as it has its own rule. Such course is dangerous and amounts to challenge the authority of Federal Government, which course is not approved. Nothing was brought on record to show that such directive/policy decision expressed through Memorandums/Notifications were not applicable to the respondents. Age relaxation of upper age limit for the direct recruitment to the advertised Post (of Librarian BPS-9) in the Directorate of Education in GHQ, which is also under the Federal Government, has not been denied by the respondents such benefit cannot be denied without any justifiable reason, which regretfully was not brought to the notice of this Court.

20. Once a right is accrued to the appellant by appointment letters issued after complying with all the codal formalities could not be taken away on mere assumption and or supposition and or whims

and fancy of any executive functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of locus poenitentiae, well recognized and entrenched in our jurisprudence (One may refer to Director, Social Welfare, N.-W.F.P., Peshawar v. Sadullah Khan (1996 SCMR 1350).

21. In view of the forgoing reasons impugned judgment of Federal Service Tribunal (FST) dated 14-1-2011 is set aside and Civil Appeal is allowed in following terms:--

(i) Appellant shall be given joining within one month from date of receipt of copy of this judgment.

(ii) Seniority will be counted from the date of appointment letter dated 14-7-2007.

(iii) However, no back benefit will be extended to the appellant for the period she remained out of office one month from the date of this order.

MWA/B-1/SC

Appeal allowed.

2017 P L C (C.S.) 587

[Peshawar High Court]

Before Rooh-ul-Amin Khan and Syed Afsar Shah, JJ

JAWAD ALI and others

Versus

SUPERINTENDENT JAIL and others

Writ Petition No.516 of 2015, decided on 19th March, 2015.

(a) Civil service---

✓ ---Cancellation of appointment orders--- Scope--- Natural justice, principles of--- Applicability--- Locus poenitentiae, principle of---Applicability---Petitioners were posted on their respective places of duties, however after 19/20 days their appointment orders were cancelled---Validity---Petitioners were appointed on merit basis and after performing duties for about 19/20 days they were terminated---Competent Authority for appointment of jail warder was Superintendent who had defended the appointment orders---Impugned cancellation order had been issued on the directive of superior officer---Public functionaries were bound to discharge their functions in accordance with law otherwise action contrary to law would not be sustainable and authority would expose itself for disciplinary action---Appointments of the petitioners had been cancelled in complete negation of the rules and law---Appointing authority was wrong in having blindly obeyed an illegal command--- Every person discharging the functions with regard to the rights of the people was bound to do justice, act fairly, justly and in accordance with law---If a person holding a public office had proceeded in violation of law or his acts and conduct amounted to misuse of his official authority, he should be made responsible to law and should be proceeded against for an appropriate action by his superior---Tenets of public service had not only been violated by the public officials but also by political office holders in the present case---Any order affecting the rights of a person had to be made in accordance with the principles of natural justice---Order taking away the rights of a person without complying with the principles of natural justice had been held to be illegal---Person would acquire right to hold the post when after selection an appointment order was issued and for cancelling such appointment giving of notice was a normal rule---Petitioners had been posted at their respective places of duties in pursuance of the appointment order and decisive step had been taken in the case---Power of rescinding the appointment order was available to the government until the decisive step was taken---Government was not vested with the authority to withdraw or rescind an order if same had taken legal effect and created certain legal rights in favour of an individual---Orders of appointment passed by the government could neither be revoked nor withdrawn under the principle of locus poenitentiae---Department had cancelled appointment order in infancy by bypassing all the relevant statutes---Cancellation order of the employees passed by the authority was not in conformity with the terms of statute---Law did not authorize any authority to cancel an appointment order and remove employees from service without any reason---Constitutional jurisdiction of High Court could be invoked if the action on the part of authorities was found coram non iudice, without jurisdiction or mala fide---Appointments of petitioners were made by the competent authority by following the prescribed procedure---Petitioners were having no nexus with the mode of selection process and they could not be blamed or punished for the laxities of the government---Impugned order was without lawful authority, *without jurisdiction and of no legal effect* which was set aside---Constitutional petition was accepted in circumstances.

Chief Secretary, Government of the Punjab and others v. Malik Asif Hayat 2011 SCMR

1220; Federation of Pakistan through Secretary Defence and others v. Abdul Basit 2012 SCMR 1299; Doctor Akhtar Hussain Khan and others v. Federation of Pakistan and others 2012 SCMR 455; Collector of Customs and Central Excise, Peshawar and 2 others v. Abdul Waheed and 7 others 2004 SCMR 303 and District Coordination Officer, District Dir Lower and others v. Rozi Khan and others 2009 SCMR 663 rel.

(b) Locus poenitentiae, principle of---

---Applicability---Scope---Government was not vested with the authority to withdraw or rescind an order if same had taken legal effect and created certain legal rights in favour of an individual.

(c) Public functionaries---

---Public functionaries were bound to discharge their functions in accordance with law.

(d) Constitution of Pakistan---

---Art. 199---Constitutional jurisdiction of High Court---Scope---Constitutional jurisdiction of High Court could be invoked if action on the part of authorities was found coram non iudice, without jurisdiction or mala fide---If an adequate remedy provided by law was less convenient, beneficial and effective then jurisdiction of High Court could be invoked.

Muhammad Ijaz Khan Sabi for Petitioners.

Syed Qaiser Ali Shah, A.A.G. along with Masud-ur-Rehman, Superintendent HQ Jail Peshawar for Respondents.

Date of hearing: 19th March, 2015.

JUDGMENT

ROOH-UL-AMIN KHAN, J.--- Our this single judgment shall dispose of the instant Writ Petition Jawad Ali and 161 others, Writ Petition No.557 Fayaz Ali and 179 others as well as Writ Petition No.632, Waseem Akram and five others, filed against the Superintendent Head Quarter (Prison) and others, as all the writ petitions have been filed against the order dated 16.2.2015, whereby the appointment orders of the petitioners as Warder (BPS-5) issued vide order dated 22.1.2015 have been cancelled on the desire of so called "Competent Authority".

2. Brief but relevant facts of the case, as per averments of the writ petitions are that respondent No.1, invited applications for appointment, against 120 posts of Jail Warder and constable (BPS-5) from eligible candidates, through advertisement No.INF (P-721) dated 22.2.2014 published in the daily "Mashriq" and daily "Aaj". Subsequently a corrigendum was published in the above said dailies on 14.4.2014, wherein the number of posts was increased from 120 to 800 as well the last date for submission of applications was extended up to 30.4.2014. In pursuance of the advertisement, the petitioners being qualified and having the prescribed age limit submitted applications for employment against the said posts. About 21000 candidates were in competition for 800 advertised posts. The petitioners, amongst others, appeared in the written examination on date and places specified by the authority i.e., at central jails of their respective district/agency. On completion of the first phase of written examination, the successful candidates were called for appearance before the selection committee for viva voce/interview and the qualified applicants/candidates were subjected to physical test and examination, thus after detail scrutiny and fulfilling the requisite codal formalities, the petitioners were offered appointment vide order dated 22.1.2015. The petitioners got through the medical examination and submitted their charge report, thus, they impliedly accepted the appointment, consequently they were posted on their respective

places of duties, however, after 19/20 days of their duties, all of a sudden misfortune befell upon them, when respondent No.1 issued the impugned order dated 16.2.2015 whereby the appointment order of all the newly temporary appointed warders in BPS-5 was cancelled as desired by the "Competent Authority". Hence this writ petition with the following prayer:

"1. A writ of certiorari may be issued to declare the impugned order of respondent No.1 dated 16.2.2015 as illegal, unlawful and thus, ineffective upon the rights of petitioners.

2. To direct the respondents to withdraw the impugned order 16.2.2015 and to allow the petitioners to perform their duties as Warders as per their initial appointment orders dated 22.1.2015."

3. Initially comments of respondents were called for which were submitted accordingly with a stance that it had cancelled the appointments of the employees as the provincial government intended to make the recruitments through "National Testing System" (NTS) as a policy matter, however the petitioners are at liberty to compete as and when the process is initiated through NTS. The fundamental right of petitioners is not violated; therefore, the writ petition is not competent.

4. Learned counsel for petitioners vehemently argued that the petitioners have been inducted into service, after fulfilling all the legal and codal formalities. They have assumed the charge of their duties at their respective places of posting. The appointment orders have been acted upon, therefore, principle of locus poenitentiae is attracted. The impugned notification has been issued in the result of pressure brought by a group of ruling party for accommodating their blue eyed. The respondents or any other else have failed to pinpoint a single irregularity or illegality in the appointment process of petitioners, thus the cancellation order is untenable and liable to be set aside.

5. Conversely, the learned A.A.G argued that the impugned order has been cancelled by the competent authority because the provincial government is constrained to make recruitment through the National Testing System, as a matter of policy. In lukewarm manner he agitated that the quota of certain district has been violated and the advisor to the Chief Minister for prison, have prevailed upon the appointing authority by inducting a large number of employees from his local area. He also argued that the jurisdiction of this court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan as well, none of the petitioners has approached the competent authority through departmental appeal.

6. The respondent No.1 personally in attendance, being appointing authority, was invited to the rostrum to apprise the Court about process of selection and cancellation of appointment order, who, with all his fairness, stated at the bar that all the appointments have been made in a transparent manner, after fulfilling all the legal requisite formalities, however on the directive of respondent No.3. i.e. Secretary Home and Tribal Affairs, routed through the Inspector General (Prisons) he being subordinate was under compulsion to issue the impugned notification. He gallantly stated that "he has just obeyed the order".

7. Having heard the learned counsel for the parties, perusal of the record would reveal that the petitioners have submitted applications for appointment against the vacant posts of Jail Warder in consequences of advertisement issued in local dailies. After qualifying written examination, passing physical fitness test and interview before the duly constituted selection committee, they were appointed on merit basis. Being pre-requisite for taking charge, they got medically examined and were posted at respective places of their duties. In addition, they were issued computerized service card through the Prison Department. After performing duties for about 19/20 days, were shown the exit door with one stroke of the pen only on the desire of an unknown competent authority. Undisputedly the competent authority for appointment of jail warder is Superintendent, HQ (Prison)

who in the presence of the Additional Advocate General backed and defended the appointment order on the rationality that it have been issued following and realizing all the legal and codal formalities. He reiterated that the impugned cancellation order has been issued on the directive of Secretary Home and Tribal Affairs, routed through the Inspector General (Prisons) and he being subordinate was under obligation to issue the impugned notification. Comprehending the state of affairs, one can easily perceive that how the bureaucracy of this province is playing with the law, and destitute of the province on an eye wink of a political stalwart or boss, despite the facts that on more than one occasion the august Supreme Court of Pakistan was pleased to emphasize and accentuate that the Functionaries, exercising statutory power, are bound to discharge their functions strictly in accordance with law, otherwise the action contrary to law would not be sustainable and such Authority shall expose itself for disciplinary action. In the case in hand, it is an undeniable and irrefutable fact which has also repatriated by the appointing authority, that the appointment of the newly appointed warder have been cancelled and the impugned order has been issued as desired by the competent authority. Admittedly the competent authority in the instant case is the appointing authority, which is defending the entire selection process as well appointment order. Here, the word "competent authority" has been applied, probably to blot out the actual man behind the gun who being influenced by the law makers of the province was instrumental for removal of employees appointed after due process of law. It emerges from the record of the case that the appointments of the petitioners have been cancelled in complete negation of the rules and law regulating the subject which is not only an illegality or irregularity, but a deviation and disobedience of command of the law and constitution, by the appointing authority. We have noted with great concern that the appointing authority was in the wrong in having blindly obeyed an illegal command, merely to accomplish the illegal desire of an unknown boss in the apparel of competent authority, which is not an obedience of high ups, rather a punishable act like a crime committed by an accused.

8. It is divulged from the record before us that in the month of April, 2014, Mr. Salih Muhammad, Member Provincial Assembly, Khyber Pakhtunkhwa moved an assembly question on the floor of the house for knowing the intention of the provincial government regarding the transparency in process of appointment of warders in the Prison department of Khyber Pakhtunkhwa. In this regard, the viewpoint of the Inspector General of Khyber Pakhtunkhwa was solicited for who opined that being the law enforcement agency the candidates appointed as warder in the Prison Department are required to go through physical and mental screening tea. Besides, the written examination and interview of such candidates are also to be conducted. He expressed his no objection at ETEA test, however expressed that physical and medical test of suitable candidate would not be possible through ETEA test. In response of the query, Secretary Home and Tribal Affairs Department (the respondent No.1) was of the view that in order to ensure transparency and merit and to avoid public complaint and to enhance the image of the present Government recruitment of the warder in prison department is required to be conducted through ETEA test.

9. Consequently, a detailed summary was submitted to the Chief Minister, Khyber Pakhtunkhwa for order, wherein the Chief Secretary, Khyber Pakhtunkhwa endorsed the following note:-

"Recruitment/selection through ETEA/NTA tests is now the norm for the KPK government which has been appreciated publicly. However, in instant case, when the provincial government is under immense pressure for beefing up its prison security on a fast track, proposal contained in para-29/n may kindly be considered favourably for approval."
(Underline is added for emphasis)

In view of the endorsement Note of chief secretary, the proposal contained in para-29 read with para-26 of the Summary was forwarded for approval of the Chief Minister. In this respect, para-24 (a) of the summery worth perusal which read as under:--

"To ensure transparency and merit in the recruitment process, at this belated stage, the only practical solution seems to be to make the recruitment by committee duly notified, with extra vigilance/caution."

Similarly, para-25 of the summary speaks that to counter such cases; it is proposed that written test papers may be preserved for at least a period of three months from the date of issuance of appointment orders. In this way, para-29 was approved by the Chief Minister. The above exercise would make it clear than crystal that before starting appointment process, the provincial government has considered pros and cons of the mode of selection of the appointees and has ultimately preferred the way for selection of written test and interview basis. After threadbare discussion, analyzing viewpoints of the proficient, high level official of the concern department and approval of the summary by the Chief Executive of the province and successful completion of the entire process of recruitment, at a belated stage, raising and agitating the question of ETEA or NTS test is a sheer pretext for the accomplishment of the illegal desire of an unknown boss. It is settled law that every person discharging the functions in relation to the rights of people is bound to do justice, act fairly, justly and in accordance with law and if a person holding a public office is found to have proceeded in violation of law or his acts and conduct amounted to misuse his official authority, he should be made answerable to law and should be proceeded against for an appropriate action by his superiors, and in such an eventuality a change in the socio-economic system would be possible. The tendency of bending for the accomplishment of desire and whims of political allied would be against the norms of good governance and transparency in public service and must be a hurdle in uplifting the general well being of the citizenry, which is definitely not the Moto of the Provincial Government. We have observed that the tenets of public service, which include honesty, integrity, accountability, transparency, impartiality, discipline, expertise and competence, among others, have not only been violated by public officials but also eroded by political office holders. Due to opacity and obscurity in appointment of the civil servant by nepotism and favoritism the service came to be characterized by lack of professionalism, excessive partisanship, endemic corruption, slowness and inefficiency, and crass selfishness and greed, whereby inspite of commendable efforts by a few to turn the tide in the right direction, the prevailing tendency is still gloomily far below what is expected of a modern nation on a fast track to development.

10. The principal submission raised by counsel for the petitioners is based on violation of the principle of natural justice in ordering cancellation of the appointments. Elaborating his submission, he contended that the petitioners were issued appointment letters, they having joined their respective posts and working, their appointments could not have been cancelled without giving them notice and opportunity of hearing. Any order affecting the rights of a person has to be made in consonance with the principles of natural justice. An order taking away the rights of a person without complying with the principle of natural justice has been held to be illegal. The principle of natural justice cannot be limited in any straitjacket formula. Necessity of hearing a person while taking an action depends on the facts of each case. With regard to cancellation of entire selection, there may be various reasons and grounds, for example, for cancelling a selection process which does not culminate into appointment giving rights to a person, it is well settled, that individual notice to the candidates selected is not normally necessary, however, when after selection an appointment is issued, the person acquires right to hold the post and for cancelling such appointment giving of notice is a normal rule. Cancellation of appointment after selection also can be of different magnitude and nature. When a cancellation of the appointment of an individual appointee is made on certain grounds concerning the said individual, opportunity has to be afforded to the person whose appointment is sought to be cancelled.

11. As observed in the preceding para-2, all the petitioners have been posted at their respective places of duties, in pursuance of the appointment order, thus decisive step has been taken in the case. No doubt, power of rescinding is available to the government until the decisive step is taken. The government or the relevant authority is not vested with the authority to withdraw or rescind an

order, if the same has taken legal effect and created certain legal rights in favour of an individual. The cases of petitioners are of the nature that the order of appointment passed by the government could neither be revoked nor withdrawn under the principle of locus poenitentiae. The honourable Supreme Court of Pakistan in case titled "Chief Secretary, Government of the Punjab and others v. Malik Asif Hayat, (2011 SCMR 1220), while dilating upon the principle of locus poenitentiae was pleased to rule that there can hardly be any dispute with the rule that apart from the provision of section 21 of the General Clauses Act, locus poenitentiae, i.e. the power of rescinding till a decisive step is taken, is available to the government or the relevant authorities. Infact, the exercise of such a power is necessary in the case of all authorities empowered to pass orders to retrace the wrong steps taken by them. The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights. It is also manifest from the record that 796 employees have been shown the exit door by one stroke of the pen and the individual appointment order have been cancelled by a single order only for the reason that the competent authority desires so. In the case in hand, it is an undeniable and irrefutable fact which even confirmed by the appointment authority that the respondent No.1, routed its desire through the respondent No.2, for cancellation of 796 appointment orders, despite the fact that all the appointees have applied for the post in pursuance of an advertisement and was declared successful in the written examination, physical check up and interview.

12. The appointment to a civil service of the province or to a civil post in connection with the affair of the province, made in the prescribed manner by the competent authority fall under Chapter-II (Terms and Conditions of Service of Civil Servants) but the Civil Servants Act equally provide a mechanism for confirmation, seniority, promotion, posting and transfer, termination of service and retirement from service etc. Likewise, the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 provides different kind of penalties including removal and dismissal from service. In the case in hand, the respondent department has cancelled the appointment order of 796 employees in infancy, by bypassing all the statutes on the service law. Obviously, the cancellation order of the employees passed by the authority is not in conformity with the terms of statute. Law does not authorize any authority to cancel an appointment order and remove such employees from service without any reason. In such an eventuality, Article 199(3) of the Constitution does not provide blanket cover to the authorities and are subject to judicial review if the action on part of the authorities is found coram non iudice, without jurisdiction or mala fide. In the case in hand, the authorities could not overlook the provision of Khyber Pakhtunkhwa Civil Servants Act, 1973, Appointment Promotion and Transfer Rules, 1989 and Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The catchphrase of cancellation of appointment to accomplish the desire of the competent authority is alien to the service law. The question of jurisdiction of the High Court in such like matters, in view of the bar contained in Article 199(3) of the Constitution has been dealt with by the august Supreme Court of Pakistan in case titled "Federation of Pakistan through Secretary Defence and others v. Abdul Basit" (2012 SCMR 1299), wherein it has been held that notwithstanding the bar contained in Article 199(3) of the Constitution, where any action has been found to be without jurisdiction or coram non iudice or mala fide, extraordinary jurisdiction of the High Court under Article 199 could competently be invoked by an aggrieved person. It was further held that the non obstante clause has to be strictly construed. If an action of the authority is in colorful exercise of power or is tainted with malice, non obstante clause will not come in the way of High Court to entertain such a petition. The august Supreme Court of Pakistan in a landmark judgment rendered in case titled "Doctor Akhtar Hussain Khan and others v. Federation of Pakistan and others" (2012 SCMR 455) *was pleased to rule that* even the existence of an alternate remedy cannot prevent the court from exercising its power of judicial review if the said alternate remedy is neither efficacious nor expeditious. If an adequate remedy provided by law is less convenient, beneficial and effective in case of a legal right to performance of a legal duty, the jurisdiction of the High Court can be invoked and if a statutory

functionary acts mala fide or in a partial unjust and oppressive manner the court in exercise of its writ jurisdiction has power to grant relief to the aggrieved party.

13. It is not the case of the respondent department that the petitioners were not eligible for the appointment or any illegality or irregularity had been committed in the appointment process rather they are intended to make transparency in the appointment matters through NTS. Undisputedly, the appointment of the petitioners were made by the competent authority by following the prescribed procedure. The petitioners were having no nexus with the mode of selection process, therefore, could not be blamed or punished for the laxities of the government. The august Supreme Court of Pakistan has held in case titled "Collector of Customs and Central Excise, Peshawar and 2 others v. Abdul Waheed and 7 others", (2004 SCMR 303) that for the irregularities committed by the department itself qua appointment of a candidate, the appointee cannot be condemned subsequently. The same view was reiterated by the august Supreme Court of Pakistan in case titled "District Coordination Officer, District Dir Lower and others v. Rozi Khan and others" (2009 SCMR 663). Amazingly, for about 9 months the appointment process remained under discussion in the corridor of government and finally it was decided by the Chief Minister of the province that the appointment shall be made after conducting written examination, physical fitness test and interview, but after completion of the selection process and appointment of petitioners the respondents awoken from the deep slumber and suddenly took a summersault with a contrary stance of making the appointment on the basis of examination through NTS.

14. In wake of the above, we are of the firm view that the impugned order dated 16.2.2015 passed by the respondent No.3, whereby the appointment orders dated 22.1.2015 were cancelled on the direction of respondent No.1 is without lawful authority, without jurisdiction and of no legal effect. Resultantly, all the three writ petitions are admitted and allowed and the impugned order is set aside, however, the parties are left to bear their own costs.

ZC/170/P

Petitions allowed.