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110	proceeding	
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		BEFORE THE KHYBER PAKHTUNKHWA! SERVICE TRIBUNAL Service Appeal No. 540/2014
	_	Service Appear No. 340/2014
		Date of Institution 17 04.2014
		Date of Decision 28:01.2019
		Mst. Shahnaz Bibi, Daughter of Shah Nawaz R/o Khandar Khankheil
		Post Office Azeem Kala Jadeed Tehsil & District Bannu.
		Appellant
		Versus
**.		
-		1. The Secretary Education (E&SE) Khyber Pakhtunkhwa
,	i ,	Peshawar.
		2. Director Education (E&SE) Khyber Pakhtunkhwa Peshawar.
	,	3. The DEO (Female) E&SE Bannu.
		4. The Secretary Finance Department Khyber Pakhtunkhwa
		Peshawar.
		Respondents
		Respondents
		Mr. Muhammad Hamid MughalMember (J)
.	28.01.2019	Mr. Ahmad HassanMember (E)
		HUDCMENT
		<u>JUDGMENT</u>
	· .	MUHAMMAD HAMID MUGHAL, MEMBER: - Learned
		counsel for the appellant and Mr. Kabir Ullah Khattak learned
=		Additional Advocate General present.
		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.
		3. The appellant has filed the present service appeal u/s 4 of the
		The second of th

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

<u>ANNOUNCED</u> 28.01.2019

The Hon'able Chairman has not yet been assumed the charge, therefore, the case is adjourned for the same on 07.01.2019 before D.B.

Reader

07.01.2019

Junior to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 28.01.2019 before D.B.

Member

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Vide separate common judgment of today of this Tribunal placed on file, the present service appeal is dismissed. Parties are left to bear their costs. File be consigned to the record room.

Ahmad Hassan) Member (Muhammad Hamid Mughal) Member

ANNOUNCED 28.01.2019

02.05.2018

Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General alongwith Atta Ur Rehman ASI for the respondents present. The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore the case is adjourned. To come up for the same on 18.07.2018

READER

18.07.2018

Counsel for the appellant present. Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 05.09.2018 before D.B.

(Ahamd Hassan) Member

(Muhammad Hamid Mughal)
Member

05.09.2018

Appellant absent. Learned counsel for the appellant is also absent. However, junior counsel for the appellant present and requested for adjournment on the ground that learned senior counsel for the appellant is busy before the august Supreme Court of Pakistan. Mr. Riaz Ahmad Paindakhel, Assistant AG for the respondents present. Adjourned. To come up for arguments on 05.10.2018 before D.B.

(M. Amin Khan Kundi) Member

(M. Hamid Mughal)
Member

05.10.2018

Learned counsel for the appellant and Mr. Kabirullah Khattak learned AAG present. Learned counsel for appellant seeks adjournment. Adjourned. To come up for arguments on 16.11.2018 before D.B.

(Hussain Shah)
Member

(Muhammad Hamid Mughal) Member 15.11.2017

Junior to counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Senior counsel for the appellant was stated to be busy before the Worthy Peshawar High Court. Seeks adjournment. To come up for arguments on 11.1.2018 before the D.B.

Member

Chairman

11.01.2018

Counsel for the appellant present and Mr. Zia Ullah, DDA for the respondents present. Counsel for the appellant seeks adjournment. Granted . To come up for arguments on 13.3.2018 before D.B.

Member

Shairman

13.03.2018

Junior to counsel for appellant and Mr. Muhammad Jan, learned Deputy District Attorney for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not available. Adjourn. To come up for arguments on 02.05.2018 before D.B

(M.Amin Khan Kundi)

Member

(Muhammad Hamid Mughal) Member 09.01.2017

Counsel for the appellant and Assistant AG for res present. Counsel for the appellant requested for adjournment

accepted. To come up for arguments on 10.05.2017/

(AHMAD HASSAN) **MEMBER**

(MUHAMMAD AAMIR NAZIF

MEMBE

10.05.2017

Counsel for the appellant and Mr. Ziaullah, GP, for respondents present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 14.07.2017 before D.B.

> (Ahmad Hassan) Member

(M.Amin Khan I Member

14.07.2017

Counsel for the appellant and Mr. Muhammad Jan, De District Attorney alongwith Mr. Hameed ur Rehman, AD(Lit respondents present. Counsel for the appellant seeks adjournme Adjourned. To come up for arguments on 15.11.2017 before D.

(Muhammad Hamid Mughal)

(Ahmad Hassan) Member

10.02.2016

Counsel for the appellant and DEO (F) alongwith Asst: AG for respondents present. Rejoinder submitted on behalf of the appellant which is placed on file.

To come up for arguments on 10.5-2016 r

MEMBER

MEMBER

10.5.2016

Junior to counsel for the appellant, M/S Khurshid Khan, SO and Hameedur Rehman, AD (Litigation) alongwith Mr. Muhammad Jan, GP for respondents present. Junior to counsel for the appellant requested for adjournment. To come up for arguments on $\frac{1}{2}$ 0.9.2016.

20.09.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 09.01.2017.

Member

24.12.2014

Clerk of counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for written reply/comments on 10.04.2015.

Reader

10.04.2015

Counsel for the appellant, M/S Khurshid Khan, SO for respondent No. 1 and Mr. Ashrafullah, ADO (lit.) for respondent No. 3 alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for Adjournment. To come up for written reply/comments on 29.7.2015 before S.B.

MEMBER

29.07.2015

Counsel for the appellant, M/S Khurshid Khan, SO and Javed Ahmed, Supdt. alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 26.10.2015 before S.B.

Chairman

26.10:2015

Counsel for the appellant, M/S Khurshid Khan, SO, Hameed-ur-Rehman, AD (lit.) Sher Zali, Assistant and Irshad Muhammad, SO alongwith Addl. A.G. for respondents present. Para-wise comments on behalf of respondents No. 1 to 3 submitted. The learned Addl: AG relies on the same on behalf of respondent No. 4. The appeal is assigned to D.B for rejoinder and final hearing for 10.02.2016:

Chairman

21.05.2014

Appeal Nb. 540/2014. Mst. Shahner Biber

Counsel for the appellant present and filed an application \ for placing on file the attendance register copies. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. She filed departmental appeal on 26.12.2013 against the non receipt of salary which the Section-17 of the Khyber Pakhtunkhwa Civil Servant, Act 1973 provides that the Civil Servant appointed to a post shall be entitled, in accordance with the Rules to the pay sanctioned for such post. Hence non receipt of pay at the end of every month is a recurring loss to the appellant which could be treated as original order. The departmental appeal dated 26.12.2013 is not responded within the statutory period of 90 days, hence the present appeal on 17.04.2014. He further contended that after appointment on 23.10.2009, the appellant took over charge on 24.10.2009 since then she regularly performed her duty for which purpose the appellant also filed an application alongwith an extract Teacher attendance register (register Hazri Mudarraseen). Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 19.08.2014.

21.05.2014

This case be put before the Final Bench_

for further proceedings.

Member

Chairman

19.8,2014

The Hon'ble Bench is on tour to Abbottabad, therefore, case adjourned to 24.12.4

Reader

Form- A FORM OF ORDER SHEET

Court of	· · · · · · · · · · · · · · · · · · ·		
Case No.		540/2014	

7	Case No	540/2014
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2.	3
1	17/04/2014	The appeal of Mst. Shahnaz Bibi presented today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution
		register and put up to the Worthy Chairman for preliminary
		hearing.
. 2	21-4-2014	This case is entrusted to Primary Bench for preliminary
	NI PAUL	hearing to be put up there on 21-5-30/
		CHAIRMAN

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 540 /2014.

Mst: Shahnaz Bibi.

VS

Education Deptt:

INDEX.

S.NO	DOCUMENTS	ANNEXURE	PAGE
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2-	Appointment order.	Α	5
3-	Charge report.	В	6
4-	Medical fitness.	С	7
5-	Suit.	D	8 – 11
6-	Application for rejection of suit.	E	12 – 13
7-	Reply to application.	F	14
8-	Court's order.	G	15 – 16
9-	Appeal.	Н	17
10-	Vakalat nama		18

APPELLANT

THROUGH:

M.ASIF YOUSAFZAI

ADVOCATE

8

TAIMUR ALTKHAN

ADVOCATE.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. <u>540</u>/2014.

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Mst: Shahnaz Bibi, PST,

Ţ,

GGPS Umar Shah Cheshmai Bannu.....Appellant

VERSUS

- 1- The Secretary Education (E&SE) KPK Peshawar.
- 2- The Director Education (E&SE) KPK Peshawar.
- 3- The DEO (female) E&SE, Bannu.
- 4- The Secretary Finance Deptt: KPK Peshawar

.....Respondents.

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS

ACT 1974 FOR DIRECTING THE RESPONDENTS TO RELEASE

THE MONTHLY SALARIES OF APPELLANT W.E.FROM

2.11.2009 TILL DATE AND ONWARDS AND AGAINST NOT

TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF

APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

17/4/14

That on acceptance of this appeal the respondents may be directed to release the monthly salaries of appellant from 3.11.2009 trill date and onwards with all arrears. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of appellant.

R.SHEWETH.

- That the appellant was appointed by the competent authority
 as PST after proper approval of the committee in light of
 judgments of superior Courts vide order dated. 2.11.2009.
 Copy of the order is attached as Annexure A.
- 2. That the appellant got medical fitness and took over charge of the post on 3.11.2009. Copies of the charge report and medical fitness are attached as Annexure B & C.
- 3. That as the appellant was not receiving his salaries despite performance of duty, therefore, the appellant filed a civil suit in Bannu on 3.3.2012. The said suit was pending till 23.1.2014. The defendants during the pendency of suit filed an application for rejection of plaint under O-7 R-11 of CPC. The said application was decided on 23.1.2014 and the suit was returned to appellant for approaching and presenting the same before proper forum (Service Tribunal). Copies of suit, application, court's decision are attached as Annexure D,E,F&G.
- 4. That during the pendency of suit the appellant had also filed departmental appeal on 24.12.2013 through proper register postal for her claim but the said appeal went unresponded till the expiry of statutory period. Copy of appeal is attached as Annexure H.

5. That now the appellant comes to this august Tribunal on the following grounds amongst the others.

GROUNDS:

- A- That not paying monthly salaries to appellant and not taking any action on the departmental appeal of appellant within statutory period of ninety days by respondents are against the norms of justice, material on record and principles of fair play.
- B- That the appellant has not been treated according to law and rules and has been deprived from her legal right of monthly salaries for no good grounds.
- C- That as evident from the appointment order that the same was passed after proper recommendations of committee, therefore the appellant took over charge of the post and started performing her duties. Therefore the appellant is fully entitled to monthly salaries.
- D- That the appellant is still in service and performing her duties, therefore under section 17 of the Civil Servants Act 1973, the appellant is fully entitled to her claim.
- E- That non-payment of monthly salaries to appellant without following any codal formalities is an act of arbitrariness on the part of respondents which cannot be protected and remain in field under the norms of justice.

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

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

APPELLANT

- شینازلیانی

SHAHNAZ BIBI

THROUGH:

M. ÁSIF YOUSAFZAI

ADVOCATE.

TAIMUR ALIKHAN

ADVOCATE.

OFFICE OF HE EXECUTIVE DISTRICT OFFICER, ELEMENTARY & SECONDARY EDUCATION BANNII

APPOINTMENT ORDER

On acceptance of representative and in compliance to the Honourable Supreme Court of Pakistan judgment dated 28/5/2002 and Honourable Peshawar High Court Bench D.I. Khan judgment dated 28/04/2004 & consequent upon the recommendation of the Department of the Department requirement committee, the undersigned is please to appoint the following PTC (Male) Denied Candidates of AIOU, 1999 form the merit list in BPS-07 as per PTC recruitment policy plus usual allowances as admissible under the rules, in the schools noted against each candidates with effect from 01/12/2009 in the

SNo	Name of Candidate	Father's Name	Address	Denied	BPS	Place of Posting	Remarks
1	Shehnaz Bibi	Shah Nawaz	Azim Killa Bannu	Denied 1999	07	GPS Umershah Cheshmai	V/Post

TERMS & CONDITIONS

Their services will be considered regular bet without pension and gratuity in term of Section 19 of NWFP, Civil servant Act, 1973 as amended vide NWFP, civil servant (Amendment) Act, 2005. He will however be entitled to contributory provident Fund in such a manner and such rates as may be prescribed by the Government

2- His services will be liable to termination on one month's notice from either side, in case of resignation without notice their / his two months pay / allowances shall be forfeited to Govt:

3- The appointee should submit their charge report to all concerned.

- 4- His services can be terminated at any time, in case his / their performance is found unsatisfactory during probationary period. In case of misconduct he/they will be preceded against under the NWFP removal from service Special ordinance 2000 & the rules framed from time to time.
- 5- The candidates should join his / their post with in 15 days. The head-of-the institution concerned should furnish a certificate to the effect that the candidates has joined the post or otherwise, after 15 days of the issuance of this order, failing which, their / his order will be treated as cancelled.

6- The appointee is directed to perform his duties in his respective school noted against his name for a minimum period of one year.

- 7- In case of fake certificates / Degree or any other mistake in the said appointment order detected later on the undersigned reserves the right of amendment them service and disciplinary action 3 will initiated against the teacher concerned.
- 8- They are required to produce health & Fitness Certificate from the Medical Superintendent concerned before taking over charge.
- 9- Their original certificate Degree should be verified from the Concerned Board / University / Institution on his own expenses before the release of their pay.

10- No TA / DA etc is allowed.

Sd/(BAKHTULLAH SHAH)
EXECUTIVE DISTRICT OFFICER,
ELEMENTARY & SECONDARY
EDUCATION, BANNU

Endst: No 1507_ 10	AE-EDO (M) PTC: Apptt: Dated Bannu	the 1-11-2000
Copy for information & necessary acti	ion to the:-	2009

- 1- Director of Elementary & Secondary Education NWFP Peshawar.
- 2- Commissioner Bannu Division Bannu
- 3. District Coordination officer Bannu.
- 4- District Account Officer Bannu.
- 5- District Nazim Bannu
- 6- Medical superintendent. DHQ Bannu with the remarks that Health & Fitness certificate may not be honored with out the authority issued by the above named officer.

7- Candidate Concerned

EXECUTIVE DISTRICT OFFICER, ELEMENTARY & SECONDARY EDUCATION, BANNU Coffing Agenc

CERTIFICATE OF CHARGE REPORT

In compliance with the order of EDO ELSE LUVIDE No. 21567-10

Dated 2 - 11 - 2009 I Miss Shelway Rom has taken över the charge of PTC in Govt. Girls Primary School June State Charlimon in after noon/forenoon. Dated _3_11_2009

3/2001/6

-Handed-over

Chachmi Bannus

Taken over
Shahnaz Bibi

ATTESTED

inst: Shehmaz Biti

Circseins

Village Kleindar Klan

Azim Killa Jackid Disti Bannu Same of Citheral Caste of page Service Same 01-07-1977 NieNo 11101-1401362-6 Pate of Birth Lync, Henrie Ni'(Surface of Applica B.D. O. E. & S. Education Bunn Problems of the E.D.O BAS. Bedwentier Boun

Medical Superintendent D.H.Q & Teaching Hospital

Bannu

ATTESTED

مرات ما سرسول عج ما سرت ساة سیازی وصر ساه نواز کان خاند خاندرخا نحیل دار - Con die fred und de سام می میسیم سرار میسیم می میسیم میران میسیم میران میسیم میران میسیم میراندی م الله المارية المنشى الله كالأي الحراف مرمضر فتوفواه لياور و، رئن من و شرب أنسر رمن من الله معدى الحل الله ی و شیک اسر رفیمل ایندی انتشان افراتیمان رور در المارس المارس المسر فعلى الم مالف: - دعواے ملے ڈارے انقارے مدے معون کہ من مرعد کو رو کے 1. 2009 1 21507-10 AE-EDO(M) PTC Apptt is is within اورنیات خلی ۔ سی ۔ دیات داری اور ناما عبرای سے رہی ڈلولی مرتام دنت کی اربی بے سن عرفانی نے معمالی نتای ہے۔ 2016

9 by the is a crossof of a circle in det in العلى مالاه سرار الله ولات كالراف ولات والزو والمولتان. مداد ال سالک ۔ بدون ۔ میکنوئی منی رستی مانسی ر نامائز مرے کے حقرق عيد سيفسوندوكالسراك. كالسر قرادوا والد اور من ميس واردا عالم مرس کردس مدرس مدرس کام اورد ہے . حاری موسے Es un new wall water and and مدے۔ دسے منے دیرے اور عمر انساعی دومی ریاسے مرس حمران ار مدا ایم توهم دا هاد کے کہ وہ مایسہ کواپنی ملاقت کی شوہ مایسہ المعاني سي سكر عارم كرديك . الديديس سنواه كى ا دراد مس رصد رندرے در رکاوٹ سالے کرنے سے مازیس مجن معمر روسف و عرعاعهم معدورهم سرم اللت المسمن كورك من مالات مندم للون الاسار الماعت عدالات nes 200/ de idra The TED mes 15/ de Ma " 200/ che cover Court Basel 15/2 che co de l'inserces volumes نىڭ ئارد د درسال ئىسىك كىنى 1 200

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15-12-01 je - ve plea Jour 0,063 45 - p 3137 (4 Com 2 3) Concision 13. = 6 g cin y co = ila , fino ; s = wine 11:16 3 2 in color of con me in by 3 / 50 - N المان استرمام کردوی کمیر فری کمیر فروی Mills with a six enter 1000 par 1 300 5 04/12/13 . 2010 42.4 Senier Govt: pleader Banner t. Registration No. 1095 04/12/13 2. Onto of Presentation of " 1:3-19 4.3-14 company of the 4 thory is contaction of Com. 4.3.19-

ا کولین و اس از بی بی بنا ایجالین و ایسان و ای د طوی استقراریم عرب در فورست جانب مردیم زیمی یا می می در می ور مورد ما بن مرمن به مرمس ما بان مرم فررام لنفينال يوميل بج factual a Controvercey Simt ish or NCO) word of 2 0119 Cofficiels silve - Epicosi -> E JULI Introctors wigos Se len of the Agents aufleg 8,16 2 4.3.15 123,01.2019 Manuel filipion of

ORDER SHEET

Case Title

No .and date

Order of the Proceedings with signature of judge or Magistrate and that of parties or counsel where necessary.

Order--25 23-01-2014

Presence as before. Arguments heard.

My this order will dispose of an application for rejection plaint, filed by defendants under order-7 rule-11 C.P.C with the assertion that the plaint in hand does not disclose a cause of action because the appointment order of the plaintiff is fake and factious and having no record. That the claim of plaintiff regarding release of salary is coming in terms and condition of service, therefore this court being civil court has got no jurisdiction to entertain the case in hand. That plaintiff has got no cause of action. Prayed that the plaint in hand be rejected.

The application was contested by plaintiff through written reply.

Brief facts of the case are such that plaintiff brought the present suit for declaration cum perpetual injunction to the effect that plaintiff has been appointed on the post of PST at government girls primary school Umar shah District, Bannu vide appointment order No. 20867-70-E.DO-A.E-1 PRY(F) dated 23-10-2009. That plaintiff assumed the charged of the said post on 24-10-2009 and performing her duty quit efficiently, but defendants have not released the salary of plaintiff since her appointment, which is against the law, facts and ineffective upon the right of plaintiff. That defendants be directed to release the salary of plaintiff.

Perusal of record reveals that salary/pay of a government servant is coming within the terms and conditions of service. Plaintiff has annexed her appointment order dated 23-10-2009 of PST, wherein clause-I and 10 prescribed the salary/pay of the plaintiff. Since the main assertion of the plaintiff is the release of salary/pay, therefore both the learned counsels were directed to confine their arguments to jurisdiction of the civil court.

Learned Government pleader argued that the salary/pay is the terms and conditions of the service, therefore civil court has got no jurisdiction. Learned counsel for the plaintiff conceded the said facts, but argued that instead of application under order-7 rule-10 C.P.C, defendants have filed the instant application for rejection of plaint under order-7 rule-11 C.P.C, which is not maintainable. Prayed that the instant application be dismissed.

In the light of arguments of both the learned counsels, it is held that though civil court has got the jurisdiction to try all suits of a civil nature unless, their jurisdiction is either expressly or impliedly barred. The claim/suit of the

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plaintiff regarding release of salary is a service matter and the provision of Article-212 of the constitution of Islamic Republic of Pakistan-1973 barred the jurisdiction of civil-court. The better course opens for the plaintiff is to approach the service tribunal or file a writ petition.

Thus without discussing the remaining plea / objections of the defendants in the instant application, it is held that this court being civil court has got no jurisdiction to entertain the present lis owing to barred contained in Article-212 of the constitution of Islamic Republic of Pakistan. Therefore, the application in hand stands dismissed and the plaint in hand is hereby returned to the plaintiff under Order-7 Rule 10 C.P.C with direction to approach the proper forum for his redressel. Original plaint along with Wakalat-Nama be returned to the plaintiff and the copy of the same be placed on file. No order as to cost. File be consigned to record room after necessary completion & compilation.

Announced: 23-01-2014

Civil Judge/JM-X, Bannu

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VAKALAT NAMA

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Advocate

TAIMUR ALIKHAN Advocate

M. ASIF YOUSAFZAI

Advocate High Court, Peshawar.

OFFICE:

Room No.1, Upper Floor, Islamia Club Building, Khyber Bazar Peshawar. Ph.091-2211391-0333-9103240 Before the KPK Service Tribunal Peshawar.

Shahnaz Bibi

-vs - Edu: Depti:

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Dt: 21.5-2014.

Comed for appellant. Jan Jai. ra. Aert Yousetai

Before othe KPK Service Tribunal Perhawan.

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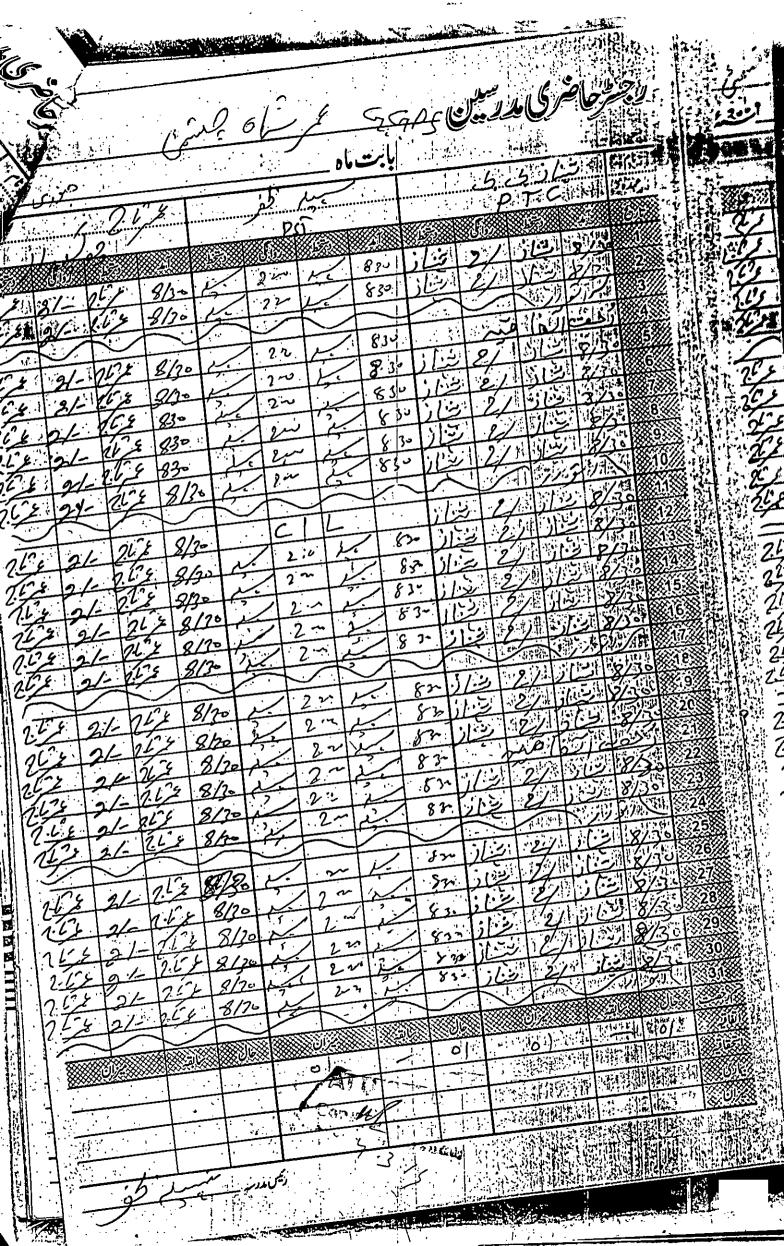
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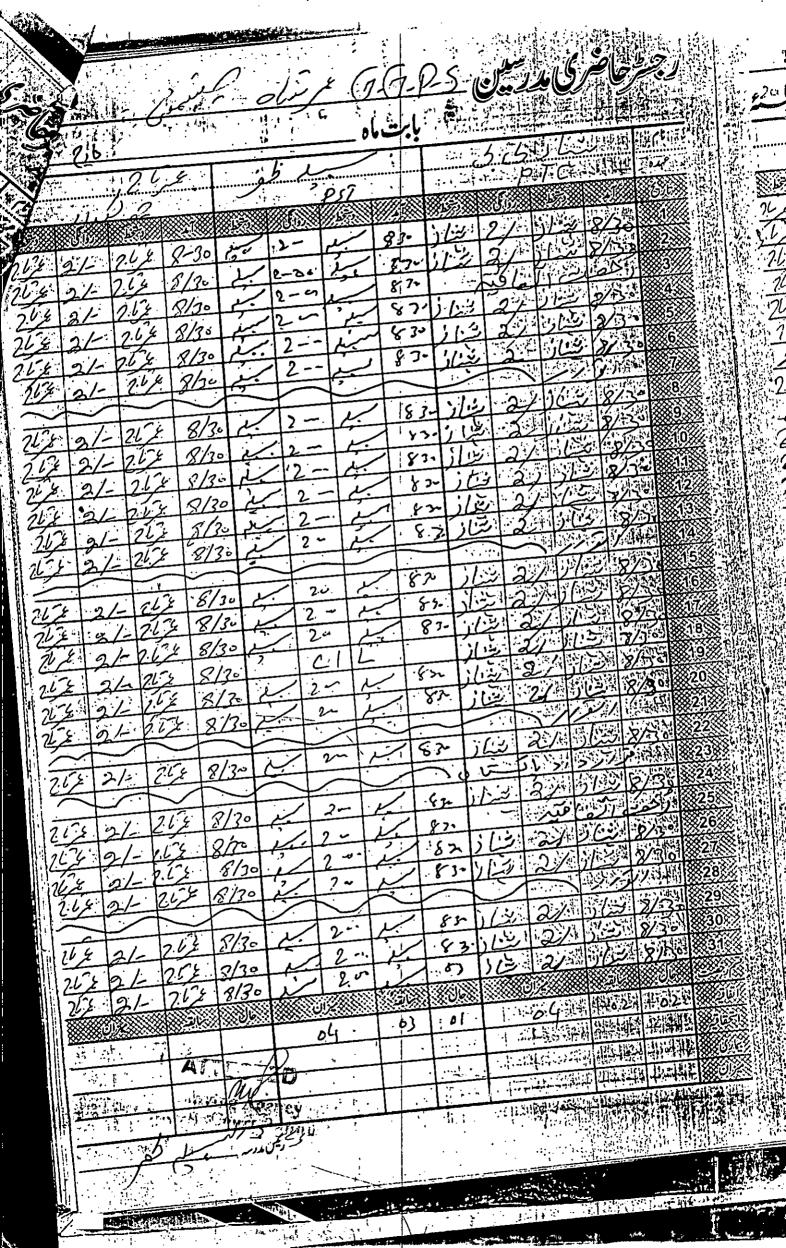
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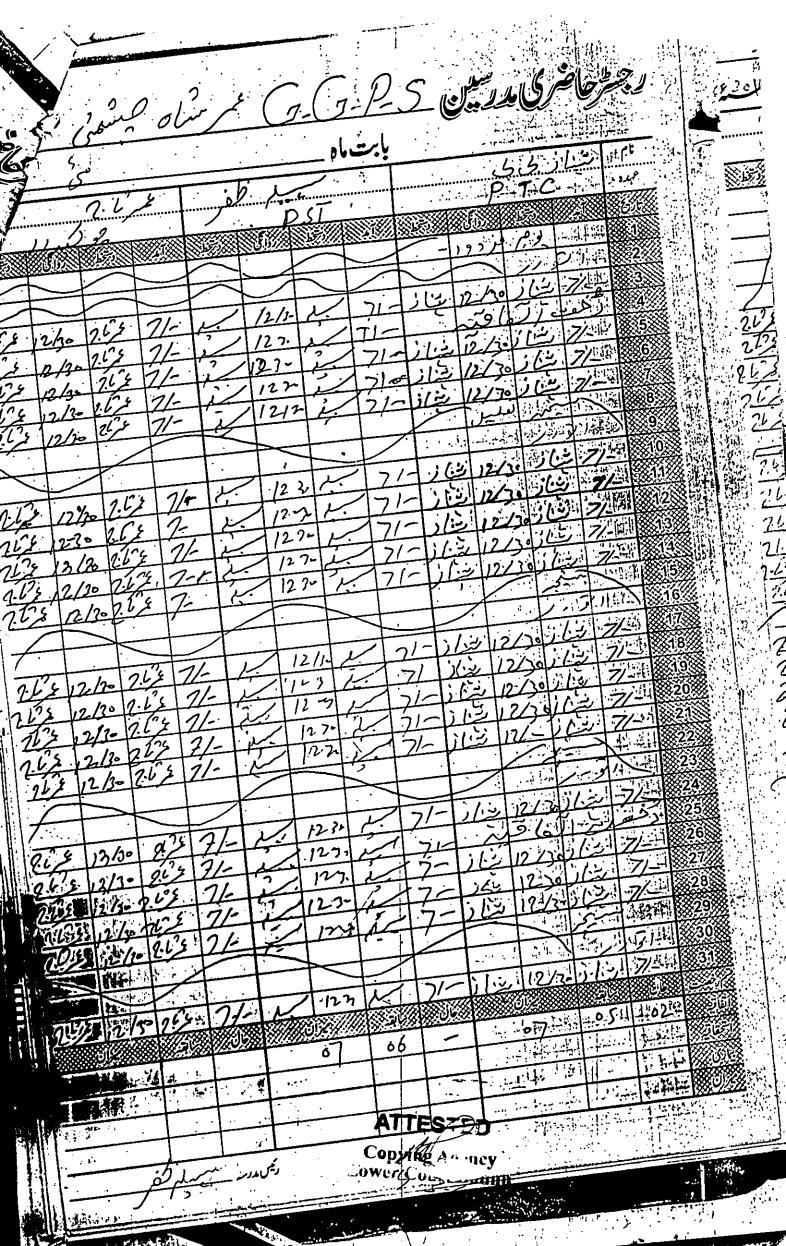
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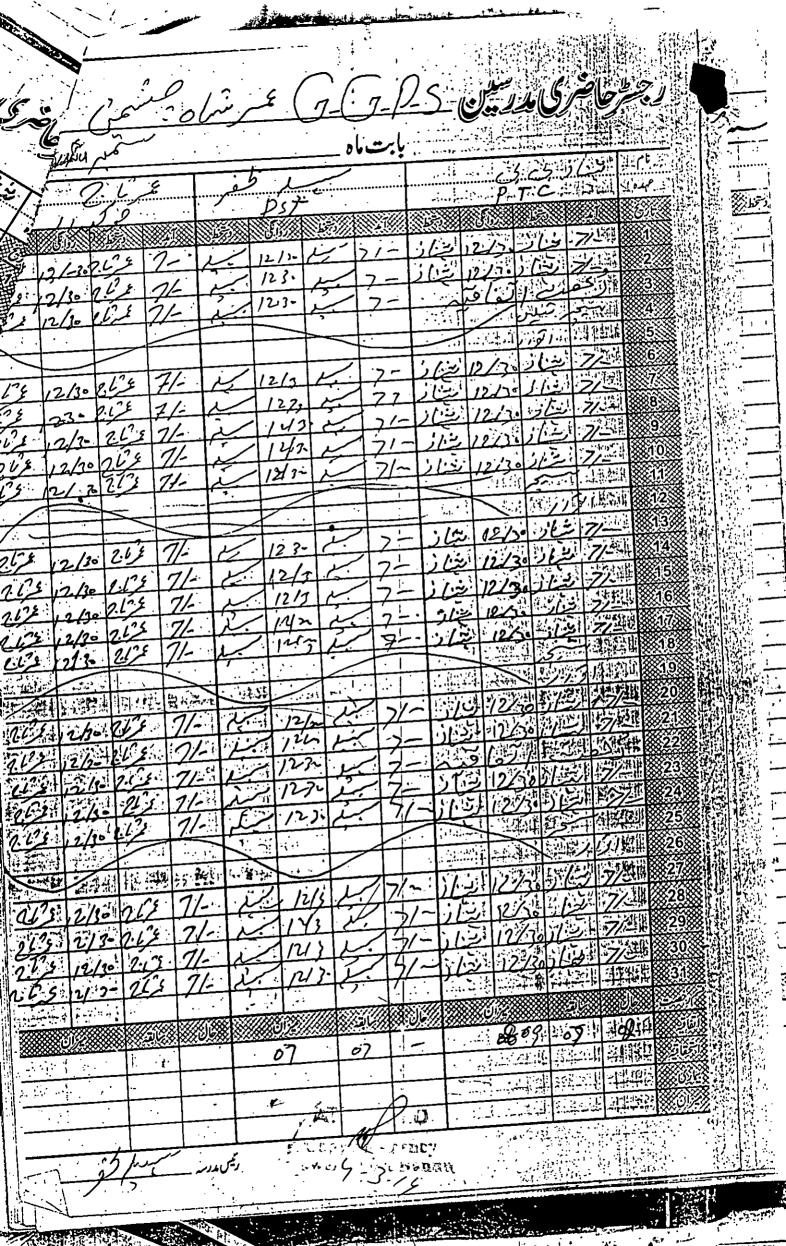
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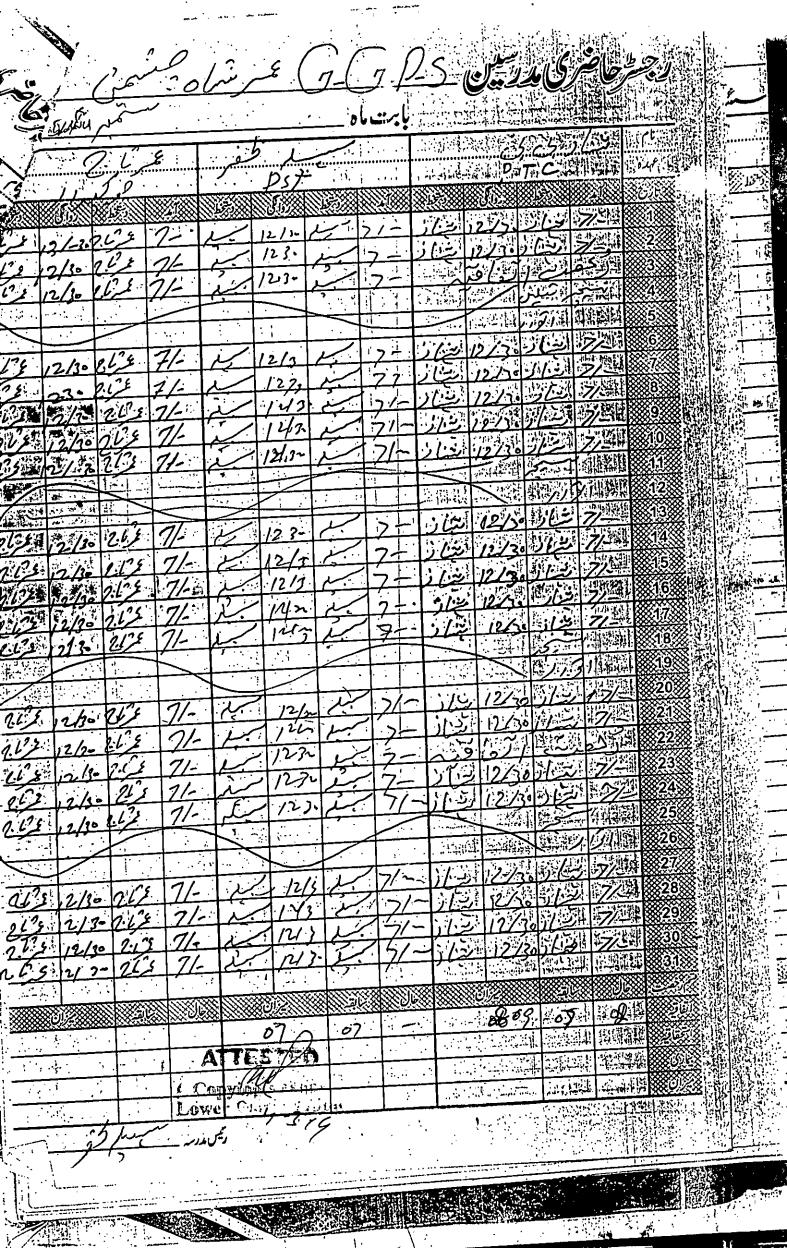
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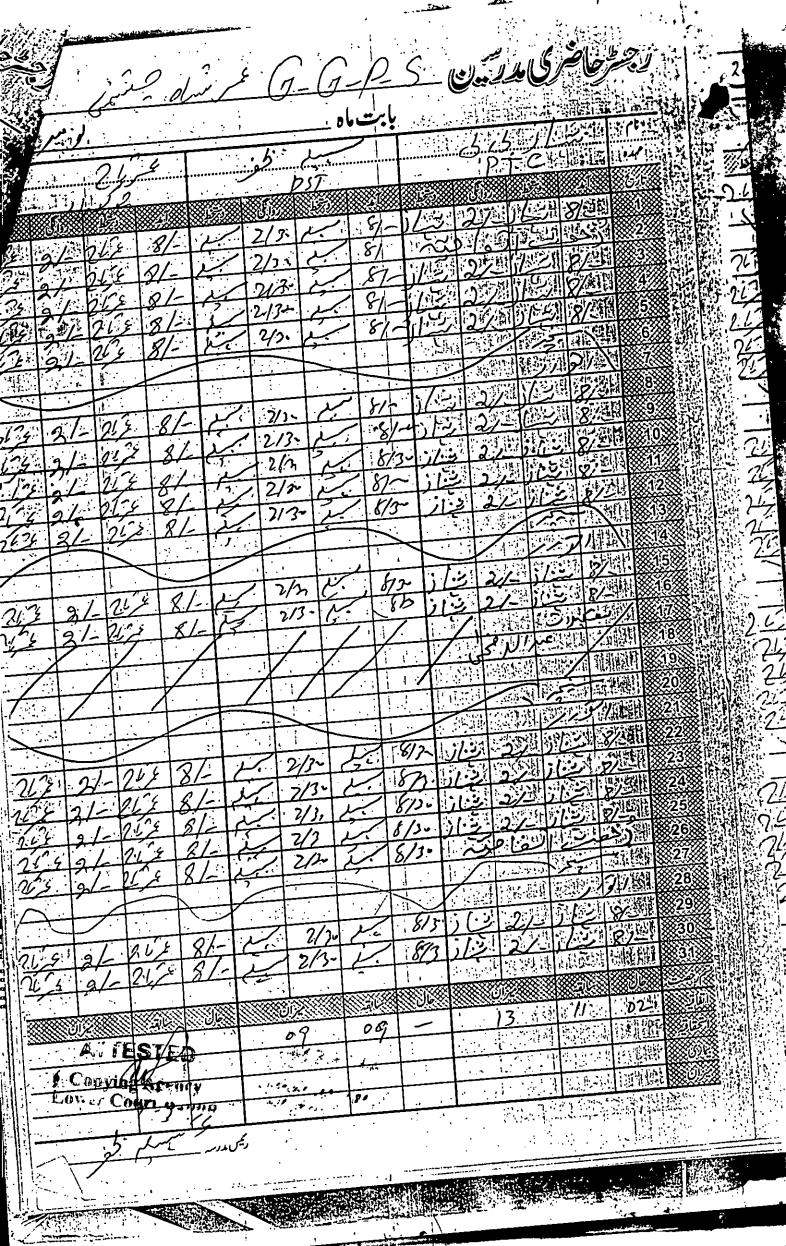
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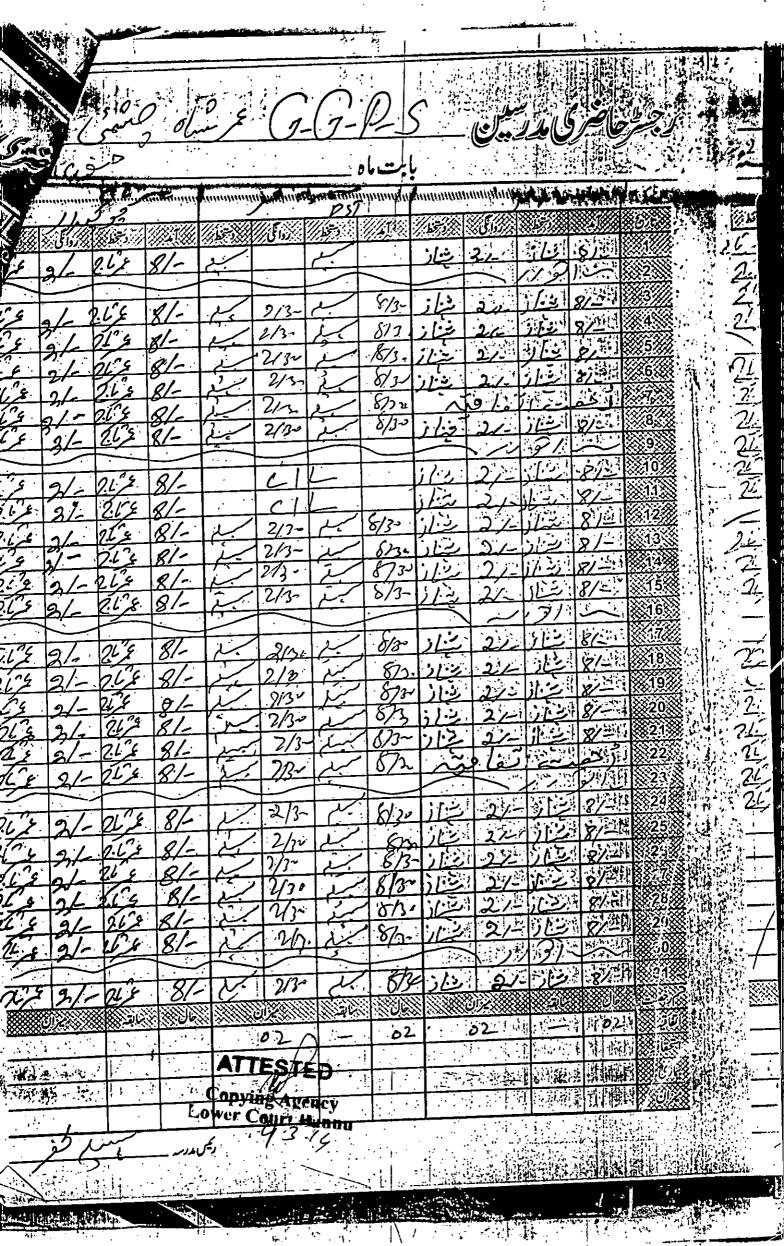
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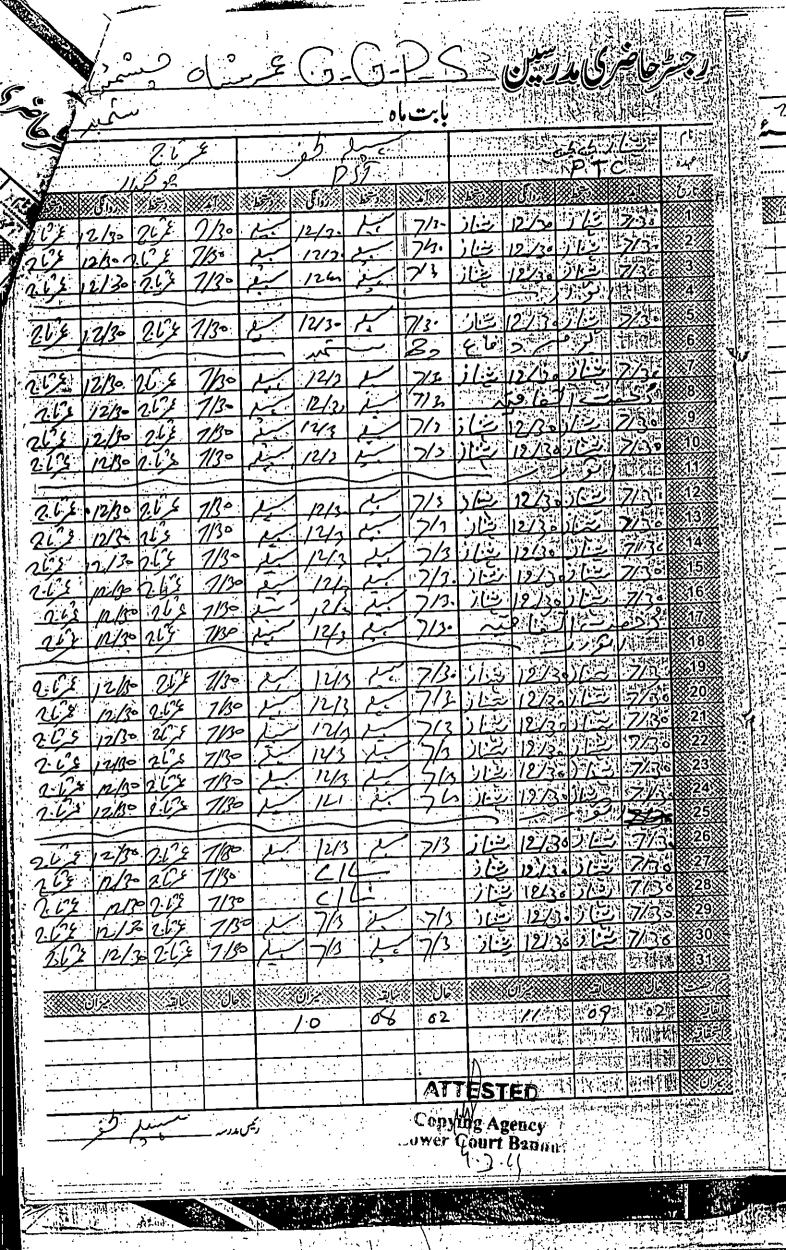
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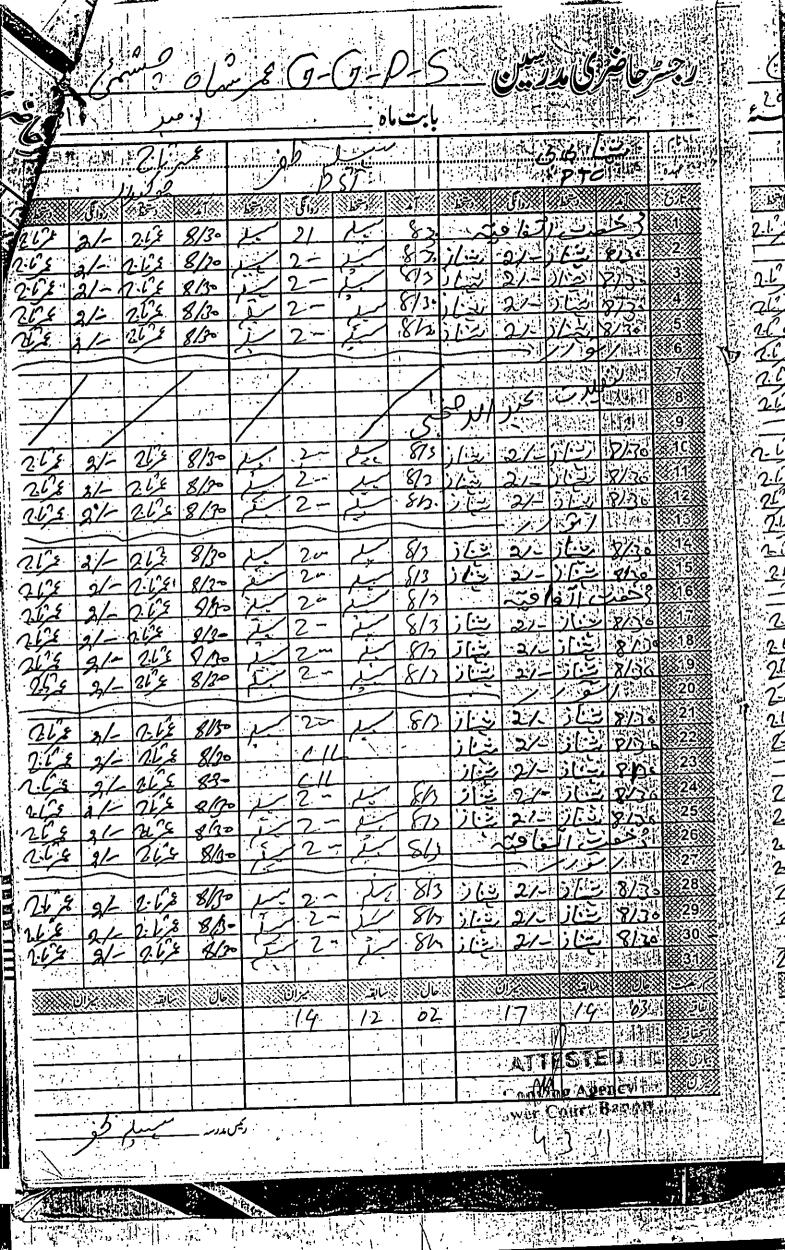
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- (a) Duty on embossing on anna receipt and cheque stamps.
- (b) Duty "On documents voluntarily brought" for adjudication (Section 31, Act II of 1899).
- (c) Duty on unstamped or insufficiently stamped documents levied under Chapter IV of Act II of 1899.
- (d) Other Items.

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 540/2014

Mst. Shahnaz...... Appellant
Govt. of Khyber Pakhtunkhwa Respondent

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS:

Respectfully Sheweth!

Preliminary objections,

- 1. That the appellant has got no cause of action and locus standi.
- 2. That the service appeal is bad for non-joinder and mis-joinder of the necessary parties.
- 3. That the service is not maintainable in its present form as no department has ever been filed.
- 4. That the service appeal is also suffering from legal defects.
- 5. That the appellant has claimed her appointment order in December 2009 while she files department appeal in 2013 which shows clear malafide intentions on her part.
- 6. That the appellant appointment order is totally faked and having no record with the respondents.
- 7. That the service appeal of the appellant has become time barred.

FACTS

- 1. Incorrect, the respondents have not made any appointment orders in 2009 of the appellant, hence respondent disown her appointment orders. The attendance is fictitious and fabricated and the same has not been signed/ countersigned by ADO (Circle), Dy: D.O and DEO (F) Bannu. The respondents conducted a fact finding inquiry in which it is proved that no record with respect to the appellant appointment is available and the appointment orders are totally bogus. (Copy of the report is Annexed-A).
- 2. Incorrect as explained in above para.
- 3. Incorrect. Since the appellant has not been appointment by the respondents, so how can her pay be released?
- 4. Incorrect. No department appeal has been filed by her.
- 5. Incorrect. She has no right to get salary / allowances.

Grounds

- A. Incorrect. The appellant is not entitled for a relief on the basis of bogus order. No appointment order of female candidates have been made with effect from 2007 till 22 April 2012
- B. Incorrect as per para No. 2.
- C. Incorrect. As explained in above paras.
- D. Incorrect. As explained in above paras.
- E. Incorrect. Respondent has treated the appellant in accordance with the law and rules. She is not entitled for any relief.

very graciously be dismissed by this Honorable Tribunal.

It is therefore, very humbly prayed that the service appeal of the appellant may

District Education Officer (F) Bannu

Director E&SE Peshawar

Secretary L&SE Peshawar.

Muex. A

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) BANNU

Subject:

Fact Finding inquiry report/investigation in service appeals titled Basreen Bibi, Samreena Bibi, Sohaila Zafar, Shehnaz Begum, Fehmida, Farhad Begum, Saira Bahader.

It is submitted that the above titled service appeals are pending adjudication before the honourable service tribunal Peshawar. That all these service appeals of the appellants were thoroughly investigated/checked by this office but were found bogus, fake and having no record at all. The Endst: Nos present on their appointment orders are fake as well as record less.

Again, That this office has never issued single appointment orders except of court orders. The appointment orders claimed by the appellants are highly fabricated and record less. That the appellants try to enter in govt. Job with fraudulent means/sources. This department highly repudiates their appointment orders. That the dates/years in which they claim their appointment orders, it is pertinent to be mentioned here that this office has never made such orders in respect of female candidates, in the period/years which they claim.

Member

irman ation Officer Femal Bannu

Asstt: Distt: Office (F) Primary Banni

Copy to:

- 1. Registrar Peshawar High Court Peshawar Bench Bannu.
- Registrar KPK Service Tribunal Peshawar. 2.
- 3. Senior Govt. Pleader KPK Tribunal Peshawar.
- 4. Senior Govt. Pleader District Court Bannu.

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 540/2014

Mst. Shah	naz	(Appellant)
	Versus	•
Govt. of K	hyber Pakhtunkhwa	(Respondents)
· -	REJOINDER ON BEHALF OF AP	PELLANT
RESPECT	FULLY SHEWETH:	
<u>Prelimina</u>	ary Objections:	
(1-7)	All objections raised by the incorrect and baseless. Rather t estopped to raise any objection conduct.	he respondents are
FACTS:		
1	Incorrect. While Para-1 of the Moreover, the appointment ord proper recommendations of coappellant took over charge of performing her duties.	ler was passed after ommittee, therefore
2	Incorrect. While Para-2 of the a	appeal is correct.
. 3	Not replied accordingly to tage appeal. Moreover Para-3 of the	
4	Incorrect. While Para-4 of the Moreover, the appellant has appeal, which is attached as A appeal.	filed departmental
5	Not replied accordingly to tagging appeal. Moreover Para-5 of the	_

GROUNDS:

- A) Incorrect. While Para-A of the appeal is correct. The appointment order was passed after proper recommendations of committee, therefore appellant took over charge of the post and start performing her duties. Therefore, the appellant is fully entitled for monthly salaries.
- B) Incorrect. While Para-B of the appeal is correct.
- C) Incorrect. While Para-C of the appeal is correct. Moreover, as explained In Para-A of the rejoinder.
- D) Incorrect. While Para-D of the appeal is correct.
- E) Incorrect. While Para-E of the appeal is correct.

 Moreover, the appellant has not been treated according to law.
- F) Legal.

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

APPELLANT

Shehnaz BiBi

Through:

(M. ASIF YOUSAFZAI) ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.

DEPONENT

FORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 948/2013

Date of institution ... 31.05.2013

Date of judgment

... 08.11.2016

Basreen Bibi D/O Raj Ali Khan, PST Teacher GGPS Kotka Mira Jan Dandi Wazir, Bannu.

(Appellant)

VERSUS

1. District Education Officer(Femal)Primary & Secondary Bannu. (Ex-DO E&SE Bannu)

- 2. Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3. Secretary, Elementary and Secondary Education Govt: of Khyber Pakhtunkhwa, Peshawar.

(Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, FOR THE RELEASE OF PAY W.E.F 31.12.2009 TILL DATE WITH ARREARS OF ALLOWANCES ETC FOR WHICH THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR, DESPITE THE LAPSE OF STATUTORY PERIOD.

Mr. Umer Zad Shah Bukhari, Advocate.

Mr. Kabir Ullah Khattak, Assistant Advocate General

For appellant. For respondents.

MR. MUHAMAMD AAMIR NAZIR

MR. PIR BAKHSH SHAH

MEMBER (JUDICIAL) MEMBER(JUDICIAL)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: , Basreen Bibi D/o Raj Ali Khan, hereinafter referred to as appellant, through the instant appeal under section-4 of Khyber Pakhtun diwa service Tribunal Act 1974 has prayed for release of her salary w.e.f 31.12.2009 till date alongwith arrears for which the appellant had filed departmental appeal but the same was not responded within the statutory period.

- 2. Brief facts of the case giving rise to the instant appeal are that the appellant joined the respondent-department as Primary School Teacher on 31.12.2009 and since then she is performing her duties with honesty and full devotion. That despite the fact that since her appointment, the appellant is regularly performing her duties, yet she has not received her monthly salaries alongwith connected allowances till date. That the appellant time and again approached respondents to release her monthly salary but of no avail. That the appellant even approached to the court of Senior Civil Judge, Bannu for that purpose on 22.3.2013 but her plaint was returned vide order dated 05.12.2012. That the appellant filed departmental appeal on 15.02.2013 which was not responded within the statutory period, hence the instant appeal.
- 3. Learned counsel for the appellant argued before the court that the appellant was appointed as Primary School Teacher vide appointment order dated 31.12.2009 and since then she is regularly performing her duties. That despite the fact that she is performing her duties, yet no salary has so far been paid to the appellant. That the respondents were time and again approached by the appellant for release of her monthly salary but of no avail. That the appellant finally approached to the court of Senior Civil Judge, Bannu but her plaint was returned by the court vide order dated 05.12.2012 wherein it was held that as the appellant is a civil servant, therefore, this court has got not jurisdiction. That since the appellant was regular appointed as Primary School Teacher in the year 2009 and till then she is performing her duties, therefore, by acceptance the instant appeal the respondent be directed to release her salaries and related allowances.
- 4. The learned Assistant A.G, while rebutting the arguments advanced by the learned counsel for the appellant, argued before the Tribunal that the appellant is not an employee of the respondent-department. That the impugned appointment order is fake and factitious. That a fact finding enquiry was conducted wherein it was held that the appointment order of the

appellant is fabricated one and there is no record of her appointment order with the responde department. That the appellant committed fraud, therefore the instant appeal may be dismiss with cost.

- 5. We have heard arguments of learned counsel for the appellant and learned Assist: A.G for the respondents and have gone through the record available on file.
- Perusal of the case file reveals that the appellant claim be appointed as Primary Scholar Teacher vide impugned order dated 31.12.2009 bearing endst: No.23000-5. The appella further claim that since she has regularly been appointed as PST Teacher vide order referr above, therefore, respondents be directed to release her monthly salaries as she has be performing duties as PST since her appointment. The respondents on the other hand denied t appointment of the appellant as PST vide impugned order dated 31.12.2009 and in this respet they had conducted a fact finding enquiry. The fact finding enquiry available on file reveat that respondents have never issued any appointed order to the appellant and the one which we produce by the appellant is fabricated, having no record. It was further held in the fact finding enquiry that the date/year in which the appellant claim her appointment, the respondents have never made such order on the above date and year.
- 7. The learned counsel for the appellant in his arguments claim that since the Civil Couvide order dated 05.12.2012 returned the plaint to the appellant on the pretext that she is civil servant, therefore the appellant is prima-facie a civil servant as held by the Civil Court and the respondents cannot deny her appointment order as PST. This arguments advanced by the learned counsel for the appellant carry no weight for the reason that the appellant in her plaing claim to have been appointed as PST, therefore the learned Civil Court without hearing the respondents, vide order dated 05.12.2012 returned the plaint to the appellant under Order Rule-10-CPC stating therein that the perusal of the plaint shows that the appellant/plaintiff civil servant and that this court has got no jurisdiction into the matter in hand. The civil countain never declared the appellant as civil servant on merits. Hence, in the above state

circumstances, we are of the considered view that the impugned appointment order of the appellant is factitious and fabricated having no record with the respondent-department, therefore, the appeal in hand is dismissed with cost. File be consigned to the record.

8. This judgment will also dispose of other connected Appeal bearing No. 960/2013 by Samreena Bibi, involving common question of law, in the same manner.

ANNOUNCED 08.11.2016

(MUHAMMAD AAMIR NAZIR) MEMBER

(PIR BAKHSH SHAH) MEMBER