

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 455/2013

Date of institution ... 19.02.2013

Date of judgment ... 09.01.2017

Muhammad Amin S/O Muhammad Nawaz
R/O Nawar Khel, Lakki Marwat, Ex-Chowkidar
Govt. Postgraduate College, Lakki Marwat.

... (Appellant)

VERSUS

1. Principal, Govt. Postgraduate College, Lakki Marwat.
2. Director, Higher Education Department, KPK, Peshawar.
3. Secretary, Govt. of KPK, Higher Education Department, Peshawar.

... (Respondents)

APPEAL AGAINST OFFICE ORDER NO. 1134-37/A-3/TER, DATED
02.11.2012 OF RESPONDENT NO. 1 WHEREBY SERVICES OF
APPELLANT WERE TERMINATED WITH IMMEDIATE EFFECT.

Mr. Saadullah Khan, Marwat, Advocate.

.. For appellant.

Mr. Adeel Butt, Additional Advocate General,

.. For respondents.

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

MR. MUHAMMAD AAMIR NAZIR

.. MEMBER (JUDICIAL)

JUDGMENT

AHMAD HASSAN, MEMBER: The appellant Muhammad Amin s/o of Muhammad Nawaz, filed the instant appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against impugned order No. 1134/37/A-3/TER dated 02.11.2012 where-under services of the appellant were terminated. The appellant preferred departmental representation on 16.11.2012 which failed to evoke any response from respondent No. 2 within the stipulated period, hence, the instant service appeal.

2. Brief facts giving rise to the above appeal are that the appellant was appointed as Chowkidar in Govt. Post Graduate College Lakki Marwat on 03.12.2008. After promulgation

of Khyber Pakhtunkhwa Employees (Regularization of Services) Act 2009 his services were regularized.

3. Mr. Najeebullah filed civil suit against the appellant in the court of Senior Civil Judge Lakki Marwat for his appointment against the post occupied by the appellant against quota reserved for retired Govt. Servants. The suit was decreed in-favour of Mr. Najeebullah on 11.11.2010. The appellant and the department filed appeals before District & Sessions Judge, Lakki Marwat to set-aside the above judgment. The appeal was partially accepted by directing the department to re-advertise the post. The appellant and Mr. Najeebullah filed revision petitions before the Hon'ble Peshawar High Court Peshawar which were dismissed on 15.10.2012. As a result of judgment of Hon'ble Peshawar High Court Peshawar, services of the appellant were terminated w.e.f 02.11.2012.

4. The learned counsel for the appellant argued before the court that his appointment was made after proper advertisement and approval of the Departmental Selection Committee. The services of the appellant were terminated without any notice and conducting proper inquiry. He prayed that order dated 02.11.2012 of respondent No. 1 may be set-aside and the appellant be restored to his original post with all consequential benefits.


5. On the contrary, learned Additional Advocate General argued before the court that services of the appellant were terminated as a result of judgment of Hon'ble Peshawar High Court Peshawar dated 15.10.2012. He further contended that the appellant at the time of appointment also produced bogus CNIC and as such was also overage to be considered for appointment. He submitted that the appeal being devoid of any merits be dismissed.

6. Arguments heard and record perused.

7. Having gone through the record of the case, it transpired that after appointment of the appellant, one Najeebullah challenged his appointment by filing civil suit before the court of learned Civil Judge, Lakki Marwat on the ground that being son of a Class-IV employee, he was entitled for appointment on the said post. After institution of the case, the appellant and respondent-department were summoned that after recording pro & contra evidence, suit filed by the said Najeebullah was decreed in his favour by cancelling the appointment of the appellant. Feeling aggrieved, the present appellant as well as department filed separate appeals

before learned Additional District Judge, Lakki Marwat. The learned appellate court after hearing the arguments of the parties, vide its consolidated judgment dated 05.04.2011, partially accepted the appeals by maintaining the illegalities in the appointment of the appellant with direction to the Education Department to re-advertise the said post within shortest possible time and also ensure proper homework regarding preparation working paper and waiting list of retired employees as per government policy and to reconsider the matter of respondent Najeebullah for the slot strictly in accordance with law and laid down procedure. The decision of the appellate court was further challenged by present appellant Muhammad Amin before Hon'ble Peshawar High Court, Bannu Bench through civil revision. The Hon'ble Peshawar High Court, Bannu Bench vide its decision dated 15.10.2012 upheld the decision of the appellate court and dismissed the revision petition filed by the appellant. As the matter in hand already been sifid before the court by way of recording pro & contra evidence and it had already been declared on the basis of evidence that appointment of the appellant was illegal, hence, we are constrained to dismiss the instant appeal having no substance. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.01.2017


(MUHAMMAD AAMIR NAZIR)
MEMBER


(AHMAD HASSAN)
MEMBER

BEFORE KPK SERVICE TRIBUNAL PESHAWARS.A No. 455 /2013

Muhammad Amin S/o Muhammad Nawaz,
R/o Nawar Khel, Lakki Marwat, Ex-Chowkidar
Govt. Postgraduate College, Lakki Marwat. Appellant

A.W.F. Peshawar
476
19-2-13

Versus

1. Principal, Govt. Postgraduate College,
Lakki Marwat.
2. Director, Higher Education
Department, KPK, Peshawar.
3. Secretary, Govt. of KPK, Higher
Education Department, Peshawar Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL AGAINST OFFICE ORDER
NO. 1134-37/A-3/TER, DATED
02.11.2012 OF R.NO.1 WHEREBY
SERVICES OF APPELLANT WERE
TERMINATED WITH IMMEDIATE
EFFECT.

19/2/13

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth;

1. That after advertising vacancies of Class-IV on 12.11.2008 and completing the due codal formalities, appellant was appointed as Chowkidar on the recommendation of Selection Committee vide order dated 03.12.2008. (Copies as annex "A & B")
2. That on 18.12.2008, Najib Ullah filed Civil Suit before the court of Senior Civil Judge, Lakki Marwat for his

455/2013

09.01.2017

Counsel for the appellant, M/S Muhammad Ayaz, Superintendent and Murad Ali, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and case file perused.

Vide our detailed judgment of today consisting of three pages placed on file. As the matter in hand had already been sifted before the court by way of recording pro & contra evidence. On the basis of evidence the appointment of the appellant was illegal, hence, we are constrained to dismiss the instant appeal having no substance. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED

09.01.2017


(MUHAMMAD AAMIR NAZIR)
MEMBER


(AHMAD HASSAAN)
MEMBER

455/2013

09.01.2017

Counsel for the appellant, M/S Muhammad Ayaz, Superintendent and Murad Ali, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and case file perused.

Vide our detailed judgment of today consisting of three pages placed on file. As the matter in hand ^{had} already been sifted before the court by way of recording pro & contra evidence ~~and it had already been declared~~ ^{on} the basis of evidence ^{that} ~~the~~ appointment of the appellant was illegal, hence, we are constrained to dismiss the instant appeal having no substance. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED

09.01.2017

(MUHAMMAD AAMIR NAZIR)
MEMBER

(AHMAD HASSAAN)
MEMBER

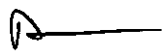
24.03.2016

Appellant in person, M/S Muhammad Ayaz, Supdt. and Muhammad Irfan, AD alongwith Assistant AG for respondents present. Para-wise comment submitted. The appeal is assigned to D.B for rejoinder and final hearing for 12.7.2016.


Chairman

12.07.2016

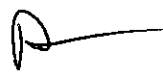
Appellant with counsel, M/S Murad Khan, Supdt: and Muhammad Ayaz Khan, Supdt: alongwith Mr. Muhammad Jan, GP for respondents present. Rejoinder submitted copy of which is handed over to the learned GP. To come up for arguments on 27.10.2016.


Member


Member

27.10.2016

Appellant with counsel and Mr. Muhammad Riaz, supdt alongwith Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. Adjournment granted. To come up for arguments on 09.01.2017.


(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

27.08.2015

Appellant Deposited
Security or Process Fee



Appellant with counsel present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that the appellant was appointed as Chowkidar on contract basis in Govt: Post Graduate College Lakki Marwat on 03.12.2008 subsequently he was regularized on the said post in pursuance of the NWFP Employees (Regularization of Services) Act, 2009. The case remained under litigation in the ^{Civil} court which was initiated by one Najeebullah who claimed the post falling to the share of retire son quota. The said litigation however ended with direction of the Court for re-advertisement of the post. The services of the appellant were terminated vide impugned order dated 02.11.2012 regarding which appellant preferred departmental appeal on 16.11.2012 which was not responded within statutory period, hence the present service appeal on 19.02.2013.

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 26.11.2015 before S.B.


Member

26.11.2015

Counsel for the appellant, Mr. Sharifullah, respondent No. 1 in person and Mr. Murad Khan, Supdt. for respondents No. 2 and 3 alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 24.3.2016 before S.B.


Chairman

DEA

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Date of institution ... 19.02.2013
Date of judgment 09.01.2017

Muhammad Amin S/O Muhammad Nawaz
R/O Nawar Khel, Lakki Marwat, Ex-Chowkidar
Govt. Postgraduate College, Lakki Marwat.

... (Appellant)

1. Principal, Govt. Postgraduate College, Lakki Marwat.
2. Director, Higher Education Department, KPK, Peshawar.
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... (Respondents)

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Mr. Saadullah Khan, Marwat, Advocate.
Mr. Adeel Butt, Additional Advocate General,

.. For appellant.
.. For respondents.

MR. AHMAD HASSAN
MR. MUHAMMAD AAMIR NAZIR

MEMBER (EXECUTIVE)
MEMBER (JUDICIAL)

JUDGMENT

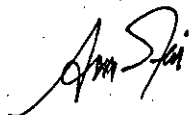
correct
رکنوں کے لئے
رکنوں کے لئے

AHMAD HASSAN, MEMBER: The appellant Muhammad Amin s/o of Muhammad Nawaz, filed the instant appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against impugned order No. 1134/37/A-3/TER dated 02.11.2012, where-under services of the appellant were terminated. The appellant preferred departmental representation on 16.11.2012 which failed to evoke any response from respondent No. 2 within the stipulated period, hence, the instant service appeal.


2. Brief facts giving rise to the above appeal are that the appellant was appointed as Chowkidar in Govt. Post Graduate College Lakki Marwat on 03.12.2008. After promulgation

APPELLANT
Hazrat ahmad

Through:


(M. ASIF YOUSAFZAI)

&


(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.


DEPONENT

of Khyber Pakhtunkhwa Employees (Regularization of Services) Act 2009 his services were regularized.

3. Mr. Najeebullah filed civil suit against the appellant in the court of Senior Civil Judge, Lakki Marwat for his appointment against the post occupied by the appellant against quota reserved for retired Govt. Servants. The suit was decreed in-favour of Mr. Najeebullah on 11.11.2010. The appellant and the department filed appeals before District & Sessions Judge, Lakki Marwat to set-aside the above judgment. The appeal was partially accepted by directing the department to re-advertise the post. The appellant and Mr. Najeebullah filed revision petitions before the Hon'ble Peshawar High Court Peshawar which were dismissed on 15.10.2012. As a result of judgment of Hon'ble Peshawar High Court Peshawar, services of the appellant were terminated w.e.f 02.11.2012.

4. The learned counsel for the appellant argued that his appointment was made after proper advertisement and approval of the Departmental Selection Committee. The services of the appellant were terminated without any notice and conducting proper inquiry. He prayed that order dated 02.11.2012 of respondent No. 1 may be set-aside and the appellant be restored to his original post with all consequential benefits.

5. On the contrary, learned Additional Advocate General argued that services of the appellant were terminated as a result of judgment of Hon'ble Peshawar High Court Peshawar dated 15.10.2012. He further contended that the appellant at the time of appointment also produced bogus CNIC and as such was also over age to be considered for appointment. He submitted that the appeal being devoid of any merits be dismissed.

6. Arguments heard and record perused.

7. Having gone through the record of the case, it transpired that initially appellant appointed as Chowkidar in the year 2008. Against which Mr. Najeebullah filed a civil suit for

*In the Court of Senior
Civil Judge, Lakki
Marwat,*

1 May 2014 11:06AM P2

FAX NO. : 0927211118

P KARAK

vii.	Mr. Arif Bilal (BPS-19)	ATC-III, Peshawar	ATC-I Swat	Vice No. X
viii.	Mr. Shahid ur Rehman (BPS-19)	District Public Prosecutor Battagram (OPS)	District Public Prosecutor Battagram	-----
ix.	Mr. Nisar Alam (BPS-18)	ATC-V, Kanju Swat at Buner	Public Prosecutor District Public Prosecutor Office Swat	Against the vacant post
x.	Mr. Anwar Khan (BPS-18)	ATC-I Swat	Public Prosecutor District Public Prosecutor Office Buner	Against the vacant post

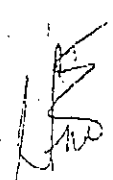
--SD--

Secretary to Govt of Khyber Pakhtunkhwa,
Home and Tribal Affairs Department

Endst: No. & Date even

Copy forwarded to:-

1. The Director General Prosecution Khyber Pakhtunkhwa.
2. The Accountant General Khyber Pakhtunkhwa Peshawar.
3. The Advocate General Khyber Pakhtunkhwa.
4. The Chairman Drug Court Peshawar.
5. The District Accounts Officer, Peshawar.
6. P.S to Secretary Home & Tribal Affairs Department Peshawar.
7. The Officers concerned.


Section Officer (Prosecution)

Ph:# 091-9210541

Fax:# 091-9210201

his appointment, being the son of retired Govt. Servant which was accepted ^{appellate} the appeal in the
^{and the} department filed appeal before District ^E/Sessions Judge which was partially accepted with the
^{to the respondents} directions ^{to} pre-advertize the post within the shortest possible time. The appellant and the
department filed civil revision petition in the Hon^{ble} Peshawar High Court Peshawar which
upheld the judgment of the Trial Court. ^{In view of the Judgment of Peshawar} The ~~decision of District & Sessions Judge in the~~
^{High Court services of the appellant were} ~~appointment of Mr. Muhammad Amin was declared as illegal and as such his services were~~
terminated on 02.11.2012. As judgments of the Trial Court ^H and High Court were based on facts
duly supported by evidence ^H hence, ^{as such} in the same have attained finality, hence there is hardly any
^{for} substance ⁱⁿ this Tribunal to intervene in the matter.

8. In view of foregoing, we are constrained to dismiss the instant appeal. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED

09.01.2017

(AHMAD HASSAN)
MEMBER

(MUHAMMAD AAMIR NAZIR)
MEMBER

from service order passed against petitioner does not stand to judicial scrutiny as it runs against spirit of law. Petition allowed. [Pp. 768 & 770] A.C.

Punjab Employees Efficiency, Discipline and Accountability Act, 2006

S. 5--Rem from service to contract employees--Stigmatic allegation--Inefficiency and misconduct--Show-cause notice--Procedure--regular inquiry--Ends of justice demand an inquiry--Denial of allegations on mere question--Not amount to affording reasonable opportunity of showing cause--Validity--Although, to dispense with regular inquiry is discretion left for authority to be gauged--Requirement of reasonable opportunity of showing cause against proposed action can only be satisfied if particulars of charges, charges, substance of evidence in support of charge and special punishment which would be called for after charge or charges established are communicated to civil servants who is given reasonable time and opportunity to show-cause--When petitioner response to show-cause notice had denied charges against him and considering nature of charges, all allegations required evidence under each head, then it had become incumbent upon authority to have ordered for regular inquiry--Departure from normal course does not reflect *bonafides* on part of authority, rather shows mechanical application of mind on the part, consequently petitioner appears to be justified in pleading that authority was in fact biased towards him. [Pp. 768 & 769] B, C & D.

Constitution of Pakistan, 1973

Art. 10-A--Fair trial--Right of access to justice--Fundamental right--It is by now well settled that right to fair trial means right to proper hearing by an unbiased competent forum--Right to fair trial has been associated with fundamental right of access to justice. [P. 769]

Mr. Muhammad Iqbal Mohal, Advocates for Petitioner.

Mr. Imtiaz Ahmad Kaifi, Additional Advocate General
State.

Date of hearing: 12.03.2015

ORDER

Briefly the facts of the case are that petitioner was appointed as Driver (BS-4) on contract basis for a period of one year, which can be extended subject to performance and conduct to be evaluated by competent authority. Subsequently a Show Cause Notice under

charge, of inefficiency as well as misconduct was issued and by dispensing with regular inquiry or affording him opportunity of hearing to him, the order dated 03.02.2008 was passed whereby his services were terminated.

2. Since the petitioner was admittedly a contract employee and furthermore the order terminating his service on the face of it contains stigmatic allegations, therefore, the instant writ petition is held to be entertainable by this Court. Reliance in this respect is placed on the case "*Rana Asif Nadeem versus Executive District Officer, Education, District Nankana and 2 others*" (208 PLC (CS) 715) and "*Rai Zaid Ahmad Kharal versus Water And Power Development Authority, through Chairman WAPDA and another*" (2008 PLC (CS) 1005). In the later judgment, this Court while assuming jurisdiction in clear terms held that "If the termination order would convey a message of any stigma, the employee could not be ousted from service without resorting to the procedure of Efficiency and Disciplinary Rules."

3. The learned counsel for the petitioner has argued that when the petitioner had specifically denied the allegations levelled against him in the Show Cause Notice, a regular inquiry into the matter was essential, wherein, the petitioner had to be supplied copies of evidence against him, he should have right to produce his defence and during inquiry if any witness appear against him, he had a right to cross-examine such witness. Reliance has been placed on the case reported in 1997 SCMR 1543. Adds that fair trial under Article 10(a) of the Constitution of Islamic Republic of Pakistan, 1973 is inalienable right of the person against whom any allegation is levelled; but in this case neither transparent procedure nor fair trial has been provided to the petitioner, therefore, impugned removal from service order is to be struck down.


4. On the other hand, learned Additional Advocate General opposed this petition on all corners by contending that charges were proved against the petitioner, therefore, the order removing him from service is fully justified.

5. I have heard the arguments of learned counsel for the parties and perused the entire available record with their assistance.

6. Without going through the factual aspect or controversy, the fact of the matter is that specific allegations of inefficiency and misconduct had been levelled against the petitioner. It is admitted position that on same charges a Show Cause Notice was issued to the petitioner, he submitted reply thereof but the authority, without

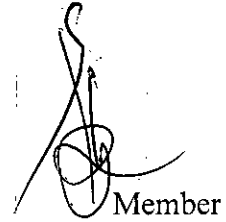
29.07.2015

Counsel for the appellant present. Learned counsel for the appellant has filed an application for revival/requisition of the appeal which was adjourned sine-die vide order dated 18.11.2013. Application allowed and the appeal is revived. Notice be issued to the respondents as well as AAG. To come up for preliminary hearing on 27.08.2015 before S.B.


Member

7.
18.11.2013
Appeal No. 455/2013.
Mr. Muhammad Amin,
Counsel for the appellant and Mr. Wajeh Ullah, Assistant to

SO(Lit) with Mr. Muhammad Jan, GP for the respondents present. Arguments on the maintainability heard. Counsel for the appellant contended that he filed CPLA against the order of the Honable High Court, Peshawar but will be fixed for hearing and requested for adjournment sine-die. Request is accepted, the appeal is adjourned sine-die till disposal of the case pending in the august Supreme Court of Pakistan. The appellant/respondents are at liberty to file application for revival after disposal by august Supreme Court of Pakistan. Till then the case file be kept in safe custody.


Member

24.5.2013

Assistant to Counsel for the appellant present. In

pursuance of the Khyber Pakhtunkhwa Service
Tribunals Amendment) Ordinance, 2013 (Khyber
Pakhtunkhwa ord. II of 2013), the case
is adjourned on note reader for proceedings as
before on 3.7.2013.


Reader

03.07.2013

Assistant to counsel for the appellant present. In pursuance
of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013,
(Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for
proceedings as before on 27.08.2013.


Reader

6. 27.08.2013

Appellant with counsel present and requested for
adjournment. Since the case of the appellant is pending before the
Hon'able Supreme Court of Pakistant. To come up for preliminary
hearing on ~~18.11~~ 2013.


Member

*Appeal No. 455/2013,
Mr. Muhammad Amir.*

4. 12.4.2013

Counsel for the appellant present and heard.

Contended that the appellant was appointed as Chowkidar in 2008. On 18.12.2008 one Najibullah filed a civil suit for his appointment, being son of a retired person, which was accepted. The appellant and department filed an appeal before the District Judge which was partially accepted with the directions to re-advertise the post within a shortest possible time. The appellant and department filed a civil revision petition in the Peshawar High Court which upheld the decision of District Judge and the appointment of Muhammad Hanif was declared as ill-gotten gain. In view of the judgment the appellant was terminated from service on 2.11.2012. The appellant preferred a departmental appeal on 16.11.2012 but with no response. Counsel for the appellant further contended that the services of the appellant have been terminated vide the impugned order, without observing the legal formalities which are mandatory under the law/rules. In this case, decision has already been given by the Civil judge, District Judge and High Court. Pre-admission notice be issued to SGP/respondents to assist the Tribunal on the point of maintainability of appeal on 24-5-2013.


Member.

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 455/2013

S No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19/02/2013	<p style="text-align: center;">The appeal of Mr. Muhammad Amin presented today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p> <p style="text-align: center;">This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>2-4-2013</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
2	25-2-2013	
3	2.4.2013	<p style="text-align: center;">None for the appellant Present.</p> <p style="text-align: center;">Case adjourned to 12.4.2013 for P.H.</p> <p style="text-align: right;"><i>[Signature]</i> Member.</p>

Note: At the time of
 Saadullah Khan
 Marwat
[Signature]

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A. No. 455/2013

Muhammad Amin

Versus

Principal & others



I N D E X

S.No	Documents	Annex	P.No.
1.	Memo of Appeal		1-4
2.	Advertisement, 12.11.2008	"A"	5
3.	Appointment order, 03.12.2008	"B"	6
4.	Plaint of Najib Ullah, 18.12.2008	"C"	7-8
5.	Written Statement of appellant, 28.01.2009	"D"	9-11
6.	Written Statement of Govt., 11.02.09	"E"	12-13
7.	Regularization Act, 24.10.2009	"F"	14-16
8.	Payment of Regular Monthly Salary	"G"	17-18
9.	Judgment, 11.11.2010	"H"	19-26
10.	Appeal to DJ by appellant, 15.11.2010	"I"	27-29
11.	Appeal to DJ by Govt., 06.12.2010	"J"	30-31
12.	Judgment of ADJ, 05.04.2011	"K"	32-36
13.	Revision to HC by appellant, 15.04.11	"L"	37-40
14.	Judgment of High Court, 15.10.2012	"M"	41-49
15.	Termination order, 02.11.2012	"N"	50
16.	Representation, 16.11.2012	"O"	51-52

Dated: 16.02.2013

Through

&

Appellant

Saad Ullah Khan Marwat

Arbab Saif Ul Kamal
Advocates.
21-A Nasir Mension,
Shoba Bazar, Peshawar.
Ph: 0300-5872676

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 455 /2013

Muhammad Amin S/o Muhammad Nawaz,
R/o Nawar Khel, Lakki Marwat, Ex-Chowkidar
Govt. Postgraduate College, Lakki Marwat. Appellant

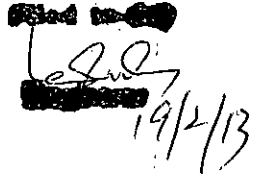
K.P.K. PESHAWAR
476
19-2-13

Versus

1. Principal, Govt. Postgraduate College,
Lakki Marwat.
2. Director, Higher Education
Department, KPK, Peshawar.
3. Secretary, Govt. of KPK, Higher
Education Department, Peshawar Respondents

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APPEAL AGAINST OFFICE ORDER
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SERVICES OF APPELLANT WERE
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19/2/13

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth;

1. That after advertising vacancies of Class-IV on 12.11.2008 and completing the due codal formalities, appellant was appointed as Chowkidar on the recommendation of Selection Committee vide order dated 03.12:2008. (Copies as annex "A & B")
2. That on 18.12.2008, Najib Ullah filed Civil Suit before the court of Senior Civil Judge, Lakki Marwat for his

- appointment, being son of a retired person on the post of appellant against the department and appellant which was replied by them, denying the claim of the said rival candidate. (Copies as annex "C, D & E")
3. That on 24.10.2009, the Govt. of KPK issued NWFP Employees (Regularization of Services) Act, 2009 wherein as per Section 3 of the said Act, "All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31st December, 2008 are till the commencement of this Act, shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post. (Copy as annex "F")
 4. That in pursuance of the aforesaid Act, Services of appellant were regularized by paying him monthly salaries as a regular Civil Servant. (Copy as annex "G")
 5. That evidence in pro and contra was recorded and after arguing the case, the Suit was decreed vide judgment dated 11.11.2010 in favor of rival claimant with direction to department to follow the rules and procedure, yet the same was already adhered to. (Copy as annex "H")
 6. That appellant, on 15.11.2010 and the department on 06.12.2010, filed appeals before the District Judge, Lakki Marwat for setting aside judgment and decree of the court below which was partially accepted by directing the department to re-advertise the said post forthwith vide judgment dated 05.04.2011. (Copies as annex "I, J & K")
 7. That appellant as well as the rival claimant namely Najib Ullah, filed Revision Petition before the Peshawar High Court, Peshawar Circuit Bench Bannu which were dismissed on 15.10.2012. (Copies as annex "L & M")
 8. That in pursuance of the aforesaid judgment, order dated 02.11.2012 was issued wherein Services of

appellant were terminated with immediate effect. (Copy as annex "N")

9. That on 16.11.2012, appellant submitted representation before R.No.2 which met dead response till date. (Copy as annex "O")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That after fulfilling of the due codal formalities, appellant was appointed as such on the recommendation of Departmental Selection Committee, being top scorer and his order of appointment was not amenable to challenge but the rival claimant, Najib Ullah Khan has no nexus with the appointment of appellant as such because he claimed the said post on account of retired son quota but the advertisement was not to this effect but was open.
- b. That the Courts did not apply judicial mind to the issue and the evidence/procedure of appointment was not appreciated in true perspective. The advertisement nowhere bore age limit.
- c. That order dated 02.11.2012, terminating appellant from service is of no legal effect as no notice was ever served upon appellant nor any inquiry was conducted in the subject matter.
- d. That order of termination was issued in haste manner because the department did not wait for challenging the judgment before the apex court of Pakistan, so the matter/order dated 02.11.2012 is premature.
- e. That order dated 02.11.2012 is based on malafide.


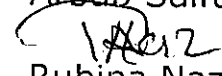
It is, therefore, most humbly prayed that on acceptance of appeal, order dated 02.11.2012 of R.No.1 be set aside and appellant be restored to his original post of Chowkidar with all back benefits, with such other relief

as may be deemed proper and just in circumstances of the case.

Dated. .02.2013

Through


Appellant
Saad Ullah Khan Marwat


Arbab Saiful Kamal
& 
Rubina Naz,
Advocates.

OFFICE OF THE PRINCIPAL GOVT. POST GRAD. COLLEGE LAHORE

ORDER:-
 (Consequent upon the recommendation of Selection Committee the following persons/candidates are hereby appointed as noted against each on contract basis in BPS-(12970-90-5670) with effect from their taking over charge.

S No	NAME / FATHER NAME	POSTED AS	REMARKS
01	Muhammad Amin S/O Muhammad Nawaz	Chowkidar	Against post
02	Javed Iqbal S/O Amir Gul	Lab. Aidi	do
03	Ghulam Abbas S/O Ghulam Hashir	Sweeper	do

TERMS & CONDITIONS

- The appointment is purely on contract basis as per the policy of the Provincial Govt.
- They should produce health & age certificates from the Medical Superintendent concerned.
- The appointment is on temporary basis and can be terminated without assigning any reason or notice.
- They should provide one month prior notice or forfeit one month's pay in lieu thereof if they wish to resign with immediate effect.
- No pensionary benefits what so ever will be allowed to them.
- They should be governed by such rules & policies issued by the Provincial Govt. from time to time.
- Charge reports should be submitted to all concerned.
- NO C.P. and contribution will be made.
- Their services will be liable to termination on one month's notice from either side. In case of resignation without any notice their one month's pay if any shall be forfeited to the Government.

(Prof. Aziz ur Rahman)
 Principal,
 GPGC, Lahore

Indst. No. 936-40 /A-3 Dated 1st Dec 2003 /12/2008

- Director Higher Education, N.W.F.P. Peshawar for information.
- Principal Govt Post Graduate College Bahawalpur for information.
- District Accounts Officer, Lahore.
- Class IV concerned.

Principal,
 GPGC, Lahore

Mushtaq
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18-12-58

لعدالت جناب سپر سول جج صاحب کی روت

17/15
N 4710
Mag. Sec. 38
18/12/58

محبت اللہ ولد محمد نواز قوم پٹیان کندہ محلہ باغبانہ کی روت

بنا

- (1) حکومت صوبہ سرحد ہڈا ایم سیکرٹری ایجوکیشن (2) ڈائریکٹر ایڈیوکیٹس پشاور
- (3) ڈپٹی ڈائریکٹر ایڈیوکیٹس پشاور (4) پرنسپل گورنمنٹ پوسٹ گریجویٹ کالج علی روت
- (5) ڈسٹرکٹ کوارڈینیشن سپر کی روت (6) ڈسٹرکٹ اگرونیٹ آفیسر کی روت
- (7) محمد امین ولد محمد نواز کندہ نواز جیل ضلع کی روت (8) انور سلیم خان پیر و سپر پوسٹ گریجویٹ کالج علی روت
- (9) عبدالغفر خان پیر و سپر پوسٹ گریجویٹ کالج علی روت
- (10) نادر خان پیر و سپر گورنمنٹ پوسٹ گریجویٹ کالج علی روت (11) سلیم خان صاحب

(1) دعویٰ ملنے ڈگری استغراقیہ بحق قدامی بر خذف قدامتہ بدین معنون کہ من قدامی
 معاً واللہ گورنمنٹ پوسٹ گریجویٹ کالج علی روت میں جسٹ جوئیدار تعینات تھا
 کے ریٹائرڈ ہونے کے بعد مذکورہ جوئیدار کی جگہ آسانی پر من قدامی معبرتی ہوئے
 کا تعداد ہوں کیوں قدامتہ بدین اور 8 تا 10 کے قدامتہ بدین کے ساتھ ساز باز کر کے
 اور من قدامتہ سے جوئیت جوئیدار تعیناتی کے احکامات جاری کیے ہیں جو
 سے اسر خذف قانون میں کیونکہ قدامتہ بدین اس پوسٹ پر معبرتی ہو گا اہل ہے
 اس لیے عملہ جاری ہاں تعبرتی قدامتہ بدین جسٹ جوئیدار پوسٹ گریجویٹ کالج علی روت
 کے قدامتہ کے حقوق پر قائم و غیر معبر ہے اور قابل معنوی ہے۔

(ب) دعویٰ ملنے ڈگری حکم امتناعی دوائی و تالییدی حق قدامی بر خذف قدامتہ بدین معنون
 کہ قدامتہ بدین کو منقہ فرمایا جائے کہ وہ قدامتہ بدین جو غیر قانونی طور پر معبرتی ہوا ہے اور
 تالییدی بدینہ کی قسم کی تنخواہ اور 17 سے باز رہیں۔ نیز حکم تالییدی نیا قدامتہ بدین
 کہ وہ گورنمنٹ پوسٹ گریجویٹ کالج علی روت میں جوئیدار کی آسانی پوسٹ پر تعینات
 کی غیر معبرتی کے قدامتہ بدین کے احکامات جاری کیوں۔ نتیجہ قدامتہ بدین کے ذریعہ جوئیت
 پیر آئندہ کیلئے معین قانونی احکامات تعینات پیر آئندہ سے باز رہیں۔ اذعان ہو۔ دلائل جاری

مانسٹ ڈپٹی کورٹ میں اختیار کیا کورٹ میں معافی ہے
 250/-

حساب عالی حسب ذیل عد میں ہے

پہ کہ من قدامی محلہ باغبانہ ضلع کی روت کا سکوتی اور نوازندہ نو جوان ہوں
 جبکہ قدامتہ بدین ناخواندہ ریٹائرڈ ملدزم ہے۔ اور دیگر قدامتہ بدین سرکاری افسران میں
 کہ من قدامی کا والد محمد نواز گورنمنٹ پوسٹ گریجویٹ کالج علی روت میں جسٹ جوئیدار
 تعینات تھا جو اپنے قدامتہ ملازمت پوری کر کے بعد 17-10-56 کو ریٹائرڈ ہوا۔ اہل ہیں بنا

17/15
21-1-59

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(3) یہ کہ مندرجہ ذیل کے والد محمد نواز نے دیشا نگر ہونے کے بعد جو کیدار خانہ بیلوٹر پوسٹ میں مقیم تھے
 (4) یہ کہ جوئلہ گورنمنٹ پوسٹ ٹرینسپورٹ عالم کالج میں جو کیدار کے آسامی ٹائیٹل کے تحت
 نے مذکورہ آسامی پر فہرستی ہونے کے لیے ہم سبیل عالم کالج کے ذریعے اشتہار ہو گا

آئینہ واروں سے درخواستیں طلب کی۔ نقل اشتہارات مندرجہ ذیل
 (5) یہ کہ ان اشتہارات کی بناء پر مندرجہ ذیل کے دو۔ آئینہ واروں کے کیدار کے آسامی پر فہرستی ہونے
 کیلئے درخواست دیکر ٹیکس و اینڈ ریورس میں عائنہ پورا اور منب سے زیادہ اور اہل امیدوار
 ہونے کے بناء پر عینت جو کیدار ہونے کا حقدار تھا اس کے ہم سبیل کے ذریعے بلائی ہو گی

کے مندرجہ ذیل
 (6) یہ کہ مندرجہ ذیل کے Reliance Employee کے ہونے کے بناء پر جو کیدار کے آسامی پر فہرستی ہونے
 کا حقدار ہونے اور فوائد اور فز جو اب ہونے کے بناء پر بھی اس کے اہل ہوں۔ جس کا
 مندرجہ ذیل کے مرتبہ میں شمولیت ہے اور درخواست بھی دے۔ سب سے غریب ہونے اور

سفر سے تم ہونے کے بناء پر مندرجہ ذیل کے فز جو اب ہونے کے بناء پر بھی اس کے اہل ہوں۔ جس کا
 (7) یہ کہ آفس کار پیری مرتبہ قدمائیم جو سرکاری اہلکارانہ ہیں کے اپنے اختیارات کا
 ناجائز استعمال کرنے ہونے کے بعد مندرجہ ذیل کے عالم کالج میں جو کیدار کے آسامی پر
 فہرستی کیلئے مورخہ 12 اکتوبر 1958 کو روزنامہ "شرق" میں اشتہار جاری کیا
 اور اس کے بعد فوائد ہونے کے بناء پر فہرستی کے بناء پر فہرستی ہو گا

(8) یہ کہ مندرجہ ذیل کے مندرجہ ذیل کے مندرجہ ذیل کے آسامی پر فہرستی ہونے کے بناء پر
 درخواست جو کیدار کے آسامی پر فہرستی کے بناء پر فہرستی ہونے کے بناء پر فہرستی ہونے کے بناء پر
 و حقدار تھا۔ سب سے غریب ہونے کے بناء پر فہرستی کے بناء پر فہرستی ہونے کے بناء پر
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(9) یہ کہ مندرجہ ذیل کے مندرجہ ذیل کے مندرجہ ذیل کے آسامی پر فہرستی ہونے کے بناء پر
 درخواست جو کیدار کے آسامی پر فہرستی کے بناء پر فہرستی ہونے کے بناء پر فہرستی ہونے کے بناء پر
 و حقدار تھا۔ سب سے غریب ہونے کے بناء پر فہرستی کے بناء پر فہرستی ہونے کے بناء پر
 سے قدمائیم کے بناء پر فہرستی کے بناء پر فہرستی ہونے کے بناء پر فہرستی ہونے کے بناء پر
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(10) یہ کہ مندرجہ ذیل کے مندرجہ ذیل کے مندرجہ ذیل کے آسامی پر فہرستی ہونے کے بناء پر
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 و حقدار تھا۔ سب سے غریب ہونے کے بناء پر فہرستی کے بناء پر فہرستی ہونے کے بناء پر
 سے قدمائیم کے بناء پر فہرستی کے بناء پر فہرستی ہونے کے بناء پر فہرستی ہونے کے بناء پر
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(11) یہ کہ مندرجہ ذیل کے مندرجہ ذیل کے مندرجہ ذیل کے آسامی پر فہرستی ہونے کے بناء پر
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بسم اللہ الرحمن الرحیم
 18/12/58

کے بناء پر فہرستی ہونے کے بناء پر فہرستی ہونے کے بناء پر فہرستی ہونے کے بناء پر
 درخواست جو کیدار کے آسامی پر فہرستی کے بناء پر فہرستی ہونے کے بناء پر فہرستی ہونے کے بناء پر
 و حقدار تھا۔ سب سے غریب ہونے کے بناء پر فہرستی کے بناء پر فہرستی ہونے کے بناء پر
 سے قدمائیم کے بناء پر فہرستی کے بناء پر فہرستی ہونے کے بناء پر فہرستی ہونے کے بناء پر
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تفہ نامہ میں لکھا ہے کہ مری کا خوردہ پرنا صوبہ
میں ہے۔ حکم مدعا علیہ بہ اسباب اسباب کی بار بار
پورے سے تکراروں کی نسبت اہل اُردو اور

۱۔ فقہ ۱۔ بار ہوت مری پر ہے
۲۔ فقہ ۲۔ اصل عدالت دربار کی ہے جو پورے کا پورے

کی بنیاد پر ہے اور جو حکومتیں ہیں وہاں ہے

۳۔ فقہ ۳۔ دربار ہے

۴۔ فقہ ۴۔ مری میں ہے کہ اس وقت دربار تمام اُردو

نے بیج مری میں ہے اور اس وقت میں ہے۔ جہاں سے مدعا علیہ کی ہے وہاں

۵۔ مری میں ہے اور زیادہ حوزہ تھا۔ یہیں وہ کہتا ہے

۶۔ مری میں ہے اور زیادہ حوزہ تھا۔ یہیں وہ کہتا ہے

۷۔ مری میں ہے اور زیادہ حوزہ تھا۔ یہیں وہ کہتا ہے

۸۔ مری میں ہے اور زیادہ حوزہ تھا۔ یہیں وہ کہتا ہے

۹۔ مری میں ہے اور زیادہ حوزہ تھا۔ یہیں وہ کہتا ہے

۱۰۔ مری میں ہے اور زیادہ حوزہ تھا۔ یہیں وہ کہتا ہے

۱۱۔ مری میں ہے اور زیادہ حوزہ تھا۔ یہیں وہ کہتا ہے

21-1-13

(3)

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و نہ من معاہدہ کی برقی قانونی موازنات کو برقرار رکھنے کے لئے درکار وہ کاموں کو جو معاہدہ کے تحت درکار ہے۔

۱۰۔ منٹا منڈی میں درکار وہ کاموں کو جو معاہدہ کے تحت درکار ہے۔

۱۱۔ منٹا منڈی میں درکار وہ کاموں کو جو معاہدہ کے تحت درکار ہے۔

۱۲۔ منٹا منڈی میں درکار وہ کاموں کو جو معاہدہ کے تحت درکار ہے۔

محمد رفیق مسعودی

Secretary

303

21-1-13

Attest
by

218

11-2-09

2018

عدالت فائز سکول جی ہاؤس - 7 - کئی روٹ

محبت اللہ بیگ سیکرٹری ایجوکیشن ویز

[Handwritten signature]

استقرار یہ حکم استماعی

حاصل ہونے والے دعویٰ ضمانت مینٹینینبل ڈیل ہے۔

عدالت تہذیبی

- (1) مدعی کو کوئی نیا دعویٰ حاصل نہیں ہے۔
- (2) دعویٰ مدعی ریزر معیار نہیں ہے۔
- (3) مدعی دعویٰ کرنے ESTOP ہے۔
- (4) موجودہ شکل میں دعویٰ مدعی - Maintainable نہیں ہے۔
- (5) دعویٰ مدعی کا Service Matter کے متعلق ہے۔ جس بابت عدالت آگیا کہ اختیار رکھتا ہے۔
- حاصل نہیں ہے بلکہ دعویٰ مدعی قابل اراج ہے۔
- (6) دعویٰ مدعی نگر کرنے کی غرض سے کیا گیا ہے اور یہ مدعی علیہم ازاں مدعی - Special compensatory Cost وصول کرنے کے ہوتے ہیں۔

عدالت واقفائی

- (1) فیروز فقہ 1-2-3 کا تعلق مدعی کی ذات سے ہے۔
- (2) فقرہ 4 آئینی کلاس فور اور آئینی کی حد تک درست ہے۔
- (3) فقرہ 5 کا تعلق مدعی سے ہے اللہ اختیار سے قبل درخواست دینا مدعی کے لئے کوئی فائدہ مند نہیں ہے۔ اللہ مذکورہ پوسٹ سفائی Merit اور Policy اور Sport کے مطابق کوئی کی گئی ہے۔
- (4) فقرہ 7 غلط ہے۔ کلاس فور آئینی (جو کلاس فور پوسٹ) کوئی فائدہ ہونا ضروری نہیں ہے۔
- Ex-Service - Merit قابل تہذیبی ہے۔
- فقرہ 3 غلط ہے۔ کوئی علی عدالت و سائنس نہیں ہوا بلکہ بلحاظ میڈرٹ عدالت

Stamp: 21-1-13

کے لئے ہے

(6) قوتہ 9 - عطا ہے مدعی کو کوئی حق حاصل نہیں ہے۔ اس لیے مدعی کسی بھی طور سے حکم استماعی پر ضلع ہیڈ کوارٹرز میں یا عدالت میں حاضر کرنے کا استماعی کا حقدار نہیں ہے

(7) قوتہ 10 - عطا ہے مدعی کو کوئی حق حاصل نہیں ہے

(8) قوتہ 11 - عطا ہے مدعی کو کوئی نئے دعوے کا حقدار نہیں ہے

(9) قوتہ 12 - عطا کی جانت عرض ہے کہ قوتہ 12 قانون ونگینس ہے

لفظ "قوتہ" کے معنی مدعی کو کوئی نئے دعوے کا حقدار نہیں ہے

تاریخ 11-02-09

حکومت صوبہ سرحد ہزارہ سیکرٹری ایجوکیشن ووز

مادریہان مدعا علیہ 10/5 وغیرہ ہزارہ
Nadrian

گورنمنٹ پبلسٹی
ٹریڈنگ آرڈرنگ ایڈوائس

گورنمنٹ ایڈوائسنگ ایجنسی

ماقرہ 10/5 بیان کے معنی
جواب دہی کے معنی ونگینس میں
درست ہے

RECEIVED

Secretary to
Magistrate & Sessions Judge
Lahore District

Attested
by

حکومت صوبہ سرحد ووز

مادریہان مدعا علیہ 10/5-1-21
Nadrian

EXTRAORDINARY

REGISTERED NO. P.III

GOVERNMENT

GAZETTE.

North-West Frontier Province

Published by Authority

PESHAWAR, THURSDAY, 24TH OCTOBER, 2009.

**PROVINCIAL ASSEMBLY SECRETARIAT
THE NORTH-WEST FRONTIER PROVINCE**

NOTIFICATION

Peshawar, dated the 24th October, 2009.

No. PA/NWFP/Bills/2009/38472. The North-West Frontier Province Employees (Regularization of Services) Bill, 2009 having been passed by the Provincial Assembly of North-West Frontier Province on 15th October, 2009 and assented to by the Governor of the North-West Frontier Province on 20th October, 2009 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

**THE NORTH-WEST FRONTIER PROVINCE
EMPLOYEES (REGULARIZATION OF SERVICES) ACT, 2009.**

(N.W.F.P. ACT NO. XVI of 2009)

(First published after having received the assent of the Governor of the North-West Frontier Province in the Gazette for the N.-W.F.P. (Extraordinary).

Dated the 24th October, 2009

AN

ACT

To provide for the regularization of the services of certain employees
Appointed on adhoc or contract basis.

Preamble.---WHEREAS it is expedient to provide for the regularization of the services of certain employees appointed on adhoc or contract basis, in the public interest, for the purposes hereinafter appearing:

It is hereby enacted as follows:-

1. Short title and commencement. ---(1) This Act may be called the North- West Frontier Province Employees (Regularization of Services) Act, 2009.

(2) It shall come into force at once and shall be deemed to have been taken effect at the promulgation of the Ordinance.

2. Definitions. (1) In this Act, unless the context otherwise requires:-

- (a) "Commission" means the North-West Frontier Province Public Service Commission.
- (aa) "Contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment.
- (b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift, but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies:
- (c) "Government" means the Government of the North-West Frontier Province:
- (d) "Government Department" means any department constituted under rule 3 of the North-West Frontier Province Government Rules of Business, 1985:
- (e) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants; and
- (f) "post" means a post under Government or in connection with the affairs of Government to be filled in on the recommendation of the commission.

(2) The expressions "adhoc appointment" and "civil servant" shall have the same meanings as respectively assigned to them in the North West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973).

3. Regularization of services of certain employees. – All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31st December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post:

4. Determination of seniority:-- (1) the employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, is pursuance of the recommendation of the Commission made before the commencement of this Ordinance, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

NWFP GOVERNMENT GAZETTE, EXTRAORDINARY, 24TH OCTOBER, 2009

(2) The seniority interest of the employees, whose service are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

4A. Overriding effect.--- Notwithstanding any thing to the contrary contained in any other law or rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect.

5. Repeal.--- The North-West Frontier Province Employees (Regularization of Services) Ordinance, 2009 (N.-W.F.P. Ordinance No.VII of 2009) is hereby repealed.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF
NORTH-WEST FRONTIER PROVINCE

AMANULLAH
SECRETARY,
Provincial Assembly of NWFP

Amrullah

by

1770 Adhoc Allowance 2010
1970 Adhoc Relief Allow 2

1,000.00
2,050.00
615.00

3604 Group Insurance
3640 Emp. Edu. Fund

7.00-
57.00-
15.00-

Lat/A Up/9

PAYMENTS
Branch Code: 250617

12,954.00
ABL LAKKI

DEDUCTIONS
Allied Bank Limited

734.00-
ABL LAKKI

NET PAY
LAKKI HARNAT

12,220.00 01.01.2012 31.01.2012
Acct. No: 3693-7

00405985 IMRAN UL HAQ
P A Y M E N T S

Prev Pers No:
A M O U N T

Desig: ASSISTANT PROFESSOR (00000172)
A M O U N T

Grade: 18 NTH
LEARN/FUND

Buckle No.:
PRINCIPAL

Gazetted/Non-Gazetted: G
REPAID BALANCE

0001 Basic Pay
1000 House Rent Allowance
1210 Convey Allowance 25
1947 Medical Allow 15% (1
1948 Adhoc Allowance 2010
1970 Adhoc Relief Allow 2

24,500.00
3,373.00
2,480.00
2,215.00
7,385.00
2,215.00

DEDUCTIONS
3101 CPF Subscription - Rs
3501 Benevolent Fund
3511 Adm Group Insurance
3604 Group Insurance
3640 Emp. Edu. Fund
3609 Income Tax

1,610.00-
250.00-
38.00-
335.00-
30.00-
364.00-

AP *Q106*

CPEA:
INCOME TAX 3,794.04

2,259.00 135,240.00
1,536.04

PAYMENTS
Branch Code: 230426

42,649.00
LAKKI HARNAT

DEDUCTIONS
National Bank of Pakistan

2,645.30-
LAKKI HARNAT

NET PAY
LAKKI HARNAT

40,023.00 01.01.2012 31.01.2012
Acct. No: 7905-1

00432298 MUHAMMAD AKIN
P A Y M E N T S

Prev Pers No:
A M O U N T

Desig: CHUKKIBAR

(00000357)
A M O U N T

Grade: 01 NTH
LEARN/FUND

Buckle No.:
PRINCIPAL

Gazetted/Non-Gazetted: N
REPAID BALANCE

0001 Basic Pay
1000 House Rent Allowance
1210 Convey Allowance 20
1300 Medical Allowance
1516 Dress/ Uniform Allow
1567 Washing Allowance
1948 Adhoc Allowance 2010
1970 Adhoc Relief Allow 2

5,250.00
391.00
250.00
1,000.00
100.00
100.00
1,575.00
473.00

DEDUCTIONS
3101 CPF Subscription - Rs
3501 Benevolent Fund
3511 Adm Group Insurance
3604 Group Insurance
3640 Emp. Edu. Fund

312.00-
120.00-
3.00-
58.00-
10.00-

3101, 3501, 3511

CPEA:

20,592.00

PAYMENTS
Branch Code: 221169

10,239.00
LAKKI HARNAT

DEDUCTIONS
Habib Bank Limited

503.00-
LAKKI HARNAT

NET PAY
LAKKI HARNAT

9,736.00 01.01.2012 31.01.2012
Acct. No: 11697100033605

00432304 SHULAN ABBAS
P A Y M E N T S

Prev Pers No:
A M O U N T

Desig: SHEEPER

(00001416)
A M O U N T

Grade: 01 NTH
LEARN/FUND

Buckle No.:
PRINCIPAL

Gazetted/Non-Gazetted: N
REPAID BALANCE

0001 Basic Pay
1000 House-Rent Allowance
1210 Convey Allowance 20
1300 Medical Allowance
1516 Dress/ Uniform Allow
1567 Washing Allowance
1948 Adhoc Allowance 2010

5,250.00
391.00
250.00
1,000.00
100.00
100.00
1,575.00

DEDUCTIONS
3101 CPF Subscription - Rs
3501 Benevolent Fund
3511 Adm Group Insurance
3604 Group Insurance
3640 Emp. Edu. Fund

312.00-
120.00-
3.00-
58.00-
10.00-

3101, 3501, 3511

CPEA:

23,085.00

Abbas

17
31-1-12



GOVERNMENT OF PAKISTAN,
ACCOUNTANT GENERAL KHYBER PAKHTUNKHWA
DISTRICT Lakki
PAY ROLL SYSTEM

PAYMENT ADVICE

P Sec: 001 Month: July 2012
LK4022 - Government Postgraduate Co

7/12

Pers #: 00432298 Buckle:
Name: MUHAMMAD AMIN
Dsg: CHOWKIDAR
NIC No.: 1120103327449

Min: Higher Education
MTN:
CPF #:
Old #:

CPF Interest Free
EPS 01 Regular / Contract

DEPT CODE LK4022

181

PAYS AND ALLOWANCES:		
0001-Basic Pay		5,250.00
1000-House Rent Allowance		391.00
1210-Convey Allowance 2005		350.00
1300-Medical Allowance		1,000.00
1516-Dress/ Uniform Allowance		100.00
1567-Washing Allowance		100.00
1948-Adhoc Allowance 2010@ 50%		1,575.00
1970-Adhoc Relief Allow 2011		473.00
2118-Adhoc Relief Allow (2012)		1,050.00
Gross Pay and Allowances		11,239.00
DEDUCTIONS:		
CPF Balance 24,336.00		
3501-Renevolent Fund		312.00
3511-Addl Group Insurance		120.00
3604-Group Insurance		3.00
3990-Emp. Edu. Fund KPX		58.00
		50.00
Total Deductions		545.00
NET AMOUNT PAYABLE		10,746.00

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QUALIFYING SERVICE YRS MON	D.O.B 01.07.1963	LFP Quota: HBL
03 Years 07 Months 02 Days	Government Contribution to CPF	312.00
		LAKKI MARWAT

Attended by

2443
2010

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IN THE COURT OF ZEB A RASHEED, CIVIL JUDGE
JUDICIAL MAGISTRATE-VII, LAKKI MARWAT

Civil Suit No.....17/1

Date of Institution..... 18.12.2008
Date of Decision.....11.11.2010

Najeebullah S/O Muhammad Nawaz Caste
Patan R/O Mohalla Baghban District
Lakki Marwat.
Plaintiff.

Government of NWFP through Secretary
Education and 12 others
Defendants.

SUIT FOR DECLARATION AND FOR GRANT
OF PERMANENT MANDATORY INJUNCTION.

J U D G M E N T.

My this judgement is meant to dispose of a suit brought by the plaintiff against the defendants seeking therein declaration to the effect that the father of the plaintiff was employed in the government Post graduate college Lakki Martwat and on account of his retirement he is entitled for appointment as Chaukidar being son of retired calass-IV employee as per government policy. Whereas the defendants No.4 and 8 to 10 with connivance of defendant No.7 appointed him on vacant seat of chaukidar which is illegal due to non eligibility of defendant No.7 therefore, appointment of defendant No.7 is ineffective upon the rights of the plaintiff. In addition the plaintiff sought grant permanent-cum-mandatory injunction restraining defendants to release the salary to the defendant No.7 and issuance of direction to the defendants to cancel the appointment of defendant No.7 and plaintiff be appointed on the vacant post.

Facts in brief of the plaint are that on account of retirement of plaintiff's father as chaukidar from government Post Graduate college Lakki, the vacancy in question was converted on contract basis as per government policy and applications were invited through publication. That plaintiff also applied for the vacancy in question and after conducting test and interview

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the defendant No.4 cancelled the same without assigning any reason. That subsequently the vacancy in question was republished in daily Mashriq on 12.10.2008 and as per publication the literate is one of the qualification for appointment against the vacancy in question. That plaintiff being literate and son of retired class-IV employee again applied for appointment against the vacancy in question. That after conducting the interview the defendants with collusion and connivance with the defendant No.7 appointed him against the vacancy in question which is illegal and being so ineffective upon the rights of plaintiff, hence appointment of the defendant No.7 is liable to be cancelled and plaintiff is entitled for appointment against the vacancy in question. That defendants were repeatedly demanded to admit the claim of the plaintiff but they refused, hence the instant suit.

Defendants were summoned. Only defendants No.7 and 8 appeared and filed their separate written statements. Defendants denied the claim of the plaintiff and raised many legal and factual objections. Out of the divergent pleadings of the parties, my learned predecessor in office has framed the following issues.

ISSUES.

1. Whether the plaintiff has got a cause of action? OPP
2. Whether plaintiff is estopped to sue? OPD
3. Whether the plaintiff has got any right for appointment on the retirement of his father? OPP
4. Whether this court has got the jurisdiction?
5. Whether the defendants malafidely appointed the defendant No.7 on the said post? OPP
6. Whether defendant No.7 appointment is based on merit? OPD
7. Whether defendants are entitled for special compensatory costs U/S 35-A CPC? OPD
8. Whether plaintiff is entitled to the decree as prayed for? OPD
9. Relief.

Parties produced their respective evidence. Arguments heard and record gone through.

My issuewise findings are as under:

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ISSUE NO.2.

No evidence is produced by the defendants to prove estoppel on part of the plaintiff, hence issue failed for want of proof.

ISSUE NO.4.

The defendants objected that the instant court has no jurisdiction to adjudicate upon the matter in hand under the Govt: servants Act, 1973. After hearing the objection the relevant law gone through. Under Section 2 of the Govt: Servants Act 1973 the government Servants can not invoke the jurisdiction of Civil Court, whereas in the matter in hand the plaintiff is not a government servant hence U/S 9 of the CPC Civil Court is fully competent to hear and adjudicate upon the matter in hand. Issue is decided in positive.

ISSUES NO.1,3,5,6 AND 8.

All the above mentioned issues are interlinked hence taken together for ^{decision} ~~discussion~~ to avoid repetition of facts and evidence.

It is alleged by the plaintiff that his father was class-IV employee in the government college Lakki Marwat and on account of his retirement, he being the real son of retired government employee is entitled for appointment against the vacancy in question. The plaintiff further alleged that the defendants published the vacancy in question in news paper and after conducting test they appointed the defendant No.7 against the vacancy in question whereas the plaintiff despite possessing the required qualification was rejected.

Plaintiff produced as many as six witnesses in support of his case and he himself stood as PW-7 in the witness box.

Record Keeper from DPO office District Bannu appeared as PW-1 and he produced the relevant record pertaining to the appointment, service and retirement of the defendant No.7 in the police department as Ex.PW 1/1 to Ex.PW 1/3 . He further produced the medical certificate pertaining to the age of the defendant No.7 as Ex.PW 1/D-1 and copy of service book as Ex.PW 1/D-2. He stated in his statement that the defendant No.7 had retired from police department after completion of 25 years of his service.

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21-1-13

Defendant No.10 appeared as PW-2 who stated that applications were invited through publication in the news paper for appointment against the vacancy in question. He further stated that a committee for recruitment was constituted and after conducting test the defendant No.7 was appointed being eligible on merit. He produced the merit list as Ex.PW 2/1. He stated that in the publication It was mentioned that retired/ ex. Soldier will be preferred. He admitted that the defendant No.7 is retired policeman and not a soldier. He produced the copy of CNIC of defendant No.7, and his application for appointment against the vacancy in question as Ex.PW 2/2 and Ex.PW 2/3. He also produced the application of the plaintiff for appointment against the vacancy in question as Ex.PW 2/5. In cross examination he produced the copy of publication dated 12.11.2008 as Ex.PW 2/D-1

Junior Clerk from Post Graduate college Lakki Marwat appeared as PW-3 and he produced the copy of publication dated 21.7.2008 as Ex.PW 3/1 and Copy of publication dated 16.8.2008 as Ex.PW 3/2. He further produced the first application of the plaintiff as Ex.PW 3/3. He produced the order of cancellation of interview by the principal govt: Graduate College as Ex.PW 3/5 and copy of publication dated 12.11.2008 as Ex.PW 3/6. He further produced the copy of third application of the plaintiff as Ex.PW 3/7. He produced the copy of application of defendant No.7 for appointment against the vacancy in question, copy of his CNIC as Ex.PW 3/8 and Ex.PW 3/9. He stated that vide office order No.1187/1337 by the director of Higher Education NWFP all the appointments of class IV employees were cancelled. He produced such letter as Ex.PW 3/10 and Ex.PW 3/11. He stated that on vacant post of Lab attendant in the Post Graduate College, son of retired Lab attendant namely Javed Iqbal was appointed vide office order Ex.PW 3/12. He also produced the medical fitness certificate produced by the defendant as Ex.PW 3/14. He also produced the service record of plaintiff's father as Ex.PW 3/16 and Ex.PW 3/17.

Senior Auditor from District Account office appeared as PW-4 and he stated that as per service record the defendant N .7 had not applied for age relaxation.

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 District & Sessions Judge
 Lakki Marwat
 21-1-13

Legal Assitant from NADRA office appeared as PW-5 who produced the relevant record pertaining to the CNIC of defendant No.7 bearing his date of birth as 1957 as Ex.PW 5/1 . He stated that CNIC Ex.PW 3/9 of the defendant No.7 bearing his date of birth as 1963 is not issued by the NADRA and same is bogus. Junior Clerk from DHQ Lakki appeared as PW-6 and he stated that the medical fitness certificate Ex.PW 3/14 is issued by the Dr. Muhammad Ishaq M.S DHQ Lakki.

Plaintiff himself appeared as PW-7 who reiterated the contents of plaint in his statement. Nothing material which could benefit the cause of the defendant could extracted from the plaintiff despite lengthy cross examination.

In rebuttal defendant No.10 again appeared as DW-1 who denied the claim of the plaintiff and stated that the plaintiff was low in merit as he did not possess the required qualification and acquaintance ^{with} the security measures whereas the defendant No.7 was selected by the recruitment committee on merits being retired policeman . Defendant No.7⁹ appeared as DW-3 and he also denied the claim of the plaintiff in his statement. However ~~statement~~ he admitted that he is retired policeman and he is receiving Rs.7306 monthly pension. He also admitted that he is illiterate and he has not applied for age relaxation at the time of his appointment against the vacancy in question. After going through the available record on file in the light of evidence produced by the parties It appears that the father of the plaintiff namely Muhammad Nawaz was class-IV employee in the Govt : Post Graduate College Lakki Marwat who was retired on 17.01.2007 vide Ex.PW 3/1. The vacant post of Chaukidar was Published in news paper on 21.7.2008. Vide Ex.PW 3/3 the plaintiff submitted his first application to the Principal Govt: College Lakki Marwat for appointment against vacant post of his father. PW-4 stated that the interview which was going to be held on 26.7.2007 was cancelled upon oral direction of the principal Govt: college. Application for appointment against the vacant post was again invited vide Ex.PW 2/3 in daily Aaj. The plaintiff again submitted his application vide Ex.PW 3/4 and the interview was going to be held on 16.8.2008 which was again cancelled. Vide Ex.PW 2/D-1 the vacant post is

question was again published in news paper and as per terms and conditions provided in the publication the applicant should be literate and an ex.soldier will be preferred whereas the age limit will be according to law. The plaintiff again submitted his application vide Ex.PW 3/7 and defendant No.7 submitted his application vide Ex.PW 3/8. The date of birth of the defendant No.7 mentioned in Ex.PW 3/8 was 1963 and he was retired policeman.

The perusal of service record of the defendant No.7 in police department produced by the PW-1 reveals that his date of birth is 18.10.1956. The copy of CNIC of defendant No.7, Ex.PW 1/3 reveals that his date of birth is 1957. The defendant No.7 was retired from police department on 29.7.2004. After receiving the applications the recruitment committee was constituted who conducted interviews of fifty candidates. The plaintiff was placed on forth number whereas the defendant No.7 was placed on No.1 being high on merit as he was ex.police man. PW-2 who produced the record admitted in his statement that other ex.soldiers also participated in the interview but they were residents of farflung areas whereas the defendant No.7 was most suitable candiate. The copy of the CNIC of defendant No.7 Ex.PW 3/9 reveals that his date of birth is shown as 1963. Legal assistant from NADRA office when appeared as PW-5 stated that there is no record of the registration of CNIC of defendant No.7, Ex.PW 3/9 , bearing the date of birth as 1963 which CNIC is forged and bogus. The defendant No.7 was also illiterate and he was not retired soldier hence the available record suggest that the terms and conditions mentioned in the advertisement has not been followed by the recruitment committee and appointment of defendant No.7 against the vacancy in question seems to be against the rules and regulations. As far entitlement of the plaintiff for appointment against the vacancy in question is concerned, the record positively suggest that he was real son of retired Class-IV employee of the Govt Post Graduate College Lakki, who also died after retirement. The date of birth of the plaintiff as he stated in his statement is 2.10.1977 and he is literate up to middle. According to the Govt: policy vide SOR I(S & GAD) 4-1/80(voll-III) dated 23.5.2000 25 % Quota is reserved for one of children of retiring Civil servants in BPS-I to BPS-4, with following conditions:

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21-1-13

- 14-12
- 25
1. The appointment shall be made subject to availability of the vacancy.
 2. A waiting list showing the name, designation and date of retirement of the Civil servant shall be mentioned and the merit shall be determined from the date of retirement of Civil servant.
 3. The child possess the qualification prescribed for the post.
 4. In case the date of retirement/invalidation of the two Civil servant is the same, the child of the Civil servant older in age shall be considered first for appointment.
 5. Under age child of the retiring Civil servant shall be included in the waiting list, however he shall be considered for appointment on attaining majority.

The above mentioned policy rules are binding in nature and cannot be violated by the defendants. As per policy the defendants has not maintained any waiting list of class-IV of retiring employee as no record in this respect is produced by the defendants. The plaintiff being sole candidate of retiring employee also possessed the required qualification hence he is entitled to be appointed against the vacancy in question.

The plaintiff has successfully proved his case hence he has got a cause of action and entitled for decree as prayed for against the defendants. All issues are decided accordingly.

ISSUE NO.7.

No evidence produced by the defendants, hence issue _____ failed for want of proof.

Relief.

As a result of my above detailed findings the _____ appointment of defendant No.7 against the vacancy in question stands cancelled being against the prescribed rules and regulations and suit of the plaintiff stands decreed in his favour as prayed for against the defendants, with directions to follow the rules and procedure for appointment of the plaintiff against the vacancy in question. No order as to cost. _____

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REVENUE
 DEPARTMENT
 OFFICE & Sessions Judge
 21-1-13

File be consigned to record room of District & Sessions

Judge, Lakki Marwat.

Announced.

11.11.2010.

Mrs. Zeba Rasheed
Civil Judge-VII/Lakki Marwat.

CERTIFICATE

Certified that this Judgment consists of 8 pages. Each page is checked, corrected and signed by me, wherever necessary.

Mrs. Zeba Rasheed
Civil Judge-VII/Lakki Marwat.

Application No. 357
 Application received on 21-1-13
 Copying fee Deposited on 21-1-13
 Next Date for Delivery of Copies 21-1-13
 File received for copying
 No of sheet 27 Sheets
 Copying fee 54/-
 Search fee 12/-
 Urgent fee 100/-
 Name of copyist 21-1-13
 Copy completed on 21-1-13
 Copy delivered on 21-1-13
 Name of examiner 21-1-13

District & Sessions Judge
 Lakki Marwat
21-1-13

Attested
 by ky

15-11-10

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ADT 1

لبرلت فتاب ڈسٹرکٹ جج صاحب محل سررت
مقدمہ 316/13 ریفر 101-11-15 و صفحہ 4-1-5

محمد امین ولد محمد نور سمنہ نادر ضیل حال ملک چمن ضیل سمنہ نادر ضیل

(مستند نمٹ) بنام

مخبر (سمنہ) ولد محمد نور سمنہ نادر ضیل ملک چمن ضیل سمنہ نادر ضیل (مستند نمٹ) (اللہ)
رہ حکومت صدر برودہ سیکرٹری و جج سمنہ نادر ضیل درجہ دو ڈسٹرکٹ سمنہ نادر ضیل
رہ ڈسٹرکٹ ڈائریکٹر سمنہ نادر ضیل ڈسٹرکٹ سمنہ نادر ضیل پورٹ گورنمنٹ سمنہ نادر ضیل

8. انور علی خان پیر و سمنہ نادر ضیل ڈسٹرکٹ سمنہ نادر ضیل ڈسٹرکٹ سمنہ نادر ضیل
10. ذوالفقار پیر و سمنہ نادر ضیل ڈسٹرکٹ سمنہ نادر ضیل ڈسٹرکٹ سمنہ نادر ضیل

ایئر سمنہ نادر ضیل حکم مقدمہ ڈسٹرکٹ سمنہ نادر ضیل 17
11-12-10 لبرلت فتاب

سول جج صاحب محل سررت جن کا ادر مع عدالت صدر سمنہ نادر ضیل
برفوت ایئر سمنہ نادر ضیل ڈسٹرکٹ سمنہ نادر ضیل ڈسٹرکٹ سمنہ نادر ضیل

استدعا کے پیش میں سمنہ نادر ضیل نے مندرجہ ذیل حکم مقدمہ ڈسٹرکٹ سمنہ نادر ضیل
ر خارج کیے جانے عدالت صدر سمنہ نادر ضیل سے اس کے بعد عدالت سمنہ نادر ضیل

رجسٹریشن کے پیش میں
11 یہ کہ حکم مقدمہ ڈسٹرکٹ سمنہ نادر ضیل عدالت صدر سمنہ نادر ضیل
دوسرے درجے میں ڈسٹرکٹ سمنہ نادر ضیل

12 یہ کہ عدالت سمنہ نادر ضیل نے حکم مقدمہ ڈسٹرکٹ سمنہ نادر ضیل
اللہ نے سمنہ نادر ضیل سے اس کے بعد عدالت سمنہ نادر ضیل

13 یہ کہ عدالت سمنہ نادر ضیل نے تصدیقات منجانب سے
عدالت دیا ہے جو کہ ایسا طور پر عدالت سمنہ نادر ضیل سے

14 یہ کہ عدالت سمنہ نادر ضیل نے تصدیقات منجانب سے
عدالت دیا ہے جو کہ ایسا طور پر عدالت سمنہ نادر ضیل سے

ATTESTED
District & Sessions Judge
Lakki Purwal

6

۱۵۔ یہ تم حکومت طاقت نہ دیکھائی تھی کیا یہ غنیمت غنیمت کہہ کر یہ
 منیج میں شامل کیا ہے کہ وہی آمد سے آج عدویہ کا بیجا ہے۔
 اس بار سے وہ لقیات کا حق دور ہے۔ اس لئے اختیار میں Candidate
 کے ناموں میں شامل ہے۔ کہ باقی عدویہ کے دربار کو
 ترجیح دیا جائیگی

۱۶۔ یہ تم حکومت طاقت نہ تھی کیا ہے۔ ۱- ۳- ۵- ۶- ۸ کو یہی منیج
 کرنے میں تاخیر ہوئی ہے۔ اور اس طرح وہی اس میں کو غنیمت
 طور پر منیج کیا ہے

بندہ لکھتا ہے۔ کہ اس پر غنیمت ہو کر
 حکم منیج دیکھا کہ حکومت طاقت منیج فرمایا تاکہ
 (دیکھو وہی اس پر کیا ہے) فرمایا گیا

15/11/2010

۱۵-۱۱-۱۰
 محمد امین بی بی ایچ

لکھنوی عدالت عالیہ علی گڑھ
 درج ۱۱
 ۱۵-۱۱-۱۰
 بی بی ایچ محمد امین
 ایچ ایچ ایچ ایچ ایچ
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ATTESTED

Examiner
 District & Sessions Judge
 Lakkhi Marwat

9-4-11

بعدالت جناب ڈسٹرکٹ جج صاحب صلح علی روت

1. حکومت ہوبہ سرحد نذریہ سیکرٹری ایجوکیشن وائزہ
2. ڈائریکٹر ایجوکیشن پشاور
3. ڈپٹی ڈائریکٹر ایجوکیشن پشاور
4. پرنسپل گورنمنٹ پوسٹ گریجویٹ کالج علی روت
5. ڈسٹرکٹ کوارڈینیشن آفیسر علی روت
6. ڈسٹرکٹ اکاؤنٹ آفیسر علی روت
7. انور سلیم خان پروفیسر پوسٹ گریجویٹ کالج علی روت
8. پروفیسر عبدالغفور خان گورنمنٹ پوسٹ گریجویٹ کالج علی روت
9. پروفیسر نادر خان (ریٹائرڈ) گورنمنٹ پوسٹ گریجویٹ کالج علی روت

(اسٹینڈنٹ)

نام

10/12/6

عقب اللہ ولد نواز قوم پٹان سکنہ باغبان محلہ علی روت

اپیل انارافنگی حکم فیصلہ ڈگری عدالت سول جج صاحب 7
علی روت مقدمہ 17/1 در فروردین 12/18 فیصلہ 11.11.2010 منسوخ
شرمایا جابر دعویٰ ریسیڈنٹ ڈگری مدعی خارج کیا جائے۔

وجہ اپیل

ذیل میں

1. یہ کہ عدالت سول جج صاحب نے مقدمہ 17/1 در فروردین 12/18 فیصلہ 11/2010
بعنوان عقب اللہ نام حکومت ہوبہ سرحد نذریہ سیکرٹری ایجوکیشن وائزہ بر خلاف
مدعا علیہم / اسٹینڈنٹ ڈگری کیا ہے۔ مقدمہ نقل مرضی دعویٰ جواب دعویٰ
حکم فیصلہ ڈگری عدالت ماتحت لفینے۔

2. یہ کہ حکم فیصلہ ڈگری عدالت ماعت غلط خلاف قانون اور خلاف واقع ہے
3. یہ کہ ماعت عدالت نے تنقیحات شہادت بر مش کی طرف کوئی توجہ نہ دے کر غلط فیصلہ کیا ہے
4. یہ کہ ماعت عدالت نے فیصلہ کرتے وقت Rules & Regulations اور مدعا علیہم فریق کے میا کردہ ریکارڈ اور شہادت کو مدنظر رکھ کر پر نظر انداز کیا ہے۔ جو کہ خلاف ضابطہ اور قانون ہے۔
5. یہ کہ اگر فیصلہ متنازعہ ماعت عدالت کو کالعدم نہ کیا گیا تو حکیمانہ کارروائی میں انتہائی پیچیدگی پیدا ہوگی
6. یہ کہ حکم فیصلہ ڈگری عدالت ماعت کوئی speaking order میں ہے۔
7. یہ کہ اس میں ہذا اجرائی ایسا لینے لے کر ماعت اندر معیاد ہے۔
8. یہ کہ مالیت ٹالسٹا اس میں لبرٹن کورٹ میں اختیار سماعت - 2009 روپے اندر 1100 روپے ہے۔ جس پر کورٹ میں معاف ہے۔
9. یہ کہ اپیلڈنٹان کو بوقت جٹ مذیر Points اٹھانے اور اس پر جٹ کرنے کی اجازت دی جائے۔

اسد علی کھانی ہے کہ منٹوری اس میں حکم فیصلہ

6/12/2010

ڈگری ماعت عدالت میں جج صاحب نے 7 مئی 2010 کو مقدمہ 17/18/2009
فیصلہ 11/2010 مستوح فرمایا جانے دھوی مدعی / ریسپانڈنٹ خارج فرمایا جاو

دورضہ 6/12/2010

لقدین عبار لیا لکرو
باقرا صالح بیان کیا
اس کے بعد فزہ
یک علم لغین کی حرکت
توسعت کیم میں کوئی اس میں
شعبہ 1-13

اپیلڈنٹان بزرگ گورنمنٹ بلدیہ

ATTESTED
by

RECORDED
J.C.C. (Civil) Marwat

RECORDED
& Sessions
Civil Marwat

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5-4-11

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IN THE COURT OF MR. FAZAL SATTAR
ADDITIONAL DISTRICT JUDGE, LAKKI MARWAT.

Civil Appeal No.....316/13 of 2010
Date of institution.....15.11.2010
Date of decision.....05-04-2011

Muhammad Amin s/o Muhammad Nawaz r/o Nawar Khel,
presently Lakki Michan Khel. District Lakki Marwat.
.....(Appellant / Plaintiff)

...Versus...

1-Najibullah s/o Muhammad Nawaz r/o Mohallah Baghban, Lakki
city, District Lakki Marwat and nine others
.....(Respondents / Defendants)

Appeal against the impugned judgment/decreed dated: 11.11.2010,
passed by Mrs. Zeba Rashid, Civil Judge, Lakki Marwat, vide which
suit of the plaintiff was decreed in his favour as prayed for.

Civil Appeal No.....319/13 of 2010
Date of institution.....06-12-2010
Date of decision.....05-04-2011

Govt. of Khyber Pukhtunkhwa and eight others
.....(Appellants / Defendants)

...Versus...

Najibullah s/o Muhammad Nawaz r/o Mohallah Baghban, Lakki
city, District Lakki Marwat.....(Respondent / Plaintiff)

Appeal against the impugned judgment/decreed dated: 11.11.2010,
passed by Mrs. Zeba Rashid, Civil Judge, Lakki Marwat, vide which
suit of the plaintiff was decreed in his favour as prayed for.

CONSOLIDATED JUDGMENT:

- 1- Vide my this single consolidated judgment, I shall dispose off, appeal No. 316/13 and appeal No.319/13 mentioned above arising out of the judgment / decree dated: 11-11-2010 passed by the learned civil judge Lakki Marwat, Mrs. Zeba Rashid wherein the appointment of appellant Muhammad Amin was cancelled and a decree as prayed for was passed in favour of respondent / plaintiff.
- 2- Brief facts, as per plaint are, that upon retirement of plaintiff / respondent father as Chowkidar from Post Graduate College Lakki Marwat, the post of chowkidar fell vacant and was advertised, however, the recruitment, as per government policy, was to be on contract basis. That after having gone through the process of selection, the appellant / defendant Muhammad Amin was mala fidely appointed against the vacant post despite his being ineligible for the post and also

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despite the fact that plaintiff / respondent was an ex-employee's son and had the right to appointed under the 25 % quota reserved for sons of ex-employees.

3- Defendants / appellants were summoned out of whom present appellants / defendants appeared and assailed the plaint through submission of written statement. Pleadings were reduced into the following issues:-

ISSUES:

~~3-~~
05/04/2011

- 1- Whether plaintiffs have got a cause of action?
- 2- Whether plaintiff is estopped to sue?
- 3- Whether the plaintiff has got any right for appointment on the retirement of his father?
- 4- Whether this court has got the jurisdiction?
- 5- Whether the defendants mala fide appointed the defendant No.7 on the said post?
- 6- Whether defendant No.7 appointment is based on merit?
- 7- Whether defendants are entitled for special compensatory costs u/s 35-A, CPC?
- 8- Whether plaintiff is entitled to the decree as prayed for?
- 9- Relief.

4- After framing of issues, pro and contra evidence of the parties was recorded and after hearing both parties, vide impugned judgment / decree, dated: 11-11-2011, cancelled the appointment of appellant / defendant Muhammad Amin and passed a decree in favour of plaintiff / respondent.

5- Feeling aggrieved with the impugned judgment / decree, the instant appeals were filed.

6- Arguments heard and file perused.

7- Learned counsel for the appellant as well as AGP for the Government of Khyber Pakhtunkhwa argued that the learned trial court has erred in the law as well as fact while passing the impugned judgment / decree. They further went on to say that the plaintiff / respondent was in no way entitled to be appointed on the 25% employee's sons quota as he has failed to bring on file that the quota in question was not filled till date. They further went on to say that appointment on quota basis have been made in excess and also referred to attested lists submitted during arguments. Learned AGP and counsel for the appellant further went on to say that the appointment of appellant, Muhammad Amin has been

ATTESTED
JUDGE & Sessions Judge
Lahore
21-1-11

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made strictly on merit, keeping in view his past 25 years experience in the police department and that no irregularity whatsoever was committed during the entire process of appointment. They thus prayed for the setting aside of the impugned judgment / decree through the acceptance of the appeals.

8- Learned counsel for the plaintiff / respondent on the other hand vehemently opposed the appeals, arguing that the impugned judgment / decree is the result of proper appreciation of the material available on file, as well as proper application of the law on subject. He further went on to say that the defendant / appellant had used unfair means while being appointed for the said post, for the reasons that he was illiterate and was also over aged. He further went on to say that the plaintiff / respondent being the son of an ex-employee of the college was fully entitled to be appointed against the said post, given the fact that policy of 25% quota reserved for the children of ex-employees was in field and that he was sole contender for the slot. He thus prayed for the dismissal of both the appeals with costs throughout.

05/04

9- Thread-bare perusal of the record, with the able assistance of both the learned counsel for the parties has led me to draw the following conclusion:-

10- Admittedly, vide the impugned judgment / decree the learned civil judge has passed two orders; one, that she has cancelled the appointment of defendant / appellant Muhammad Amin and (2) she has passed a decree in favour of the plaintiff / respondent Najibullah to the effect that he be appointed against the said post in accordance with law and procedure.

11- To begin with the first part of the judgment i.e. the cancellation of the appointment of defendant / appellant Muhammad Amin warrants discussion. No doubt the procedure regarding the advertisement of the post of Chowkidar was adopted. The age limit prescribed for the appointment of Chowkidar is from 18 to 35 years as mentioned in the advertisement, whereas the defendant / appellant Muhammad Amin being retired from police department is entitled to relaxation for 10 years, as per rules, therefore, he would be eligible if he is below 45 years i.e. 35+10 years. Now coming to his service record, his date of birth is mentioned as 18-06-1956, his entry into service is 20-10-1975 and retirement from service is 29-07-2004, which is mentioned in his personal data Ex. PW 1/4. Astonishingly one of his ID card, copy of

21-1-1

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which is Ex. PW 3/9, suggests his date of birth to be 1963, whereas another copy of his ID card, his date of birth is 1957, copy of which is Ex: PW 1/3. If his date of birth is considered as 1963 and as per service record his entry into government service is 20-10-1975, then it suggests that he was the age of 12 years when he joined the police service, which does not appeal to common sense and it can be said beyond doubt that ID card bearing the date of birth 1963 was job specific only intended malafidely to bring himself within the eligibility criteria. The point of genuineness or otherwise regarding the date of birth of the defendant / appellant Muhammad Amin has been categorically clarified by the NADRA official, who has stated that they have no such record and that the NIC bearing the date of birth as 1963 is bogus. Therefore, his age can be reckoned from the police record, which as mentioned above vide Ex. PW 1/4, is 18-10-1956, therefore, his age at the time of advertisement of the post i.e. 16-08-2008 was almost 52 years, hence, well beyond the upper age limit, even if relaxation of 10 years is given to him.

07/07/2011

12- Another basic criteria was that of literacy. Though he has retired as Sub Inspector from the Police Force, yet there is nothing on record to suggest as to whether he has gone to school in his life, rather police record suggest the opposite, that he is illiterate, point which has also been admitted by defendant / appellant Muhammad Amin in his own statement. In such circumstances, he does not possess the basic qualifications for the appointment to the post of Chowkidar as per rules, regulations, terms and conditions laid down by the department concerned. Therefore, in the light of the above, I fail to disagree with the findings of the learned civil judge. Hence the appointment to the post of chowkidar by the committee concerned is hereby declared as illegal.

13- Now coming to the second point of appointment of the plaintiff / respondent Najibullah against the slot in the alternative, no doubt the appointment of defendant / appellant Muhammad Amin has been declared illegal, but yet again the appointment on the said post of plaintiff / respondent cannot automatically follow suit. His appointment is to be considered in accordance with law and procedure. Plaintiff / respondent Najibullah has claimed his rights on the basis of 25 % quota reserved for ex-employees' sons but there is nothing on record to suggest that the said quota has not been filled up or otherwise. Apart from him many others (around 50) had also applied for the said post and as per record he has been placed at No.4 in the result by the selection

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 21-1-11
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committee. It is to be seen that as to whether the plaintiff / respondent Najibullah is entitled to be appointed under the government policy vide SOR I(S & GAD) 4-1/80(voll-III) dated: 23-05-2000, wherein 25% quota is reserved for retiring civil servants in BPS-1 to BPS-4, in which it has been clearly mentioned that a waiting list showing the name, designation and date of retirement of civil servant shall be mentioned and that merit shall be determined from the date of retirement of civil servant. Neither any waiting list has been brought on file, nor is there any mention of any record pertaining to the appointment against the 25% quota of the total officials in the college. Hence the plaintiff / respondent Najibullah cannot be mechanically held entitled to the slot in the event of disqualification of appellant Muhammad Amin.

14. Summing up, in the light of the above, while partially accepting the appeals, the orders pertaining to the illegality of the appointment of the appellant / defendant Muhammad Amin is hereby maintained, whereas the remaining part of the decree entitling the plaintiff / respondent Najibullah to the decree as prayed for is set aside. The department concerned i.e. Education department is directed to re-advertise the said post forthwith within the shortest possible time and also ensure proper home work regarding the preparation of working papers, waiting list of retired employees as per government policy and to re-consider the matter of the plaintiff / respondent Najibullah for the slot strictly in accordance with law and the laid down procedure at the time of general test / interview. Appeals disposed off accordingly. Costs shall follow the events. Copy of this judgment be placed on connected appeal.

File of the trial court be sent back there, while file of this court be consigned to record room after its necessary completion and compilation.

Announced.
05-04-2011

(Fazal Sattar)
Addl. District Judge,
Lakki Marwat

CERTIFICATE:

Certified that this judgment comprising five (05) sheets has been checked by me and necessary corrections made therein.

Attested
by

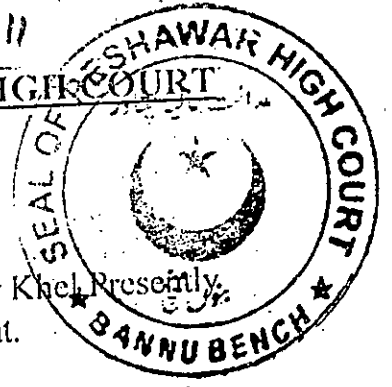
(Fazal Sattar)
Addl. District Judge,
Lakki Marwat.

21-1-17
Lakki Marwat

L (1) 2011

BEFORE THE HONOURABLE PESHAWAR HIGH COURT
BENCH DERA ISMAIL KHAN

Civil Revision No. 168 56 of 2011



Muhammad Amin S/O Muhammad Nawaz R/O Nawar Khel Presently
Lakki Michan Khel District Lakki Marwat.

(Petitioner)

Vs

- 1- Najeeb Ullah S/O Muhammad Nawaz caste Pathan R/O Mohallah Baghban District Lakki Marwat.
- 2- Government of NWFP through Secretary Education Peshawar
- 3- Director Higher Education Peshawar
- 4- Deputy Director Higher Education Peshawar
- 5- Principal Government Post Graduate College Lakki Marwat.
- 6- District Coordination Officer Lakki Marwat
- 7- District Account Officer Lakki Marwat
- 8- Professor Anwar Saleem Khan Post Graduate College Lakki Marwat
- 9- Professor Abdul Aziz Post Graduate College Lakki Marwat
- 10- Professor Nadar Khan Post Graduate College Lakki Marwat

(Respondents)

CIVIL REVISION UNDER SECTION 115 OF THE
CODE OF CIVIL PROCEDURE AGAINST THE ORDER
DATED 05-04-2011 PASSED BY ADDITIONAL
DISTRICT JUDGE LAKKI MARWAT VID WHICH
THE APPEAL OF THE PETITIONER WAS
DISMISSED.

PRAYER.

BY ACCEPTING THE INSTANT REVISION PETITION, BOTH
THE ORDERS OF THE TRIAL COURT AS WELL AS OF THE
APPELLATE COURT MAY KINDLY BE SET ASIDED AND
THE SUIT OF THE PETITIONER MAY KINDLY BE
DISMISSED WITH COST.

Note: The addresses given above are sufficient for the purpose of service of the parties.

ATTESTED

[Signature]
EXAMINER
Peshawar High Court

Respectfully submitted:

1- That respondent No.01 instituted civil suit for declaration along with permanent injunction to the extent that father of the respondent No.01 is retired from the service as Chowkidar from Post Graduate College Lakki Marwat and the post of chowkidar fell vacant and was advertised. That after having gone through the process of selection, the petitioner was appointed against the post of Chowkidar. Details are given in the heading of the plaint. Copy of Plaint is enclosed as ANNEXURE "A".


2- That petitioner/defendant was summoned and contested the same by submitting the written statement. Copy of written statement is enclosed as ANNEXURE "B".

3- That from the divergent pleadings, the Trial Court framed as many as 09 issues and parties were directed to produced their evidence.

4- That after recording evidence and hearing counsels for the parties, the trial court decreed the suit of the respondent no.01 vide order dated 11-11-2010. copy of judgment and decree dated 11-11-2010 is enclosed as ANNEXURE "C".

5- That the petitioner preferred appeal before the Additional District Judge Lakki Marwat against the impugned order dated 11-11-2010 and the same was dismissed by the appellate court vide order dated 05-04-2011. copy of appeal and order dated 05-04-2011 is enclosed as ANNEXURE "D& E".

6- That the petitioner feeling aggrieved from the same, approached this Honourable Court inter alia on the following grounds.

ATTESTED

EXAMINER
Peshawar High Court
Room No. 11

Grounds:

- 1- That both the orders of the Lower Court are against the law, facts and circumstances of the case and result of non reading and miss reading of record.
- 2- That the as per Government Policy, the regular post of the chowkidar was converted to contract and this fact is admitted by respondent in para No.03 of the plaint.
- 3- That according to law, the post was advertised in News Paper and applications were sought for the said post and the criteria was mentioned in the advertisement.
- 4- That it is clearly mentioned in the criteria given in the advertisement that for the post of Chowkidar ex service man (Retired army) will be given preference and according to the criteria, the petitioner is suitable for the post of Chowkidar and respondents No. 2 to 10 committed no illegality in the appointment of the petitioner.
- 5- That it is also clear form the advertisement that there was no Quato for retired employee sons, therefore, respondent No.01 cannot claim appointment on retired employee sons quato and the appointment of the petitioner is according to law and, as per criteria mentioned in the advertisement.
- 6- That it is pertinent to mentioned that respondent No.01 claims appointment on the basis of retired employee sons Quato whereas the advertisement dated 12-11-2008 has not been challenged in the plaint therefore, if the appointment of the petitioner is set asided and respondent No.01 is appointed on the post of Chowkidar on the basis of retired employee sons Quata then again legal question will arise that whether appointment of respondent is according to law or not because there is no post for retired employee sons in the advertisement dated 12-11-2008.

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5/11/08

ESTD
J. J. JINER
Jwar High Court,
Bannu Bench

(4)

7- That if we looked into open merit for appointment, then it is crystal clear that only petitioner is the most suitable candidate for the same because the petitioner has the same qualification being retired army official whereas respondent No.01 is not qualified for the post of Chowkidar.

8- That both the courts below are failed to appreciate all the above facts and both the impugned order and decree are result of miss reading and non reading of record.

9- That counsel for the petitioner may kindly be allowed to raise further grounds during the arguments.

It is therefore, requested that in view of the above submissions, both the orders dated 11-11-2010 and 05-04-2011 may kindly be set aside and suit of respondent No.01 may kindly be dismissed with cost.

Your Humble Petitioner

Signature
Muhammad Amin

Signature
Through Counsel
Muhammad Yousaf Khan
Advocate High Court
District Bar DIKhan

ATTESTED

Signature
EXAMINER
Peshawar High Court,
Bannu Bench

Signature
by

5/9/11

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15-10-12

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
[JUDICIAL DEPARTMENT]

C.R. No.56-B/2011

JUDGMENT

Date of hearing: 15.10.2012

Petitioner(s) : Muhamrnad Amin son of
Muhamrnad Nawaz, resident of
Nawar Khel presentiy Lakki
Michan Khel District Lakki
Marwat by Mr. Saleemullah
Khan Ranazai, advocate.

Respondent(s) : Najeebullah son of Muhammad
Nawaz r/o Beghban District,
Lakki Marwat by Mr. *Fajir M. Hossain*
ul-Hameed advocate and
Government of NWFP through
Secretary Education Peshawar &
others by Mr. Ahmed Farooq
Khattak, Additional Advocate,
General.

NISAR HUSSAIN KHAN, J :- Through this common judgment, I propose to decide instant C.R. No.56-B/2011, titled "Muhammad Amin Vs Najibullah etc" and connected C.R. No.79-B/2011, titled, "Najibullah Vs Government of KPK etc", as both emanate from the same consolidated judgment of the learned Additional District Judge dated 05.04.2011, whereby civil

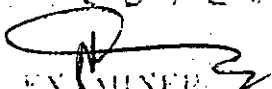
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EXAMINER
Peshawar High Court
Bannu Bench

appeal No. 316/13 of 2010, filed by Muhammad Amin petitioner-defendant was dismissed while civil appeal No. 319/13 of 2010, filed by Government of KPK, against the judgment and decree of the Trial Court dated 11.11.2010, was partially allowed and the judgment of the Trial Court was modified.


2. The resume of the facts forming the background of the instant petitions is that, Najibullah plaintiff (Petitioner in C.R. No. 79-B/2011), filed a suit in the Court of learned Senior Civil Judge Lakki Marwat, seeking declaration to the effect that he being the son of retired Class-IV employee of Government Post Graduate College, Lakki Marwat, was entitled to be appointed as watchman (Chowkidar) on the vacant post by virtue of policy of the Government. While appointment of respondent No. 7 (now petitioner of instant C.R. No. 56-B/2011), on the said post, being wrong, illegal and in collusion of the official respondents be cancelled.

ATTESTED


EXAMINER
Peshawar High Court,
Bannu Bench

3. The suit was contested by official defendants as well as defendant Muhammad Amin appointee of the said post by filing their written statement, wherein, they controverted the allegations of the plaintiff. The divergent pleadings of the parties generated into framing of issues and parties were invited to adduce their pro and contra evidence, which they did, as they wished. On conclusion of trial, learned Trial Court after hearing the parties, decreed the suit as prayed for in favour of the plaintiff. The judgment and decree of the Trial Court was assailed before the learned Appellate Court; by defendant Muhammad Amin appointee of the Post, by filing C.A. No.316/13 of 2010, and Government of KPK through officials through C.A No.319/13 of 2010. Both the appeals were decided through consolidated judgment by learned Appellate Court vide which appeal of petitioner Muhammad Amin was dismissed while appeal of Government of KPK etc, was partially allowed and decree of the Trial Court was modified to the extent that departmental

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Peshawar High Court,
Bannu Bench


authorities should re-advertise the post in question and consider Najibullah plaintiff on 25% quota, reserved for the children of retired Class-IV employees, as per policy of the Government.

The judgment and decree of learned Appellate Court has been questioned through instant revisions petitions by Muhammad Amin defedant and Najibullah plaintiff.

4. Learned counsel for petitioner Najibullah contended that Muhammad Amin has obtained his appointment on the post in question in collusion with the departmental authorities by using forged documents with regard to his age while petitioner Najibullah was entitled to be appointed on the said post, being son of retired Class-IV employee of the same College. He contended that judgment of the Trial Court was well reasoned, whereas, the learned Appellate Court has erred in law by modifying the same.

5. As against that, learned counsel for petitioner Muhammad Amin contended that policy of the Government does not create any legal right in favour of children of retired

ATTESTED


EXAMINER
Peshawar High Court,
D. J. Bench


employees; that no objection with regard to the age of petitioner Muhammad Amin has been raised in the plaint; that both the Courts have exceeded their jurisdiction while decreeing the suit; that fraud, if any, was on the part of the Government officials for which Muhammad Amin should not suffer; that civil suit was not maintainable, rather writ petition could have been filed.

6. Learned A.A.G. on behalf of the official respondents contended that judgment of learned Appellate Court is well reasoned; that Najibullah petitioner was absent at the time of interview for the post in question, hence, both the petitions are liable to be dismissed.

7. Arguments heard and record perused.

8. Undisputedly, Najibullah plaintiff is the son of retired Class-IV employee, whose father retired as a watchman (Chowkidar) from Government Post Graduate College Lakki Marwat. According to policy of the Government vide Notification No.SOR-1(S&GAD)4-1/80(Voll.III), dated 23.05.2000, 25% quota has

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EXAMINER
Peshawar High Court,
Banau Bench

been reserved for the children of Retired Civil Servants of BPS-01 to BPS-04, with which some conditions have also been placed as a rider. The post in question was advertised for information of the general public but there is no reference of any proposal to the children of retired employees, in pursuance of the ibid notification. As per record, Muhammad Amin along with others applied for the said Post, and he succeeded, purportedly, being ex-serviceman of the Police Department, where he has produced his CNIC showing his date of birth, as 1963. So as per stipulation of the advertisement, he brought himself within the age limit, as required. When his appointment was challenged, it came to limelight, during trial that according to his service record of the Police Department, he joined police service on 20.10.1975, where his date of birth is mentioned as 18.06.1956. He has another Identity Card, containing his date of birth as 1957. If his date of birth, according to his CNIC, on which he joined the present Post, is accepted to be true, then he joined the police

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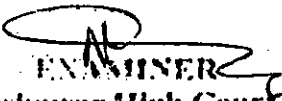
EXAMINER
Peshawar High Court,
Bannu Bench

service at the age of 12 years, which cannot be believed on any account. On the other hand, NADRA official was examined in the Court, who stated that he has no record of petitioner Muhammad Amin, containing his date of birth, as 1963, which is fake and fictitious.

9. From the evidence it is abundantly proved that petitioner Muhammad Amin has obtained his second appointment by providing false information and fake documents. Thus, he cannot be allowed to retain an ill-gotten gain. Both the Courts below have rightly struck down his appointment on the basis of these fake and fictitious documents, to which no exception can be taken.

10. So far as the next question with regard to the prayer of Najibullah petitioner for his appointment on the post so vacated with termination of Muhammad Amin, which was earlier vacated by his father, is concerned, that cannot be straightaway allowed. He himself is placing reliance on the policy of the Government, whereby 25% quota has been reserved for the

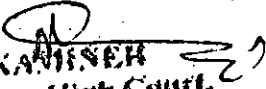
ATTESTED


EXAMINER
Peshawar High Court,
Karnal Bench

children of retired employees. It is neither provided in the notification nor Policy of the government, nor any body, can claim his appointment, on the post, so vacated on retirement of their parents, as an hereditary right. The officials are required to maintain the record of the vacancies of 25% quota for the children of retired employees, for which a separate advertisement should be made, whereupon, the children of the retired employees, should be appointed in order of priority list, maintained by the Department, and on such quota, Najibullah petitioner shall be considered for his appointment.

11. The objection of learned counsel that plaintiff could only invoke the constitutional jurisdiction of the High Court, and Civil Court has no jurisdiction, nor suit was maintainable. Admittedly, it is a dispute of civil nature. Learned counsel has failed to point out any ouster clause of any statute which bars the jurisdiction of Civil Court. Section 9 C.P.C. empowers the Civil Court to try all suits of civil nature, including right to

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Peshawar High Court,
Bannu Bench

an office. Although, writ jurisdiction of the High Court, is an efficacious remedy in such matter, which provides a speedy and timely remedial forum. But jurisdiction of Civil Court is also not barred. Rather, in a civil suit, factual controversies can also be resolved. Therefore, the objection of learned counsel is not tenable.

12. The learned Appellate Court has rightly concluded and modified the decree of the Trial Court. There is no illegality or material irregularity in the impugned judgment, which may warrant interference of this Court in its revisional jurisdiction. Resultantly, both the petitions are dismissed. No order as to costs.

Announced:
15.10.2012

sd/ Nisar Hussain Khan

CONTINUED TO BE HAVE COPY

[Signature]
Peshawar High Court
Authorised Under Section 5-A
of the Contempt of Court Act, 1973

31/10/12

758

Number of Pages of Application: 16-10-12
 Copying Fee: 15/-
 Court Fee: 30/-
 Date of Preparation of Copy: 31-10-12
 Given for Delivery: 31-10-12
 Date of Delivery of Copy: 31-10-12
M. Amir Khan

Attested
by

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2-11-12

FROM :

FAX NO. :

Jan. 01 1995 12:01:11 P

OFFICE OF THE PRINCIPAL GOVT; POST GRADUATE COLLEGE,
LAKKI MARWAT

OFFICE ORDER

DATED:- 02/11/2012

In the light of the decision titled "Muhammad Amin Vs Najib Ullah & others, INSTANT REVISION PETITION STANDS DISMISSED" given by Mr. Justice, Nisar Hussain Khan, Honorable Peshawar High Court, Bannu Bench (Judicial Department); dated: 15/10/2012, vide case No: C.R.56-B/2011 (written Judgment received on 02-11-2012), Mr. Muhammad Amin, Chowkidar (BPS-I) is hereby terminated from Government service with immediate effect. Consequently his pay and allowances are stopped through form Pay-02 in the District Accounts Office, Lakki Marwat.

PRINCIPAL,
GPGC, LAKKI MARWAT

Endst; No: 1134-37 /A-3 Termination

Dated: 02 / 11 / 2012

Copy of the above is submitted to the:-

- 01:- Director Higher Education, KPK, Peshawar for information & further guidance to process the matter concerned, please.
- 02:- District Accounts Officer, Lakki Marwat for stoppage of pay henceforth and further necessary action, please
- 03:- Class-IV concerned for strict compliance.
- 04:- Office Superintendent.

Attested by

PRINCIPAL,
GPGC, LAKKI MARWAT.

[Handwritten mark]

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16-11-12

R. No. 236

dt 16.11.12

R. No. 237

dt 16.11.12

The Director,
Higher Education Department,
KPK, Peshawar

Subject: APPEAL AGAINST OFFICE ORDER DATED 02.11.2012
OF THE PRINCIPAL, GOVT. POST GRADUATE
COLLEGE (GPGC), LAKKI MARWAT WHEREBY
SERVICES OF APPELLANT WERE TERMINATED WITH
IMMEDIATE EFFECT.

Respected Sir,

1. That after advertising vacancies of Class-IV and completing the due codal formalities, appellant was appointed as Chowkidar on the recommendation of Selection Committee vide order dated 03.12.2008.
2. That on 18.12.2008, Najib Ullah filed Civil Suit before the court of Senior Civil Judge, Lakki Marwat for his appointment, being son of a retired person on the post of appellant against the department and appellant which was replied by them, denying the claim of the said rival candidate.
3. That evidence in pro and contra was recorded and after arguing the case, the Suit was decreed vide judgment dated 11.11.2010 in favor of rival claimant with direction to department to follow the rules and procedure, yt the same was already adhered to.
4. That appellant filed appeal before the ADJ, Lakki Marwat for setting aside judgment and decree of the court below which was partially accepted by directing the department to re-advertise the said post forthwith vide judgment dated 05.04.2011.
5. That appellant as well as the rival claimant namely Najib Ullah, filed Revision Petition before the Peshawar High Court, Peshawar Circuit Bench Bannu which were dismissed on 15.10.2012.
6. That in pursuance of the aforesaid judgment, order dated

02.11.2012 was issued wherein Services of appellant were terminated with immediate effect.

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That after fulfilling of the due codal formalities, appellant was appointed as such on the recommendation of Departmental Selection Committee, being top scorer and his order of appointment was not amenable to challenge but the rival claimant, Najib Ullah Khan has no nexus with the appointment of appellant as such because he claimed the said post on account of retired son quota but the advertisement was not to this effect but was open.
- b. That the Courts did not apply judicial mind to the issue and the evidence/procedure of appointment was not appreciated in true perspective.
- c. That order dated 02.11.2012, terminating appellant from service is of no legal effect as no notice was ever served upon appellant nor any inquiry was conducted in the subject matter.
- d. That order of termination was issued in haste manner because the department did not wait for challenging the judgment before the apex court of Pakistan, so the matter/order dated 02.11.2012 is premature.
- e. That order dated 02.11.2012 is based on mala fide.

It is, therefore, most humbly requested that order dated 02.11.2012 of Principal GPGC, Lakki Marwat be set aside and appellant be reinstated in service with all back benefits.

Dated 16.11.2012

Your Sincerely,

Muhammad Amin
Muhammad Amin S/o M. Nawaz
R/o Nawar Khel, Ex-Chokidar,
GPGC, Lakki Marwat.

Copy to:

1 Principal, Govt. Post Graduate College, Lakki Marwat.

Attested
by

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal NO. 455/2013

Mr. Muhammad Amin -----
Appellant

Versus

Director Higher Education & others-----
Respondents

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Respondents 24/3/2016

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal NO. 455/2013

Mr. Muhammad Amin -----Appellant

Versus

Director Higher Education & others-----Respondents

Subject:- **PARA WISE COMMENTS ON BEHALF OF RESPONDENTS**

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:-

1. The appellant has no locus standi/cause of action to file the instant appeal
2. That the instant appeal is badly time barred.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the instant appeal is based on misconception/misstatement and therefore, liable to be dismissed.
5. That the appellant has not come to the Hon'able Tribunal with clean hands.
6. That this Hon'able Service Tribunal lacks jurisdiction to entertain the appeal.
7. That the appellant is hit by Rule-23 of Service Tribunal Rules.

ON FACTS:-

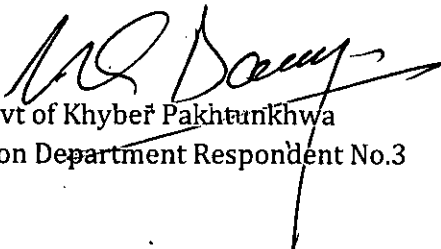
1. That Para No.1 is correct and hence needs no comments.
2. That Para No.2 is incorrect and hence denied to the extent that appellant was appointed as Chowkidar on the recommendation of selection committee and therefore, one Najib Ullah, son of deceased employee of this Department approached to civil court for Redressal of his grievances regarding the appointment of the appellant on the said post. The stance of Mr. Najib Ullah, before the learned trial court was that he is the son of deceased employee of the Department, so he may be given preference in this regard but the Department strongly condemned and contested the case against Mr. Najib Ullah.
3. Correct. Hence need no comments.
4. Correct to the extent of the operation of law.
5. Correct to the extent, that the suit of Mr. Najib Ullah was decreed with the direction to Department concerned to follow rules and procedure in the appointments.
6. Correct to the extent that both appellant and Department filed appeal against the decree/judgment passed by the learned Civil Judge paying therein for setting aside decree/judgment which was partially accepted by directing the Department to re-advertise the posts vide judgment dated 05/04/2011.
7. Correct. The appellant and his rival filed revision Petition before Peshawar High Court, Bannu Bench, which were dismissed on 15/10/2012.
8. Correct. In pursuance of the judgment dated 15/10/2012 of Hon'able High Court, the Department on 02/11/2012, terminated the services of the appellant with immediate effect.
9. No comments.


ON GROUNDS:-

- a. Correct to the extent that appellant was appointed as Chowkidar but as it was mentioned in the advertisement, some requirements were made necessary for appointment for e.g. he should be literate (05/04/2011 Advertisement Annexure-A). Furthermore as per judgment of Hon'able court, the Department even under legal obligation to re-advertise the posts.
- b. Incorrect. The Hon'able court thoroughly examined the case and come up with a decision to re-advertise the posts and fulfil all legal and codal formalities vide judgment dated 15/10/2012.
- c. Incorrect. The impugned order was issued as per judgment of the Hon'able High Court.
- d. As already mentioned in the preceeding Para.
- e. Incorrect. The order was strictly made according to law.

PRAYER:-

From the above facts & grounds it is therefore most humbly prayed that the appeal may graciously be dismissed with costs.


Secretary to Govt of Khyber Pakhtunkhwa
Higher Education Department Respondent No.3


Director Higher Education
Khyber Pakhtunkhwa Respondent No.2

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal NO. 455/2013

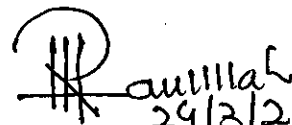
Mr. Muhammad Amin -----
Appellant

Versus

Director Higher Education & others-----
Respondents

AFFIDAVIT

I Irfan Ullah khan, Assistant Director, Litigation Higher Education Department do hereby declare and affirm on oath that the contents of Para Wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'able Court.


Deponent
29/3/2014.

CNIC No.11101-6409112-3

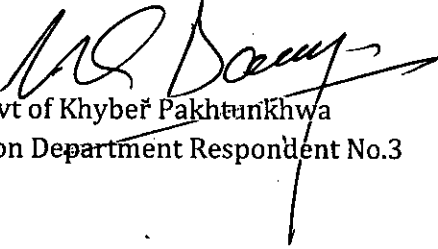
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ON GROUNDS:-

- a. Correct to the extent that appellant was appointed as Chowkidar but as it was mentioned in the advertisement, some requirements were made necessary for appointment for e.g. he should be literate (05/04/2011 Advertisement Annexure-A). Furthermore as per judgment of Hon'able court, the Department even under legal obligation to re-advertise the posts.
- b. Incorrect. The Hon'able court thoroughly examined the case and come up with a decision to re-advertise the posts and fulfil all legal and codal formalities vide judgment dated 15/10/2012.
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Secretary to Govt of Khyber Pakhtunkhwa
Higher Education Department Respondent No.3


Director Higher Education
Khyber Pakhtunkhwa Respondent No.2

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal NO. 455/2013

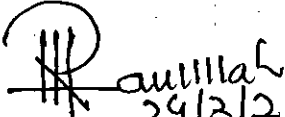
Mr. Muhammad Amin -----
Appellant

Versus

Director Higher Education & others-----
Respondents

AFFIDAVIT

I Irfan Ullah Khan, Assistant Director, Litigation Higher Education Department do hereby declare and affirm on oath that the contents of Para Wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'able Court.


Deponent
24/3/2014.

CNIC No.11101-6409112-3

Identify by

A

درخواستیں مطلوب ہیں

— x —

حکما لراہجو کیشن صومیر جو کے زیر انتظام مختلف زمانہ درمیانہ کالجوں میں درج ذیل
 حالیہ ماسیاں پر کرتے کئی تعلقہ اشخاص کے سکریٹری امیدواروں سے سادہ کاغذ پر درخواستیں
 مطلوب ہیں۔ جو بعد مطلوبہ دستاویزات (فٹول لیلی اسناد، ڈی سی اسٹیل وغیرہ) متعلقہ کالج کے پرنسپل
 صاحب کے دفتر کو 27 نومبر 2008ء کو وقت 2 بجے تک بھیج جان چاہئیں۔ تا معلقہ ادیر سے پالیس سے دی
 ہوئی درخواستوں پر کوئی عمل درآند نہیں کیا جائیگا۔ یکم دسمبر اور 2 دسمبر 2008ء کو ٹکٹ اور
 انٹرویو اسی کالج میں ہونگے۔ نوٹ۔ جن امیدواروں کے ٹکٹ اور انٹرویو مسوخ کئے جائے
 ہوں۔ وہ دوبارہ درخواستیں دیں۔

نمبر شمار	نام کالج اسی سکول	اسیوں کی تعداد
-----------	-------------------	----------------

گورنمنٹ ہوسٹل ٹریجوٹ کالج "سکی مدرٹ"

۱	لیب اسٹ	۷	۱
۲	جوینر ملرک	۴	۱
۳	لیب انڈرٹ	۴	۱
۴	جوینر دار	۴	۱
۵	خاتروب	۴	۱

قابلیت / اہلیت ۱۔ ۱۔ پیش امام، درس نظام، حافظ قرآن اور قرانی کو سرچیم دی جائیگی، ۲۔ اسٹل سپرنٹنڈنٹ۔ زمانہ کا کھسکینے
 کم از کم ۱۱/۱۱/۱۱ (۲۴ گھنٹے ڈیوٹی) غیر شادی شدہ امیدوار کو سرچیم دی جائیگی۔ ۳۔ جوینر ملرک۔ کم از کم
 میٹرک سینئر ڈیویشن (فوسی ٹریڈ) ایف ٹا پینٹ سینڈ 30 ماہ ۱۱ الفاظی صفت۔ نیز اس ارضیت کا 3 مینے کبوتر ٹورس لازمی ہے۔
 ۴۔ لیبارٹری اسٹنٹ۔ کم از کم میٹرک سینئر ڈیویشن سائنس ٹریڈ ۴ ٹرو ایبلشن۔ صرف ایس ایس سی / ایس ایس سی / ایس ایس سی ہوں۔
 ۵۔ ایف ایف ایف ایف۔ کم از کم ایف ایف ڈی (سی ٹریڈ) ۱۱۔ سنو کیم۔ کم از کم میٹرک سینئر ڈیویشن (سی ٹریڈ)
 ہے ڈرائیور۔ HTV ٹکس یافتہ اور HIV ٹکس پاس کرنا لازمی ہے۔ ~~۸۔ درجہ چہارم۔ مزیدہ امیدواروں کو سرچیم دی جائیگی۔~~

(عمر۔ تمام اسیوں کو ۱۷ سال سے کم نہیں کے مطابق)

جوینر ملرک۔ جنم اسیاں کنٹرولنگ پارٹی کے تحت ہونگی۔ ۱۱۔ معذور امیدواروں کیلئے 2 فیصد کوٹہ حصوں سے جس میں سے سنڈنگ
 میٹرک ہونے والے اور سے سرٹیفکیشن ٹریننگ لازمی ہے، ۱۱۔ کسی خاص وجہ یا بصورت عدم الامت از مصلحت ادارہ جات شیئر ٹرڈ اسٹیوٹ
 میں ردد ہوا / شعونی ہو سکتا ہے۔ ۱۱۔ حکم لراہجو کیشن کے کالجوں کے درجہ چہارم کے ملازمین جو کم جوینر ملرک لینے والے ایف ایف ایف
 وہ 33 فیصد حصوں کوٹہ لینے متعلقہ کالج کے پرنسپل کو درخواست دیں، کیلئے ڈائریکٹوریٹ کے درجہ چہارم ۱۱۔ ملازمین پر
 پرنسپل کوٹہ کا ۱۱۔ شمار کے ۱۱۔ چھ کریں۔

غلام علی خان۔ ڈپٹی ڈائریکٹر ٹریجوٹ کیشن صومیر سکرٹری

OFFICE OF THE PRINCIPAL GOVT; POST GRADUATE COLLEGE LAKKI

AUTHORITY

Mr. Muhammad Ayaz, Superintendant of this college is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal, Peshawar on 12-07-2016, on my behalf in connection with appeal No.455 of 2013 (Muhammad Amin, Appellant/Petitioner) Versus Principal, GPGC, Lakki Marwat.

M. Ayaz 12/7/2016
PRINCIPAL

GPGC, LAKKI MARWAT

Principal
Govt. Post Graduate
College Lakki Marwat

BEFORE THE KPK SERVICES TRIBUNAL, PESHAWAR

S.A.No.455/2013

Muhammad AminAppellant

VERSUS

Principal and othersRespondents

REJOINDER

Respectfully Sheweth:

Answer to preliminary objections:

All the 7 preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no locus standi/ cause of action, time barred, estopped by own conduct, misconception and mis-statement, unclean hands, lack of jurisdiction and barred by rules-23.

ON FACTS

1. Needs no comments.
2. Not correct. The rival candidate namely, Najeeb Ullah had no cause of action against the appellant as he was not appointed in the quota of deceased employees as is evident from the advertisement but on open merit.
3. Admitted correct, regarding Regularization of Service Act, 2009.
4. Admitted correct to the extent of Regularization of Services of appellant.
5. Needs no comments. Rules and procedure for appointment of appellant was already adhered too.
6. Admitted correct by the department to the extent of re-advertisement of the post.

7. Admitted correct by respondents, dismissing the suit of appellant and rival candidate by the High Court.
8. Admitted correct by the respondents by terminating the services of appellant.
9. Not commented upon by the respondents regarding submission of representation before appellate authority.

GROUNDS

All the grounds of appeal are legal and correct, while that of the reply of respondents are illegal and incorrect. The same are adopted once again.

It is, therefore, mostly humbly requested that the appeal be accepted as prayed for.

Dated 12.07.2016

Appellant

Through

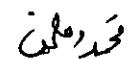
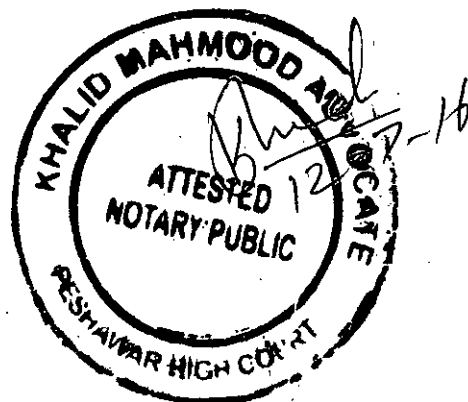


Saadullah Khan Marwat
Advocate,

AFFIDAVIT

I, Muhammad Amin, appellant, do hereby solemnly affirm and declare that the contents of the appeal and rejoinder are true and correct to the best of my knowledge and belief while that of the reply are illegal and incorrect.

I re-affirm the same on oath once again to be true and correct as per the available record.



Deponent

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No. 155 of 2013.

Mr. M. M. Khan, Ex-Candidate
Appellant/Petitioner

vs
Versus
Principal, Govt Post Graduate College, Uddermandera

Principal, Govt Post Graduate College, Uddermandera
RESPONDENT(S)

Notice to Appellant/Petitioner
Principal, Govt Post Graduate College, Uddermandera

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 21-02-13 at 11:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Printed acknowledgment of appeal

Registrar
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

o.

APPEAL No. 455 of 2013.

Mr. Muhammad Amin, Ex-Chancellor,
Govt Post Graduate College, Lulle Marwat
Appellant/Petitioner

Versus

Principal, Govt Post Graduate College,
Lulle Marwat
RESPONDENT(S)

Notice to Appellant/Petitioner Senior Govt Pleader
Service Tribunal, KPT/6, Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 24-5-2013 at 8:00 A. Mat Peshawar

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Point of maintainability
of appeal.

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

[Signature]

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