

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 597/2013

Date of Institution ... 03.04.2013

Date of Decision ... 15.08.2017

Bakhat Munir, Tube Well Operator, GDC Landi Jalandar,
Bannu. ... (Appellant)

VERSUS

1. The Secretary Higher Education Department, Khyber Pakhtunkhwa, Peshawar
and 3 others. ... (Respondents)

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate --- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASSAN ... MEMBER

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned
counsel for the parties heard and record perused.

2. This judgment shall dispose of the instant service appeal as well as
connected service appeals No. 593/2013 Shahidullah, No. 594/2013 Arifullah,
595/2013 Gul Yar Khan, No. 596/2013 Sahib Zada, No. 598/2013 Khandan Khan,
No. 599/2013 Shafiullah No. 600/2013 Jaidad Khan, 601/2013 Shams Zaman, No.
602/2013 Ikhtiar Zaman, as common questions of law and facts are involved in
all the appeals.

FACTS

3. The appellants were appointed on 03.11.2012 in BPS-01 on different posts in
Government Degree College, Landi Jalandar, District Bannu on the

recommendations of a Departmental Selection Committee, held on 03.11.2012. Thereafter the appellants assumed the charge of their posts and then on 1.12.2012 the Principal of the said College stopped the pay of the appellants on the basis of a telephonic call from the Deputy Director, Higher Education Department on 30.11.2012. A letter was also issued on 05.11.2012 by the Section Officer (Colleges-II), Government of Khyber Pakhtunkhwa Higher Education Department, Peshawar addressed to the Director, Higher Education Department, Khyber Pakhtunkhwa, Peshawar directing him that orders of appointment of the appellants might be held in abeyance with immediate effect. He was further directed that the competent authority had constituted a fact finding committee consisting of two members. The appellants filed their departmental appeals against the orders dated 05.11.2012 (purportedly communicated to the appellants on 04.12.2012) which was not responded to, and hence the present appeals before this Tribunal were filed on 03.04.2013.



ARGUMENTS

4. The learned counsel for the appellants argued that the appellants were appointed on the recommendations of the Departmental Selection Committee and they took over charge of their posts and thereafter their pay was stopped and fact finding enquiry was constituted but till today no termination order of the appellants has been passed. That there is no law under which pay could be stopped. That the fact finding enquiry did not held the present appellants responsible for any irregularity or illegality.

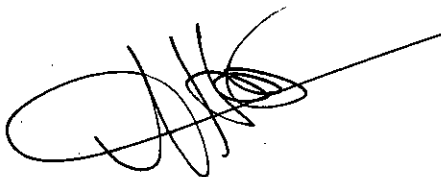
5. On the other hand, the learned Deputy District Attorney argued that the appointment orders were made by a Lecturer who was not of an officer in category-II and not a competent authority to issue appointment orders. That some persons from surplus pool had already been adjusted against the posts of the appellants.

CONCLUSION.

6. It is admitted position that a Departmental Selection Committee was held which made the recommendations for appointment of the appellants. Appointment orders were signed by the Principal/DDO, Government Degree College, Landi Jalandar. In view of the judgment reported as 2004-SCMR-1077, 2006-SCMR-678, 1996-SCMR-413 and 2009-SCMR-663, any appointment made in violation of rules cannot be cancelled to the detriment of the appointee and especially when no action is taken against the officer responsible for illegal appointment. In the present case no action has been proposed or taken against the Members of the Departmental Selection Committee and person signing appointment orders of the appellants himself as Principal. So far as the irregularity committed in the appointment of the appellants like non summoning of general public for test/interview and issuance of call letters to the concerned, the appointing authority was bound to summon only those peoples whose names appeared in the list provided by the District Employment Exchange. The limited list signed by the District Employment Exchange to the appointing authority has got no concern with the appellant nor is there any rule or law under which the list supplied by the District Employment Exchange should contain names of the candidates more than the available vacancies. Therefore, limited list provided by the District Employment Exchange cannot be made basis for declaring appointment as illegal. It has also not been shown by the respondents that who was the actual Principal and whether the person signing the appointment letters was not Principal and what action did the department take against the person who made appointments without any competency. The appellants were also given no opportunity of show cause notice nor they were heard or associated in the enquiry proceedings. So far as the issue of adjustment of person from surplus pool are concerned, the departmental representative has not been able to give any detail about the date when those persons were adjusted against these

posts nor there is any written order or proof of their adjustment. Additionally the appellants have not been terminated so far as their appointments were held in abeyance through the order dated 01.11.2012 which means that they are still in service and have been denied from getting their pay.

7. As a nutshell of the above discussion, all the appeals are accepted and the appellants who have not been terminated from service shall be deemed to be in service from the date they assumed the charge of their posts. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER



(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
15.08.2017

19.06.2017

Appellant with counsel and Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Arguments could not be heard due to learned member executive is on leave. To come up for arguments on 15.08.2017 before D.B.



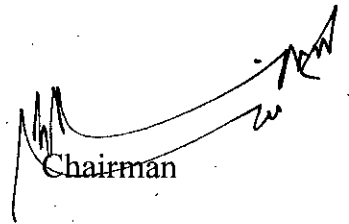
(Muhammad Amin Khan Kundi)
Member

15.08.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard and record perused.

This appeal is accepted as per detailed judgment of to-day. Parties are left to bear their own costs. File be consigned to the record room.

Member



Chairman

ANNOUNCED
15.08.2017

26.10.2016

Clerk to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to general strike of the Bar. To come up for arguments on 30.12.2016w3.



(PIR BAKHSH SHAH)
MEMBER



(ABDUL LATIF)
MEMBER

30.12.2016

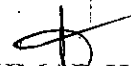
Counsel for the appellant and Addl. AG for respondents present. Counsel for the appellant submitted Wakalat Nama on behalf of the appellant. Arguments could not be heard due to incomplete bench. Case adjourned to 22.03.2017 for arguments before D.B.



Chairman

22.03.2017

Counsel for the appellant and Addl. AG for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 19.06.2017 before D.B.



(AHMAD HASSAN)
MEMBER

20.03.2015

Counsel for the appellant and Mr. Ibrar Ali, AD for respondents
alongwith Muhammad Jan, G.P present. Rejoinder submitted. To come up
for arguments on 13.10.2015.


MEMBER

013.10.2015


Clerk to counsel for the appellant and Mr. Murad Khan,
Supdt alongwith Mr. Muhammad Jan, GP for respondents present.
Clerk to counsel for the appellant requested for adjournment. To
come up for arguments on 14-04-16.


Member


Member

14.04.2016

Counsel for the appellant and Mr. Ziaullah, GP for
respondents present. Counsel for the appellant requested for
adjournment. To come up for arguments on 20.06.2016.


Member


Member

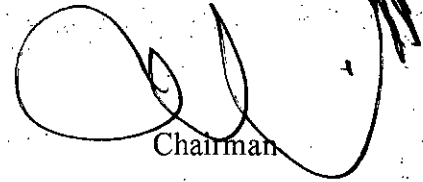
20.06.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for
respondents present. Arguments could not be heard due to learned
Member (Judicial) is on leave. To come up for arguments on
26.10.2016.


Member

28.01.2014

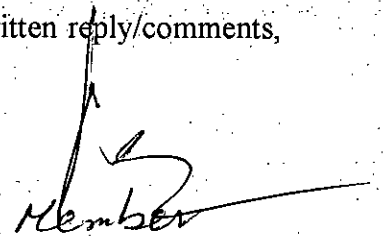
Appellant with counsel and Mr. Bukhari Shah, SO for respondents No. 1 to 3 with AAG for the respondents present. Written reply has not been received. To come-up for written reply/comments on 24.4.2014.



Chairman

24.4.2014

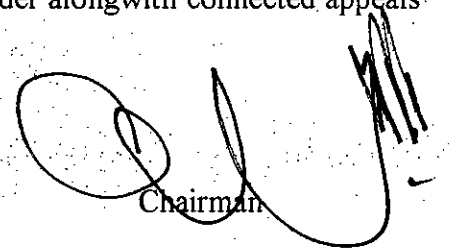
Counsel for the appellant, M/S Aziz Khan, Assistant for respondents No. 1 to 3 and Irshad Muhammad, Supdt. for respondent No. 4 with AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. Another chance is given for written reply/comments, positively, on 24.7.2014.



Member

24.7.2014

Mr. Taimur Ali, Advocate on behalf of counsel for the appellant and Mr. Muhammad Bashir, AD for respondents No. 1 to 3 with Mr. Ziaullah, GP for the respondents present. Joint written reply/para-wise comments received on behalf of the respondents, copy whereof is handed over to the learned Advocate appearing on behalf of counsel for the appellant for rejoinder alongwith connected appeals on 28.11.2014.



Chairman

28.11.2014

Clerk of counsel for the appellant and Mr. Anees-ur-Rehman, Junior Clerk for respondents No. 1 to 3 with Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for rejoinder alongwith connected appeals on 20.03.2015.



Reader

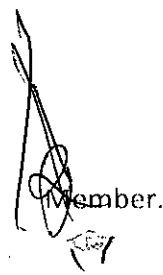
Appeal No. 597/2013.
Mr. Bakht Munir

24.07.2013

Appellant with counsel present and heard on preliminary.

Contends that the appellant has not been treated in accordance with the law/rules. He was appointed vide order dated 3.11.2012 as Tube well Operator and took over charge on 05.11.2012. The principal (Respondent No.3) has stopped the pay of the appellant on 01.12.2013 in pursuance of telephonic call of the Deputy Director on 30.12.2011. He filed departmental appeal on 04.12.2012 which has not been responded within the statutory period of 90 days. The instant appeal has been filed on 03.04.2013 which is within time. Points raised 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, notice be issued to the respondents.

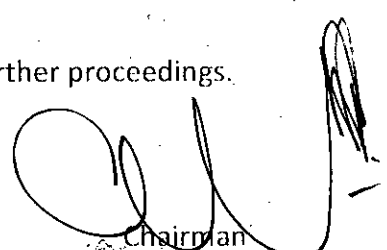
Case adjourned to 18.11.2013 for submission of written reply.


Member.

6.
Appellant deposited
Security & process fee
Rs 2200/- Bank
receipt is attached
with file
Jeh
2

24.7.2013

This case be put before the Final Bench P for further proceedings.


Chairman

18-11-13.

counsel for the appellant and ABIZ Khan,
Assistant, for respondents 1 & 2 present.
The worthy Chairman is an order to A/Asst
To come up for written reply / comments
on 28-1-2014.

Reeds.

4.6.2013

Munshi 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 26.6.2013.


Reader

26.6.2013

Munshi for the Counsel of 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 24.07.2013.


Reader

3, 22.05.2013



Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment Ordinance, 2013) (Khyber Pakhtunkhwa Order II of 2013), the case is adjourned on note Reader for proceeding as before on 4.6.2013


Reader.

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 597 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	03/04/2013	<p>The appeal of Mr. Bakhat Munir presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	9-4-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>22-5-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 597 /2013.

Bakhat Munir

VS

Higher Edu: Deptt:

INDEX.

S.NO	DOCUMENTS	ANNEXURE	PAGE
1-	Memo of appeal.	---	1 - 3
2-	Appointment order.	A	4 - 5
3-	Arrival report.	B	6
4-	Medical fitness.	C	7
5-	Order dt. 1.12.2012.	D	8
6-	Appeal.	E	9
7-	Vakalat nama	---	10.

APPELLANT

THROUGH:


M.ASIF YOUSAFZAI

ADVOCATE.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 597 /2013.

K.W.F. Peshawar
Service Tribunal
No. 665
Date 03-11-2013

Bakhat Munnir, T/well Opr.

GDC Landi Jalandar BannuAppellant.

VERSUS

- 1- The Secretary Higher Education Deptt: KPK Peshawar.
- 2- The Director Higher Education Deptt: KPK Peshawar.
- 3- The Principal Govt: College Landi Jalandar Bannu.
- 4- The Secretary Finance Deptt: KPK Peshawar.

..... Respondents.

APPEAL UNDER SECTION -4 OF THE KPK SERVICE TRIBUNALS ACT 1974 AGAINST THE ORDER OF RESPONDENT NO.3 DATED. 1.12.2012 WHEREBY THE PAY OF THE APPELLANT HAS BEEN STOPPED FOR NO GOOD REASONS AND AGAINST NOT TAKING ANY ACTION OF THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

~~Handwritten signature~~
3/4/13

PRAYER:

That on acceptance of this appeal the order dated. 1.12.2012 may be set-aside and the respondents may be directed to grant the pay to appellant from December 2012 till date and

onwards being still in service and performing regular duty. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of appellant.

R.SHEWETH.

- 1- That the appellant was appointed as Tube/well opr. by the competent authority vide order dated. 3.11.2012. after the approval and recommendations of proper Departmental Selection committee. Copy of the order is attached as Annexure – A.
- 2- That the appellant reported for arrival on 5.11.2012 along with medical fitness certificate. The appellant regularly performed and is still performing his duty in the office/college of respondent no.3 and has also drawn pay for the month of November 2012. Copies of the charge report and medical fitness certificate are attached as Annexure – B & C.
- 3- That all of sudden the respondent No.3 has stopped the payoff the appellant on 1.12.2012 in pursuance of telephone call and letter dt. 5.11.2012. Copy of the order & letter is attached as Annexure – D.
- 4- That the appellant filed departmental appeal on 4.12.2012 against the order of respondent no.3 and waited for statutory period but no reply has been received by the appellant so far. Hence the present appeal on the following grounds amongst others. Copy of the appeal is attached as Annexure – E.

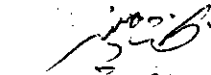
GROUND:

- A- That the order dated.1.12.2012 of respondent no.3 and not taking action on the departmental appeal of appellant within statutory period is against the norms of justice and material on record. Therefore not tenable.

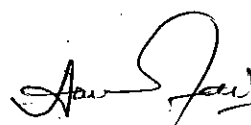
- B- That the appellant is still performing his duty regularly and there are no complaints against the appellant. Thus the appellant cannot be deprived from his legal right of pay of the post.
- C- That the appellant has been condemned unheard as no prior notice or chance of defense was provided to appellant before passing order of stopping pay of appellant.
- D- That the appellant has not been treated according to law and rules and the act of the respondents is an arbitrary and without legal footings.
- E- That the appellant is legally entitled to the pay of the post against which he is performing his duties under section 17 of the Civil Servant Act 1973.
- F- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

APPELLANT


Beekhal Munnir

THROUGH:


M.ASIF YOUSAFZAI
ADVOCATE.

A (4)

OFFICE OF THE PRINCIPAL GOVT. DEGREE COLLEGE
LANDI JALANDAR BANNU.

Appointment Notification:

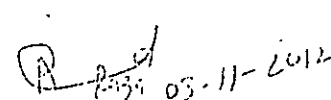
As per decision / recommendation of the Departmental Selection Committee dated 03-11-2012, constituted for the recruitment of class-I at Govt Degree College Landi Jalander Bannu; The competent authority is pleased to appoint the following persons for the posts mentioned against each in this college with immediate effect :-

S.No	Name	Sp/Name	POSTS With BPS
01	Fida ullah	Miradar khan	Naib Qasid-01
02	Arifullah	Muhammad Nawaz	Lab Attendant-01
03 ✓	Gulyar	Sabir Zaman	Mali-01
04	Jaidad khan	Farid khan	Lab attendant-01
05	Ikhitar Zaman	Farid khan	Lab Attendent-01
06	Sahib zada	Adif Badshah	Naib Qasid-01
07 ✓	Bakht Munir	Gul Zaman	Tube well operator-01
08	Khandan	Amil Zaman	Chowkidar-01
09	Shafi ullah	Saydad khan	Sweeper-01
10	Shahid ullah	Saydad khan	Sweeper-01
11	Shams Zaman	Sadrai	Chowkidar-01

The Appointments of the above class - servants will be subject to the following terms and conditions.

TERMS AND CONDITIONS:

1. Charge Reports should be submitted to all concerned.
2. No TADA etc is allowed.
3. The Appointment of the above candidates are being made on purely temporary basis and is liable to termination at any time with out notice And with out assigning any reason.
4. They are not entitled to any pension & gratuity.
5. They should produce their Health & age certificate from Medical Supdt; DHO Hospital, Bannu.
6. They will be governed by the rules & Regulations of the provincial-Govt Prescribed for such employees.


Principal/DHO
Govt : Degree College Landi Jalander
Bannu

ATTESTED


5

Encls: No...190-96

Dated: GDC 1...1-03-11-2012

Copy of the above is forwarded for information to ...

1. The Director Higher Education Department KPK Peshawar.
2. P.S to Minister for Higher Education Department KPK Peshawar.
3. PS to Secretary Higher Education Department KPK Peshawar.
4. Section Officer Higher Education Department KPK Peshawar.
5. The District Account officer Bannu.
6. Officials concerned.

R. Parag
03-11-2012

Principal/DDO

Govt : Degree college Landi jalaudar
Bannu

Attested

R. Parag
05-11-2012

Govt : Degree college Landi jalaudar
Bannu

ATTESTED

[Signature]

B 6

CHARGE REPORT

5/11/2012.

certified that we have on the forenoon of this day respectively made over and received charged of this office of the Tubewell Operator of Govt Degree College Landi Jalander Bannu vide Notification No. Principal: 190-96 dated Peshawar the 3 11 2012.
Presencures of each and important secret and confidential documents handed over are noted on the reverse.

Signature of relived
Govt Servant Vacant

Designation Tubewell Operator

Station Govt Degree Landi Jalander Bannu

Signature of reliving
Govt Servant [Signature]

Designation Tubewell Operator

Date 3/11/2012 (INFN)

OFFICE OF THE PRINCIPAL GOVT DEGREE COLLEGE LANDI JALANDER BANNU

Form No. 2/15-53 GDC Landi Jalander Bannu dated 5/11/2012

- The Director Higher Education KPK Peshawar.
- The Section Officer (Colleges) Higher Education KPK Peshawar.
- The Section Officer Bannu.
- Office concerned
- O.S. to Secretary Higher Edu KPK Pesh.
- Higher Edu KPK Pesh.

[Signature]
Principal,
Govt Degree College Landi Jalander
Bannu

[Signature]

MEDICAL FITNESS CERTIFICATE

C (7)

Name of applicant: MR. Bakht Munir
Name of employer: MR. Gul Zaman
Caste or Race: (C Muslim)

Residence: Landi-Jalawaray Tehsil
DIST: Bannu

Date of Birth: 12.04.1971 NIC: 1101-9293997-3

Exact Height by measurement: 5-11

Personal mark of identification: Scar lower lid of R.Eye

Signature of official: [Signature]

Signature of head of office: _____

I do hereby certify that I have examined Mr. Bakht Munir

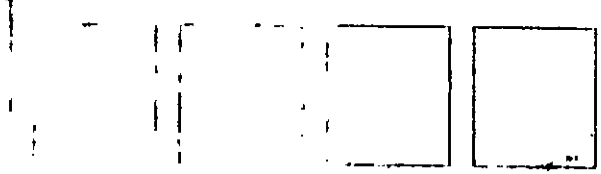
for employment in the office of (Education) Govt Degree College
Landi Jalawaray Buz as T.W-OPFR
and cannot discover that he/she has any diseases communicable of either constitutional

or bodily deformity except nil

I do not consider as disqualification for employment in the office of the (Education) Govt Degree College Landi Jalawaray Buz as T.W-OPFR

His age according to his own statement is (41) years and by appearance is about Forty one years.

Impression of
L.H/Right hand thumb and fingers



[Signature]
Medical Superintendent
Govt. Teaching Hospital
Bannu
08/11/2012

ATTESTED

[Signature]

10 8

**OFFICE OF THE DIRECTOR HIGHER EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.**

Instt: No. _____/CA-VII/ Estt: Branch/GDC, Parova Dated Peshawar the 6/11/2012

Copy of overleaf is forwarded for information and necessary action to the:-

1. Principal Govt; Degree College, Landi Jalandar (Bannu).
2. Govt; Girls Degree College, Tank.
3. Govt; Degree College, Parova (D.I.Khan).
4. Section Officer (Colleges-II) Govt; of Khyber Pakhtunkhwa, Higher Education Department Peshawar with reference to letter No referred to above.
5. PS to Secretary Higher Education Khyber Pakhtunkhwa.

DY: DIRECTOR (ESTABLISHMENT)
[Signature]

Dy Director Ghulam Ali sb make a telephonic call to me on 30-11-2012 at 11:22 am and ordered to stop the pay of the appointees with immediate effect.

This letter was with Dy Director (H.E), Mr-Ghaffoorullah Lecturer in Islamiyat received it from Dy Director on the same day. In compliance to that letter I stop further process in the matter.

R 01-12-2012
Rag 01-12-2012

**Principal
Govt Degree College
Landi Jalandar**

ATTESTED
[Signature]

MOST IMMEDIATE

**GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT**

NO. SO(COLLEGES-II)/28-1/ 2012.
Dated Peshawar the 05.11.2012.

To

✓
The Director,
Higher Education Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - APPOINTMENT NOTIFICATION OF CLASS-IV AT GDC
LANDI JALANDAR, BANNU/ GGDC TANK / GDC PAROVA,
D.I. KHAN / INQUIRY.

Dear Sir,

I am directed to refer to the subject cited above and to state that the Competent Authority has been pleased to direct that Appointment Notifications of Class-IV issued by the Principals concerned may be **held in abeyance** with immediate effect till further orders. I am further directed to request that the Competent Authority has constituted a fact finding Committee of **Mr. Niaz Mohammad**, Principal, Govt. Degree College, Naguman, Peshawar and **Mr. Bukhari Shah**, Section Officer (Litigation), Higher Education Department to conduct an inquiry in the subject case and furnish a report to this Department within three (03) days, positively.

Yours faithfully,

[Signature]
SECTION OFFICER (COLLEGES-II)

Undsi:- No. & Date Even.

Copy of the above is forwarded to the:-

- ⇒ Principals, of the concerned colleges.
- ⇒ P.S to Minister, Higher Education, Khyber Pakhtunkhwa.
- ⇒ P.S to Secretary, Higher Education Department.

SECTION OFFICER (COLLEGES-II)

بھنخور جناب ڈائریکٹر صاحب ہائر ایجوکیشن خیبر پختون خواہ پشاور

عنوان: (حکمانہ اپیل برخلاف حکم N.So(Colleges-II) مورخہ 05-11-2012 جو کہ ایپلانٹ کو مورخہ 04-12-2012 کو موصل ہوا ہے)

استدعائے اپیل:

بمنظوری اپیل ہذا حکم زیر اپیل کو کالعدم و منسوخ قرار دیا جائے نیز ایپلانٹ کے سروس بحالی مع جملہ مراعات و تنخواہ برقرار رکھے جاوے۔

جناب عالی!

ایپلانٹ حسب ذیل عرض کرتا ہے۔

1- یہ کہ ایپلانٹ کو حسب ضابطہ از روئے قانون مورخہ 03-11-2012 کو بطور Tube well operator مجاز اتھارٹی نے تعینات کیا گیا جو کہ مورخہ 05-11-2012 سے چارج لیا ہوا ہے۔

2- یہ کہ آج مورخہ 04-12-2012 کو جناب پرنسپل صاحب نے ایپلانٹ کی تنخواہ بند کرنے اور اسے نوکری سے نکالنے کا حکم زبانی کیا اور حکم مورخہ 05-11-2012 کا حوالہ دیا، جس کی فوٹو کاپی ایپلانٹ نے وصول کیے، جو لطف ہے۔

3- یہ کہ ایپلانٹ کے میڈیکل فٹنس سرٹیفکیٹ لطف ہے۔

4- یہ کہ اب آپ صاحبان کو حکمانہ اپیل برطبق قانون حسب ذیل عرض ہے۔

الف۔ یہ کہ حکم زیر اپیل سراسر غیر قانونی اور خلاف انصاف ہے۔

ب۔ یہ کہ ایپلانٹ کی تعیناتی میرٹ اور قانون کے مطابق ہوئی ہے جبکہ سیاسی سازش کی بناء پر ایپلانٹ کو نکالے جانے پر تلے ہوئے ہیں۔

ج۔ یہ کہ ایپلانٹ کو کوئی نوٹس نہیں دیا گیا ہے جبکہ ایپلانٹ اپنے خاندان کا واحد ذریعہ معاش ہے۔

د۔ یہ کہ ایپلانٹ کا رزق حلال ذریعہ برقرار رکھا جاوے۔

لہذا استدعا ہے کہ منظوری اپیل ہذا ایپلانٹ کی نوکری تعیناتی کو برقرار رکھا جائے، نیز تنخواہ و مراعات دیے جانے کا حکم زیر اپیل کو کالعدم و منسوخ قرار دے جانے کا حکم

صادر فرمایا جاوے۔

مورخہ 04-12-2012

آپ کا تاحدار
جناب مندو گل زمان

Tube well operator

دستخط و درخواست گزار
جناب سید محمد سعید

کاپی نو:

1- سیکریٹری ہائر ایجوکیشن خیبر پختون خواہ پشاور

2- پرنسپل ڈگری کالج لنڈی جالندھر بنوں

ATTESTED

1
2
3
4

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Bakhat Muneer

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Higher Edu: Dept.

(Respondent)
(Defendant)

I/We Bakhat Muneer (Appellant)

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

(CLIENT)

ACCEPTED

M. Asif Yousafzai
M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI

Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

Before the Service Tribunal Khyber Pakhtunkhwa, Peshawar

Service Appeal No.597/2013

Bakht Munir

Appellant

Versus

1. Secretary Higher Education Govt of KPK Respondent No.1
2. Director Higher Education(Colleges) KPK Respondent No.2
3. Principal Govt Degree College Landi Jalandher Bannu Respondent No.3
4. Secretary Finance Department Govt of KPK Respondent No.4

Respondents

Subject; - **PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO.1, 2 &4.**

Respected Sheweth,

Preliminary Objections

- I. The appellant has no locus standi to file the Appeal in hands.
- II. That the appellant has concealed material facts from this Hon'able Court hence the Appeal in hands is not maintainable.
- III. The appointment order of the appellant was not in accordance with the prescribed manner as provided in the Appointment and Promotion rules.
- IV. That the appeal is badly time barred.
- V. That the appellant has been estopped by his own conduct to file the instant appeal.
- VI. That the appellant has no cause of action.
- VII. That the Hon'able Tribunal has no jurisdiction to entertain the appeal.
- VIII. That the appellant has no come to the court with clean hands.

Facts

1. Incorrect. The appointment order dated 03/11/2012 was not according to the strict codal formalities as it was made in undue haste. A lecturer in (BPS-17) has issued the appointments orders which fall beyond his jurisdiction. Above that this committee has interviewed all these 11 candidates and issued their orders on the same day to the extent that they have taken their charge of offices. Furthermore, a thick cloud of malafide is visible as evident from the inquiry report dated 26/11/2012(Annexure-A) wherein three main objections have been raised by the Inquiry Officers:-
 - i. There is a variation between the date of requisition of the College Administration for the candidates i.e. 08/10/2012 and provision of the candidates by employment exchange Bannu i.e. 02/10/2012. Another disputed point is that the Manager Employment Exchange, Bannu only sent the same names of those 11 candidates who were later on appointed. However in the eyes of law and procedural experiences he should have sent more than 11 candidates.
 - ii. No call letters to candidates were issued, which is pre-requisite for such like appointments.
 - iii. The DDO being a lecturer in BPS-17 and not an officer of category-II is not competent to issue these appointments orders.
2. Incorrect. The DDO concerned was informed to held in abeyance the appointment orders vide Endst No.SO (COLLEGES-II)28-1/2012 dated 05/11/2012^{as} per Annexure-D of the appeal.
3. Incorrect. The pay was stopped due to the gross irregularities reported to the Provincial Government in the appointments of the appellants.
4. Incorrect. His Departmental appeal has been considered and filed being meritless.

Grounds

- A. Not admitted. The action of the Respondents is legal, lawful and in the best interest of public.
- B. Not admitted. The appellant is trying to misguide the Court by claiming that he is still performing his duties but, in Para-2 of the Departmental appeal he himself admits that the DDO has stopped his salary and cancelled his appointment order. According to the inquiry report (Annexure-A) supra the appointments orders are made purely on temporary basis and are liable to termination at any time with out any notice or assigning any reason.
- C. Incorrect. Per terms and conditions the appointment of the appellant was liable to termination without serving upon him any notice.
- D. Incorrect. The action of the Respondents is according to the law and rules as stated above.
- E. Incorrect. Section -17 of the civil servant act,1973 deals with the seniority of the civil servant and not with the payment of salary, hence denied.
- F. The Respondents also seek permission to advance additional arguments at the time of the hearing of the case.

Prayer

The above arguments prove that the appellant has very weak legs to stand upon, hence the appeal in hand may graciously be dismissed.

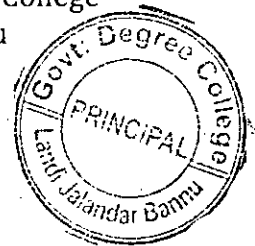
M. Khan

Secretary
To Govt: of KPK
Higher Education Department
Respondent No.1

[Signature]
Director Higher Education
Khyber Pakhtunkhwa
Respondent No.2

**Director Higher Education
Khyber Pakhtoon Khwa
Khyber Road Peshawar.**

[Signature]
Principal Govt Degree College
Landi Jalandher Bannu
Respondent No.3



[Signature]
Secretary
To Govt: of KPK
Finance Department
Respondent No.4

[Signature]

Before the Service Tribunal Khyber Pakhtunkhwa, Peshawar

Service Appeal No.592/2013

Fida Ullah----- Appellant

Versus

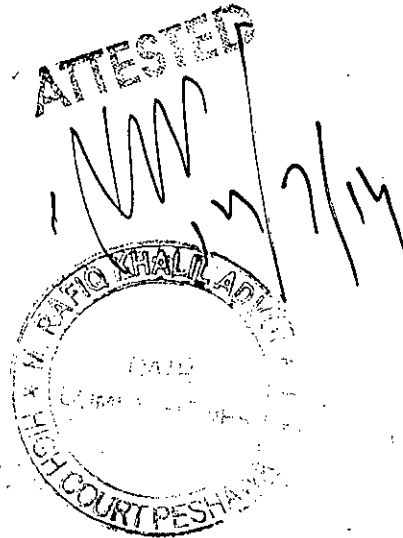
1. Secretary Higher Education Govt of KPK Respondent No.1
2. Director Higher Education(Colleges) KPK Respondent No.2
3. Principal Govt Degree College Landi Jalandher Bannu Respondent No.3
4. Secretary Finance Department Govt of KPK Respondent No.4

-----Respondents

Affidavit

I Muhammad Bashir Assistant Director(Litigation Cell) Higher Education Khyber Pakhtunkhwa solemnly affirm and declare on oath that the contents of Para wise comments in the above mentioned service appeal are true and correct to the best of my knowledge and belief that nothing has been concealed or withheld from this Honorable Tribunal.

Identified by



M. Bashir

Deponent

CNIC 33301-5765388-9

249

To
The Secretary
Govt. of Khyber Pakhtunkhwa
Higher Education Department.

Subject:- APPOINTMENT NOTIFICATION OF CLASS-IV AT GDC LANDI JALANDAR, BANNU /
GGDC TANK/ GDC PROVA D.I.KHAN/ INQUIRY.

Memo,

Kindly refer to the letter No.SO(COLLEGES-II)28-1/2012, Dated 05-11-1012, regarding probe in the matter of selection for certain posts in three Govt Colleges.

1-Govt. Girls Degree College Tank. As per available record and statement of the Principal Miss Farida Shah, there are Five vacant posts (one each of Driver, Bearer, Mali, Cook and Sweeper). A letter was sent to the Manager Employment Exchange D.I.Khan for the provision of suitable candidates (**Annex-A**). In response a list of 28 persons was provided (**Annex-B**) The Principal also advertised the posts through local notices affixed at various prominent places. Therefore, total Number of candidates raised to 135. Similarly the DCO Tank was asked by the Principal for NOC. In response the DCO provided at a list of 23 persons from surplus pool (**Annex-C**) but there was no suitable persons for the job except driver who remained absent on the date of interview. A committee was constituted of the following persons to conduct the interview.

- 1- Miss Farida Shah Principal (chair person)
- 2- Miss Zainab Lecture (Member)
- 3- Dr. Abdul Wahab Associate Professor GPGC D.I.Hkan (Member)
- 4- Mr. Habibur Rehman SO. Colleges (Provincial Nominee)

Interview was conducted on 02-11-2012 and selection was made on the basis of suitability cum fitness but no appointment order has so far been issued.

2-Govt Degree Collge Prova D.I.Khan. As per statement of the Principal Prof: Said Nawaz, there is only one post of tube well operator is vacant in the college. The Manager employment Exchange D.I.Khan was asked for the provision of suitable candidates (**Annex-D**) and in response a list of Eight persons was provided (**Annex-E**). Similarly Principal called the application through local Notices and Six persons applied. Total number of the candidates raised to 14. Interview was conducted on 03-11-2012, candidates were informed through local notices and the following persons conducted the interview.

Dated: _____/_____/2012

Copy of the above is submitted
Peshawar for information please.

Director Higher Education

2495

To
The Secretary

Govt. of Khyber Pakhtunkhwa

Higher Education Department.

Subject:- APPOINTMENT NOTIFICATION OF CLASS-IV AT GDC LANDI JALANDAR, BANNU /
GGDC TANK/ GDC PROVA D.I.KHAN/ INQUIRY.

Memo,

Kindly refer to the letter No.SO(COLLEGES-II)28-1/2012, Dated 05-11-1012, regarding probe in the matter of selection for certain posts in three Govt Colleges:

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- 1- Miss Farida Shah Principal (chair person)
- 2- Miss Zainab Lecture (Member)
- 3- Dr. Abdul Wahab Associate Professor GPGC D.I.Hkan (Member)
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Dated: _____/_____/2012

Copy of the above is submitted
Peshawar for information please

Director Higher Education

- 223
- 1- Prof: Said Nawaz Principal (Chairman)
 - 2- Mr. Niaz Hussain Lecturer (Member)
 - 3- Mr. Sohail Rizwan Lecture (member)
 - 4- Mr. Habibur Rehman SO Colleges (Provincial Nominee)

Five persons among the candidates were present Annex-F) and one Mr. Ihsanullah was selected as principal candidate and Muhammad Arshad as alternate candidate. The process was completed at 11:30 A.M. on 03-11-2012, no appointment order has so far been issued.

3- Govt Degree College Landi Jalandar Bannu :- According to available record and statement of the DDO/ Incharge Principal Mr. Ahmad Raza Lecturer in Political Science, there are eleven vacant posts consisting of 3 Lab attendant, 2 chowkidars, 2 Naib Qasid, 2 sweepers, 1 Mali and 1 tube well operator. A letter was sent to the Manager Employment Exchange Bannu on 08-10-2012 (Annex-G) asking for the provision of suitable candidates and DCO for NOC on the same date (Annex-H) but the List of 11 persons had sent by Manager employment Exchange Bannu on 02-10-2012, prior to the requisition (Annex-I). The DCO, however, granted NOC on the same date (Annex-J). Interview was conducted on 03-11-2012 at 12:30 P.M. and the following persons conducted the interview.

- 1- Mr. Ahmad Raza Lecturer DDO (chairman)
- 2- Mr. Gul Tiaz Khan Lecturer (Member)
- 3- Mr. Alam Zeb Khan Lecturer (Member)
- 4- Mr. Habibur Rehman SO Colleges (Provincial Nominee)

No call letter for the interview was issued to candidates nor it was published through local notice. However all of the 11 candidates were selected, their appointment orders were issued on the same date i.e. 03-11-2012, they were handed over charge of their duties inspite of the facts that only 7 persons had submitted their Medical fitness.

Therefore the following discrepancies are pointed out;

- 1- There is a variation between the date of requisition of the college administration for the candidates i.e. 08-10-2012 and provision of the list of candidates by Employment Exchange Bannu i.e. 02-10-2012. Provision before requisition establishes malafide.
- 2- No call letter to the candidates was issued to appear for interview but all were present for.
- 3- The Employment Exchange Bannu provided a list of exactly 11 candidates so that selection committee had no option but to select all. This aspect of the case also speaks of malafide and intransparency of the process.

Copy of the above is submitted to
Peshawar for information please.

Dated: _____/_____/2012

To Director Higher Education

AC

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- 4- DDO being a Lecturer IN Grade-17 and not an officer of category-II, not competent to issue appointment orders.
- 5- It is worth mentioning that interview started on 03-11-2012, at 12.30 ,completed the process on the same day and appointment orders issued on the same day too. Therefore, such hasty decisions shows pre planning.
- 6- It is noted from the record of Higher Education Department that Mr. Muhammad Zaman Deputy CPO was nominated for the said college (Annex-K) and then Mr. Habibur Rehman was nominated(Annex-L).

It has been written in the appointment orders that "The appointments are being made on purely temporary basis and is liable to termination at any time without notice and without assigning any reason." Therefore it is recommended that appointment orders of all the 11 person issued vide No.190-96 dated 03-11-2012 at Govt Degree College Landi Jalandar Bannu (Annex-M) may be ^{with drawn} cancelled and it may be reprocessed to maintain transparency in appointment particularly in view of the intransparency in the process of selection and constitution of improper selection committee.

Bukhari Shah
 Section Officer (Litigation)
 Higher Education Department

Niaz Muhammad
 Niaz Muhammad
 Principal
 Govt Degree College Naguman.

Moreover the (11) candidates who appeared for interview on 03/11/12 may also be interviewed afresh, and their cases be considered in the fresh process of selection, and after constitution of the selection committee.

Nadeem
 26/11/12

Dated: _____ 2012
 Director Higher Education

Copy of the above is submitted to Peshawar for information please.

Annex G 32

NO. 120

Dated: 25-09-2012.

Form:

The office of the Principal,
GDC Landi Jalander Bannu.

To,

The Manager,
Employment Exchange Bannu.

Subject: LIST OF SUITABLE CANDIDATES ELIGIBLE FOR THE POST OF FOLLOWING CLASS-IV

Memo;

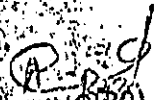
It is submitted that following Class IV are hereby lying vacant since long time in DGC Landi Jalander Bannu.

The Detail is as under:

- 1- Lab Attendant (03)
- 2- Chowkidar (02)
- 3- Naib Qasid (02)
- 4- Sweeper (02)
- 5- Mali (01)
- 6- Tube well Operator (01)

Please provide the list of suitable candidates who are eligible for the above posts according to your office record.

08-10-2012


 PRINCIPAL
 Govt. Degree College
 GDC Landi Jalander
 BANNU

Annex - H. 33

No. 187

Alco 1484/10
Bannu dated 1. 10. 2012

From:

The Office of the Principal,
GDC Landi Jalander Bannu.

To,

The District Coordination Officer,
Bannu.

Subject:

Request list of Class IV and Lab Attendant.

Memo,

It is submitted that following Class IV are hereby lying vacant since long time in
GDC Landi Jalander Bannu.

- 1. Lab Attendant (03)
- 2. Chowkidar (02)
- 3. Naib Qasid (02)
- 4. Sweeper (02)
- 5. Mali (01)
- 6. Tube well Operator (01)

*It is requested that necessary
NOC for filling up the above vacant post may be issued
Accordingly.*
A.E.

[Signature]

[Signature]
Govt. of Punjab
District Office Bannu
08-10-2012

[Signature]
DCO

7769
09-10-12

Amir

27

No:- 408/EEB/Appendix

From,
The Manager,
Employment exchanges Bannu,

To,
The Principal,
GDC Landi Jalandar Bannu

Subject: List of Registered Candidates

Honourable Sir,

It is to inform you that this office get various application regarding the newly created post at your college.

The list of the candidates are as follows.

1. Fida Ullah S/O Mirdad Khan Reg: 1143/EP/011
2. Arif Ullah S/O Muhammad Nawaz Reg: 280/05
3. Qut Yar S/O Sabir Zaman Reg: 866/011
4. Saidad Khan S/O Farid Khan Reg: 049/EP/011
5. Ashtiar Zaman S/O Farid Khan Reg: 870/011 (153/EP/011)
6. Habib Zada S/O Adil Badshah Reg: 870/011
7. Sakhi Zaidir S/O Gu Zaman Reg: 144/EP/0
8. Khandan S/O Amil Zaman Reg: 865/011
9. Shafi Ullah S/O Sawdad Khan Reg: 868/011
10. Shaid Ullah S/O Khan Reg: 1207/EP/011
11. Shams Zaman S/O Sadrai Reg: 1142/EP/011

Dated: 22/10/12

[Signature]
22-10-012

Manager,
Employment Exchange
Bannu.

Manager
Employment Exchange
BANNU

Better Copy

(Annexure-I)

OFFICE OF THE DISTRICT COORDINATION OFFICER, BANNU

No. 4134/DCO/AE/NOC

Dated 09/10/2012

To

The Principal
Govt Degree College Landi Jalandher,
Bannu.

Subject: - **NO OBJECTION CERTIFICATE.**

Reference your letter No. 182 dated 09/10/2012.

This office has got no objection over filling of the vacant posts of the following Class-IV lying vacant in Govt Degree College Landi Jalandher Bannu subject to the fulfillment all codal formalities under rules/ policy.

S#	Nomenclature of post with BPS	No. of Posts	Institution in which the post lying vacant
1	Lab Attendant	03	GDC, Landi Jalandher Bannu
2	Chowkidar	02	do
3	Naib Qasid	02	do
4	Sweeper	02	do
5	Mali	01	do
6	Tube Well operator	01	do

Sd/
District Coordination Officer
Bannu.



Govt. of KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

No. SO (COLLEGES-II)HE/19-1/2012.
Dated Peshawar the September 28th, 2012.

To

The Director,
Higher Education, Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - INTERVIEW FOR THE APPOINTMENT OF CLASS-IV EMPLOYEES

Sir,

I am directed to refer to the subject noted above and to state that the Competent Authority in Higher Education Department has been pleased to nominate Mr. Mohammad Zaman, Deputy Chief Planning Officer of this Department to conduct interview of the above mentioned posts in the following colleges:

1. GDC (Boys) Mamash Khel Bannu.
2. GDC (Boys) Landi Jalandar Bannu.
3. GDC (Boys) Domail Bannu.

Endst: No & Date of even

SECTION OFFICER (COLLEGES-II)

Copy forwarded for information to the:

1. PS to Secretary, Higher Education Department.
2. Muhammad Zaman, Dy: Chief Planning Officer, Higher Education Department

SECTION OFFICER (COLLEGES-II)



GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

Dated Peshawar the 05.10.2012.

NOTIFICATION

NO. SO(C-II)HED/28-1/2012. Consequent upon the issuance of fresh Job distribution by the Provincial Government among one of the following, subject to the availability, will attend the DSC meeting as Govt. nominee for the recruitment of Class-IV staff in the different colleges of Khyber Pakhtunkhwa (Male & Female) with immediate effect:-

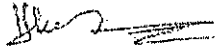
S. No.	Name & Designation of the Officer	Areas for which nominated
1.	Mr. Habib-ur-Rahman, SO(C-II)	For southern areas.
2.	Mr. Pir Mohammad Khan, SO(C-I)	For Northern areas.
3.	Mr. Ghulam Ali, Deputy Director (Estt), Directorate of Higher Education.	For Central districts.
4.	Mr. Naveed Khan, Deputy Director (P&D), Directorate of Higher Education.	For Hazara Division.

SECRETARY TO GOVT. OF
KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

Ends: No. & Date Even.

A copy is forwarded to the:-

1. Director, Higher Education, Khyber Pakhtunkhwa, Peshawar.
2. P.S to Minister, Higher Education, Khyber Pakhtunkhwa, Peshawar.
3. P.S to Secretary, Higher Education Department.
4. Officers concerned.


(HABIB-UR-RAHMAN)
SECTION OFFICER (COLLEGES-II)

Annex-M

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**OFFICE OF THE PRINCIPAL GOVT: DEGREE COLLEGE
LANDI JALANDAR BANNU.**

Appointment Notification:


As per decision / recommendation of the Departmental Selection Committee dated 03-11-2012, constituted for the recruitment of class-4 at Govt Degree College Landi Jalander Bannu; The competent authority is pleased to appoint the following persons for the posts mentioned against each in this college with immediate effect :-

S.No	Name	F/Name	POSTS With BPS
01	Fida ullah	Miradar khan	Naib Qasid-01
02	Arifullah	Muhammad Nawaz	Lab Attendant-01
03	Gulyar	Sabir Zaman	Mali-01
04	Jaidad khan	Farid khan	Lab attendant-01
05	Ikhtiar Zaman	Farid khan	Lab Attendent-01
06	Sahib zada	Adil Badshah	Naib Qasid-01
07	BakhtMunir	Gul Zaman	Tube well operator-01
08	Khandan	Amil Zaman	Chowkidar-01
09	Shafi ullah	Sawdad khan	Sweeper-01
10	Shahid ullah	Sawdad khan	Sweeper-01
11	Shams Zaman	Sadrai	Chowkidar-01

The Appointments of the above class 4 scrvants will be subject to the following terms and conditions.

TERMS AND CONDITIONS:

1. Charge Reports should be submitted to all concerned.
2. No TA/DA etc is allowed.
3. The Appointment of the above candidates are being made on purely temporary basis and is liable to termination at any time with out notice And with out assigning any reason.
4. They are not entitled to any pension & gratuity.
5. They should produce their Health & age certificate from Medical Supdt;DHO Hospital Bannu.
6. They will be governed by the rules & Regulations of the provincial-Govt Prescribed for such employces.


Principal/DDO
Govt : Degree College Landi Jalandar
Bannu

03-11-2012

Endst: No...190-96

Dated: GDC L.J-03-11-2012

38

Copy of the above is forwarded for information to ...

1. The Director Higher Education Department KPK Peshawar.
2. P.S to Minister for Higher Education Department KPK Peshawar.
3. PS to Secretary Higher Education Department KPK Peshawar.
4. Section Officer Higher Education Department KPK Peshawar.
5. The District Account officer Bannu.
6. Officials concerned.

R. P. J.
03-11-2012

Principal/DDO
Govt : Degree college Landi jalandar
Bannu

Attested

R. P. J.
03-11-2012
Govt: Degree College
Landi Jalandhar Bannu

Before the Service Tribunal Khyber Pakhtunkhwa, Peshawar

Service Appeal No.597/2013

Bakht Munir

Appellant

Versus

1. Secretary Higher Education Govt of KPK Respondent No.1
2. Director Higher Education(Colleges) KPK Respondent No.2
3. Principal Govt Degree College Landi Jalandher Bannu Respondent No.3
4. Secretary Finance Department Govt of KPK Respondent No.4

Respondents

Subject; - **PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO.1, 2 &4.**

Respected Sheweth,

Preliminary Objections

- I. The appellant has no locus standi to file the Appeal in hands.
- II. That the appellant has concealed material facts from this Hon'able Court hence the Appeal in hands is not maintainable.
- III. The appointment order of the appellant was not in accordance with the prescribed manner as provided in the Appointment and Promotion rules.
- IV. That the appeal is badly time barred.....
- V. That the appellant has been estopped by his own conduct to file the instant appeal.
- VI. That the appellant has no cause of action.
- VII. That the Hon'able Tribunal has no jurisdiction to entertain the appeal.
- VIII. That the appellant has no come to the court with clean hands.

Facts

1. Incorrect. The appointment order dated 03/11/2012 was not according to the strict codal formalities as it was made in undue haste. A lecturer in (BPS-17) has issued the appointments orders which fall beyond his jurisdiction. Above that this committee has interviewed all these 11 candidates and issued their orders on the same day to the extent that they have taken their charge of offices. Furthermore, a thick cloud of malafide is visible as evident from the inquiry report dated 26/11/2012(Annexure-A) wherein three main objections have been raised by the Inquiry Officers:-
 - i. There is a variation between the date of requisition of the College Administration for the candidates i.e. 08/10/2012 and provision of the candidates by employment exchange Bannu i.e. 02/10/2012. Another disputed point is that the Manager Employment Exchange, Bannu only sent the same names of those 11 candidates who were later on appointed. However in the eyes of law and procedural experiences he should have sent more than 11 candidates.
 - ii. No call letters to candidates were issued, which is pre-requisite for such like appointments.
 - iii. The DDO being a lecturer in BPS-17 and not an officer of category-II is not competent to issue these appointments orders.
2. Incorrect. The DDO concerned was informed to held in abeyance the appointment orders vide Endst No.SO (COLLEGES-II)28-1/2012 dated 05/11/2012^{as} per Annexure-D of the appeal.
3. Incorrect. The pay was stopped due to the gross irregularities reported to the Provincial Government in the appointments of the appellants.
4. Incorrect. His Departmental appeal has been considered and filed being meritless.

Grounds

- A. Not admitted. The action of the Respondents is legal, lawful and in the best interest of public.
- B. Not admitted. The appellant is trying to misguide the Court by claiming that he is still performing his duties but, in Para-2 of the Departmental appeal he himself admits that the DDO has stopped his salary and cancelled his appointment order. According to the inquiry report (Annexure-A) supra the appointments orders are made purely on temporary basis and are liable to termination at any time with out any notice or assigning any reason.
- C. Incorrect. Per terms and conditions the appointment of the appellant was liable to termination without serving upon him any notice.
- D. Incorrect. The action of the Respondents is according to the law and rules as stated above.
- E. Incorrect. Section -17 of the civil servant act,1973 deals with the seniority of the civil servant and not with the payment of salary, hence denied.
- F. The Respondents also seek permission to advance additional arguments at the time of the hearing of the case.

Prayer

The above arguments prove that the appellant has very weak legs to stand upon, hence the appeal in hand may graciously be dismissed.

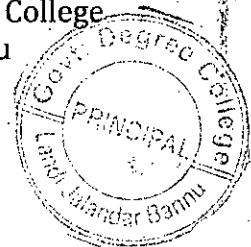
M. Khos

Secretary
To Govt: of KPK
Higher Education Department
Respondent No.1

[Signature]
Director Higher Education
Khyber Pakhtunkhwa
Respondent No.2

[Signature]
Director Higher Education
Khyber Pakhtoon Khwa
Khyber Road Peshawar

Principal Govt Degree College
Landi Jalandher Bannu
Respondent No.3



[Signature]
Secretary
To Govt: of KPK
Finance Department
Respondent No.4

[Signature]
Support

24/11/12

To

The Secretary
Govt. of Khyber Pakhtunkhwa
Higher Education Department.

Subject:- APPOINTMENT NOTIFICATION OF CLASS-IV AT GDC LANDI JALANDAR, BANNU / GGDC TANK/ GDC PROVA D.I.KHAN/ INQUIRY.

Memo,

Kindly refer to the letter No.SO(COLLEGES-II)28-1/2012, Dated 05-11-1012, regarding probe in the matter of selection for certain posts in three Govt Colleges.

1-Govt. Girls Degree College Tank. As per available record and statement of the Principal Miss Farida Shah, there are Five vacant posts (one each of Driver, Bearer, Mali, Cook and Sweeper). A letter was sent to the Manager Employment Exchange D.I.Khan for the provision of suitable candidates (Annex-A). In response a list of 28 persons was provided.(Annex-B) The Principal also advertised the posts through local notices affixed at various prominent places. Therefore, total Number of candidates raised to 135. Similarly the DCO Tank was asked by the Principal for NOC. In response the DCO provided at a list of 23 persons from surplus pool (Annex-C)but there was no suitable persons for the job except driver who remained absent on the date of interview. A committee was constituted of the following persons to conduct the interview.

- 1- Miss Farida Shah Principal (chair person)
- 2- Miss Zainab Lecture (Member)
- 3- Dr. Abdul Wahab Associate Professor GPGC D.I.Hkan (Member)
- 4- Mr. Habibur Rehman SO. Colleges (Provincial Nominee)

Interview was conducted on 02-11-2012 and selection was made on the basis of suitability cum fitness but no appointment order has so far been issued.

2-Govt Degree Collge Prova D.I.Khan. As per statement of the Principal Prof: Said Nawaz, there is only one post of tube well operator is vacant in the college. The Manager employment Exchange D.I.Khan was asked for the provision of suitable candidates(Annex-D) and in response a list of Eight persons was provided(Annex-E). Similarly Principal called the application through local Notices and Six persons applied. Total number of the candidates raised to 14. Interview was conducted on 03-11-2012, candidates were informed through local notices and the following persons conducted the interview.

Dated: _____/2012

Copy of the above is submitted to the office of Higher Education Peshawar for information please.

To the office of Higher Education

2425

To

The Secretary
Govt. of Khyber Pakhtunkhwa
Higher Education Department.

Subject:- APPOINTMENT NOTIFICATION OF CLASS-IV AT GDC LANDI JALANDAR, BANNU /
GGDC TANK/ GDC PROVA D.I.KHAN/ INQUIRY.

Memo,

Kindly refer to the letter No.SO(COLLEGES-II)28-1/2012, Dated 05-11-1012, regarding probe in the matter of selection for certain posts in three Govt Colleges.

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- 1- Miss Farida Shah Principal (chair person)
- 2- Miss Zainab Lecture (Member)
- 3- Dr. Abdul Wahab Associate Professor GPGC D.I.Hkan (Member)
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Dated: _____/2012

Copy of the above is submitted
Peshawar for information please.

The Director Higher Education

- 293
- 1- Prof: Said Nawaz Principal (Chairman)
 - 2- Mr. Niaz Hussain Lecturer (Member)
 - 3- Mr. Sohail Rizwan Lecture (member)
 - 4- Mr. Habibur Rehman SO Colleges (Provincial Nominee)

Five persons among the candidates were present Annex-F) and one Mr. Ihsanullah was selected as principal candidate and Muhammad Arshad as alternate candidate. The process was completed at 11.30 A.M. on 03-11-2012, no appointment order has so far been issued.

3- Govt Degree College Landi Jalandar Bannu :- According to available record and statement of the DDO/ Incharge Principal Mr. Ahmad Raza Lecturer in Political Science, there are eleven vacant Posts consisting of 3 Lab attendant, 2 chowkidars, 2 Naib Qasid, 2 sweepers, 1 Mali and 1 tube well operator. A letter was sent to the Manager Employment Exchange Bannu on 08-10-2012 (Annex-G) asking for the provision of suitable candidates and DCO for NOC on the same date (Annex-H) but the List of 11 persons had sent by Manager employment Exchange Bannu on 02-10-2012, prior to the requisition (Annex-I). The DCO, however, granted NOC on the same date (Annex-J). Interview was conducted on 03-11-2012 at 12.30 P.M. and the following persons conducted the interview.

- 1- Mr. Ahmad Raza Lecturer DDO (chairman)
- 2- Mr. Gul Tiaz Khan Lecturer (Member)
- 3- Mr. Alam Zeb Khan Lecturer (Member)
- 4- Mr. Habibur Rehman SO Colleges (Provincial Nominee)

No call letter for the interview was issued to candidates nor it was published through local notice. However all of the 11 candidates were selected, their appointment orders were issued on the same date i.e. 03-11-2012, they were handed over charge of their duties inspite of the facts that only 7 persons had submitted their Medical fitness.

Therefore the following discrepancies are pointed out;

- 1 There is a variation between the date of requisition of the college administration for the candidates i.e. 08-10-2012, and provision of the list of candidates by Employment Exchange Bannu i.e. 02-10-2012. Provision before requisition establishes malafide.
- 2- No call letter to the candidates was issued to appear for interview but all were present for.
- 3- The Employment Exchange Bannu provided a list of exactly 11 candidates so that selection committee had no option but to select all. This aspect of the case also speaks of malafide and intransparency of the process.

Dated: _____/_____/2012

Copy of the above is submitted
Peshawar for information please.

The Director, Higher Education

276

4- DDO being a Lecturer, IN Grade-17 and not an officer of category-II, not competent to issue appointment orders.

5- It is worth mentioning that interview started on 03-11-2012, at 12.30, completed the process on the same day and appointment orders issued on the same day too. Therefore, such hasty decisions, shows pre planning.

6- It is noted from the record of Higher Education Department that Mr. Muhammad Zaman Deputy CPO was nominated for the said college (Annex-K) and then Mr. Habibur Rehman was nominated (Annex-L).

It has been written in the appointment orders that "The appointments are being made on purely temporary basis and is liable to termination at any time without notice and without assigning any reason." Therefore it is recommended that appointment orders of all the 11 person issued vide No.190-96 dated 03-11-2012 at Govt Degree College Landi Jalandar Bannu (Annex-M) may be ^{with drawn} cancelled and it may be reprocessed to maintain transparency in appointment particularly in view of the intransparency in the process of selection and constitution of improper selection committee.

Bukhari Shah
Section Officer (Litigation)
Higher Education Department

Niaz Muhammad
Niaz Muhammad

Principal

Govt Degree College Naguman.

Moreover the (11) candidates who appeared for interview on 03/11/12 may also be interviewed afresh, and their cases be considered in the fresh process of selection, and after constitution of the selection committee.

Niaz Muhammad
26/11/12

Dated: _____/2012

Copy of the above is submitted
Peshawar for information please

Director Higher Education

Annex G 32

NO 120

Dated: 25-09-2012.

Form:

The office of the Principal,
GDC Landi Jalander Bannu.

To,

The Manager,
Employment Exchange Bannu.

Subject:

**LIST OF SUITABLE CANDIDATES ELIGIBLE FOR THE POST OF
FOLLOWING CLASS-IV**

Memo;

It is submitted that following Class IV are hereby lying vacant since long time in
DGC Landi Jalander Bannu.

The Detail is as under:

- | | | |
|----|--------------------|------|
| 1- | Lab Attendant | (03) |
| 2- | Chowkidar | (02) |
| 3- | Naib Qasid | (02) |
| 4- | Sweeper | (02) |
| 5- | Mali | (01) |
| 6- | Tube well Operator | (01) |

Please provide the list of suitable candidates who are eligible for the above posts
according to your office record.

P. S. G. 08-10-2012
PRINCIPAL
Govt. Degree College
G.D.C. LANDI JALANDER
BANNU

Annex - H, 33

No. 1424/12

Bannu dated 09/10/2012

No. 187

From:

The Office of the Principal,
GDC Landi Jalander Bannu.

To,

The District Coordination Officer,
Bannu.

Subject:

Request list of Class IV and Lab Attendant

Memo,

It is submitted that following Class IV are hereby lying vacant since long time in GDC Landi Jalander Bannu.

- 1. Lab Attendant (03)
- 2. Chowkidar (02)
- 3. Naib Qasid (02)
- 4. Sweeper (02)
- 5. Mali (01)
- 6. Tube well Operator (01)

*It is requested that necessary
D.O. for filling up the above vacant post may be issued
Accordingly.*

AE

[Signature]
DCO

[Signature]
Govt. of Punjab
Landi Jalander Bannu
08-10-2012

[Signature]
DCO

[Signature]

9/10

7769
09-10-12

Annex-I

37

No. - 408/EEB/Appendix

From, The Manager,
Employment exchanges Bannu,

To, The Principal,
GDC Landi Jalandar Bannu

Subject: List of Registered Candidates

Honourable Sir,

It is to inform you that this office got various application regarding the newly created post at your college.

The list of the candidates are as follows.

1. Fida Ullah S/O Mirdad Khan Reg: 1143/EP/011
2. Arif Ullah S/O Muhammad Nawaz Reg: 280/05
3. Gul Yar S/O Sabir Zaman Reg: 866/011
4. Jaidad Khan S/O Farid Khan Reg: 049/EP/011
5. Ikhtiar Zaman S/O Farid Khan Reg: 870/011 (153/EP/011)
6. Sanib Zada S/O Adil Badshah Reg: 870/011
7. Bakht Munir S/O Gu Zaman Reg: 144/EP/011
8. Khandan S/O Amil Zaman Reg: 865/011
9. Shafi Ullah S/O Sawdad Khan Reg: 868/011
10. Shahid Ullah S/O Khan Reg: 1207/EP/011
11. Shams Zaman S/O Sadrai Reg: 1142/EP/011

Dated: 2-10-012

SA
2-10-012

Manager,
Employment Exchange
Bannu.

Manager
Employment Exchange
BANNU

Annex J 35

OFFICE OF THE DISTRICT COORDINATION OFFICER BANNU
No. 44 / DCO / AF / NOC
Dated: 09/10/2012

To: The Principal,
Govt Degree College, Landi Baloch

Subject: NO OBJECTION CERTIFICATE

Reference your letter No. 48 dated 09/10/2012

This office has got no objection over filling of the vacant posts of the following class IV employees in Govt Degree College Landi Baloch subject to fulfillment of all procedural formalities in accordance with the rule/policy.

Name/nature of post with EPS	No. of posts	Institution in which it exists
Lab Assistant	03	Govt Degree College Landi Baloch
Chowkidar	04	do
Maily Guard	02	do
Sweepers	02	do
Mali	01	do
Tube Well Operator	01	do

*Received
in original*

[Signature]
District Coordination Officer
Bannu

[Signature]
ASST
12/10/12

Better Copy

(Annexure-J)

OFFICE OF THE DISTRICT COORDINATION OFFICER, BANNU

No. 4134/DCO/AE/NOC

Dated 09/10/2012

To

The Principal
Govt Degree College Landi Jalandher,
Bannu.

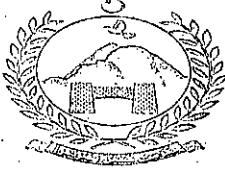
Subject: - **NO OBJECTION CERTIFICATE.**

Reference your letter No. 182 dated 09/10/2012.

This office has got no objection over filling of the vacant posts of the following Class-IV lying vacant in Govt Degree College Landi Jalandher Bannu subject to the fulfillment all codal formalities under rules/ policy.

S#	Nomenclature of post with BPS	No. of Posts	Institution in which the post lying vacant
1	Lab Attendant	03	GDC, Landi Jalandher Bannu
2	Chowkidar	02	do
3	Naib Qasid	02	do
4	Sweeper	02	do
5	Mali	01	do
6	Tube Well operator	01	do

Sd/
District Coordination Officer
Bannu.



Answer *K* 85 / 85 32
15

**GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT**

No. SO (COLLEGES-II)HE/19-1/2012.
Dated Peshawar the September 28th, 2012.

To

The Director,
Higher Education, Khyber Pakhtunkhwa,
Peshawar. *10*

SUBJECT: - INTERVIEW FOR THE APPOINTMENT OF CLASS-IV EMPLOYEES

Sir,

I am directed to refer to the subject noted above and to state that the Competent Authority in Higher Education Department has been pleased to nominate Mr. Mohammad Zaman, Deputy Chief Planning Officer of this Department to conduct interview of the above mentioned posts in the following colleges:

1. GDC (Boys) Mamash Khel Bannu.
2. GDC (Boys) Landi Jalandar Bannu.
3. GDC (Boys) Domail Bannu.

Endst: No & Date of even

ole SECTION OFFICER (COLLEGES-II)

Copy forwarded for information to the:

1. PS to Secretary, Higher Education Department.
2. Muhammad Zaman, Dy: Chief Planning Officer, Higher Education Department

28/9 SECTION OFFICER (COLLEGES-II)



GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

Dated Peshawar the 05.10.2012.

NOTIFICATION

NO. SO(C-II)HED/28-1/2012. Consequent upon the issuance of fresh Job distribution by the Provincial Government among one of the following, subject to the availability, will attend the DSC meeting as Govt. nominee for the recruitment of Class-IV staff in the different colleges of Khyber Pakhtunkhwa (Male & Female) with immediate effect:-

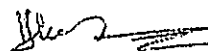
S. No.	Name & Designation of the Officer	Areas for which nominated
1.	Mr. Habib-ur-Rahman, SO(C-II)	For southern areas.
2.	Mr. Pir Mohammad Khan, SO(C-I)	For Northern areas.
3.	Mr. Ghulam Ali, Deputy Director (Estt), Directorate of Higher Education.	For Central districts.
4.	Mr. Naveed Khan, Deputy Director (P&D), Directorate of Higher Education.	For Hazara Division.

SECRETARY TO GOVT. OF
KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

Endst: No. & Date Even.

A copy is forwarded to the:-

1. Director, Higher Education, Khyber Pakhtunkhwa, Peshawar.
2. P.S to Minister, Higher Education, Khyber Pakhtunkhwa, Peshawar.
3. P.S to Secretary, Higher Education Department.
4. Officers concerned.


(HABIB-UR-RAHMAN)
SECTION OFFICER (COLLEGES-II)

Amex. M.

**OFFICE OF THE PRINCIPAL GOVT: DEGREE COLLEGE
LANDI JALANDAR BANNU.**

Appointment Notification:


As per decision / recommendation of the Departmental Selection Committee dated 03-11-2012, constituted for the recruitment of class-4 at Govt Degree College Landi Jalander Bannu; The competent authority is pleased to appoint the following persons for the posts mentioned against each in this college with immediate effect :-

S.No	Name	F/Name	POSTS With BPS
01	Fida ullah	Miradar khan	Naib Qasid-01
02	Arifullah	Muhammad Nawaz	Lab Attendant-01
03	Gulyar	Sabir Zaman	Mali-01
04	Jaidad khan	Farid khan	Lab attendant-01
05	Ikhtiar Zaman	Farid khan	Lab Attendent-01
06	Sahib zada	Adil Badshah	Naib Qasid-01
07	BakhtMunir	Gul Zaman	Tube well operator-01
08	Khandan	Amil Zaman	Chowkidar-01
09	Shafi ullah	Sawdad khan	Sweepcr-01
10	Shahid ullah	Sawdad khan	Sweepcr-01
11	Shams Zaman	Sadrai	Chowkidar-01

The Appointments of the above class 4 servants will be subject to the following terms and conditions.

TERMS AND CONDITIONS:

1. Charge Reports should be submitted to all concerned.
2. No TA/DA etc is allowed.
3. The Appointment of the above candidates are being made on purely temporary basis and is liable to termination at any time with out notice And with out assigning any reason.
4. They are not entitled to any pension & gratuity.
5. They should produce their Health & age certificate from Medical Supdt;DHO Hospital Bannu.
6. They will be governed by the rules & Regulations of the provincial-Govt Prescribed for such employees.


Principal/DDO
Govt : Degree College Landi Jalandar
Bannu

03-11-2012

38

Endst: No...190-96

Dated: GDC L.J-03-11-2012

Copy of the above is forwarded for information to ...

1. The Director Higher Education Department KPK Peshawar.
2. P.S to Minister for Higher Education Department KPK Peshawar.
3. P.S to Secretary Higher Education Department KPK Peshawar.
4. Section Officer Higher Education Department KPK Peshawar.
5. The District Account officer Bannu.
6. Officials concerned.

R. J. 03-11-2012

Principal/DDO
Govt : Degree college Landi jalandar
Bannu

AMENDED

R. J. 03-11-2012

Govt: Degree college
Landi Jalandar Bannu

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

Service Appeal No. 597/2013

Bakhat Munir VS Higher Edu: Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(i-viii) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Incorrect. The appointment order dated 3.11.2012 was according to codal formalities as the appellant was appointed by competent authority after the approval and recommendation of the departmental Selection Committee.
- 2 Not replied according to para 2 of the appeal. Moreover para 2 of the appeal is correct.
- 3 Incorrect. The appointment was according to law and rules as the appellant was appointed by competent authority after the approval and recommendation of the departmental Selection Committee.
- 4 Incorrect. The appellant has good cause of action therefore he filed departmental appeal which was not responded within the statutory period of time.

GROUND:

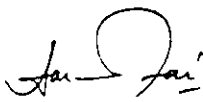
- A. Incorrect. While para A of the appeal is correct.

- B. Incorrect. The appellant is not trying to misguide the Honouable Court as the appellant was not terminated by the department and still performing his duty. Thus the appellant cannot be deprived from his legal right of pay of the post.
- C. Incorrect. While para C of the appeal is correct.
- D. The action of the department is not according to law and rules and stopped the salaries in an arbitrary manner.
- E. Incorrect. Section-17 of the civil Servant Act 1973 deals with pay of the civil servant and not with the seniority of the civil servant and according to Section-17 of the civil Servant Act 1973, the appellant is legally entitled to the pay of the post against which he is performing his duties.
- F. Legal.

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

APPELLANT
Bakhat Munir

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

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1929/ST

Dated 21 / 8 / 2017

To


The Secretary Higher Education Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 597/2013, MR. BAKHT MUNIR.

I am directed to forward herewith a certified copy of Judgement dated 15.08.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.