

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT D.I.KHAN.

SERVICE APPEAL NO. 339/2013

Date of institution ... 04.02.2013

Date of judgment ... 23.05.2016

Gul Sher S/o Alam Sher, (Cook BPS-1 at G.H.S Shero Kohna)
R/o Shero Kohna District D.I.Khan

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Education (S & L) Peshawar.
2. Director of Education (S & L) Peshawar.
3. Executive District Officer (S & L) D.I.Khan)
4. District Account Officer D.I.Khan.
5. Ghulam Bahoo S/o Ghulam Hussain R/o Shero Kohna D.I.Khan (Ex-PST, GPS Wanda Shisha presently Cook at GHS Shero Kohna D.I.Khan).

(Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ILLEGAL MALAFIDE CANCELLATION/TERMINATION OF APPELLANT APPOINTMENT VIDE ORDER NO. 15987 OF RESPONDENT NO. 3 DATED 23.10.2012 VIDE WHICH THE APPELLANT WAS TERMINATED FROM HIS LEGAL SERVICE.

Mr. Mohammad Waqar Alam, Advocate.
Mr. Farhaj Sikandar, Government Pleader.

.. For appellant.
.. For official respondents.

MR. ABDUL LATIF
MR. MUHAMMAD AAMIR NAZIR

.. MEMBER (EXECUTIVE)
.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:- Facts giving rise to the instant appeal are that the appellant was appointed against the vacant post of Cook in Education Department by Executive District Officer (S & L) D.I.Khan. That the appellant is performing his respective duties since his appointment and is getting his salary from the Accounts Office D.I.Khan. That on 15.08.2012, respondent No. 3 E.D.O (S & L) through impugned

cancelled the appointment order of the appellant and appointed respondent No. 5 on the appellant's post. That against sheer violation of prescribed rules the appellant invoked the constitutional jurisdiction of the august Peshawar High Court D.I.Khan Bench through a writ petition whereby the august Court forwarded writ of the appellant to the respondents to treat it as a representation/appeal and to dispose it of within period of one month. That on 23.01.2013 the respondent No. 3 handed over the impugned termination order to the appellants counsel in the august High Court Bench D.I.Khan in the matter of Contempt of Court proceedings. That appellant has no other remedy but to prefer the instant appeal before the worthy Tribunal with a prayer that on acceptance of instant appeal both the impugned orders No. 11086-91 dated 15.08.2012 and No. 15987 dated 23.10.2012 of EDO Education D.I.Khan is requested to be set-aside/cancelled ab-initio and the appellant may please be reinstated in service with all back benefits.

2. The learned counsel for the appellant argued that both the impugned orders of respondent No. 3 were against the law, facts and material on record and was liable to be set-aside. He further argued that appointment order of the appellant was made by the competent authority after observing all codal formalities and his cancellation was based on malafide which was not maintainable under the law. He further argued that private respondent No. 5 was Lab Attendant prior to his appointment as PST in the year 2007 and as a consequence of the Service Tribunal judgment in the civil application case of 2007 he was adjusted against the post of Cook by dislodging the appellant from his lawful position. He prayed that on acceptance of this appeal impugned orders of respondent No. 3 may be set-aside and the appellant may be reinstated against his original position.

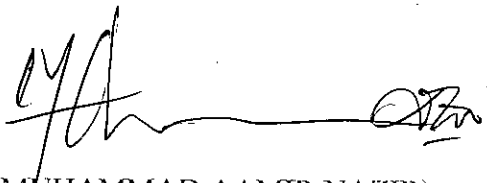
3. Learned Government Pleader resisted the appeal and argued that competent authority was competent to rescind the orders of appointment of the appellant and to appoint/adjust private respondent No. 5 Ex-PST against the post vacated by the appellant whose appointment order was simultaneously cancelled ab-initio. He prayed that the appeal being devoid of merits may be dismissed.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that the appellant was appointed as Cook (BPS-1) by respondent No. 3 vide order dated 08.06.2012 and after medical fitness of the appellant, he assumed the charge of the post and his salaries were started by the District Account Officer. However, vide subsequent order dated 15.08.2012 private respondent No. 5 was appointed against the said post of Cook at GHS Sheru Kohna D.I.Khan inter-alia other appointees in pursuance of Khyber Pakhtunkhwa Service Tribunal judgment dated 27.10.2011 in service appeal No. 1407/2010 and other connected appeals. It is astonishing that while making the said appointment of the private respondent No. 5 vide note appended to the said appointment order appointment order of the appellant was cancelled ab-initio. Obviously no charge-sheet or show-cause notice was served upon the appellant nor was any opportunity of defence and opportunity of personal hearing provided to the appellant before dispensing with his services vide impugned order dated 15.08.2012 which is against the law, the rules and the norms of natural justice. We, therefore, hold that the said order of respondent No. 3 suffer from legal infirmity, is without any lawful authority, is void ab-initio and we therefore, set-aside the said order to the extent of private respondent No. 5. The appellant is accordingly reinstated in service, the intervening period he remained out of service is however treated as leave of the kind due. Parties are, however, left to bear their own costs. File be consigned to the record room.

6. Our this judgment will also dispose of identical case under service appeal No. 338/2013 tilted Allah Nawaz wherein identical question of law and facts are involved.

ANNOUNCED
23.05.2016


(MUHAMMAD AAMIR NAZIR)
Member


(ABDUL LATIF)
Member

28.02.2016

Counsel for the appellant and Mr. Farhaj Sikandar, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 23-5-16 at cam court D.I Khan.

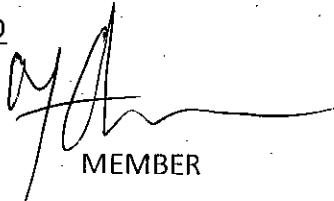

Member


MEMBER
Camp Court D.I Khan

23.05.2016

Counsel for the appellant and Mr. Farhaj Sikandar, Government Pleader for respondents present. Arguments heard and record perused. Vide our detailed judgment of today placed on file, the appellant is accordingly reinstated in service, the intervening period he remained out of service is however treated as leave of the kind due. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
23.05.2016


MEMBER


MEMBER
Camp Court D.I.Khan

27.07.2015

Appellant in person and Mr. Minhaj Sikandar, GP for the respondents present. The Tribunal is incomplete, therefore, case to come up for arguments at camp court, D.I.Khan on

24-11-2015



MEMBER

Camp court, D.I.Khan

24.11.2015

Appellant present in person and Mr. Farhaj Sikandar, GP for the official respondents present. Since D.B for touring Bench, D.I.Khan is incomplete, therefore, case is adjourned to

27-1-16 for arguments at camp court, D.I.Khan.



MEMBER


Camp Court, D.I.Khan

25.01.2016

Counsel for the appellant, Mr. Muhammad Nawaz, ADEO alongwith Mr. Farhaj Sikandar, GP for official respondents No.1 to 4 and counsel for private respondent No.5 present. Rejoinder on behalf of the appellant has already been submitted copy of which handed over to the learned GP and learned counsel for private respondent No.5. To come up for arguments on 28.03.2016 before D.B at camp court D.I.Khan.



Member



Member

Camp Court, D.I. Khan

29-12-2014.

Counsel for the appellant present.
No one is present on behalf of respondents.
Case adjourned to 27-1-15 for rejoinder
at Camp Court, D.I.Khan.

Shah
Registrar

Camp Court, D.I.K.

27-1-15

Appellant in person, G.P. for respondents
no. 1 to 4 & private respondent no. 5 in person
present. Rejoinder not received. To come up
for rejoinder on 23-2-2015 at Camp Court,
D.I.Khan.

§
Member
Camp Court, D.I.K.

23-2-15

Present as before on 27-1-15 with Mubd
nawaz, A.D.D. for respondents no. 1 to 4. Rejoinder
not received. To come up for rejoinder on 25-5-15
at Camp Court, D.I.Khan.

§
Member
Camp Court, D.I.K.

25.05.2015

Appellant in person and Mr. Farhaj Sikandar, GP for the
respondents present. Rejoinder submitted and copy whereof handed
over to the learned GP. To come up for arguments on 27.7.2015
at camp court, D.I.Khan.

§
MEMBER
Camp Court, D.I.Khan.

24-3-2014. Counsel for appellant and Muid Nawaz ADD for respondents no. 1 to 3 with G.P. present. R. No. 5 in person present. Rejoinder not received. To come up for rejoinder on 26-5-2014 at Camp Court, D.I. Khan.

Member
Camp Court, D.I.K.

26-5-14. Appellant in person and Muid Nawaz ADD for R. No. 1 to 3 with G.P. present. R. No. 5 also in person present. Rejoinder not received. To come up for rejoinder on 29-9-2014 at Camp Court, D.I. Khan.

Member
Camp Court, D.I.K.

29-9-2014. Present as before i.e. 26-5-2014. Rejoinder not received. To come up for rejoinder on 27-10-2014 at Camp Court, D.I. Khan.

27-10-14. Counsel for the appellant and Muid Nawaz ADD for respondents No. 1 to 4 with G.P. for respondents present. Rejoinder not received. To come up for rejoinder on 29-12-14 at Camp Court, D.I.K.

Member
Registrar
Camp Court, D.I.K.

23-9-2013 Appellant in person, G.P. with Naved Zafar
AAO for respondent no. 4 and respondent no. 5 also
in person present. Reply to 5 not received. To come
up for reply of 5 on 28-10-2013 at Camp Court
D.I. Khan.

Member
Camp Court, D.I. Khan

28-10-13

Appellant in person, Naved Zafar for respondent
no. 4 with G.P. and respondent no. 5 in person present.
Rejoinder against reply of respondent no. 4 received
copy whereof is handed over to G.P. To come up
for reply of private respondent no. 5 on 30-12-13
at Camp Court, D.I. Khan.

Member
Camp Court, D.I. Khan

2-1-2014,

Appellant in person. G.P. also present with private respondent
and his counsel. Written reply on behalf of respondent
no. 5 filed, copy whereof is handed over to appellant
for rejoinder, if any, on 24-2-2014 at Camp Court,
D.I. Khan.

Member
Camp Court, D.I. Khan

24-2-2014.

Appellant in person present, Muhammad Nawaz, AAO
for respondents no. 1 to 3 moved application for setting aside
ex parte order against respondents no. 1 to 3 is set aside and
a copy of written reply is handed over to appellant for rejoinder,
if any. To come up for rejoinder on 24-3-14 at Camp Court
D.I. Khan.

Member
Camp Court, D.I. Khan

26-3-2013

Appellant in person, Mahdolanwar, AAO, with G.P. for respondent no. 1 to 3, Nawed Zafar for respondent no. 4 and respondent no. 5 in person present, written ^{reply} not received. To come up for written reply on 23-4-2013 at Camp Court, D.I. Khan.

Member
Camp Court, D.I. Khan

23-4-13

Appellant in person, Nawed Zafar, AAO for respondent no. 4. Private respondent no. 5 also in person present. ~~Private~~ is present on behalf of respondents no. 1 to 3, proceeded against ex parte. Private respondent no. 5 is directed to submit reply on next date by way of last chance. To come up for written reply of respondent no. 5 on 28-5-2013 at Camp Court, D.I. Khan.

Member
Camp Court, D.I. Khan

28-5-2013

Appellant with counsel, Nawed Zafar, AAO for respondent no. 4 and private respondent no. 5 in person present. The Bench could not proceed to D.I. Khan owing to promulgation of KPK Ordinance No. 11 of 2013. Case adjourned to 24-6-2013 for reply at Camp Court, D.I. Khan. Reply of R. no. 4, ^{recomm} copy whereof is handed over to appellant.

Registrar
Camp Court, D.I. Khan

24-6-13


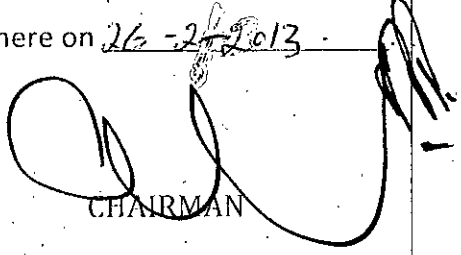

Appellant in person, Nawed Zafar, AAO for R. No. 4 and R. no. 5 also in person present. The Bench could not Tour to D.I. Khan owing to promulgation of KPK ordinance no. 11 of 2013. Case adjourned to 23-9-2013 for written reply at Camp Court, D.I. Khan.

Registrar
Camp Court D.I.K

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 339/2013

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 04/02/2013 | <p>The appeal of Mr. Gul Sher presented today by Mr. Muhammad Waqar Alam 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 | 7-2-2013 | <p>This case is entrusted to Touring Bench D.I. Khan for preliminary hearing to be put up there on 26-2-2013 <u>26-2-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |
| | 26.02.2013. | <p>Appellant with counsel present and heard. The learned counsel for the appellant contended that the appellant was appointed as Cook by the competent authority according to law after observing all codal formalities but cancelled twice with malafide intentions which also amounts to discrimination. The appellant has not been treated in accordance with the law. Points raised need consideration. The appeal is admitted for regular hearing / ^{ST to all just legal objections.} Process fee and security be deposited within 10 days. Thereafter notices be issued to the respondents for submission of written reply on 26.3.2013 at camp court, D.I. Khan.</p> <p style="text-align: right;"> MEMBER Camp Court, D.I. Khan</p> |

Appellant deposited security & process fee Rs 220/- Bank receipt is attached with file

JMA

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, CAMP COURT D.I.KHAN.

Service Appeal No. 339 /2013

Gul Sher

VERSUS

Govt. of KPK & Others

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| 3. | Copy of Charge report & salary slip. | "B & D" | 6-9 |
| 4. | Copy of NOC | "F" | 10 |
| 5. | Copy of E.D.O Order dated 15/08/12 | "G" | 11 |
| 6. | Copy of Writ Petition & Order | "H & I" | 12-16 |
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Yours Humble Appellant

(Gul Sher)
Through Counsel

Dated: 01/02/2013


MOHAMMAD WAQAR ALAM
Advocate High Court,
Dera Ismail Khan.

①

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

Service Appeal No. 339 of 2013

L.W.F. Peshawar
375
4/2/13

1- **GUL SHER** S/o Alam Sher R/o Shero Kohna District
D.I.Khan (COOK BPS-I at G.H.S Shero Kohna)

(Appellant)

VERSUS

1. Government of KPK through Secretary Education (S & L)
Peshawar.

2. Director of Education (S & L) Peshawar.

3. Executive District Officer (S & L) D.I.Khan.

4. District Account Office D.I.Khan.

5. Ghulam Bahoo S/o Ghulam Hussain R/o Shero Kohna
D.I.Khan. (Ex-PST, GPS Wanda Shisha Presently COOK at
GHS Shero kohna DIKhan.

(Respondents)

NOTE: Addresses given above shall suffice the object of
Service.

**SERVICE APPEAL UNDER SECTION 4 OF KPK
SERVICES TRIBUNAL ACT 1974 AGAINST THE
ILLEGAL MALAFIDE CANCELLATION/ TERMINATION
OF APPELLANT APPOINTMENT VIDE ORDER NO
15987 OF RESPONDENT NO 3 DATED: 23.10.2012
VIDE WHICH THE APPELLANT WAS TERMINATED
FROM HIS LEGAL SERVICE.**

PRAYER:

On acceptance of instant appeal both the impugned
two orders No: 11086-91 dated: 15.08.12 and No
15987 dated: 23.10.12 of EDO Education D I Khan is
requested to be set aside/ cancelled ab-initio and
the appellant may please be reinstated in service
with all back benefits.

Filed to the

[Signature]

4/2/13

Respectfully Sheweth:-

The Appellant humbly submitted as under:-

Brief Facts:-

- 1- That the Appellant is respectable citizen of Pakistan and is serving in Department of Education and permanent resident of D.I.Khan.
- 2- That the appellant was appointed against the vacant post by E.D.O (S & L) / respondent No.3 D.I.Khan in education department against the vacant post of "COOK" vide order dated: 08.06.12. Copy of appointment order is enclosed as **Annexure "A"**.
- 3- That the appellant is performing his respective duties since his appointment and is getting his salary from the accounts office D.I.Khan. Copies of, charge report and salary slip of the appellant are enclosed as **Annexure "C, D"** respectively.
- 4- That No Objection Certificate was also issued by the District Co-ordination Officer which is enclosed as **Annexure "E"**.
- 5- That on 15/08/2012, respondent No.3 E.D.O (S & L) through impugned order dated same cancelled the appointment order of the appellant and appointed respondent No.5 on the appellant's post. Copy of impugned order dated 15/08/2012 is enclosed as **Annexure "F"**.
- 6- That against sheer violation of prescribed rules the appellant invoked the constitutional jurisdiction of the August Peshawar High Court D I Khan Bench through a writ petition whereby the August Court forwarded writ of the appellant to the respondents to treat it as a representation/appeal and to dispose it of within period of one month. Copies of Writ Petition and order thereon are enclosed as **Annexure "G" & "H"**.

7- That on 23/01/2013 the respondent No 3 handed over the impugned termination order to the appellants counsel in the August High Court Bench DIKhan in the matter of Contempt of Court Proceedings. Copies of impugned termination order and Order of High Court are enclosed as Annexure J & K respectively.

That appellant has no other remedy but to prefer the instant appeal before the worthy tribunal enter alia on the following grounds:-

GROUND

- 1- That both the impugned orders of respondent No.3 are against law, facts and circumstances of the case.
- 2- That the appointment order of the appellant was made by the competent authority and according to law after observing all the codal formalities, but were twicely cancelled with malafide intention which also amounts to discrimination.
- 3- That public servants once appointed have to be dealt with according to law and cancellation of appointments order is alien to that law specially when codal formalities are duly completed.
- 4- That the act of respondent No.3 is illegal and void ab-initio and also against the settled norms of justice.
- 5- That respondent No 5 was Lab Attendant prior to reappointment on PST in the year 2007 and after the order of August Service Tribunal in famous Education 2007 Case in D I Khan, they should have been adjusted against their previous positions but in present circumstances the respondent No 3 make Haste and order for adjustment of respondents No 5 against his previous position and readjusted them as cook in illegal manners.

6- That the appellants have no expeditious remedy except invoking the appellate jurisdiction of this Honorable tribunal to get the impugned order declared as ineffective against the right of the appellant.

7- That counsel for the appellants may graciously be allowed to raise additional grounds at the time of arguments.

Therefore, in wake of submissions made above this Honourable Tribunal is respectfully requested to declare both the impugned orders of respondent No 3 as against law and ineffective upon the rights of the appellant. Any other relief which this Honourable tribunal deem fit in circumstance of the case may kindly be granted.

Yours Humble Appellants

1. GUL SHER
Through Counsel

Dated: 01.02.2013

MUHAMMAD WAQAR ALAM
Advocate High Court,
Dera Ismail Khan.

AFFIDAVIT

I, **Syed Muhammad Waqar Alam** advocate, do hereby solemnly affirm and declare on oath that all the Para-wise contents of **Service Appeal** are true and correct to the best of my knowledge and nothing has been concealed from this Honourable Tribunal.



Deponent
[Handwritten signature]

Annexure "A" (9) (5)

OFFICE OF THE EXECUTIVE DISTRICT OFFICER, (E&SE) D.I.KHAN
APPOINTMENT ORDER:-

Mr. Gul Sher S/O Alam Sher resident of Sheru Kohna is hereby appointed against the vacant post of Class-IV Servant as Cook at GHS. SHERU KOHNA D.I.KHAN in BPS-1 (2970-90-5670) plus usual allowances in the interest of public service with immediate effect on the following terms & conditions.

TERMS & CONDITIONS

1. His service will be considered as regular but without pension/ gratuity in the terms of section 19 of the Khyber Pakhtoon khawa civil servants act 1973 amended in 2005.
2. He will contribute to CPF & Rs. 10% of the minimum of pay and 10% contribution will be made by the Govt:
3. He will be Governed by such rules and regulations as may be prescribed by the Govt: from time to time for the category to which he belongs.
4. His appointment made purely temporary & liable to termination at any time without assigning any reason.
5. One month pay will be forfeited to Govt: in case of resignation without prior notice. The period of giving Notice in one month before the date of resignation.
6. His original certificates/ digrees will be got verified by this office. All expenses will be born by the candidate.
7. He is required to join the post within 15 days failing which the appointment order will stand cancel automatically.
8. The appointment is made subject to the condition that the candidate is candidate is permanent domiciles of District D.I.Khan.
9. He is required to produce health & age certificate from the Medical Superintendent D.I.Khan.
10. Charge report should be submitted to all concerned.
11. No TA/DA etc is allowed.
12. Order will be implemented w.e.from 01.07.2012.

Sd//

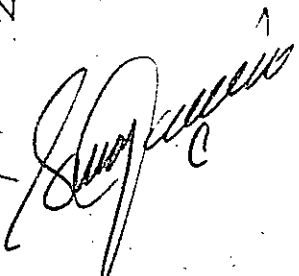

EXECUTIVE DISTRICT OFFICER,
E&S EDUCATION D.I.KHAN


Endst: No. Q/132-37

Dated DIKhan the 28/06/2012

Copy of the above is forwarded to the:-

1. District Co-Ordination Officer, D.I.Khan.
2. Head Master, GHS. Sheru Kohna D.I.Khan.
3. District Accounts Officer, D.I.Khan.
4. Official concerned.



EXECUTIVE DISTRICT OFFICER,
E&S EDUCATION D.I.KHAN

Charge has taken
on 28/06/12


W.F.P. Form No. 42 of 1950 (Rev. 12.6.52) 213
CERTIFICATE OF TRANSFER OF CHARGE.

1. Certified that we have on the fore/afternoon of this day respectively made over and received charge of the Office of the *H/M. L.P.S. Shri. Rohna. Adc. E.P.C. (D.S.) No. 332-3/16/12*
2. Particulars of such and important secret and confidential documents handed over or noted on the reverse: -

Signature of relieved Government servant *V. A. Govil, P.S.O.*

Station. *L.P.S. Shri. Rohna* Designation *COOK*

Signature of relieving Government servant *G. D. S. Das*

Date. *25-16/6/12* Designation *COOK*

Forwarded to the.....

N.W.F.P. Acctt. Try. No. 42

[Handwritten signature]

"r" 12(a)

Annex: "D" (7)



ACCOUNTANT GENERAL KHYBER PAKHTUNKHWA DISTRICT PAY ROLL SYSTEM

PAYMENT ADVICE

Sers No: 09086928 Buckle:
Name: GUL SHER
Dsg: FEOPER / COOK
NIC No: 1210161887606

Sec: 002 Month: August 2012
016066 - H. M. G. H. S. SHRO KHANA D.
Min: Education Schools
BTN:
PF #:
Dtd #:

CFPS Interest Applied
01 Regular / Contract

DEPT CODE
016066

| PAYS AND ALLOWANCES: | | 016066 |
|---------------------------------|---------------------------|------------------|
| 0001-Basic Pay | | 4,800.00 |
| 1000-House Rent Allowance | | 891.00 |
| 1210-Convey Allowance 2005 | | 1,500.00 |
| 1300-Medical Allowance | | 1,000.00 |
| 1971-Adhoc Allowance 2011@ 15% | | 445.00 |
| 1973-Adhoc Allowance 2011@ 50% | | 1,485.00 |
| 2118-Adhoc Relief Allow (2012) | | 960.00 |
| Gross Pay and Allowances | | 11,081.00 |
| DEDUCTIONS: | | |
| CPF Balance | 624.00 | |
| 3501-Benevolent Fund | | 312.00 |
| 3511-Addl Group Insurance | | 120.00 |
| 3604-Group Insurance | | 3.00 |
| 3643-EEF HUFF Fund | | 58.00 |
| | | 10.00 |
| Total Deductions | | 1,127.00 |
| | NET AMOUNT PAYABLE | 9,954.00 |

QUALIFYING SERVICE
YRS MON
60 Years 02 Months 00 Days
GOVERNMENT CONTRIBUTION TO CPF

D.O.B.
01/01/1990

PF Quota:
H.M. FARQA ROAD D. I. FARQA ROAD D. I. KHAN
3884-0
312.00

8

BETTER COPY...

CERTIFICATE OF TRANSFER OF CHARGE:

I Certified that we have on the fore/afternoon of this day respectively made over and received charge of the office of the H/M GHS Shero Kohna vide EDO Letter No 8132-37 dated 08/06/2012.

ii. Particular of cash and important secret and confidential documents handed over noted on the reverse.

Sig.....

Govt: Servant

Desg: Cook.

Dated 25/6/12

Annex: E (3)

OFFICE OF THE DISTRICT COORDINATION OFFICER, DERA ISMAIL KHAN.

No. 3074/DCO(NOC II) Dated Dikhan the 16/11/2012.


To

The Executive District Officer,
Elementary & Secondary Education, Dikhan

Subject: NO OBJECTION CERTIFICATE.

Refer to your appointment order No 8132 37, dated 08 05 2012 &
No. 8266 73/ dated 09 06 2012 wherein Mr Gulsher s/o Aiamsher s/o Sheru
Kohna against the vacant post of Cook & Allah Nawaz s/o Allah Dad s/o Sheru
Kohna appointed as Beaten in your office has already been recruited

This office has no objection on the above mentioned appointment
as such no suitable candidate is available in District Surplus pool


District Coordination Officer,
Dera Ismail Khan.

BETTER COPY

OFFICE OF THE DISTRICT CO-ORDINATION OFFICER DIKHAN.

No-3874/DCO(NOC-1)Dated 16/7/12

To

The Executive district officer
(E&S)Education DIKhan.

SUB:

NO OBJECTION CERTIFICATE.

Refer to your appointment orders No.8132-31 dated 8/6/12 and No. 826673/dated 9/6/12 wherein Mr. Gulsher s/o Alamsher r/o sheru kohna appointed against the vacant post of (COOK) and Allah Nawaz s/o Allah Dad r/o Sheru Kohna appointed as bearer in your office has already be recruited.

This office has no objection on the above mentioned appointments as such no suitable candidate is available in district surplus pool.

Sig:

DCO

DIKhan



EXECUTIVE DISTRICT OFFICER
(ELEMENTARY & SECONDARY) EDUCATION
DERA ISMAIL KHAN

Annex: F

10
17

ORDER:

Consequent upon report / findings / recommendations of the committee with reference to Secretary to Govt. of KPK Elementary & Secondary Education Department notification No. SO (Litigation)/E&SE/1-3/2011/D.I.Khan, dated 29-11-2011 in pursuance of Khyber Pakhtunkhwa Service Tribunal order dated 27-10-2011 on service appeal no. 1407/2010 and other connected appeals, the following appellants are hereby adjusted with immediate effect to the posts noted against their names in the schools given below:

| S.No | Name of Appellant with Address | Post | School | Remarks |
|------|--|-----------|--------------------|---------------------|
| 1 | Ishfaq Ahmed Faiz S/O Faizullah, Ex-PST GPS Ratta Kulachi | Beater | GHS Shero Kohna | Against Vacant Post |
| 2 | Ghulam Farid S/O Fateh Khan Ex-PST, GPS No.2 Dhallah | Sweeper | GHS Takwara | Against Vacant Post |
| 3 | Ahmed Hussain S/O Ghulam Raza, Ex-PST GPS Riaz Abad (Paharpur) | Chowkidar | GPS Buchri | Against Vacant Post |
| 4 | Gul Nawaz S/O Imam Bakhsh, Ex-CT, | Chowkidar | GGPS Chah Lal Wala | Against Vacant Post |
| 5 | Ghulam Bahoo S/O Ghulam Hussain, Ex-PST, GPS Wanda Shesha | Cook | GHS Shero Kohna | Against Vacant Post |
| 6 | Nazir Ahmed S/O Allah Bakhsh, Ex-PST, GPS Kundi Abad | Bahishti | GHS Paroa | Against Vacant Post |

Note:

1. Charge report should be submitted to all concerned.
2. No TA/DA is allowed to any one.
3. Previous appointment order against the above said vacancies is deemed as cancelled ab initio, if any.

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Sd/-
Executive District Officer
(E&SE) D.I.Khan

Ends No. 11086-911

Dated D.I.Khan the 15/08 /2012

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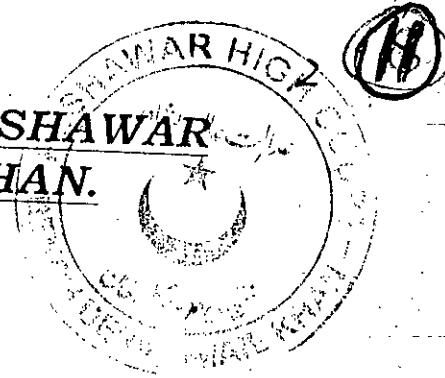
1. Director (E & S) Education Khyber Pakhtunkhwa Peshawar.
2. District Coordination Officer D.I.Khan.
3. District Officer (M/F) E&SE D.I.Khan
4. District Accounts Officer D.I.Khan
5. Principal /Headmaster/Dy. DO (M/F) concerned along with original service book.
6. Official concerned.

Removed on date 15/09/12

[Handwritten signature]
Executive District Officer
(E&SE) D.I.Khan

**BEFORE THE HONOURABLE PESHAWAR
HIGH COURT BENCH D.I.KHAN.**

Writ Petition No. 376-D of 2012



- 1- **Alla Nawaz** S/o Allah Dad R/o Shero Kohna District D.I.Khan
(Bearer BPS-I at G.H.S Shero Kohna)
- 2- **Gul Sher** S/o Alam Sher R/o Shero Kohna District D.I.Khan
(Cook at G.H.S Shero Kohna)

(Petitioners)

VERSUS

1. Government of KPK through Secretary Education (S & L) Peshawar.
2. Director of Education (S & L) Peshawar.
3. Executive District Officer (S & L) D.I.Khan.
4. District Account Office D.I.Khan.
5. Ishfaq Ahmad Faiz S/o Fiazullah R/o Shero Kohna D.I.Khan.
6. Ghulam Bahoo S/o Ghulam Hussain R/o Shero Kohna D.I.Khan.

(Respondents)

18/8/12
WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN 1973.

Respectfully Sheweth:-

The Petitioner humbly submitted as under:-

Brief Facts:-

- 1- That the petitioners is respectable citizens of Pakistan and is serving in Department of Education and permanent resident of D.I.Khan.

ATTESTED

EXAMINER
Peshawar High Court
D.I. Khan Bench

[Handwritten Signature]
20/10/12

2- That the petitioners were appointed by E.D.O (S & L) / respondent No.3 D.I.Khan in education department against the vacant posts of "bearer" and "cook". Copies of appointment orders are enclosed as Annexure "A & B" respectively.

3- That the petitioners are performing their respective duties since their appointment and are getting their salaries from the accounts office D.I.Khan. Copies of medical reports, charge reports and salary slip of the petitioner are enclosed as Annexure "C, D & E" respectively.

4- That no objection certificate were also issued by the District Co-ordination Officer which is enclosed as Annexure "F".

5- That on 15/08/2012, respondent No.3 E.D.O (S & L) through impugned order dated same cancelled the appointment orders of the petitioners and appointed respondent No.5 & 6 on the petitioners posts. Copy of impugned order dated 15/08/2012 is enclosed as Annexure "G".

6- That instead of issuing any termination letter respondent No.3 cancelled the petitioner's appointment orders in a "NOTE" given at the end of impugned order which is also the appointment letter of respondent No.5 and 6.

7- That petitioners have no other remedy but to invoke the constitutional jurisdiction of this Honourable Court enter alia on the following grounds:-

GROUNDS

1- That the impugned order of respondent No.3 is against law,

|||||

APPEAL
20/10/12

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- 2- That the appointment orders of the petitioners were made by the competent authority and according to law after observing all the codal formalities, but were cancelled with malafide intention which also amounts to discrimination.
- 3- That public servants once appointed have to be dealt with according to law and cancellation of appointments order is alien to that law specially when codal formalities are duly completed.
- 4- That the act of respondent No.3 is illegal and void abinitio and also against the settled norms of justice.
- 5- That the petitioners have no expeditious remedy accept invoking the constitutional jurisdiction of this Honourable Court to get the impugned order declared as ineffective against the right of the petitioners.
- 6- That counsel for the petitioners may graciously be allowed to raise additional grounds at the time of arguments.

Therefore, in wake of submissions made above this Honourable Court is respectfully requested to declare the impugned order dated 15/08/2012 as against law and ineffective upon the rights of the petitioners. Any other relief which this Honourable Court deem fit in circumstance of the case may kindly be granted.

Yours Humble Petitioners

(Allah Nawaz etc)
Through Counsel

SYED MUHAMMAD WAQAR ALAM
Advocate, Dera Ismail Khan.

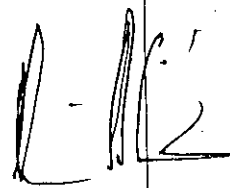
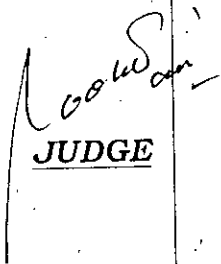
Syed Muhammad Waqar Alam
18/9

Dated: 18/09/2012

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18/9/12
20/10/12

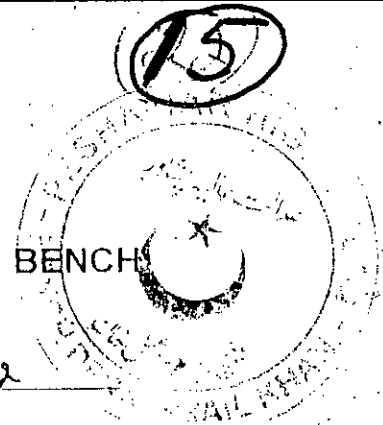
PESHAWAR HIGH COURT, D.I.KHAN BENCH

FORM OF ORDER SHEET

| Date of order or proceedings (1) | Order or other proceedings with signature of Judge(s) (2) |
|-------------------------------------|---|
| 20.9.2012. | <p><u>W.P.No.376-D/2012.</u></p> <p><u>Present:</u> Muhammad Waqar Alam, Advocate for the petitioners. ***</p> <p>Comments be called from respondent No.3 so as to reach this Court within a fortnight.</p> <p><u>C.M.No.340-D/2012.</u></p> <p>Notice for 18.10.2012. Till then the impugned order dated 15.8.2010 to the extent of Ishfaq Ahmad and Ghulam Bahoo appearing at serial Nos.1 and 5 shall remain suspended.</p> <p style="text-align: right;"> JUDGE</p> <p style="text-align: center;">ATTESSE</p> <p style="text-align: center;">EX-11111 Peshawar High Court D.I.Khan Bench</p> <p style="text-align: right;"> JUDGE</p> |

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20/9

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)



CWP No. 376 of 2012
with C.M. 34-12
JUDGMENT

Date of hearing 18-10-2012

Appellant-petitioner Allah Nawaz by Mr. Muhammad Waqar Alam
Advocate.

Respondent Govt. of KPK by Mr. Khan Wadi Khan Mahsood
Addl. A.G.

QAISER RASHID KHAN, J.- On 20.9.2012 comments were called from the respondent No.3 which have been submitted wherein specific plea of jurisdiction has been taken by the respondent. When the same was pointed out to the learned counsel for the petitioner that jurisdiction of this Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, he stated that he would not press the present petition. However, he requested that the same may be treated as representation.

2. In view of the above, we treat the writ petition as representation on behalf of the petitioner and send the same to the respondents for its decision within a period of one month according to law/rules and Government policy, whereafter the petitioner may seek his remedy before the proper forum, if so advised.

Announced
DI:18.10.2012.

ATTESTED

JUDGE

EXAMINED

Peshawar H.C.
D.I. Khan B.

20/10/12

JUDGE

19/10/12

1916
 Applied to the court on 7/20/16
 General Order No. 2
 7/20/16
 7/20/16

Clerk of the Court
 High Court Bapein
 1916

7/20/16

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OFFICE OF THE EXECUTIVE DISTRICT OFFICER (E&SE)
D.I.KHAN

Subject: WRIT PETITION # 376-D of 2012 (ALLAH NAWAZ & OTHERS Vs GOVT. OF KPK etc.

The petitioner filed the above captioned writ petition before the Honorable Peshawar High Court D.I.Khan Bench. The Honorable Court was pleased to treat the writ petition as representation on behalf of the petitioners and send the same to respondents for its decision within one month according to the rules/law, and Govt. policy, hence the representation.

Brief facts as narrated in the representation are that they were serving as cook and bearer in GHS Shero Kohna District D.I.Khan. Instead of issuance termination letter EDO cancelled their appointment orders and appointed respondent no. 5 & 6 on the petitioner's posts, therefore they are aggrieved of.

But the statement of the petitioner is contrary to fact, circumstances and law. The petitioners have no cause of action and locus standi.

It is evident from the terms and conditions of their appointment orders that their appointment was made on purely temporary basis and liable to termination at any time without assigning any reasons. Since they have accepted all the terms and conditions of their appointment order. The petitioner has only one and half month service. Therefore their appointment orders have been rightly cancelled and they have no grounds to aggrieve of in view of terms and conditions of their appointment order.

According to terms and conditions appointment order they were bound to join the post within 15 days failing which the appointment order stand cancelled automatically. But the petitioner did not join the duty within stipulated period.

Representation is also time barred. Because the petitioners are aggrieved of order dated 15-08-2012 of the EDO (E&SE) D.I.Khan and filed the instant representation in the Honorable court on 18-09-2012.

On the other hand, the private respondents were class-IV servants having more than 15 years service. They were appointed/promoted PST teachers in the year 2007. Their appointment was declared illegal. In pursuance of the order dated 27-10-2011, of the Honorable Service Tribunal in service appeal no. 1407/2010 and connected appeals, committee headed by the Secretary (E&SE) department of KPK recommended for their reversion to lower posts. Therefore in compliance of the recommendations of committee they were reverted and adjusted against the posts vacated by the petitioners.

In view of above stated facts, instant representation is devoid of any merits and dismissed.

EXECUTIVE DISTRICT OFFICER
(E&SE) D.I.Khan

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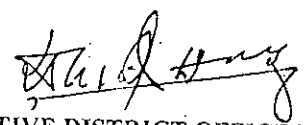
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Endst No. 15987-93/

Dated D.I.Khan the 23/10/2012

Copy for information to:

1. District Officer (M) E&SE D.I.Khan.
2. Headmaster GHS Shero Kohna.
3. Allah Nawaz S/o Allah Dad R/o Shero Kohna D.I.Khan.
4. Gul Sher S/o Alam Sher R/o Shero Kohna D.I.Khan.
5. Ghulam Bahoo Cook, GHS Shero Kohna D.I.Khan.
6. Ishfaq Ahmad Faiz Bearer, GHS Shero Kohna D.I.Khan.
7. SO (Litigation) (E&SE) KPK Peshawar with reference to his No. SO(LIT)E&SE/1-1/2012, dated 01-10-2012.



EXECUTIVE DISTRICT OFFICER
(E&SE) D.I.Khan

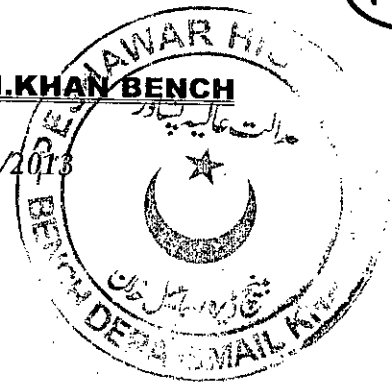
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BEFORE THE HON'BLE PESHAWAR HIGH COURT D.I.KHAN BENCH

Contempt Petition No. _____/2013

In

C.O.C No. 376-D /2012



1. Allah Nawaz s/o Allah Dad r/o Sheru Kohna District D.I.Khan (bearer) BPS01 at GHS, Sheru Kohna, D.I.Khan
2. Gul Sher S/o Alam Sher R/o Sheru Kohna District D.I.Khan (cook) at GHS, Sheru Kohna, D.I.Khan.

..... (PETITIONERS)

VERSUS

1. The Government of KPK through Secretary Education (S & L), Peshawar, (Muhammad Mushtaq Jaddon).
2. Director of Education (S&L) Peshawar (Muhammad Rafiq Khattak).
3. Executive District Officer Education, Syed Ferooz Hussain Shah, D.I.Khan.
4. District Accounts Officer, D.I.Khan, (Syed Akbar).
5. Ishaq Ahmad s/o Faizullah R/o Sheru Kohna, D.I.Khan (Ex-Naib Qasid GGHS No.2 D.I.Khan) presently at GHS Sheru Kohna, D.I.Khan.
6. Ghulam Baho s/o Ghulam Hussain (Ex-Lab Attendant, at GHS Kath Garh, D.I.Khan) presently at GHS, Sheru Kohna, D.I.Khan.

..... (RESPONDENTS)

Handwritten signature and date: 8/11/13

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PETITION FOR INITIATION OF CONTEMPT
PROCEEDINGS UNDER ARTICLE 204 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN,
1973 AGAINST THE RESPONDENT FOR VIOLATING THE
ORDER OF THIS HON'BLE COURT DATED 18.10.2012 AND
WILLFULLY DISOBEYING AND DISRESPECTING THE

ATTEST LAWFUL ORDERS OF THIS HON'BLE COURT.

EXAMINOR

Peshawar
D.I. Khan

Handwritten signature and date: 26/11/13

Respectfully Sheweth,

The Petitioner humbly submits as under:

1. That on 18.10.2012 Writ Petition No.376-D/2012 filed by the Petitioners was disposed off by this Hon'ble Court. Copy of writ petition and order are enclosed as **ANNEXURE "A & B"** respectively.
2. That on 20.10.2012 the Respondent No.3 passed an order where in order, he confirmed and declared infact his (EDO) order dated 15.08.2012 the said order 20.10.2012 was addressed to Head Master G.H.S Sheru Kohna, D.I.Khan as a result of which the Headmaster G.H.S Sheru Kohna stopped the Petitioners from the performance of the their legal duties. Copy of order dated 20.10.2012 is enclosed as **ANNEXURE "C"**
3. That on 01.11.2012 the Petitioners filed appeals before Service Tribunal which was fixed for preliminary arguments on 27.12.2012. Copies of the appeal's and cause list of Service Tribunal dated 27.12.2012 are enclosed as **ANNEXURE "C & D"** respectively.
4. That during arguments the arguments the Hon'ble member of Service Tribunal Peshawar said that the E.D.O's/Respondent No. 3 order dated 20.10.2012 was not addressed to the Petitioners so the same could not be made basis of the appeal and the Appellants/Petitioners should move contempt petition before this Hon'ble Court withdrawing the appeals made to Service Tribunal, Peshawar.
5. That the Respondents has not complied the orders of this Hon'ble Court dated 18.10.2012 and has deliberately violated the law for dismissing/terminating the Services of the Petitioner without any termination/suspension latter and has also stopped, through Headmaster G.H.S Shero Kohna, the Petitioner from t he performance of their legal duties.

8/11/13

Sum

ATTESTED

EXAMINOR
Peshawar High Court
D I Khan Bench

[Handwritten Signature]
26/11/13

6. That this Hon'ble Court had directed/ordered the Respondents to solve the matter of the Petitioner within one month which the Respondents did not bother to comply which is a clear cut violation of the orders of this Hon'ble Court.

It is, therefore, respectfully submitted that on acceptance of this petition, the Respondent may please be proceeded against for the contempt of court and may please be awarded exemplary punishment for willfully disregarding and disobeying the lawful orders of this Hon'ble Court and may please be directed to obey the order of this Hon'ble Court in its true spirit and the Respondent No. 3 be also directed to reinstate the Petitioners with all back benefits.

[Handwritten signature]
8/1/13

Your humble Petitioner

- 1. Allah Nawaz
- 2. Gul Sher

Dated. 07.01.2013

Through Counsel

MUHAMMAD WAQAR ALAM
Advocate, High Court
Dera Ismail Khan

[Handwritten signature]
7/1/12

AFFIDAVIT

I, Muhammad Waqar Alam Advocate, D.I.Khan, counsel for Applicant under the instructions of my client do here by solemnly affirm and declare on oath that all the contents of above contempt application are true and correct to the best of my knowledge and nothing has been concealed form this Hon'ble Court.

[Handwritten signature]
Muhammad Waqar Alam
Advocate

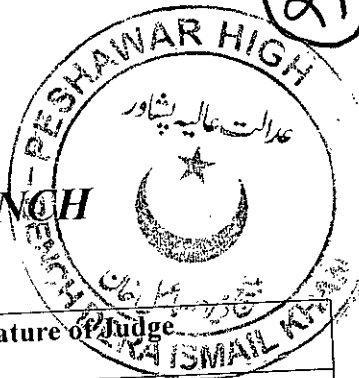
Deponent
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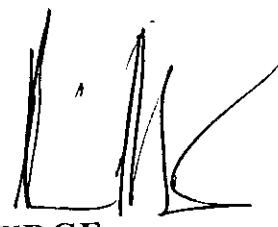
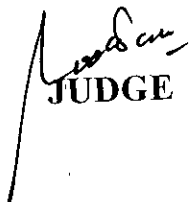
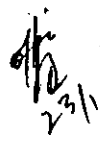
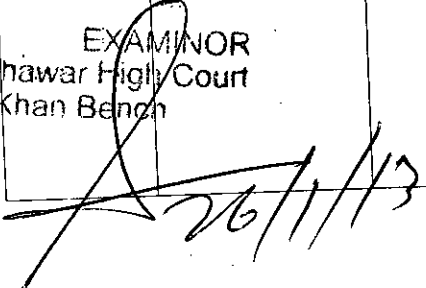
EXAMINOR
Peshawar High Court
D.I Khan Bench

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26/1/13

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4/8/13



PESHAWAR HIGH COURT, D.I.KHAN BENCH
FORM OF ORDER SHEET

| S.No. | Date of Proceedings | Order or other Proceedings with signature of Judge |
|-------|---------------------|--|
| 1 | 2 | <p>CM No. 37-D/2013.</p> <p>Present: Mr.Muhammad Waqar Alam advocate for the petitioner and Syed Feroz Shah, EDO Schools and Literacy D.I.Khan in person.</p> <p><u>QAISER RASHID KHAN J.</u>-The former states that the orders of this court dated 18-10-2012 in WP No.376/2012 have not been complied till today, but the latter produced compliance report bearing No.15987-93 dated 23-10-2012 to which the former totally expressed ignorance. However, copy of the said letter was handed over to the learned counsel for the petitioner in court, whereafter he opted not to press this petition.</p> <p>Disposed off accordingly.</p> <p style="text-align: right;"> JUDGE</p> <p style="text-align: right;"> JUDGE</p> <p style="text-align: center;">ATTESTEL </p> <p>EXAMINOR Peshawar High Court D I Khan Bench</p> <p style="text-align: center;"> 26/11/13</p> |

وکالت نامہ

| | | |
|--------------------|--|-------------|
| قیمتی ایک روپیہ | | کورٹ فیس |
|--------------------|--|-------------|

اعدالت عروسین برنیوئل کھنڈ اور کورٹ ڈیوڑھہ و سہیل خان

دعویٰ یا جرم: منجانب مسائل گل شہید (Coor) بناام حکومت و عدلیہ گل شہید

تفصیل دعویٰ یا جرم: عروسین اپیل

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے بیرونی وجوہ دی برائے پیشی یا تفریق مقدمہ بناام

تھرو فار عالم ایڈووکیٹس چارجی کورٹ ڈیوڑھہ و سہیل خان

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا ہذا بذریعہ رو برو عدالت حاضر ہوتا رہوں گا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر منظر حاضر نہ ہو اور مقدمہ بیرونی غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیرونی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر پکھری کے علاوہ اور جگہ ساعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے یا پیچھے پیش ہونے پر منظر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا سخت نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ کو کل ساختہ پر واخست صاحب موصوف محل کردہ ذات خود منظور قبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ یا درخواست اجراء اسمائے ذکری نظر جانی اپیل گمرانی دہرسم درخواست ہرسم کے بیان دینے اور پر جاتی یا راضی نامہ و فیصلہ بر حلف کرنے اقبال در۔ کا بھی اختیار ہوگا اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مقرر بیرون از پکھری صدر بیرونی مقدمہ مقرر نظر جانی اپیل و گمرانی دہرسم کی مقدمہ یا مشورتی ذکری یک طرفہ یا درخواست حکم اختتامی یا ترقی یا گرفتاری قتل از فیصلہ اجراءے ذکری صاحب موصوف کو بشرط ادا تکلیف علیحدہ حکایتہ در: کا اختیار ہوگا اور تمام ساختہ پرداخت صاحب موصوف محل کردہ از خود منظور قبول ہوگا اور یہ بت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ در۔ اس کے کسی جزو کی کارروائی یا بصورت درخواست نظر جانی اپیل گمرانی یا دیگر معاملہ و مقرر کردہ کسی دوسرے وکیل یا ہر ستر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور یہی شیر قانون کو بھی ہر امر میں دی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور در۔ میں جو کچھ ہر جانہ التواء پڑے گا وہ صاحب موصوف کا حق ہوگا مگر صاحب موصوف کو یہی نہیں تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی بیرونی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نا، لکھ رہا ہے تاکہ سند رہے
مورخہ 01 ماہ صوری 2012

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

گل شہید ... اسیدانٹ

Accepted.
Suhail Khan
Adv.
Att.

**BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR AT D.I.KHAN CAMP**

SERVICE APPEAL NO 339 OF 2013

Gul Sher

Vs

District Accounts Officer D.I.Khan (Respondent No.04)

Respectfully Sheweth:

1. Administrative matter
2. Not relates to respondent No. 04
3. Relates to Administrative Department
4. Administrative matter
5. Administrative matter
6. Not relates to respondent No. 04
7. Not relates to respondent No. 04

Grounds:

1. Administrative matter
2. Not relates to respondent No. 04
3. Administrative matter
4. As above
5. As above
6. As above
7. As above

It is therefore, humbly prayed that the name of respondent No. 04 may kindly be deleted from the list of respondents.


District Accounts Officer
Dera Ismail Khan

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR AT D.I.KHAN CAMP**

Service appeal No. _____/of 2013

Gulshair

Versus

Govt. of KPK and others

Rejoinder

**Subject: REPLY ON APPLICATION SUBMITTED BY RESPONDENT NO. 4 BY
THE APPELLANT**

Respectfully Sheweth:-

That appellant humbly replied as under:-

1. That respondent No. 4 district account officer D.I.Khan is a necessary party in the appeal and application for deletion of his name from the appeal is baseless and against the interest of appellant.
2. That para No. 2 of the application is incorrect hence denied.
3. That para No. 3 of the application is also incorrect hence denied.
4. That para No. 4 of the application is also incorrect hence denied.
5. That para No. 5 of the application is also incorrect hence denied.
6. That para No. 6 of the application is also incorrect hence denied.
7. That para No. 7 of the application is also incorrect hence denied.
8. That para No. 8 of the application is also incorrect hence denied, the subjected matter in appeal is not administrative matter rather it is a pure question of law and violation of rules by the respondents.

Grounds Reply:-

- A. That para A of the application of respondent No. 4 is incorrect hence denied, the respondent No. 4 is a necessary party in appellant's appeal.
- B. That para B of the application of respondent No. 4 is incorrect hence denied, the respondent No. 4 is a necessary party in appellant's appeal.
- C. That para C of the application of respondent No. 4 is incorrect hence denied, the respondent No. 4 is a necessary party in appellant's appeal.
- D. Incorrect.
- E. That para E of the application of respondent No. 4 is incorrect hence denied, the respondent No. 4 is a necessary party in appellant's appeal.
- F. That para F of the application of respondent No. 4 is incorrect hence denied, the respondent No. 4 is a necessary party in appellant's appeal.
- G. That para G of the application of respondent No. 4 is incorrect hence denied, the respondent No. 4 is a necessary party in appellant's appeal.

It is therefore, humbly requested by the appellant that application of the respondent No. 4 is baseless without merit and based on *malafide*, hence liable to be dismissed with costs.

Humble Appellant

Gul Shair

Through Counsel

Muhammad Waqar Alam
Advocate D.I.Khan

Muhammad Waqar Alam
28/10/13

Dated: 28-10-2013

BEFORE THE HON'BLE SERVICE TRIBUNAL K.P.K. PESHAWAR.

S.T.A Mp. 339/2013

Gul Sher V/S Govt of K.P.K etc.

2/1/14

REPLY TO THE APPEAL OF THE APPELLANT ON BEHALF OF
RESPONDENT No.5 GHULAM BAHOO

Respectfully Sheweth,

Preliminary notes.

1. That the Appellant have questioned the order of this Hon'ble Court dated.27.10.2011 vide which the Respondent No.5 Ghulam Bahoo have been adjusted on the said post. Thus the Appeal of the Appellant is not maintainable and is liable to be dismissed.
2. That the Appeal of the Appellant is hopelessly time barred.
3. That the Appellant has no locus standii against the Private Respondent.

Reply to Facts.

1. Needs no reply.
2. That Para No.2 is incorrect. It is submitted that Respondent No.5 Ghulam Bahoo was working on the said post and he has challenged the orders in the court and this Hon'ble Court accepted the appeal of the Respondent Ghulam Bahoo.
3. Reply as supra para.

Handwritten signature/initials

4. That the Para No.4 of the Appellant needs no reply This relates to the Respondent authorities that how they appointed the Appellant wherein the post was still not vacant.
5. In regard to Para No.5 it is submitted that the Respondent No.5 (Ghulam Bahoo adjusted/posted on the same post correctly and the Appellant has been removed correctly by the order of this Hon'ble Court.
6. That the Hon'ble Peshawar High Court Bench D.I.Khan has already turned down the writ Petition of the Appellant. The Appellant has neither submitted Deptt: Appeal nor order of the Hon'ble Peshawar High Court.
7. That the Appellant has rightly and correctly removed from services and after removed he neither submitted Departmental appeal nor applied for restoration his services .This appeal of the Appellant is hopelessly time barred.
8. That the Appellant is not entitled to file Appeal before this Hon'ble Tribunal, the Appellant is not entitled to challenge the order of this Hon'ble Tribunal.

Reply to Grounds.

1. Para No.1 is incorrect , denied.
2. Para 2 is incorrect denied.
3. That para relates to the Respondent authorities which may be replied at their end.

4. That the Respondent authorities has rightly adjusted the Respondent No.5 (Ghulam Bahoo) on his previous post.
- 5 Para 5 is incorrect.


It is , therefore humbly prayed that the Appeal of the Appellant may kindly be dismissed.



Yours Humble Respondent No.5

Ghulam Bahoo

through Counsel.

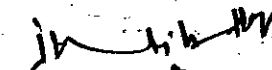


(Sheikh Iftikharul Haq)
Advocate High Court.

Dated.28.10.2013.

Affidavit.

I Shaikh Iftikharul Haq Advocate Counsel for the Respondent No.5 Ghulam Bahoo do hereby solemnly affirm and declare on oath that the contents of the reply is true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



Deponent.



خدمت جا۔ صبر حسن صبر خیر تو اس وقت تک نہیں ہے اور

حکومت صبر خیر تو
گلشن نسیم

خط - عالی
وہاں تک نہیں ہے کہ

1. اس میں اس عنوان کے تحت یہ ہے۔ اور تاریخ میں اس کے Rejoinder
23-9-13 تاریخ

2. 23-9-13 کو نائندہ حکم تعلیم کے تحت اس میں یہ حکم کے تحت اس میں یہ

3. یہ کہ اس میں اس عنوان کے تحت یہ ہے۔ اور تاریخ میں اس کے Rejoinder
23-9-13

4. یہ کہ اس وقت کے DEO کے تحت یہ ہے۔ اور تاریخ میں اس کے Rejoinder
23-9-13

5. یہ کہ اس کے تحت یہ ہے۔ اور تاریخ میں اس کے Rejoinder

6. یہ کہ اس کے تحت یہ ہے۔ اور تاریخ میں اس کے Rejoinder

7. یہ کہ اس کے تحت یہ ہے۔ اور تاریخ میں اس کے Rejoinder

8. یہ کہ اس کے تحت یہ ہے۔ اور تاریخ میں اس کے Rejoinder
24-9-13

9. یہ کہ اس کے تحت یہ ہے۔ اور تاریخ میں اس کے Rejoinder
24-9-13

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

Service Appeal No. 339/2013

Gul SherAppellant

VERSUS

Govt. of KPK & othersRespondents

Written reply/ Para wise Comments for & on behalf of Respondents

Preliminary Objections

1. That the appellant has got no cause of action.
2. That the appellant have concealed material facts from this Honorable Tribunal.
3. That the appointment of the appellant was on temporary basis and liable to be terminated at any time without assigning any reason.
4. That the appellant has not completed his probation period and under section 11 of the Khyber Pakhtunkhwa civil servants Act 1973, services of the civil servant may be terminated without notice during the initial or extended period of probation.
5. The appellant is aggrieved of order dated 15-08-2012 of the EDO (E&SE) D.I.Khan. He filed the writ petition before Peshawar High Court D.I.Khan Bench on 18-09-2012. Writ petition was converted into representation and EDO (E&SE) D.I.Khan decided the representation on 23-10-2012. Whereas the petitioner preferred the instant appeal on 01-02-2013. Hence the appeal of the appellant is badly time barred and liable to be dismissed on this score.

Objections on Facts

1. Correct to the extent that appellant is permanent resident of District D.I.Khan and citizen of Pakistan. Remaining para is incorrect and not admitted. Service of the appellant has been terminated.
2. Correct.
3. Incorrect and not admitted. Service of the appellant has been terminated. Neither he is performing duties not getting any salary.
4. Correct that no objection certificate was granted by District Coordination Officer. But subsequently he made adjustment of the officials from surplus pool against the vacancy occupied by the appellant vide his adjustment order No. 263 dated 14-6-2012 (ASAun-nur-A)
5. Correct to the extent that appointment order of the appellant was cancelled. Remaining para is in correct and not admitted. Respondent No.5 has many years service as Lab Attendant in education department. He was appointed as PST in the year 2007. His service as PST was terminated with effect from 01-05-2010. An inquiry committee under the Chairmanship of Secretary to Govt. of Khyber Pakhtunkhwa, Elementary & Secondary Department recommended for the reversion of the official to their original/lower posts, who were appointed from lower to higher posts. Therefore respondent No. 5 was reverted to lower post. Due to non availability of the vacancy the respondent no.5 was adjusted against the post occupied by the appellant. The appointment of the appellant was cancelled for the reason that he was junior in the service.

6. Pertains to record of the Honorable High Court. Hence no comments.
7. Incorrect and not admitted. As per directions of the Honorable High Court, representation was decided by the EDO and appellant was informed accordingly vide endst no. 1:5987-93 dated 23-10-2012. Copy of the decision is available at page 16 of the file.

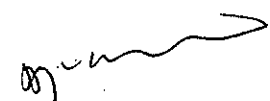
Subsequently appellant preferred service appeal before this Honorable Tribunal, the service appeal was dismissed in limine. Afterward the appellant filed C.O.C petition before the Honorable High Court D.I.Khan Bench which was disposed of on 23-01-2013 and now the second service appeal on the same cause of action with the same prayer.


8. Incorrect and not admitted. 1st appeal of the appellant has been dismissed and it is second appeal of the appellant is the same subject matter. Which is also timed barred. Therefore it is not maintainable.

Objections on Grounds

1. Incorrect and not admitted. Orders passed by the respondent no.3 are in accordance with the law, rules, facts and circumstances of the case.
2. Incorrect and not admitted. The authorities who have power to issue appointment orders have also power to cancel the appointment orders. The appointment orders of the appellant was cancelled for the reason that the appellant was junior most in the service and there was no vacant post of class-IV servant to adjust the respondent no.5 who have many years of service as class-IV servant and reverted to original/lower post under the recommendations of the inquiry committee.
3. Incorrect and not admitted. The appellant was appointed on temporary basis. He has not completed his probation period and service of the probationer can be terminated at any time without notice and assigning any reasons. The appellant has accepted this terms and conditions of his appointment order. Therefore he has no grounds to challenge the cancellation of his appointment order.
4. Incorrect and not admitted. The act of the respondent is lawful.
5. Incorrect and not admitted. Respondent no.5 was a regular/confirmed civil servant. Under section 10 of the Khyber Pakhtunkhwa civil servants Act 1973, every civil servant is liable to serve any where with in or out side the province in any post. Therefore adjustment of the respondent no.5 against the post of cook is legal.
6. Incorrect and not admitted. First appeal of the appellant was dismissed before the service tribunal. Therefore he has no right to prefer second appeal on the same subject matter.
7. That the counsel for respondents also seeks permission of this Honorable Tribunal to raise addition grounds during the course of hearing the case.

In view of the above submission it is humbly prayed that on acceptance of the written reply, instant appeal of the appellant may graciously be dismissed with cost.


Secretary
(E&SE) Department
KPK, Peshawar


Director
(E&SE) Department
KPK, Peshawar


District Education Officer
(M) E&SE D.I.Khan

(17) Annex L
THE DISTRICT COORDINATION OFFICER DIKhan.

ADCO/HRDO/Surplus Pool Dated DIKhan the 14/06/2012

ORDER

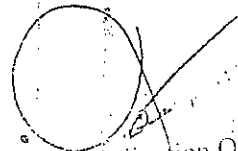
In pursuance to the adjustment decision issued by the Director (FMU) Department Govt of Khyber Pakhtunkhwa vide letter No.FMU/FD/4-Surplus Pool dated 21/05/2012 and Govt of Khyber Pakhtunkhwa, Establishment & Administration Department (Regulation Wing) Peshawar letter No.SOI-1(S&GAD)-009/Vol-I, dated 13.08.2001, the following surplus employees of District DIKhan are hereby adjusted w.e.f 01-07-2012 against the vacant / newly created posts with immediate effect as under :-

| S.No. | Name of Official with Designation | ADJUSTED AS | Office/ Department | Remarks |
|-------|---|-----------------------------|--|---|
| 1. | Muhammad Aslam, Dozer Greaser (BPS-02) Agriculture Engg. DIKhan. | Chowkidar BPS-01. | Animal Husbandry/DO LS&DD, DIKhan | With pay protection as per Govt policy. |
| 2. | Gul Nawaz, Dozer Greaser (BPS-02) Agriculture Engineering DIKhan | Chowkidar BPS-01. | -do- | -do- |
| 3. | Asmatullah, Dozer Greaser (BPS-02) Agriculture Engineering DIKhan | Chowkidar (BPS-01) | -do- | -do- |
| 4. | Ikram ullah, Truck Driver (BPS-05) Agriculture Engineering DIKhan | Driver (BPS-04) | Assistant Director LG&RDD DIKhan | -do- |
| 5. | Abdul Latif, Truck Driver (BPS-05) Agriculture Engineering DIKhan | Naib Qasid (BPS-01) | -do- | -do- |
| 6. | Samullah, Dozer Greaser (BPS-02) Agri Engg. DIKhan | Chowkidar BPS-01. | -do- | -do- |
| 7. | Abdul Ghaffar, Junior Clerk (B-07) Ex DC Office, DIKhan. | Jr Clerk | C&W Highways Divn. DIKhan. | -do- |
| 8. | Muhammad Naeem, electrician (B-05), Agriculture Engg. DIKhan | Chowkidar (BPS-01) | Civil Dispensary Amanullah Kot UC Ketch, DIK. | With pay protection as per Govt policy. |
| 9. | Saameen Bibi, Dai (BPS-03), Health Department DIKhan. | Dai (BPS-02) | -do- | -do- |
| 10. | Khan Sherin, Fitter (BPS-03), Agriculture Engineering DIKhan | Ward Ordely (BPS-02) | -do- | -do- |
| 11. | Arshad Mehmood, Behisti (BPS-2) Health Dept. DIKhan. | Behishti / Sweeper (BPS-01) | -do- | -do- |
| 12. | Akbar Hayat, Dozer Greaser (BPS-02) Agriculture Engineering DIKhan | Ward Ordely (BPS-02) | Civil Dispensary Diyal, DIKhan | -do- |
| 13. | Mr. Ghulam Ahmed, Sub-Inspector, (BPS-05) Cooperative Society, DIKhan | Chowkidar (BPS-01) | Civil Dispensary Dost Muhammad Khan Kot, UC DIKhan | -do- |
| 14. | Asmatullah, Dai (BPS-03) Health Dept. DIK. | Dai (BPS-02) | -do- | -do- |
| 15. | Muhammad Anwar, Dozer Greaser (BPS-02) Agriculture Engg. DIKhan | Ward Ordely (BPS-02) | -do- | -do- |
| 16. | Jahan Zaib Behishti (BPS-2) Health Dept. DIKhan. | Behishti / Sweeper (BPS-01) | Civil Dispensary Dost Muhammad Khan Kot, DIK | With pay protection as per Govt policy. |

SA
12

| | | | | With pay protection as per Govt policy. |
|-----|---|--------------------------------|---|---|
| 18. | Mr. Nasrullah, Sub-Inspector, (BPS-05) Cooperative Society, DIKhan | Ward Ordly (BPS-02) | Civil Dispensary Kharshid UC DIKhan | -do- |
| 19. | Javed Iqbal, Helper (BPS-02) Agriculture Engineering DIKhan | Chowkidar (BPS-01) | -do- | -do- |
| 20. | Bashir Ahmad, Behishti (BPS-2) Health Deptt. DIKhan. | Behishti / Sweeper (BPS-01) | -do- | -do- |
| 21. | Mr. Saghar Ali, Sub Inspector, (BPS-05) Cooperative Society, DIKhan. | Chowkidar (BPS-01) | Civil Dispensary Village Rehman, DIKhan | -do- |
| 22. | Imayatullah, Dozer Greaser (BPS-02) Agriculture Engineering DIKhan | Ward Ordely (BPS-02) | -do- | -do- |
| 23. | Muhammad Ilyas, Behishti (BPS-02), Health Deptt. DIKhan. | Behishti / Sweeper (BPS-01) | -do- | -do- |
| 24. | Amina Bibi, Dai (BPS-03) Health Department DIKhan. | Dai (BPS-02) | -do- | -do- |
| 25. | Muhammad Ramzan, Dozer Greaser (BPS-02) Agriculture Engg. DIKhan | Ward Ordely (BPS-02) | Civil Dispensary Wanda Solan, Girsal DIKhan. | -do- |
| 26. | Mehtab Ahmad, Sweeper (BPS-02) Health Deptt. DIKhan. | Behishti / Sweeper (BPS-01) | -do- | With pay protection as per Govt policy. |
| 27. | Muhammad Naeem, Daftri (BPS-05), E&SE DIKhan | Chowkidar (BPS-01) | -do- | -do- |
| 28. | Mr. Tasleem Nawaz, Mechanic (B-07) Agriculture Engineering DIKhan | Chowkidar (BPS-01) | DHQ Teaching Hospital (THQ Hospital) DIKhan | -do- |
| 29. | Liaqatullah, Senior Store Keeper (B-06) Agriculture Engineering DIKhan | Store Keeper (BPS-06) | -do- | -do- |
| 30. | Muhammad Asad Qureshi, Tractor Driver (BPS-05) Agriculture Engg. DIKhan | Driver (BPS-04) | -do- | With pay protection as per Govt policy. |
| 31. | Abdur Rehman, Dozer Greaser (BPS-02) Agriculture Engg. DIKhan | Ward Attendant (B-1) | -do- | -do- |
| 32. | Jamal Abdul Nasir, Dozer Greaser (BPS-02) Agriculture Engg. DIKhan | Ward Attendant (BPS-01) | -do- | -do- |
| 33. | Fakher Zaman, Dozer Greaser (BPS-02) Agriculture Engg. DIKhan | Ward Attendant (BPS-01) | -do- | -do- |
| 34. | Alamgeer, Sweeper (BPS-02) Health Deptt. DIKhan. | Sweeper (BPS-01) | District Officer Livestock & Dairy Dev. DIKhan. | -do- |
| 35. | Muhammad Najeem, Fitter (B-05) Agriculture Engineering DIKhan | Rod Man (BPS-01) | On Farm Water Management, EDO, Agri. DIKhan | -do- |
| 36. | Aziz ur Rehman, Welder (B-05) Agriculture Engineering DIKhan | Rod Man (BPS-01) | -do- | With pay protection as per Govt policy. |
| 37. | Sheikh Muhammad Younis, Junior Clerk (B-07) Ex DC Office, DIKhan | Assistant Store Keeper, (B-07) | Education Deptt DIKhan | -do- |

| | | | | |
|-----|---|--|--|---|
| 38. | Health Ahmad Raza, Mechanic (B-07) Agriculture Engineering DIKhan; Muhammad Nazir Mechanic (B-07) Agriculture Engineering DIKhan; | Chowkidar (BPS-01) Naib Qasid (B-01) | Excise & Taxation Office DIKhan Excise & Taxation Office DIKhan | With pay protection as per Govt policy. -do- |
| 39. | Saboullah, Junior Store Keeper (BPS-05) Agri. Engg. DIKhan | Adjusted by the Director Agriculture Engineering, KPK, vide order No. 1456-61/DAE/Acctt/3/232 dated 04/06/2012 | | |
| 40. | Munir Ahmad, Truck Driver (BPS-05) Agriculture Engineering DIKhan | Driver (B-04) | Excise & Taxation Office - DIKhan | -do- |
| 41. | Zafar Mehmood, Mechanic (B-07) Agriculture Engineering DIKhan; | Chowkidar (BPS-01) | GGHS Sherazi DIKhan | -do- |
| 42. | Meharban, Sweeper (BPS-02) Health Deptt. DIKhan. | Sweeper (BPS-01) | G.G.H.S. Sherazi, DIKhan | -do- |
| 43. | Fateh Sher, Truck Driver (BPS-05) Agriculture Engineering DIKhan | Adjusted by the Director Agriculture Engineering, KPK, vide order No. 1447-52/DAE/Acctt/3/232 dated 04/06/2012 | | |
| 44. | Saifur Rehman, Dozer Greaser (BPS-02) Agri Engg. DIKhan. | Lab Attendant (BPS-01) | Govt Girls High School Babar Pacca, DIKhan. | -do- |
| 45. | Mazhar Rehman, Tractor Driver (BPS-05) Agriculture Engineering DIKhan | Chowkidar (BPS-01) | GGHS Haji Mora DIKhan | -do- |
| 46. | Mumtaz Ahmad Khan, Sweeper (BPS-02) Health Deptt. DIKhan. | Sweeper (BPS-01) | IIM GHS Hathala DIKhan. | -do- |
| 47. | Mahmood Saddique, Dozer Greaser (BPS-02) Agriculture Engg. DIKhan | Bearer (BPS-01) | IIM GHS Shero Kohna DIKhan | -do- |
| 48. | Jama Bakhshi, Dozer Greaser (BPS-02) Agriculture Engg. DIKhan | Cook (BPS-01) | IIM GHS Shero Kohna DIKhan | -do- |
| 49. | Gohar Zaman, Dozer Greaser (BPS-02) Agriculture Engineering DIKhan | Chowkidar (BPS-01) | Industrial Development Office, DIKhan. | -do- |
| 50. | Abdullah Khan Daller Helper (BPS-02) Agriculture Engineering DIKhan | Naib Qasid (BPS-01) | -do- | -do- |
| 51. | Haji Nawaz, Helper (BPS-02) Agriculture Engineering DIKhan | Chowkidar BPS-01. | MCH Centre Surat Kot UC Kech, DIKhan | -do- |
| 52. | Muhammad Kamran, Sweeper (BPS-02) Health Deptt. DIKhan. | Behishti Sweeper (B-1) | -do- | -do- |
| 53. | Abdullah Khan Dozer Greaser (BPS-02) Agriculture Engg. DIKhan | Operator-cum Chowkidar (BPS-01) | Public Health Engineering Division DIKhan | -do- |
| 54. | Atul Hussain, Mechanic (B-07) Agriculture Engineering DIKhan; | Chowkidar (BPS-01) | Social Welfare & Special Education Deptt. DIKhan | -do- |


 District Coordination Officer
 Dera E-mail Khan.

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& date even:

Copy forwarded to the :-

Secretary to Govt of Khyber Pakhtunkhwa, Establishment & Administration Department, Peshawar.

Secretary to Govt of Khyber Pakhtunkhwa, Finance Department, Peshawar.

Secretary to Govt of Khyber Pakhtunkhwa, LG&RD Department, Peshawar.

Director (FMIU), Govt of Khyber Pakhtunkhwa, Finance Department, Peshawar w/r to his letter No.FMIU/FD/4-1/2012/Surplus Pool dated 21/05/2012.

Accountant General, Khyber Pakhtunkhwa, Peshawar.

Section Officer (E-V), Establishment Department, Peshawar.

Section Officer (Surplus Pools), Establishment Department, Peshawar.

Budget Officer (PFC-II) Finance Department, Peshawar.

Budget Officer (IV) Finance Department, Peshawar.

Executive District Officer, Finance & Planning, DIKhan

Executive District Officer, Elementary & Secondary Education, DIKhan

Executive District Officer, Health, DIKhan

Executive District Officers, Agriculture, DIKhan.

Superintending Engineer, Public Health Engineer Circle DIKhan.

Superintending Engineer, C&W Circle, DIKhan.

Medical Superintending DIHQ Teaching Hospital DIKhan.

District Officer, Revenue & Estate/Collector, DIKhan.

Excise & Taxation Officer, DIKhan.

District Officer, Livestock & Dairy Development DIKhan.

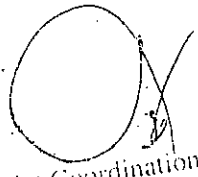
Industrial Development Officer, DIKhan.

Assistant Registrar/District Officer, Cooperative Societies, DIKhan.

District Accounts Officer, DIKhan.

Officials concerned for compliance.

All concerned.


District Coordination Officer
Dera Ismail Khan.

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 339/2013

Gul Sher

Versus

Govt. of Khyber Pakhtunkhwa and others

REJOINDER FROM APPELLANT IN WRITTEN REPLY OF
RESPONDENT NO. 1, 2 & 3

Respectfully Sheweth:-

Reply on Preliminary Objections:-

- i. Incorrect, appellant has clear cause of action against the respondents.
- ii. Incorrect, hence denied, appellant comes to the Honourable Tribunal with clean hands and no facts, circumstance and law concealed in the present appeal.
- iii. Incorrect, after appointment appellant was legally entitled for show cause notice which is evidence from the appointment order of the appellant. And in this regard principle of locus potencia is very much clear and applied in the case of appellant.
- iv. Incorrect, hence not admitted. It is a settled principle natural justice regarding issuance of the notice/show cause before taking any penal action against a civil servant.
- v. Incorrect and misconceived. Appellant approached to this tribunal intime and this point is also resoled at the time of preliminary arguments.

Objections on Facts:-

- 1) Admitted by respondents, hence no reply, moreover, termination of the appellant is against law, rules, hence liable to be set aside.
- 2) No reply.
- 3) Incorrect and misconceived. Appellant was appointed after fulfilling all the code formalities by the competent authority against a clear cut vacant post and in this regard NOC from D.C.O was also taken by the competent authority, moreover,

appellant personal number was also issued by the concerned account office which is already placed on file.

- 4) Admitted by respondents, hence no reply. But unfortunately misguided this honourable Tribunal through a wrong story which is self created and not agitated at the time of submitting comments in the august Peshawar High Court Bench D.I.Khan in Writ Petition of the appellant. Copy of comments is enclosed herewith for ready reference.
- 5) Incorrect, actually the appellant was terminated in a haste full manner alien to law procedure and unfortunately no show cause notice was given to the appellant by the competent authority, termination/cancellation of appointment order of the appellant is very much ambiguous and not understandable by a prudent mind and in the eye of law not a legal order. Furthermore, it is pertinent to mention here that appellant was appointed by the competent authority against a clear vacant post and at that time competent authority was well aware regarding termination of private respondents.
- 6) Incorrect and misconceived. Appeal of the appellant is well within time.
- 7) Incorrect and misconceived.

OBJECTION ON GROUNDS:

- i. Incorrect, appellant was terminated by respondent No. 3 in a illegal manner and violating all the settled canons of justice/service rules.
- ii. Incorrect, and not admitted. The ground taken by the respondents that seniors and juniors are not equal is very much unrealistic and the ground for termination of appellant's service is alien to law and liable to be set aside by the honourable Tribunal.
- iii. In correct and misconceived. Hence not admitted.
- iv. Incorrect and misconceived. Act of the respondents is against law and service rules.
- v. Incorrect and misconceived. Section 10 of KPK Civil Servant Act 1973, was interpreted by the respondents in a very okward manner and just a try to deceive the honourable Tribunal and it is pertinent to mention here that adjustment of any employee cannot be made against a fill-up post.
- vi. Incorrect and misconceived. Appellant's gravience has not been redressed finally till date.

vii. Incorrect.

In wake of submissions made above, it is therefore, humbly requested that written reply of the respondents/department declared baseless and appeal of the appellant may please be accepted as prayed for. Any other relief deems appropriate may please be given to the appellant.

Dated:

Yours Humble
Petitioner


Gul Sher

Through Counsel


Muhammad Waqar Alam
Advocate High Court *25/11*

AFFIDAVIT

I, **Muhammad Waqar Alam** Advocate High Court counsel of the petitioners, under the instructions of my client, do hereby solemnly affirm and declare on Oath that contents of the Rejoinder are true and correct to the best of my knowledge and belief; and nothing has been deliberately concealed from this Hon'ble Court.

Dated:


Deponent

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 339/2013

Gul Sher

Versus

Govt. of Khyber Pakhtunkhwa and others

REJOINDER FROM APPELLANT IN WRITTEN REPLY OF
RESPONDENT NO. 5

Respectfully Sheweth:-

Reply on Preliminary Objections:-

- i. Incorrect and misconceived. Appellant has clear cause of action against the respondents.
- ii. Incorrect, hence denied. The appeal of the appellant is well within time.
- iii. Incorrect and misconceived.

Objections on Facts:-

- 1) Admitted by respondent, hence no reply.
- 2) Incorrect and misconceived. Respondent No. 5 never submitted any cogent proof regarding service on the seat of appellant, hence, not admitted, the story narrated by the respondent in para 2 of reply.
- 3) No reply.
- 4) No reply.
- 5) Incorrect and misconceived. Respondent No. 5 could not be adjusted against the filled post of the appellant. Hence, order of the competent authority regarding cancellation of appointment order of appellant is liable to be set aside.
- 6) Incorrect and misconceived. Appeal of the appellant is well within time.
- 7) Incorrect and misconceived. Appeal of the appellant is well within time.

8) Incorrect and misconceived. Respondent No. 3 categorically admitted before the honourable Peshawar High Court, Bench D.I.Khan regarding entitlement of appellant's civil servant. Hence, appellant come to this forum being civil servant for the grievance of his redressal.

OBJECTION ON GROUNDS:

- i. No reply also incorrect.
- ii. Incorrect, hence not admitted.
- iii. No reply.
- iv. Incorrect and misconceived. Respondent No. 5 could not be adjusted against the appellant's post and the order of respondent No. 3 in this respect is against law/service rules and liable to be cancellation.
- v. No reply.

In wake of submissions made above, it is therefore, humbly requested that written reply of the respondent No. 5 declared baseless and appeal of the appellant may please be accepted as prayed for. Any other relief deems appropriate may please be given to the appellant.

Dated:

Yours Humble Petitioner

Gul Sher

Through Counsel

Muhammad Waqar Alam
Advocate High Court

AFFIDAVIT

I, **Muhammad Waqar Alam** Advocate High Court counsel of the petitioners, under the instructions of my client, do hereby solemnly affirm and declare on Oath that contents of the Rejoinder are true and correct to the best of my knowledge and belief; and nothing has been deliberately concealed from this Hon'ble Court.

Dated:

Deponent

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 949 /ST

Dated 6/6/2016

To


The DEO S&L,
D.I.Khan.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 23.5.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.