

22.10.2015

Counsel for the appellant, M/S Khurshid Khan, SO and Said Badshah, ADO alongwith Mr. Muhammad Jan, GP for official respondents No. 1 to 3 and 5 and clerk to counsel for private respondent No. 5 present. Clerk to counsel for private respondent No. 5 requested for adjournment as his counsel is stated busy before the august High Court Peshawar, therefore, case is adjourned to 12-11-15 for arguments.


MEMBER


MEMBER

12.11.2015

Counsel for the appellant and Mr. Said Badshah, ADO alongwith Mr. Muhammad Jan, GP for official respondents and private respondent No. 4 in person present. Arguments could not be heard due to paucity of time. Therefore, the case is adjourned to 30-11-15 for arguments.


Member

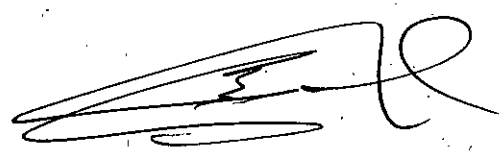

Member


30.11.2015

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for withdrawal of the instant appeal. His signature also obtained in the margin of order sheet. Request is accepted. The appeal is dismissed as withdrawn. File be consigned to the record.

ANNOUNCED
30.11.2015


Member


Member


30/11/15

1370/13

1.4.2015

Appellant with counsel and Mr. Muhammad Jan, GP with Said Badshah, ADO (Legal) for the official respondents and clerk of counsel for private respondent No. ⁴P Present. The learned Member (Judicial) is on official tour to D.I.Khan, therefore, case is adjourned to 23.06.2015 for arguments.



MEMBER

23.06.2015

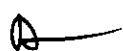
Appellant with counsel and Syed Badshah, ADO (Legal) alongwith Addl. AG for the respondents present. Arguments could not be heard as learned Member (Judicial) is on leave. To come up for arguments on 02.09.2015.



Member

02.09.2015

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 22-10-2015.



Member



Member

26.09.2014

Appellant with counsel, Mr. Muhammad Adeel Butt, AAG with Khursheed Khan, SO, Javed Ahmad, Supdt. and Said Badshah, ADO for official respondents and private respondent No. 4 with counsel present. Due to incomplete Bench, case is adjourned to 25.11.2014 for arguments. Till then status quo is extended.


MEMBER

25.11.2014

Appellant in person, Mr. Muhammad Jan, GP with Khursheed Khan, SO for the official respondents and private respondent No. 4 in person present. The Tribunal is incomplete. To come up for the same on 31.12.2014.


READER

31.12.2014

Appellant in person, Mr. Muhammad Adeel Butt, AAG with Said Badshah, Supdt. and Mosam Khan, AD for the official respondents and Clerk to counsel for private respondent No. 4 present. The Tribunal is incomplete. To come up for the same on 23.2.2015.


READER

23.2.2015

Appellant with counsel, Mr. Muhammad Jan, GP with Bakhshish Elahi, ADO for the official respondents private respondent No. 4 with counsel present. The learned Judicial Member is on official tour to D.I.Khan, therefore, case is adjourned to 1.4.2015 for arguments.


MEMBER

1370/13

6.5.2014

Appellant with counsel, Mr. Muhammad Jan, GP with Said Badshah, ADO and Khursheed Khan, SO for the official respondents and clerk to counsel for private respondent present and stated that his senior is busy in the august Supreme Court of Pakistan. To come up for arguments on 19.5.2014. Till then status quo is extended.

19.5.2014

MEMBER
Appellant in person, Mr. Muhammad Jan, GP with Khursheed Khan, SO for the official respondents and private respondent in person present. Parties need time to produce his counsel. To come up for arguments on 16.6.2014. Till then status quo is extended.

MEMBER

MEMBER

16.6.2014

Counsel for the appellant, Mr. Muhammad Jan, GP with Said Badshah, ADO and Khursheed Khan, SO for the official respondents and private respondent No.4 present. The learned Judicial Member is on leave, therefore, arguments could not be heard. To come up for arguments on 16.7.2014. Till then status quo is extended.

MEMBER

MEMBER

16.7.2014

Appellant with counsel, Mr. Muhammad Jan, GP with Saeedur Rahman, ADO for official respondents and clerk to counsel for private respondent No. 4 present. Senior counsel for private respondent No. 4 is not available and request made on his behalf for adjournment. To come up for arguments on 26.09.20-14. Till then status quo is extended.

MEMBER

MEMBER

24.2.2014

Appellant in person, Mr. Muhammad Jan, GP with Roz Wali Khan, ADO & Mosam Khan, AD for the official respondents No. 1 to 3, Private respondent No. 4 in person and Musharaf Ali, A.D (Admn) in person present and submitted Affidavit, which is placed on file. Letter dated 20.2.2014 also received from the respondent No. 2. Copies handed over to opposite sides. To come up for further proceedings/further arguments on the point of maintainability on 19.3.2014. Till then status quo is extended.


MEMBER

19.3.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Khursheed Khan, SO & Bakhsheesh Elahi, Assistant for official respondents and private respondent No.4 in person present. Respondent No. 4 also in person present. Counsel for private respondent No. 4 submitted an application for summoning respondents No. 1, 2 & 5 in view of order sheet dated 31.1.2014 for examining them on Oath. Copies handed over to counsel for the appellant, learned GP and representatives. To come up for further arguments on the point of maintainability as well as reply/arguments on application on 8.4.2014. Status quo is extended till the date fixed.


MEMBER


MEMBER

8.4.2014.

Appellant in person, AAG with Muhammad Abbas, DDEO for official respondents and private respondent No.4 in person present. Reply of respondents No.1, 2, & 5 on application of private respondent No.4 received. Copies handed over to opposite side. Due to strike of the bar, counsel for the parties are not available. To come up for arguments on 6.5.2014. Till then status quo is extended.


MEMBER


MEMBER

13.1.2014

Appellant in person, Mr. Muhammad Adeel Butt, AAG with Roz Wali Khan, DEO (M) Haripur for the official respondents and private respondent No. 4 in person present. Reply on behalf of appellant to the application of private respondent No.4, received. Copy handed over to learned AAG and private respondent No.4. To come up for arguments on the point of maintainability as well as other proceedings on 31.1.2014. Till then status quo is extended.

MEMBER 

31.1.2014

Counsel for the appellant and Mr. Muhammad Jan, GP Khursheed Khan, SO and Mosam Khan, AD for respondents No. 1 & 2, Mr. Roz Wali Khan, DEO (M) Haripur (respondent No.3) himself and private respondent No. 4 with counsel present. Reply to stay application on behalf of respondent No. 3 received. Copy handed over to counsel for the appellant. Arguments, on the point of maintainability of the appeal, partly heard.

During the course of arguments, it was pointed out by the learned counsel for private respondent No. 4 that the departmental appeal was not filed before the proper forum and rejection order was passed by an incompetent authority i.e. Assistant Director (Admn) Directorate of E&SE, Peshawar and prima-facie is fake and factitious.

Perusal of the record reveals that the official respondents in their written reply also stated that the departmental appeal and order passed there upon seems to be factitious, however, no affidavit was submitted on this point, hence they are directed to furnish proper affidavit in this respect. Similarly, respondent No. 5 i.e. Assistant Director (Admn) E&SE Directorate, Peshawar is also directed to appear in person and explain his position. To come up for further proceedings/arguments on the point of maintainability of the appeal on 24.2.2014.

MEMBER 

MEMBER 

25.11.2013

Appellant with counsel and Mr. Muhammad Adeel Butt, AAG with Rozwali Khan, DEO Haripur for the official respondents present and requested for further time. Private respondent No. 4 with counsel present and reply on main appeal as well as stay application filed. He also submitted application for dismissal of the case on the point of maintainability. Copies handed over to counsel for the appellant. To come up for written reply on main appeal as well as stay application on behalf of the official respondents and reply on behalf of the appellant on application of private respondent No. 4 and arguments on 18.12.2013. Till then status quo is extended.

MEMBER

MEMBER

18.12.2013.

Appellant with counsel, Mr. Muhammad Adeel Butt, AAG with Khursheed Khan, SO, Mosam Khan, AD and Said Badshah, ADO for the official respondents No. 1 to 3 and private respondent No. 4 with counsel present. Written reply on behalf of respondents No. 1 to 3 received. Copy handed over to counsel for the appellant. Counsel for the appellant requested for time to file reply to application submitted on behalf of private respondent No. 4. To come up for reply/arguments on application of private respondent No.4, and arguments on stay application on 13.1.2014. Till then status quo is extended.

MEMBER

MEMBER

Appeal No. 1370/2013.
Mr. Ghulam Ahmad

30.09.2013

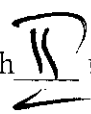
Counsel for the appellant present and heard on preliminary.

Contended that the appellant has not been treated in accordance with the law/rules. The impugned transfer cancellation order dated 20.09.2013 is politically motivated. He further contended that the rejected order dated 23.09.2013 is a non-speaking order which is the violation of section 24-A of General Clauses Act and was passed by incompetent authority. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections/limitation. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Counsel for the appellant also submitted an application for suspension the operation of impugned order dated 20.09.2013 and 23.09.2013 till the disposal of main appeal. Notice of application also be issued to the respondents for reply/arguments. To come up for written reply on main appeal on 25.11.2013 as well as reply/arguments on application on 09.10.2013.

Member.

Note The appellant deposited
security & process fee Rs 220/-
Bank receipt attached on file

30.09.2013

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

Chairman

9.10.2013.

Appellant with counsel, and Mr. Muhammad Jan, GP with Khursheed Khan, SO, Mosam Khan, Supdt. and Muhammad Abbas, DDEO Haripur for the official respondents present and requested for time. None is available on behalf of private respondent No. 4. Fresh notice be issued to him through registered post. To come up for written reply on main appeal as well as reply/arguments on stay application on 25.11.2013. Status quo be maintained till the date fixed.

MEMBER



MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1370/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/09/2013	<p>The appeal of Mr. Ishtaq Ahmad resubmitted today by Mr. M. 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	26-9-2013.	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>30-9-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Ishtaq Ahmad PET, GMS Kachi Haripur received today i.e. on 24.09.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of proper rejection order of departmental appeal is not attached with the appeal which may be placed on it.

No. 1349 /S.T,

Dt. 24/09 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. M. Asif Yousafzai Adv. Pesh.

Re-submitted because the appeal is Amexure - D is attached and the rejection order is recorded on the same appeal without typing any order. Therefore, the appeal may be place before primary Bench for consideration.



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO-1370/2013

Ishtaq Ahmad.

Vs

Education Deptt:


INDEX.

S.NO	DOCUMENTS	ANNEXURE	PAGE
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2-	Stay application.	---	4 - 5
3-	Order dt. 14.9.2013	A	6
4-	Charge report.	B	7
5-	Cancellation order 20.9.2013	C	8
6-	Appeal. & Rejection order.	D	9
7-	Posting policy.	E	10 - 13
8-	Vakalat nama	---	14.

APPELLANT

ISHTIAQ AHMED

THROUGH;



M.ASIF YOUSAFZAI
ADVOCATE.



TAIMUR ALI
ADVOCATE

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO-1370/2013


G.W.F. Province
Larawan & Peshawar
No. 1403
24-9-13

Ishtaq Ahmad (PET)
GMS Kachi Haripur.....Appellant.

VERSUS

- 1) The Secretary Education (E&SE) KPK Peshawar
- 2) Director Education (E&SE) KPK Peshawar
- 3) District Education Officer, male ,(E&SE) Haripur
- 4) Faridoon khan (PET) GMS Kheri Haripur.....Respondents.
- 5- Assst. Director (Admin) E&SE, Education Peshawar.

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT AGAINST THE ORDER DATED 23.9.2013 WHERE BY THE DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 20.9.2013 HAS BEEN REJECTED FOR NO GOOD GROUND


24/9/13

PRAYER IN APPEAL

ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 23.9.2013 MAY BE SET ASIDE WITH THE DIRECTIONS TO THE RESPONDENTS TO RESTORE THE POSTING ORDER OF APPELLANT AT GMS KACHI HARIPUR DATED 14.9.2013. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT

R.SHEWETH:

1. That the appellant after completing more than 4 years tenure at GMS Kachi, Haripur vide order dated 14.9.2013. The private respondent who completed more than 8 year was transferred from GMS Kachi to GMS Kheri Haripur in place of the appellant. Copy of order is attached as Annexure – A
2. That the appellant took over charge in pursuant in the above mention order on 16.9.2013. copy of charge report is attached as Annexure – B
3. That the order dated 14.9.2013 was cancelled due to political interference which is evident from the endorsement made at NO.1 & 2 of order dated 20.9.2013. Copy of the order is attached as Annexure – C
4. That the appellant submitted departmental appeal on 23.9.2013 but the same has been rejected for no good ground on 23.9.2013. The rejection order is recorded on the departmental appeal of the appellant. Copy of appeal & rejection order is attached as Annexure – D
5. That now the appellant come to this august Tribunal on the following ground amongst the others.

GROUNDS :

- A. That the order 20.9.2013 And 23.9.2013 are against law, facts, norms of justice and material on record therefore liable to be set aside.
- B. That the impugned cancellation order dated 20.9.2013 is politically motivated order and such political interference has strongly been condemned by Supreme Court of Pakistan in its various judgments.
- C. That the appellant's tenure at GMS Kachi was just 4 days. Thus the impugned order dated 20.9.2013 was premature.
- D. That the impugned order dated 20.9.2013 is against and in total violation of the government posting and transfer policy dated. 15.2.2003. copy of the posting band transfer policy is attached as Annexure- E
- E. That the even the rejection order dated 23.9.2013 is a non-speaking order which is the violation of section 24 A of General Clauses Act and Supreme Court judgment reported as 1991 SCMR-2330. *Even order dt. 23.9.13 was passed by incompetent authority.*
- F. That the order dated 23.9.2013 and 20.9.2013 are against the principles laid down by Hon'ble Supreme Court of Pakistan in case of Anita Turab.
- G. That the appellant seeks permission to advance other proofs and grounds at the time of hearing .

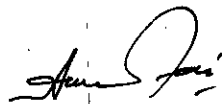
It is therefore most humbly prayed that appeal of the appellant may be accepted as prayed for.

APPELLANT



ISHTIAQ AHMED

THROUGH;



M.ASIF YOUSAFZAI
ADVOCATE.



TAIMUR ALI
ADVOCATE

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

Appeal No. _____/2013

Ishtiaq Ahmed

V/S

Education Department.

**APPLICATION FOR SUSPENDING
THE OPERATION OF IMPUGNED
ORDER DATED 20.9.2013 and
23.9.2013 TILL THE DISPOSAL OF
MAIN APPEAL.**

RESPECTFULLY SHEWETH:


1. That the appellant has filed Service Appeal along-with application in which no date has been fixed so far.
2. That the appellant has a good prima facie case and all the three ingredients are in favour of the appellant, because the appellant has been made to suffer due to political interference.
3. That the impugned order has been passed in violation of Government Policy.
4. That the ground of main appeal may be considered as integral part of this application.
5. That, if the impugned order has not been suspended, then the appellant would become mentally torture.
6. That the impugned order has been passed by the respondent, which is illegal and violation of rules.

7. That the appellant has not been relinquished the charge of the post till the date and there is no legal hurdle in suspending the impugned order.

It is, therefore, most humbly prayed that the impugned order dated 20.9.2013 and 23.9.2013 may be suspended till the disposal of main appeal. Any other remedy, which this august Tribunal deems fit and appropriate that may also be awarded in favour of appellant.

APPELLANT
Istiaq Ahmed

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

&
Taimur Ali Advocate

AFFIDAVIT:

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


DEPONENT



A (6)

Office of the District Education Officer (Male)
Haripur
PH No. 0995-610178, 610268

Order

Consequent upon the recommendation of competent authority the following Adjustment of teaching staff of Elementary & Secondary Education Haripur is hereby ordered as mentioned against the name of each, on their own pay & grade in the bet interest of public services with immediate effect.

S.No	Name with Designation	From	To	Remarks
01	Mr Fardoon Khan PET	GMS Kachi	GMS Amgah	Vice S.No 02 ✓ 8 years
02	Mr, Shahid PET	GMS Amgah	GMS Kheri	Vice S.No 03
03	Ishtiaq Ahmad PET	GMS Kheri	GMS Kachi	Vice S.No 1, J

Note:-

1. Charge reports should be submitted to all concerned.
2. No TA/DA is allowed to any one.

--- sd ---


District Education Officer (Male)
Haripur

Endst No. 8830-32

Dated 14/09/2013.

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

01. The Senior District Accounts Officer Haripur.
02. The Principal / Headmaster concerned.
03. The Officer record file.


14/9/13
District Education Officer (Male)
Haripur

ATTESTED
X

CHARGE REPORT

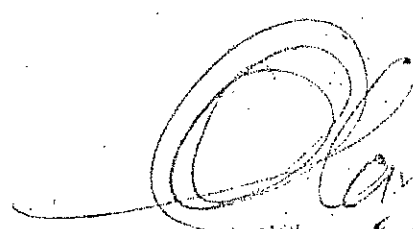
B (7)

Certified that Mr. Ishtiaq Ahmad PET has taken over charge of PET POST at Gms Kachhi Haripur on 16-9-2013 (AN) vide DEO(M) order No 8830-32 dated 14-9-2013 Particulars of cash and important Confidential documents are handed over are noted on the reverse.

Handed over Ishtiaq Ahmad
Mahamud Ibrahim et
Gms Kachhi
Dated 16-9-2013

Taken over charge
Ishtiaq Ahmad PET
Gms Kachhi
Dated, 16-9-2013

No 12 dated 16/9/2013


Head Master
Govt Middle School
Kacchi Haripur
16/9/2013

ATTESTED




Office of District Education Officer

Male Haripur

PH No. 0995-610178, 610268

Cancellation

As order by the Hon Minister for E & Secondary Education KPK this office order No 8830-32 dated 14/9/2013, in respect of Fardoon Khan PET GMS Kachi to GMS Kheri vice Ishtiaq PET is hereby canceled with immediate effect.

Note:

- 1- No TA/DA or TG is allowed.
- 2- Charge report should be submitted to all concerned

Endst: No. 9019-21

Cc:

-----sd/-----

District Education Officer
(Male) Haripur

Dated: 20/09/2013

1. The P/S to Hon: Minister for E&SE KPK Peshawer..
2. The P/S to Hon MPA PF 52 Haripur .
3. Official concerned.
4. Office record file.


District Education Officer
(Male) Haripur

ATTESTED



1 شہادت نامہ : Edu

District Education Officer (Male)

HARIPUR

610178, 610268

As Approved by the competent authority, Mr Faridoon Khan PET GMS Kachi Under transfer GMS Khari Haripur is hereby adjusted at GHS No II against Vacant post of PET B-15 (Vacated due to the retirement of Murtaza Shah PET) on his own pay and grade with effect from the date of taking over Charge.

Note:

1. No T.A/D.A or T.G is allowed to anyone.
2. Charge report should be submitted to all concerned.

-----Sd/-----
District Education Officer (Male)
Haripur

Dated: 5 / 12 / 2014.

- 14790-931
1. Additional Register Khybar Pakhtoon Khwa service Tribunal Peshawar in connection with service appeals No 1370/13 Title Ishtiq Ahmad VS Education Department etc for information please
 2. Senior District Accounts Officer Haripur
 3. Principal GHS No II Haripur
 4. Teacher Concerned.
 5. Office Copy.

Dy: District Education Officer (Male)
Haripur

D
9
ذات جناب ڈائریکٹر صاحب محمد لعلیم (ESSE) لکھنؤ۔

عنوان = اپیل بے حلف و کلمہ مورخہ 20/9/2013

جناب عالی!
التماس ہے کہ سائل کو مورخہ 9/14/2013 کو GMS کبھی
پری پور کو ڈسٹریکٹ کیا گیا۔ سائل نے مورخہ 9/16 کو باقاعدہ چارج لے لیا
تین سبھی مراعات کے باعث سائل کا ڈسٹریکٹ آرڈر مورخہ 9/14 کو
چینڈ دن بعد مورخہ 9/20 کو منسوخ کیا گیا۔ یہ امر بھی قابل ذکر ہے
کہ فریون نے GMS کبھی پری پور میں 8 سال سے زائد عرصہ گزارا ہے۔
لہذا استدعا ہے کہ مورخہ 9/14 والے آرڈر کو ہٹوا
دیا جائے تاکہ آرڈر مورخہ 9/20 کو خارج کیا جائے۔

مورخہ: 23-9-2013

شفاق احمد
PET
GMS کبھی پری پور

DEC (M)
23/9/13

DEO (M) Hanjra
Appeal of Mr. Ishtiaq
Ahmed PET has
been rejected
being Dist. Cdr. P.S.

ATTESTED
*

M. N.
Assistant Director (Admn.)
Directorate of E & SE
Khyber Pakhtunkhwa Peshawar
23.9.13

E (10)

GOVERNMENT OF N.W.F.P
ESTABLISHMENT & ADMINISTRATION DEPARTMENT
(REGULATION WING)

NO.SOR-1(E&AD)1-1/85(Vol:II)

Dated the Peshawar the 15th February, 2003.

- 1- All Administrative secretaries to Govt: of NWFP.
- 2- The Secretary to Governor, NWFP.
- 3- The Secretary to Chief Minister, NWFP.
- 4- All Heads of Attached Departments in NWFP.
- 5- All the Heads of Autonomous/Semi Autonomous Bodies in NWFP.
- 6- All Distt: Co-Ordination Officer/Political Agents in NWFP.
- 7- The Registrar Peshawar High Court Peshawar.
- 8- All Distt: & Session Judges in NWFP.
- 9- The Secretary NWFP Public Service Commission, Peshawar.
- 10- The Director Anti-Corruption Establishment, Peshawar.
- 11- The Secretary Board of Revenue, NWFP, Peshawar.
- 12- The Registrar, NWFP Service Tribunal, Peshawar.

SUBJECT: POSTING/TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

Dear Sir,

1. I am directed to refer to the subject noted above and to say that in super-session of all policy, instructions issued in this behalf, the competent authority has approved the following Posting/Transfer Policy: -
 - i) All the posting /transfer shall be made strictly in the public interest and shall not be abused/misused to victimize the Government Servant.
 - ii) All Government servants are prohibited to exert political, Administrative or any other pressure upon the posting /transfer authorities for seeking posting transfer of their choice and against the public interest.
 - iii) All contract Govt: employees appointed against specific posts cannot be posted against any other post.
 - iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas, the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the government.
 - v) Months of March and July are fixed for posting/transfer of the officers/officials excluding the officers in B-19 and above in the Province. Posting/transfer in Education and Health Departments shall be made in March

ATTACHED

while the remaining departments shall make posting/transfer in July. There shall be a ban on posting/transfer throughout the year excluding the aforementioned two months due to promotion/retirement/creation of new post/return from long leave/involvement in disciplinary proceedings and adjustment of surplus staff for which specific relaxation shall be obtained from the Chief Minister.

- vi) While making posting/transfers from settled area to FATA vice-versa specific approval of the Governor NWFP needs to be obtained.
- vii) Officers may be posted on executive/administrative posts in the Distt: of their domicile except District Co-Ordination Officers (DCOs), and Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where a Police Station (Thana) of his area/residence is situated.
- viii) No posting/transfers of the officers/officials on the detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in the Provincial Services, efforts where possible would be made to post such persons at one station and this will be subject to the public interest.
- x) All posting/transfers authorities may facilitate the posting/transfers of unmarried female Govt; Servant at the station of their residence of their parents.
- xi) Officer/officials except DCOs and SPs who are due to retire within one year may be posted on their option, on posts in the Distt: of their domicile and be allowed to serve there till retirement.
- xii) In terms of Rule-17 (1) and (2) read with schedule-III of the Govt: of NWFP Rules of Business 1985, transfer of officers shown in column 1 of the following table, table shall be made by the authorities shown against each officers in column 2 thereof: -

COLUMN -1	COLUMN -2
<p><u>Outside the Secretariat.</u></p> <ol style="list-style-type: none"> 1. Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above. 2. Other officers in BPS-17 and above to be posted against scheduled posts or posts normally held by the APUG, PCS (EG) and PCS (SG) 3. Head of attached Deptt: and other officers in B-19 & above in all the Deptt: 	<p>Chief secretary in consultation with the Establishment Deptt. With the of the Chief Minister.</p>

ATTESTED
[Signature]

<p><u>In the Secretariat.</u></p> <p>4. Secretaries.</p> <p>5. Other officers and above the rank of Section Officers: -</p> <p>a)- Within the same Deptt:</p> <p>b)-Within the Secretariat from one Deptt: to another.</p> <p>6. Officers up to the rank of Superintendents.</p> <p>a)- Within the same Deptt:</p> <p>b)- To and from Attached Deptt:</p> <p>c)- Within the Secretariat from one Deptt: to another.</p>	<p>Chief Secretary with the approval of the Chief Minister.</p> <p>Secretary of the Deptt: concerned.</p> <p>Chief Secretary/ Secretary Establishment.</p> <p>Secretary of the Deptt: concerned.</p> <p>Secretary of the Deptt: in consultation with the Head of Attached Deptt:</p> <p>Secretary Establishment.</p>
---	--

xiii) While considering the posting/transfers proposals all the concerned authorities shall keep in mind the following: -

- a). To ensure the posting of proper persons on proper posts the annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on integrity of the concerned officer/officials be considered.
- b). Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

xiv) Government servants including Distt: Government employees feeling aggrieved due to the orders of posting/transfers authorities may seek remedy from the next higher authority/ the appointing authority as the case may be brought an appeal to be submitted within seven days of the receipt of such order. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/transfers orders could be exercised only in the following cases: -

- i)- premature posting/transfers or posting/transfers in violation of this policy.
- ii)- Serious and grave personal(humanitarian) grounds.

2. To streamline the posting /transfers in the Distt; Govt: and to remove any imitant/confusions in this regard the provision of Rule 25 of the NWFP Distt: Govt: Rules of Business 2001 read with schedule-IV thereof is referred. As per schedule-IV the Posting /Transferring authorities for the officials/officers shown against each are as under: -

ATTESTED
A

<i>S.No</i>	<i>Officers</i>	<i>Authority</i>
1-	Posting of Distt; Coordination Officer and Executive Distt: Officer in a Distt:	Provincial Govt:
2-	Posting of Distt: Police Officer.	Provincial Govt:
3-	Other officer in BPS-17 and above posted in the Distt:	Provincial Govt:
4-	Official in BPS-16 and below.	Executive Distt: Officer in consultation with Distt: Coordination Officer.

3. As per Rule-25 (2) of the Rules mentioned above the Distt: Coordination Department shall consult the Govt: if it is proposed to:-
- transfer the holder of the tenure post before the completion of his tenure or extend the period of his tenure; and
 - Acquire an officer to hold charge of more than one post for a period exceeding two months.
4. I am directed further to request that the above noted policy may be strictly observed/ implemented.

Your Faithfully,

Sd/xxx
(GHULAM JALANI ASIF)
ADDL: SECRETARY(REG:)

Endst:NO.SOR-1(E&AD)1-1/85

dated Peshawar the 15.2.2003.

ATTESTED

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Ishfaq Ahmed (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education Dept. (Respondent)
(Defendant)

I/We, Ishfaq Ahmed (appellant)
& Taimur Ali

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.

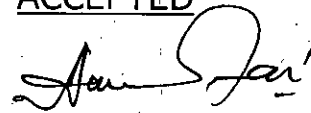
I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding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

Dated _____/20



(CLIENT)

ACCEPTED



M. ASIF YOUSAFZAI

Advocate.



TAIMUR ALI

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1370 /2013

Ishtiaq Ahmad, PETAppellant

Versus

The Secretary Education (E&SE),
Khyber Pakhtunkhwa and others.....Respondents.

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Reply with Affidavit			1-4
2.	Reply to Stay Application with Affidavit			5-6
3.	Copy of order	17.09.2012	Reply/A	0-7
4.	Wakalat Nama			



Respondent No.4
(Faridoon Khan)

Through



Khush Dil Khan
Advocate, Peshawar

9-B, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 091-2213445

Dated: 25 / 10/ 2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 1370 /2013**

Ishtiaq Ahmad, PETAppellant

Versus

The Secretary Education (E&SE),
Khyber Pakhtunkhwa and others:.....Respondents.

**REPLY ON BEHALF OF RESPONDENT NO.4
(FARIDOON KHAN, PET, GMS KACHI).**

Respectfully Sheweth,

Preliminary objections.

- I. That the appeal in question is not sustainable under the law and rules on subject and liable to be dismissed in limine because departmental appeal of the appellant was not rejected by the appellate authority i.e. Director Education (E&SE), Peshawar rather the same was manipulated and rejected by Assistant Director (Admin), Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar who is neither appellate authority nor competent otherwise.
- II. That the appellant has not come with clean hands. The material facts have been concealed by him malafidely, advertently and cheating with the Hon'ble Tribunal. Thus the appeal is liable to be dismissed in limine.

- III. That the appellant has no cause of action as he is liable to serve anywhere in the district.
- IV. That the appeal has not been framed in accordance with law and rules on subject and not tenable.

Reply to Facts:

1. Para No.1 of the appeal is correct to the extent that by order dated 14.09.2013 passed on the recommendation of political authority by the Respondent No.3 thereby answering Respondent was transferred from GMS Kachi to GMS Amgah while on other teacher Shahid PET from GMS Amgah to GMS Kheri and appellant was adjusted from GMS Kheri to GMS Kachi but on 17.09.2012 another order was issued by the Respondent No.3 thereby the name of Shahid PET was deleted. This order was not shown by the appellant and concealed it from this Hon'ble Tribunal malafidely (Copy of order dated 17.09.2012 **Annex:- Reply/A**). Hence rest of the contents of para are denied.
2. Incorrect and against the facts so denied. The answering Respondent is still working against his original post in GMS Kachi.
3. The Respondent No.3 has rightly canceled the order dated 14.09.2013 by his subsequent order dated 20.09.2013 as the same was not warranted by the rules and policy on subject.

4. It is incorrect and cheated the Hon'ble Tribunal for the reason that a departmental appeal has not been submitted properly in accordance with Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 to the appellate authority (Respondent No.2) while in very clandestine manner the rejection order recorded on the face of appeal by Assistant Director (Admn) who is neither appellate authority in the case nor competent otherwise so the appellant did all these malafidely just to approach earlier to this Tribunal on the basis of fake order.
5. Para No.5 of the appeal needs no comments.

Reply to Grounds:

- A. The order dated 23.09.2013 is false and maneuvered by the appellant. Thus this appeal is not competent and maintainable as neither the departmental appeal has been filed before the appellate authority properly and if filed then the statutory period of 90 days has not lapse from the date on which the such appeal was preferred which is a mandatory requirement of the law on subject.
- B. Incorrect so denied.
- C. Incorrect so denied.
- D. Incorrect.
- E. There is no such departmental appeal filed by the appellant and the departmental appeal is attached with the appeal is fabricated shown rejected by the

Assistant Director (Admn) who is not the appellate authority.

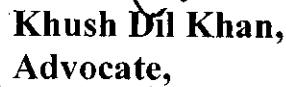
F. Incorrect.

It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellant may kindly be dismissed with costs.



**Respondent No.4.
(Faridoon Khan)**

Through



**Khush Dil Khan,
Advocate,**

Supreme Court of Pakistan.

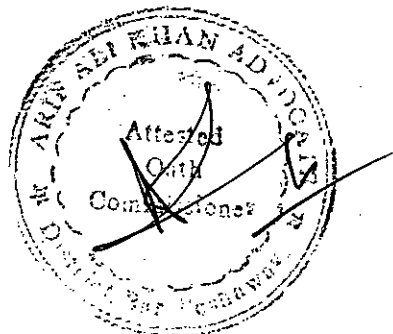
Dated: 25 / 10/ 2013

Counter Affidavit

I, Faridoon Khan, PET, GMS Kachi, Haripur do hereby affirm and declare on oath that the contents of this reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED

Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 1370 /2013**

Ishtiaq Ahmad, PETAppellant

Versus

The Secretary Education (E&SE),
Khyber Pakhtunkhwa and others.....Respondents.

**REPLY TO APPLICATION REGARDING THE
INTERIM RELIEF.**

Respectfully Sheweth,

Preliminary objections.

- I. That the application is not maintainable under the law and rules on subject.
- II. The applicant has no cause of action.
- III. That the applicant has not come with clean hands and concealed the material facts from this Hon'ble Tribunal.

Reply to Facts:

1. No need of answer.
2. That applicant has no good prima facie case and not a fit case for granting interim relief in all respect.

3. That the appeal of appellant is not competent and maintainable as neither the stipulated period of 90 days has been lapsed nor the appeal was disposed off by the competent authority. Thus the application is also not sustainable and liable to be dismissed.
4. Denied.
5. Denied.
6. Denied.
7. Incorrect and denied.

It is, therefore, humbly prayed that on acceptance of this Reply the application for interim relief may kindly be dismissed.

Counter Affidavit

I, Faridoon Khan, PET, GMS Kachi, Haripur do hereby affirm and declare on oath that the contents of this reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED



Deponent

A handwritten signature in black ink, appearing to read "Faridoon Khan".

Reply / 'A' (7)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
HARIPUR

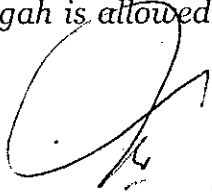


Susbsuitional Order

In continuation to this office order issued under Endst: No.8830-32 dated 14.09.2013, the following subssuitional order is hereby made on the terms and condition in original order.

S.No.	Name Designation	with	From	To	Remrks
01.	Faridoon Khan PET		GMS Kachi	GMS Kheri	Vice S.No.02
02.	Ishtiaq Ahmed PET		GMS Kheri	GMS Kachi	Vice S.No.1


Note: 1- Mr. Muhammad Shahid PET GMS Amgah is allowed to continue his services at his original station as usual.


District Education Officer
Haripur

Endst: No. even NO / dates Dated: / / 2013

Cc:

1. The Account Branch of local office.
2. The Headmaster concerned.
3. Official concerned.
4. Office record file.


17/9/13
District Education Officer
Haripur

ATTESTED

WAKALAT NAMA

IN THE COURT OF K.P Service Tribunal

Ishtiaq Ahmad

Appellant(s)/Petitioner(s)

VERSUS

The District Education Officer (male) Haripur

Respondent(s)

I/We Fardos Khan Regdt No. 4 do hereby appoint **Mr. Khush Dil Khan, Advocate Supreme Court of Pakistan**, in the above mentioned case, to do all or any of the following acts, deeds and things.


1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this

Attested & Accepted by




Khush Dil Khan,
Advocate,
Supreme Court of Pakistan

9-B, Haroon Mansion
Khyber Bazar, Peshawar

Respondent No. 4



Signature of Executants


Nawab Zada
Advocate

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BEFOR THE KHYBER PAKHTUN KHA WA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1370/2013

Mr. Ishtiaq Ahmed, PET GMS Kachi District Haripur..... (Appellant)

VERSUS

1. The Secretary (E & SE) Department, K.P.K Peshawar.
2. The Director of (E & SE) Department, K.P.K Peshawar.
3. The District Education Officer (M) District Haripur.
4. Faridoon Khan PET GMS Kheri District Haripur.

..... (Respondents)

INDEX

S. No	Description of Documents	Annex	Pages
01.	Para wise Reply/comments		01-02
02.	Copy of Joint Application	A	04
03.	Copy of Substitutional order	B	05
04.	Copy of Appeal	C	06

Through

Respondents

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BEFOR THE KHYBER PAKHTUN KHAWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1370/2013

Mr. Ishtiaq Ahmed, PET GMS Kachi District Haripur..... (Appellant)

VERSUS

1. The Secretary (E & SE) Department, K.P.K Peshawar.
2. The Director of (E & SE) Department, K.P.K Peshawar.
3. The District Education Officer (M) District Haripur.
4. Faridoon Khan PET GMS Kheri District Haripur.

..... (Respondents)

Respectfully Sheweth:-

The respondent No.1,2 & 3 respectfully submit the joint Para wise reply/comments towards the appeal filed by the appellant as follows:-

Preliminary Objections

- 1- The appeal is not maintainable under the Law.
- 2- The Appellant has no cause of action.
- 3- The Appellant has not come to this Honorable Service Tribunal with clean hand.
- 4- That the Appellant has got no locus standi to file the instant appeal.
- 5- The Appellant has concealed the material facts from this Honorable Court, hence liable to be dismissed.
- 6- That the Appellant has filed the instant appeal on malafide motives.
- 7- That the Appellant has filed the instant appeal just to pressurize the Respondents.

REPLY./COMMENTS ON FACTS:-

- 1- Correct to the extent of transfer order dated 14-09-2013. However it is pertinent to mention that upon the joint application dated 13-09-2013 by appellant and respondent No.4, the competent authority was pleased to issue the said order. **(The copy of the joint application is marked as Annexure -A)**. In this regard order was issued vide Endst No.8830-32 Dated 14-09-2013, but another teacher namely Mr. Shahid PET transferred to GMS Kheri being aggrieved with the said order, preferred departmental appeal and consequently the substitutional order was issued on even No. & dated. **(Copy of substitutional order is marked as Annexure B)**
- 2- No comments.
- 3- In correct, the competent authority has issued the order in accordance with Law/rules etc.

4- Incorrect, the appeal of the appellant was not submitted before the competent authority i.e the Director E&SE K.P.K Peshawar. It is pertinent to mention here that the appellant neither submitted his appeal before the competent authority nor it is rejected by the competent authority. Hence the service appeal of the appellant is premature and liable to be dismissed. (Copy of appeal marked as annexure -C)

REPLY / COMMENTS ON GROUNDS:-

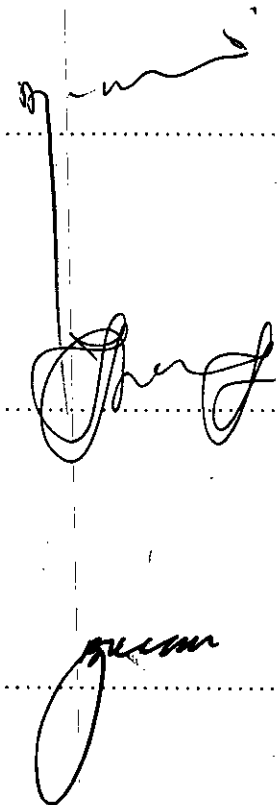
- A. Incorrect, the order dated 20-09-2013 was made purely on merit and in accordance with the Principles of equity.
- B. In correct, the impugned cancellation order dated 20-09-2013 is based on the Principles of the equity and was issued due to unwillingness of the prive respondents as he prayed for to be transferred to GMS Amgah instead of GMS Kheri.
- C. In correct, the detail is given in the above Para "B".
- D. In correct, the impugned order is a cancellation order and is not an order of posting or transfer.
- E. No comments.
- F. That the order dated 23-09-2013 and 20-09-2013 is based on the principles of equity.
- G. That the respondents also see the permission of the honorable court to adduce further points and facts at the time of arguments.

Prayer

In the Light of above facts it is humbly prayed that the Appeal of the Appellant devoid of legal footing, merit may graciously be dismissed with cost please.

Respondents;

- 1- The Secretary Elementary & Secondary Education Department
Khyber Pakhtun Khawa Peshawar.
(Respondent No.1)
- 2- The Director Elementary & Secondary Education
Khyber Pakhtun Khawa Peshawar.
(Respondent No.2)
- 3- The District Education Officer (M) District Haripur.
(Respondent No.3)



The image shows three handwritten signatures, each written on a horizontal dotted line. The first signature is at the top, the second is in the middle, and the third is at the bottom. The signatures are written in dark ink and appear to be cursive or semi-cursive.

30
مدرسین ڈیپارٹمنٹ ریموکن آف سر صلیب علی پور

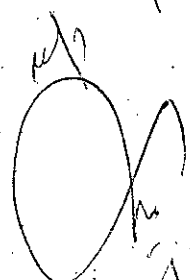
عنوان تبادلہ

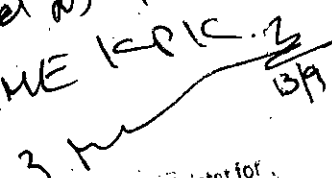
جناب عالی "مزید" جیہ ہم دو ایسٹنڈنٹ گورنمنٹ مڈل سکول بھی صلیب
پور سے ایچ اے گورنمنٹ مڈل سکول آگاہ ~~ہوئے~~ سے PET کی ڈیوٹی
پر تمام بنیادیں ہوں اور اسباق اور PET گورنمنٹ
مڈل سکول کھیری سے گورنمنٹ مڈل سکول بھی قادی ہوئے
پر پوسٹ ڈیوٹی سرگرم بنیادیں آج آپ صلیب
صوبائی کر تبادلہ کرنے کے حکم صادر فرمائیں

الکاح

فریڈون خان
GMS
PET

گورنمنٹ مڈل سکول کھیری
GMS
PET

Suppl
Mr. 
18/9/17

DEO (MS) Haripur
May be transfer in
velocity of bar of
both the teachers as
agreed as desig
by HME KPK
3. 
3/17



FAISAL ZAMAN
MEMBER PROVINCIAL ASSEMBLY
PAKISTAN TEHREEK INSAF (PTI)
K.P.K

ZUBAIDA AMAN PLAZA
TEHSIL GHAZI
DISTRICT HARIPUR
Tel. Off: 0995-660981
Fax: 0995-660229
Mob: 0300-8591935
E-mail: faisalzaman43@gmail.com

Ref. No. PK-52
Date: 2-9-2013

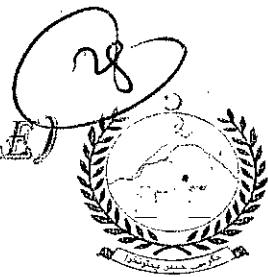
Dear Minister for Education K.P.K

Mr Faridoon Khan P.E.T, G.M.S
Kachhi, Haripur is recommended
for transfer at G.M.S Aansah,
Tehsil Ghazi Haripur and
Mr Ishtiaq Ahmed P.E.T, G.M.S
Khairi, Haripur is to be
transferred at G.M.S Kachhi
Haripur after relaxation of
bar in the best interest
of public at large.

F. Zaman
FAISAL ZAMAN
MEMBER PROVINCIAL ASSEMBLY

Annexure - "B"

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
HARIPUR

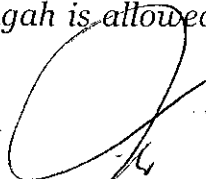


Subsuitional Order

In continuation to this office order issued under Endst: No.8830-32 dated 14.09.2013, the following subsuitional order is hereby made on the terms and condition in original order.

S.No.	Name with Designation	From	To	Remrks
01.	Faridoon Khan PET	GMS Kachi	GMS Kheri	Vice S.No.02
02.	Ishtiaq Ahmed PET	GMS Kheri	GMS Kachi	Vice S.No.1


Note: 1- Mr. Muhammad Shahid PET GMS Amgah is allowed to continue his services at his original station as usual.


District Education Officer
Haripur

Endst: No. even NO / date Dated: / / 2013

Cc:

1. The Account Branch of local office.
2. The Headmaster concerned.
3. Official concerned.
4. Office record file.


17/9/13
District Education Officer
Haripur

Handwritten notes:
Khan Sahib
Sum...
12/19/9/13

Annexure - (C)
خدمت ضابطہ ایڈمنسٹریشن (E&SE) لکھنؤ

D

(9)

معاون : اہل مختلف حکم مورخہ 20/9/2013

ضابطہ عالی، التماس کیا گیا کہ مورخہ 9/14/2013 کو GMS کئی

ہیں پورے کٹر انٹرنیٹ کیا گیا۔ سائل نے مورخہ 9/16/2013 کو باقاعدہ جاری لینے لیا

تکین سیاسی مداخلت کے باعث سائل کا کٹر انٹرنیٹ آرڈر مورخہ 9/14/2013 کو

چینڈ دن بعد مورخہ 9/20/2013 کو منسوخ کیا گیا۔ یہ امر بھی قابل ذکر ہے

کہ فریڈن نے GMS کئی پوری طور پر 8 سال سے زائد رقم گزارنے پر

لکھنا استعماجاً مورخہ 9/14/2013 والے آرڈر کو ہٹوا

کھینے ہوئے آرڈر مورخہ 9/20/2013 کو خارج کیا جائے

مورخہ: 23-9-2013

شہناز احمد PET
GMS کئی پوری طور

DEC (M)
23/9/13

DEO (M) Hanjra
Appeal of Mr. Ishtiaq
Ahmad PET has
been rejected
being Dist. Cdr. P.S.

M. N.
Assistant Director (Admin.)
Directorate of E & SE
Khyber Pakhtunkhwa Peshawar

23.9.13

Service Appeal No. 1370 /2013

Ishtiaq Ahmad, PETApplicant/Appellant

Versus

The Secretary Education (E&SE),
Khyber Pakhtunkhwa and others.....Respondents.

Application for dismissal of the appeal on the point of maintainability.

Respectfully Sheweth,

1. That in this case the appellant filed the photocopy of departmental appeal dated 23.09.2013 addressed to Respondent No.2 as appellate Authority and on the same date on the face of the departmental appeal recorded rejection order by the Assistant Director (Admn:) addressed to DEO (Male) Haripur. Neither the departmental appeal has been properly framed under the Khyber Pakhtunkhwa Civil Servants (Appeals) Rules, 1986 nor the same was disposed off by the appellate authority rather rejected by a strange officer of the Department which indicates that the appellant have got this order in very clandestine manner which is no order in the eye of law.
2. That thus in this case neither a period of 90 days has lapsed nor the same was rejected by the appellate authority, therefore, the appeal is not maintainable and sustainable under the Provision

of (a) of the Section 4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974.

It is, therefore, humbly prayed that on acceptance of this application, the appeal of appellant may kindly be dismissed with costs as not maintainable under the law.

Applicant/
Respondent No.4.
(Faridoon Khan)

Through

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan.

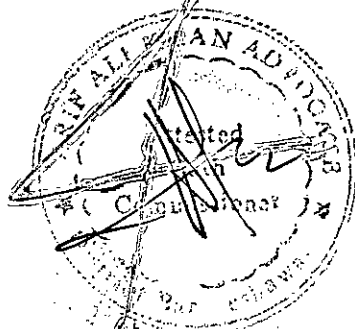
Dated: 25 / 10/ 2013

Affidavit

I, Faridoon Khan, PET, GMS Kachi, Haripur do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED

Deponent



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1370/13.

Ishtiaq Ahmed.

Vs

Education Deptt:

REJOINDER ON BEHALF OF APPELLANT.

R.SHEWETH.

PRELIMINARY OBJECTIONS:

All objections raised by the respondents are incorrect and baseless. Rather the respondents are stopped to raise any objections due to their own conduct. More over the respondent no.5 has rejected the appeal, therefore he should file his reply to defend himself.

FACTS:

- 1- Admitted correct by the respondents. However it is added that the order dated. 17.9.2013 was never communicated to appellant because, the appellant took over charge on 16.9.2013 in pursuance to order dated. 14.9.2013. Therefore the stance of the respondents is incorrect, especially that of private respondent.
- 2- Admitted correct by the official respondents however, the reply of the private respondent is not correct.
- 3- Incorrect while para-3 of appeal is correct. The attached annexure shows that the said order has been issued due to political interference and not according to law and rules, especially when the Govt; has already circulated the instructions on 27.2.2103.
- 4- Incorrect. The appellant filed appeal before the Director Education which was rejected by Asstt: Director (Admin) who has been arrayed as respondent No.5 and who under the law

required to file his reply. More over the Responded No. 2 should be aware of the functions of his subordinates. The appellant was refused his appeal and under the law the appellant was having only the remedy to go before the Tribunal.


GROUND:

- A- Incorrect while para-A of the appeal is correct. More over as explained in para-4 above of this rejoinder.
- B- Incorrect while para-B of the appeal is correct. The order is politically motivated and premature.
- C- Incorrect while para-C of appeal is correct. The charge report proves that the appellant tenure was just 4 days.
- D- Incorrect while para-D of appeal is correct. The respondents have violated the posting /transfer policy of the Govt; as well as Circular dated. 27.2.2013.
- E- Admitted correct by the official respondents whereas the reply of the private respondent is not correct as explained in para-4 above.
- F- Incorrect while para-F of appeal is correct.
- G- Legal.

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

APPELLANT

THROUGH;


M.ASIF YOUSAFZAI
ADVOCATE.

AFFIDAVIT.

It is affirmed that the contents of this appeal and replication are true and correct.

Rai

DEPONENT.

ATTESTED



2/4

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1370/13.

Ishtiaq Ahmed.

Vs

Education Deptt:

REPLY TO APPLICATION ON BEHALF OF APPELLANT.

R.SHEWETH.

PRELIMINARY OBJECTIONS:

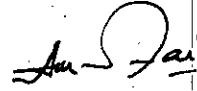
- 1- The application is not sustainable as the respondent No.5 has not yet filed his reply.
- 2- The application is based on malafide intentions to save the skin of the respondent No.5

FACTS:

- 1- Incorrect. The appeal was properly addressed to respondent No.2 but rejected by the respondent no.5. Thus keeping in view the legal position, it was an appellate order on the appeal of appellant and the same fact has been admitted by official respondents in reply to Para-E of their comments. The appellant was having only the remedy to go before the Tribunal in appeal as the rejection order was passed by the respondent No.5 on his appeal. Thus if any violation is made that is on the part of the official respondents which cannot be attributed to appellant.
- 2- Incorrect hence denied. More over as explained in para-2 above. It is also added that the appeal is now mature during the pendency of appeal.
It is therefore most humbly prayed that the application in hand may be rejected.

APPELLANT /RESPONDENT.

THROUGH:



M.ASIF YOUSAFZAI
ADVOCATE.

AFFIDAVIT.

It is affirmed that the contents of this reply are true and correct.



DEPONENT.

ATTESTED



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

No. 178 /ST,

Dated 04/02 /2014

To:

The Assistant Director (Admn)
Elementary & Secondary Education,
Peshawar.

Subject:- SERVICE APPEAL NO. 1370/2013, ISHTIAQ AHMAD VERSUS
THE SECRETARY EDUCATION (E&SE) KPK PESHAWAR ETC.

I am directed to say that the above mentioned Service Appeal was fixed for before the learned Member Bench on 31.1.2014. On the same date, the learned Members have passed the following order, which is sent for further necessary action:-

“Counsel for the appellant and Mr. Muhammad Jan, GP Khursheed Khan, SO and Mosam Khan, AD for respondents No. 1 & 2, Mr. Roz Wali Khan, DEO (M) Haripur (respondent No.3) himself and private respondent No. 4 with counsel present. Reply to stay application on behalf of respondent No. 3 received. Copy handed over to counsel for the appellant. Arguments, on the point of maintainability of the appeal, partly heard.

During the course of arguments, it was pointed out by the learned counsel for private respondent No. 4 that the departmental appeal was not filed before the proper forum and rejection order was passed by an incompetent authority i.e. Assistant Director (Admn) Directorate of E&SE, Peshawar and prima-facie is fake and factitious.

Perusal of the record reveals that the official respondents in their written reply also stated that the departmental appeal and order passed there upon seems to be factitious, however, no affidavit was submitted on this point, hence they are directed to furnish proper affidavit in this respect. Similarly, respondent No. 5 i.e. Assistant Director (Admn) E&SE Directorate, Peshawar is also directed to appear in person and explain his position. To come up for further proceedings/arguments on the point of maintainability of the appeal on 24.2.2014.

Sd/- MEMBER

Sd/- MEMBER”


REGISTRAR,

KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR



a long time as graveyard. Therefore, he was assumed to have ceased to be its owner who could not file a suit for pre-emption in respect of some other land on the basis of ownership in the Shamli Deh and contiguity. In the present case, the appellants had proved their right of pre-emption over the suit-land and the suit of the appellants was rightly decreed by the trial Court as well as by the First Appellate Court. Therefore, the impugned judgment of the High Court is not sustainable at law.

6. For the foregoing reasons, this appeal is allowed and the impugned judgment, dated 23-2-2001 of the High Court is set aside. Consequently, the judgments and decrees of the trial Court as well as that of the First Appellate Court are restored. No order as to costs.

M.H./N-42/S

Appeal allowed.

2005 S C M R 890

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan and Mian Shakirullah Jan, JJ

MANAGING DIRECTOR, OIL AND GAS
DEVELOPMENT COMPANY LTD.---Appellant

versus

Syed NAJMUL HASSAN NAQVI---Respondent

Civil Appeal No.662 of 2001, decided on 28th February, 2005.

(On appeal from the judgment, dated 23-6-2000 passed by the Federal Service Tribunal, Islamabad in Appeal No.1675(R) of 1999).

(a) Service Tribunals Act (LXX of 1973)---

---S. 4---Civil Procedure Code (V of 1908), S.80 & O.VII, R.11---Premature appeal---Effect---Any suit or cause of action which is premature, does not entail dismissal of that cause but it results into rejection under O.VII, R.11 C.P.C. that does not operate as res judicata---If appeal before Service Tribunal is premature, it should be returned by Registrar so as to be re-submitted after maturity of cause of action. [p. 893] A

Abdullah Bhai's case PLD 1964 SC 106; Muhammad Usman's case PLD 1983 SC 436; Syed Aftab Ahmed's case 1999 SCMR 197; Pakistan International Airlines Corporation's case 1999 PLC (C.S.) 1539 and Sui Southern Gas Company Limited's case 2003 PLC (C.S.) 796 ref.

SCMR

(b) Service Tribunals Act (LXX of 1973)---

---S. 4---Civil Procedure Code (V of 1908), O.VII, R.11---Premature appeal---Filing of appeal before expiry of ninety days---Penalty of compulsory retirement, setting aside of---Civil servant was compulsorily retired from service but Service Tribunal allowed appeal and set aside the penalty---Plea raised by the authorities was that civil servant had filed appeal after eighty days from filing of departmental representation, thus the appeal was premature the same merited dismissal by Service Tribunal---Validity---If at the initial stage, by serious omission, the timely return of appeal was avoided and the cause of action was allowed to mature during pendency of appeal and on the final end of proceedings, the appeal was dismissed on the ground that the initial submission was premature, such volte face if taken by Service Tribunal, could not be endorsed under any canon of justice---Premature matters were not bad but simply premature and must be returned---Failure to return the appeal debarred the Tribunal to subsequently jeopardize rights and bona fide claims of civil servants---Service Tribunal was required to return the appeal at the very first instance, if such course was not adhered to, then the Tribunal subsequently could not damage the civil servant on the grounds of prematurity of appeal when the same had become mature during the pendency allowed by Service Tribunal itself---Service Tribunal had rightly declined to dismiss the appeal on the score of prematurity---Appeal was dismissed. [p. 893] B

(c) Service Tribunals Act (LXX of 1973)---

---S. 4---Penalty of compulsory retirement, setting aside of---Discrimination---Departmental inquiry was initiated against eight officers but the respondent civil servant was only condemned who was compulsorily retired from service just 4 days prior to his superannuation---Service Tribunal allowed the appeal and set aside the penalty---Validity---No action was taken against other officers under inquiry on the ground that he was to retire after about four months---If such reason could prevail with the authorities with regard to that other officer, it was equally available for the respondent civil servant who was compulsorily retired 4 days before his superannuation---Service Tribunal had rightly concluded that the penalty awarded to respondent civil servant was clearly discriminatory and his retirement was expedited mala fide despite the fact that after 4 days he was to retire on superannuation---Supreme Court declined to interfere with the judgment passed by Service Tribunal as the same was unexceptionable---Appeal was dismissed. [pp. 894, 895] C & D

Shah Abdul Rasheed, Advocate Supreme Court with Syed Amjad Ali, Dy. Admn. Officer (O.G.D.C.) for Appellant.

Hafiz S.A. Rehman, Advocate Supreme Court for Responder

Date of hearing: 28th February, 2005.

JUDGMENT

SARDAR MUHAMMAD RAZA KHAN, J. — Oil and Gas Development Company Limited, Islamabad has challenged, after leave of the Court, the judgment, dated 23-6-2000 of learned Federal Service Tribunal whereby, on acceptance of the appeal of Syed Najamul Hassan Naqvi, his compulsory retirement from service was set aside.

2. The respondent joined the company on 23-9-1982 as Deputy Chief Geologist and in due course became a Manager (B-21) when on 12-12-1998 he was served with a charge-sheet levelling the allegations of misconduct. An inquiry was held and ultimately it was found that the charges of misconduct were proved. Accordingly, vide office memorandum dated 13-8-1999 he was made to retire from service compulsorily. His appeal before the Service Tribunal succeeded and hence this appeal.

3. Learned counsel for the appellant challenged the very maintainability of appeal before the Tribunal on the ground that it was premature and was filed without waiting for a period of 90 days after filing of appeal or representation before the higher departmental authority. The learned counsel drew analogy from section 80 of the Civil Procedure Code where no suit against Government could be filed before the expiry of two months next after notice in writing, as contemplated by the section itself. It was vehemently asserted by the learned counsel that any suit brought in contravention of section 80, C.P.C. was bound to be rejected under Order VII, rule 11 of the C.P.C. and could not be entertained by the Court. That identical was the case of appeals to be filed under section 4 of the Service Tribunal Act.

4. We believe that the one in hand is a matter squarely akin to the civil law and that is why the learned counsel also consciously sought protection under the provisions of section 80, C.P.C. Still, we cannot avoid making expression that the condition of prematurity involved under section 80, C.P.C. as well as under section 4 of the Service Tribunal Act is of hyper-technical nature. Legislature having realized this fact has amended the section in the year 1962 by adding proviso to the effect that if a premature suit is instituted without such notice or in contravention of the provision of section 80, C.P.C., the Court shall allow not less than three months to the Government to submit its written statement. The logic behind the issuance of notice under section 80, C.P.C. of providing time to the Government is covered by allowing it three months time after the institution of suit, to file written statement. This carries an idea that

the causes of action if premature can be overlooked if those become mature during pendency of the cause. This Court comprising of Mr. Justice A.R. Cornelius, Mr. Justice B.Z. Kaikous and Mr. Justice Hamoodur Rahman in Abdullah Bhai's case PLD 1964 SC 106-113 had categorically observed that it was open for the Court to have decreed the suit which was premature when it was filed but where the cause of action matured during the pendency of the suit.

5. The aforesaid verdict though available in field, in principle, this Court comprising of two Honourable Judges in Muhammad Usman's case PLD 1983 SC 436 did not agree to the hearing of a premature appeal by the Tribunal under section 4 of the Service Tribunals Act. Subsequent development would indicate that this rule was relaxed in Syed Aftab Ahmed's case 1999 SCMR 197 by holding that where no statutory provision or statutory rule providing a right of appeal or representation is available in the relevant laws of the appellant, he is not bound to file the same and then wait for a period of 90 days in order to have resort to the Service Tribunal. Similar view was taken in Pakistan International Airlines Corporation 1999 PLC (C.S.) 1539 that if the provision of appeal or representation is available in the statutory rules of a corporation or statutory body, the employee shall have to file such appeal but where the rules are not statutory, the employees can directly resort to the Service Tribunal. In the instant case, the Oil and Gas Development Company is not possessed of any statutory rules and hence the appeal before the Tribunal could be filed directly either without filing any appeal or representation before the departmental authority or without waiting for a period of 90 days. The latest view of this Court in this behalf is given in the case of Sui Southern Gas Company Limited 2003 PLC (C.S.) 796.

6. With regard to the stringency of the rule involved, we have another view of the matter as well. Any suit or cause which is premature, does not entail the dismissal of that cause but it results into rejection under Order VII, rule 11, C.P.C. that does not operate as res judicata. We are, therefore, of the firm view that if an appeal before a Service Tribunal is premature, it should be returned by the Registrar so as to be re-submitted after the maturity of the cause of action. Quite an anomalous situation would it be that on the one hand and at the initial stage, by serious omission, the timely return of appeal is avoided and the cause of action is allowed to mature during pendency and, on the other hand, at the sag end of proceedings, it is dismissed on the ground that the initial submission was premature. Such volte face if taken by the Tribunal cannot be endorsed under any canon of justice. The fact remains that premature matters are not bad but simply premature and must be returned. Failure to do so debars the Tribunal to subsequently jeopardize the rights and bona fide claims of the appellants. We,

therefore, conclude that a premature appeal before the Tribunal need to be returned at the very first instance. If this course of action is adhered to, the Tribunal subsequently, cannot damage the appellate grounds of prematurity of appeal when the same had become mature during the pendency allowed by the Tribunal itself. The Tribunal, in instant case, has rightly declined to dismiss the appeal on this score moreover, this objection was not taken before the Tribunal either by filing any concise statement.

7. Coming to the factual aspect of the case concerning charges of misconduct and the manner those were tackled with by the Tribunal, would take up the charge concerning Gas Dehydration Plant. In charge 8 officers were under inquiry and the respondent was held liable being member of the Evaluation Committee. The learned Tribunal has rightly concluded that on the one hand, the respondent was not a member of Evaluation Committee consisting of 5 members namely, Mr. Ain-ud-Din Siddique, Mr. Jaffar Muhammad, Mr. Ghulam Abbas Nakai, Mr. Qamar Saeed Awan and Muhammad Athar. It may be remarked at this stage that Mr. Qamar Saeed Awan was exonerated for not being a member of the committee while he was very much the member thereof whereas, the respondent was condemned though not a member at all. This was an act of discrimination as well.

8. No action was taken against Mr. Qamar Saeed Awan on the ground that he was to retire on 7-1-1999. If such reason could prevail with the authorities qua Mr. Qamar Saeed Awan, it was equally available for the respondent as well who also was to retire on 17-8-1999. The height of discrimination is that Mr. Qamar Saeed Awan was accordingly exonerated but the respondent was compulsorily retired only 4 days before his superannuation.

9. Concerning the charge about appointment of a consultant, it is rightly observed by the Tribunal that the same appointment of consultant was dropped on 27-4-1995 by the competent authority and the said committee did not take any final decision. There were many officers senior to him in the committee and the final decision never rested with the respondent.

10. Regarding Gas Transport Pipeline the allegation against the respondent was that he facilitated the procurement of a Pipeline at a very high cost, depriving the corporation of the benefits of a fair and transparent competition. Suffice it to say for negation of charge that the decision to adopt the gallop tender was taken at the level of Chairman, the Minister and the Prime Minister. It was implemented through the decision of Chairman O.G.D.C. and the period of 15 days after gallop tender was determined by the Chairman himself.

11. For all the aforesaid reasons, it was rightly concluded that the penalty awarded to the respondent did not commensurate with the so-called misconduct on his part. That he was clearly discriminated and his retirement was expedited malafidely despite the fact that after 4 days he was to retire on superannuation. In the circumstances, the judgment of the Tribunal being unexceptionable is maintained and the appeal is hereby dismissed.

M.H./M-233/S

Appeal dismissed.

2005 S C M R 895

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan and
Tassaduq Hussain Jillani, JJ

ABDUL HAMEED and others---Appellants

versus

MUZAMIL HAQ and others---Respondents

Civil Appeal No.982 of 2001, decided on 8th March, 2005.

(On appeal from the judgment, dated 21-3-2001 passed by
Lahore High Court, Lahore in R.S.A. No.192 of 1988).

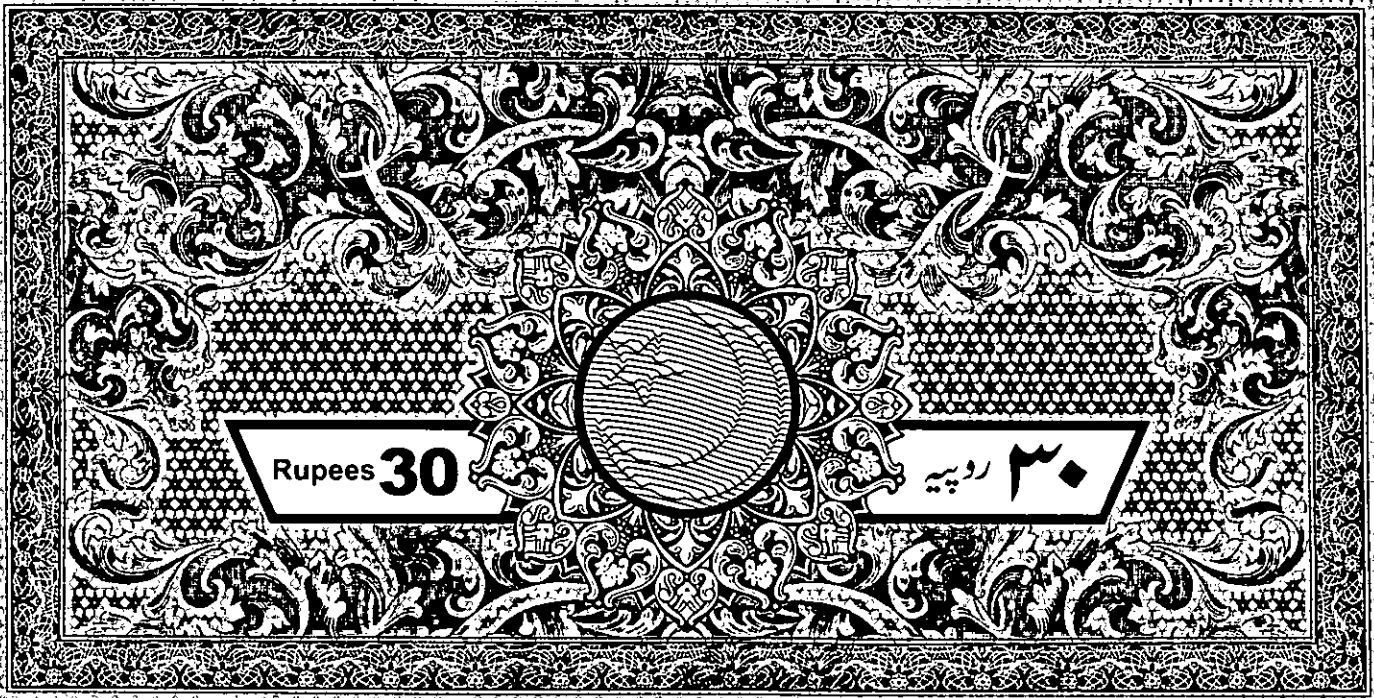
(a) Waiver—

—Defined. [p. 900] A

Black's Law Dictionary ref.

(b) Punjab Pre-emption Act (I of 1913)—

—Ss. 4 & 21—Right of pre-emption—Principle of implied waiver—Applicability—Pre-emptor was son of vendor who was aware of transaction—Amount received by the vendor was deposited by pre-emptor in his account—Pre-emptor claimed superior right of pre-emption on the basis of being son of vendor—Trial Court decreed the suit in favour of pre-emptor but Appellate Court dismissed the suit—Judgment and decree passed by Appellate Court were set aside by High Court in exercise of second appeal—Plea raised by vendee was that the pre-emptor had waived his right of pre-emption—Validity—Evidence showed that the pre-emptor was aware of transaction, he was intimate enough to the vendor and in the event of expression his desire to purchase the suit-land, the vendor would have sold it to him but he allowed the sale to take place—Sale price was deposited in personal



Rupees 30

۳۰ روپیہ

بیانا ملحق

مکہ سید مشرف علیا ولد سید مرتضیٰ علیا ،
 اسسٹنٹ ڈائریکٹر (ایڈمنسٹریشن) گلہ ایگریکلچرل اینڈ سیلنڈری
 ایجوکیشن جی بی آر خواتین تعلیمی بیانا میں کہ منہ مخالف
 نے اشتیاق احمد PET گورنمنٹ فڈل سکول کچی پور
 کے ٹرانسفر اپیل پر جی بی آر ایس ایف کے بیانا میں
 تسلیم کرتا ہوں اور مزید وضاحت کرتا ہوں کہ
 منہ مخالف نے یہ بیانا ایڈمنسٹریشن صاحب
 ایگریکلچرل اینڈ سیلنڈری ایجوکیشن جی بی آر خواتین
 اجازت سے لکھا ہے ۔ جسکا ثبوت ڈائریکٹر صاحب
 کا لیٹر ۲۰۹۵ ، مورخہ ۲۰-۰۲-۰۱۴ لغت ہے

مذکورہ بالا بیانا ملحق میں نے غلطی و یقین سے
 صحیح و درست ہے اور کوئی اعتراض نہیں ہے
 سب سے لکھا گیا

ATTESTED



۲۴/۰۲/۰۱۴
 مہر
 سید مشرف علیا
 M. AD

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA PESHAWAR.

No. 2895 / AD. (Lit. II)

Dated Peshawar the 20/2 /2014

To
The Registrar,
Khyber Pakhtunkhwa Service
Tribunal, Peshawar.

Subject:- SERVICE APPEAL NO. 1370/2013, ISHTIAQ AHMAD VERSUS THE
SECRETARY EDUCATION (E&SE) KPK PESHAWAR ETC.

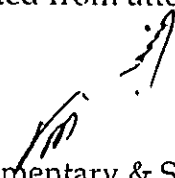
Memo,

Kindly reference your letter No. 178/ST dated 04-02-2014 addressed to Assistant Director (Admn) of this Directorate on the subject cited above.

In this connection it is elaborated that the version of the learned counsel for private respondent No. 4 is not based on facts. The Assistant Director (Admn) is a very responsible officer of this office. He is supposed to be an authorized officer to dispose off routine issues/appeals etc: in exigency of service pertaining to administration and establishments matters received in this office from time to time with the prior approval/consent of the undersigned.

So far as the question of disposal of departmental appeal dated 23-09-2013 in respect of Mr. Ishtiaq Ahmad PET GMS Kachi District Haripur and order passed there upon is concerned, it is clarified that the very appeal was disposed off by the Assistant Director (Admn) i.e. respondent No. 5 genuinely so directed to him by the undersigned. There is nothing of the sort as pointed out by the learned counsel for private respondent No. 4.

Keeping the above factual position into consideration, it is requested that the Assistant Director (Admn) respondent No.5 may please be exempted from attendance in person on 24-02-2014.


Director Elementary & Secondary
Education, Pakhtunkhwa Peshawar

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1370 /2013

Ishtiaq Ahmad, PETAppellant

Versus

The Secretary Education (E&SE),
Khyber Pakhtunkhwa and others.....Respondents.

APPLICATION UNDER SECTION 7 SUB SECTION 2 OF THE KP SERVICE TRIBUNAL ACT, 1974 READ WITH RULE 13 OF THE KP SERVICE TRIBUNALS RULES, 1974 FOR SUMMONING RESPONDENTS NO.1, 2 AND 5 IN VIEW OF ORDER SHEET DATED 31.01.2014 FOR EXAMINING THEM ON OATH BEFORE THIS HON'BLE TRIBUNAL.

Respectfully Sheweth,

1. That Respondent No.4 has filed an application for dismissal of the service appeal No.1370/2013 on the point of maintainability on the grounds that neither Departmental Appeal has been properly framed under the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 nor the same was disposed off by the appellate authority rather rejected by Respondent No.5 who is not the appellate authority and as such there is no departmental appeal in true sense and this plea is also supported by the answering Respondents in para 4 of their comments.

2. That the application was fixed for arguments on the single point of maintainability for 31.01.2014 and on the very date during the course of arguments this Hon'ble Tribunal has observed that the Respondent Department has also taken the same plea in their respective reply of para 4 of the appeal therein they candidly denied of the department appeal of the appellant but no affidavit was filed by the answering Respondents so they were directed to furnish proper affidavit in this respect and Respondent No.5 was directed to appear in person and explain his position.

3. That on the date of hearing i.e. 24.02.2014 non of the official Respondents has furnished the requisite affidavit as per order sheet dated 31.01.2014 while Respondent No.5 has filed affidavit which is not seemed to be

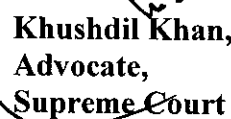
genuine for the reason that the signatures affixed on the affidavit and on the Departmental Appeal are quit deferent. However a letter No.2895/AD(Lit: II) dated 20.02.2014 filed on behalf of Respondent No.2 which is also not seemed to be genuine because the signature of Respondent No.2 affixed on the reply is quit deferent from the signature of this letter. In addition, there is no provision in the law and rules empowering the authority to delegate its power/authority to any subordinate for the decision of departmental appeal of an aggrieved civil servant.

4. That the appellant has not come to Hon'ble Tribunal with clean hands and is committing a fraud with this Hon'ble Tribunal with the connivance of official Respondents which is not only an illegal act but also a criminal one.
5. That in such situation the personal attendance of Respondents No.1, 2 and 5 is necessary in order to examining them on oath to resolve the controversial issue in the interest of justice and fair play.

It is therefore humbly prayed on acceptance of this application, Respondent No.1, 2 and 5 may kindly be summoned and examined them on oath in this Hon'ble Tribunal.

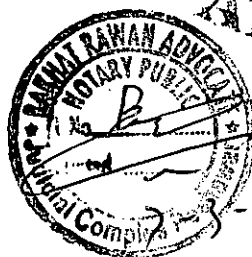

Applicant/Respondent No.4

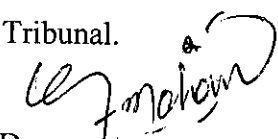
Through


Khushdil Khan,
Advocate,
Supreme Court of Pakistan

Affidavit

I, Faridoon Khan, PET, GMS Kachi, Haripur, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.




Deponent

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1370/2013

Ishtiaq Ahmad, PETApplicant/Appellant

Versus

The Secretary Education and others.....Respondents.

APPLICATION FOR EARLY HEARING

Respectfully Sheweth,

1. That titled appeal is pending before this Hon'ble Tribunal and is fixed for hearing on 25.11.2013.
2. That matter in question is of urgent nature pertaining to transfer and status quo order was issued by this Hon'ble Tribunal.

It is, therefore, humbly prayed that on acceptance of this application, the appeal may kindly be accelerated to an early date than the date already fixed.

Applicant/
Respondent No.4.
(Faridoon Khan)

Through

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan.

Dated: 25 / 10/ 2013

ATTESTED

Affidavit

I, Faridoon Khan, PET, GMS Kachi, Haripur do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Deponent

Notice of this application be issued to opposite for date already fixed.

12.11.13.

Faridoon Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1370 /2013

Ishtiaq Ahmad, PET Applicant/Appellant

Versus

The Secretary Education and others..... Respondents.

APPLICATION FOR EARLY HEARING

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Applicant/
Respondent No.4.
(Faridoon Khan)

Through

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan.

Dated: 25 / 10/ 2013

Affidavit

I, Faridoon Khan, PET, GMS Kachi, Haripur do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA PESHAWAR.**

No. 2395 / AD (Lit: II)

148
20-2-14

Dated Peshawar the 20/2 /2014

To.

The Registrar,
Khyber Pakhtunkhwa Service
Tribunal, Peshawar.

**Subject:- SERVICE APPEAL NO. 1370/2013, ISHTIAQ AHMAD VERSUS THE
SECRETARY EDUCATION (E&SE) KPK PESHAWAR ETC.**

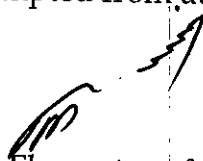
Memo,

Kindly reference your letter No. 178/ST dated 04-02-2014 addressed to Assistant Director (Admn) of this Directorate on the subject cited above.

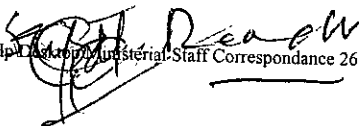
In this connection it is elaborated that the version of the learned counsel for private respondent No. 4 is not based on facts. The Assistant Director (Admn) is a very responsible officer of this office. He is supposed to be an authorized officer to dispose off routine issues/appeals etc: in exigency of service pertaining to administration and establishments matters received in this office from time to time with the prior approval/consent of the undersigned.

So far as the question of disposal of departmental appeal dated 23-09-2013 in respect of Mr. Ishtiaq Ahmad PET GMS Kachi District Haripur and order passed there upon is concerned, it is clarified that the very appeal was disposed off by the Assistant Director (Admn) i.e. respondent No. 5 genuinely so directed to him by the undersigned. There is nothing of the sort as pointed out by the learned counsel for private respondent No. 4.

Keeping the above factual position into consideration, it is requested that the Assistant Director (Admn) respondent No.5 may please be exempted from attendance in person on 24-02-2014.


Director Elementary & Secondary
Education, Pakhtunkhwa Peshawar
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

*Put up to the court
with relevant appeal.*



20/2/14

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA PESHAWAR.**

No. 2895 / AD (Lit: II)

Dated Peshawar the 20/2 /2014

To.

The Registrar,
Khyber Pakhtunkhwa Service
Tribunal, Peshawar.

**Subject:- SERVICE APPEAL NO. 1370/2013, ISHTIAQ AHMAD VERSUS THE
SECRETARY EDUCATION (E&SE) KPK PESHAWAR ETC.**

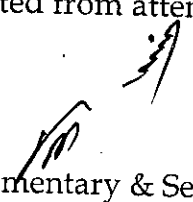
Memo,

Kindly reference your letter No. 178/ST dated 04-02-2014 addressed to Assistant Director (Admn) of this Directorate on the subject cited above.

In this connection it is elaborated that the version of the learned counsel for private respondent No. 4 is not based on facts. The Assistant Director (Admn) is a very responsible officer of this office. He is supposed to be an authorized officer to dispose off routine issues/appeals etc: in exigency of service pertaining to administration and establishments matters received in this office from time to time with the prior approval/consent of the undersigned.

So far as the question of disposal of departmental appeal dated 23-09-2013 in respect of Mr. Ishtiaq Ahmad PET GMS Kachi District Haripur and order passed there upon is concerned, it is clarified that the very appeal was disposed off by the Assistant Director (Admn) i.e. respondent No. 5 genuinely so directed to him by the undersigned. There is nothing of the sort as pointed out by the learned counsel for private respondent No. 4.

Keeping the above factual position into consideration, it is requested that the Assistant Director (Admn) respondent No.5 may please be exempted from attendance in person on 24-02-2014.


Director Elementary & Secondary
Education, Pakhtunkhwa Peshawar

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1370/013²

Ishtiaq Ahmad, PET GMS Kachi District Haripur (Appellant)

Versus

The Secretary Education (E&SE)
Khyber Pakhtunkhwa and others (Respondents)

**REPLY/REJOINDER TO AN APPLICATION FILLED BY RESPONDENT NO.4
ON BEHALF OF RESPONDENT NO. 2**

Respectfully Sheweth,

1. This Para of the application (**Annex-A**) is related to record of the Court. However it would not be out of place to mention here that the present application is not affected one from the affidavit (**Annex-B**) as submitted by respondent No.5 in compliance with the direction of this Honorable Court wherein the deponent admitted the fact that the remarks addressed to DEO (M) E&SE Haripur on the face of the departmental appeal (**Annex-C**) were written and signed by him as per direction of the Director (E&SE) Khyber Pakhtunkhwa Peshawar. While it is also pertinent to mention here that the “**para-wise reply**” to the appeal as per (**Annex-D**) as mentioned in this para was prepared by the office of the DEO (M) E&SE Haripur and was ignorant of the facts and as a result replied **para 4** of the appeal by denying the remarks of respondent No. 5. Hence the applicant has no prima facie to file this application.
2. As mentioned in para above the reply was prepared by the office of the DEO (E&SE) M Haripur while the departmental appeal of the Ishtiaq Ahmad PET referred to above was submitted directly to the Director E&SE Peshawar. Hence the District Education Officer Haripur was ignorant of said appeal.
3. The statement of the applicant i.e respondent No.4 is misleading one, baseless, against the material on record and facts. The affidavit filled by respondent No. 5 is genuine and original one. The signatures as mentioned in this para has been owned by respondent No. 5 while it is also pertinent to mention here that in

response to letter of the Registrar Service Tribunal Peshawar (**Annex-E**) the letter of the Director E&SE (**Annex-F**) addressed to the Registrar Service Tribunal Peshawar is also genuine and signed by the sitting Director (E&SE) while the "**para-wise reply**" to the appeal referred above was signed by the then In charge Director E&SE namely Mr. Shamas Khan Ex-Additional Director (now retired) who was competent to sign the said reply whenever the incumbent Director E&SE is out of station. Hence nothing has been done against the rules. Hence the request of the applicant i.e responded No.4 is not proper and expedient.

4. This para is also incorrect to the extent that the respondents did not have any intention to commit a fraud .The statement of the applicant in this para is false and futile one.
5. Incorrect the affidavit referred in (Annex-A) submitted by the Respondent No. 5 is sufficient for the said purpose. While the respondents seek the permission to adduce more ground and proofs at the time of hearing. And the respondents may kindly be allowed to make necessary correction in "**para 4**" of the "**para-wise reply**" as per (Annex-C)

In view of the above, it is requested that this Honorable Tribunal may very graciously be pleased to dismiss the application in hand in favor of the respondents

Respondents.

1. Secretary Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1)
2. Director Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 2)
3. Assistant Director (Admn)
Directorate Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1370/2013

Ishtaq Ahmad, PETAppellant

Versus

The Secretary Education (E&SE);
Khyber Pakhtunkhwa and others Respondents.

APPLICATION UNDER SECTION 7 SUB SECTION 2 OF THE KP SERVICE TRIBUNAL ACT, 1974 READ WITH RULE 13 OF THE KP SERVICE TRIBUNALS RULES, 1974 FOR SUMMONING RESPONDENTS NO.1, 2 AND 5 IN VIEW OF ORDER SHEET DATED 31.01.2014 FOR EXAMINING THEM ON OATH BEFORE THIS HON'BLE TRIBUNAL.

Respectfully Sheweth,

1. That Respondent No.4 has filed an application for dismissal of the service appeal No.1370/2013 on the point of maintainability on the grounds that neither Departmental Appeal has been properly framed under the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 nor the same was disposed off by the appellate authority rather rejected by Respondent No.5 who is not the appellate authority and as such there is no departmental appeal in true sense and this plea is also supported by the answering Respondents in para 4 of their comments. P-45

2. That the application was fixed for arguments on the single point of maintainability for 31.01.2014 and on the very date during the course of arguments this Hon'ble Tribunal has observed that the Respondent Department has also taken the same plea in their respective reply of para 4 of the appeal therein they candidly denied of the department appeal of the appellant but no affidavit was filed by the answering Respondents so they were directed to furnish proper affidavit in this respect and Respondent No.5 was directed to appear in person and explain his position. P-45

3. That on the date of hearing i.e. 24.02.2014 non of the official Respondents has furnished the requisite affidavit as per order sheet dated 31.01.2014 while Respondent No.5 has filed affidavit which is not seemed to be

AD (Admin) → P-49

P-53
P-45
→ AD (Admin)
P-53

genuine for the reason that the signatures affixed on the affidavit and on the Departmental Appeal are quite different. However a letter No.2895/AD(Lit: II) dated 20.02.2014 filed on behalf of Respondent No.2 which is also not seemed to be genuine because the signature of Respondent No.2 affixed on the reply is quite different from the signature of this letter. In addition, there is no provision in the law and rules empowering the authority to delegate its power/authority to any subordinate for the decision of departmental appeal of an aggrieved civil servant.

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P-59
Reply P-45

P-59

4. That the appellant has not come to Hon'ble Tribunal with clean hands and is committing a fraud with this Hon'ble Tribunal with the connivance of official Respondents which is not only an illegal act but also a criminal one.
5. That in such situation the personal attendance of Respondents No.1, 2 and 5 is necessary in order to examining them on oath to resolve the controversial issue in the interest of justice and fair play.

It is therefore humbly prayed on acceptance of this application, Respondent No.1, 2 and 5 may kindly be summoned and examined them on oath in this Hon'ble Tribunal.

[Handwritten Signature]

Applicant/Respondent No.4

Through

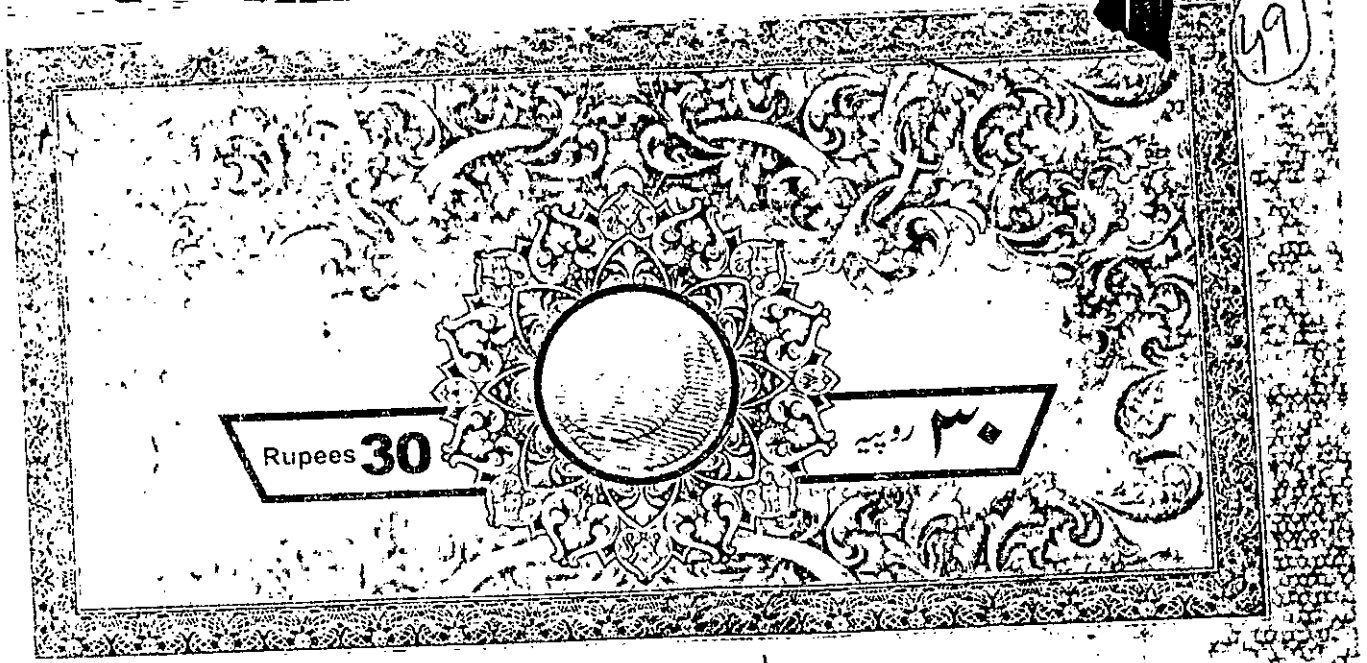
Khushdil Khan,
Advocate,
Supreme Court of Pakistan

Affidavit

I, Faridoon Khan, PET, GMS Kaahi, Haripur, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

[Handwritten Signature]
Deponent



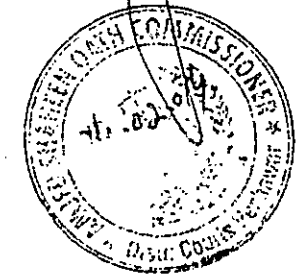


بیانا حلحا

مکہ سید مشرف علما ولد سید مرتضیٰ علی
 اسٹیشن ڈائریکٹر (ایڈمن) جامعہ اسلامیہ سید علیہ السلام
 ایجوکیشنل فیلو شپ پر حوالہ دینے پر بیانا حلحا کے مطابق
 نے اشتیاق احمد PFI اور سید علیہ السلام کے ساتھ
 کے ٹرانسفر ایک پر جو ریپارٹس کے ساتھ بیانا حلحا
 تسلیم کرتا ہوں اور مزید وضاحت کرتا ہوں کہ
 منہ خالف نے یہ ریپارٹس ایڈ ڈائریکٹر صاحب
 ایلیمنٹری اینڈ سیکنڈری ایجوکیشن خا رضامندی اور
 اجازت سے لکھی ہیں۔ حسباً ہدایت ڈائریکٹر صاحب
 کا لیٹر ڈی/۲۰۹۵، مورثہ ۲۰۰۱-۲۰۰۲-۲۰۰۳ لکھ چکے

مذریہ بالا بیانا حلحا سے علم و یقین سے
 صحیح و درست ہے اور کوئی اعتراض نہیں
 کیا رہتا تھا

ATTESTED



۲۰۱۴

حالیہ
سید مشرف علی

۱۷۱۱۰

خدمت صاحب ڈائریکٹوریٹ تعلیم (E&SE) لیٹائر

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عنوان: اپیل بھلائی کے حوالے سے

صاحب عالی،
التماس ہے کہ سائل کو درجہ $\frac{9}{2013}$ 14 کر $\frac{9}{2013}$ 945 کی

پہلی پوز کو پڑا ستر کر دیا گیا۔ سائل نے درجہ $\frac{9}{2013}$ 16 کو باقاعدہ خارج ہو گیا۔

تین سہ ماہی مراعات کے باعث سائل کا پڑا ستر آرڈر درجہ $\frac{9}{2013}$ 14 کو

صیغہ ذیل تبدیل ہو گیا۔ $\frac{9}{2013}$ 20 کو مسترد کر دیا گیا۔ سائل کو اپنی قابل ذکریت

کو فریڈن نے $\frac{9}{2013}$ 25 کو کچھ بھی پڑا نہیں 8 سال سے زائد درجہ $\frac{9}{2013}$ 14

لے کر اسے ماہی ادرجہ $\frac{9}{2013}$ 14 والے آرڈر کو پڑا

کے لئے پڑا آرڈر درجہ $\frac{9}{2013}$ 20 کو خارج کر دیا گیا

درجہ: 23-9-2013

شفاق احمد
PET
گورنمنٹ کالج پشاور

DEC (M)
23/9/13

DEC (M) Hanjra
Appeal of Mr. Ishtiaq
Ahmad PET has
been rejected
being Dist. Officer

Assistant Director (Admin)
Directorate of E & SE
Hyder Peshawar
23.9.13

(47)

BEFOR THE KHYBER PAKHTUN KHAWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1370/2013

Mr. Ishtiaq Ahmed, PET GMS Kachi District Haripur..... (Appellant)

VERSUS

1. The Secretary (E & SE) Department, K.P.K Peshawar.
2. The Director of (E & SE) Department, K.P.K Peshawar.
3. The District Education Officer (M) District Haripur.
4. Faridoon Khan PET GMS Kheri District Haripur.

..... (Respondents)

INDEX

S. No	Description of Documents	Annex	Pages
01.	Para wise Reply/comments		01-02
02.	Copy of Joint Application	A	04
03.	Copy of Substitutional order	B	05
04.	Copy of Appeal	C	06

18/12 (Copy of BE Reply 21)
13/14 (next date)

Through

Respondents

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BEFOR THE KHYBER PAKHTUN KHAWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1370/2013

Mr. Ishaiq Ahmed, PET GMS Kachi District Haripur..... (Appellant)

VERSUS

1. The Secretary (E & SE) Department, K.P.K Peshawar.
2. The Director of (E & SE) Department, K.P.K Peshawar.
3. The District Education Officer (M) District Haripur.
4. Faridoon Khan PET GMS Kheri District Haripur.

..... (Respondents)

Respectfully Sheweth:-

The respondent No.1,2 & 3 respectfully submit the joint Para wise reply/comments towards the appeal filed by the appellant as follows:-

Preliminary Objections

- 1- The appeal is not maintainable under the Law.
- 2- The Appellant has no cause of action.
- 3- The Appellant has not come to this Honorable Service Tribunal with clean hand.
- 4- That the Appellant has got no locus standi to file the instant appeal.
- 5- The Appellant has concealed the material facts from this Honorable Court, hence liable to be dismissed.
- 6- That the Appellant has filed the instant appeal on malafide motives.
- 7- That the Appellant has filed the instant appeal just to pressurize the Respondents.

REPLY /COMMENTS ON FACTS:-

- 1- Correct to the extent of transfer order dated 14-09-2013. However it is pertinent to mention that upon the joint application dated 13-09-2013 by appellant and respondent No.4, the competent authority was pleased to issue the said order. (The copy of the joint application is marked as Annexure -A). In this regard order was issued vide Endst No.8830-32 Dated 14-09-2013, but another teacher namely Mr. Shahid PET transferred to GMS Kheri being aggrieved with the said order, preferred departmental appeal and consequently the substitutional order was issued on even No. & dated.(Copy of substitutional order is marked as Annexure B)
- 2- No comments.
- 3- In correct, the competent authority has issued the order in accordance with Law/rules etc.

- 4- Incorrect, the appeal of the appellant was not submitted before the competent authority i.e the Director E&SE K.P.K Peshawar. It is pertinent to mention here that the appellant neither submitted his appeal before the competent authority nor it is rejected by the competent authority. Hence the service appeal of the appellant is premature and liable to be dismissed.
(Copy of appeal marked as annexure -C)

REPLY / COMMENTS ON GROUNDS:-


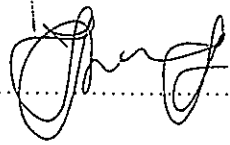
- A. Incorrect, the order dated 20-09-2013 was made purely on merit and in accordance with the Principles of equity.
- B. In correct, the impugned cancellation order dated 20-09-2013 is based on the Principles of the equity and was issued due to unwillingness of the private respondents as he prayed for to be transferred to GMS Amgah instead of GMS Kheri.
- C. In correct, the detail is given in the above Para "B".
- D. In correct, the impugned order is a cancellation order and is not an order of posting or transfer.
- E. No comments.
- F. That the order dated 23-09-2013 and 20-09-2013 is based on the principles of equity.
- G. That the respondents also see the permission of the honorable court to adduce further points and facts at the time of arguments.

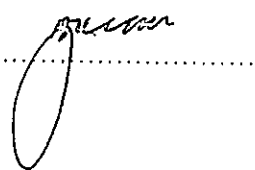
Prayer

In the Light of above facts it is humbly prayed that the Appeal of the Appellant devoid of legal footing, merit may graciously be dismissed with cost please.

Respondents;

- 1- The Secretary Elementary & Secondary Education Department
Khyber Pakhtun Khawa Peshawar.
(Respondent No.1)
- 2- The Director Elementary & Secondary Education
Khyber Pakhtun Khawa Peshawar.
(Respondent No.2)
- 3- The District Education Officer (M) District Haripur.
(Respondent No.3)


.....



.....

(178) (SS)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

No. 178 /ST;

Dated 04/02 /2014

To:

The Assistant Director (Admn)
Elementary & Secondary Education,
Peshawar.

Subject:- SERVICE APPEAL NO. 1370/2013, ISHTIAQ AHMAD VERSUS
THE SECRETARY EDUCATION (E&SE) KPK PESHAWAR ETC.

I am directed to say that the above mentioned Service Appeal was fixed for before the learned Member Bench on 31.1.2014. On the same date, the learned Members have passed the following order, which is sent for further necessary action:-

“Counsel for the appellant and Mr. Muhammad Jan, GP Khursheed Khan, SO and Mosam Khan, AD for respondents No. 1 & 2, Mr. Roz Wali Khan, DEO (M) Haripur (respondent No.3) himself and private respondent No. 4 with counsel present. Reply to stay application on behalf of respondent No. 3 received. Copy handed over to counsel for the appellant. Arguments, on the point of maintainability of the appeal, partly heard.

During the course of arguments, it was pointed out by the learned counsel for private respondent No. 4 that the departmental appeal was not filed before the proper forum and rejection order was passed by an incompetent authority i.e. Assistant Director (Admn) Directorate of E&SE, Peshawar and prima-facie is fake and factitious.

Perusal of the record reveals that the official respondents in their written reply also stated that the departmental appeal and order passed there upon seems to be factitious, however, no affidavit was submitted on this point, hence they are directed to furnish proper affidavit in this respect. Similarly, respondent No. 5 i.e. Assistant Director (Admn) E&SE Directorate, Peshawar is also directed to appear in person and explain his position. To come up for further proceedings/arguments on the point of maintainability of the appeal on 24.2.2014.

Sd/- MEMBER

Sd/- MEMBER”

(Signature)
REGISTRAR

KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
Peshawar
ID No. 657
Dated 17/2

②
AD (Admn)
AD (Admn)
17/2/2014

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA PESHAWAR.**

No. 2895 / AD (Lit: II)

Dated Peshawar the 20/2 /2014

To.

The Registrar,
Khyber Pakhtunkhwa Service
Tribunal, Peshawar.

Subject:- SERVICE APPEAL NO. 1370/2013, ISHTIAQ AHMAD VERSUS THE
SECRETARY EDUCATION (E&SE) KPK PESHAWAR ETC.

Memo,

Kindly reference your letter No. 178/ST dated 04-02-2014 addressed to Assistant
Director (Admn) of this Directorate on the subject cited above.

In this connection it is elaborated that the version of the learned counsel for
private respondent No. 4 is not based on facts. The Assistant Director (Admn) is a very
responsible officer of this office. He is supposed to be an authorized officer to dispose off routine
issues/appeals etc: in exigency of service pertaining to administration and establishments
matters received in this office from time to time with the prior approval/consent of the
undersigned.

So far as the question of disposal of departmental appeal dated 23-09-2013 in
respect of Mr. Ishtiaq Ahmad PET GMS Kachi District Haripur and order passed there upon is
concerned, it is clarified that the very appeal was disposed off by the Assistant Director (Admn)
i.e. respondent No. 5 genuinely so directed to him by the undersigned. There is nothing of the
sort as pointed out by the learned counsel for private respondent No. 4.

Keeping the above factual position into consideration, it is requested that the
Assistant Director (Admn) respondent No.5 may please be exempted from attendance in person
on 24-02-2014.

Director Elementary & Secondary
Education, Pakhtunkhwa Peshawar

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

BEFOR THE KHYBER PAKHTUN KHAWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1370/13

Mr. Ishtiaq Ahmad, PET District Haripur

(Appellant)

VERSUS

9. The Secretary (E & SE) Department, K.P.K Peshawar.
10. The Director of (E & SE) Department, K.P.K Peshawar.
11. The District Education Officer (M) District Haripur.
12. The Deputy Director Establishment (E & SE) K.P.K Peshawar.

(Respondents)

**REPLICATION IN RESPONSE TO THE APPLICATION SUBMITTED BY
APPELLANT FOR THE GRANT OF STATUS QUO**

Respectfully Sheweth:-

- 15- That the above mentioned appeal is pending for adjudication before this honorable service tribunal and is fixed for 13.01.2014.
- 16- This honorable tribunal has issued a stay order on 30-9-2013 in the above noted appeal.
- 17- That the Appellant cannot satisfy all the three necessary ingredients under order 39 rules 1&2 which are must according to the Supreme Court judgments.
- 18- That as the impugned order has been passed by proper government authority, therefore under 56 (d) of specific relief Act such orders cannot be stayed / suspended.
- 19- That if the stay order is vacated then the Appellant will not suffer irreparable loss.
- 20- That under order 39, rule 2A stay cannot be granted for more than fifteen days.
- 21- That no prior notice of the stay application was given which is mandatory under section 80 of the civil procedure code 1908.

Prayer

It is therefore humbly prayed that on acceptance of this application, the stay order issued on 30-9-2013 may graciously be vacated/set aside.

Respondents;

District Education Officer (M)

Haripur

BEFOR THE KHYBER PAKHTUN KHAWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1370/13

Mr. Ishtiaq Ahmad, PET District Haripur

(Appellant)

VERSUS

9. The Secretary (E & SE) Department, K.P.K Peshawar.
10. The Director of (E & SE) Department, K.P.K Peshawar.
11. The District Education Officer (M) District Haripur.
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- 20- That under order 39, rule 2A stay cannot be granted for more than fifteen days.
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Prayer

It is therefore humbly prayed that on acceptance of this application, the stay order issued on 30-9-2013. may graciously be vacated/set aside.

Respondents;

District Education Officer (M)

Haripur

9. We are not inclined to dilate upon other questions as Dr. Abida has retired from service since March, 2008 and most probably has received all the retiring benefits. Therefore, we feel that the rest of the questions formulated by this Court, as a matter of fact, have become redundant. We are mindful of the fact that if any findings adverse to the interest of Dr. Abida are rendered, it may prejudice her cause, who is no more in service and would have surrendered her claim of promotion as Professor of Pathology against Dr. Nazifa. However, benefits including the retirement benefits derived by Dr. Abida Iqbal shall remain intact in view of rule laid down by this Court in the case of Engineer-in-Chief Branch v. Jalaluddin PLD 1992 SC 207.

10. For the foregoing reasons, the present appeal is allowed. The impugned judgment, dated 10-7-2004, passed by the Punjab Service Tribunal is set aside and the Service Appeal No.708 of 2004 of Dr. Abida Iqbal shall stand dismissed. No order as to costs.

M.B.A./S-41/SC

Order accordingly.

2009 P L C (C.S.) 440 ✓

[Lahore High Court]

Before Hafiz Tariq Nasim, J

IRFAN ALI ABBASI

versus

DIRECTOR-GENERAL, LAHORE DEVELOPMENT
AUTHORITY (L.D.A.), LAHORE and another

Writ Petition No.14091 of 2008, heard on 16th December, 2008.

(a) Punjab Civil Servants Act (VIII of 1974)---

---S. 8---Constitution of Pakistan (1973), Art.199---Constitutional petition---Promotion, eligibility for---Petitioner, who was Diploma holder, joined the department as Sub-Engineer (BS-11) and thereafter was promoted to BS-16 and then BS-17, on contract basis on acting charge basis---Petitioner was considered for regular promotion as S.D.O. (BS-17) and Departmental Promotion Committee recommended his name and on said recommendation he was regularly promoted and was awarded move-over to (BS-18)---Petitioner was expecting his regular promotion to BS-18 in view of his eligibility, but he was deprived of the same on the ground that Rules applicable to the department, did not permit a Diploma holder for promotion as XEN (BS-18)---Earlier,

petitioner, despite his status as Diploma holder, was promoted to the post of S.D.O. against 20% quota as per regulations---Counsel for department after consulting the record had conceded the above fact---Regulation/eligibility/criteria for promotion to the post of Deputy Director (Engineering) (BS-18) conveyed a clear message that no condition of passing B.Sc. (Engineering) was there and there was not the slightest bar/embargo on the promotion of any Diploma holder to the post of Deputy Director (Engineering), provided that employee was the holder of post of Assistant Director (Engineering)/Junior Maintenance Engineer/S.D.O. with at least 5 years service in Grade-17---Petitioner was posted as Assistant Director (Engineering)/S.D.O. on regular basis and since his promotion he had put more than seven years against said post, which was mandatory requirement for further promotion to the rank of Deputy Director (Engineering)---Petitioner in circumstances was eligible for promotion to the rank of Deputy Director (Engineering)---Department was directed to place the petitioner's promotion case in the forthcoming meeting of the Departmental Promotion/Selection Committee who would consider the case of the petitioner, fairly and justly. [pp. 442, 443, 444] A, B, C, D, E, F & I

Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad and another PLD 1995 SC 701 ref.

(b) Administration of justice---

---If a thing was required to be done in a particular manner, it must be done in that manner only and not otherwise. [p. 443] G

(c) Interpretation of statutes---

---Rule of harmonious interpretation was to be followed in case of interpretation. [p. 444] H

Accountant General, Sindh and others v. Ahmad Ali U. Qureshi and others PLD 2008 SC 522 ref.

Mushtaq Ahmad Mohal for petitioner.

Nayyar Iqbal Ghori for Respondent.

Date of hearing: 16th December, 2008.

JUDGMENT

HAFIZ TARIQ NASIM, J.--- The backdrop of this writ petition is that the petitioner joined WASA (L.D.A.) as Sub Engineer (BS-11) in the year, 1972. After completion of 11 years service, the petitioner was awarded BS-16 and that too after passing the departmental examination through order dated 10-12-1983. The

petitioner was further promoted as Sub-Divisional Officer (BS-17) but on contract basis through order dated 18-3-1987 and on acting charge basis vide order dated 3-6-1987.

2. The petitioner was considered for regular promotion as S.D.O. (BS-17) the Departmental Promotion Committee recommended his name, he was regularly promoted on 16-3-2001 and later on he was awarded move over (BS-18) on 14-5-2003.

3. Learned counsel for the petitioner submits that the petitioner is expecting his regular promotion to BS-18 in view of his eligibility but he is being deprived of the same on wrong premises and as such the respondents be directed to consider his promotion case for BS-18 in the next forthcoming meeting of Departmental Promotion Committee.

4. On the other hand, learned counsel for the respondents submits that so far the facts of the case are concerned, those are undisputed, the petitioner is performing his duties without any complaint whatsoever, he was granted promotion to the rank of S.D.O. as per Rules but the rules do not permit a diploma holder for promotion as XEN (BS-18) and in support of his contention, learned counsel has relied on the case of Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad and another PLD 1995 SC 701 and submits that the petitioner has no case at all and his writ be dismissed.

5. Arguments heard. Record perused.

6. The only point which is required to be resolved through this writ petition is that whether there is any embargo in the rules applicable to the WASA employees, whereby the department's stance could be substantiated that a diploma holder cannot be promoted to the post of XEN (BS-18) and whether the law relied upon by the learned counsel for the respondents is applicable in the present case or not?

7. For filling the post of Grade-17, L.D.A. (Appointment and Conditions of Service) Regulations, 1978, provide the following method/criteria:--

Pay Scale	Name of the post	Appointing Authority	Minimum qualification for initial recruitment	Method of recruitment.
Grade-17	Assistant Director (Engineering)	Managing Director	Bachelor's Degree in Civil/Mechanical/Electrical Engineering	80% by initial recruitment or deputation from Government; and 20% by promotion on the basis of seniority-cum-fitness from amongst

			from recognized University.	Sub-Engineers with at least 10 years service as Sub-Engineer. If suitable candidates are not available vacancies to be filled by deputation from Government."
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8. When confronted with this that whether the petitioner despite his status of diploma holder, was promoted to the post of SDO against 20% quota as per regulations, the learned counsel for the respondents after consulting the record frankly conceded that the petitioner was of course promoted as SDO/Assistant Director (Engineering)(BS-17) as per quota of promotees.

9. When the promotion of the petitioner as SDO is admitted, then we have to advert to the regulation concerning promotion to Grade-18, which is reproduced as follows:--

Pay Scale	Name of the post	Appointing Authority	Minimum qualification for initial recruitment	Method of recruitment.
Grade-18	Deputy Director (Engineering)	Managing Director		By promotion on the basis of seniority-cum-fitness from amongst Assistant Directors (Engineering)/Junior Maintenance Engineers S.D.O. with at least 5 years service in Grade-17"

10. A plain reading of Regulation/eligibility/criteria for promotion to the post of Deputy Director (Engineering) (BS-18) conveys a clear message that there is no condition of passing B.Sc. (Engineering) or there is not a slightest bar/embargo on the promotion of any diploma holder to the post of Deputy Director (Engineering), provided he is the holder of post of Assistant Director (Engineering)/Junior Maintenance Engineer/S.D.O. with at least 5 years service in Grade-17. There is no denial by the respondents that the petitioner was promoted as Assistant Director (Engineering)/S.D.O. on regular basis in the year, 2001 and since his promotion he has put more than seven years against the said post, which was a mandatory requirement for further promotion to the rank of Deputy Director (Engineering).

11. It is well settled law laid down by the Honourable Supreme Court of Pakistan that "if a thing is required to be done in a

particular manner, it must be done in that manner only and not otherwise".

12. It is also settled by the Honourable Supreme Court of Pakistan once for all in the case reported as Accountant General, Sindh and others v. Ahmad Ali U. Qureshi and others PLD 2008 SC 522 that "rule of harmonious interpretation is to be followed in case of interpretation".

13. Even otherwise, in the present case plain reading of Regulations, 1978 which are applicable to the petitioner's case do not require any interpretation. However, it is held that the Regulations ibid do not make any bar on the departmental authorities to promote a diploma holder to the post of Deputy Director (Engineering), provided he fulfils the conditions which are contained in the Regulations for his promotion to BS-18 as Deputy Director (Engineering), thus I hold that the petitioner is eligible for promotion to the rank of Deputy Director (Engineering) and as such the respondents are directed to place the petitioner's promotion case in the forthcoming meeting of the Departmental Promotion/Selection Committee, who shall consider the same fairly, justly and without being influenced from any observation made by the departmental authorities previously.

Writ petition is allowed in the above terms.

H.B.T./I-10/L

Petition allowed.

2009 P L C (C.S.) 444

[Supreme Court of Pakistan]

Present: Faqir Muhammad Khokhar, M. Javed Buttar
and Muhammad Qaim Jan Khan, JJ

FAZAL MUHAMMAD

versus

GOVERNMENT OF N.-W.F.P. and others

Civil Petition No.316-P of 2007, decided on 25th August, 2008.

(On appeal from the judgment, dated 28-2-2007 of the N.-W.F.P. Service Tribunal, Peshawar passed in Appeal No.224 of 1996).

Civil service---

---Seniority---Both the incumbents were selected and appointed in the

same batch---Mere fact that one of them assumed the duties earlier would not adversely affect the seniority position of the one who assumed the duties later. [p. 445] A

Siddiq Haider Qureshi, Advocate Supreme Court for Petitioner.

Nemo for Respondents.

Date of hearing: 25th August, 2008.

JUDGMENT

FAQIR MUHAMMAD KHOKHAR, J.--- The petitioner and the respondent No.3 (Azmatullah) were selected by the Selection Committee and were appointed as Auditor (BPS-11) in Local Fund Audit Department, N.-W.F.P. However, respondent No.3 could not assume the charge of the post as sanction of relaxation in age limit was awaited. Therefore, he joined his duties ten days later than the petitioner. Initially the petitioner was shown senior to the respondent No.3 in the seniority lists. However, the seniority dispute was resolved by the departmental authorities in favour of the respondent No.3 who was found senior to the petitioner both in order of merit and age. In the final seniority list as it stood on 31-12-1995, the respondent No.3 was shown at serial No.33 and the petitioner next below him. The petitioner, therefore, filed Appeal No.224 of 1996 which was dismissed by the N.-W.F.P. Service Tribunal. The case was earlier remanded by this Court. The Tribunal, by impugned judgment, dated 28-2-2007, dismissed the service appeal of the petitioner. Hence this petition for leave to appeal.

2. The learned counsel vehemently argued that the petitioner and respondent No.3 were selected from Zones 1 and 2 respectively. Moreover, the petitioner had joined his duties in the department earlier than the respondent No.3. Therefore, in terms of sub-rule (b) of rule 17 of the N.-W.F.P. Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the seniority of both parties was required to be determined with reference to the date of regular appointment to the post and the respondent No.3 could not be declared to be senior to the petitioner by any stretch of imagination.

3. We have heard the learned counsel at length and have also perused the available record. We find that the petitioner as well as the respondent No.3 were selected and appointed in the same batch. Admittedly, the respondent No.3 is older in age than the petitioner. The mere fact that the petitioner assumed the duties earlier would not adversely affect the seniority position of the respondent No.3. In our view, the impugned judgment of the Tribunal is plainly correct to which no exception can be taken. Moreover, no question of public