

**ORDER**

21<sup>st</sup> July, 2022

1. Counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG and Mr. Noor Zaman Khattak, District Attorney alongwith Mr. Lutfullah, Assistant for respondents present.

2. Vide our detailed judgment of today placed in Service Appeal No. 691/2019 titled "Mohammad Miskeen-vs- the Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar and others" (copy placed in this file), this appeal is also dismissed. Costs shall follow the events. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 21<sup>st</sup> day of July, 2022.*



**(KALIM ARSHAD KHAN)**  
**CHAIRMAN.**  
**Camp Court Abbottabad**

**(SALAH UD DIN)**  
**MEMBER(Judicial)**  
**Camp Court Abbottabad**

14.03.2022


Due to retirement of the Hon'able Chairman, the Tribunal is defunct, therefore, the case is adjourned for the same before on 17.05.2022


  
Reader

17.05 2022

None for the appellant present. Mr. Muhammad Asif Masood, Deputy District Attorney for respondents present.

Previous date was changed through Reader note, therefore, notice for prosecution of appeal be issued to the appellant as well as his counsel. Adjourned. To come up for arguments on 20.07.2022 before D.B at camp court Abbottabad.


  
(Fareeha Paul)  
Member(E)


  
(Kalim Arshad Khan)  
Chairman  
Camp Court Abbottabad

20<sup>th</sup> July, 2022

Learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for respondents present.


Learned counsel for the appellant seeks adjournment on the ground that he has not made preparation of the brief. Adjourned. To come up for arguments on 21.07.2022 before the D.B at Camp Court Abbottabad.

  
(Salah-ud-Din)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman  
Camp Court Abbottabad

20-4-21

Due to covid-19, case is adjourned  
to 21-9-2021 for the same.

  
Reader.

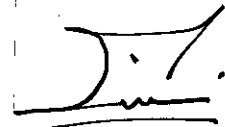
21.09.2021

Nemo for the appellant. Mr. Latuf Ullah, Assistant (Litigation) alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Previous date was changed on Reader Note, therefore, notice for prosecution of the appeal be issued to the appellant as well as her counsel and to come up for arguments before the D.B on 16.11.2021 at Camp Court Abbottabad.



(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)  
CAMP COURT ABBOTTABAD



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT ABBOTTABAD

16.11.2021

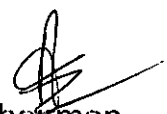
Appellant alongwith counsel present.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General alongwith Lutfullah Assistant for respondents present.

Former made a request for adjournment. Request is accorded. To come up for arguments on 14.03.2022 before D.B at Camp Court, Abbottabad.



(Rozina Rehman)  
Member (J)

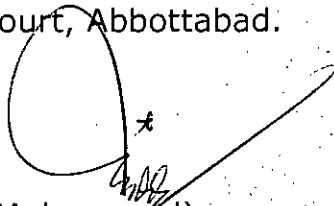


Chairman  
Camp Court, A/Abad

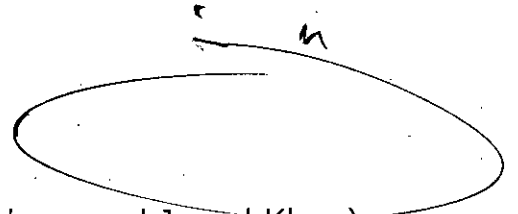
18.11.2020

None for the appellant is present, however, clerk of the counsel has appeared. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General and Mr. Lutf Ullah, Assistant Litigation, for the respondents are present.

Reader of the court namely Pir Muhammad informed the D.B that according to the clerk the learned counsel has proceeded to Peshawar and is not available today and requested for adjournment. Adjourned to 15.02.201 on which date file to come up for arguments before D.B at Camp Court, Abbottabad.



(Mian Muhammad)  
Member (Executive)  
Camp Court Abbottabad



(Muhammad Jamal Khan)  
Member (Judicial)  
Camp Court Abbottabad

15.02.2021

Junior to counsel for the appellant present.


Mr. Noor Zaman, learned District Attorney for respondents present.

Former requests for adjournment as senior counsel for the appellant is busy before Hon'ble High Court, Abbottabad Bench.

Adjourned to 20.04.2021 for arguments before D.B at Camp Court Abbottabad.



(Atiq ur Rehman Wazir)  
Member (E)  
Camp Court, Abbottabad



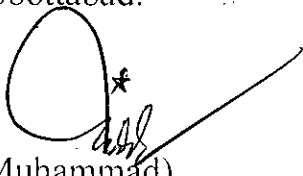
(Rozina Rehman)  
Member (J)  
Camp Court, Abbottabad

15.09.2020

Appellant alongwith his counsel Mr. Adeel Ahmad, Advocate is present. Mr. Usman Ghani, District Attorney alongwith Mr. Lutuf Ullah, Assistant for respondents present.

It was during the course of addressing arguments of the learned counsel made reference to the judgment of the august Supreme Court of Pakistan dated 27.03.2020 and submitted that the apex court has decided the point with regard to the protection of service of an employee for the protected period for payment of pensionary benefits. On the contrary, learned District Attorney made reference and relied on service appeal bearing No. 1377/2015 decided on 20.02.2019 captioned Syed Naveed Shah-vs-Government of Khyber Pakhtunkhwa through Secretary Education. Both the respective learned counsel as well as Learned District Attorney sought time for preparing the brief on the issues involved. In the circumstances, we deemed it appropriate <sup>to</sup> give them time to fully prepare the brief according to their respective point of view.

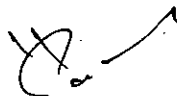
Adjourned to 18.11.2020 for arguments before D.B at camp court Abbottabad.

  
(Mian Muhammad)  
Member(E)

(Muhammad Jamal)  
Member  
Camp Court A/Abad

20.11.2019

Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney alongwith Alif Ullah Assistant present. Representative of respondent department submitted written reply/comments. To come up for rejoinder if any and arguments on 23.01.2020 before D.B at Camp Court, Abbottabad.




Member  
Camp Court, A/Abad

23.01.2020

None for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Lutufullah, Assistant for the respondents present. Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings on 17.02.2020 before D.B at camp court Abbottabad. Appellant be put on notice for the date fixed. /  
Due to covid, case to come up for the same on 9 / 20 at camp court abbottabad.



Member



Member  
Camp Court A/Abad  
Reader

Due to summer vacation case to come up for the same on 115  
9 / 20 at camp court abbottabad.




Reader

20.09.2019

Counsel for the appellant Afreen Khan present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as PST by the respondent-department. It was further contended that the appellant was terminated/dismissed vide order dated 14.05.1997. It was further contended that again the appellant was appointed vide order dated 15.02.2013 on the basis of judgment of the worthy High Court but without back benefits. It was further contended that some conditions were mentioned in the appointment order of the appellant by the respondent-department that the appellant will not claim back benefits but later on the said terms and conditions was withdrawn by the respondent-department vide office order dated 26.02.2013. It was further contended that the appellant was terminated without any reason therefore, the appellant was entitled for back benefits for the period he remained out of service therefore the appellant filed departmental appeal on 28.02.2013 but the same was not responded hence, the present service appeal. Learned counsel for the appellant contended that since the appellant was illegally terminated for no fault of the appellant therefore, the appellant is entitled to the back benefits.

The contention raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days thereafter. notices be issued to the respondents for written reply/comments for 20.11.2019 before S.B at Camp Court Abbottabad.

  
(Muhammad Amin Khan Kundi)  
Member  
Camp Court Abbottabad

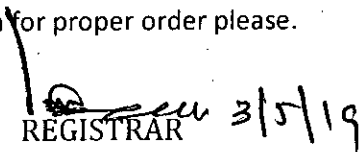
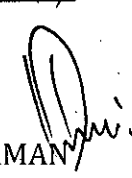

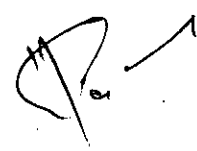
Appellant Deposited  
Security & Process Fee

23/9/19

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 577/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/05/2019	<p>The appeal of Mr. Afreen Khan received today by post through Mr. Zaheer Ahmad Qureshi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 3/5/19</p>
2-	10.5.19	<p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>12-07-19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
09.07.2019		<p>Junior counsel for the appellant present and requested for adjournment on the ground that learned senior counsel for the appellant has gone to Islamabad. Adjourned to 22.08.2019 for preliminary hearing before S.B at Camp Court Abbottabad.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member Camp Court Abbottabad</p>
22.08.2019		<p>Junior to counsel for the appellant present and again sought adjournment as senior learned counsel for the appellant is not in attendance. Adjourn. To come up for preliminary hearing on 20.09.2019 before S.B at Camp Court, Abbottabad.</p> <p style="text-align: right;"> Member</p>

Camp court A /Abad



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

*Appeal No. 577/2019*

Afreen Khan S/o Tor Khan Presently Serving as Junior Clerk GGHS Gul,  
Muhammadabad District Battagram.

...APPELLANT

**V E R S U S**

Govt of Khyber Pakhtunkhwa & Others.

...RESPONDENTS

**SERVICE APPEAL  
INDEX**

S.No.	Description of Document	Annexure	Page No.
1.	Appeal alongwith affidavit	--	1-6
2.	Copy of the appointment letter 23/08/1995	"A"	7
3.	Copy of the termination order 14/05/1997	"B"	8
4.	Copy of the appointment letter dated 15/02/2013	"C"	9
5.	Copy of the office order 26/02/2013	"D"	10
6.	Copy of the departmental representation	"E"	11
7.	Vakalat Nama		12

*Afreen Khan*  
...APPELLANT

**Through:**

Dated:- *26/04/2019*

*Zaheer Ahmad Qureshi*  
(Zaheer Ahmad Qureshi)  
&

*Abdul Aziz Khan Tanoli*  
(Abdul Aziz Khan Tanoli)  
Advocates High Court, Abbottabad.

**BEFORE THE KHYBER PAKHTUNKHAWA SERVICE  
TRIBUNAL, PESHAWAR**

Service Appeal No. 577-1/2019

Afreen Khan S/o Tor Khan R/o Presently Serving as Junior Clerk GGHS, Gul,  
Muhammadabad District Battagram.

...APPELLANT

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
2. Director (Estab) Elementary & Secondary Education Khyber Pakhtunkhwa.
3. District Education Officer (Elementary & Secondary Education) Male Primary Battagram.
4. District Account Officer Battagram.

..RESPONDENTS

**APPEAL:-** UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
AGAINST APPELLANT IS WORKING IN THE  
RESPONDENTS DEPARTMENT AND HIS SERVICES WERE  
TERMINATED ON THEREAFTER UNDER THE KHYBER  
PAKHTUNKHWA ACT XVII 2012 AND IN THE IN THE LIGHT  
OF JUDGMENT PESHAWAR HIGH COURT ABBOTTABAD  
BENCH DATED 17/01/2013 THE APPELLANT WAS  
APPOINTED AS JUNIOR CLERK IN BPS-07, VIDE ORDER  
DATED 15/02/2013 THE APPELLANT IS ENTITLED FOR  
BACK BENEFITS FROM THE DATE OF TERMINATION I.E  
14/05/1997 TO THE DATE OF ORDER DATED 15/02/2013 BUT

**Filed to-day**  
**Registrar**  
3/5/2019

THE RESPONDENTS DID NOT GRANTED ALL CONSEQUENTIAL BACK BENEFITS FROM THE DATE OF TERMINATION TO THE DATE ORDER 15/02/2013 WHICH IS AGAINST THE PROVISIONS OF SAID ACT, AS WELL AS DISCRIMINATION AS OTHER DEPARTMENTS ALLOWED THE BACK BENEFITS TO THE OTHER EMPLOYEES, AS WELL. THE CONDUCT OF THE RESPONDENTS TOWARDS THE APPELLANT IS ILLEGAL, MALAFIDE, UNLAWFUL, WITHOUT, LAWFUL AUTHORITY, WITHOUT JURISDICTION, ARBITRARY, PERVERSE, HARSH, VOID-ABNITIO AND AGAINST THE PRINCIPLE OF NATURAL JUSTICE INEFFECTIVE UPON RIGHTS OF THE APPELLANT.

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**PRAYER:-** ON ACCEPTANCE OF INSTANT APPEAL THE APPELLANT BE GRANTED ALL CONSEQUENTIAL BACK BENEFITS FROM THE DATE OF TERMINATION I.E. 14/05/1997 TO THE DATE OF ORDER DATED 15/02/2013 ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED.

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**Respectfully Sheweth:-**

**FACTS:-**

1. That, the Appellant is a resident of District Battagram was appointed as Junior Clerk (BPS-5) on 23/08/1995 in the

respondents department. *(Copy of the appointment letter is attached and marked as Annexure "A")*

2. That, the services of the appellant was terminated by the respondents without any justification on 14/05/1997.

*(Copy of the termination order is attached and marked as Annexure "B")*

3. That, the Appellant was appointed as Junior Clerk in (BPS-7 ) in the light Khyber Pakhtunkhwa Act XVII 2012 and the judgment of Honorable High Court Peshawar Abbottabad Bench dated 17/01/2013 by the respondents department vide appointment order dated 15/02/2013.

*(Copy of the appointment letter dated 15/02/2013 is attached and marked as Annexure "C")*

4. That, the respondents vide order dated 26/02/2013 withdrew the conditions mentioned in the serial No.10 of order dated 15/02/2013. *(Copy of the office order is attached and marked as Annexure "D")*

5. That, appellant requested the respondent No.3 through written Application dated 28/02/2013 / Representation to release all the back benefits as the appellant entitled for but so far no heed has paid to the grievances of the appellant and not decided the representation yet. *(Copy of the Departmental representation is attached and marked as Annexure "E")*

6. That, feeling aggrieved from the conduct of the respondent's appellant approaches this Honorable

Tribunal for redressal of his grievances on the following amongst other grounds.

**GROUNDS:-**

- a. That, once the Govt, allowed the back benefits, and then the Department / Respondents are bound to release the same to the appellant.
- b. That, it is the settled principle of administrative law that when law prescribe something which is to be done in the particular manner that must be done, in that manner not otherwise.
- c. That, appellant has been allowed for all back benefits vide office order dated 26/02/2013 after that respondents deviations from their own commitment is against the law and facts.
- d. That, the respondents department led the appellant to the place which is utterly, unknown to the principle of jurisprudence, natural justice.
- e. That, other departments allowed back benefits to other employee as well while ignoring the appellant by not allowing back benefits amounts to discrimination is against the fair play and good governance.
- f. That, other grounds will be agitated with the permission of this Honorable Tribunal at the time of arguments.

**PRAYER:-**

On Acceptance Of Instant Appeal The Appellant Be Granted All Consequential Back Benefits From The Date Of Termination I.E 14/05/1997 To The Date Of Order Dated 15/02/2013 Any Other Relief Which This Honourable Tribunal Deems Fit And Proper In The Circumstances Of The Case May Also Be Granted.

*Ahmed*

...APPELLANT

**Through:**

Dated:- 29/04/2019

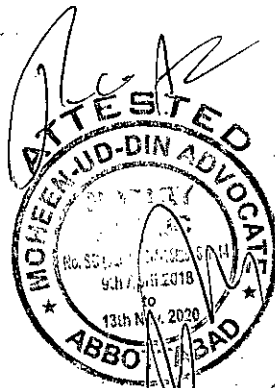
*Zaheer Ahmad Qureshi*  
(Zaheer Ahmad Qureshi)  
&

*Abdul Aziz Khan Tanoli*  
(Abdul Aziz Khan Tanoli)  
Advocates High Court, Abbottabad.

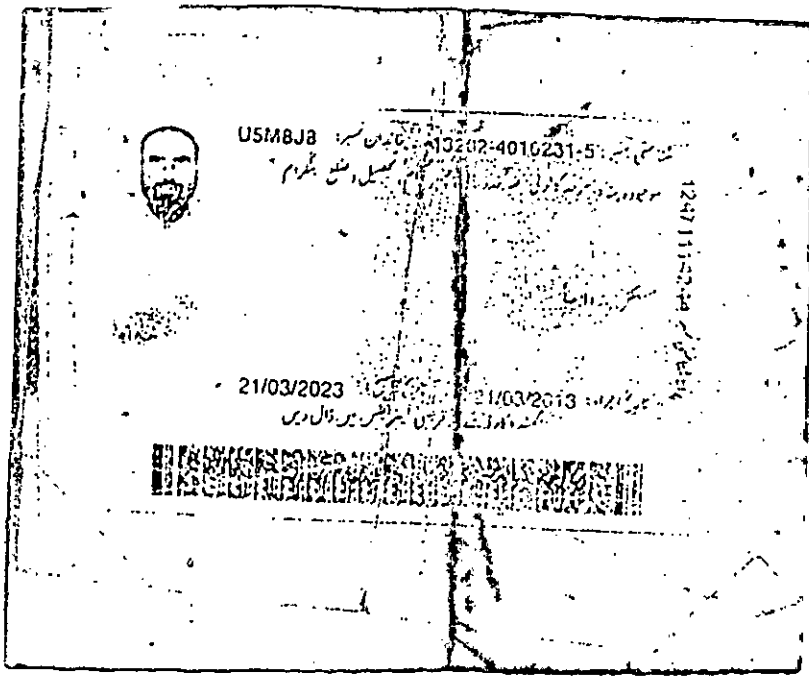
**VERIFICATION:-**

*Verified that the contents of the instant APPEAL are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.*

Dated:- 29/04/2019



*Ahmed*  
...APPELLANT



232



حکومت پاکستان

قومی شناختی کارڈ

13202-4016231-5



دستخط مال کاندہ



نام: آدین خان

جنس: مرد

وہ کام: مدرس

شناختی ادارت: کوئٹہ شہر

1971

ایر قلمی

وزیر امور





USM8J8 13202-4010231-5

معلومات شخصی: نام: محمد علی احمد

1247 11-22-20

21/03/2023

21/03/2013

تاریخ: 21/03/2023



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

Afreen Khan.

...APPELLANT

VERSUS

Govt of Khyber Pakhtunkhwa & Others.

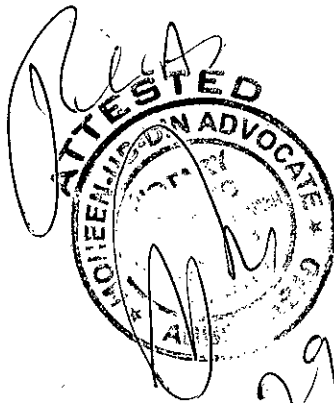
...RESPONDENTS

**SERVICE APPEAL**

**AFFIDAVIT**

*Afreen Khan S/o Tor Khan R/o Presently Serving as Junior Clerk GGHS, Gul, Muhammadabad District Battagram, do hereby solemnly affirm and declare on oath that contents of the above appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.*

Date:- 29/04 2019



*Afreen*  
...DEPONENT

APPOINTMENT.

Amreeve  
(A)

Annex 'A'

Mr. Afareen Khan S/o Tour Khan (Matric) R/o Chapper Gram (Pattagram) is hereby appointed as Junior Clerk @ Rs. 1400/- P.M. in B.S-5 viz Rs. 1400-66-2390 plus usual allowances, as admissible under rules against the vacant post of Steno-Typist in the Directorate of Primary Education, NWFP Peshawar as stop-gap arrangement in the interest of public service with effect from the date of his taking over charge.

CONDITIONS.

1. The appointment is purely temporary and subject to the termination at any time without any notice and assigning any reasons. In case of resignation, he shall have to ~~submit~~ submit one month's prior notice or in lieu thereof forfeit one month's pay and allowances to the Govt. His services shall stand automatically terminated on the arrival of the permanent incumbent of the post.
2. The pay scale and services rules would be subject to revision in accordance with order to be passed by the Government of NWFP from time to time.
3. The candidate should not be handed over charge, if his age exceed 25 years or below 18 years.
4. He is required to produce health and age certificate from the Civil Surgeon Peshawar, if he is not in Government service.
5. Charge reports (induplicate) should be submitted to all concerned.
6. No DA is allowed being first appointment, under the rules.

(SARAJ NAZNEEN)  
ADDITIONAL DIRECTOR-I,  
PRIMARY EDUCATION, NWFP.

Endst.No.30611-15/ E.No.149/DPE/M&A/PF Afreen Khan/Adm:Officer  
Dated Peshawar, the 23.8.1995

Copy forwarded for information and n/action to the:-

1. Accountant General, NWFP, Peshawar.
2. Cashier, Local Office.
3. Official concerned.
4. P.A. to Director Primary Education, NWFP.
5. Master file.

*Handwritten signature*  
ZAHEER AHMAD  
Advocate High Court  
Peshawar

23/8/95  
ADDITIONAL DIRECTOR-I,  
PRIMARY EDUCATION, NWFP.

(8)

Amend "B"

OFFICE OF THE DIRECTOR PRIMARY EDUCATION NWFP, PESHAWAR.

O.R.D.E.R.

1. Consequent upon the decision of the peshawar High Court and in pursuance of minutes of the meeting issued vide this office Endst: No./ dated 14-5-1997, the pay of all the Learning Coordinators/ PTC teachers/Mistresses and Junior Clerks reverted/ terminated from service. ( as the case may be ) are hereby released from the date of service termination till selection on merit.
2. The trained petitioners will compete for selection against various posts on merit.

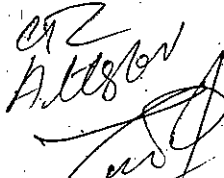
( HAJI SARFARAZ KHAN )  
DIRECTOR.

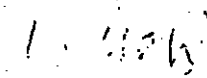
F.No. 30/DFE/M&A/Gen; Correspondence/AD (M&A)-(M).

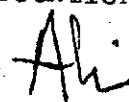
Endst: No 25752-25791 Dated Peshawar the 9/6 1997.

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

1. Accountant General NWFP, Peshawar.
2. All the District Education Officer (M) Primary in NWFP, Concerned.
3. All the District Education Officer (F) Primary in NWFP, Concerned.
4. All the District Account Officers in NWFP, Concerned.
5. All the Sub-Divisional Education Officer (M) in NWFP, Concerned.
6. All the Sub-Divisional Education Officer(F) in NWFP, Concerned.
7. FA to Director Primary Education NWFP, ( Local Office ).

  
ZAHIEER AHMAD  
Advocate High Court  
Abbottabad

  
FOR/ ASSISTANT DIRECTOR (P&D)  
DIRECTOR PRIMARY EDUCATION,  
NWFP, PESHAWAR.

  
2/6/97

(9)

A move "C"

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) BATTAGRAM.

ORDER

Consequent upon the recommendation of the Departmental Selection Committee and approval of the competent authority (Deputy Commissioner) Battagram, in the light of Khyber Pakhtunkhwa Act XVII 2012 and Honorable Court Judgment Peshawar High Court Abbottabad Bench dated 17-01-2013 Mr: Afreeen Khan S/O Toor Khan R/O Chappargram (Battagram) is hereby appointed as J/Clerk in BPS 07 (Rs:5800-320-15400) plus usual allowances as admissible under the rules against the vacant post at Govt: Girls High School Gul Muhammadabad (Battagram) in the interest of public service with effect from the date of his taking over charge.

NOTE The Drawing and disbursing officer is directed to verify their Degrees/Certificates from the concerned Board/University/Institutions.

TERMS AND CONDITIONS:-

- 1 The appointment is made purely on temporary basis and liable to termination at any time without assigning any reason or notice.
- 2 His service will be on regular basis but not pensionable and he will contribute to CP Fund.
- 3 He will be abide by the rules and regulation issued from time to time by the Provincial Govt.
- 4 His appointment has been made in the Act of Sacked Employees Appointments Act, No XVII, 2012.
- 5 He should obtain Medical fitness Certificate from the Medical Superintendent DHQ Hospital Battagram.
- 6 In case of resignation from Govt: service one month notice will be served otherwise the pay of one month will be forfeited to the Govt: treasury.
- 7 He should take over charge within in 15 days after the issuance of this appointment order otherwise the order of appointment shall stand cancel after 15 days.
- 8 Charge report should be submitted to all concerned.
- 9 The DDO is directed to obtain an affidavit on stamp paper duly attested by the 1st Class Magistrate that,
  - (a) He will served the Education department for more then five (5) year countinously.
  - (b) He is not served any other Department/Corporation/Agency.
  - (c) His previous services if any will be treated as EOL (without Pay).
  - (d) He will not go in the court for their previous service benefits.
- 10 No TA/DA etc is allowed to any one.

DEPUTY COMMISSIONER (CHAIRMAN)  
BATTAGRAM

Endst:No 7811-17 /EB/AE-II/ Apptt: Sacked: Emp: DATED 15/02/2013

Copy for information and necessary action to the:

- 1 Deputy Commissioner Battagram.
- 2 Registrar Honorable High court Peshawar
- 3 District Accounts Officer Battagram..
- 4 Head Master concerned School..
- 5 D.D.E.O (Male) Battagram.
- 6 Candidates concerned.
- 7 Office file.

*CTC*  
*A. Ahmad*  
*Zaheer Ahmad*  
ZAHEER AHMAD  
Advocate High Court  
Abbottabad

*J. M. M.*  
Assistant District Education Officer  
Litigation Battagram

I/K (10) Amount "D"

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) BATTAGRAM.

OFFICE ORDER:-

Serial No. <sup>95d</sup> of the terms and conditions mentioned in the Sacked employees appointments orders bearing Endst: No, 7811-17 dated 15-02-2013 is hereby withdrawn.

The remaining order will stand intact and unchanged.

DISTRICT EDUCATION OFFICER (MALE) BATTAGRAM.

7952-57

Endst: No                      / EB/AE-II/P-Sacked Emp: Apptt: dated 26/02/2013.

Copy for information to the:-

1. Deputy Commissioner Battagram.
2. Registrar High Court Bench Abbottabad.
3. District Accounts Officer Battagram.
4. Headmaster/Head Teachers concerned schools.
5. Candidates concerned.
6. Office copy.

*Handwritten signature*  
ZAHED AHMAD  
Advocate High Court  
Abbottabad

*Large handwritten signature*

DI: DISTRICT EDUCATION OFFICER (MALE) BATTAGRAM.

(11)

Amara "E" " "

بخدمت جناب ڈسٹرکٹ ایجوکیشن افسر صاحب ضلع ملگرام

عنوان: حکمانہ اپیل

جناب عالی! منوجبات اپیل ذیل عرض ہیں۔

- 1- یہ کہ اپیلانٹ محکمہ ہذا میں بطور جونیئر کلرک مورخہ 23-08-1995 کو بھرتی ہوا۔
- 2- یہ کہ اپیلانٹ کو مورخہ 14-05-1997 کو بلا کسی وجہ سے ملازمت سے نکال دیا گیا۔
- 4- یہ کہ اپیلانٹ Sacked Employee/ کو عدالت عالیہ ایبٹ آباد بیچ نے مورخہ 17-01-2013 کو دوبارہ بھرتی کرنے کے احکامات صادر کئے اور عدالت عالیہ کے فیصلے اور Sacked Employee/ ایکٹ 2012 KPK XVII کی روشنی میں دوبارہ مورخہ 15-02-2013 کو بھرتی کر دیا اور اپیلانٹ کو محکمہ کی طرف سے Back Benefits نہ دیئے گئے۔
- 5- یہ کہ اپیلانٹ ملازمت سے فارغ ہونے کے عرصے سے لیکر دوبارہ بھرتی ہونے تک کے عرصہ میں بے روزگار رہا ہے اور اپیلانٹ کو ڈیپارٹمنٹ کی طرف سے Back Benefits نہ دیئے گئے ہیں۔
- 6- یہ کہ بمطابق آفس آرڈر نمبر 63-7958 مورخہ 26-02-2013 کی روشنی میں اپیلانٹ Back Benefits کا حقدار ہے۔

لہذا آپ جناب سے گزارش ہے کہ اپیلانٹ کو ملازمت سے فارغ ہونے کے دن سے اپیلانٹ کی بحالی کے دن تک Back Benefits دیئے جائیں۔

المرقوم: 28-2-2013

العارض

آفرین خان ----- اپیلانٹ

*Afrin*

*Zaheer Ahmad*  
ZAHÉER AHMAD  
Advocate High Court  
Abbottabad

کورٹ فیس

# وکالت نامہ

بعدالت ضابطہ سرحد ڈائمنشنل کورٹ

عنوان: آغا فرید خان نام گورنمنٹ آف ایجوکیشن

مخائب: اسٹریٹ

نوعیت مقدمہ:

## باعث تحریر آنکھ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آن مقام

اسٹریٹ آف ایجوکیشن گورنمنٹ آف ایجوکیشن

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے رضی نامہ و تقریر انٹ و فیصلہ بر طرف دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دخل کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا محکمہ صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقریر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پرداختہ مجھ کو منظور قبول ہوگا۔

دوران مقدمہ جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔

نیز ہتھیار تم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا عد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ ہر دی مقدمہ مذکورہ کریں اور اگر محکمہ مقرر کردہ میں کوئی جزو ہتھیار ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمواد تجارت ہائش بسینہ مفلسی کے دائرہ کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

الرقوم: 23/04/2019

بمقام: ایڈووکیٹ آغا

Accepted

المنشی

Accepted

المنشی

Appreciation  
آغا فرید خان



**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE**

**TRIBUNAL CAMP COURT ABBOTTABAD**

**SERVICE APPEAL No. 577 of 2019**

**Afreen Khan S/O Toor Khan.....Appellant**

**VERSUS**

**Government of Khyber Pakhtunkhwa through Secretary E&SE KPK  
Peshawar and others.....Respondents**

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**Respondent**

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE**

**TRIBUNAL CAMP COURT ABBOTTABAD**

**SERVICE APPEAL No. 577 of 2019**

Afreen Khan S/O Tor Khan.....Appellant

**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary E&SE KPK  
Peshawar and others.....Respondents

**Joiant Para-wise comments /Reply on behalf of  
Respondents NO. 1 to 3**

**Respectfully Sheweth:**

**Preliminary Objections**

1. That the appellant has no cause of action/locus standi to file the present appeal.
2. That the appellant has concealed the material facts from this Hon'ble Tribunal.
3. That the appellant has not come to this Hon'ble Tribunal with clean hands.
4. That the appellant has filed the instant appeal on malafide grounds, just to put pressure on the respondent Department for illegal pension benefits.
5. That the appellant's appeal is against the prevailing rules and law.
6. That the appellant is estopped by his own conduct to file the instant appeal.
7. That the instant appeal is not maintainable in its present form and also in the present circumstances of the issue.
8. **As per Law/ Section 5 of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act 2012, a sacked employee appointed under Section. 3. shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment; hence the instant appeal is liable to be dismissed without any further proceeding.**
9. That the instant appeal is badly barred by time; hence is liable to be dismissed without any further proceeding.

ON FACTS

1. Para No. 1 of the appeal is correct. Pertaining to the appointment of the appellant; hence needs no comments.
2. Para No. 2 pertains to termination of the appellant, hence needs no comment.
3. Para No. 3 of the appeal is correct. Pertains to the appointment of the appellant in the light of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act 2012.
4. Respondents are bound to follow the rules/policy and law (Sacked Employees Appointment Act 2012) as mentioned in preceding paras.
5. Para No. 5 of the appeal is incorrect and denied. As per Section 5 of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act 2012, it is clearly mentioned that **“a sacked employee appointed under Section. 3. shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment”**. And as decided in Service Appeal No.1377/2015. Titled **Syed Naveed Shah VS Govt. of KP & Others** dated. 20-02-2019, hence the plea of the appellant is against the law/act. (Copy of the Act and Judgment dated 20-02-2019 are attached as **“Annex. A & B”**).
6. The appellant has no cause of action.

ON GROUNDS:

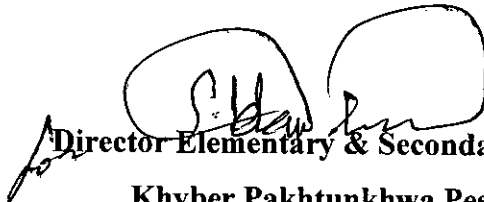
- a. Ground “a” of the appeal is incorrect, hence denied. Govt. has not allowed any back benefits as it is clearly mentioned in the Act, and respondents are not bound to obey the illegal demands of the appellant.
- b. Ground “b” of the appeal is incorrect. Detailed reply is given in the preceding paras.
- c. Ground “c” of the appeal is incorrect. Detailed reply is given in the preceding paras..
- d. Ground “d” of the appeal is incorrect. Respondents department followed the law/Act and acted accordingly.
- e. Ground “e” of the appeal is incorrect. Detailed reply is given in Para No. 5 of the Facts.
- f. Ground “f” of the appeal is incorrect. Appellant has no cause of action.

It is therefore humbly prayed that on acceptance of above Para-wise comments, the appeal of the appellant may graciously be dismissed with cost.

RESPONDENT NO. 3


  
District Education Officer (Male)  
Battagram

RESPONDENT NO. 2

  
Director Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

Additional Director (Estt.)  
Directorate of (E & SE)  
Khyber Pakhtunkhwa Peshawar


RESPONDENT NO. 1

  
Secretary Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

*vetted subject to correction  
Amara Affidavits and AAG  
Approval.*

  
7/11

AAG

*Agreed as above*  


7/11  
Additional Advocate General  
Khyber Pakhtunkhwa  
Service Tribunal Peshawar

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE**

**TRIBUNAL CAMP COURT ABBOTTABAD**

**SERVICE APPEAL No. 577 of 2019**

Afreen Khan S/O Toor Khan.....Appellant

**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary E&SE KPK

Peshawar and others.....Respondents

**AFFIDAVIT**

I Waliur Rahman Assistant District Education officer (Male) Battagram do hereby affirm and declare on oath that contents of accompanying **Joint Para-wise comments** on behalf of respondent NO. 1 to 3 are true and correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Court.

DEPENDENT

CNIC:

13202-4789969-9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR  
AT CAMP COURT ABBOTTABAD.

Service Appeal No. 1377/2015

Date of Institution ... 10.12.2015

Date of Decision ... 20.02.2019



Syed Naveed Shah son of Muazzam Shah, PST, Govt. Primary School Maira  
Hajjam, District Manshra. (Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa; through Secretary Elementary and Secondary  
Education, Peshawar and two others. (Respondents)

MR. MUHAMMAD ARSHAD KHAN TANOLI,  
Advocate

For appellant.

MR. MUHAMMAD BILAL,  
Deputy District Attorney

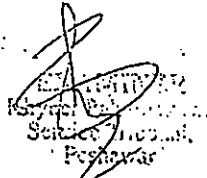
For respondents

MR. AHMAD HASSAN,  
MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER (Executive)  
MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the  
parties heard and record perused.

ATTESTED  
  
Ahmad Hassan  
Member (Executive)  
Service Tribunal,  
Peshawar

ARGUMENTS

Learned counsel for the appellant argued that he joined the Education Department  
as PST on 22.11.1994. That his services were terminated vide order dated 13.02.1997.  
After promulgation of Khyber Pakhtunkhwa Sacked Employees Appointment Act, 2012,  
all the employees who were appointed in the year 1993-96 and terminated in 1997-98  
were reinstated. As the appellant was not reinstated so he filed writ petition no. 401-  
A/2012 before the Peshawar High Court, Abbottabad bench. Judgment of the Pesh war  
High Court Abbottabad bench dated 22.05.2013 was not implemented by the respondents.  
so C.O.C no. 70-A/2013 was filed. Resultantly, vide impugned order dated 01.07.2015,  
the appellant was reinstated in service with immediate effect. Feeling aggrieved, he filed

13-10 695  
2  
departmental appeal on 29.07.2015 which was not responded within the stipulated period, hence, the present service appeal. The appellant is required to give all service benefits w.e.f 03.02.1997 to 01.07.2015.

3. Learned Deputy District Attorney argued that as the appellant was appointed in violation of invogue rules, hence, his services were terminated vide order dated 13.02.1997. Under the Khyber Pakhtunkhwa Sacked Employees Appointment Act 2012, he was reappointed as PST vide order dated 01.07.2015. According Section-5 of the said Act sacked employees shall not be entitled to claim seniority and other back benefits. Appellant was treated according to law and rules.

#### CONCLUSION.

4. It is not disputed that initially the appellant was appointed as PST at GPS D m Nalla on 22.02.1994. Later on when it came to the notice of the respondents that his appointment was made in violation of rules, hence, his services were terminated vide order dated 13.02.1997. In the meanwhile the provincial government promulgated Khyber Pakhtunkhwa Sacked Employees Appointment Act 2012. When grievances of the appellant were not redressed at departmental level he resorted to litigation by filing writ petition in Peshawar High Court, Abbottabad Bench. Finally in pursuance of the directions of the Peshawar high Court, Abbottabad Bench he was appointed as PST at GPS Mira Hajam with immediate effect vide order dated 01.07.2015. The appellant is asking for reappointment from the date of his termination from service dated 03.02.1997. Attention is drawn to Section-5 of the aforementioned Act, wherein it is clearly laid down that the sacked employee shall not be entitled to claim seniority and other back benefits.

The relevant provision is reproduced below:-

"A sacked employee appointed under Section-3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment"

B-11

64

As a sequel to above; the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)  
Member  
Camp Court Abbottabad.

*Muhammad Amin*  
(MUHAMMAD AMIN KHAN KUNDI)  
Member

ANNOUNCED  
20.02.2019

03-05-19

Date of Presentation of Application \_\_\_\_\_

Number of Pages \_\_\_\_\_ 1650

Copying Fee \_\_\_\_\_ 10/-

Urgent \_\_\_\_\_

Total \_\_\_\_\_ 10/-

Name of Copyist \_\_\_\_\_

Date of Completion of Copy \_\_\_\_\_ 15-5-19

Date of Delivery of Copy \_\_\_\_\_ 25-5-19

Certified to be true copy

*[Signature]*

Secretary



AN  
ACT

*to provide relief to those sacked employees in the Government service, who were dismissed, removed or terminated from service, by appointing them into the Government service*

WHEREAS it is expedient to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1<sup>st</sup> day of November 1993 to the 30<sup>th</sup> day of November, 1996 (both days inclusive) and were dismissed, removed, or terminated from service during the period from 1<sup>st</sup> day of November 1996 to 31<sup>st</sup> day of December 1998 on various grounds;

WHEREAS the Federal Government has also given relief to the sacked employees by enactment;

AND WHEREAS the Government of the Khyber Pakhtunkhwa has also decided to appoint these sacked employees on regular basis in the public interest;

It is hereby enacted as follows:

1. Short title, extent and commencement.—(1) This Act may be called the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.

(2) It shall apply to all those sacked employees, who were holding various civil posts during the period from 1<sup>st</sup> day of November, 1993 to 30<sup>th</sup> day of November, 1996 (both days inclusive).

(3) It shall come into force at once.

2. **Definitions** — In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say:-

- (a) "civil post" means a post created by the Finance Department of Government for the members of civil service of the Province;
- (b) "Department" means, the Department and the Attached Department as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985, including the Divisional and District offices working thereunder;
- (c) "Government" means the Government of the Khyber Pakhtunkhwa;
- (d) "Prescribed" means prescribed by rules;
- (e) "Province" means the Province of the Khyber Pakhtunkhwa;
- (f) "rules" means the rules made under this Act; and
- (g) "sacked employee" means a person who was appointed on regular basis to a civil post in the Province and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1<sup>st</sup> day of November 1993 to the 30<sup>th</sup> day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1<sup>st</sup> day of November 1996 to 31<sup>st</sup> day of December 1998 on the ground of irregular appointments.

3. **Appointment of sacked employees** — Notwithstanding anything contained in any law or rule for the time being in force, on the commencement of this Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service:

Provided that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department:

Provided further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority.

4. Age relaxation.--- The period during which a sacked employee remained dismissed, removed or terminated from service, till the date of their appointment shall be deemed to have been automatically relaxed and there shall be no further relaxation under any rules for the time being in force.

5. Sacked employees shall not be entitled to claim seniority and other back benefits.--- A sacked employee appointed under section 3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.

6. Preference on the basis of age.--- On the occurrence of a vacancy in the respective cadre of the concerned Department of the sacked employee against the thirty percent available share, preference shall be given to the sacked employee who is older in age.

7. Procedure for appointment.---(1) A sacked employee, may file an application, to the concerned Department within a period of thirty days from the date of ~~commencement~~ commencement of this Act, for his appointment in the said Department:

Provided that no application for appointment received after the due date shall be entertained.

(2) The concerned Department shall maintain a list of all such sacked employees whose applications are received under sub-section (1) in the respective cadres in chronological order.

(3) If any vacancy occurs against the thirty percent available share of the sacked employee in any Department, the senior in age from such sacked employee shall be considered by the concerned Departmental Selection Committee or the District Selection Committee as the case may be, to be constituted in the prescribed manner, for appointment.

Provided that no willingness or response is received within a period of thirty days, the next senior sacked employee shall be considered for appointment.

(4) The concerned Departmental Selection Committee or District Selection Committee, as the case may be, will determine the suitability or eligibility of the sacked employee.

(5) If no sacked employee is available against thirty percent vacancy reserved in respective cadre in a Department, then the post shall be filled through initial recruitment.

8. **Removal of difficulties.**— If any difficulty arises in giving effect to any of the provisions of this Act, the Chief Minister Khyber Pakhtunkhwa may issue such order not inconsistent with the provision of this Act as may appear to him to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from coming into force of this Act.

9. **Act to override other laws.**— Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have overriding effect and the provisions of any other law or rules to the extent of inconsistency to this Act, shall cease to have effect.