

48

Annexed - 14

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE ANWAR ZAHEER JAMALI
MR. JUSTICE EJAZ AFZAL KHAN

C. Ps. No. 2026 and 2029 of 2013.
(On appeal against the judgment
dt. 2.10.2013 passed by the
Peshawar High Court, Peshawar in
W. Ps. No. 271-P and 663-P of 2013).

Mushtaq Ahmed and another. (in CP. 2026/13)
Muhammad Nasir Ali and others. (in CP. 2029/13)
.....Petitioners

VERSUS:

Government of KPK through Chief Secretary,
Peshawar and others. (in both cases)
.....Respondents

For the petitioners: Mr. Ghulam Nabi Khan, ASC.
Syed Safdar Hussain, AOR.

For the respondents: Sikandar Khan, Chief Engineer, PHEK, KPK.
(on court notice)

Date of hearing: 15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments
of the learned ASC for the petitioners and careful perusal of the case
record particularly the reasons assigned in the impugned judgment,
we are satisfied that no case for grant of leave to appeal is made out,
including the plea of discrimination raised by the petitioners, as one
wrong or any number of wrongs, cannot be made basis to justify an
illegal action under the garb of Article 25 of the Constitution. Both
these petitions are, therefore, dismissed. Leave is refused.

2. So far as some other illegalities in the appointments
brought to our notice is concerned, in response to our earlier order
dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health
Engineering, Department, KPK is present in Court, he states that

ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

(97)

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although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/- Ammar Zahoor Jawali
Sd/- Ejaz Akmal Khan

Certified to be True Copy



[Signature] 16-1-14
Superintendent
Supreme Court of Pakistan
Islamabad
[Signature]

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 184/2014.

Mr. Hussain Khan S/O Raj Wali,
Resident of Village Aman Kot, District Nowshehra.....Appellant

VERSUS

Govt of Khyber Pakhtunkhwa C&W Department

..... Respondents.

WRITTEN REPLY AGAINST PETITION FOR CONDONATION OF DELAY.

PRELIMINARY OBJECTIONS.

1. Appellant's father is neither government servant nor died official, appointment of appellant is not covered under Rules 10 (4) of Khyber Pakhtunkhwa Civil Servant A.P.T Rules 1989, hence illegal, void abinitio and not warranted by any law.
2. As the appointment of Appellant is illegal and void abinitio, has got no cause of action to invoke the jurisdiction of this Honourable Tribunal and the principal of locus poenitentiae.
3. The Appellant has deliberately concealed the material facts from this Honourable Tribunal in the appeal in hand.
4. The appellant has not come to the Tribunal with clean hands.
5. The appeal is bad for misjoinder and non joinder of the then Executive Engineer, Mr. Ghulam Yazdani who signed the Service Books and other documents and not released the salaries if appointment was regular and not illegal.

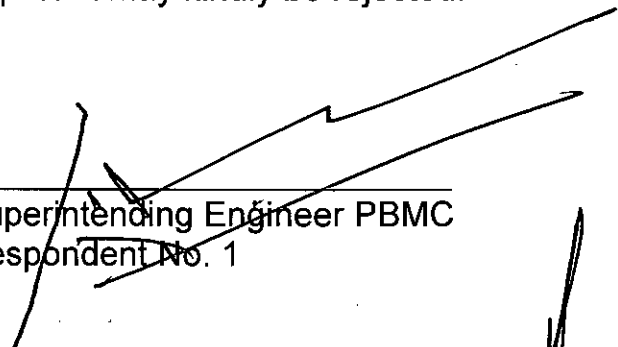
Respectfully Sheweth:

1. Incorrect: No grievance has been caused to the petitioner by the replying respondents, all actions of the replying respondents are in the ambit of law and rules.


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2. Incorrect to the extent that no departmental appeal have been received to the replying respondents and if the petitioner was aggrieved from any action of the replying respondents, he should have submitted departmental appeal to the concerned authority, hence question of condonation of delay does not arise at all and not entitled for the relief prayed for.
3. The petitioner was legally bound to file his case / appeal before competent forum, hence condonation on this score cannot be extended to the petitioner for his own illegal act.
4. The respondents will offer/raise their plea/arguments before the court at the relevant time.

It is therefore requested that the condonation petition of the applicant may kindly be rejected.

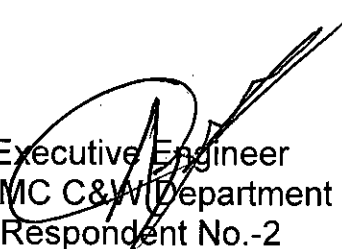

Superintending Engineer PBMC
Respondent No. 1


Executive Engineer PBMC
Respondent No. 2/3


Secretary to Govt of Khyber Pakhtunkhwa
Communication & Works Department
Respondent No.-4

COUNTER AFFIDAVIT

I Engr: Abdul Ghafoor Executive Engineer PBMC C&W Department Peshawar do hereby solemnly affirm and declare that the contents of reply against petition for condonation of delay are true and correct to the best of my knowledge ad belief and that nothing has been kept secret or concealed from this Honourable Court.


Executive Engineer
PBMC C&W Department
Respondent No.-2

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

Service Appeal No. 184/2014

Hussain Khan

V/S

S.E. PBMC etc.

.....

REPLY ON BEHALF OF RESPONDENTS NO.5
(Shams-uz-Zaman)

RESPECTFULLY SHEWETH:

1. No comments.
2. Correct. The replying respondent had properly convened the DSC meeting and after observing all codal formalities, the appellant was appointed. As far as the insertion of Section-10(4) of APT Rules, 1989 is concerned, that was a typographical mistake for which proper corrigendum was issued on 8.2.2013. The replying respondent also made clear to the higher ups in various letters with specific evidences. The appellant has been made to suffer due to ill intentions of the other respondents, and also due to accommodating the blue eyed persons of other respondent. The replying respondent had not violated any law and rules, and appointed the appellant according to Rules, after fulfilling all codal formalities. It is also added that Mr. Imtiaz Junior Clerk had given statement in absence of replying respondent and that two the said affidavit is even not attested by the competent Oath Commissioner. Thus that statement carries no weight at all. Similarly the letter of P.W.D Labour Union Sub Committee, PBMC, Peshawar is also fake and bogus, because the said sub committee was expired on 2.3.2013 and was not in existence on 6.5.20013, as evident from PWD Labour Union KPK letter dated 16.5.2013. It is also worth to mention here that the present incumbent also appointed one person through same DSC, through which the replying respondent had made appointment. Thus one and same act can not be termed as illegal for replying respondent and as legal

for present incumbent. All this proves malice on the part of other respondents.

3. Correct.
4. Correct.
5. Correct.
6. Correct. It is a well settled law that when ever there is work, there shall be pay.
7. Correct. The replying respondent had fulfilled his duty as evident from the remarks written an appeal of appellant by the replying respondents. Presently the other respondents are responsible for non payment of salaries to the appellant.
8. No comments.

GROUND:

1. Correct. The salary is the legal right of appellant being performing duties and validly appointed.
2. No comments.
3. No comments, but replying respondent is not responsible for that as evident from the record.
4. No comments.
5. No comments.
6. No comments.
7. Legal.

It is, therefore, most humbly prayed that the justice may very graciously be done to appellant.

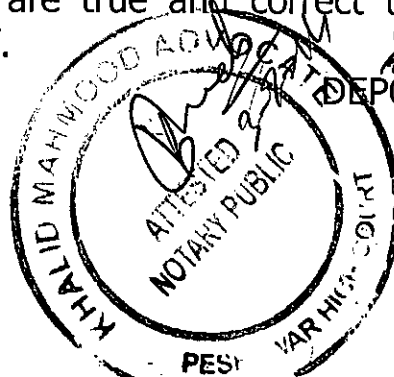
Respondent No.5

Through

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the contents of Reply on behalf of respondent No.5 are true and correct to the best of my knowledge and belief.



(~~XXXXXXXXXX~~)

R-1

OFFICE OF THE Director(Tech)EQAAAbbottabad
No. 661 / 1-i Dated 3 /04/2014

To,

The S E
C&W circle Peshawar
(Inquiry officer)

Subject:- APPOINTMENT OF HOUSE HOLD STAFF IN PBMC

Ref:- Your letter No. 1677/PF/30-SE dated 25 /3/2014 (Received on 31/3/21014 under diary No.635/1-i)

It is important to explain the back ground motive of the said inquiry before detail statement is given.

In fact this issue was raised when my successor took over the charge as SE PBMC for reason better known to him. Being SE having in same grade as mine having no authority to mention my appointment orders as illegal subject given in his letter to Secretary C&W but on the other hand he should have to request the competent authority for analyzing the matter whether rules violated or otherwise.

Moreover it is also strange to note that the officer himself made appointment under the same rules but In his opinion others violate rules.

It is also important to state that this inquiry is illegal, malafide that on the ground prior to this an inquiry on the allegation raised by a blackmailer ex-labour union leader (Anex-1) Mr Shehryar was conducted by Mr Fazal Kabir the then SE C&W circle Peshawar on the order of Secretary C&W and nothing was pointed out wrong or illegal in his report which is lying in the Secretary C&W office and after six month again another inquiry initiated on the same issue with same grounds reported by the same official and SE indicates intentions to create hindrance in my promotion to BPS -20 as the panel has been sent to PSB to bestow junior officer.

(17)

The detail statement is as under.

1. That all appointments made were according to the prevailing rules established and implemented in the PBMC since its creation. (Copy of the notifications/mended rules as Anex:2to 13 attached).

The honourable high court given instruction to employees to approach the proper forum i.e. Service tribunal in connection with salary issue where the cases of the official have been admitted for salary claims which means that employs status were given because an unemployed person can not be allowed to file any case in the tribunal or in the court.

2.The reason given by the sitting SE are base less and concocted as he himself accepted the rules and made appointment.

Strange point which must be noticed in his appointment order is that one section of the rule 10(2).have been implemented and other sections of the said rule is ignored which is a clear example of fraud case.Despite of exemption of this rule to PBMC.(Anex:14)

It is also pertinent to mention that present Executive Engineer and his predecessors also previous Superintending Engineers since creation of PBMC have already been made many appointments under the same rules, record available in PBMC office..The question is that only this employment case is being targeted just to involve me in an irregularity to deprive me from my right of promotion as I am at the verge of promotion and the panel has already been sent to PSB.

3.That the letter written by SE to the Advocate General regarding in-service employees as deceased son is an example of his lack of knowledge, incompetency and personal grudges where in he could not have understood the wording of the minutes.(Anex:14)

4.That for deceased sons seperate DSC was conducted in the month of November on 28 /11/20112 one month prior to the DSC on 14/1/2013.This is the main reason that the present SE is not aware of his office record and duty that his report is an

example of disinformation which is also a criminal act to deceive higher ups.(Copy of the minutes DSC as Anex:15 attached).

5.That proper letter on 9/1/2013 for DSC was intimated to all members of the committee where in 14/1/2014 was fixed for DSC meeting.(Anex;15).

6.That all members according to the committee constituted by Secretary C&W participated in the meeting and 38 applicant cases were examined and the suitable candidates were selected and approved.(Anex:16)

7.That proper 25 % quota of Retired employees son were observed and 05 Applicants were selected having good qualification.The name of retired employes sons can be verified from the DSC minutes Anex:17 A, are as under.

1. Mr Tahir Shah (Diploma holder) S/O Noor Hassan Shah Ex -Employee
- 2.Mr Muhammad Tanvir(Diploma holder) S/O Saleem Khan Ex -Employee
- 3.Mr Raees Khan S/O Muneer khan Ex-Employee
- 4.Mufti Asif S/O Jan gul Ex -Employee
- 5.Mr Khurram S/O Maqsood Ahmad Ex –Employee.

8.That other employ sons mentioned in the DSC minutes are candidates those fathers are in service applied for job and one can not prevent them from participation in the open competition which is their basic right and selected only having good qualification or technically good in comparison to others. Their names are as below

- 1.Habibullah (FA) S/O Nasrullah (Employee in PBMC)
- 2.Mr Shahabuddin S/O Nasrat gul (Employee in Building Division)
- 3.Mr Wareedullah S/O Gul zada (Employee in PBMC)


9.That no appointment were made during the care taker regime.The report is totally false and based on misleading information.

10. That all appointments were made in the month of January 2013 during previous regime and appointment letters were issued to them within one month with the direction for medical examination from health department . (photo copies of appointment orders & medical certificates are attached)
11. That the allegation of back dating is totally base less having no ground as the health department neither honour such like irregularity nor the health department was under my control. The date of medical examination can be compared from medical certificates .(Photo copies of employs MC attached).
12. That on 15/1/2013 the DSC minutes were sent to Executive Engineer (Anex:17) which was noted by Xen by initialing it. The Executive Engineer have properly initialed all office orders shows no back dating. This can be verified from original dispatch register in the custody of the SE PBMC /office. (Copies of office orders having initials of XEN attached.
13. That all original record are available in the office of SE PBMC and it is the responsibility of the sitting officer to safe guard the official documents being the custodian of official record.
14. That the service book is an important document which speak about all aspects required for a fresh employees. The service books are properly maintained and signed by the then Executive Engineer certifying order and date of arrival report with medical certificates of each employee. Accordingly signed by undersigned at appropriate column. (Photo copies of service books complete in all respect attached).
15. That all employs performed their duties since their arrival reports. After my transfer the sitting SE/XEN started creating hindrances in their duties and did not allowed the salaries to poor officials which is an example of abuse of authority , cruelty and dishonesty to deprive a person from their fundamental rights.
16. The matter is subjudice as employees have approached to the Service Tribunal where their cases have been admitted for the claim of salaries.

In the end I will request to file this malafide and base less inquiry in light of factual position explained above to help the poor official and also to save my un-blemish career through out my whole service.

I also reserve my legal right against any such details if subsequently brought on record for depriving me to defend myself in proper way. I also wish to be heard in person and reserve my right to add things to my written reply in respect of accusation/allegations subsequently introduced against me. I also reserve my legal right to proceed to the court of law.

The photo copies of all necessary documents properly numbered are attached for your perusal. The original documents are lying in the custody of PBMC staff.


Shamsuzzaman
Director (Tech) EQAA

R-2

No. 668/1-i Dated 21/4/2014.

Reply to the additional document placed in the inquiry in continuation of my letter No 661/i-1 dated 3/4/2014

The Service Tribunal KPK issued order on 17/4/2014, directed the department to refrain from any adverse action against the officials and allowed to perform their duties.(Copy attached).It is therefore required that the inquiry proceedings may be stopped and the inquiry should be filed keeping in view the Honourable Court order.

(Some order sheets attached)

However the detail reply to the false and concocted allegations by SE PBMC despite of in the same grade as mine are given below.

During my stay as SE PBMC not only these appointments were made but prior to this in PBMC since its creation many appointments had been made under the said prevailing rules.

When undersigned was transferred to EQAA Abbottabad and Mr Muhammad Ashraf took over the Charge this issue was created and orders issued during my tenure were termed as illegal without any authority being in the same grade as mine and report was sent to Secretary C&W with subject "Illegal appointment in PBMC" which was in the first instant an illegal act as he was not authorized to mention any previous orders illegal with out any legal authority.

The said officer also wrote letter to Advocated General and a brief note sent to the Secretary C&W both were deceiving and without fact and concocted allegations mentioned to gain the favour of the worthy Secretary C&W .(Copies attached)

Para wise Replies to his letters are as under.

1. That the report of the Head Clerk totally false and baseless as the Head Clerk is not direct subordinate to me but he is actually attached with Executive Engineer office. In his letter the first four paragraphs were false statement because he himself denied all allegation in his last paragraph clearly accept that all documents were received and were put up to the Executive Engineer which was his duty.

2. That the whole drama is based on the compliant by Mr sheryar reflecting himself as president labour union sub committee in his letter dated 6/5/2013 is false statement as letter dated 15/5/2013 from Provincial labour union president Mr Malik Nisar denies his claim(Annex:1) .This mean that the complainant is himself a black mailer because when DSC was conducted in the month of January 14'th 2013(Annex:2) then why he was silent and after my transfer he as an intrigue attempt with the SE PBMC made an issue for their own interest.

More over important to note that DSC dated 14/1/2013 has been partly implemented as four officials have been released salaries where as others are deprived.

3. It is also clear that the Shehryar neither objected to the appointment case conducted by the sitting SE on 28/6/2013 for ex-employees quota nor for the unfair selection as only one applicant participated clearly mentioned in the DSC minutes.(Annex:3)

4. That the statement given in the letter totally false as proper 25 % quota of Retired employees son were observed and 05 Applicants were selected having good qualification.The name of retired employs sons can be verified from the DSC minutes dated 14/1/2013 attached as (Annex:3A) , are as under.

1. Mr.Tahir Shah (Diploma holder) S/O Noor Hassan Shah Ex -Employee
- 2.Mr Muhammad Tanvir(Diploma holder) S/O Saleem Khan Ex Employee
- 3.Mr Raees Khan S/O Muneer khan Ex-Employee
- 4.Mufti Asif S/O Jan gul Ex -Employee
- 5.Mr Khurram S/O Maqsood Ahmad Ex-Employee.

5. That the letter written to Advocate General Peshawar High Court (Annex:4) where in reference given to the deceased one are totally baseless as a separate DSC one month before of DSC dated 14/1/2013(Annex:3A)was conducted on 28/11/2012(Annex:5) to appoint the deceased sons and also three fresh appointment were made in that DSC but the SE did not objected those appointments.

Actually the SE was unaware of his office affairs and is an example of his lack of knowledge, incompetency and personal grudges where in he could not have

understood the wording of the minutes or might be kept in dark by his office staff hence the letter is based on false information as no applicant is selected as deceased son.

6. That proper letter on 9/1/2013 for DSC was intimated to all members of the committee where in 14/1/2013 was fixed for DSC meeting.(Attached as Annex:6).

7. That all members according to the committee constituted by Secretary C&W participated in the meeting and 38 applicant cases were examined out of those applicant suitable candidates were selected and approved. (as Anex:3A)

The minutes of the DSC were sent to the Executive Engineer on 15/1/2013 and were properly initialed by head clerk and Executive Engineer confirm the receipt of the letter. (Anex:7)

8. That other employee sons mentioned in the DSC minutes dated 14/1/2013 are candidates those fathers are in service applied for job and one can not prevent them from participation in the open competition which is their basic right and selected only having good qualification or technically good in comparison to others. Their names are as below,

1.Habibullah (FA) S/O Nasrullah (Employee in PBMC)

2.Mr Shahabuddin S/O Nasrat gul (Employee in Building Division)

3.Mr Wareedullah S/O Gul zada (Employee in PBMC)

9. That no appointment were made during the care taker regime.The report is totally false and based on misleading information.

10. That all appointments were made in the month of January i.e. on 14/1/2013 and appointment letters were issued to them within one month with the direction for medical examination from health department .Photo copies of appointment orders are attached.(Annex:8)

11. That the allegation of back dating is totally base less having no ground as the health department neither honour such like irregularity nor the health department was under my control.The date of medical examination can be compared from medical certificates .Photo copies of employees MC attached. (Annex:9)

12. The same doctor who examined the official selected by the SE also examined all officials selected during my tenure.

13. That the Executive Engineer and Head Clerk have properly initialed all office orders show no back dating. This can be verified from original dispatch register in the custody of the SE PBMC /office.(Copies of office orders having initials of XEN and head clerk attached as (Annex:8 above)

14. That all original record are available in the office of SE PBMC and it is the responsibility of the sitting officer to safe guard the official documents being the custodian of official record.

Further it also pertinent to high light the fact that Divisional office Account officer (DAO) provided all record to the inquiry officer Mr Shahid Hussain in the inquiry ordered by Secretary C&W dated 25/3/2014 confirms that all record is available in the PBMC offices and intentionally concealed to deceive the higher offices.

15. That the service book is an important document which speak about all aspects required for a fresh employees. The service books are properly maintained and signed by the then Executive Engineer certifying order and date of arrival report with medical certificates of each employee. Accordingly signed by undersigned at appropriate column.Photo copies of service books complete in all respect attached.(Annex:10)

16. That all employees performed their duties since their arrival reports.After my transfer the sitting SE/XEN started creating hindrances in their duties and did not allowed the salaries to poor officials which is an example of abuse of authority , cruelty and dishonesty to deprive a person from their fundamental rights.

17. That the delay in salary for two months are not a crime but due to rush of work the delay might be occurred in the Divisional office.

Astonishing to note that the reporting SE himself made delay to release the order for three months approximately. as the DSC was conducted on 28/6/2013 and order was issued in the month of September on 20/9/2013.The salary to the official was released in the month of November 2013,Why? (Anex:11,12,13)

18. That it is beyond to understand that how the applicant came to know about his selection in the DSC which is a official secret and the candidate submitted

a compliant against SE with a threat of approaching the court .The application is without signature of the applicant and also the hand writing in which name written does not tally with the signature of the applicant as on medical certificate ,thus can not be treated as signature of the applicant on the application but a forgery.(Annex:14)

It is also strange to note that only one applicant was participated in the competition as clear from DSC dated 28/6/2012 as (Annex:5 above) conducted by the present SE PBMC where in no importance was given to the deceased son as well as Ex-employ 's son.

The reply to the brief sent to Secretary C&W/Court by SE is as under.

The false statement as replied above in para 1 and the H/Clerk have noted all office orders by initialing before putting up to the XEN and accordingly noted by him. (Copies of office orders already attached.)

Parawise replies,

- I) Totally False statement as there was clear corrigendum issued vide 1930/41-E dated 8/2/2013 because of the rule mentioned wrongly written.(Annex:15)
- II) The PBMC (Provincial Building Maintenance Cell) with out any doubt is working at provincial level and controls many sections in other district.
- III) The PBMC can not be restricted to district level. More over at the time of creation approximately 50% maintenance staff were handed over to the district. This rule applies to district maintenance staff appointment . A large number of examples are on record that since creation other district persons have been employed in the PBMC.(Annex:16).

The reason of concealment of fact by the SE not understandable.

- IV) All necessary documents i.e appointment orders, medical certificates and arrival reports etc are annexed in their service books properly certified by XEN and the then SE as in (Annex:10)above.
- V) The detail reply to the objection raised in the para has already been given in the para 17 above which is reproduced below,

"That the delay in salary for two months are not a crime but due to rush of work the delay might be occurred in the Divisional office.

Astonishing to note that the reporting SE himself made delay to release the order for three months approximately as the DSC was conducted on 28/06/2013 and order was issued in the month of September on 20/9/2013. The salary to the official was released in the month of November 2013, Why? "(Annex:s already attached as 11,12,13)

- VI) The objection is irrelevant and no such instruction were issued to PBMC for deceased sons as mentioned and no appointment were made during care taker government.
- VII) That all documents are lying in the office and might be removed from the office record just to give weight to their complaint /allegations. In case the record was not available then how the photocopies are available and have been produced to your office with the reply and in the Court. The DAO also submitted the record to your office. This clearly mean that the present officers/officials try to conceal record. They are responsible to secure official documents being the custodian of office record and they can not shred away their responsibilities.

Shams uz zaman
Director (Technical)
O/O CE EQAA Abbottabad.

R-3

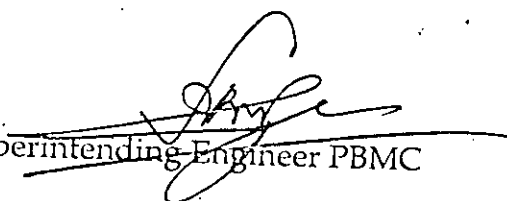
PROVINCIAL BUILDING MAINTENANCE CELL
COMMUNICATION & WORKS DEPARTMENT
Phone No. 091-9211370

No. 1930 / 41-E Dated 8 / 2 / 2013

Subject: CORRIGENDUM.

The following amendments in the office orders/Minutes are made with immediate effect and Corrigendum issued as below:

1. All the appointments made in light of Govt. Notification No. SOR-VI(E&AD) 1-3/2003 (Vol-V) dated 3.7.2003 and further clarified by letter No. SO(PBMC)AD/Budget/3-2/2005/P-VI dated 10.2.2006.
2. Rule 10(4) of Khyber Pakhtunkhwa wrongly typed in various office orders issued in light of DSC meeting dated 14.1.2013 be considered as deleted.
3. Raees Khan Carpenter wrongly written in BPS-6 may be read as BPS-5.


Superintending Engineer PBMC

Copy for information to the Executive Engineer PBMC C&WD Peshawar.

Superintending Engineer PBMC

VAKALAT NAMA

NO. 184 /2014.

IN THE COURT OF Service Tribunal Peshawar

Hussain Khan

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

PBMC etc

(Respondent)
(Defendant)


I/We Respondent no. 5.

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.

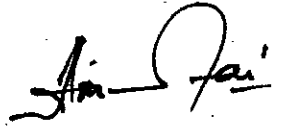
§ Taimur Ali Khan
(ADN)

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

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

§.

TAIMUR ALI KHAN
Advocate

OFFICE:

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Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

HUSSAIN KHAN

VERSUS

SUPERINTENDENT ENGINEER PBMC
COMMUNICATION AND WORKS DEPARTMENT
PESHAWAR BACHA KHAN CHOWK AND OTHERS.

**REJOINDER ON BEHALF OF APPELLANTS
TO THE COMMENTS SUBMITTED BY
RESPONDENT NO. 1 TO 4. BEFORE THIS
HON'BLE COURT.**

RESPECTFULLY SHEWETH:

Reply to Preliminary Objections:

1. That Para no. 1 of preliminary objection of the comments is incorrect. Infact section 10(4) of KPK civil servant Rules 1989 was inadvertently written and in this respect immediately corrigendum was issued on 8-2-2013, hence this objection of the respondents is without any force, moreover the deceased sons separate D.S.C. was conducted in the month of November on 28-11-2011 one month prior to the D.S.C. on 14-01-2013. This is the main reason that the present S.E. is not aware of his office record and duty.
2. That Para No.2 of preliminary objection of the comments is incorrect; however the appointment made according to law and to the prevailing rules and the same has created valuable rights in favour of appellant, hence appointments made are not only legal but are also made by competent authority.

3. Para No.3 of the preliminary objection of comments is incorrect; appellant has not concealed material facts from this honorable court and the appeal of the appellant are based on true facts and even all the requisite record is already annexed with the appeal and is available on file.
4. That Para No.4 of preliminary objection of the comments is incorrect; appellant has come to this hon,able court with clean hands.
5. The Para No.5 of the preliminary objection of comments is incorrect, however respondents have admitted that the appellant service book and other documents were signed by the then executive engineer and as such on the principle of locus poientia, appellant case is liable to acceptance. It is pertinent to mention here that the service book was even counter signed by respondent no. 5 (competent authority)

ON FACTS: -

1. Para No 1 of the comments needs no reply.
2. Para no. 2 of the comments is incorrect while Para no 2 of the appeal is correct, the appellant was appointed in the respondents establishment on post of COOLI (BPS-01) vide order dated Peshawar the 14-01-2013 passed by respondent no-5 and is house hold staff after approval by the D.S.C. in the meeting held on 14-01-2013. Moreover the reason given by the sitting S.E. are baseless and concocted as he himself accepted and made appointment in the similar manner and as such all appointment are made in accordance with law. Infact section 10(4) of KPK civil servant Rules 1989 was inadvertently written and in this respect

immediately corrigendum was issued on 8-2-2013, hence this objection of the respondents is without any force and even the allegation in respect of back dated entries are without force and proof and respondents be directed to produced dispatch register before this hon,able court in order to ascertain the true facts and it is wrong that the appointment were made in Caretaker Govt. more over there was no ban in the then regime during the appointments period and the order of chief minister referred in the Para is not attracted in the case of appellant.

3. Para No. 3 of the comments is incorrect while Para No.3 of the appeal is correct, moreover for deceased sons separate D.S.C. was conducted in the month of November on 28-11-2012 and the letter written by S.E. to advocate general regarding in service employees as deceased sons is an example of his lack of knowledge, more over the arrival report, medical fitness certificate are genuine. It is pertinent to mention here that present S.E. PBMC had made fresh appointment of one Noor Akbar S/O Haji Akbar R/O village Akazai Tehkal Bala Peshawar on recommendation of D.S.C. held on 28-06-2013 in the same manner of appointment as of appellant was also made payment of salary after six months but appellant is treated discriminatory which is not permissible under the law as well as in the same manner of appointment through the same DSC is also legal one and respondents are dealing appellant discriminatory.

4. Para no. 4 of the comments is in correct while Para no 4 of the appeal is correct, the appellant has there after made arrival report on 16-01-2013.

5. Para No. 5 of the comments is incorrect while Para No.5 of the appeal is correct. That appellant furnished service book with medical certificate along with arrival report which were duly entered and certified by the Superintending Engineer and Executive Engineer and proper letter on 9-1-2013 for DSC was intimated to all members of the committee where in 14-1-2013 was fixed for DSC meeting.

6. Para No.6 of the comments is incorrect while Para No.6 of the appeal is correct. However it is wrong that the high court asked appellant counsel to state on oath in respect of appellants father serving in department. More Over the appellant performing his duties with full diligent and devotion since from the date of his arrival, but the respondents were not paying his monthly salaries to the appellant with out any cogent reasons, therefore appellant has instituted a writ petition before Peshawar high court Peshawar, however the respondent due to institution of the writ petition have become biased and even started not allowing appellant and his others colleagues to duties and created problems in this regard due to malafide reasons and at the time of arguments their lord ships were of the view that pay being falls within terms and condition of service therefore to withdraw the writ petition and to move the service tribunal KPK, hence the writ petition was withdrawn with permission to move the proper forum which was not objected by learned A.A.G.

7. Para No.7 of the comments is incorrect while Para No.7 of the appeal are correct. Moreover the appellant has also approached the respondent No.5 for the release/payment of his salaries but nothing has been paid, despite the clear instructions by respondent No 5 on his appeal, which is the legal rights of appellant but the same is still not paid despite the clear cut direction by the then competent authority.
8. Para no 8 of the appeal is incorrect. No ground for dismissal of appellant appeal exist.

GROUNDS

1. Para No.1 of the grounds of comments is incorrect while Para No.1 of the grounds of appeal is correct, that due to the non payment of the salaries, appellant has not been treated in accordance with law, and his rights secured and guaranteed under the law have been violated by not releasing his salaries and issuance of appointment letter by competent authority have created valuable right in favour of appellant and those rights can not be taken away in the manner respondents are adopting.
2. Para No 2 of the ground of comments is incorrect while Para No.2 of the ground of appeal is correct, that discrimination as observed by the respondents with appellant is highly deplorable and condemnable being unlawful, unconstitutional, with out authority, with out jurisdiction, against the norms of natural justice and equity and against the law on subject, hence liable to declared as such.
3. Para No.3 of the ground of comments is incorrect while Para no. 3 of the ground of appeal is correct,

That respondent are not acting in accordance with law and are illegal acts with ulterior motive and malafide intention by not releasing appellants salaries which are stopped without any cogent reason since date of appointment/arrival report.

4. Para No.4 of the ground of comments is incorrect while Para no 4 of the ground of appeal is correct, the appellant are recommended for appointment as per D.S.C. held on 14-01-2013 but are not being paid salaries though to three official namely (I) Said Rasan (II) Waqar Ul Islam (IV) Riaz Khan mentioned in the same D.S.C were later on paid and even fresh appointment made of one Noor Akbar S/O Haji Akbar R/O village Akazai Tehkal Bala Peshawar on recommendation of D.S.C. held on 28-06-2013 in the same manner of appointment as of appellant was also made payment of salaries but appellant is treated discriminatory which is not permissible under the law.
5. Para No.5 of the ground of comments is incorrect while Para no 5 of the ground of appeal is correct, the appellant is entitled for the receipt of his salaries and the act of respondent by not paying the same is against the law and rules and as such the respondent are under the obligation to pay salaries to appellant as per the appellant appointment order.
6. Para No.6 of the ground of comments is incorrect while Para No.6 of the ground of appeal is correct, the act of respondents by not allowing appellant to his duties due to institution of writ petition for salaries and others illegal action are based on malafide and illegal because demand of salaries / pay is legal and the appointment of the appellant are made by competent authority in legal manner by following of all

codal formalities and the service book which is an important documents and speak about all aspects required for fresh employees and were properly maintained and were signed by the then executive engineer certifying order and date of arrival report with medical certificates of each appellant which was signed the then superintendent engineer in appropriate column.

7. Para no 7 of the ground of appeal are replied as that no such ground is available for respondent to deny appellant claim

It is, therefore, requested that on acceptance of this rejoinder appellant appeal be accepted as prayed for in the appeal in favor of the appellant against respondents and any other relief which appellant found entitled and not specifically asked for may also be granted.

Hussain Khan.

APPELLANT

Through

[Signature]
ASAD JAN

ADVOCATE SUPREME COURT OF PAKISTAN.

VERIFICATION

It is declared on Oath that all contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon, able court.

Hussain Khan.
DEPONENT

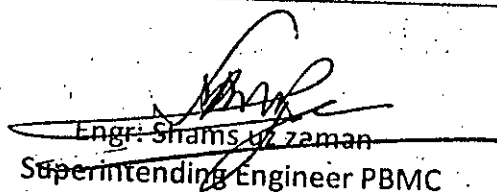
OFFICE OF SUPERINTENDING ENGINEER PBMC
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

No. 1928 / 15-G DATED 7 / 2 / 2013

OFFICE ORDER.

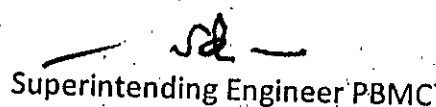
The newly appointed household staff are hereby posted for duty on the following sections as under.

<u>S.No.</u>	<u>Name</u>	<u>Designation</u>	<u>Place of duty</u>
1	Tahir Hussain Shah	W/Supdt	KPK House Nathiagali
2	Alamgir Khan	W/Supdt	MPA Hostel
3	Muhammad Tanveer	W/Mistri	MPA Hostel
4	Ruhullah	W/Mistri	CM House
5	Raees Khan	Carpenter	CM House
6	Hassan Dad	P/Fitter	MPA Hostel
7	Wareedullah	P/Fitter	Shahi Mehman Khana
8	Muhammad Imran	P/Fitter	KPK House Nathiagali
9	Khurram	Electrician IV	KPK House Islamabad
10	Asif Ali	Electrician IV	Governor House Peshawar
11	Muhammad Ismail	Electrician II	Governor House Peshawar
12	Sajid Khan	Electrician V	Shahi Mehman Khana
13	Habibullah	S/Cooly	Governor House Peshawar
14	Asfandyar	S/Cooly	Governor House Peshawar
15	Navaidur Rehman	Khansama	MPA Hostel
16	Aftab	Mali	MPA Hostel
17	Asad Ali	Mali	Shahi Mehman Khana
18	Hussain Khan	cooly	CM house Peshawar
19	Yasir Mumarak	cooly	MPA Hostel
20	Shahabuddin	Chowkidar	Governor House Peshawar
21	Muzzaffar	M/Sweeper	Shahi Mehman Khana


Engr. Shams ul zaman
Superintending Engineer PBMC

Copy to the:

1. Executive Engineer PBMC C&WD Peshawar for information and if required, necessary changes by his office are allowed according to the requirement.
2. DAO (Local) for information and to attach the copy in all service books of the officials.


Superintending Engineer PBMC

2

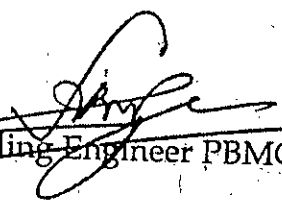
PROVINCIAL BUILDING MAINTENANCE CELL
COMMUNICATION & WORKS DEPARTMENT
Phone No. 091-9211370

No. 1930/41-B Dated 8/2/2013

Subject: CORRIGENDUM.

The following amendments in the office orders/Minutes are made with immediate effect and Corrigendum issued as below:

1. All the appointments made inlight of Govt. Notification No. SOR-VI(E&AD) 1-3/2003 (Vol-V) dated 3.7.2003 and further clarified by letter No. SO(PBMC)AD/Budget/3-2/2005/P-VI dated 10.2.2006.
2. Rule 10(4) of Khyber Pakhtunkhwa wrongly typed in various office orders issued inlight of DSC meeting dated 14.1.2013 be considered as deleted.
3. Races Khan Carpenter wrongly written in BPS-6 may be read as BPS-5.


Superintending Engineer PBMC

Copy for information to the Executive Engineer PBMC C&WD Peshawar.

Superintending Engineer PBMC

App: Couvance

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service appeal No. 183/2014

Muhammad Alamgir S/O Muhammad Ajmal,
Resident of Canal Colony Behind Secondary Board,
Peshawar & OTHERS. (Maintain Appeals No. 184/2014, 185/2014, 186/2014,
187/2014, 188/2014, 189/2014, 190/2014, 217/2014, 218/2014, 219/2014,
220/2014, 221/2014, 222/2014, 223/2014, 249/2014, 250/2014, 251/2014
(17 Nos)

.....Appellants

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION & WORK DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR-IV PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTUNKHWA PESHAWAR.
5. SHAMS-UZ-ZMAN EX-SUPERINTENDENT ENGINEER C&W PESHAWAR PRESENTLY POSTED AS DIRECTOR (TECH) EQAA ABBOTTABAD.

.....Respondents

APPLICATION FOR THE VACATION OF ORDERS PASSED ON 08/07/2014.

Respectfully Sheweth;

1. That 18-Nos Main Service Appeals are pending adjudication before this Honorable Tribunal wherein next date 18/09/2014 is fixed.
2. That comments to the Main Service Appeals as well as reply on the applications for the Grant of Interim Injunctions have since been filed in this Honorable Tribunal.
3. That the Hon'able Tribunal has held in its order dated 08/07/2014 as under: -
"to allow the appellant to perform his duties and start their monthly salary provisionally" (Copy of the above order is annexed as **(Annexed-A)**).
4. That the order ibid is liable to be vacated inter alia on the following grounds: -

- a. That the order of temporary injunction has badly affected the merits of the main appeals wherein the main preliminary objection of Petitioners/Respondents have not yet been decided regarding the illegal orders of the appellants.
- b. That orders for payment of salaries even provisional and to allow perform duties (Now) are not warranted by any law for the time being enforce, hence liable to be vacated on this sole ground.
- c. That on the implementation of ibid orders, the illegal and void appointments shall receive a legal cover directly on the passing of such temporary injunction.
- d. That it is yet to be decided that the illegal appointments orders, have been made under the relevant Ruls-10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 explicitly indicated in the offers of appointments of each individual issued under the signatures of the Private Respondent-5 (Mr. Shams-uz-Zaman the then Superintending Engineer PBMC).
- e. That the private respondent-5 stated in his written as well as verbal statement before this Court that he has made appointments through Departmental Selection Committee on 14/01/2013 and are regular, if it so, then under what circumstances, he had not paid salaries to the appellants uptill his posting out from PBMC in 04/2013 when he and the then XEN PBMC (Ghulam Yazdani) who was also a member of the Departmental Selection Committee, with conspiracy and in connivance of each other (amongst them) have signed the relevant entries in Service Books, which never been provided in office by any of them. Original still holds with them/him . He kept these orders with him uptill 18/04/2013 for which the written statement of the then Head Clerk (Mr. Azeem Khan) of XEN PBMC Office and Dispatch Clerk (Mr. Imtiaz) of PBMC Circle Office have since been annexed with the replies / comments on Main Service Appeals and on the Application for the Grant of Interim Injunction as well, which in fact warrants great importance in these appointment/cases (**Annexed B&C**).
- f. That written reply/comments of the Respondents No.1 to 4 filed against main appeals and stay application of the appellants may also be treated as integral part of this petition

- g. That finding of the Departmental Inquiry, ordered by the respondent-4 (Secretary C&W Department) in these illegal and void appointments orders made by the private respondent-5 has also been annexed with the replies/comments filed by respondents 1 to 4, where the action taken by private respondent-5 termed as illegal after detailed study / its pros and cones and the clarification of Establishment Department (Regulation Wing) tendered vide Memo No. SOR-V(E&AD)/Gen: C&W/13 dated 10-12-2013 and the ancillary instructions issued by the Administration Department Memo No. E&A(AD)4(75)/2003 dated 01/12/2006 and even number dated 11/12/2006 (**Annexed-D, E & F**) when the PBMC Directorate and XEN PBMC Office were attached as Subordinate Attached Offices of the Administration Department, Civil Secretariat up to 30-06-2009.
- h. That all the three ingredients required for interim relief, are missing in the instant petitions.

In the wake of above said circumstances, it is prayed that the orders passed on 08/07/2014, granting the Temporary Injunction as mentioned at Para-3 above, may graciously be vacated/discharged till the final decision on the Main Appeals pending adjudication before the Honorable Tribunal.

~~Superintending Engineer, PBMC
(Respondent No. 1)
PBMC C & W Department
Khyber Pakhtunkhwa Peshawar~~

Executive Engineer PBMC
EXECUTIVE ENGINEER
(Respondent No. 2/3)
PBMC C & W Department
Khyber Pakhtunkhwa Peshawar

Secretary to Govt of Khyber Pakhtunkhwa
Communication & Works Department
(Respondents No. 4)

Dated ____th July, 2014

Through: Senior Govt Pleader
Khyber Pakhtunkhwa Service Tribunal

AFFIDAVIT

I Engr: Abdul Ghafoor Executive Engineer PBMC C&W Department Peshawar do hereby solemnly affirm and declare that the contents of application for the vacation of order passed on 08/07/2014 are true and correct to the best of my knowledge and belief and that nothing has been kept secret or concealed from this Honorable Court.

Executive Engineer
PBMC C & W Department
EXECUTIVE ENGINEER
PBMC C & W Department
Khyber Pakhtunkhwa Peshawar

Annex-A

4

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.



S.A. NO... 183... /2014

132
04-2-14

MOHAMMAD ALAMGIR KHAN S/O MOHAMMAD AJMAL R/O
CANAL COLONY BEHIND SECONDRY BOARD PESHAWAR.

.....APPELLANT

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR, IV PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTOON KHWA PESHAWAR
5. SHAMS UZ. ZAMAN EX- SUPERINTENDENT ENGINEER.PBMC C&W PESHAWAR PRESENTLY POSTED AS DIRECTOR (TECH).EQAA ABBOTTABAD.

.....RESPONDENT'S

ATTESTED

[Signature]
CHIEF CLERK
KPK Service Tribunal,
Peshawar

APPEAL U/ S 4 OF THE SERVICE TRIBUNAL ACT, 1974 WHEREBY MONTHLY SELARIES OF APPELLANT WERE WITHHELD SINCE APPOINTMENT AND ARRIVAL REPORT FOR DUTY TILL DATE FOR NO LEGAL REASON AND THAT THE REPRESENTATION/DEPARTMENTAL APPEAL FILED AGAINST WAS NOT HONOURED.

[Signature]
4/2/14

as submitted to
is filed.

[Signature]
4/2/14

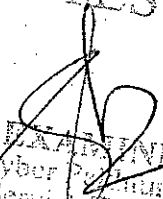
Reply to Preliminary objections.

1. That the appellant is law abiding citizen of Pakistan.

08.7.2014

Appellant with his counsel, official respondents No. 1 to 3 in person alongwith Sr.GP for official respondents and private respondent No.5 with Mr. Muhammad Asif Yousafzai, Advocate present and filed Wakalatnama and written reply. Copies whereof handed over to counsel for the appellant as well as learned Sr.GP

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

2. Arguments on application for temporary injunction heard and case file perused.

3. The learned counsel for the appellant produced before the court Service Book of the appellant and submitted before the court that the appellant has legally been appointed by respondent No. 5 Ex-Superintending Engineer, PBMC C&W Department, Peshawar presently posted as Director (Tech)EQAA, Abbottabad; that the official respondents are now reluctant to allow the appellant to join duty and also not paying him monthly salary.

4. Learned Sr.GP on the contrary argued that the appellant has been illegally appointed and there is no service record of the appellant. hence his request for allowing him to join duty is without any substance.

5. It is evident from the written reply submitted by respondent No. 5 that being Appointing Authority he has appointed the appellant as Work Superintendent (BPS-09) vide order dated 16.01.2013 after approval by the Departmental Selection Committee meeting held on 14.01.2013. Record further reveals that after appointment, the appellant got medically examined from the Police & Services Hospital, Khyber Pakhtunkhwa, Peshawar and thereafter submitted his arrival report. Though the official respondents are denying the appointment of the appellant, yet in the light of admission on the part of the Appointing Authority/respondent No. 5 and record available on the file, this Tribunal is of the firm view that the appellant has prima-facie been appointed on the recommendation of Departmental Selection Committee and after fulfillment of all the codal formalities and he submitted his arrival report. Hence, valuable rights have been accrued to the appellant, the principle of 'locus poenitentiae' is attracted in the case of appellant, therefore, he is entitled for grant of temporary injunctions. The respondents are therefore, directed to allow the appellant to perform his duties and start their monthly salary provisionally. To come up for rejoinder on 18.09.2014.

Certified to be true copy
JUDGE
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Sd/-
Member

Sd/-
Member

Date of Presentation of _____ 10.7.2014
Number of Vendors _____
Copying Fee _____ 800
Amount _____
_____ 11.7.2014
_____ 11.7.2014

To
The Executive Engineer
Provincial Building Maintenance Cell
Peshawar

Subject: ILLEGAL APPOINTMENTS IN PBMC PESHAWAR.

Sir,

In compliance with your letter No.50002/9-E dated 26.06.2013 and Chief Engineer (Centre) C&W Department No.73-E/1345/CE/C&WD dated 27.06.2013, it is to state that I have already submitted my written statement regarding the subject cited case to your good-self on 24.05.2013, which was forwarded to the Superintending Engineer PBMC-Peshawar vide your letter No.4207/38-M dated 24.05.2013 (copy attached).

However I explain my position so for I concern;-

1. On 18-04-2013 I was called by the then Superintending Engineer PBMC Peshawar to his office and delivered me with a letter showing minutes of the DSC meeting dated 14-01-2013 and copies of offer of appointments of some individuals which were endorsed to the office of the Executive Engineer PBMC Peshawar and directed to put receipt signatures with reference to the dates as appeared thereon.
2. It may please be noted that I was posted as Head Clerk PBMC where I assumed my duties on 15.01.2013. So the working Papers/ documents in support of the said DSC meeting have never been shown or brought in my notice.
3. As the offers of appointments were shown issued in January 2013, but actually delivered to me on 18-04-2013, till that even when I was posted - out from the post i.e on 31-05-2013, none of these appointees either reported physically for their jobs nor none of them produced any documents viz Medical Fitness/provision of credential/certificates.

It may further be noted that the documents as stated above were put-up to the then Executive Engineer who endorsed his initial on the offers of appointments but the original copy of the minutes were kept by the Executive Engineer with him and not returned to the records nor to me. However I got a photo copy of the minutes before its put-up to the then Executive Engineer.

My report on the issue is submitted please.

281 / Sa-e
4/7/13
AZEEM KHAN
ACCOUNTS CLERK
O/O CHIEF ENGINEER(C)
C&W DEPARTMENT PESHAWAR

Copy forwarded for information to:-

1. The Superintending Engineer C&W Circle Peshawar
2. The Superintending Engineer PBMC C&W Department, Peshawar.
3. The Section Officer (ESTABT) C&W Department, Peshawar.
4. The Administrative Officer O/O the Chief Engineer (Centre) C&W Dept. Peshawar.

AZEEM KHAN
ACCOUNTS CLERK
04/07/2013

To,

B (8)
2


The Executive Engineer,
PBMC, C&W Department Peshawar.

Subject - WRIT PETITION NO. 1301-P/2013.

It is submitted that Class-IV employees mentioned in the subject Writ Petition have been appointed in month of January 2013 in PBMC. Only appointment orders of the newly appointed employees have been received. There is no documents, which are the pre-requisite of regular appointment i.e. applications of the employees, advertisement of post in news paper, merit list etc are available in this office record.

Neither the related documents have been received nor the employees attended this office till date and their place of duty is also not known.

Report is submitted for your kind perusal please.


Head Clerk
26/5/2013
PBMC C&W Department Peshawar

Annex-C حلفیہ بیان

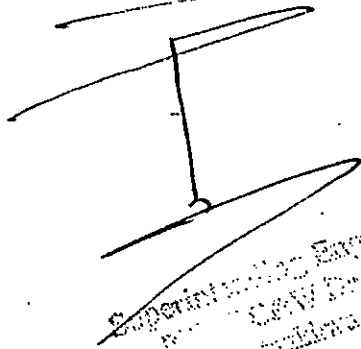
جناب عالی!

منکہ امتیاز خان جو سب ملکر
 لیالی ایچ سی حلفیہ بیان کرتا ہوں کہ
 ماتحت ہونے کے ناطے مجھے شمس الزمان
 اس ای لی ای ایچ سی نے وسیع ریسٹ
 کے ساتھ اپنے گھر و اسع حیات آباد تھلایا
 اور اس کے حکم پر میں نے بیک ڈیٹ میں
 آفس آرڈروں پر نمبر لگائے ہیں۔ اور وسیع
 ریسٹ میں نمبر بھی اس کے حکم پر چھوڑنے
 کے۔

امتیاز خان جو سب ملکر

(Handwritten signature)

NAI 1/1



Superintending Engineer
 C&W Deptt
 Hyderabad Cantonment



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

Annex-D

No.SOR-V(E&AD)/Gen:C&W/13
Dated 10th October, 2013.

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
C&W Department.

Subject: ILLEGAL APPOINTMENT IN PBMC C&W PESHAWAR.

Dear Sir,

I am directed to refer to your letter No.SOE/C&WD/24-60/2013/Association dated 28-8-2013 on the subject cited above and to state that no post has been classified or categorized to be the staff for houses. However provision of Sub Rule-2 of Rule-10 of Appointment, Promotion and Transfer Rules 1989 read with Sub Rule 2&3 of Rule-12 of APT Rules 1989 are quite clear on the subject which may be followed to dispose off the subject case.

Yours faithfully,


(SHABBIR AHMED)
SECTION OFFICER (REG-V)
10-10-13.

GOVERNMENT OF NWFP
ADMINISTRATION DEPARTMENT

Annex-E (11)

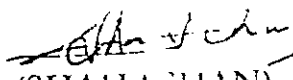
No. E&A(ADM) 4
Dated Peshawar the

The Assistant Account Officer,
C/O Account General,
NWFP, Peshawar.

SUBJECT: STAFF OF PBMC AS HOUSE HOLD STAFF

Reference your letter No. Seat-03 Pay Roll No. 2005
200613, dated 10.12.2006 on the subject noted above.

The staff appointed against the sanctioned posts in the
Governor's Chief Minister's House and other state guests houses are under
the category of house hold staff and they are served under the category of
house hold staff. The PBMC staff working in the state guests houses
established by the Government of NWFP does not come under the category of
house hold staff as they are appointed by the PBMC, but are deputed to posting in
the houses temporarily and their all service matters are dealt by their parent
department.


(SHAI JEHAN)
SECTION OFFICER (ADMN)

SECTION OFFICER

GOVERNMENT OF NWFP
ADMINISTRATION DEPARTMENT

Annex-F

(12)

No. E&A(AD)4(75)/2003
Dated Peshawar the 11.12.2006

To

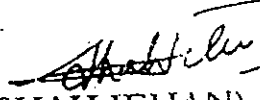
The Deputy Director (PBMC),
Admin. Department.

SUBJECT:- I. DEPARTMENTAL SELECTION / PROMOTION /
PROMOTION AND POSTING / TRANSFER
COMMITTEES.

II. STAFF OF PBMC AS HOUSE HOLD STAFF.

Reference your Endst: No. 1410/9-B dated 07.12.2006 addressed to
Section Officer (Accounts), PBMC copy thereof endst: to this department on the
subject noted above.

The clarification already made in this department letter of even
number dated 01.12.2006 is still hold its good being issued with the approval of the
Secretary Administration, NWFP please.


(SHAH JEHAN)
SECTION OFFICER (ADMIN)

ENDST: OF EVEN NO & DATE.

Copy forwarded to the Section Officer (Accounts), PBMC Admin:
Department for information please.


SECTION OFFICER (ADMIN)

REC
AD
137/12

Dy No 106/96

CH 18.12.06

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service appeal No. 183/2014

Muhammad Alamgir S/O Muhammad Ajmal,
Resident of Canal Colony Behind Secondary Board,
Peshawar & OTHERS. (Maintain Appeals No. 184/2014, 185/2014, 186/2014,
187/2014, 188/2014, 189/2014, 190/2014, 217/2014, 218/2014, 219/2014,
220/2014, 221/2014, 222/2014, 223/2014, 249/2014, 250/2014, 251/2014
(17 Nos)

.....Appellants

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION & WORK DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR-IV PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTUNKHWA PESHAWAR.
5. SHAMS-UZ-ZMAN EX-SUPERINTENDENT ENGINEER C&W PESHAWAR PRESENTLY POSTED AS DIRECTOR (TECH) EQAA ABBOTTABAD.

.....Respondents

APPLICATION FOR THE VACATION OF ORDERS PASSED ON 08/07/2014.

Respectfully Sheweth;

1. That 18-Nos Main Service Appeals are pending adjudication before this Honorable Tribunal wherein next date 18/09/2014 is fixed.
2. That comments to the Main Service Appeals as well as reply on the applications for the Grant of Interim Injunctions have since been filed in this Honorable Tribunal.
3. That the Hon'able Tribunal has held in its order dated 08/07/2014 as under: -
"to allow the appellant to perform his duties and start their monthly salary provisionally" (Copy of the above order is annexed as **(Annexed-A)**).
4. That the order ibid is liable to be vacated inter alia on the following grounds: -

- a. That the order of temporary injunction has badly affected the merits of the main appeals wherein the main preliminary objection of Petitioners/Respondents have not yet been decided regarding the illegal orders of the appellants.
- b. That orders for payment of salaries even provisional and to allow perform duties (Now) are not warranted by any law for the time being enforce, hence liable to be vacated on this sole ground.
- c. That on the implementation of ibid orders, the illegal and void appointments shall receive a legal cover directly on the passing of such temporary injunction.
- d. That it is yet to be decided that the illegal appointments orders, have been made under the relevant Ruls-10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 explicitly indicated in the offers of appointments of each individual issued under the signatures of the Private Respondent-5 (Mr. Shams-uz-Zaman the then Superintending Engineer PBMC).
- e. That the private respondent-5 stated in his written as well as verbal statement before this Court that he has made appointments through Departmental Selection Committee on 14/01/2013 and are regular, if it so, then under what circumstances, he had not paid salaries to the appellants uptill his posting out from PBMC in 04/2013 when he and the then XEN PBMC (Ghulam Yazdani) who was also a member of the Departmental Selection Committee, with conspiracy and in connivance of each other (amongst them) have signed the relevant entries in Service Books, which never been provided in office by any of them. Original still helds with them/him. He kept these orders with him uptill 18/04/2013 for which the written statement of the then Head Clerk (Mr. Azeem Khan) of XEN PBMC Office and Dispatch Clerk (Mr. Imtiaz) of PBMC Circle Office have since been annexed with the replies / comments on Main Service Appeals and on the Application for the Grant of Interim Injunction as well, which in fact warrants great importance in these appointment/cases (**Annexed B&C**).
- f. That written reply/comments of the Respondents No.1 to 4 filed against main appeals and stay application of the appellants may also be treated as integral part of this petition

- g. That finding of the Departmental Inquiry, ordered by the respondent-4 (Secretary C&W Department) in these illegal and void appointments orders made by the private respondent-5 has also been annexed with the replies/comments filed by respondents 1 to 4, where the action taken by private respondent-5 termed as illegal after detailed study / its pros and cones and the clarification of Establishment Department (Regulation Wing) tendered vide Memo No. SOR-V(E&AD)/Gen: C&W/13 dated 10-12-2013 and the ancillary instructions issued by the Administration Department Memo No. E&A(AD)4(75)/2003 dated 01/12/2006 and even number dated 11/12/2006 (**Annexed-D, E & F**) when the PBMC Directorate and XEN PBMC Office were attached as Subordinate Attached Offices of the Administration Department, Civil Secretariat up to 30-06-2009.
- h. That all the three ingredients required for interim relief, are missing in the instant petitions.

In the wake of above said circumstances, it is prayed that the orders passed on 08/07/2014, granting the Temporary Injunction as mentioned at Para-3 above, may graciously be vacated/discharged till the final decision on the Main Appeals pending adjudication before the Honorable Tribunal.

~~Superintending Engineer PBMC
(Respondent No. 1)
PBMC C & W Department
Khyber Pakhtunkhwa Peshawar~~

~~Executive Engineer PBMC
(Respondent No. 2/3)
PBMC C & W Department
Khyber Pakhtunkhwa Peshawar~~

Secretary to Govt of Khyber Pakhtunkhwa
Communication & Works Department
(Respondents No. 4)

Dated ____th July, 2014

Through: Senior Govt Pleader
Khyber Pakhtunkhwa Service Tribunal

AFFIDAVIT

I Engr: Abdul Ghafoor Executive Engineer PBMC C&W Department Peshawar do hereby solemnly affirm and declare that the contents of application for the vacation of order passed on 08/07/2014 are true and correct to the best of my knowledge and belief and that nothing has been kept secret or concealed from this Honorable Court.

Executive Engineer
PBMC C & W Department
PBMC C & W Department
Khyber Pakhtunkhwa Peshawar

Annex-A

4



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

S.A. NO...183... /2014

139
24-2-14

MOHAMMAD ALAMGIR KHAN S/O MOHAMMAD AJMAL R/O
CANAL COLONY BEHIND SECONDRY BOARD PESHAWAR.

.....APPELLANT

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR, IV PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTOON KHWA PESHAWAR
5. SHAMS UZ. ZAMAN EX-SUPERINTENDENT ENGINEER.PBMC C&W PESHAWAR PRESENTLY POSTED AS DIRECTOR (TECH)EQAA ABBOTTABAD.

.....RESPONDENTS

ATTESTED

MAHMOOD
Khyber Pakhtoonkhwa
Service Tribunal,
Peshawar

4/2/14

submitted to
and filed.

4/2/14

Reply to Preliminary objections.

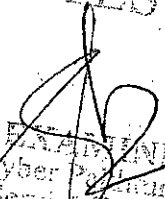
APPEAL U/ S 4 OF THE SERVICE TRIBUNAL ACT, 1974 WHEREBY MONTHLY SELARIES OF APPELLANT WERE WITHHELD SINCE APPOINTMENT AND ARRIVAL REPORT FOR DUTY TILL DATE FOR NO LEGAL REASON AND THAT THE REPRESENTATION/DEPARTMENTAL APPEAL FILED AGAINST WAS NOT HONOURED.

1. That the appellant is law abiding citizen of Pakistan.

08.7.2014

Appellant with his counsel, official respondents No. 1 to 3 in person alongwith Sr.GP for official respondents and private respondent No.5 with Mr. Muhammad Asif Yousafzai, Advocate present and filed Wakalatnama and written reply. Copies whereof handed over to counsel for the appellant as well as learned Sr.GP

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

2. Arguments on application for temporary injunction heard and case file perused.

3. The learned counsel for the appellant produced before the court Service Book of the appellant and submitted before the court that the appellant has legally been appointed by respondent No. 5 Ex-Superintending Engineer, PBMC C&W Department, Peshawar presently posted as Director (Tech)EQAA, Abbottabad; that the official respondents are now reluctant to allow the appellant to join duty and also not paying him monthly salary.

4. Learned St.GP on the contrary argued that the appellant has been illegally appointed and there is no service record of the appellant, hence his request for allowing him to join duty is without any substance.

5. It is evident from the written reply submitted by respondent No. 5 that being Appointing Authority he has appointed the appellant as Work Superintendent (BPS-09) vide order dated 16.01.2013 after approval by the Departmental Selection Committee meeting held on 14.01.2013. Record further reveals that after appointment, the appellant got medically examined from the Police & Services Hospital, Khyber Pakhtunkhwa, Peshawar and thereafter submitted his arrival report. Though the official respondents are denying the appointment of the appellant, yet in the light of admission on the part of the Appointing Authority/respondent No. 5 and record available on the file, this Tribunal is of the firm view that the appellant has prima-facie been appointed on the recommendation of Departmental Selection Committee and after fulfillment of all the codal formalities and he submitted his arrival report. Hence, valuable rights have been accrued to the appellant, the principle of 'locus poenitentiae' is attracted in the case of appellant, therefore, he is entitled for grant of temporary injunctions. The respondents are therefore, directed to allow the appellant to perform his duties and start their monthly salary provisionally. To come up for rejoinder on 18.09.2014.

Certified to be true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Sd/-
Member

Sd/-
Member

Date of Presentation of

10.7.2014

Number of Vols

1200

Copying Fee

800

Amount

800

11.7.2014

11.7.2014

To
The Executive Engineer
Provincial Building Maintenance Cell
Peshawar

Subject: ILLEGAL APPOINTMENTS IN PBMC PESHAWAR.

Sir,

In compliance with your letter No.50002/9-E dated 26.06.2013 and Chief Engineer (Centre) C&W Department No.73-E/1345/CE/C&WD dated 27.06.2013, it is to state that I have already submitted my written statement regarding the subject cited case to your good-self on 24.05.2013, which was forwarded to the Superintending Engineer PBMC-Peshawar vide your letter No.4207/38-M dated 24.05.2013 (copy attached).

However I explain my position so for I concern;-

1. On 18-04-2013 I was called by the then Superintending Engineer PBMC Peshawar to his office and delivered me with a letter showing minutes of the DSC meeting dated 14-01-2013 and copies of offer of appointments of some individuals which were endorsed to the office of the Executive Engineer PBMC Peshawar and directed to put receipt signatures with reference to the dates as appeared thereon.
2. It may please be noted that I was posted as Head Clerk PBMC where I assumed my duties on 15.01.2013. So the working Papers/ documents in support of the said DSC meeting have never been shown or brought in my notice.
3. As the offers of appointments were shown issued in January 2013, but actually delivered to me on 18-04-2013, till that even when I was posted - out from the post i.e on 31-05-2013, none of these appointees either reported physically for their jobs nor none of them produced any documents viz Medical Fitness/provision of credential/certificates.

It may further be noted that the documents as stated above were put-up to the then Executive Engineer who endorsed his initial on the offers of appointments but the original copy of the minutes were kept by the Executive Engineer with him and not returned to the records nor to me. However I got a photo copy of the minutes before its put-up to the then Executive Engineer.

My report on the issue is submitted please.

281 / Sa-e
4/7/13
AZEEM KHAN
ACCOUNTS CLERK
O/O CHIEF ENGINEER(C)
C&W DEPARTMENT PESHAWAR

Copy forwarded for information to:-

1. The Superintending Engineer C&W Circle Peshawar
2. The Superintending Engineer PBMC C&W Department, Peshawar.
3. The Section Officer (ESTABT) C&W Department, Peshawar.
4. The Administrative Officer O/O the Chief Engineer (Centre) C&W Dept: Peshawar.

AZEEM KHAN
ACCOUNTS CLERK
04/07/2013

To,

B (8)
2

The Executive Engineer,
PBMC, C&W Department Peshawar.

Subject: - WRIT PETITION NO. 1301-P/2013.

It is submitted that Class-IV employees mentioned in the subject Writ Petition have been appointed in month of January 2013 in PBMC. Only appointment orders of the newly appointed employees have been received. There is no documents, which are the pre-requisite of regular appointment i.e. applications of the employees, advertisement of post in news paper, merit list etc are available in this office record.

Neither the related documents have been received nor the employees attended this office till date and their place of duty is also not known

Report is submitted for your kind perusal please.


Head of
PBMC C&W Department Peshawar

جناب عالی!

منکہ اعتباراً خان جونیر ملنگ
پجالی ایچ سی حلفیہ بیان کرتا ہوں کہ
ما تحت ہونے کے ناطے مجھے شمس الرحمن
اس ای سی ای لی ایچ سی نے ڈسٹریکٹ
کے ساتھ اپنے گھر واقع حیات آباد تھلایا
اور اس کے حکم پر میں نے بیک ڈیٹ میں
آفس آرڈر لکھوائے ہیں۔ اور ڈسٹریکٹ
رہسٹری میں نمبر بھی اس کے حکم پر چھوڑنے
کے۔

استیاز خان جونیر ملنگ

NT 1/1

Superintendent Engineer
C&W Deptt.
Ayaz Ahmadhara Peshawar

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

Annex-D

No.SOR-V(E&AD)/Gen:C&W/13
Dated 10th October, 2013.



To

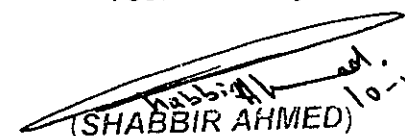
The Secretary to Govt. of Khyber Pakhtunkhwa,
C&W Department.

Subject: ILLEGAL APPOINTMENT IN PBMC C&W PESHAWAR.

Dear Sir,

I am directed to refer to your letter No.SOE/C&WD/24-60/2013/Association dated 28-8-2013 on the subject cited above and to state that no post has been classified or categorized to be the staff for houses. However provision of Sub Rule-2 of Rule-10 of Appointment, Promotion and Transfer Rules 1989 read with Sub Rule 2&3 of Rule-12 of APT Rules 1989 are quite clear on the subject which may be followed to dispose off the subject case.

Yours faithfully,


(SHABBIR AHMED)
SECTION OFFICER (REG-V)
10-10-13.

GOVERNMENT OF NWFP
ADMINISTRATION DEPARTMENT

Amex-5

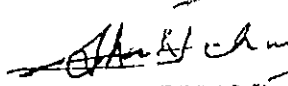
No. E&A(AD)4(75)/2003
Dated Peshawar the 01.12.2006

The Assistant Account Officer,
O/O Account General,
NWFP, Peshawar.

SUBJECT: STAFF OF PBMC AS HOUSE HOLD STAFF.

Reference your letter No. Seat-03/Pay Roll.05(M PBMC, 2005-2006) dated 20.12.2006 on the subject noted above.

The staff appointed against the sanctioned posts in the Governor's/Chief Minister's House and other state guests house etc comes under the category of house hold staff and they are served under the rules framed for house hold staff. The PBMC staff working in the state house/guest houses established by the Government of NWFP does not come under the category of house hold staff as they are appointed by the PBMC, but are detailed for posting in the houses temporarily and their all service matters are dealt by their parent department.


(SHAH JEHAN)
SECTION OFFICER (ADMN)

SECTION OFFICER

#

GOVERNMENT OF NWFP
ADMINISTRATION DEPARTMENT

Annex-7

No.E&A(AD)4(75)/2003
Dated Peshawar the 11.12.2006

To

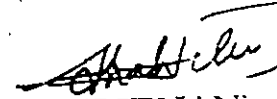
The Deputy Director (PBMC),
Admn: Department.

SUBJECT:- I. DEPARTMENTAL SELECTION / PROMOTION / PROMOTION AND POSTING / TRANSFER COMMITTEES.

II. STAFF OF PBMC AS HOUSE HOLD STAFF.

Reference your Endst: No. 1410/9-B, dated 07.12.2006 addressed to Section Officer (Accounts), PBMC copy thereof endst: to this department on the subject noted above.

The clarification already made in this department letter of even number dated 01.12.2006 is still hold its good being issued with the approval of the Secretary Administration, NWFP please.


(SHAH JEHAN)
SECTION OFFICER (ADMN)

ENDST: OF EVEN NO & DATE.

Copy forwarded to the Section Officer (Accounts), PBMC Admn: Department for information please.


SECTION OFFICER (ADMN)

DATE REC.
12/12

Dy. No. 106/97

off 18-12-06