

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1074/2022

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS. FAREEHA PAUL ... MEMBER(E)

Ihtiram Khan, Principal Government High School Pashta Khara
Payan, Peshawar.

.... (Appellant)

Versus

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education, Peshawar.
3. The Director, Elementary & Secondary Education, Peshawar.
4. The District Education Officer (Male), Peshawar.
5. Khalil Ur Rehman, Principal Government High School, Lowara Maina Jamrod, District Khyber.

.... (Respondents)

Mr. Rizwan Ullah
Advocate

... For appellant

Mr. Naseer Ud Din Shah
Addl. Advocate General

... For respondents

Mr. Javid Iqbal Gulbela
Advocate

... For Private respondents

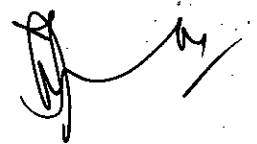
Date of Institution.....30.06.2022

Date of Hearing.....04.10.2022

Date of Decision.....04.10.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the alleged premature and politically motivated transfer vide impugned notification dated 22.03.2022 issued by the Secretary Elementary & Secondary Education Department (Respondent No. 2), whereby notification of transfer dated



10.02.2022 of the appellant and his co-employee was cancelled and one, Khalil Ur Rehman, Principal Government High School, Lowara Maina, Jamrod (Respondent No. 5) was posted in his place.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as Principal Government Higher Secondary School Urmar Bala, Peshawar. He and one, Raz Muhammad, Principal Government High School, Pashta Khara Payan, Peshawar, made a joint request to Respondent No. 2 for their mutual transfer which was accepted and a formal notification dated 10.02.2022 was issued. In pursuance of that, the appellant submitted his arrival report on 14.02.2022. While he was performing his duties there with full devotion, one, Khalil Ur Rehman, Principal Government High School, Lowara Maina, Jamrod (Respondent No. 5) was transferred in his place vide notification dated 22.03.2022 and that was made effective from 03.04.2022. Transfer notification of the appellant dated 10.02.2022 was withdrawn/cancelled vide a separate notification dated 22.03.2022.

3. Feeling aggrieved, the appellant preferred departmental appeal on 31.03.2022 with the prayer to set aside the notification dated 22.03.2022, but his appeal was not responded; hence this service appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

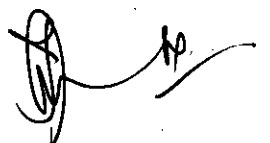
5. Learned counsel for the appellant presented the case and referred to the Posting and Transfer Policy of Government of Khyber Pakhtunkhwa as well as principles laid down by the august Supreme Court of Pakistan in case reported in PLD-2013-SC-195 (citation-h) and 1996-SCMR-284 (citation-c). While referring



to PLD-2013-SC-195(citation-h) he argued that tenure for posting had been specified in the Posting and Transfer Policy of Provincial Government, but in case of appellant it had not been followed and his transfer order was cancelled after passage of just one month and a few days. He invited the attention to the (citation-h) by the august Supreme Court of Pakistan which clearly mentioned that transfer of civil servants by political figures which were capricious and were based on considerations not in the public interest were not legally sustainable. He further referred to 1996-SCMR-284, which stated in its citation-c that law declared by Supreme Court would be binding on all courts, tribunals and bureaucratic set-up in Pakistan.

6. The learned Assistant Advocate General, on the other hand, contended that under Section-10 of the Civil Servant Act 1973, every civil servant was bound to serve anywhere within the province in the best interest of public service. He referred to 2020-SCMR-1432, according to which government servant was required to serve where his employer wanted him to serve and it was not a choice or prerogative of the employer to claim a right to serve at place that he choose to serve. He further contended that in response to his departmental appeal, the appellant was provided an opportunity of personal hearing by the respondent department but he did not avail that.

7. In view of the arguments and record presented before us, it is evident that appellant was transferred from Government Higher School Urmar Bala, Peshawar to Government High School Pashta Khara Payan, Peshawar on 10.02.2022, and he assumed the charge of new position on 14.02.2022. On 22.03.2022, his transfer order was withdrawn/cancelled, without giving any reason. On the same date another Principal (Khalil Ur Rehman) was transferred in his place and the transfer was given effect from 03.04.2022. A point to be noted here is that the appellant




stayed at GHS Pashta Khara Payan for a little more than one month after assuming charge there, his transfer order was cancelled. It appears to be a sheer violation of Posting/Transfer Policy of the provincial government, which defines the tenure very clearly, which in this case should have been two years. Respondents violated not only the government policy but they violated the instructions issued vide Establishment Department's letter No. SOR.VI(E&AD)1-4/2005-Vol-II dated 27.02.2013, which were circulated in pursuance of Constitution Petition No. 23 of 2012 out of Suo moto case No. 3/2013, a petition by Ms. Anita Turab for protection of civil servants. In that case the august Supreme Court of Pakistan clearly found that when the ordinary tenure for a posting had been specified in law or rules made thereunder, such tenure must be respected and can not be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable. In the present case before us, we observe that the appellant's transfer order was cancelled just one month after he joined his new position, and no reason was given as to why the order was being cancelled prematurely and without allowing the appellant to complete normal tenure as per the government policy.

8. In the light of above discussion, the appeal in hand is allowed. Respondents are directed to withdraw the cancellation order of appellant dated 22.03.2022 and let him serve as Principal Government High School Pashta Khara Payan, Peshawar till completion of normal tenure as given in the Transfer/Posting Policy of provincial government. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 4th day of October, 2022.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Service Appeal No. 1074/2022

1. Mr. Rizwan Ullah, Advocate for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for official respondents present. Mr. Javid Iqbal Gulbela, Advocate for private respondent present. Arguments heard and record perused.

2. Vide our detailed judgement containing 04 pages, we have arrived at a conclusion that the appeal in hand is allowed. Respondents are directed to withdraw the cancellation order of appellant dated 22.03.2022 and let him serve as Principal Government High School Pashta Khara Payan, Peshawar till completion of normal tenure as given in the Transfer/Posting Policy of provincial government. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 4th day of October, 2022.*


(FAREEHA PAUL)
Member (E)



(KALIM ARSHAD KHAN)
Chairman

28.07.2022

Appellant present in person. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Faheem Khan, Assistant for respondents present.

Written reply/comments not submitted. Representative of the respondent department seeks time for submission of written reply/comments. To come up for written reply/comments on 15.09.2022 before S.B.

The operation of the impugned order shall remain suspended till the date fixed.


(Fareeha Paul)
Member (E)

15th Sept, 2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Fahim Shah, Assistant for official respondents and private respondent No.5 alongwith his counsel present.

Written reply on main appeal as well as on stay application on behalf of official respondents No. 1 to 4 submitted which is placed on file. Private respondent No.5 rely on the reply of official respondents. To come up for arguments on 04.10.2022 before D.B. The operation of the impugned order shall remain suspended till the date fixed.


(Kalim Arshad Khan)
Chairman

4th July, 2022

Appellant alongwith his counsel present.

Learned counsel for the appellant submits that vide notification No. SO(SM) E&SED/5-18/2022/PT/Principal dated 10.02.2022, the appellant was transferred from GHSS Umar Bala Peshawar and posted as Principal GHS Pashta Khara Payan on mutual request of two officers. That in compliance with the notification, the appellant assumed the charge of the post and started performing his duty when on 22.03.2022 the above transfer notification was withdrawn /cancelled and respondent No.5 was posted as Principal GHS Pashta Khara Payan through another notification of the same date. Learned counsel submits that the appellant was not allowed to complete his normal tenure. He filed departmental representation on 31.03.2022, which was not responded within statutory period of ninety days, compelling him to file this appeal which is within time. This appeal is thus admitted to full hearing subject to all just and legal objections by the other side. Out district respondents be summoned through TCS, the expenses of which be deposited by the appellant within three days, while the local respondents be summoned through process serving agency of the learned Senior Civil Judge, Peshawar. To come up for written reply/comments on 28.07.2022 before S.B.

As to the application for suspension of the operation of the impugned order dated 22.03.2022, it is directed that the operation of the impugned order dated 22.03.2022, shall stand suspended till the next date subject to the notices to the other side.


(Kalim Arshad Khan)
Chairman

Rs - 700/-
Appellant Deposited
Security & Process Fee

A. J. J. J. J.
Jul/7/22


SCANNED
KPST
Peshawar

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1074/2022 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30/06/2022	<p>The appeal of Mr. Ihtiram Khan presented today by Mr. Rizwanullah 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</p>
2-		<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">CHAIRMAN</p>

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Versus

..... Appellant

..... Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: <u>Advocate</u> <u>Court</u>	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Rizwanullah

Signature:- [Signature]

Dated:- 30-6-2022

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 1074 /2022

1. Ihtiram Khan, Principal Government High School Pashta Khara Payan, Peshawar.

APPELLANT

**SCANNED
KPST
Peshawar**

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others.

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Service Appeal	—	1-7
2	Affidavit	—	8
3	Copy of transfer order dated 10-02-2022	A	9
4	Copy of arrival report dated 14-02-2022	B	10
5	Copy of cancellation notification dated 22-03-2022	C	11
6	Copy of notification of transfer dated 22-03-2022	D	12
7	Copy of departmental appeal dated 31-03-2022	E	13
8	Copy of letter of Establishment Department dated 27-02-2013	F	14-15
9	Application for stay with affidavit	—	16-17
10	Wakalatnama	—	—

Through

Dated: 30-06-2022

Appellant

Rizwanullah

M.A. LL.B

Advocate High Court, Peshawar

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 1074 /2022

Diary No. 582

Dated 30-6-2022

1. Ihtiram Khan, Principal Government High School Pashta Khara Payan, Peshawar.

APPELLANT

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education, Peshawar.
3. The Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. The District Education Officer (M) Peshawar.
5. Khalil ur Rehman, Principal Government High School Lowara Miana, Jamrud, District Khyber.

RESPONDENTS

Filed to-day
Registrar
30/6/2022

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
PRE-MATURE AND POLITICALLY
MOTIVATED TRANSFER ORDER/
NOTIFICATION DATED 22-03-2022
PASSED BY THE SECRETARY
ELEMENTARY AND SECONDARY
EDUCATION, DEPARTMENT**

(RESPONDENT NO. 2) WHEREBY THE NOTIFICATION OF TRANSFER DATED 10-02-2022 IN RESPECT OF APPELLANT AND CO-EMPLOYEE WAS CANCELLED AND ONE KHALIL UR REHMAN, PRINCIPAL GOVERNMENT HIGH SCHOOL, LOWARA MAINA JAMRUD (RESPONDENT NO. 5), WHO WAS THE BLUE EYED CHAP OF THE AUTHORITY WAS POSTED IN HIS PLACE IN UTTER VIOLATION OF LAW. A DEPARTMENTAL APPEAL WAS FILED ON 31-03-2022 BUT THE SAME WAS NOT RESPONDED WITHIN THE STATUTORY PERIOD OF LAW.

Prayer in Appeal

By accepting this appeal, both the impugned notifications dated 22-03-2022 passed by the Secretary Elementary and Secondary Education, Department (Respondent No. 2) may very graciously be set-aside being politically motivated, pre-mature and passed in utter violation of the Constitution, posting/transfer policy of the Government of Khyber Pakhtunkhwa as well as law laid down by august Supreme Court of Pakistan in various judgments.

Any other relief deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.

Respectfully Sheweth,

Short facts giving rise to the present appeal are as under:-

1. That the appellant was serving as a Principal Government Higher Secondary School, Urmar Bala Peshawar. He and one Raaz

Muhammad, Principal Government High School Pashta Khara Payan, Peshawar, made a joint request to respondent No. 2 for their mutual transfer which was accepted and formal notification whereof was duly issued in the best public interest on 10-02-2022.

(Copy of transfer order is appended as Annex-A)

2. That after receiving the above order, the appellant submitted arrival report on 14-02-2022. He was performing his duty with great zeal and devotion, and no complaint whatsoever was received against him to his superiors. Nevertheless, one Khalil ur Rehman (respondent No. 5) was indescribably and shockingly able to preponderate and prevail over the Competent Authority through unfair means to dislodge the appellant from his post and accommodate him in his place. The authority, firstly cancelled/withdrawn the Notification regarding transfer dated 10-02-2022 and thereafter, accommodated the respondent No. 5 in place of appellant and that the notification was made enforceable from 03-04-2022 vide Notification dated 22-03-2022 in utter violation of law.

(Copy of arrival order, Notification for Cancellation and Notification of transfer are appended as Annex-B, C and D respectively)

3. That the appellant felt aggrieved, filed a departmental appeal on 31-03-2022 praying therein that the impugned notifications dated 22-03-2022 may graciously be set aside on the grounds mention therein. But the same was not responded.

(Copy of Departmental Appeal is appended as Annex-E).

4. That the appellant now files this service appeal before this Hon'ble Tribunal inter-alia on the following grounds:-

GROUND OF APPEAL

- A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned notifications are against the spirit of administration of justice.
- B. That the Competent Authority was under statutory obligation to have retained the appellant as Principal Government High School Pashta Khara Payan, Peshawar till completion of his tenure as per Posting and Transfer Policy of Government of Khyber Pakhtunkhwa as well as law laid down by august Supreme Court of Pakistan in case reported in **PLD-2013-SC-195 (citation-h)**. The relevant citation is reproduced herein for facility of reference:

PLD-2013-SC-195(citation-h)

Civil Servants Act (LXXI of 1973)---

----Ss. 4 & 10---Constitution of Pakistan, Art. 184(3)---Tenure, posting and transfer of civil servants---Principles--- When the ordinary tenure for a posting had been specified in the law or rules made thereunder, such tenure must be respected and could not be varied, except for compelling reasons, which should be recorded in writing and were judicially reviewable--Transfers of civil servants by political figures which were capricious and were based on considerations not in the public interest were not legally sustainable.

Therefore, the impugned notifications are not sustainable in the eye of law.

- C. That the Establishment Department of Khyber Pakhtunkhwa vide letter No.SOR.VI(E&AD)1-4/2005/Vol-II dated 27-2-2013 directed all the Secretaries of the respective Departments in Province for strict implementation of the aforesaid dictum of august Supreme Court of Pakistan. But despite thereof, the respondent No. 2 has blatantly violated the above dictum by passing the impugned transfer notifications.

(Copy of letter of Establishment Department is appended as Annex-E).

- D. That it is well settled law that the decision of august Supreme Court of Pakistan is binding on each and every organ of the state by virtue of **Article 189 & 190 of the Constitution of Islamic Republic of Pakistan, 1973**. Reliance can be placed on the judgment of apex court reported in **1996-SCMR-284 (citation-c)**. The relevant citation is mentioned below:

1996-SCMR-284
(citation-c)

---Arts. 189 & 190---Decision of Supreme Court---Binding, effect of--Extent--Law declared by Supreme Court would bind all Courts, Tribunals and bureaucratic set-up in Pakistan.

But the respondent No. 2 has blatantly violated the above dictum of august Supreme Court of Pakistan by passing the impugned notifications.

- E. That the impugned notifications were the absolute outcome of malafide action and colorable exercise of powers by the concerned Authority who did not apply its independent mind and blatantly violated all Rules, Regulations and norms notwithstanding the short

tenure of appellant at the station. Thus, the impugned notifications are not tenable under the law.

- F. That the Appellate Authority was under statutory obligation to have decided the departmental appeal filed by the appellant after application of mind with cogent reasons within reasonable time as per law laid down by august Supreme Court of Pakistan reported in 2011-SCMR-page-1. It would be advantageous to reproduce herein the relevant citation for facility of reference: -

2011-SCMR-page-1

Citation-b

**S. 24-A---Speaking order-Public
functionaries are bound to decide
cases of their subordinates after
application of mind with cogent
reasons within reasonable time.**

But the Appellate Authority has blatantly violated the above dictum of Apex Court of country by not disposing of the departmental appeal within the statutory period of law. Therefore, the impugned notifications are liable to be set aside on this count alone.

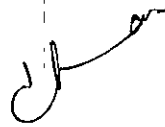
- G. That the Notification in respect of appellant and co employee was cancelled without completing his lawful tenure and the same was obviously done to accommodate his blue-eyed chap. Thus, the same is nullity in the eye of law.
- H. That the impugned notifications are against law, facts of the case and norms of natural justice. Therefore, the same are not warranted under the law.
- I. That the respondent No. 2 has passed the impugned notifications in mechanical manner and the same is perfunctory as well as non-

speaking and also against the basic principle of administration of justice. Thus, not tenable under the law.

- J.** That the impugned notifications are based on conjectures and surmises. Hence, the same are against the legal norms of justice.
- K.** That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned notifications dated 22-03-2022 passed by the Secretary Elementary and Secondary Education, Department (Respondent No. 2) may very graciously be set-aside being politically motivated, pre-mature and passed in utter violation of Constitution, posting/transfer policy of Government of Khyber Pakhtunkhwa as well as law laid down by august Supreme Court of Pakistan in various judgments.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.


Appellant

Through


14
Rizwanullah
M.A. LL.B

Dated: 30-06-2022

Advocate High Court, Peshawar

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2022

1. Ihtiram Khan, Principal Government High School Pashta Khara Payan, Peshawar.

APPELLANT

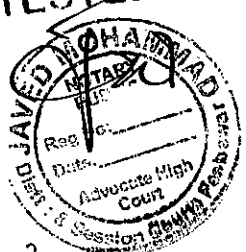
VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others.

RESPONDENTS

AFFIDAVIT

I, Ihtiram Khan, Principal Government High School Pashta Khara Payan, Peshawar, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

ATTESTED

30 JUN 2022


DEPONENT



Annex - A (9)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223533

Dated Peshawar the February 10, 2022

NOTIFICATION

NO.SO(SM)E&SED/5-18/2022/PT/Principal : The following Principals of Elementary & Secondary Education Department is hereby transferred and posted (on mutual basis) as mentioned against each, with immediate effect, in the best public interest:-

S#	Name & Designation	From	To
1.	Mr. Ihtiram Khan Principal (BS-18)	GHSS Urmar Bala Peshawar	Principal (BS-18) GHS Pashta Khara Payan Peshawar vice S.No.02.
2.	Mr. Raaz Muhammad Principal (BS-18)	GHS Pashta Khara Payan Peshawar	Principal (BS-18) GHSS Urmar Bala Peshawar vice S.No.01.

**SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT**

Endst: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Peshawar.
4. District Accounts Officers, Peshawar.
5. Director, EMIS E&SE Department.
6. PS to Minister for E&SE Department.
7. PS to Secretary E&SE Department.
8. PA to Deputy Secretary (Admn) E&SE Department.
9. Officers concerned.
10. Office order file.

Attested
Chan.
Appellant

Mansoor
10/2/2022
(HAFEEZ UR REHMAN SHAH)
SECTION OFFICER (SCHOOLS MALE)

ARRIVAL REPORT

Annex - B (10)

This is to certify that I Mr. Iltiram Khan Principal GHSS Urmar Bala Peshawar submit my arrival report on 14/2/ 2022 to the Principal Government Shaheed Maheer Rizwan High School Pustakhara Payan vide Order No. SO (SM) E&SED/5—18—2022/ PT/ Principal: 10/2/2022.

Signature Sd
Principal GHSS Urmar Bala
Peshawar.

Copy Forwarded to;

1. SO School E&SE Peshawar.
2. District Account Officer Peshawar.
3. Director E&SE Peshawar.
4. DEO (M) Peshawar.
5. Officer Concerned.

Attested
Sd an
Appellant

o/c

Signature Sd an
Principal GHSS Urmar Bala
Peshawar. 14-2-2022
Principal
Govt Higher Secondary School
Urmar Bala Peshawar

Arrival
received &
accepted.

Rafiq
14/2/2022
PRINCIPAL
Govt Shaheed Maheer Rizwan
High School Pustakhara
Payan Peshawar.

Annex-C

Dated Peshawar the March 22, 2022

NOTIFICATION

NO.SO(SM)E&SE/D/5-18/2022/P1/Principal: The posting/transfer Notification of even number dated 10-02-2022 is hereby withdrawn/ cancelled in the best public interest

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst of even No & Date

Copy forwarded to the

- 1 Accountant General, Khyber Pakhtunkhwa Peshawar
- 2 Director, E&SE Khyber Pakhtunkhwa, Peshawar
- 3 District Education Officer (Male) concerned
- 4 District Accounts Officers, concerned
- 5 Director EMIS E&SE Department
- 6 PS to Minister for E&SE Department
- 7 PS to Secretary E&SE Department
- 8 PA to Deputy Secretary (Admin) E&SE Department
- 9 Mr Ihtiram Khan Principal GHS Pashta Khara Payan Peshawar
- 10 Mr Raaz Muhammad Principal GHSS Umar Bala Peshawar.
- 11 Office order file

Attest
Chair
Appellant

(SYEDA ZAINAB NAQVI)
SECTION OFFICER (SCHOOLS MALE)

12

Date: 03-04-2022

NOTIFICATION

Annex-D

NO.SO(SM)E&SED/5-18/2022/ PT/G/SS/Principal: Mr. Khalil ur Rehman, Principal (BS-18) GHS Lowara Miana Jamrud Khyber is hereby transferred and posted as Principal (BS-18) at GHS Pashta Khara Payan Peshawar in the best public interest.

2. The above posting/transfer will take effect from 03-04-2022 due to the retirement of incumbent Principal.

**SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT**

Endst: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) concerned.
4. District Accounts Officers, concerned.
5. Director, EMIS E&SE Department.
6. PS to Minister for E&SE Department.
7. PS to Secretary E&SE Department.
8. PA to Deputy Secretary (Admn) E&SE Department.
9. Mr. Khalil ur Rehman, Principal GHS Lowara Miana Jamrud Khyber .
10. Office order file.

Attest
Char
Appellant

(Signature)

**(SYEDA ZAINAB NAQVI)
SECTION OFFICER (SCHOOLS MALE)**

The Secretary
S.E.D.,
Khyber Pakhtunkhwa

Received
Section Officer (31-3-22)
Education Department
Civil Sect: Khyber Pakhtunkhwa

Amex.

13

Sub: Cancellation of withdrawal of posting order and adjustment of the new incumbent on vacant post.

Sir,

This is to draw your attention towards the captioned subject and to state that I was posted as a result of mutual transfer to the post of Principa BS-18 at GHS Purbtakkara Payam in Feb 2022. I assumed charge of office, started work but to my astonishment I was conveyed that my order has been cancelled and a new incumbent Khalid ur Rehman who is by designation SS BS-18 was posted at my place on 22nd March 2022 after withdrawal of ^{my} order.

Sir, now how can I go back to my previous station although I remained there at GHSS Urmar for FIVE years whereas this Khalid ur Rehman passed only one and a half year on his station.

I request you to kindly withdraw his order and who politically cancelled my order and allow me to continue my duties at GHS Purbtakkara. He Khalid ur Rehman may be posted at GHSS Urmar Baloch which is lying vacant after the retirement of Raj Muhammad.

Thanks

Ch am

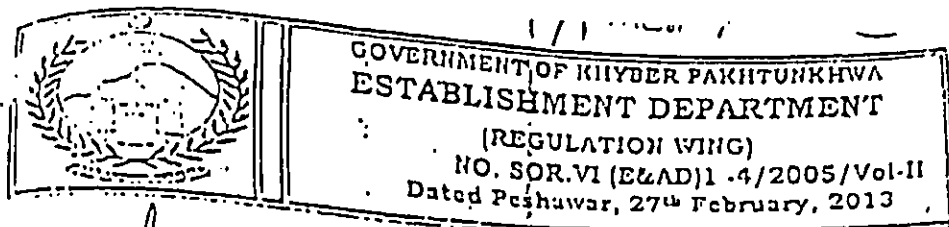
Date: 31/3/2022

Attested
Ch am
Appellant

31-3-22

Dhritam Khan
Principal GHS Purbtakkara
Payam. Purbtakkara

Annex-F^{1c}
14



Serial No. 1000/2013
Date: 27/2/2013

seal

1. The Additional Chief Secretary (P&D) Khyber Pakhtunkhwa.
2. The Additional Chief Secretary (FATA) Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
4. All Commissioners in Khyber Pakhtunkhwa.

Subject: CONSTITUTION PETITION NO. 23 OF 2012 OUT OF SUO MOTO CASE NO. 3/2012 PETITION BY MRS. JANITA TURAB FOR PROTECTION OF CIVIL SERVANTS REGISTERED UNDER ARTICLE 184 (3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973

Su.

I am directed to refer to the subject noted above and to state that the Supreme Court of Pakistan vide the subject cited judgment has enunciated the following principles of Law with regard to protection and benefit of civil servants:

W

(i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder, where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.

R

2R

4/3

(ii) Tenure, Posting and Transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

Attest

 14/2/13
 A.S.Y

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(iii) **Illegal Orders:** Civil Servants owe their first and foremost allegiance to the law and the constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule based norms; instead, in such situations, they must record their opinion and, if necessary, dissent.

(iv) **OSD:** Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing. If at all an officer is to be posted as OSD, such posting should not exceed 03 months. If there is a disciplinary inquiry going on against him/her such inquiry must be completed at the earliest. The officer on special duty may be posted against a part of his/her equivalent pay scale/grade within 03 months of his/her order as OSD.

2. I am, therefore, directed to request you to note the above principles of law for strict compliance.

Ali

Yours faithfully,

Majam
(NAJ-MUS-SAHAR)
SECTION OFFICER (REG-VI)

Encl: as above.

A copy is forwarded to:-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. The Secretary Provincial Assembly, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Registrar; Peshawar High Court, Peshwar.
6. The Secretary Khyber Pakhtunkhwa, Public Service Commission.
7. All Addl: Secretaries Establishment & Administration Department.
8. All Deputy Secretaries in Establishment & Administration Department.

Majam
SECTION OFFICER (REG-VI)

(16)

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2022

1. Ihtiram Khan, Principal Government High School Pashta Khara Payan, Peshawar.

APPELLANT

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others.

RESPONDENTS

APPLICATION FOR SUSPENDING
THE OPERATION OF THE
IMPUGNED NOTIFICATIONS
DATED 22-03-2022 PASSED BY
THE RESPONDENT NO. 2 TILL
THE DISPOSAL OF MAIN
APPEAL.

Respectfully Sheweth:-

1. That the appellant has filed service appeal along with this application in which no date has been fixed so far.
2. That the facts enumerated and grounds taken in the body of service appeal may kindly be considered as an integral part of this application, which make out an excellent prima facie case in favour of the appellant.

- 3. That the impugned notifications were passed on the basis of political interference, favoritism / nepotism and also in utter violation of Posting & Transfer Policy as well as law laid down by august Supreme Court of Pakistan in case reported in **PLD-2013-SC-195**.
- 4. That the appellant was transferred without completing his lawful tenure in order to accommodate a favorite chap, and as such blatantly violated the posting and transfer policy of Government of Khyber Pakhtunkhwa as well as law laid down by the august Supreme Court of Pakistan in various judgments. This action of the respondent No. 2 was fallacious, malicious and politically motivated. Therefore, the impugned notifications are against the spirit of administration of justice.
- 5. That in case the operation of the impugned notifications are not suspended, the very purpose of appeal would be defeated and it would become infructuous as well.

It is, therefore, humbly prayed that the impugned orders dated 22-03-2022 passed by the respondent No. 2 may graciously be suspended till the disposal of main appeal.

Ch...

Appellant/Applicant

Through

[Signature]

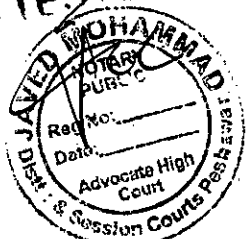
Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar

Dated: 30-03-2022

AFFIDAVIT

I, Ihtiram Khan, Principal Government High School Pashta Khara Payan, Peshawar, do hereby solemnly affirm and declare that the contents of the accompanied Stay Application are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

ATTESTED

 30 JUN 2022

Ch...

DEPONENT

قیمت
50 روپے

27672

ایڈوکیٹ: Rizwanullah

بار کونسل ایسوسی ایشن نمبر: Be-09-00500

رابطہ نمبر: 03005965843



پشاور بار ایسوسی ایشن، خیبر پختونخواہ

Honble Chairman KPK Service Tribunal, Peshawar بعد اٹ جاناب

Appellant (Mhtisam Khan) منجانب	دعویٰ: <u>Service Appeal</u>
Mhtisam Khan	علت نمبر: _____
	مورخہ: _____
Chief Secretary and others.	جرم: _____
	تھانہ: _____

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام Peshawar کیلئے Rizwanullah کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور سٹوپی، نیز دائر کر کے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو کوئی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا سببختہ پر دائرہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب یا بندہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

Handwritten notes on the left margin.

المقوم: _____
 PESHAWAR BAR ASSOCIATION
 KHYBER PAKHTOONKHWA
 واہشہ _____

المقام: Peshawar only

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

In Re S.A. 1074/2022

Khalil Ur Rehman

VERSUS

Chief Secretary Education and others

AFFIDAVIT

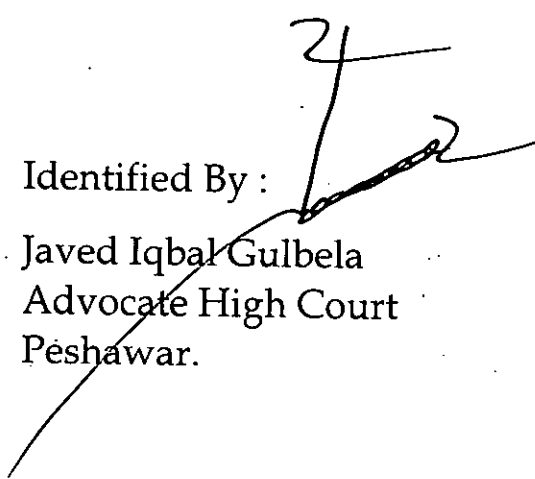
I, Khalil Ur Rehman s/o Shahistan Khan R/o Village Naudeh Bala Kandi Payan Peshawar, do hereby solemnly affirm and declare that all the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.



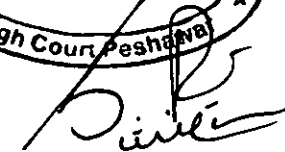
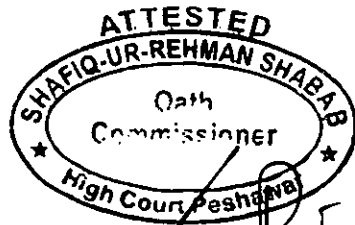
DEPONENT

CNIC# 17301-5847407-1

Identified By :



Javed Iqbal Gulbela
Advocate High Court
Peshawar.



12-08-2022

وکالت نامہ

KPK Services Tribunal Peshawar: بعدالت

احتراماً نام حکومت

منجانب R# 05 دعویٰ S.A

تاریخ 12 - 08 - 2022

باعث تحریر آنکہ مقدرم مندرجہ بالا عنوان اپنی طرف سے واسطے پیروی و جوابدہی

بمقام ^{تعمیر اقبال گل بیگم} ^{مسیدہ} ^{حبیب} جاوید اقبال گل بیگم ایڈووکیٹ سپریم کورٹ آف پاکستان

کو بدیں شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا کوڈ یا بزرگیہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدرمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر دالت کروں گا، اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کی کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے۔ اگر مقدمہ علاوہ صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کوکل پرداختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب کو عرضی دعویٰ و جواب دعویٰ اور درخواست جرائے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپروٹاشی و راضی نامہ فیصلہ پر خلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا طرفہ درخواست حکم انتہائی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختار نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزوی کارروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا ایئر سٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر وہی اور ویسے ہی اختیارات حاصل ہونگے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سندر ہے۔

مورخہ 12 - 08 - 22 مضمون مختار نامہ من لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

- Javed Iqbal Gulseta
- Saghi Iqbal Gulseta
- Syeda Ume Habibq

BC-10-79-24
javediqbalgulseta
1980@gmail.com

خلیل الرحمن (Respondent. 5)

S. Qureshi



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

No. SOR-VI/E&AD/1-4/2010/Vol-VIII
Dated Peshawar, the 14th Feb, 2014.

933

To

1. Additional Chief Secretary (P & D) Department, Khyber Pakhtunkhwa.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
4. The Secretary to Governor, Khyber Pakhtunkhwa.
5. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. The Secretary Provincial Assembly Khyber Pakhtunkhwa Peshawar.
7. All Commissioners/Deputy Commissioners/Political Agents in Khyber Pakhtunkhwa.
8. The Accountant General of Khyber Pakhtunkhwa.
9. The Registrar, Peshawar High Court Peshawar.
10. The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
11. All Heads of Attached Departments in Khyber Pakhtunkhwa.
12. The Secretary, Khyber Pakhtunkhwa Public Service Commission Peshawar.
13. The Secretary, Board of Revenue Khyber Pakhtunkhwa Peshawar.
14. All Heads of Autonomous/Semi-Autonomous Bodies in Khyber Pakhtunkhwa.
15. The Director Anti-Corruption Establishment Khyber Pakhtunkhwa Peshawar.

Subject: - POSTING/TRANSFER.

Dear Sir,

I am directed to refer to the subject cited above and to state that the competent authority has been pleased to direct that subsequent cancellation of posting/transfer order issued with the approval of the competent authority, may not be made without seeking formal approval of the competent authority through summary/note.

I am, therefore, directed to request that the above instructions may kindly be brought into the notice of all concerned for strict compliance.

Yours faithfully,

ZIRA
14.02.14

(QUREAT-UL-AIN)
SECTION OFFICER (REG-VI)

Copy forwarded to:-

1. Director Secretariat Staff Training Institute, Peshawar.
2. All Additional Secretaries/Deputy Secretaries in Establishment & Administration Department.
3. All Section Officers/Estate Officers, Resource Officer/Librarian/ACSO/Assistant Secretary BF in Establishment & Administration Department.
4. PS to Chief Secretary, Khyber Pakhtunkhwa.
5. PS to Secretary Establishment.
6. PS to Special Secretary (Establishment), Establishment Department.
7. PS to Special Secretary (Regulation), Establishment Department.

ZIRA
14.02.14
SECTION OFFICER (REG-VI)

17-2-14



36

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

The April 26, 2022

NOTIFICATION

NO. AO/E&SE/6-29/LPR/Peshawar: In pursuance of Section-13 (1) of Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), Mr. Raz Muhammad, Principal BS-18, GHS Pistakhara Payan, Peshawar stands retired from Government service w.e.f. 02-04-2022 (A.N) on attaining sixtieth (60th) year of age, as his date of birth is 03-04-1962.

2. The Competent Authority is further pleased to allow him 365 days encashment of leave in lieu of LPR as admissible to him under the Revised Leave Rules, 1981.

**SECRETARY
Govt. of Khyber Pakhtunkhwa
Elementary & Secondary Edu: Department**

Endst: of even No. & date:

Copy forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Elementary & Secondary Education, Peshawar.
3. The District Education Officer (Male), Peshawar.
4. The Director, EMIS Cell, E&SE Department for uploading at official website.
5. The Section Officer (Schools/Male), Elementary & Secondary Education Department.
- ✓ 6. Mr. Raz Muhammad, Principal BS-18, GHS Pistakhara Payan, Peshawar.
7. Master File.

Principal
Govt. Shaheed Maheer Rizwan
High School Pushtakhara Payan
Peshawar

Abdul Ghaffar
(ABDUL GHAFFAR)
SECTION OFFICER (ACCOUNTS)

Principal
Govt. Shaheed Maheer Rizwan
High School Pushtakhara Payan
Peshawar

BEFORE THE HONORABLE KHYBRPAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1074/20

SCANNED
KPST
Peshawar

IHTIRAM KHAN.....Appellant

VERSUS

Govt: of Khyber PakhtunkhwaRespondents.

APPLICATION FOR VACATION OF ORDER DATED 04.07.2022 PASSED BY THIS HON'BLE COURT.

Respectfully Shewith

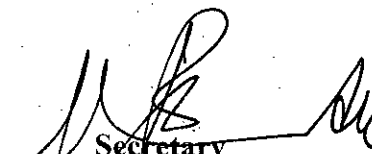
Preliminary Objections

1. That the appellant has got no cause of action to file this present appeal.
2. That the appellant is liable to be dismissed summarily .
3. That the petitioner is duty bound to obey the orders of the department in letter & spirits.
4. That the appellant has concealed the material facts from this Hon'ble court, thus enjoying the status quo issued by this Hon'ble Tribunal.
5. That both the schools where the petitioner was posted and then withdraw are in District Peshawar and there is no inconvenience to the petitioner on performing duties on his original post.
6. That balance of convenience lies in favour of the respondent/department.

GROUNDS

- a. That the petitioner has got no cause of action.
- b. That no prima facie case of the petitioner can be made from the present situation.
- c. That the petitioner is a public servant and is duty bound to obey the department and serve the nation wherever desired by the department concern.
- d. That there is no irreparable loss or inconvenience to the petitioner.

It is, therefore, very humbly prayed to this Hon'ble Court that the status quo order dated may kindly vacated.


Secretary
E&SE, Department
(Respondent No. 2)

BEFORE THE HONORABLE KHYBRPAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1074/20

IHTIRAM KHAN.....(APPELLANT)

VERSUS

GOVT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS.....(RESPONDENTS).

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTE NO. 1 TO 4.

Khyber Pakhtunkhwa
Service Tribunal

Respectfully Shewith

Dairy No. 1306

Para Wise Comments on behalf of Respondents are submitted as under

Date 15/9/2022

Preliminary Objections

1. That the appellant has got no cause of action and locus standi to file the instant appeal.
2. That the appellant is not aggrieved person.
3. That appellant is estopped by his own conduct to approach this Hon'ble Tribunal
4. That the present appeal is against the relevant provision of law and rules.
5. That as per Section 10 of Civil Servant Act 1973, every Government servant is bound to serve anywhere within the province in the best interest of public service
6. That this instant appeal is not maintainable in its present form in preview of Section 10 of Civil Servant Act 1973.
7. That the transfer order of the appellant was issued in accordance to the rules as per Civil Servant Act, 1973.

- I. Every Civil Servant shall hold office during the pleasure of the Governor.
- II. "Every Civil Servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local Authority, or a corporation or body set up or established by any such Government.
- III. As per 2020 SCMR1432 "Govt, servant were required to serve where his employer wanted him to serve, it was not a choice or prerogative of the employee to claim a right to serve at place that he chooses to serve"

10. That all the proceedings have been done by the competent authority as per Law & Rule, hence, the appeal is liable to be dismissed without further proceeding.

FACTUAL OBJECTIONS:

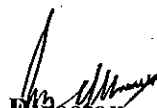
1. That Para 01 Pertains to record.
2. Incorrect and misleading. The act on the part of respondent is neither in violation of concerned law, nor relevant rule. Posting transfer of Civil Servant governed under Section-10 of Civil Servant Act, 1973. Every Government servant is bound to serve anywhere within the province in the best interest of public service without raising any objection in this regard.


3. That the appellant is working against provincial cadre/administrative post in the Respondent Department, as the aforesaid law and rule does not bar transfer at any time. However, tenure is provided in transfer policy, and the policy is inferior document than the law/rules ibid and provision of policy does not over rule the provision of Civil Servant Act 1973 and APT rules 1989. However in response to the departmental appeal, the appellant was provided opportunity of personal hearing by Additional Secretary (Establishment) E&SE Department, but he willfully not attended the office of Additional Secretary. So appellant is estopped by his own conduct.
4. That the appellant is not an aggrieved person. Hence the instant Service Appeal may be dismissed inter-alia on the following ground.

GROUNDS

- a. Incorrect and misleading. The act on part of respondent is neither in violation of concerned law, nor relevant rule. As per Section 10 of Civil Servant Act 1973, every Government servant is bound to serve anywhere within the province in the best interest of public service without raising any objection in this regard.
- b. Incorrect, comprehensive reply has already been given in foregoing Para. Criteria as part of criteria for posting/transfer as per above stated .Detail reply is given in Para a ibid.
- c. Incorrect, hence denied. The detailed reply has already given in forgoing.
- d. Incorrect this may be thought of appellant having no documentary evidence to support his claim.
- e. The action on the part of respondents as per law /rules, and they issued posting / transfer order under lawful Authority in public interest.
- f. Incorrect, hence denied. That the detail reply has already given in forgoing Paras.
- g. Incorrect, hence denied. That the detail reply has already given in forgoing as already explained in above.
- h. The Respondents may also be allowed to raise additional grounds at the time of arguments.
- i. Incorrect not admitted as explained in forgoing Para.
- j. Incorrect hence denied.
- k. The Respondents may also be allowed to raise additional grounds at the time of arguments.

It is, therefore, very humbly prayed that in the light of foregoing comments, the appeal may graciously be dismissed with cost throughout.


Director
E&SE Khyber Pakhtunkhwa.
(Respondent No. 4)


Secretary
E&SE Department
(Respondent No. 1 to 3)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

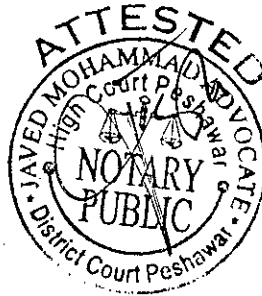
Service Appeal # 5791/2021

IHTIRAM KHAN ...Principal Petitioner
VERSUS

Govt. of Khyber Pakhtunkhwa & others..... Respondents

AFFIDAVIT

I, Muhammad Saleem Khan, Section Officer (Litigation-II) Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.



DEPONENT


Muhammad Saleem Khan
Section Officer (Lit-II)
E&SE Department Peshawar

only ①
I have
capital

received ③

John
15/9/12

Before the Honorable Khaydar Pakhanchikov
Senior Tribunal, Palanwan

S.A # 1074/2022

Ikhram Khan vs Govt of K.P.K. & other

Applicant ^{relying upon} ~~is~~ ^{comment} of the official Respondent.

Reportedly Shwetha,
the captured case is final
for today i.e 15/09/2022.

That Counsel for Private Respondent
rely upon comments submitted
by official respondent.

It is, further, Subly prayed that
the case be decided on merits.

Dated: 15th Sep 2022
Javed Ikhram Khan
ASC

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD
Service Appeal No. 818/2015

Date of Institution... 15.07.2015

Date of decision... 24.08.2017

Ifikhar Ahmad ADEO (Male) son of Muntaz Ahmad, office of the District Education Office (Male) Mnschra. ... (Appellant)

Versus:

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar and 2 others. ... (Respondents)

Appellant

Pro Se

MR. MUHAMMAD BILAL

Deputy District Attorney

...

For respondents.

MR. NIAZ MUHAMMAD KHAN,

MR. MUHAMMAD HAMID MUGHAL

...

...

CHAIRMAN

MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the appellant and learned Deputy District Attorney heard and record perused.

FACTS


2. The appellant has challenged his premature transfer from Circle Lora, Abbottabad to the office of the District Education Officer, Mansehra dated 19/3/2015, against which he filed a departmental appeal on 27.3.2015 which was not responded to and thereafter the appellant filed the present appeal on 15.7.2015.

3. During the pendency of the present appeal an order was passed by the Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar by posting the appellant back to his position on 23.08.2016 but again on 27.10.2016 he has been transferred as ASDEO Circle Sherwan-II.

ARGUMENTS

4. The appellant argued that he is in the Management Cadre whereas respondent No. 3 belongs to Teaching Cadre and both the posts are not inter-transferable. That he had

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Scanned by CamScanner

spent 11 months in the days when he was transferred on 19.3.2015 without assigning any reason though the normal tenure is 2 years.

5. On the other hand the learned DDA argued that the Teaching Cadre and Management Cadre are inter-transferable. That the transfer of the appellant was made in the public interest.

CONCLUSION:

6. According to posting/transfer policy of the Provincial Government the normal tenure of posting is 2 years and according to notification of the Establishment Department dated 27.2.2013, if the ordinary tenure for a posting is specified in the law or rules that cannot be violated except for compelling reasons which should be recorded in writing and are justiciable. The same principle has been held by the august Supreme Court of Pakistan in Anita Turab's case. As per the Government of Khyber Pakhtunkhwa posting/transfer policy, 2003, the normal tenure of posting is 2 years for areas other than unattractive areas and hard areas. District Abbottabad has not been declared as unattractive or hard area. Therefore, the normal tenure of the appellant should have been two years. No reason whatsoever has been given in the impugned order which was mandatory as discussed above.

7. Resultantly, this appeal is accepted and the impugned order is set aside. Parties are left to bear their own costs. File be consigned to the record room.

SD/-

Muhammad Hamid Mughal
Member

SD/-

Niaz Muhammad Khan
Chairman

Certified to be true copy

SEAL
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	7-6-18
Number of Words	1250
Copying Fee	8--
Urgent	2--
Total	10--
Name of Copyist	Haris
Date of Completion of Copy	7-6-18
Date of Delivery of Copy	7-6-18

2014 P L C (C.S.) 797

[Sindh High Court]

Before Muhammad Ali Mazhar and Sadiq Hussain Bhatti, JJ

GHULAM MUHAMMAD---Petitioner

Versus

PROVINCE OF SINDH through Chief Secretary and another---Respondents

Constitutional Petition No.D-613 of 2013, decided on 25th January, 2014.

(a) Hyderabad Development Authority Act (XIII of 1976)---

---S. 7---Sindh Civil Servants Act (XIV of 1973), Ss.2(1)(b)(i) & 10---Constitution of Pakistan, Art.199--
- Constitutional petition---Appointment of civil servant by way of transfer against non-cadre post---Scope--
--Petitioner, who while working as Revenue Officer in Water and Sewerage Board was transferred and
posted as Director General of City Development Authority and subsequently repatriated to his parent
department---Contention of the petitioner was that he was competently appointed by the government,
therefore the order of repatriation was politically maneuvered and illegal---Validity---Development
Authority was a statutory body and had its statutory rules under which its employees were governed---
Government could appoint Director General of the Authority on such terms and conditions as may
determine, but the said post was a cadre post, therefore the Government could not appoint any person on a
cadre post without fulfilling the requisite formalities of the other mandatory requirements---Civil servant
of a non-cadre post could not be transferred to hold the cadre post which was meant for recruitment through
competitive process---Petitioner was initially appointed as Accounts Officer, then posted as Chief Financial
Officer and then Director General of the Authority---Petitioner was not brought in through competitive
process to hold the post in question, therefore was required to be repatriated to his original
posting/department---Constitutional petition was dismissed.

Zahid Akhter v. Government of Punjab and others PLD 1995 SC 530 and Syed Mahmood Akhtar
Naqvi v. Federation of Pakistan and others PLD 2013 SC 195 distinguished.

2013 SCMR 1752 rel.

(b) Sindh Civil Servants Act (XIV of 1973)---

---Ss. 4, 5 & 10---Constitution of Pakistan, Art.199---Constitutional petition---Tenure,
appointment and transfer---Discretion of executive authority---Scope---Appointing
authority could not be allowed to exercise discretion at their whims or in an arbitrary
manner, rather they were bound to act fairly, evenly and justly---Ordinary tenure for a
posting had been specified in the law or rules, such tenure must be respected and could not
be varied except for compelling reasons.

Syed Mahmood Akhtar Naqvi v. Federation of Pakistan and others PLD 2013 SC 195 rel.

Abrar Hassan, Usman Shaikh, Muhammad Iqbal Ch. for the Petitioner.

Khalid Jawed Khan, A.-G., Adnan Karim, A.A.-G., Abdul Jalil Zubedi, A.A.-G. for Respondents.

Muhammad Nawaz Shaikh, for the intervener.

Nazir Ahmed Dhoon, Additional Secretary, Local Government Department, Government of Sindh.

ORDER

MUHAMMAD ALI MAZHAR, J.--- Through this Constitutional petition, the petitioner has approached this court for the following relief(s):---

- "(a) Hold and declare that the petitioner was promoted to BPS-20 by the competent authority after satisfying codal formalities.
- (b) Hold and declare that repeated transfers of the petitioner for one reason or other are illegal, violative of the dicta of apex court with mala fide.
- (c) Hold and declare that petitioner after his last posting as Director General, Hyderabad Development Authority vide Notification dated 7-12-2012 cannot be transferred before completion of his normal tenure of incumbency.
- (d) Restrain permanently the respondents from transferring the petitioner from the post of Director General, Hyderabad Development Authority, in violation of HDA Act and its statutory Rules and Regulations.
- (e) Ad interim relief is also prayed.
- (f) Award any other relief as deemed just and proper in the circumstances of the case".

2. The brief facts of the case are that the petitioner was awarded promotion to BS-18 and then to BS-19 by the competent authority. After rendering the requisite services, the petitioner was further promoted to BS-20. The Hyderabad Development Authority has been established under the Hyderabad Development Act, 1976. After the promulgation of Sindh Local Government Ordinance, 2001, Hyderabad Development Authority was placed under the administration of Zilla Nazim. After repealing of Sindh Local Government Ordinance, 2001, the petitioner who was serving in BS-19 and being an officer of Hyderabad Development Authority posted as Director-General, Hyderabad Development Authority on OPS. (own pay scale) basis. However, after promotion of the petitioner in BS-20 all the requirements of the said post were complied with.

3. The case of the petitioner at present is that on 7-12-2012, two Notifications were issued i.e. one notification was issued which allowed the petitioner to continue as Director General, (BS-20) Hyderabad Development Authority till further orders and but on the same day, another Notification was issued whereby the posting of the petitioner was declared illegal and he was directed to report to his parent department while Syed Fazil Shah Kazmi was allowed to continue as Director General (BS-20) Hyderabad Development Authority.

4. The learned counsel for the petitioner argued that the petitioner is performing his duties as Director-General, Hyderabad Development Authority which is not a tenure post in terms of Hyderabad Development Authority Act, 1976, however, he referred to the Rule 3(iii) of the Sindh Government. Rules of Business, 1986, which pertains to the different Departments and their businesses. In this Rule it is provided that there shall be attached departments as shown in Column 3 of Schedule-I which pertains to the Local Government Housing and Town Planning Department and according to Column 3, the attached department is Town Planning Department while according to Column 4, Director Town Planning Department, Director General, Rural Development Department and Chief Engineer, Public Health Engineering Department may be the head of the attached departments. He argued that Hyderabad

Development Authority is the attached department of Local Government Department and the petitioner being Director General of the same is the head of the Department, notwithstanding the fact that Hyderabad Development Authority was established under the statute. He further argued that according to Schedule-IX attached with the aforesaid Rules of Business, normal period of tenure of head of attached department is for five years. He further referred to the Rule 35 which is pertaining to the transfer and posting specified in Column 2 of Schedule-IX.

5. The learned counsel also pointed out various postings of the petitioner in chronological order, which shows that the petitioner from 18-3-2010 to 22-2-2011 remained as Director-General of Hyderabad Development Authority on OPS basis. Thereafter, he was promoted to the post of C.F.O. in BS-20. However, on 25-7-2012, one Qurban Khoso (BS-19) Officer was posted as Director General, Hyderabad Development Authority on OPS basis and the petitioner was replaced. Again, the petitioner was restored and the earlier notification was suspended. Then one Fazil Shah (BS-19) was posted on OPS basis thereafter, again the petitioner was restored to the position of Director General, Hyderabad Development Authority but again Fazil Shah was restored to the position of Director General, Hyderabad Development Authority vide Notification dated 7-12-2012, which was again cancelled and the petitioner was again posted as Director-General, Hyderabad Development Authority.

6. On 22-2-2013, another learned division bench of this court directed the respondent to maintain the status quo, which order is still in field, but during the status quo order vide Notification dated 6-9-2013 one Iqbal Memon was posted as Director-General, Hyderabad Development Authority and the petitioner was transferred and directed to report to Local Government Department. Hence the petitioner filed Miscellaneous Applications Nos.23808 and 23811 of 2013- along with urgent application. One for trying alleged contemnors and another application for suspension of the Notification dated 6-9-2013. Both the applications were placed before the division bench of this court on 9-9-2013 on which date while issuing the notice, the court observed that the interim orders passed on 22-2-2013 shall remain continue. It was further averred that the petitioner was never allowed to continue his tenure and he was interrupted at least three times, hence, whatever the period he served cannot be construed as a normal tenure. It was further argued that the petitioner was politically victimized and the transfer of the petitioner was not made due to any exigency of service. He further argued that number of F.I.Rs. were also lodged against the petitioner and he was constrained to file different petitions in this court. In support of his argument, the learned counsel for the petitioner relied upon the following case-law:---

(1) PLD 1995 SC 530 (Zahid Akhter v. Government of Punjab and others). The Hon'ble Supreme Court while dilating upon the Punjab Government Rules of Business, 1974 held that the normal period of posting of Government Servant at a station, according to the above referred policy decision of the Government, is 3 years, which has to be followed in the ordinary circumstances, unless for reasons of exigencies of services mentioned in the aforesaid policy of Government, a transfer before expiry of 3 years period becomes necessary in the opinion of competent authority. The transfer orders of Government servant concerned, therefore, could neither be justified on the plane of policy directive of Government nor they were sustainable on the language of Rule 21 (2) read with Schedule V of the Rules of Business, 1974.

(2) PLD 2013 SC 195 (Syed Mahmood Akhtar Naqvi v. Federation of Pakistan and others). (Anita Turab case). In which it was held that whenever there were statutory provisions or rules or regulations which governed the matter of appointments of civil servants, the same must be followed, honestly and scrupulously. Even where there were no explicit rules governing the appointment process and appointments were to be made in the exercise of discretionary powers, such discretion must be employed in a structured, transparent and reasonable manner and in the public interest. Appointing authorities could not be allowed to exercise discretion at their whims or in an arbitrary manner; rather they were bound to act fairly, evenly and justly and their exercise of power was judicially reviewable. Removal and dismissal of civil servants from service was not left to anyone's whims and caprice and it was governed by rules and regulations. When

the ordinary tenure for a posting had been specified in the law or rules made thereunder, such tenure must be respected and could not be varied, except for compelling reasons, which should be recorded in writing and were judicially reviewable. Transfers of civil servants by political figures which were capricious and were based on consideration not in the public interest were not legally sustainable.

(3) He further referred to an unreported judgment passed by Hon'ble Supreme Court in Civil Appeal No.39 of 2010 and others in which the Hon'ble Supreme Court for the purposes of deciding the issue of maintainability of petition discussed the cases of various public sector projects/Government Organizations whether under Article 199 they are the persons discharging functions in connection with affairs of Federation or a Province within the meaning of Article 199 of the Constitution and amenable to writ jurisdiction of the High Court.

7. On the contrary, the learned A.-G. argued that the petitioner was appointed on 18-3-2010 as Director-General, Hyderabad Development Authority and continuously remained Director-General upto 25-7-2012 i.e. for two years. Qurban Khoso who was appointed Director-General, Hyderabad Development Authority who remained in the office till 10-8-2012 i.e. only for 15 days and later on Fazil Shah was appointed on 16-10-2012 who remained D.G. H.D.A. up to 30-11-2012 which is only for one month and 14 days, thereafter, the petitioner was restored on 30-11-2012 and still he is continuing as Director-General, Hyderabad Development Authority. The amassed effect of the tenure of the petitioner being Director-General, Hyderabad Development Authority is more than three and half years and under the attire of interim orders, he is continuously enjoying this post as a vested right. The learned A.-G. argued one more crucial point that the post of Director General, Hyderabad Development Authority is a cadre post and the petitioner is required to be repatriated to his original position in view of the latest judgment of Hon'ble Supreme Court passed in contempt proceedings initiated against the Chief Secretary, Government of Sindh and others, which is reported in 2013 SCMR 1752. He specifically referred to paragraph 126 of the judgment which is reproduced as under:---

"126. From the above discussion, the aforesaid legislative instruments on the issue of absorption are liable to be struck down being violative of constitutional provisions referred to hereinabove, therefore, we hold as under:---

- (i) That the Sindh Government can only appoint person by absorption by resorting to Rule 9-A of the Rules of 1974.
- (ii) Sindh Government cannot order absorption of an employee who is a non-civil servant, however, an employee of an autonomous body can be absorbed in Sindh Government subject to conditions laid down under Rule 9-A of the Rules of 1974.
- (iii) Sindh Government cannot absorb a civil servant of non-cadre post to any cadre which is meant for the officers who are recruited through competitive process.
- (iv) Any backdated seniority cannot be granted to any absorbee and his inter-se seniority, on absorption in the cadre shall be maintained at the bottom as provided under the Rules regulating the seniority.
- (v) No civil servant of a non-cadre post can be transferred out of cadre to be observed to a cadre post which is meant for recruitment through competitive process. A civil servant can be transferred out of cadre to any other department of the government subject to the restrictions contained under Rule 9(1) of the Rules of 1974.
- (vi) The legislature cannot enlarge the definition of "civil servant" by appointing a non-civil servant through transfer on the basis of absorption conferring him status of civil servant pursuant to the impugned

legislation which is violative of the scheme of civil service law as provided under Articles 240 and 242 of the Constitution."

8. In the rebuttal, the learned counsel for the petitioner argued that the judgment of Hon'ble Supreme Court (supra) is not applicable to the petitioner's case, who is governed under the Hyderabad Development Authority Act, 1976. He further argued that under section 7 of the aforesaid Act it is clearly provided that the Director-General shall be appointed by Government on such terms and conditions as Government may determine. After referring to section 7 of the aforesaid Act, the learned counsel further averred that there is nothing mentioned under section 7 that the post of Director-General, Hyderabad Development Authority is a cadre post and he took the stance that the petitioner was initially appointed as Accounts Officer and earlier to the appointment of Director-General, he was C.F.O (Chief Financial Officer). It was further admitted in past, the petitioner was also posted as Director-General, H.D.A on O.P.S. basis.

9. The pros and cons lead us to a conclusion that no doubt, under section 7 of Hyderabad Development Authority Act, it is clearly provided that Director-General shall be appointed by Government on such terms and conditions as Government may determine which does not mean in any way that the post of Director General. H.D.A cannot be a "cadre post". The composition of Authority is provided under Section 4 of the same Act which includes its Chairman, Director-General and other Members. Under section 70 it is further provided that subject to the provisions of the Act and the rules, the Authority may by notification in official gazette and with the previous approval in writing of Government, make regulations for carrying out the purpose of the Act and in particular and without prejudice to the generality of the power, such regulations may provide including terms and conditions of the service of the officers and staff of the Authority and Agency. According to Hyderabad Development Authority Employees (General Conditions of Service) Regulations, 1988, the cadre means the strength of service or a part of service sanctioned as separate unit and competent authority means the Director-General or any officer authorized by the Director-General. Under these regulations the head of the department would be the officer declared or designated as such by the Director-General and the schedule of establishment means the schedule of establishment prepared and approved under the Hyderabad Development Authority (Appointment, Promotion and Transfer) Regulation, 1988. Under these regulations the appointing authority means the authority including the Director-General and any other officer as may be authorized by the authority to act as such in respect of any post or class of posts.

10. The crux of the matter is that the petitioner has challenged his alleged frequent transfers from the post of Director-General, Hyderabad Development Authority though at present he is in BS-20. It is an admitted fact that the petitioner was initially appointed as Accounts Officer and before the appointment as Director General he was C.F.O. and it is also an admitted fact that when he was in grade-19, he had also served as Director-General on O.P.S. basis. The learned A.-G. argued that the post of Director-General, Hyderabad Development Authority is a cadre post and he has also filed revised schedule of cadre posts filed by officers of APUG/DMG and Provincial Services issued by Service, General Administration and Coordination Department, Government of Sindh. In this revised Schedule at least 64 cadre posts in BS-20 have been shown at Secretariat Side while 52 BS-20 posts have been shown at field posts, which make total 127 posts.

11. Besides, producing the revised schedule, the learned A.-G. also pointed out the comments filed by Secretary, Service, General Administration and Coordination Department, Government of Sindh in which it is clearly stated that the petitioner while working as Revenue Officer in KW&SB was transferred and posted as Director-General, H.D.A. on OPS basis. It is further stated that on the recommendation of D.P.C. the petitioner was promoted to the post of Chief Financial Officer (BS-20) but he was not promoted against the post of Director-General, H.D.A. It is further stated in the comments that amendment made in the Sindh Civil Servants Act regarding the out of turn promotion etc. have already been declared violative and ultra vires of the provisions of Constitution by the Hon'ble Supreme Court of Pakistan

hence the petitioner cannot claim his posting at particular place.

12. No doubt that Hyderabad Development Authority is statutory body and has had its statutory rules under which its employees are governed, but so far as the posting and transfer of Director-General is concerned, his appointment is made under section 7 of the Hyderabad Development Authority Act, 1976 by the Government on such terms and conditions as Government may determine but the post of Director-General, Hyderabad Development Authority in BS-20 is a cadre post, which is clearly provided in revised schedule of field posts at Sr.No.35. By simply arguing that appointment of Director-General, Hyderabad Development Authority made under section 7 does not mean that the Government may appoint any person on a cadre post without fulfilling the requisite formalities or the other mandatory requirements. Learned counsel for the petitioner referred to the case of Zahid Akhter in which it was held that a normal period of posting of Government Servant at a station according to Punjab Government Rules of Business is 3 years. The facts and circumstances of this case are distinguishable especially in the circumstances when the present petitioner is enjoying cadre post without fulfilling the requisite requirements. He further referred to the case of Syed Mahmood Akhtar Naqvi which is commonly known as Anita Turab case in which the Hon'ble Supreme Court discussed the period of tenure post and held that appointing authorities could not be allowed to exercise discretion at their whims or in an arbitrary manner; rather they are bound to act fairly, evenly and justly. It was further held that the ordinary tenure for a posting had been specified in the law or rules then such tenure must be respected and could not be varied except for compelling reasons. Again we would like to observe that before applying the dictum of Anita Turab case, it is necessary for the petitioner to demonstrate that he is eligible for the cadre post from which his transfer has been made questionable by him through this petition. Nothing has been produced before us to substantiate that the post of Director General, Hyderabad Development Authority is not a cadre post but the appointment was tried to be protected or shielded under section 7 of the Act on the plea that the Government has power to appoint Director-General, Hyderabad Development Authority. The latest judgment of apex court reported in 2013 SCMR 1752, made it clear unequivocally that no civil servant of a non-cadre post can be transferred to hold the cadre post which is meant for recruitment through competitive process which judgment has a binding effect in terms of Article 189 of the Constitution of Pakistan 1973. It is not the case of the petitioner that he was appointed Director General, Hyderabad Development Authority through competitive process rather it is an admitted position that initially he was appointed as Accounts Officer, then he was posted as Chief Financial Officer and then Director-General, Hyderabad Development Authority which means that he has not brought in through competitive process to hold the present office which is a cadre post in view of the revised schedule dated 12-3-2013. Though at the time of filing of this petition on 14-2-2013, this revised schedule was not available, however, learned A.-G. robustly argued that in view of the aforesaid dictum of Hon'ble Supreme Court, the petitioner is required to be repatriated to his original posting/department. The petitioner has only challenged his transfer and this is not the case that post of Director-General, Hyderabad Development Authority is not a cadre post. Including the period of interim orders the petitioner has already served as Director-General, Hyderabad Development Authority for more than three years and still he is claiming the post of Director-General, Hyderabad Development Authority as a vested right notwithstanding that he is not eligible to hold a cadre post.

13. As a result of above discussion, this petition is dismissed. However, it is clarified that when the Government of Sindh has taken straightforward and unambiguous standpoint that the post of Director General H.D.A is cadre post of BPS-20, which is meant for recruitment through competitive process, hence the new incumbent to this office will be appointed, and posted accordingly.

JJK/G-1/Sindh

Petition dismissed.



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223533

Dated Peshawar the July 26, 2022

NOTIFICATION

NO.SO(SM)E&SED/5-18/2022/ PT/G/SS/Principal: In compliance of the Khyber Pakhtunkhwa Service Tribunal Peshawar in its Order Sheet dated 04-07-2022 in service appeal No. 1074/2022, the posting/transfer Notification of even number dated 22-03-2022 in respect of Mr. Khalil ur Rehman, Principal (BS-18) GHS Lowara Miana Jamrud Khyber as Principal (BS-18) GHS Pashta Khara Payan Peshawar is hereby suspended till further orders.

**SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT**

Endst: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Peshawar.
4. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
5. District Accounts Officers, concerned.
6. Director, EMIS E&SE Department.
7. Section Officer (Lit-II) E&SE Department.
8. PS to Secretary E&SE Department.
9. PA to Deputy Secretary (Estab) E&SE Department.
10. Officer concerned.
11. Office order file..

Baqir Ali
(BAQIR ALI) 26/07/2022
SECTION OFFICER (SCHOOLS MALE)



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.

DIRECTOR ORDER

Mr. Ihtiram Khan, Principal Govt High School Pushtakhara Payan, Peshawar by declared to act as DDO for all kind of account matters for the establishment of Govt High School Pushtakhara Payan, Peshawar.

The DDO Ship awarded to Mr. Khalil ur Rehman, Principal Govt. High School Pushtakhara Payan Peshawar vide DDO Ship issued under Endst:No.394-94 dated 12.5.2022 by cancelled due to his posting order suspended vide Notification No.SO(SM)E&SED/12022/PT/G/SS/Principal dated 26.7.2022 by Secretary to Govt. of Khyber Pakhtunkhwa Peshawar with immediate effect.

DISTRICT EDUCATION OFFICER
(MALE) PESHAWAR.

Order No. 3700-03 /DDO SHIP/VOL-I

Dated Peshawar the 05/06/2022

Copy forwarded to the:-

1. Accounts General Khyber Pakhtunkhwa Peshawar.
2. Manager State Bank of Pakistan, Peshawar branch.
3. Managers concerned Bank Peshawar.
4. Officer/Official concerned

DISTRICT EDUCATION OFFICER
(MALE) PESHAWAR.

District Education Officer
(Male) Peshawar

The Secretary,
Elementary & secondary Education,
Khyber Pakhtunkhwa.

ub: ADJUSTMENT AS SUBJECT SPECIALIST ENGLISH TEXT BOOK BOARD
PESHAWAR

This is to refer to the subject cited above and to state that according to my information the period/ term of SS English at Text Book Board has expired. That post needs to be refilled with another candidate for another term.

In this regard I offer my services to be placed as SS English at Text Book Board Khyber Pakhtunkhwa Peshawar.

It is therefore, requested to kindly adjust me as SS English at Text Book Board Peshawar and oblige. (Detailed CV is attached).

Thanks

Professionally,

Ch. Ihtiram Khan
19/8/2022
Ihtiram Khan

Principal

GHSS Urmar Bala

Peshawar

Cell: 03005904123

ted: 19-08-2022

The Secretary,
Elementary & secondary Education,
Khyber Pakhtunkhwa.

ub: ADJUSTMENT AS SUBJECT SPECIALIST ENGLISH TEXT BOOK BOARD
PESHAWAR

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This is to refer to the subject cited above and to state that according to my information the period/ term of SS English at Text Book Board has expired. That post needs to be refilled with another candidate for another term.

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Principal

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Cell: 03005904123

ted: 19-08-2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 684/2017

Date of Institution ... 23.06.2017

Date of Decision ... 28.01.2019



Mst. Wajahat Hassan, PHC Technician (MCH) (BPS-12) Basic Health Unit,
Ashakai, District Malakand under transfer to BHU Naray Oba, District
Malakand. ... (Appellant)

VERSUS

The Secretary Health Department, Khyber Pakhtunkhwa Peshawar and four
others. ... (Respondents)

Present.

MR. NOOR MUHAMMAD KHATTAK,
Advocate.

... For appellant

MR. ZIAULLAH,
District Attorney

... For respondents.

MR. MUMTAZ KHAN,
Advocate

... For respondent No.5.

MR. HAMID FAROOQ DURRANI,
MR. HUSSAIN SHAH,


... CHAIRMAN
... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:

1. Instant Service Appeal has been preferred against the order dated
30.01.2017 passed by respondent No. 3, whereby, the appellant was
transferred and posted at BHU Naray Oba while respondent No. 5 was posted
at BHU Ashaqai.

ATTESTED



CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

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2. The facts, as laid down in the memorandum of appeal, are that initially the appellant was serving as PHC Technician (MCH) at BHU Naray Oba District Malakand and was transferred to BHU Ashaqai on 11.02.2015. She, in pursuance to the order, submitted her arrival report at BHU Ashaqai. On 09.12.2015 an order was issued by respondent No. 4, whereby, the appellant was again transferred to BHU Naray Oba. Against the said order she filed departmental appeal which was followed by a review petition regarding the transfer order dated 09.12.2015 and 21.01.2016. Upon the application, respondent No. 3 issued order on 04.02.2016 on the directions of respondent No. 2, whereby, the appellant was retained at BHU Ashaqai District Malakand. It was followed by proper transfer order dated 10.02.2016 and the appellant was transferred and posted at BHU Ashaqai while respondent No. 5 was posted at BHU Naray Oba. The appellant submitted her arrival report at Ashaqai on 13.02.2016 and started performing her duty. Once again, vide order dated 25.02.2016, the transfer order dated 10.02.2016 was cancelled and on the subsequent day the cancellation order was yet again cancelled

ATTESTED

while order dated 10.02.2016 was restored. On 02.03.2016, the appellant was again transferred to BHU Naray Oba on the directions of Minister for Health which was questioned through departmental appeal by the appellant. The said appeal was not responded to, therefore, the appellant preferred Service Appeal No. 669/2016 before this Tribunal. The appeal was decided on 03.01.2017 with the directions to respondents to pass a speaking order in the light of law and rules. Subsequent to the judgment by the Tribunal the impugned order


 CHAIRMAN
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar



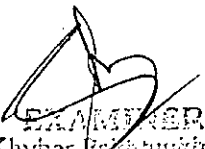
dated 30.01.2017 was passed which, in view of the appellant, was not in accordance with judgment in Appeal No. 669/2016. The appellant, therefore, submitted an application on 08.02.2017 requiring proceedings against the respondents for contempt of court. On 23.06.2017, the appeal in hand was submitted after exhausting the remedy by way of departmental appeal, which remained un-responded.

3. In order to proceed further in the matter it shall be necessary to reproduce herein below the operative part of judgment of this Tribunal in Appeal No. 669/2016:-

"9. After going through the record and keeping in view the arguments of the learned counsel for the parties we observe that the Health Department failed to portray responsible behavior as the case of the parties was not dealt with in accordance with rules and policy and had passed posting/transfer orders due to political pressure and that frequent posting/transfer orders were issued without giving due weight to the rules and norms of postings/transfers.

10. In view of the above we are constrained to accept the present appeal and direct that the competent authority shall pass an elaborate speaking order supported by reasons within a period of 14 days from the date of receipt of this judgment. In case the authority concerned failed to comply with the orders or is found involved in undue considerations including political or any other undesirable pressure then the responsible authority shall be liable to be proceeded against departmentally under the relevant disciplinary Rules. Till passing the said elaborate order the present position shall

ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar




remain intact and if no order passed till then, then it shall be deemed that the present appeal has been allowed. Parties are left to bear their own costs. File be consigned to the record room".

It is also necessary to note the remarks/grounds provided in the impugned order dated 30.01.2017, purportedly, in pursuance to the judgment:-

1. BHU Narai Oba is the original place of posting of Mst. Wajahat Hasan.
2. Mst. Wajahat Hasan was temporarily posted to BHU Ashakai in addition to its original incumbent i.e. Mst. Meena Gul.
3. Mst. Wajahat Hasan was repatriated back to her original place of posting i.e. BHU Narai Oba as generally directed by the Director General Health Services Khyber Pakhtunkhwa, Peshawar.
4. Mst. Wajahat Hasan is Junior to Mst. Meena Gul both in service and induction to the strength of District Malakand.
5. BHU Ashaki falls in the U/C Koper and Mst. Mena Gul is local of this U/C."

4. We have heard learned counsel for the appellant and respondent No. 5 as well as Deputy District Attorney on behalf of official respondents and have gone through the available record with their assistance.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

It was the contention of learned counsel for the appellant that successive transfers/re-transfers of appellant were against the law and the transfer/posting policy of the Provincial Government. Under the policy, the tenure of appellant was protected, however, the official respondents disregarded the same and upon manipulation by respondent No. 5, actualized

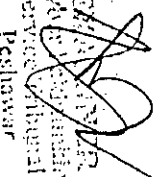


the illegal transfer of appellant. It was further contended that after the passing of judgment by this Tribunal in Appeal No. 669/2016 the official respondents were obligated to have re-decided the matter strictly in accordance with law which they failed to.

On the other hand learned counsel for respondent No. 5 argued that wish of appellant could not be the driving force behind her transfer/posting. It was further contended that in line with the directions contained in judgment of this Tribunal ample reasons were provided in the impugned order for posting of appellant at BHU Naray Oba.

Learned Deputy District Attorney, while defending the cause of official respondents, stated that under the provisions of Khyber Pakhtunkhwa Civil Servants Act, 1973 the appellant was under an obligation to serve anywhere in the Province and had no right or lien for posting at a particular place. He also concurred with learned counsel for respondent No. 5 that sufficient reasons were provided in the impugned order.

5. The above reproduced operative part of the judgment passed by this Tribunal in Appeal No. 669/2016 clearly suggests that in past the transfer/posting case of appellant and respondent No. 5 was not dealt with in accordance with rules and policy. The appeal of appellant was, therefore, accepted with the directions to the official respondents/competent authority to pass an elaborate speaking order supported by reasons. On the other hand, the reasons/grounds provided in the impugned order and reproduced herein-above appear to be absolutely out of context. Furthermore, no reference is made to


 DEPUTY DISTRICT ATTORNEY
 KHYBER PAKHTUNKHWA
 SERVICE TRIBUNAL,
 Peshawar


ATTESTED



lawful reason or the relevant policy on the subject justifying the act of official respondents culminating into successive transfers of appellant and respondent No. 5 in a short span of time. It appears that the respondents had either not assimilated the judgment of Tribunal or the same had been wrongly interpreted, apparently for extending undue favour to respondent No. 5. The fact that respondent No. 5 had served the respondent department for more than 22 years at BHU Ashakai could not be denied by the respondents.

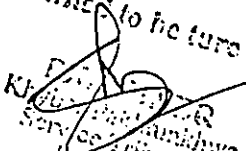
6. It is also apparent on the face of record that the impugned order requiring transfer of appellant and respondent No-5 was premature in view of posting/transfer policy of the Provincial Government. At present, the said policy provides normal tenure of posting of a civil servant to be two years barring un-attractive and hard areas where the said tenure is of lesser period.

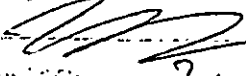
7. For what has been discussed above, the appeal in hand is allowed as prayed for. Parties are left to bear their respective costs. File be consigned to the record room.


(HUSSAIN SHAH)
MEMBER(E)


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
28.01.2019

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Appl.	30-01-19
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Urgent	2-00
Total	16-00
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Date of Completion of Copy	30-01-19
Date of Delivery of Copy	30-01-19

(h)

For appealant**P L D 2013 Supreme Court 195****Present: Iftikhar Muhammad Chaudhry, C.J., Jawwad S. Khawaja and Khilji Arif Hussain, JJ****Syed MAHMOOD AKHTAR NAQVI and others---Petitioners****Versus****FEDERATION OF PAKISTAN and others---Respondents**

[Petition by Ms. Anita Turab for protection of Civil Servants: In re]

Constitution Petitions Nos.23 and 11, Criminal Original Petitions Nos.23, 24 and 27, H.R.C. No. 14427-P, C.M.As. Nos. 1575, 1611, 1792, 197-K and 231-K and Criminal Miscellaneous Application No.587 of 2012 in Criminal Original Petition No. 24 of 2012 in Constitution Petition No.11 of 2012.

(a) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Constitution of Pakistan, Arts. 9, 14, 18 & 184(3)---Constitutional petition under Art. 184(3) of the Constitution seeking elaboration of constitutional and legal safeguards relating to the working of civil servants---Maintainability---Matter of tenure, appointment, posting, transfer and promotion of civil servants could not be dealt with in an arbitrary manner; it could only be sustained when it was in accordance with the law---Decision which deviated from the accepted or rule-based norm without proper justification, could be tested on the touchstone of a manifest public interest---Fundamental rights of civil servants, inter alia, under Arts.9, 14 & 18 of the Constitution were aspects arising in the present constitutional petition---Constitutional petition was maintainable.

Tariq Aziz-ud-Din's case 2010 SCMR 1301; Syed Yousaf Raza Gillani v. Assistant Registrar PLD 2012 SC 466 and Mehmood Akhtar Naqvi v. Federation of Pakistan, Constitution Petition No.5 of 2012 ref.

(b) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 5 & 184(3)---Civil servant, duties of---Non-subservience to political executive and impartiality---Scope---Although civil servants did have a duty to follow the policy guidelines and directions of the political executive yet, because of Art.5 of the Constitution, their foremost duty was "obedience to the Constitution and the law", not unthinking obedience to all directives (right or wrong) issued from the political executive---Civil servants were public servants and were, therefore, meant to take decisions only in accordance with law in the public interest---Civil servants in their capacity as advisors in decision making or as administrators and enforcers of law, were not subservient to the political executive---Civil servants were under an obligation to remain compliant with the Constitution and law, hence they were not obliged to be servile or unthinkingly submissive to the political executive---Civil servants to give advice in the best public interest and were to administer the law impartially being incharge of the machinery of the State.

Quaid-e-Azam Mohammad Ali Jinnah Speeches as Governor General of Pakistan 1947-48,

Sang-e-Meel Publications, Lahore: 2004 ref.

(c) Civil Servants Act (LXXI of 1973)---

---Ss. 3 & 5---Rules of Business, (1973), R. 5(10)---Appointment and conditions of service of civil servants---Transaction of business---Civil servant, opinion of---Scope---Implementation of policy or directives, might be required in some cases notwithstanding the considered views of a civil servant to the contrary, however in such an event, the civil servant should record his/her honest and considered opinion without fear---Decisions violating the law relating to appointment and terms and conditions of service of civil servants which were manifestly wrong and were likely to cause gross injustice or undue hardship should be considered important enough for the purpose of R. 5(10) of Rules of Business, (1973).

(d) Civil Servants Act (LXXI of 1973)---

---Preamble---Object of civil Servant Act, 1973---Parliament had enacted Civil Servants Act, 1973 for providing meaningful legal guarantees to civil servants and doing away with arbitrariness---Object of Civil Servants Act, 1973 was to legally "regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan" (Preamble)---Rule of law was the key idea reflected in the whole scheme of the Act.

(e) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Constitution of Pakistan, Art. 184(3)---Constitutional petition under Art. 184(3) of the Constitution seeking elaboration of constitutional and legal safeguards relating to the working of civil servants---Tenure, appointment, promotion and posting/transfer of civil servants---Favoritism/discouragement of merit---Effect---Tenure, appointment, promotion and posting/transfer were of utmost importance in the civil service, and if same were made on merit in accordance with definite rules, instructions etc., they would rightly be considered and treated as part of the terms and conditions of service of a civil servant; however, where rules and instructions were deviated from and as a result merit was discouraged on account of favoritism, sifarish or considerations other than merit, it should be evident that the civil service would not remain independent or efficient.

(f) Civil Servants Act (LXXI of 1973)---

---Ss. 5 & 11---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Civil Servants (Efficiency and Discipline Rules), 1973---Constitution of Pakistan, Art. 184(3)---Appointment and removal of civil servants---Principles---Whenever there were statutory provisions or rules or regulations which governed the matter of appointments of civil servants, the same must be followed, honestly and scrupulously---Even where there were no explicit rules governing the appointment process, and appointments were to be made in the exercise of discretionary powers, such discretion must be employed in a structured, transparent and reasonable manner and in the public interest---Appointing authorities could not be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they were bound to act fairly, evenly and justly and their exercise of power was judicially reviewable---Removal and dismissal of civil servants from service was not left to anyone's whims and caprice and it was governed by rules and regulations---Anachronistic concept where government servants held office during the pleasure of the Authority had no place in a dispensation created and paid for by the people.

Tariq Aziz-ud-Din's case 2010 SCMR 1301; Corruption of Hajj Arrangement's case PLD

2011 SC 963 and Muhammad Yasin v. Federation of Pakistan PLD 2012 SC 132 ref.

(g) Civil Servants Act (LXXI of 1973)---

---S. 9---Constitution of Pakistan, Art. 184(3)---Promotion of civil servants---Discretion---Principles---Discretion in matters of promotion must be exercised fairly and in a transparent manner---Such discretion had to be understood within the four corners of the concept of rule of law upon which the system of governance was founded---Every Authority in the State was bound to obey the dictates of the law and had no personal or absolute discretion.

Tariq Aziz-ud-Din's case 2010 SCMR 1301 ref.

(h) Civil Servants Act (LXXI of 1973)---

---Ss. 4 & 10---Constitution of Pakistan, Art. 184(3)---Tenure, posting and transfer of civil servants---Principles---When the ordinary tenure for a posting had been specified in the law or rules made thereunder, such tenure must be respected and could not be varied, except for compelling reasons, which should be recorded in writing and were judicially reviewable---Transfers of civil servants by political figures which were capricious and were based on considerations not in the public interest were not legally sustainable.

Corruption of Hajj Arrangement's case, Punjab PLD 1995 SC 530 and Farrukh C. Development Department, Lahore and 2 other

Copies of this Judgment shall be sent to all chief secretary and Rural Letter of establishment DC/NT

(i) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 5 & 184(3)---Civil servant, duty of---Non-compliance with illegal orders of superiors---Scope---Duty of public officers was to independently discharge their functions and not be influenced by "dictatorial misuse of powers" at the hands of political figures---Civil servants were not bound to obey orders from superiors which were illegal or were not in accordance with accepted practices and rule-based norms; instead, in such situations, they must record their opinion and, if necessary, dissent---Compliance with illegal orders of superiors was not justified on the basis of having been issued from higher authority as it was the law and the Constitution which must be obeyed---Illegal orders (of superiors) could not be defended on the plea that they could expose the concerned government servant to the risk of disciplinary action.

Syed Nazar Abbas Jafri v. Secretary to the Government of the Punjab and another 2006 SCMR 606; Province of Punjab v. Azhar Abbas 2002 SCMR 1; Samiullah Khan Marwat v. Government of Pakistan 2003 SCMR 1140; Iqbal Hussain v. Province of Sindh 2008 SCMR 105; Human Rights Cases Nos.4668 of 2006, 111 of 2007 and 15283-G of 2010 PLD 2010 SC 759 and Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 ref.

(j) Civil Servants Act (LXXI of 1973)---

---S.10---Constitution of Pakistan, Art. 184(3)---Posting of a civil servant as Officer on Special Duty (OSD)---Principles---Officer should not be posted as Officer on Special Duty (OSD) except for compelling reasons, which must be recorded in writing and were judicially reviewable---If at all an officer was to be posted as Officer on Special Duty (OSD), such posting should be for the minimum period possible and if there was a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

Corruption of Hajj Arrangement's case PLD 2011 SC 963; Mir Shah Nawaz Marri v. Government of Balochistan and others 2000 PLC (C.S.) 533; Syed Ajmal Hussain Bokhari v. Commissioner, Rawalpindi 1997 PLC (C.S.) 754; Sajjad Ahmad Javed Bhatti v. Federation of Pakistan 2009 SCMR 1448 and Lt. Col. (R.) Abdul Wajid Malik v. Government of the Punjab 2006 SCMR 1360 ref.

(k) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 189, 190 & 204(2)(a)---Decision of---Supreme Court---Binding nature of---Scope---Decision given by the Supreme Court on a point of law would be binding on concerned departmental functionaries who would be obliged to apply such legal principle in other similar cases regardless of whether or not a civil servant had litigated the matter in his own case---In view of Art.189 and 190 of the Constitution, a civil servant would be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by the Supreme Court---Failure of a State functionary to apply a legal principle which was clearly and unambiguously attracted to a case, might expose him to proceedings under Art.204(2)(a) of the Constitution.

Al-Jehad Trust v. Federation of Pakistan PLD 1997 SC 84; Hameed Akhtar Niazi v. The Secretary Establishment Division 1996 SCMR 1185 and Baaz Muhammad Kakar v. Federation of Pakistan PLD 2012 SC 870 ref.

(l) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Constitution of Pakistan, Art. 184(3)---Tenure, appointments, promotions and transfers of civil servants---Discretion of Executive Authority---Interference by courts---Scope---Responsibility of deciding suitability of an appointment, posting or transfer fell primarily on the executive branch of the State which comprised of both the political executive and civil servants---Decision making in relation to tenure, appointments, promotions and transfers remained rule-based and was not susceptible to arbitrariness or absolute and unfettered discretion---Courts ordinarily would not interfere in the functioning of the executive as long as it adhered to the law and established norms and acts in furtherance of its fiduciary responsibility.

Petitioners in person.

Hafiz S.A. Rehman, Sr. Advocate Supreme Court: Amicus Curiae.

Abdul Fateh Malik, A.G., Adnan Karim, A.A.-G., Ali Sher Jakhrani, AIG and Maqsood Ahmed, DSP for Government of Sindh.

Syed Arshad Hussain Shah, A.A.-G. for Government of Khyber Pakhtunkhwa.

Azam Khattak, A.A.-G. for Government of Balochistan.

Jawad Hassan, A.A.-G. for Government of Punjab.

Date of hearing: 18th October, 2012.

JUDGMENT

JAWWAD S. KHAWAJA, J.---Many centuries before the term 'good governance' became a catch-phrase, we find a remarkably eloquent exposition of the principles of good governance in

the Epistle of Hazrat Ali to Malik ibn Ashtar, the Governor of Egypt. The revered Khalifa, may Allah be pleased with him, is reported to have said: ".....give careful consideration to the selection of ... officers. Confirm them in their appointments after approval, apprenticeship and probation. Never select men for responsible posts either out of any regard for personal connections or under any influence, for, that might lead to injustice and corruption.... select for higher posts men of experience, men firm in faith ... Such men will not fall an easy prey to temptations and will discharge their duties with an eye on the abiding good of others". The law and the Constitution of Pakistan, with the aim of furthering the welfare of the people of Pakistan, articulate the same principles. The truth is that principles pertaining to the setting up of a just and constitutional government are eternal, not peculiar to our times. Our law, Constitution and courts only apply these universal and time-tested principles to the prevalent situation. In this public interest case seeking elaboration of constitutional and legal safeguards relating to the working of civil servants, we reaffirm these eternal principles which have also been stressed by us in cases decided earlier.

2. The background to this matter is that Suo Motu Case No.3 of 2012 was initiated on the basis of broadcasts on different TV channels on 25-2-2012. In these broadcasts, Syeda Wahida Shah, a candidate of the Pakistan Peoples Party for bye-election to PS-53 (Tando Muhammad Khan) was shown slapping a member of the polling staff. The Suo Motu case was concluded vide order dated 12-3-2012. Ms. Anita Turab, who is a civil servant in BS-19, presently working in the Ministry of Interior, filed an application in the aforesaid Suo Motu case. Since the case stood concluded, the application was ordered on 12-3-2012 to be registered as a petition under Article 184 (3) of the Constitution. It is this petition which is being decided through the present order.

3. The grievance of the petitioner set out in her petition can be summarized. Firstly, she seeks that the standing of the civil service be restored as service of the State and not the service of any transient government. To achieve this object, her submission is that unlawful political interference in the independent and legitimate functioning of civil servants be stopped. Secondly, the petitioner seeks corrective institutional measures to revert the civil service to rule-based management practices in accordance with the letter and spirit of applicable laws, rules and precedents of this Court.

4. On 12-3-2012, we had directed the Secretary Establishment Division, Government of Pakistan, the Chief Secretaries of the four Provinces and the Chief Commissioner, Islamabad Capital Territory to submit their comments. It was noted in the said order that civil servants who act according to law, at times, have to face hardship in the form of immediate transfer or posting as Officers on Special Duty (OSD) even before the completion of their tenure. It was also noticed that frequent transfers, postings and disciplinary proceedings are taken in violation of the law, rules and regulations.

5. The above referred functionaries comprised as a Committee, have submitted their report which includes tentative recommendations. Amongst other things, the Committee has recommended that "[p]ostings and transfers be made on merit", "tenures for various categories of posts be fixed" and that "[n]o civil servant should be posted as OSD for purposes of parking of officers who are unwanted, or, who are not susceptible to pressures." The Committee further recommends that "[a] civil servant should be placed under suspension only by the competent authority after initiation of disciplinary proceedings; and....Officers taken on deputation/borrowed from other tiers of the government should carry the requisite experience and seniority for specific jobs." According to the petitioner, many of the Committee's recommendations are already covered by existing law, rules and regulations, particularly in matters relating to tenure, appointment, transfer and posting of civil servants. There is no dispute or contention that such recommendations must indeed be implemented with immediate effect as a necessary concomitant to good governance. Some other recommendations made by the Committee require legislation or rule

making which, necessarily will need to be undertaken by the legislature and/or the competent rule making authority and not by the Court.

6. The petitioner being a civil servant herself has requested revival of the independent, impartial and professional status of the civil service as an institution and to affirm its decision-making authority in furtherance of the rule of law. The petitioner's further grievance is that legal and constitutional safeguards meant to protect the civil service from excessive political interference are being systemically breached. With its safeguards thus withered, the service is growing inefficient and demoralized and with it, the machinery of the State, mandated to enforce good governance, rule of law and fundamental rights of the people of Pakistan, is failing.

7. The petition has been held maintainable because the situation portrayed does raise a question of public importance with reference to the enforcement of fundamental rights. In our constitutional scheme of governance, the importance of such a civil service, which is law-abiding and itself legally protected, cannot be over emphasized. "Good governance", this Court has recently observed, "is largely dependent upon [an] upright, honest and strong bureaucracy. [The] Civil service is the back bone of our administration." per Chaudhry Ijaz Ahmad, J. in Tariq Aziz-Din's case (2010 SCMR 1301). Additionally, the fundamental rights of civil servants, inter alia, under Articles 9, 14 and 18 of the Constitution are also aspects arising in this Constitution Petition. The enforcement of fundamental rights is primarily the responsibility of the Executive branch of the State and civil servants constitute that essential component of the Executive who operate the executive machinery. A duty is thus cast both on the civil service and on the political executive to ensure the effectiveness (in all respects) of the civil service.

8. It is not in contention that civil servants are public servants and are, therefore, meant to take decisions only in accordance with law in the public interest. In their capacity as advisors in decision making or as administrators and enforcers of law, they are not subservient to the political executive. It is their obligation to remain compliant with the Constitution and law. Hence they are not obliged to be servile or unthinkingly submissive to the political executive. One of their prime duties is to give advice in the best public interest and to administer the law impartially being incharge of the machinery of the State. In this regard, the address made by Quaid-i-Azam Mohammad Ali Jinnah to the members of the civil service at Peshawar on 14th April, 1948 is most relevant. Quaid-i-Azam instructed them not to be "influenced by any political pressure, by any political party or individual politician." While urging them to loyally and faithfully serve whichever government came to power "in the ordinary constitutional course", he also reminded them of the need for "fearlessly, maintaining [their] high reputation, prestige, honour and the integrity of [their] service." Noting that pressurizing civil servants was, even in those early days, "a very common fault of politicians", he warned politicians that such behaviour would lead to "nothing but corruption, bribery and nepotism which is a horrible disease..." Ultimately, he urged both politicians and civil servants to "understand [their] own sphere of duty and responsibility and act with others harmoniously and in complete cooperation." Yet, being fully aware that real life was never ideal, he forewarned the civil servants that "you may even be put to trouble not because you are doing anything wrong but because you are doing right. Sacrifices have to be made, and I appeal to you, if need be, to come forward and make the sacrifice..." (Quaid-e-Azam Mohammad Ali Jinnah, Speeches as Governor General of Pakistan 1947-48, Sang-e-Meel Publications, Lahore 2004).

9. These should, indeed, be the guiding principles informing the relationship between the civil service and the political executive - the two limbs of the Executive branch of government, envisaged in the Constitution. Equally so, these principles should inform the judiciary's interpretation of the Articles of the Constitution and legal provisions which relate to the employment of persons in the service of Pakistan. We reaffirm that while civil servants do have a

duty to follow the policy guidelines and directions of the political executive yet, because of Article 5 of the Constitution, just like other citizens, their foremost duty is "obedience to the Constitution and the law", not unthinking obedience to all directives (right or wrong) issuing from the political executive. In this context, Rule 5(10) of the Rules of Business, 1973 framed by the Federal Government in accord with Articles 90 and 99 of the Constitution, may be examined: "When the Secretary submits a case to the Minister, the latter may accept the proposal or views of the Secretary or may over-rule him. The Secretary will normally defer to the decision of the Minister and implement it. In case, however, the Secretary feels that the decision of the Minister is manifestly wrong and will cause gross injustice or undue hardship, he may state his reasons and re-submit the case to the Minister. If the Minister still adheres to his earlier decision and the matter is important enough, the Secretary shall request the Minister to refer the case to the Prime Minister and the Minister shall so refer the case for orders of the Prime Minister. If the case is not referred to the Prime Minister, the Secretary shall submit it directly to the Prime Minister with observations of the Minister-in-Charge." In other words, implementation of policy or directives, in some cases may be required notwithstanding the considered views of a civil servant to the contrary. In such event, however, the civil servant should record his/her honest and considered opinion without fear. Decisions violating the law relating to appointment and terms and conditions of service of civil servants which are manifestly wrong and are likely to cause gross injustice or undue hardship should be considered important enough for the purpose of Rule 5(10) *ibid*.

10. It is worth noting that the Constitutions of 1956 and 1962 contained chapters outlining certain safeguards for the civil service. In the 1973 Constitution, the framers omitted a similar chapter from the Constitution and shifted the onus to ordinary legislation. The Law Minister at the time, who was steering the Constitution Bill informed the Constituent Assembly that in the past, constitutional protection for civil servants had been granted "because those who served came from outside and they needed these protections in respect of service". However, since now "this country [was] being run by the leaders of the people" such protections were no more deemed necessary. The purpose of this change, therefore, was to "[break] away from the past colonial traditions" and to emphasize the point that civil servants were not entitled to "any superior or higher status" compared to other citizens. Another reason the Law Minister gave was that the "Constitution is the basic document providing the fundamentals and this matter was not so fundamental as to be provided in the Constitution." (Parliamentary Debates, 31st December, 1972 and 19th February, 1973). It was therefore decided that, as stated in Articles 240, 241 and 242 of the Constitution, the matter would be dealt with through statutes. Such statutes were subsequently passed and include the Civil Servants Act, 1973. It may be emphasized that whatever else the intent behind these changes may have been, it could not have been meant to subjugate of civil servants to constantly changing political imperatives. The intent of the Constitution cannot but be a fuller realization of the goal set out in the speech of the country's founding father quoted earlier: "fearlessly, maintaining [the] high reputation, prestige, honour and the integrity of [the civil] service."

11. It was in this spirit, i.e. providing meaningful legal guarantees to civil servants and doing away with arbitrariness, that Parliament enacted statutes such as the Civil Servants Act, 1973. The very object of this statute is to legally "regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan" (Preamble). The rule of law is the key idea reflected in the whole scheme of the statute. This impression is textually reinforced by the express stipulation that appointment of civil servants shall be made only "in the prescribed manner" (S. 5), that the terms and conditions shall be only such as are "provided in [the] Act and the Rules" [S. 3(1)] and not be "varied to his disadvantage" [S. 3(2)] and that promotions shall only be made on the basis of objective criteria such as "merit" [S. 9(2)(a)] and "seniority-cum-fitness". [S.9(2)(b)].

12. This Court, in a number of precedents has, interpreted and emphasized these very

principles, some of which need to be reiterated at this point. Before that, however, we may note the precept and rule of public trust which forms the basis of this area of the law. This court has repeatedly observed that "functionaries of the State are fiduciaries of the people and ultimately responsible to the people who are their pay masters." [Syed Yousaf Raza Gillani v. Assistant Registrar, (PLD 2012 SC 466) affirming Muhammad Yasin v. Federation of Pakistan]. Most recently, in the case relating to dual nationality of Parliamentarian, we have reiterated that "all State authority is in the nature of a 'sacred trust' and its bearers should therefore be seen as fiduciaries" (Mehmood Akhtar Naqvi v. Federation of Pakistan, Const. P. 5/2012). One of the implications of this concept, highlighted in the case-law considered below, is that the matter of tenure, appointment, posting, transfer and promotion of civil servants cannot be dealt with in an arbitrary manner; it can only be sustained when it is in accordance with the law. Moreover, the use of the words 'in the public interest' in such matters are not fatuous or pointless, but emphasise the fiduciary nature of orders relating to tenure, posting etc. Thus a proposed decision which deviates from the accepted or rule-based norm without proper justification, can be tested on the touchstone of a manifest public interest.

13. Tenure, appointment, promotion and posting/transfer are of utmost importance in the civil service. If these are made on merit in accordance with definite rules, instructions etc., the same will rightly be considered and treated as part of the terms and conditions of service of a civil servant. If, however, rules and instructions are deviated from and as a result merit is discouraged on account of favoritism, sifarish or considerations other than merit, it should be evident the civil service will not remain independent or efficient. It is necessary once again, to hark back to the considerations set out in the speech of Quaid-i-Azam and the eternal wisdom reflected in the Epistle of Hazrat Ali, may Allah be pleased with him, cited at the start of this opinion. It is also relevant to note that the principles of good governance are already envisioned in the Constitution and are also encoded in statutes such as the Civil Servants Act, 1973, the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and other rules made under the aforesaid Act and in regulations and instructions given in the Civil Establishment Code (Estacode). It is, however, apparent from precedent and civil service matters coming up before Service Tribunals and this Court that problems/difficulties arise for civil servants when the rules of good governance so encoded are breached and the reason for such breach appears to be abuse of discretion. We are aware that matters relating to tenure etc. cannot be put in a strait-jacket and that there is to be an element of flexibility. A balance between the competing pulls of discretion and rule based decision making is a fine one where perception of fairness and even handed treatment is of utmost importance. It is for this reason that transparency in decisions relating to tenure etc. are required to be entrenched and cemented to assure the quality, effectiveness and morale of the civil service. Since executive decisions generally are subject to judicial review, the assurance of transparency is itself likely to eliminate decision making based on considerations other than merit. We have referred to accepted principles and rules above and may now advert to certain relevant rulings earlier rendered by this Court.

A - On the Issue of Appointments and Removals

14. In a number of judgments, the courts have clarified that whenever there are statutory provisions or rules or regulations which govern the matter of appointments, the same must be followed, honestly and scrupulously. In the Corruption of Hajj Arrangements' case (PLD 2011 SC 963) and Tariq Aziz-ud-Din's case *ibid*, it has been clarified that even where there are no explicit rules governing the appointment process, and appointments are to be made in the exercise of discretionary powers, such discretion must be employed in a structured and reasonable manner and in the public interest. Appointing authorities cannot be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they are bound to act fairly, evenly and justly and their exercise of power is judicially reviewable. And in Muhammad Yasin v. Federation of Pakistan

(PLD 2012 SC 132), we have clarified that, when called upon to do so, the Courts are "duty bound to examine the integrity of the selection process", although they "will not engage in any exhaustive or full-fledged assessment of the merits of the appointee nor [...] seek to substitute [their] own opinion for that of the Executive." It may also be noted that just like the appointment of civil servants, their removal and dismissal from service has not been left to anyone's whims and caprice. It is governed by rules and regulations, amongst them the Civil Servants (Efficiency and Discipline Rules), 1973. Indeed, the anachronistic concept where government servants held office during the pleasure of the Crown has no place in a dispensation created and paid for by the people.

B - On the Matter of Promotions

15. In Tariq Aziz-ud-Din's case, we have dealt with some important facets of the civil service including the exercise of discretion in matters of promotion. Such discretion must be exercised fairly and in a transparent manner. Discretion has to be understood within the four corners of the concept of rule of law upon which our system of governance is founded. Every authority in the State is bound to obey the dictates of the law and has no personal or absolute discretion. It was therefore held that "[t]he right [to be considered for promotion] contemplated under section 9 [of the Civil Servants Act] is neither illusionary nor a perfunctory ritual and withholding of promotion of an officer is a major penalty in accordance with the Civil Servants (Efficiency and Disciplinary) Rules, 1973, therefore, consideration of an officer for promotion is to be based not only on the relevant law and the rules but also to be based on some tangible material relating to merit and eligibility which can be lawfully taken note of."

C - On the Matter of Transfers and Tenure

16. In the Hajj Corruption Case, the Court reiterated its earlier ruling in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), where it had been held that "the normal period of posting of a Government servant at a station, according to Rule 21 of the Rules of Business is three years, which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary in the opinion of the competent authority." Furthermore, with regard to transfers of civil servants, this Court has stated that transfers by political figures which are capricious and are based on considerations not in the public interest are not legally sustainable. Farrukh Gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others (1998 SCMR 2222). These are principles of law enunciated by this Court and are to be followed in terms of Article 189 of the Constitution. We, however, repeatedly come across violations of such principles. This unnecessarily leads to litigation which, in turn, clogs Courts and Service Tribunals.

D - On the matter of obeying illegal orders from superiors

17. In Syed Nazar Abbas Jafri v. Secretary to the Government of the Punjab and another (2006 SCMR 606), this Court held that the duty of public officers is to independently discharge their functions and not be influenced by "dictatorial misuse of powers" at the hands of political figures. The Court has also emphasized that the appointment and removal of civil servants is not to be politically motivated. Province of Punjab v. Azhar Abbas (2002 SCMR 1). These decisions highlight the concept of a civil service which enjoys certain legal protections and is thus capable of performing its envisioned role as a law-enforcing institution.

18. The compliance of illegal orders of superiors is not justified on the basis of having been issued from higher authority as it is the law and Constitution which must be obeyed. Here it would be relevant to cite the judgment of this Court in Samiullah Khan Marwat v. Government of Pakistan (2003 SCMR 1140) where it was stated: "...the exercise of powers by the public

functionaries in derogation to the direction of law would amount to disobey[ing] the command of law and the Constitution..." Furthermore, in the case of Iqbal Hussain v. Province of Sindh (2008 SCMR 105) the Court held that "the compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law." In case the subordinates are directed to implement an illegal order "they should put on record their dissenting note" Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 SC 759). Similarly, illegal orders cannot be defended on the plea that these could expose the concerned government servant to the risk of disciplinary action. Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530).

E - On the matter of posting civil servant as Officers on Special Duty (OSD)

19. Ordinarily, no government employee should be posted as OSD except under compelling circumstances. In the Hajj Corruption case, (PLD 2011 SC 963) the Court held: "It is well settled that placing an officer as OSD is tantamount to penalizing him because the expression 'OSD' is not known to either the Civil Servants Act, 1973 or the Civil Servants (Appointment Promotion and Transfer) Rules, 1973." Reference in this regard may also be made to the cases of Mir Shah Nawaz Marri v. Government of Balochistan and others (2000 PLC (C.S) 533), Syed Ajmal Hussain Bokhari v. Commissioner, Rawalpindi (1997 PLC (C.S.) 754), Sajjad Ahmad Javed Bhatti v. Federation of Pakistan (2009 SCMR 1448) and Lt. Col. (R.) Abdul Wajid Malik v. Government of the Punjab (2006 SCMR 1360).

20. The above referred precedents have shaped the contours of the law relating to civil servants and the civil service. In the established tradition of a common law jurisdiction, Article 189 of the Constitution stipulates that, "[a]ny decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan." As this Court has already held "... the interpretation of the various Articles by this Court becomes part of the Constitution". Al-Jehad Trust v. Federation of Pakistan (PLD 1997 SC 84). Specific to the law relating to civil servants and matters in respect of their service, we have enunciated a principle of law in the case titled Hameed Akhtar Niazi v. The Secretary Establishment Division (1996 SCMR 1185) holding that a decision given by this Court on a point of law will be binding on concerned departmental functionaries who will be obliged to apply such legal principle in other similar cases regardless of whether or not a civil servant has litigated the matter in his own case. We are conscious that in some instances the application of a legal principle enunciated in a precedent may be possible without difficulty or ambiguity, while in other cases there may be some uncertainty in determining if a legal principle is in fact applicable as precedent. It is, however, clear that in view of Articles 189 and 190 of the Constitution, a civil servant will be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by this Court.

21. In appropriate cases the failure of a State functionary to apply a legal principle which is clearly and unambiguously attracted to a case, may expose him to proceedings also under Article 204(2)(a) of the Constitution. This Article, it may be recalled, grants this Court the power to punish for contempt any person who "disobeys any order of the Court". In a recent judgment, the Court has clarified the significance of the law of contempt as an enforcement mechanism. It was held "...the Court, in and of itself, has to pass orders and to require the implementation of its orders; responsibility for implementation has been made obligatory on other organs of the State, primarily the Executive. However, in the unfortunate situation that a functionary of the Executive refuses to discharge his constitutional duty, the Court is empowered to punish him for contempt... Simply put, a government of laws cannot be created or continued with toothless courts and defiant or blithely non-compliant public functionaries". Baaz Muhammad Kakar v. Federation of Pakistan (PLD 2012 SC 870). If there still remains any doubt, let us clarify that those

executive functionaries who continue to ignore the Constitution and the law, do so at their own peril.

22. The principles of law enunciated hereinabove can be summarized as under:--

(i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder; where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.

(ii) Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

(iii) Illegal orders: Civil servants owe their first and foremost allegiance to the law and the Constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule based norms; instead, in such situations, they must record their opinion and, if necessary, dissent.

(iv) OSD: Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

23. We are fully conscious that the aforesaid matters relate to decision making and administration of the machinery of the State. As such the responsibility of deciding as to suitability of an appointment, posting or transfer falls primarily on the executive branch of the State which comprises of both the political executive and civil servants. Courts ordinarily will not interfere in the functioning of the executive as long as it adheres to the law and established norms and acts in furtherance of its fiduciary responsibility. However, while hearing this petition we have recognized the need for ensuring that decision making in relation to tenure, appointments, promotions and transfers remains rule based and is not susceptible to arbitrariness or absolute and unfettered discretion.

24. Copies of this judgment shall be sent to the Federal Secretary Establishment, the Chief Secretaries of the Provinces, the Commissioner Islamabad Capital Territory and to the Secretaries of all Federal and Provincial government departments.

جواد ایس خواجہ، جج

”مستحسن طرزِ حکمرانی“ (good governance) کے جدید تصورات سے صد ہا سال قبل ہمیں اس موضوع پر نہایت فصیح اور جامع ہدایات ایک قدیم تحریر میں ملتی ہیں۔ یہ تحریر بابِ شہرِ حکمت حضرت علیؑ کرم اللہ وجہہ سے منسوب ایک خط ہے، جو والی مصر مالک بن اشتر کو لکھا گیا۔ خلیفہ اپنے مکتوب میں فرماتے ہیں کہ ”افسران کا چناؤ کرتے ہوئے انتہائی محتاط رہو اور انہیں آزمائشی مدت کی تکمیل پر مستقل کر دیا کرو۔ اہم عہدوں پر تعیناتی کبھی بھی ذاتی تعلق یا دباؤ کی بنا پر نہ کرو کہ ایسا کرنا بددیانتی اور نا انصافی کی وجہ بن سکتا ہے۔ اونچے عہدوں کے لئے تجربہ کار اور مضبوط ایمان کے حامل افراد کا چناؤ کرو ایسے افراد کا اخلاق اچھا ہوتا ہے، ان کو بہکانا آسان نہیں ہوتا، اور یہ لوگ زیادہ دور اندیش اور عاقبت اندیش ہوتے ہیں“۔ پاکستان کا آئین اور قانون، عوام کی فلاح و بہبود کی حصول کی خاطر انہی بنیادی اصولوں کی وضاحت کرتا ہے۔ سچ یہ ہے کہ ایک آئینی اور منصفانہ طرزِ حکومت کا تصور اور اس کی

بنیادی تصورات حکمتِ ازلی ہیں، عہدِ جدید کی اختراع نہیں۔ ہمارا آئین اور قانون اور ان پر عملدرآمد کرنے والی عدالتوں کا وظیفہ صرف اس قدر ہے کہ ان ازلی اصولوں کا اطلاق حال میں درپیش واقعات اور مسائل پر کریں۔

عوامی مفاد کے اس مقدمے میں عدالت سے سرکاری ملازمین کے دائرہ ملازمت کو حاصل قانونی اور آئینی تحفظات کی وضاحت چاہی گئی ہے۔ عدالت نے ایک بار پھر ”مستحسن طرزِ حکمرانی“ کے ان ازلی اصول و قواعد کا اعادہ کیا ہے جن کی وضاحت اس سے پہلے بھی متعدد مقدمات میں کی جا چکی ہے۔

2- اس معاملے کا پس منظر کچھ یوں ہے کہ مورخہ 25-2-2012 کو مختلف ٹی وی چینلز پر ایک خبر نشر ہوئی جس میں ٹنڈو محمد خان (حلقہ PS-53) کے ضمنی انتخابات کے دوران اس حلقہ سے پاکستان پیپلز پارٹی کی امیدوار سیدہ وحیدہ شاہ کو پولنگ سٹاف کے ایک رکن کو ٹھپڑ مارتے ہوئے دکھایا گیا۔ اس واقعے کا از خود نوٹس لیا گیا (مقدمہ نمبر 3/2012)، جس کا فیصلہ 12-3-2012 کو سنا دیا گیا۔ اسی دوران، وزارتِ داخلہ میں متعین گریڈ 19 کی ایک سرکاری ملازمہ، مسماء انیٹا تراب، نے مذکورہ بالا از خود نوٹس میں ایک درخواست دائر کی۔ چونکہ مذکورہ بالا مقدمہ 12-3-2012 کو مکمل ہو گیا تھا لہذا ان کی درخواست کو آئین کی دفعہ 184(3) کے تحت سماعت کے لئے منظور کر لیا گیا۔ موجودہ فیصلے کے ذریعے ہم اس درخواست کو نمٹا رہے ہیں۔

3- درخواست گزار کا مدعا درخواست میں تفصیلاً بیان کیا گیا ہے، ہم سیاق و سباق واضح کرنے کے لیے یہاں مختصراً دہرا دیتے ہیں۔ درخواست کی گئی ہے کہ اولاً یہ باور کریا جائے کہ سرکاری ملازمین ریاست کے ملازم ہیں نہ کہ حکومتِ وقت کے۔ اور اس مقصد کو حاصل کرنے کے لئے درخواست گزار نے کہا ہے کہ سرکاری ملازمین کی قانونی اور آزادانہ فرائض کی انجام دہی میں کسی بھی قسم کی سیاسی مداخلت نہیں ہونی چاہیے۔ ثانیاً، درخواست گزار کی استدعا ہے کہ سرکاری ملازمین کو وضع شدہ قوانین، قواعد و ضوابط اور عدالتی نظائر کے روشنی میں اپنے فرائض منصبی کی انجام دہی میں مکمل آزادی کی یقین دہانی کرائی جائے۔

4- مورخہ 12-3-2012 کو ہم نے اسٹیبلشمنٹ ڈویژن کے سیکریٹری، حکومتِ پاکستان، چاروں صوبوں کے چیف سیکریٹریز اور چیف کمشنر اسلام آباد کو مقدمے میں اپنا نقطہ نظر دائر کرنے کو کہا۔ اس حکم میں ہم نے واضح کیا کہ سرکاری ملازمین کو قانون کے مطابق اپنے فرائض کی انجام دہی کے دوران بعض اوقات مشکلات کا سامنا کرنا پڑتا ہے مثلاً یا تو فوری طور پر ان کا تبادلہ کر دیا جاتا ہے یا پھر انہیں اپنی تعیناتی کی مدت مکمل کئے بغیر آفیسر آن سپیشل ڈیوٹی (او ایس ڈی) بنا دیا جاتا ہے اور یہ بات بھی سامنے آئی ہے کہ تبادلوں، تقرریوں اور تادیبی کارروائیوں میں اکثر قانون اور قواعد و ضوابط کو بالائے طاق رکھا جاتا ہے۔

5- متذکرہ بالا عہدیداران پر مشتمل کمیٹی نے اپنی سفارشات پر مبنی رپورٹ عدالت میں دائر کی۔ کچھ اور سفارشات کے ساتھ ساتھ، کمیٹی نے بھی سفارش کی کہ ”تقرر اور تبادلے اہلیت کی بنیاد پر ہونے چاہئیں“، ”مختلف اقسام کی ملازمتوں کے لئے مدتِ منصبی مقرر کی جانی چاہیے“، اور یہ کہ ”کسی بھی سرکاری ملازم کو محض افسرانِ بالا کی نا پسندیدگی یا سیاسی دباؤ میں نہ آنے کی وجہ سے آفیسر آن سپیشل ڈیوٹی (او ایس ڈی) نہ کیا جائے گا“۔ کمیٹی نے مزید سفارش کی کہ ”کسی بھی سرکاری ملازم کی معطلی مجاز افسران کی جانب سے صرف باضابطہ تادیبی کارروائی شروع کرنے کے بعد ہی کی جائے گی اور دوسرے اداروں سے ڈیپوٹیشن پر لئے گئے ملازمین کو متعلقہ ذمہ داری کی بابت تجربہ اور سنیارٹی ضرور حاصل ہونی چاہیے“۔ درخواست گزار کے مطابق، کمیٹی کی متعدد سفارشات، خاص طور پر وہ سفارشات جو سرکاری ملازمین کے تقرر و تبادلے اور تعیناتی کی بابت ہیں، پہلے ہی قانون اور قواعد و ضوابط میں موجود ہیں۔

بلاشبہ ایسی سفارشات پر فی الفور عملدرآمد ہونا چاہیے تاکہ ملک میں بہتر طرزِ حکمرانی قائم ہو سکے۔ بعض دیگر سفارشات ایسی ہیں جن کے متعلق قانون سازی کی ضرورت ہے۔ اس سلسلے میں مقننہ سے رجوع کرنا مناسب ہو گا جو قانون سازی کی ذمہ دار ہے۔

6- درخواست گزار نے بحیثیت ایک سرکاری ملازمہ کے یہ استدعا بھی کی ہے کہ سرکاری ملازمت کا پیشہ وراہہ رتبہ اور ان کی خود مختاری بحال ہونی چاہیے تاکہ وہ قانون پر عملدرآمد اور فیصلہ سازی میں اپنا قانونی کردار بطریق احسن ادا کر سکیں۔ درخواست گزار نے مزید استدعا کی ہے کہ سرکاری ملازمین کو حاصل قانونی اور آئینی تحفظ بڑھتی ہوئی سیاسی مداخلت کی بناء پر اپنی حقیقت کھو چکا ہے۔ اس سے سرکاری ملازمین اخلاقی زوال کا شکار ہیں اور روز بروز اپنی فعالیت کھو رہے ہیں۔ اس انحطاط کی بدولت ریاستی مشینری، جس کا مقصد بہترین طرز حکمرانی کی بنیاد رکھنا اور پاکستان کے عوام کے بنیادی حقوق کا تحفظ اور قانون کی بالادستی برقرار رکھنا ہے، بری طرح متاثر ہو رہی ہے۔

7- عدالت نے درخواست کو قابل سماعت اس لئے گردانا کیوں کہ اس میں اٹھائے گئے سوال کا بنیادی حقوق کے نفاذ سے براہ راست تعلق ہے۔ اور حقیقت یہ ہے کہ آئینی طرز حکمرانی کے قیام اور اس کی فعالیت میں سرکاری ملازمین کا کلیدی کردار ہے۔ حال ہی میں طارق عزیز الدین (SCMR 1301 2010) کے مقدمہ میں عدالت واضح کر چکی ہے کہ ”مستحسن طرز حکمرانی“ کے قیام کا انحصار ”مکمل طور پر ایماندار، با اصول اور مضبوط بیورو کریسی پر ہے۔ سرکاری ملازمین ہماری انتظامیہ کی ریڑھ کی ہڈی ہیں۔“۔ مزید برآں یہ درخواست اس لیے بھی قابل سماعت ہے کہ اس میں سرکاری ملازمین کو حاصل بنیادی حقوق من جملہ زیر آرٹیکل 14, 9 اور 18 سے متعلقہ نکات اٹھائے گئے ہیں۔ حقیقت یہ ہے کہ بنیادی حقوق کے نفاذ کی ذمہ داری بنیادی طور پر ریاست کے انتظامی عضو پر ہے۔ سرکاری ملازمین انتظامیہ کا اہم حصہ ہیں، بلکہ یہ کہنا مناسب ہو گا کہ اس ذمہ داری سے عہدہ براء ہونے میں وہ سیاسی انتظامیہ کے دست و بازو ہیں۔ اس بنا پر، ان کی کارکردگی اور پیشہ وراہہ خود مختاری کا سوال بنیادی حقوق سے جڑا ہوا ہے جو کہ اس عدالت کے دائرہ اختیار سماعت میں شامل ہے۔

8- کوئی بھی فریق اس حقیقت سے منکر نہیں ہے کہ سرکاری ملازمین عوام ہی کے خادم ہیں اور قانون کے مطابق عوامی مفاد میں فیصلے کرنے کے پابند ہیں۔ معاملہ چاہے فیصلہ سازی میں مشاورت کا ہو، یا انتظامی ذمہ داریوں کا، کسی بھی معاملے میں وہ سیاسی انتظامیہ کی من و عن اطاعت کے پابند نہیں۔ ان کا اولین فریضہ آئین اور قانون کی پاسداری ہے۔ اور اس معاملے میں انہیں اپنا کردار حکومت وقت کے زر خرید غلاموں کی طرح نہیں بلکہ عوام کے مخلص خادموں کی طرح کردار ادا کرنا چاہیے۔ اس حوالے سے قائد اعظم محمد علی جناح کا وہ خطبہ ہمارا مورد نظر ہے جو انہوں نے 14 اپریل 1948ء کو پشاور میں سرکاری ملازمین کو دیا۔ قائد اعظم نے انہیں ہدایت کی کہ وہ ”کسی بھی سیاستدان سے سیاسی پارٹی، یا سیاسی دباؤ سے اثر قبول نہ کریں۔“۔ ”آئینی طریق کار سے اقتدار میں آنے والی“ کسی بھی حکومت کی خدمت کرنے کی ہدایت کے ساتھ ہی ساتھ، انہوں نے ”بلا خوف و خطر (اپنی) اعلیٰ شہرت، (اپنے) وقار، (اپنی) عزت اور (اپنی) سروس کی سالمیت قائم رکھنے“ پر بھی خصوصی زور دیا۔ اس بات کا نوٹس لیتے ہوئے کہ ریاست کے ان ابتدائی ایام میں بھی سول سرونٹس پر دباؤ ڈالنا ”سیاستدانوں کی ایک معروف خامی“ تھی، انہوں نے سیاستدانوں کو خبردار کیا کہ ایک دن اس کا نتیجہ ”بدعنوانی، رشوت ستانی اور اقرباء پروری جیسی خوفناک سماجی بیماریوں“ کی صورت میں نکلے گا۔ آخر میں انہوں نے سیاست دانوں اور سرکاری ملازمین دونوں کو یہ تلقین کی کہ وہ ”اپنے اپنے دائرہ کار اور دائرہ ذمہ داری کو سمجھیں اور ایک دوسرے کے ساتھ ہم آہنگی کی فضا میں تعاون کریں۔“۔ تاہم قائد اعظم کو اس حقیقت کا بخوبی ادراک تھا کہ حالات ہمیشہ مثالی نہیں ہوتے۔ اس لئے انہوں نے سرکاری ملازمین کو خبردار کیا کہ ”آپ آزمائشوں میں ڈالے جائیں گے۔ اپنی لغزشوں کے باعث نہیں، بلکہ اپنی راست بازی کی وجہ سے۔ اُس وقت قربانیاں درکار ہوں گی۔ میں آج آپ سے درخواست کرتا ہوں کہ اس آڑے وقت میں آپ سامنے آئیے گا اور قربانیوں کے نذرانے پیش کیجئے گا۔“ (قائد اعظم محمد علی جناح، خطبات بطور گورنر جنرل آف پاکستان، 1947 - 48 سنگ میل پبلی کیشنز، لاہور 2004)

9- آئین کے رو سے، ”سرکاری ملازمین“ اور ”سیاسی انتظامیہ“ ریاست کے ”انتظامی عضو“ کی دو شاخیں ہیں۔ قانونی ضوابط اور آئین کی وہ دفعات جو کہ حکومت پاکستان کے ملازمین سے متعلقہ ہیں انہی اصولوں کو عملی جامہ پہنانے کی خاطر نافذ کی گئی ہیں۔ ہم توثیق کرتے ہیں کہ سرکاری ملازمین کی ذمہ داری ہے کہ وہ سیاسی انتظامیہ کے احکام پر عملدرآمد کے ساتھ ساتھ قانون اور آئین کی پاسداری کریں کیونکہ آئین کی دفعہ 5 کے تحت دوسرے تمام شہریوں کی طرح ان کی بھی سب سے اہم ذمہ داری ”قانون اور آئین کی تابعداری کرنا ہے۔“۔ مگر سیاسی منتظمین کی جانب سے جاری کردہ تمام احکامات کی بلا سوچے سمجھے

کہ یہ درست ہیں یا غلط اطاعت کرنا ضروری نہیں۔ اس ضمن میں وفاقی حکومت کی جانب سے آئین کے آرٹیکل 90 اور 99 کے تحت رائج کردہ قواعد کار سرکار مجریہ 1973ء (Rules of Business) کے قاعدہ نمبر (10) کا جائزہ لینا ضروری ہے جس کے مطابق ”جب ایک سیکریٹری وزیر کے روبر کوئی معاملہ لے کر جاتا ہے تو آخر الذکر اگر چاہے تو تجویز اور سیکریٹری کے خیالات سے اتفاق کرے اور اگر چاہے تو اسے رد کر دے۔ سیکریٹری عموماً وزیر کے فیصلے کی تائید اور اس کے نفاذ کا پابند ہے لیکن اگر سیکریٹری یہ محسوس کرے کہ وزیر کا فیصلہ مکمل طور پر غلط ہے اور یہ نا انصافی اور غیر ضروری مشکلات کا باعث بنے گا، تو وہ اپنے تحفظات بیان کرتے ہوئے معاملے کو دوبارہ وزیر کے روبرو پیش کر سکتا ہے۔ اگر وزیر پھر بھی قائل نہ ہو اور معاملہ انتہائی اہمیت کا حامل ہو تو سیکریٹری وزیر سے درخواست کر سکتا ہے کہ معاملے کو وزیر اعظم کے پاس بھیج دیا جائے۔ وزیر مذکورہ معاملہ وزیر اعظم کے روبرو بھیج دے گا۔ اگر معاملہ وزیر اعظم کو بھیجا نہیں جاتا تو پھر سیکریٹری انچارج وزیر کے تحفظات کے بیان کے ساتھ معاملہ براہ راست وزیر اعظم کو بھیج دے۔“ بالفاظ دیگر، یہ درست ہے کہ بعض اوقات پالیسی اور ہدایات کا نفاذ کرتے ہوئے سرکاری ملازمین کو اپنی رائے کے برعکس بھی جانا پڑتا ہے۔ اس طرح کے حالات میں سرکاری ملازم کو چاہیے کہ وہ اپنی ایماندارانہ اور عاقبت اندیش آراء کا بلا خوف و خطر ضرور اظہار کرے۔ یاد رہے کہ سرکاری ملازمین کے تقرر اور ملازمت کے متعلق ایسے فیصلے جو کہ قانون کے منافی ہوں اور ظلم پر مبنی ہوں، اسی نوعیت کے اہم فیصلے ہیں جن میں جرات اور بے باکی سے اظہار رائے کیا جانا چاہیے۔

10۔ یہاں یہ بیان کرنا از حد ضروری ہے کہ 1956ء کے آئین اور 1962ء کے آئین میں سرکاری ملازمین کو تحفظ فراہم کرنے کی خاطر باقاعدہ ابواب موجود تھے۔ 1973ء کے آئین میں یہ باب حذف کر دیا گیا، تاکہ یہ امور پارلیمنٹ کے مجریہ قانون کے ذریعہ طے کئے جائیں۔ آئینی بل پیش کرتے وقت وزیر قانون نے آئین ساز اسمبلی میں اس تبدیلی کا دفاع کرتے ہوئے مطلع کیا کہ ان کے تناظر میں ماضی میں سرکاری ملازمین کو آئینی تحفظ س لئے دیا گیا تھا ”کیونکہ جو لوگ فرائض سر انجام دے رہے تھے وہ اکثر باہر سے آئے تھے اور چاہتے تھے کہ ان کو اپنی نوکری کی بابت غیر معمولی تحفظ حاصل ہو“ تاہم اب چونکہ ”ملک کی باگ دوڑ عوامی رہنماؤں کے ہاتھ میں آ گئی ہے“ اس لئے سرکاری ملازمین کو مذکورہ تحفظ آئین میں دینا ضروری نہیں رہا۔ ان کے مطابق اس تبدیلی کا مقصد دراصل یہ تھا کہ ”سامراجی روایات کو ختم کیا جائے“ اور اس نقطے پر اصرار کیا جائے کہ سرکاری ملازمین قانوناً دوسرے شہریوں کے برابر ہیں، اعلیٰ و ارفع رتے پر فائز حکمران طبقہ نہیں۔ ایک اور وجہ جو کہ وزیر قانون نے بیان کی وہ یہ تھی کہ ”آئین انتہائی بنیادی اصولوں پر مشتمل ایک دستاویز ہے جبکہ یہ معاملہ ایسی بنیادی اہمیت کا حامل نہیں کہ اسے آئین میں شامل کیا جائے“ (پارلیمانی بحث مورخہ 31 دسمبر 1972ء اور 19 فروری 1973ء)۔ لہذا یہ فیصلہ ہوا کہ ان معاملات کا تصفیہ متعلقہ قوانین کے تحت کیا جائے جیسا کہ آئین کے آرٹیکل 241، 240 اور 242 میں مرقوم ہے۔ آئین سازی کے مرحلہ کے فوراً بعد ایسے قوانین و ضوابط نافذ بھی ہوئے۔ مختصر یہ کہ آئین سازوں کا مقصد سرکاری ملازمین کو سیاسی دباؤ سے سرنگوں کرنا قطعاً نہیں تھا۔ اس حوالے سے آئینی احکامات کا مقصد تو پہلے ہی قائد اعظم کی متذکرہ بالا تقریر میں بیان ہو چکا ہے وہ یہ ہے کہ ”سرکاری ملازمین بلا خوف و خطر اپنی اعلیٰ شہرت، اپنے وقار، اپنی عزت اور اپنی ملازمت کی سالمیت کو قائم رکھیں“۔ 1973ء کا آئین بھی اس وعدہ کا ضامن ہے۔

11۔ یہی وہ ضمانت تھی کہ جس کو عملی جامہ پہنانے کے لئے پارلیمنٹ نے قانون برائے سرکاری ملازمین مجریہ 1973ء جیسے قوانین نافذ کئے۔ اس قانون کا اہم مقصد قانونی طور پر ”حکومت پاکستان کے ملازمین کو تفری اور ملازمت کے قواعد و ضوابط کو ترتیب دینا ہے“ (ابتدائیہ)۔ قانون کی بالادستی اس تمام قانون کا مرکزی تصور ہے۔ اور اس تصور کی جھلک ہمیں متعدد شقوں میں ملتی ہے۔ جن میں بیان کیا گیا ہے کہ سرکاری ملازمین کا تقرر صرف ”مجوزہ طریقہ کار“ (S.5) سے ہی ہو گا، اور ان ہی شرائط و ضوابط کی بناء پر ہو گا ”جو کہ قانون یا قواعد میں دئیے گئے ہیں“ [S.3(1)]۔ اور ”ان شرائط و ضوابط میں دوران ملازمت ایسی تبدیلی نہیں کی جا سکتی جس سے نقصان ہو“۔ [S.3(2)] اور ترقی صرف ”اہلیت“ [S.9(2)(a)] اور ”سنیاریٹی اور موافقت [S.9(2)(b)] کے بامقصد کلیئے کی بنیاد پر ہونی چاہیے۔

12۔ ان اصولوں کی تشریح گزشتہ نظائر میں بار بار کی جا چکی ہے۔ چیدہ چیدہ نظائر کا حوالہ ہم ذیل میں دے رہے ہیں۔ مگر ان سب سے قبل ”امانتی تعلق“ کے نظریہ کا ذکر لازم ہے جو اس شعبہ قانون کا بنیادی

نظریہ ہے۔ اس عدالت نے بار بار وضاحت کی کہ ”ریاست کے عہدیداران عوام کے امین ہیں اور عوام کو جوابدہ ہیں جو کہ دراصل ان کو اس کی ادائیگی بھی کرتے ہیں“ (سید یوسف رضا گیلانی بنام اسٹینٹ رجسٹرار PLD 2012 SC 466)۔ حال ہی میں پارلیمانی نمائندگان کی دہری شہریت کے مقدمے میں ہم نے بیان کیا کہ ریاست کی جانب سے دئیے گئے تمام اختیارات ”مقدس امانت“ کی مانند ہیں اور جس کسی کو بھی آئین اور قانون کے مطابق اختیارات حاصل ہیں وہ ان اختیارات کا امین ہے (محمود اختر نقوی بنام وفاق پاکستان آئینی درخواست نمبر 5، 2012ء)۔

13۔ تقرر، ترقی اور عرصہ ملازمت سرکاری ملازمین کے لئے انتہائی اہم ہیں اور اگر یہ اہلیت کے مطابق وضع کردہ قواعد و ہدایات کی روشنی میں نہیں بلکہ سفارشوں اور اقرباء پروری کی بنیاد پر ہوں گے تو اس سے سرکاری ملازمین کی خود مختاری اور کارکردگی متاثر ہو گی۔ یہاں پر ایک دفعہ پھر ضروری ہے کہ ہم قائد اعظم کی تقریر میں طے کردہ اصول اور حضرت علیؑ کے مکتوب سے جھلکنے والی دائمی حکمت اپنے پیش نظر رکھیں۔ یہ بیان کرنا بھی ضروری ہے کہ مستحسن طرز حکمرانی کے اصول آئین میں بیان کردہ ہیں اور مختلف قوانین مثلاً قانون برائے سرکاری ملازمین 1973ء، سرکاری ملازمین (تقرر، ترقی اور تبادلے) کے قواعد مجریہ 1973ء اور ان قوانین کے تحت رائج کردہ قواعد و ہدایات جو کہ سول اسٹیشنمنٹ کوڈ میں ان کی تفصیلات درج ہیں۔ تاہم عدالتی نظائر اور سرکاری ملازمت سے متعلقہ معاملات جو کہ سروس ٹریبونل اور اس عدالت کے روبرو لائے جاتے ہیں سے ظاہر ہے کہ سرکاری ملازمین کی مشکلات اور پریشانیوں میں اضافہ اُس وقت ہوتا ہے جب مذکورہ بالا قوانین کے تحت دئیے گئے مستحسن طرز حکمرانی کے اصول کی خلاف ورزی کی جاتی ہے۔ ہم جانتے ہیں کہ ملازمت کی مدت وغیرہ سے متعلق معاملات میں لچک کی گنجائش رہنا محال ہے۔ اور کچھ معاملات ہمیشہ صوابدیدی رہیں گے۔ مگر صوابدید کے استعمال اور قاعدہ کی پاسداری کے مابین توازن ضرور رہنا چاہیے۔

(ا) تقریر اور برطرفی

14۔ گزشتہ فیصلوں میں عدالتیں بار بار یہ واضح کر چکی ہیں کہ جہاں بھی تعیناتی یا برطرفی سے متعلق قوانین و ضوابط موجود ہیں، تو ان پر سختی سے اور دیانتداری سے عمل ہونا چاہیے۔ اور جہاں ان معاملات کے بارے میں تحریری قوانین و ضوابط موجود نہیں ہیں، اور یہ معاملہ صوابدیدی ہے، وہاں بھی اس صوابدید کا استعمال عوامی مفاد میں اور مناسب اور شفاف انداز میں ہونا چاہیے (بحوالہ حج بدعنوانی مقدمہ اور طارق عزیز الدین کا مقدمہ (PLD 2011 SC 963)۔ تعیناتی کرنے والے حکام قطعاً اس بات کے مجاز نہیں کہ وہ اپنی صوابدید بلا جواز (Arbitrary) انداز میں استعمال کریں۔ بلکہ ان کا فرض ہے کہ وہ منصفانہ فیصلے کریں اور ان کے فیصلے پر عدالتی نظر ثانی بھی ہو سکتی ہے۔ محمد یسین بنام وفاق پاکستان (PLD 2012 SC 2) میں ہم واضح کر چکے ہیں کہ عدالتیں، استدعا کئے جانے پر، ”چناؤ کے طریق کار کی صحت“ کا جائزہ لینے کی پابند ہیں، ”اگرچہ وہ چنے گئے شخص کے کوائف کا تفصیلی جائزہ نہیں لیتیں اور نہ انتظامیہ پر اپنی رائے مسلط کرتی ہیں“۔ اسی طرح برطرفی کے سلسلے میں بھی قوانین، مثلاً قواعد برائے فعالیت و تادیب سرکاری ملازمین، 1971ء کی پاسداری لازم ہے۔ یوں ہمارے نظام حکومت میں اس فرسودہ تصور کے لئے کوئی گنجائش نہیں رہی جس کے مطابق تمام سرکاری ملازمین صرف اس وقت تک اپنے منصب کے حقدار رہتے ہیں جب تک تاج شاہی ان سے راضی رہے، یا، جب تک ان پر نظر کرم رہے۔ یہ تصور ہمارے نظام میں بر محل نہیں جہاں پر ہر ریاستی عہدار بالآخر عوام کا تنخواہ دار ہے۔

(ب) ترقی

15۔ طارق عزیز الدین کے مقدمے میں ہم نے سرکاری ملازمت سے متعلق متعدد اہم مسائل کا جواب دیا ہے۔ بشمول ترقی کی بابت صوابدیدی اختیارات کے سوال کا۔ یہ اختیارات صرف شفاف اور منصفانہ انداز میں ہی استعمال ہو سکتے ہیں۔ بات یہ ہے کہ صوابدید بھی حکمرانی قانون کے حدود اربعہ کے اندر ہی استعمال ہو سکتی ہے، کیونکہ یہ وہ تصور ہے جس پر ہمارے پورے ریاستی نظام کی بنیاد ہے۔ ریاست کا ہر عہدہ دار اپنے فرائض کی ادائیگی میں قانون کی حکمرانی کی پاسداری کرے گا۔ اسی لئے عدالت نے کہا تھا کہ ”ترقی کے لئے زیر غور آنے کا جو حق [سول سرونٹس ایکٹ] کے سیکشن 9 میں عطا کیا گیا ہے وہ کوئی فرضی وعدہ یا رسمی مرحلہ نہیں ہے۔ سول سرونٹس [فعالیت و تادیبی] قواعد، 1973ء کے مطابق ایک افسر کی ترقی روکنا باقاعدہ سزا ہے۔ غرضیکہ جب ایک افسر کو ترقی کے لئے جانچا جائے تو فیصلہ متعلقہ

قوانین و ضوابط کی روشنی میں کیا جانا چاہیے، اور اس افسر کی قابلیت کے متعلق ٹھوس شواہد کو بنیاد بنایا جانا چاہیے۔“

16- انتظام حج بدعنوانی کیس میں عدالت نے زابد اختر بنام حکومت پنجاب (PLD 1995 SC 530) میں اپنے فیصلے کا اعادہ کیا، جس میں کہا گیا تھا کہ ”رولز آف بزنس کے رول 21 کے مطابق ایک سرکاری افسر کی ایک مقام پر تعیناتی کی معیاد عام طور پر 3 سال ہے۔ عمومی حالات میں اس کی ضرور پاسداری ہونی چاہیے۔ ماسوائے ایسے ہنگامی حالات میں جہاں مجاز اتھارٹی کی رائے میں تبادلہ بے پناہ لازم ہو جائے۔“ مزید برآں سرکاری ملازمین کے تبادلوں کے معاملے میں عدالت یہ بھی واضح کر چکی ہے کہ ایسے تبادلے جو سیاسی شخصیات نے عوامی مفاد کی بجائے اپنے مفاد کو بچانے کے لئے کئے ہوں، وہ قانونی طور پر قابلِ دفاع نہیں۔“ فرح گلزار بنام سیکریٹری، مقامی حکومت و محکمہ دیہی ترقی (SCMR 222 1998)۔

(ج) افسرانِ بالا کے غیر قانونی احکام کی تعمیل

17- سید نظر عباس جعفری بنام سیکریٹری حکومت پنجاب وغیرہ (SCMR 606 2008) میں عدالت کہہ چکی ہے سرکاری ملازمین کا فرض بنتا ہے کہ وہ آزادانہ طور پر اپنی ذمہ داریوں سے نبرد آزما ہوں اور سیاسی شخصیات کی ”آمرانہ دھونس“ میں نہ آئیں۔ عدالت نے اس بات پر بھی زور دیا تھا کہ سرکاری ملازمین کا تقرر اور ان کی برطرفی سیاسی بنیادوں پر نہیں ہونی چاہیے۔ صوبہ پنجاب بنام اظہر عباس (SCMR 1 2002) یہ تمام فیصلے ایک ایسی سول سروس کے خدوخال بیان کرتے ہیں جو قانونی تحفظ کی حامل ہو اور بطور ادارہ سوئپی گئی ذمہ داریوں سے آزادانہ طور پر اور بخوبی عہدہ برآ ہو۔

18- سرکاری ملازمین کے غیر قانونی اقدامات محض اس بنیاد پر جائز نہیں بن جاتے کہ وہ افسرانِ بالا کے اور امر کے اتباع میں اٹھائے گئے۔ من و عن اتباع کا حق صرف آئین اور قانون کو ہے۔ اس سلسلے میں سلیم اللہ خان مروت بنام حکومت پاکستان (SCMR 1140 2000) کا حوالہ مفید ہے جہاں یہ کہہ دیا گیا تھا کہ ”سرکاری عہدیداران کے تئیں قانون کو نظر انداز کرتے ہوئے اختیارات کا استعمال آئین سے روگردانی تصور کیا جائے گا۔“ مزید برآں اقبال حسن بنام صوبہ سندھ (SCMR 105 2008) میں عدالت نے قرار دیا کہ ”ماتحت فورم پر لازم نہیں کہ وہ اوپر سے آنے والے کسی ایسے حکم کی تعمیل کرے جو سراسر غیر قانونی اور بلا جواز ہو۔ بلکہ یہ جائز بھی نہیں۔“ اور اگر ماتحت لوگوں سے ایک غیر قانونی امر کی تعمیل کروائی جائے تو ”انہیں چاہیے کہ وہ اپنا اختلافی نوٹ ضرور لکھیں“ (PLD 2010 SC 759) غیر قانونی اقدامات پر عملدرآمد صرف اس لئے جائز نہیں بن جاتا کہ ایسا نہ کرنے کی صورت میں سرکاری ملازم کو تادیبی کارروائی کا خدشہ تھا۔ زابد حسین بنام حکومت پنجاب (PLD 1995 SC 530)۔

19- کسی بھی سرکاری ملازم کو او ایس ڈی کے طور پر تعینات نہیں کیا جانا چاہیے، ماسوائے ان حالات میں جہاں یہ ناگزیر ہو۔ حج بدعنوانی کیس (PLD 2011 SC 963) میں عدالت نے فیصلہ دیا ”یہ امر طے شدہ ہے کہ کسی افسر کو او ایس ڈی بنانے کا مطلب اس کو سزا دینا ہے کیونکہ یہ اصطلاح سرکاری ملازمین کے قانون مجریہ 1973ء اور سرکاری ملازمین (تقرر، ترقی اور تبادلہ) کے قواعد 1973ء میں کہیں بھی بیان کردہ نہیں ہے۔“ مقدمات میر شاہ نواز مری بنام حکومت بلوچستان وغیرہ (PLC (CS) 2000) 533، سید اجمل حسین بخاری بنام کمشنر راولپنڈی (PLC (CS) 754 1997) ساجد احمد جاوید بھٹی بنام وفاق پاکستان (SCMR 1448 2009) اور لیفٹیننٹ کرنل (ر) عہدہ الواجد ملک بنام حکومت پنجاب (2006) 1360 (SCMR) میں بھی اس اصول کی توثیق کی گئی۔

20- متذکرہ بالا نظائر قانون کے خدوخال واضح کرتے ہیں۔ ہمارے قانونی نظام کا خاصہ ہے کہ اس میں شرح قانون میں نظائر کا کردار اہم ہے۔ آئین کا آرٹیکل 189 وضاحت کرتا ہے کہ ”عدالتِ عظمیٰ“ کا کوئی بھی فیصلہ جو کہ کسی قانونی نقطے کا فیصلہ کرتا ہو اور قانونی نقطہ کی بنیاد پر ہو پاکستان کی تمام عدالتیں اس پر عملدرآمد کی پابند ہیں“ ایک گزشتہ فیصلے میں عدالت واضح کر چکی ہے، ”اس عدالت کی جانب سے کی گئی شرح آئین کا حصہ بن جاتی ہے۔“ الجہاد ٹرسٹ بنام وفاق پاکستان (PLD 1997 SC 84)

- سرکاری ملازمین سے متعلقہ ایک مقدمے حمید اختر نیازی بنام سیکریٹری اسٹیبلشمنٹ ڈویژن (1996 SCMR 1185) میں یہ واضح کیا جا چکا ہے کہ جب یہ عدالت کوئی اصول یا قاعدہ واضح کر دے، تو پھر اُس کا اطلاق، ہر خاص و عام پر ہو گا۔ اور اگر کسی تشریح سے فائدہ ایسے شخص کو ہو رہا ہے جو اس مقدمے میں فریق نہیں تھا، تب بھی اُسے فائدہ ضرور پہنچایا جانا چاہیے۔ اُس کی جانب سے مقدمہ بازی کا انتظار نہیں کیا جانا چاہیے۔ ہم سمجھ سکتے ہیں کہ کچھ معاملات میں تو نظائر میں طے شدہ قانونی اصول بغیر کسی تامل اور ابہام کے من و عن لاگو ہوں گے، مگر کچھ معاملات ایسے بھی ہوں گے جہاں یہ طے کرنے میں مشکل پیش آ سکتی ہے۔ بہر حال قاعدہ یہ ہے آئین کے آرٹیکل 189 اور 190 کے تحت سرکاری ملازمین کو حق حاصل ہے کہ وہ عدالت کی جانب سے طے کردہ اس قانونی اصولوں کے نفاذ کے لیے محکمانہ اعتراض دائر کریں یا مجاز عدالت سے قانونی چارہ جوئی کریں۔

21- اگر کوئی ریاستی عہدہ دار جان بوجھ کر اور ڈھٹائی کے ساتھ عدالت کی جانب سے بیان کئے گئے ان احکامات سے روگردانی کرتا ہے تو ظاہر ہے کہ اُسے اس حرکت سے باز آنا چاہیے۔ ورنہ یاد رہے کہ آرٹیکل 204(2)(a) اس عدالت کو اختیار دیتا ہے کہ وہ کسی بھی ایسے شخص کو توہین عدالت کی سزا دے جو ”اس عدالت کے احکامات کی حکم عدولی کا مرتکب ہو“ اپنے ایک حالیہ فیصلے میں عدالت نے توہین عدالت کے قانون کی اہمیت واضح کی ہے۔ عدالت نے طے کیا کہ ”عدالت بذاتِ خود احکامات جاری کرتی ہے اور چاہتی ہے کہ اُس کے احکامات پر عملدرآمد کیا جائے؛ عملدرآمد کی ذمہ داری ریاست کے دوسرے ستونوں کے لئے لازم ہے خاص طور پر انتظامیہ کے لئے۔ بد قسمتی سے اگر انتظامی اہلکار قانون کے مطابق اپنے فرائض سر انجام دینے سے روگردانی کرتے ہیں تو عدالت کے پاس اختیار ہے کہ وہ انہیں توہین کی سزا دے۔ بات یہ ہے کہ قانون کی حکمرانی کا خواب بے اختیار عدلیہ اور نافرمان اور غیر محتاط سرکاری اہلکاروں کی موجودگی میں شرمندہ تعبیر نہیں ہو سکتا“۔ باز محمد کاکڑ بنام وفاقِ پاکستان (Constitution Petition No.77 of 2012) اگر ابھی بھی کوئی ابہام ہو تو ہم یہ وضاحت کر دیں کہ وہ انتظامی عہدیداران جو آئین اور قانون کے صریح احکامات کو نظر انداز کرنے پر تلے ہوئے ہیں وہ نتائج کے ذمہ دار ہوں گے۔

22- اوپر وضع کردہ اصولوں کو ذیل میں مختصراً بیان کیا جا رہا ہے:

(i) تقرر، برطرفی اور ترقی

تقرر، برطرفی اور ترقی لازمی طور پر قانون کے مطابق ہونی چاہیے اور جہاں کوئی قانون اور ضابطہ نہ ہو اور فیصلہ صوابدیدی ہو تو صوابدید سلیقے سے اور شفاف و بہترین انداز میں اور عوامی مفاد میں استعمال کی جانی چاہیے۔

(ii) مدتِ ملازمت

جہاں پر عمومی طور پر مدتِ ملازمت قانون اور ضابطوں میں بیان کر دی گئی ہو وہاں مذکورہ مدت کو پورا کیا جانا ضروری ہے اور اس میں کوئی رد و بدل نہیں کیا جا سکتا سوائے اُس کے کہ کوئی اور چارہ کار نہ ہو لیکن ایسی صورت میں وجوہات کو تحریری طور پر بیان کیا جانا ضروری ہے اور اُس پر قانونی کارروائی کا حق محفوظ ہونا چاہیے۔

(iii) غیر قانونی احکامات

سرکاری ملازمین کی پہلی اور اہم ذمہ داری قانون اور آئین کی پاسداری ہے وہ اپنے حکامِ بالا کے کسی ایسے حکم کو ماننے کے پابند نہیں جو کہ صریحاً غیر قانونی، استبدادی اور عوامی مفاد کے برخلاف ہو اور اس قسم کے حالات میں اختلافی رائے کا اظہار تحریری طور پر کرنا چاہیے۔

(iv) او ایس ڈی

افسران کو ضروری وجوہات کے بغیر او ایس ڈی نہیں بنایا جائے گا یہ وجوہات عدالتی داد رسی کے تابع ہوں گی۔ اگر کسی وجہ سے کسی افسر کو او ایس ڈی بنایا گیا تو اس کی وہ تقرری ممکن حد تک قلیل مدت کی ہونی چاہیے اور اگر اس کے خلاف کوئی محکمانہ تادیبی کارروائی چل رہی ہو تو اس کو بھی جلد از جلد مکمل کیا جانا ضروری ہے۔

23۔ ہمیں معلوم ہے کہ ریاست میں انتظامیہ کا کردار کلیدی ہے۔ اور انتظامیہ کی دونوں شاخیں یعنی سرکاری ملازمین اور سیاسی انتظامیہ اپنے دائرہ کار میں رہتے ہوئے آزاد اور خود مختار ہیں تاوقتیکہ وہ اپنے امور انین و قانون اور قواعد کے مطابق اور درست انداز میں چلاتے رہیں، عدالتیں ان کے دائرہ کار میں مداخلت نہیں کریں گی۔ مگر واضح رہے کہ اس کا یہ مطلب نہیں کہ سیاسی ملازمین کے تقرر، ترقی، تبادلہ وغیرہ کی بابت مطلق العنانیت، بدعنوانی اور سیاسی مداخلت کو قبول کیا جائے گا۔

24۔ فیصلے کی نقول وفاقی سیکریٹری اسٹیبلشمنٹ، صوبوں کے چیف سیکریٹریز، کمشنر اسلام آباد اور تمام وفاقی اور صوبائی محکموں کے سیکریٹریز کو بجهوائی جا رہی ہیں۔

25۔ یہ تحریر انگریزی میں جاری کردہ فیصلہ کے اہم حصوں کا خلاصہ ہے۔ ہم انین کے آرٹیکل 28 اور 251 کی منشا کو ذہن میں رکھتے ہوئے اسے جاری کر رہے ہیں۔

MWA/A-31/S

Order accordingly.



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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

The April 26, 2022

NOTIFICATION

NO. AO/E&SE/6-29/LPR/Peshawar: In pursuance of Section-13 (1) of Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), Mr. Raz Muhammad, Principal BS-18, GHS Pistakhara Payan, Peshawar stands retired from Government service w.e.f. 02-04-2022 (A.N) on attaining sixtieth (60th) year of age, as his date of birth is 03-04-1962.


2. The Competent Authority is further pleased to allow him 365 days encashment of leave in lieu of LPR as admissible to him under the Revised Leave Rules, 1981.

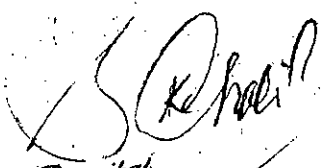
SECRETARY
Govt. of Khyber Pakhtunkhwa
Elementary & Secondary Edu: Department

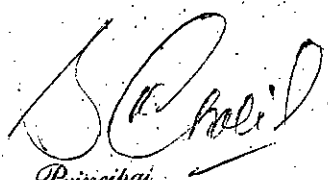
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Copy forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Elementary & Secondary Education, Peshawar.
3. The District Education Officer (Male), Peshawar.
4. The Director, EMIS Cell, E&SE Department for uploading at official website.
5. The Section Officer (Schools/Male), Elementary & Secondary Education Department.
6. Mr. Raz Muhammad, Principal BS-18, GHS Pistakhara Payan, Peshawar.
7. Master File.


(ABDUL GHAFFAR)
SECTION OFFICER (ACCOUNTS)


Principal
Govt: Shaheed Maheer Rizwan
High School Pushtakhara Payan
Peshawar


Principal
Govt: Shaheed Maheer Rizwan
High School Pushtakhara Payan
Peshawar