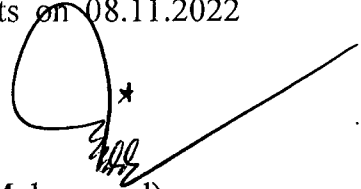


26.09.2022

Appellant in person present. Mr. Kabirullah Khattak,
Additional Advocate General for the respondents present.

Reply/comments on behalf of respondents not
submitted. Learned Additional Advocate General seeks time
to contact the respondents for submission of reply/comments.
Adjourned. To come up for reply/comments on 08.11.2022
before S.B.



(Mian Muhammad)
Member (E)

27.04.2022

Appellant in person present.

He made a request for adjournment on the ground that his counsel is not available. Adjourned. To come up for preliminary hearing on 16.06.2022 before S.B.



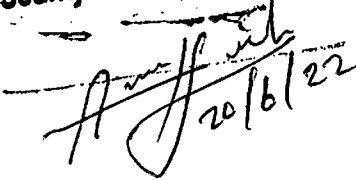
(Rozina Rehman)
Member (J)

16th June, 2022

Learned counsel for the appellant present.

This appeal is against the order dated 03.08.2021, whereby the appointment order of the appellant was withdrawn/cancelled against which he filed departmental appeal on 30.8.2021 and waited ^{for} 90 days waiting period when he did not receive response from the department he filed this appeal within next 30 days which is within time and is admitted to full hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 04.08.2022 before S.B.

Rs 500/-
Appellant Deposited
Security & Process Fee


20/6/22



(Kalim Arshad Khan)
Chairman

04.08.2022

Junior of counsel for the appellant present. Mr. Kabir Ullah Khattak, Additional Advocate General for respondents present.

Written reply not submitted. Learned Additional AG sought time for submission of written reply. To come up for written reply on 26.09.2022 before S.B.






(Fareeha Paul)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7889/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/12/2021	<p>The appeal of Mr. Jamal Qadar presented today by Mr. Amjid Ali 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-	10.02.2022	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>10/02/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to <u>27.04.2022</u> for the same as before.</p> <p style="text-align: right;"> Reader</p> <p><i>[Faint, illegible text and a large diagonal line are present in the lower portion of the table cell.]</i></p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

SERVICE APPEAL NO. 7289 /2021

Jamal Qadir S/O Fazal Qadir R/O Village and Post Office Garhi Kapura Kandar
Tehsil and District Mardan

..... (Appellant)

VERSUS

Govt of Khyber Pukhtunkhwa through Secretary Health at Civil Secretariate
Peshawar and others

..... (Respondents)

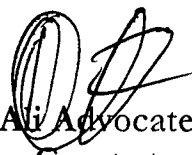
INDEX

Serial No	Description of Documents	Annexure	Pages
1	Service Appeal		1-7
2	Copy of the experience certificates	A	7A-14
3	Copy of appointment order dated 10/08/2016	B	15-16
4	Copy of Medical Certificate	C	17
5	Copy of the posting order dated 22/08/2016	D	18-
6	Copy of arrival report	E	19
7	Copy of attendance register	F	20
8	Copy of order dated 20/09/2016	G	24
9	Copy of Departmental appeal and P.O receipt	H	25-28
10	Copy of the service appeal	I	29-34
11	Copy of the judgment dated 18/12/2018	J	35-38
12	Copy of the show cause notice dated 30/01/2019	K	39
13	Copy of the reply to show cause notice dated 11/02/2019	L	40-41

14	Copy of the statement dated 19/02/2019	M	42-43
15	Copy of the enquiry report dated 20/02/2019	N	44-46
16	Copy of the execution form/petition	O	47-48
17	Copy of the office order dated 03/08/2021	P	49
18	Copy of the departmental appeal along with post office receipt dated 30/08/2021	Q	50-56
19	Copy of the judgment dated 04/02/2015	R	57-80
20	Wakalatnama		81


Appellant

Through


Amjad Ali Advocate
Supreme Court at
Distt: Courts Mardan

Dated: 20/12/2021

6

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

SERVICE APPEAL NO. 7889 /2021

Jamal Qadir S/O Fazal Qadir R/O Village and Post Office Garhi Kapura
Kandar Tehsil and District Mardan

..... (Appellant)

VERSUS

1. Govt of Khyber Pukhtunkhwa through Secretary Health at Civil Secretariate Peshawar
2. Director General Health KP at Judicial Complex Khyber Road Peshawar
3. District Health Officer District Mardan

..... (Respondents)

SUBJECT: APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, AGAINST THE ORDER DATED 03/08/2021 PASSED BY RESPONDENT NO 3 RECEIVED ON 26/08/2021 DURING IMPLEMENTATION PROCEEDINGS BEFORE SERVICE TRIBUNAL KP WHEREIN APPOINTMENT ORDER DATED 22/08/2016 OF APPELLANT IS WITHDRAWN WITH IMMEDIATE EFFECT AND THEREAFTER DEPARTMENTAL APPEAL DATED 30/08/2021 REMAINED UNRESPONDED EVEN AFTER LAPSE OF 90 DAYS WHICH IS ILLEGAL AGAINST LAW AND FACTS.

PRAYER IN APPEAL:

On acceptance of this service appeal, impugned order dated 03/08/2021 may please be set aside and appellant may please be permitted to continue his service as per his appointment order dated 08/10/2016 with all back benefits.

OR IN ALTERNATIVE (2)

Appellant may please be granted salaries from 10/08/2016 (i.e date of appointment) till date and onwards and appellant may please be granted experience certificate for the said period.

Respected Sir,

Appellant humbly submits as under:

1. That appellant is equipped with qualification such as B.A with Diploma in Medical Technology, domiciled and NIC of Mardan and two experience certificates i.e
 - i. By Chief Executive Mardan Medical Complex from 06/10/2010 till 10/10/2012.
 - ii. From Jan 2013 till December 2015 by RAHAP Project KPK SDU Building Civil Secretariat Khyber Road, Peshawar (Copy of the experience certificates are attached as Annexure A)
2. That the Executive District Officer Health Mardan advertised posts of Medical PHC Tech (MP) BPS-12.
3. That appellant applied for the same as per qualification/experience detailed in Para No 1 of this appeal.
4. That appellant was tested and interviewed by the Selection Committee.
5. That the Selection Committee recommended appellant for appointment as PHC MP BPS-12.
6. That in pursuance of said recommendation by Selection Committee, appellant was appointed as PHC (Tech) MP BPS-12 vide appointment order dated 10/08/2016 by the D.H.O Mardan (Copy of appointment order dated 10/08/2016 is attached as Annexure B)
7. That medically the appellant was examined by medical superintendent, DHQ, Hospital Mardan on 19/08/2016 (Copy of Medical Certificate is attached as Annexure C)
8. That appellant was posted in R.H.C Gumbat vide order dated 22/08/2016 (Copy of the posting order dated 22/08/2016 is attached as Annexure D)

9. That appellant submitted arrival report on the same day i.e 22/08/2016 **(Copy of arrival report is attached as Annexure E)** (3)
10. That appellant regularly performed duty and his attendance register and the concerned superior officers were satisfied from performance of appellant **(Copy of attendance register is attached as Annexure F)**
11. That vide order dated 20/09/2016, District Health Officer Mardan cancelled appointment order of appellant with immediate effect, which is illegal against law and facts **(Copy of order dated 20/09/2016 is attached as Annexure G)**
12. That appellant served departmental appeal dated 10/10/2016 upon Director General Health Department through registered AD which remained un-responded even after lapse of 90 days. **(Copy of Departmental appeal and P.O receipt is attached as Annexure H)**
13. That the present appellant filed service appeal before the Service Tribunal KP against the order dated 20/09/2016 **(Copy of the service appeal is attached as Annexure I)**
14. That the Honorable Service Tribunal KP accepted the service appeal of the present appellant by setting aside the impugned order dated 20/09/2016 with direction to the Health Department to issue show cause notice and after submission of reply to the show cause, the same shall be concluded within a period of 60 days **(Copy of the judgment dated 18/12/2018 is attached as Annexure J)**
15. That a show cause notice was served upon the appellant on 30/01/2019 **(Copy of the show cause notice dated 30/01/2019 is attached as Annexure K)**
16. That the appellant submitted written reply dated 11/02/2019 to the show cause notice **(Copy of the reply to show cause notice dated 11/02/2019 is attached as Annexure L)**
17. That the statement of the present appellant was recorded by the inquiry committee on 19/02/2019 **(Copy of the statement dated 19/02/2019 is attached as Annexure M)**
18. That the enquiry was concluded on 20/02/2019 and the enquiry report was submitted on 27/02/2019 **(Copy of the enquiry report dated 20/02/2019 is attached as Annexure N)**

19. That despite the report of the enquiry committee, the competent authority refrained itself from passing suitable order against the appellant in light of the recommendations of the enquiry committee. (4)
20. That the appellant meanwhile filed execution petition before the Honorable Service Tribunal KP for the implementation of the judgment dated 18/12/2018 on 21/09/2020. **(Copy of the execution form/petition is attached as Annexure O)**
21. That the direction of the Honorable KP Service Tribunal was for passing of order within 60 days but the respondents failed to pass any order adverse to the service of the appellant within 60 days and as per law and judgments of the Honorable High Court Peshawar as well as judgments of this Honorable Tribunal, the respondents cannot pass an order adverse to the service of the appellant and the judgment of the Honorable Service Tribunal is to be implemented in its true letter and spirit by continuing the first appointment order dated 10/08/2016 of the appellant, as the withdrawal order dated 20/09/2016 was already set aside by Honorable KP Service Tribunal.
22. That during the execution/implementation proceedings before the Honorable Service Tribunal KP, the appellant received office order dated 03/08/2021 on 26/08/2021 whereby the order dated 22/08/2016 was withdrawn with immediate effect. **(Copy of the office order dated 03/08/2021 is attached as Annexure P)**
23. That appellant served departmental appeal dated 30/08/2021 upon respondent no 2 through registered post No 239 dated 30/08/2021 which remained unresponded even after lapse of 90 days **(Copy of the departmental appeal along with post office receipt dated 30/08/2021 is attached as Annexure Q)**
24. That feeling aggrieved from the office order dated 03/08/2021, appellant approaches this Honorable Tribunal on the following grounds:
- GROUND:**
- A. Because the impugned order dated 03/08/2021 is illegal, against law and facts and liable to be set aside.
- B. Because as per the impugned order dated 03/08/2021, the posting order of the appellant dated 22/08/2016 has been withdrawn with immediate effect and the appointment order dated 10/08/2016 is still intact, meaning thereby that the appellant is still in service of the Health Department and therefore is entitled to perform his duty/service as per his appointment order dated 10/08/2016.

C. Because even for the sake of argument without admitting the impugned order as correct, appellant is entitled for the salaries from date of his appointment i.e 10/08/2016 till 03/08/2021. (5)

D. Because as per the enquiry report dated 20/02/2019, the findings against the appellant are reproduced as under:

“Jamal Qadir has basic qualification of Matric Science and PHC Technician Diploma. Matric Science and PHC Technician Diploma/Certificates are true. He has shown experience of MMC Mardan for two years after passing the PHC Technician Diploma. But this two years experience was not paid job. No appointment order of the experience and no salary slip of the experience were found in his documents. According to Esta Code Criteria, experience marks can be given to those candidates who have paid experience from some Govt or Semi Government recognized institute. Since the experience of Jamal Qadir is not paid therefore he is not entitled for experience marks. He has given the following marks as;

1) Matric Science	:	50 Marks
2) PHC Diploma	:	20 Marks
3) Higher Qualification	:	08 Marks
4) Interview	:	4.5 Marks
<hr/>		
Total		82.5 Marks

His total marks become 82.5 and in the merit list the last candidate got 89.5 marks. So the total marks of Mr Jamal Qadir are less than the last selected candidate.”

E. Because the present appellant has not been awarded experience marks only due to the reason that the experience of the appellant is not from a paid job which is illegal and against law and facts.

F. Because the Honorable Peshawar High Court Peshawar vide its judgment dated 04/02/2015 in case titled as Dr Ikram Ullah versus KP Agriculture University Peshawar (W.P No 1012/2014) has held that experience acquired in any manner cannot be taken away from a person merely because has not been paid any remuneration or pay for the same. The relevant Para of the aforementioned judgment is reproduced as under: (Copy of the judgment dated 04/02/2015 is attached as Annexure R)

“ 7.For the purpose of experience it is not necessary that a person must be serving against a post on regular basis. If a person teaching in a University, particularly at Post-Graduate level without taking any remuneration, it cannot be said the he has

gained and acquired experience without any wages is not entitled for its benefits. Experience acquired in any manner cannot be taken away from a person merely because he has not been paid any remuneration or pay for the same. Experience means the accumulation of knowledge or skill which results from the direct participation in events or activities with or without any financial benefit. The meaning provided by Wikipedia (Free Encyclopedia), experience is the knowledge or mastery of an event or subject gained through involvement in or exposure to it. From the above definition, it can be easily gathered that infact, experience is a process of getting knowledge or skill from doing, seeing or feeling of things practically.....”

- G. Because since experience means accumulation of knowledge or skill which results from the direct participation in events or activities with or without any financial benefit therefore discriminating the appellant merely on the ground that the experience was not paid is a glare illegality.
- H. Because the provision of salary slips is irrelevant and not a requirement in light of the judgment of the Honorable Peshawar High Court Peshawar dated 04/02/2015 in case titled as Dr Ikram Ullah versus KP Agriculture University Peshawar (W.P No 1012/2014).
- I. Because appellant has got experience for about 05 years. The relevant provision of Esta Code is reproduced as under:
- “ C. Experience
- | | |
|-------------------------------------|-----|
| Experience for one year | 04 |
| Experience of two years | 07 |
| Experience of three years and above | 10” |
- J. Because appellant as per aforementioned provision of law is entitled for ten experience marks which have not been given to the appellant by the enquiry officer.
- K. Because if the ten marks of experience are added to the total marks of the appellant then the total marks of appellant becomes $82.5+10=92.5$ and therefore appellant falls within the merit as enquiry report envisages the last selected candidate has secured 89.5.
- L. Because appellant has not been treated in accordance with law and violated Article 4 of the Constitution of Pakistan.
- M. Because appellant has been discriminated infringing article 5 and 27 of the Constitution of Pakistan.

- N. Because it is a settled law that once a vested right granted to anyone, he cannot be divested of the same.
- O. Because the appellant's name was reflected in the merit list and upon the same, appointment order of the appellant was issued and the appellant was posted in RHC Gumbat where he assumed charge and performed duty.
- P. Because the principle of locus poenitentiae is attracted with full force to the case of the appellant. Once a benefit accrued to the appellant, he cannot be divested of the same. The appellant cannot be divested of the same when no action has been taken against the concerned delinquent official.
- Q. Because there is no requirement as per law and rules that experience must be from a Semi-Govt/Govt institute and experience merely means to acquire knowledge or skill by engaging in any activity or task. Therefore the experience acquired by appellant by engaging and directly participating in events or activities, cannot be taken away from the appellant as experience is acquiring of knowledge or skill by doing, seeing or feeling things practically.
- R. Because appellant is jobless and is therefore entitled for back monetary as well as service benefits.

It is therefore humbly prayed that on acceptance of this service appeal, impugned order dated 03/08/2021 may please be set aside and appellant may please be permitted to continue his service as per his appointment order dated 08/10/2016 with all back benefits.

OR IN ALTERNATIVE

Appellant may please be granted salaries from 10/08/2016 (i.e date of appointment) till date and onwards and appellant may please be granted experience certificate for the said period.

Through

Appellant

Amjad Ali Advocate
Supreme Court at
Distt: Courts Mardan

Dated: 20/12/2021

AFFIDAVIT

I, Jamal Qadir S/O Fazal Qadir R/O Village and Post Office Garhi Kapura Kandar Tehsil and District Mardan, do hereby solemnly affirm and declare that all the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Court.

Deponent

S.No. 93151
Roll No. 1399
Group. Science

7/A
A. Qadir
AMT 300000
SYDNEY
MARDAN



MARKS IMPROVED

Board of Intermediate and Secondary Education Mardan N.W.F.P. Pakistan SECONDARY SCHOOL CERTIFICATE

SESSION - 2005 - Supplementary

This is to certify that JAMAL QADIR Son of FAZAL QADIR
and resident of District Mardan has passed the Secondary School Certificate Examination of the Board of Intermediate & Secondary Education

Mardan held in September/October, 2005 as a Private candidate. He obtained 652 marks out of 1050 and has been placed

in Grade B representing Very Good. The candidate passed the following subjects:
1. English 2. Urdu 3. Islamiat (Comp) 4. Pakistan Studies 5. Mathematics 6. Physics 7. Chemistry 8. Biology

His date of birth according to admission form is (in Figures) 24-02-89 (in Words) 24th February N/H Eighty Nine.

Rashidul

Asstt. Secretary

[Signature]
Secretary

Issued in Lieu of Certificate bearing Roll No. 60715 Session SSC (A) 200.

This certificate is issued without alteration or erasure.

S. No. 057591
Roll No. 45306
Group. Humanities



Board of Intermediate and Secondary Education
Mardan N.W.F.P. Pakistan
INTERMEDIATE EXAMINATION
SESSION 2007 - ANNUAL

This is to certify that JAMAL QADIR son of FAZAL QADIR
and student of Govt. Higher Secondary School Garhi Kapura Mardan Registration No. 34-B/HGKM-2005
has passed the Intermediate Examination of the Board of Intermediate & Secondary Education,
Mardan held in May/June, 2007 as a Regular candidate. He obtained 668 Marks out
of 1100 and has been placed in Grade B Representing Very Good The Examination was
taken as a whole.

[Signature]
Asstt. Secretary

[Signature]
Secretary

This certificate is issued without alteration or erasure.

Serial No. 249

Roll No. 25014

(10)

KHYBER PAKHTUNKHWA MEDICAL FACULTY PESHAWAR PAKISTAN




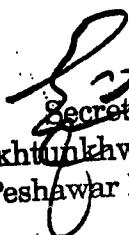
Diploma In Medical Technology

HEALTH TECHNOLOGY

SESSION 2009/2010

This is to certify that Mr. Miss. Mrs. Jamal Qadir Son / Daughter of
Mr. Fozal Qadir Of 5th Batch bearing Registration No
MF/53/N.IMG/H.T/25014 Has passed the examination of diploma in Medical Technology
In the year 04/2010 He / She obtained 710 Marks out of 1000
He / She has been Placed in C Grade.


INCHARGE
Secrecy Section
Khyber Pakhtunkhwa
Medical Faculty Peshawar


Secretary,
Khyber Pakhtunkhwa Medical Faculty
Peshawar Pakistan


Instructor
Govt. College of Management
Science Mardan

S.No. 809

KHYBER PAKHTOONKHWA MEDICAL FACULTY

PESHAWAR - PAKISTAN



(MARDAN)

Name: JAMAL QADIRFather Name: FAZAL QADIR

Health Technology

SESSION: 04/2010 (ROLL NO 25014)

1st SEMESTER

Subject/paper	Total Marks	Obtained Marks	Passing Marks	Result
Anatomy	100	50	50	Passed
Pathology	100	50	50	Passed
Pharmacology	100	50	50	Passed
Physiology/ Biochemistry	100	50	50	Passed
Result	400	200		

SESSION: 04/2010 (ROLL NO 25014)

2nd SEMESTER

Subject/paper	Total Marks	Obtained Marks	Passing Marks	Result
Paper A	100	50	50	Passed
Paper B	100	50	50	Passed
English	100	57	50	Passed
Islamiat	50	25	25	Passed
Result	350	182		

SESSION: 04/2010 (ROLL NO 25014)

3rd SEMESTER

Subject/paper	Total marks	Obtained Marks	Passing Marks	Result
Paper A	100	50	50	Passed
Paper B	100	50	50	Passed
Public Health	100	50	50	Passed
Result	300	150		

SESSION: 04/2010 (ROLL NO 25014)

4th SEMESTER

Subject/paper	Total marks	Obtained Marks	Passing Marks	Result
Paper A	100	50	50	Passed
Paper B	100	53	50	Passed
English	100	50	50	Passed
Pak Study	50	25	25	Passed
Result	350	178		
Grand Total	1400	710		

Date: 05/10/2010

Prepared by:

Checked by:

INCHARGE
 Secrecy Section
 Khyber Pakhtoonkhwa Medical Faculty Peshawar

Secretary

Director
 Govt. College of Management
 Science Mardan

Peshawar.

Serial No 253

Roll No 25014

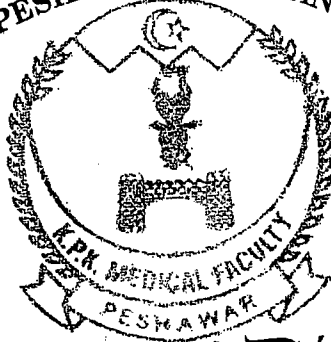
Batch No _____

Examination Session 04/2010

Technology Health

(12)

KHYBER PAKHTOONKHA MEDICAL FACULTY
PESHAWAR PAKISTAN



Renewal Of Diploma

REGISTRATION / ENROLMENT VALID



FOR FIVE YEARS 2010/2015


The Diploma registration of Mr. Miss. Mrs. Jamal Qadir Son Daughter of


Fazal Qadir hearing Registration No. MF/53/M.IMS Enrolment Provisional

Diploma Serial No. 249 Dated 6/10/2010 is hereby renewed for the period of five

years with effect from 10/2010 to 09/2015

Prepared by: 
Checked by: 


INCHARGE
Secrecy Section
Khyber Pakhtoonkhwa
Medical Faculty Peshawar


SECRETARY
Khyber Pakhtoonkhwa
Medical Faculty Peshawar



**Mardan Medical Complex
Teaching Hospital Mardan**

13

To Whom It May Concern

This is to certify that Mr. Jamál Qadir S/o Fazal Qadir has been working in Mardan Medical Complex Teaching Hospital Mardan as a Health Technician from 06-10-2010 to 10-10-2012.

The above named person is fully trained and assist all the senior Professor and Surgeon in a good manner.

During the tenure of his service we found him devoted efficient, punctual and hard working.

His performance is outstanding and his attitude with patient & Staff is good.

We wish him success in his future career.

[Signature]
Instructor
Govt. College of Management
Science Mardan

[Signature]
Chief Executive
Mardan Medical Complex
Teaching Hospital Mardan
Chief Executive
Mardan Medical Complex
Mardan



Planning & Development Department
Government of Khyber Pukhtunkhwa Civil Secretariat Peshawar
Phone# 091-9211053, 9210195 Fax # 091-9210308
E-Mail: sdupdd_2007@yahoo.com

14

Dated December , 2015

Experience Certificate

United Nation Development Program has initiated Refugee Affected & Hosting Areas (RAHA) programme under ONE-UN. Under this programme rehabilitation of infrastructure, social mobilization & community development, livelihood improvement through skill development and rehabilitation of environment will be carried out in target areas. The RAHA -RAA component is being implemented through SDU, P&D Department, Khyber Pakhtunkhwa. A Programme Management Unit (PMU) has been established in SDU to implement the RAHA programme.

Refugee Affected & Hosting Areas (RAHA) programme is a joint initiatives of the Economic Affairs Division, Government of Pakistan and UN system in Pakistan. The programme is being implemented by UNDP and UNHCR through national & provincial implementation partners in Baluchistan and Khyber Pakhtunkhwa under the National Implementation Modality (NIM).

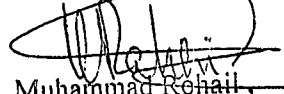
The overall objective of the RAHA programme is to improve livelihoods, rehabilitate the environment and enhance social cohesion within communities of refugee-affected and hosting areas. Under the RAHA programme public services will be improved and community physical infrastructure rehabilitated in the target areas. The programme is funded by UN Agencies under ONE-UN Programme being piloted in Pakistan. The UN One Programme crosscutting issues relating to human rights, gender equality, civil society engagement and refugees will be addressed.

This is to certify that **Mr. Jamal Qadir S/O Mr. Fazal Qadir** of District Mardan has worked with UNDP-RAHA Project in capacity of as **Medical Technician** from January 2013 to December, 2015.

During his tenure we found him sincere, trustworthy, proactive, pleasant, confident, innovative, open to challenges and best team player. He was professionally & technical sound, punctual, hard-working, target oriented and a devoted staff. He proved himself capable of performing his tasks with Zeal & Zest & up to the satisfaction of management.

We wish him all the best in his future endeavor.

Sincerely Yours,


Muhammad Rehail,
RAHA Project, Khyber Pakhtunkhwa,
SDU Building, Civil Secretariat,
Khyber Road, Peshawar Cantt,
Ph. No. 091-9211557
0345-8575996


Instructor
Govt. College of Management
Science Mardan



حکومت خیبر پختونخوا

DISTRICT HEALTH OFFICER
Mardan (Khyber Pakhtunkhwa)

Ph: # (0937) 9230030 Fax: # (0937) 9230349
Email: mardandho@gmail.com

Aux B

No. /DHO Dated: / /2016

15

OFFICE ORDER:

The competent authority is pleased to notify the following candidates for appointment against the vacant positions of PHC Tech (MP) BPS-12 on the recommendation of the Departmental Selection Committee of DHO Office Mardan plus usual allowances as admissible under the rules and posted in the following health facilities on the following terms and conditions;

PHC Technician (MP) BPS-12

Attest
Amjad Ali
Mardan
AMJAD ALI
SUPERVISOR

S.#	Name	Father Name	Address
1	Waqar Ahmad	Mazullah	Vill: Shahnoor Pull p/o Takkar Teh: Takht Bhai Distt: Mardan
2	Syed Shah Fahad	Bakht Jamal	Vill: & p/o Galyara Distt: Mardan
3	Riaz Khan	Gul Zada	Vill: Anwar Khan Kali p/o Pir Abad Teh: Takht Bhai Distt: Mardan
4	Imran	Sayed Imam Jan	Vill: Noor Abad p/o Pir Sadi Teh: Takht Bhai Distt: Mardan
5	Hazrat Said	Esa Khan	Vill: Chail kumbary p/o Lund Khwar Tehs; Katlang Distt: Mardan:
6	Farooq Ahmad	Haji Monawar Khan	Vill: Jafar Dheri p/o Takar Teh: Takht Bhai Distt: mardan
7	Noor ul Islam	M Shoaib	Herawand Rustam District Mardan
8	Muhammad Ubaid Ullah	Hafiz Ahmad Jan	Vll: Shiekhano Kali p/o Garo Shah Teh: Takht Bhai Distt: Mardan
9	Amjid Khan	M.muhammad Amin	Vill: & p/o Gujar Garhi Moh: Poswal Near Petrqi Pump Distt: Mardan
10	Sher Ali	Abdul Sattar Rahi	vill: Lundkhwar Teh: Takht Bhai Distt: Mardan
11	Hidayat Ullah	Gul Bahadar	Vill: Mansab Charsadda Road Teh: & Distt: Mardan
12	Ihtisham ul Haq	Gulzar Ali Khan	Parkho Dheri Teh: Takht Bhai Distt: Mardan
13	Sher M. Khan	Abdul Kabir	Vill: Chato Hathain p/o Hathian Teh: Takht Bhai Distt: Mardan
14	Jamal Qadir	Fazal Qadir	Garhi Kapura Kandar Teh: & Distt: Mardan
15	Muhammad Imran Khan	Ameer Rahman	Ittabad Colony p/o Jalala Teh: Takht Bhai Distt: Mardan
16	Taimur Khan	Aurang Zeb	Moh: Landaky P/o Parholi Mardan

16

Terms & Condition:

1. He/she is domiciled in District Mardan.
2. His/her appointment is purely on temporary basis and is liable to termination at any time without assigning any notice or reason.
3. He/she will remain on probation period of one year starting from the date of joining services in the Health Department. The probation period if not extended in writing shall be presumed to have been extended.
4. He/she will not be entitled to any TA/DA on joining his/her duty.
5. He/she is declared medically fit for Govt: Service.
6. He/she is liable to serve anywhere in the District as well as in Khyber Pakhtunkhwa (KPK).
7. He/she will be governed by such rules and order as may be issued by the Government for the category of government servants to which he belongs.
8. If he/she intends to resign his services, he/she will give two months notice in advance or deposit one month salary in lieu thereof to Government.

If he/she accepts the above-mentioned terms and conditions, he/she should report to the office of the undersigned for duty on his/her own expense within seven days after the receipts of this letter otherwise his appointment order will be considered as cancelled.

N.B: - He/she will have no legal rights to challenge his/her termination in case his/her Academic & Professional documents have been found fake.

~~_____~~
District Health Officer
Mardan

No. 9124-45 /DHO Dated Mardan the: 10 / 8 / 2016
Copy forwarded to the following for information and n/action: -

1. Director General Health Services, Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner, Mardan.
3. District Nazim Mardan.
4. District Comptroller of Accounts, Mardan.
5. Deputy District Health Officer, Mardan.
6. Accountant DHO Office, Mardan.
7. All officials concerned.

District Health Officer
Mardan

MEDICAL CERTIFICATE

Ann - C
DNO: 1577 MS/PA

Name of Official Mr - Jamal Qadis 16101-9181468-5

Caste or Race Afghan (17)

Father's Name Fazal Qadis

Residence Mehallah Paktan Khandak Tehsil &
District Mardan

Date of Birth 24-02-1989 (As per enic)

Exact Height by measurement 5-4"

Exact mark of Identification NIL

Signature of the Official [Signature]

Signature of the Head of Office [Signature]

Seal of Office [Seal]

I do hereby certify that I have examined Mr. Jamal Qadis
for employment in the office of the DHO office Mardan
and cannot discover that he had any disease communicable or other constitutional
affection or bodily infirmity except Fit.

I do not consider this is disqualification for employment in the office of the
above as PMC Tech BPS-12 his age according to his own statement
27 year and by appearance about year Twenty Seven.



[Signature]
Medical Superintendent,
DHQ Hospital, Mardan

~~Medical Superintendent~~
~~District Hospital Mardan~~

LEFT HAND THUMB AND FINGER IMPRESSION

Date: 19/08/2016



DISTRICT HEALTH OFFICER
Mardan (Khyber Pakhtunkhwa)
Ph: # (0937) 9230030 Fax: # (0937) 9230349
Email: mardandho@gmail.com

Aux-D

OFFICE ORDER

Reference this office order No.9124-45/DHO dated 10/08/2016, the competent authority is pleased to place the services of the following officials at the Health facilities mentioned against their names, with immediate effect. (18)

S.No.	Name of Official	Designation	BPS	Place of posting	Remarks
1.	Waqar Ahmad	PHC Tech (MP)	12	THQH Takht Bhai	Against the vacant post at Malaria Head of Account
2.	Syed Shah Fahad	PHC Tech (MP)	12	TDH Shahbaz Garhi	Against the vacant post at Malaria Head of Account
3.	Imran	PHC Tech (MP)	12	THQH Takht Bhai	Against the vacant post at Malaria Head of Account
4.	Hazrat Said	PHC Tech (MP)	12	TDH Lund Khwar	Against the vacant post at Malaria Head of Account
5.	Farooq Ahmad	PHC Tech (MP)	12	THQH Takht Bhai	Against the vacant post at Malaria Head of Account
6.	Noor ul Islam	PHC Tech (MP)	12	TDH Rustam	Against the vacant post at Malaria Head of Account
7.	Muhammad Ubaid Ullah	PHC Tech (MP)	12	THQH Takht Bhai	Against the vacant post at Malaria Head of Account
8.	Amjid Khan	PHC Tech (MP)	12	RIIC Manga	Against the vacant post at Malaria Head of Account
9.	Sher M. Khan	PHC Tech (MP)	12	RIIC Shergarh	Against the vacant post at Malaria Head of Account
10.	Sher Ali	PHC Tech (MP)	12	TDH Lund Khwar	Against the vacant post at Malaria Head of Account
11.	Jamal Qadir	PHC Tech (MP)	12	RIIC Gumbat	Against the vacant post at Malaria Head of Account
12.	Hidayat Ullah	PHC Tech (MP)	12	RIIC Manga	Against the vacant post
13.	Ihtisham ul Haq	PHC Tech (MP)	12	RIIC Shergarh	Against the vacant post
14.	Riaz Khan	PHC Tech (MP)	12	RIIC Shergarh	Against the vacant post
15.	Taimur Khan	PHC Tech (MP)	12	CD Par Hoti	Against the vacant post of OHH Head of Account

No. 10042-64 DHO

dated Mardan the 22/08/2016

Copy forwarded to the:

1. Deputy Commissioner, Mardan.
2. District Nazim, Mardan.
3. District Comptroller of Accounts, Mardan.
4. Deputy DHO Mardan.
5. Incharge of the Health Facility concerned.
6. Accountant DHO Office Mardan.
7. DIIS Cell, DHO Office, Mardan.
8. Officials concerned.

District Health Officer
Mardan

(Signature)
District Health Officer
Mardan

District Health Officer
Mardan

(Signature)

To

Aux - E
19
The District Health
Office
Mardan

Through Proper channel

Subject: Annual Report

Sir, with respect it is stated
that reference your order No 10042-64
DHO dt-22-8-2016
I hereby submit my annual report
to day on 22/8/16 (FN) at RHC Gumbat

Yours Obediently
JTD

JAMAL QADIR
JPHC (MP)
RHC Gumbat.

No 48 dt 22/8/16

Forwarded to DHO
for info for information
attached please
Annual Report of
Jamal Qadir JPHC
at RHC Gumbat.

Murad Ali
Senior Medical Officer
RHC Gumbat

Senior Medical Officer
IN CHARGE RHC GUMBAT

Aux-F

20
2013

JAN.	FEB.	MAR.	APR.
MAY.	JUN.	JUL.	AUG.
SEP.	OCT.	NOV.	DEC.

بابت ماہ جون



رجسٹر حاضری روزانہ

کیفیت	بقایا		پیشگی		رقم		شرح	میزان	اور نام	۳۱	۳۰	۲۹	۲۸	۲۷	۲۶	۲۵	۲۴	۲۳	۲۲	۲۱	۲۰	۱۹	۱۸	۱۷	۱۶	۱۵	۱۴	۱۳	۱۲	۱۱	۱۰	۹	۸	۷	۶	۵	۴	۳	۲	۱	عمدہ	نام و ولدیت	برنڈ				
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...	-	-	-	-	120000/2	-	120000	31	-	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
...	-	-	-	-	120000/2	-	120000	31	-	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
...	-	-	-	-	70000/2	-	70000	31	-	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
...	-	-	-	-	30000/2	-	30000	31	-	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
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رجسٹر حاضری روزانہ

JAN.	FEB.	MAR.	APR.
MAY.	JUN.	JUL.	AUG.
SEP.	OCT.	NOV.	DEC.

۶ 2013

بابت ماہ

کس

نمبر	نام مہتممات	بیمہ	۱	۲	۳	۴	۵	۶	۷	۸	۹	۱۰	۱۱	۱۲	۱۳	۱۴	۱۵	۱۶	۱۷	۱۸	۱۹	۲۰	۲۱	۲۲	۲۳	۲۴	۲۵	۲۶	۲۷	۲۸	۲۹	۳۰	۳۱	مجموعہ
1	السنحان	وزارتہ	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	12000
2	عقاروسنہ	انجمن	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	12000
3	محمد کابیر	وزارتہ	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	12000	
4	زلمیہ	وزارتہ	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	10000	
5	عالی فائزہ	وزارتہ	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	30000	
6	عابد علی	وزارتہ	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	15000	

15/000/2 = 2013

امین

31.12.2013

محمد کابیر

عقاروسنہ

السنحان

عابد علی

13

JAN.	FEB.	MAR.	APR.
MAY.	JUN.	JUL.	AUG.
SEP.	OCT.	NOV.	DEC.

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بیت ماه صورتی

رجسٹر حاضری روزانه

کیفیت	بقایا	بیل	نم	ش	اربعه	۳۱	۳۰	۲۹	۲۸	۲۷	۲۶	۲۵	۲۴	۲۳	۲۲	۲۱	۲۰	۱۹	۱۸	۱۷	۱۶	۱۵	۱۴	۱۳	۱۲	۱۱	۱۰	۹	۸	۷	۶	۵	۴	۳	۲	۱	شماره	نام خدمت	
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Handwritten notes: 2024 - بیت ماه صورتی

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رجسٹر حاضری روزانہ

JAN.	FEB.	MAR.	APR.
MAY.	JUN.	JUL.	AUG.
SEP.	OCT.	NOV.	DEC.

بابت ۵ دسمبر

نمبر	نام	تاریخ	حاضر	غائب	نقص	نوٹس	دیگر
1	دینار	12	P				
2	زیبا	12	P				
3	علی	12	P				
4	محمد	12	P				
5	فریح	12	P				
6	سید	12	P				
7	احمد	12	P				
8	صابحہ	12	P				
9	علی	12	P				
10	احمد	12	P				
11	محمد	12	P				
12	فریح	12	P				
13	علی	12	P				
14	احمد	12	P				
15	صابحہ	12	P				
16	علی	12	P				
17	احمد	12	P				
18	صابحہ	12	P				
19	علی	12	P				
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26	احمد	12	P				
27	صابحہ	12	P				
28	علی	12	P				
29	احمد	12	P				
30	صابحہ	12	P				
31	علی	12	P				
32	احمد	12	P				

15/11/2014 / 2014

11/11

11/11

31

11



حکومت خیبر پختونخوا

Registered

DISTRICT HEALTH OFFICER
Mardan (Khyber Pakhtunkhwa)

Ph: # (0937) 9230030 Fax: # (0937) 9230349
Email: mardandho@gmail.com

Reg

Aux-G

241

OFFICE ORDER:

As recommended by the committee of DHO Office Mardan, vide minutes of Meeting held in DHO Office on 19/09/2016, the competent authority is pleased to withdraw and cancel the appointment order of Jamal Qadir s/o Fazal Qadir (PHC Technician) at S.No. 11, letter No. 10042-64/DHO dated 22/08/2016, with immediate effect in larger interest of public.

District Health Officer
Mardan

No. 11875-78/DHO dated Mardan the 20 19 /2016

Copy forwarded to the:

1. Director General Health Services Khyber Pakhtunkhwa Peshawar.
2. District Comptroller of Accounts Mardan.
3. Incharge RHC Gumbat.
4. Accountant DHO Office, Mardan.
5. DHIS Cell, DHO Office Mardan.
6. Official concerned.

[Handwritten signature]
[Handwritten signature]
[Handwritten signature]
MARDAN
HEALTH OFFICER

District Health Officer
Mardan

To

The Director General (Health)
KPK Peshawar

Annex-H

25

Subject: APPEAL AGAINST THE ORDER OF DHO MARDAN DATED.20/9/2016 WHEREBY APPLICANT'S SERVICE HAS BEEN WITHDRAWN WHICH IS ILLEGAL AGAINST LAW AND FACT

Prayer: - *On acceptance of this order dated 20/9/2016 passed by D.H.O Mardan may please be withdrawn set aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit may also be graciously granted.*

Sir, Appellants humbly submits as under

1. That appellant is equipped with qualification such as B.A with Diploma in Medical Technology domiciled and NIC of Mardan and two experience certificates i.e.

A) By Chief Executive Mardan Medical Complex from 6/10/2010 till 10/10/2012.

B) From Jan 2013 till December 2015 by RAHAP Project KPK SDU Building Civil Secretariat Khyber Road Peshawar. (Copy of Certificates/ Experience are Annex-A)

2. That the Executive District Officer Health Mardan advertised posts of Medical PHC Tech (MP) BPS-12.

3. That appellant applied for the same as per qualification /experience detailed in Para No. 1 of appeal.

4. That appellant was tested and interviewed by the Selection Committee.

5. That the Selection Committee recommended appellant for appointment as PHC MP BPS-12.

6. That in pursuance of said recommendation by Selection Committee, appellant as PHC (Tech) MP BPS-12 vide appointment order dated 10/08/2016 by the D.H.O Mardan (Copy of appointment order dated 10/08/2016 is Annex-B).

- (26)
7. That medically the appellant was examined by Medical Superintendent, DHQ, Hospital Mardan on 19/08/2016 and found fit. (Copy of Medical Certificate is Annex-C).
 8. That appellant was posted in R.H.C Gumbat vide order dated 22/08/2016 (Copy of posting order dated 22/08/2016 is Annex-D).
 9. That appellant submitted arrival report on the same dated i.e. 22/08/2016. (Copy of arrival report is Annex-E).
 10. That appellant regularly performed duty and his attendance register and the concerned Superior Officers were satisfied from performance of appellant. (Copy of attendance register is Annex-F).
 11. That vide order dated 20/09/2016 District Health Officer, Mardan cancelled appointment order of appellant with immediate effect which is illegal against law and facts on following grounds. (Copy of cancellation order dated 20/09/2016 is Annex-G):-

GROUNDS


- a) Because impugned order is without any reason and is against the 3rd maxim of natural justice that every order must be supported by cogent reasons.
- b) Because impugned order is arbitrary, whimsical and passed in cursory and slipshod manner.
- c) Because appellant has been condemned unheard and violated the foremost and 1st principal of Natural Justice which is well entrenched in even administrative, Quasi Judicial and Judicial System. So much so that Adam and even Devil was afforded opportunity of hearing.
- d) Because appellant has served to the entire satisfaction of his superiors and there is no complaint against appellant.
- e) Because no inquiry has been conducted.
- f) Because appellant has not been associated with any inquiry.
- g) Because impugned order has been passed at the back of appellant.

- h) Because appellant provided all the qualification certificates, degrees/experience certificates mentioned in Para No.1 of appeal at the time of submission of documents as well as original at the time of interview before Selection Committee.
- i) Because there is no provision in law for appointment of inquiry without charge sheet/show cause notice and finding of any such committee are nullity in the eye of law and at the best can be termed probe finding inquiry.
- j) Because without resort to KPK E&D Rules 2011, appellant can't be terminated from service.
- k) Because as per 2006 SCMR 412/413 famous case of Sadullah department can't take benefit of its own omission.
- l) Because cancellation/withdrawal of appointment order are germane to Law/E&D Rules and appellant's appointment order can't be cancelled/withdrawn without any backing of law.
- m) Because appellant is jobless after cancellation for no fault and is not permitted for duty, therefore entitled for back benefits.


On acceptance of this order dated 20/9/2016 passed by D.H.O Mardan may please be withdrawn set aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit may also be graciously granted.

Dated. 10-10-2016

Appellant


 Jamal Qadir S/o
 Fazal Qadir R/o
 Garhi Kapura Mardan

]Through


 Amjad Ali Advocate
 Supreme Court of
 Pakistan

No. 894

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgment is due.

Rs. Ps.

28

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Received a registered* addressed to _____

Initials of Receiving Officer _____ *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) _____ (in words) _____

If insured.

Insurance fee Rs. _____ Ps. _____ (in words) _____

Name and address of sender _____

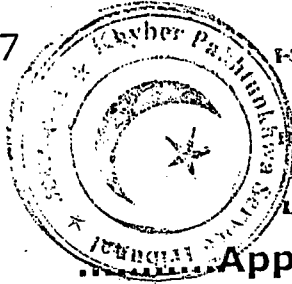
Date Stamp
Weight 2 kgs
Grams

~~Ann-A~~ (B)
Ann-I
(29)

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

Service Appeal No. 109 /2017

Jamal Qadir S/o Fazal Qadir
R/o Garhi Kapura Mardan



Khyber Pakhtunkhwa
Service Tribunal

149

31-01-2017

Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
2. Director General, Health Khyber Pakhtunkhwa, Judicial Complex, Khyber Road, Peshawar.
3. District Health Officer, District Mardan.

.....Respondents


Appeal u/s 4 of Service Tribunal Act against order dated 20.09.2016 passed by respondent No.3, whereby appellant's service has been withdrawn and departmental appeal dated 10.10.2016 remained un-responded even after 90 days, which is illegal against law and facts.

Filed to-day
Registrar

31/1/17
PRAYER:

On acceptance of instant service appeal the impugned order dated 20.09.2016 passed by D.H.O, Mardan may please

ATTESTED


Registrar
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

be withdrawn/ set-aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit may also be graciously granted.

(4)

(30)

Sir,

Appellant humbly submits as under;-

1) That appellant is equipped with qualification such as B.A with Diploma in Medical technology, domiciled and NIC of Mardan and two experience certificates i.e.

i. By Chief Executive Mardan Medical Complex from 06.10.2010 till 10.10.2012.

ii. From Jan 2013 till December 2015 by RAHAP Project KPK SDU Building Civil Secretariat Khyber Road, Peshawar.


(Copy of Certificates/ Experience are Annex "A")

2) That the Executive District Officer Health, Mardan advertised posts of Medical PHC tech (MP) BPS-12.

3) That appellant applied for the same as per qualification/ experience detailed in Para No.1 of appeal.

4) That appellant was tested and interviewed by the Selection Committee.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

5) That the Selection Committee recommended appellant for appointment as PHC MP BPS-12.

6) That in pursuance of said recommendation by Selection Committee, appellant as PHC (Tech) MP BPS-12 vide appointment order dated 10.08.2016 by the D.H.O, Mardan. **(Copy of appointment order dated 10.08.2016 is Annex "B")**

7) That medically the appellant was examined by medical Superintendent, DHQ, Hospital Mardan on 19.08.2016 and found fit. **(Copy of Medical Certificate is Annex "C")**

8) That appellant was posted in R.H.C Gumbat vide order dated 22.08.2016. **(Copy of posting order dated 22.08.2016 is Annex "D")**

9) That appellant submitted arrival report on the same day i.e 22.08.2016. **(Copy of arrival report is Annex "E")**

10) That appellant regularly performed duty and his attendance register and the concerned Superior Officers were satisfied from performance of appellant. **(Copy of attendance register is Annex "F")**

11) That vide order dated 20.09.2016, District Health Officer, Mardan cancelled appointment order of appellant with immediate effect, which is illegal, against law and facts. **(Copy**

31

31

ATTESTED

EXAMINER
Chayder Pakhtunkhwa
Service Tribunal,
Peshawar

of impugned order dated 20.09.2016 is Annex "G")

12) That appellant served departmental appeal dated 10.10.2016 before respondent No.2 through registered A.D, which remained un-responded even after lapse of 90 days.

(Copy of Departmental appeal is Annex "H", and P.O receipt is Annex "I")

13) That appellant is jobless since withdrawal order.

14) That appellant now approaches this Hon'ble Tribunal on following grounds:-

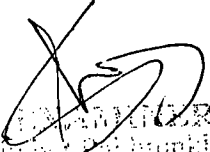
GROUND

A. Because impugned order is without any reason and is against the 3rd Maxim of Natural Justice, **that every order must be supported by cogent reasons.**

B. Because impugned order is arbitrary, whimsical and passed in cursory and slipshod manner.

C. Because appellant has been condemned unheard and violated the foremost and 1st Principle of Natural Justice, which is well entrenched in even administrative, Quasi Judicial and Judicial System. So much so, that Adam and Eve Devil was afforded opportunity of hearing.

ATTESTED


Registrar
Karnataka State Tribunal,
Bangalore

D. Because appellant has served to the entire satisfaction of his superiors and there is no complaint against appellant.

E. Because no inquiry has been conducted.

F. Because appellant has not been associated with any inquiry.

G. Because impugned order has been passed at the back of appellant.

H. Because appellant provided all the qualification certificate, degrees/ experience certificates mentioned in Para No.1 of appeal at the time of submission of the documents as well as original at the time of interview before Selection Committee.


I. Because there is no provision in law for appointment of inquiry Officer without charge sheet/ show cause notice and finding of any such committee are nullity in the eye of law and at the best can be termed probe finding inquiry.

J. Because without resort of **KPK E&D Rules, 2011**, appellant can't be terminated from service.

Because as per **2006 SCMR 412/413** famous case of Sadullah department can't take benefit of its own omission.

L. Because cancellation/ withdrawal of appointment order are Germane to law/ F&D

ATTESTED


K.
Secretary, Government
Peshawar

(X)

(33)

Rules and appellant's appointment order can't be cancelled/ withdrawn without any backing of law.

34

M. Because appellant is jobless after cancellation for no fault and is not permitted for duty, therefore, entitled for back benefits.

It is therefore, humbly prayed that, on acceptance of instant service appeal the impugned order dated 20.09.2016 passed by D.H.O, Mardan may please be withdrawn/ set-aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit may also be graciously granted.

Appellant

Through

Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

VERIFICATION

It is verified that, the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

Deponent

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(9) *Had J 35*
Khyber Pakhtunkhwa Service Tribunal

18.12.2018

Appellant alongwith his counsel present *Mr. Riaz Ahmad*
Paindakheil, Assistant Advocate General for the respondents present
Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed in connected Service Appeal No. 108/2017 "titled Ihtisham ul Haq Versus Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar and two others, we accept the appeal, set-aside the impugned order with the direction to the respondent-department to issue show-cause notice to the appellant that why his appointment order be not withdrawn on such ground and after reply of the show-cause notice, the same be decided within a period of 60 days from the date of receipt of this judgment positively. However, the reinstatement of the appellant will be subject to the decision/outcome of the show-cause notice and the same must be communicated to the appellant. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
18.12.2018

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Hussain Shah
(HUSSAIN SHAH)
MEMBER

Certified to be true copy
K. J. Khan
Secretary
Peshawar

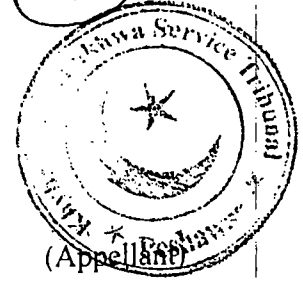
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Copy to _____
Urgent _____
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Name of _____
Date of _____
Date of delivery _____
21/1/19
01-01-19
03-01-19
03-01-19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 108/2017

Date of institution ... 31.01.2017
Date of judgment ... 18.12.2018

Ihtisham ul Haq S/o Gulzar Ali Khan
R/o Parkho Dheri Tehsil Takht Bahi, District Mardan.



VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
 2. Director General Health, Khyber Pakhtunkhwa. Judicial Complex, Khyber Road, Peshawar.
 3. District Health Officer, District Mardan.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT
AGAINST ORDER DATED 20.09.2016 PASSED BY RESPONDENT
NO. 3, WHEREBY APPELLANT SERVICES HAS BEEN
WITHDRAWN AND DEPARTMENTAL APPEAL DATED
10.10.2016 REMAINED UN-RESPONDED EVEN AFTER 90 DAYS,
WHICH IS ILLEGAL AGAINST LAW AND FACTS.

Mr. Amjid Ali, Advocate. .. For appellant.
Mr. Riaz Ahmad Paindakheil, Assistant Advocate General .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. HUSSAIN SHAH .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Our this judgment shall dispose of instant service appeal as well as Service Appeal No. 109/2017 titled "Jamal Qadir Versus Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar and two others" as common question of law and facts are involved in both the appeals.

2. Appellants alongwith counsel present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

3. Brief facts of both the cases are that the appellants were appointed as PHC Technician (MP) BPS-12 on the recommendations of Departmental Selection

ATTESTED

Committee by the competent authority vide order dated 10.08.2016. However, the competent authority withdrawn/cancelled their appointment orders with immediate effect vide order dated 20.09.2016 on the basis of minutes of meeting held in DHO Office on 19.09.2016. The appellants filed departmental appeal on 10.10.2016 which was not responded hence, the present service appeals on 31.01.2017.

(94)
(37)

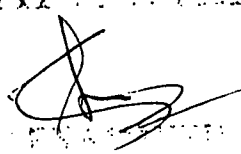
4. Respondents were summoned who contested the appeals by filing written reply/comments.

5. Learned counsel for the appellants contended that the appellants were appointed by the competent authority on the recommendation of Departmental Selection Committee as PHC Technician (MP) BPS-12 after fulfilling all the codal formalities. It was further contended that the appellants were medically examined by the Medical Superintendent and found fit. It was further contended that the appellants were posted and they submitted their arrival reports. It was further contended that the appellants were regularly performing their duties and the appellants were fully qualified and having experience for the said post but the competent authority cancelled/withdrawn their appointment orders vide order dated 20.09.2016 without any notice. It was further contended that the respondent-department was bound to issue show-cause notice before passing of adverse order against the appellants regarding withdrawal of their appointment orders. It was further contended that the appellants were condemned unheard and the respondent-department has violated the principle of natural justice therefore, the impugned order is illegal and liable to be set-aside.

11/15/17. 28/17

6. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellants and contended that a meeting was held under the Chairmanship of DHO Mardan and it was found in the said meeting that the experience certificates of the appellants were not valid. It was further contended that the appellants have got no valid experience certificates and was erroneously given experience marks which was then deducted from the appellant out of total marks therefore, the appellants were not qualified for the said post and the competent authority has rightly withdrawn the appointment orders of the appellants.

ATTACHED



7. Perusal of the record reveals that both the appellants were appointed by the competent authority on the recommendation of Departmental Selection Committee after fulfillment of all the codal formalities vide order dated 10.08.2016. The record further reveals that the appellants were medically examined by the medical Superintendent of DHQ Hospital and they submitted their arrival reports. The record further reveals that the appellants were performing their duties regularly however, vide order dated 20.09.2016 the competent authority cancelled/withdrawn their appointment orders with immediate effect on the basis of minutes of meeting held on 19.09.2016 without issuing of any show-cause notice to the appellants and without giving opportunity of personal hearing, meaning thereby that the appellants were condemned unheard. Although it was mandatory for the respondent-department to issue any show-cause notice before passing any adverse order against the appellants therefore, the respondent-department has violated the principle of natural justice which has rendered the impugned order illegal and liable to be set-aside. As such, we accept the appeals, set-aside the impugned orders with the direction to the respondent-department to issue show-cause notice to both the appellants that why their appointment orders be not withdrawn on such ground and after reply of the show-cause notice, the same be decided within a period of 60 days from the date of receipt of this judgment positively. However, the reinstatement of the appellants will be subject to the decision/outcome of the show-cause notice and the ^{same} must be communicated to the appellants. Parties are left to bear their own costs. File be consigned to the record room.

(22)
(38)

ANNOUNCED
18.12.2018

Muhammad Amin
(MUIHAMMAD AMIN KHAN KUNDI)
MEMBER

Hussain Shah
(HUSSAIN SHAH)
MEMBER

Certified to be true copy

Number of copies
Copying fee
Urgent
Total
Name
Date

1200
01-01-19
03-01-19
03-01-19



DISTRICT HEALTH DEPARTMENT- MARDAN
DISTRICT HEALTH OFFICER MARDAN
KHYBER PAKHTUNKHWA

Phone # (0937) 9230030 Fax: # (0937)9230349).

No. 1470-73 /DHO (P&D) Dated

30/01/2019

Mr. Jaml Qadar s/o Fazal Qadar PHC Technician (MP) Malaria BPS-12 RHC Gumbat village Kandar P.O Garhi Kapura Tehsil & District Mardan

Subject:- FINAL SHOW CAUSE NOTICE

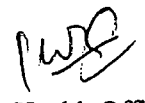
I, (Dr. Fazli Hadi District Health Officer), as competently authority ,under the Khyber r Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do here by serve ,you ,Mr. Jaml Qadar s/o Fazal Qadar PHC Technician (MP) RHC Gumbat village Kandar P.O Garhi Kapura Tehsil & District Mardan ,as follows:

That consequent upon the completion of Enquiry conducted against you by the Enquiry committee;

I am satisfied that you have committed the following acts /omission specified in rules 3 of the said rules.


- (a). Due to Computer Operator mistake (written statement placed on record) .
- (b). No Valid Experience
- ©. No Salary Slip.
- iv. No. attendance record.


2. As result therefore, I as competent authority, have have decided to impose upon you the penalty of SHOW CASUE under rulers 4 of the said rules. .
3. You are therefore required to show cause as to why the afforded penalty should not be imposed upon you and also intimate whether you desire to be heard in person .
4. If no replay to this notice is received within seven days or not more than fifteen days of its delivery ,it shall be presumed that you have no defense to put in and in that case an ex -part action shall be taken against you.
5. A copy of the findings of the inquiry committee is enclosed.


District Health Officer
Mardan. P

Copy forwarded to the following for information .

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar for information w/r to his letter No. 89/ST dated 11/01/2019 regarding judgment dated 18/12/2108 passed by Honorable Muhamamd Amin Khan Kundi Member Service Tribunal Member Peshawar.
2. Director General Health Services Khyber Pkahtunkhwa Peshawar.
3. Senior Medical officer Incharge RHC Gumbat.


District Health Officer
Mardan


16101-9181468-5

Received Date = 4/02/2019

And - ~~DL~~ L

To

The District Health Officer
MARDAN.

Date: 30-01-2019

(40)
BA

Subject: **"REPLY TO SHOW CAUSE NOTES"**

Sir, Applicant humbly submits as under

I have not been associated with inquiry. So I request that I may please be associated with inquiry and on one sided inquiry, I can't be legally issued Show Case Notice on the basis of fact finding inquiry.

That Para "a" of show case notes is incorrect. The statement of Computer Operator has not been recorded in my presence so legally this statement is of no value and can't be used against me. As per 1996 SCMR 413, the officer whose are wrong, should be punished.

1996 SCMR 413 read as under.

"Constitution of Pakistan (1973), art 212(3)... Termination of services on ground that appointment of civil servant was irregular... Service tribunal ordered reinstatement of civil servant... Validity... Department's plea was not that civil servant lacked qualification for the post in question... Department having itself appointment civil servant on temporary basis in violation of rules could not be allowed to take benefit of its lapses in order to terminate services of civil servant merely because it had itself committed irregularity in violating procedure governing such appointment... Service tribunal having re-instated civil servant could not be deemed to have committed any illegality or irregularity... Leave to appeal was refused in circumstances.

2005 PLC (CS) 1165 reads as under,

Illegal appointment... Termination of service... Imposition of penalty by appointing authority responsible for making illegal appointment... Validity... Appointment of an employee, if made illegal, could not be cancelled under efficiency and discipline rules... Instead of taking action against such employee, action must be taken against

appointment authority for committing misconduct by illegal appointment as per his own admission... Principle illustrated.

(b) That para (b) of experience is incorrect because my experience is correct and I have verified it from the concert department. Verified photo copy of experience certificate is attached. It is further stated that for the first time (DHO Office) called me to verify my experience. In this very first opportunity I verified my experience. You may verify it from MMC Mardan. Everything is on the record.

The attested attendance record is attached back side of the application.


(c). even we did not get salary slip.

It is further submitted that I have performed duty for 40 xdays with your good self which days too is to be counted.

2-----5 that paras 2-----5 of show cause notes are incorrect deiced.

I am innocent, falsely charged. Show Cause Notice, may please be withdrawn.

I may please be exonerated of the charges leveled against me and the Show Cause Notes may please be filed.


Name: Jamal Qadir s/o Fazal Qadir.
CNIC: 16101-9181468-5.
Adress: Villg & P/o Garhi kapura kandar,
Tehsil and Distt: Mardan.
EX RHC Gumbat.
Phone: 0345-9366807, 0310-1980380

Dated: 11-02-2019

To

The Inquiry Committee
DHO Office, Mardan.

Am - M
(42)

Subject: STATEMENT OF JAMAL QADIR SON OF FAZAL QADIR R/O GARHI
KAPURA KANDAR TEHSIL & DISTRICT MARDAN

R/Sir

It is stated that in July 2016 DHO Office Mardan Advertised some posts of PHCs Technicians in Daily Mushriq Annex (a).

I applied for the mentioned post and submit my documents in to the DHO, Mardan. The concerned authority published shortlist in which I found my name Mr. Jamal Qadir S/o Fazal Qadir selected in DHO office mardan. After that on date 02/08/2016 I was called for interview. My interview was very good and the members of the panel were satisfied from qualification and interview.

After interview the departmental selection committee prepared a merit list for recruitment in merit list I (Jamal Qadir) was at serial No.14 top 16 candidates had to be appointed. So DHO Office Mardan appointed me as PHC Technician BPS-12 purely on their own merit.

Then DHO Office Mardan issued me appointment order No. 9142-45/DHO on date 10-08-2016 Annex (b).

DHQ Hospital Mardan did my medical examination on 19-08-2016 Annex (c).

The DHO office Mardan issued my place of posting order No, 10042-64/DHO on dated 22-08-2016 and I was posted in RHC Gumbat Annex (d).

There after I submitted my arrival report vide No.10042/64 on dated 22/08/2016 (forenoon) which copy is attached Annex (e).

I was performing my regular duty and the incharge of RHC Gumbat was satisfied from my duty. Annex (f).

(43)

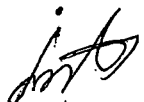
On 5th October after performing my duty when I went home I received a letter from DHO Office Mardan in which my termination order was present Annex (g).

In termination no reason of termination was mentioned. I concerned DHO Office Mardan regarding my termination matter but nobody allowed me to meet DHO of District Mardan. I tried many time to meet DHO Mardan to discuss this matter but in vain.

So DHO Office Mardan did not explained me even the reason of termination No Explanation was called from me. No warning was given to me no show case was called from me. I was not heard even from single time. No opportunity was given to me for any type of clarification. Even DHO Office Mardan did not explained me the reason of my termination. I was kept in Dark all my this statement in purely truth and nothing is concealed from my side.

I request this enquiry committee to clear with me with Justice.

Dated: 19-02-2019


(JAMAL QADIR)
S/o Fazal Qadir
CNIC #: 16101-9181468-4
Mob: 0345-9366807
0310-1980380



**DISTRICT HEALTH OFFICER
MARDAN (Khyber Pakhtunkhwa)**

پنجاب اور خیبر پختونخواہ کے درمیان
صحت کی سہولتوں کی فراہمی کے بارے میں

یہ نوٹیفکیشن صرف سرکاری کاموں کے لیے ہے
اسے کسی اور مقاصد کے لیے استعمال نہیں کیا جائے گا

Handwritten signature and initials
Ain
(HW)

To: Registrar
Khyber Pakhtunkhwa Service Tribunal
Peshawar

**SUBJECT: RECALL IN APPL NO. 100/2017 MR. HUSSAIN ULLAH
MR. JASAL QADIR**

In the light of letter No. 100/2017 dated 14.12.2018 and Service Tribunal KPK
Peshawar order dated 14.12.2018 in service appeal No. 100/2017 above stated with respect to
Mr. Hussain Ullah, S.O. Quetta, Mr. Khan and Mr. Jasal Qadir S.O. Peshawar regarding their
recall on the basis of irregular experiences.

In this regard an enquiry has been conducted and the report of that enquiry is
herby enclosed for further guidance please

Handwritten signature
District Health Officer
Mardan

DHO

Director of Health Services, Khyber Pakhtunkhwa Peshawar
KPK Service Tribunal Peshawar

District Health Officer

Country Report

Dated: 20/02/2019

(45)

Inquiry regarding service Tribunal Peshawar case of Mr. Jamal Qadir S/O Fazal Qadir and Mr. Iftikham U Haq S/O Gulzar Ali Khan has been conducted in the light letter No. 3347/13149 dated Mardan the 08-02-2019 with following facts and findings.

1. Statement of Jamal Qadir S/O Fazal Qadir
2. Statement of Iftikham U Haq S/O Gulzar Ali Khan
3. Statement of Computer Operator (Mr. Fuhim DIPS Cell DHO Office).

We studied all the above statements carefully and keenly. We also listened them verbally. We studied/checked carefully all the documents of Jamal Qadir and Iftikham U Haq. We checked all the selection process and record of the recruitment of PHC Technicians in disposal of DHO Mardan in August 2016. We the enquiry committee reached to following conclusion

Jamal Qadir S/O Fazal Qadir

Jamal Qadir has basic qualification of Matric Science and PHC Technician Diploma. Matric Science and PHC Technician Diploma certificates are true. He has shown experience of MMC Mardan for two years after passing the PHC Technician Diploma. But this two years experience was not paid job. No appointment order of the experience and no salary slip of the experience were found in his documents. According to Data Code Criteria, experience marks can be given to those candidates who have paid experience from some Govt. or Semi Govt. recognized institute. Since the experience of Jamal Qadir is not paid therefore he is not entitled for experience marks. He has given the following marks as:

1)	Matric Science	:	50 Marks
2)	PHC Diploma	:	20 Marks
3)	Higher Qualification	:	08 Marks
4)	Interview	:	4.5 Marks
Total			82.5 Marks

His total marks become 82.5 and in the merit list the last candidate got 89.5 marks. So the total marks of Mr. Jamal Qadir are less than the last selected candidate (Adhoc).

Iftikham U Haq S/O Gulzar Ali Khan

After careful and thoroughly checking of Mr. Iftikham U Haq record it is concluded that

His Matric Qualification certificate and PHC Diploma were found true

Experience - 03 years in Takka Welfare Organization

Experience was not considered for Verbal age due to 6 months before the declaration

His Matric Qualification certificate and PHC Diploma were found true

Experience - 03 years in Takka Welfare Organization

Experience was not considered for Verbal age due to 6 months before the declaration

His Matric Qualification certificate and PHC Diploma were found true

Experience - 03 years in Takka Welfare Organization

Experience was not considered for Verbal age due to 6 months before the declaration

46

Candidates below		
19	Maria Selwan	80 Marks
21	PHC Diploma	70 Marks
30	Higher Qualification	98 Marks
33	Interview	6.4 Marks
Total		88.4 Marks

He does not fall in selected list because the last selected candidate got 89.5 marks and the first candidate on waiting list got 88.0 marks.

Fahim (Computer Operator DHS Cell DHO Office)


Mr. Fahim, the computer operator did the clerical mistake. He wrote to Mr. Ishaham Ul Haq the interview marks 13.5 out of total 8 marks. He accepted his mistake for which explanation was also called from him by DHO Mardan. The actual interview marks of Mr. Ishaham Ul Haq are 6.4 as per record (Annex B).


The statements of Mr. Jamal Qadir, Mr. Ishaham Ul Haq and Mr. Fahim are attached to this enquiry report.

Recommendations:

Enquiry report in original has been submitted to DHO Mardan for further necessary action please.

Enquiry Members:


 Dr. Shafiq Ullah Bacha
 MS TDH Toru
 22-02-19


 Dr. Fazle Rabi SMO
 Litigation DHO Office Mardan
 22-02-19

[Handwritten notes and signatures in Urdu, including names like 'Raza', 'Zameer', 'Munir', and dates like '22/2/19']

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

IN Re:
S.Appeal No.109/2017

Jamal Qadir.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa through
Secretary, Civil Secretariat & othersRespondents

**APPLICATION FOR IMPLEMENTATION
OF JUDGMENT DATED 18.12.2018 OF
THIS HON'BLE TRIBUNAL**

Sir,

Applicant humbly submits as under:-

1. That applicant filed titled Service Appeal No.109/2017 before this hon'ble Tribunal with the prayer that:-

"the impugned order dated 20.09.2016 passed by D.H.O, Mardan may please be withdrawn/ set-aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit may also be graciously granted"

2. That appeal of the applicant came up for hearing on 18.12.2018, and this Hon'ble Tribunal was pleased to allow the appeal of the applicant with the following order:-

"we accept the appeal, set-aside the impugned order with the direction to the respondent-department to issue show-cause notice to the appellant that why his appointment order be not withdrawn on such ground and after reply of the show-cause notice, the same be decided within a period of 60 days from the date of receipt of this judgment positively. However, the reinstatement of the

(4)

Ans - 0

(47)

**appellant will be subject to the decision/
outcome of the show-cause notice and
the same must be communicated to the
appellant"**

(7)

(48)

(Copy of order/ judgment dated 18.12.2018 is Annex "A")

3. That after announcement of judgment dated 18.12.2018, the applicant send the attested copy of the said judgment to the respondents through registered letter dated 08.01.2019 for the implementation of the same. (Copy of letter dated 08.01.2019 is Annex "B")
4. That since announcement of judgment/ order dated 18.12.2018 the same has not been implemented, despite several request of the applicant, but in vain.
5. That omission of respondents to act upon the order of this Hon'ble Tribunal speaks of the fact that respondents has undermined the authority of this Hon'ble Tribunal and have not moved even an inch for implementation of the same.
6. That this omission/ act of respondents squarely falls within the ambit of contempt of court as respondents have conveniently ignored the time frame provided by this Tribunal Court.

It is therefore, humbly requested to please direct respondents to implement the judgment dated 18.12.2018 in its letter and spirit

Applicant

Tariq Ali

Through

Amjald Ali (Mardan)

Advocate

Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare as per instructions of my clients that the contents of this **Application** are true and correct and nothing has been concealed from this honorable court.

Attested
Oath
Commissioner
Mehmoor
Commissioner
Court

ATTESTED
NOTARY PUBLIC
KHALICHA
MARDAN

DEPONENT

Tariq Ali



ملکہ صحت خیر بختو خوا

District Health Department – Mardan
DISTRICT HEALTH OFFICER
Mardan (Khyber Pakhtunkhwa)
Ph: # (0937) 9230030 Fax: # (0937) 9230283
Email: mardandho@gmail.com

(49) And P

All communications should be addressed to the District Health Officer and not to any official by name.

OFFICE ORDER:

As per order of the Honourable Service Tribunal Peshawar dated 14.07.2021 in E.P No. 165/2019, to conclude the proceeding of show cause notice and inquiry, the competent authority is pleased to withdraw/ cancel the appointment order of Jamal Qadir s/o Fazal Qadir (PHC-Technician) at S.No.11 vide letter No. 10042-64/DHO dated 22/08/2016, with immediate effect in large interest of public.

District Health Officer

Mardan

dated 03/08/2021

No. 13452-57 /DHO

Copy forwarded to the:

1. Director General Health Services, Khyber Pakhtunkhwa Peshawar.
2. District Comptroller of Accounts, Mardan.
3. Accountant DHO Office Mardan.
4. DHIS Cell, DHO Office, Mardan.
5. Official concerned.
6. Office copy.

District Health Officer
Mardan

To,

The Director General
Health Department KP,
Judicial Complex Khyber Road,
Peshawar

Ana-Q
(50)

Subject: Departmental Appeal against the order dated 03/08/2021 Received on 26/08/2021 during Implementation proceedings before the Service Tribunal KP which is illegal against law and facts and liable to be set aside.

PRAYER:- On acceptance of this appeal, order dated 03/08/2021 may please be set aside and appellant may please be permitted to continue his service as per his appointment order dated 08/10/2016 with all back benefits.

OR IN ALTERNATIVE

Appellant may please be granted salaries from 10/08/2016 (i.e date of appointment) till date and onwards and appellant may please be granted experience certificate for the said period.

Respected Sir,

1. That appellant is equipped with qualification such as B.A with Diploma in Medical Technology, domiciled and NIC of Mardan and two experience certificates i.e
 - i. By Chief Executive Mardan Medical Complex from 06/10/2010 till 10/10/2012.
 - ii. From Jan 2013 till December 2015 by RAHAP Project KPK SDU Building Civil Secretariat Khyber Road, Peshawar (Copy of the experience certificates are attached)
2. That the Executive District Officer Health Mardan advertised posts of Medical PHC Tech (MP) BPS-12.
3. That appellant applied for the same as per qualification/experience detailed in Para No 1 of this appeal.
4. That appellant was tested and interviewed by the Selection Committee.

511

5. That the Selection Committee recommended appellant for appointment as PHC MP BPS-12.
6. That in pursuance of said recommendation by Selection Committee, appellant was appointed as PHC (Tech) MP BPS-12 vide appointment order dated 10/08/2016 by the D.H.O Mardan (Copy of appointment order dated 10/08/2016 is attached)
7. That medically the appellant was examined by medical superintendent, DHQ, Hospital Mardan on 19/08/2016 (Copy of Medical Certificate is attached)
8. That appellant was posted in R.H.C Gumbat vide order dated 22/08/2016 (Copy of the posting order dated 22/08/2016 is attached)
9. That appellant submitted arrival report on the same day i.e 22/08/2016 (Copy arrival report is attached)
10. That appellant regularly performed duty and his attendance register and the concerned superior officers were satisfied from performance of appellant. (Copy of attendance register is attached)
11. That vide order dated 20/09/2016, District Health Officer Mardan cancelled appointment order of appellant with immediate effect, which is illegal against law and facts (Copy of order dated 20/09/2016 is attached)
12. That appellant served departmental appeal dated 10/10/2016 upon Director General Health Department through registered AD which remained unresponded even after lapse of 90 days. (Copy of Departmental appeal and P.O receipt is attached)
13. That the present appellant filed service appeal before the Service Tribunal KP against the order dated 20/09/2016 (Copy of the service appeal is attached)
14. That the Honorable Service Tribunal KP accepted the service appeal of the present appellant by setting aside the impugned order dated 20/09/2016 with direction to the Health Department to issue show cause notice and after submission of reply to the show cause, the same shall be concluded within a period of 60 days (Copy of the judgment dated 18/12/2018 is attached)
15. That a show cause notice was served upon the appellant on 30/01/2019 (Copy of the show cause notice dated 30/01/2019 is attached)
16. That the appellant submitted written reply dated 11/02/2019 to the show cause notice (Copy of the reply to show cause notice dated 11/02/2019 is attached)

(52)

17. That the statement of the present appellant was recorded by the inquiry committee on 19/02/2019 (Copy of the statement dated 19/02/2019 is attached)
18. That the enquiry was concluded on 20/02/2019 and the enquiry report was submitted on 27/02/2019 (Copy of the enquiry report dated 20/02/2019 is attached)
19. That despite the report of the enquiry committee, the competent authority refrained itself from passing suitable order against the appellant in light of the recommendations of the enquiry committee.
20. That the appellant meanwhile filed execution petition before the Honorable Service Tribunal KP for the implementation of the judgment dated 18/12/2018 on 21/09/2020. (Copy of the execution form/petition is attached)
21. That the direction of the Honorable KP Service Tribunal was for passing of order within 60 days but the respondents failed to pass any order adverse to the service of the appellant within 60 days and as per law and judgments of the Honorable High Court Peshawar as well as judgments of this Honorable Tribunal, the respondents cannot pass an order adverse to the service of the appellant and the judgment of the Honorable Service Tribunal is to be implemented in its true letter and spirit by continuing the first appointment order dated 10/08/2016 of the appellant, as the withdrawal order dated 20/09/2016 was already set aside by Honorable KP Service Tribunal.
22. That during the execution/implementation proceedings before the Honorable Service Tribunal KP, the appellant received office order dated 03/08/2021 on 26/08/2021 whereby the order dated 22/08/2016 was withdrawn with immediate effect. (Copy of the office order dated 03/08/2021 is attached)
23. That feeling aggrieved from the office order dated 03/08/2021, the appellant approaches the Director General Health Department being the next higher authority. The office order dated 03/08/2021 is illegal, against law and facts and liable to be set aside on the following grounds:

GROUND:-

- A. Because the impugned order dated 03/08/2021 is illegal, against law and facts and liable to be set aside.
- B. Because as per the impugned order dated 03/08/2021, the posting order of the appellant dated 22/08/2016 has been withdrawn with immediate effect and the appointment order dated 10/08/2016 is still intact, meaning thereby that the appellant is still in service of the Health Department and therefore is entitled to perform his duty/service as per his appointment order dated 10/08/2016.

C. Because even for the sake of argument without admitting the impugned order as correct, appellant is entitled for the salaries from date of his appointment i.e 10/08/2016 till 03/08/2021.

D. Because as per the enquiry report dated 20/02/2019, the findings against the appellant are reproduced as under:

“Jamal Qadir has basic qualification of Matric Science and PHC Technician Diploma. Matric Science and PHC Technician Diploma/Certificates are true. He has shown experience of MMC Mardan for two years after passing the PHC Technician Diploma. But this two years experience was not paid job. No appointment order of the experience and no salary slip of the experience were found in his documents. According to Esta Code Criteria, experience marks can be given to those candidates who have paid experience from some Govt or Semi Government recognized institute. Since the experience of Jamal Qadir is not paid therefore he is not entitled for experience marks. He has given the following marks as;

1) Matric Science	:	50 Marks
2) PHC Diploma	:	20 Marks
3) Higher Qualification	:	08 Marks
4) Interview	:	4.5 Marks
<hr/>		
Total		82.5 Marks

His total marks become 82.5 and in the merit list the last candidate got 89.5 marks. So the total marks of Mr Jamal Qadir are less than the last selected candidate.”

E. Because the present appellant has not been awarded experience marks only due to the reason that the experience of the appellant is not from a paid job which is illegal and against law and facts.

F. Because the Honorable Peshawar High Court Peshawar vide its judgment dated 04/02/2015 in case titled as Dr Ikram Ullah versus KP Agriculture University Peshawar (W.P No 1012/2014) has held that experience acquired in any manner cannot be taken away from a person merely because has not been paid any remuneration or pay for the same. The relevant Para of the aforementioned judgment is reproduced as under: (Copy of the judgment dated 04/02/2015 is attached)

“ 7.For the purpose of experience it is not necessary that a person must be serving against a post on regular basis. If a person teaching in a University, particularly at Post-Graduate level without taking any remuneration, it cannot be said the he has gained and acquired experience without any wages is not entitled for its benefits. Experience acquired in any manner cannot be taken away from a person merely because he has not been paid any remuneration or pay for the same. Experience means the accumulation of knowledge or skill which results from the direct participation in events or activities with or without any financial benefit. The meaning provided by Wikipedia (Free Encyclopedia), experience is the knowledge or mastery of an event or subject gained through involvement in or exposure to it. From the above definition, it can be easily gathered that infact, experience is a process of getting knowledge or skill from doing, seeing or feeling of things practically.....”

G. Because since experience means accumulation of knowledge or skill which results from the direct participation in events or activities with or without any financial benefit therefore discriminating the appellant merely on the ground that the experience was not paid is a glare illegality.

H. Because the provision of salary slips is irrelevant and not a requirement in light of the judgment of the Honorable Peshawar High Court Peshawar dated 04/02/2015 in case titled as Dr Ikram Ullah versus KP Agriculture University Peshawar (W.P No 1012/2014).

I. Because appellant has got experience for about 05 years. The relevant provision of Esta Code is reproduced as under:

“ C. Experience

Experience for one year	04
Experience of two years	07
Experience of three years and above	10”

J. Because appellant as per aforementioned provision of law is entitled for ten experience marks which have not been given to the appellant by the enquiry officer.

K. Because if the ten marks of experience are added to the total marks of the appellant then the total marks of appellant becomes $82.5+10=92.5$ and therefore appellant falls within the merit as enquiry report envisages the last selected candidate has secured 89.5.

L. Because appellant has not been treated in accordance with law and violated Article 4 of the Constitution of Pakistan.

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M. Because appellant has been discriminated infringing article 5 and 27 of the Constitution of Pakistan.

N. Because it is a settled law that once a vested right granted to anyone, he cannot be divested of the same.

O. Because the appellant's name was reflected in the merit list and upon the same, appointment order of the appellant was issued and the appellant was posted in RHC Gumbat where he assumed charge and performed duty.

P. Because the principle of locus poenitentiae is attracted with full force to the case of the appellant. Once a benefit accrued to the appellant, he cannot be divested of the same. The appellant cannot be divested of the same when no action has been taken against the concerned delinquent official.

Q. Because there is no requirement as per law and rules that experience must be from a Semi-Govt/Govt institute and experience merely means to acquire knowledge or skill by engaging in any activity or task. Therefore the experience acquired by appellant by engaging and directly participating in events or activities, cannot be taken away from the appellant as experience is acquiring of knowledge or skill by doing, seeing or feeling things practically.

R. Because the appellant is jobless since appointment.

It is therefore humbly prayed that on acceptance of this appeal, order dated 03/08/2021 may please be set aside and appellant may please be permitted to continue his service as per his appointment order dated 08/10/2016 with all back benefits.

OR IN ALTERNATIVE

Appellant may please be granted salaries from 10/08/2016 (i.e date of appointment) till date and onwards and appellant may please be granted experience certificate for the said period.

Dated.30/08/2021

Appellant



Jamal Qadir S/O Fazal Qadir
CNIC: 16101-9181468-5
Address: Village & PO Garhi
Kapura Kandhar, Tehsil and
District Mardan.
Mobile: 0345-9366807
0310-1980380

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No. 239 For Insurance Notice
Stamps affix **RGL57484275** in case of
uninsured parcels of not more than
weight prescribed in the
Office Guide or on which no
acknowledgment is due.

Rs. 80 Ps.

Received, a registered
addressed to _____ Date Stamp _____

Initials of Receiving Officer _____
with the word "insured" before it when necessary.

Insured for Rs. (in figures) _____ (in words) _____

If insured: Insurance fee Rs. _____
Name and address of sender _____
Weight _____ Kilo _____ Grams _____
20 0

No. 240 For Ins...

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No. 1012/2014.

Dr. Ikramullah... Versus... Khyber Pakhtunkhwa
Agricultural University, Peshawar)

Date of hearing04.02.2015.

JUDGMENT

Petitioner(s). By Mr. Khushdil Khan, Advocate.

Respondent (s) By M/S Khalid Khan and Muhammad Isa Khan, advocates for Respondent
No.1 to 5.

Mr. Saqib Raza Advocate for Respondent No.6.

Mr. Jehanzeb Meshsud Advocate for Respondent No.7 and 8.

ROOH-UL-AMIN KHAN.J. On 28.5.2013, the

respondent No.2 invited applications on printed Forms,

through advertisement published in daily "Aaj" for

appointment against the post of Associate Professor BPS-20

(Weed Science), from the eligible candidates having the

following qualification:

*"Ph.D in the relevant field from an HEC
recognized University/ Institution plus,
10 (ten) years Teaching/research*

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experience in HEC recognized University or a Post Graduate Institution or professional experience in the relevant field in a National or International Organization, plus 10 (ten) research publications (with at least 4 (Four) Publications in the last 5 years) in HEC recognized journals.

OR

5 (Five) years post Ph.D teaching/research experience in HEC recognized University or a Post Graduate Institution or professional experience in the relevant field in a National or International Organization, plus 10 research publications (with at least 4 (Four) publications in the last 5 years) in HEC recognized journals."

The petitioner being equipped with the required qualification i.e. Ph.D degree in Weed Science applied for the post of Associate Professor lying vacant in the relevant category of Weed Science. The respondent No.6 to 8 were also in the run for the same position in the same discipline, therefore, their credentials were placed before the

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Scrutiny Committee for determination of their eligibility and quantification wherein all the candidates competing for the post in question were declared eligible and their names were referred to the Selection Board for further proceedings at that end. In pursuance of the recommendation of Scrutiny Committee, the petitioner alongwith respondent No.6 and 8 were called for interview by the Selection Board and ultimately, the respondent No.6 to 8 were recommended to the Syndicate for appointment against the vacant posts of Associate Professor in Weed Science, which aggravated the grievance of petitioners, who rushed to knock the door of this court with the following prayer:

- (i) *Declare the declaration of eligibility of Respondent No. 6 & 7 as unlawful, malafide, contrary to the terms of advertisement and statutes, tainted with favouritism and nepotism liable to be set aside. Further declare the recommendation of Respondent No.5 (Selection Board) in favour of Respondent No.6 & 7 as illegal,*

unlawful, unjustified, unfair, discriminatory and of no legal effect.

- (ii) Direct the Respondent No.1 to 5 to act in accordance with law and to consider the Research Project Report, make correct evaluation as teacher and award the requisite marks for the recognized Awards received by petitioner from time to time.*
- (iii) Restrain the Respondent No.1 & 4 from granting approval to recommendation of Respondent No.5 (Selection Board) regarding the selection of Respondent No. 6 & 7 to the post of Associate Professor and from issuing any notification in this regard.*
- (iv) Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioner.*

2. Initially, comments of the respondents were called for and in the meanwhile the status quo was ordered to be maintained, however, on 12.5.2014 on request of the counsel for respondent No.6 & 7, the syndicate was allowed to proceed with the appointment process of the parties to Lis; however, the final authority was restrained to pass the

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final order regarding appointments, till decision of the instant writ petition.

3. The learned counsel for petitioner vividly argued that the petitioner is highly qualified having Ph.D degree in the Weed Science from the university of Queensland, Australia and now a days pursuing the Post-Doctorate in Weed Science in U.A.E University, Al-Ain. He is also performing his duties as lecturer in the Weed Science Department since 3.2.2005 while the respondent No.6 & 7 have qualified their Ph.D degree in Agricultural Bio-Tech and Agricultural Science from Tsukuba University, Japan and University of Queensland, Australia respectively. Thus the respondents are lacking qualification in the relevant discipline being not equipped with degree in Weed Science, hence not qualified in terms of advertisement for the post of

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Associate Professor, BPS-20 in Weed Science Department.

The learned counsel for petitioner also disputed the length of experience of respondents and argued that the petitioner has been appointed as lecturer in the Department of Weed Science on regular basis w.e.f 17.2.2003, vide order dated 6.3.2003, thus, he has more experience than the requisite i.e. 10 years, while the respondents No.6 and 7 have been appointed as lecturer on regular basis on 3.2.2005 w.e.f 18.1.2005; therefore, they have a maximum experience of teaching in the Weed Science as 8 years 4 months and 27 days which is less than the required experience of 10 years.

He further argued that the Chairman of the Weed Science Department was also one of the members of the Selection Board against whom the petitioner had earlier filed a complaint regarding his corruption and maltreatment with

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the petitioner. The petitioner, in this regard, has also submitted application to the Vice Chancellor, Agricultural University, Peshawar, showing his reservation against the above mentioned person but with no premium to him. Thus the Selection Board, in presence of a biased person has not acted fairly by not awarding him the requisite marks as commensurate to the knowledge of the petitioner during the interview and in this view of the matter, the petitioner has been discriminated by not recommending his name for selection.

4. The above arguments of learned counsel for petitioner was strongly refuted by the respondent and argued that the respondent No.6 and 7 have acquired their Ph.D degrees in Weed Science from the renowned Universities of the world. The respondent No. 7 is MSc (Hons) from the

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University of Peshawar and has obtained his Ph.D degree from the university of Queensland, Australia in agricultural science discipline calling major subject area of Weed Science. No doubt, the text appearing on the title of the degree conveying the word "Doctor of Philosophy in the field of Agricultural Science" but reading the same in juxtaposition with thesis submitted by the respondents would abundantly make it clear that the subject area of his philosophy was "Weed Science", because the title of the thesis, submitted by the respondent No.7, is "Long term sustainable management of parthenium weed (*Parthenium Hysterophorus* L.) using suppressive pasture plants." *Parthenium Hysterophorus* is a species of flower plant commonly known as whitetop weed which has been remained area of research of respondent. Likewise, the

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respondent No.6 has joined the service with the university as a lecturer in Weed Science and had acquired her Ph.D degree from the university of Tsukuba, Japan in Weed Science. It is also born out of the record that the respondent No.6 and 7 are serving the university since 2002, having overall experience of 11 years in teaching of Weed Science. Learned counsel for respondent No.1 and 2 while clarifying biasness of one of the members of Selection Board namely Azeem Khan argued that the Chairman of the concerned Department by virtue of section 4-1 (d) of the University Ordinance, 1981 saved under clause 45 (f) of the Khyber Pakhtunkhwa University Act, 2012 is a statutory member, moreso, when Mr. Azeem Khan was not the sole member of the committee nor having any influence on the Vice Chancellor/ chairman of the Committee. The petitioner has

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appeared before the Selection Board, therefore, he is stopped by his own conduct to urge the malafide on the part of an honourable member who is head of the concerned department, learned counsel for the respondents lastly added.

5. Having heard the learned counsel for the parties, perusal of record would reveal that the post of Associate Professor (BPS-20) in Department of Weed Science was advertised by the respondent No.2 against which the petitioner as well as respondent No.6 to 8 submitted application on printed forms, for appointment. The credentials of the candidates were examined by the Scrutiny Committee and were placed before the Selection Board. The Selection Board in its 79th meeting held on 12.3.2014 recommended the respondent No. 6 to 8 for appointment as Associate Professor, BPS-20 in the

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Department of Weed Science in order of merit position i.e.

Dr. Ijaz Ahmad Khan with 60.34- Score out of 100, Dr.

Saima Hasham having 56.10 marks out of 100 and Dr.

Naeem Khan securing 51.46/100. The recommendation of

Selection Board got approbation of the syndicate in its

meeting dated 13.5.2014 but the notification is awaited due

to restraint order passed by this court. The contention of

learned counsel for the petitioner regarding Ph.D degree of

respondent No.6 and 7 is misconceived and unpersuasive.

No doubt, the Ph.D degree of respondent No. 6 and 7 reflect

that the same have been conferred by the University in the

field of Agricultural Science but the same has been clarified

by the concerned universities that the incumbents have

completed their thesis in Weed Science. For better

understanding and clarification, we deem it appropriate to

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reproduce the letters of clarification issued by the respective Universities.

The letter of Tsukuba University dated 15.4.2014 regarding Ph.D degree of respondent No.6 is as under:

"To whom it may concern.

"It is certified that I was the advisor of Dr.Saima Hashim during her Ph.D . Her thesis title was "Mechanism of Trifluralin Resistance in Alopecurus aequalis" and her PhD research paper was published in Weed Science, the oldest journal of Weed Science. Her research was on Herbicides Resistance, which is the major problem that must be solved in present day Weed Science. There is no doubt that her degree is in weed science.

Your sincerely

*Hiroshi Matsumoto, PhD
Professor, Faculty of Life and Environmental Sciences
Director, Center in Research for Isotopes and Environmental
Dynamics, University of Tsukuba,
Tsukuba, Ibaraki 305-8572
Japan.*

Similarly the letter dated April 2014, issued by the principal supervisor of respondent No.7 at tropical and sub-

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tropical weed research unit, the school of Agriculture and food science, the University of Queensland, Australia read as under:

*“Dr. Naeem Khan.
To whom it may concern,*

Dr. Naeem Khan lived for 4 years in Australia conducting research studies for his PhD under my supervision and that of Dr's Doug George and Chris O'Donnell at the University of Queensland, Brisbane. He carried out his PhD studies on the “Long term sustainable management of parthenium weed (Parthenium Hysterophorus L.) using suppressive pasture plants’. This research work involved both glasshouse and field work and looked at how certain pasture plants could suppress the growth of parthenium weed, a significant invasive alien weed of more than 30 countries, in an attempt to find ways of better managing this weed.

Dr. Khan completed the PhD program in early 2011 and the evaluation was completed by external weed science experts in September, and as a result of this process was awarded his PhD degree on 29th September 2011. The subject area of his thesis was “Weed Science”.

During his stay at the university of Queensland, Australia, Dr. Khan obtained research skills in many areas of Weed Sciences, in particularly in the biology and management of one of the world's most important invasive alien weeds, parthenium weed.

He was an efficient, hard working, enthusiastic young professional researcher with a very friendly and caring manner, Dr. Khan fitted well into the Tropical and Subtropical

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Weeds Research Unit within the School of Agriculture and Food Sciences, The University of Queensland. I confirm that the subject area of his PhD study was "Weed Science". Dr. Khan has also published papers in both national and international high impact factor journals, all within the subject area of "Weed Science".

Yours sincerely

*Steve Adkins
Professor*

6. The perusal of the above referred to letters would make it abundantly clear that both the respondents have completed their studies of Doctor of Philosophy in the field of Weed Science. The appearance of word "Agricultural Science" does not exclude the research and thesis of the respondents, manifestly done in the Weed Science specialty. Agricultural science is a study of the science and technology underlying the principles practices of agriculture. It aims to develop knowledge, skill and attitude concerning the factors that affect the long term well being of agricultural resources, and places

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emphasis on the managed uses of these resources. The studies in agricultural science include Agriculture, Agriculture Extension, Agronomy, Crop Production, Entomology, Fiber Technology, Food Science and Technology, Food Technology, Forestry, Horticulture, Nutrition, Plant Breeding and Genetics, Plant Pathology, Plant Protection, Soil and Environmental Sciences, Water Management and Weed Science. In our view the word "Agricultural Science" has been used in the broad spectrum because the Weed Science alongwith above mentioned other 17 subject areas are the discipline of Agricultural Science. The agricultural science, in fact, is not a separate independent discipline rather is used as overall consolidative discipline named for the above mentioned studies and subjects, thus reference to "Agricultural Science" on the title of the degree would not be sufficient to exclude the respondents from

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competition for the subject post, most particularly in the circumstances when their research area of thesis for Ph.D degree was Weed Science. In our view, the petitioner being well-equipped and having fair knowledge about the modern agricultural sciences and terminology, should have not raised cavil to the Ph.D degree of respondents. The respondent No.6 and 7 are in possession of Ph.D degrees in the relevant field (Weed Science), from the Universities, duly recognized by the Higher Education Commission.

7. Adverting to the other limbs of arguments of petitioner regarding comparison of experience of petitioner and respondents No. 6 and 7, suffice it to say that the petitioner as per the averment of writ petition has entered into the university as lecturer vide order dated 6.3.2003, w.e.f 17.2.2003 and since then teaching the Weed Science. Likewise the respondent No. 6

and 7 have joined the same University as lecturer w.e.f

16.9.2002, hence their overall experience of teaching in the

weed subjects comes to eleven years, despite the fact that the

requisite experience for the post in question is prescribed as ten

years. The contention of the counsel for petitioner that

experience shall be reckoned from the regular appointment

stands to no sound reasons. For the purpose of experience it is

not necessary that a person must be serving against a post on

regular basis. If a person teaching in a University, particularly at

Post-Graduate level without taking any remuneration, it cannot

be said that he has gained and acquired experience without any

wages is not entitled for its benefits. Experience acquired in any

manner cannot be taken away from a person merely because he

has not been paid any remuneration or pay for the same.

Experience means the accumulation of knowledge or skill which

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results from the direct participation in events or activities with

or without any financial benefit. The meaning provided by

Wikipedia (Free Encyclopedia), experience is the knowledge or

mastery of an event or subject gained through involvement in or

exposure to it. From the above definition, it can be easily

gathered that infact, the experience is a process of getting

knowledge or skill from doing, seeing or feeling of things

practically. It is born out from the record that the respondent

No.6 and 7 are teaching the Weed Science in agricultural

University of Peshawar to the B.Sc and M.Sc (Hons) classes

since 2003 and 2002 respectively, thus were having more than

the requisite experience of teaching in the respondent university.

Moreover, as per criteria laid down by the Higher Education

Commission, the counting of experience gained during

private/government job will depend upon the nature of

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experience and is to be decided by the University Scrutiny Committee and Selection Board.

8. As far as the contention of the petitioner that he had made a complaint against Dr. Azeem Khan, member of the Selection Board, about his corruption in the weed department of University of Agriculture, therefore, was not recommended for the appointment by the Selection Board due to the malice on the part of the above named member, is concerned, suffice it to observe that this court under its constitutional jurisdiction cannot substitute opinion of the Selection Board on mere allegation of biasness of one of the member and that too after losing the chance in the Selection Board. Besides, on complaint of the petitioner, regarding malice and biasness of Dr. Azeem Khan, Vice Chancellor, Agricultural University, constituted a special committee comprising of four

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members under the chairmanship of Professor Dr. Muhammad Naeem to probe into the matter. The above referred committee after investigating the allegations, submitted its report suggesting punitive action as well as initiating disciplinary proceedings against the complainant/petitioner for leveling false and baseless allegations against the Scrutiny Committee and member of the Selection Board. In nutshell the allegation of malafide on the part of Dr. Azeem Khan, Chairman of the Weed Science Department has properly been addressed by the respondents. Moreover, the Chairman of the Department of Weed Science was statutory member, thus, his membership to the selection board cannot be controverted on the mere allegation of biasness. Besides, the selection board consist of seven members under the chairmanship of Vice Chancellor of the Agricultural University and Dr. Azeem Khan was not the

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sole member of the board to target the petitioner. As discussed in the preceding paras, the High Court in exercise of constitutional jurisdiction under article 199 of the Constitution of Islamic Republic of Pakistan is not expected to perform the functions of the selection authority in appointment matters so as to substitute its opinion for the competent authority. There is also no measuring apparatus with this court to determine that the petitioner was deferred and not recommended for appointment by the Selection Board for the sole reason of his allegations against Dr. Azeem Khan. In this respect, reliance may be placed on judgments of august Supreme Court of Pakistan rendered in case titled "Dr. Mir Alam Jan Vs Dr. Muhammad Shehzad (2008 SCMR 960), "Asif Mehmood Chughtai, Advocate and 17 others Vs Govt. of the Punjab through Chief Secretary and others" (2000 SCMR 966), "Muhammad Ashraf Sangri Vs

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Federation of Pakistan and others” (2014 SCMR 157), and
“Arshad Ali Tabbasum Vs the Registrar, Lahore High Court,
Lahore” (2005 SCMR 112).

9. From the above discussion, it is abundantly clear that the university authorities have carried the entire process of appointment in transparent manner and properly assessed the credentials and experience of the candidate in accordance with the terms enumerated in the advertisement for the post. Even otherwise, it is settled law that in exercise of constitutional jurisdiction, high court does not set as a court of appeal over the decisions of statutory bodies. In the judgment, rendered by this court in the recent past in case titled “Dr. Rozina Gul Vs the Government of Khyber Pakhtunkhwa etc” W.P No 3355-P/2013, it was held that ‘it is not the purpose and the remedies under Article-199 of the Constitution of Islamic Republic of

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Pakistan, 1973, to take away from those authorities the power and discretion properly vested in them by law and to substitute this court as a body, making the decision. The function of the constitutional court under article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is not to exercise an independent discretion of its own. It must not interfere in the decision of statutory bodies, unless it finds that the purported exercise of the discretion by the statutory body was ultra vires, either because it was exercised in bad faith or because as a result of misconstruing the provisions of the statute by which the discretion was conferred, it has purported to exercise the discretion when the conditions precedent to its exercise were not fulfilled or in exercising it, it has taken into consideration some matters which the statute forbids to be taken into

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consideration or it has failed to take into consideration some matter which the statute required to take into consideration.

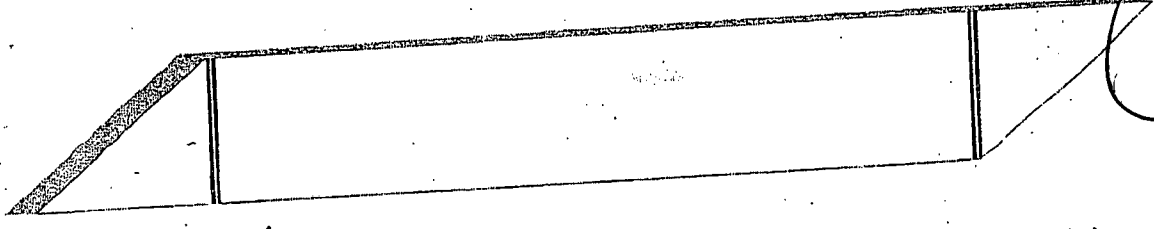
10. In wake of the above discussion, this Writ Petition, being devoid of merit is dismissed.

JUDGE

JUDGE

Announced on
4th February, 2015

Amir Khan



سہ منجانب

بنام:

مورخہ:
مقدمہ:
دعویٰ:
جرم:

باجت نہر بر آنکہ

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آں مقام کیلئے امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سنڈ رہے۔

العبد

گواہ

العبد

کے لیے منظور ہے۔

بمقام

(Handwritten signature)

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No..... 7889 of 2021.

Jamal Qadir

Apellant/Petitioner

Versus

Through Secy Health Pesh

RESPONDENT(S)

Response No 1
Notice to Appellant/Petitioner Govt of Kpk Through
Secretary Health Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 4/8/2022 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Copy is Attached
For Reply

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

S-B
-

No.

APPEAL No..... 7889 of 20 21.

Jamal Qadir

Appellant/Petitioner

Versus

Through Secy Health Psh

RESPONDENT(S)

Respondents No. 2) Director General
Notice to Appellant/Petitioner
Health K.P.A. Judicial Complex
Khyber Road Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 4/8/2022 at 9:00 AM.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Reply
Copy is Attached



Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.