


Service Appeal No. 905/2019, *Afrasiab Khan vs Govt*

ORDER
01.07.2022

Learned counsel for the appellant present. Mr. Touheed Iqbal, Assistant Director (Litigation) alongwith Mr. Riaz Ahmad Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 904/2019 titled "Abid Ali Versus Government of Khyber Pakhtunkhwa through Secretary Livestock & Cooperative Department, Civil Secretariat Khyber Pakhtunkhwa, Peshawar and three others", the appeal in hand being devoid of merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
01.07.2022


(Rozina Rehman)
Member (Judicial)



(Salah-ud-Din)
Member (Judicial)


03.08.2021

Counsel for the appellant present.

Mr. Riaz Ahmed Paindakheil, Assistant Advocate General alongwith Mr. Touheed Iqbal A.D for respondents present.

Arguments were advanced at some length however, during the arguments it was pointed out that vide order of the Hon'ble Peshawar High Court, Peshawar dated 16.05.2018, all the appointments of Laboratory Assistant were struck down which were made pursuant to the advertisement dated 19.10.2016 in District D.I.Khan. Copy of the above mentioned advertisement is not available on file alongwith other relevant documents, therefore, both the parties are directed to make sure the production of relevant record for proper assistance of this Bench. Case is adjourned. To come up for production of relevant record and arguments on 08.12.2021 before D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

08.12.2021

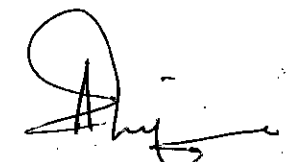
Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

The Worthy Chairman is on leave, therefore, the bench is incomplete. Adjourned. To come up for arguments on 28.03.2022 before the D.B.


(Salah-ud-Din)
Member (J)

28-3-2022

Proper DB not available - the case is adjourned to come up for the same as before on 1-7-2022


Reader

10.02.2021

Mr. Maaz Madni, Advocate, for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Toheed Iqbal, Assistant Director, for respondents are also present.

Learned counsel representing appellant requested for adjournment as he has not prepared the brief. Last chance is given to learned counsel representing appellant for addressing arguments. Adjourned to 14.04.2021 on which date file to come up for arguments before D.B.


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

14.04.2021


Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 03.08.2021 for the same as before.


READER

30.09.2020

Muhammad Maaz Madni, Advocate alongwith Muhammad Akram S/O Mir Alam Khan Attorney for appellants are present. Mr. Muhammad Jan, learned Deputy District Attorney for the respondents is also present.

According to Muhammad Akram, Attorney for appellants that learned counsel is engaged in the Hon'ble Peshawar High Court, Peshawar, therefore, cannot attend the Tribunal today and requested for adjournment. Adjourned to 30.11.2020 on which to come up for arguments before D.B


(Atiq-ur-Rehman Wazir)
Member(E)



(Muhammad Jamal Khan)
Member (J)

30.11.2020

Counsel for appellants present.

Muhammad Jan learned Deputy District Attorney for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 10.02.2021 before D.B.



(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

7-5 .2020

Due to COVID19, the case is adjourned to

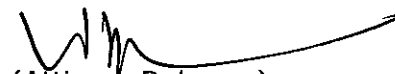
27/7/2020 for the same as before.


Reader

27.07.2020

Nemo for appellant. Mr. Ziaullah, DDA for the respondents present.

On the last date the matter was adjourned through Reader note, therefore, notices be issued to appellant/counsel for 16.09.2020 for hearing before the D.B.


(Attiq-ur-Rehman)
Member

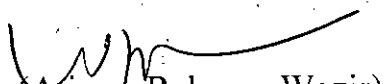

Chairman


16.09.2020

Counsel for appellant present .

Mr. Muhammad Jan learned Deputy District Attorney for respondents present.

Former requests for adjournment. Adjourned. To come up for arguments on 30.09.2020 before D.B.


(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

19.11.2019

Appellant alongwith counsel and Addl. AG for the respondents present.

Learned AAG is required to ensure attendance of representative of the respondents and submission of requisite reply/comments on next date.

Adjourned to 01.01.2020 before S.B.


Chairman

02.01.2020

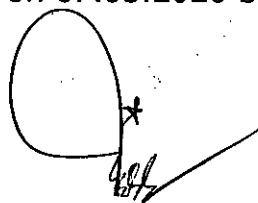
Appellant alongwith counsel, Addl. AG alongwith Toheed Iqbal, AD for the respondents present.

Representative of respondents has furnished reply on behalf of the respondents. Placed on record. The appeal is assigned to D.B for arguments on 09.03.2020. The appellant may furnish rejoinder, within one month, if so advised.


Chairman

09.03.2020

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Toheed Iqbal, AD and Mr. Muhammad Ilyas, Senior Statistician for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.05.2020 before D.B.


Member


Member

23.08.2019

Counsel for the appellant present.

Contends that the Honourable High Court had struck down only the appointments of Laboratory Assistant (BPS-06) made pursuant to the advertisement dated 19.10.2016 in District D.I.Khan. On the other hand, the appointment of appellant was as Laboratory Assistant in the office of Director Hazara Agriculture Research Station, Abbottabad. The appointment of appellant was, therefore, neither impugned in the Writ Petition nor was declared ^{to be} in derogation of law. The impugned office order dated 15.02.2019 referred to in the judgment of Peshawar High Court passed in Writ Petition No. 1024-D/2018 and Review Petition No. 1203-D/2018 it was a total misconception on the part of respondents.

In view of the available record and arguments of learned counsel instant appeal is admitted for regular 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 15.10.2019 before S.B.

Appellant Deposited
Security & Process Fee

23/8/19

Chairman



15.10.2019

Junior to counsel for the appellant and Addl. AG alongwith Jalalud Din, Agronomist and Tauheed Iqbal, AD for the respondents present.

Representatives of the respondents request for time to submit the requisite comments/reply. Adjourned to 19.11.2019 on which date the requisite reply/comments shall positively be submitted.

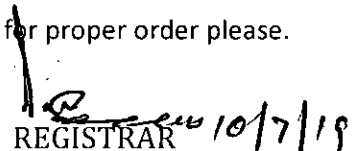

Chairman



Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 905/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/07/2019	<p>The appeal of Mr. Afrasiab Khan presented today by Mr. Muhammad Maaz Madni Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 10/7/19</p>
2-	01/07/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/08/19</u></p> <p> CHAIRMAN</p>


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 905 /2019

AFRASIAB KHAN V/S AGRICULTURE DEPTT:
& OTHERS

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Through: APPELLANT

MUHAMMAD MAAZ MADNI
ADVOCATE 09/07/2019.
ROOM NO. 1, UPPER FLOOR,
NEW ISLAMIA CLUB BUILDING,
KHYBER BAZAR, PESHAWAR CITY
0345-9090737, 0314-9965666

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 905 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 941

Dated 10-7-2019

MR. AFRASIAB KHAN, Ex-Laboratory Assistant(BPS-06),
o/o Director Hazara Agriculture Research Station, Abbottabad.

.....APPELLANT

VERSUS

1. THE GOVT. OF KHYBER PAKHTUNKHWA
through Secretary, Livestock & Cooperative Department,
Civil Secretariat Khyber Pakhtunkhwa, Peshawar.
2. THE DIRECTOR GENERAL AGRICULTURE RESEARCH,
Khyber Pakhtunkhwa, Peshawar.
3. THE DIRECTOR,
Hazara Agriculture Research Station, Abbottabad.
4. THE DIRECTOR,
Agriculture Research Institute, DI Khan.

..... RESPONDENTS

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED 15.02.2019 WHEREBY MAJOR
PENALTY OF REMOVED FROM SERVICE HAS BEEN IMPOSED
UPON THE APPELLANT AND AGAINST NOT TAKING ANY
ACTION ON THE DEPARTMENTAL APPEAL DATED 13.03.2019
OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF
NINETY (90) DAYS

Filed to-day

Registrar

10/7/19

PRAYER:

That on acceptance of the instant service appeal the impugned removal order dated 15.02.2019 to the extent of appellant may very kindly be set aside and the appellant be reinstated into service with all consequential back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

Respectfully Sheweth:

FACTS:

Brief facts which give rise to the instant appeal are as under:-

1. That the respondents issued advertisement for filling up of various vacant posts including the post of Laboratory Assistant (BPS-06). That the appellant being eligible in all respect applied for the post of Laboratory Assistant (BPS-06) and passing test & Interview stood successful by attaining proper position in the merit list prepared for the post of Laboratory Assistant (BPS-06).

Copy of the Merit List is attached as
ANNEXURE A.

2. That appellant after being declared successful in the test & interview and attaining a proper position in the merit List the appellant was issued with appointment order as Laboratory Assistant (BPS-06) dated 13.11.2017 and was accordingly posted under the administrative control of Respondent no.3.

Copy of the appointment order is
attached as ANNEXURE..... B.

3. That the appellant after receiving the appointment order dated 13.11.2017, was medically examined and was found fit for Government job where after the appellant submitted his arrival and charge report before the Respondent no. 3 and started performing his duty quite efficiently, whole heartedly and upto the entire satisfaction of his high ups.

4. That a writ petition was filed before the Peshawar High Court, DI Khan bench against the respondent by challenging the appointment order of ONE Jabir who also hails from DI Khan which was admitted and allowed vide judgment dated 16.05.2018 with the remarks given in Para-13 of the judgment as "We are left with no other choice but to struck down all the appointments of Laboratory Assistant (BPS-06) made pursuant to the advertisement dated 19.10.2016 in District DI Khan".

Copy of the judgment dated 16.05.2018
attached as ANNEXURE.....C.

5. That the respondents also filed a review petition against the above-mentioned judgment dated 16.05.2016 which was dismissed in limine being not maintainable vide judgment dated 05.12.2018.

Copy of the judgment dated 05.12.2018
attached as ANNEXURED.

6. That, the appellant while performing his duty with respondent no. 3, was issued with the impugned order dated 15.02.2019 communicated to the appellant on 22.02.2019 whereby the appellant was removed from service along with two others at serial no. 1 & 3 of the impugned order dated 15.02.2019.

Copy of the impugned order dated 15.02.2019 is attached as ANNEXURE..... E.

7. That, the appellant feeling aggrieved from the inaction of the respondents by issuing the impugned order dated 15.02.2019 filed Departmental Appeal dated 13.03.2019 before the appellate authority and after waiting for 90 days filed an application requesting therein for provision of the appellate order if any but no response has been received so far.

Copy of the Departmental Appeal & application is attached as ANNEXURE F & G.

8. That the appellant having no other efficacious, adequate and alternate remedy but to approach this Honourable Tribunal on the following grounds amongst others:

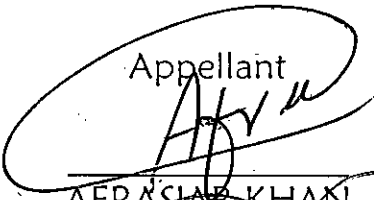
GROUND:-

- A. That the impugned order dated 15.02.2019 of the respondents issued to the appellant is against the Law, Rules, Fact & material available on record hence not tenable in the eye of Law and is liable to be set aside.
- B. That the appellant has not been treated by the respondents in accordance with Law and Rules on the subject noted above and as such the respondents are clearly violating Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C. That the respondents have not acted in accordance with law and the rules governing on the subject matter by issuing the impugned removal order dated 15.02.2019.
- D. That the treatment met out to the appellant is highly discriminatory as other employee appointed with that of the appellant on the same advertisement are still serving in the respondent Department.
- E. That the judgment issued by the Honourable Peshawar High Court DI Khan was not properly interpreted by the respondents.

- F. That no charge sheet, no statement of allegation no show cause notice has been served upon the appellant while issuing the impugned removal order dated 15.02.2019.
- G. That no proper inquiry has been conducted by the respondents while issuing the impugned removal order dated 15.02.2019 which is pre-requisite as per various judgments of the apex Court for imposing a major penalty.
- H. That, the issuing of the impugned removal order is nothing but just to harass the appellant and to accommodate their blue-eyed person.
- I. That the appellant has properly been qualified and has also passed through proper selection process where after were selected on the post, hence the appellant has been punished for the fault of other by mis-interpreting the verdicts of the Honourable High Court by the respondents while issuing the impugned removal order dated 15.02.2019.
- J. That any other grounds will be raised at the time of arguments with prior permission of this Honourable Tribunal.

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

09/07/2019

Appellant

AFRASIAB KHAN
Through
MUHAMMAD MAAZ MADNI
Advocate,
High Court, Peshawar.

Annex-2

ADMISSION

50

Ranking Meritlist of candidates for the post of Laboratory Assitant (BPS-06)

Age Limit 18 to 32 Years
Vacancy No. 04

S.No	Dairy No	Name	Father Name	Domicile	Required Age 18-32 years Age Y M D	Qualific ation	Matric (70)	1st Step (6)	2nd Step (8)	3rd Step (12)	Experience in the relevant field 4 marks per years (10)	DGAR	Rep. of Admn Deptt	SDOR	Avera ge	Grand total Intervie w Marks.	Remarks
1	186	Abbas Ali Khan	Muhammad Ali Khan	Peshawar	25 , 8 , 3 ,	B.Sc	70		8		10	5	5	6	5.3333	93.33333	
2	827	Amir Hamza	Mushtaq Ahmad	Peshawar	21 , 5 , 23 ,	B.A	70		8		4	4	5	3	4	86	
3	1660	Jabir	Umar Daraz	D.I.Khan	18 , 6 , 26 ,	F.Sc	70	6			4	5	6	7	6	86	
4	1653	Akmal Jadoon	Muhammad Ajmal Jadoon	Swabi	23 , 4 , 18 ,	Matric	70				7	3	4	3	3.3333	80.33333	
5	468	Abid Ali	Bahadar Khan	D.I.Khan	32 , 6 , 19 ,	B.A	53		8		7	7	7	8	7.3333	75.33333	
6	83	Farhatullah Khan	Inamullah Khan	Peshawar	24 , 7 , 11 ,	F.A	51	6			10	5	7	6	6	75	
7	697	Afrasiab Khan	Abdul Ghafar	D.I.Khan	18 , 6 , 18 ,	Matric	53				10	8	7	8	7.6667	70.66667	
8	10	Muhammad Adnan	Shah Nazar Khan	Nowshera	21 , 7 , 11 ,	B.Sc	53		8		7	3	3	2	2.6667	70.66667	
9	1482	Fawad Mahmood	Fazal Mahmood	Swabi	25 , 8 , 21 ,	M.Sc	53			12	4	2	2	1	1.6667	70.66667	
10	1440	Muhammad Sajid Saleem	Muhammad Saleem Shah	Bannu	28 , 7 , 11 ,	F.A	53	6			10	2	1	2	1.6667	70.66667	
11	1374	Muhammad Farooq	Gohar Ali	Peshawar	27 , 8 , 15 ,	F.A	53	6			10	2	1	2	1.6667	70.66667	
12	411	Ilyas Khan	Sad Ullah Khan	D.I.Khan	21 , 6 , 1 ,	B.A	53		8		4	4	4	3	3.6667	68.66667	
13	1380	Muhammad Irfan	Wasil Khan	Peshawar	26 , 9 , 28 ,	B.Sc	53		8		4	4	3	3	3.3333	68.33333	
14	1123	Shah Jahan Ali	Malik Wahid Ali	orkazai Agency	32 , 4 , 19 ,	B.A	53		8		4	3	3	2	2.6667	67.66667	
15	11	Babar Maqsood	Maqsood Ali	Peshawar	21 , 4 , 14 ,	B.A	53		8		4	2	3	3	2.6667	67.66667	
16	625	Muhammad Bilal Aamir Khan Field Worker	Muhammad Ayaz	Peshawar	23 , 7 , 24 ,	B.A	53		8		4	2	2	3	2.3333	67.33333	
17	951	Aamir Khan Field Worker	Aziz Ur Rehman	Nowshera	28 , 8 , 30 ,	B.A	53		8		4	2	2	3	2.3333	67.33333	

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Annexure - A

Ranking Meritlist of candidates for the post of Laboratory Assitant (BPS-06)

Age Limit 18 to 32 Years
Vacancy No. 04

S.No	Dairy No	Name	Father Name	Domicile	Required Age 18-32 years Age Y M D	Qualification	Matric (70)	1st Step (6)	2nd Step (8)	3rd Step (12)	Experience in the relevant field 4 marks per years (10)	DGAR	Rep. of Admn Deptt	SDOR	Average	Grand total Interview Marks.	Remarks
18	382	Muhammad Ilyas	Qazi Amin Ul Haq	Malakand	25 ,9 ,28 ,	F.A	53	6			4	4	5	3	4	67	
19	856	Muntazir Shah	Muhammad Ali Shah	Nowshera	27 ,1 ,26 ,	Matric	53				10	3	4	4	3.6667	66.66667	
20	46	Ahmad Ali	Ayub Khan	Swat	27 ,2 ,17 ,	DAE	53	6			4	4	4	3	3.6667	66.66667	
21	216	Raheel Ahmad	Shakeel Ahmad	D.I.Khan	22 ,9 ,25 ,	F.A	53	6			4	3	4	4	3.6667	66.66667	
22	168	Aamir Shahzad	Abdur Rasheed	Abbottabad	36 ,9 ,30 ,	DAE	53	6			4	4	4	3	3.6667	66.66667	
23	78	Syed Mehtab Hussain	Ismail	Swat	20 ,9 ,30 ,	F.A	53	6			4	3	4	3	3.3333	66.33333	
24	508	Imtiaz Ahmad	Adam Khan	Karak	29 ,3 ,29 ,	F.A	53	6			4	3	4	3	3.3333	66.33333	
25	378	Muhammad Tahir	Shafiq ur Rehman	Mansehra	22 ,2 ,15 ,	F.Sc	53	6			4	3	3	4	3.3333	66.33333	
26	170	Nimat Ullah	Alam Khan	Karak	34 ,6 ,28 ,	F.A	53	6			4	4	3	2	3	66	
27	40	Bahar Ali	Ghulam Nabi	Peshawar	20 ,8 ,28 ,	F.A	53	6			4	2	2	2	2	65	
28	1613	Sadiq Ullah	Siraj Muhammad	DIR Lower	18 ,6 ,16 ,	Matric	53				7	3	4	3	3.3333	63.33333	
29	1437	Usman Ali Shah	Sabz Ali	Mardan	19 ,9 ,26 ,	Matric	53				4	3	6	5	4.6667	61.66667	

Abdul
Member
Outreach Agric.
Research Khyber
Pakhtunkhwa

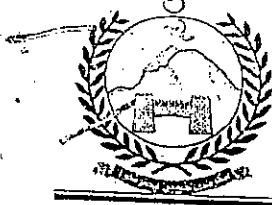
Member
Section Officer (Estt) Agric.
Livestock & Cooperative
Department

Chairman
Director General Agric.
Research Khyber Pakhtunkhwa

(51)

(7)

Annexure - B



GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURAL RESEARCH

Office: at Agricultural University Peshawar
Phone #: 0092-91-9221271
Fax #: 0092-91-9221270
Email: dgragriresearch@gmail.com

OFFICE ORDER

Consequent upon the recommendation of Departmental Selection Committee Mr. Afrasiab Khan S/O Abdul Ghafar is hereby appointed as Laboratory Assistant on regular basis in BPS-06 (10620-560-27420) plus usual allowances as admissible under the Government rules. He is posted against the existing vacancy of Laboratory Assistant in the office of the Director Hazara Agriculture Research Station Abbottabad.

1. His services will be considered regular and are entitled to General Provident Fund in such a manner and at such rates as may be prescribed by the Government by the Khyber Pakhtunkhwa, Civil Servant (Amendments) Act, 2013.
2. His services will be liable to termination on one month notice from either side. In case of resignation without notice his two months, pay/allowances shall be forfeited to Government.
3. The appointee should join his duty within 30-days of the issue of this order.
4. He will have to produce a Medical Fitness Certificate before joining his duties.
5. He will be governed by such rules and regulation as may be issued from time to time by the Government.
6. His service can be terminated at any time in case his performance is found unsatisfactory during probationary period. In case of misconduct he will be proceeded against the Khyber Pakhtunkhwa, Government Servants (Efficiency & Disciplinary) Rules, 2011 and the Rules framed there under from time to time.
7. No TA/DA will be granted for joining the duty.

If he accepts the post on the above terms and conditions which are laid down in the above quoted circular, he should report for duty to the Director Hazara Agriculture Research Station Abbottabad.

Sd/-
DIRECTOR GENERAL
Agriculture Research
Khyber Pakhtunkhwa
Peshawar

No. 19351-59 /Estt/DGAR;

Dated Peshawar the 13/11 /2017.

Copy to:-

ATTESTED

1. The Director Hazara Agriculture Research Station Abbottabad.
2. The District Accounts Officer, Abbottabad.
3. The Assistant Accounts Officer, H.Q.
4. Mr. Afrasiab Khan S/O Abdul Ghafar R/O Village Rori Tehsil Kulachi District D.I.Khan.
for information & necessary action.

DIRECTOR GENERAL
Agriculture Research
Khyber Pakhtunkhwa
Peshawar

8

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
D.I.KHAN BENCH
(Judicial Department)**



**W.P. No.1024-D/2017 with
C.M.No.1186-D/2017**

Raheel Ahmad

Annexure - e

Versus.

Govt. of K.P.K and others

JUDGMENT

For petitioner: **Mr. Muteeullah Rind Advocate.**

For respondents
No.1 to 4:

**Mr. Kamran Hayat Miankhel, Addl:
A.G. alongwith Abdul Majeed
(respondent No.4 in person).**

For respondent
No.5:

Muhammad Anwar Awan Advocate.

Date of hearing: **16.5.2018.**

IJAZ ANWAR, J.- Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks the following relief:-

*"In wake of submission made above,
it is humbly prayed that on
acceptance of instant writ petition,
respondents No.1 to 4 may kindly be
directed to appoint the petitioner as
Lab Assistant (BPS-6) against
vacant post on merit, and*

ATTESTED

10-06-18
EXAMINOR
Peshawar High Court
D.I.Khan Bench

9

respondents No.1 to 4 may please be directed to declare the impugned appointment order of respondent No.5 as null and void."

2. Precisely stated the facts of the case are that pursuant to the advertisement dated 19.10.2016, the petitioner applied for the post of Laboratory Assistant (BPS-6). He appeared in test/interview and secured 68/100 marks, but later on through publication the test/interview so conducted was cancelled and the respondent No.5 was appointed vide order dated 02.11.2017 on political influence despite the fact that he has not even applied for the said post.

3. Arguments heard and record perused.

4. Perusal of the record reveals that the respondent No.2 advertised different posts, including the posts of 04 Laboratory Assistant (BPS-6), one post each for 04 separate districts, through daily newspapers dated 19.10.2016. Initially departmental test was conducted despite the fact that there are standing instructions of the Provincial Government that for all appointments, the department is required to conduct written test through National Testing Service (NTS). Initially the candidates qualifying the written test were called for interview, however, as admitted by the respondents the interview

RB

ATTESTED

*Imran/**

(D.B) Hon'ble Mr. Justice Ijaz Anwar & Hon'ble Mr. Justice Shakeel Ahmad

ATTESTED
10-06-18
EXAMINOR
Peshawar High Court
D.I. Khan Bench

10

was subsequently cancelled for the reasons that no suitable candidate was available. It transpired that in order to accommodate the respondent No.5 and certain other candidates, the interview was again re-arranged without calling other shortlisted candidates and thus respondent No.5 including 02 other candidates were appointed as Laboratory Assistant on regular basis.

5. The respondent No.4, present in the Court, was asked what was the quota allocated to District D.I.Khan, he stated that he is not the appointing authority and the appointments were made by the respondent No.2. He however, conceded that there were only 01 post allocated for District D.I.Khan. We have also been informed that all the 03 candidates appointed belongs to Tehsil Kulachi, the home town/constituency of the Minister of Agriculture. The result of shortlisted candidates would show that the petitioner has topped the written test by securing 68 marks out of 100, but he was deprived while the respondent No.5, who has not even appeared in written test was allowed appointment.

6. It is a matter of great concern that three appointments of Laboratory Assistant were made from the candidates of Tehsil Kulachi and the other districts were deprived as one post of Laboratory Assistant was earmarked for each district. We are facing cases of civil

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Imran/*

(D.B) Hon'ble Mr. Justice Ijaz Anwar & Hon'ble Mr. Justice Shakeel Ahmad

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court
D.I.Khan Bench

(11)

servants day to day in the High Court wherein adjustments and appointments are made in other districts of the candidates belonging to District D.I.Khan and are then subsequently reposted in District D.I.Khan as these candidates were not ready to perform their duties in other districts. In the instant case the fault lies with the appointing authority that as to why he has made appointments in District D.I.Khan over and above their entitlement. Making such appointments give support to the argument of the learned counsel for the petitioner that since it was the constituency of Minister for Agriculture, as such, the appointments were made at the choice of Minister concerned.

7. The august Supreme Court of Pakistan in case of "*Zahid Akhtar Vs. Government of Punjab through Secretary, Local Government and Rural Development, Lahore and 2 others*" (PLD 1995 S.C. 530), while discussing the role of Bureaucracy and their dealing with the public representative held as under:-

"Tamed and subservient bureaucracy can neither be helpful to Government nor it is expected to inspire public confidence in the administration. Good governance is largely dependent on an upright, honest and strong bureaucracy."

ATTESTED

Inran/*

(D.B) Hon'ble Mr. Justice Ijaz Anwar & Hon'ble Mr. Justice Shakeel Ahmad

ATTESTED
EXAMINER
Peshawar High Court
D.I.Khan Bench

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Therefore, mere submission to the will of superior is not a commendable trait in a bureaucrat. Elected representatives placed as incharge of administrative departments of Government are not expected to carry with them a deep insight in the complexities of administration. The duty of a bureaucrat, therefore, is to apprise these elected representatives the nicety of administration and provide them correct guidance in discharge of their functions in accordance with the law. Succumbing to each and every order of direction of such elected functionaries without bringing to their notice, the legal infirmities in such order's/directions may sometimes amount to an act of indiscretion on the part of bureaucrats which may not be justifiable on the plane of hierarchical discipline. A Government servant is expected to comply only those orders/directions of his superior which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-

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20-06-19
EXAMINOR
Jeshnawar High Court
D.I. Khan District

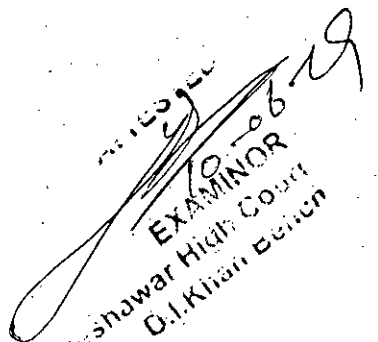
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compliance would have exposed the concerned Government servant to the risk of disciplinary action."

8. Similarly, in the matter of appointments the august Supreme Court of Pakistan in the case of "**Chief Secretary Punjab and others Vs. Abdul Raof Dasti**" (2006 SCMR 1876), held as under:-

"26. It is our misfortune that when we are looking for individuals to serve our own-selves, we search for the best of doctors, the best of architects, the best of lawyers, the best of engineers, the best of cooks, the best of butlers and so on but when it comes to selecting similar individuals to serve the public, we get swayed by nepotism, by petty personal interests and by other similar ulterior and extraneous considerations and settle for the ones not worthy of serving the public in the requisite manner. We need to remind ourselves that choosing persons for public service was not just providing a job and the consequent livelihood to the one in need but was a sacred trust to be discharged by the ones charged with it, honestly, fairly, in a just and transparent manner and in the best interest of the public. The individuals


ATTESTED


EXAMINOR
Peshawar High Court
D. I. Khan Bizen

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so selected are to be paid not out of the private pockets of the ones appointing them but by the people through the public exchequer. Therefore, we must keep it in mind that not selecting the best as public servants was a gross breach of the public trust and was an offence against the public who had right to be served by the best. It is also blatant violation of the rights of those who may be available and whose rights to the said posts are denied to them by appointing unqualified or even less qualified persons to such posts. Such a practice and conduct is highly unjust and spreads a message from ones in authority that might was right and not vice versa which message gets gradually permeated to the very gross root level leading ultimately to a society having no respect for law, justice and fair play. And it is the said evil norms which ultimately lead to anarchic and chaotic situations in the society. It is about time we suppressed such-like evils tendencies and eliminated them before the same eliminated us all."

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20-06-14
EXAMINOR
Jeshawar High Court
D.I. Khan
D.I. Khan

9. There is yet another very important aspect of the case. It was vehemently argued that the candidates

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(D.D) Hon'ble Mr. Justice Ijaz Anwar & Hon'ble Mr. Justice Shukreef Ahmad

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were not disclosed the outcome of their interviews for which they were called, however, the reply of the respondents in their comments is "the interview was cancelled, due to the reasons that no suitable candidate was available." The learned Addl. A.G. was confronted this fact that when the Departmental Selection Committee has not found any suitable candidate what was the proper course for the department, he was having no answer. Ironically the respondents again called upon their blue-eyed and made appointments at the cost of merit as well as violating the rights of candidates of other districts of the Province. When once the Interviewing/Selection Committee came to the conclusion that none of the candidates, called for interview, was suitable for appointment, the proper course was to re-advertise the post instead of appointing persons, some of whom have not even appeared in written test.

10. In the instant case we find that the selection process was not transparent for multiple reasons; (i) When once the Departmental Selection Committee have failed to find suitable candidates, in such circumstances the posts of Laboratory Assistant should have been re-advertised, which has not been done; (ii) Only against one seat allocated for District D.I.Khan, three candidates have been appointed violating the zonal quota, besides, rights of other

ATTESTED

EXAMINOR
D.I.Khan

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candidates of other districts; (iii) The candidate, who even had not appeared in written test, has been allowed appointment manipulating the merit for him for the reason not explained before this Court; and (iv) Short listing not conducted through National Testing Service.

11. The august Supreme Court of Pakistan in the case of *"Government of N.-W.F.P. through Secretary, Forest Department, Peshawar and others Vs. Muhammad Tufail Khan"* (PLD 2004 Supreme Court 313), while hearing appeal against the order of Service Tribunal allowing appeal in illegal appointments held as under:-

"7. However, in spite of all these directions, this salutary principle is being frustrated with impunity. This malady which has plagued the whole society shall be arrested with iron hands and the principle of merits shall be safeguarded, otherwise, it would be too late to be corrected. In the case in hand admittedly the appointment was made clearly in violation of the codal formalities simply on the dictation of a political figure. The learned Tribunal while accepting the appeal has not at all adverted to these aspects."

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EXAMINOR
Peshawar High Court
D.I. Khan Bench

The august Supreme Court of Pakistan in another case titled "*Muhammad Sadiq and another Vs. Federal Service Tribunal, Islamabad and others*" (2003 P L C (C.S.) 1029), held as under:-

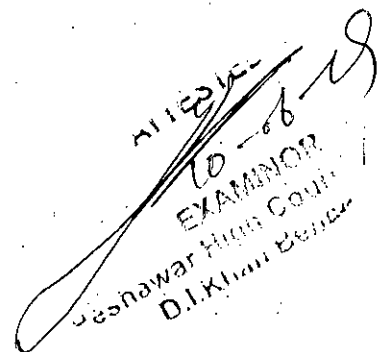
"We are afraid, the opinion of the Law Division would not cure the illegality in the appointments made in violation of rules and the same cannot be approved and allowed to be perpetuated on the basis of a favourable opinion of Law Division. The act of making of the appointments in departure to the rules amounts to defeat the equal right of employment on merits, therefore, the appointments obtained by the petitioners would not create any right in their favour for regularization. The mere passage of time would not be a ground to allow the rectification of irregularity on the ground that the appointees should not suffer for the fault of concerned authorities. It is sad that the public functionaries through misuse of their powers, without observing the rules, make appointments to oblige their favourites and deprive the deserving persons from their legitimate right of service. We may observe that a holder of public office by misusing



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(D.B) Hon'ble Mr. Justice Ijaz Anwar & Hon'ble Mr. Justice Shakeel Ahmad


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EXAMINOR
Jeshawar High Court
D.I. Khair Bhattar

his authority in breach of law and public trust, is guilty of misconduct. The Government while taking notice of such regularities should take appropriate action against the concerned authorities under the Government Servants (Efficiency and Discipline) Rules, 1973 to ensure the transparency in the appointments and to eradicate the element of favouritism and nepotism for advancement of policy of merits and fairness."

Similarly, recently in the case of "**Rashid Ali Channa and others Vs. Muhammad Junaid Farooqui**" (2017 SCMR 1519), while dismissing the review petition, the apex Court held that:-

"The question before this Court is not whether one or the other set of candidates had resorted to unfair means and illegal acts in order to gain employment, the real question relates to fairness, integrity and transparency of the process and procedure adopted by the Chairman and Members of the Commission to undertake the selection process. This Court has found serious flaws in the process of selection which point towards lack of transparency to facilitate nepotism and favoritism

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(D.B) Hon'ble Mr. Justice Ijaz Anwar & Hon'ble Mr. Justice Shazeel Ahmad

ATTESTED

EXAMINOR
Peshawar High Court
E. Khan Bench

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that cannot be condoned or countenanced."

12. The other two candidates, who were also appointed alongwith the respondent No.5, are not before the Court, however, where there are clear manipulation on the part of the official respondents and apparent favouritism in appointments, it was for the department to have explained transparency and though they are not party to this petition still have to face the consequences when illegal appointments are made.

13. We for the reasons stated above, find that neither written test was conducted through National Testing Service (NTS) nor the appointment process has been carried out transparently rather it shows favouritism while making appointments, as such, for the supremacy of the rule of law and to have confidence of the people in this system, we are left with no other choice but to struck down all the appointments of Laboratory Assistant (BPS-6) made pursuant to the advertisement dated 19.10.2016 in District D.I.Khan. The official respondents are further directed to re-advertise the posts of Laboratory Assistant (BPS-6) and to fill the same strictly in accordance with law. We also direct the respondent No.1 to constitute a comprehensive inquiry and to see whether the appointments of other posts were also made only from D.I.Khan and merit has been

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(D.B) Hon'ble Mr. Justice Ijaz Anwar & Hon'ble Mr. Justice Shakeel Ahmad

EXAMINING
D.I.Khan

violated. The report shall be submitted within 30 days positively to the Additional Registrar of this Court for perusal of Judges in Chamber. This writ petition is admitted and allowed in the above terms.

Announced.
Dr: 16.5.2018.



JUDGE



JUDGE



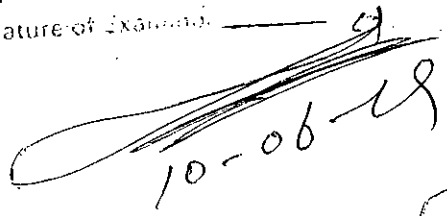
Approved for reporting

2/15



G.R.No. 2755
Application Received on 10-06-19
Copying Fee deposited Rs. _____
No of Papers 2 page
Copying Fee 04
Urgent Fee _____
Total Fee 80/-
Copy ready for delivery 10-06-19
Copy delivered on 10-06-19
Signature of Examinor _____

ATTESTED


10-06-19

Certified to be true Cop.
10-06-19
Peshawar High Court Bench D.I.K
Authorized Under Section 4
Qanoon-a-Shahadat-1919

(21)

**JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)**

Annexure - D

Review Petition No. 1203-D/2018

Government of Khyber Pakhtunkhwa
Through Chief Secretary, Peshawar and others

Versus

Raheel Ahmad

For petitioners Mr. Adnan Ali, Assistant Advocate General

For respondents Nemo

Date of hearing 05.12.2018

JUDGMENT

SHAKEEL AHMAD, J.- The Government of Khyber Pakhtunkhwa through Advocate General, seeks review of judgment dated 16.5.2018, rendered in writ petition No.1024-D/2017, whereby this Court admitted and allowed writ petition.

2. At the very outset, learned Assistant Advocate General was confronted with the order dated 27.8.2016 passed by the august Supreme Court of Pakistan whereby the impugned judgment was upheld. On this, learned Assistant Advocate General appearing on behalf of petitioners conceded that in view of judgment of the august Supreme Court of Pakistan referred ^{to} above, this review petition is not competent.

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3. In view of above, this review petition being not maintainable is hereby dismissed in *limine*.

Announced
Dt. 05.12.2018
Hasnain/*



JUDGE


JUDGE

Officer
19/12



ATTESIED

(D.B)

Hon'ble Mr. Justice Ijaz Anwar
Hon'ble Mr. Justice Shakeel Ahmad



GOVERNMENT OF KHYBER PAKHTUNKHWA

DIRECTORATE GENERAL AGRICULTURE RESEARCH
KHYBER PAKHTUNKHWA, 25130, PESHAWAR

☎ 091-9221271 web: www.agrires.kp.gov.pk ☎ 091-9221270
Email: dgragriressearch@gmail.com



OFFICE ORDER

Amexure-E

Consequent upon the judgment of the Hon'ble high court, DIKhan Bench in Writ Petition No. 1024-D/2018, dated 16/05/2018 and Review Petition No. 1203-D/2018, dated 05/12/2018 and as per dismissal proposal No. 92/DAR[DK], dated ARI, DIKhan the 11/01/2019 and No. 53/DSC, dated 06/02/2019 the following officials are hereby removed from service with immediate effect.

1. Mr Jabir (Lab Assistant) o/o Director Agril. Research institute, DIKhan
2. Mr. Afrasiyab (Lab Assistant) o/o Director Agril. Research institute, DIKhan
3. Mr. Abid Ali (Lab Assistant) o/o Director Sugar Crops Research Institute, Mardan

SD/-
Director General
Agriculture Research
Khyber Pakhtunkhwa
Peshawar

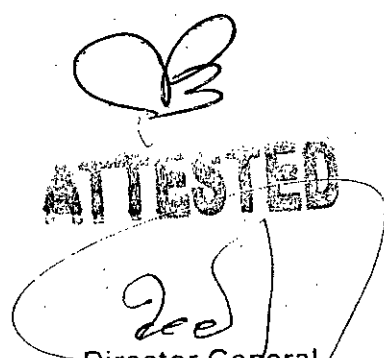
No: 924-3 Estt:/DGAR

Dated Peshawar the 15/02 2019

Copy forwarded for information to:

1. PS to Secretary Agriculture, Livestock & Cooperatives Department, Peshawar
2. Section Officer (Litigation) Agriculture, Livestock & Cooperatives Department, Peshawar
3. The Director, Agricultural Research Institute, DIKhan
4. The Director, Sugar Crops Research Institute, Mardan
5. District Accounts Officer, DIKhan
6. District Accounts Officer, Mardan
7. The Assistant Accounts Officer, HQ.
8. Officials concerned

ATTESTED


Director General
Agriculture Research
Khyber Pakhtunkhwa
Peshawar

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To:

THE HONOURABLE SECRETARY AGRICULTURE,
Livestock & Cooperative Department,
Civil Secretariat, Peshawar.

Amexure-F

Subject: **DEPARTMENTAL APPEAL AGAINST ORDER DATED 15.02.2019**

R/Sir,

Most respectfully, it is stated that I was appointed as Lab: Assistant (BPS-06) against the vacant available at Director Sugar Crops Research Institute, Mardan by the Director General, Agriculture Research Khyber Pakhtunkhwa Peshawar vide order dated 13.11.2017 after fulfilling all the codal formalities required for the post of Laboratory Assistant (BPS-06). I was medically examined by the concerned medical officer and was found medically fit for Government Job. I submitted my arrival and charge report before the competent authority at Mardan and started performing my duties quite efficiently, whole heartedly, to the best of my abilities and upto the entire satisfaction of my high ups and had never given anyone the chance of any complaint.

While, performing my duties I came to know that someone has filed writ petition no. 1024/2017 before the Peshawar High Court, Bench Dera Ismail Khan against the appointments made in District DI Khan by challenging the appointment order of one Mr. Jabir who also hails from DI Khan which was allowed vide judgment dated 16.05.2018 with remarks given in Para-13 of the judgment as "***we are left with no other choice but to struck down all the appointments of Laboratory Assistant (BPS-06) made pursuant to the advertisement dated 19.10.2016 in District DI Khan***" which means that the persons appointed in DI Khan District, the appointment of those persons are struck down by the court and not of every person appointed in pursuant of the said advertisement.

Astonishingly, I received the removal order dated 15.02.2019 on 21.02.2019 whereby I along with other 2 Laboratory Assistant are removed from service in light of the above mentioned judgment dated 16.05.2018.

The said order dated 15.02.2019 passed by the Director General, Agriculture Research Khyber Pakhtunkhwa is passed against only the 3 Lab Assistants whereas other Lab Assistant appointed are not removed. No codal formality i.e. show cause, charge sheet, personal hearing was adopted while issuing the removal order date 15.02.2019 against me and the said order is nothing but just to accommodate their blue eye person. Moreover, the judgment date 16.05.2018 was wrongly interpreted while passing the impugned order dated 15.02.2019 and I have been removed with a jerk of a single stroke of Pen.

It is, therefore, most kindly requested that the removal order dated 15.02.2019 may very kindly be cancelled/set aside and I may be reinstated into service with all consequential back benefit.

I shall be very thankful to you for this kindness.

Dated: 13.03.2019

Sincerely Yours,

AFRASIYAB, Ex-Lab Assistant,
o/o Director Agriculture,
Research Institute, DI Khan
0345-9837778

ATTESTED

No. 1206

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
acknowledgement is due.

Rs. Ps.

25

Received a registered*
addressed to

Seetej... Date Stamp

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

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

Insurance fee Rs. Ps. (in words) Weight Grams

Name and address

B

ATTESTED

To

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The Secretary (Agriculture),
Livestock & Cooperative Department, (KPK),
Civil Secretariat, Peshawar. Annexure - 9

Subject: Request for Provision of Decision on
Departmental Appeal dated 13.03.2019
filed against the removal dated 15.02.2019.

R/Sir,
Most respectfully it is stated that we
have filed a Departmental Appeal dated 13.03.2019
against removal order dated 15.02.2019. Now,
after the passage of more than 90 days we
have not received any decision in this regard.

It is, therefore, requested to provide a copy
of decision if any on the Departmental Appeal
13.03.2019, whether it been accepted in our
favour that we may join our duty again
and if it been rejected by the competent
authority then we may approach proper forum
for our redressal. I shall be very thankful to you.
(Copy of D.A. dated 13.03.2019 are attached).

12.6.2019

Obediently Yours,

Afza

Afzaqat 8/10 Abdul Ghafoor
Ex-Lab Assistant,
District Abbotabad.

OR

ATTESTED

V A K A L A T N A M A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. _____ OF 2019

AFRASIAB KHAN(APPELLANT)

VERSUS

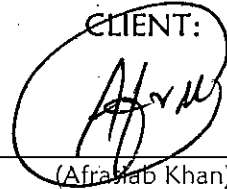
AGRICULTURE DEPTT: & other (RESPONDENTS)

I/We AFRASIAB KHAN

do hereby appoint and constitute **MUHAMMAD MAAZ MADNI, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

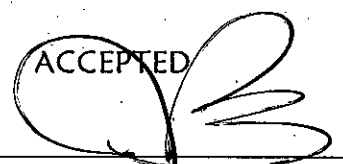
Dated. 08 /07/ 2019

CLIENT:



(Afrasiab Khan)

ACCEPTED



MUHAMMAD MAAZ MADNI
Advocate
High Court, Peshawar
(BC-11-1460)

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391
Mobile No.0345-9090737, 0333-9313113

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

Service Appeal No. 905 -P/2019

AFRASIYAB KHAN.....**Appellant**

Versus

GOVERNMENT OF KHYBER PAKHTUNKHWA AND OTHERS
.....**Respondents**

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3.	Power of Attorney		5
4.	Copies of judgments	A	6-20
	Letter of Law Department	B	21

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

SERVICE APPEAL NO. 905 -P/2019

AFRASIYAB KHAN.....Appellant

Versus

- 1. *Govt. of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock & Coop: Department*
- 2. *The Director General Agriculture Research, KP, Peshawar*
- 3. *The Director, Agric. Research Station, Abbottabad*
- 4. *The Director, Agricultural Research Institute, DIKhan*

Respondents

SUBJECT: REPLY ON BEHALF OF RESPONDENTS No. 1, 2, 3 & 4

Preliminary Objections

- ✓ That the instant appeal is not maintainable in its present form and is liable to be dismissed.
- ✓ That the petitioner has no cause of action to file the instant appeal as his right of appeal has already been dismissed by the Hon`ble Peshawar High Court DIKhan Bench in WP No.1024-D/2017 as well as by the Supreme Court of Pakistan as reflected in review petition No. 1203-D/2018 (Copies of Judgments attached as annexure A).
- ✓ That the petitioner has no locus standi to file the instant appeal.
- ✓ That the petitioner has deliberately concealed the important facts from this honorable court.

Respectfully Sheweth:-

ON FACTS: -

- Para-1 No comments, it pertains to record.
- Para-2 No comments.
- Para-3 No comments: it also pertains to record and codal formalities.
- Para-4 Correct to the extent that the appointment of the appellant was terminated on the direction of Hon`ble Court vide judgment dated 16.05.2018
- Para-5 The Department in response to the said judgment sought advice from the Law Department and as per directions of the Law Department, the Agriculture Department proceeded for Review, which was also dismissed by the Hon`ble Court.

Para-6 As the petitioner has himself mentioned about the judgment of the Hon`ble Peshawar High Court, DIKhan, Bench in para 4 of his appeal that "**We are left with no other choice but to struck down all the appointments of Laboratory Assistant (BS-06) made pursuant to the advertisement dated 19.10.2016 in District D.I.Khan**". Thus, in compliance with the directions of the Hon`ble Court, the Department issued removal from service orders of the said three Laboratory Assistants who belonged to District DIKhan.

Para-7 As mentioned in para 6, the removal from service order was issued in compliance with the Hon`ble Court directions. The Department was not competent for issuance of any such orders. Similarly, the appeal of the appellant was sent to Law Department for necessary opinion. The Law Department returned the case with the remarks that "**judgment dated 16.05.2018 passed in WP. No. 1024-D, passed by the Peshawar High Court, DIKhan Bench has been attained finality and the department should have to re-advertise the post of Laboratory Assistants in light of directions of the Peshawar High Court. Moreover, the re-instatement of the appellants mentioned in the letter under reference cannot be made**" (copy attached as annexure B).

Para-8 No comments.

GROUNDS

Para-a Not admitted. The orders dated 15.02.2019 were issued after fulfilling all legal obligations.

Para-b Not admitted, hence denied. The appellant was treated according to proper law & rules.

Para-c Not accepted, the impugned order was issued under the direction of Hon`ble Court.

Para-d Not accepted. The appellant was treated as per Law on the directions of the Hon`ble Court, hence, no discrimination was made.

Para-e Not admitted. The judgment was properly interpreted by the Law Department.

Para-f As mentioned in the above paras, the removal from service orders were issued in compliance with the directions of the Hon`ble Court. Hence, there is no need for justification for issuance of charge sheet / statement of allegations.

Para-g As mentioned in the above paras, there was no need of inquiry as the compliance of Hon'ble Court directions were at the top priority.

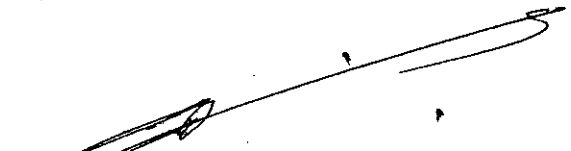
Para-h Not admitted, hence denied.

Para-i Not admitted, hence denied as all the things are properly justified in above mentioned paras, also clearly depicted from the detail judgment of the Hon'ble Court.


Para-i With prior permission of this Hon'ble Tribunal, necessary additional grounds and justifications will be provided at time of arguments.

It is therefore, humbly prayed that on acceptance of the above para-wise comments/reply, the instant appeal of the petitioner may kindly be dismissed with cost.

Respondent No. 1


The Secretary
Agriculture Department,
Govt. of Khyber Pakhtunkhwa

Respondent No. 2


Director General
Agriculture Research Khyber
Pakhtunkhwa

Respondent No. 3


Director
Agric. Research Station, Abbottabad

Respondent No. 4


Director
Agriculture Research Institute,
DIKhan

4

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

Service Appeal No. 905 -P/2019

AFRASIYAB KHAN.....**Appellant**

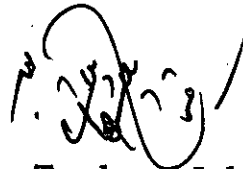
Versus

1. Govt. of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock & Coop: Department
2. The Director General Agriculture Research, KP, Peshawar
3. The Director, Agric. Research Station, Abbottabad
4. The Director, Agricultural Research Institute, DIKhan

.....**Respondents**

AFFIDAVIT

I Touheed Iqbal, Asstt: Director, Directorate General Agriculture Research, Peshawar, do hereby solemnly affirm and declare on the oath that the contents of para-wise reply/comments on behalf of respondents are true and correct to the best of our knowledge and belief and that nothing has been concealed from this Hon`ble Tribunal.



Touheed Iqbal
Assistant Director
Directorate General
Agriculture Research
Peshawar
CNIC#17301-0727541-9

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

Service Appeal No. 905 -P/2019

AFRASIYAB KHAN.....*Appellant*

Versus

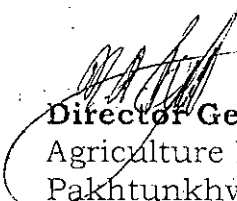
1. Govt. of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock & Coop: Department
2. The Director General Agriculture Research, KP, Peshawar
3. The Director, Agric. Research Station, Abbottabad
4. The Director, Agricultural Research Institute, DIKhan

.....*Respondents*

POWER OF ATTORNEY

Mr. Touheed Iqbal (Asstt: Director, HQ) is hereby authorized to appear on behalf of respondents before the Hon'ble Tribunal in the above service appeal and also pursue the case on each and every date.

He is also authorized to submit all relevant documents in connection with the above case.


Director General
Agriculture Research Khyber
Pakhtunkhwa

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
D.I.KHAN BENCH
(Judicial Department)



W.P. No.1024-D/2017 with
C.M.No.1186-D/2017

Raheel Ahmad

Versus.

Govt. of K.P.K and others

JUDGMENT

For petitioner: **Mr. Muteullah Rind Advocate.**

For respondents
No.1 to 4:

**Mr. Kamran Hayat Miankhel, Addl:
A.G. alongwith Abdul Majeed
(respondent No.4 in person).**

For respondent
No.5:

Muhammad Anwar Awan Advocate.

Date of hearing: 16.5.2018.

IJAZ ANWAR, J.- Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks the following relief:-

"In wake of submission made above, it is humbly prayed that on acceptance of instant writ petition, respondents No.1 to 4 may kindly be directed to appoint the petitioner as Lab Assistant (BPS-6) against vacant post on merit, and

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EXAMINOR
10-06-18
Peshawar High Court
D.I.KHAN BENCH

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
D.I.KHAN BENCH
(Judicial Department)



W.P. No.1024-D/2017 with
C.M.No.1186-D/2017

Raheel Ahmad

Versus.

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JUDGMENT

For petitioner: Mr. Muteeullah Rind Advocate.

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Peshawar High Court
D.I.Khan Bench



respondents No.1 to 4 may please be directed to declare the impugned appointment order of respondent No.5 as null and void."

2. Precisely stated the facts of the case are that pursuant to the advertisement dated 19.10.2016, the petitioner applied for the post of Laboratory Assistant (BPS-6). He appeared in test/interview and secured 68/100 marks, but later on through publication the test/interview so conducted was cancelled and the respondent No.5 was appointed vide order dated 02.11.2017 on political influence despite the fact that he has not even applied for the said post.

3. Arguments heard and record perused.

4. Perusal of the record reveals that the respondent No.2 advertised different posts, including the posts of 04 Laboratory Assistant (BPS-6), one post each for 04 separate districts, through daily newspapers dated 19.10.2016. Initially departmental test was conducted despite the fact that there are standing instructions of the Provincial Government that for all appointments, the department is required to conduct written test through National Testing Service (NTS). Initially the candidates qualifying the written test were called for interview, however, as admitted by the respondents the interview

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was subsequently cancelled for the reasons that no suitable candidate was available. It transpired that in order to accommodate the respondent No.5 and certain other candidates, the interview was again re-arranged without calling other shortlisted candidates and thus respondent No.5 including 02 other candidates were appointed as Laboratory Assistant on regular basis.

5. The respondent No.4, present in the Court, was asked what was the quota allocated to District D.I.Khan, he stated that he is not the appointing authority and the appointments were made by the respondent No.2. He however, conceded that there were only 01 post allocated for District D.I.Khan. We have also been informed that all the 03 candidates appointed belongs to Tehsil Kulachi, the home town/constituency of the Minister of Agriculture. The result of shortlisted candidates would show that the petitioner has topped the written test by securing 68 marks out of 100, but he was deprived while the respondent No.5, who has not even appeared in written test was allowed appointment.

6. It is a matter of great concern that three appointments of Laboratory Assistant were made from the candidates of Tehsil Kulachi and the other districts were deprived as one post of Laboratory Assistant was earmarked for each district. We are facing cases of civil

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D.I.Khan Bench



servants day to day in the High Court wherein adjustments and appointments are made in other districts of the candidates belonging to District D.I.Khan and are then subsequently reposted in District D.I.Khan as these candidates were not ready to perform their duties in other districts. In the instant case the fault lies with the appointing authority that as to why he has made appointments in District D.I.Khan over and above their entitlement. Making such appointments give support to the argument of the learned counsel for the petitioner that since it was the constituency of Minister for Agriculture, as such, the appointments were made at the choice of Minister concerned.

7. The august Supreme Court of Pakistan in case of "*Zahid Akhtar Vs. Government of Punjab through Secretary, Local Government and Rural Development, Lahore and 2 others*" (PLD 1995 S.C. 530), while discussing the role of Bureaucracy and their dealing with the public representative held as under:-

"Tamed and subservient bureaucracy can neither be helpful to Government nor it is expected to inspire public confidence in the administration. Good governance is largely dependent on an upright, honest and strong bureaucracy.

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Therefore, mere submission to the will of superior is not a commendable trait in a bureaucrat. Elected representatives placed in charge of administrative departments of Government are not expected to carry with them a deep insight in the complexities of administration. The duty of a bureaucrat, therefore, is to apprise these elected representatives the nicety of administration and provide them correct guidance in discharge of their functions in accordance with the law. Succumbing to each and every order of direction of such elected functionaries without bringing to their notice, the legal infirmities in such order's/directions may sometimes amount to an act of indiscretion on the part of bureaucrats which may not be justifiable on the plane of hierarchical discipline. A Government servant is expected to comply only those orders/directions of his superior which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-

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compliance would have exposed the concerned Government servant to the risk of disciplinary action."

8. Similarly, in the matter of appointments the august Supreme Court of Pakistan in the case of "**Chief Secretary Punjab and others Vs. Abdul Raoof Dasti**" (2006 SCMR 1876), held as under:-

"26. It is our misfortune that when we are looking for individuals to serve our own-selves, we search for the best of doctors, the best of architects, the best of lawyers, the best of engineers, the best of cooks, the best of butlers and so on but when it comes to selecting similar individuals to serve the public, we get swayed by nepotism, by petty personal interests and by other similar ulterior and extraneous considerations and settle for the ones not worthy of serving the public in the requisite manner. We need to remind ourselves that choosing persons for public service was not just providing a job and the consequent livelihood to the one in need but was a sacred trust to be discharged by the ones charged with it, honestly, fairly, in a just and transparent manner and in the best interest of the public. The individuals

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Peshawar High Court
D.I. Khan Bench



so selected are to be paid not out of the private pockets of the ones appointing them but by the people through the public exchequer. Therefore, we must keep it in mind that not selecting the best as public servants was a gross breach of the public trust and was an offence against the public who had right to be served by the best. It is also blatant violation of the rights of those who may be available and whose rights to the said posts are denied to them by appointing unqualified or even less qualified persons to such posts. Such a practice and conduct is highly unjust and spreads a message from ones in authority that might was right and not vice versa which message gets gradually permeated to the very gross root level leading ultimately to a society having no respect for law, justice and fair play. And it is the said evil norms which ultimately lead to anarchic and chaotic situations in the society. It is about time we suppressed such-like evils tendencies and eliminated them before the same eliminated us all."

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D.I. Khan District

9. There is yet another very important aspect of the case. It was vehemently argued that the candidates

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were not disclosed the outcome of their interviews for which they were called, however, the reply of the respondents in their comments is "the interview was cancelled, due to the reasons that no suitable candidate was available." The learned Addl: A.G. was confronted this fact that when the Departmental Selection Committee has not found any suitable candidate what was the proper course for the department, he was having no answer. Ironically the respondents again called upon their blue-eyed and made appointments at the cost of merit as well as violating the rights of candidates of other districts of the Province. When once the Interviewing/Selection Committee came to the conclusion that none of the candidates, called for interview, was suitable for appointment, the proper course was to re-advertise the post instead of appointing persons, some of whom have not even appeared in written test.

10. In the instant case we find that the selection process was not transparent for multiple reasons; (i) When once the Departmental Selection Committee have failed to find suitable candidates, in such circumstances the posts of Laboratory Assistant should have been re-advertised, which has not been done; (ii) Only against one seat allocated for District D.I.Khan, three candidates have been appointed violating the zonal quota, besides, rights of other

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candidates of other districts; (iii) The candidate, who even had not appeared in written test, has been allowed appointment manipulating the merit for him for the reason not explained before this Court; and (iv) Short listing not conducted through National Testing Service.

11. The august Supreme Court of Pakistan in the case of *"Government of N.-W.F.P. through Secretary, Forest Department, Peshawar and others Vs. Muhammad Tufail Khan"* (PLD 2004 Supreme Court 313), while hearing appeal against the order of Service Tribunal allowing appeal in illegal appointments held as under:-

"7. However, in spite of all these directions, this salutary principle is being frustrated with impunity. This malady which has plagued the whole society shall be arrested with iron hands and the principle of merits shall be safeguarded, otherwise, it would be too late to be corrected. In the case in hand admittedly the appointment was made clearly in violation of the codal formalities simply on the dictation of a political figure. The learned Tribunal while accepting the appeal has not at all adverted to these aspects."

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Peshawar High Court
D.I. Khan Bench

The august Supreme Court of Pakistan in another case titled "*Muhammad Sadiq and another Vs. Federal Service Tribunal, Islamabad and others*" (2003 P LC (C.S.) 1029), held as under:-

"We are afraid, the opinion of the Law Division would not cure the illegality in the appointments made in violation of rules and the same cannot be approved and allowed to be perpetuated on the basis of a favourable opinion of Law Division. The act of making of the appointments in departure to the rules amounts to defeat the equal right of employment on merits, therefore, the appointments obtained by the petitioners would not create any right in their favour for regularization. The mere passage of time would not be a ground to allow the rectification of irregularity on the ground that the appointees should not suffer for the fault of concerned authorities. It is sad that the public functionaries through misuse of their powers, without observing the rules, make appointments to oblige their favourites and deprive the deserving persons from their legitimate right of service. We may observe that a holder of public office by misusing

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his authority in breach of law and public trust, is guilty of misconduct. The Government while taking notice of such regularities should take appropriate action against the concerned authorities under the Government Servants (Efficiency and Discipline) Rules, 1973 to ensure the transparency in the appointments and to eradicate the element of favouritism and nepotism for advancement of policy of merits and fairness."

Similarly, recently in the case of "*Rashid Ali Channa and others Vs. Muhammad Junaid Farooqui*" (2017 SCMR 1519), while dismissing the review petition, the apex Court held that:-

"The question before this Court is not whether one or the other set of candidates had resorted to unfair means and illegal acts in order to gain employment, the real question relates to fairness, integrity and transparency of the process and procedure adopted by the Chairman and Members of the Commission to undertake the selection process. This Court has found serious flaws in the process of selection which point towards lack of transparency to facilitate nepotism and favoritism

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(D.B) Hon'ble Mr. Justice Ijaz Anwar & Hon'ble Mr. Justice Shateel Ahmad

that cannot be condoned or countenanced."

12. The other two candidates, who were also appointed alongwith the respondent No.5, are not before the Court, however, where there are clear manipulation on the part of the official respondents and apparent favouritism in appointments, it was for the department to have explained transparency and though they are not party to this petition still have to face the consequences when illegal appointments are made.

13. We for the reasons stated above, find that neither written test was conducted through National Testing Service (NTS) nor the appointment process has been carried out transparently rather it shows favouritism while making appointments, as such, for the supremacy of the rule of law and to have confidence of the people in this system, we are left with no other choice but to struck down all the appointments of Laboratory Assistant (BPS-6) made pursuant to the advertisement dated 19.10.2016 in District D.I.Khan. The official respondents are further directed to re-advertise the posts of Laboratory Assistant (BPS-6) and to fill the same strictly in accordance with law. We also direct the respondent No.1 to constitute a comprehensive inquiry and to see whether the appointments of other posts were also made only from D.I.Khan and merit has been

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(D.B) Hon'ble Mr. Justice Ijaz Anwar & Hon'ble Mr. Justice Shakeel Ahmad

10 Feb 2017
EXAMINING
D.I.Khan
D.I.Khan District

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violated. The report shall be submitted within 30 days positively to the Additional Registrar of this Court for perusal of Judges in Chamber. This writ petition is admitted and allowed in the above terms.

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JUDGE

Announced.
Dt. 16.5.2018.

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JUDGE

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Approved for reporting

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G.R.No. 2755
 Application Received on 10-06-19
 Copying Fee deposited Rs. _____
 No of Papers 20 Page
 Copying Fee 04
 Urgent Fee _____
 Total Fee 80/-
 Copy ready for delivery 10-06-19
 Copy delivered on 10-06-19
 Signature of Examinor _____

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10-06-19

Certified to be true Cop.
 10-06-19
 Peshawar High Court Bench D.I.K
 Authorized Under Section 10
 Qanoon-a-Shahadat

(3/9)
(21)

**JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)**

Review Petition No. 1203-D/2018

Government of Khyber Pakhtunkhwa
Through Chief Secretary, Peshawar and others

Versus

Raheel Ahmad

For petitioners Mr. Adnan Ali, Assistant Advocate General

For respondents Nemo

Date of hearing 05.12.2018

JUDGMENT

SHAKEEL AHMAD, J.- The Government of Khyber Pakhtunkhwa through Advocate General, seeks review of judgment dated 16.5.2018, rendered in writ petition No.1024-D/2017, whereby this Court admitted and allowed writ petition:

2. At the very outset, learned Assistant Advocate General was confronted with the order dated 27.8.2016 passed by the august Supreme Court of Pakistan whereby the impugned judgment was upheld. On this, learned Assistant Advocate General appearing on behalf of petitioners conceded that in view of judgment of the august Supreme Court of Pakistan referred ^{to} above, this review petition is not competent.

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3. In view of above, this review petition being not maintainable is hereby dismissed in *limine*.



Announced
Dt.05.12.2018
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Hon'ble Mr. Justice Ijaz Anwar
Hon'ble Mr. Justice Shakeel Ahmad

Annex - B

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GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. SO(OP-I)/LD/5-4/2012-VOL-II
DATED: PESHAWAR THE 11 SEPTEMBER, 2019.

17279-31

To

The Secretary to Government of Khyber Pakhtunkhwa,
Agriculture, Livestock & Cooperative Department.

Attention: Section Officer (Estt)

Subject: REQUEST FOR PROVISION OF DECISION ON
DEPARTMENTAL APPEAL DATED 13.03.2019 FILED
AGAINST REMOVAL ORDER DATED 15.02.2019

Dear Sir,

I am directed to refer to your Department's letter No. SOE(AD)VI-106/RW dated 19.08.2019 on the subject noted above and to state that the judgment dated 16.05.2018 passed in W. P No. 1024-D/2017 by the Peshawar High Court, D.I.Khan Bench has been attained finality and the department should have to re-advertise the post of Lab Assistants in light of directions of the Peshawar High Court. Moreover, the re-instatement of the appellants mentioned in the letter under reference cannot be made. The Administrative Department may decide the appeal of the appellants accordingly.

Yours Faithfully,

Section Officer (Opinion-I)

with copy Estt
Endst: of even No. & date.

A copy is forwarded to the:-

1. PS to Secretary Law Department.
2. PA to Additional Secretary (Opinion).

Section Officer (Opinion-I)

S.O (E) 666
Dy. Secy. Agriculture Deptl.

Secretary Agriculture
No. 6752

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