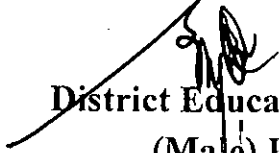


BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR
SERVICE APPEAL NO.177/2022

Titled: Mr. Jahanzeb vs. DEO & OTHERS

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District Education Officer
(Male) Peshawar

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

SERVICE APPEAL No.177/2022

Mr. Jahanzeb Khan vs. DEO & Others

Reply on behalf of respondents No, 1, 2.

Respectfully Sheweth:

The respondents submit below:-

Preliminary Objection:-

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2177

Dated 7/12/22

1. That the Appellant has got no cause of action /locus standi.
2. That the Appellant has concealed material facts from this Hon'ble Tribunal.
3. That the Appellant has been estopped by his own conduct to file the instant appeal before this Hon'ble Tribunal.
4. That the instant Appeal is badly time barred.
5. That the instant Appeal is not maintainable in its present form.
6. That the instant Appeal is bad for mis- joinder and non- joinder of the necessary and proper parties.
7. That the Appellant has not come with clean hands to this Hon'ble Tribunal.

REPLY ON FACTS:

1. That in reply to Para No-1.It is submitted that the appellant was appointed in Education Department on 05-11-2012. The DDEO visited on 13-12-2013 to the appellant school and he has been found absent from his duty w-e-f 13-12-2013.The competent authority served show cause notice on dated 31-12-2013,called for personal hearing, issued final show cause notice in "Daily Mashriq" and "Daily AAJ" on .Inspite all the above process the appellant did not reported for duty, hence he was removed from the service under the Khyber Pakhtunkhwa Government (E&D) rules 2011, on 27-07-2014. Against the said order the appellant filed service appeal No-961/2015 in this Hon'ble Service tribunal. The tribunal decided the said appeal on 02-08-2017 with the direction "The impugned order is set- aside and the appellant is re-instated in service the respondent are at liberty to conduct de-novo inquiry within a period of 90 days from the receipt f this judgment in the mode and manner prescribed In the rules fully associating the appellant with the inquiry proceeding. The issue of back benefits shall be subject to the outcome of the de-novo inquiry". The respondent Department conduct inquiry in light of court judgment and the inquiry committee submitted the report with the recommendation. That "The Hon'ble Khyber Pakhtunkhwa service tribunal vide its judgment dated 02-08-2017 has already set aside the removal orders of Mr. Muhammad Shabeer (Naib Qasid) and Mr. Jahanzeb khan (Chowkidar) conditioning the back benefit with a De-novo inquiry. So this enquiry committee also recommends their re-instatement without back benefits.(show cause notice , personal hearing letters, final show cause notice, judgment, enquiry report, and re instatement order are annexure A,B,C,D,E,F,& G).
2. That reply to Para No-02.It is submitted that the respondent department implemented the court judgment with letter and spirit.
3. That Para No-03 is incorrect, misleading and against the facts the enquiry committee called both the appellants and recorded their statements which showed on page No-03 first line of the enquiry report. Enquiry report has already annexed as annexure F of the reply.
4. That Para No-04 is incorrect, misleading and against the facts. The respondent department implemented the court judgment with in time.
5. That Para No-05 is incorrect, misleading & against the facts. The appellant did not submit any application in the respondent department. Furthermore the respondent department submitted the inquiry report and final order with the reply of E.P No-169/2020 of the appellant in this Hon'ble service tribunal.

- 6. That reply to Para No-06 has already been given in the Para No-05.
- 7. That reply to Para No-07 has already been given in the above facts Para.
- 8. That reply to Para No-08. It is submitted that the respondent department implemented the judgment of the Hon'ble service tribunal with letter and spirit.
- 9. That reply to Par No-09. It is submitted that the respondent department acted in light of this Hon'ble service tribunal judgment therefore the appellant has no cause of action to file the instant service appeal in this Hon'ble service tribunal.

REPLY ON GROUND:

- A. Ground A is misleading and against the facts. The respondents department acted according to law & rules. Furthermore the appellant was called the inquiry committee in light of Court judgment. Which has already discussed in the facts Para.
- B. That Ground B is incorrect, misleading and against the facts the respondent department acted according law & rules. According to the Hon'ble service tribunal judgment dated 02-08-2017 page No-03 Para No-06 line,9 " the issue of back benefits shall be subject to the outcome of the de-novo inquiry". The inquiry committed clear cut recommend on page No-06 and said that "this enquiry committee also recommends their re-instatement without back benefits".
- C. That reply to Ground C the respondents also seek permission of this Hon'ble tribunal to advance further grounds at the time of arguments.

It is therefore, very humbly prayed that on acceptance of this reply, the instant appeal may very kindly be dismissed with cost.

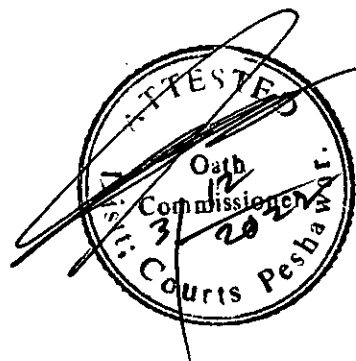
**District Education Officer
(Male) Peshawar,**

(DIRECTOR)

Elementary & Secondary, Education,
Khyber Pakhtunkhawa, Peshawar.

Affidavit

Stated on Oath the content of the reply is correct to the best of my knowledge and nothing has been concealed from this Hon'ble Service tribunal.



**District Education Officer
(Male) Peshawar,**

Annexure (A)

P-3

DISTRICT EDUCATION OFFICER,
(MALE) PESHAWAR.
No. 11069 /
Dated 31/12 /2013

To,

The Headmaster,
GPS/GMS Garhi Mumtaz Peshawar.


Subject

SHOW CAUSE NOTICE.

Memo:

I am directed to refer to the subject cited above and to ask you to serve the enclosed show cause notices upon Mr Jehanzeb Sweeper GMS Garhi Mumtaz Peshawar and submit a copy thereof in token having received the notice to this office for reference and record please.

Encl: as above.


Deputy District Education Officer,
(Male) Peshawar.

el

~~CONFIDENTIAL~~

P-4

726

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.

SHOW CAUSE NOTICE.

I, (Mr Sharif Gul, DEO (M) Peshawar), as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Jehanzeb Sweep, G/S Garhi Mumtaz Peshawar as follows:

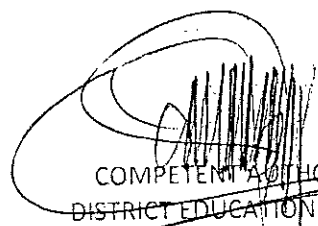
I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

- (i) Absent from duty w.e.f 13/12/2013 upto till date.

As a result thereof, I, as competent authority, have tentatively decided to impose upon you the major penalty under rule 4 of the said rules.

You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you.

If no reply 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 defiance to put in and in that case an ex-parte action shall be taken against you.


COMPETENT AUTHORITY
DISTRICT EDUCATION OFFICER,
(Male) PESHAWAR.

Annex - B"

P-5

DISTRICT EDUCATION OFFICE

(MALE) PESHAWAR.

No. 1479

Dated 13/5 /2014


To,

The Sub: Divisional Education Officer,
(Male) Peshawar.

Subject: PERSONAL HEARING.

Memo:--

You are requested to direct Mr. Jehanzeb Sweeper ^{GAS} GMS Garhi
Mumtaz Circle Badaber Peshawar to attend the office of the under signed on
15/05/2014 at 9-00 am for personal hearing positively.


DY: DISTRICT EDUCATION OFFICER,
(MALE) PESHAWAR

dl

P-6

(22)

DISTRICT EDUCATION OFFICE

(MALE) PESHAWAR.

No. 2829

Dated 26/5 /2014


To,

Headmaster,
GMS Garhi Mumtaz Peshawar.

Subject:- **PERSONAL HEARING.**

Memo:-

You are requested to direct Mr. Jehanzeb Sweeper GMS Garhi Mumtaz Circle Badaber Peshawar to attend the office of the under signed on 29/05/2014 at 9-00 am for personal hearing positively.



DY: DISTRICT EDUCATION OFFICER,
(MALE) PESHAWAR.

نوٹس غیر حاضری

ہرگاہ کہ آپ جہانزیب ولد میر اکبر محلہ برہان خیل بڈھ پیر ضلع پشاور سو پیر گورنمنٹ مڈل سکول گھڑی ممتاز پشاور مورخہ 13-12-2013 سے اپنی ڈیوٹی سے بغیر کسی اطلاع کے تاحال غیر حاضر ہیں آپ کو آپ کی غیر حاضری کے متعلق شوکار نوٹس نمبر 11068 مورخہ 31-12-2013 اور آپکو پرنسپل ہیرنگ نمبر 8229 مورخہ 26-5-2014 کیلئے دفتر ہذا حاضر ہونے کیلئے کہا گیا آپ کے آپ کے سکول کے پتے پر آگاہ کیا گیا اور تاکید کی گئی کہ آپ فوراً اپنی ڈیوٹی پر حاضر ہو کر اپنی غیر حاضری کی وجہ بیان کریں مگر آپ نے نوٹس ہذا کی پروا نہ کی اور نہ ہی ڈیوٹی پر حاضری ہوئے۔

لہذا آپ کو ایک بار پھر بذریعہ نوٹس ہذا مطلع کیا جاتا ہے۔ کہ اس نوٹ کی اشاعت کے پندرہ دن کے اندر زبردستی کے دفتر دوران اوقات کار حاضر ہو کر اپنی غیر حاضری کی وجہ بیان کریں۔ بصورت دیگر آپ کے خلاف یکطرفہ کارروائی عمل میں لاتے ہوئے ای اینڈ ڈی رولز مجریہ 2011 کے تحت حاصل کردہ اختیارات بروئے کار لاتے ہوئے آپ کو ملازمت سے برخاست کر دیا جائیگا۔

شریف گل
ڈسٹرکٹ ایجوکیشن آفیسر مردانہ
ضلع پشاور

پشاور اسلام آباد مشرق

Friday 4 July / 2014

نوٹس غیر حاضری

ہرگاہ کہ آپ جہانزیب الدین راہبر کنگز بڈھیر ٹیچر ہائیڈرو پینٹل بڈھیر شیخ پٹنہ اور سہیل گورنمنٹ نیشنل سکول کراچی
متاثر پٹنہ اور سہیل گورنمنٹ 13/12/2013 سے اپنی ذمہ داری سے بغیر کسی اطلاع کے تاحال غیر حاضر ہیں آپ کو آپ کی غیر
حاضری کے متعلق شوکا زفونٹس نمبر 11068 سوریہ 31/12/2013 اور آپ کو پرنسپل ہیرنگ نمبر 8229 سوریہ
26/5/2014 کیلئے دفتر بذمہ حاضر ہونے کے لئے کہا گیا آپ کو آپ کے سکول کے پتے پر آگاہ کیا گیا اور یہ کہ
کی کہ آپ ذمہ داری ذمہ داری پر حاضر ہو کر اپنی غیر حاضری کی وجہ بیان کریں اگر آپ نے نوٹس پڑا کی ہوا ہے اور
نئی ذمہ داری پر حاضر ہوئے۔ لہذا آپ کو ایک بار پھر بذمہ نوٹس پڑا پیش کیا جاتا ہے کہ اس نوٹس کی اشاعت کے
پندرہ دن کے اندر ذمہ داری کے دفتر دوران اوقات کار حاضر ہو کر اپنی غیر حاضری کی وجہ بیان کریں۔ سہولت
دیگر آپ کے خلاف سیکورٹیز کارروائی عمل میں لاتے ہوئے ای ایجنڈہ ڈی ورڈز بحریہ 2011 کے تحت موصول کروا
انتیہانت ہونے کا لگاتار ہونے آپ کو کٹاؤت سے برخواست کر دیا جائیگا۔

شریف گل
ڈسٹرکٹ ایجوکیشن آفیسر ہریانہ ضلع پشاور

Also available on www.khyberpaktunkhwa.gov.pk INF(P) 2668

Annexure — P — 8

پشاور ایبٹ آباد اسلام آباد اور کراچی سے بیک وقت شائع ہونے والا کثیر الاشاعت قومی روزنامہ

روشنی کی مناسبت، آج کا نصب العین

روزنامہ

آج

پشاور
پاکستان

ایڈیٹر
عبدالواحد ریونی

سنوٹ 12

جلد 25 حصہ 4 جولائی 2014 5- رمضان 1435 ہجرت 12 بے برونٹ الی 1 شہزاد 176

نوٹس غیر حاضری

ہرگاہ کہ آپ جہانزیب الدین راہبر کنگز بڈھیر ٹیچر ہریانہ ضلع پشاور سہیل گورنمنٹ نیشنل سکول
کراچی متاثر پٹنہ اور سہیل گورنمنٹ 13/12/2013 سے اپنی ذمہ داری سے بغیر کسی اطلاع کے تاحال غیر حاضر ہیں۔
آپ کو آپ کی غیر حاضری کے متعلق شوکا زفونٹس نمبر 11068 سوریہ 31/12/2013 اور آپ کو پرنسپل
ہیرنگ نمبر 8229 سوریہ 26/5/2014 کیلئے دفتر بذمہ حاضر ہونے کیلئے کہا گیا آپ کو آپ کے سکول
کے پتے پر آگاہ کیا گیا اور یہ کہ اگر آپ ذمہ داری پر حاضر ہو کر اپنی غیر حاضری کی وجہ بیان کریں
اس کے ساتھ ساتھ نوٹس پڑا کی ہوا ہے اور یہ کہ اس نوٹس کی اشاعت کے پندرہ دن کے اندر
ذمہ داری پر حاضر ہوئے۔

1:11:00 (D)

[Handwritten scribbles]

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.

NOTIFICATION.

1. WHEREAS Mr. Jehanzeb Sweeper Government Middle school Garhi Mumtaz Peshawar was proceeded against under Khyber Pakhtunkhwa Govt: servant (Efficiency & Discipline)-Rules, 2011, for the Charge of willful absence from duty with effect from 13-12-2013 (as reported by Dy.DEO(M) during his surprise visit).

~~WHEREAS~~ Mr Jehanzeb Sweeper Government Middle school Garhi Mumtaz Peshawar was proceeded under Khyber Pakhtunkhwa Govt: Servant (Efficiency & Disciplinary) Rules 2011 for the charged of willful absence from duty with effect from 13-12-2013 as mentioned in the show cause notice was served upon him under registered post at his home address vide No. 11069 dated 31-12-2013:

3. WHEREAS the accused official has submitted no reply to the show cause notice.

4. WHEREAS the absentee notice were served upon Mr Jehanzeb Sweeper Government Middle school Garhi Mumtaz Peshawar through two leading daily newspapers" Mashriq and Aaj" dated 04-07-2014 but he remained absent and did not report for duty in response to the notice.

5. AND WHEREAS the competent authority (District Education Officer (M) Peshawar) after having considered the charges and evidence on record, is of the view that the charges of willful absence against the accused official has been proved.

6. NOW THEREFORE, In exercise of the powers conferred under Rules-4 (b) iii of Khyber Pakhtunkhwa Government servants (Efficiency and Discipline) Rules 2011 I the competent authority district education officer (Male) Peshawar is pleased to impose major major penalty of Removal from service upon Mr. Jehanzeb ~~the~~ Sweeper Govt Middle Mumtaz Peshawar with effect from the date of his willful absence.

(SHARIF GUL)

o/c District Education Officer
(Male) Peshawar.

Endst No 8317-23 Dated Peshawar the 24/7/2014.
Copy of the above is forwarded to the:-

- 1) Accountant General Khyber Pakhtunkhwa Peshawar.
- 2) P.S to Minster for Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- 3) P.S to: Secretary to GOvt: of Khyber Pakhtunkhwa (E&SE) Department.
- 4) Director (E&S. Education) Khyber Pakhtunkhwa Peshawar.
- 5) Cashier local office Peshawar
- 6) Headmaster GMS Garhi Mumtaz Peshawar
- 7) Official concerned.

o/c
24/7/14
Dy: District Education Officer
(Male) Peshawar.

[Handwritten signature]

Annexure — "E"

P-10

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 969 / of 2015

Jehanzeb Khan,
Son of Mir Akbar, Ex-Sweeper
Government Middle School Garhi Mumtaz
Resident Lalma Delidher
Village Badaber, District Peshawar...



100%
25-8-2015

Appellant

VERSUS

1. The District Education Officer (Male)
Elementary and Secondary Education
Department, Peshawar.
2. The Deputy District Education Officer (Male),
Elementary and Secondary Education
Department, Peshawar.
3. The Director,
Elementary and Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
4. The Secretary,
Government of Khyber Pakhtunkhwa,
Elementary and Secondary Education
Department, Peshawar... Respondents

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974 AGAINST THE IMPUGNED ORDER
DATED 24.7.2014 (ANNEX: H) THEREBY
APPELLANT WAS REMOVED FROM
SERVICE AGAINST WHICH HE FILED
DEPARTMENTAL APPEAL ON 15.5.2015
(ANNEX: J) UNDER REGISTERED POST IN
VIEW OF ORDER OF THE HONOURABLE
PESHAWAR HIGH COURT PESHAWAR

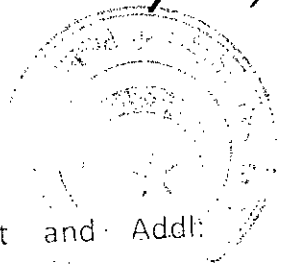
~~25/8/15~~
25/8/15

APPELLANT

DATED 22.4.2015

Appeal No: 962/2015
Jehanzeb vs Govt

P-11



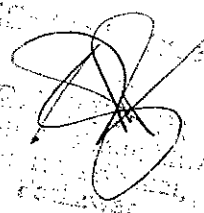
2/8/2017

Counsel for the appellant and Addl.
Advocate General for the respondents present.
Arguments heard and record perused.

Vide our detailed judgment of today placed on connected appeal No.961/2015 titled Muhammad Shabir Versus District Education Officer (Male) Elementary and Secondary Education Department Peshawar and others. The impugned order is set-aside and the appellant is reinstated in service. The respondents are at liberty to conduct denovo inquiry within a period of 90 days from the receipt of this judgment, in the mode and manner prescribed in the rules fully associating the appellant with the inquiry proceedings. The issue of back benefits shall be subject to the outcome of the de-novo inquiry. In case inquiry is not conducted within the stipulated period, the appellant shall be deemed to have been reinstated in service from the date of dismissal from service and the absence period shall be treated as leave of the kind due. Parties are left to bear their own costs, File be consigned to the record room. Parties, are however, left to bear their own costs file be consigned to the record.

ANNOUNCED
2/8/2017


(Gul Zeb Khan)
MEMBER


copy (Muhammad Hamid Mughal)
MEMBER

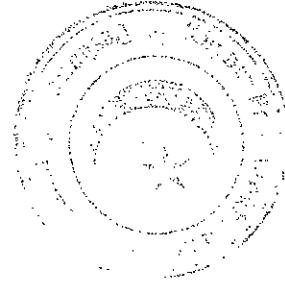
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 961/2015

Date of Institution ... 25.8.2015

Date of Decision ... 02.08.2017



Mr. Muhammad Shabbir Son of Muhammad Nazir,
Ex-Naib Qasid, Govt. Middle School,
Garhi Mumtaz, Peshawar.

(Appellant)

VERSUS

1. The District Education Officer(Male) (E&SE) Department Peshawar.
 2. The Deputy District Education Officer (Male). (E&SE) Department Peshawar.
 3. The Director (E&SE) Department, Khyber Pakhtunkhwa Peshawar.
 4. The Secretary, (E&SE) Department, Khyber Pakhtunkhwa
- ... (Respondents)

MR. KHUSH DIL KHAN,
Advocate

For appellant.

MR. Adeel Butt,
Addl: Advocate General

For respondents.

MR. GUL ZEB KHAN
MR. MUHAMMAD HAMID MUGHAL

MEMBER
MEMBER

ATTESTED

(Signature)
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

GUL ZEB KHAN, MEMBER - This judgment shall dispose of the aforesaid Appeal as well as the connected Service Appeal No. 962/2015 titled "Jehanzeb Khan Versus District Education Officer (Male) (E&SE) Department Peshawar & Others" as similar question of law and facts are involved in both the appeals.

2. The aforesaid appeal dated 25/8/2015 has been lodged by Mr. Muhammad Shabbir, ex-Naib Qasid hereinafter referred to as appellant, under Section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, wherein he has impugned the order dated 9/6/2014 vide which appellant was awarded major penalty of Removal from Service. The appellant filed departmental appeal against the impugned order on 15/5/2015 which was not disposed of

Brief facts of the case giving rise to the instant appeal are that the appellant joined Education Department as Naib Qasid on 5/11/2012. He joined duty after fulfilment of all the requisite formalities. That since then, appellant was performing his duties regularly to the entire satisfaction and during this period, no complaint whatsoever was made about his alleged absence to any quarter by any authority. Similarly, he was regularly paid salary without any break. That all of a sudden, his monthly salary was stopped without any notice and reason, so he submitted applications to higher authorities for release of salary but no action was taken thereon. Thereafter he filed a Writ Petition No. 1511-P/2014 titled "Muhammad Shabbir and others versus The Secretary Govt. of Khyber Pakhtunkhwa Elementary and Secondary Education Peshawar and other", in response to which, the respondents filed parawise comments with document pertaining to disciplinary action and removal of the appellant from service. That for the first time, appellant came to know about the disciplinary proceedings conducted against him by the respondents on false charge of absence culminating, in the impugned order dated 9/6/2014 of removal of the appellant from service, when relevant documents as referred above were filed by respondents in the Peshawar High Court. Hence in view of this scenario, the appellant withdrew his writ petition vide order sheet dated 22/4/2015. Thereafter the appellant filed departmental appeal before the respondent No. 3, but the same was not disposed of within statutory period of ninety days. Hence the instant appeal.

3. Learned counsel for the appellant argued at the bar that mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules. That neither any notice was issued directly to the appellant nor on his proper home address as required under Rule-9 of the E&D Rules 2011 nor any chance of personal hearing/defense was given to him before passing the impugned order and that no regular enquiry was conducted by the respondent-department which was mandatory requirement of the law while awarding such major punishment. That since the impugned order is illegal and without any justification, hence the same be set-aside. In this

PLC (CS) 771 titled "Abdul Bashir and 9 Others Versus Govt of Baluchistan through Chief Secretary and 3 Others".

4. In rebuttal, learned Government Pleader argued before the court that since the appellant has willfully absented himself without any leave, hence he was rightly proceeded against and removed from service vide impugned order dated 9/6/2014. Relying on 2002 SCMR 1004 titled "Pakistan International Airlines Corporation versus Captain MSK Lodhi Respondents" the learned Government Pleader contended that the instant appeal is badly time barred and without any substance, hence may be dismissed with cost.

5. We have heard arguments of learned counsel for the appellant and learned Government Pleader for the respondents and have gone through the record available on file.

6. Perusal of record revealed that no opportunity of personal hearing or self-defense during the course of departmental proceedings were provided to the appellant. The respondents could not produce any documentary proof in the shape of a letter bearing registered acknowledgment-due at home address of the appellant which was mandatory under the rules. In view of the above discussion the impugned order is set-aside and the appellant is reinstated in service. The respondents are at liberty to conduct denovo inquiry within a period of 90 days from the receipt of this judgment, in the mode and manner prescribed in the rules fully associating the appellant with the inquiry proceedings. The issue of back benefits shall be subject to the outcome of the de-novo inquiry. In case inquiry is not conducted within the stipulated period, the appellant shall be deemed to have been reinstated in service from the date of dismissal from service and the absence period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

02.08.2017

[Handwritten signature]

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(Gul Zeb Khan)
MEMBER
[Handwritten signature]

OFFICE OF THE PRINCIPAL GOVERNMENT HIGH SCHOOL BADABER PESHAWAR

No. 34 Dated: 07/11/2017

DENOVE INQUIRY IN RESPECT OF:

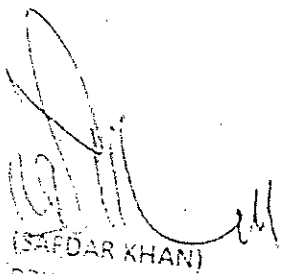
1. Mr. Muhammad Shabeer N/Qasid GMS Garhi Mumtaz Peshawar.
1. Mr. Jahan Zeb Khan Chowkidar GMS Garhi Mumtaz Peshawar.

AUTHORITY

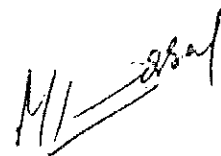
DISTRICT EDUCATION OFFICER (MALE)
PESHAWAR

INQUIRY OFFICERS:

1. MR. MUHAMMAD IQBAL
PRINCIPAL G.H.S BADABER PESHAWAR
2. MR. SAFDAR KHAN
PRINCIPAL GOVT. SHAHEED SAAD-UR-RAHMAN HIGH SCHOOL GULSHAN
RAHMAN COLONY PESHAWAR



(SAFDAR KHAN)
PRINCIPAL BPS-18
GOVT. SHAHEED SAAD UR REHMAN HIGH SCHOOL
(GULSHAN, REHMAN COLONY)



(MUHAMMAD IQBAL)
PRINCIPAL BPS-19
GOVT. ...

TERMS OF REFERENCE:

The District Education Officer (Male) Peshawar has constituted an enquiry committee vide Notification No.6536-38 dated 25-09-2017 to order a **Denovo Inquiry** in pursuance of the Honorable KP Service Tribunal judgment dated 02/08/2017, in respect of the following class IVs GMS Garhi Mumtaz Peshawar.

- I. Mr. Muhammad Shabeer N/Qasid GMS Garhi Mumtaz Peshawar.
- II. Mr. Jahan Zeb Khan Chowkidar GMS Garhi Mumtaz Peshawar.

HISTORY OF THE INQUIRY:

Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar had been removed from their services vide the District Education Officer (Male) Peshawar Notifications No. 3994-4000 dated 09-06-2013 and 8317-23 dated 24-07-2014, respectively for the charge of their willful absence from their duties.

Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar had filed a case in the Honorable Service Tribunal of Khyber Pakhtunkhwa against the decision of their removal which has passed finally its judgment on 02/08/2017 reproduced as under:

"In view of the above discussions the impugned order is set aside and the appellant is reinstated in service. The respondents are at liberty to conduct Denovo inquiry within a stipulated period of 90 days from the receipt of this judgment in the mode and manner prescribed in the rules fully associating the appellant with the inquiry proceedings. The issue of back benefits shall be subject to outcomes of the Denovo inquiry."

In pursuance of the Honorable Service Tribunal of Khyber Pakhtunkhwa judgment, the District Education Officer (Male) Peshawar has reinstated Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar in service at GMS Garhi Mumtaz Peshawar vide Endst: No. 7074-81 dated 28-09-2017, therein constituting this inquiry committee vide Notification No. No.6536-38 dated 25-09-2017 for the purpose of back benefits as required in the judgment.

MECHANISIM OF THE INQUIRY:

The following procedure, in line with judgment, associating the appellants, was adopted to conduct this inquiry:

Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar were called to GHS Badhber Peshawar on 23/10/2017 and a questionnaire was served upon both to probe the matter further. (Copies annexed as "A" & "B")

2. Also both the affected class IVs were asked to furnish a written statement at their liberty to the inquiry committee in case the questionnaires don't fully cover their grievances.
3. The inquiry committee visited GMS Garhi Mumtaz Peshawar on 02/11/2017 to investigate as to when the school started its proper functioning and whether the affected class IVs have rendered their services there or not. For this purpose the first attendance register of the school was examined and photo copies of its pages were extracted duly signed by the Head Teacher concerned (Copy annexed as "C"). Also the Head Teacher was asked to furnish a written statement regarding the opening of the school and the matter in question regarding the services of Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar.
4. The land owner Mr. Samiullah s/o Rifaqat Khan was investigated/interrogated for his claim of appointments from the members of his family and opinion about adjustment of Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar who had been appointed against the newly created vacancies in the school established on his inherited plot of land.

FINDINGS OF THE INQUIRY:

After thorough examination of the record, statements of both the parties and their informal interviews/personal hearing the inquiry committee record its findings as under.

1. Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar had been appointed against the newly created vacant posts lying at GMS Garhi Mumtaz Peshawar which was established on the land of one Mr. Rifaqat Khan and it remained in nonfunctional condition up to 01/05/2014 as evident from the first attendance register of the school.
2. In the written statement obtained from the Head Teacher Mr. Kifayatullah SST (G) (Copy annexed as "D") he has declared that his brother Mr. Latifullah C.T took the charge of the school and thus the school started functioning on 02/05/2014.
3. Both the affected class IVs attended the school on 06/05/2012 to submit their arrival report there to the Head Teacher but the school was closed and they were not allowed by the land owner to take over the charge on ground there, as the land

Submitted an enquiry
Report Inquiry
11/11/2017, in

- owner of the said school was demanding the appointment of class IVs from his family members as he deserved per agreement with the Education department.
4. The confession of the land owner Mr. Samiullah in front of the inquiry committee endorsed the narrative and written statement of Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar that they were not allowed to take over the charge on the day of their arrival on 06/11/2012 as the land owner had applied for appointment of class IVs for his own family members.
 5. Compellingly both the affected class IVs submitted their arrival reports in paper, to the then S.D.E.O (Male) Primary Peshawar on 06/11/2012 (Copies annexed as "E" & "F") where they were asked to arrange service books, handing them over to the official concerned for further process.
 6. On 12/11/2012 both the affected class IVs requested in written to the then S.D.E.O (Male) Primary Peshawar to adjust them at a station where they could perform their duties normally (Copies annexed as "G" & "H") but the authority concerned failed to pay any heed to the significant matter of their indefeasible vested rights and other prerogatives and unfortunately they remained without any station of duty till their removal.
 7. After fulfillment of the requisite codal formalities their salaries were started and necessary entries to the effect have been made in their service books but the matter of their place of duty was left undecided and they were told verbally by the then S.D.E.O (Male) Primary Peshawar to wait for their corrigendum/further order thereto.
 8. In their written statement, (Copy annexed as "I") they have declared that again they have re-appealed on 15/10/2013 to the then S.D.E.O (Male) Primary Peshawar for their re-adjustment at a station where they could perform their duties normally notwithstanding no step has been taken in this regard by the authority concerned till last.
 9. The competent authority, the then DEO (M) Peshawar has proceeded against them a disciplinary action under the Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules 2011, on the charge of willful absence from duty where with they were removed from their services but the fact cannot be denied that they have not been provided the opportunity to render their services normally as required, in view of the ground reality that they were unable to perform their duties in the mentioned school because they had been debarred by the land owner.

12-18

12/9/12

CONCLUSIONS OF THE INQUIRY

In view of the Denovo inquiry proceedings carried out, it is concluded that:

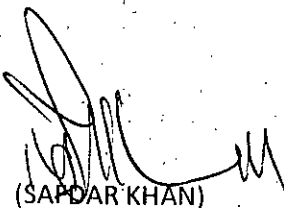
1. In pursuance of the District Education Officer (Male) Peshawar Endst: No.5708-55 dated 05/11/2012 the affected class IVs attempted to take over the charge at GMS Garhi Mumtaz Peshawar but as a matter of fact the school was closed and they were not allowed by the land owner to take over the charge there.
2. The then D.E.O (M) had appointed these two class IVs on the recommendations of Mr. Khushdil Khan, the then deputy speaker provincial assembly Khyber Pakhtunkhwa, in violations of the agreement with the land owner wherein it was committed by the D.E.O (M) Peshawar that class IVs will be employed from among the family members of the land owner.
3. The affected class IVs have duly submitted their arrival reports to the then S.D.E.O (Male) Primary Peshawar and a written request has been made by them simultaneously to redress their grievances of the place of their duty.
4. The then S.D.E.O (Male) Primary Peshawar has proceeded for drawl of their salaries and their salaries were released in due course of time but he has, neither ensured their duties on the disputed station where they were appointed nor they had been provided another place for their posting, in view of their grievances based on facts.
5. The competent authority, the then D.E.O (Male) Peshawar before initiating disciplinary proceedings against them has not ensured a remedial and corrective measure either to persuade the land owner not to hinder the affected class IVs to render their services normally on the disputed station or therefrom transfer and adjust them elsewhere.
6. Though all the codal formalities for removal of the affected class IVs have been duly fulfilled by the competent authority but the inquiry committee on its visit to the D.E.O (Male) Peshawar and a meeting therein with the present D.E.O (Male) Peshawar requested for provision of supporting documents i.e. Inquiry report etc. but nothing was found in this regard to depict the delinquency on the part of the affected class IVs which may tantamount to the instant inefficiency or misconduct liable to disciplinary action under the rules.
7. One Mr. Muhammad Shabeer Naib Qasid has been removed from his services on 09/06/2014 and the other Mr. Jahan Zeb Khan Chowkidar on 24/07/2014 from the same disputed station without redressing their above mentioned grievance and thus the instant case might not speak fully of the inefficiency, omission and

commission based on malafide intentions of the affected class IVs liable to the instant disciplinary action.

8. The appointment of Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar on the school constructed on the land of Mr. Rifaqat Khan, as revealed during the course of the inquiry, on the recommendations of the then Deputy speaker provincial assembly Khyber Pakhtunkhwa, is really an act unbecoming of a competent civil servant and their removal from service without the insurance of a convenient place of their duty, is a gross negligence on the part of the competent authority.

RECOMMENDATIONS OF THE INQUIRY:-

1. The Honorable Khyber Pakhtunkhwa Service Tribunal vide its judgment dated 02/08/2017 has already set aside the removal orders of Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar conditioning the back benefits with a Denovo inquiry. So this enquiry committee also recommends their reinstatement without back benefits.
2. The then D.E.O (Male) Peshawar may be taken to task, issuing him a letter of explanation under the Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules 2011 for his two fold omissions and commissions, one for illegally appointing both the affected class IVs on a disputed station i.e. a school established on the land of another owner in violation of the agreement with him and afterwards removing these class IVs without redressing their grievance of disputed place of their duty.

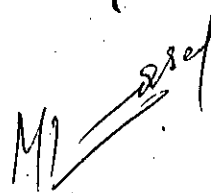


(SAPDAR KHAN)

PRINCIPAL BPS-18

GOVT: SHAHEED SAAD UR REHMAN HIGH SCHOOL
(GULSHAN REHMAN COLONY) PESHAWAR

(Inquiry Officer)



(MUHAMMAD IQBAL)

PRINCIPAL BPS-19

GOVT: HIGH SCHOOL
BADHBER PESHAWAR.

(Chairman Inquiry Committee)



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR

NOTIFICATION:-

1. **WHEREAS** Mr. Jehanzaib Khan Ex-Sweeper GMS Garhi Muntaz Peshawar was re instated in service & adjusted against the vacant post of Sweeper at GMS Garhi Muntaz Peshawar vide this office Notification issued under endst: No. 7074-81 dated 28-09-2017 in pursuance of Court Judgment dated 02-08-2017 passed by Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal No. 962 of 2015 with the direction that the issue of back benefits shall be subject to the outcome of the De-novo inquiry.
2. **AND WHEREAS** the enquiry committee consisting of Mr. Iqbal Bangush Principal GHS Badaber (Chairman) and Mr. Salfdar Khan Principal GHS Gulshan Rehman Colony Peshawar was constituted to conduct detailed **DE-NOVO** enquiry against the appellant concerned.
3. **AND WHEREAS** an enquiry report submitted by the enquiry committee vide letter No. 34 dated 07-11-2017. The enquiry committee recommended that the official may be reinstated in service without back benefits.
4. **NOW THEREFORE**, the DEO(M) Peshawar, being competent authority, is pleased to decide the issue of back benefits in the light of De-Novo enquiry and his intervening /absence period wef 13-12-2013 (date of absence) to 02-08-2017 (date of Judgment) is hereby treated as Extra Ordinary Leave without Pay under FR-85.

District Education Officer
(Male) Peshawar.

Endst: No. 3622-28 / SPL-File 21- Shabir & Jehanzaib Dated 21 / 03 / 2019

Copy forwarded to the:-

1. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar in reference with service appeal No. 962/of 2015, judgment dated 02-08-2017.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. PS to Secretary E&SED Khyber Pakhtunkhwa Peshawar.
4. PA to Director, E&SE Khyber Pakhtunkhwa Peshawar.
5. Cashier Local Office
6. Official Concerned.
7. P/File.

By: District Education Officer
(Male) Peshawar

o/c

Ammeor — "1-1"

P-22

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

Execution Petition No.169/2020

Jehanzeb Khan.....Petitioner

Vs

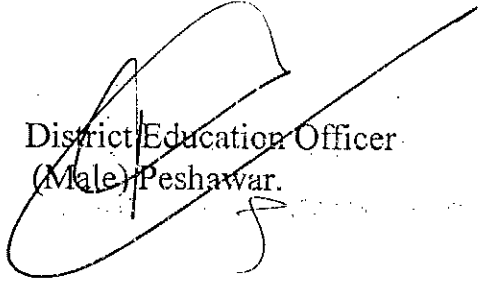
Mr. Hamid Mehmood DEO & OTHERS.....Respondents

**REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENT
DEPARTMENT.**

RESPECTFULLY SHEWETH.

1. That Para No.1 pertains to record.
2. That in reply to Para No.2, it is submitted that the Respondent Department re-instated the Petitioner in light of the judgment of this Hon'ble Service Tribunal and conducted the de veno inquiry.
(Copy of Inquiry is annexed as Annex: A)
3. That in reply to Para No.3, it is submitted that the Respondent Department implemented the judgment of this Hon'ble Tribunal with in true letter and spirit.
4. That Para No.4 is pertains to record.
5. That reply of Para No.5 has already given in the above Para.

It is therefore, prayed that on acceptance of this reply, the execution petition may very kindly be dismissed.


District Education Officer
(Male) Peshawar.

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.
TO BE SUBSTITUTED WITH THIS OFFICE NOTIFICATION BEARING SAME NO. & DATE.
OFFICE ORDER

Consequent upon the approval of the competent authority, the following officials are hereby transferred / adjusted on their own pay and BPS, in the Schools noted against their names in the interest of public service with immediate effect.

S #	Name & Designation	From	To	Remarks
1	Mr. Muhammad Shabir NQ	GMS Garhi Mumtaz Peshawar	GHSS Garhi Ghulam Shah Peshawar	Against Vacant Post
2	Mr. Jehanzeb Khan Sweeper	GMS Garhi Mumtaz Peshawar	GHS Mattani Peshawar	Against Vacant Post

NOTE:

1. No TA/DA is allowed.
2. Charge Report should be submitted to all concerned.

(JADDI KHAN KHALIL)
 DISTRICT EDUCATION OFFICER

(MALE) PESHAWAR.

Endst: No: 12867/ SPL File -21/Shabir & Jehanzeb dated 25 / 01 /2018.

Copy of the above is forwarded to the:-

- 1- Accountant General Khyber Pakhtunkhwa Peshawar.
- 2- Principal GHSS Garhi Ghulam Shah Peshawar.
- 3- Principal GHS Matani Peshawar.
- 4- Officials concerned.
- 5- Master File.

DY: DISTRICT EDUCATION OFFICER
 (MALE) PESHAWAR

0/0