

104/14

09.2.2015

Appellant with counsel and Mr. Muhammad Jan, GP with Muhammad Ilyas, SDEO for the respondents present. Arguments heard and record perused. Vide our detailed order of to-day in connected Service Appeal No. 103/2014, titled "Muhammad Afzal Vs. Govt. of KPK through Secretary Elementary & Secondary Education Peshawar etc.", this appeal is also disposed of as per detailed order. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED

09.2.2015



MEMBER



MEMBER

MEMBER

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20.6.2014

Appellant in person and Mr. Muhammad Jan, GP with Muhammad Ilyas, ADO for official respondents present and reply filed. Copy handed over to appellant. To come up for arguments on 08.09.2014. Rejoinder, if any, in the meantime.

MEMBER

MEMBER

08.09.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Muhammad Ilyas, SDEO for the respondents present. The learned Member is on leave. To come up for the same on 21.1.2015.

MEMBER

21.01.2015

Appellant with counsel, and Mr. Ziaullah, GP with Muhammad Ilyas, SDEO for the respondents present. Arguments heard. To come up for order on 09.2.2015.

MEMBER

MEMBER

7.5.2014

Appellant with counsel, Mr. Muhammad Jan, GP with Khursheed Khan, SO, Sajjad Rashid, AD and Abdul Jalil, Assistant for respondents present. Respondents No. 3 and 4 were also summoned personally. Respondent No. 4 in person present. Syed Ihsan Shah, ADO appeared and stated that respondent No.3 informed him telephonically to appear on his behalf because respondent No.3 was busy in other affairs. Salary of respondent No. 3 is attached for not obeying the order of the Tribunal.

Arguments on stay application heard and record perused. Respondent No. 4 stated at the bar that the appellant has been relieved from GPS Bori Saghri, Shakardara by the Headmaster. Therefore, his application for interim relief is rejected. To come up for written reply on main appeal on 20.6.2014. Copy of this order sheet be sent to District Accounts Officer, Kohat and Secretary, E&SE, Khyber Pakhtunkhwa, Peshawar for information and necessary action.

MEMBER

MEMBER

20.05.2014

(*) DEO (Male) Kohat appeared in person and requested for requisition of file for to-day. Case file has been requisitioned. He submitted an application for release of salary attached on 7.5.2014 which is placed on file. Application is allowed and salary of DEO (M) Kohat is released. *Copy to all concerned*

MEMBER

*AS per
cust# 103/2014-*

31.3.2014

Appellant with counsel, Mr. Ziaullah, GP with Syed Ihsan Shah, ADO and Sajjad Rasheed, AD for the official respondents present and requested for time. None is available on behalf of private respondent No.5. Fresh notice be issued to him through registered post. To come up for written reply on main appeal as well as reply/arguments on stay application on 6.5.2014.


MEMBER


MEMBER

6.5.2014

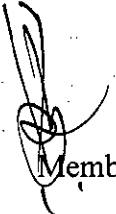
Appellant with counsel and Mr. Muhammad Jan, GP with Khursheed Khan, SO, Sajjad Rashid, AD and Abdul Jalil, Assistant for the official respondents present and requested for time. None is available on behalf of private respondent No. 5 despite proper service, hence placed ex-parte. To come up for written reply on main appeal as well as reply/arguments on stay application on 7.5.2014. Respondents No. 3 and 4 will attend the Tribunal personally on the date fixed. Mr. Abdul Jalil, Assistant is directed to inform them.

MEMBER

MEMBER 


3,
10.02.2014

Mr. Muhammad Afzal in the connected appeal present on behalf of the appellant and requested for adjournment due to non-availability of his counsel. To come up for preliminary hearing on 04.03.2014.

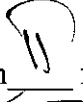

Member

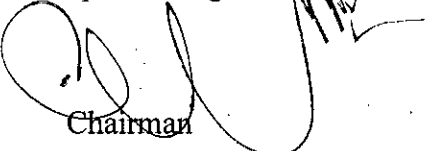
4,
18.02.2014

Counsel for the appellant present and moved an application for early hearing; that the instant appeal fixed for preliminary hearing on 04.03.2014 may be fixed for today. Application is allowed. File requisitioned and preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned transfer order dated 03.10.2013 of the District Education Officer, Kohat, he filed departmental appeal on 05.10.2013, which has not been responded within the statutory period of 90 days, hence the instant appeal on 16.01.2014. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents. Appellant has also filed an application for suspension of the impugned order dated 03.10.2013. Notice of application should also be issued to the respondents for reply/arguments. To come up for written reply on main appeal as well as reply/arguments on application on 31.03.2014.


Member

5,
18.02.2014

This case be put before the Final Bench  for further proceedings.




Chairman

*Appellant's deposited
of Process fee & Security
Rs. 2200/- Bank Receipt
attached with file*

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 104/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21/01/2014	<p>The appeal of Mr. Muhammad Khurshid resubmitted today by Mr. Hassan U.K. Afridi Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	23-1-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>10-2-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: right;"><i>Handwritten notes:</i> The appeal of Mr. Muhammad Khurshid resubmitted today by Mr. Hassan U.K. Afridi Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p>

The appeal of Mr. Muhammad Khurshid PST, GPS Badasam Kohat received today i.e. on 16.01.2014 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of order dated 18.3.2013 mentioned in para-3 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Page No.8 of the appeal is illegible which may be replaced by legible/better one.
- 3- Sub-rule-4 of rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974 requires that every civil servant to whom relief claimed may affect, shall also be shown as respondent.
- 4- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.

No. 91 /S.T,

Dt. 17/01 /2014.

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Hassan U.K. Afridi Adv. Pesh.

I Fulfiller of the objection as
mentioned above and Re-submitted
on 21-01-2014

[Handwritten Signature]

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 104 / 2014.

MUHAMMAD KHURSHEED S/O MUHAMMAD ABBAS KHAN . . . PETITIONER.

VERSUS.

Govt: OF K.P.K. THROUGH SECRETARY ELEMENTARY
& SECONDARY EDUCATION PESHAWAR & OTHERS RESPONDENTS.

I N D E X.

S.No.	Description of documents.	pages.
1.	Service Appeal.	1 - 5
2.	Application for stay of impugned order.	6 - 7
3.	Service Card.	8
4.	Transfer order on the basis of Notification dated 18/3/2013.	9
5.	Transfer order dated 3/10/2013.	10
6.	Departmental appeal.	11
7.	Postal receipt.	12
8.	C.N.I.C.	13
9.	List of Urban Union Council of appellant.	14
10.	Wakalatnama.	15

APPELLANT:

Through:-

Dated : 2 /1/2014.

(HASSAN U. Z. APRI DI)
Advocate High Court,
Peshawar.

①

BEFORE THE KHYBER PUKHTUNKHAWA , SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 104 / 2014.

=====

Muhammad Khursheed Son of Muhammad Abbas, Khan,
PST/ PTC Teacher , Government Primary School Badasam,
Shakardara, Kohat APPELLANT.

VERSUS.

1. Government of K.P.K. through Secretary Elementary & Secondary Education , Peshawar.
2. Director Elementary & Secondary Education , Peshawar.
3. District Education Officer, (Male) Elementary & Secondary Education , Kohat.
4. Sub Divisional Education Officer, (Lachi) Elementary & Secondary Education, Kohat. @ @ @ @
5. Shakir Hussain ,PST (Teacher) Govt: Primary school Banda Fathe Khan ,Shakardara,Kohat...RESPONDENTS.

=====

APPEAL UNDER SECTION -4, OF THE K.P.K. SERVICE TRIBUNAL ACTS, 1974, AGAINST THE IMPUGNED ORDER OF TRANSFER NO. 7105-8, DATED 3/10/2013, WHILE THE DEPARTMENTAL APPEAL FILED BY THE APPELLANT ON 9/10/2013, HAS NO RESPONSE / REPLY.

PRAYER IN APPEAL:-

On acceptance of this appeal the impugned order dated 3/10/2013, PASSED by the Respondent No.3, on the proposal of Respondent No.4, may kindly be set-aside and the Respondents may kindly be directed to remain the appellant on

16-1-2014

16/1/2014

21/1/2014

duty in Government Primary School BADASAM, SHAKARDARA
KOHAT, ^{or} ~~and~~ posted the appellant to his nearer Union
Council School.

Any other relief which this Honourable Tribunal
may deem fit/ proper for the safe administration of
justice.

=====

RESPECTFULLY SHEWETH:

1. That the appellant was appointed as P.T.C. Teacher in Education Department on 15/12/1983, . (Copy of Service Identity Card is attached).
2. That from the date of appointment the appellant performed his duties well and to the entire satisfaction of the Superiors.
3. That the appellant was transferred from Government primary School Spinkai Kala to Government Primary School Badasam on 18/3/2013. (Copy of Transfer order is attached).
4. That the appellant again transferred from Government Primary School Badasam to Government Primary School Banda Fatha Khan on 3/10/2013.

5. That the appellant aggrieved from the Transfer order vide dated 3/10/2013, filed an Departmental appeal , which has not been responded , hence the service appeal on the following amongst the other grounds:-

G R O U N D S :-

- A). That the impugned order vide dated 3/10/2013, is against law , facts and justice and is liable to be set-aside.
- B). That the appellant has not been dealt in accordance with law and Rules .
- C). That the transfer order of the appellant dated 3/10/2013, is based on malafide intention , hence not tenable.
- D). That the appellant has been transferred from Govt: Primary School Spinkai Kala to Government Primary School Badasam on 18/3/2013, and after six (6) months the appellant again been transferred from Government Primary School Banda Fatha Khan ,Shakardara Kohat, on 3/10/2013.
- E). That according to the Policy of Provincial Government he must be posted in a School of his own Union Council while he has been transferred to a Govt: Primary School Banda Fatha Khan which is away of 42 K.M. while the Govt: Primary School Badasam is away of 11 K.M.

- F). That the appellant has a right according to the Provincial Government Policy /Rules / Notifications, to be posted in a School of his Union Council as nearer to his Union Council.
- G). That the appellant has the right to be posted at Rural-1 Union Council Shakardara, Kohat.
- H). That some other grounds may be adduced at the time of arguments with the permission of this Hon'ble Tribunal.

It is, therefore, most humbly prayed, that on acceptance of this appeal, the impugned transfer order dated 3.10.2013, may kindly be set-aside and the Respondents may kindly be directed to remain the appellant on duty in Government Primary School Badsam, Shakardara Kohat or posted the appellant to his nearer Union Council School.

Any other relief which this Hon'ble Tribunal may deem fit / proper for the safe administration of justice.

Through:-

Dated : 16 /1/2014.

Appellant
(HASSAN U.K. AFRIDI)
Advocate High Court,
Peshawar.

5

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

IN RE: SERVICE APPEAL NO. _____ / 2014.

=====

Muhammad Khursheed S/O Muhammad Abbas Khan ...Appellant.

Versus.

Govt: of K.P.K. through Secretary Elementary
& Secondary Education Peshawar & others . . . Respondents.

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A F F I D A V I T.

I, Muhammad Khursheed S/O Muhammad Abbas Khan
do hereby solemnly affirm and declare on Oath
that the contents of the accompanying Service
appeal are true and correct to the best of my
knowledge and belief and that nothing has been
concealed from this Hon'ble Tribunal.

DEPONENT.



6

BEFORE THE KHYBER PUKHTUNKHAWA , SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____ / 2014

IN

Service Appeal No. _____ / 2014.

=====

Muhammad Khursheed S/O Muhammad Abbas Khan . . Applicant.
APPELLANT.

VERSUS.

Government of K.P.K. through Secretary
Elementary & Secondary Education & others.. . RESPONDENTS.

=====

APPLICATION FOR THE SUSPENSION OF THE IMPUGNED
ORDER DATED 3/10/2013, TILL THE FINAL DECISION OF
THE INSTANT SERVICE APPEAL .

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RESPECTFULLY SHEWETH:

1. That the appellant filed the above noted Service appeal alongwith this application which has sufficient chances to succeed.
2. That the appellant has good Prima facie case in his favour. as the same is on very strong grounds.
3. That the balance of convenience is also lies in favour of the Applicant / Appellant.
4. That if the impugned transfer order has not been suspended , then the appellant will suffer an irreparable loss.

5. That the grounds of appeal may please be consider as integral part of this application .

It is, therefore, most humbly prayed that on acceptance of this application , the impugned transfer order dated 3/10/2013 of the appellant may please be suspended till the final decision of the main Service appeal.

Applicant/Appellant
Muhammad Khursheed.

Through:-

(HASSAN U.K.AFRIDI)
Advocate, High Court,
Peshawar.

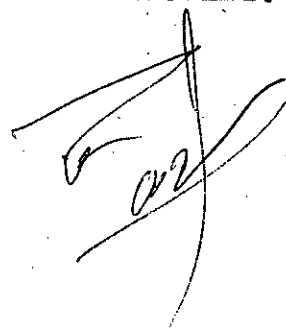
Dated:- 16 /1/2014.

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A F F I D A V I T.

I, Muhammad Khursheed S/O Muhammad Abbas Khan Teacher Govt: primary school Badasam, Kohat, do, hereby solemnly affirm and declare on Oath that the contents of this application are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court/ Tribunal.

DEPONENT.





GOVT OF PAKISTAN
KHYBER PAKHTOONKHWA
Education Department Kohat
Service Card

MUHAMMAD KHURSHID
Primary School Teacher

Govt. Primary School Spinkai Kala
Shakardara

DATE OF ISSUE: 04-12-2012

[Signature]
DDO (M)
E&S EDUCATION
Issuing Authority



(8)

8


Mat

3

3

GOVT OF PAKISTAN
Service Card

Personal No: 00157058
Name: Nuhammad Khurshid
Father's Name: Muhammad Abas Khan
CNIC # 14301-3287315-1 B.P.S. 12
Qualification: BA PTC Blood Group: O+
Date of birth: 01-02-1965 Date of Appt: 15-12-1983
ID Mark: Mole on Right Wrist. Phone# 0346-6258873
Address: Mohallah Dhandoka Village & P/O Shakardara
Tehsil Lachi District Kohat



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KOHAT

NOTIFICATION

Impartial modification vide this office Endst No.397-402 dated 18/03/2013, of PST Promotion from BPS-14 to BPS-15 as Primary School Head Teachers, are hereby ordered on their own pay and grade with immediate effect.

~~after 6 month~~

(9)

18/3/2013

S. No.	Name	From	To
1	Zafrullah PSHT BPS-15	GPS No.1 City	GPS No.1 City
2	Zubair Ahmad PSHT BPS-15	GPS Tehsil Gate	GPS Asghari Mela
3	Ijaz Mir PSHT BPS-15	MPS Zawaki Banda	GPS Lal Mela
4	Naeem Khan PSHT BPS-15	GPS No.1 Jungle Khel	GPS No.1 Doctor Banda
5	Hamid Ullah Khan PSHT BPS-15	GPS Nasrat Khel	GPS Dakhli Habbi
6	Abdur Rashid PSHT BPS-15	GPS Chambaal	GPS Chanbai
7	Muhammad Saeed PSHT BPS-15	GPS Hawasi Banda	GPS Hawasi Banda
8	Mehmood Khan PSHT BPS-15	GPS Hawasi Banda	GPS Lachi Payan No.2(Markaz)
9	Mushtaq Hussain PSHT BPS-15	GPS No.1 Marai Bala	GPS Kizar Banda
10	Fazil Khan PSHT BPS-15	GPS Noor Abad	GPS No.1 Sumari Payan
11	Mubashir Naeem PSHT BPS-15	GPS No. 3 Jungle Khel	GPS No.3 Jungle Khel
12	Abdul Jaleel PSHT BPS-15	GPS No.3 Jungle Khel	GPS No.2 Sur Gul
13	Syed Rehman PSHT BPS-15	GPS Musal	GPS Janak
14	Abdul Ghafor PSHT BPS-15	GPS Dori Saghai	GPS No.1 Chorlaki
15	Abdul-Rahim PSHT BPS-15	GPS No.1 S/Darra	GPS No.2 S/Darra
16	Muhammad Khurshid PSHT BPS-15	GPS Spinkai Kala	GPS Badasam
17	Muhammad Nazir PSHT BPS-15	GPS Sher Ali Banda	GPS Mandoori No.1 Lachi)

✓ All in a way

Accepted
[Signature]

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KOHAT
TRANSFER

Consequent upon the approval of the competent authority, as per proposed by DEO(M) Lachi the following ST are hereby transferred on their own pay and grace in the interest of public service, their name & school name noted against each

No TA/DA is allowed
 Charge report should be submitted to all concerned

#	Name & Designation	From	To	Remarks
1	Nafces Ahmad PST	G S Kirroni Sam	GPS Kirroni Killa	VS No. 3
2	Muhammad Kharshid, PST	G S Kirroni Killa	GPS Banda Fetha Khan	VS No. 13
3	Fazal Haq PST	G S Kirroni Killa	GPS Shrawaki	VS No. 8
4	Muhammad Shauq, PST	G S Maudina Colony	GPS Nardanka	VS No. 17
5	Muhammad Ismail, PST	G S Dera S/Dara	GPS Maudina Colony	VS No. 6
6	Muhammad Rauf, PST	G S Dera Amir Shah	GPS No 2 Chorluki	VS No. 7
7	Muhammad Saeed, PST	G S Dera Choraluki	GPS Dera Rauf Shah	VS No. 5
8	Muhammad Khurshid, PST	G S Shrawaki	GPS S/Dara No. 4	VS No. 5
9	Zarceef Khan PST	G S Spinmari	GPS Gurgura	VS No. 18
10	Jahanzib PST	G S Rakwan	GPS Spinmari	VS No. 9
11	Saeed ur Rehman PST	G S No. 2 Androoni Chashmi	GPS Bori Saghri	VS No. 12
12	Amir Sultan PST	G S Bori Saghri	GPS Androoni Chashmi	VS No. 11
13	Shakir Hussain, PST	G S Banda Fetha Khan	GPS Badasam	VS No. 2
14	Sajjad Nazim PST	G S Gul Shahi Khel	GPS Kirodam	VS No. 1
15	Abdul Hamid PST	G S Ghurzi Payan	GPS Dhard Bakhtawara	VS No. 16
16	Muhammad Saeed PSHT	G S Dhard Bakhtawar	GPS Ghurzi Payan	VS No. 15
17	Muhammad Kamran PSHT	G S Nandhala	GPS Gul Shahi Khel	VS No. 14
18	M. Rahim PSHT	G S Gurgura	GPS Rakwan	VS No. 10

Accepted
[Signature]

(ZAHID RASHID)
 DISTRICT EDUCATION OFFICER
 (MALE) KOHAT

Indst. No. 7105-8 dated 3/10 /2013

Copy to:-

1. District Accounts Officer Kohat
2. SDEO (M) Kohat & Lachi
3. ASDEO Circle Concerned
4. Head Teacher concerned

with the proposal 7-both the serial

BY-DISTRICT EDUCATION OFFICER
 (MALE) KOHAT
 [Signature]

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KOHAT TRANSFER.

Consequent upon the approval of the competent authority, as per proposal by DEO (M) Lachi, the following PST are hereby transferred on their own pay and grade in the interest of Public Service, their name & school name noted against each -

NO TA/DA is allowed
Charge report should be submitted to all concerned.

Name & Designation	From	To	Remarks
1. Nafees Ahmad PST	GPS Kirroor Sam	GPS Kirroori Killa	V.S No. 3
2. Mohammad Khurshid PST	GPS Badasam	GPS Banda Fatha Khan	VS No-13
4. Mohammad Shafiq PST	GPS Mirandha Colony	GPS Nandhaka	VS No-19
3. Fajal Haq PST	GPS Karori Khd	GPS Shawaiki	VS No. 8
5. Muhammad Ismail PST	GPS No 3 - / Dana	GPS Mirandha Colony	VS No. 4
6. Muhammad Rauf PST	GPS Dh. Amir Shah	GPS No 2 - Chakluki	VS No. 7
7. Muhammad Saeed PST	GPS No. 2 Chakluki	GPS, Dh - Rauf Shah	VS No. 6
8. Muhammad Khurshid PST	GPS Shawaiki	GPS S/ Dana No. 4	VS No. 5
9. Zulf Khan PST	GPS Spinmari	GPS Junguns	VS No. 18
10. Jahanzaib PST	GPS Rakwan	GPS Spinmari	VS No. 9
11. Saeed-ul-Rehman PST	GPS No 2 - Anchooni Chashmi	GPS Bori Saghri	VS No. 12
12. Amir Sultan PST	GPS Bori Saghri	GPS Anchooni Shashmi	VS No. 11
13. Shakia Humair PST	GPS Banda Fatha Khan	GPS - Badasam	VS No. 2
14. Sajjad Nazim PST	GPS Gul Shah Khd	GPS Kirroor Sam	VS No. 1
15. Abdul Hamid PST	GPS Ghungai Payan	GPS Dhand Balthawan	VS No. 16
16. Muhammad Saeed PST	GPS Dhand Balthawan	GPS Ghungai Payan	VS No. 15
17. Muhammad Kamran PST	GPS Nandhaka	GPS Gul Shah Khd	VS No. 14
18. M Rahim PST	GPS - Gungmis	GPS Pakwan	VS No. 10

End. 7105-8 dated - 3/10/2013

District education officer
(male) Kohat

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12/10/1976
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12



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

Rs. 40

13

Received a registered
addressed to

Date

Handwritten initials

*Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary

Initials of Receiving Office

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

ed.

Insurance for Rs.

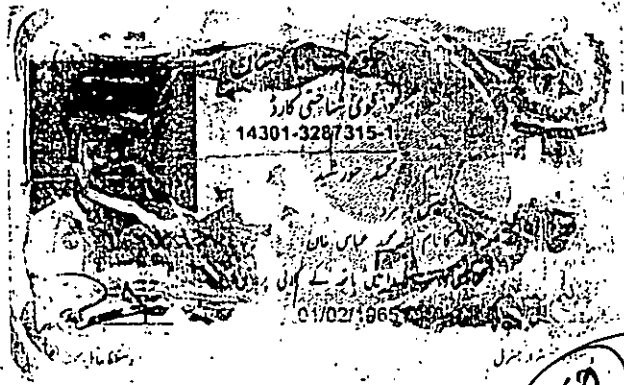
Weight

Kilo

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address

grams

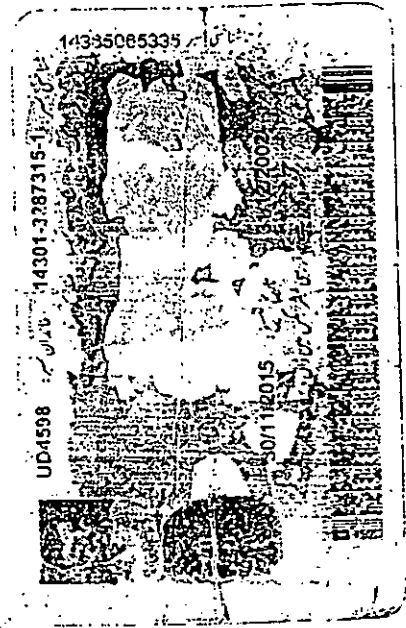
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مستند

م



سلسلہ نمبر	گورنر نمبر	نام	والد نام	قومی شناختی کارڈ نمبر	مر
165	54	شفیق الرحمن	نان گل	14301-1930106-3	43
166	55	سیف اللہ خان	آفتاب خان	14301-4330536-9	57
167	56	کلیم اللہ خان	آفتاب خان	14301-2021677-5	C-1
168	56	محمد فضل	کلیم اللہ خان	14301-4399267-3	28
169	57	محمد یوسف	گل بارتون مرحوم	14301-2000144-7	54
170	58	نصیر اللہ خان	محمد عثمان	14301-2065874-7	37
171	59	آفتاب شاہ گل	نور شاہ گل	14301-7050981-5	27
172	60	محمد سلیمان	گل بیت خان	14301-8270353-7	58
173	60	رب نواز	گل خان مرحوم	14301-6866521-1	57
174	60	ناصر محمود	محمد یوسف	14301-9294799-7	28
175	60	عادل نواز	رب نواز	14301-8705598-9	27
176	60	عمران افضل	رب نواز	14301-7204538-9	23
177	60-A	محمد عباس خان	غلام سرد خان	14301-9428597-1	78
178	60-A	محمد خورشید	محمد عباس خان	14301-3287315-1	47
179	60-A	محمد افضل	محمد عباس خان	14301-1947205-1	42
180	61	محمد گل	آفتاب گل	14301-2903992-1	71
181	61	بنت گل	محمد گل	14301-7225877-9	49
182	61	محمد رمضان شریف	علی محمد	14301-4362217-7	43
183	61	سیف اللہ خان	محمد شیر	14301-2005447-1	32
184	61	عمایت اللہ خان	محمد شیر	14301-1107240-5	28
185	61	سبح اللہ خان	محمد شیر	14301-2031795-9	28
186	61	محمد مصطفیٰ	علی محمد	14301-3994151-1	27
187	62	محمد ہارون	رحیم گل خان	14301-3574481-1	30
188	63	مرسلین خان	مخرب گل مرحوم	14301-2033346-7	66
189	63	غلام محی الدین	مرسلین خان	14301-1929505-5	38
190	64A	منظور حسین	افضل حسین	61101-7081227-5	62
191	64A	آفتاب حسین خٹک	منظور حسین خٹک	61101-2355542-9	29
192	64A	محمد حسین خٹک	منظور حسین	61101-5212445-7	24

اردین فاضل

Handwritten signature and stamp.

بیم گروہ کی درخواستیں

۱۵

قیمت ایک روپیہ

نورطافیس

Appellet

بیم گروہ کی درخواستیں

عمر گروہ کی درخواستیں

مقدمہ

مقدمہ

دعویٰ

جہم

Service Appeal - 1/14

پابندی تحریر کی گئی

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جوابدہی کی کارروائی متعلقہ آؤں مقام کے لئے

مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی عمل کارروائی کا اختیار ہوگا۔ نیز وکیل صاحب کو کہتے رائی نامہ و تقریر ثالثہ

اور در خواست پر قسم کی تصدیق و اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا نگرانی یا نظر قسم یا اپیل کی برآمدگی

ایک مشروطی و نیز دائر کرنے اپیل نگرانی نظر ثانی و پیروی کوئے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے عمل یا اپنی جائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہونگے۔ اور اس کا سہا ختمہ پر داختم منظور و قبول

ہوگا۔ دوران مقدمہ میں جو شرط و ہر جائہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق کیا صاحب موصوف ہونگے نیز بقایا

شرچہ کی وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا جس سے باہر ہو وکیل صاحب یا ہزنم ہوں گے۔ کہ

پیروی مذکور کریں۔ لہذا د کالت نامہ لکھی دیا کہ شدہ ہے۔

ماہ

مقدمہ

مقام

سے لے منظور ہے

Accepted

مقدمہ

مقدمہ

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____ / 2014.

IN

Service Appeal No. _____ / 2014.

=====

Muhammad Khursheed Versus... Govt; of K.P.K. throug secretary
(E & SE) Peshawar & others.

=====

APPLICATION FOR HEARING OF THE ABOVE TITLED
CASE FOR TODAY OR TOMARROW.

=====

Respectfully sheweth:

1. That the above titled case has been fixed before this Honourable Tribunal on 4/3/2014.
2. That the appellant has not been relieved , but number of notices have been sent to the appellant.
3. That the stay application has been filed with this appeal.
4. That the appellant has a good prima facie case in his favour.

It is, therefore, most humbly prayed that on acceptance of this application, the above noted titled appeal/ ^{stay app} may kindly be heard today OR tomorrow.

Appellant

Through:-

Dated : 17/2/2014.

(HASSAN J.K. AFRI DI)
Advocate, Peshawar.

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

In Re. C.M. No. _____ / 2014

IN
Service Appeal No. _____ / 2014.

Muhammad Khursheed... Versus.... Govt; of K.P.K. through secretary
(E & SE) Peshawar & others.

A F F I D A V I T.

I, Muhammad Khursheed S/O Muhammad Abbas Khan R/O Shakardara,
Tehsil Lachi & District Kohat, do hereby solemnly affirm and
declare on Oath that the contents of the accompanying
application are true and correct to the best of my knowledge
and belief and that nothing has been concealed from this
Hon'ble Court/ Tribunal.



~~DEPONENT~~
Muhammad Khursheed
Muhammad Khursheed.

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____ / 2014.

IN
Service Appeal No. _____ / 2014.

Muhammad Khursheed Versus... Govt; of K.P.K. throug Secretary
(E & SE) Peshawar & others.

APPLICATION FOR HEARING OF THE ABOVE TITLED
CASE FOR TODAY OR TOMARROW.

Respectfully sheweth:

1. That the above titled case has been fixed before this Honourable Tribunal on 4/3/2014.
2. That the appellant has not been relieved , but number of notices have been sent to the appellant.
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4. That the appellant has a good prima facie case in his favour.

It is, therefore, most humbly prayed that on acceptance of this application, the above noted titled appeal may kindly be heard today OR tomorrow.

Appellant

Through:-

Dated : 17/2/2014.

(HASSAN J.K. AFRI DI)
Advocate, Peshawar.

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

In re. C.M. No. _____ / 2014

IN
Service Appeal No. _____ / 2014.

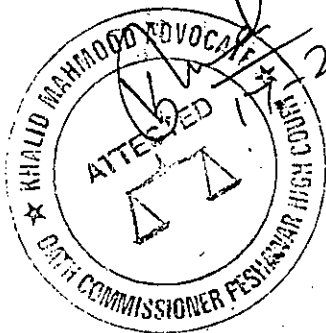
Muhammad Khursheed... Versus.... Govt; of K.P.K. through Secretary
(E &SE) Peshawar & others.

=====
A F F I D A V I T.

I, Muhammad Khursheed S/O Muhammad Abbas Khan R/O Shakardara,
Tehsil Lachi & District Kohat, do hereby solely affirm and
declare on Oath that the contents of the accompanying
application are true and correct to the best of my knowledge
and belief and that nothing has been concealed from this
Hon'ble Court/ Tribunal.

DEPONENT.

Muhammad Khursheed.



BEFORE THE HON'ABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Appeal.No. 104/2014


Mr. Muhammad Khurshid S/o Muhammad Abbas Khan. PST/PTC Teacher Govt Primary School Bada Sam Shakardara Kohat..... Appellant.

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director (E&SE) department Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) Kohat.
4. Sub Divisional Education Officer (Lachi) Elementary & Secondary Eduaction Kohat..... Respondents.

I N D E X

S.No.	Description of Documents	Annex	Pages
1	Affidavit		1
2	Para wise comments signed by Secretary, Director, DEO(M) Kohat and SDEO (M) PRY.LACHI		2-3
3	Para wise comments vetted by Govt. Pleeder.		4-5


Sub Divisional Education Officer
(Male) Primary Lachi Kohat

BEFORE THE HON'ABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Appeal No. 104/2014

Mr. Muhammad Khurshid S/o Muhammad Abbas Khan. PST/PTC Teacher Govt Primary School Bada Sam Shakardara Kohat..... Appellant.

VERSUS

- 1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- 2. Director (E&SE) department Khyber Pakhtunkhwa Peshawar.
- 3. District Education Officer (Male) Kohat.
- 4. Sub Divisional Education Officer (Lachi) Elementary & Secondary Eduaction Kohat..... Respondents.

AFFIDAVIT

I **Muhammd Ilyas Khan** SDEO (M) Primary Tehsil. Lachi (Kohat) do hereby solemnly affirm and declare on oath that the contents of the accompanying **Para Wise Comments** on behalf of respondent No.1 are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable Tribunal.

M Ilyas

DEPENDENT

CNIC No. 14202-1324299-7

**Sub. Divisional
Edu: Officer (Male)
Lachi**

BEFORE THE HON'ABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Appeal No. 104/2014

Mr. Muhammad Khurshid S/o Muhammad Abbas Khan. PST/PTC Teacher Govt Primary School Bada Sam Shakardara Kohat..... Appellant.

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director (E&SE) department Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) Kohat.
4. Sub Divisional Education Officer (Lachi) Elementary & Secondary Eduaction Kohat..... Respondents.

REPLY ON BEHALF OF RESPONDENT.

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action/locus standi to file the present appeal.
2. That the appellant has not come to the honorable service tribunal with clean hands.
3. That the appellant has suppressed/concealed material facts from the honorable service tribunal.
4. That the appeal is barred by time.
5. That the present appeal is bad in its present form, hence not maintainable and liable to be dismissed with cost.

Facts

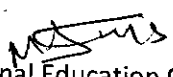
1. Pertains to record.
2. Subject to proof.
3. Pertains to record.
4. Correct, transfer is a part of service.
5. Transfer is no punishment & it is a part of service, Govt. servant is supposed to be transferred anywhere his services is required, more beneficial in the interest of public service without any condition of tenure.

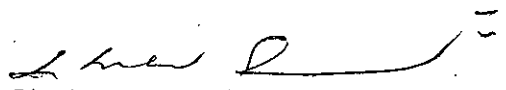
Grounds.

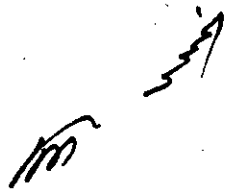
- a) Incorrect, the transfer has been issued within the purview of law, facts and justice.

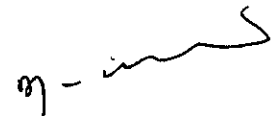
- b) Explained vide para "A".
- c) Incorrect, the order has been issued in the best interest of public service.
- d) There is no limit of tenure in law and his transfer was made after six months considering his services more beneficial and necessitate in the GPS Banda Fateh Khan.
- e) The substitute of the appellant also belong to UC Shakardara and he has right to be posted there.
- f) Incorrect, as replied in para "e".
- g) Incorrect the appellant has been dealt in accordance with law.
- h) That the respondent seek permission to raise additional grounds at the time of arguments.

It is therefore humble prayed that instant appeal in the light of facts explained above may very kindly be dismissed with cost.


 Sub Divisional Education Officer,
 (Male) Primary Lachi Kohat.

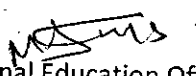

 District Education Officer
 (Male) Kohat.

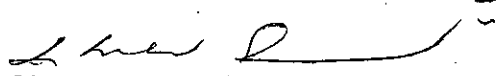

 Director,
 Elementary & Secondary Education,
 Khyber Pakhtoon Khwa.



 Secretary,
 Elementary & Secondary Education,
 Khyber Pakhtoon Khwa.


- b) Explained vide para "A".
- c) Incorrect, the order has been issued in the best interest of public service.
- d) There is no limit of tenure in law and his transfer was made after six months considering his services more beneficial and necessitate in the GPS Banda Fateh Khan.
- e) The substitute of the appellant also belong to UC Shakardara and he has right to be posted there.
- f) Incorrect, as replied in para "e".
- g) Incorrect the appellant has been dealt in accordance with law.
- h) That the respondent seek permission to raise additional grounds at the time of arguments.

It is therefore humble prayed that instant appeal in the light of facts explained above may very kindly be dismissed with cost.


 Sub Divisional Education Officer,
 (Male) Primary Lachi Kohat.


 District Education Officer
 (Male) Kohat.


 Director,
 Elementary & Secondary Education,
 Khyber Pakhtoon Khwa.


 Secretary,
 Elementary & Secondary Education,
 Khyber Pakhtoon Khwa.

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(15)

BEFORE THE HON'ABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Appeal No. 104/2014

Mr. Muhammad Khurshid S/o Muhammad Abbas Khan. PST/PTC Teacher Govt Primary School Bada Sam Shakardara Kohat..... Appellant.

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director (E&SE) department Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) Kohat.
4. Sub Divisional Education Officer (Lachi) Elementary & Secondary Eduaction Kohat..... Respondents.

REPLY ON BEHALF OF RESPONDENT.

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action/locus standi to file the present appeal.
2. That the appellant has not come to the honorable service tribunal with clean hands.
3. That the appellant has suppressed/concealed material facts from the honorable service tribunal.
4. That the appeal is barred by time.
5. That the present appeal is bad in its present form, hence not maintainable and liable to be dismissed with cost.

Facts

1. Pertains to record.
2. Subject to proof.
3. Pertains to record.
4. Correct, transfer is a part of service.
5. Transfer is no punishment & it is a part of service, Govt. servant is supposed to be transferred anywhere his services is required, more beneficial in the interest of public service without any condition of tenure.

Grounds.

- a) Incorrect, the transfer has been issued within the purview of law, facts and justice.

BEFORE THE HON'ABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Appeal No. 104/2014

Mr. Muhammad Khurshid S/o Muhammad Abbas Khan. PST/PTC Teacher Govt Primary School Bada Sam Shakardara Kohat.....(Appellant)

VERSUS

- 1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- 2. Director (E&SE) department Khyber Pakhtunkhwa Peshawar.
- 3. District Education Officer (Male) Kohat.
- 4. Sub Divisional Education Officer (Lachi) Elementary & Secondary Education Kohat.....(Respondents)

REPLY ON BEHALF OF RESPONDENT.

PRELIMINARY OBJECTIONS:

- 1. That the appellant has got no cause of action/locus standi to file the present appeal.
- 2. That the appellant has not come to the honorable service tribunal with clean hands.
- 3. That the appellant has suppressed/concealed material facts from the honorable service tribunal.
- 4. That the appeal is barred by time.
- 5. That the present appeal is bad in its present form, hence not maintainable and liable to be dismissed with cost.

Facts

- 1. ~~Correct.~~ *Pertains to record.*
- 2. ~~Correct.~~ *Subject to proof.*
- 3. ~~Correct.~~ *Pertains to record.*
- 4. Correct, transfer is a part of service.
- 5. Transfer is no punishment & it is a part of service, Govt. servant is supposed to be transferred anywhere his services is required, more beneficial in the interest of public service without any condition of tenure.

Grounds.

- a) Incorrect, the transfer has been issued within the purview of law, *facts and justice.*

- b) Explained vide para "A".
 - c) Incorrect, the order has been issued in the best interest of public service.
 - d) ~~Correct~~, there is no limit of tenure and his transfer was made after six months considering his services more beneficial and necessitate in the GPS Banda Fateh Khan.
 - e) ~~Incorrect~~ The substitute of the appelland also belong to UC Shakardara and he has right to be posted there.
 - f) ~~Incorrect~~ AS replied in para 2 The other PST teachers serving in the different UC's where-as they belongs to Rural 1 Shakardara also right to be posted in their own UC therefore they may also be given a chance.
 - g) ~~Accepted~~ ~~Incorrect~~ ? incorrect, the appelland has been dealt with in accordance with law.
- (H) That the respondents seek permission to raise additional grounds at the time of arguments.

It is therefore humble prayed that instant appeal in the light of facts explained above may very kindly be dismissed with cost.

[Signature]
District Education Officer
(Male) Kohat.

[Signature]
Sub Divisional Education Officer
(Male) Primary Lachi (Kohat). *[Signature]*

CPI
Pl. Net.
[Signature] 6/15/14

Under subject to correction, attachment of all annexure, affidavit and approval of Sd/-

Approved
[Signature] 6/15

[Signature]
6/15/2014
Govt: Pleader
Khyber Pakhtoon Khwa
Svc: Tribunal Peshawar

BEFORE THE SERVICE TRIBUNAL, K.P.K. PESHAWAR.

Service Appeal No. 104/2014

Muhammad KhurshidVersus..... Government of KPK etc.

RE-JOINDER ON BEHALF OF APPELLANT.

Respectfully sheweth;

PRELIMINARY OBJECTIONS.

That all the preliminary objections are incorrect and have no nexus with the present appeal and irrelevant.

FACTS

1. No need of reply.
2. No need of reply.
3. No need of reply.
4. That para-4 is correct to the extent that transfer is a part of service, but transfer order must be made in accordance with law and prevailing policy.
5. That para-5 is correct to the extent that government servant can be transferred anywhere, but there are rules/policies available, according to which, before transfer, these rules/policies must be adopted.

GROUNDS

- a) Incorrect, the impugned transfer order has been passed against the rules/policies of the Department and against law.
- b) Para-b is incorrect.
- c) Para-c is incorrect, because the transfer order is against the prevailing rules and regulations, in the field.
- d) Para-d is incorrect, the tenure of transfer is 2 years.

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- e) Para-e is denied because the appellant may be adjusted in his Union Council or the Union Council nearer his own Union Council.
- f) Para-f is denied.
- g) Para-g is denied.
- h) para-h, no need of reply.

It is, therefore, humbly prayed that on acceptance of this re-joinder, the appellant may please be ordered to remain on duty in Government primary school, Bada Sam shakardara Kohat or posted in nearer to his Union Council school.

Appellant

through

PESHAWAR

-07-2014

(Hassan U.K. Afridi)
Advocate, High Court,
Peshawar

AFFIDAVIT

I, Muhammad Khurshid son of Muhammad Abbas Khan, PST/PTC teacher Govt. primary School Bada Sam shakardara, Kohat do hereby solemnly affirm and declare on oath that the contents of the above re-joinder are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.


Deponent

Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011

AN ACT to regulate by law appointments, postings and transfers of teachers serving in primary, middle, secondary and higher secondary schools, lecturers in colleges and instructors in technical institutions and doctors in health facilities.

Preamble.---WHEREAS it is expedient to regulate by law appointments, postings and transfers at local level, of teachers serving in primary, middle, secondary and higher secondary schools, lecturers in colleges and instructors in technical institutions and doctors in health facilities and to ensure the availability of teachers in schools, lecturers in colleges and instructors in technical institutions and the doctors in health facilities, and to regulate deputation of doctors abroad, and to provide for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:

1. Short title, application and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011.

(2) It shall apply to teachers serving in primary, middle, secondary and higher secondary schools, lecturers in colleges as well as commerce colleges and instructors serving in technical institutions and doctors serving in the health facilities in the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. Definitions.---(1) In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say,-

- (a) "Commission" means the Khyber Pakhtunkhwa Public Service Commission;
- (aa) "college" means a degree college;
- (b) "doctor" means a doctor serving in the health facility;
- (c) "Government" means the Government of the Khyber Pakhtunkhwa;
- (d) "health facilities" mean all health facilities established and managed by Government to provide medical facilities to general public;
- (e) "lecturer" and "instructor" respectively means a lecturer or an instructor serving in a Technical Institution as well as in a college, as the case may be;
- (f) "prescribed" means prescribed by rules made under this Act;

(g) "rules" mean the rules made under this Act;

(h) "school" means school in the public sector including primary, middle, secondary school, higher secondary school or an institution of equivalent level imparting education through any system or medium of instruction in the public sector;

(i) "teacher" means a teacher of primary, middle, secondary or higher secondary school; and

(j) "technical institution" means and includes a Commerce College or Government College of Management Sciences or Technical Institute or Technical and Vocational Training Center or Skill Development Center in the public sector imparting technical education to students leading to the award of a degree or a diploma or a certificate.

(2) Words and phrases used in this Act, but not defined, shall have the same meanings as respectively assigned to them under the relevant federal law or provincial law or any other statutory order or rules for the time being in force.

3. Appointment, posting and transfer of primary school teachers.---

(1) The vacancy of primary school teacher shall be filled in from the candidates belonging to the Union Council of their permanent residence mentioned in their Computerized National Identity Card and domicile, on merit and if no eligible candidate in that Union Council is available where the school is situate, such appointment shall be made on merit from amongst eligible candidates belonging to the adjacent Union Councils:

Provided that on availability of a vacancy, a primary school teacher, appointed from adjacent Union Council, as referred to in this sub-section, shall be transferred against a vacant post in a school of the Union Council of his residence within a period of fifteen days.

(2) Upon marriage, the primary school teacher on request may be transferred to the school in the Union Council, where his spouse, ordinarily resides, subject to the availability of vacancy.

(3) The primary school teacher shall be transferred to other school within the Union Council on completion of tenure as may be prescribed or before completion of tenure, subject to the policy of rationalization for maintaining certain students teachers ratio, if any.

(4) Government shall, within a period not exceeding one year of the commencement of this Act, make arrangement for posting of all the primary school teachers appointed prior to coming into force of this Act, to the schools of their respective Union Councils or adjacent Union Councils, as the case may be.

4. Appointment of doctors, lecturers, instructors, subject specialists and teachers on adhoc basis.---(1) Government may, through the competent authorities make adhoc appointment on merit against the vacant posts of doctors, lecturers, instructors, subject specialists and teachers, falling within the purview of Commission, in a district concerned from the domicile holders of that district for a period of one year or till the arrival of recommendees of Commission, whichever is earlier after fulfilling the pre-requisites

2. Briefly, stated the facts giving rise to the filing of instant petition are that petitioner filed a suit against respondents for declaration that he is the owner in possession of the suit-land situated in village Neelore Tehsil and District Mansehra for being remained in possession as mortgagee for more than 60 years as well as being in adverse possession for more than 12 years and the respondents have lost their rights of ownership and mortgagor in the suit-land.

3. The suit was contested by the respondents by filing their written statement on various grounds that the suit is not within time and also not maintainable in its present form and that respondents Nos. 4 to 8 are bona fide purchasers of the land but ultimately the suit was dismissed vide judgment and decree dated 20-2-1995 mainly on the ground that plea of prescription is not available to the petitioner and also that the exclusive possession over the suit-land hostile to the respondents has not been proved. Petitioner filed appeal before the District Judge, Mansehra, which was dismissed, vide judgment dated 23-11-1999 holding that section 28 of the Act, 1908 (Act No. IX of 1908) (hereinafter referred to as 'the Act') has been declared repugnant to the Injunctions of Islam and as such not applicable to the present case. Feeling aggrieved, the petitioner assailed the said judgment before the learned High Court in the above mentioned civil revision, which was dismissed, vide impugned judgment.

4. We have heard Raja Muhammad Ibrahim Satti, learned Advocate Supreme Court for the petitioner and Roy Muhammad Nawaz Kharal, learned Advocate Supreme Court for respondents and have gone through the record and proceedings of the case in minute particulars.

5. Raja Muhammad Ibrahim Satti, learned Advocate Supreme Court for the petitioner has argued that the findings of the Courts below suffer from misreading and non-reading of material evidence on record and also from wrong appreciation of facts and law involved in the case. He further argued that the Courts below have erred in holding that since section 28 of the Act has been declared un-Islamic by the learned Shariat Appellate Bench of this Court, the petitioner could not claim to have prescribed his titled through adverse possession. He contended that section 28 of the Act has been declared to be ineffective and non-existent from 31-8-1991 only and the rights which had already matured before 31-8-1991 on account of adverse possession have not been affected by the said judgment because the petitioner had prescribed his titled through adverse possession long before 31-8-1991. He further contended that petitioner has successfully proved his adverse possession through evidence. According to him the learned trial Court even did not frame the issues properly which arose out of the pleadings of the parties.

6. On the other hand Roy Muhammad Nawaz Kharal, learned Advocate Supreme Court for respondents vehemently controverted the view point as canvassed by learned counsel for petitioner and supported the impugned judgment being free from any illegality or serious irregularity.

7. The main point, which requires serious consideration, is whether the petitioner has matured his title through adverse possession. The petitioner claimed that respondents have lost their rights of ownership and status of mortgagors over the suit property and he has become owner in possession of the same due to open and hostile possession for more than 12 years and also by prescription for being remained in possession as mortgagee for more than 60 years. We are of the opinion that this plea is not available to him inasmuch as section 28 of the Act has been declared repugnant to the Injunctions of Islam by this Court in the case of Maqbool Ahmad v. Hakoomat-e-Pakistan 1991 SCMR 2963, wherein it has been held that section 28 of the Act is repugnant to the Injunctions of Islam insofar as it provides for extinguishment of the right in the property at the determination of the period prescribed for instituting a suit for possession of the said property and that this decision shall take effect from 31st of August, 1991 and on this date section 28 of the Act shall also cease to have effect.

8. For what has been discussed above, we are of the considered opinion that impugned judgment is based on valid and sound reasons and is entirely in consonance with the law laid down by this Court. Neither there is misreading nor non-reading of material brought on record or misconstruction of facts or law.

9. Resultantly, the petition being devoid of force is dismissed and leave to appeal refused.

M.H./M-218/SC

Petition dismissed.

2007 S C M R 599 L

[Supreme Court of Pakistan]

*Present: Sardar Muhammad Raza Khan and Nasir-ul-Mulk, JJ*ROSHAN KHAN, SET GOVERNMENT HIGH SCHOOL
KUZ PAO, DISTRICT SHANGLA---Petitioner

versus

DIRECTOR SCHOOLS AND LITERACY, N.-W.F.P.,
PESHAWAR and 4 others---Respondents

(On appeal from the judgment, dated 10-8-2004 passed by N.-W.F.P. Service Tribunal, Peshawar in Appeal No.205 of 2004).

North-West Frontier Province Civil Servants Act (XVIII of 1973)---

---S. 10---Rules of Business, (N.-W.F.P), 1974, R.21(2)---Transfer of civil servant---Political influence---Recommendation of Member of Provincial Assembly---Civil servant was a senior school teacher who assailed his transfer order before Service Tribunal but without any success---Plea raised by civil servant was that his transfer was politically motivated and on the recommendations of Member of Provincial Assembly---Validity---Transfer of civil servant under the orders of even a Minister was void and unlawful, being violative of R.21(2) read with Schedule V of Rules of Business, (N.-W.F.P.), 1974---Supreme Court, while condemning the role of Minister, that of tainted and subservient bureaucracy was also condemned and need for an upright, honest and strong bureaucracy was emphasized---Member of Provincial Assembly in view of background of political influence had been guilty of misconduct, unfair exploitation and malpractice that maligned the legislature and disrupted administration---Supreme Court converted petition for leave to appeal into appeal and set aside the transfer order of civil servant---Appeal was allowed. [pp. 603, 604] A & B

Munawar Khan v. Niaz Muhammad 1993 SCMR 1287; Parwez Yunas Uppal's case PLJ 2000 (Tr.C) Service 473; Zahid Akhter's case PLD 1995 SC 530 and Sayyad Sikandar Ali Shah's case 2002 SCMR 1124 fol.

Malik Shahzad Ahmed, Advocate Supreme Court, for Petitioner.

Khushdil Khan, Additional Advocate-General, N.-W.F.P. along with Respondents Nos.2 and 5.

Mir Adam Khan, Advocate-on-Record along with Pir Muhammad Khan, MPA and Hamid Iqbal, MPA on Court's call.

Date of hearing: 3rd October, 2006.

JUDGMENT

SARDAR MUHAMMAD RAZA KHAN, J.--- Roshan Khan, a Senior English Teacher of District Shangla seeks leave to appeal against the judgment dated 10-8-2004 of learned N.-W.F.P. Service Tribunal, Peshawar, whereby, his appeal was dismissed and his transfer order dated 8-3-2003 from Shangla to Government High School Kuz Pao was considered valid, within the contemplation of section 10 of N.-W.F.P. Civil Servants Act, 1973. The plea of the petitioner that his transfer was void being politically motivated, was not taken into consideration.

2. The petitioner alleges and claims to have served Education Department for 30 years and currently belonged to the senior class of teachers. He was holding the post of Assistant District Officer (M) Inspection, since 12-3-2002. Due to his honest and bold action against the teachers; absent from duty, eight teachers who were proceeded against accordingly, nursed grudge and departmental rivalry against the petitioner. They approached Mr. Pir Muhammad Khan MPA whom they had allegedly favoured in elections and thus with the active role of the MPA aforesaid, petitioner was transferred vide order dated 8-3-2003.

3. He preferred departmental appeal, giving the aforesaid background, whereupon, on acceptance of such appeal on 28-2-2004, his transfer order dated 8-3-2003 was withdrawn. The political influence once again got spurred and, to the utter disappointment of the petitioner, the above mentioned order dated 28-2-2004 was cancelled on 11-3-2004. He knocked unsuccessfully at the door of Service Tribunal and hence this petition.

4. As, gross violation of repeated verdicts of this Court was prima facie noticed, a Full Bench of this Court issued notice to the respondents. Again, this Court on 23-5-2006, in view of the allegations levelled by the petitioner, issued notice to Pir Muhammad Khan, MPA to appear before the Court. On appearance he furnished written reply which forms paper book-III of this record.

5. At page 26 of the file there is a memo on the letter head pad of Pir Muhammad Khan MPA where he has given different directions for the postings and transfers of different civil servants. In his comments he stated that the endorsements on the letter head pad (P-26) are undated, unnumbered, unsigned by Pir Muhammad Khan and not addressed to any one. He never denied, in so many words, the endorsement having been made by him but still he said that "the same can only amount to proposals which were to be considered by the concerned authorities and such proposals do not amount to any order or directions or recommendations."

6. From the aforesaid remarks, the MPA who professes to be an Advocate as well, tried to interpret his endorsements at page-26 as mere proposals of recommendatory nature. This is factually incorrect because, the language used is indicative of direction and not proposals. A letter No.3131/F.No.72/ADO(M)/Shangla dated 22-1-2003 written by Directorate of Schools and Literacy to the Section Officer (Primary) Government of N.-W.F.P. Schools and Literacy Department Peshawar proves how Mr. Pir Muhammad MPA was involved in the transfer of the petitioner. A para reproduced therefrom would be self-explanatory:--

"2. On 8-3-2003 Mr. Pir Muhammad Khan, MPA, District Shangla

visited this office and submitted a proposal for making transfer of some SET/ADOs of District Shangla and thus his recommendation was honoured and transfer order was issued (copy attached) wherein the appellant concerned was victimized/suffered having immature tenure against the ADO(M) post at Shangla."

7. Another letter No.4454/F.No.72/ADO(Male)/Shangla dated 29-1-2004 would reinforce the charge that Mr. Pir Muhammad Khan MPA had pursued the matter. The relevant para of this letter by Deputy Director (Estt.) Schools and Literacy N.-W.F.P., as follows, is quite revealing:--

"2. However it is further clarified that his transfer order was made on the request of Mr. Pir Muhammad Khan MPA in March, 2003 and since this Directorate has issued his transfer order hence this Directorate is not in a position to cancel it rather the worthy Secretary, (S&L) N.-W.F.P. is the competent/appellate authority to consider his appeal regarding cancellation of his transfer order."

8. It is deplorable that the officers concerned invited the recommendations of MPAs for cancellation of transfer order, specially, Pir Muhammad Khan MPA, the one who opposed the petitioner. This very letter shows that even the department was aware that it was impossible for the petitioner to obtain recommendation of Pir Muhammad Khan MPA because it was he who victimized the petitioner. Anyhow, when the petitioner was asked to bring recommendations of an MPA, he produced one of Mr. Hamid Iqbal. It seems that Mr. Hamid Iqbal did not volunteer to make recommendation. It was probably arranged by the petitioner under the desire of the department, in order to balance the pressure. The relevant para is as follows:--

"3. As regards obtaining of recommendation/consent from Pir Muhammad Khan MPA Shangla as per your directions contained in your letter referred to the above, so it is not possible for him as he has been victimized through the said MPA, however, he has been got favourable/strong recommendation of Mr. Hamid Iqbal, MPA, also belongs to District Shangla (Annexure "B")."

9. Another letter would further clarify the persistent involvement of Mr. Pir Muhammad Khan MPA. The same is reproduced:--

"Directorate of Schools and Literacy N.-W.F.P. Peshawar.
No.11408/dated 2-12-2003.
The Section Officer (Primary)
Government of N.-W.F.P., Peshawar.

Memo.

Kindly refer to your office letter No.SO(PE)(S&L)EDO dated Peshawar the 10-11-2003 the following comments are hereby submitted for clarification of situation:--

- (1) The letter issued vide reference No.3131/F.No.72/ADO(M) Shangla dated 27-10-2003 by Director (S&L) Shangla, it is requested that the said proposal/view was submitted by the worthy MPA Mr. Pir Muhammad Khan. This officer has neither forwarded for said proposal nor is involved in this matter.
- (2) The ADO Mr. Roshan Khan is an efficient and hardworking officer.
- (3) The ADO concerned Mr. Roshan Khan had not completed his normal tenure on the said post.

Keeping in view the above facts if the transfer order of the officer concerned is cancelled this office will have no objection.

Executive District Office
Schools and Literacy"

10. All documentary evidence has gone a long way to prove that Pir Muhammad Khan was persistently involved in getting the petitioner transferred. He dubbed it as mere proposal but, under the prevailing conditions, one can well contemplate as to what is meant by the proposal of an elected representative who carries a weight to throw.

11. As early as in 1993, this Court had sensed the malady. In *Munawar Khan v. Niaz Muhammad* 1993 SCMR 1287, a larger Bench had taken serious notice of allocation of appointment quota to the Ministers, MNAs and MPAs though with the blessings of the executive, and had declared them void ab initio, calling upon all Courts, Tribunals and Authorities to so declare. A healthy example of such compliance was Parwez Yunas Uppal's case PLJ 2000 (Tr.C.) Service 473, where the learned Federal Service Tribunal declared a transfer order void and mala fide because it was motivated by a privilege motion moved in the assembly and because the competent authority had passed it without the application of its own and independent mind.

12. Transfer of civil servant under the orders of even a Minister was held by this Court to be void and unlawful, being violative of Rule 21(2) read with Schedule V of Rules of Business 1974. While condemning the role of Minister, that of tamed and subservient bureaucracy was also condemned and need for an upright, honest and strong bureaucracy was

emphasized. Zahid Akhter's case PLD 1995 SC 530 is the relevant reference.

13. Lately, in Sayyad Sikandar Ali Shah's case 2002 SCMR 1124, the role of competent/Administrative authorities was once again condemned when they yield and surrender to the dishonestly intruding political influence.

14. It is for quite a long time, that some of the peoples representatives, whose sacred and scholarly job it was to legislate while honourably confining themselves to the dignified mansions of the assemblies, have started undesirable, dishonest and corrupt interference into the purely Executive/Administrative domain of appointments, promotions and transfers of civil servants. By now it has turned into a mafia that does not care about Law, Rules, Regulations, Rules of Business and repeated deprecations by the Supreme Court of Pakistan and High Courts. All forces seem to have whittled down before the exploitation and blackmail by some people whose weight, and not legislation, matters. This is bound to destroy the institutions, if not already destroyed.

15. Despite the fact that there is no law in the country giving authority to MPAs or MNAs to interfere into the Executive and Administrative domain, even to the extent of recommendations and proposals; despite the fact that the Rules of Business are utterly to the contrary; despite the fact that such practice is highly deprecated and condemned by this Court on numerous occasions, Mr. Pir Muhammad Khan, on whose letter head pad word Advocate appears below his name, has flouted all Law, Rules and Regulations. As an Advocate he ought to have been aware of the verdicts of the superior Courts and if not, at least, he ought to have known the Rules of Business and above all, the nature of his own obligations towards legislation in the Assembly and not beyond.

16. Before this Court he appeared personally and held the rostrum to address. It was a short but eloquent speech where, instead of clarifying his position, he argued the case against the petitioner saying that he was beaten by the teachers, that law and order situation had arisen and that his transfer was, therefore, necessary, again not realizing, that law and order also was not his headache. It is quite interesting that he still kept venom against the petitioner. At the end he requested the Court, not that he be absolved but that the instant petition be dismissed. In view of the background of political influence, the background of the case in hand and the repeated verdicts of this Court, we are constrained to observe that Mr. Pir Muhammad Khan MPA has been guilty of misconduct, unfair exploitation and malpractice that maligns the legislature and disrupts the administration.

17. It was for the reasons above that we had accepted the petitioner's claim after conversion into appeal through our short order dated 3-10-2006 that runs as follows:--

"For detailed reasons to be given later on, the impugned judgment dated 10-8-2004 of the learned N.-W.F.P. Service Tribunal is set aside, the transfer order # 1201-1206/F.No.72/DS&L/ADO(M)/Shangla, dated 8-3-2003 passed by Director Primary Education N.-W.F.P., Peshawar is hereby set aside as withdrawn and that Endst. No.1077-82/F.No.13/Vol: 1/DIE/ADO(M) Shangla, dated 12-3-2002 of the Director Primary Education, N.-W.F.P. Peshawar is restored.

M.H./R-22/SC

Appeal allowed.

2007 S C M R 605

[Shariat Appellate Jurisdiction]

*Present: Justice Javed Iqbal, Chairman,
Justices Sardar Muhammad Raza Khan,
Ch. Ijaz Ahmed, Dr. Allama Khalid Mehmood
and Allama Rashid Ahmed Jullundhari, Members*

IBRAR HUSSAIN and others---Appellants

versus

THE STATE and another---Respondents

Criminal Appeals Nos.14(S) and 15(S) of 2005, decided on 15th November, 2006.

(On appeal from the judgment, dated 2-5-2005 passed by the Federal Shariat Court, Islamabad, in Criminal Appeals Nos.196-I and 199-I of 2003; Murder Reference No.17-I of 2003).

(a) **Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979)---**

---Ss.10(4) & 11---Reappraisal of evidence---Contradictory statements---Deliberate and dishonest improvements---Accused were convicted for gang rape and abduction and were sentenced to death penalty and imprisonment for life respectively, by Trial Court---Federal Shariat Court partly allowed the appeal and set aside the sentence for gang rape but maintained that of abduction---Plea raised by accused was that in view of contradictory statements...

1999 TD(Service) 42 ✓

Present: Mr. Justice Nasir Aslam Zahid

Mr. Justice Abdur Rehman Khan

[Supreme Court of Pakistan]

Civil Petition No. 356-L of 1998 disposed of on 29.5.1998.

(On appeal from the order dated 12.1.1998 of the Lahore High Court passed on C.M. No. 1/98 in W.P. No. 526/98).

FARRUKH J. GULZAR---Petitioner

versus

SECRETARY, LOCAL GOVT. AND RURAL DEVELOPMENT
 DEPARTMENT, LAHORE AND 2 OTHERS---Respondents

(a) Transfer of Civil Servants---

MPA has no jurisdiction to give a direction or make a request to Government department on basis of complaints or recommendations received by him for transfer of a civil servant. If any such complaints are received by MPA, concerned parties should be directed to address complaints to concerned department and in case no action was taken on such complaints by concerned department further action could be taken by complainants in accordance with law and rules.

(P. 46)

(b) Transfer Policy---

All transfers should be made in accordance with transfer policy of Government.

(P. 48)

(c) Transfer Policy---

Transfer policy of employees of Local Councils framed through Notification dated 26.5.1998 is based generally on approved Government transfer policy.

(P. 44/46)

(d) Constitution of Pakistan, 1973---

Arts. 212(3), 199. Leave petition to Supreme Court against interim order of High Court by which it suspended operation of transfer order which was challenged in writ petition before it. Contended before Supreme Court that High Court had no jurisdiction to pass impugned order in view of law contained in Art. 212 in matters relating to transfers of Government employees. Supreme Court informed that cases of leave petitioner and respondent (writ

respondent (writ petitioner) that he would withdraw his writ petition within 15 (P. 47)

Date of hearing : 29.5.1998 (Islamabad)

ORDER

NASIR ASLAM ZAHID, J.---The following are present:--

- (1) Mr. Abdul Sami Khawaja, ASC for the petitioner with petitioner Farrukh J. Gulzar.
- (2) Mr. Muhammad Asghar Malik, ASC for respondent No. 2 with respondent Ch. Nazir Ahmad.
- (3) Mr. Altaf Elahi Sheikh, Addl. A.G. Punjab, on Court notice.
- (4) Dr. Qazi M. Mohyuddin, ASC and Legal Advisor, Punjab Local Govt. Board, alongwith Khalid Farooq, Secretary of the Board.
- (5) Haji Malik Jalal Din Dhakoo, MPA, Sahiwal, present pursuant to notice.

This petition has been filed by Farrukh, J. Gulzar seeking leave against the interim order dated 12.1.1998 passed on C.M. No. 1/98 in Writ Petition No. 526/98 filed by respondent No. 2 Ch. Nazir Ahmad against the Secretary, Local Government and Rural Development Department, Punjab, and petitioner Farrukh J. Gulzar. The impugned order of the High Court passed on 12.1.1998 is reproduced here:--

"It is argued that the petitioner (respondent No. 2 before this Court) has been prematurely transferred at the behest of local MPA. In this behalf reference is made to Annexures B and C.

(2) In order to better appreciate the grievance of the petitioner I would like to hear respondent No. 1.

(3) Rana Muhammad Arif, learned Addl. A.G. is present on Court's call. Let copy of the petition be made over to him to obtain a report and instructions from respondent No. 1 who shall be represented on the next date of hearing by a responsible officer alongwith complete record.

C.M. No. 1/98

(4) Notice for an early date. In the meanwhile operation of the impugned order is suspended."

In the present petition for leave the interim order on C.M. No. 1/98 granting

jurisdiction to pass the impugned order in view of the bar contained in Article 212 of the Constitution, the transfers relating to terms and conditions of service of the Government employees, namely, petitioner Farrukh J. Gulzar and respondent No. 2 Ch. Nazir Ahmad.

2. In the High Court, writ petitioner Ch. Nazir Ahmad, who was posted as Accounts Officer Zila Council, Sahiwal, had taken up the plea that petitioner Farrukh J. Gulzar had exerted political pressure on the Secretary Local Government and Rural Development Department through Haji Malik Jalal Din Dhakoo, MPA Sahiwal, for his posting and transfer as Accounts Officer Zila Council Sahiwal vide letters dated 15.12.1997 and 16.12.1997 addressed by the said MPA to Secretary of the Board (at that time Tajjamaal Hussain Rizvi). The said two letters are reproduced here:--

"Haji Malik Jalal Din Dhakoo

M.P.A. Sahiwal

Dated 15.12.1997

Ref. No. _____

محترم برادر م رضوی صاحب

مزاج گرامی

السلام علیکم
ایف جی گلزار اکاؤٹس آفیسر ملتان میں ہے۔ مہربانی کر کے اس کا تبادلہ ضلع کوئٹہ ساہیوال میں بطور اکاؤٹس آفیسر کر کے منھکور فرمائیں۔

فقط آپ کا

جلال دین ڈھکو MPA

16-12-97

'PROVINCIAL ASSEMBLY OF THE PUNJAB

محترم برادر م رضوی صاحب

مزاج گرامی

السلام علیکم
نذیر احمد اوکانت ضلع کوئٹہ میرے حلقہ کا ہے۔ پارٹی باز ہے۔ ضلع کوئٹہ میں بے چینی پیدا کر دی ہے۔ ۶-۵ سال سے مقیم ہے۔ اس کا تبادلہ ہر صورت فرما دیں۔

فقط آپ کا بھائی

جلال دین ڈھکو

appears that, pursuant to the said letters, transfers orders had been passed on the desire of MPA Haji Malik Jalal Din Dhakoo. As observed, on the writ petition filed by Ch. Nazir Ahmad, the High Court called for report and, on the application for interim relief, the operation of the impugned order transferring Ch. Nazir Ahmad was suspended, which interim order has been challenged in the present petition for leave.

3. When this petition for leave came up in chambers for interim orders, learned counsel appearing for petitioner Farrukh J. Gulzar submitted that the said two letters were apparently forged and perhaps were not available on the record of the Department to the information of the petitioner. In the circumstances, notice was issued to the Secretary Local Government and Rural Development Department, Lahore, to produce the original record.

On 27.3.1998, the record was produced which contained the said two letters in original written by the MPA. It was further found that the letters had been diarized and, according to the representative of the Department, Tajjamaal Hussain Rizvi, then Secretary of the Board, had initialled the two letters, which showed that the said two letters were received by the Secretary of the Board from the MPA and had been placed on record.

On that day, Mr. Altaf Elahi Sheikh, learned Addl. Advocate-General, Punjab, informed on instructions, that petitioner Farrukh J. Gulzar had been transferred to Multan and respondent Nazir Ahmad had not taken over the charge at Lahore and was still at Sahiwal and this was on account of the order passed by the Lahore High Court. By order dated 27.3.1998, this Court suspended the interim order passed by the High Court to the extent of staying the transfer of Ch. Nazir Ahmad to Lahore and the effect was that Ch. Nazir Ahmad was required to report immediately and take over charge of the post at Lahore. The hearing was then adjourned to 22.4.1998 with the direction to the petitioner, respondent No. 2, MPA Sahiwal and Tajjamaal Hussain Rizvi, Secretary of the Board to be present in Court. When the matter was taken up on 22.4.1998, it was informed by the office that the MPA could not be served and the case was then adjourned for today.

4. Today, as observed, all the parties as well as Haji Malik Jalal Din Dhakoo, MPA Sahiwal, are present. On being asked as to why the two letters were written by him to the Secretary of the Board, MPA Haji Malik Jalal Din Dhakoo, first acknowledged that he had written the said letters, but then stated that these letters were written by him in good faith and in the interest of the

period of posting at a place, and this he had managed through influence, and a request was also made that if Ch. Nazir Ahmad was transferred from Sahiwal in his place Farrukh J. Gulzar, who was a good officer may be posted in his place. It was submitted by the MPA that whatever he had done was done with sincerity and in all humility and at the instance of the people of the area and that he had no personal interest in getting the transfers made.

It was pointed out very clearly to the MPA that his action in writing the said two letters in effect amounted to requiring the Secretary to make the transfers and that this was an improper action on the part of the MPA. It was emphasized that there was a transfer policy of the Government and all transfers should be made in accordance with such transfer policy in the Local Council offices also till such time the Local Government and Rural Development Department adopted a new policy of its own for the employees. It was further pointed out to the MPA that even if he had received complaints or recommendations, it was not within the jurisdiction of the MPA to give a direction or make a request to the Secretary to effect the transfers on the basis of such complaints or recommendations. It was emphasized that the recommendations should be made as had been done and, if there were any complaints, the concerned parties should have been asked to address the complaints to the concerned Department and in case no action was taken on such complaints by the concerned Department, further action could be taken by the complainants in accordance with law and the rules.

5. Haji Malik Jalal Din Dhakoo, MPA from Sahiwal, submitted that he had understood what was intimated to him by the Court and that in future he would not take any action which may amount to interference with the performance of the functions of any Department according to the applicable law and rules.

6. Dr. Qazi M. Mohyuddin, learned ASC and Legal Advisor, Punjab Local Government Board, informs that the previous Secretary, Tajjamm Hussain Rizvi, has been transferred and in his place Khalid Farooq has taken over as Secretary to the Board and that, by Notification dated 26.5.1998, the Punjab Local Government Board has approved a transfer policy for the employees of the Local Councils, provisions whereof have generally been drawn from the approved Government transfer policy. Copy of the Notification dated 26.5.1998 has been placed on record.

It is further stated by Dr. Qazi M. Mohyuddin that in future all transfers will be made strictly in accordance with the transfer policy that has been approved and that the cases of petitioner Farrukh J. Gulzar and respondent

7. In the circumstances, this petition is not pressed by Mr. Abdul Sami Khawaja, learned ASC for the petitioner. Mr. Muhammad Asghar Malik, learned ASC for respondent No. 2 Ch. Nazir Ahmad, states that he will file a normal application within 15 days from today for withdrawal of Writ Petition No. 526/98 filed by his client before the Lahore High Court.

8. The *ad interim* order dated 12.1.1998 passed on C.M. No. 1/98 in Writ Petition No. 526/98 by the Lahore High Court has already been suspended. The Writ Petition will be withdrawn by respondent No. 2 within 15 days from today as undertaken by his counsel. In the circumstances, Civil Petition No. 356-L of 1998 is not pressed and stands disposed of as such.

Order Accordingly.

1999 TD(Service) 47

Before Chaudhary Muhammad Taj, J. (AJK)

Writ Petition No. 146 of 1998 dismissed on 30.5.1998.

RAJA MUHAMMAD AZAD KHAN, REGISTRAR, AZAD JAMMU & KASHMIR UNIVERSITY, MUZAFFARABAD---Petitioner

versus

VICE-CHANCELLOR, AZAD JAMMU AND KASHMIR UNIVERSITY
 • MUZAFFARABAD, ETC.---Respondents

(a) AJK University Act, 1985---

S. 11 read with AJK University Service Statutes (1981). Vice-Chancellor, in the best interest of University, can effect and make transfers from one post to another to an equivalent post. Vice-Chancellor holds and exercises all powers including those vested with Syndicate to be exercised in an emergency. Order of transfer u/s. 11 from post of Registrar to any other equivalent post would not be illegal and would provide any grievance justiciable by High Court in exercise of its writ jurisdiction u/s. 44, AJK Constitution Act, 1974. (P. 51,52)

(b) Constitution Act, 1974 (AJK)---

S. 44. Petitioner seeking writ of *quo warranto* has burden to show that respondent is not holding office under authority of law. When he initially makes out *prima facie* case, burden of proof would shift to respondent. If petitioner fails to make out a *prima facie* case, rule *nisi* would not be issued as a matter of routine. (P. 52)

(c) Ibid---

S. 44. Non-invocation of alternate remedy against order impugned in writ petition would render writ petition as not maintainable. (P. 53,54)

... .. Hassan Kiani and Ghulam Mustafa Mughal

ORDER

CHAUDHARY MUHAMMAD TAJ, J.—This writ petition filed under section 44 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, calls in question the order passed by respondent No. 1, on April 2, 1998, as being illegal, and without jurisdiction. Alternatively, a writ of *quo warranto* was sought to be issued against respondent No. 2.

2. The facts as stated in the petition, are that the petitioner was appointed as Registrar of Azad Jammu and Kashmir University, in BPS-19, on the recommendation of Selection Board, by the competent authority. The post was later on upgraded and the petitioner was given BPS-20 and since then he is performing his duties in the above capacity. It was further disclosed that on resignation tendered by Dr. Muhammad Kharait Chaudhary, the additional charge of the Vice-Chancellor of the University was handed over to the Chief Secretary of Azad Jammu and Kashmir, on March 12, 1998, who *vide* his order dated April 2, 1998, appointed respondent No. 2 as Registrar of the University and transferred the petitioner from his present assignment. The aforesaid order is challenged through this writ petition as being illegal and of no legal effect.

3. M/s. Kh. Shahad Ahmed, Ashfaq Hussain Kiani and Ghulam Mustafa Mughal, the learned Counsel appearing for the petitioner, raised the following points in support of the petition:--

- (i) That respondent No. 1 was not competent to effect transfer of the petitioner from the post of Registrar, Azad Jammu and Kashmir University. It was explained that the Syndicate of the Azad Jammu & Kashmir University was only the competent authority to make such orders and not the Vice-Chancellor;
- (ii) that the powers envisaged under section 11 of the Azad Jammu and Kashmir University Act, 1985, the Vice-Chancellor could pass an order for temporary arrangement only, therefore, the order runs counter to law;
- (iii) that the petitioner has been left without any post which indicates the respondent's *mala fide* intention of victimising the petitioner;
- (iv) that respondent No. 2 is a permanent employee of the Azad Jammu & Kashmir Government, serving as Additional Secretary (Services) in BPS-19. The Vice-Chancellor has no authority to transfer and appoint him as Registrar of the University. The order even otherwise is violative of Section 46 of the University Act, 1985 which empowers the Chancellor alone to appoint;
- (v) that the post of Registrar can be filled in by promotion or through direct recruitment. The appointment by transfer is not permitted under any of the rules; and
- (vi) that respondent No. 2, in any case, was not qualified to be appointed as Registrar of the University in view of the

to 1992 SCR 110 and 1994 C.L.C. 1632, in support of their assertion.

4. Mr. Rafique Mahmood Khan, the learned Counsel appearing for the respondents, on a pre-admission notice issued to them, addressed his arguments for the dismissal of the writ petition in the following manner:--

- (i) That the Vice-Chancellor under the University of Azad Jammu and Kashmir Act, 1985, is a Principal Executive and academic officer of the University and has all the powers to take any action he may consider necessary, including the transfers to be effected. It was emphasised that under section 11 of the University Act, more specifically under sub-sections (1) (3) & (4) of Section 11 of the Act, the Vice-Chancellor is fully empowered to pass any order in the best interest of the University, to ensure that the provisions of University Act, statutes, regulations and rules are faithfully observed, to promote the general efficiency and good order of the University;
- (ii) that the services of respondent No. 2 who was Additional Secretary in the Services Department of the Azad Jammu and Kashmir Government, were placed at the disposal of the Vice-Chancellor and was temporarily appointed/posted as Registrar. It was vehemently argued that the aforesaid officer was fully qualified and held the required qualification, experience and fulfilled all other conditions. It was also pointed out that nothing was brought on record except a bare assertion in the writ petition that respondent No. 2 was not qualified to be appointed which did not require for a notice to be issued to him, to explain under what authority of law he was holding the post, particularly when it was admitted that he, before the impugned order, was posted as Additional Secretary (Services). It was also submitted that the petitioner was to be adjusted by respondent No. 1 against some other equivalent post in the University, but due to stay order issued by this Court in terms of maintenance of *status quo*, the same could not be done and has to follow after vacation of stay order, therefore, the petitioner's assertion of his being left with no post, is without any substance; and
- (iii) that an alternative remedy in the shape of an appeal was available to the petitioner under section 38 of the University Act, 1985 which was adequate and in presence of aforesaid remedy, the writ petition was not competent and as such is not maintainable. Reliance in this regard

proposition involved in the present case was dealt with. The learned Counsel also referred to the Azad Jammu and Kashmir University Act, 1985, 1993 SCR 186, 27, 1980 CLC 952, in support of his assertions.

5. I have heard the learned Counsel for the parties and also gone through the record, contents of the writ petition as well as objections filed by the respondents, including the case-law referred to by the respective parties. The affairs of University of Azad Jammu and Kashmir are regulated and administered under the Azad Jammu and Kashmir University Act, 1985, statutes, regulations and rules made thereunder. The Vice-Chancellor is the principal executive and academic officer of the University who enjoys all powers necessary to exercise control and enforce discipline over all officers, teachers and other employees and students of the University and can also take any action in an emergency, requiring so necessary and to report to the Authority or other body which, in the ordinary course, would have powers to deal with the matter including the creation and filling up the posts temporarily for a period not exceeding 6 months, under section 11 of the University Act. The relevant Section is usefully reproduced as under:--

"11. *Powers and duties of the Vice-Chancellor.*--(1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall ensure that the provisions of this Act, the Statutes, the Regulations and the Rules are faithfully observed, shall promote the general efficiency and good order of the University and shall have all powers necessary to exercise control and enforce discipline over all officers, teachers and other employees and students of the University.

(2) The Vice-Chancellor shall, in the absence of the Chancellor, preside at a Convocation of the University and the meetings of the Syndicate and shall, if present, preside at the meetings of the Authorities of which he is the Chairman and be entitled to attend and preside at any meeting of any other Authority or body of the University.

(3) The Vice-Chancellor may, in an emergency which in his opinion requires immediate action, take such action as he may consider necessary and shall, as soon thereafter as possible, report his action

(4) The Vice-Chancellor shall also have the power--

- (i) to create and fill posts temporarily for a period not exceeding six months;
- (ii) to sanction all expenditure provided for in the approved budget, and to re-appropriate funds within the same major head of expenditure;
- (iii) to sanction by re-appropriation an amount not exceeding fifteen thousand rupees for an unforeseen item not provided for in the budget, and report it to the Syndicate at the next meeting;
- (iv) to appoint examiners for all examinations of the University after receiving panels of names from the relevant Authorities;
- (v) to make such arrangements for the scrutiny of papers, marks and results as he may consider necessary;
- (vi) to direct teachers, officers and other employees of the University to take up such assignments in connection with teaching, research, examination and administration and such other activities in the University, as he may consider necessary for the purpose of the University;
- (vii) to appoint employees upto Grade 16 in the National Pay Scales;
- (viii) to delegate, subject to such conditions, if any, as may be prescribed, any of his powers under this Act to an officer or other employees of the University; and
- (ix) to exercise and perform such other powers and functions as may be prescribed."

6. The analysis of the aforesaid provisions reveals that the Vice-Chancellor has got all the powers necessary to exercise control and enforce discipline over all officers and in emergency, if he so considers necessary, may take any action which, in his opinion, requires an immediate action and is also empowered to create any post for a period of six months, including the filling up of a post. The combined study of all the provisions maintaining powers and duties of the Vice-Chancellor shows that he holds and exercises all powers including those vested with the Syndicate to be exercised in an emergency. Therefore, it leaves no doubt that the Vice-Chancellor, in the best interest of the University, can affect and make transfers from one post to another, of an equivalent one, as provided in sub-sections (1), (3) & (4)(i) of

A grievance to him, to agitate the matter in a Court of law, much less through extraordinary Constitutional jurisdiction of this Court, providing a condition of an aggrieved person.

7. So far as the question of appointment of respondent No. 2 Registrar is concerned, the petitioner claimed that the relevant respondent is not qualified as per requirements maintained in Schedule-V, Category-I, II, in respect of the appointment of the Registrar. The assertion of the petitioner is not supported by any document, substantiating his point of view for respondent No. 2 being not qualified for the aforesaid appointment, while the respondent denied the petitioner's assertion. It may be mentioned that in writ of *quo warranto*, it is for the petitioner in the first instance to show that in view of the given facts of a case, the non-petitioner is not holding the office under the authority of law. If initially he makes out his *prima facie* case, the burden of proof would shift to the opposite side. But if the material facts are not pleaded by the petitioner on which he bases his claim, or the same are not sufficient enough to make out a *prima facie* case in favour of the petitioner, cannot be said that the rule, '*nisi*' can be issued as a matter of routine. The non-petitioner would be called upon to show he was holding the office under what authority of law, would arise only if in the first instance, the petitioner makes out a *prima facie* case that he was not so holding the office. The case of respondent No. 2, in the background of his having been serving as Additional Secretary in a Government Department, requires a further caution, demanding a strict proof for the purpose. Reliance in this regard is placed on 1993 SC 27 wherein it was observed as under:--

"It is for the petitioner in the first instance to show that in view of the given facts of the case, the non-petitioner is not holding the office under the authority of law. If he initially makes out his *prima facie* case, the burden of proof will shift to the opposite side but if the material facts are not pleaded by the petitioner on which he bases his claim or the same are not sufficient enough to make out a *prima facie* case, it cannot be said that a rule *nisi* can be issued as a matter of routine."

It may also be added for clarification that the objection raised for respondent No. 2, a Government servant, with regard to his appointment as Registrar of the Vice-Chancellor, is also found to have no substance in it as the Counsel for the respondents produced a file before the Court, containing an order where the services of respondent No. 2 were placed at the disposal of the Vice-Chancellor.

8. The learned Counsel for the respondents raised a preliminary objection with regard to the maintainability of the writ petition on the ground of unavailability of an alternative remedy to the petitioner. It was strenuously urged on the basis of judgment recorded by the Supreme Court of Azad Jammu and Kashmir while dealing with the proposition in hand, in the case, *Khizar Hayat Khan v. Vice-Chancellor, University of Azad Jammu and Kashmir*, that the remedy of appeal available under section 38 of the University Act, 1985, bars the petitioner to file the writ petition. The learned Counsel appearing for the petitioner, while controverting the contention of the learned Counsel for the respondents, relied upon 1992 SCR 110 (*Chaudhary Muhammad Siddique v. Deputy Collector Excise and Taxation & others*) and 1993 C.L.C. 1632 (*Javed Alam v. Nazam Hussain & others*). The former case relates to the charge of excise duty in which the learned Judges of the Supreme Court held that when the jurisdiction of an authority to act under the Statute is under challenge, it is not necessary for an aggrieved person to have recourse for redressing his grievance to such authority by filing appeal etc. before invoking writ jurisdiction. The argument to test the validity of the decision in question before the higher forum was not held tenable. The latter case related to the nomination for M.B.B.S. seat wherein no objection raised by the petitioner with regard to the maintainability of the writ petition on the ground of unavailability of an alternative remedy provided in Instruction No. 20 of the Notification of 1986, providing for the nomination, it was held that the existence of an alternative remedy creates a bar for filing a writ petition only if the other remedy available is adequate and efficacious one. The appeal provided before the Government in view of likely to consume lot of time and failing to decide matters expeditiously, as noticed by the superior Courts, was not held to be an adequate and efficacious remedy. The respondents relied upon '*Khizar Hayat*' referred to above which directly dealt with the proposition in hand and decided by the Supreme Court of Azad Jammu and Kashmir on 22.1.1998 which is the latest authority on the subject as contended by the learned Counsel for the respondents. In the aforesaid case, the petitioner filed a writ petition in the High Court challenging his transfer as Controller of Examinations, to the post of Chairman Zoology Department, on the ground that the Vice-Chancellor was not empowered to effect any transfer. It was also claimed that the post to which he was transferred, did not exist, alongwith other number of points mentioned in the petition. The writ petition was partly admitted for regular consideration. Both the parties went in appeal. The petitioner challenged partly the decision of the High Court in appeal, while the Vice-Chancellor challenged the decision of the High Court in appeal.

2. Briefly, stated the facts giving rise to the filing of instant petition are that petitioner filed a suit against respondents for declaration that he is the owner in possession of the suit-land situated in village Neelore Tehsil and District Mansehra for being remained in possession as mortgagee for more than 60 years as well as being in adverse possession for more than 12 years and the respondents have lost their rights of ownership and mortgagor in the suit-land.

3. The suit was contested by the respondents by filing their written statement on various grounds that the suit is not within time and also not maintainable in its present form and that respondents Nos. 4 to 8 are bona fide purchasers of the land but ultimately the suit was dismissed vide judgment and decree dated 20-2-1995 mainly on the ground that plea of prescription is not available to the petitioner and also that the exclusive possession over the suit-land hostile to the respondents has not been proved. Petitioner filed appeal before the District Judge, Mansehra, which was dismissed, vide judgment dated 23-11-1999 holding that section 28 of the Act, 1908 (Act No. IX of 1908) (hereinafter referred to as 'the Act') has been declared repugnant to the Injunctions of Islam and as such not applicable to the present case. Feeling aggrieved, the petitioner assailed the said judgment before the learned High Court in the above mentioned civil revision, which was dismissed, vide impugned judgment.

4. We have heard Raja Muhammad Ibrahim Satti, learned Advocate Supreme Court for the petitioner and Roy Muhammad Nawaz Kharal, learned Advocate Supreme Court for respondents and have gone through the record and proceedings of the case in minute particulars.

5. Raja Muhammad Ibrahim Satti, learned Advocate Supreme Court for the petitioner has argued that the findings of the Courts below suffer from misreading and non-reading of material evidence on record and also from wrong appreciation of facts and law involved in the case. He further argued that the Courts below have erred in holding that since section 28 of the Act has been declared un-Islamic by the learned Shariat Appellate Bench of this Court, the petitioner could not claim to have prescribed his titled through adverse possession. He contended that section 28 of the Act has been declared to be ineffective and non-existent from 31-8-1991 only and the rights which had already matured before 31-8-1991 on account of adverse possession have not been affected by the said judgment because the petitioner had prescribed his titled through adverse possession long before 31-8-1991. He further contended that petitioner has successfully proved his adverse possession through evidence. According to him the learned trial Court even did not frame the issues properly which arose out of the pleadings of the parties.

6. On the other hand Roy Muhammad Nawaz Kharal, learned Advocate Supreme Court for respondents vehemently controverted the view point as canvassed by learned counsel for petitioner and supported the impugned judgment being free from any illegality or serious irregularity.

7. The main point, which requires serious consideration, is whether the petitioner has matured his title through adverse possession. The petitioner claimed that respondents have lost their rights of ownership and status of mortgagors over the suit property and he has become owner in possession of the same due to open and hostile possession for more than 12 years and also by prescription for being remained in possession as mortgagee for more than 60 years. We are of the opinion that this plea is not available to him inasmuch as section 28 of the Act has been declared repugnant to the Injunctions of Islam by this Court in the case of Maqbool Ahmad v. Hakoomat-e-Pakistan 1991 SCMR 2963, wherein it has been held that section 28 of the Act is repugnant to the Injunctions of Islam insofar as it provides for extinguishment of the right in the property at the determination of the period prescribed for instituting a suit for possession of the said property and that this decision shall take effect from 31st of August, 1991 and on this date section 28 of the Act shall also cease to have effect.

8. For what has been discussed above, we are of the considered opinion that impugned judgment is based on valid and sound reasons and is entirely in consonance with the law laid down by this Court. Neither there is misreading nor non-reading of material brought on record or misconstruction of facts or law.

9. Resultantly, the petition being devoid of force is dismissed and leave to appeal refused.

M.H./M-218/SC

Petition dismissed.

2007 S C M R 599

[Supreme Court of Pakistan]

*Present: Sardar Muhammad Raza Khan and Nasir-ul-Mulk, JJ*ROSHAN KHAN, SET GOVERNMENT HIGH SCHOOL
KUZ PAO, DISTRICT SHANGLA---Petitioner

versus

DIRECTOR SCHOOLS AND LITERACY, N.-W.F.P.,
PESHAWAR and 4 others---Respondents

(On appeal from the judgment, dated 10-8-2004 passed by N.-W.F.P. Service Tribunal, Peshawar in Appeal No.205 of 2004).

North-West Frontier Province Civil Servants Act (XVIII of 1973)---

---S. 10---Rules of Business, (N.-W.F.P), 1974, R.21(2)---Transfer of civil servant---Political influence---Recommendation of Member of Provincial Assembly---Civil servant was a senior school teacher who assailed his transfer order before Service Tribunal but without any success---Plea raised by civil servant was that his transfer was politically motivated and on the recommendations of Member of Provincial Assembly---Validity---Transfer of civil servant under the orders of even a Minister was void and unlawful, being violative of R.21(2) read with Schedule V of Rules of Business, (N.-W.F.P.), 1974---Supreme Court, while condemning the role of Minister, that of tamed and subservient bureaucracy was also condemned and need for an upright, honest and strong bureaucracy was emphasized---Member of Provincial Assembly in view of background of political influence had been guilty of misconduct, unfair exploitation and malpractice that maligned the legislature and disrupted administration---Supreme Court converted petition for leave to appeal into appeal and set aside the transfer order of civil servant---Appeal was allowed. [pp. 603, 604] A & B

Munawar Khan v. Niaz Muhammad 1993 SCMR 1287; Parwez Yunas Uppal's case PLJ 2000 (Tr.C) Service 473; Zahid Akhter's case PLD 1995 SC 530 and Sayyad Sikandar Ali Shah's case 2002 SCMR 1124 fol.

Malik Shahzad Ahmed, Advocate Supreme Court, for Petitioner.

Khushdil Khan, Additional Advocate-General, N.-W.F.P. along with Respondents Nos.2 and 5.

Mir Adam Khan, Advocate-on-Record along with Pir Muhammad Khan, MPA and Hamid Iqbal, MPA on Court's call.

Date of hearing: 3rd October, 2006.

JUDGMENT

SARDAR MUHAMMAD RAZA KHAN, J.--- Roshan Khan, a Senior English Teacher of District Shangla seeks leave to appeal against the judgment dated 10-8-2004 of learned N.-W.F.P. Service Tribunal, Peshawar, whereby, his appeal was dismissed and his transfer order dated 8-3-2003 from Shangla to Government High School Kuz Pao was considered valid, within the contemplation of section 10 of N.-W.F.P. Civil Servants Act, 1973. The plea of the petitioner that his transfer was void being politically motivated, was not taken into consideration.

2. The petitioner alleges and claims to have served Education Department for 30 years and currently belonged to the senior class of teachers. He was holding the post of Assistant District Officer (M) Inspection, since 12-3-2002. Due to his honest and bold action against the teachers; absent from duty, eight teachers who were proceeded against accordingly, nursed grudge and departmental rivalry against the petitioner. They approached Mr. Pir Muhammad Khan MPA whom they had allegedly favoured in elections and thus with the active role of the MPA aforesaid, petitioner was transferred vide order dated 8-3-2003.

3. He preferred departmental appeal, giving the aforesaid background, whereupon, on acceptance of such appeal on 28-2-2004, his transfer order dated 8-3-2003 was withdrawn. The political influence once again got spurred and, to the utter disappointment of the petitioner, the above mentioned order dated 28-2-2004 was cancelled on 11-3-2004. He knocked unsuccessfully at the door of Service Tribunal and hence this petition.

4. As, gross violation of repeated verdicts of this Court was prima facie noticed, a Full Bench of this Court issued notice to the respondents. Again, this Court on 23-5-2006, in view of the allegations levelled by the petitioner, issued notice to Pir Muhammad Khan, MPA to appear before the Court. On appearance he furnished written reply which forms paper book-III of this record.

5. At page 26 of the file there is a memo on the letter head pad of Pir Muhammad Khan MPA where he has given different directions for the postings and transfers of different civil servants. In his comments he stated that the endorsements on the letter head pad (P-26) are undated, unnumbered, unsigned by Pir Muhammad Khan and not addressed to any one. He never denied, in so many words, the endorsement having been made by him but still he said that "the same can only amount to proposals which were to be considered by the concerned authorities and such proposals do not amount to any order or directions or recommendations."

6. From the aforesaid remarks, the MPA who professes to be an Advocate as well, tried to interpret his endorsements at page-26 as mere proposals of recommendatory nature. This is factually incorrect because, the language used is indicative of direction and not proposals. A letter No.3131/F.No.72/ADO(M)/Shangla dated 22-1-2003 written by Directorate of Schools and Literacy to the Section Officer (Primary) Government of N.-W.F.P. Schools and Literacy Department Peshawar proves how Mr. Pir Muhammad MPA was involved in the transfer of the petitioner. A para reproduced therefrom would be self-explanatory:--

"2 On 8-3-2003 Mr. Pir Muhammad Khan, MPA District Shangla

visited this office and submitted a proposal for making transfer of some SET/ADOs of District Shangla and thus his recommendation was honoured and transfer order was issued (copy attached) wherein the appellant concerned was victimized/suffered having immature tenure against the ADO(M) post at Shangla."

7. Another letter No.4454/F.No.72/ADO(Male)/Shangla dated 29-1-2004 would reinforce the charge that Mr. Pir Muhammad Khan MPA had pursued the matter. The relevant para of this letter by Deputy Director (Estt.) Schools and Literacy N.-W.F.P., as follows, is quite revealing:--

"2. However it is further clarified that his transfer order was made on the request of Mr. Pir Muhammad Khan MPA in March, 2003 and since this Directorate has issued his transfer order hence this Directorate is not in a position to cancel it rather the worthy Secretary, (S&L) N.-W.F.P. is the competent/appellate authority to consider his appeal regarding cancellation of his transfer order."

8. It is deplorable that the officers concerned invited the recommendations of MPAs for cancellation of transfer order, specially, Pir Muhammad Khan MPA, the one who opposed the petitioner. This very letter shows that even the department was aware that it was impossible for the petitioner to obtain recommendation of Pir Muhammad Khan MPA because it was he who victimized the petitioner. Anyhow, when the petitioner was asked to bring recommendations of an MPA, he produced one of Mr. Hamid Iqbal. It seems that Mr. Hamid Iqbal did not volunteer to make recommendation. It was probably arranged by the petitioner under the desire of the department, in order to balance the pressure. The relevant para is as follows:--

"3. As regards obtaining of recommendation/consent from Pir Muhammad Khan MPA Shangla as per your directions contained in your letter referred to the above, so it is not possible for him as he has been victimized through the said MPA, however, he has been got favourable/strong recommendation of Mr. Hamid Iqbal, MPA, also belongs to District Shangla (Annexure "B")."

9. Another letter would further clarify the persistent involvement of Mr. Pir Muhammad Khan MPA. The same is reproduced:--

"Directorate of Schools and Literacy N.-W.F.P. Peshawar.
No.11408/dated 2-12-2003.

The Section Officer (Primary)
Government of N.-W.F.P., Peshawar.

Memo.

Kindly refer to your office letter No.SO(PE)(S&L)EDO dated Peshawar the 10-11-2003 the following comments are hereby submitted for clarification of situation:--

- (1) The letter issued vide reference No.3131/F.No.72/ADO(M) Shangla dated 27-10-2003 by Director (S&L) Shangla, it is requested that the said proposal/view was submitted by the worthy MPA Mr. Pir Muhammad Khan. This officer has neither forwarded for said proposal nor is involved in this matter.
- (2) The ADO Mr. Roshan Khan is an efficient and hardworking officer.
- (3) The ADO concerned Mr. Roshan Khan had not completed his normal tenure on the said post.

Keeping in view the above facts if the transfer order of the officer concerned is cancelled this office will have no objection.

Executive District Office
Schools and Literacy"

10. All documentary evidence has gone a long way to prove that Pir Muhammad Khan was persistently involved in getting the petitioner transferred. He dubbed it as mere proposal but, under the prevailing conditions, one can well contemplate as to what is meant by the proposal of an elected representative who carries a weight to throw.

11. As early as in 1993, this Court had sensed the malady. In *Munawar Khan v. Niaz Muhammad* 1993 SCMR 1287, a larger Bench had taken serious notice of allocation of appointment quota to the Ministers, MNAs and MPAs though with the blessings of the executive, and had declared them void ab initio, calling upon all Courts, Tribunals and Authorities to so declare. A healthy example of such compliance was Parwez Yunas Uppal's case PLJ 2000 (Tr.C.) Service 473, where the learned Federal Service Tribunal declared a transfer order void and mala fide because it was motivated by a privilege motion moved in the assembly and because the competent authority had passed it without the application of its own and independent mind.

12. Transfer of civil servant under the orders of even a Minister was held by this Court to be void and unlawful, being violative of Rule 21(2) read with Schedule V of Rules of Business 1974. While condemning the role of Minister, that of tamed and subservient bureaucracy was also condemned and need for an upright, honest and strong bureaucracy was

emphasized. Zahid Akhter's case PLD 1995 SC 530 is the relevant reference.

13. Lately, in Sayyad Sikandar Ali Shah's case 2002 SCMR 1124, the role of competent/Administrative authorities was once again condemned when they yield and surrender to the dishonestly intruding political influence.

14. It is for quite a long time, that some of the peoples representatives, whose sacred and scholarly job it was to legislate while honourably confining themselves to the dignified mansions of the assemblies, have started undesirable, dishonest and corrupt interference into the purely Executive/Administrative domain of appointments, promotions and transfers of civil servants. By now it has turned into a mafia that does not care about Law, Rules, Regulations, Rules of Business and repeated deprecations by the Supreme Court of Pakistan and High Courts. All forces seem to have whittled down before the exploitation and blackmail by some people whose weight, and not legislation, matters. This is bound to destroy the institutions, if not already destroyed.

15. Despite the fact that there is no law in the country giving authority to MPAs or MNAs to interfere into the Executive and Administrative domain, even to the extent of recommendations and proposals; despite the fact that the Rules of Business are utterly to the contrary; despite the fact that such practice is highly deprecated and condemned by this Court on numerous occasions, Mr. Pir Muhammad Khan, on whose letter head pad word Advocate appears below his name, has flouted all Law, Rules and Regulations. As an Advocate he ought to have been aware of the verdicts of the superior Courts and if not, at least, he ought to have known the Rules of Business and above all, the nature of his own obligations towards legislation in the Assembly and not beyond.

16. Before this Court he appeared personally and held the rostrum to address. It was a short but eloquent speech where, instead of clarifying his position, he argued the case against the petitioner saying that he was beaten by the teachers, that law and order situation had arisen and that his transfer was, therefore, necessary, again not realizing, that law and order also was not his headache. It is quite interesting that he still kept venom against the petitioner. At the end he requested the Court, not that he be absolved but that the instant petition be dismissed. In view of the background of political influence, the background of the case in hand and the repeated verdicts of this Court, we are constrained to observe that Mr. Pir Muhammad Khan MPA has been guilty of misconduct, unfair exploitation and malpractice that maligns the legislature and disrupts the administration.

17. It was for the reasons above that we had accepted the petitioner's claim after conversion into appeal through our short order dated 3-10-2006 that runs as follows:--

"For detailed reasons to be given later on, the impugned judgment dated 10-8-2004 of the learned N.-W.F.P. Service Tribunal is set aside, the transfer order # 1201-1206/F.No.72/DS&L/ADO(M)/Shangla, dated 8-3-2003 passed by Director Primary Education N.-W.F.P., Peshawar is hereby set aside as withdrawn and that Endst. No.1077-82/F.No.13/Vol: 1/DIE/ADO(M) Shangla, dated 12-3-2002 of the Director Primary Education, N.-W.F.P. Peshawar is restored.

M.H./R-22/SC

Appeal allowed.

2007 S C M R 605

[Shariat Appellate Jurisdiction]

*Present: Justice Javed Iqbal, Chairman,
Justices Sardar Muhammad Raza Khan,
Ch. Ijaz Ahmed, Dr. Allama Khalid Mehmood
and Allama Rashid Ahmed Jullundhari, Members*

IBRAR HUSSAIN and others---Appellants

versus

THE STATE and another---Respondents

Criminal Appeals Nos.14(S) and 15(S) of 2005, decided on 15th November, 2006.

(On appeal from the judgment, dated 2-5-2005 passed by the Federal Shariat Court, Islamabad, in Criminal Appeals Nos.196-I and 199-I of 2003; Murder Reference No.17-I of 2003).

(a) **Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979)---**

---Ss.10(4) & 11---Reappraisal of evidence---Contradictory statements---Deliberate and dishonest improvements---Accused were convicted for gang rape and abduction and were sentenced to death penalty and imprisonment for life respectively, by Trial Court---Federal Shariat Court partly allowed the appeal and set aside the sentence for gang rape but maintained that of abduction---Plea raised by accused was that in view of contradictory statements...

1999 TD(Service) 42 ✓

Present: Mr. Justice Nasir Aslam Zahid

Mr. Justice Abdur Rehman Khan

[Supreme Court of Pakistan]

Civil Petition No. 356-L of 1998 disposed of on 29.5.1998.

(On appeal from the order dated 12.1.1998 of the Lahore High Court passed on C.M. No. 1/98 in W.P. No. 526/98).

FARRUKH J. GULZAR---Petitioner

versus

SECRETARY, LOCAL GOVT. AND RURAL DEVELOPMENT
 DEPARTMENT, LAHORE AND 2 OTHERS---Respondents

(a) Transfer of Civil Servants---

MPA has no jurisdiction to give a direction or make a request to Government department on basis of complaints or recommendations received by him for transfer of a civil servant. If any such complaints are received by MPA, concerned parties should be directed to address complaints to concerned department and in case no action was taken on such complaints by concerned department further action could be taken by complainants in accordance with law and rules.

(P. 46)

(b) Transfer Policy---

All transfers should be made in accordance with transfer policy of Government.

(P. 46)

(c) Transfer Policy---

Transfer policy of employees of Local Councils framed through Notification dated 26.5.1998 is based generally on approved Government transfer policy.

(P. 44)

(d) Constitution of Pakistan, 1973---

Arts. 212(3), 199. Leave petition to Supreme Court against interim order of High Court by which it suspended operation of transfer order which was challenged in writ petition before it. Contended before Supreme Court that High Court had no jurisdiction to pass impugned order in view of bar contained in Art. 212 in matters relating to transfers of Government employees. Supreme Court informed that cases of leave petitioner and respondent (writ

respondent (writ petitioner) that he would withdraw his writ petition within 15 days. (P. 47)

Date of hearing : 29.5.1998 (Islamabad)

ORDER

NASIR ASLAM ZAHID, J.---The following are present:--

- (1) Mr. Abdul Sami Khawaja, ASC for the petitioner with petitioner Farrukh J. Gulzar.
- (2) Mr. Muhammad Asghar Malik, ASC for respondent No. 2 with respondent Ch. Nazir Ahmad.
- (3) Mr. Altaf Elahi Sheikh, Addl. A.G. Punjab, on Court notice.
- (4) Dr. Qazi M. Mohyuddin, ASC and Legal Advisor, Punjab Local Govt. Board, alongwith Khalid Farooq, Secretary of the Board.
- (5) Haji Malik Jalal Din Dhakoo, MPA, Sahiwal, present pursuant to notice.

This petition has been filed by Farrukh, J. Gulzar seeking leave against the interim order dated 12.1.1998 passed on C.M. No. 1/98 in Writ Petition No. 526/98 filed by respondent No. 2 Ch. Nazir Ahmad against the Secretary, Local Government and Rural Development Department, Punjab, and petitioner Farrukh J. Gulzar. The impugned order of the High Court passed on 12.1.1998 is reproduced here:--

"It is argued that the petitioner (respondent No. 2 before this Court) has been prematurely transferred at the behest of local MPA. In this behalf reference is made to Annexures B and C.

(2) In order to better appreciate the grievance of the petitioner I would like to hear respondent No. 1.

(3) Rana Muhammad Arif, learned Addl. A.G. is present on Court's call. Let copy of the petition be made over to him to obtain a report and instructions from respondent No. 1 who shall be represented on the next date of hearing by a responsible officer alongwith complete record.

C.M. No. 1/98

(4) Notice for an early date. In the meanwhile operation of the impugned order is suspended."

In the present petition for leave the interim order on C.M. No. 1/98 granting

jurisdiction to pass the impugned order in view of the bar contained in Article 212 of the Constitution, the transfers relating to terms and conditions of service of the Government employees, namely, petitioner Farrukh J. Gulzar and respondent No. 2 Ch. Nazir Ahmad.

2. In the High Court, writ petitioner Ch. Nazir Ahmad, who was posted as Accounts Officer Zila Council, Sahiwal, had taken up the plea that petitioner Farrukh J. Gulzar had exerted political pressure on the Secretary Local Government and Rural Development Department through Haji Malik Jalal Din Dhakoo, MPA Sahiwal, for his posting and transfer as Accounts Officer Zila Council Sahiwal vide letters dated 15.12.1997 and 16.12.1997 addressed by the said MPA to Secretary of the Board (at that time Tajjamaal Hussain Rizvi). The said two letters are reproduced here:--

"Haji Malik Jalal Din Dhakoo

M.P.A. Sahiwal

Dated 15.12.1997

Ref. No. _____

محترم برادر م رضوی صاحب

مزاج گرامی

السلام علیکم

ایف۔ جی گلزار اکاؤنٹس آفیسر ملتان میں ہے۔ مہربانی کر کے اس کا تبادلہ ضلع کوئٹہ ساہیوال میں بطور اکاؤنٹس آفیسر کر کے منگور فرمائیں۔

فقط آپ کا

جلال دین ڈھکو MPA

16-12-97

'PROVINCIAL ASSEMBLY OF THE PUNJAB

محترم برادر م رضوی صاحب

مزاج گرامی

السلام علیکم

مذیر احمد اوکانٹ ضلع کوئٹہ میرے حلقہ کا ہے۔ پارٹی باز ہے۔ ضلع کوئٹہ میں بے چینی پیدا کر دی ہے۔ ۵-۶ سال سے مقیم ہے۔ اس کا تبادلہ ہر صورت فرما دیں۔

فقط آپ کا بھائی

جلال دین ڈھکو

It appears that, pursuant to the said letters, transfers orders had been passed on the desire of MPA Haji Malik Jalal Din Dhakoo. As observed, on the writ petition filed by Ch. Nazir Ahmad, the High Court called for report and, on the application for interim relief, the operation of the impugned order transferring Ch. Nazir Ahmad was suspended, which interim order has been challenged in the present petition for leave.

3. When this petition for leave came up in chambers for interim orders, learned counsel appearing for petitioner Farrukh J. Gulzar submitted that the said two letters were apparently forged and perhaps were not available on the record of the Department to the information of the petitioner. In the circumstances, notice was issued to the Secretary Local Government and Rural Development Department, Lahore, to produce the original record.

On 27.3.1998, the record was produced which contained the said two letters in original written by the MPA. It was further found that the letters had been diarized and, according to the representative of the Department, Tajjamaal Hussain Rizvi, then Secretary of the Board, had initialled the two letters, which showed that the said two letters were received by the Secretary of the Board from the MPA and had been placed on record.

On that day, Mr. Altaf Elahi Sheikh, learned Addl. Advocate-General, Punjab, informed on instructions, that petitioner Farrukh J. Gulzar had been transferred to Multan and respondent Nazir Ahmad had not taken over the charge at Lahore and was still at Sahiwal and this was on account of the order passed by the Lahore High Court. By order dated 27.3.1998, this Court suspended the interim order passed by the High Court to the extent of staying the transfer of Ch. Nazir Ahmad to Lahore and the effect was that Ch. Nazir Ahmad was required to report immediately and take over charge of the post at Lahore. The hearing was then adjourned to 22.4.1998 with the direction to the petitioner, respondent No. 2, MPA Sahiwal and Tajjamaal Hussain Rizvi, Secretary of the Board to be present in Court. When the matter was taken up on 22.4.1998, it was informed by the office that the MPA could not be served and the case was then adjourned for today.

4. Today, as observed, all the parties as well as Haji Malik Jalal Din Dhakoo, MPA Sahiwal, are present. On being asked as to why the two letters were written by him to the Secretary of the Board, MPA Haji Malik Jalal Din Dhakoo, first acknowledged that he had written the said letters, but then stated that these letters were written by him in good faith and in the interest of the

period of posting at a place, and this he had managed through influence, and a request was also made that if Ch. Nazir Ahmad was transferred from Sahiwal in his place Farrukh J. Gulzar, who was a good officer may be posted in his place. It was submitted by the MPA that whatever he had done was done with sincerity and in all humility and at the instance of the people of the area and that he had no personal interest in getting the transfers made.

It was pointed out very clearly to the MPA that his action in writing the said two letters in effect amounted to requiring the Secretary to make the transfers and that this was an improper action on the part of the MPA. It was emphasized that there was a transfer policy of the Government and all transfers should be made in accordance with such transfer policy in the Local Council offices, also till such time the Local Government and Rural Development Department adopted a new policy of its own for the employees. It was further pointed out to the MPA that even if he had received complaints or recommendations, it was not within the jurisdiction of the MPA to give direction or make a request to the Secretary to effect the transfers on the basis of such complaints or recommendations. It was emphasized that no recommendations should be made as had been done and, if there were any complaints, the concerned parties should have been asked to address the complaints to the concerned Department and in case no action was taken on such complaints by the concerned Department, further action could be taken by the complainants in accordance with law and the rules.

5. Haji Malik Jalal Din Dhakoo, MPA from Sahiwal, submitted that he had understood what was intimated to him by the Court and that in future he would not take any action which may amount to interference with the performance of the functions of any Department according to the applicable law and rules.

6. Dr. Qazi M. Mohyuddin, learned ASC and Legal Advisor, Punjab Local Government Board, informs that the previous Secretary, Tajiama Hussain Rizvi, has been transferred and in his place Khalid Farooq has taken over as Secretary to the Board and that, by Notification dated 26.5.1998, the Punjab Local Government Board has approved a transfer policy for the employees of the Local Councils, provisions whereof have generally been drawn from the approved Government transfer policy. Copy of the Notification dated 26.5.1998 has been placed on record.

It is further stated by Dr. Qazi M. Mohyuddin that in future all transfers will be made strictly in accordance with the transfer policy that has been approved and that the cases of petitioner Farrukh J. Gulzar and respondent

7. In the circumstances, this petition is not pressed by Mr. Abdul Sami Khawaja, learned ASC for the petitioner. Mr. Muhammad Asghar Malik, learned ASC for respondent No. 2 Ch. Nazir Ahmad, states that he will file a formal application within 15 days from today for withdrawal of Writ Petition No. 526/98 filed by his client before the Lahore High Court.

8. The *ad interim* order dated 12.1.1998 passed on C.M. No. 1/98 in Writ Petition No. 526/98 by the Lahore High Court has already been suspended. The Writ Petition will be withdrawn by respondent No. 2 within 15 days from today as undertaken by his counsel. In the circumstances, Civil Petition No. 356-L of 1998 is not pressed and stands disposed of as such.

Order Accordingly.

1999 TD(Service) 47

Before Chaudhary Muhammad Taj, J. (AJK)

Writ Petition No. 146 of 1998 dismissed on 30.5.1998.

RAJA MUHAMMAD AZAD KHAN, REGISTRAR, AZAD JAMMU & KASHMIR UNIVERSITY, MUZAFFARABAD---Petitioner

versus

VICE-CHANCELLOR, AZAD JAMMU AND KASHMIR UNIVERSITY MUZAFFARABAD, ETC.---Respondents

(a) AJK University Act, 1985---

S. 11 read with AJK University Service Statutes (1981). Vice-Chancellor, in the best interest of University, can effect and make transfers from one post to another to an equivalent post. Vice-Chancellor holds and exercises all powers including those vested with Syndicate to be exercised in an emergency. Order of transfer u/s. 11 from post of Registrar to any other equivalent post would not be illegal and would provide any grievance justiciable by High Court in exercise of its writ jurisdiction u/s. 44, AJK Constitution Act, 1974. (P. 51,52)

(b) Constitution Act, 1974 (AJK)---

S. 44. Petitioner seeking writ of *quo warranto* has burden to show that respondent is not holding office under authority of law. When he initially makes out *prima facie* case, burden of proof would shift to respondent. If petitioner fails to make out a *prima facie* case, rule *nisi* would not be issued as a matter of routine. (P. 52)

(c) Ibid---

S. 44. Non-invocation of alternate remedy against order impugned in writ petition would render writ petition as not maintainable. (P. 53,54)

ORDER

CHAUDHARY MUHAMMAD TAJ, J.---This writ petition filed under section 44 of the Azad Jammu and Kashmir Interim Constitution Act, 1974 calls in question the order passed by respondent No. 1, on April 2, 1998, as being illegal, and without jurisdiction. Alternatively, a writ of *quo warranto* was sought to be issued against respondent No. 2.

2. The facts as stated in the petition, are that the petitioner was appointed as Registrar of Azad Jammu and Kashmir University, in BPS-19, on the recommendation of Selection Board, by the competent authority. The post was later on upgraded and the petitioner was given BPS-20 and since then he is performing his duties in the above capacity. It was further disclosed that on resignation tendered by Dr. Muhammad Kharait Chaudhary, the additional charge of the Vice-Chancellor of the University was handed over to the Chief Secretary of Azad Jammu and Kashmir, on March 12, 1998, who *vide* his order dated April 2, 1998, appointed respondent No. 2 as Registrar of the University and transferred the petitioner from his present assignment. The aforesaid order is challenged through this writ petition as being illegal and of no legal effect.

3. M/s. Kh. Shahad Ahmed, Ashfaq Hussain Kiani and Ghulam Mustafa Mughal, the learned Counsel appearing for the petitioner, raised the following points in support of the petition:--

- (i) That respondent No. 1 was not competent to effect transfer of the petitioner from the post of Registrar, Azad Jammu and Kashmir University. It was explained that the Syndicate of the Azad Jammu & Kashmir University was only the competent authority to make such orders and not the Vice-Chancellor;
- (ii) that the powers envisaged under section 11 of the Azad Jammu and Kashmir University Act, 1985, the Vice-Chancellor could pass an order for temporary arrangement only, therefore, the order runs counter to law;
- (iii) that the petitioner has been left without any post which indicates the respondent's *mala fide* intention of victimising the petitioner;
- (iv) that respondent No. 2 is a permanent employee of the Azad Jammu & Kashmir Government, serving as Additional Secretary (Services) in BPS-19. The Vice-Chancellor has no authority to transfer and appoint him as Registrar of the University. The order even otherwise is violative of Section 46 of the University Act, 1985 which empowers the Chancellor alone to appoint;
- (v) that the post of Registrar can be filled in by promotion or through direct recruitment. The appointment by transfer is not permitted under any of the rules; and
- (vi) that respondent No. 2, in any case, was not qualified to be appointed as Registrar of the University in view of the

to 1992 SCR 110 and 1994 C.L.C. 1632, in support of their assertion.

4. Mr. Rafique Mahmood Khan, the learned Counsel appearing for the respondents, on a pre-admission notice issued to them, addressed his arguments for the dismissal of the writ petition in the following manner:--

- (i) That the Vice-Chancellor under the University of Azad Jammu and Kashmir Act, 1985, is a Principal Executive and academic officer of the University and has all the powers to take any action he may consider necessary, including the transfers to be effected. It was emphasised that under section 11 of the University Act, more specifically under sub-sections (1) (3) & (4) of Section 11 of the Act, the Vice-Chancellor is fully empowered to pass any order in the best interest of the University, to ensure that the provisions of University Act, statutes, regulations and rules are faithfully observed, to promote the general efficiency and good order of the University;
- (ii) that the services of respondent No. 2 who was Additional Secretary in the Services Department of the Azad Jammu and Kashmir Government, were placed at the disposal of the Vice-Chancellor and was temporarily appointed/posted as Registrar. It was vehemently argued that the aforesaid officer was fully qualified and held the required qualification, experience and fulfilled all other conditions. It was also pointed out that nothing was brought on record except a bare assertion in the writ petition that respondent No. 2 was not qualified to be appointed which did not require for a notice to be issued to him, to explain under what authority of law he was holding the post, particularly when it was admitted that he, before the impugned order, was posted as Additional Secretary (Services). It was also submitted that the petitioner was to be adjusted by respondent No. 1 against some other equivalent post in the University, but due to stay order issued by this Court in terms of maintenance of *status quo*, the same could not be done and has to follow after vacation of stay order, therefore, the petitioner's assertion of his being left with no post, is without any substance; and
- (iii) that an alternative remedy in the shops of an appeal was available to the petitioner under section 38 of the University Act, 1985 which was adequate and in presence of aforesaid remedy, the writ petition was not competent and as such is not maintainable. Reliance in this regard

proposition involved in the present case was dealt with. The learned Counsel also referred to the Azad Jammu and Kashmir University Act, 1985, 1993 SCR 186, 27, 1980 CLC 952, in support of his assertions.

5. I have heard the learned Counsel for the parties and also gone through the record, contents of the writ petition as well as objections filed by the respondents, including the case-law referred to by the respective parties. The affairs of University of Azad Jammu and Kashmir are regulated and administered under the Azad Jammu and Kashmir University Act, 1985, statutes, regulations and rules made thereunder. The Vice-Chancellor is the principal executive and academic officer of the University who enjoys all powers necessary to exercise control and enforce discipline over all officers, teachers and other employees and students of the University and can also take any action in an emergency, requiring so necessary and to report to the Authority or other body which, in the ordinary course, would have powers to deal with the matter including the creation and filling up the posts temporarily for a period not exceeding 6 months, under section 11 of the University Act. The relevant Section is usefully reproduced as under:--

"11. *Powers and duties of the Vice-Chancellor.*--(1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall ensure that the provisions of this Act, the Statutes, the Regulations and the Rules are faithfully observed, shall promote the general efficiency and good order of the University and shall have all powers necessary to exercise control and enforce discipline over all officers, teachers and other employees and students of the University.

(2) The Vice-Chancellor shall, in the absence of the Chancellor, preside at a Convocation of the University and the meetings of the Syndicate and shall, if present, preside at the meetings of the Authorities of which he is the Chairman and be entitled to attend and preside at any meeting of any other Authority or body of the University.

(3) The Vice-Chancellor may, in an emergency which in his opinion requires immediate action, take such action as he may consider necessary and shall, as soon thereafter as possible, report his actions

(4) The Vice-Chancellor shall also have the power--

- (i) to create and fill posts temporarily for a period not exceeding six months;
- (ii) to sanction all expenditure provided for in the approved budget, and to re-appropriate funds within the same major head of expenditure;
- (iii) to sanction by re-appropriation an amount not exceeding fifteen thousand rupees for an unforeseen item not provided for in the budget, and report it to the Syndicate at the next meeting;
- (iv) to appoint examiners for all examinations of the University after receiving panels of names from the relevant Authorities;
- (v) to make such arrangements for the scrutiny of papers, marks and results as he may consider necessary;
- (vi) to direct teachers, officers and other employees of the University to take up such assignments in connection with teaching, research, examination and administration and such other activities in the University, as he may consider necessary for the purpose of the University;
- (vii) to appoint employees upto Grade 16 in the National Pay Scales;
- (viii) to delegate, subject to such conditions, if any, as may be prescribed, any of his powers under this Act to an officer or other employees of the University; and
- (ix) to exercise and perform such other powers and functions as may be prescribed."

6. The analysis of the aforesaid provisions reveals that the Vice-Chancellor has got all the powers necessary to exercise control and enforce discipline over all officers and in emergency, if he so considers necessary, may take any action which, in his opinion, requires an immediate action and is also empowered to create any post for a period of six months, including the filling up of a post. The combined study of all the provisions maintaining powers and duties of the Vice-Chancellor shows that he holds and exercises all powers including those vested with the Syndicate to be exercised in an emergency. Therefore, it leaves no doubt that the Vice-Chancellor, in the best interest of the University, can affect and make transfers from one post to another, or from one to an equivalent one, as provided in sub-sections (1), (3) & (4)(i) of

A grievance to him, to agitate the matter in a Court of law, much less through extraordinary Constitutional jurisdiction of this Court, providing a condition of an aggrieved person.

7. So far as the question of appointment of respondent No. 2 Registrar is concerned, the petitioner claimed that the relevant respondent was not qualified as per requirements maintained in Schedule-V, Category-I, Part II, in respect of the appointment of the Registrar. The assertion of the petitioner is not supported by any document, substantiating his point of view for respondent No. 2 being not qualified for the aforesaid appointment, while the respondent denied the petitioner's assertion. It may be mentioned that on writ of *quo warranto*, it is for the petitioner in the first instance to show that in view of the given facts of a case, the non-petitioner is not holding the office under the authority of law. If initially he makes out his *prima facie* case, the burden of proof would shift to the opposite side. But if the material facts are not pleaded by the petitioner on which he bases his claim, or the same are not sufficient enough to make out a *prima facie* case in favour of the petitioner, cannot be said that the rule, '*nisi*' can be issued as a matter of routine. The non-petitioner would be called upon to show he was holding the office under what authority of law, would arise only if in the first instance, the petitioner makes out a *prima facie* case that he was not so holding the office. The case of respondent No. 2, in the background of his having been serving as Additional Secretary in a Government Department, requires a further caution, demanding a strict proof for the purpose. Reliance in this regard is placed on 1993 SC 27 wherein it was observed as under:--

"It is for the petitioner in the first instance to show that in view of the given facts of the case, the non-petitioner is not holding the office under the authority of law. If he initially makes out his *prima facie* case, the burden of proof will shift to the opposite side but if the material facts are not pleaded by the petitioner on which he bases his claim or the same are not sufficient enough to make out a *prima facie* case, it cannot be said that a rule *nisi* can be issued as a matter of routine."

It may also be added for clarification that the objection raised for respondent No. 2, a Government servant, with regard to his appointment as Registrar by the Vice-Chancellor, is also found to have no substance in it as the Counsel for the respondents produced a file before the Court, containing an order where the services of respondent No. 2 were placed at the disposal of the Vice-Chancellor.

8. The learned Counsel for the respondents raised a preliminary objection with regard to the maintainability of the writ petition on the ground of unavailability of an alternative remedy to the petitioner. It was strenuously argued on the basis of judgment recorded by the Supreme Court of Azad Jammu and Kashmir while dealing with the proposition in hand, in the case of *Khizar Hayat Khan v. Vice-Chancellor, University of Azad Jammu and Kashmir*, that the remedy of appeal available under section 38 of the University Act, 1985, bars the petitioner to file the writ petition. The learned Counsel appearing for the petitioner, while controverting the contention of the learned Counsel for the respondents, relied upon 1992 SCR 110 (*Ch. Muhammad Siddique v. Deputy Collector Excise and Taxation & others*) and 1982 C.L.C. 1632 (*Javed Alam v. Nazam Hussain & others*). The former case relates to the charge of excise duty in which the learned Judges of the Supreme Court held that when the jurisdiction of an authority to act under the Statute is under challenge, it is not necessary for an aggrieved person to have recourse for redressing his grievance to such authority by filing appeal etc. before invoking writ jurisdiction. The argument to test the validity of the appointment in question before the higher forum was not held tenable. The latter case related to the nomination for M.B.B.S. seat wherein no objection raised by the petitioner was held tantamount with regard to the maintainability of the writ petition on the ground of unavailability of an alternative remedy provided in Instruction No. 20 of the Notification of 1982, 1986, providing for the nomination, it was held that the existence of an alternative remedy creates a bar for filing a writ petition only if the other remedy available is adequate and efficacious one. The appeal provided before the Government in view of likely to consume lot of time and failing to decide matters expeditiously, as noticed by the superior Courts, was not held to be an adequate and efficacious remedy. The respondents relied upon '*Khizar Hayat*' referred to above which directly dealt with the proposition in hand and decided by the Supreme Court of Azad Jammu and Kashmir on 22.1.1998 which is the latest authority on the subject as contended by the learned Counsel for the respondents. In the aforesaid case, the petitioner filed a writ petition in the High Court challenging his transfer as Controller of Examinations, to the post of Chairman Zoology Department, on the ground that the Vice-Chancellor was not empowered to effect any transfer. It was also claimed that the post to which he was transferred, did not exist, alongwith other number of points raised in the petition. The writ petition was partly admitted for regular consideration. Both the parties went in appeal. The petitioner challenged partly the dismissal of the writ petition *in limine*, while the Vice-Chancellor challenged the admission of the writ petition.

keeping in view the respective submissions of the parties which were almost the similar as advanced herein, i.e. (i) inadequacy of the remedy, (ii) Syndicate being constituted of persons and authorities from different places taking pretty long time to convene its meetings which practically denies the right of appeal and (iii) the order challenged is without jurisdiction, made the following observation while accepting the appeal, thereby dismissing the writ petition filed by the petitioner and admitted by the High Court for regular hearing:-

"Therefore, we hold that an adequate remedy by way of appeal to the Syndicate was available to Sardar Khizar Hayat but he did not avail it. Thus, under section 44 of the Azad Jammu and Kashmir Interim Constitution Act, the High Court could not have entertained the writ petition filed by him. It has been held by this Court in *Abdul Rehman and another v. Income Tax Officer, Mirpur Circle & another* (1999 SCR 186) and *Ghulam Hussain and 3 others v. Muhammad Bostan and 3 others* (PLD 1995 S.C. (AJ & K) 38) that existence of adequate remedy was a rule of law barring jurisdiction of the High Court and was not regulatory in nature. Therefore, the admission order challenged before us by the Vice-Chancellor is not sustainable and has to be set aside. Therefore, Civil Appeal No. 33 of 1997 titled *Vice-Chancellor and others v. Sardar Khizar Hayat Khan* is accepted and order passed by the High Court partly admitting the writ petition is vacated.

In the light of the conclusion reached above, the other appeal being Civil Appeal No. 28 of 1997 titled *Sardar Khizar Hayat Khan v. Vice-Chancellor and others* also entails dismissal for the same reason, namely, that Sardar Khizar Hayat Khan cannot file a writ petition in presence of an adequate remedy by way of appeal to the Syndicate."

9. As discussed above, the facts of the present case are closer to those of Khizar Hayat Khan's case, referred to above. Incidentally, the petitioner was party as respondent in the case who also took the appeal to the Supreme Court. Relying upon the aforesaid authority which squarely applies to the facts of the present case, it is held that the petitioner on both counts for entertaining grievance for his claim of illegal transfer and the appointment of respondent No. 2 as Registrar of the University can competently file an appeal before the Syndicate. Therefore, the writ petition is not maintainable on this sole ground and it was not required to attend other points discussed above.

10. The upshot of the above discussion is that the writ petition is dismissed *in limine*.
Writ Petition Dismissed.

1999 TD(Service) 55

Before Ihsanul Haq Chaudhry, J. (Lahore)

W.P. No. 935 of 1998 dismissed on 18.9.1998.

EHSAN ULLAH---Petitioner

versus

THE ZILA COUNCIL, GUJRANWALA THROUGH ITS
ADMINISTRATOR/DEPUTY COMMISSIONER, GUJRANWALA, ETC.---
Respondents

(a) Zila Council---

Appointments in Zila Council under Export Tax Zila Council Rules, 1990 read with Punjab Local Government (Establishment) Rules. Selection Committee, and not the Recruitment Committee, is competent to make such appointments. Recruitment Committee has no jurisdiction to make such appointments in Zila Council. Appointments made by Zila Council would amount to usurping jurisdiction of Selection Committee. (P. 59)

(b) Appointments---

Appointments made irregularly would not create a vested right. Such action can be corrected at any time. Such correction cannot be questioned by illegal appointees because it would amount to perpetuating irregular and illegal appointments. (P. 59,60)

(c) Promissory Estoppel---

Doctrine of promissory estoppel would not apply in case of correction of irregular and illegal appointments. (P. 60)

(d) General Clauses Act (VI of 1956)---

S. 20. Appointment authority has jurisdiction u/s. 20 to rescind order of irregular and illegal appointments. (P. 60)

(e) Appointments---

Illegal and irregular appointments. The moment order of appointment is declared illegal, the other acts would automatically become void.

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____ / 2014.

IN

Service Appeal No. _____ / 2014.

Muhammad Khursheed Versus... Govt; of K.P.K. through Secretary
(E & SE) Peshawar & others.

APPLICATION FOR HEARING OF THE ABOVE TITLED
CASE FOR TODAY OR TOMORROW.

Respectfully sheweth:

1. That the above titled case has been fixed before this Honourable Tribunal on 4/3/2014. / 6-5-14
2. That the appellant has not been relieved, but number of notices have been sent to the appellant.
3. That the stay application has been filed with this appeal.
4. That the appellant has a good prima facie case in his favour.

It is, therefore, most humbly prayed that on acceptance of this application, the above noted titled appeal may kindly be heard today OR tomorrow.

Appellant

Through:-

Dated : 17/2/2014.

(HASSAN U. K. AFRI DI)
Advocate, Peshawar.

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

In Re. C.M. No. _____ / 2014.

IN
Service Appeal No. _____ / 2014.

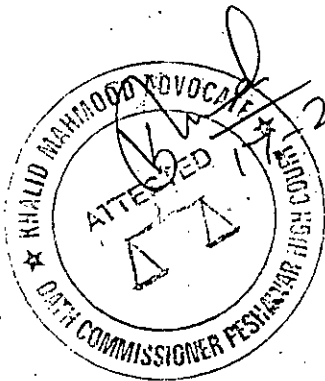
Muhammad Khursheed... versus.... Govt: of K.P.K. through Secretary
(E & SE) Peshawar & others.

A F F I D A V I T.

I, Muhammad Khursheed S/O Muhammad Abbas Khan R/O Shakardara,
Tehsil Lachi & District Kohat, do hereby solemnly affirm and
declare on Oath that the contents of the accompanying
application are true and correct to the best of my knowledge
and belief and that nothing has been concealed from this
Hon'ble Court/ Tribunal.

DEPONENT.

Muhammad Khursheed.



BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____ / 2014.

IN
Service Appeal No. _____ / 2014.

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Through:-

(HASSAN J. K. AFRI DI)
Advocate, Peshawar.

Dated : 17/2/2014.

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

In Re. C.M. No. _____/2014.

IN
Service Appeal No. _____/2014.

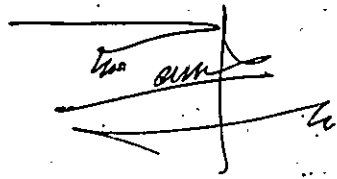
Muhammad Khursheed... Versus.... Govt: of K.P.K. through Secretary
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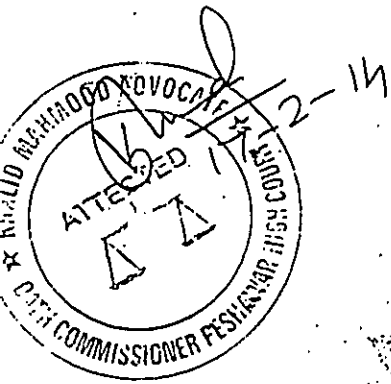
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DEPONENT.

Muhammad Khursheed.





BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____ / 2014.

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Muhammad Khurshed Versus... Govt: of K.P.K. through Secretary
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3. That the stay application has been filed with this appeal.
4. That the appellant has a good prima facie case in his favour.

It is, therefore, most humbly prayed that on acceptance of this application, the above noted titled appeal may kindly be heard today OR tomorrow.

Appellant

Through:-

Dated : 17/2/2014.

(HASSAN J.K. AFRI DI)
Advocate, Peshawar.

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL,
PESHAWAR.

In Re. C.M. No. _____ / 2014.

IN
Service Appeal No. _____ / 2014.

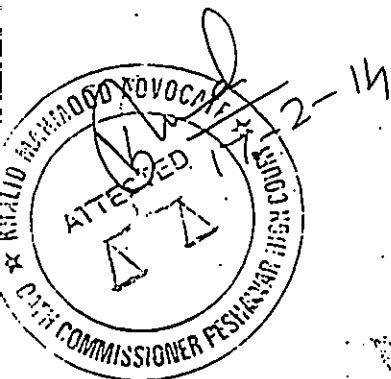
Muhammad Khursheed... versus.... Govt: of K.P.K. through Secretary
(E & SE) Peshawar & others.

A F F I D A V I T.

I, Muhammad Khursheed S/O Muhammad Abbas Khan R/O Shakardara,
Tehsil Lachi & District Kohat, do hereby solely affirm and
declare on Oath that the contents of the accompanying
application are true and correct to the best of my knowledge
and belief and that nothing has been concealed from this
Hon'ble Court/ Tribunal.

DEPONENT.

Muhammad Khursheed.



A handwritten signature in black ink, appearing to read 'Muhammad Khursheed', written over a horizontal line.