

19.2.2015

Appellant with counsel, Mr. Usman Ghani, Sr.GP with Muhammad Arif, SDO for the official respondents and private respondent No. 5 with counsel (Mr. Muhammad Asif Yousafzai, Advocate) present. Arguments heard. Record perused.

Vide our detailed judgment of to-day in connected Service Appeal No. 183/2014, titled "Muhammad Alamgir Khan Vs. Superintending Engineer, PBMC, C&W Department, Peshawar etc.", this appeal is also disposed of as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED

19.2.2015.


MEMBER


MEMBER

16.2.2015

Counsel for the appellant, Mr. Muhammad Adeel Butt, Addl.A.G and Mr. Usman Ghani, Sr.GP with Muhammad Iqbal, SDO for the official respondents and private respondent No. 5 with his counsel (Mr. Muhammad Asif Yousafzai, Advocate) present. To come up for arguments on 17.2.2015 alongwith connected appeal No. 183/2014.



MEMBER



MEMBER

17.2.2015

Counsel for the appellant, Mr. Usman Ghani, Sr.GP with Muhammad Arif, SDO for the official respondents and private respondent No. 5 with counsel present. Arguments heard. To come up for order on 19.2.2015 alongwith connected appeal No. 183/2014.



MEMBER.



MEMBER

18.09.2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Mr. Muhammad Iqbal Yousafzai, SDO PBMC for the respondents present. Rejoinder received. Copy handed over to the learned AAG. To come up for arguments on 24.11.2014.


MEMBER

24.11.2014

Counsel for the appellant, Mr. Muhammad Adeel Butt, AAG with Muhammad Iqbal, SDO for the official respondents and Clerk to counsel for private respondent No. 5 present. The Tribunal is incomplete. To come up for the same on 11.12.2014.


READER

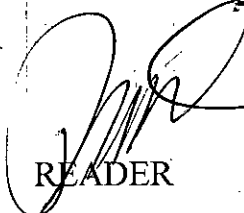
11.12.2014

Counsel for the appellant, and Mr. Muhammad Adeel Butt, AAG with Muhammad Iqbal, SDO for the respondents present. The Tribunal is incomplete. To come up for the same on 20.1.2015.


READER

21.01.2015

Since 20th January has been declared as public holiday by the provincial government, therefore, case to come up for the same on 16.2.2015.


READER

4. Learned Sr.GP on the contrary argued that the appellant has been illegally appointed and there is no service record of the appellant, hence his request for allowing him to join duty is without any substance.

5. It is evident from the written reply submitted by respondent No. 5 that being Appointing Authority he has appointed the appellant as Electrician (BPS- 05) vide order dated 23.01.2013 after approval by the Departmental Selection Committee meeting held on 14.01.2013. Record further reveals that after appointment, the appellant got medically examined from the Police & Services Hospital, Khyber Pakhtunkhwa, Peshawar and thereafter submitted his arrival report. Though the official respondents are denying the appointment of the appellant, yet in the light of admission on the part of the Appointing Authority/respondent No. 5 and record available on the file, this Tribunal is of the firm view that the appellant has prima-facie been appointed on the recommendation of Departmental Selection Committee and after fulfillment of all the codal formalities and he submitted his arrival report. Hence, valuable rights have been accrued to the appellant, the principle of 'locus poenitentiae' is attracted in the case of appellant, therefore, he is entitled for grant of temporary injunctions. The respondents are therefore, directed to allow the appellant to perform his duties and start their monthly salary provisionally. To come up for rejoinder on 18.09.2014.

MEMBER

MEMBER

10.6.2014.

Counsel for the appellant, AAG with Saleem Shah, Assistant for respondent No. 1, and respondents No. 2 to 4 in person present and submitted written reply on main appeal. Copy handed over to counsel for the appellant. They requested for time to file reply on stay application. Respondent No. 5 in person present and requested for time to file reply. Counsel for the appellant submitted two separate applications to-day one for implementation of status quo order and the other for payment of salaries to the appellant. Copies handed over to opposite sides. To come up for written reply of respondent No. 5 on main appeal as well as stay application and two other misc-applications on 8.7.2014. The respondents are further directed not to initiate any adverse proceedings/action and status quo be maintained till the date fixed.

MEMBER

MEMBER

08.7.2014

Appellant with his counsel, official respondents No. 1 to 3 in person alongwith Sr.GP for official respondents and private respondent No.5 with Mr. Muhammad Asif Yousafzai, Advocate present and filed Wakalatnama and written reply. Copies whereof handed over to counsel for the appellant as well as learned Sr.GP

2. Arguments on application for temporary injunction heard and case file perused.

3. The learned counsel for the appellant produced before the court Service Book of the appellant and submitted before the court that the appellant has legally been appointed by respondent No. 5 Ex-Superintending Engineer, PBMC C&W Department, Peshawar presently posted as Director (Tech)EQAA, Abbottabad; that the official respondents are now reluctant to allow the appellant to join duty and also not paying him monthly salary.

16.4.2014.

Appellant alongwith counsel and AAG with Muhammad Arif, SDO for respondents No. 1 to 4 and Shamsuz Zaman, Director (Technical)n EQAA, respondent No. 5 in person present and requested for time to file written reply on main appeal as well as reply to the application for interim relief.

Perusal of the case file reveals that the appellant was appointed by respondent No. 5 vide order dated 23.1.2013 on the recommendations of Departmental Selection Committee. Thereafter, the appellant got himself medically examined and submitted his arrival report to the respondent department. Entry in this respect was made in his service book, copy of which is available on file, even then the respondents have failed to pay monthly salary to the appellant.

The learned counsel for the appellant submitted before the court that despite the fact that appellant has properly been appointed, the respondents are reluctant to pay him monthly salary and intend to expel him from service. Learned counsel requested that the respondents be restrained from taking any adverse action against the appellant and they should be directed to allow the appellant to perform his duties.

As record annexed with the appeal suggests that the appellant has prima-facie been appointed on the recommendations of Departmental Selection Committee and after medical examination, he submitted arrival report, therefore, the respondent department is directed to restrain from taking any adverse action against the appellant and furthermore the appellant should be allowed to perform his duty. To come up for written reply on main appeal as well as reply/arguments on stay application on 10.6.2014.


MEMBER


MEMBER

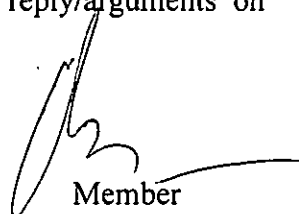
Appeal No. 189/2014.
Mr. Saif-ud-Din

4. 26.03.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has prayed for payment of his salary which was allegedly with-held by the respondents despite the fact that the appellant was properly appointed vide appointment order dated 16.01.2013; that after appointment, appellant got medically examined, he submitted his arrival report. Entry in the service book has also been made to that effect even then the appellant has not been paid monthly salary; that departmental appeal was filed by the appellant praying for release of his salary upon which the Superintendent Engineer (respondent No.1) has directed for release of salary of the appellant without further delay but of no avail. Alongwith appeal, the appellant also filed an application for condonation of delay and stated that delay if any, in filing the instant appeal was caused due to filing Writ Petition before the Peshawar High Court, Peshawar which was eventually withdrawn with permission to approach this Tribunal.

Since the matter pertaining to terms and conditions of service of the appellant, therefore, the appeal is admitted for 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 for submission of written reply on main appeal on 10.06.2014. appellant also submitted an application for grant of interim relief. Notice of application should also be issued to the respondents for reply/arguments on 16.04.2014.

5. 26.03.2014


Member

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


Chairman

18.03.2014

Counsel for appellant present and requested for adjournment. To come up for preliminary hearing on 26/3/2014.

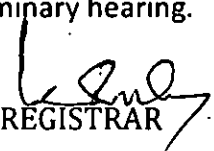
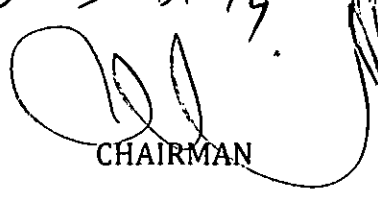
Member



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 189/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14/02/2014	<p>The appeal of Mr. Sajid Khan resubmitted today by Mr. Asad Jan 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	<u>21-2-2014</u>	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>18-3-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Sajid Khan son of Akhtar Zaman received today i.e. on 04.02.2014 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Appeal may be got signed by the appellant.
- 2- Page Nos. 25 to 27 and 29 of the appeal are illegible which may be replaced by legible/better one.

No. 188 /S.T.

Dt. 06/02 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Asad Jan Adv. Pesh.

R/s,

Re-submitted after necessary

Completion.

Cus.

Adv.

14/2/14

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No. 189/2014

SAJID KHAN

VERSUS

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND
WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK
AND OTHERS.

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Sajid
Petitioner

Through *Asad Jan*

ASAD JAN (advocate high court Peshawar)

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

S.A. NO. 189 / 2014

137
04-2-14

SAJID KHAN S/O AKHTER ZAMAN R/O VILLAGE JHANSA P.O
KALABAGH NATHIAGAI ABBOTTABAD.

.....APPELLANT

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR, 1V PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTOON KHWA PESHAWAR
5. SHAMS UZ. ZAMAN EX- SUPERINTENDENT ENGINEER.PBMC C&W PESHAWAR PRESENTLY POSTED AS DIRECTOR (TECH).EQAA ABBOTTABAD.

.....RESPONDENTS

APPEAL U/ S 4 OF THE SERVICE TRIBUNAL ACT, 1974 WHEREBY MONTHLY SELARIES OF APPELLANT WERE WITHHELD SINCE APPOINTMENT AND ARRIVAL REPORT FOR DUTY TILL DATE FOR NO LEGAL REASON AND THAT THE REPRESENTATION/DEPARTMENTAL APPEAL FILED AGAINST WAS NOT HONOURED.

6/2/14

re-submitted to and filed.

14/2/14

Reply to Preliminary objections.

1. That the appellant is law abiding citizen of Pakistan.

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2. That the appellant was appointed in the respondents establishment on post of Electrician (BPS-05) vide order dated Peshawar the 23-01-2013 passed by respondent no-5 and is house hold staff after approval by the D.S.C. in the meeting held on 14-01-2013.
3. That the appellant accordingly carried out his medical from Service Hospital Peshawar.

(Copy of the medical report is annexed)

4. That the appellant has there after made arrival report on 29-01-2013.
5. That appellant furnished service book with medical certificate along with arrival report which were duly entered and certified by the Superintending Engineer and Executive Engineer.

(Copies of the appointment letters and arrival report and service book are annexed here with)

6. That the appellant performing his duties with full diligent and devotion since from the date of his arrival, but the respondents were not paying his monthly salaries to the appellant with out any cogent reasons, therefore appellant has instituted a writ petition before Peshawar high court Peshawar, however the respondent due to institution of the writ petition have become biased and even started not allowing appellant and his others colleagues to duties and created problems in this regard due to malafide reasons and at the time of arguments their lord ships were of the view that pay being falls within terms and condition of service therefore to withdraw the writ petition and to move the service tribunal KPK, hence the writ petition was withdrawn with permission to move the proper forum which was not objected by learned A.A.G.

(Copy of the writ petition and order dated 27-01-2014 is annexed)

7. That the appellant has also approached the respondent no.5 for the release/payment of his salaries but nothing has been paid, despite the legal rights of the appellant

(Copy of the appeal/ representation is annexed)

8. That due to above mentioned appellant prefer this appeal on the following grounds amongst others:-

GROUND

1. That due to non payment of the salaries, appellant has not been treated in accordance with law, and his right secured and guaranteed under the law have been violated by not releasing his salaries and issuance of appointment letter have created valuable right in favour of appellant and those rights can not be taken away in the manner respondents are adopting.
2. That the discrimination as observed by the respondents with appellant is highly deplorable and condemnable, being unlawful, unconstitutional, without authority, without jurisdiction, against the norms of natural justice and equity and against the law on subject, hence liable to declared as such.
3. That respondent are not acting in accordance with law and are taking illegal acts with ulterior motive and malafide intention by not releasing appellants salaries which are stopped without any cogent reason since date of appointment / arrival report.
4. That the appellant was recommended for appointment as per D.S.C. held on 14-01-2013 but are not being paid salaries though to three officials namely (i). Said Rasan (ii). Waqar Ul. Islam (iii). Riaz Khan mentioned in the same D.S.C. were later on paid and even fresh appointment made of one Noor Akbar S/O Haji Akbar

4

R/O village Akazai Tehkal Bala Peshawar on recommendation of D.S.C. held on 28-06-2013 in the same manner of appointment as of appellant was also made payment of salaries but appellant is treated discriminately which is not permissible under the law **(Copy of the DSC dated 14-01-2013 and dated 28-06-2013 along with appointment of Noor Akbar are annexed)**

5. That appellant is entitled for the receipt of his salaries and the act of respondent by not paying the same is against the law and rules and as such the respondents are under the legal obligation to pay salaries to appellant as per the appellant appointment order.
6. That the act of respondents by not allowing appellant to his duties due to institution of writ petition for salaries and others legal rights are based on malafide and illegal because demand of salary/ pay is a legal right.
7. That others grounds will be raised at the time of arguments.

It is therefore requested that on acceptance of instant appeal, the respondent be directed to pay the withheld salaries since arrival report for duty till date and onward and not to create illegal hurdle in the way of performance of duties as well as to restrain respondents from taking any discriminatory action against appellant with such other relief as may be deemed proper and just in circumstances of the case.


Appellant

Through



ASAD JAN (advocate high court Peshawar)

Dated: /02/2014

5

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

SAJID KHAN

VERSUS

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND
WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK
AND OTHERS.

***PETITION FOR GRANT OF INTERIM RELIEF IN FAVOUR OF
THE PETITIONER AGAINST RESPONDENTS TO THE
EFFECT THAT THE RESPONDENTS BE RESTRAINED
FRON RESTRAINING OR CREATING HURDLE IN THE
PERFORMANCE OFFICIAL DUTIES OF THE PETITIONER
TILL FINAL DECISION OF THE APPEAL.*** -----

Reply to Preliminary objections.

1. That the above titled service appeal is pending adjudication in this honorable court.
2. That the petitioner performing his duties with full diligent and devotion since from the date of his arrival but the respondents were not paying his monthly salaries to the petitioner, since from his appointment and till Hence, the petitioner has filed the writ petition before Peshawar high court Peshawar.
3. That the respondents now due to the filing of the above titled writ petition creating hurdle for the petitioner and not allowing him to perform his duty.
4. That the due to appointment order, copies of the appointment letters and medical report as well as arrival report and service book the petitioner is got prima facie case, balance of convenience also lies in favour of the

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petitioner, more over if the instant petition is not accepted the petitioner will irreparable loss.

- 5. That there is no legal bar on the acceptance of this petition rather the same is in the interest of justice.
- 6. That the act of respondents by not allowing appellant to his duties due to institution of writ petition for salaries and others legal rights are based on malafide and illegal because demand of salary/ pay is a legal right.
- 7. That others grounds will be raised at the time of arguments.

It is therefore requested that on acceptance of instant petition relief in favour of the petitioner against respondents to the effect that the respondents may kindly be restrained from restraining or creating hurdle in the performance of official duties of petitioner till the decision of this appeal in the interest of justice and other relief for which the petitioner entitled may also be granted.

[Signature]
Petitioner

Through *[Signature]*

ASAD JAN (advocate high court Peshawar)

Dated: /02/2014

AFFIDAVIT

As per instruction of my clients I, Asad Jan advocate (Peshawar high court) do hereby solemnly affirm and declare that the contents of this petition are true and correct to the best of my knowledge and belief and that nothing has been concealed or kept secret from this Hon, able court.

[Signature]

DEPONENT



Amended A (7)

MEDICAL CERTIFICATE

Name of official Mr. Sajid Khan
 Caste or race Muslim
 Father's name Akhtar Zaman
 Residence Park - Mangum - Callary H. No A-1
Teh. & Dist. Rawl
 Date of birth 15.8.1987
 Exact height by measurement 5-6
 Personal mark of identification nil
 Signature of the official [Signature]
 Signature of head of office _____

Seal of office _____

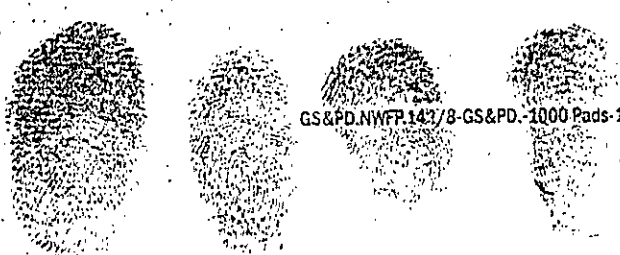
I do hereby certify that I have examined Mr. Sajid Khan a candidate
 for employment in the Office of the PO M C & W Dept
 and cannot discover that he had any disease communicable or other constitutional affection or bodily
 infirmity except nil

I do not consider this as disqualification for employment in the office of the _____
 His age according to his own statement 26 year and by appearance about
 year 26

[Signature]
 MEDICAL SUPERINTENDENT,
 CIVIL HOSPITAL Medical Superintendent
Police/Services Hospital
Peshawar.
 23/01/13

[Signature]
 Attested to be
 True Copy
ASAD JAN
 (Judge High Court)
 X-CJ/JMIO

LEFT HAND THUMB AND FINGER IMPRESSIONS



OFFICE OF THE SUPERINTENDING ENGINEER PBMC,
COMMUNICATION & WORKS DEPARTMENT,
KHYBER PUKHTUNKHWA, PESHAWAR.

No. 1795 /41-E,
Dated Peshawar the, 23/ 1 /2013

Amirul H. B. S.

Mr. Sajid Khan S/O Akhter Zaman
R/O Village jhansa PO kalabagh Nathiagai, Abbottabad.

Subject: APPOINTMENT AS ELECTRICIAN (BPS-05) HOUSEHOLD STAFF IN PBMC,
COMMUNICATION & WORKS DEPARTMENT PESHAWAR.

As approved by the DSC in its meeting held on 14-01-2013, you are hereby offered the post of Electrician (BPS-05) i.e. Rs.(5400-260-13200) under the Rules 10 (4) of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, against the Existing vacancy on the following terms and conditions:-

1. Your services are liable for termination on one month's notice.
2. In case you wish to resign at any time one month's notice will be necessary or in lieu thereof one month pay shall be forfeited.
3. You will have to produce a medical certificate of fitness from the Medical Superintendent / Civil Surgeon Peshawar.
4. You will have to serve as house keeping/non house keeping employee any where in Khyber Pakhtunkhwa and against any post of equivalent status.
5. You will join duty on your own expenses.
6. Your appointment to the above post is subject to the eligibility and production of original certificate of qualification/experience, domicile, NIC and other documents.
7. You are appointed on probation period of one year.

According to Provincial Govt. orders notified vide No. SOR-VI (E&AD) 1-13/2005, dated 10/8/2005 and Section Officer (Accounts)PBMC/AD/BUDGET/3-2/2005/P-VI, dated 26/6/2006, you will not be entitled for pension gratuity but will contribute CP Fund @ 10% from your pay and 10% will be contributed by the Govt. of Khyber Pakhtunkhwa in lieu thereof.

If you accept the offer on the above terms and conditions, you should report for duty in the office of the Executive Engineer PBMC C&W. Department Peshawar.

ENGR: SHAMS UZ ZAMAN,
SUPERINTENDING ENGINEER.

Copy forwarded for information to the:

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Executive Engineer PBMC C&W Department Peshawar.
3. Section Officer (E) C&W Department Peshawar.
4. Case 41-E

ASAD JAN
Attested
ASAD JAN
Advocate High Court
E-CJ/1010

ATTESTED

Shams Uz Zaman
SUPERINTENDING ENGINEER

10/1/2013

Advocate

بخدمت جناب ایڈووکیٹ بی. ایم. سی. پٹا و

جناب عالی



فائبریری رپورٹ

میں ساجد خان ولد اختر زمان

بمطابق آرڈر نمبر 41E/1795 تاریخ 23/01/13

روز آجہ صدر خدہ 29/01/2013 کو ڈیوٹی

پر حاضر ہوا۔

العارضین
DD No. 450/9-E
13/2/2013

آپکا نائب سردار ساجد خان

[Handwritten signature]

17301-8875462-3

Attested to be
True Copy

ATTESTED

Advocate High Court
F-07/11/10

[Handwritten signature]
Stamp: 2013
Advocate High Court
F-07/11/10

SERVICE BOOK

Annex No. 0019

OF

Mr. Gajid Khan Jejra
S/o Ahmed Zaman
Designation Electrician
Department P.B.C. Es. Dept. Peshawar

ATTESTED

[Signature]

Attested to be
True & Correct
AS AT
RECORDED
IN
OFFICE

[Signature]

Price : Rs. 50/-

Note:- The entries in this page should be renewed or re-attested at least every five years and the signature to 9 and 10 should be dated.

(18) ()

1. Name: Sajid Khan

2. Race: Islam

3. Residence: village Thansa P.O Kulubagh Nathia Jali
Abbotabad.

4. Father's name and residence: Abdul Zaman


5. Date of birth by Christian era as nearly as can be ascertained:

6. Exact height by measurement:

7. Personal marks for identification:


8. Left hand thumb and finger impression of (Non-Gazetted) officer:

Little Finger 

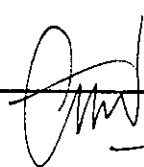
Ring Finger 

Middle Finger 


Fore Finger 

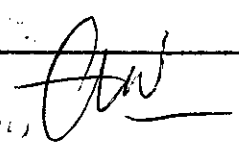
Thumb 

9. Signature of Government Servant:

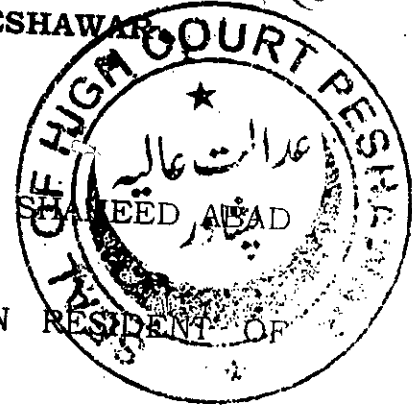

Sajid Khan

10. Signature and designation of the Head of the Office, or other Attesting Officer.


Assistant Engineer
PBMC C&W Deptt
City - Islamabad, Peshawar


JAN 1971
High Court

IN THE COURT OF PESHAWAR HIGH COURT PESHAWAR



Writ Petition No. _____ / 2013

1. MR. ASAD SON OF SANAB GUL RESIDENT OF SHAHEED ABAD KHAISHKI NOWSHERA.
2. MR. NAVID-UR-REHMAN S/O FAIROAZ KHAN RESIDENT OF VILLAGE TEHKAL BALA, PESHAWAR.
3. MR. RUHULLAH SON OF SHAFIQR REHMAN RESIDENT OF SARBAND BARA ROAD DISTRICT, PESHAWAR.
4. MR. HUSSAIN KHAN SON OF RAJ WALI VILLAGE AMANKOT, DISTRICT NOWSHERA.
5. MR. YASIR MUBARAK SON OF MUBARAK SHAH RESIDENT OF PARAM KORONA DISTRICT NOWSHERA.
6. MR. SHAHABUDDIN SON OF NASRAT GUL RESIDENT OF VILLAGE SURIZAI PESHAWAR.
7. MR. MUZZAFFAR SON OF HIDAYATULLAH RESIDENT OF VILLAGE QAYYUM ABAD PO UMERZAI CHARSADEA.
8. MR. MUFTI ASIF MANSOOR SON OF MUFTI JAN GUL RESIDENT OF MOHALLAH ISLAMABAD BAIROON LAHOORI PESHAWAR.
9. MR. ALAMGIR KHAN SON OF MUHAMMAD AJMAL RESIDENT OF CANAL COLONY BEHIND SECONDARY BOARD PESHAWAR.
10. MR. TAHIR HUSSAIN SHAH SON OF NOOR HASAN RESIDENT OF VILLAGE DAG, PESHAWAR.
11. MR. AFTAB SON OF ZAHID RASHEED RESIDENT OF SHAH MUHAMMAD GHARI, PESHAWAR.
12. MR. ASFANDYAR SON OF FIR MUHAMMAD RESIDENT OF BARA BANDA RISALPUR.
13. MR. HABIBULLAH SON OF NASRULLAH RESIDENT OF SHAHAB KHEL DISTRICT, PESHAWAR.
14. MR. KHURRUM SON OF MASOOD AHMAD RESIDENT OF FIDA ABAD BERON YAKA TOOT, PESHAWAR.
15. MR. WAREEDULLAH SON OF GUL ZADA RESIDENT OF PASANI BALA MATTANI DISTRICT, PESHAWAR.
16. MR. HASSAN DAD SON OF RAHIM DAD RESIDENT OF VILLAGE BANDA DISTRICT, NOWSHERA.
17. MR. SAJJAD KHAN SON OF AKHTER ZAMAN RESIDENT OF VILLAGE JHANSA PO KALABAGH NATHIAGAI RESIDENT OF ABBOTTABAD.

Attested to be

True Copy

ASAD JAN
(Attorney High Court)
PESHAWAR

ATTESTED

EXAMINER
Peshawar High Court

5.1 JAN 2014

- 15
18. MR. MUHAMMAD TANWEER SON OF SALEEM KHAN
RESIDENT OF DHERI ISHAQ DISTRICT NOWSHERA.
 19. MR. ASIF ALI SON OF MUSHTAQ HUSSAIN RESIDENT OF
GHARI SAIDAN.
 20. MR. RAEES KHAN SON OF MUNEER KHAN RESIDENT OF
VILLAGE DAG DISTRICT, PESHAWAR.
 21. MR. MUHAMMAD ISMAIL SON OF AKBER ALI VILLAGE
AMANKOT, DISTRICT NOWSHEHRA.
 22. MR. SAID RASSAN RESIDENT OF PBMC OFFICE PESHAWAR
BACHA KHAN CHOWK.
 23. WAQAR UL ISLAM SON OF AHMAD SAEED RESIDENT OF
TEHSIL AND DISTRICT RAWALPENDINGI KHBER PAKHTUNKHWA
HOUSE (KPK) ISLAMABAD.

----- PETITIONERS.

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION
AND WORKS DEPARTMENT PESHAWAR BACHA KHAN
CHOWK.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND
WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK.
3. DIRECTOR PBMC CIVIL SECRETARIAT, PESHAWAR.
4. ASSISTANT DIRECTOR, IV PBMC C & W DEPARTMENT
PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL
BACHA KHAN CHOWK PESHAWAR.
5. SECRETARY C&W KHYBER PAKHTUNKHWA PESHAWAR.

-----RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF
CONSITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN 1973

RESPECTFULLY SHEWETH; -

PETITIONERS SUBMIT AS UNDER:-

1- That the petitioners are law abiding citizen of Pakistan.

2- That the petitioners were appointed in the respondent's establishment on different posts on dated 14/01/2013 and are house hold staff after all the formalities the petitioners have made arrival in the month of Jan/Feb 2013.

Attested to be

True

ASAD JAN
(Attorney High Court)

ATTESTED
EXAMINER
Peshawar High Court
31 JAN 2014

(3)

(16)

(Copies of the appointment letters and medical report are annexed as annexure "A" and "B" respectively)

- 3- That the petitioners are performing their duties with full diligent and devotion since from the date of their appointments but the respondents are not paying their monthly salaries to the petitioners without any cogent reasons, since from their appointments and till date no money has been given to the petitioners as monthly salary.
- 4- That the petitioners have also approached the respondent no. 1 for the release/payment of their salaries who directed the respondent no.2 for the redressal of the petitioners grievances. but the respondent no. 2 despite that is not releasing/paying the salaries to the petitioner without any cogent reasons.
- 5- That due to the above mentioned reasons the petitioners have no option but to knock the door of this honorable court due to violation of their fundamental rights guaranteed under article 11 of the constitution of Islamic republic of Pakistan, 1973. Hence, filing the instant writ petition on the following grounds inter-alia

GROUND OF PETITION; -

- I- That the petitioners have not been treated in accordance with law, and his right secured and guaranteed under the law and constitution have been violated.
- II- That the discrimination as observed by the respondents with petitioners are highly deplorable and condemnable, being unlawful, unconstitutional, without authority, without jurisdiction, against the norms of natural justice and equity and against the law on subject, hence liable to be declared as such.
- III- That respondents are bent upon to force employees work without salary and such concept is against Islam which envisage payment of wages before sweat of toil is dried up. Performance of duties under such circumstances, were amount to forced labour which is forbidden under article 11 of the constitution, whereby all forms of forced labour are prohibited.
- IV-
- V- That the petitioners are entitled for the payment of their salaries and this act of the respondents not paying the same is against the law and rules and as such the respondents is under obligation to pay their salaries as per the petitioners appointment orders.

ATTESTED

EXAMINED
Peshawar High Court

31 JAN 2014

Attested to be

True Copy

ASAD JAN

Advocate High Court

S-C/J/MIC

VI- That the act of respondents not paying the monthly salaries is based on malafide and against the norm of natural justice.

VII- That the action on the part of the Respondents has adversely affecting petitioners financial rights as protected by the constitution and the petitioners be treated as in accordance with the law and rules.

VIII- That the petitioner seek the permission of this Hon, able court to rely on additional grounds at the hearing of this petition

It is therefore, most humbly prayed that on acceptance of the instant writ petition an appropriate writ may please issued and the respondents be directed to released/pay monthly salary to the petitioners since from their appointment.

PETITIONER

THROUGH

Asad Jan
ASAD JAN
(ADVOCATE HIGH COURT)

CERTIFICATE

Priorly no such writ petition has been filed on behalf of the petitioners before this Hon, able court.

Asad Jan
Advocate Peshawar.

List of books:

1. CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN.
2. CASE LAW AND ANY OTHER LAW BOOK ACCORDING TO NEED.

ATTESTED
EXAMINER
Peshawar High Court
31 JAN 2014

Attested to be
True Copy

Asad Jan
ASAD JAN
(Advocate High Court)
B-CJ/JMIC

IN THE COURT OF PESHAWAR HIGH COURT PESHAWAR.

Writ Petition No.----- / 2013

18

MR. ASAD AND OTHERS

VERSUS

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND
WORKS DEPARTMENT PESHAWAR AND OTHERS.

ADDRESSES OF THE PARTIES

PETITIONERS

1. MR. ASAD SON OF SANAB GUL RESIDENT OF SHAHEED ABAD KHAISHKI NOWSHERA.
2. MR. NAVID-UR-REHMAN S/O FAIROAZ KHAN RESIDENT OF VILLAGE TEHKAL BALA, PESHAWAR.
3. MR. RUHULLAH SON OF SHAFIQR REHMAN RESIDENT OF SARBAND BARA ROAD DISTRICT, PESHAWAR.
4. MR. HUSSAIN KHAN SON OF RAJ WALI VILLAGE AMANKOT, DISTRICT NOWSHERA, HOUSE NO. 133L-2 PHASE III HAYATABAD PESHAWAR.
5. MR. YASIR MUBARAK SON OF MUBARAK SHAH RESIDENT OF FARAM KORONA DISTRICT NOWSHERA.
6. MR. SHAHABUDDIN SON OF NASRAT GUL RESIDENT OF VILLAGE SURIZAI PESHAWAR.
7. MR. MUZZAFFAR SON OF HIDAYATULLAH RESIDENT OF VILLAGE QAYYUM ABAD PO UMERZAI CHARSAJDA.
8. MR. MUFTI ASIF MANSOOR SON OF MUFTI JAN GUL RESIDENT OF MOHALLAH ISLAMABAD BAIROON LAHOORI PESHAWAR.
9. MR. ALAMGIR KHAN SON OF MUHAMMAD AJMAL RESIDENT OF CANAL COLONY BEHIND SECONDARY BOARD PESHAWAR.
10. MR. TAHIR HUSSAIN SHAH SON OF NOOR HASAN RESIDENT OF VILLAGE DAG, PESHAWAR.
11. MR. AFTAB SON OF ZAHID RASHEED RESIDENT OF SHAH MUHAMMAD GHARI, PESHAWAR.
12. MR. ASFANDYAR SON OF PIR MUHAMMAD RESIDENT OF BARA BANDA RISALPUR.
13. MR. HABIBULLAH SON OF NASRULLAH RESIDENT OF SHAHAB KHEL DISTRICT, PESHAWAR.
14. MR. KHURRUM SON OF MASOOD AHMAD RESIDENT OF FIDA ABAD BERON YAKA TOOT, PESHAWAR.
15. MR. WAREEDULLAH SON OF GUL ZADA RESIDENT OF PASANI BALA MATTANI DISTRICT, PESHAWAR.
16. MR. HASSAN DAD SON OF RAHIM DAD RESIDENT OF VILLAGE BANDA DISTRICT, NOWSHERA.
17. MR. SAJJAD KHAN SON OF AKHTER ZAMAN RESIDENT OF VILLAGE JHANSA PO KALABAGH NATHIAGAI RESIDENT OF ABBOTTABAD.
18. MR. MUHAMMAD TANWEER SON OF SALEEM KHAN RESIDENT OF DHERI ISHAQ DISTRICT NOWSHERA.
19. MR. ASIF ALI SON OF MUSHTAQ HUSSAIN RESIDENT OF GHARI SAIDAN.
20. MR. RAEES KHAN SON OF MUNEER KHAN RESIDENT OF VILLAGE DAG DISTRICT, PESHAWAR.

ATTESTED

EXAMINER
Peshawar High Court

31 JAN 2014

Attested to be
True Copy



ASAD JAN

(Advocate High Court)

X-CJ/JMIC

- (6)
- (18)
21. MR. MUHAMMAD ISMAIL SON OF AKBER ALI VILLAGE AMANKOT, DISTRICT NOWSHEHRA HOUSE NO. 42 PHASE VI HAYATABAD, PESHAWAR.
22. MR. SAID RASSAN.
23. WAQAR UL ISLAM SON OF AHMAD SAEED RESIDENT OF TEHSIL AND DISTRICT RAWALPENDI.

RESPONDENTS.

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR.
3. DIRECTOR PBMC CIVIL SECRETARIAT, PESHAWAR.
4. ASSISTANT DIRECTOR, IV PBMC C & W DEPARTMENT PESHAWAR.
5. SECRETARY C&W KHYBER PAKHTUNKHWA PESHAWAR.

PETITIONERS

THROUGH

Asad Jan
ASAD JAN
(ADVOCATE HIGH COURT)

**Attested to be
True Copy**

ASAD JAN
Advocate High Court
K-CJ/JMIC

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-Shahadat Order 1984

31 JAN 2014

7

IN THE COURT OF PESHAWAR HIGH COURT PESHAWAR.

20

Writ Petition No. / 2013

MR. ASAD AND OTHERS

VERSUS

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR AND OTHERS.

AFFIDAVIT

As per instruction of my clients I, Asad Jan advocate (Peshawar high court) do hereby solemnly affirm and declare on oath that the contents of the writ petition are true and correct to the best of my knowledge and belief and that nothing has been concealed or kept secret from this Hon, able court.

Asad Jan

DEPONENT

1781

I, the undersigned, being a duly qualified and sworn-in Advocate of the High Court of Peshawar, do hereby certify that the contents of the above affidavit are true and correct to the best of my knowledge and belief and that nothing has been concealed or kept secret from this Hon, able court.

Attested to be True Copy

Asad Jan

ASAD JAN
(Advocate High Court)
K-C/M/S

ATTESTED

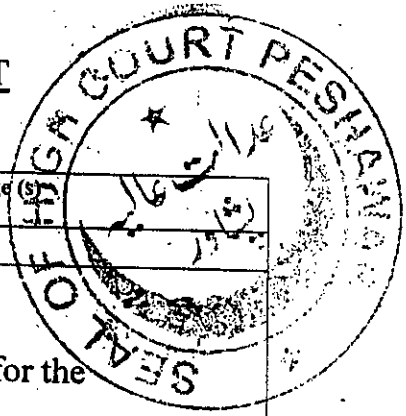
EXAMINER
Peshawar High Court.

31 JAN 2014

Amazul. F (A)

PESHAWAR HIGH COURT,
PESHAWAR

FORM OF ORDER SHEET



Date of Order or Proceedings	Order or other Proceedings with Signature of Judge (S)
1	2
27.01.2014	<p><u>W.P. No.1301-P/2013.</u></p> <p><u>Present:-</u> Mr. Asad Jan, advocate, for the petitioners. Mr. Waqar Ahmad, AAG for the respondents.</p> <p>*****</p> <p><u>ROOH-UL-AMIN KHAN, J.</u> - After arguing the case at some length, learned counsel for the petitioners stated at the bar that he would not press this writ petition provided petitioners are allowed to approach the proper forum for redressal of their grievance. Learned AAG has no objection on request of learned counsel for the petitioners.</p> <p>2. In view of statement of learned counsel for the petitioners made at the bar, this writ petition stands dismissed being not pressed. However, the petitioners are at liberty to approach the proper forum for redressal of their grievance in accordance with law.</p> <p><u>Announced:</u> 27.01.2014.</p>

Attested to be True Copy

ASAD JAN
(Advocate High Court)
K-CJ/JMIC

M. Siraj P.S.

sd/- Rooh ul Amin Khan - J
sd/- Waqar Ahmad Khan - J

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984

31 JAN 2014

31-1-14

مقررہ سہ ماہیہ اجرت P BMC سے ایندھن کی قیمتیں

ضبطہ کی بجائے اس کے عکس کی صورت

مذاہمت کی گئی ہے۔ اس کے ساتھ ساتھ اس کے بارے میں

نمبر 1795/4172 مورخہ 23/1/2013 کے حکم کے تحت

مقررہ دی۔ اور اس کے ساتھ ساتھ P BMC کو مورخہ 20/1/2013

کوڈنگ اور رپورٹ کر دی۔ اور اس کے ساتھ ساتھ

مقررہ سہ ماہیہ اجرت سے رہا ہوں۔ اور اس کے ساتھ ساتھ

مقررہ سہ ماہیہ اجرت سے رہا ہوں۔ اور اس کے ساتھ ساتھ

مقررہ سہ ماہیہ اجرت سے رہا ہوں۔ اور اس کے ساتھ ساتھ

مقررہ سہ ماہیہ اجرت سے رہا ہوں۔ اور اس کے ساتھ ساتھ

Appeal Accepted

-the Director
for release of Salary 29/03/2013

Superintending Engineer
PBMC C&W Deptt. Peshawar

Attested to be True Copy

ASAD JAN
(Advocate High Court)
B-CJ/JMIC

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Xerox for ... the ... to ... financial ... the ... employees ...

Superintendent of Prisons Khyber Pakhtunkhwa

Attested and Ad...

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Attested to be True Copy

ASAD JAN (Advocate High Court) B-G/MIC

17801-1234567-7

Annexure # 24

OFFICE OF THE SUPERINTENDING ENGINEER
PBM C&W DEPARTMENT PESHAWAR

NO. 196/12-4-11 Dated 15/1/2013

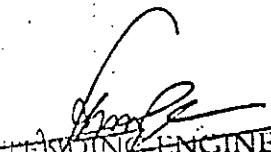


To


Executive Engineer,
PBM C&W Department Peshawar,


Subject: MINUTES OF THE DSC MEETING HELD ON 14.01.2013.

The approved Minutes of DSC meeting held on 14.01.2013 is sent to your office for record and further necessary action.


SUPERINTENDING ENGINEER PBM
C&W DEPARTMENT PESHAWAR

Copy to the Section Officer (Establishment) for information with a copy of the Minutes of subject cited meeting for record.

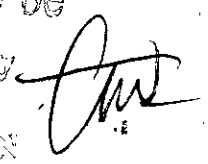

SUPERINTENDING ENGINEER PBM

 Fee

Attested
Amm
Ajl

The post of Carpenter BPS-06 shall deemed to be downgraded to BPS-04.

Contd: 2

Attested to be
True Copy

ASAD KHAN
(Magistrate High Court)
PESHAWAR

Minutes of the Departmental Selection and Promotion Committee
PBMC, C&W Department



A meeting of the DSC&PC was held on 14.1.2013 in the office of the Superintending Engineer PBMC C&W Department and make decision on the agenda items. The following attended the meeting: -

- | | |
|------------------------------|------------------------------------|
| 1. Engr: Shams-uz-Zaman | Superintending Engineer PBMC: |
| 2. Engr: G. Yazdani Khanzada | Executive Engineer PBMC: |
| 3. Mr. Rahim Badshah | Section Officer (Estt:) C&W Deptt: |

The Committee was assisted by the relevant staff of PBMC in consideration of the cases as per rules. The Committee was informed that appointments on vacant post of different cadre will be filled up against employee's son quota and against class IV establishment in PBMC C&W Department. To consider the cases of the appointment of applicants against vacant post of House hold staff both for employee's sons and fresh recruitment total 38 applications were received and considered according to merit.

The following applicants were selected against the vacant posts as below.

1. M. Tahir Hassan Shah S/o Noor Hassan resident of village Dag Peshawar against the post of Work Superintendent in PBS-09 (Diploma in Civil Technology)
2. Alamgir Khan S/o Muhammad Ajmal resident of Canal colony behind secondary board Peshawar against the post of Work Superintendent in BPS 9 (Diploma Holder in Civil Technology). The required age relaxation granted and approved by the Selection Committee.
3. Mohammad Tanveer S/o Saleem Khan resident of village Dheri Ishaq District Nowshera (Diploma in Civil Technology) Employee's son against the post of Work Mistri in BPS- 06.
4. Ruhullah S/o Shafeequr Rehman resident of Sarband Bara Road District Peshawar against the post of Work Mistri in BPS- 06 (Bachelor, Employee's son)
5. Raees Khan S/o Muneer Khan resident of village Dag District Peshawar against the post of Carpenter in BPS- 06 (Retired High court section Employee's son).
6. In light of Supreme Court orders Said Rasool already working as sweeper in BPS-01 is allowed proper scale BPS-04 as Pump Operator and adjusted temporarily on the post of Carpenter in BPS-06 on stop gap arrangement and the post of Carpenter BPS-06 shall deemed to be downgraded.
7. Waqar ul Islam will be adjusted on stop gap arrangement against the post of Carpenter BPS-06 subject to the court decision and his post of Plumber in BPS-04 will be restored. The post of Carpenter BPS-06 shall deemed to be downgraded to BPS-04.

Contd:-P-

Handwritten signatures and notes at the bottom of the page, including "Attached" and "Aje".

Minutes of the departmental selection and promotion committeePBMC, C&W department

A meeting of DSC & PC was held on 14.01.2013 in the office of the Superintending Engineer PBMC C&W department and make decision on the agenda items. The following attended the meeting.

- | | |
|--------------------------------------|-------------------------|
| 1. Engr. Shams-uz- Zaman
PBMC | Superintending Engineer |
| 2. Engr. G. Yazdani Khanzada
PBMC | Executive Engineer |
| 3. Mr. Rahim Badshah
C&W Deptt: | Section officer.(Estt:) |

The committee was assisted by the relevant staff of PBMC in Consideration of the cases as per rules. The committee was informed that appointments on vacant posts of different cadre will be filed up against employee's son quota and against class IV establishment in PBMC C&W Department. To consider the cases of the appointment of applicants against vacant post of House hold staff both for employees sons and fresh recruitment of total 38 applications were received and considered according to merit.

The following applicants were selected against the vacant posts as below.

1. M. Tahir Hussan Shah S/O Noor Hussan village Dag Peshawar against the post of work superintendent in PBS-09 (Diploma in civil technology).
2. Alamgir Khan S/O Mohammad Ajmal R/O Canal Colony behind Secondary Board Peshawar against the post of Work Superintendent in PBS- 09 (Diploma holder in civil technology) the required age relaxation granted approved by the selection committee .
3. Mohammad Tanveer S/O Saleem Khan R/o village dheri Ishaq district Nowshera (Diploma in civil technology) employee's against the post of Work Mistri in BPS-06
4. RuhUllah S/O Shafeeq.Ur.Rehman R/o Sarband Bara road district Peshawar against the post of work Mistri Bps-6(bachelor employee's sons).
5. Raees Khan S/o Muneer Khan R/o village Dag district Peshawar against the post of carpenter in BPS-6(retired High Court section employee's son) .
6. In light of supreme court orders said rasan already working as sweeper in BPS-1 is allowed proper scale BPS-04 as pump operator and adjusted temporary on the post of carpenter in BPS-06 on stop gap arrangements and the post of carpenter BPS-06 shall deemed to be downgraded.
7. Waqar-Ul- Islam will be adjusted on stop gap arrangements against the post of carpenter BPS-6 subject to the court decision in his post of plumber in BPS-4 will be restored. The post of carpenter BPS-06 shall deemed to be downgraded to BPS -04.

96

8. Hassar Dad S/o Rahim Dad resident of village Banda District Nowshera against the post of Pipe Fitter in BPS- 04(Matriculation)
9. Wareedullah S/o Gul zada village pasani Kala Mattani District Peshawar against the post of Pipe Fitter in BPS-04. Employee' son.
10. Muhammad Imran S/o Muhammad Hamid resident of village Mohib Banda district Nowshera against the post of Pipe fitter in BPS 04.
11. Mr. Khurram S/o Maqsood Ahmad (Ex-Employee in PBMC) resident of Fida abad Beroon Yaka Toot Peshawar against the post of Electrician Grade IV in BPS 04(F.A)
12. Asif Ali S/o Mushtaq Hussain resident of Shahallah Ghari Saidan Hashtnagri Peshawar against the post of Electrician Grade IV in BPS 02.
13. Mohammad Ismail S/o Akbar Ali H#402 N-3 Phase IV Hayat abad Peshawar against the post of Electrician in BPS-02 (Qualification Matric).
14. Sajid Khan S/o Akhtar Zaman village Jharan PO Kala bagh Nathiagali Abbottabad against the post of Electrician Grade II in BPS 05 (Matriculation ,Certificate in air conditioning from technical training school Gujjar Peshawar and Electrician Certificate course from NTDC Peshawar).
15. Habibullah S/o Nasrullah village Shahab Khet District Peshawar against the post of Skilled cooly in BPS- 02(Qualification FA ,Employee' son)
16. Asfandyar S/o Pir Muhammad resident of Gara Banda Risalpur against the post of Skilled Cooly in BPS-02.
17. Navaid ur Rehman S/o Fairoz Khan Village Tehkal Bala against the post of Khansama in BPS-04
18. Aftab S/o Zahid Rasheed resident of Shah Muhammad ghari Peshawar for the post of Mali in BPS -02.
19. Assad S/o Sanab gul resident of Shaheed abad Khaishki Nowshera against the post of Mali in BPS-02.
20. Hussain S/o Raj Wali resident of H# 133L- phase III Hayat abad against the post of cooly in BPS-01(matric)

Contd: P-

Attested
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 A. J.

ASAD JAN
 Advocate (High Court)
 E-CJ/JMIC

8. Hasan Dad S/O Rahim Dad R/O village BANDA district Nowshera against the post of Pipe fitter in BPS-4 (Matriculation)
9. Wreed Ullah S/O Gul Zada village Pasani Bala Mattani District Peshawar against the post of pipe fitter in BPS-04 Employee's son.
10. Mohammad Imran S/o Mohammad Hamayun R/o village Mohib Banda district Nowshera against the post of pipe fitter in BPS-04.
11. Mr. Khurram S/o Maqsood ahmad (EX- employee in PBMC) R/o of fida abad heroon Yaka Toot Peshawar against the post of electrician grade 1V in BPS-4 (F.A).
12. Asif Ali s/o mushtaq hussain r/o mohallah ghari saidan Hashtnagri peshawar against the post of electrician Grade 1V in BPS-02.
13. Mohammad Ismail H# 402N-2 Phase 1V Hayat abad peshawar against the post of electrician in BPS-02 (Qualification matric).
14. Sajid Khan s/o akhter zaman village jhan..a PO kala bagh nathiagali Abbottabad against the post of electrician grade ii in Bps 05 (matriculation certificate in Air conditioning from technical training school Gulbahar peshawar and electrician certificate course from NTDC peshawar)
15. Habib Ullah S/o Nasrullah village shahab khel district Peshawar against the post of skilled
16. coolly in BPS-2 (qualification F.A Employee son)
17. Navid ur Rehman S/o Fairoz khan village Tehkal Bala against the post of Khansama in BPS - 04.
18. Aftab S/o Zahid Rasheed resident of Shah Mohammad Ghari Peshawar for the post of Mali in BPS-02.
19. Asad S/o Sanab Gul resident of Shaheed abad Khaishki Nowshera against the post of Mali in BPS-02
20. Hussain S/o Raj wali resident of H#133L-2 phase iii Hayat abad against the post of Cooly in BPS-01 (Metric)



21. Yasir Mubarak S/o Mubarak Shah Resident of Faram corona District Nowshera against the post of Cooly in BPS- 01.

22. Shahabuddin S/o Nasrat gui village : arizai Peshawar against the post of Chowkidar in BPS-01


23. Riaz Khan Carpenter working in BPS 02 allowed proper Scale BPS-06

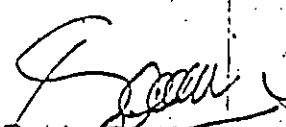
24. Fazle Ijaz reverted to his own grade S-06 as Work Mistri.


25. Muzzaffar S/o Hidayatullah village Q: rum abad P.O Umerzai charsadda against the post of Muslim Sweeper in BPS- 01.

26. Mufti Asif Mansoor S/o Mufti Jan Gul Resident of Mahallah Islam abad Bairoon Lahoori Peshawar as Muslim Sweeper in BPS-0

Meeting ended with the vote of thanks from the chair.


Engr: G. Yazdani Khanzada
(Member)
Executive Engineer PBMC,
C&W Department Peshawar.


Rahim BadShah
(member)
Section Officer(Estt.)
C&W Department Peshawar


~~Engineer Shams Azam
(Chairman)~~
Superintending Engineer,
PBMC, C&W Department Peshawar.

→ *Aggested*
cont
Ad


ASAD JAN
(Advocate High Court)
B-C/BMIC

21. Yasir mubarak S/o Mubarak Shah R/o Faram Korona district Nowshera against the post of Cooly. in BPS-01
22. Shahab Uddin s/o nasrat Gul village surizai peshawar against the post of chowkidar in BPS-01.
23. Riaz khan Carpenter working in BPS-02 allowed proper scale BPS-06.
24. Fazle Ijaz revertewd to his own grade BPS-06 as work misatri .
25. Muzzaffar son of Hidayat Ullah village Qayyum abad PO Umerzai Charassadda against the post of muslim sweeper in BPS-01
26. Mufti Asif Mansoor s/o Mufti Jan Gul R/o Mohallah Islamabad baroon lahori pesahwar as muslim sweeper in BPS-01

Meeting ended with the vote of thanks from the chair.

Engr: G. Yazdani Khanzada
(Member)
Executive Engineer PBMC,
C&W Department Peshawar.

Rahim Badshah
Section officer (Estt)
C&W Department
Peshawar.

Engineer : Shams uz zaman
(chairman)
Superintending Engineer,
PBMC, C&W Department Peshawar

Ans

Amrullah 28

MINUTES OF THE DEPARTMENTAL SELECTION COMMITTEE / DEPARTMENTAL PROMOTION COMMITTEE NO.II, HELD ON 28/06/2013 AT 10-00 AM UNDER THE CHAIRMANSHIP OF SUPERINTENDING ENGINEER PBMC C&W DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR.

Meeting started with recitation from the Holy Quran

A Meeting of the Departmental Selection Committee/Departmental Promotion Committee No.II was held on 28/06/2013 at 10:00 A.M. in the office of the SUPERINTENDING ENGINEER PBMC C&W Deptt: Peshawar under his Chairmanship to recommend the Candidate for appointment as Cooly (BPS-01) in Governor's House Peshawar against the existing vacancy.

The following attended the meeting:-

- 1. Muhammad Ashraf Khan, Chairman
Superintending Engineer PBMC
C&W Deptt: Peshawar.
- 2. Muhammad Taufeeq Member
Section Officer (Estt:)
C&W Deptt: Peshawar
- 3. ENGR: Muhammad Nawaz Khan Member
Executive Engineer PBMC.
C&W Deptt: Peshawar.

The appointment case of the candidate noted below was examined and recommended for appointment as Cooly (BPS-01) in Governor's House Peshawar being House Hold Post.

S/No	Name & Address	Name of Vacancy	Place of post	Remarks
1.	Mr. Noor Akbar S/O Haji Akbar Village Akazi Telhkal Bala Teh: & Distt: Peshawar	Cooly (BPS-01)	Governor's House Peshawar	Recommended for appointment and otherwise eligible for the post of Cooly.

Meeting ended with the vote of thanks from and to the Chair.

Attested to be True Copy
ASAD JAN
Advocate High Court
Peshawar

- 1. Muhammad Ashraf Khan,
Superintending Engineer PBMC
C&W Deptt: Peshawar.
- Muhammad Taufeeq
Section Officer (Estt:)
C&W Deptt: Peshawar
- 3. ENGR: Muhammad Nawaz Khan
Executive Engineer PBMC.
C&W Deptt: Peshawar.

Handwritten signatures and lines corresponding to the list of attendees.

OFFICE OF THE SUPERINTENDING ENGINEER PBMC,
COMMUNICATION & WORKS DEPARTMENT,
KHYBER PUKHTUNKHWA, PESHAWAR.

No. 715 /41-E,

Dated Peshawar the, 20/9/2013

To

Mr. Noor Akbar S/O Haji Akbar,
Village Akazi Tehkal Bala,
Teh: & Dist: Peshawar.

Subject: APPOINTMENT AS COOLY (BPS-01) IN (GOVERNOR'S HOUSE
SECTION) PBMC COMMUNICATION & WORKS DEPARTMENT
PESHAWAR.

As approved by the DSC in its meeting held on 28/06/2013, you are hereby offered the post of Cooly (BPS-01) (House Keeping), after fulfillment of the following terms and conditions:-

1. Your services are liable for termination on one month's notice.
2. In case you wish to resign at any time, one month's notice will be necessary or in lieu thereof one month pay shall be forfeited.
3. You will have to produce a medical certificate of fitness from the Medical Superintendent / Civil Surgeon Peshawar.
4. You will have to serve as house keeping/non house keeping employee any where in Khyber Pakhtunkhwa and against any post of equivalent status.
5. You will join duty on your own expenses.
6. Your appointment to the above post is subject to the eligibility and production of original certificate of qualification/experience, domicile, NIC and other documents.
7. You are appointed on probation period of one year.

According to Provincial Govt. orders notified vide No. SOR-VI(E&AD)1-13/2005, dated 10/8/2005 and Section Officer (Accounts)PBMC/AD/BUDGET/3-2/2005/P-VI, dated 26/6/2006, you will not be entitled for pension graduity but will contribute CP Fund @ 10% from your pay and 10% will be contributed by the Govt. of Khyber Pakhtunkhwa in lieu thereof.

If you accept the offer on the above terms and conditions, you should report for duty in the office of the Executive Engineer PBMC C&W Department Peshawar within 15 days of the issue of this letter.

Engr: Muhammad Ashraf Khan,
Superintending Engineer (PBMC)

Copy forwarded for information to:

1. The Accountant General Khyber Pakhtunkhwa Peshawar.
2. The Executive Engineer PBMC C&W Department Peshawar.
3. The Sub-Divisional Officer Concerned.

Attested
True Copy

ASAD JAN

State High Court
Peshawar

Superintending Engineer (PBMC)

Better Copy Annexed (28)

OFFICE OF THE SUPERINTENDING ENGINEER PBMC,
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR
NO. 715/41-E,
Dated Peshawar the, 20/09/2013

To

Mr. Noor Akbar s/o Haji Akbar
village Akazai Tehkal Bala,
the: & Distt: Peshawar.

Subject: APPOINTMENT AS COOLY (BPS-01) IN (GOVERNOR,S HOUSE
SECTION) PBMC COMMUNICATION & WORK DEPARTMENT
PESHAWAR.

As approved by the DSC in its meeting held on 28-6-2013, you are hereby offered the post of cooly (BPS-01) (House keeping); after the fulfillment of the following terms and conditions :-

1. your services are liable for termination on one month,s notice.
2. in case you wish to resign at any time one month,s notice will be necessary or in lieu thereof one month shall be forfeited .
3. you will have to produced a medical certificate of fitness from the medical superintendent/ civil surgeon peshawar.
4. you will have to serve as house keeping /non house keeping employee any where in Khyber Pakhtunkhwa and against any post of equivalent status .
5. you will join duty own you own expences.
6. your appointment to the above post is subject to the eligibility and production of original certificate of qualification / experience, domicile, NIC and other documents.
7. you are appointed on probation period of one year.

According to provincial Govt. order notified vide no SOR-V1 (E&AD) 1-13/2005, dated 1/8/2005 and section officer (Accounts) PBMC/AD/BUDGET/3-2/2005/P-V1, dated 26/6/2006, you will not be entitled for pension gratuity but will contribute CP Fund @ 10% from your pay and 10% will be contributed by the Govt. of Khyber Pakhtunkhwa in lieu thereof.

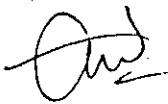
If you accept the offer on the above terms and conditions , you should report for duty in the office of the Executive Engineer PBMC C&W Department Peshawar within 15 days of the issue of this letter.

Engr: Muhammad Ashraf Khan,
Superintending Engineer (PBMC)

Copy forwarded for information to :

1. the accountant general Khyber Pukhtunkhwa Peshawar
2. The Executive Engineer PBMC C&W Department Peshawar.
3. The Sub divisional Officer Concerned

Superintending Engineer (PBMC)

AT T
to




30

To,

The Executive Engineer,
PBMC C&W Department,
Peshawar.

Subject: ARRIVAL REPORT.

In compliance with office order No.715/41-E Dated:20-09-2013 I beg to submit my arrival report to day on dated 23-09-2013 (Fore Noon) for duty please.

Thanks

HC / Estab. Chief
For signature
Kar
23/9

Your's obediently,

Noor Akbar
Noor Akbar
S/O Haji Akbar
Village Akazi Tehkal Bala,
Teh: & Distt: Peshawar

[Signature]

Attested to be
True Copy

[Signature]
HEAD JUDGE
(District High Court)
PESHAWAR

(3)

Form No. 4

MEDICAL CERTIFICATE

Name of official Noor Akbar ✓
 Caste or race Agghan
 Father's name Haji Akbar ✓
 Residence Akazi Tehkal Bala Plo Has Distt & Telawa Peshawar
 Date of birth 19-03-1982 ✓
 Exact height by measurement 5-7
 Personal mark of Identification _____
 Signature of the official [Signature]
 Signature of head of office _____

Seal of office _____

I do hereby certify that I have examined Mr. Noor Akbar a candidate for employment in the Office of the P.B.M.C. (Carpenter's & Hand Sect) and cannot discover that he had any disease communicable or other constitutional affection or bodily infirmity except Nil

I do not consider this as disqualification for employment in the office of the P.B.M.C. His age according to his own statement 31 (Thirty one) year and by appearance about 31 (Thirty one) year. [Signature] Attested.

13/3/82

Sub Divisional Officer-II
 P.B.M.C. Deptt.
 Peshawar

[Signature]
 MEDICAL SUPERINTENDENT,
 CIVIL HOSPITAL
 Medical Superintendent
 Police/Service Hospital
 Peshawar

26/9/13

[Signature]
 LEFT HAND THUMB AND FINGER IMPRESSIONS

Note - The entries in this page should be renewed or re-attested at least every five years and the signature to lines 9 and 10 should be dated.

ENIC NO. 17301-1256153-7

(34)

1. Name: NOOR AKBER

2. Race: Afghan

3. Residence: Village Akzai Tabbal Bala, Teh. & Dist. Peshawar

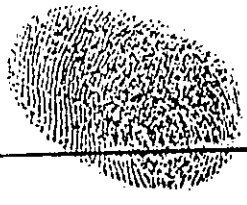
4. Father's name and residence: Haji Akbar

5. Date of birth by Christian era as nearly as can be ascertained: 19-03-1982

6. Exact height by measurement: 5-7

7. Personal marks for identification: Nil

8. Left hand thumb and finger impression of (Non-Gazetted) officer:



Little Finger



Ring Finger



Middle Finger



Fore Finger



Thumb



9. Signature of Government Servant:

10. Signature and designation of the Head of the Office, or other Attesting Officer:

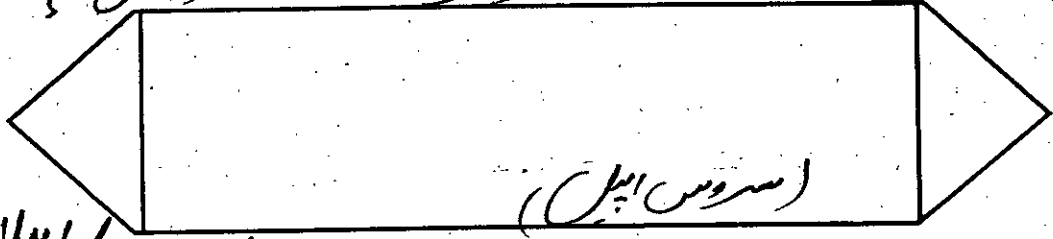
Sub Divisional Officer-II
PBMC C&W Deptt:
Peshawar

Attested to be
True Copy

ACAD

8-C/1

بعدالت ضابطہ شیعہ جماعتوں اور سرویس ٹریڈ یونین کے لیے



2014ء پنجاب / اپیلانٹ

(سروس اپیل)

موضوعہ
مقدمہ
دعویٰ
جرم

سما لہ خان بنام مسیٹر ٹریڈ یونین انجینئر سے لائن ڈیپو

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کے لیے (معدوبان الٹرو ویکٹ لہ) کی کورٹ کے لیے
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث ہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائہ التوائے مقدمہ کے سبب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم 1 / ماہ فروری 2014ء

واہ العیہ کے لئے منظور ہے۔

بمقام مسیٹر
Suzell
Attested

17301-8875462-3

BEFORE THE K.P.K SERVICE TRIBUNAL PESHAWAR

Sajid Khan

VERSUS

Superintendent Engineer PBMC etc

**PETITION FOR CONDONATION OF DELAY IF ANY CAUSED IN
SUBMISSION OF FILING OF INSTANT SERVICE APPEAL.**

Respectfully Sheweth;


Petitioner humbly submits as under:-

- 1-** That petitioner is aggrieved from the act of respondents whereby they withheld the petitioner salaries.
- 2-** That after submission of departmental appeal, when the same was not implemented then the petitioner moved Peshawar High Court Peshawar in its writ jurisdiction but the same was withdrawn with permission to move Honorable Service Tribunal. **(Copy annexed)**
- 3-** That due to litigating on a wrong from which was due to bonafide mistake, the condonation of delay, if any cause may kindly be condoned in the interest of justice because the same comes within preview of sufficient cause and was beyond petitioner control.
- 4-** That for above mentioned reason and others to be raised at the time of arguments the delay is condonable.

It is, therefore, requested that on acceptance of this petition the delay if any in approaching this Honorable Court may kindly be condoned in the interest of justice.


PETITIONER/APPELLANT

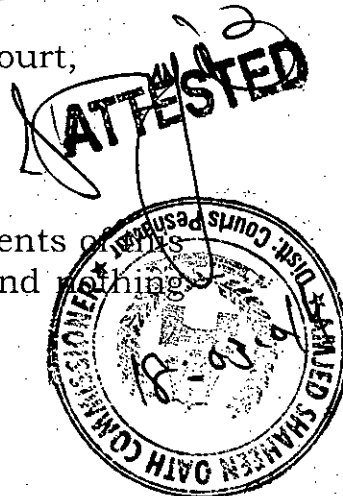
Through

Asad Jan 
Advocate, High Court,
Peshawar

AFFIDAVIT:

I, do hereby solemnly affirm and declare on oath that the contents of this petition are true and correct and the best of my knowledge and nothing has been concealed intentionally from this Honorable Court.


DEPONENT



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

Petition..... /2014.

Sajid Khan

Versus

**SUPERINTENDING ENGINEER PBMC C&W AND
OTHERS**

**PETITION FOR ISSUANCE OF DIRECTION TO
RESPONDENTS FOR PAYMENT OF SALARIES TO
PETITIONER SINCE HIS ARRIVAL FOR DUTY IN
THE INTEREST OF JUSTICE**

Respectfully sheweth,

Petitioner submits as under,

1. That the above titled appeal is pending before this hon'able court and is fixed for 10-6-2014.
2. That this hon'able court issued order on previous date in favour of petitioner but respondent are malafiedly disobeying the same.
3. That the petitioner is employee of respondents and for no fault of his own, respondents not paying the salaries and petitioner is a poor person and low grade employee and has no other source of income hence request through instant petition for release of his salaries since arrival for duty.

4. That there is no legal bar on the acceptance of instant petition.

It is, therefore humbly prayed on the acceptance of instant petition, appropriate order direction for payment of salaries till final decision of the appeal may kindly be passed.

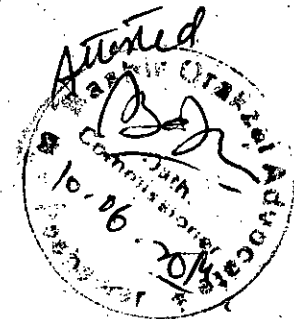
Petitioner / Appellant
THROUGH

ASAD JAN (advocate high court)

AFFIDAVIT/ VERIFICATION.

I do here by solemnly affirm and declared on oath that all the content of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.

DEPONENT.



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

Application no...../2014.

Sajid Akbar

Versus.

SUPERINTENDING ENGINEER PBMC C&W AND OTHERS

**PETITION FOR ISSUENCE OF STRICT
DIRECTION FOR IMPLIMENTATION OF STATUS QUO
ORDER WHEREBY THIS HON'ABLE TRIBUNAL
ALREADY RESTRAINED RESPONDENTS FROM
TAKING ANY ADVERSE ACTION AGAINST
PETITINER AND ALSO FOR STRICT COMPLIENCE
WITH THE ORDER OF THIS HON'ABLE COURT FOR
ALLOWING THE PETITIONER TO PERFORM HIS
OFFICIAL DUTIES.**

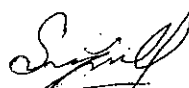
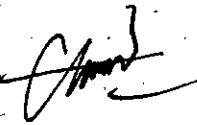
Respectfully sheweth,

Petitioner Submits As Under,

1. That the above titled appeal is pending before this hon'able court and is fixed for 10-6-2014.
2. That this hon'able court on previous date of hearing directed respondents to allow petitioner to the official duties and also to restrain respondents from any adverse action against petitioner
3. That respondents did not obeyed the order of this hon'able tribunal and also continued with the illegal inquiry initiated on the bases of malafide and also did not allow petitioner to perform official duties, hence instant petition

submitted for the compliance of status quo orders respondents have initiated illegal inquiry.
4. That there is no legal bar on the acceptance of instant petition.

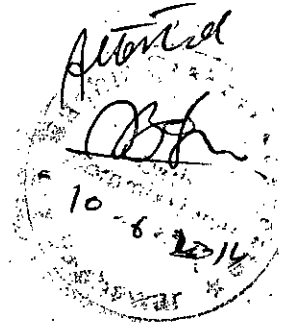
It is, therefore humbly prayed on the acceptance of instant petition, appropriate order for strict compliance of status quo order already issued be passed against respondents in the interest of justice.


Petitioner / Appellant 
THROUGH
ASAD JAN (advocate high court)

AFFIDAVIT / VERIFICATION.

I do here by solemnly affirm and declared on oath that all the content of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.


DEPONENT



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No.189.

Mr. Sajid Khan **Versus** Govt of Khyber Pakhtunkhwa C&W Department.

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4	Audit Inspection Report / Draft Para No. 14	III	9
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(L)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 189/2014.

Mr. Sajid Khan S/O Akhtar Zaman,
Resident of Villige Jhansa, P.O Kalabagh Nathiagali
District Abbotabad.....Appellant

VERSUS

1. Superintending Engineer PBMC C&W Department Peshawar
2. Executive Engineer PBMC C&W Department Peshawar.
3. Assistant Director/SDO-IV PBMC C&W Department Peshawar.
4. Secretary to Govt of Khyber Pakhtunkhwa C&W Department Peshawar.
5. Shams-uz-Zaman, Ex-Superintending Engineer PBMC C&W Department.
(Now Director EQAA C&W Department Abbotabad.)

..... Respondents.

COMMENTS ON BEHALF OF RESPONDENT NO.1 TO 4.

PRELIMINARY OBJECTIONS.

1. Appellant's father is neither government servant nor died official, appointment of appellant is not covered under Rules 10 (4) of Khyber Pakhtunkhwa Civil Servant A.P.T Rules 1989, hence illegal, void abinitio and not warranted by any law.
2. As the appointment of the Appellant is illegal and void abinitio, has got no cause of action to invoke the jurisdiction of this Honourable Tribunal and the principal of locus poenitentiae.
3. The Appellant has deliberately concealed the material facts from this Honourable Tribunal in the appeal in hand.
4. The appellant has not come to the Tribunal with clean hands.
5. The appeal is bad for misjoinder and non joinder of the then Executive Engineer, Mr. Ghulam Yazdani who signed the Service Books and other documents and not released the salaries if appointment was regular and not illegal.

FACTS.

1. No comments.
2. Incorrect, the office record does not prove as to whether his appointment as Electrician(Grade-II) (BPS-05) (whether no other eligible candidate hailing from Peshawar with relevant Trade Proficiency Electrician as per the appointment / recruitment Rules, 1996) was available, while appellant belongs to district Abbotabad, if made by the then Superintending Engineer (Respondent-5) was regular and his father had either served in the department and was died during service because the so called appointment orders with service appeal (offer) itself speaks:-

“As approved by the DPC in its meeting held on 14-01-2013, you are hereby offered the post of Electrician Grade-II (BPS-05) i.e..... under Rule-10 (4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, against the Employees Sons Quota.....”

Whereas the Rule-10 (4) ibid notified by the Establishment Department (Regulation Wing) vide No.SOR-VI (E&AD)1-3 / 2011/ Vol-VIII dated 31-08-2012, (Annexed-I) describes that: -

“where a Civil Servant dies or is rendered incapacitated / invalidated permanently during service, then notwithstanding the procedure provided in the sub rule (2), the appointing authority may appoint one of the children of such Civil Servants or if..... to a post in any of the basic pay scale 1-10.

By virtue of the ibid Rules, the appointment made by the Respondent-5 in connivance with DPC, are illegal, void abinitio and smells some vested interest at the last days when the then Respondent-5 (Mr. Shams-uz-Zaman) and Executive Engineer (Ghulam Yazdani) were posted out from PBMC in the month of April 2013. Giving the issue date in back month of January 2013 while there was also imposed ban by the Election Commission during the Care Taker Government (When the then Regime was sent to home) and new care taker took over. The statement of

issue/dairy clerk (MR. Imtiaz) is **Annexed-II**. This point is also noticed by the Audit Inspection Team as per D.P No. 14 (**Annexed-III**). The illegal and void abinitio appointment orders were also brought into the notice of Chief Minister Khyber Pakhtunkhwa by the Labour Union dated 06-05-2013 (**Annexed-IV**). The Chief Minister orders dated 25/09/2013 are also (**Annexed-V**). The Secretary C&W Department ordered an enquiry in this case. The Enquir Officer in his report (Annexure-VI) held that the appointments cannot be termed as legal, meaning thereby ILLEGAL.

3. As stated in the above para, record with regard to appellant's application / qualification / domicile other experience certificate and his father's death during service / family pension payment orders are not coming in office record, so what to say the joining report and Medical fitness which seem doubtful. According to the appellant, if had joined service then in January, why he and others, who had been shown appointed and Service Books made also thereto, had not been paid by the then Executive Engineer/Superintending Engineer (Shams-uz-Zaman/Ghulam Yazdani), if the so said (all) appointments were ordered in regular manner even till the end of April 2013 when the then Executive Engineer (DDO) and Superintending Engineer (who appointed him and others) were transferred out from PBMC.

4. Incorrect, as stated in above paras.

5. Incorrect as stated in Para-3 above in detail.

6. So far filing Writ Petition No. 1301-P/2013 under the title: Mr. Asad S/O Sanab Gul of Nowshera and others is concerned, the Respondents Departments filed written reply with a Brief Note (**Annexed-VII/VIII**). The written statement of the office Head Clerk dated 04/07/2013 (**Annexed-IX**) was also filed in the August Peshawar High Court and that were the petitioners, feeling, not achieving their goal, when the kind Lord Judge asked the council of the petitioner to state on Oath that his clients father's having served the Department and died during service for the purpose of their appointment under the aforesaid rules, withdrew the Writ which was accordingly dismissed "being not pressed." vide orders dated 27-01-2014

(Annexed-X). He was appearing at Serial No-17 as petitioner in the Writ. Moreover the appellant is not entitled for pay of salary as his appointment order is illegal and void abinitio.

7. The present respondent 1 to 4 are not in the knowledge that when the appellant and others, appointed under Rule-10(4) of the A.P.T Rules, 1989, approached to Respondent-5, Mr. Shams-uz-Zaman for release/payment of salaries. The non-payment of salary to the appellant is lawful one as the appointment order of the appellant is illegal and void abinitio which does not accrue any right of salary.

8. The appeal may be dismissed with cost on the following replying grounds amongst others:-

GROUND

- 1. Incorrect. No valuable right of the appellant has been taken away as he is not entitled for salary being an illegal appointee.
- 2. Incorrect. No discriminations, illegality, unlawful and unconstitutional act has been done by the replying respondents as the appellant has got no locus standia and cause of action.
- 3. Incorrect. Appellant is not entitled for payment of salary. The pay of appellant has not been issued as the appointment being illegal, void abinitio and fabricated.

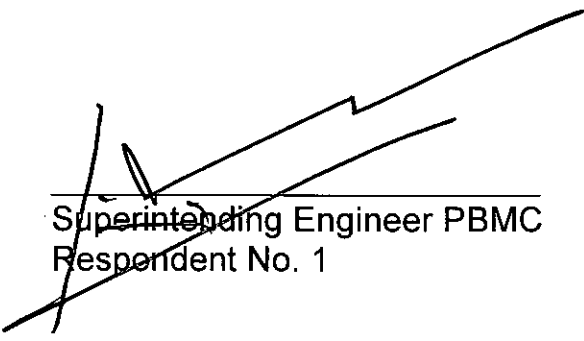
4. Incorrect, the position of other 3 officials, namely (1) Said Rasan (2) Waqarul Islam (3) Riazullah stated appearing in the same DSC had been later paid, are quite different, none of them were appointed under Rule-10(4) of A.P.T. Rules, 1989, as fresh appointees. Their status is that: -

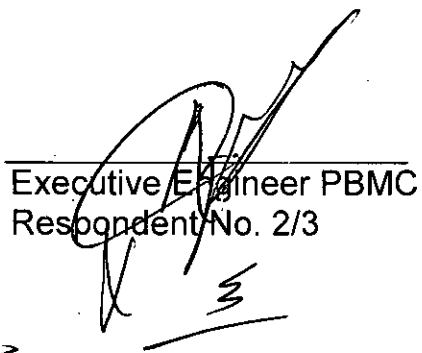
- i) Mr. Said Rasan was holding appointment as Sweeper (BPS-01) was elevated to the post of Pump Operator (BPS-04) in 09/2008 and was removed from service on 23/6/2009, which he sued before the Tribunal in (Service Appeal No 1665/2009). Against the decision of Tribunal dated 21-07-2010 (Annexed-XI) the department went in Civil Petition No. 339-P/2011, which was dismissed on 01-11-2012 by the Apex Supreme Court of Pakistan (Annexed-XII), hence paid.

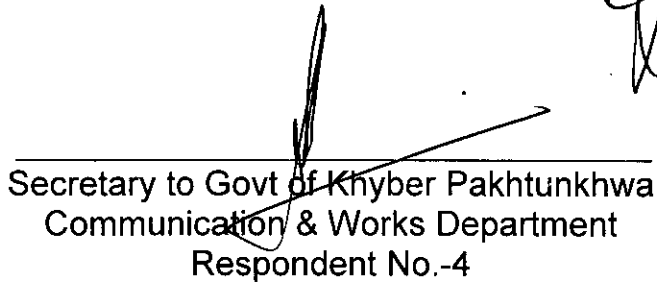
- ii) Similarly Mr. Waqarul Islam who was holding appointment as Plumber (BPS-04) in 10/2008 was removed from service with effect from 01-01-2010, he sued before the Service Tribunal (Service Appeal No. 880/2011) (Annexed-XIII) lastly he was re-instated and adjusted on stop Gap against the post of Carpenter (BPS-06), hence paid, down grading the post of Carpenter from BPS-06 to BPS-04.
 - iii) Whereas the nature of Mr. Riazullah is totally different, he was appointed somewhere back in BPS-02 as Carpenter while the post of Carpenter carries BPS-06 and as such the incumbent official was awarded BPS-06 the original Pay Scale of post and is paid accordingly. Hence the question of discrimination does not arise at all.
 - iv) It is correct that one Mr. Noor Akbar S/O Haji Akbar Resident of Tehkal Bala Peshawar has been appointed on 20/09/2013, not in the same manner, meaning thereby under Rule-10(4) of the A.P.T Rules, 1989 but against the post of Coolli (BPS-01) in Governor House Section for which proper working papers were drawn and DSC meeting was officially called. Proper procedure / codal requirement and keeping the very aspect that posts in BPS-01 and BPS-02 or equivalent are to be filled on local basis under S/Rules-3 of Rule-12 of the APT Rules, 1989 (Page 22 of ESTA CODE is (Annexed-XIV) followed by ancillary instructions of the Provincial Government dated 8/3/2013 (Annexed-XV).
5. Incorrect, cannot be paid when the appointments at all were illegal and void abinitio and carried totality in disregard of the specified rules and were not borne on the Establishment on the one and on the others, if any of the then appointees were correctly appointed in 01/2013, performed duties till the date/period when the Respondent-5 (Mr. Shamz-uz-Zaman the then Superintending Engineer PBMC) posted out in 04/2013 why he (Respondent-5) had not paid them when the so stated service books even were maintained. All the actions taken thereto are illegal and void abinitio, therefore the appointments and claim for salaries is unjust. One cannot be paid for not doing the job.

- 6. Incorrect, that is the appellant and others who infacts were never assigned/posted in field/offices by the then Superintending Engineer/ Executive Engineer who remained upto 04/2013 and not paid being not performed the duties physically.
- 7. The respondent(s) also seek permission to advance further grounds/facts at the time of arguments.

It is therefore requested that the appeals may graciously be dismissed with cost.

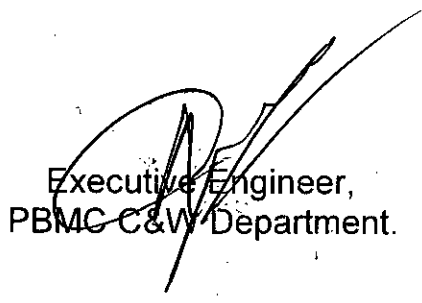

 Superintending Engineer PBMC
 Respondent No. 1


 Executive Engineer PBMC
 Respondent No. 2/3


 Secretary to Govt of Khyber Pakhtunkhwa
 Communication & Works Department
 Respondent No.-4

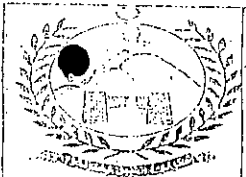
AFFIDAVIT

It is hereby solemnly affirm that the reply/comments thereto are correct to the best of my knowledge and nothing has been concealed from this Honourable Court.


 Executive Engineer,
 PBMC C&W Department.

7

Amended



GOVERNMENT OF KHYBER PAKH
ESTABLISHMENT DEPARTMENT

(REGULATION WING)

Dated, Peshawar the 31st August, 2012

PS/SMER
Dy. No. 743
Date: 1/11/12
Govt. of Khyber Pakhtunkhwa

REGULATION

No. SOR-VI (EQAD)1-3/2011/Vol-VIII: - In exercise of the powers conferred by Section 26 of the Khyber Pakhtunkhwa Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973), read with this Department's Notification No. SOR-I(S&CAD)1-206/74/Vol-V, dated 18th April 1989, the Chief Minister of the Khyber Pakhtunkhwa Province is pleased to direct that in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989, the following further amendments shall be made, namely:

AMENDMENT ✓

Sub rule 4 of Rule 10 shall be substituted by the following:-

"Where a civil servant dies or is rendered incapacitated/invalidated permanently during service then notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant, or if the child has not attained the age prescribed for appointment in Government Service, the widow/wife of such civil servant, to a post in any of the Basic Pay Scales 1-10:-

Provided that the child or the widow/wife as the case may be, possesses the minimum qualification prescribed for appointment to the post:

Provided further that if there are two widows/wives of the deceased civil servant, preference shall be given to the elder widow/wife:

Provided also that the appointment under this sub rule is subject to availability of a vacancy and if more than one vacancies in different pay scales are available at a time, and the child or the widow/wife, as the case may be, possesses the qualifications making him or her eligible for appointment in more than one post, he/she shall ordinarily be appointed to the post carrying higher pay scale.

Provided further that this shall not apply to any post in BPS-1-10 falling in the purview of the Khyber Pakhtunkhwa Public Service Commission.

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

27/8/12
27/8/12

SECTION OFFICER (R.VI)

حلفیہ بیان

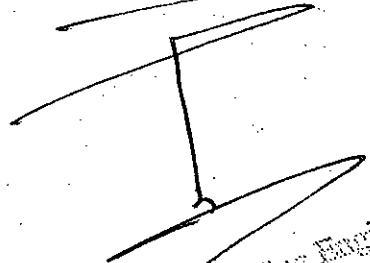
جناب عالی!

منکہ امتیاز خان جوئیہ ملکر
 پیالی ایف سی حلفیہ بیان کرنا ہوں کہ
 ماتحت ہونے کے ناطے مجھے شمس الزمان
 اس ای بی بی ایم سی نے ڈسٹریکشن
 کے ساتھ اپنے گھر واقع حیات آباد ٹھلایا
 اور اس کے حکم پر میں نے بینک ڈپٹ میں
 آفس آرڈروں پر نمبر لگائے ہیں۔ اور ڈسٹریکشن
 رجسٹر میں نمبر بھی اس کے حکم پر چھوڑنے
 کے۔

امتیاز خان جوئیہ ملکر

(Handwritten signature)

NT 11



Superintending Engineer
 C&W Deptt
 Kyber Pakhtunkhwa Peshawar

OFFICE OF THE DIRECTOR GENERAL AUDIT KHYBER PAKHTUN KHWA PESHAWAR.

Advance Para.

14

NAME OF DEPARTMENT	Secretary Works & Services
NAME OF OFFICE	Superintendent Engineer PBMC, Peshawar
PERIOD OF IRREGULARITY	2012-2013
MONTH IN WHICH DETECTED	09/2013
NAME OF RESPONSIBLE OFFICER	Superintendent Engineer
NAME OF INSPECTION OFFICER	Ijaz Arif AAO
PARA No. AUDIT NOTE.	07

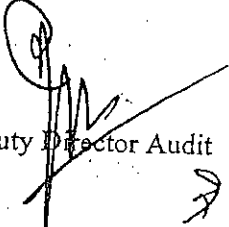
23 NOS ILLEGAL APPOINTMENTS IN PROVINCIAL BUILDING MAINTENANCE CELL PESHAWAR

Para 23 of GFR Vol.-I requires that every Government Officer should realize fully and clearly that he will be held personally responsible for any loss sustained by Government through fraud or negligence on his part.

During the Financial Year 2012-13 the accounts record of Superintendent Engineer PBMC Peshawar, on verification

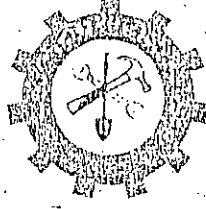
On further verification of record it came into notice that 23 numbers official was appointed by Superintendent Engineer PBMC Peshawar in the month of January, 2013 which was challenged in court, when thoroughly seen the record it was astonishing to note that these appointees have no record such as Merit List, Arrival Report, Medical Fitness Certificate, Positing Order/Policy/criteria of the retired employees/present employees sons quota and Employment Exchange registration cards were available (statement of the Head Clerk is attached) which is self explanatory. All the appointments orders were issued in back date photo copies of the dispatch register attached.

On the above facts all the appointments is illegal and unfair which needs justification and strict action may be taken against the person at fault for misuse of power against the appointments of 23 numbers employees, ignoring the merit and used of back dating numbers in dispatch register.


Deputy Director Audit

P.W.D Labour Union Sub Committee PBMC Peshawar

Attached With Pakistan Workers Federation



Ref 333/45

Date 06-05-13

جناب سیکرٹری صاحب (محکمہ سی اینڈ ڈبلیو) خیبر پختونخواہ
 عنوان: PBMC میں غیر قانونی بھرتیاں

جناب عالی!

گزارش ہے کہ PBMC محکمہ سی اینڈ ڈبلیو میں سپرنٹنڈنگ انجینئر شمس الزمان اور اکاؤنٹنٹ PBMC وغیرہ کی ایما پر جو بھرتیاں کی گئی ہیں وہ غیر قانونی طور پر کی گئی ہیں۔ جبکہ دفتر سے کافی قیمتی سامان غائب کر کے ان کے متعلق بل پاس کروانے گئے ہیں جن کی بھی تحقیقات کروائی جائیں تاکہ حقیقت سامنے آسکے۔ جبکہ کچھ پوسٹوں پر اپنے قریبی اور منظور نظر افراد کو بھرتی کیا گیا ہے۔ جو کہ ریٹائرڈ اور حاضر سروس ملازمین کے ساتھ سراسر انصافی کے مترادف ہے اس سے پہلے بھی اکاؤنٹنٹ PBMC نے اپنے رشتہ داروں اور دیگر منظور نظر افراد کو بھرتی کیا تھا۔ جبکہ سپرنٹنڈنگ انجینئر صاحب نے مذکورہ بھرتیوں کو قانونی طور پر ثابت کرنے کے لئے اپنی ٹرانسفر سے پہلے پرانی تاریخوں میں تعیناتی کی ہے۔ جبکہ گذشتہ ادوار میں جتنی کرپشن کی گئی ہے اس کے متعلق بھی معلومات حاصل کر کے مطابق قانون کارروائی عمل میں لائی جائے۔ لہذا بذریعہ درخواست ہذا گزارش کی جاتی ہے کہ جملہ بھرتیوں کو منسوخ کر کے حقداران ملازمین کو ترقی دی جائے اور ریٹائرڈ ملازمین کے بچوں کو قانونی کوٹہ کے مطابق متعلقہ پوسٹوں پر بھرتی کرنے کے احکامات صادر فرمائیں۔ جبکہ غیر قانونی طور پر بھرتی ہونے والے افراد اور بھرتی کرنے والوں کے خلاف سخت سے سخت کارروائی عمل میں لائی جا کر داد رسی کی جائے۔

شہید بیار صاحب
 صدر PWD لیبر یونین
 PBMC سب کمیٹی پشاور

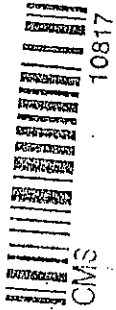
کاپی برائے:

- جناب چیف انجینئر صاحب خیبر پختونخواہ
- جناب وزیر اعلیٰ صاحب صوبہ خیبر پختونخواہ
- جناب چیف سیکرٹری صاحب صوبہ خیبر پختونخواہ
- جناب اکاؤنٹنٹ جنرل صاحب خیبر پختونخواہ
- جناب ڈپٹی انجینئر صاحب خیبر پختونخواہ
- جناب ڈائریکٹر (نیٹ) خیبر پختونخواہ
- جناب سپرنٹنڈنگ انجینئر صاحب لیبر وڈبلیو
- جناب ڈائریکٹر صاحب لیبر وڈبلیو پشاور
- جناب سیکشن آفیسر صاحب سٹیٹمنٹ سول سیکرٹریٹ پشاور
- جناب انجینئر ڈائریکٹر PBMC صوبہ خیبر پختونخواہ
- جناب صوبائی صدر سیکرٹری ڈبلیو ڈی لیبر یونین

Stey (Cew)

Comments plus

P.T.O





CHIEF MINISTER'S SECRETARIAT
KHYBER PAKHTUNKHWA

No. SOVI/CMS/KPK/1-51/2013/ 7/6
Dated Peshawar the, 09-05-2013.

To

The Secretary to Govt: of Khyber Pakhtunkhwa,
Communication & Woks Department, Peshawar.

Diary No: 9026
Date: 13/5/13
Secretary C&W Dept
Khyber Pakhtunkhwa

Subject:- ILLEGAL APPOINTMENT IN PBMC PESHAWAR.

Dear Sir,

I am directed to forward herewith a copy of self contained letter No.333/B dated 06-05-2013 alongwith its enclosures received from Mr. Sheher Yar Sabir, President PWD Labour Union PBMC Sub Committee Peshawar on the subject noted above and to state that your comments in the matter may please be furnished to this Secretariat for perusal/orders of the Hon'able Chief Minister Khyber Pakhtunkhwa.

AS / DSA
for report
from SE PB

URGENT
Painy L

SA

Yours faithfully,

Section Officer-VI

Encls: (As above).

Endst: of even No. & Date.

Copy forwarded to:-

PSO to Chief Minister Khyber Pakhtunkhwa.

Section Officer-VI

80 (E) 14/5

18x5=90

Amended-V

11

SO(4) Memo
No. SO(4)/C&W/11-124/E&AD/2013
dated 24-10-2013



GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No. SO(O&M)E&AD/6-7/2010
Dated Peshiawar, the 25th September, 2013

AS/DSCA
17825
Diary No:
Date: 26-9-13
Secretary C&W Dept
Khyber Pakhtunkhwa

To

All Administrative Secretaries to,
Govt. of Khyber Pakhtunkhwa.

Ords

Subject:

HON'ABLE CHIEF MINISTER, KHYBER PAKHTUNKHWA HAD MEETING WITH PTI MNA'S/MPA'S, DISTRICT PRESIDENTS ALONGWITH CABINETS AND PRESIDENT/GENERAL SECRETARIES PTI ORGANIZATIONS OF DISTRICT NOWSHERA, SWABI, CHARSADEA & MARDAN ACCOMPANIED BY DEPUTY COMMISSIONERS, D.P.OS AND HEADS OF ALL LINE DEPARTMENTS.

Dear Sir,

I am directed to state that the in the meeting mentioned in the subject, the Competent Authority directed as under;

"All those appointed on Deceased Son's Quota without fulfilling codal/legal formalities shall be removed, and the process carried out transparently and in accordance with rules".

I am therefore, directed to request that the above directives of the Competent Authority may be followed/complied with in letter and spirit.

Yours faithfully,

[Signature]
25/9/13

(SHAISTA)
SECTION OFFICER (O&M)

Copy for information to:-

1. Principal Staff Officer to Chief Minister, Khyber Pakhtunkhwa.
2. PS to Chief Minister Khyber Pakhtunkhwa.
3. PS to Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
4. PS to Secretary, Establishment Department.
5. PS to Special Secretary, Establishment Department.

Please give a spare copy of returns to SO(4) SO(4) 27/9/13

[Signature]
25/9/13

SECTION OFFICER (O&M)

13

INQUIRY REPORT INTO ILLEGAL APPOINTMENT IN PBMC C&W DEPARTMENT
PESHAWAR

I. AUTHORITY.

I Engr. Shahid Hussain, Superintending Engineer C&W Circle Peshawar is appointed as Inquiry Officer by the Secretary to Government of Khyber Pakhtunkhwa C&W Department vide No.SOE/C&WD/24-60/Association Dated 12-03-2014 to inquire the issue of illegal appointment in PBMC C&W Department, keeping in view all aspects including written statement of the sitting authorities of the PBMC explained to the Advocate General Peshawar as well as the accused officer and submit report.

II. PREAMBLE.

President Labour Union PBMC Sub Committee Peshawar vide his letter No.333/B Dated 6-5-2013 complained to the Secretary to Government of Khyber Pakhtunkhwa C&W Department and copies thereof endorsed to Chief Minister Khyber Pakhtunkhwa & others that Engr.Shams-us-Zaman Superintending Engineer PBMC in collaboration with Divisional Account Officer PBMC have made fresh illegal appointments ignoring the Employees Sons of the office of the Executive Engineer PBMC, and the appointment were made in back dates. The Secretary C&W Department initiated an inquiry in the matter and Engr.Fazali Kabir, the then Superintending Engineer C&W Circle Peshawar, presently working as Chief Engineer (C) C&W Department was appointed as Inquiry Officer, who submitted the report with the recommendation to get the views of Establishment Department On the following points.

1. Whether the posts of Work Superintendant, Work Mistri, Carpenter and Electrician come under the purview of Household Staff.
2. Whether the appointment in Class -IV of the Employees belongs to other Districts in PBMC are under the rules.

The points were referred to the Establishment Department by the Competent Authority and the Establishment Department intimated that no post has been classified or categorized to be the staff for houses. However provision of Sub Rule -2 of Rule-10 of APT Rules 1989 read with Sub Rule 2&3 of Rule-12 of APT Rules 1989 are quite clear on the subject which may be followed to dispose of the subject case. vide Establishment Department No.SORV(E&AD)Gen-C&W /13 Dated 10-10-2013. Hence the case was again referred to Engr.Fazali kabir, the inquiry Officer for further comments. The inquiry Officer reported that he has ascertained findings regarding the employees sons in the inquiry report from the record submitted by the accused Officer accountable for such appointments, and further added to get the accurate record from the concern office.

III. PROCEEDINGS.

On appointment as Inquiry Officer in the titled case, the undersigned asked the Superintending Engineer PBMC Peshawar vide Letter No.1629//30-SE Dated 18-03-2014 to attend the office of the undersigned on 20-3-2014 accompanied with the Executive Engineer & Divisional Account Officer PBMC and to furnish the relevant record pertaining to the inquiry. The said Officers attended the office of the undersigned on 20-3-2014 and all the possible aspects of the inquiry were discussed. Mr.Sheryar Sabir, President PWD Labour Union C&W Department/Accuser was also invited to this office for recording his statement vide

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(13)

No.1630/30-SE Dated 18/3/2014 ,but he neither attended the office of the undersigned nor submitted his statement. The submitted record was scrutinized and found deficient .Therefore the aforesaid offices were once again requested vide this office No.1675/30-SE Dated 25/3/2014 for production of complete record . Engr.Shams-uz-Zaman the then Superintending Engineer PBMC, presently working as Director (Technical) EQQA Abbottabad, was also requested to furnish his statement as well as relevant record vide this office No.1677/PF/30-SE Dated 25-3-2014, who submitted his statement with some record vide his No.661/1-1 Dated 3/4/2014.Mr.Amir Qadir, the then/ present DAO and Mr.Lal Payo Khattak the then / present Superintendent of PBMC were also requested to furnish their statements vide this office No.1679/30-SE Dated 25-3-2014 & No.1678/PF/30-se Dated 25-3-2014, the former submitted the same record submitted by the then Superintending Engineer(Engr.Shams-uz-Zaman) vide No.671/3EC Dated 26/3/2014,while the latter did not replied .The Executive Engineer PBMC after repeated reminders/requests submitted two lists of employees sons and deceased sons on 7-4-2014.

IV, GENERAL FINDINGS.

After hearing the sitting Authorities of PBMC and the then Divisional Account Officer of PBMC in meeting held on 20-3-2014 in the office of the Superintending Engineer C&W Circle Peshawar and scrutiny of the record submitted by the concerned offices & the then Superintending Engineer PBMC , related to the 26 No Office orders ,including 21 No fresh appointments ,the undersigned restricts the inquiry to the mandate given for illegal appointments and has reached to the following findings.

1. The Executive Engineer PBMC Letter No.4207/38-M Dated 24.5.2013 addressed to SE PBMC revealed that:" It came to the knowledge of this office from honorable Peshawar High Court through Writ Petition No.1301-P/2013 that some persons are alleging themselves as appointees /employees of this office through different appointment letter from office of the Superintending Engineer PBMC C&W Department Peshawar .The said alleged appointees have not record such as arrival reports, posting order ,Medical Fitness Certificate etc. and this office record is silent about their entries." Annexure-A.
2. The Superintending Engineer PBMC letter No.1101/52-C Dated 25-11-2013 addressed to Advocate General Khyber Pakhtunkhwa revealed that, neither any of the petitioner assumed duties nor were provided service books and medical certificates to the sitting authorities till April 2013,while the office orders have been issued in January 2013,photo copy attached as Annexure-B.
3. The letter referred in para-2 above further revealed that "it is clear off course if these appointments had been made in the month of January /February 2013, then why the then appointing authorities viz Executive Engineer /Superintending Engineer PBMC had not bothered to clear the salaries at that time uptil their posting. In view of above it is very clear that the appointments ordered at the last leg of out going appointing authorities in April 2013".

4. In this regard, the statement of Mr. Azeem Khan, the then Head Clerk can be taken into the account which states that "on 18/4/2013, he was called by the then SE PBMC Peshawar to his office and delivered a letter showing minutes of the DSC Meeting dated 14-1-2014 and copies of offer of appointments of some individuals, which were endorsed to the office of the Executive Engineer PBMC Peshawar and directed him to put receipt signature with the reference to the dates as appeared thereon. He further stated that "As the offers of appointments were shown issued in January 2013, but actually delivered to me on 18-4-2013, till that even when I was posted out from the post i.e on 31-05-2013, none of these appointees either reported physically for their jobs nor none of them produced any documents viz Medical Fitness /provision of credential/certificates.", photo copy of one office order and statement of Head Clerk attached as Annexure-C.
5. The statement of issue Clerk also support the statement of Head Clerk, which states that he was called by the Superintending Engineer PBMC at his Residence at Hayatabad Peshawar along-with issue register, and was directed to dispatch the office orders in back dates, photo copy of statement attached as Annexure-D.
6. The writ petition lodged by the petitioners in Peshawar High Court was dismissed on 27-1-2014 at liberty to the petitioner to approach proper forum for redressal, however the brief of the sitting Superintending Engineer PBMC submitted to the Secretary C&W Department with his letter No.1341/52-C Dated 27-12-2013, copy thereof endorsed to Advocate General is also quite clear, self explanatory and sufficient to turn down the aforesaid appointment as it is not possible for the subordinate office to mislead the Administrative Department, and for the respondent to misguide his Pleader, photo copy attached as Annexure-D1
7. Mr. Amir Qadir the then and present Divisional Account Officer in his written statement submitted vide his No.671/3-EC Dated 26-3-2014 intimated that the household staff were exempted from purview of DSC as well as advertisement, whereas DSC has been convened /minutes of DSC issued, which is self contradictory. It seems that the DAO tried to mislead his superiors. The DAO stated nothing regarding monthly salaries of the aforesaid appointees that why he did not prepared /forwarded their salaries during 03 months period being responsible Officer for the same. Photo copy of statement, Minutes of DSC Meeting & Notification of DSC attached as Annexure-D2
8. The statement of the then Superintending Engineer PBMC emphasis that all the appointments under inquiry were made according to the prevailing rules established and implemented in the PBMC since its creation. He further stated that proper 25 % quota of retired Employees sons were observed and 05 applicants were selected. The office orders were issued in the month of 1/2013 and allegation of back dating is baseless. Proper minutes of the meeting were issued on 15/1/2013 as well as service books of the new appointees were maintained by the Executive Engineer PBMC and the employees have performed their duties. Photo copy attached as Annexure-E.

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9. The former inquiry Officer, Engineer Fazali Kabir vide his findings at S.No.3 & 4 linked the appointments of Class-III & IV with want of clarification from Establishment Department Khyber Pakhtunkhwa. In response, the Establishment Department intimated vide his letter No.SORV/(E&AD)Gen-C&W/13 Dated 10-10-2013 that no post has been classified or categorized to be the staff of houses. However provision of Sub rule-2 of Rule -10 of appointment, promotion and transfer rules 1989 read with Sub rule-2 & 3 of Rule-12 of APT Rules -1989 are quite clear on the subject, which may be followed to dispose off the subject case. Annexure-K.

CONCLUSION.

After scrutiny of the record submitted by the then / sitting Officers /Officials PBMC in support of their statement, the following conclusions have been arrived.

- i) The appointments under inquiry were initially made under the Rule-10 (4) of the Khyber Pakhtunkhwa Civil Servant rules (APT-Rule 1989) which are for deceased Sons and later on Corrigendum was found issued replacing the said rule with Notification No.SOR-VI(E&AD)1-3/2003(Vol-V) Dated 3.7.2003 & Clarification of Admn. Department No.SO(PBMC)AD/Budget/3-2/2005/P-VI Dated 10-2-2006, instead of prevailing Sub Rule (2) of Rule-10 and Sub Rule 2& 3 of Rule -12 of APT Rule 1989.
- ii) The appointments of employees sons quota of 25 % were not found supported with any document such as merit list, identity cards of Employees sons, pension books or retirement orders of their fathers. The waiting list of employees sons as stood on 14-1-2013 submitted by the concerned office does not indicate the names of the individuals appointed, except one Mr.Khurram, at S.NO.39 of the list. It seems that merit list of employees sons quota was neither maintained nor followed, Photo copy attached Annexure-F.
- iii) The appointments stated to have been made in January 2013. For instance, it is presumed that the fresh appointees have performed their duties, then why their pays were not processed and passed from the Accountant General Khyber Pakhtunkhwa within 03 months time (2/2013 to 4/2013).
- iv) The minutes of the meeting were issued on 15-1-2013, where as two No Office Orders were found issued on 14-1-2013 and 03 on 15-1-2013, entered under register No.1695,1696 & 1697 i.e prior to the issuance of the minutes of meeting entered on register No.1698, photo copy of 05 No orders and letter of minutes attached as Annexure-G.
- v) As far as minutes of the meeting is concerned, the notified DSC, comprises of 04 Members and the aforesaid minutes have been signed by 03 members, photo copy of Notification and minutes of DSC attached as Annexure-H.
- vi) The photo copies of some arrival reports, medical fitness certificates and pages of services books are either without signatures of the appointees or signatures do not tally with each other and seem to be fake. Photo copies of some of it are attached as Annexure-I

Two
1692
1693
(6947)

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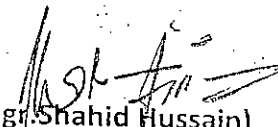
- vii) The applicants applied for appointment under deceased sons quota (having 100 % quota) have not been taken in account in the aforesaid appointment, list seeking appointment under the said quota is attached as Annexure-J.
- viii) In pursuance of the recommendation for clarification regarding the points referred in back ground above, the Establishment Department also vide its letter No.SOR-V-V (E&AD)/Gen/C&W/13 Dated 10-10-2013 has clarified that no post has been classified /categorized to be the staff for houses and referred sub rule (2) & (2&3) of rule-10 & 12 of APT-Rule 1989 for initial appointments in Zonal & Local Cadre. Photo copy attached as Annexure-K

V. FINAL CONCLUSION.

In light of the findings/Conclusion, detailed above, it is found that not only the prevailing rule-10 & 12, of Appointment, promotion & Transfer Rule-1989 as well as merit list of employee sons were not followed but also numerous lapses mentioned above are observed in whole process, hence the aforesaid appointment can not be termed as legal

VI. RECOMMENDATION.

- a. Since the whole process was not found in line with the prevailing rule-10 sub rule (2)(4) and Rule -12 sub rule (2&3) of APT Rule 1989, hence the appointments under inquiry, can not be termed as legal.
- b. The confusion of Provincial Building Maintenance Cell Authorities should be removed that there is no special rules for appointment in PBMC except prevailing rule (APT Rule-1989) applicable throughout Khyber Pakhtunkhwa Province.
- c. The PBMC authorities should be directed to ensure all types of appointments strictly under the prevailing rules on merit.
- d. Waiting list of employee sons, whose fathers have been retired after completion of 60 year age of superannuation should be maintained.
- e. Waiting list of deceased Government Servants /incapacitated, invalidated permanently during service should be properly maintained.
- f.


 (Eng. Shahid Hussain)
 Inquiry Officer/ SE C&W Circle
 Peshawar.

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

W.P.No.1301-P/2012

Mr. Asad and Others

.....Petitioners

VERSUS

- 1. Superintending Engineer (PBMC)
- 2. Executive Engineer (PBMC),
- 3. Director (PBMC),
- 4. Sub Divisional Officer-IV (PBMC),
- 5. Secretary C&W Department,



Respondents

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully sheweth

PRELIMINARY OBJECTIONS

- 1. That the petitioners have no cause of action to file the instant writ petition.
- 2. That the petitioners have no locus standi for filing the writ petition as they are not aggrieved persons.
- 3. That the petitioners have not come to this court with clean hands.
- 4. That the petitioners are not the employees of the respondent as they have not tendered any documents to the respondent for assuming the charge and no arrival report has been given to the petitioner further more till date they have not performed any duty for which they are entitled to any compensation / salary hence stance is not sustainable in the eyes of law.

*vetted
16-8-13*

5. That the petitioners are not the employees of the respondents as there is no record available in the office of the replying respondents, which make the petitioner as employees of the respondents because of the facts as stated in para No.4

*15 Hilarys A-Khan
ld: AA4
checked on*

6. That there is no charge report or assumption of charge on the part of the petitioner & there is no attendance which could suggest a single day duty on the part of the petitioner which allegedly they have performed till date.

7. That as per record, no arrival report is available in the office record nor the petitioner has annexed that arrival report and annexed a self made/fabricated medical fitness certificate as the alleged documents were never tendered in the office of the respondents till date.

8. That as per the annexed record and details given in the writ petition the alleged documents, there is no mentioning of that on which particular day/date the petitioners assumed or made arrival in the office of the respondents, which suggests that the petitioner's petition is based on malafide and not sustainable in the eyes of law, hence they cannot claim any salary as they hence not become the employees of the respondents and as per W.P alleged appointments orders carried out in the month of January / February, while resent staff has been posted in the last week of March 2013 and the matter was brought in the notice through Peshawar High Court. Mean while complaints were received to the Secretary to Government of Khyber Pakhtunkhwa, Communication & Works Department regarding these illegal appointments from the office of the Honorable Chief Minister Khyber Pakhtunkhwa, the Secretary C&W Department has ordered as inquiry in which Superintending Engineer, C&W Circle (Peshawar) vide office order No. the detail para wise comments could be submitted to the Honorable Court after finalized inquiry.

Therefore, Peshawar High Court is requested to allow the Department to wait for inquiry report.

9. That this Honorable Court has no jurisdiction to entertain the present petition as there is factual controversy and it cannot be resolved; decided in writ petition

ON FACTS:

1. Subject to proof.
2. Para No. 2 is incorrect hence denied. The petitioners are not performing their duties as they have not joined any duty in the office of the respondent and about their appointment also a departmental inquiry is in progress vide letter No.704/31-SE/PBMC, dated 18/06/2013 by the Superintending Engineer, Communication & Works Circle Peshawar, finding of the same is awaited.
3. Para ~~No.~~ 3 is incorrect, hence denied, as the petitioners have not got the status of the employees and they are not performing their duties as per record as there is no charge assumption / arrival report nor they have joined the department for duty till date, thus are not entitled to any salary / remuneration as per record.
4. Para No. 4 is incorrect hence denied, as the petitioners are not the employees of the respondents there is no question arises for payment of salaries or redressal of their grievances as no duty was


5. Para No.5 is incorrect hence denied, moreover the petitioner have no cause of action of locus standi to approach this Honorable Court.


6. Statement of Head Clerk Dated: 04-07-2013, where he stated that the same offers of appointment were actually delivered on 18-04-2013 (statement annexed for evidence).

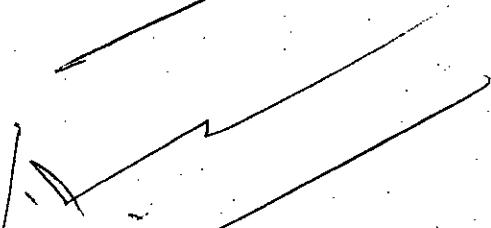
ON GROUND:-

- I. Para I of grounds is incorrect hence denied, illegal appointment do not create any right.
- II. Para II of grounds is incorrect hence denied, the respondent is asking in accordance with law.
- III. Para III of grounds is incorrect hence denied.
- IV. Para IV of grounds is incorrect hence denied, detailed reply is given in the preliminary objections.
- V. Para V of grounds is incorrect hence denied, detailed reply is given in the preliminary objections.
- VI. Para VI of grounds is incorrect hence denied, detailed reply is given in the preliminary objections.
- VII. Para VII of grounds is incorrect hence denied, detailed reply is given in the preliminary objections.
- VIII. Para VIII of grounds is incorrect hence denied, As the petitioners are not entitled to any additional ground during the proceeding of the instant petition.

It is therefore most humbly prayed that on acceptance of this reply, the petition may please be dismissed with costs as the petitioner hence no locus standi.


 SUB-DIVISIONAL OFFICER-IV (PBMC)
 C&W DEPTT: PESHAWAR


 EXECUTIVE ENGINEER (PBMC)
 C&W DEPTT: PESHAWAR


 SUPERINTENDING ENGINEER PBMC
 C&W DEPTT: PESHAWAR

RECEIVED
 2013

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Annexed-VIII

BRIEF NOTE: WRIT PETITION NO.1301-P/2013-ASAD S/O SANAB GUL AND OTHERS VS S.E PBMC & OTHERS.

1. The so called offer of appointments orders were issued by the then superintending Engineer Provincial Building Maintenance Cell (Shams-uz-Zaman) in the M/O April 2013 when he was at the last leg of his transfer. For evidence statement of the Head Clerk, Mr.Azeem Khan dated:04/07/2013 Copy annexed in support of Para-6 of the comments of Respondents in Writ Petition No.1301-P/2013 clarify that orders were given to him on 18/04/2013 by the then superintending Engineer PBMC in person after calling him in his office. The appointments had been given back dates showing them issued in January, 2013. The irregularity has also been noticed by the Audit of PBMC (Superintending Engineer Office) and termed it into an Advance para.
2. It is very alarming, the orders have been shown made under Rule-10(4) of the Appointment Promotion and Transfer Rules, 1989, Rule-10(4) provides appointments to one of Son/Wife/Widow of those Government Servants who dies Or is rendered incapacitated/invalidated permanently (on medical grounds) during service. And not to other Employee's Sons who either are (alive) still in-Service or died after their retirement from service, the orders are not only contrary of the ibid rules on this account, even the then appointing authority (Superintending Engineer, PBMC) has issued these orders with some vested interest and plotted the orders in back dates.
3. Besides, the Posts in BPS-1 and BPS-2 according to Appointment Promotion Transfer Rules,1989 are reserved to Local Cadre and not to those who either have domicile of other Districts, or hail to the same District but it does not come under local cadre. The plotted orders represent that outsiders of District Charsadda/ Nowshera etc. have been inducted against Class-IVs posts in disregard of Rules / Regulations.
4. (a) Petitioners/ applicants, appearing at Serial No.1,3,7,8,12 & 14 of the Writ Petition No. 1301-P/2013 have supported their case by providing offer of appointments at Pages-8,10,14,15,19& 21 but have not annexed their Medical Certificates of the Medical Superintendent Police Service Hospital Peshawar. So how they claim salaries when none of them have reported arrival for duty even then.
(b) Medical Fitness Certificate in favour of some individuals annexed with the Writ Petition No.1301-P/2013 also seems doubtful. It can not be prevented how these Certificates have been got obtained from the Medical Superintendent Police Services Hospital Peshawar in different dates of the month of January, 2013. MC form does not contain Serial / Book or Page numbers.
© Medical Fitness Certificate filed (at Page-41) for Muhammad Imran with the Writ Petition, has not provided appointment orders therewith, whereas Muhammad Imran had also not sued the case as Petitioner. The whole case of appointments made by the then Superintending Engineer, PBMC is doubtful, which needs through investigations and inquiry through Provincial Inspection Team or any other agency.
5. When these orders became in the knowledge of Labour Union of PBMC, it reported to the Chief Minister, on 06-05-2013. The Chief Minister issued directives on 25-09-2013 to all Administrative Secretaries of the Khyber Pakhtunkhwa "that all such appointees on (Deceased Son Quota) shall be removed and the process carried out transparently & in accordance with Rules"(Copy attached).
6. All of above, if these appointments had actually been ordered in the m/o 01/2013 and the supported Medical Fitness Certificates were also got obtained in 01/2013, then why the sitting officers, S.E / XEN had not released salaries to those who stated assumed duties then even till his posting from PBMC in the last week of 04/2013. The outgoing S.E / XEN not realized their obligations to pay the said staff with their salaries, when all pre-requisites, if had been completed then.
7. Neither the office Superintendent, who administers Establishment matters & other working of circle office had been associated in the whole process, nor any office record on account of Applications of individuals / Education Qualification / Domicile/ Death Certificates/ Retirement orders (Pension Books) in support of their claim, being Employees sons or Registration with Employment Exchange have been delivered / handed over to him. The issue number to appointment letters, were entered by the Dairy / Dispatch Clerk under the dictation of the then S.E at his residence in Back Dates (Copy of report of Dispatch Clerk Local attached) because there were left pages and issue numbers totally blank in the Dispatch Register. This very point has also been taken by the Audit, i.e (Advance Para) conducting audit of S.E PBMC Office for the year 2012-13.

ENGR: MUHAMMAD ASHRAF KHAN,
SUPERINTENDING ENGINEER

18x5-90

(21)

AMMORD-11


The Executive Engineer
PBMC, C&W Department Peshawar.

Subject: - WRIT PETITION NO. 1301-P/2013.

It is submitted that Class-IV employees mentioned in the subject Writ Petition have been appointed in month of January 2013 in PBMC. Only appointment orders of the newly appointed employees have been received. There is no documents, which are the pre-requisite of regular appointment i.e. applications of the employees, advertisement of post in news paper, merit list etc are available in this office record.

Neither the related documents have been received nor the employees attended this office till date and their place of duty is also not known.

Report is submitted for your kind perusal please.



Head Clerk
PBMC C&W Department Peshawar

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To

The Executive Engineer
Provincial Building Maintenance Cell
Peshawar

Subject: ILLEGAL APPOINTMENTS IN PBMC PESHAWAR.

Sir,

In compliance with your letter No.50002/9-E dated 26.06.2013 and Chief Engineer (Centre) C&W Department No.73-E/1345/CE/C&WD dated 27.06.2013, it is to state that I have already submitted my written statement regarding the subject cited case to your good-self on 24.05.2013, which was forwarded to the Superintending Engineer PBMC-Peshawar vide your letter No.4207/38-M dated 24.05.2013 (copy attached).

However I explain my position so for I concern:-

1. On 18-04-2013 I was called by the then Superintending Engineer PBMC Peshawar to his office and delivered me with a letter showing minutes of the DSC meeting dated 14-01-2013 and copies of offer of appointments of some individuals which were endorsed to the office of the Executive Engineer PBMC Peshawar and directed to put receipt signatures with reference to the dates as appeared thereon.
2. It may please be noted that I was posted as Head Clerk PBMC where I assumed my duties on 15.01.2013. So the working Papers/ documents in support of the said DSC meeting have never been shown or brought in my notice.
3. As the offers of appointments were shown issued in January 2013, but actually delivered to me on 18-04-2013, till that even when I was posted out from the post i.e on 31-05-2013, none of these appointees either reported physically for their jobs nor none of them produced any documents viz Medical Fitness/provision of credential/certificates.

It may further be noted that the documents as stated above were put-up to the then Executive Engineer who endorsed his initial on the offers of appointments but the original copy of the minutes were kept by the Executive Engineer with him and not returned to the records nor to me. However I got a photo copy of the minutes before its put-up to the then Executive Engineer.

My report on the issue is submitted please.

Dy. No. 1713/9-E/Hc
dt. 4.7.2013

Azeem Khan
AZEEM KHAN
ACCOUNTS CLERK 04/07/2013
O/O CHIEF ENGINEER(C)
C&W DEPARTMENT PESHAWAR

Copy forwarded for information to:-

- 1- The Superintending Engineer C&W Circle Peshawar
- 2- The Superintending Engineer PBMC C&W Department, Peshawar.
- 3- The Section Officer (ESTABL) C&W Department, Peshawar.
- 4- The Administrative Officer O/O the Chief Engineer (Centre) C&W Dept. Peshawar.

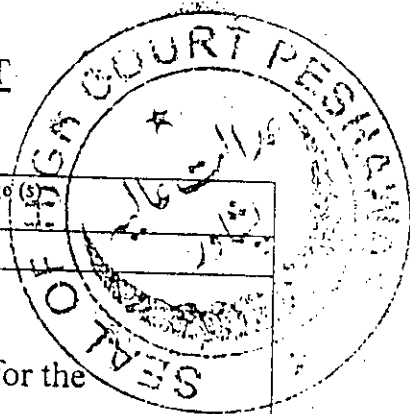
AZEEM KHAN
ACCOUNTS CLERK

23

Amended - X

**PESHAWAR HIGH COURT,
PESHAWAR**

FORM OF ORDER SHEET



Date of Order or Proceedings	Order or other Proceedings with Signature of Judge (s)
1	2
27.01.2014	<p><u>W.P. No.1301-P/2013.</u></p> <p>Present:- Mr. Asad Jan, advocate, for the petitioners. Mr. Waqar Ahmad, AAG for the respondents.</p> <p>*****</p> <p>ROOH-UL-AMIN KHAN, J. - After arguing the case at some length, learned counsel for the petitioners stated at the bar that he would not press this writ petition provided petitioners are allowed to approach the proper forum for redressal of their grievance. Learned AAG has no objection on request of learned counsel for the petitioners.</p> <p>2. In view of statement of learned counsel for the petitioners made at the bar, this writ petition stands dismissed being not pressed. However, the petitioners are at liberty to approach the proper forum for redressal of their grievance in accordance with law.</p> <p><u>Announced:</u> 27.01.2014.</p> <p><i>sd/- Rooh-ul Amin Khan - J</i> <i>sd/- Waqar Ahmad Khan - J</i></p>

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-u-Shahadat Order 1984

31 JAN 2014

31-1-14

M. Siraj P.S.

ASAD JAN
(Advocate High Court)
KCI/MIC

18x5-70

BEFORE THE K.P.K SERVICE TRIBUNAL, PESHAWAR



Appeal No. 1665/2009

Date of institution - 28.09.2009
Date of Decision - 21.07.2010

~~Syed Rasool Ex-Pump Operator~~ PBMC Cell/C&W Department NWFP Peshawar
.....(Appellant).

VERSUS

1. Director PBMC Cell (W&S) Department, Peshawar.
2. Secretary Administration Department, NWFP Peshawar.
3. Zar Khan, R/O Agar Khel Badaber Peshawar.....(Respondents)

Appeal against the orders dated 19.6.2009 and 23.6.2009 whereby the services of the appellant were dispensed with by appointing Respondent No. 3 in place of appellant.

EXAMINER

ATTESTED

Mr. Saadullah Khan Marwat, Advocate.....For Appellant.
 Mr. Jamal Nasir, AGP.....For Respondents 1-2.
 Mr. Khalid Rehman, Advocate.....For Respondent-3.

MR. ABDUL JALIL.....MEMBER.
 MR. NOOR ALI KHAN.....MEMBER.

JUDGEMENT.

ABDUL JALIL, MEMBER :- This appeal has been filed by the appellant against the orders dated 19.9.2006 and 23.6.2009 whereby his services were dispensed with by appointing Respondent No.3.

2. Brief facts of the case are that the appellant was appointed as Pump Operator on regular basis vide order dated 10.9.2008 and was posted to Old Jamrud Road Tube-well Peshawar on 13.9.2008. He was served with a notice by Respondent No. 1 on 20.4.2009 that he belongs to District Lakki Marwat and his services should be terminated being found illegal. In the notice two days instead of seven days were given to which he replied. On 19.6.2009 the services of the appellant were dispensed with. On 23.6.2009 Respondent No. 1 appointed Respondent No. 3 on the post of appellant. The appellant submitted a departmental appeal which was not decided. Hence, the present appeal. Arguments heard and file perused.

4. The learned counsel for the appellant argued that the appellant was validly appointed by the competent authority. The order was implemented, acted upon and has got finality so cannot be dispensed with on the interference of Local MPA. In the notice the appellant was given 2 days for submission of reply while under the law 7 days are mandatory. No inquiry was conducted. On the same analogy and allegation, the services of one Tanveer, complaint receiver has been re-instated, thus the appellant has been discriminated. There are numerous servants of various Districts appointed in K.P.K are performing their duties. The impugned order is based on malafide in order to appoint Respondent No. 3 on the direction of Local MPA. The post against which the appellant was appointed is a Provincial level post.

5. The A.G.P argued that as per condition of appointment order the services of the appellant are liable for termination on one month notice. His termination order has been issued during the period of probation. A complaint was filed before the Chief Minister for his illegal appointment which was processed and his services were terminated. Respondent No. 3 is the bonafide resident of District Peshawar, therefore, he was appointed. The cases of Tanveer Akhtar, complaint receiver and appellant are quite different, as he was in BPS-5 while the post of appellant in BPS-4, U/S 21 of the General Clauses Act, 1887 the authority which can pass an order has got the power to cancel the same as well. Proper notice was served on the appellant and no inquiry was mandatory. ~~The post exists at Peshawar therefore, it was the entitlement of resident of District Peshawar and not of Larki Mawat.~~

6. Perusal of the file reveals that no proper inquiry was conducted prior to dismissal order of the appellant. The complaint receiver Tanveer Akhtar who was removed from service, was re-instated, therefore, the case is sent back to the department with direction to adjust the appellant against any vacant Class-IV post. No order as to costs. File be consigned to the record.

ANNOUNCED.
21.7.2010.

(NOOR ALI KHAN)
MEMBER.

(Signature)
(ABDUL JALIL)
MEMBER.

Certified to be true copy
EXAMINER
Tribunal

26

Annexed-XII

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE TARIQ PARVEZ

CIVIL PETITION NO. 339-P OF 2011
(on appeal from judgment of the KPK Service Tribunal, Peshawar dated 21.07.2010 passed in Appeal No. 1665 of 2009)

Director P BMC Cell (W&S) Department
Peshawar & another ...Petitioners.

VERSUS

~~Syed Rasan and another~~ ...Respondents.

For the Petitioners: Mr. Lal Jan Khattak, Addl. AG.

For the Respondents: N.R.

Date of Hearing: 01.11.2012.

ORDER

NASIR-UL-MULK, J.— This petition is barred by 282 days and no plausible ground for condoning the delay has been mentioned in the application for condonation of delay. The petition is, therefore, dismissed as barred by time.

*self - Nasir-ul-Mulk, J.
self - Tariq Parvez, J.*

Certified to be true copy
[Signature]
17.12.2012
Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

PESHAWAR
1st November, 2012.
Mudassar *[Signature]*
01/11

1 (27)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR.

Service Appeal No. 880 of 2010

Waqar-ul-Islam Son of Ahmad Saeed
R/o Tehsil & District Rawalpindi, Ex-Plumber
BPS-4 in the Office Deputy Director PMBC
Admin Department, Peshawar.
..... Appellant

VERSUS

- 1) Superintendent Engineer PBMC Communication & Works Department Peshawar.
- 2) Director PBMC Civil Secretariat Peshawar.
- 3) Assistant Director IV, PBMC C&W Department Peshawar.
- 4) Secretary C&W Khyber Pakhtunkhwa Peshawar.

..... Respondents

APPEAL U/S 4 OF SERVICE TRIBUNAL
ACT 1974 FOR!

- 1) RELEASE OF SALARY W.E.F. 09/12/2009
UPTO 24/11/2010
- 2) FOR REINSTATE IN SERVICE W.E.F
01/01/2010 WITH ALL BACK BENEFITS
AGAINST THE IMPUGNED ORDER OF
TERMINATION VIDE NO.577/41-E,
PESHAWAR DATED 24/11/2010 AS
ANNEXURE "A".

(2) 28

Prayer in Appeal!

On acceptance of this appeal the impugned order 24/11/2010 may please be set aside and the appellant be reinstated in service with all back benefits and also release the salary w.e.f 09/12/2010 upto 24/11/2010.

Respectfully Sheweth:

- 1) That appellant was appointed as Plumber in BPS - 4 Dated: 06/10/2008 in the department of provision building, maintenance cell, Admin Department Peshawar. As Annexure "A"
- 2) That appellant performed duty with a keen interest. As Annexure "B"
- 3) That appellant was getting salary on payroll. As Annexure "C"
- 4) That unfortunately the appellant got accident and injured / fractured submitted applied with Medical Certificate dated 07/02/2009 upto 12/03/2009. As Annexure "D"
- 5) That appellant absence was not intentionally but due to accident.
- 6) That he further applied and then fitness submitted dated 05/03/2010 as Annexure "E"
- 7) That appellant become regular after recovery from injuries as admitted by his authority as Annexure "F"
- 8) That since 05/03/2010 no salary was paid to the appellant by the authority, even then favoured, admitted by the authority as Annexure "G"
- 9) That the appellant was terminated on 14/10/2010 w.e.f 01/01/2010, while impugned order was kept secret from the appellant then verbally told him

(3) 29

dated 24/11/2010, regarding the termination as Annexure "H".

10) That appellant is called time and again for job whenever needed, even after his termination as Annexure "I".

11) That the appellant was stopped from duty till the finalization of inquiry as Annexure "J".

12) That appellant submitted application as appeal to Respondent No.2 for salary and reinstatement as Annexure "K" that another appeal to the Respondent No.4 was submitted for redressal of grievances as Annexure "L".

13) That appellant is constrained to approach this Hon'ble Tribunal for redressal of his grievances on the following ground:

GROUNDS:

A) That the order and treatment of the respondent with the appellant is ultra virus, void and against the Service Rules needs to be set aside.

B) That the order of the respondent, impugned has no legal footing to stand on.

C) That no inquiry is done by the respondent against the appellant.

4 (30) 6
D) That impugned order is with retrospective effect is not accepted in the eye of law.

E) That respondents are still taking duty from the appellant as Annexure "M" but no payment is made to the appellant.

F) That appellant may be allowed to rely on additional grounds at the time of arguments please

Prayer:

It is, most humbly prayed that on acceptance of this appeal, the appellant may be reinstated in service with all back benefits and also release his salary w.e.f. 09/12/2009 upto 24/11/2010.

Dated 04/05/2011

Through

Appellant *Waf*

GA
Gohar Ali
Advocate, High Court,
Peshawar.

OFFICE OF THE DEPUTY DIRECTOR,
PBMC ADMN. DEPTT. PESHAWAR

No. 467/2008

Dated 6/11/2008 ✓

(31)

To:

Mr. Waqarul Islam Khan S/O
Ahmed Saeed Khan
C/O Comptroller Frontier House Islamabad

Subject:

APPOINTMENT ON REGULAR BASIS AS PLUMBER (BPS-04)
AGAINST THE VACANT POST (HOUSE-HOLD STAFF)

As approved by the DSC held on 06.10.2008, you are hereby offered the post of Plumber (Rs.2700-115-6150) (BPS-04) after fulfill the following terms and conditions:-

1. ✓ Your services are liable for termination on one months notice.
2. In case you wish to resign at any time one month's notice will be necessary or in lieu thereof one month pay shall be forfeited.
3. You will have to produce a medical certificate of fitness from the Medical Superintendent / Civil Surgeon Peshawar.
4. You will have to serve as house keeping/nor. house keeping employees any where in NWFP and against any post of equivalent status.
5. You will joint duty on your own expenses.
6. Your appointment to the above post is subject to the eligibility and production of original certificate of qualification/experience, domicile, NIC and other documents.
7. ✓ You are appointed on probation period for one year.

According to Provincial Govt. orders notified vide No.SOR-VI(E&AD)/1-13/2005 dated 10.8.2005v and Section Officer (Accounts)PBMC/AD/EUDGET/3-2/2005/P-VI dated 26.6.2006, you will not be entitled for pension gratuity but will be contribute (CP Furd) @ Rs.10% from your pay and 10% will be contributed by the Govt. of NWFP in lieu thereof.

If you accept the offer on the above terms and conditions, you should report for duty in the office of the Assistant Director-V, PBMC Admn Department Peshawar within 15-days of the issuance of this letter.

The official will performed duty at Frontier House Islamabad

Engr. ABDUL GHAFOR
DEPUTY DIRECTOR

- Copy forwarded for information to :-
1. Accountant General, NWFP Peshawar
 2. Director, PBMC, Administration Department Peshawar
 3. Section Officer (Accounts), PBMC, Admn Department Peshawar

DEPUTY DIRECTOR

AG NWFP PESH

SN:2822

P Ser:005 Month:December 2008
PR4021 -DY: DIR: FBMC ADMN: DE
Min: Administration & Estate
HTN:
CPF #:
Old #:

Pers #: 00422513 Zuckle:
Name: MAGARISIAH KRAN
Dsg.: PEUMBER
NIC No.: 21177134317
CPF Interest Applied:
04 Regular / Contract

PR4021

PAYS AND ALLOWANCES:

0001-Basic Pay	3,240.00
1001-House Rent Allowance 45%	1,458.00
1210-Convey Allowance 2005	680.00
1300-Medical Allowance	500.00

Gross Pay and Allowances

5,878.00

DEDUCTIONS:

CPF Balance	1,536.00	Subtr:	384.00
3501-Benevolent Fund			25.00
3511-Addl Group Insurance			3.00
3604-Group Insurance			58.00

Total Deductions

470.00

NET AMOUNT PAYABLE 5,408.00

(5) No candidate shall be appointed to a post unless he is found, after such medical examination as Government may prescribe, to be in good mental and bodily health and free from physical defect likely to interfere in the efficient discharge of his duties.

12. **Zonal and Divisional representation:** - (1) Except as otherwise specifically provided in any rule for the time being in force, initial recruitment to posts in Basic Pay Scales 16 and 17 and other posts in Basic Pay Scales 3 to 15 borne on Provincial cadre shall be made in accordance with the Zonal quota specified by Government from time to time:

Provided that initial recruitment to the post of Civil Judge/Judicial Magistrate/Allaqa (BPS-18) shall also be made in accordance with the zonal quota specified by the Government from time to time.

(2) Initial recruitment to posts in Basic Pay Scales 3 to 15 borne on divisional or district cadre shall be made from amongst bona fide residents of the division or district concerned, as the case may be.

(3) Initial recruitment to posts in Basic Pay Scales 1 and 2 or equivalent shall ordinarily be made on local basis.

PART-IV

AD HOC APPOINTMENT

13. **Requisition to Commission:**-When under any rule for the time being in force, a post is required to be filled in through the Commission, the appointing authority shall forward a requisition on the prescribed form to the Commission immediately after it is decided to fill in the post, or if that is not practicable and the post is filled on ad hoc basis as provided in rule 14, within two months of the filling of the post.

14. **Ad hoc Appointment:**-(1) When the appointing authority considers it to be in the public interest to fill in a post falling within the purview of the Commission urgently, it may, pending nomination of a candidate by the Commission, proceed to fill in such post on ad hoc basis for a period not exceeding ⁵²[one year] by advertising the same in accordance with the procedure laid down for initial appointment in Part-III of these rules.

(2) Short term vacancies in the posts falling within the purview of the Commission and vacancies occurring as a result of creation of temporary posts for a period not exceeding ⁵³[one year], may be filled in by appointing authority otherwise than through the Commission on a purely temporary basis after advertising the vacancy.

⁵¹ Proviso to rule-12 added vide Notification No. SOR-VI(E&AD)1-27/08, dated 03-07-2008

⁵² The words six months replaced with the words one year vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-01-2009.

⁵³ The words six months replaced with the words one year vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-01-2009.

Secy C/W Deptt: Memo No: 505/ C/W/13-22/2013 dated 25-10-2013 (34)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)
NO. SOR-VI (E&AD)1-3/2010
Dated Peshawar, 8th October, 2013

Annex (XV)

for compliance
by all.
10/10/2013
18425

1. The Additional Chief Secretary, Planning & Development Department Government of Khyber Pakhtunkhwa, Peshawar.
2. The Additional Chief Secretary (FATA), FATA Secretariat, Peshawar.
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
4. All Commissioners in Khyber Pakhtunkhwa.

Diary No: 18425
Date: 09/10/13
Secretary C&W Deptt.
Khyber Pakhtunkhwa

A.S./DSA

Subject RECRUITMENT OF CLASS-IV.

Dear Sir,

I am directed to refer to the subject noted above and to state that this department had issued certain instructions vide notification No. SORVI/E&AD/1-1/2010 dated 16-03-2004 for compliance of all concerned. According to these instructions, Class-IV employees will be recruited on the basis of their selection from their native/parent districts. However it has been observed that the aforesaid instructions are not being complied in their true spirit which not only creates problems to such employees in performance of their duties but also deprives them of their genuine right of posting in their own native/home districts.

I am therefore, directed to request that the recruitment of Class-IV employees in accordance with their native districts may be ensured and the aforesaid instructions may be adhere to in letter and spirit.

The above instructions may kindly be brought to the notice of all concerned for strict compliance.

Yours faithfully,

ZIRA 8.10.13
(QURAT-UL-AIN)
SECTION OFFICER (REG-VI)

END OF EVEN NO. AND DATE.

Copy forwarded to:-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principle Secretary to Chief Minister, Khyber Pakhtunkhwa with reference to his letter No. 50 (ADMN) CMS/KPK/3-18/2013, dated 04-09-2013.
3. The Secretary Provincial Assembly Khyber Pakhtunkhwa, Peshawar.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Registrar Peshawar High Court, Peshawar.
6. The Secretary Khyber Pakhtunkhwa Public Service Commission.
7. All Addl: Secretaries Establishment & Administration Department.
8. All Deputy Secretaries in Establishment & Administration Department.
9. All Section Officers in Establishment & Administration Department.
10. Private Secretary to Provincial Ministers in Khyber Pakhtunkhwa.
11. Private Secretary to Chief Secretary Khyber Pakhtunkhwa.
12. Private Secretary to Secretary Establishment Department.

4
11/10

ZIRA 8.10.13
SECTION OFFICER (REG-VI)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 189/2014.


Mr. Sajid Khan S/O Akhtar Zaman,
Resident of Villige Jhansa, P.O Kalabagh Nathiagali
District Abbotabad.....Appellant

VERSUS

Govt of Khyber Pakhtunkhwa C&W Department
..... Respondents.

REPLY ON STAY APPLICATION (S)/INTERIM RELIEF

PRELIMINARY OBJECTIONS.

1. Appellant's father is neither government servant nor died official, appointment of appellant is not covered under Rules 10 (4) of Khyber Pakhtunkhwa Civil Servant A.P.T Rules 1989, hence illegal, void abinitio and not warranted by any law.
2. As the appointment of the Appellant is illegal and void abinitio, has got no cause of action to invoke the jurisdiction of this Honourable Tribunal and the principal of locus poenitentiae.
3. The Appellant has deliberately concealed the material facts from this Honourable Tribunal in the appeal in hand.
4. The appellant has not come to the Tribunal with clean hands. 
5. The appeal is bad for misjoinder and non joinder of the then Executive Engineer, Mr. Ghulam Yazdani who signed the Service Books and other documents and not released the salaries if appointment was regular and not illegal.

Respectfully Sheweth:

1. The written comments on the Main appeals have been filed in the court.
2. To advance comments on the stay application(s)/interim relief in the titled Service Appeals, it is added that the impugned offers of appointments

made under Rule-10 (4) of the A.P.T Rules 1989, are illegal and void abinitio. The relevant clause of Rule 10 (4) states: -

“where a Civil Servant dies or is rendered incapacitated / invalidated permanently during service, then notwithstanding the procedure provided in the sub rule (2), the appointing authority may appoint one of the children of such Civil Servants or if the child has not attained the age prescribed for appointment in government Service, the widow/wife of such Civil Servants to a post in any of the BPS, 01-10.

Provided that the child or the widow as the case may be possesses the minimum qualification prescribed for appointment to the post

3. Father(s) of above said appellant's neither died nor incapacitated/invalidated during service.

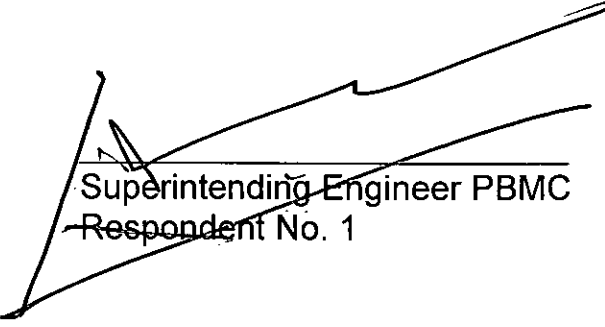
4. The illegal appointment have been given released/issue numbers in the back dates of the month of 01/2013 for some motivated interest of the Superintending Engineer PBMC, Mr. Shams uz Zaman who was at the last days of his posting on the one and on the others, the Election Commission imposed ban on Appointment/Posting/Transfer throughout the province during the period. The statement of Head Clerk (Azeem Khan) and issue Clerk (Imtiaz) are **Annexed-I/II** which confirm the position of illegalities exercised by the appointing authority with colourful manners. An enquiry has also been ordered by the Secretary C&W Department. The Enquiry Officer in his report held that appointments cannot be termed as legal meaning thereby ILLEGAL Annexed III. Hence the applicant has got no prima facie case, balance of convenience lies in favour of respondents rather than applicant. Respondents will suffer irreparable loss rather than applicant.

5. No documentary proof / record is available with regard to applications of Appellants / Qualifications / Domicile / assuming duties / Medical Fitness Certificates etc. All such documents produced before the Court/Tribunal are fabricated one and casted with the connivance of the then Superintending Engineer and Executive Engineer, Engr: Shams uz Zaman/Ghuylam Yazdani and that are they who kept all secret till their


posting out from PBMC, the appointments made thereto are illegal, void abinitio.

6. The action taken by the then officers is illegal, void abinitio, which cannot be made basis to justify an illegal action, a legal one under the garb of Article-25 of the Constitution of Islamic Republic of Pakistan as held in CP No(s) 2026 and 2029/2013 by the Apex Supreme Court of Pakistan on 15-01-2014 (Annexed-IV).

It is therefore requested that the instant petition for grant of interim relief may graciously be rejected/dismissed with cost. It is also requested to, that the order of this Hon'able Tribunal dated 16-04-2014 may kindly be vacated/withdrawn.

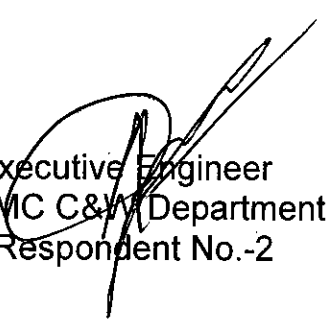

Superintending Engineer PBMC
Respondent No. 1


Executive Engineer PBMC
Respondent No. 2/3


Secretary to Govt of Khyber Pakhtunkhwa
Communication & Works Department
Respondent No.-4

COUNTER AFFIDAVIT

I Engr: Abdul Ghafoor Executive Engineer PBMC C&W Department Peshawar do hereby solemnly affirm and declare that the contents of reply to stay application /interim relief are true and correct to the best of my knowledge ad belief and that nothing has been kept secret or concealed from this Honourable Court.


Executive Engineer
PBMC C&W Department
Respondent No.-2



The Executive Engineer
PBMC, C&W Department Peshawar

Subject: - WRIT PETITION NO. 1301-P/2013.

It is submitted that Class-IV employees mentioned in the subject Writ Petition have been appointed in month of January 2013 in PBMC. Only appointment orders of the newly appointed employees have been received. There is no documents, which are the pre-requisite of regular appointment i.e. applications of the employees, advertisement of post in news paper, merit list etc are available in this office record.

Neither the related documents have been received nor the employees attended this office till date and their place of duty is also not known.

Report is submitted for your kind perusal please.

[Handwritten Signature]
Head Clerk
27/5/2013

PBMC C&W Department Peshawar

1872452/180

To

The Executive Engineer
Provincial Building Maintenance Cell
Peshawar

Subject: ILLEGAL APPOINTMENTS IN PBMC PESHAWAR.

Sir,

In compliance with your letter No:50002/9-E dated 26.06.2013 and Chief Engineer (Centre) C&W Department No.73-E/1345/CE/C&WD dated 27.06.2013, it is to state that I have already submitted my written statement regarding the subject cited case to your good-self on 24.05.2013, which was forwarded to the Superintending Engineer PBMC-Peshawar vide your letter No.4207/38-M dated 24.05.2013 (copy attached).

However I explain my position so for I concern:-

1. On 18-04-2013 I was called by the then Superintending Engineer PBMC Peshawar to his office and delivered me with a letter showing minutes of the DSC meeting dated 14-01-2013 and copies of offer of appointments of some individuals which were endorsed to the office of the Executive Engineer PBMC Peshawar and directed to put receipt signatures with reference to the dates as appeared thereon.
2. It may please be noted that I was posted as Head Clerk PBMC where I assumed my duties on 15.01.2013. So the working Papers/ documents in support of the said DSC meeting have never been shown or brought in my notice.
3. As the offers of appointments were shown issued in January 2013, but actually delivered to me on 18-04-2013, till that even when I was posted out from the post i.e on 31-05-2013, none of these appointees either reported physically for their jobs nor none of them produced any documents viz Medical Fitness/provision of credential/certificates.

It may further be noted that the documents as stated above were put-up to the then Executive Engineer who endorsed his initial on the offers of appointments but the original copy of the minutes were kept by the Executive Engineer with him and not returned to the records nor to me. However I got a photo copy of the minutes before its put-up to the then Executive Engineer.

My report on the issue is submitted please.

Dy. No. 1713/9-E/Hc
dt: 4-7-2013

A. Azeem Khan
AZEEM KHAN
ACCOUNTS CLERK 04/07/2013
O/O CHIEF ENGINEER(C)
C&W DEPARTMENT PESHAWAR

Copy forwarded for information to:-

- 1- The Superintending Engineer C&W Circle Peshawar
2. The Superintending Engineer PBMC C&W Department, Peshawar.
3. The Section Officer (ESTABT) C&W Department, Peshawar.
4. The Administrative Officer O/O the Chief Engineer (Centre) C&W Dept: Peshawar.

AZEEM KHAN
ACCOUNTS CLERK

18x2x5=180



(41)

Amneshad-113

GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/24-60/2014 Association
Dated Peshawar, the May 27, 2014

TO

✓
The Superintending Engineer
PBMC, C&W Peshawar

Subject: Illegal Appointment in PBMC C&W Department Peshawar

I am directed to refer to the subject noted above and to forward herewith facts finding inquiry conducted by Engr. Shahid Hussain SE C&W Department with the request to take immediate necessary action in light of recommendations of the inquiry report under intimation to this Department, if the subject case is not sub-judice in the court of law please.

(USMAN JAN)
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department Peshawar

SECTION OFFICER (Estb)

INQUIRY REPORT INTO ILLEGAL APPOINTMENT IN PBMC C&W DEPARTMENT
PESHAWAR

I. AUTHORITY.

I Engr. Shahid Hussain, Superintending Engineer C&W Circle Peshawar is appointed as Inquiry Officer by the Secretary to Government of Khyber Pakhtunkhwa C&W Department vide No.SOE/C&WD/24-60/Association Dated 12-03-2014 to inquire the issue of illegal appointment in PBMC C&W Department, keeping in view all aspects including written statement of the sitting authorities of the PBMC explained to the Advocate General Peshawar as well as the accused officer and submit report.

II. PREAMBLE.

President Labour Union PBMC Sub Committee Peshawar vide his letter No.333/B Dated 6-5-2013 complained to the Secretary to Government of Khyber Pakhtunkhwa C&W Department and copies thereof endorsed to Chief Minister Khyber Pakhtunkhwa & others that Engr.Shams-us-Zaman Superintending Engineer PBMC in collaboration with Divisional Account Officer PBMC have made fresh illegal appointments ignoring the Employees Sons of the office of the Executive Engineer PBMC, and the appointment were made in back dates. The Secretary C&W Department initiated an inquiry in the matter and Engr.Fazali Kabir, the then Superintending Engineer C&W Circle Peshawar, presently working as Chief Engineer (C)C&W Department was appointed as Inquiry Officer, who submitted the report with the recommendation to get the views of Establishment Department On the following points.

1. Whether the posts of Work Superintendant, Work Mistri, Carpenter and Electrician come under the purview of Household Staff.
2. Whether the appointment in Class -IV of the Employees belongs to other Districts in PBMC are under the rules.

The points were referred to the Establishment Department by the Competent Authority and the Establishment Department intimated that no post has been classified or categorized to be the staff for houses. However provision of Sub Rule -2 of Rule-10 of APT Rules 1989 read with Sub Rule 2&3 of Rule-12 of APT Rules 1989 are quite clear on the subject which may be followed to dispose of the subject case. vide Establishment Department No.SORV(E&AD)Gen-C&W /13 Dated 10-10-2013. Hence the case was again referred to Engr.Fazali kabir, the inquiry Officer for further comments. The inquiry Officer reported that he has ascertained findings regarding the employees sons in the inquiry report from the record submitted by the accused Officer accountable for such appointments, and further added to get the accurate record from the concern office.

III. PROCEEDINGS.

On appointment as Inquiry Officer in the titled case, the undersigned asked the Superintending Engineer PBMC Peshawar vide Letter No.1629//30-SE Dated 18-03-2014 to attend the office of the undersigned on 20-3-2014 accompanied with the Executive Engineer & Divisional Account Officer PBMC and to furnish the relevant record pertaining to the inquiry. The said Officers attended the office of the undersigned on 20-3-2014 and all the possible aspects of the inquiry were discussed: Mr.Sheryar Sabir, President PWD Labour Union C&W Department/Accuser was also invited to this office for recording his statement vide

0321-9040340

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No.1630/30-SE Dated 18/3/2014 ,but he neither attended the office of the undersigned nor submitted his statement. The submitted record was scrutinized and found deficient .Therefore the aforesaid offices were once again requested vide this office No.1675/30-SE Dated 25/3/2014 for production of complete record . Engr.Shams-uz-Zaman the then Superintending Engineer PBMC, presently working as Director (Technical) EQQA Abbottabad, was also requested to furnish his statement as well as relevant record vide this office No.1677/PF/30-SE Dated 25-3-2014, who submitted his statement with some record vide his No.661/1-1 Dated 3/4/2014.Mr.Amir Qadir, the then/ present DAO and Mr.Lal Payo Khattak the then /,present Superintendent of PBMC were also requested to furnish their statements vide this office No.1679/30-SE Dated 25-3-2014 & No.1678/PF/30-se Dated 25-3-2014, the former submitted the same record submitted by the then Superintending Engineer(Engr.Shams-uz-Zaman) vide No.671/3EC Dated 26/3/2014,while the latter did not replied .The Executive Engineer PBMC after repeated reminders/requests submitted two lists of employees sons and deceased sons on 7-4-2014.

IV, GENERAL FINDINGS.

After hearing the sitting Authorities of PBMC and the then Divisional Account Officer of PBMC in meeting held on 20-3-2014 in the office of the Superintending Engineer C&W Circle Peshawar and scrutiny of the record submitted by the concerned offices & the then Superintending Engineer PBMC , related to the 26 No Office orders ,including 21 No fresh appointments ,the undersigned restricts the inquiry to the mandate given for illegal appointments and has reached to the following findings.

1. The Executive Engineer PBMC Letter No.4207/38-M Dated 24.5.2013 addressed to SE PBMC revealed that:" It came to the knowledge of this office from honorable Peshawar High Court through Writ Petition No.1301-P/2013 that some persons are alleging themselves as appointees /employees of this office through different appointment letter from office of the Superintending Engineer PBMC C&W Department Peshawar .The said alleged appointees have not record such as arrival reports, posting order ,Medical Fitness Certificate etc. and this office record is silent about their entries." Annexure-A.
2. The Superintending Engineer PBMC letter No.1101/52-C Dated 25-11-2013 addressed to Advocate General Khyber Pakhtunkhwa revealed that, neither any of the petitioner assumed duties nor were provided service books and medical certificates to the sitting authorities till April 2013,while the office orders have been issued in January 2013,photo copy attached as Annexure-B.
3. The letter referred in para-2 above further revealed that "it is clear off course if these appointments had been made in the month of January /February 2013, then why the then appointing authorities viz Executive Engineer /Superintending Engineer PBMC had not bothered to clear the salaries at that time upto their posting. In view of above it is very clear that the appointments ordered at the last leg of out going appointing authorities in April 2013".

4. In this regard, the statement of Mr. Azeem Khan, the then Head Clerk can be taken into the account which states that "on 18/4/2013, he was called by the then SE PBMC Peshawar to his office and delivered a letter showing minutes of the DSC Meeting dated 14-1-2014 and copies of offer of appointments of some individuals, which were endorsed to the office of the Executive Engineer PBMC Peshawar and directed him to put receipt signature with the reference to the dates as appeared thereon. He further stated that "As the offers of appointments were shown issued in January 2013, but actually delivered to me on 18-4-2013, till that even when I was posted out from the post i.e on 31-05-2013, none of these appointees either reported physically for their jobs nor none of them produced any documents viz Medical Fitness /provision of credential/certificates.", photo copy of one office order and statement of Head Clerk attached as Annexure-C.
5. The statement of issue Clerk also support the statement of Head Clerk, which states that he was called by the Superintending Engineer PBMC at his Residence at Hayatabad Peshawar along-with issue register, and was directed to dispatch the office orders in back dates, photo copy of statement attached as Annexure-D.
6. The writ petition lodged by the petitioners in Peshawar High Court was dismissed on 27-1-2014 at liberty to the petitioner to approach proper forum for redressal, however the brief of the sitting Superintending Engineer PBMC submitted to the Secretary C&W Department with his letter No.1341/52-C Dated 27-12-2013, copy thereof endorsed to Advocate General is also quite clear, self explanatory and sufficient to turn down the aforesaid appointment as it is not possible for the subordinate office to mislead the Administrative Department, and for the respondent to misguide his Pleader, photo copy attached as Annexure-D1
7. Mr. Amir Qadir the then and present Divisional Account Officer in his written statement submitted vide his No.671/3-EC Dated 26-3-2014 intimated that the household staff were exempted from purview of DSC as well as advertisement, whereas DSC has been convened /minutes of DSC issued, which is self contradictory. It seems that the DAO tried to mislead his superiors. The DAO stated nothing regarding monthly salaries of the aforesaid appointees that why he did not prepared /forwarded their salaries during 03 months period being responsible Officer for the same. Photo copy of statement, Minutes of DSC Meeting & Notification of DSC attached as Annexure-D2
8. The statement of the then Superintending Engineer PBMC emphasis that all the appointments under inquiry were made according to the prevailing rules established and implemented in the PBMC since its creation. He further stated that proper 25 % quota of retired Employees sons were observed and 05 applicants were selected. The office orders were issued in the month of 1/2013 and allegation of back dating is baseless. Proper minutes of the meeting were issued on 15/1/2013 as well as service books of the new appointees were maintained by the Executive Engineer PBMC and the employees have performed their duties. Photo copy attached as Annexure-E.

032-4090340

9. The former inquiry Officer, Engineer Fazali Kabir vide his findings at S.No.3 & 4 linked the appointments of Class-III & IV with want of clarification from Establishment Department Khyber Pakhtunkhwa. In response, the Establishment Department intimated vide his letter No.SORV/(E&AD)Gen-C&W/13 Dated 10-10-2013 that no post has been classified or categorized to be the staff of houses. However provision of Sub rule- 2 of Rule -10 of appointment ,promotion and transfer rules 1989 read with Sub rule-2 & 3 of Rule-12 of APT Rules -1989 are quite clear on the subject, which may be followed to dispose off the subject case. Annexure-K.

CONCLUSION.

After scrutiny of the record submitted by the then / sitting Officers /Officials PBMC in support of their statement, the following conclusions have been arrived .

- i) The appointments under inquiry were initially made under the Rule-10 (4) of the Khyber Pakhtunkhwa Civil Servant rules (APT-Rule 1989) which are for deceased Sons and later on Corrigendum was found issued replacing the said rule with Notification No.SOR-VI(E&AD)1-3/2003(Vol-V) Dated 3.7.2003 & Clarification of Admn. Department No.SO(PBMC)AD/Budget/3-2/2005/P-VI Dated 10-2-2006, instead of prevailing Sub Rule (2) of Rule-10 and Sub Rule 2& 3 of Rule -12 of APT Rule 1989.
- ii) The appointments of employees sons quota of 25 % were not found supported with any document such as merit list ,identity cards of Employees sons ,pension books or retirement orders of their fathers. The waiting list of employees sons as stood on 14-1-2013 submitted by the concerned office does not indicate the names of the individuals appointed, except one Mr.Khurram, at S.NO.39 of the list . It seems that merit list of employees sons quota was neither maintained nor followed, Photo copy attached Annexure-F.
- iii) The appointments stated to have been made in January 2013. For instance, it presumed that the fresh appointees have performed their duties, then why their pays were not processed and passed from the Accountant General Khyber Pakhtunkhwa within 03 months time (2/2013 to 4/2013).
- iv) The minutes of the meeting were issued on 15-1-2013, where as two No Office Orders were found issued on 14-1-2013 and 03 on 15-1-2013, entered under register No. 1695, 1696 & 1697 i.e prior to the issuance of the minutes of meeting entered on register No.1698, photo copy of 05 No orders and letter of minutes attached as Annexure-G.
- v) As far as minutes of the meeting is concerned, the notified DSC , comprises of 04 Members and the aforesaid minutes have been signed by 03 members, photo copy of Notification and minutes of DSC attached as Annexure-H.
- vi) The photo copies of some arrival reports, medical fitness certificates and pages of services books are either without signatures of the appointees or signatures do not tally with each other and seem to be fake. Photo copies of some of it are attached as Annexure-I

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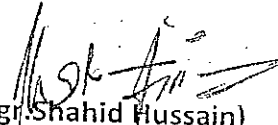
- vii) The applicants applied for appointment under deceased sons quota (having 100 % quota) have not been taken in account in the aforesaid appointment, list seeking appointment under the said quota is attached as Annexure-J.
- viii) In pursuance of the recommendation for clarification regarding the points referred in back ground above, the Establishment Department also vide its letter No.SOR-V-V (E&AD)/Gen/C&W/13 Dated 10-10-2013 has clarified that no post has been classified /categorized to be the staff for houses and referred sub rule (2) & (2&3) of rule-10 & 12 of APT-Rule 1989 for initial appointments in Zonal & Local Cadre. Photo copy attached as Annexure-K

V. FINAL CONCLUSION.

In light of the findings/Conclusion, detailed above, it is found that not only the prevailing rule-10 & 12, of Appointment, promotion & Transfer Rule-1989 as well as merit list of employee sons were not followed but also numerous lapses mentioned above are observed in whole process, hence the aforesaid appointment can not be termed as legal

VI. RECOMMENDATION.

- a. Since the whole process was not found in line with the prevailing rule-10 sub rule (2)(4) and Rule -12 sub rule (2&3) of APT Rule 1989, hence the appointments under inquiry, can not be termed as legal.
- b. The confusion of Provincial Building Maintenance Cell Authorities should be removed that there is no special rules for appointment in PBMC except prevailing rule (APT Rule-1989) applicable throughout Khyber Pakhtunkhwa Province.
- c. The PBMC authorities should be directed to ensure all types of appointments strictly under the prevailing rules on merit.
- d. Waiting list of employee sons, whose fathers have been retired after completion of 60 year age of superannuation should be maintained.
- e. Waiting list of deceased Government Servants /incapacitated, invalidated permanently during service should be properly maintained.
- f.


(Engr. Shahid Hussain)
Inquiry Officer/ SE C&W Circle
Peshawar.

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE ANWAR ZAHEER JAMALI
MR. JUSTICE EJAZ AFZAL KHAN.

C. Ps. No. 2026 and 2029 of 2013.
(On appeal against the judgment
dt. 2.10.2013 passed by the
Peshawar High Court, Peshawar in
W. Ps. No. 271-P and 663-P of 2013).

Mushfaq Ahmed and another. (in CP. 2026/13)
Muhammad Nasir Ali and others. (in CP. 2029/13)
.....Petitioners.

VERSUS:

Government of KPK through Chief Secretary,
Peshawar and others. (in both cases)
.....Respondents.

For the petitioners: Mr. Ghulam Nabi Khan, ASC.
Syed Safdar Hussain, AOR.

For the respondents: Sikandar Khan, Chief Engineer, PHEK, KPK.
(on court notice)

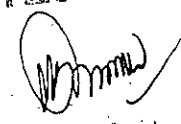
Date of hearing: 15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments
of the learned ASC for the petitioners and careful perusal of the case
record particularly the reasons assigned in the impugned judgment,
we are satisfied that no case for grant of leave to appeal is made out,
including the plea of discrimination raised by the petitioners, as one
wrong or any number of wrongs, cannot be made basis to justify an
illegal action under the garb of Article 25 of the Constitution. Both
these petitions are, therefore, dismissed. Leave is refused.

2. So far as some other illegalities in the appointments
brought to our notice is concerned, in response to our earlier order
dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health
Engineering, Department, KPK is present in Court, he states that

ATTESTED



Registrar
Supreme Court of Pakistan
Islamabad

although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/- Ammar Zabeer Jamali
Sd/- Ejaz Afzal Khan

Certified to be True Copy



[Signature] 16-1-14
Superintendent
Supreme Court of Pakistan
Islamabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 189/2014.


Mr. Sajid Khan S/O Akhtar Zaman,
Resident of Villige Jhansa, P.O Kalabagh Nathiagali
District Abbotabad.....Appellant

VERSUS

Govt of Khyber Pakhtunkhwa C&W Department
..... Respondents.

WRITTEN REPLY AGAINST PETITION FOR CONDONATION OF DELAY

PRELIMINARY OBJECTIONS.

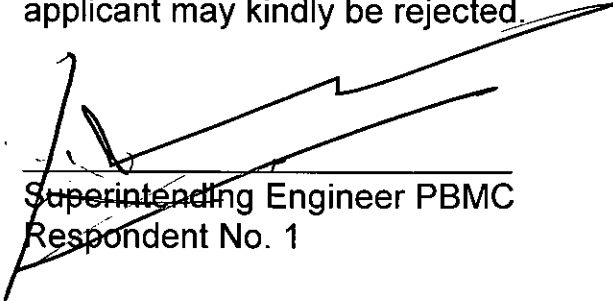
1. Appellant's father is neither government servant nor died official, appointment of appellant is not covered under Rules 10 (4) of Khyber Pakhtunkhwa Civil Servant A.P.T Rules 1989, hence illegal, void abinitio and not warranted by any law.
2. As the appointment of the Appellant is illegal and void abinitio, has got no cause of action to invoke the jurisdiction of this Honourable Tribunal and the principal of locus poenitentiae.
3. The Appellant has deliberately concealed the material facts from this Honourable Tribunal in the appeal in hand.
4. The appellant has not come to the Tribunal with clean hands. 
5. The appeal is bad for misjoinder and non joinder of the then Executive Engineer, Mr. Ghulam Yazdani who signed the Service Books and other documents and not released the salaries if appointment was regular and not illegal.

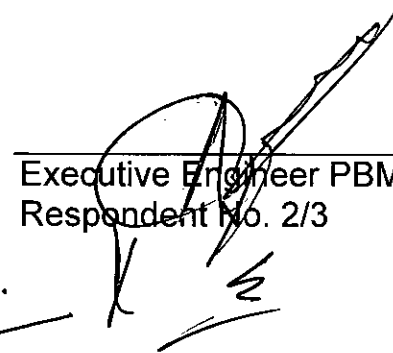
Respectfully Sheweth:

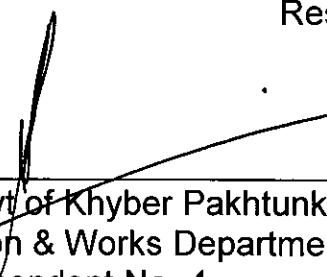
1. Incorrect: No grievance has been caused to the petitioner by the replying respondents, all actions of the replying respondents are in the ambit of law and rules.

2. Incorrect to the extent that no departmental appeal have been received to the replying respondents and if the petitioner was aggrieved from any action of the replying respondents, he should have submitted departmental appeal to the concerned authority, hence question of condonation of delay does not arise at all and not entitled for the relief prayed for.
3. The petitioner was legally bound to file his case / appeal before competent forum, hence condonation on this score cannot be extended to the petitioner for his own illegal act.
4. The respondents will offer/raise their plea/arguments before the court at the relevant time.

It is therefore requested that the condonation petition of the applicant may kindly be rejected.

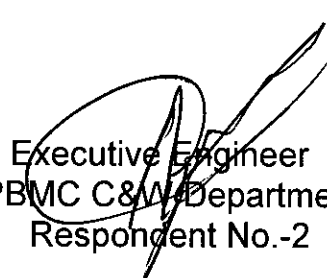

Superintending Engineer PBMC
Respondent No. 1


Executive Engineer PBMC
Respondent No. 2/3


Secretary to Govt of Khyber Pakhtunkhwa
Communication & Works Department
Respondent No.-4

COUNTER AFFIDAVIT

I Engr: Abdul Ghafoor Executive Engineer PBMC C&W Department Peshawar do hereby solemnly affirm and declare that the contents of reply against petition for condonation of delay are true and correct to the best of my knowledge ad belief and that nothing has been kept secret or concealed from this Honourable Court.


Executive Engineer
PBMC C&W Department
Respondent No.-2

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

Service Appeal No. 189/2014

Sajid Khan

V/S

S.E. PBMC etc.

**REPLY ON BEHALF OF RESPONDENTS NO.5
(Shams-uz-Zaman)**

RESPECTFULLY SHEWETH:

1. No comments.
2. Correct. The replying respondent had properly convened the DSC meeting and after observing all codal formalities, the appellant was appointed. As far as the insertion of Section-10(4) of APT Rules, 1989 is concerned, that was a typographical mistake for which proper corrigendum was issued on 8.2.2013. The replying respondent also made clear to the higher ups in various letters with specific evidences. The appellant has been made to suffer due to ill intentions of the other respondents, and also due to accommodating the blue eyed persons of other respondent. The replying respondent had not violated any law and rules, and appointed the appellant according to Rules, after fulfilling all codal formalities. It is also added that Mr. Imtiaz Junior Clerk had given statement in absence of replying respondent and that two the said affidavit is even not attested by the competent Oath Commissioner. Thus that statement carries no weight at all. Similarly the letter of P.W.D Labour Union Sub Committee, PBMC, Peshawar is also fake and bogus, because the said sub committee was expired on 2.3.2013 and was not in existence on 6.5.20013, as evident from PWD Labour Union KPK letter dated 16.5.2013. It is also worth to mention here that the present incumbent also appointed one person through same DSC, through which the replying respondent had made appointment. Thus one and same act can not be termed as illegal for replying respondent and as legal

for present incumbent. All this proves malice on the part of other respondents.

3. Correct.
4. Correct.
5. Correct.
6. Correct. It is a well settled law that when ever there is work, there shall be pay.
7. Correct. The replying respondent had fulfilled his duty as evident from the remarks written an appeal of appellant by the replying respondents. Presently the other respondents are responsible for non payment of salaries to the appellant.
8. No comments.

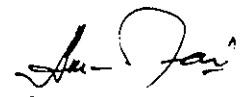
GROUND:

1. Correct. The salary is the legal right of appellant being performing duties and validly appointed.
2. No comments.
3. No comments, but replying respondent is not responsible for that as evident from the record.
4. No comments.
5. No comments.
6. No comments.
7. Legal.

It is, therefore, most humbly prayed that the justice may very graciously be done to appellant.


Respondent No.5

Through


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the contents of Reply on behalf of respondent No.5 are true and correct to the best of my knowledge and belief.


DEPONENT

(~~XXXXXXXXXX~~)

R-1

OFFICE OF THE Director(Tech)EQAAAbbottabad
No. 661 / 1-i Dated 3 /04/2014

To,

The S E
C&W circle Peshawar
(Inquiry officer)

Subject:- APPOINTMENT OF HOUSE HOLD STAFF IN PBMC

Ref:- Your letter No. 1677/PF/30-SE dated 25 /3/2014 (Received on 31/3/21014 under diary No.635/1-i)

It is important to explain the back ground motive of the said inquiry before detail statement is given.

In fact this issue was raised when my successor took over the charge as SE PBMC for reason better known to him. Being SE having in same grade as mine having no authority to mention my appointment orders as illegal subject given in his letter to Secretary C&W but on the other hand he should have to request the competent authority for analyzing the matter whether rules violated or otherwise.

Moreover it is also strange to note that the officer himself made appointment under the same rules but In his opinion others violate rules.

It is also important to state that this inquiry is illegal, malafide that on the ground prior to this an inquiry on the allegation raised by a blackmailer ex-labour union leader (Anex-1) Mr Shəhryar was conducted by Mr Fazal Kabir the then SE C&W circle Peshawar on the order of Secretary C&W and nothing was pointed out wrong or illegal in his report which is lying in the Secretary C&W office and after six month again another inquiry initiated on the same issue with same grounds reported by the same official and SE indicates intentions to create hindrance in my promotion to BPS -20 as the panel has been sent to PSB to bestow junior officer.

(17)

The detail statement is as under.

1. That all appointments made were according to the prevailing rules established and implemented in the PBMC since its creation. (Copy of the notifications/mended rules as Anex:2to 13 attached).

The honourable high court given instruction to employees to approach the proper forum i.e. Service tribunal in connection with salary issue where the cases of the official have been admitted for salary claims which means that employs status were given because an unemployed person can not be allowed to file any case in the tribunal or in the court.

2.The reason given by the sitting SE are base less and concocted as he himself accepted the rules and made appointment.

Strange point which must be noticed in his appointment order is that one section of the rule 10(2).have been implemented and other sections of the said rule is ignored which is a clear example of fraud case.Despite of exemption of this rule to PBMC.(Anex:14)

It is also pertinent to mention that present Executive Engineer and his predecessors also previous Superintending Engineers since creation of PBMC have already been made many appointments under the same rules, record available in PBMC office..The question is that only this employment case is being targeted just to involve me in an irregularity to deprive me from my right of promotion as I am at the verge of promotion and the panel has already been sent to PSB.

3.That the letter written by SE to the Advocate General regarding in-service employees as deceased son is an example of his lack of knowledge, incompetency and personal grudges where in he could not have understood the wording of the minutes.(Anex:14)

4.That for deceased sons seperate DSC was conducted in the month of November on 28 /11/20112 one month prior to the DSC on 14/1/2013.This is the main reason that the present SE is not aware of his office record and duty that his report is an

example of disinformation which is also a criminal act to deceive higher ups.(Copy of the minutes DSC as Anex:15 attached).

5.That proper letter on 9/1/2013 for DSC was intimated to all members of the committee where in 14/1/2014 was fixed for DSC meeting.(Anex;15).

6.That all members according to the committee constituted by Secretary C&W participated in the meeting and 38 applicant cases were examined and the suitable candidates were selected and approved.(Anex:16)

7.That proper 25 % quota of Retired employees son were observed and 05 Applicants were selected having good qualification.The name of retired employ sons can be verified from the DSC minutes Anex:17 A, are as under.

1. Mr Tahir Shah (Diploma holder) S/O Noor Hassan Shah Ex -Employee
- 2.Mr Muhammad Tanvir(Diploma holder) S/O Saleem Khan Ex -Employee
- 3.Mr Raees Khan S/O Muneer khan Ex-Employee
- 4.Mufti Asif S/O Jan gul Ex -Employee
- 5.Mr Khurram S/O Maqsood Ahmad Ex –Employee.

8.That other employ sons mentioned in the DSC minutes are candidates those fathers are in service applied for job and one can not prevent them from participation in the open competition which is their basic right and selected only having good qualification or technically good in comparison to others. Their names are as below

- 1.Habibullah (FA) S/O Nasrullah (Employee in PBMC)
- 2.Mr Shahabuddin S/O Nasrat gul (Employee in Building Division)
- 3.Mr Wareedullah S/O Gul zada (Employee in PBMC)

9.That no appointment were made during the care taker regime.The report is totally false and based on misleading information.

10. That all appointments were made in the month of January 2013 during previous regime and appointment letters were issued to them within one month with the direction for medical examination from health department. (photo copies of appointment orders & medical certificates are attached)

11. That the allegation of back dating is totally base less having no ground as the health department neither honour such like irregularity nor the health department was under my control. The date of medical examination can be compared from medical certificates. (Photo copies of employs MC attached).

12. That on 15/1/2013 the DSC minutes were sent to Executive Engineer (Anex:17) which was noted by Xen by initialing it. The Executive Engineer have properly initialed all office orders shows no back dating. This can be verified from original dispatch register in the custody of the SE PBMC /office. (Copies of office orders having initials of XEN attached).

13. That all original record are available in the office of SE PBMC and it is the responsibility of the sitting officer to safe guard the official documents being the custodian of official record.

14. That the service book is an important document which speak about all aspects required for a fresh employees. The service books are properly maintained and signed by the then Executive Engineer certifying order and date of arrival report with medical certificates of each employee. Accordingly signed by undersigned at appropriate column. (Photo copies of service books complete in all respect attached).

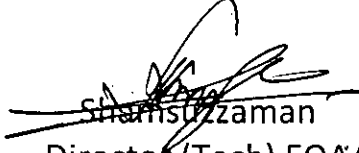
15. That all employs performed their duties since their arrival reports. After my transfer the sitting SE/XEN started creating hindrances in their duties and did not allowed the salaries to poor officials which is an example of abuse of authority, cruelty and dishonesty to deprive a person from their fundamental rights.

16. The matter is subjudice as employees have approached to the Service Tribunal where their cases have been admitted for the claim of salaries.

In the end I will request to file this malafide and base less inquiry in light of factual position explained above to help the poor official and also to save my un-blemish career through out my whole service.

I also reserve my legal right against any such details if subsequently brought on record for depriving me to defend myself in proper way. I also wish to be heard in person and reserve my right to add things to my written reply in respect of accusation/allegations subsequently introduced against me. I also reserve my legal right to proceed to the court of law.

The photo copies of all necessary documents properly numbered are attached for your perusal. The original documents are lying in the custody of PBMC staff.


Shamuzzaman
Director (Tech) EQAA

Reply to the additional document placed in the inquiry in continuation of my letter No 661/i-1 dated 3/4/2014

The Service Tribunal KPK issued order on 17/4/2014, directed the department to refrain from any adverse action against the officials and allowed to perform their duties.(Copy attached).It is therefore required that the inquiry proceedings may be stopped and the inquiry should be filed keeping in view the Honourable Court order.

(Some order sheets attached)

However the detail reply to the false and concocted allegations by SE PBMC despite of in the same grade as mine are given below.

During my stay as SE PBMC not only these appointments were made but prior to this in PBMC since its creation many appointments had been made under the said prevailing rules.

When undersigned was transferred to EQAA Abbottabad and Mr Muhammad Ashraf took over the Charge this issue was created and orders issued during my tenure were termed as illegal without any authority being in the same grade as mine and report was sent to Secretary C&W with subject "Illegal appointment in PBMC" which was in the first instant an illegal act as he was not authorized to mention any previous orders illegal with out any legal authority.

The said officer also wrote letter to Advocated General and a brief note sent to the Secretary C&W both were deceiving and without fact and concocted allegations mentioned to gain the favour of the worthy Secretary C&W .(Copies attached)

Para wise Replies to his letters are as under.

1. That the report of the Head Clerk totally false and baseless as the Head Clerk is not direct subordinate to me but he is actually attached with Executive Engineer office. In his letter the first four paragraphs were false statement because he himself denied all allegation in his last paragraph clearly accept that all documents were received and were put up to the Executive Engineer which was his duty.

2. That the whole drama is based on the compliant by Mr sheryar reflecting himself as president labour union sub committee in his letter dated 6/5/2013 is false statement as letter dated 15/5/2013 from Provincial labour union president Mr Malik Nisar denies his claim(Annex:1) .This mean that the complainant is himself a black mailer because when DSC was conducted in the month of January 14'th 2013(Annex:2) then why he was silent and after my transfer he as an intrigue attempt with the SE PBMC made an issue for their own interest.

More over important to note that DSC dated 14/1/2013 has been partly implemented as four officials have been released salaries where as others are deprived.

3. It is also clear that the Shehryar neither objected to the appointment case conducted by the sitting SE on 28/6/2013 for ex-employees quota nor for the unfair selection as only one applicant participated clearly mentioned in the DSC minutes.(Annex:3)

4. That the statement given in the letter totally false as proper 25 % quota of Retired employees son were observed and 05 Applicants were selected having good qualification.The name of retired employs sons can be verified from the DSC minutes dated 14/1/2013 attached as (Annex:3A) , are as under.

1. Mr Tahir Shah (Diploma holder) S/O Noor Hassan Shah Ex -Employee
- 2.Mr Muhammad Tanvir(Diploma holder) S/O Saleem Khan Ex Employee
- 3.Mr Raees Khan S/O Muneer khan Ex-Employee
- 4.Mufti Asif S/O Jan gul Ex -Employee
- 5.Mr Khurram S/O Maqsood Ahmad Ex-Employee.

5. That the letter written to Advocate General Peshawar High Court (Annex:4) where in reference given to the deceased one are totally baseless as a separate DSC one month before of DSC dated 14/1/2013(Annex:3A)was conducted on 28/11/2012(Annex:5) to appoint the deceased sons and also three fresh appointment were made in that DSC but the SE did not objected those appointments.

Actually the SE was unaware of his office affairs and is an example of his lack of knowledge, incompetency and personal grudges where in he could not have

understood the wording of the minutes or might be kept in dark by his office staff hence the letter is based on false information as no applicant is selected as deceased son.

6. That proper letter on 9/1/2013 for DSC was intimated to all members of the committee where in 14/1/2013 was fixed for DSC meeting.(Attached as Annex:6).

7. That all members according to the committee constituted by Secretary C&W participated in the meeting and 38 applicant cases were examined out of those applicant suitable candidates were selected and approved. (as Anex:3A)

The minutes of the DSC were sent to the Executive Engineer on 15/1/2013 1nd were properly initialed by head clerk and Executive Engineer confirm the receipt of the letter. (Anex:7)

8. That other employee sons mentioned in the DSC minutes dated 14/1/2013 are candidates those fathers are in service applied for job and one can not prevent them from participation in the open competition which is their basic right and selected only having good qualification or technically good in comparison to others. Their names are as below,

1.Habibullah (FA) S/O Nasrullah (Employee in PBMC)

2.Mr Shahabuddin S/O Nasrat gul (Employee in Building Division)

3.Mr Wareedullah S/O Gul zada (Employee in PBMC)

9. That no appointment were made during the care taker regime.The report is totally false and based on misleading information.

10. That all appointments were made in the month of January i.e. on 14/1/2013 and **appointment letters were issued to them within one month** with the direction for medical examination from health department .Photo copies of appointment orders are attached.(Annex:8)

11. That the allegation of back dating is totally base less having no ground as the health department neither honour such like irregularity nor the health department was under my control.The date of medical examination can be compared from medical certificates .Photo copies of employees MC attached. (Annex:9)

12. The same doctor who examined the official selected by the SE also examined all officials selected during my tenure.

13. That the Executive Engineer and Head Clerk have properly initialed all office orders show no back dating. This can be verified from original dispatch register in the custody of the SE PBMC /office.(Copies of office orders having initials of XEN and head clerk attached as (Annex:8 above)

14. That all original record are available in the office of SE PBMC and it is the responsibility of the sitting officer to safe guard the official documents being the custodian of official record.

Further it also pertinent to high light the fact that Divisional office Account officer (DAO) provided all record to the inquiry officer Mr Shahid Hussain in the inquiry ordered by Secretary C&W dated 25/3/2014 confirms that all record is available in the PBMC offices and intentionally concealed to deceive the higher offices.

15. That the service book is an important document which speak about all aspects required for a fresh employees. The service books are properly maintained and signed by the then Executive Engineer certifying order and date of arrival report with medical certificates of each employee. Accordingly signed by undersigned at appropriate column.Photo copies of service books complete in all respect attached.(Annex:10)

16. That all employees performed their duties since their arrival reports.After my transfer the sitting SE/XEN started creating hindrances in their duties and did not allowed the salaries to poor officials which is an example of abuse of authority , cruelty and dishonesty to deprive a person from their fundamental rights.

17. That the delay in salary for two months are not a crime but due to rush of work the delay might be occurred in the Divisional office.

Astonishing to note that the reporting SE himself made delay to release the order for three months approximately as the DSC was conducted on 28/6/2013 and order was issued in the month of September on 20/9/2013.The salary to the official was released in the month of November 2013,Why? (Anex:11,12,13)

18. That it is beyond to understand that how the applicant came to know about his selection in the DSC which is a official secret and the candidate submitted

a compliant against SE with a threat of approaching the court .The application is with out signature of the applicant and also the hand writing in which name written does not tally with the signature of the applicant as on medical certificate ,thus can not be treated as signature of the applicant on the application but a forgery.(Annex:14)

It is also strange to note that only one applicant was participated in the competition as clear from DSC dated 28/6/2012 as (Annex:5 above) conducted by the present SE PBMC where in no importance was given to the deceased son as well as Ex-employ 's son.

The reply to the brief sent to Secretary C&W/Court by SE is as under.

The false statement as replied above in para 1 and the H/Clerk have noted all office orders by initialing before putting up to the XEN and accordingly noted by him. (Copies of office orders already attached.)

Parawise replies,

- I) Totally False statement as there was clear corrigendum issued vide 1930/41-E dated 8/2/2013 because of the rule mentioned wrongly written.(Annex:15)
- II) The PBMC (Provincial Building Maintenance Cell) with out any doubt is working at provincial level and controls many sections in other district.
- III) The PBMC can not be restricted to district level. More over at the time of creation approximately 50% maintenance staff were handed over to the district. This rule applies to district maintenance staff appointment. A large number of examples are on record that since creation other district persons have been employed in the PBMC.(Annex:16).

The reason of concealment of fact by the SE not understandable.

- IV) All necessary documents i.e appointment orders, medical certificates and arrival reports etc are annexed in their service books properly certified by XEN and the then SE as in (Annex:10)above.
- V) The detail reply to the objection raised in the para has already been given in the para 17 above which is reproduced below,

"That the delay in salary for two months are not a crime but due to rush of work the delay might be occurred in the Divisional office.

Astonishing to note that the reporting SE himself made delay to release the order for three months approximately as the DSC was conducted on 28/06/2013 and order was issued in the month of September on 20/9/2013. The salary to the official was released in the month of November 2013, Why? "(Annex:s already attached as 11,12,13)

- VI) The objection is irrelevant and no such instruction were issued to PBMC for deceased sons as mentioned and no appointment were made during care taker government.
- VII) That all documents are lying in the office and might be removed from the office record just to give weight to their complaint /allegations. In case the record was not available then how the photocopies are available and have been produced to your office with the reply and in the Court. The DAO also submitted the record to your office. This clearly mean that the present officers/officials try to conceal record. They are responsible to secure official documents being the custodian of office record and they can not shred away their responsibilities.

Shams uz zaman
Director (Technical)
O/O CE EQAA Abbottabad.

R-3

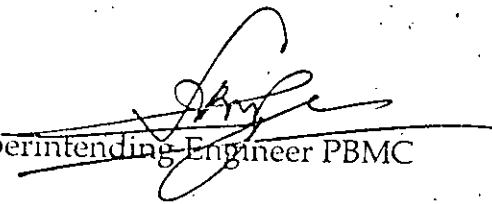
PROVINCIAL BUILDING MAINTENANCE CELL
COMMUNICATION & WORKS DEPARTMENT
Phone No. 091-9211370

No. 1930/141-E Dated 8/2/2013

Subject: CORRIGENDUM.

The following amendments in the office orders/Minutes are made with immediate effect and Corrigendum issued as below:

1. All the appointments made in light of Govt. Notification No. SOR-VI(E&AD) 1-3/2003 (Vol-V) dated 3.7.2003 and further clarified by letter No. SO(PBMC)AD/Budget/3-2/2005/P-VI dated 10.2.2006.
2. Rule 10(4) of Khyber Pakhtunkhwa wrongly typed in various office orders issued in light of DSC meeting dated 14.1.2013 be considered as deleted.
3. Raees Khan Carpenter wrongly written in BPS-6 may be read as BPS-5.


Superintending Engineer PBMC

Copy for information to the Executive Engineer PBMC C&WD Peshawar.

Superintending Engineer PBMC

VAKALAT NAMA

NO. 189 /2014.

IN THE COURT OF Service Tribunal Peshawar.

Sajid Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS


PRINC etc (Respondent)
(Defendant)

I/We Respondent No. 5.


Do hereby appoint and constitute M. Asif Yousafzai, Advocate, Peshawar, ^{§ Taimur Ali Khan}
to appear, plead, act, compromise, withdraw or refer to arbitration for me/us ^{Adv}
as my/our Counsel/Advocate in the above noted matter, without any liability
for his default and with the authority to engage/appoint any other Advocate/
Counsel on my/our costs.


I/we authorize the said Advocate to deposit, withdraw and receive on my/our
behalf all sums and amounts payable or deposited on my/our account in the
above noted matter. The Advocate/Counsel is also at liberty to leave my/our
case at any stage of the proceedings, if his any fee left unpaid or is
outstanding against me/us.

Dated _____/20


(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI
Advocate

§

TAIMUR ALI KHAN
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

SAJID KHAN

VERSUS

SUPERINTENDENT ENGINEER PBMC
COMMUNICATION AND WORKS DEPARTMENT
PESHAWAR BACHA KHAN CHOWK AND OTHERS.

**REJOINDER ON BEHALF OF APPELLANTS
TO THE COMMENTS SUBMITTED BY
RESPONDENT NO. 1 TO 4. BEFORE THIS
HON'BLE COURT.**

RESPECTFULLY SHEWETH:

Reply to Preliminary Objections:

1. That Para no. 1 of preliminary objection of the comments is incorrect. Infact section 10(4) of KPK civil servant Rules 1989 was inadvertently written and in this respect immediately corrigendum was issued on 8-2-2013, hence this objection of the respondents is without any force, moreover the deceased sons separate D.S.C. was conducted in the month of November on 28-11-2011 one month prior to the D.S.C. on 14-01-2013. This is the main reason that the present S.E. is not aware of his office record and duty.
2. That Para No.2 of preliminary objection of the comments is incorrect; however the appointment made according to law and to the prevailing rules and the same has created valuable rights in favour of appellant, hence appointments made are not only legal but are also made by competent authority.

3. Para No.3 of the preliminary objection of comments is incorrect; appellant has not concealed material facts from this honorable court and the appeal of the appellant are based on true facts and even all the requisite record is already annexed with the appeal and is available on file.
4. That Para No.4 of preliminary objection of the comments is incorrect; appellant has come to this hon,able court with clean hands.
5. The Para No.5 of the preliminary objection of comments is incorrect, however respondents have admitted that the appellant service book and other documents were signed by the then executive engineer and as such on the principle of locus poeintentia, appellant case is liable to acceptance. It is pertinent to mention here that the service book was even counter signed by respondent no. 5 (competent authority)

ON FACTS: -

1. Para No.1 of the comments needs no reply.
2. Para no. 2 of the comments is incorrect while Para no 2 of the appeal is correct, the appellant was appointed in the respondents establishment on post of electrician (BPS-05) vide order dated Peshawar the 23-01-2013 passed by respondent no-5 and is house hold staff after approval by the D.S.C. in the meeting held on 14-01-2013. Moreover the reason given by the sitting S.E. are baseless and concocted as he himself accepted and made appointment in the similar manner and as such all appointment are made in accordance with law. Infact section 10(4) of KPK civil servant Rules 1989 was inadvertently written and in this

respect immediately corrigendum was issued on 8-2-2013, hence this objection of the respondents is without any force and even the allegation in respect of back dated entries are without force and proof and respondents be directed to produced dispatch register before this hon,able court in order to ascertain the true facts and it is wrong that the appointment were made in Caretaker Govt. more over there was no ban in the then regime during the appointments period and the order of chief minister referred in the Para is not attracted in the case of appellant.

3. Para No. 3 of the comments is incorrect while Para No.3 of the appeal is correct, moreover for deceased sons separate D.S.C. was conducted in the month of November on 28-11-2012 and the letter written by S.E. to advocate general regarding in service employees as deceased sons is an example of his lack of knowledge, more over the arrival report, medical fitness certificate are genuine. It is pertinent to mention here that present S.E. PBMC had made fresh appointment of one Noor Akbar S/O Haji Akbar R/O village Akazai Tehkal Bala Peshawar on recommendation of D.S.C. held on 28-06-2013 in the same manner of appointment as of appellant was also made payment of salary after six months but appellant is treated discriminatory which is not permissible under the law as well as in the same manner of appointment through the same DSC is also legal one and respondents are dealing appellant discriminatory.

4. Para no. 4 of the comments is in correct while Para no 4 of the appeal is correct, the appellant has there after made arrival report on 29-01-2013.

5.

Para No. 5 of the comments is incorrect while Para No.5 of the appeal is correct. That appellant furnished service book with medical certificate along with arrival report which were duly entered and certified by the Superintending Engineer and Executive Engineer and proper letter on 9-1-2013 for DSC was intimated to all members of the committee where in 14-1-2013 was fixed for DSC meeting.

6. Para No.6 of the comments is incorrect while Para No.6 of the appeal is correct. However it is wrong that the high court asked appellant counsel to state on oath in respect of appellants father serving in department. More Over the appellant performing his duties with full diligent and devotion since from the date of his arrival, but the respondents were not paying his monthly salaries to the appellant with out any cogent reasons, therefore appellant has instituted a writ petition before Peshawar high court Peshawar, however the respondent due to institution of the writ petition have become biased and even started not allowing appellant and his others colleagues to duties and created problems in this regard due to malafide reasons and at the time of arguments their lord ships were of the view that pay being falls within terms and condition of service therefore to withdraw the writ petition and to move the service tribunal KPK, hence the writ petition was withdrawn with permission to move the proper forum which was not objected by learned A.A.G.

7. Para No.7 of the comments is incorrect while Para No.7 of the appeal are correct. Moreover the appellant has also approached the respondent No.5 for the release/payment of his salaries but nothing has been paid, despite the clear instructions by respondent No 5 on his appeal, which is the legal rights of appellant but the same is still not paid despite the clear cut direction by the then competent authority.
8. Para no 8 of the appeal is incorrect. No ground for dismissal of appellant appeal exist.

GROUNDS

1. Para No.1 of the grounds of comments is incorrect while Para No.1 of the grounds of appeal is correct, that due to the non payment of the salaries, appellant has not been treated in accordance with law, and his rights secured and guaranteed under the law have been violated by not releasing his salaries and issuance of appointment letter by competent authority have created valuable right in favour of appellant and those rights can not be taken away in the manner respondents are adopting.
2. Para No 2 of the ground of comments is incorrect while Para No.2 of the ground of appeal is correct, that discrimination as observed by the respondents with appellant is highly deplorable and condemnable being unlawful, unconstitutional, with out authority, with out jurisdiction, against the norms of natural justice and equity and against the law on subject, hence liable to declared as such.
3. Para No.3 of the ground of comments is incorrect while Para no. 3 of the ground of appeal is correct,

That respondent are not acting in accordance with law and are illegal acts with ulterior motive and malafide intention by not releasing appellants salaries which are stopped without any cogent reason since date of appointment/arrival report.


4. Para No.4 of the ground of comments is incorrect while Para no 4 of the ground of appeal is correct, the appellant are recommended for appointment as per D.S.C. held on 14-01-2013 but are not being paid salaries though to three official namely (I) Said Rasan (II) Waqar Ul Islam (IV) Riaz Khan mentioned in the same D.S.C were later on paid and even fresh appointment made of one Noor Akbar S/O Haji Akbar R/O village Akazai Tehkal Bala Peshawar on recommendation of D.S.C. held on 28-06-2013 in the same manner of appointment as of appellant was also made payment of salaries but appellant is treated discriminatory which is not permissible under the law.
5. Para No.5 of the ground of comments is incorrect while Para no 5 of the ground of appeal is correct, the appellant is entitled for the receipt of his salaries and the act of respondent by not paying the same is against the law and rules and as such the respondent are under the obligation to pay salaries to appellant as per the appellant appointment order.
6. Para No.6 of the ground of comments is incorrect while Para No.6 of the ground of appeal is correct, the act of respondents by not allowing appellant to his duties due to institution of writ petition for salaries and others illegal action are based on malafide and illegal because demand of salaries / pay is legal and the appointment of the appellant are made by competent authority in legal manner by following of all

codal formalities and the service book which is an important documents and speak about all aspects required for fresh employees and were properly maintained and were signed by the then executive engineer certifying order and date of arrival report with medical certificates of each appellant which was signed the then superintendent engineer in appropriate column.

7. Para no 7 of the ground of appeal are replied as that no such ground is available for respondent to deny appellant claim

It is, therefore, requested that on acceptance of this rejoinder appellant appeal be accepted as prayed for in the appeal in favor of the appellant against respondents and any other relief which appellant found entitled and not specifically asked for may also be granted.


APPELLANT

Through 

ASAD JAN

ADVOCATE SUPREME COURT OF PAKISTAN.

VERIFICATION

It is declared on Oath that all contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon, able court.


DEPONENT

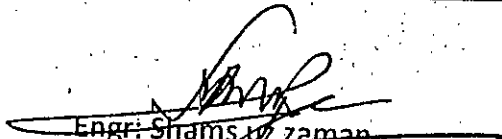
OFFICE OF SUPERINTENDING ENGINEER PBMC
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

No. 1928 / 159 DATED 7 / 2 / 2013

OFFICE ORDER.

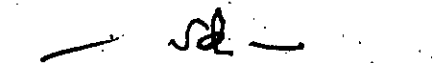
The newly appointed household staff are hereby posted for duty on the following sections as under.

<u>S.No.</u>	<u>Name</u>	<u>Designation</u>	<u>Place of duty</u>
1	Tahir Hussain Shah	W/Supdt	KPK House Nathiagali
2	Alamgir Khan	W/Supdt	MPA Hostel
3	Muhammad Tanveer	W/Mistri	MPA Hostel
4	Ruhullah	W/Mistri	CM House
5	Raees Khan	Carpenter	CM House
6	Hassan Dad	P/Fitter	MPA Hostel
7	Wareedullah	P/Fitter	Shahi Mehman Khana
8	Muhammad Imran	P/Fitter	KPK House Nathiagali
9	Khurram	Electrician IV	KPK House Islamabad
10	Asif Ali	Electrician IV	Governor House Peshawar
11	Muhammad Ismail	Electrician II	Governor House Peshawar
12	Sajid Khan	Electrician V	Shahi Mehman Khana
13	Habibullah	S/Cooly	Governor House Peshawar
14	Asfandyar	S/Cooly	Governor House Peshawar
15	Navaidur Rehman	Khansama	MPA Hostel
16	Aftab	Mali	MPA Hostel
17	Asad Ali	Mali	Shahi Mehman Khana
18	Hussain Khan	cooly	CM house Peshawar
19	Yasir Mumarak	cooly	MPA Hostel
20	Shahabuddin	Chowkidar	Governor House Peshawar
21	Muzzaffar	M/Sweeper	Shahi Mehman Khana


Engr. Shams ul zaman
Superintending Engineer PBMC

Copy to the:

1. Executive Engineer PBMC C&WD Peshawar for information and if required, necessary changes by his office are allowed according to the requirement.
2. DAO (Local) for information and to attach the copy in all service books of the officials.


Superintending Engineer PBMC

2

PROVINCIAL BUILDING MAINTENANCE CELL
COMMUNICATION & WORKS DEPARTMENT
Phone No. 091-9211370

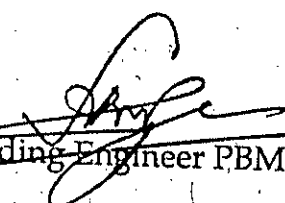
No. 1930 / 41-B

Dated 8 / 2 / 2013

Subject: CORRIGENDUM.

The following amendments in the office orders/Minutes are made with immediate effect and Corrigendum issued as below:

1. All the appointments made in light of Govt. Notification No. SOR-VI(E&AD) 1-3/2003 (Vol-V) dated 3.7.2003 and further clarified by letter No. SO(PBMC)AD/Budget/3-2/2005/P-VI dated 10.2.2006.
2. Rule 10(4) of Khyber Pakhtunkhwa wrongly typed in various office orders issued in light of DSC meeting dated 14.1.2013 be considered as deleted.
3. Raees Khan Carpenter wrongly written in BPS-6 may be read as BPS-5.


Superintending Engineer PBMC

Copy for information to the Executive Engineer PBMC C&WD Peshawar.

Superintending Engineer PBMC

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service appeal No. 183/2014

Muhammad Alamgir S/O Muhammad Ajmal,
Resident of Canal Colony Behind Secondary Board,
Peshawar & OTHERS. (Maintain Appeals No. 184/2014, 185/2014, 186/2014,
187/2014, 188/2014, 189/2014, 190/2014, 217/2014, 218/2014, 219/2014,
220/2014, 221/2014, 222/2014, 223/2014, 249/2014, 250/2014, 251/2014
(17 Nos)

.....Appellants

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION & WORK DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR-IV PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTUNKHWA PESHAWAR.
5. SHAMS-UZ-ZMAN EX-SUPERINTENDENT ENGINEER C&W PESHAWAR PRESENTLY POSTED AS DIRECTOR (TECH) EQAA ABBOTTABAD.

.....Respondents

APPLICATION FOR THE VACATION OF ORDERS PASSED ON 08/07/2014.

Respectfully Sheweth;

1. That 18-Nos Main Service Appeals are pending adjudication before this Honorable Tribunal wherein next date 18/09/2014 is fixed.
2. That comments to the Main Service Appeals as well as reply on the applications for the Grant of Interim Injunctions have since been filed in this Honorable Tribunal.
3. That the Hon'able Tribunal has held in its order dated 08/07/2014 as under: -
"to allow the appellant to perform his duties and start their monthly salary provisionally" (Copy of the above order is annexed as **(Annexed-A)**).
4. That the order ibid is liable to be vacated inter alia on the following grounds: -

- a. That the order of temporary injunction has badly affected the merits of the main appeals wherein the main preliminary objection of Petitioners/Respondents have not yet been decided regarding the illegal orders of the appellants.
- b. That orders for payment of salaries even provisional and to allow perform duties (Now) are not warranted by any law for the time being enforce, hence liable to be vacated on this sole ground.
- c. That on the implementation of ibid orders, the illegal and void appointments shall receive a legal cover directly on the passing of such temporary injunction.
- d. That it is yet to be decided that the illegal appointments orders, have been made under the relevant Ruls-10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 explicitly indicated in the offers of appointments of each individual issued under the signatures of the Private Respondent-5 (Mr. Shams-uz-Zaman the then Superintending Engineer PBMC).
- e. That the private respondent-5 stated in his written as well as verbal statement before this Court that he has made appointments through Departmental Selection Committee on 14/01/2013 and are regular, if it so, then under what circumstances, he had not paid salaries to the appellants uptill his posting out from PBMC in 04/2013 when he and the then XEN PBMC (Ghulam Yazdani) who was also a member of the Departmental Selection Committee, with conspiracy and in connivance of each other (amongst them) have signed the relevant entries in Service Books, which never been provided in office by any of them. Original still holds with them/him. He kept these orders with him uptill 18/04/2013 for which the written statement of the then Head Clerk (Mr. Azeem Khan) of XEN PBMC Office and Dispatch Clerk (Mr. Imtiaz) of PBMC Circle Office have since been annexed with the replies / comments on Main Service Appeals and on the Application for the Grant of Interim Injunction as well, which in fact warrants great importance in these appointment/cases (**Annexed B&C**).
- f. That written reply/comments of the Respondents No.1 to 4 filed against main appeals and stay application of the appellants may also be treated as integral part of this petition

- g. That finding of the Departmental Inquiry, ordered by the respondent-4 (Secretary C&W Department) in these illegal and void appointments orders made by the private respondent-5 has also been annexed with the replies/comments filed by respondents 1 to 4, where the action taken by private respondent-5 termed as illegal after detailed study / its pros and cones and the clarification of Establishment Department (Regulation Wing) tendered vide Memo No. SOR-V(E&AD)/Gen: C&W/13 dated 10-12-2013 and the ancillary instructions issued by the Administration Department Memo No. E&A(AD)4(75)/2003 dated 01/12/2006 and even number dated 11/12/2006 (**Annexed-D, E & F**) when the PBMC Directorate and XEN PBMC Office were attached as Subordinate Attached Offices of the Administration Department, Civil Secretariat up to 30-06-2009.
- h. That all the three ingredients required for interim relief, are missing in the instant petitions.

In the wake of above said circumstances, it is prayed that the orders passed on 08/07/2014, granting the Temporary Injunction as mentioned at Para-3 above, may graciously be vacated/discharged till the final decision on the Main Appeals pending adjudication before the Honorable Tribunal.

~~Superintending Engineer, PBMC
Respondent No. 1
PBMC C&W Deptt:
Khyber Pakhtunkhwa Peshawar~~

~~Executive Engineer PBMC
EXECUTIVE ENGINEER
(Respondent No-2/3)
PBMC C & W Department
K. Pakhtunkhwa Peshawar~~

Secretary to Govt of Khyber Pakhtunkhwa
Communication & Works Department
(Respondents No. 4)

Dated ____th July, 2014

Through: Senior Govt Pleader
Khyber Pakhtunkhwa Service Tribunal

AFFIDAVIT

I Engr: Abdul Ghafoor Executive Engineer PBMC C&W Department Peshawar do hereby solemnly affirm and declare that the contents of application for the vacation of order passed on 08/07/2014 are true and correct to the best of my knowledge and belief and that nothing has been kept secret or concealed from this Honorable Court.

Executive Engineer
PBMC C&W Department
PBMC C & W Department
K. Pakhtunkhwa Peshawar

Annex-A

(4)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.



S.A. NO... 183... /2014

139
104-2-14

MOHAMMAD ALAMGIR KHAN S/O MOHAMMAD AJMAL R/O
CANAL COLONY BEHIND SECONDRY BOARD PESHAWAR.

.....APPELLANT

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR, IV PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTOON KHWA PESHAWAR.
5. SHAMS UZ. ZAMAN EX- SUPERINTENDENT ENGINEER PBMC C&W PESHAWAR PRESENTLY POSTED AS DIRECTOR (TECH).EQAA ABBOTTABAD.

.....RESPONDENTS

ATTESTED

[Signature]
 EXAMINER
 Khyber Pakhtoonkhwa
 Service Tribunal,
 Peshawar

[Signature]
 4/2/14

as submitted to
 and filed.

[Signature]
 4/2/14

APPEAL U/ S 4 OF THE SERVICE
 TRIBUNAL ACT, 1974 WHEREBY
 MONTHLY SELARIES OF APPELLANT
 WERE WITHHELD SINCE
 APPOINTMENT AND ARRIVAL
 REPORT FOR DUTY TILL DATE FOR
 NO LEGAL REASON AND THAT THE
 REPRESENTATION/DEPARTMENTAL
 APPEAL FILED AGAINST WAS NOT
 HONOURED.

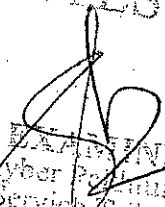
Reply to Preliminary objections.

1. That the appellant is law abiding citizen of Pakistan.

08.7.2014

Appellant with his counsel, official respondents No. 1 to 3 in person alongwith Sr.GP for official respondents and private respondent No.5 with Mr. Muhammad Asif Yousafzai, Advocate present and filed Wakalatnama and written reply. Copies whereof handed over to counsel for the appellant as well as learned Sr.GP

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

2. Arguments on application for temporary injunction heard and case file perused.

3. The learned counsel for the appellant produced before the court Service Book of the appellant and submitted before the court that the appellant has legally been appointed by respondent No. 5 Ex-Superintending Engineer, PBMC C&W Department, Peshawar presently posted as Director (Tech)EQAA, Abbottabad; that the official respondents are now reluctant to allow the appellant to join duty and also not paying him monthly salary.

4. Learned St.GP on the contrary argued that the appellant has been illegally appointed and there is no service record of the appellant, hence his request for allowing him to join duty is without any substance.

5. It is evident from the written reply submitted by respondent No. 5 that being Appointing Authority he has appointed the appellant as Work Superintendent (BPS-09) vide order dated 16.01.2013 after approval by the Departmental Selection Committee meeting held on 14.01.2013. Record further reveals that after appointment, the appellant got medically examined from the Police & Services Hospital, Khyber Pakhtunkhwa, Peshawar and thereafter submitted his arrival report. Though the official respondents are denying the appointment of the appellant, yet in the light of admission on the part of the Appointing Authority/respondent No. 5 and record available on the file, this Tribunal is of the firm view that the appellant has prima-facie been appointed on the recommendation of Departmental Selection Committee and after fulfillment of all the codal formalities and he submitted his arrival report. Hence, valuable rights have been accrued to the appellant, the principle of 'locus poenitentiae' is attracted in the case of appellant, therefore, he is entitled for grant of temporary injunctions. The respondents are therefore, directed to allow the appellant to perform his duties and start their monthly salary provisionally. To come up for rejoinder on 18.09.2014.

Certified to be true copy
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Sd/-
Member

Sd/-
Member

Date of Presentation of _____ 10.7.2014
Number of Words _____
Copying Fee _____ 800
Usent _____
_____ 800
_____ 11.7.2014
_____ 11.7.2014

To
The Executive Engineer
Provincial Building Maintenance Cell
Peshawar

Subject: ILLEGAL APPOINTMENTS IN PBMC PESHAWAR.

Sir,

In compliance with your letter No.50002/9-E dated 26.06.2013 and Chief Engineer (Centre) C&W Department No.73-E/1345/CE/C&WD dated 27.06.2013, it is to state that I have already submitted my written statement regarding the subject cited case to your good-self on 24.05.2013, which was forwarded to the Superintending Engineer PBMC-Peshawar vide your letter No.4207/38-M dated 24.05.2013 (copy attached).

However I explain my position so for I concern:-

1. On 18-04-2013 I was called by the then Superintending Engineer PBMC Peshawar to his office and delivered me with a letter showing minutes of the DSC meeting dated 14-01-2013 and copies of offer of appointments of some individuals which were endorsed to the office of the Executive Engineer PBMC Peshawar and directed to put receipt signatures with reference to the dates as appeared thereon.

2. It may please be noted that I was posted as Head Clerk PBMC where I assumed my duties on 15.01.2013. So the working Papers/ documents in support of the said DSC meeting have never been shown or brought in my notice.

3. As the offers of appointments were shown issued in January 2013, but actually delivered to me on 18-04-2013, till that even when I was posted - out from the post i.e on 31-05-2013, none of these appointees either reported physically for their jobs nor none of them produced any documents viz Medical Fitness/provision of credential/certificates.

It may further be noted that the documents as stated above were put-up to the then Executive Engineer who endorsed his initial on the offers of appointments but the original copy of the minutes were kept by the Executive Engineer with him and not returned to the records nor to me. However I got a photo copy of the minutes before its put-up to the then Executive Engineer.

My report on the issue is submitted please. /

281 / Sa-e
4/7/13
AZEEM KHAN
ACCOUNTS CLERK
O/O CHIEF ENGINEER(C)
C&W DEPARTMENT PESHAWAR

Copy forwarded for information to:-

1. The Superintending Engineer C&W Circle Peshawar
2. The Superintending Engineer PBMC C&W Department, Peshawar.
3. The Section Officer (ESTABT) C&W Department, Peshawar.
4. The Administrative Officer O/O the Chief Engineer (Centre) C&W Dept: Peshawar.

AZEEM KHAN
ACCOUNTS CLERK
04/07/2013

To:

B (8)
2


The Executive Engineer,
PBMC, C&W Department Peshawar.

Subject: - WRIT PETITION NO. 1301-P/2013.

It is submitted that Class-IV employees mentioned in the subject Writ Petition have been appointed in month of January 2013 in PBMC. Only appointment orders of the newly appointed employees have been received. There is no documents, which are the pre-requisite of regular appointment i.e. applications of the employees, advertisement of post in news paper, merit list etc are available in this office record.

Neither the related documents have been received nor the employees attended this office till date and their place of duty is also not known.

Report is submitted for your kind perusal please.


Head Clerk
26/5/2013
PBMC C&W Department Peshawar

Annex-C حلفیہ بیان

جناب عالی!

منکہ اعتبار خان جوئیہ ملکر
 پجالی ایچ سی حلفیہ بیان کرنا ہوں کہ
 ماتحت ہونے کے ناطے مجھے شمس الرحمن
 اس ای بی بی ایچ سی نے ڈسٹریکٹ
 کے ساتھ اپنے گھر واقع حیات آباد تھلایا
 اور اس کے حکم پر میں نے بیک ڈیٹ میں
 آفس آرڈر لے کر غیر لگائے ہیں۔ اور ڈسٹریکٹ
 رجسٹر میں نمبر بھی اس کے حکم پر چھوڑنے
 کے۔

استیاز خان جوئیہ ملکر

(Handwritten signature)

NT 11/11

(Large stylized signature)

Superintendent Engineer
 P.W.D. Deptt.
 Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

Annex-D

No.SOR-V(E&AD)/Gen:C&W/13
Dated 10th October, 2013.

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
C&W Department.

Subject: ILLEGAL APPOINTMENT IN PBMC C&W PESHAWAR.

Dear Sir,

I am directed to refer to your letter No.SOE/C&WD/24-60/2013/Association dated 28-8-2013 on the subject cited above and to state that no post has been classified or categorized to be the staff for houses. However provision of Sub Rule-2 of Rule-10 of Appointment, Promotion and Transfer Rules 1989 read with Sub Rule 2&3 of Rule-12 of APT Rules 1989 are quite clear on the subject which may be followed to dispose off the subject case.

Yours faithfully,


(SHABBIR AHMED)
SECTION OFFICER (REG-V)
10-10-13.

GOVERNMENT OF NWFP
ADMINISTRATION DEPARTMENT

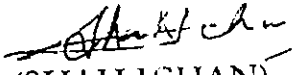
No. E&A(AD)4(75)/2003
Dated Peshawar the 01.12.2006.

The Assistant Account Officer,
C/O Account General,
NWFP, Peshawar.

SUBJECT: STAFF OF PBMC AS HOUSE HOLD STAFF.

Reference your letter No. Seat-03/Pay Roll.05/M/PBMC, 2005-
2006/1329 dated 20.12.2006 on the subject noted above.

The staff appointed against the sanctioned posts in the Governor's/Chief Minister's House and other state guests house *etc* comes under the category of house hold staff and they are served under the rules framed for house hold staff. The PBMC staff working in the state house/guest houses established by the Government of NWFP does not come under the category of house hold staff as they are appointed by the PBMC, but are detailed for posting in the houses temporarily and their all service matters are dealt by their parent department.


(SHAH JEHAN)
SECTION OFFICER (ADMN)

SECTION OFFICER

#

GOVERNMENT OF NWFP
ADMINISTRATION DEPARTMENT

Annex-7

No. E&A(AD)4(75)/2003
Dated Peshawar the 11.12.2006

(12)

To

The Deputy Director (PBMC),
Admin: Department.

SUBJECT:- I. DEPARTMENTAL SELECTION / PROMOTION /
PROMOTION AND POSTING / TRANSFER
COMMITTEES.

II. STAFF OF PBMC AS HOUSE HOLD STAFF.

Reference your Endst: No. 1410/9-B, dated 07.12.2006 addressed to
Section Officer (Accounts), PBMC copy thereof endst: to this department on the
subject noted above.

The clarification already made in this department letter of even
number dated 01.12.2006 is still hold its good being issued with the approval of the
Secretary Administration, NWFP please.

Shah Jehan
(SHAH JEHAN)
SECTION OFFICER (ADMIN)

ENDST. OF EVEN NO & DATE.

Copy forwarded to the Section Officer (Accounts), PBMC Admin:
Department for information please.

Shah Jehan
SECTION OFFICER (ADMIN)

MAC/ER
AB
MRD
12/12

Dy. No. 106/96

CH 18-12-06