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10/11/23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No: 1598/2022

Siraj Muhammad S/O Noor Muhammad (Ex-PST) G PS Jhangi Dher-2 Katlang
District Mardan.

(Appellant)

Versus

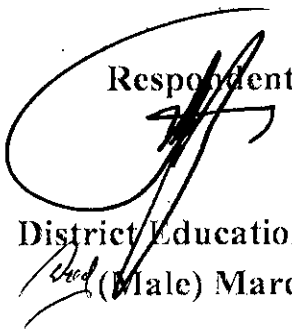
The Govt of Khyber Pakhtunkhwa through Secretary of (E & SE) Education,
KPK Peshawar & Others.

(Respondents)

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Respondent


District Education Officer
(Male) Mardan

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Para Wise Comments On Respondents 1 to 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal, hence the appeal is liable to be dismissed
2. That the instant appeal is badly time barred, hence the appeal is liable to be dismissed.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. That the appellant has concealed the material facts from this Honorable Tribunal, hence the appeal is liable to be dismissed.
5. That the respondent has implemented the judgment of the honorable Peshawar high Court Peshawar and the appellant has appointed with Terms & Conditions. In condition No 15 is that, in case of having no prescribed qualification, the same may be obtained within three (03) years after issuing of this order, otherwise appointment will be automatically stand cancelled.
(Copy of appointment Order is Annex-G Page No 40--41 with the Service appeal)
6. That the judgment of the WP-No 516-A,/2013, Peshawar High Court Abbott Abad Bench stated in Para No 07, In case of having less qualification which ever is prescribed intermediate /FA for PST as well as PST Certificate as professional, the candidates must be qualified both the academic /professional qualification within three years after issue of this appointment order, failing which their appointment order shall stand terminated automatically, without any further period. (Copy of Peshawar High Court Judgment in wp No 516 A/2013 is Annex-F Page No 37 with the Service appeal)

7. That as per the Amendment Notification dated 30/01/2018 the Prescribed qualification is Graduation/BA/Bsc for the said Post, which is not fulfilled by the appellant.

(Copy of Amendment Notification is Annex-S Page No 58 with the Service appeal)

That Para No 5 of the terms & conditions in the appointment order, is that they will be governed by such rules & regulations as may be issued from time to time by the Govt, and the appellant is bound the amendment Notification dated 30/01/2018, which is issued by the Govt.

(Copy of appointment Order is Annex-G Page No 40--41 with the Service appeal)

8. That the respondent has completed after all the codal formalities and the appellant has removed from service.

(Copy of removal Order is Annex-P Page No 54 with the Service appeal)

FACTS:

1. Para No 1 Pertains to record, hence need no comments.
2. Para No 2 Pertains to record, hence need no comments.
3. Para No 3 is incorrect, baseless and against the facts as the respondent department reinstated the Sacked Employees as per rule and regulation, hence denied.
4. Para No 4 Pertains to record, however the respondent has implemented the said Judgment and the appellant has appointed with terms and conditions, hence need no comments.
5. Para No 5 Pertains to record, however the respondent issued removal order on the basis of less academic qualification and the removal order is not issued on the basis of Professional training, hence needs no comments.
6. Para No 6 Pertains to record, hence needs no comments.
7. Para No 7 Pertains to record, hence needs no comments.
8. Para No 8 is related to the training arrangement but the respondent issued removal order on the basis of less academic qualification and the removal order is not issued on the basis of Professional training, hence needs no comments.
9. Para No 9 is related to the training arrangement and the respondent Department has not issued removal order of the appellant on the basis of training, hence needs no comments.
10. Para No 10 is incorrect, baseless and against the facts as the respondent has issued show cause Notice and the appellant is bound to upgrade the

prescribed qualification which is mentioned in the Amendment Notification dated 30 January 2018. (Copy of Amendment Notification is Annex-S Page No 58 with the Service appeal)

11. Para No 11 needs no comments. The detail grounds reply as under:

GROUND:

- A. Para No A is incorrect, baseless as the respondents have treated in accordance with law, rules and policy on subject and did not act violation of Article 4 and 10 A of the Constitution of Islamic Republic of Pakistan, 1973 and lawfully issued the order which is just, fair and sustainable in the eye of law, hence denied.
- B. Para No B is incorrect, baseless as the discrimination has not been met out towards the appellant and the other Sacked Employees has upgraded their prescribed qualification within (03) three years as per the Amendment Notification dated 30/01/2018, the judgment 2002 SCMR 82 is not identical to the instant case, hence denied.
- C. Para No C Pertains to record, however the respondent issued removal order on the basis of less academic qualification and the removal order is not issued on the basis of Professional training., hence needs no comments.
- D. Para No D is incorrect, baseless as the acts of the Department is not based upon malafide intention and is not fall within the ambit of contempt of court and the office order dated 15-08-2018 is tenable in the eye of law, hence denied.
- E. Para No E Pertains to record, hence needs no comments.
- F. Para No F is incorrect, baseless as the respondent has been given proper opportunity to the appellant, to upgrade his qualification within three years as per the terms and condition No 15 of the appointment order , hence denied.

(Copy of appointment Order is Annex-G Page No 40--41 with the Service appeal)

- G. Para No G is incorrect, baseless as the appellant has been treated in accordance with law and rules. The order is valid in the eye of law, and is not liable to be brushed aside, hence denied.
- H. Para No H Pertains to record, however the respondent issued removal order on the basis of less academic qualification and the removal order is not issued on the basis of Professional training, hence needs no comments.

- I. Para No I. is incorrect, baseless as the respondent has issued show cause Notice regarding prescribed qualification and the appellant has not reply about prescribed qualification as per Amendment Notification 30 January 2018, hence denied.
- J. Para No J Pertains to record, however the case is related to the less qualification of the appellant and the removal order is valid, hence needs no comments.
- K. Para No K is incorrect, baseless as the respondents being a responsible Govt officer acted according to law and rules and the judgment authority is not Identical to the instant case ,hence denied.
- L. Para No L is incorrect, baseless as the respondent has been given proper opportunity to the appellant, to upgrade his qualification within three years as per the terms and condition of the appointment order , hence denied
(Copy of appointment Order is Annex-G Page No 40--41 with the Service appeal)
the respondents seek permission to raise additional grounds at the time of arguments.

It is therefore humbly prayed that in the light of above facts, the appeal may please be dismissed with cost.

Respondent No 02

Director of (E & SED)
KPK, Peshawar

Respondent No 03

District Education Officer
(Male) Mardan

Respondent No 01

Secretary of (E & SED)

KPK , Peshawar

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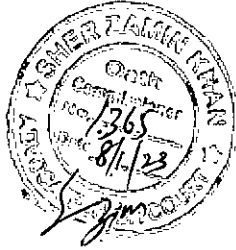
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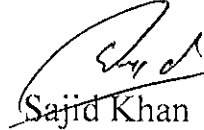
(Respondents)

AFFIDAVIT

I, Mr. Sajid Khan Legal Representative Education Department Mardan do hereby solemnly
affirm and declare that the contents of Para Wise Comments submitted on behalf of respondents
are true to the best of my knowledge and belief and nothing has been concealed from this
Honorable Tribunal.



Deponent


Sajid Khan

16101-6005318-5