

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1097/2022

Mr. Faqir Taj..... Appellant Pakhtunkhwa Service Tribunal

Versus

Diary No. 3037

Govt. of Khyber Pakhtunkhwa
Through Secretary, Higher Education
& others.....

Dated 18-1-2023

Respondents

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with
Respondent

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

Service Appeal # 1097/2022

Faqir Taj Appellant

Versus

Govt. of Khyber Pakhtunkhwa

Through Secretary, Govt; of Khyber Pakhtunkhwa &

others..... Respondents

SUBJECT:- PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1-3

PRELIMINARY OBJECTIONS: -

Respectfully Sheweth: -

1. That, the Appellant has got no locus standi/cause of action, to file the instant appeal.
2. That, the Appellant has not come to the Tribunal with clean hands and trying to conceal material facts.
3. That the present is barred by Law and limitation.
4. That the Appellant is estopped by his own conduct to file the present appeal.
5. That the appeal is bad for misjoinder and non-joinder of necessary parties.

Facts: -

1. Correct to the extent that the appellant was appointed as Chowkidar at Govt; Degree College, Garhi Kapoora Mardan.
- 2- Correct to the extent that an FIR was lodged against the appellant. It is pertinent to mention here that during course of his service, he was deputed to the Govt; Girls Degree College, Garhi Kapura, Mardan. The Principal Govt; Girls Degree College Garhi Kapoora Mardan informed that the appellant is absent from his official duty vide letter No. 80 dated: 07-02-2017 (**Annex-A**). Upon inquiry, it came into the notice that an FIR has been lodged against the appellant. Consequently, the Principal Govt; Degree College, Garhi Kapura Mardan constituted an inquiry committee on 20-05-2018 to probe into the matter of his wilful absence. The inquiry committee informed the appellant to appear before the committee vide letters No. 2549 dated: 21-05-2018 & 2582 dated: 21-06-2018 (**Annex B & C**) but both the letters were returned undelivered thereafter, the Principal concerned publish absence notice of the appellant in daily newspaper "AAJ" (**Annex-D**) but again the appellant failed to report to his duties. Resultantly the inquiry committee proceeded further and recommended major penalty of compulsory retirement under E&D rules 2011 (**Annex-E**). In compliance with recommendation, the Principal Govt; Degree College Garhi Kapura Mardan imposed the penalty of compulsory retirement up the appellant w.e.f 15-10-2018 (**Annex-F**).
- 3- Correct to the extent that due to his wilful absence from duty, the inquiry committee recommended major penalty of compulsory retirement which was imposed upon him by the Principal concerned after fulfilling all codal formalities.
- 4- Pertains to the judicial record of the Hon'ble Court.
- 5- That the departmental Appeal of the appellant was badly time barred (**Annex-G**). It is pertinent to mention here that the appellant was on bail as evident from his acquittal order dated: 21-02-2022. (**Annex-H**)

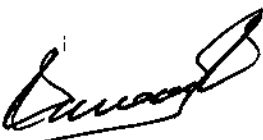
- 6- Incorrect. The impugned order has been issued after fulfilling all Codal formalities.

Grounds: -

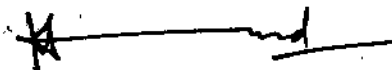
- A) Incorrect. All codal formalities have been fulfilled and no such order was passed which might be considered against the Law/rules.
B) Incorrect as already explained in the preceding paras.
C) Incorrect as already explained in the preceding paras.
D) Incorrect as already explained in the preceding paras.
E) Incorrect. Charge sheet and Show Cause is not compulsory in case of wilful absence. As the appellant was wilful absent and proper procedure was adopted.
F) Incorrect. As already explained in preceding paras of Facts.
G) Incorrect. As already explained in preceding paras.
H) Incorrect. As already explained in preceding paras.
I) Incorrect. As already explained in preceding paras.
J) Incorrect. As already explained in preceding paras.
K) Incorrect. As already explained in preceding paras.
L) Incorrect. As already explained in preceding paras.
M) That the respondents may be allowed to raise additional grounds at the time of arguments.

Prayers:

It is, therefore, humbly prayed that on acceptance of instant Parawise Comments the instant Service Appeal may graciously be dismissed with cost.



Secretary,
Higher Education, Archives
& Library Department
Respondent No. 03



Director
Higher Education Department
Respondent No. 01

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Principal,
Govt; Degree College ..
Garhi Kapura, Mardān
Respondent No. 02

HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1097/2022

Mr. Faqir Taj..... Appellant

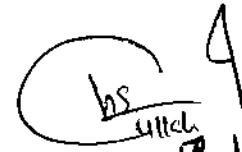
Versus

Govt. of Khyber Pakhtunkhwa
Through Secretary, Higher Education
& others..... Respondents

AFFIDAVIT

I, Ihsan Ullah Khan, Litigation Officer, Higher Education Department do hereby declare and affirm on oath that the contents of "Parawise Comments" are correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.

Identified by:


Ihsan Ullah Khan
17.1.2023
Deponent

ATTESTED


AZHAR AH ADVICER
Notary Public
17.1.2023
Judicial Complex Peshawar

7/18
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Ans - A

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OFFICE OF THE PRINCIPAL
GGDC GARHI KAPURA MARDAN.
No 80 Dated 7/24/2017

The Principal,
Govt. Degree College Garhi Kapura Mardan.

Subject: REPORT.

Respectfully,

It is stated that Mr Faqir Taj did not report for duty on when I enquired about his absence it was reported that he killed someone with an F.I.R lodged against his in the local police station, the class 1st Sergeant of GDC Garhi Kapura who has been deputed to this college on temporary basis has become an absconder being at large, His willful absence from duty with-out the prior permission of the undersigned is reported for onward action.


PRINCIPAL
GGDC GARHI Kapura Mardan.

Encl: No _____

Copy of the above is forwarded to the Director of Higher Education Khyber Pakhtun
Kwa Peshawar for information and further necessary action please.

PRINCIPAL
GGDC GARHI KAPURA MARDAN

Accepted
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Amir



PRINCIPAL
GOVT. DEGREE COLLEGE GARHI KAPURA
MARDAN.
PHONE # 0937-869700
FAX 0937-869700
Email principaldcgk@gmail.com

2549

Dated 21/05/2018

Mr. Faqir Taj
Class- IV Chowkidar.

Subject:

WILLFUL ABSENCE FROM DUTY/ APPEARANCE BEFORE COLLEGE
COMMITTEE ON DATED 26- 5-2018.

Memo:

It is to inform you that you have been absent from official duty w.e.f 05-02-2017 till date. A disciplinary committee of the college has been formed to find out the factual position and recommend to the undersigned action against you as per E & D rules.

You are hereby directed to appear before the college disciplinary committee on 27-05-2018 positively, failing which proceeding against you will be followed in absentia.

Attest

[Signature]

[Signature]

Prof. Muhammad Ibrar
Principal
Govt. Degree College
Garhi Kapura Mardan

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PRINCIPAL
GOVT. DEGREE COLLEGE GARHI KAPURA
MARDAN.
PHONE # 0937-869700
FAX 0937-869700
Email principalgdcpk@gmail.com



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Dated 21/05/2018

RESUMPTION OF OFFICIAL DUTY NOTICE

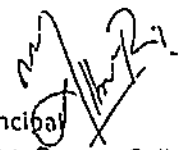
Mr. Faqir Taj

Class-IV (Class-IV)

Govt. Degree College Garhi Kapura Mardan.

It is to inform you (Mr. Faqir Taj Class-IV) that you have been absent from official duty w.e.f. 05-02-2017 till date without any prior permission. A disciplinary inquiry committee has been formed to conduct an inquiry in your case. The undersigned sent a registered letter No. 2549 dated 21-05-2018 on your home address and asked you to appear before that committee but you did not appear to explain your position.

Therefore the undersigned hereby direct you that you must resume your official duty as Chowkidar class-IV at Govt. Degree College Garhi Kapura Mardan within fifteen days and explain your position, otherwise strict disciplinary action will be taken against you which may result in removal from service.


Principal
Govt. Degree College
Garhi Kapura Mardan

Accepted


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INQUIRY REPORT

With reference to letter No. dated: 21-05-2018 the constituted committee completed inquiry regarding the absence of Mr. Faqir Taj Class-IV (Chowkidar).

Proceedings:-

The committee issued a postal letter No. 2549 dated 21-05-2018 to Mr. Faqir Taj class-IV through Principal, Mr. Faqir Taj on the strength of Govt. Degree College Garhi Kapura-Mardan but he is not working with the Principal, Govt. Girls Degree College Garhi Kapura Mardan. Meanwhile an FIR No. dated 05-01-2017 lodged against him in police station Garhi Kapura. Still he is absconder and no reply has been made by him to the competent authority during this time. (Copy of FIR is attached), but the copy returned back in original with the remarks that the concerned person was missing.

Findings:-

It is reported that Mr. Faqir Taj was not interviewed and no statement recorded.

Conclusion:-

We the committee members concluded that he has not appeared before the committee as he is absconder.

Recommendations:-

As Mr. Faqir Taj is absent for a long time from his official duty, therefore legal action may please be taken according to E & D rules 2011 that is the penalty of compulsory retirement may be imposed on Mr. Faqir Taj Class-IV (Chowkidar).

Committee:-

1) Mr. Firdous Khan

2) Mr. Gulzar Hussain

3) Mr. Qazi Shahi Saad

[Signature]
Chairman

[Signature]
Member

[Signature]
Member

29/05/18

Countersigned by:

[Signature]
29.05.18
Principal
Govt. Degree College
Garhi Kapura Mardan

Attested
[Signature]

Handwritten: **Ant-F**



PRINCIPAL
GOVT. DEGREE COLLEGE GARHI KAPURA
MARDAN
PHONE# 0937-869700
FAX 0937-869700
Email: principalgdcgk@gmail.com



Ref. No. 2722

Dated 01/01/2018

OFFICE ORDER

Consequent upon the recommendations of the inquiry committee, the penalty of compulsory retirement is hereby imposed on Mr. Farid Taj Class-IV (Chowkidar) of Govt. Degree College, Garhi Kapura Mardan on account of willful absence with effect from 15-10-2017.

[Signature]
Principal
Govt. Degree College
Garhi Kapura Mardan

Copy for information to:

Director Higher Education Govt. of Khyber Pakhtunkhwa, Peshawar

[Signature]
Principal
Govt. Degree College
Garhi Kapura Mardan

Handwritten: **Addressed**

Handwritten signature



DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA
RANO GHARI NEAR CHAMKANI MOR, PESHAWAR

E-mail:- dhekppesh@gmail.com Facebook.com/dhekppeshawar Twitter.com/dhekppeshawar1

No. 142 / CA-VII/Estt: Branch/A-167/GDC Gari Kapora Mardan M-44 V-1 Dated Peshawar the 29 / 7 /2022

To

The Principal,
Govt: Degree College,
Gari Kapora (Mardan).

Subject: - DEPARTMENTAL APPEAL

Memo:

I am directed to refer to your letter No. 6032 dated 02-07-2022 on the subject noted above and to state that the subject appeal was examined and accordingly has been regretted being time barred please.

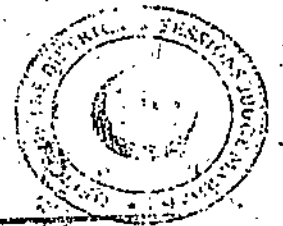
[Signature]
DEPUTY DIRECTOR (Estt)

Attested
[Signature]

[Signature]

Annex - H

21/02/22
21/02/22



IN THE COURT OF SAID BADSHAH
ADDL DISTRICT & SESSIONS JUDGE-V, MARDAN.

The State vs. Faqir Taj etc
Sessions Case No.57/SC of 2021

Order - 15
21.02.2022

SPP for the state present. Both the accused namely Faqir Taj and Meher Taj on bail present.

Through my this order I attend to dispose of an application filed U/S 265-K Cr.P.C for acquittal of accused facing trial namely 1) Faqir Taj son of Meher Shad, 2) Meher Taj son of Mir Shad Baig both residents of Garhi Doulat Zai, District Mardan charged in case FIR No. 84 dated 05.02.2017 U/S 302/324/304 PPC Police Station Garhi Kapoora, Mardan.

137/22

SAID BADSHAH
Addl District & Sessions Judge
Mardan

Facts narrated in the FIR are that on 05.02.2017 complainant Zahoor Khan brought the dead body of his father Hakim Khan to police station and reported the matter to the local police that on the day of occurrence he along with his deceased father Hakim Khan and brother Mansoor Khan were on way to their fields, when they reached to the place of occurrence, the accused Faqir Taj and Meher Taj were already present there duly armed with firearms, they on seeing them started firing at them, as a result of which his father namely Hakim Khan was hit and died on the spot while the complainant and his brother escape unhurt. Due to empty handed they could not resist. Motive behind the occurrence was stated to be previous blood feud enmity, like in the present FIR.

Attested

Ch 9
JAT

Verified To Be True Copy

12 MAR 2022

Examiner Copying Branch
Sessions Court MARDAN

After registration of the case complete challan was submitted. Accused were summoned, they appeared before the court and provision of section 265-C Cr.P.C complied with. Charge against accused was framed to which they pleaded not guilty and claimed trial. The prosecution was given opportunity to produce evidence in support of

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The State vs. Faqir Taj etc
Sessions case No.57/SQ of 2021

Contd. Order--15.
21.02.2022

its claim. The prosecution examined two PWs including the complainant.

Arguments on application U/S 265 K Cr.P.C already heard and record perused.

It is the case of the prosecution that the complainant along with his father and brother Manzoor Khan were going to their field and when reached to the place of occurrence where the accused facing trial were already present while armed with Kalashnikove and started firing at them. As a result of which his father was hit and died at the spot while the complainant and his brother namely Manzoor escaped unhurt. In support of this version the complainant appeared as PW-1 and his examination in chief he totally deviate from his stance and narrated another story, he stated that on the day of occurrence he was present in his house when he was informed by his brother Manzoor that his father was murdered and lying at the spot upon which the complainant attracted to the spot and thereafter stuffed the dead body to the P. That he charged the accused facing trial on the basis of suspicion due to previous enmity. The APP for the state requested the court for declaring the witness as hostile being deviate from his stance which was allowed and the prosecution was allowed to cross-examine the said witness. He was cross-examined by the APP for the state but nothing favorable was brought in support of the prosecution case. The prosecution also abandoned the PW Manzoor being not supported the prosecution case.

[Handwritten signature]

APR BASHAN
Additional District & Session Judge
Mardan

Accepted

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The Io of the case was examined as PW-2 and he stated in his cross examination that no weapon of offence was recovered from the possession of the accused facing trial or on their pointation. That except the statement of complainant and his brother he has not collected any independent witness in support of prosecution case.

Certified To Be True Copy

12/02/2022

Registrar, District & Sessions Court, Mardan

17

In the State of Jammu & Kashmir
Sessions case No. 57/SC of 2021

17

Contd: Order-15
21.02.2022

As above it is evident that the complainant and his brother Manzoor are shown to be the witness of the occurrence in the FIR however when complainant appeared as a W-1 he stated that in his examination in examination in chief that he is not eye witness of the occurrence while other eye witness namely Manzoor was abandoned by the prosecution being not supported the version of prosecution. So, in such circumstances, no case is made out against the accused facing trial and if all the remaining PWs are summoned and examined then there is also no probability of the conviction of the accused in the case in hand rather it would be a futile exercise.

Resultantly, by invoking the provision of section 265 of Cr.P.C both the accused facing trial namely Fakhir Taj and Melier Taj are hereby acquitted of the charges so levelled against them in case No. 84 dated 05.02.2017 III/302/324/34 PPC PS Garhi Kapoor. Accused are on bail, their bail bonds stands cancelled and their sureties are absolved from the liabilities of bail bonds. Case property, if any be dispose of as per law after the lapse of period of appeal/revision. File be consigned to record room after its necessary completion and compilation.

Announced:
21.02.2022

(SAID BASHARI)
Additional Sessions Judge-V, Mardan
SAID BASHARI
Additional District Sessions Judge-V
Mardan

Attached
21/3

Name of Application: اپیٹیشن
No. of Application: 3663
Date of presentation of application: 21/3/22
Date of preparation of copies: 12/3/22
Number of Pages: 24-2
Court Fees: Nil
Urgent Fees: Nil
Signed of copyist/Examiner: 21/3/2022
Date of Delivery: 21/3/2022

Certified To Be True Copy
12 MAR 2022
Examiner Copying Branch
Session Court Mardan