#### BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7122/2021

Date of Institution ... 29.07.2021

Date of Decision ... 14.07.2022

Abdul Subhan, Retired Chowkidar, GGCMS Zara Miana, Nowshera.

... (Appellant)

#### **VERSUS**

The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and four others.

(Respondents)

MR. TAIMUR ALI KHAN,

Advocate

--- For appellant.

MR. NASEER-UD-DIN SHAH,

Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN

MS. ROZINA REHMAN

---

MEMBER (JUDICIAL)

MEMBER (JUDICIAL)

#### JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts giving rise to filing of instant service appeal are that the appellant was appointed as Naib Qasid on 24.04.1998. The appellant was born in the year 1953 and was to retire on 30.06.2013 on attaining the age of superannuation but the competent Authority did not issue his order of retirement and the appellant thus carried out his duties till March 2016. The appellant received salaries till March 2016 i.e beyond the age of superannuation. The competent Authority belatedly issued retirement order of the appellant on 20.10.2020, whereby the appellant was retired from service with effect from 30.06.2013. The appellant was granted commutation and



pension on his retirement, however salaries amounting to Rs. 569782/- received by the appellant for the period from 01.07.2013 to March 2016 were deducted from his pension, which compelled the appellant to file departmental appeal, however the same was not responded within the statutory period of 90 days, hence the instant service appeal.

- 2. Respondents contested the appeal by way of submitting para-wise comments, wherein they refuted the assertions raised by the appellant in his appeal.
- Learned counsel for the appellant has contended that the 3. retirement of the appellant was due on 30.06.2013 but the competent Authority did not issue retirement order of the appellant in time and he thus actively performed his duty till the month of March 2016; that copies of attendance register, annexed with the appeal supports the stance of the appellant that he had performed his duties till the month of March 2016; that the appellant was an illiterate Class-IV employee and it was fault of the competent Authority that his issued after considerable delay on retirement order was 20.10.2020 instead of 30.06.2013; that the appellant suffered mental torture agony at the hands of competent Authority as the pensionary benefits were handed over to him after considerable long period; that nothing is available on the record, which could show that the appellant was having any connivance in the late issuing of retirement order of the appellant, therefore, the respondents were not justified in recovery of salaries received by the appellant after attaining the age of superannuation. Reliance was placed on 2001 PLC (C.S) 1092 and 2017 PLC (C.S) 331.
- 4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant was well aware of the date of his superannuation but he illegally received salaries till March 2016; that the appellant somehow managed to get lost his service book, therefore, the competent Authority could not issue retirement order of the appellant in time; that on attaining the age of superannuation, the



appellant automatically stood retired on 30.06.2013, therefore, the salaries received by him beyond the age of his superannuation were rightly deducted from his pension; that the appellant had intentionally concealed the age of his superannuation and his appeal is liable to be dismissed with cost.

- 5. We have heard arguments of learned counsel for the parties and have perused the record.
- 6. A perusal of the record would show that the date of birth of the appellant is 01.07.1953 and his retirement was due on 30.06.2013. The competent Authority, however did not issue any notification regarding the retirement of the appellant and he continued his duties till March 2016. The respondents have not denied the fact that the appellant actively performed his duties till March 2016. It appears that the appellant was not given any salary beyond the month of March 2016 but the competent Authority delayed issuing of retirement order of the ultimately issued and the same was 20.10.2020, whereby the appellant stood retired with effect from 30.06.2013. The appellant has categorically alleged that being illiterate was unaware of the date of his retirement. Respondents have not brought anything on the record, which could show that the delayed issuing of order of retirement of the appellant was the result of any fault on the part of the appellant. The date of birth of a civil servant is entered in his service book and other relevant service therefore, it was the responsibility of the competent Authority to have issued the retirement order of the appellant in time. The appellant had attained the age of superannuation on 30.06.2013 but the notification regarding his retirement was issued on 20.10.2020, regarding which no plausible reason has been furnished by the respondents in their comments. According to Pension Roll Data Sheet issued to the appellant, an amount of Rs. 569782/- was deducted from his pension as the salaries received by him beyond the age of superannuation. It is evident from the record that it was the

department, which allowed the appellant to perform his duty beyond the age of superannuation, therefore, the department was estopped through its own conduct from deducting the concerned amount from the pension of the appellant. Wisdom in this respect derived from the judgment titled "Rana Muhammad Shaif Versus Chief Engineer, Irrigation and others", reported as 2000 PLC (C.S) 480.

7. In view of the above discussion, the appeal in hand is allowed as prayed for. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED 14.07.2022

> (SALAH-UD-DIN) MEMBER (JUDICIAL)

(ROZINA REHMAN) MEMBER (JUDICIAL) ORDER 14.07.2022 Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed as prayed for. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED 14.07.2022

> (Rozina Rehman) Member (Judicial)

(Salah-Ud-Din) Member (Judicial) 7122/21 23.12.2021

Counsel for the appellant and Mr. Muhammad Adeel Butt, Addl. AG alongwith Shafiq HC Clerk for the respondents present.

The respondents have not furnished reply/comments and seek further time. Let the respondents be afforded with last opportunity with the warning that in case they fail to submit the written reply/comments on or before next date, their right for reply/comments shall be deemed as struck off by virtue of this order. Case to come up for arguments on 06.04.022 before the D.B.

Chairman

06.04.2022

Clerk of the counsel for appellant present. Mr. Kabirullah Khattak Adl. AG along with Miss. Roheen ADO (Legal) for respondents present. Written reply has been submitted by respondents No. 1 to 3 which is placed on file.

Counsel are at strike. Therefore the case is adjourned to 11.07.2022 before D.B.

(Mian Muhammad) Member (E) Chairman

13.07.2022

Learned counsel for the appellant present.

Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present.

Partial arguments heard. To come up for remaining arguments on 14.07.2022 before the D.B.

(Rozina Rehman) Member (J) (Salah-Ud-Din) Member (J)

#### **Abdul Subhan 7122/2021**

06.09.2021

llant Deposited

Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant contended that the appellant is aggrieved from impugned order dated 21.01.2021 which is basically pay slip of the appellant and recovery to the tune of Rs. 569782/- is to be made from his pension. It was on part of the respondents that the appellant being an illiterate Class-IV was not retired on attaining the age of superannuation on 30.06.2013. His retirement notification was issued on 20.10.2020 but w.e.f 30.06.2013 (his date of superannuation). During the said period, the appellant did perform his duties and attendance register is evident to have actually worked beyond the date of superannuation. It was admitted that there is no original or appellate order to have been issued and then challenged or impugned. However, it is recurring cost and recurring cause of action which may be entertained and admitted for regular hearing. In support of his arguments, he placed reliance on 2017 PLC (C.S) 331 and 2018 PLC (CS) 375. He, therefore, requested that the appellant is not at fault and the period served beyond superannuation be treated as "contract employment" and the amount of recovery from his pension be declared as unjustified and illegal.

hearing, subject to all just and legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written rocess Feereply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time or extension of time is not sought, the office shall submit the file with a report of non-compliance. File to come up for arguments on 23.12.2021 before the D.B.

Points raised need consideration. The appeal is admitted to regular

(Mian Muhammad) Member(E)

#### Form- A

### FORM OF ORDER SHEET

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<b>*</b>	Worthy Chairman for proper order please.
	worthy chairman for proper order please.
	REGISTRAR ,
	This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>of 19121</u> .
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1	This Appeal has been presented by:	165	110
2	Whether Counsel/Appellant/Respondent/Deponent have signed	2	
	the requisite documents?		!
3	Whether appeal is within time?		
4	Whether the enactment under which the appeal is filed mentioned?		
5	Whether the enactment under which the appeal is filed is correct?		·
6	Whether affidavit is appended?		
7	Whether affidavit is duly attested by competent Oath Commissioner?		
8	Whether appeal/annexures are properly paged?		
9	Whether certificate regarding filing any earlier appeal on the		
	subject, furnished?	. –	
10	Whether annexures are legible?	v	
11	Whether annexures are attested?	1	
12	Whether copies of annexures are readable/clear?	/	
13	Whether copy of appeal is delivered to AG/DAG?		
14	Whether Power of Attorney of the Counsel engaged is attested	· -	
1.5	and signed by petitioner/appellant/respondents?		
15	Whether numbers of referred cases given are correct?	~	
16	Whether appeal contains cutting/overwriting?	~	
17	Whether list of books has been provided at the end of the appeal?	_	
18	whether case relate to this court?	شن	
19	Whether requisite number of spare copies attached?	4	
20	Whether complete spare copy is filed in separate file cover?	-	
21	Whether addresses of parties given are complete?		
22	Whether index filed?		
23	Whether index is correct?	-	
24	Whether Security and Process Fee deposited? On	4	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules		
25	1974 Rule 11, notice along with copy of appeal and annexures has		-
	been sent to respondents? On		
26	Whether copies of comments/reply/rejoinder submitted? On		٠
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Signature: Dated:

## BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

-	
APPEAL NO.	/2021
	14041

Abdul Subhan

V/S

Secretary (E&SE) & others

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S. No.	Documents	Annexure	P. No.
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03.	Copy of attendance register	A	06-29
04.	Copy of order dated 20.10.2020	В	30 ,
05	Copy of pension slip	С	31
06	Copy of notice dated 12.03.2021	D	32-33
07.	Copies of departmental appeal and letter dated 19.04.2021	E&F	34-37
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APPELLANT

THROUGH:

(TAIMUR ALI KHAN) ADVOCATE HIGH COURT

Room No. FR 8, 4<sup>th</sup> Flour, Bilour plaza, Peshawar cantt: Cell# 0333-9390916

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 7/2021

Khyber Pakhtukhwa Service Tribunal

Diary No. 7382

29-7-202

Abdul Subhan, Retired-Chowkidar GGCMS Zara Miana, Nowshera.

#### **APPELLANT**

#### VERSUS

- 1. The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2. The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3. The District Education Officer (Female), Nowshera.
- 4. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 5. The District Account Officer, Nowshera.

#### **RESPONDENTS**

APPEAL **UNDER SECTION OF** THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE **IMPUGNED ACTION** THE RESPONDENTS OF RECOVERY/DEDUCTION OF AMOUNT OF RS.569782/- FROM THE PENSION OF THE APPELLANT AND NOT TAKING ACTION AGAINST DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Registrar

#### **PRAYER**

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY KINDLY BE DIRECTED TO MAKE THE PAYMENT OF RECOVERED/DEDUCTED AMOUNT OF WORTH OF RS. 569782/-, WHICH WAS ILLEGALLY RECOVERED/DEDUCTED FROM THE PENSION OF THE APPELLANT FOR THE PERIOD ON WHICH HE HAS PERFORMED DUTY. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE

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## THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

#### RESPECTFULLY SHEWETH:

#### **FACTS:**

- 1. That the appellant being illiterate was appointed as Naib Qasid on 24.04.1998 in the education department and since his appointment the appellant has performed his duty with great devotion and honesty whatsoever assigned to him.
- 2. That the appellant was born in the year 1953 and would be retired on 30.06.2013 on attaining the age of superannuation, but the respondent No.4 did not pass an order in respect of retirement of the appellant in time and the appellant being illiterate has continued his duty and regularly performed duty till March 2016 and also received salaries for that period, which is evident from the attendance register of the concerned school. (Copy of attendance register is attached as Annexure-A)
- 3. That the respondent No.3 passed an order dated 20.10.2020, whereby the appellant was retired from service on superannuation with effect from 30.06.2013. (Copy of order dated 20.10.2020 is attached as Annexure-B)
- 4. That the appellant has granted his commutation and pension on his retirement, but received salaries of worth of Rs.569782/- for the period with effect from 1.07.2013 till March 2016 on which the appellant has performed his duty was illegally recovered from the pension of the appellant, which is evident from the pension slip of the appellant. (Copy of pension slip is attached as Annexure-C)
- 5. That the appellant filed compliant to Provincial Ombudsman for recovery of that deducted amount which is evident from the notice dated 12.03.2021 of the Provincial Ombudsmen, but no positive response has been given to the appellant on that complaint by Provincial Ombudsman. (Copy of notice dated 12.03.2021 is attached as Annexure-D)
- 6. That as the amount of worth of Rs.569782/- was illegally recovered/deducted from the pension of the appellant, because he was not retired in time i.e 30.06.2013 by the competent authority and was

continuously and regularly performed duty till March 2016 due to which he received salaries for that period, therefore the appellant filed departmental appeal on 07.04.2021 for grant of that recovered/deducted amount of worth of Rs. 569782/- on which detail reports/comments was called from respondent No.4 by the appellant authority vide letter dated 19.04.2021, however the departmental appeal of the appellant was not decided with in the statutory period of ninety days. (Copies of departmental appeal and letter dated 19.04.2021 are attached as Annexure-E&F)

7. That appellant being aggrieved and having no other remedy except to file the instant service appeal on the following grounds amongst the others.

#### **GROUNDS:**

- A) That recovery/deduction of Rs.569782/- from the pension of the appellant is against facts, norms of justice and material on record, therefore, not tenable and the recovered/deducted amount of worth of Rs.569782/- may kindly be granted to the appellant.
- B) That the appellant was born in the year 1953 and would be retired on 30.06.2013 on attaining the age of superannuation, but the respondent No.4 did not pass an order in respect of retirement of the appellant in time and the appellant being illiterate has continued his duty and regularly performed duty till March 2016 and also received salaries for that period, therefore the appellant could not punished for the fault of the other in shape of recovery/deduction for the period on which he has performed his duty.
- C) That the appellant would be retired on 30.06.2013 on attaining the age of superannuation and it was the responsibility of the competent authority to pass the order of retirement of the appellant in time and not allowed him to perform after his superannuation, but the retirement order of the appellant was passed on 20.10.2020 and the appellant being illiterate has continued his duty and performed that duty till March 2016, and now recovery of worth of Rs.569782/- from the pension for the period on which he has performed his duty is against the norms of justice and fair play.

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- D) That the appellant has regularly performed duty with effect from 01.07.2013 till March 2016, which is evident from the attendance register of the school and recovery of Rs.569782/- from the pension of the appellant for that period amounts to force labour, which is violation of Article-11 of Constitution of Islamic Republic of Pakistan, 1973.
- E) That the appellant being a low paid employee (Class-IV) and recovery/deduction of Rs.569782/- from his pension on the fault of the others has badly effect his financial position.
- F) That the action of the respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly conferred by the Constitution and is liable to be declared as null and void.
- G) That as the act of the respondents is illegal, without any legal authority and not only discriminatory but also the result of malafide on the part of respondents.
- H) That the appellant seeks permission of this Honorable Tribunal to advance other grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

عرا بي ال APPELLANT

Abdul Subhan

THROUGH:

(TAIMUR ALI KHAN) ADVOCATE HIGH COURT

#### CERTIFICATE:

**)**\*

It is certified that no other similar service appeal between the parties has been filed earlier.

DEPONENT

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

<b>SERVICE</b>	APPEAL NO.	/2021
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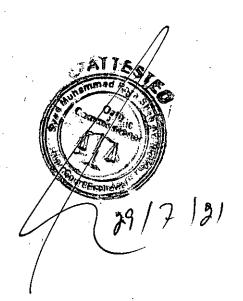
Abdul Subhan

V/S

Education Deptt:

#### **AFFIDAVIT**

I, Abdul Subhan, Retired-Chowkidar, GGCMS Zara Miana, Nowshera, (Appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this Honourable Tribunal.



**DEPONENT**Abdul Subhan
(APPELLANT)

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ابیداسر Mistress G.G. CMS Zara Miana (NSR) AFFOTED

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Head Mistress G.G. CMS Zara Miana (NSR)

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G.G. CMS Zara Miana (NSR)

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SHAMA STATIONERY STORE PH: 7226599 - 7248132

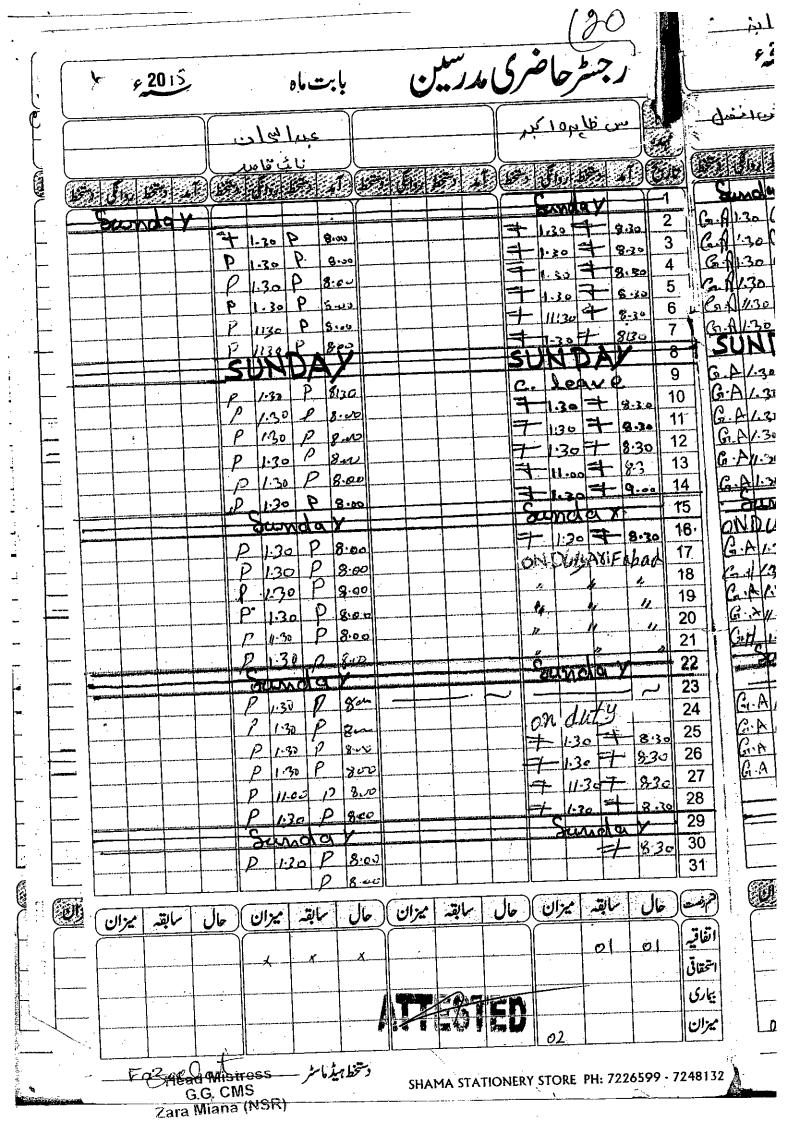
Zara Miana (NSR)

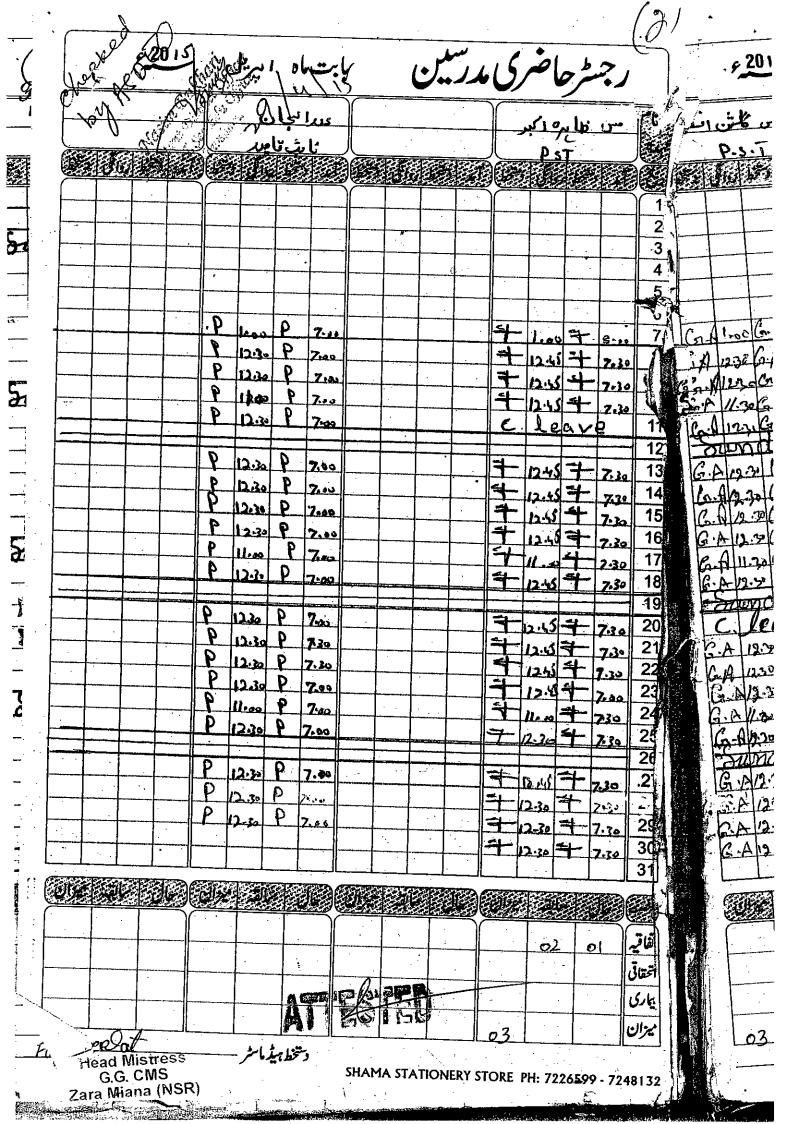
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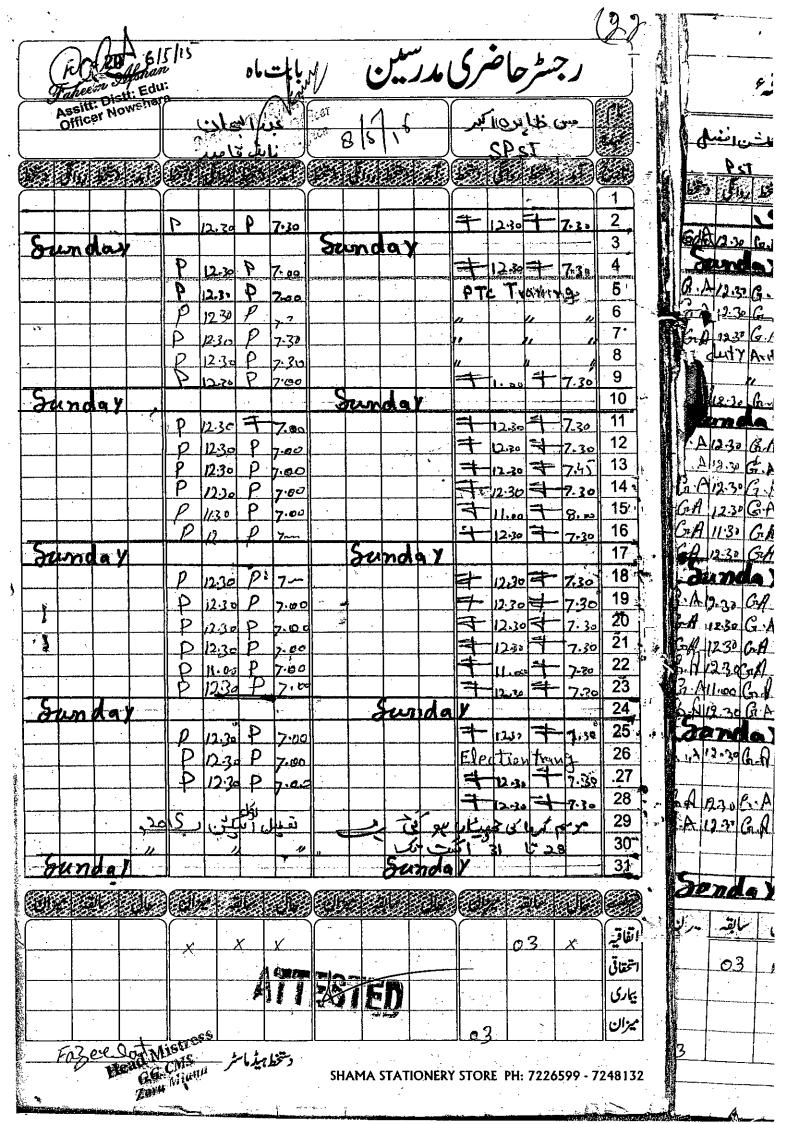
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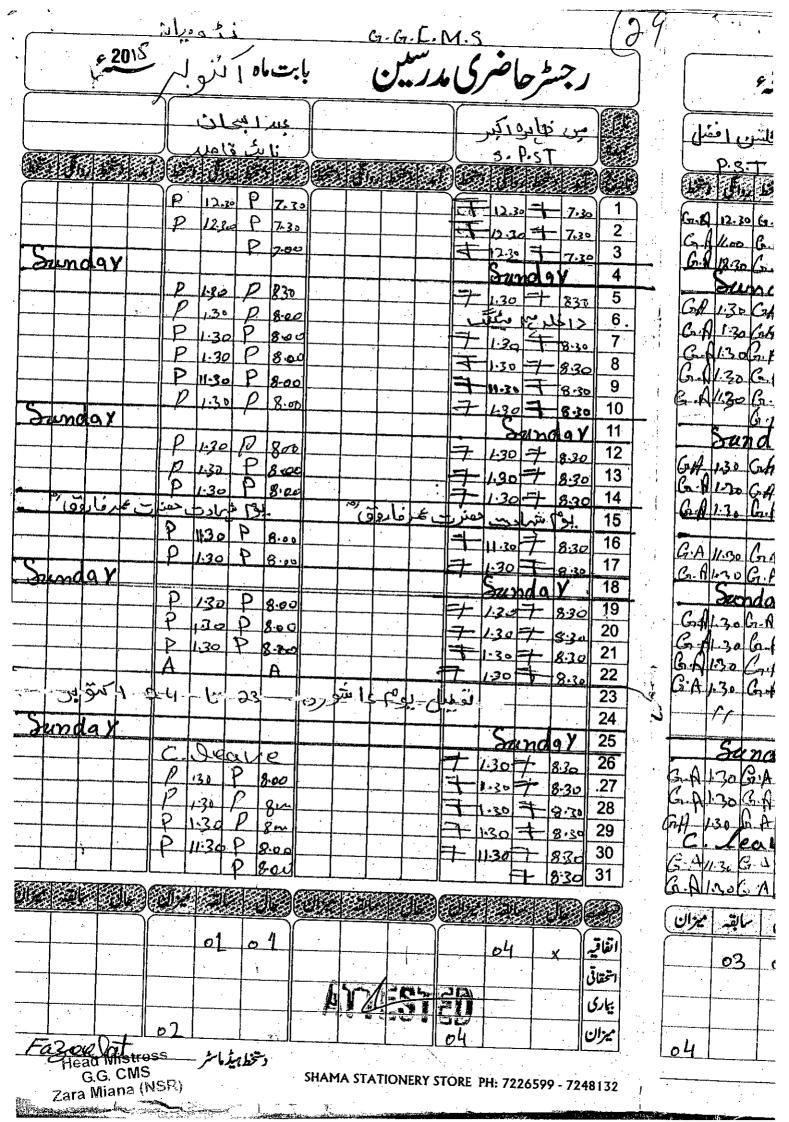
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# OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) NOWSHERA

# RETIREMENT ORDER.

Under the provision of Government of Khyber Pakhtunkhwa Finance Department letter No.FD (SR-IV) Vol.II, dated 24-08-1983. The competent authority is pleased to grant of sanction to the retirement of the following official as mentioned against his name.

Moreover in pursuance of section 21 of civil servant revised leave rules 1981. Sanction is hereby accorded to the grant of Encashment on full pay in lieu of LPR as admissible to her under the rules.

\$#	Name of Official	Date of Birth	Date of 1st Appointment	Date Retirement	Total Length of Service	LPR for Leave	Remarks
1	Mr. Abdul Subhan (Ex-Naib Qasid) GGCMS Zara Miana (NSR) P.No. 00137972	1953	24-04-1998	30-06-2013 (A.N)	Y- M- D 15-02-06	Encashment 365-days	Superannuation

Note: - Necessary entry to this effect should be made in his Service Book accordingly.

(ABIDA PARVEEN)
DISTRICT EDUCATION OFFICER
(FEMALE) NOWSHERA

Endst No. 4947.52/Retirement/DEO (F) MSR,

Dated Nowshera the \_\_\_\_ / 1 o \_\_/2020

Copy forwarded for information & necessary action to the:-

1. District Accounts Officer, Nowshera.

- 2. SDEO (F) Nowshera w/r to her later No.4732 dated 05-10-2020.
- 3. Superintendent Establishment (Local Office).
- 4. Head Mistress GGCMS Zara Miana Nowshera.
- 5. Official Concerned.

6. Office Copy.

DISTRICT EDUCATION OFFICER (FEMALE) NOWSHERA

AFFISIED

#### ENSION ROLL DATA SHEET NOT A PAYMENT ADVICE

РРО Турс: 11 00137972-01 PO Number:

00137972 Pensioner ID:

Pension Register No:

Pensioner's Name: ABDUL SUBHAN Father / Husband name: SHAII SAID NAIB QASID Designation:

1720163888853 Grade / Scale :02

Department Min: GOVERNMENT PRIMARY SCHOOL

Pensioner's Type: SELF

SUPERANNUATION Pension Type:

Date of Birth . :01.07.1953 Date of appointment:24.04.1998 Date of retirement: 30:06.2013

Date of Death:

Date of commence :01.07.2013

Date of Restoration Accounts office ID: NR

Accounts office Name : Nowshera Federal / Province : Khyber Pakhtunkhwa

Length of Qualifying Service: 15 years, 2 months, 6 days

No. and Date of sanction of pension / Letter No. :

and the date of the other Audit and Accounts officer authourising

the Pension/Gratuity/Commutation Permanent Addressi MOH QURESH ZARHA MENA

NOWSHERA

He/She is also entitled to the following increases

1		Period *	Increase	<del>%</del> T	Increase	W.E.F.
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Note: MINIMUM PENSION ARREAR & RECOVERY

ADJUSTED

Age: 60 years Last Drawn pay/Emoluments(Rs.): 7450.00 : 2607.50 Gross Pension(Rs.)

1/4th Surrendered Portion (Rs.)

912.63 Commuted Portion (Rs.) : 10000.00 Net Pension (Rs.) 0.00Net Family Pension (Rs.) Amount of Commutation(Rs.) : : 135492.00 0.00With Held Amount (Rs.) 0.00 Life Time Arrears (Rs.) Arrears Of Pension (Rs.) 0.00 0.00 Special Additional Pension (Rs.): 35.00 Commutation Percentage 12.37

Recovery on A/C of

Commutation Table value

:Khyber Pakhtunkhwa Debitable to Govt

## PROPOSED PENSION SLIP

#### Payment details

Wage Type	:Wage Type Text	Amount
0100	Monthly Pension - Self	10000.00
0101	Pension Increases - Self	1000.00
1599	Medical Allow - Pensioner	750.00
1600	Med. All. 2015 Pensioner	187.50
3950	Recovery: Pension Self	569782.00
5901	Arrears of Pension	791994.00
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#### Bank Details

Bank Account Number: 3048311510 Bank Branch: NOWSHERA CANTT **NOWSHERA CANTT** 

Payment Mode :NATIONAL BANK OF PAKISTAN

ACCOUNTS OFFICER (Pension)

Document Printed on 21.01.2021 by 894475

ATTESTED



# PROVINCIAL OMBUDSMAN (صوبائي محتسب) SECRETARIAT,

KHYBER PAKHTUNKHWA

No. PO/Complaint/953/11/2020/ 🧚

Dated: Peshawar the, 12/03/2021

### <u>NOTICE FOR HEARING</u> FOR 31/03/2021 AT 11:00 AM

To

1. Secretary, Elementary & Secondary Education Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.

Director, Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

3. District Education Officer (Female), District Nowshera

4. Mr. Abdul Jalil s/o Haji Arif Ullah r/o Mohallah Ouresh, P/O Akora Khattak Zara Miana District Complainant

Agency

Nowshera (Cell No. 0341-0077161)

Subject:

#### REQUEST FOR RELEASE OF OUTSTANDING SALARIES AND RETIRED CLASS-IV EMPLOYEE'S CHILDREN QUOTA.

(Notice under Regulation 12 of the Khyber Pakhtunkhwa Provincial Ombudsman Office (Registration, Investigation and Disposal of Complaint) Regulations, 2011).

With reference to this Secretariat Notice dated 07/12/2020, reminder dated 28/12/2020, final reminder dated 18/01/2021 and subsequent Hearing Notice dated 08/02/2021 on the subjected noted above.

Whereas, no record was provided by the Agency even within the extended period as per allegations levelled by the complainant, which has delayed the disposal of complaint. In order to reach just investigation, the case is once again fixed for hearing in the Provincial Ombudsman Secretariat, Khyber Pakhtunkhwa on the date and time mentioned above.

Whereas, as per sub-regulation (3) of Regulation 9 of the Khyber Pakhtunkhwa Provincial Ombudsman Office (Registration, Investigation and Disposal of Complaints) Regulations, 2011 a questionnaire prepared by the undersigned is enclosed herewith for your perusal and reply. The questionnaire should be submitted to the undersigned on or before 31/03/2021.

Whereas, all the parties are asked to put in appearance on the date fixed either in person or through their duly appointed representative's alongwith relevant documents / record as per questionnaire attached. The representative of the Agency should be an Officer not below the rank of BPS-17 who is conversant with facts of the case and should be authorized to record statement before the Investigation Officer.

> Overseas Pakistanis Foundation Building, Phase -V, Hayatabad, Peshawar. Office Phone # 091-9219531-32, Office Fax # 091-9219526

Website: www.ombudsmankp.gov.pk Email: provincialombudsman@gmail.com



# PROVINCIAL OMBUDSMAN (صوبائی محتسب) SECRETARIAT, KHYBER PAKHTUNKHWA

Whereas, if the Agency fails to provide relevant record / documents as per questionnaire attached, necessary action under Section 14 read with Section 16 of the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010 will be initiated.

# THIS ISSUES WITH THE APPROVAL OF THE PROVINCIAL OMBUDSMAN.

Muhammad Kamuan Ali Assistant Director

Provincial Ombudsman Secretariat, Khyber Pakhtunkhwa



To

The Worthy Director (Elementary & Secondary Education), Khyber Pakhtunkhwa, Peshawar.

SUBJECT: DEPARTMENTAL APPEAL FOR GRANT OF
AMOUNT OF WORTH OF RS.569782/-, WHICH WAS
LLLEGALLY DEDUCTED/RECOVERED FROM THE
PENSION THE APPELLANT.

### RESPECTED SIR,

Most humbly it is submitted that:

- 1. That the appellant is illiterate and was appointed as Naib Qasid on 24.04.1998 in the education department and since his appointment the appellant has performed his duty with great devotion and honesty whatsoever assigned to him.
- 2. That the appellant was born in the year 1953 and would be retired on 30.06.2013 on attaining the age of superannuation, but the concerned DEO (Female) did not pass an order in respect of retirement of the appellant in time and the appellant being illiterate has continued his duty and regularly performed duty till March 2016 and also received salaries for that period, which is evident from the attendance register of the concerned school.
- 3. That the District Education Officer (Female) passed an order dated 20.10.2020, whereby the appellant was retired from service on superannuation with effect from 30.06.2013.
  - That the appellant has received his commutation and pension on his retirement, but the period with effect from 1.07.2013 till March 2016 on which the appellant has performed his duty and have received salaries for that period of worth of Rs.569782/- has illegally recovered from the pension of the appellant, which is evident from the pension slip of the appellant.

That as the appellant was not retired in time i.e 30.06.2013 and has continuously and regularly performed duty till March 2016 and have received salaries for that period of worth of Rs.569782/- which was

2/19

ATTENT

illegally recovered from the pension, therefore the appellant wants to file departmental appeal for grant of that recovered amount of worth of Rs. 569782/- on the following grounds.

#### **GROUNDS:**

- A) That recovery of Rs.569782/- from the pension of the appellant is against facts, norms of justice and material on record, therefore, not tenable and the recovered amount of worth of Rs.569782/- may kindly be granted to the appellant.
- B) That the appellant was born in the year 1953 and would be retired on 30.06.2013 on attaining the age of superannuation, but the concerned DEO (Female) did not pass an order in respect of retirement of the appellant in time and the appellant being illiterate has continued his duty and regularly performed duty till March 2016 and also received salaries for that period, therefore the appellant could not punished for the fault of the other in shape of recovery for the period on which he has performed his duty.
- C) That the appellant was born in the year 1953 and would be retired on 30.06.2013 on attaining the age of superannuation, but the retirement order of the appellant was passed on 20.10.2020 and the appellant being illiterate has continued his duty and performed that duty till March 2016, therefore, it was the responsibility of the concerned official to pass the order of retirement of the appellant in time and not allowed him to perform after his superannuation worth of Rs.569782/- from the pension for the period on which he has performed his duty is against the norms of justice and fair play being a low paid employee.
- D) That the appellant has regularly performed duty with effect from 01.07.2013 till March 2016, which is evident from the attendance register of the school and recovery of Rs.569782/- from the pension of the appellant amount to force labour, which is violation of Article-11 of Constitution of Islamic Republic of Pakistan, 1973.
- E) That the appellant being a low paid employee (Class-IV) and recovery of Rs.569782/- from his pension on the fault of the others has badly effect his financial position.

ATTESTED

(36

It is, therefore, most humbly requested that on the acceptance of the departmental appeal, the amount of Rs.569782/- which has been illegally recovered/deducted from the pension of the appellant for the period on which he has performed his duty may kindly be granted to him as being low paid employee.

Dated: 07/04/2021

APPELLANT

Abdul Subhan (Retired- Naib Qasid)
GGCMS Zara Miana, Nowshera.

Cell NO. 0341-00 77161

ATTEN



# DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA PESHAWAR.

No 5280 /F.No. PF/A-20/C-IV/abdul Subhan Nowshera

Dated Peshawar the 19-4-

/2019

Phone: 091-9225344

Email: ddadmn.ese@gmail.com

Τo

The District Education Officer (Female) Nowshera

Subject:

DEPARTMENTAL APPEAL FOR THE GRANT OF AMOUNT WORTH OF RS.569782/-, WHICH WAS ILLEGALLY DEDUCTED / RECOVERED FROM THE PENSION THE APPELLANT

Memo:

I am directed to refer to the subject noted above and to enclose herewith a copy of appeal lodged by Mr. Abudl Subhan retired N/Qasid GGCMS Zara Miana Nowshera.

You are therefore directed to submit detailed report/comments at an early date.

Assistant Director (Admn)
Directorate of E&SE K.P, Peshawar

Endst; No.

Copy forwarded to the: -

1. Mr. Abudi Subhan retired N/Qasid GGCMS Zara Miana Nowshera

2. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

M/File

Assistant Director (Admin)

Directorate of E&SE K.P. Peshawar



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### **VAKALAT NAMA**

NO/20	· · · · · · · · · · · · · · · · · · ·
IN THE COURT OF KP Service Tribunal	Peshawae
Abdul Subhan VERSUS	(Appellant) (Petitioner) (Plaintiff)
Secretary (ESSE) & others	_ (Respondent) (Defendant)
I/We, Abdul Subhan	
Do hereby appoint and constitute <i>Taimur Ali Khan, Advoca Peshawar</i> , to appear, plead, act, compromise, withdraw or refer me/us as my/our Counsel/Advocate in the above noted matter, without default and with the authority to engage/appoint any other Advany/our costs.	to arbitration for out any liability for
I/We authorize the said Advocate to deposit, withdraw and receive on sums and amounts payable or deposited on my/our account in the ab	n my/our behalf all love 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

TAIMUR ALI KHAN Advocate High Court BC-10-4240 CNIC: 17101-7395544-5

Cell No. 0333-9390916

## **OFFICE:**

Room # FR-8, 4<sup>th</sup> Floor, Bilour Plaza, Peshawar, Cantt: Peshawar

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

1

# Service Appeal No. 7122/2021

Abdul SubhanAppellant.
Versus
The Secretary (E & SE) KPK and others

# **INDEX**

S.N	Description of Documents	Date	Annexure	Pages
1.	Para wise Comments			01-04
2.	Affidavit			00
3.				

Deponent

## BEFORE THE KHYBER PÄKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

#### Service Appeal No. 7122/2021

Abdul Subhan			Appellant.
Versus	:	!	
The Secretary (E & SE) KPK and of	here	3	Respondents

# PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 TO 3.

### Preliminary Objections:-

- i. That appellant has no cause of action and locus standi.
- ii. That appellant has not come to the court with clean hands and suppressed material facts from the notice of this Honorable Tribunal. Appellant was aware of his age. The CNIC was in the possession of the appellant from which the age of the appellant could be easily calculated. The date of birth as per CNIC of the appellant is 30-06-1953 and as such he has attained his 60<sup>th</sup> year on 30-06-2013. Appellant being an educated person and more so an employee of education department, how it be presumed that he was not aware of his date of birth and 60<sup>th</sup> anniversary. Appellant caused lost his service book intentionally therefore, respondent could not trace his service record in due course of time. After attaining the age of 60 years / superannuation, the appellant has lost his service book, as result thereof, now service book of the appellant was produced by respondents. It is also worth mentioning that one copy of service book is usually in possession of every employee. Appellant concealed this fact intentionally and malafidely and as such received his salaries illegally. Since the receipt of salaries from 30-06-2013 to march, 2016 were received with malafide intention therefore, the same have been recovered through the impugned notification.
- iii. That the appeal is not maintainable.

- iv. That the principle of estoppels lies against the appellant.
- v. That appeal is hit by principle of limitations.
- vi. Appellant has not availed departmental remedy in shape departmental appeal therefore the instant appeal is not maintainable.
- vii. That appellant is not an aggrieved person within the meaning of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

#### Reply to Facts:-

- 1. That Para No.1 is incorrect, hence denied. Appellant cannot be presumed to be an illiterate person being an employee of education department as well on the score of service record and service career. The plea of the appellant that he has served the department with great devotion and honesty is also devoid of merits for the reason that he managed his service book loss and entry in his CNIC regarding his date of birth and obtained ill gotten salaries in lieu thereof. It is imperative to mention here that under the provisions of the Section 13 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, an employee as automatically retire on attaining the age of superannuation.
- 2. That Para No 2 is incorrect, hence denied. Appellant automatically got retired on attaining age of superannuation. The detail answer has already been submitted.
- 3. That Para No.3 is incorrect, hence denied. The impugned order dated 20-10-2020, the respondent department is legally competent in as liable to be mentioned on the ground that the service of the appellant after attaining the age of superannuation was not required to the respondent department in the terms of Section 13 of Khyber Pakhtunkhwa Civil Servants Act, 1973.

- 4. That Para No.4 is incorrect, hence denied. Since the salaries were received by the appellant malafidely as explained ibid, therefore, proper deduction was made from the pension of the appellant by respondent No.4.
- 5. That Para No.5 is incorrect, hence denied. Appellant has approached Provincial Ombudsman, which is against the provision of Article 212 (2) of the Constitution of Pakistan, 1973. and as such the principle of constructive res judicate can validly apply against the appellant.
- 6. That Para No.6 of the appeal is incorrect, hence denied. Since appellant has received his salaries with malfide intention, therefore proper deduction was made from his commutation. An employee automatically got retired on attaining the age of 60<sup>th</sup> years. Appellant has not filed any departmental appeal before the competent authority and has approached this Hon'ble Tribunal without availing departmental remedy. On this score the instant appeal is liable to dismissed.
- 7. That Para No.7 of the appeal is incorrect, hence denied. Appellant is not an aggrieved person within the meaning of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

#### Reply to Grounds.

- A. That Ground "A" of the appeal is incorrect, hence denied. Appellant has been treated in accordance with law, rules and policy on the subject. Recovery has rightly been made by respondent No.4.
- B. That Ground "B" of the appeal is incorrect, hence denied.

  Appellant was aware of his age. The CNIC was in the possession of the appellant from which the age of the appellant could be

easily calculated. The date of birth as per CNIC of the appellant is 30-06-1953 and as such he has attained his 60<sup>th</sup> year on 30-06-2013. Appellant being an educated person and more so an employee of education department, how it be presumed that he was not aware of his date of birth and 60<sup>th</sup> anniversary. Appellant caused lost his service book intentionally, therefore, respondent could not trace his service record in due course of time. When missing of service book was noticed; the same was re-constructed and appellant was got retired. It is also worth mentioning that one copy of service book is usually in possession of every employee. Appellant concealed this fact intentionally and malafidely and as such received his salaries illegally. Since the receipt of salaries from 30-06-2013 to march, 2016 were received with malafide intention therefore, the same have been recovered through the impugned notification.

C. That Ground "C" of the appeal is incorrect, hence denied. The detail answer has already been submitted.



- D. That Ground "D" of the appeal is incorrect, hence denied. Appellant received his salaries malafidely for which he was not legally entitled. An employee shall be retired automatically on attaining the age of superannuation as per provision of section 13 of the Khyber Pakhtunkhwa Civil Servant Act, 1973.
- E. That Ground "E" of the appeal is incorrect, hence denied. The answering respondents has followed the law, rules and policy on the subject and no violation of rule was made.
- F. That ground "F" of the appeal is incorrect, hence denied. The detail answer has been submitted by the answering respondent.

  Appellant has not been discriminated.

G. That answering respondent would also like to seek the permission of the this Honourable Tribunal to share grounds in rebuttal.

It is therefore, humbly prayed that on acceptance of this parawise reply, this Hon'ble Tribunal may be pleased to dismiss the appeal with cost.

Respondent No.3

The Secretary (E &SE)

Govt: of Khyber Pakhtunkhwa.

Respondent No.2

The Director

Govt: of Khyber Pakatunkhwa.

Respondent No.1 DEO (E & SE), (F)

Nowshera.

Dated: \_\_\_/\_\_/2021

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 7574/2021

Tahir Ali Shah .......Appellant.

Versus

The District Education Officer (F) and others ......Respondents.

## **AFFIDAVIT**

I, Roheen ADO Legal (E & SE) department Nowshera, do hereby solemnly affirm and declare on oath that the contents of this Parawise Comments/Reply are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

ATTESTER

Deponent