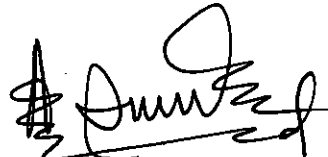


ORDER
27.01.2022

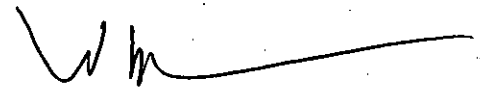
Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for official respondent No. 1 to 3 present. Counsel for private respondent No. 4 present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in service appeal bearing No. 1225/2019 "titled Momin Khan Versus Assistant Director, Local Government & Rural Development, Lakki Marwat and three others" is accepted, the impugned order of his termination from service is set aside and appellant is reinstated into service against his respective position with all back benefits with further direction that private respondent also shall not suffer for lapses of the respondents, hence he also be accommodated. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
27.01.2022

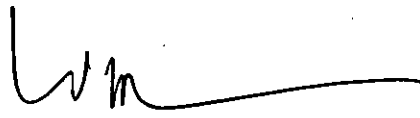



(AHMAD SULTAN TAREEN)
CHAIRMAN



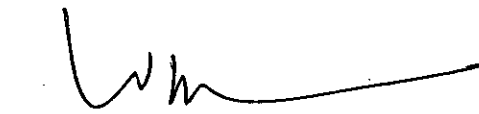
(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

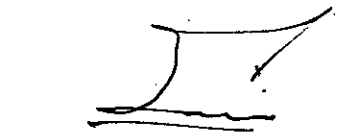
30.06.2021 Mr. Arbab Saif-ul-Kamal, Advocate, for the appellant present. Muhammad Adeel Butt, Additional Advocate General for official respondents No. 1 to 3 present. Mr. Taimur Ali Khan, Advocate, submitted Wakalatnama on behalf of private respondent No. 4 and requested for adjournment on the ground that he has been engaged today and has not gone through the record. Adjourned. To come up for arguments before the D.B on 15.07.2021.


(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

15.07.2021 Mr. Arbab Saif-ul-Kamal, Advocate, for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for official respondents No. 1 to 3 present. Mr. Taimur Ali Khan, Advocate, on behalf of private respondent No. 4 present and requested for adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments before the D.B. on 16.08.2021.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

16.08.2021 Since 16.08.2021 has been declared as Public holiday on account of Moharram, therefore, case is adjourned to 29.11.2021 for the same as before.


Reader

28-12-2020


Due to summer vacation, case is adjourned to
01-2-2021 for the same as before.

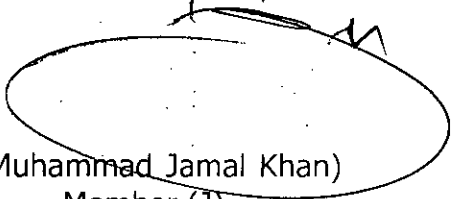

Reader

01.02.2021

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for official respondents No. 1 to 3 and private respondent No.4 in person present.


Private respondent No.4 requested for adjournment that his counsel is not available today. Adjourned. To come up for arguments on 30.03.2021 before D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)


(Muhammad Jamal Khan)
Member (J)

30.03.2021

Due to non availability of the concerned D.B, the case is
adjourned to 30.06.2021 for the same.


Reader

قیمت
50 روپيا

89115



ایڈوکیٹ:

بار کونسل / ایسوسی ایشن نمبر:

رابطہ نمبر:

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

P. O. F.

بعدالت جناب: سرور سٹریٹ، پشاور

30/06/21

مخانب: محفل رحیم

1078/2018

دفعہ:

علت نمبر:

مورخہ:

جرم:

تھانہ:



باعت تحریر آتکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پر موجود رہنے والے محترم مسٹر/خان احمد کوکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز ڈیپٹی صاحب کو راضی نامہ کر کے واپس رکھنا اور فیصلہ برحلاف دینے جو اس دعویٰ اقبال دعویٰ اور درخواست آڈیٹ کی تصدیق زیریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل اپیل و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار کو اپنی کو اختیار ہونے پر راہ ہائے اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساتھ پر دستخط منظور و قبول ہوگا دوران مقدمہ میں جو چیز چاہر جائد اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم:



الع الع

مقام حد کے لیے منظور ہے۔

Accepted
Attest

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

محفل رحیم

03.11.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

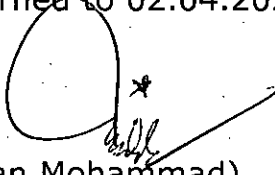
The Bar is observing general strike, therefore, the matter is adjourned to 28.12.2020 for hearing before the D.B.


(Mian Muhammad)
Member


Chairman

05.03.2020

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for official respondents No. 1 to 3 and private respondent No. 4 in person present. Private respondent No. 4 requested for adjournment on the ground that his counsel is not available today. Private respondent No. 4 is strictly directed to produce his counsel on the next date positively. Adjourned to 02.04.2020 for arguments before D.B.



(Mian Mohammad)
Member



(M. Amin Khan Kundi)
Member


2. 4. 2020

Due to public holiday on account of (COVID-19) the case is adjourned. To come up for same on 29.6.2020.



29.06.2020

Due to COVID-19, the case is adjourned to 24.08.2020 for the same.



Reader

24.08.2020

Due to summer vacation case to come up for the same on 03.11.2020 before D.B.



Reader

12.09.2019 Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Junior counsel for the appellant requested submitted rejoinder, which is placed on record. Junior counsel for the appellant also requested for adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned to 18.11.2019 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

18.11.2019 Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for official respondents No. 1 to 3 and private respondent No. 4 in person present. Private respondent No. 4 requested for adjournment on the ground that his counsel is not available today. Adjourned to 16.01.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

16.01.2020 Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for official respondents present. Adjourned to 05.03.2020 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

25.04.2019 Appellant in person present. Addl: AG alongwith Mr. Yousaf Jan, Secretary Village Council for official respondents and private respondent no.4 in person present. Written reply on behalf private respondent no.4 not submitted. Requested for adjournment. Adjourned. Case to come up for written reply of respondent no.4 on 19.06.2019 before S.B.


(Ahmad Hassan)
Member

19.06.2019 Counsel for the appellant, Mr. Kabirullah Khattak, Additional AG for official respondents No. 1 to 3 and private respondent No. 4 in person present. Joint para-wise comments on behalf of official respondents No. 1 to 3 has already been submitted. Written reply on behalf of private respondent No. 4 not submitted and he requested for further time to submit written reply. Last chance is granted to private respondent No. 4 to submit written reply. Case to come up for written/comments on behalf of private respondent No. 4 on 12.07.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member

12.07.2019 Counsel for the appellant and Addl. AG for official respondents No. 1 to 3 who already submitted written reply. Respondent No. 4 in person present and submitted written reply. To come up for arguments on 12.09.2019 before the D.B. The appellant may submit rejoinder within a fortnight, if so advised.


Member

04.2.2019

Counsel for the appellant and Addl. AG alongwith Yousaf Khan, AD for the official respondents present. Mr. Muhammad Tariq Qureshi, Advocate has submitted Wakalatnama on behalf of respondent No. 4 which is placed on file.

Representative of the official respondents states that the requisite reply is in the process of preparation and will positively be submitted on the next date of hearing. Adjourned to 27.03.2019 before S.B. The private respondent No. 4 may also furnish reply to the appeal on the next date, if so advised.


Chairman

27.03.2019

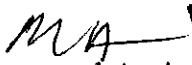
Learned counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Yousaf Khan AD for official respondents present. Learned counsel for private respondent No.4 also present. Written reply submitted on behalf of official respondents. Learned counsel for private respondent No.4 seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on behalf of private respondent No.4 on 25.04.2019 before S.B


Member

11.12.2018

Counsel for the appellant Ihsan Ullah present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as Naib Qasid in Local Government Department by the competent authority vide order dated 15.03.2016 on the recommendation of Selection and Recruitment Committee. It was further contended that someone was aggrieved from the appointment order of the appellant therefore, he filed Writ Petition against the appellant in the Worthy Peshawar High Court Peshawar and the Worthy Peshawar High Court Peshawar disposed of the Writ Petition vide order dated 28.02.2018 and directed the competent authority to re-examine the appointment of the private respondents, merit position of the appellant and pass an appropriate order keeping in mind the rules, policy and the terms and conditions incorporated in the advertisement for appointment of Class-IV employees, after providing the parties an opportunity of hearing and thereafter the competent authority vide order dated 18.04.2018 terminated the appellant from service. It was further contended that the appellant filed departmental appeal on 11.05.2018 but the same was not responded hence, the present service appeal. It was further contended that neither the appellant was issued any show-cause notice nor the appellant was provided opportunity of personal hearing but the competent authority has passed the impugned termination order illegally therefore, the impugned order is liable to be set-aside.

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit of security and process fee, thereafter notice be issued to the respondents for written reply/comments for 04.02.2019 before S.B.

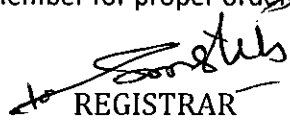

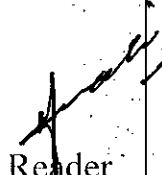

(Muhammad Amin Khan Kundi)
Member

Appellant Deposited
Security & Process Fee

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. _____ 1078 /2018 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/09/2018 4-9-18	The appeal of Mr. Ihsanullah presented today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.  REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24-10-18</u> .  MEMBER
	24.10.2018	Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 11.12.2018.  Reader

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 1078 /2018

Ihsan Ullah

versus

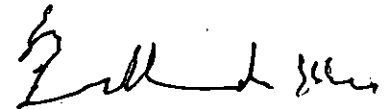
Assistant Director & Others

INDEX

S. No	Documents	Annex	P. No.
1.	Memo of Appeal		1-4
2.	Advertisement dated 04-07-2015	"A"	5
3.	Appointment order dated 15-03-2016 / Arrival report	"B"	6-7
4.	W.P / Judgment dated 28-02-2018	"C"	8-11
5.	Show Cause Notice	"D"	12
6.	Reply to Show Cause Notice, 12-04-2018	"E"	13
7.	Termination order dated 18-04-2018	"F"	14
8.	Appointment of R. No. 04, 19-04-2018	"G"	15
9.	Representation dated 11-05-2018	"H"	16-19

Appellant

Through



Dated: 29.08.2018

Saadullah Khan Marwat
Advocate.
21-A Nasir Mansion,
Shoba Bazaar, Peshawar.
Ph: 0300-5872676
0311-9266609

BEFORE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 1078 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1388

Dated 03/9/2018

Ihsan Ullah S/O Faiz Ullah Khan,
R/O Mela Shahab Khel, Lakki Marwat,
Ex-Naib Qaisd, Village Council,
Abba Khel-IV, Lakki Marwat. Appellant

VERSUS

1. Assistant Director, Local Government
& Rural Development Department,
Lakki Marwat.
2. Director General, Local Government
& Rural Development Department, Peshawar.
3. Secretary, Govt. of KP, Local Government
& Rural Development Department, Peshawar.
- ✓ 4. Fazal Rahim S/O Abdul Qasid,
Naib Qasid, Village Council Abba Khel-IV,
Lakki Marwat Respondents

Filed to day
Sondhis
03/9/18
Registrar

⇔ <=> ⇔ <=> ⇔ <=> ⇔ <=> ⇔

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OFFICE ORDER NO. 5216-21, DATED
18-04-2018 OF RESPONDENT NO. 1 WHEREBY
SERVICES OF APPELLANT WERE TERMINATED
AND R. NO. 04 WAS APPOINTED AS NAIB QASID
FOR NO LEGAL REASON:

⇔ <=> ⇔ <=> ⇔ <=> ⇔ <=> ⇔

Respectfully Sheweth;

1. That on 04-07-2015, R. No. 01 floated advertisement in daily Newspapers for appointment of Class-IV servants in their respective Village Council. (Copy as annex "A")

2. That after going through the prescribed procedure of selection, appellant was appointed as Naib Qasid on regular basis on the recommendations of Selection and Recruitment Committee vide order dated 15-03-2016 and assumed the charge of the said assignment on 18-03-2016. (Copies as annex "B")
3. That on 31-05-2016, R. No. 04 filed W. P. before the Peshawar High Court, Circuit Bench Bannu to declare the order of appointment of appellant as illegal and he be appointed as such, which petition came up for hearing on 28-02-2018 along with other connected Writ Petitions on the same point and then the hon'ble court was pleased to hold that:-

All the cases are remitted back to R. No. 01 to re-examine the appointments of the private respondents and passed an appropriate order in light of Rules and Policy after providing the parties an opportunity of hearing. The entire process shall be completed within two (02) months positively. The Writ Petitions were disposed off accordingly. (Copy as annex "C")

4. That after remitting of the said judgment to R. No. 01 for compliance, Show Cause Notice was issued on 30-03-2018 to appellant to explain his position which was replied on 12-04-2018. (Copies as annex "D" & "E")
5. That on 18-04-2018, R. No. 01 terminated services of appellant with immediate effect on the score that he was not the appointee of his own Village Council. (Copy as annex "F")

Here it would be not out of place to mention that R. No. 01 appointed numerous other candidates not in their own Village Council but in others i.e. Umair Ahmad Village Council Khero Khel Pakka appointed at Serai Naurang-III, Faheem Ullah VC Khero Khel Pakka appointed at VC Gerzai, Washeullah VC Wanda Aurangzeb appointed at VC Attashi Mechan Khel, Ezat Khan VC Wanda Saeed Khel appointed at VC Kalin, Sher Nawaz VC Issik Khel appointed at VC Wanda Baru, Siffat Ullah VC Khokidad Khel Lakki City appointed at VC Jung Khel, Momin Khan VC Lakki City appointed at VC Abdul Khel, etc. their services are still retained till date, so appellant was not treated alike and discriminated.

6. That on 19-04-2018, R. No. 04 was appointed as such by R. No. 01 on the post of appellant. In the judgment, the hon'ble court never directed the authority to appoint R. No. 04 as Naib Qasid and to terminate services of appellant. (Copy as annex "G")
7. That on 11-05-2018, appellant submitted representation before R. No. 02 for reinstatement in service which met dead response till date. (Copy as annex "H")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That appellant has in his credit the educational qualification of Matric.
- b. That appellant applied to the said post of his own Village Council and it was incumbent upon the department to appoint him as such in his own Village Council and not in any other. He could not be held responsible for the lapses of the respondents, if any.
- c. That when the matter taken to the court, the department was legally bound to transfer appellant even other incumbents to their own Village Council to save their skins.
- d. That as and when Show Cause Notice was issued to appellant regarding appointment in other Village Council, then he should rectify the mistake, if any, because the lapses were on the part of the authority and not of the appellant and in such situation, he could not be made responsible for the same.
- e. That appellant was appointed as per prescribed manner after observing the due codal formalities.
- f. That as per law and rules, appellant is liable to serve anywhere in District, outside District / Province even outside Country, then he can be appointed anywhere for the purpose, being citizen of the country.

- g. That it is to be ascertained as to whether R. No. 04 has applied to the said post or otherwise. In such a situation the department was legally bound to advertise the said post.
- h. That R. No. 04 was never gone through the process of selection, so at such a belated stage when his name was not recommended by the Departmental Selection / Recruitment Committee, he could not be appointed straight away as such.
- i. That in the aforesaid circumstances, order of appointment of R. No. 04 was not only illegal but was ab-initio void. The same was based on favoritism.
- j. That service law is alien to the word "Termination", so on this score alone, order of termination of appellant is / was illegal.
- k. That order of appointment of appellant was acted upon, effected and got finality, the same was made by the competent authority and cannot be rescinded in the manner taken.
- l. That appellant was paid Monthly Salaries for about 02 Years and 02 Months which gave vested right to him.
- m. That order of termination of appellant from service is based on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 18-04-2018 of R. No. 01, and appointing R. No. 04 as Village Council be set aside and appellant be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Ghazan

Appellant

Through

Saadullah Khan Marwat

Saadullah Khan Marwat

Amjad Nawaz

Amjad Nawaz
Advocates.

Dated.29.08.2018

دفتر ڈائریکٹر جنرل محکمہ بلدیات و

دیہی ترقی صوبہ خیبر پختونخواہ پشاور

اشتہار برائے بھرتی کلاس-IV (BPS-01)

محکمہ بلدیات کی طرف سے درج ذیل خالی آسامیوں کو بھرتی کرنے کے لئے صوبہ خیبر پختونخواہ کے ڈویژنل کے عامل اعلیٰ امیدواروں سے درخواستیں مطلوب ہیں جو کہ اس اشتہار کے اشاعت کے چند روزوں کے اندر اندر متعلقہ ضلع کے اسٹنسٹ ڈائریکٹر محکمہ بلدیات و دیہی ترقی کے دفاتر میں دفتر میں اوقات کار کے دوران ہر قسم میں شد و دستاویزات جمع کرناں جاسکتی ہیں۔
تفصیلی آسامیاں و مطلوبہ قابلیت اور دیگر کارٹھری حد نیچے درج ہیں۔

نمبر اشتہار	ضلع	ڈیو آسامی	بنیادی سکیل	مطلوبہ قابلیت	حکومتی نمبر
1	متعلقہ	کلاس-IV	01	متعلقہ ضلع اور ضلع بلدیاتی کانسٹبل	18-40

1- گورنمنٹ ملازم کو ترجیح دی جائے گی۔
2- متعلقہ ضلع کے باشندے سے ترجیح دی جائے گی۔

مطلوبہ قابلیت اور دیگر شرائط پر پورا اترنے والے امیدواروں سے درخواست اس اشتہار کی اشاعت کے چند روزوں کے اندر اندر اپنے دستاویزات اپنے ڈویژنل کے عامل ضلع کے اسٹنسٹ ڈائریکٹر محکمہ بلدیات و دیہی ترقی کے دفتر میں جمع کرائے۔

ڈائریکٹر جنرل

محکمہ بلدیات و دیہی ترقی، خیبر پختونخواہ

2/7/2015

B G

OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVT. & RURAL DEVELOPMENT
DEPARTMENT, LAKKI MARWAT

Dated. 15 / 3 / 2016

OFFICE ORDER.

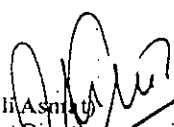
No. 3887-99 / On the recommendations of Selection and Recruitment Committee, appointment of the following Naib Qasid, Village / Neighborhood Council is hereby ordered in BPS-01 Rs. (6210-195-12060) plus usual allowances as admissible under the rules existing policy of the Provincial government on the terms and conditions given below w.e.f the date of taking over their charge in the interest of public service, they will report for duty in the office of Village / Neighborhood Council Nazim mentioned against each:-

S.No	Name with Address	Village/ Neighborhood Council	Remarks
1	Ihsanullah s/o Faizullah	Abakhel IV	Against vacant Post

Terms and Conditions:

1. His services will be liable to termination on one month notice in advance from either side, but in case of resignation without notice, one month pay shall be refunded towards Government.
2. He will be on probation for a period of one year extendable for a further period of 12 months and during this probationary period he will not be entitled to apply for any long leave etc.
3. His services will be governed by such rules and regulations as are in vogue and as may be issued by the Government from time to time.
4. His services can be terminated at any time in case his performance is found unsatisfactory during probationary period and in case of misconduct, he will be proceeded against the Removal from Service (Special Power) Ordinance, 2000 and the rules made from time to time.
5. He should report his arrival to all concerned. He will also not be entitled to any TA/DA for his first arrival/joining duty but in case he is not willing to join the duty, he should furnish his un-willingness on a stamp paper to the office of the undersigned.
6. His services are also liable to be terminated if any of his documents is found fake or altered, at any later stage and that he will not entitle to undergo any litigation.
7. The undersigned deserves the rights to amend or add any condition to his appointment order.
8. He is required to produce Health and Age Certificate from the Medical Superintendent DHQ Hospital, Lakki Marwat within 15 days.
9. The appointment is made subject to the conditions that the candidate has a permanent domicile of District Lakki Marwat.

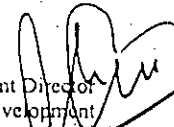
If the above terms and conditions are accepted, he should immediately communicate to this office, and report for duty to the undersigned within (15) days, failing which this appointment order may be treated as cancel in respect of the candidate.

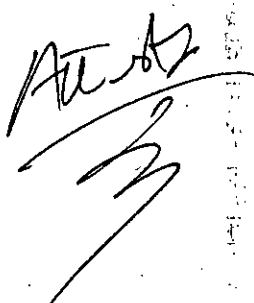

(Ali Aslam)
Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat

Even No. & Date.

Copy forwarded to:-

1. The Director General, Local Govt. & Rural Development Dept: KP, Peshawar.
2. The District Nazim, District Government Lakki Marwat.
3. The Deputy Commissioner/ Chairman Selection Committee, Lakki Marwat.
4. PS to Senior Minister LG&RDD, Khyber Pakhtunkhwa Peshawar.
5. PS to Secretary LG&RDD, Khyber Pakhtunkhwa, Peshawar.
6. The Section Officer (Estab), Khyber Pakhtunkhwa, Peshawar.
7. Tehsil Municipal Officer / Member Selection Committee, Lakki Marwat.
8. The District Accounts Officer, Lakki Marwat.
9. The Nazim NC/VC concerned District Lakki Marwat.
10. All Supervisors LG&RDD, Lakki Marwat
11. Official concerned.
12. Office Order File.


Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat



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The Assistant Director

LG & RPD

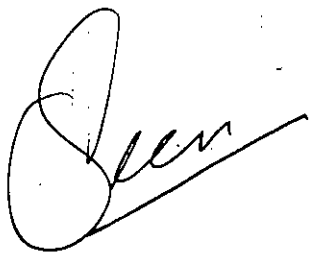
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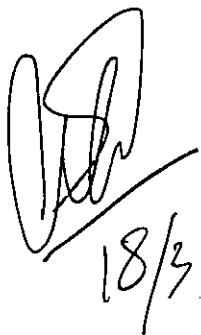
Amex C

Subject: - Arrival Report

with reference of your office order
NO 3887-99 on dated 15/03/016. I
have been selected as waib asid BPS 01.

So I am suborityly my arrival
Report on 18-03-2018




18/3



Yours Truly

Agus
Ihsanullah

S/O Faizullah

VK Abdulkhel (u)

0332-5859268

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

W.P.No.199-B/2016

Najibullah

Versus

Director General Local Govt. and Rural Development
and others

JUDGMENT

Date of hearing: 28.02.2018.

Appellant-petitioner By Fawaz Alam Nazki Adv.

Respondent By Shahid Hameed Qureshi Adv.

Atw Abdul Hameed ADLG Bannu Muhammad Aalam
ADLG Lakki and Yousaf Khan Progress office Lakki.

SHAKEEL AHMAD, J.- By this single judgment we

propose to decide the following petitions having identical
questions of law and facts:-

1. W.P.No.199-B/2016.
(Najibullah Vs. Director General Local Govt.
and Rural Development and others).
2. W.P.No.206-B/2016.
(Addul Wadood and others Vs. Govt. of
K.P.K through Secretary Local Govt. and
Rural Development and others).
3. W.P.No.261-B/2016.
(Sher Alam Khan Vs. Govt. of K.P.K through
Secretary Local Govt. and Rural
Development and others).
4. W.P.No.271-B/2016
(Umar Jan Vs. Govt. of K.P.K through
Secretary Local Govt. and Rural
Development and others).

ATTESTED
BY
EXAMINER
PESHAWAR HIGH COURT
Bannu Bench

Inwam

(D) By Mr. Justice Abdul Shakoor and Mr. Justice Shakeel Ahmad, JJ

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5. W.P.No.278-B/2016.
(Irshadullah Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
6. W.P.No.279-B/2016.
(Abdul Haseeb Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
7. W.P.No.297-B/2016.
(Naqibullah Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
8. W.P.No.305-B/2016.
(Akhtar Zaman Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
9. W.P.No.316-B/2016.
(Kamranullah Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
10. W.P.No.350-B/2016.
(Momin Khan and another Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
11. W.P.No.438-B/2016.
(Hassan Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
12. W.P.No.577-B/2016.
(Noor Aslam Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
13. W.P.No.10-B/2018.
(Fazal Rahim and another Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

2. The common facts of all these writ petitions are that the petitioners are the residents of their respective Union Councils. In response to the advertisement made in the newspaper the petitioners applied for their appointments as

Imran (D.B) Mr. Justice Abdul Shakoor and Mr. Justice Shakeel Ahmad, JJ

ATTESTED
 EXAMINER
 Bahawal High Court
 Bahawal Pur

Class-IV employees, but they were denied appointments and the people from other Union Councils were appointed, hence, these constitutional petitions.

3. After arguing the case at great length, the learned counsels for the petitioners stated at the bar that let all these cases be sent to the competent authority to re-examine the cases of appointment of the private respondents and to find out whether they have been appointed in accordance with law, policy and the terms and conditions incorporated in the advertisement or not. The learned counsel representing the private respondents in all the writ petitions and the learned A.A.G appearing on behalf of official respondents assisted by representatives of the department agreed with the contention of the learned counsels for the petitioners.

4. In view of above, we send back all these cases to the Assistant Director Local Government and Rural Development/competent authority of their respective districts to re-examine the appointments of the private respondents, merit position of the petitioners and pass an appropriate order keeping in mind the rules, policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees, after providing the parties an opportunity of hearing and submit compliance report to Additional Registrar of this Court. The entire process shall be completed within 02

ATTESTED

EXAMINER
Kashwar High Court
Khanu Bhatt

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months positively. With these observations the writ petitions are disposed of accordingly.

Announced.
Di: 28.02.2018.

(Signature)

JUDGE

(Signature)
JUDGE

CERTIFIED TO BE TRUE COPY

(Signature)
19/3/18

Peshawar Bench
Authenticity of the copy of
The Qanun-e-Safaidat Order 1947

(Signature)

03/2/18

(Signature)

Imran

(D.B) Mr. Justice Abdul Shakoor and Mr. Justice Shakeel Ahmad, JJ.



TO BE SUBSTITUTED BY EVEN NO. & DATE

OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVT. & RURAL DEVELOPMENT
DEPARTMENT, LAKKI MARWAT.

No. 5086-87

Dated March 30, 2018.

To

Mr. Ihsanullah
Naib Qasid Village Council
Abba Khel-IV, District Lakki Marwat.

SUBJECT:- SHOW CAUSE NOTICE.

Memo.

In the light of worthy Peshawar High Court, Bannu Bench, judgment dated 28.02.2018 in WP No.10-B/2017, the undersigned is going to serve you with the following Show Cause Notice:-

(1). That you have been appointed a Class-IV in BPS-3 in the Village Council Abba Khel-IV, Tehsil and District Lakki Marwat vide Order No.3877-94, dated 15.03.2016.

(2). That your this appointment order was challenged by the petitioners/other candidates before the worthy PHC Bannu Bench through Writ Petition No.10-B/2017 which was disposed of by the worthy High Court in the following terms:-

"In view of the above, we send back all these cases to the Assistant Director, Local Govt. & Rural Dev./Competent Authority of their respective District to re-examine the appointment of the private respondents, merit position of the petitioners and pass an appropriate order keeping in mind the Rules, Policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees after providing the parties an opportunity of hearing."


(3). That in the light of, above mentioned judgment of PHC Bannu Bench, we have re-examined your appointment and merit position, in the light of Rules, Policy and Terms and Conditions, incorporated in the advertisement, for the above mentioned posts of Class-IV and found that you, belongs to Village Council Mela Shahab Khel but have been appointed against the post for Village Council Abba Khel-IV So in this way your appointment against the above mentioned post is against the Rules, Policy and against the terms and conditions incorporated in the advertisement for the above post.

(4). That through this Show Cause Notice you are hereby directed to file your reply, if any, to the office of undersigned within seven (7) days from the receipt of this Show Cause Notice, as why you should not be removed from your service, otherwise ex-party action will be taken against you.

(5). That if you want personal hiring, in this respect you can approach to the office of the undersigned within 7 days from receipt of this notice in office hours.

Note:- After lapse of 7 days from receipt of this notice, you will not be allowed to question any action taken against you in the light of this Notice.

Aueto


Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.

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To

The Assistant Director,
Local Govt & Rural Development Department,
Lakki Marwat.

Subject:-

REPLY TO SHOW CAUSE NOTICE DATED 30-04-2018
RECEIVED BY POST ON 10-04-2018.

Respected Sir,

I have the honour to invite a reference to your letter No 5086-87 dated 30-03-2018 on the subject mentioned above and to state that I had been appointed as Naib Qasid according to the laid down principles & criteria and since my appointment, I am serving the department with the best of my ability. According to the advertisement, there was no specific restriction rather preferential treatment to the applicants of nearby villages was mentioned. After due scrutiny by competent authority, I had been appointed as Naib Qasid and since then no minor or major offence as envisaged in Efficiency and Discipline rules 1973 has been committed by me so the serving of above mentioned show cause notice is illegal. I belong to the same district and also to the adjoining village so I deserved as received. Furthermore the provincial Govt had also made further clarification about the eligibility and qualification of candidates by issuance of notification No: 50(LG-1)2-188/89 copy attached for ready reference in this regard. dated 3-12-2015

In view of the above situation, It is humbly prayed that the above cited Show Cause Notice my please be filed without further proceedings.

Dated:12-04-2018

445022
Your obediently,
Ihsanullah s/o Faiz ullah
Naib Qasid office of
Assistant Director
LG&RDD Lakki Marwat

Received May
12/4/2018
Attested
[Signature]



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Annexure 4

OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVT. & RURAL DEVELOPMENT
DEPARTMENT, LAKKI MARWAT.

Dated April 18, 2018

OFFICE ORDER

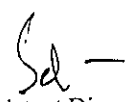
No. 5216-21 / The Peshawar High Court Bannu Bench was pleased to announce the following judgment in Writ Petition No.10-B/2018 on 28.02.2018:-
"In view of the above, we send back all these cases to the Assistant Director, Local Govt. & Rural Dev./Competent Authority of their respective District to re-examine the appointment of the private respondents, merit position of the petitioners and pass an appropriate order keeping in mind the Rules, Policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees after providing the parties an opportunity of hearing."

In pursuance of the above judgment the appointment of the following respondent was re-examined:-

#	Name & father's name of Respondent	Parent Village Council.	Village Council where appointed.
1	Mr. Ihsanullah S/O Faizullah.	Mela Shahab Khel	Abba Khel-IV

Both the Petitioner and Respondent were heard and examined in detail and record perused. The petitioner Mr. Fazal Rahim S/O Abdul Hamid stated that he applied for the post of Class-IV lying vacant in his parent Village Council but was ignored. The respondent informed that he applied for the post of Naib Qasid in his parent Council. He admitted the fact that he belongs to Village Council Mela Shahab Khel but he was appointed at Village Council Abba Khel-IV which is not his parent Village Council at all.

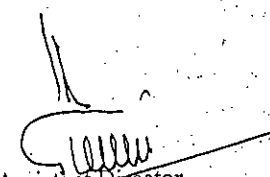
Keeping in view the above, the competent authority considers appointment order of the respondent as Naib Qasid at Village Council Abba Khel-IV issued vide No. Order No. 3877-94, dated 15.03.2016 against the Rules and Policy and the conditions incorporated in the advertisement for Class-IV. Consequently the said order becomes invalid and services of the respondent stand terminated with immediate effect.

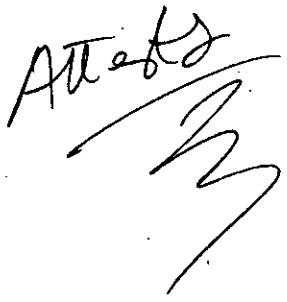

Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.

Even No. & Date.

Copy forwarded to:-

1. The Director General, Local Govt. & Rural Dev. Deptt. KPK, Peshawar.
 2. The Addl: Registrar, Peshawar High Court Bannu Bench.
 3. The Addl: Advocate General, Peshawar High Court Bannu Bench.
 4. The District Accounts Officer, Lakki Marwat.
 5. The official concerned.
 6. Office Order File.
- For information & necessary action.


Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.





OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVT. & RURAL DEVELOPMENT
DEPARTMENT, LAKKI MARWAT.

Dated April 19 /2018

OFFICE ORDER.

No. 5307-10 / In pursuance to the judgment dated 28.02.2018 of Peshawar High Court Bannu Bench in Writ Petition No. 10-B/2017, Mr. Fazal Rahim S/O Abdul Hamid Khan R/O Abba Khel, Tehsil and District Lakki Marwat is hereby appointed as Naib Qasid in BPS-3 (9610-390-21310) plus usual allowances as admissible under the Rules, on regular basis, against the vacant post at VC Abba Khel-IV, District Lakki Marwat with the following terms and conditions:-

Terms and Conditions.

1. His services will be governed by the rules and regulations as are in vogue and as may be issued by the Government from time to time.
2. His services will be liable to termination on one month notice in advance from either side, but in case of resignation, without notice, two months pay shall be refunded towards Government.
3. He will be on probation for a period of one year extendable for a further period of one year and during this period he will not be entitled to apply for any long leave etc.
4. His services can be terminated at any time in case his performance is found unsatisfactory during probationary period and in case of misconduct he will be preceded against the Removal from Service (Special Power) Ordinance, 2000 and the rules made from time to time.
5. His services are liable to be terminated if any of his documents is found fake or altered at any later stage and he will not entitle to undergo any litigation.
6. He will report his arrival to all concerned. He will also not entitle to any TA/DA for his first arrival. In case he is not willing to join the duty, he should furnish his un-willingness on a stamp paper to the office of the undersigned.
7. Before submission of pay bill to the District Accounts Officer for pay purpose, all his Certificates and Degrees will be checked and verified from the concerned Board or University as the case may be.
8. The undersigned deserves the rights to amend or add any condition to his appointment order.
9. He is required to produce Health and Age Certificate from the Medical Superintendent DHQ Hospital, Lakki Marwat.

If the above terms and conditions are accepted, he should immediately communicate his willingness and report for duty to the undersigned within 15 days, failing which this appointment order may be treated as cancelled in respect of the candidate.

Sd/-xxxxxxxxxxxx
(Muhammad Aleem)

Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.

Even No. & Date.

Copy forwarded to:-

1. The Director General, Local Govt. & Rural Development Deptt: KP, Peshawar.
2. The District Accounts Officer, Lakki Marwat.
3. The Progress Officer, LGRDD, Lakki Marwat to arrange for verification of documents.
4. Candidate concerned.

Sd/-xxxxxx
Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.

H 16

D.I. 8727
DATE 17/8/11
DC LOCAL GOVERNMENT

01/11/11

The Director General,
Local Government and Rural Development Department,
Khyber Pakhtunkhwa Peshawar.

SUBJECT :- DEPARTMENTAL APPEAL

Respected Sir,

With due respect the appellant submits as under,

1. That your good Office advertised vacancies of Class-IV throughout Khyber Pakhtunkhwa vide advertisement dated 04.07.2015 in which the condition for appointment of Class-IV was that the candidate must be the resident of relevant District where he resides. As per afore-said advertisement, the appellant being permanent resident of District Lakki Marwat, applied for the vacancy of Class-IV, appeared in Test / interview and secured top position on merit list. Copy of advertisement dated 04.07.2015 is attached as **Annexure-A**.
2. That accordingly the Departmental Selection Committee duly approved and recommended the name of appellant for appointment as Class-IV. Where after the Assistant Director LGRDD Lakki Marwat issued appointment order of appellant as Naib Qasid on 15.03.2016 and posted at **Village Council Abba Khel - IV** District Lakki Marwat as Class-IV. Copies of Minutes of Meeting of Departmental Selection Committee and appointment Order dated 15.03.2016 of appellant are attached as **Annexure-B**.
3. That after appointment, the appellant submitted his arrival report and rendered duties for about more than 02 years. The service book and Master file of appellant was also prepared by the Department. Copies of arrival report and service book of appellant are attached as **Annexure-C**.
4. That it is pertinent to mention here that in response to the advertisement dated 04.07.2015, total 65 Class-IV have been appointed by the Assistant Director LGRDD Lakki Marwat who are also permanent residents of District Lakki Marwat and appointed in different village Councils like appellant.
5. That out of 65 Class-IV employees, 23 appointment orders of Class-IV were Challenged (including the appellant) before Peshawar High Court, Bannu Bench in different writ petitions solely on the ground that appellant belongs to **village Council Mela Shahab Khel** but he has been appointed as Class-IV in **village Council Abba Khel - IV**. The Peshawar High Court Bannu Bench without going into the merit of the case, decided all the 23 Writ Petitions through single Judgment dated 28.02.2018 in the following terms;-" In view of the above, we send back all these cases to the Assistant Director, Local Government and Rural Dev; / Competent Authority of their respective District to re-examine the appointment of the private respondents, merit position of the petitioners and pass an appropriate order keeping in mind the rules, Policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees after providing the

Attended
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parties an opportunity of hearing". Copy of Judgment dated: 28.02.2018 of Peshawar High Court Bannu Bench is attached as **Annexure – D**.

6. That as such the Assistant Director LGRDD Lakki Marwat issued show cause notice to the appellant on the basis of afore-said Judgment of Peshawar High Court Bannu Bench dated: 28.02.2018, in which the only objection raised was that appellant belongs to **village Council Mela Shahab Khel** but he has been appointed as Class-IV in **village Council Abba Khel - IV** District Lakki Marwat. There was no objection as to the merit position of the appellant in the afore-said Show Cause Notice. The appellant timely replied to the afore-said Show Cause Notice after receipt of the same. Copies of Show Cause Notice and reply of the appellant are attached as **Annexure-E**.
7. That thereafter the Assistant Director LGRRD Lakki Marwat all of sudden issued termination order dated 18.04.2018 of appellant in which the same reason is given that appellant belongs to **village Council Mela Shahab Khel** but he has been appointed as Class-IV in **village Council Abba Khel - IV** District Lakki Marwat. Copy of termination order of appellant dated 18.04.2018 is attached as **Annexure-F**.
8. That as per advertisement dated 04.07.2018, the candidate must be the permanent resident of relevant District. As such appellant is fully eligible to apply to the vacancy of Class-IV because applicant is the permanent resident of District Lakki Marwat and has rightly been appointed as Class-IV in **Village Council Abba Khel - IV** District Lakki Marwat as per terms and conditions of the afore-said advertisement dated 04.07.2018. But Assistant Director LGRRD Lakki Marwat has wrongly and illegally terminated the appellant from service in order to adjust his blue eyed persons. The Assistant Director LGRRD Lakki Marwat has misconceived and mis-interpreted the Judgment of Peshawar High Court, Bannu Bench dated 28.02.2018 as the merit position of the appellant has not been called in question by the Assistant Director LGRRD Lakki Marwat. At the same time, it is written in the advertisement dated: 04.07.2015, that in case of two candidates having equal marks in test/interview then as per advertisement dated 04.07.2015, preference shall be given to the candidate of concerned village / neighborhood council. But Assistant Director LGRDD Lakki Marwat has misconceived this condition while terminating the appointment order of appellant. As per merit, appellant is the top position holder therefore, appellant being resident of District Lakki Marwat has rightly been appointed. Copies of I.D Card and Domicile of the appellant are attached as **Annexure-G**.
9. That Local Government and Rural Development Department Khyber Pakhtunkhwa Peshawar issued Notification dated: 03-12-2015 vide which an amendment has been made for the selection of appointment of Naib Qasid / Chowkidar in which criteria laid down for their appointment is that he must be physically sound, preferably literate, about 18 to 40 years aged. There is no such condition / criteria for the appointment of Class-IV that he must be permanent resident of same village council. Again the stance of the appellant has been confirmed by the rules framed by the Department itself where no such condition has been placed that the candidate must be the resident of the same village council where he has been appointed. The only condition as mentioned in the advertisement is that he must be the resident of same District where he applies. As such the reason given for termination of the appellant in the termination order dated 18.04.2018 is against the service rules dated 03.12.2015 of the Department. And ultimately the afore-said termination order is also against the very spirit of the Judgment dated 28.02.2018 of the Peshawar High Court, Bannu

Bench. Copy of Service Rules / Notification dated: 03-12-2015 is attached as **Annexure-H.**

10. That appellant belongs to **village Council Mela Shahab Khel** and has been appointed in **Village Council Abba Khel - IV** District Lakki Marwat. Whereas 64 other Class-IV employees who have been appointed in response to the same advertisement dated 04.07.2015 are similarly placed persons who belong to one Village Council but they have been appointed in other village Council (Like Appellant) but no Show Cause Notice nor any termination order has been issued to them. As for example, in village council Attashi Meehan Khel a candidate namely Wasiullah S/O Shafiullah has been appointed as Class-IV on 15-03-2016 despite the fact that the afore-said candidate namely Wasiullah S/O Shafiullah is the permanent resident of Village Council Wanda Aurangzeb and stranger to the village council Attashi Meehan Khel. But no show cause notice has been issued to the afore-said Wasi Ullah nor has he been terminated from service. Similarly no show cause notice has been issued to 42 other Class-IV employees who are similarly placed as of appellant. Therefore, the termination order dated 18.04.2018 is discriminatory with the appellant. On one hand, Assistant Director LGRRD Lakki Marwat is admitting the appointment orders of similarly placed persons as correct whereas on the other hand he has issued termination order of the appellant. As such the conduct of the Assistant Director LGRRD Lakki Marwat is contradictory in itself. Copy of appointment order of Wasiullah and affidavit dated; 06.08.2016 of Secretary Village Council Attashi Machan Khel are attached as **Annexure-I.**

11. That appellant has been appointed as Naib Qasid according to rules, regulations and policy by the Departmental Selection Committee after due process of law. The Departmental Selection Committee was consisted by Hon able members of your good Office including the representative from LGRDD Peshawar as well. The Departmental Selection Committee has discussed the case of each appointee and after thorough scrutiny of documents the appellant has been appointed as Class - IV along with 64 others. As such vested right has been accrued to the appellant for appointment and as such termination order dated: 18.04.2018 of appellant is illegal, unlawful and without lawful authority.

12. That after appointment on 15.03.2016, the appellant was rendered medically fit for service, the appellant assumed charge of his office and rendered services for about more than 02 years. The Master file and service book of appellant are also prepared. At all these stages, Assistant Director LGRRD Lakki Marwat didn't raise any objection regarding the appointment order of appellant. Now after more than 02 years service of appellant, Assistant Director LGRRD Lakki Marwat cannot raise any such objection because he is estopped by his own conduct. Furthermore, after 02 years service of appellant, vested right has been accrued to the applicant for appointment. Therefore, if any irregularity whatsoever, has been committed by the Department in the procedure / process of appointment (which is not available on record), then for such irregularity the appellant should not be punished (**In this respect guidance can be sought from Judgment of Supreme Court reported as 2009 SCMR-page 663.**)

13. That LGRDD Department also filed Comments in all the Writ Petitions in Peshawar High Court Bannu Bench in which your good Office admitted the plea of the appellant that appellant has been appointed as Class-IV according to rules, regulations and policy. And there is nothing unlawful in these appointment orders. Now how come Assistant Director LGRRD Lakki Marwat is saying that appellant is not

appointed according to rules, regulations and policy. Copy of Comments filed by your good Office in Connected Writ Petition 529-B/2016 is attached as **Annexure-J**—
14. That even Peshawar High Court Bannu Bench didn't find any irregularity or illegality in the appointment order of appellant and as such Peshawar High Court Bannu Bench allowed the appellant to work as it is.

15. That most of the candidates who have been appointed as Class - IV on 19-04-2018 in place of appellant have not filed even applications in response to the advertisement dated 04.07.2015 nor they were on top position on merit list nor the merit position of those candidates are brought to light by the Assistant Director LGRRD Lakki Marwat even than they have been appointed as Class-IV on the next date i.e 19.04.2018 in place of the appellant. The person who has been appointed in the place of appellant is Fazal Rahim S/O Abdul Hamid Khan. Copy of appointment order dated: 19.04.2018 of Fazal Rahim who has been appointed in place of appellant is attached as **Annexure - K**.

16. That appellant has been terminated from service only upon Show Cause Notice and no regular inquiry has been conducted by the Assistant Director LGRRD Lakki Marwat before issuing termination order dated 18.04.2018 of appellant. Which is against the law, rules and regulations.

17. That no summary of allegation has been given to the appellant nor opportunity of hearing has been given to the appellant before issuing termination order of the appellant. Which act of Assistant Director LGRRD Lakki Marwat is also against the very spirit of the Judgment dated 28.02.2018 of the Peshawar High Court Bannu Bench in which it is clearly held that **Opportunity of hearing must be given to the appellant.**

18. That compliance report submitted by the Assistant Director LGRDD Lakki Marwat is also against the spirit of the Judgment dated: 28.02.2018 of Peshawar High Court Bannu Bench and also against the law, rules, regulations and principles of Natural Justices.. Copy of compliance report of Assistant Director LGRDD Lakki Marwat is attached as **Annexure - L**.

19. That at time of appointment of Fazal Rahim on 19 /04/ 2018, there was complete ban imposed by the Election Commission of Pakistan on new appointments in all Departments Provincial as well as Federal. As such the appointment order of Fazal Rahim is also against the law and Ban Order.

It is therefore, most humbly requested that on acceptance of my Departmental Appeal, the appointment order dated 19.04.2018 of Fazal Rahim may be cancelled and as such the termination order dated 18.04.2018 of appellant may very graciously be set aside being illegal, unlawful and without lawful authority and appellant may kindly be re-instated in service as Class-IV with all back benefits

Ihsan
APPLICANT / APPELLANT

Ihsan Ullah S/O Faiz Ullah
Naib Qasid
Village Council Abba Khel - IV
District Lakki Marwat

Dated: *[Signature]*

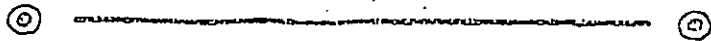
یعدالت جناب سرسٹریٹ جیٹوئل سوپہ سیرجہ پشاور

منجانب ایڈوائس

دھان الہہ بنام محمد علی دھیر

دعوی اپیل

باعضرت شریک ایٹک



بقدر مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور
کیسٹیم سید احمد خان سرور نے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب
موصوف کو مقدمہ کی وکل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ تقریر ثالث و فیصلہ بر عطف
یہ ہے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست
ہر قسم کی تعلیق اور اس پر دستخط کرانے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری بکطرفہ یا اپیل کی برآمدگی
اور تسویغ یا نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور
کے وکل یا جزیوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقریر کا اختیار ہوگا
اور انصاف مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظر
قبول ہوگا و دوران مقدمہ میں جو فرجیہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب
موصوف ہوں گے نیز بقایا و فرجیہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام درجہ
پر ہو یا عدسے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ رکھ دیا کہ سند ہے۔

المزوم ۲۹-۸/۱۸

العبد العبد العبد

سید محمد علی دھیر
سنہ ۱۳۸۵ھ
ایڈووکیٹ
ارباب پشاور
ایڈووکیٹ

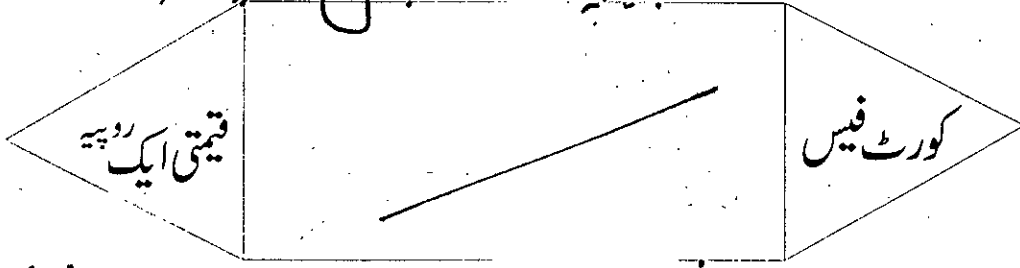
عن رخصتہ تار
ایڈووکیٹ

محمد علی دھیر
ایڈووکیٹ

Jagan

وکالت نامہ

بعدالت جمیعین سے دستاویزوں کی کاپیوں کا ایشیا اور



2019ء منجانب ریٹائرمنٹ (فضل الرحیم) بنام اسٹیٹ ٹیلی فون کمپنی وغیرہ

4 فروری

مورخہ
مقدمہ
دعویٰ
جرم

احسان اللہ
SA-1078/018
باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب وہی وکیل کاروائی متعلقہ آن
مقام پشاور کے لئے محمد طارق قریشی ایڈووکیٹ کی
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 و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت
ڈگری کرانے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زر
اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا ایٹیل کی برآمدگی او منسوخ
دانہ کرنے ایٹیل نمائی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی
کاروائی کے واسطے اور وکیل یا مختیار قانونی کو ہمراہ یا اپنی بجائے تقرر کا کا اختیار ہوگا اور صاحب
مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہونگے۔ اور اس کا ساختہ پر ساختہ منظور قبول
ہوگا اور دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق وکیل صاحب
موصوف ہونگے۔ نیز بقایا و خرچہ کی وصولی کرینکا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ پر ہو
یا جگہ سے باہر ہو تو وکیل صاحب پابند ہونگے کے پیروی مقدمہ مذکور کریں لہذا وکالت
لکھ دیا تاکہ سند رہے

Accepted

(Signature)

الرقوم 4 ماہ فروری 2019ء
العبد گواہ شہد العبد

فضل الرحیم منظور

بمقام پشاور کے لئے منظور ہے



محمد طارق قریشی ایڈووکیٹ

سپریم کورٹ آف پاکستان

موبائل: 0300-5768804

یاسر مروت پرنٹنگ پریس پشاور موبائل: 0333-9123075

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No 1078/2018

Ihsanullah

Versus

Govt. of KPK & others.

INDEX.

#	Description of Documents	Annexure	Pages
1.	Comments.	-	1-3
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3.	Copy of judgment dated 11.12.2018 of PHC Bannu Bench.	A	5-9

Deponent



Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.
(Respondent No.1).

Assistant Director
Local Govt. & Rural Dev:
Deptt: Lakki Marwat.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No 1086/2018

Ihsan Ullah S/O Faiz Ullah Khan
R/O Mela Shahab Khel, VC Mela Shahab Khel
Ex-Naib Qasid, Village Council Abba Khel-IV
Lakki Marwat.....Appellant

VERSUS

1. Assistant Director, Local Govt. & Rural Development
Department, Lakki Marwat.
2. Director General, Local Govt & Rural Dev. Department
Khyber Pakhtunkhwa, Peshawar.
3. Secretary, Govt. of Khyber Pakhtunkhwa Local Govt. Elec.
and Rural Development Department, Peshawar.
4. Fazal Rahim S/O Abdul Hamid Khan
R/O Village Abba Khel Lakki Marwat.
Naib Qasid, Village Council Abba Khel-IV
Lakki Marwat.
..... Respondents

PARA-WISE COMMENTS IN RESPECT OF RESPONDENT NO.1, 2 & 3.

Respectfully Sheweth.

PRILIMINARY OBJECTIONS.

1. That the appellant has no cause of action & locus standi.
2. That the appellant has been es-topped by his own conduct to file the appeal.
3. That the instant appeal is time barred.
4. That the appeal is bad for misjoinder and nonjoinder of necessary parties.
5. That the Honorable Court has no jurisdiction to adjudicate the appeal.

ON FACTS.

1. Para No.1 is correct to the extent that the posts of class- IV were advertised by the Director General, LGRDD, KPK, Peshawar on 04/07/2015.
2. Para No.2 is incorrect. The appellant was appointed as Naib Qasid on temporary basis.
3. This is correct to the effect that the writ petition filed by the Respondent No.4 was disposed of by the honorable Peshawar High Court Bannu Bench on 28/02/2018 along with other writ petitions.

4. Correct to the effect that appellant submitted his reply to the Show Cause Notice issued to him by the Assistant Director, LGRDD, Lakki Marwat being respondent No.1 in the present appeal and was found unsatisfactory.
5. That Para No.5 is correct to the extent that the services of appellant were terminated on 18/04/2018 on the grounds that the appellant was not bonafide resident of the Council to which he was appointed in 2016. The advertisement floated in the Daily Newspapers in 2015 bore a condition that the candidate should be inhabitant of the council concerned.
6. That Para No.6 is correct to the extent that the Assistant Director, Local Govt. and Rural Development Department Lakki Marwat (R.No.1) appointed R.No.04 being bonafide resident of the said Council against the post so vacated by the appellant which also was in pursuance of the said judgment dated 28/02/2018 as well as the CMA of the appellant dismissed by the Peshawar High Court Bannu Bench vide its judgment dated 11.12.2018. Copy of the judgment is as Annex-A.
7. In response to Para no.7 it is stated that the appeal of the appellant was considered and filed having no merit.

ON GROUNDS.

- a. That it is upon the appellant to prove his qualifications.
- b. That the Para No. b is incorrect. The appointment of the appellant to another council was violation of the prescribed service rules as well as the advertisement. The Peshawar High Court Bannu Bench in its judgment 28/02/2018 ordered for reconsideration of appointment of the appellant and issuance of proper order keeping in mind the condition so incorporated in the advertisement, which was done accordingly.
- c. Incorrect. The post of Naib Qasid in the Union Council was not vacant as bonafide resident of the said Council was earlier appointed there.
- d. Incorrect. Since the matter was in the court pending decision and that rectification of the mistake was not possible therefore show cause notice was issued to the appellant and was removed from service to implement the said judgment. Moreover, the post of Naib Qasid was also not vacant.
- e. Incorrect. The appointment of the appellant was contrary to the condition so incorporated in the advertisement as well as the prescribed Service Rules.
- f. Incorrect. The appellant could not be appointed out of his Village/Neighborhood Council.

- g. Incorrect. The post of Naib Qasid in the concerned Village/Neighborhood Council was advertised as per Service Rules.
- h. Incorrect. The Respondent No.4 was found eligible for the post of Naib Qasid by the competent authority and was appointed in pursuance of the decision of the court, as noted in the preceding paras.
- i. As replied in Para-h above.
- j. Incorrect. The word "Termination" prevails in the constitutional provisions regarding terms and conditions of service of civil servants therefore this word is not alien at all.
- k. As replied in Para-b above.
- l. Incorrect. The respondent filed writ petition in Peshawar High Court Bannu Bench which was decided on 28/02/2018. The competent authority implemented the court decision within the time given by the court, therefore, the appellant was not given any vested right.
- m. Incorrect. As replied in Para-b above.

It is therefore requested that this Honorable Tribunal may graciously dismiss appeal of the appellant with cost.



Assistant Director
Local Govt. & Rural Dev:
Deptt: Lakki Marwat.

Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.
(Respondent No.1).

Director General
Local Govt: Rural Development
Khyber Pakhtunkhwa

Director General
Local Govt. & Rural Development
Department, KPK, Peshawar.
(Respondent No.2).



(SECRETARY)
Govt: of Khyber Pakhtunkhwa
Local Govt: Elections & Rural Dev:
Department

Secretary
Local Govt. & Rural Development
Department, KPK, Peshawar.
(Respondent No.3).

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No 1078/2018

Ihsanullah

Versus

Govt. of KPK & others.

Affidavit

I, Mr. Yousaf Khan, Assistant Director, Local Govt. & Rural Development Department, Lakki Marwat solemnly affirm that the contents of comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Deponent



Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.
(Respondent No.1).
Assistant Director
Local Govt: & Rural Dev:
Deptt: Lakki Marwat.

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,
BANNU BENCH.**

(Judicial Department)

CM NO.330-B of 2018 in

Writ petition No:279-B of 2016

Hamid Usman

Vs.

**Govt. of Khyber Pakhtoonkhwa
and others**

JUDGMENT

Date of hearing 11-12-2018

Present: Bailiwork by

Rudam Khan Kundli A-02

and Shahid Saleem Mirza Bhal D-02

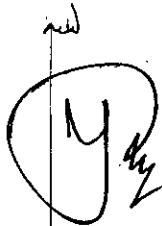
By Shahid Hameed Bhal A-02

Work by Muhammad Amir Khan Mehdal Khan A-02


SHAKEEL AHMAD, J.--- Through this common judgment we propose to decide the instant application as well as the following connected applications as common question of law and facts are involved therein:-

1- CM NO.332-B/2018 in WP NO.438-B/2016
(Titled Haroon Khan Vs Govt. of KPK etc)

2- CM No.333-B/2018 in WP NO.260-B/2016
(Titled Yousaf Jamal Vs Govt. of KPK etc)



**Assistant Director
Local Govt. & Rural Dev:
Deptt: Lakki Marwat.**

ATTESTED

**EXAMINER
Peshawar High Court
Bannu Bench**

- 3- CM No.334-B/2018 in WP NO.278-B/2016
(Titled Alta fur Rahman Vs Govt. of KPK
etc).
- 4- CM No.335-B/2018 in WP NO.305-B/2016
(Titled Farhatullah Vs Govt. of KPK etc)
- 5- CM No.336-B/2018 in WP NO.535-B/2016
(Titled Farboq Khan Vs Govt. of KPK etc)
- 6- CM No.337-B/2018 in WP NO.343-B/2016
(Titled Imtiaz Ahmad Vs Govt. of KPK etc)
- 7- CM No.338-B/2018 in WP NO.529-B/2016
(Titled Muhammad Ismail Vs Govt. of KPK
etc)
- 8- CM No.339-B/2018 in WP NO.22-
B/2016(Titled Siraj-Ud-Din Vs Govt. of
KPK etc)
- 9- CM No.340-B/2018 in WP NO.350-B/2016
(Titled Subzali Khan Vs Govt. of KPK etc)
- 10- CM No.341-B/2018 in WP NO.316-
B/2016(Titled Farmanullah Vs Govt. of
KPK etc)
- 11- CM No.342-B/2018 in WP NO.386-B/2016
(Titled Mumtaz Khan Vs Govt. of KPK etc)
- 12- CM No.343-B/2018 in WP NO.297-B/2016
(Titled Dil Jan Vs Govt. of KPK etc)
- 13- CM No.345-B/2018 in WP NO.285-B/2016
(Titled Tahir Khan Vs Govt. of KPK etc)
- 14- CM No.346-B/2018 in WP NO.261-B/2016
(Titled Irfanullah Vs Govt. of KPK etc)



Assistant Director
Local Govt. & Rural Dev:
Deptt: Lakki Marwat.

Azmat Awan

ATTESTED

EX. CLERK
Peshawar High Court
Kamra Bench

(DB) Mr Justice Muhammad Nasir Mahboob & Mr. Justice Shakeel Ahmed


2- Through all these petitions filed under section 47 read with Section 151 CPC, the applicants have called in question the validity of orders, passed by the Assistant Director LG and RDD of their respective districts whereby their services were terminated.

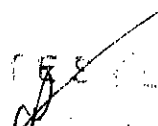
3- According to the learned counsel for the applicants, the respondents have misconceived and misinterpreted the judgment dated 28/02/2018 passed by this Court in Writ Petition No.279-B/2016, and wrongly terminated the services of the applicants through separate office orders, therefore, the same are liable to be set aside.

4- On the other hand, learned counsel appearing on behalf of the private respondents contended that in pursuance of order of this court, the appointment orders of the applications were re-examined and it was found that their appointments were made against the rules, policy and terms and conditions, incorporated in the advertisement, therefore, their services were rightly terminated.

5- Learned Additional AG, appearing on behalf of the official respondents, assisted by the Assistant Director L.G & RDD added that the present applications are not competent, and contended that if the applicants feel themselves to be aggrieved from their termination

Azmat Awan (113) Mr. Justice Muhammad Nasir Mahfooz & Mr. Justice Shakeel Ahmed


Assistant Director
Local Govt: & Rural Dev:
Deptt: Lakki Marwat.


OFFICE
LAKKI MARWAT

orders, they can challenge the validity of the same through a Constitutional petition.

6- We have heard arguments of learned counsel for the parties and have gone through the record with their able assistance.

7- This court by its judgment dated 28.02.2018 rendered in Constitutional Petition No.279-B/2016 directed the Assistant Director LG and RDD/competent authority of their respective districts to re-examine the appointment orders of the applicants/private respondents, their merit position and pass an appropriate order keeping in mind the rules, policy and terms and conditions incorporated in the advertisement for appointment as Class-IV employee, and after providing the parties an opportunity of hearing and submit compliance report to the Registrar of this court. In pursuance thereof, the Assistant Director Local Government and Rural Development department, examined the cases of the applicants individually in their respective district and held that their appointments were made against the rules, policy and terms and conditions incorporated in the advertisement for Class-IV employees, consequently terminated the applicants from services. Prior to termination order all the applicants were given right of audience. The applicants are not aggrieved from the

Azmat Awan (DB) Mr. Justice Muhammad Nasir Mahfooz & Mr. Justice Shakeel Ahmed

Assistant Director
Local Govt: & Rural Dev:
Deptt: Lakki Marwat.

ATTESTED

EXAMINER
Peshawar High Court
Danno Bannu

judgment of this court. They have urged before us that their termination order is illegal. Admittedly this court is not acting as an Executing court, therefore, in our view the petitions filed by the applicants U/S 47 read with section 151 Cr.P.C is not competent. It is not open for the applicants to raise the question of validity of the order of their termination through these petitions. The question of validity of the impugned order can be raised by a separate lis. There is nothing in these applications which warrants the proposition that this court can adjudge the validity of the termination order of the applicants.

8- For this reason, we dismiss this petition as well as connected petitions with no order as to costs, however, the petitioners shall be at liberty to seek their relief through separate lis before the appropriate forum, if so desired.

Announced.
11-12-2018

Sd/- Mr. Justice Muhammad Nasir Mahfooz

Sd/- Mr. Justice Shakeel Ahmad

RECORDED TO BE TRUE COPY

11/12/18

Assistant Director
Local Govt. & Rural Dev.
Deptt. Larkana

[Handwritten signature]
[Handwritten signature]
[Handwritten signature]

Assistant Director
Local Govt. & Rural Dev.
Deptt: Larkna Marwat.

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S. A. No. 1078 /2018

Ihsanullah

versus

Director & Others

REPLICATION**Respectfully Sheweth,****Preliminary Objections:**

All the preliminary objections of the respondents are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no cause of action / locus standi, estoppel, time barred, bad for mis-joinder and non-joinder of necessary parties and has no jurisdiction in the matter. He has not come to the hon'ble Tribunal with clean hands and has concealed material facts and malafide.

ON FACTS

1. Admitted correct by the respondents regarding advertisement. In the advertisement, candidates throughout the Province were directed to apply for the post and the selection will be made on merit, however, preference would be given to the local candidate. The advertisement was not specifically meant for concerned Village Council as is evident from the same.
2. Not correct. The para of the appeal is correct regarding appointment of appellant as Naib Qasid. Rest of the para of reply of respondents is without proof regarding advertisement for the concerned Village Council. Appellant performed his duties at the said post and also enjoyed monthly salaries.

3. Admitted correct by the respondents regarding implementation of the judgment of the High Court. The order of appointment of appellant was made by the respondents after observing the due codel formalities, by keeping in view the advertisement which was for the whole of KPK and not specifically for concerned Village Council.
4. Admitted correct by the respondents regarding Show Cause Notice and its reply. Here it is pertinent to point out that the authority mis-used her power as the candidates were appointed in different Village Council instead of his own one, as the advertisement says so.
5. Not correct. Appellant services were illegally terminated as no fulfilled enquiry was conducted as per the mandate of law and more so, in this para of the appeal, the position has been explained by appointing candidates in other Village Councils instead of in their own Village Council as per advertisement. They are still in service. No surplus employee was ever appointed at the post but should have been adjusted and not appointed.
6. Not correct. When in the Village Council of the appellant another candidate was appointed then it was not the fault of appellant but of the authority. Whole record submitted to the authority was quite clear but it was the authority who despite the complete documents appointed him in other Village Council and even if he was appointed in other Village Council, the same was also not illegal as per the spirit of advertisement. The hon'ble High court did not directed the respondents to terminate services of appellant.
7. Not correct. The para of the appeal is correct regarding submission of appeal before the authority. The newly appointed candidate, R. No. 04 was never gone through the process of selection for the post.

More so, on the same and similar subject matter, the hon'ble Peshawar High Court, Bannu Bench was pleased to dismiss the W.P No. 430-B/18, Jamil Khan vs Govt. of KP & Others on 24-06-2019 by not acceding with his request on the same issue.
(Copy Attached)

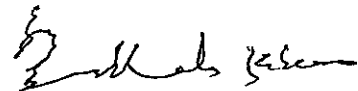
GROUND:

All the grounds of the appeal are legal and correct, while that of the comments are illegal and incorrect. The same are once again relied upon. In the advertisement, applications were invited from the candidates of the KP and not of the Village Council concerned, so the appointment of appellant was quite per its mandate. Giving preference to the candidate of concerned Village Council, does not mean that other candidate could not compete for the said post.

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

Appellant

Through



(Saadullah Khan Marwat)

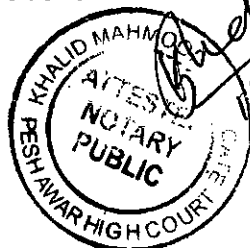
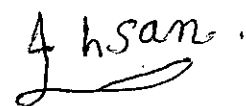
Advocate,

Dated: 11-09-2019

AFFIDAVIT

I, *Theravellat*, appellant do hereby solemnly affirm and declare that contents of the **Appeal & replication** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

DEPONENT

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
BANNU BENCH.**

(Judicial Department)

W.P No. 430-B of 2018



Jameel Khan Vs. Govt: of KP etc:

JUDGMENT

Date of hearing 24/6/2019

Appellant-Petitioner By Masood Adnan Adv. and
Masood Iqbal Khattak Adv.

Respondent(s) By Shahid Hameed Qureshi Adv. & G.
Other No.4 By Muhammed Tariq Qureshi A.S.

SHAKEEL AHMAD, J.--- By means of this

Constitutional petition filed U/A-199 of the Islamic Republic of
Pakistan, 1973, petitioner sought the following relief:-

"It is, therefore most humbly
prayed that:-

- I. the impugned appointment order of the
respondent No.4 may very kindly be set
aside/ cancelled by declaring it to be,
illegal, improper, un-just, discriminatory
and of no legal effect.

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

II. *The respondents may kindly be directed to appoint the petitioner as class-IV BPS "I" for the village council Aba Khel (I), according to law, rules and policy.*

III. *Any other appropriate remedy according to law as this honorable court deems fit. "*

2. Facts of the case, in brief, are that by means of an advertisement dated 07.7.2015, the respondent No.2 invited applications for appointment against the post of Class-IV employees (BPS-1) on the terms and conditions mentioned therein. In pursuance thereof petitioner applied for the same, competed with others, however, on merit he could not be selected rather one Imranullah/respondent No.4 was appointed as such, hence, this petition.

3. In pursuance of order of this court, respondents No.3 & 4, submitted their para-wise comments raising therein many legal and factual objections.

4. It was mainly argued by the learned counsel for the petitioner that respondent No.4, Imranullah, had neither applied against the impugned post nor belongs to village council/Neighbourhood council, Aba Khel-(1), therefore, his appointment is illegal, without lawful authority and the same is liable to be struck down and in his place, petitioner is entitled for appointment.

5. As against that, learned counsel appearing on behalf of respondent No.4 and learned Addl: A.G appearing on behalf of official respondents jointly argued that respondent No.4 belongs to village council/Neighbourhood council, Aba Khel-(1) District Lakki Marwat as is reflected from Annexure-H at Page-15 and minutes of meeting of selection and recruitment committee enclosed as Annexure-A at Page-6 of the comments, and prayed for dismissal of the writ petition.

6. Arguments heard and record perused.

7. It is evident from the record that through a public notice dated 07.7.2015, applications were invited for appointment against Class-IV employees BPS-01 on the terms

Imranullah (D.B) Justice Muhammad Nasir Mahfooz and Justice Shakceel Ahmad

ATTESTED

ATTORNEY
Peshawar Court
Bannu Bench

and conditions mentioned therein, pursuant thereto the contesting parties appalied for the same, competed with others, however, respondent No.4 was appointed as such, on merit. It was specifically mentioned in the advertisement that posts were to be filed from the District concerned/ village council/Neighbourhood council, and preference will be given to the resident of village council concerned. Perusal of the minutes of the meeting of selection and recruitment committee enclosed as Annexure-A at Page-6 reflects that name of the petitioner appears at S.No.34 and in the column of village council/Neighbourhood council, it was recorded as Abba Khel (1) and the post in question was filled through open competition, also belongs to village council/Neighbourhood council. The question whether the petitioner applied for appointment against the impugned post or not and whether the petitioner belongs to village council, Aba Khel-(1) are purely factual in nature which can only be answered after recording pro and contra evidence and this exercise cannot be done in writ jurisdiction.

Imranullah (D.B) Justice Muhammad Nasir Mahfooz and Justice Shakeel Ahmad

ATTESTED

EXAMINER
Peshawar High Court
Bannu Bench

8. For what has been discussed above, this writ petition is dismissed being not maintainable, however, the petitioner shall be at liberty to seek her relief before the court of competent jurisdiction, if so desired.

Announced.
24.6.2019.

SA/ Mr. Justice Muhammad Nasir Mahfooz

SA/ Mr. Justice Shakeel Ahmad

CERTIFIED TO BE TRUE COPY

28/6/19

Examiner

Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1968

Handwritten signature and date: 26/6/19

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1078 / 2018.

Ahsanullah

Appellant

VERSUS

Assistant Director, Local Government & others

Respondents

INDEX

S.No.	Description of Documents	Annexure	Page
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2.	Copy of appointment order of replying respondent	A	6
3.	Copy of arrival report of replying respondent	B	7
4.	Copy of verification reports	C	8
5.	Copy of judgment of the High Court	D	9-13

Dated: 24.03.2019

Replying Respondent No. 04
Through Counsel

فضل الرحم

Muhammad Tariq Qureshi
Advocate Supreme Court of Pakistan

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 1078 / 2018.**

Ahsanullah

Appellant

VERSUS

Assistant Director, Local Government & others

Respondents**PARA-WISE COMMENTS / REPLY ON BEHALF OF PRIVATE****RESPONDENT NO. 4****Preliminary Objections**

- i. This Hon'ble Court has got no jurisdiction to entertain instant appeal.
- ii. Appellant has no locus standi.
- iii. Appellant is not come to this Hon'ble Court with clean hand.
- iv. The instant appeal is time barred.
- v. The appellant has concealed material facts from this Hon'ble Court.
- vi. The appellant is stopped by his own conduct to sue.
- vii. That, there is malafide on the part of the appellant.

COMMENTS ABOUT FACTS:

1. That, the para No.1 is correct and pertains to the record.
2. That, the para No.2 is incorrect. The appellant was not appointed through the said prescribed procedure. The recommendations of the selection and recruitment committee were in clash and contradictory to the terms and conditions lay down in the advertisement and relevant policy. The appellant was not even belonging to the ~~Village~~ Village Council for which the post was allocated. The post in question was to be filled on the basis of village council, but in the case in hand, even the person appointed i.e. appellant hails from another ~~Village~~ Village Council. Interesting is the fact that appellant has not joined the service formally / as per law through charge report and he cannot claim a single day in a duty for discharge of his duties. He has not

performed duty a single day rather has been enjoyed salaries while sitting at home.

3. That, the para No.3 is correct. The part of the judgment reproduced is fabricated and not the real excerpt from the judgment. The judgment also refers to keep the terms and conditions and merit position of the appellant and replying respondent. The respondents therein were supposed to make order according to the merit, policy and regulation, which the respondent have made accordingly.
4. That, the para No. 4 is correct and pertains to record.
5. That, the appellant was rightly terminated after observance of all the codal formalities and requirements. The appellant badly failed to explain and prove his merit, position and rights. The appellant was not only lagging behind in score but also not permanent resident of the same village council for which the post in question was allotted.
The second paragraph is refuted. No such discrimination persons are there. The stated persons are either on surplus basis or the inquiries into the validity of their appointments are pending against them.
6. That, the replying respondent No. 4 was appointed according to law and to the soul of the said judgment because the replying respondent No.4 was party to the petition whereon the judgment in question was passed. Since, the replying respondent was far better than the appellant, hence he was appointed. In identical cases / matters the High Court has directed the respondents for removal of persons who had been appointed from the outside ~~Village~~ Council, Village Council.
7. That, the para No.7 is incorrect. The appellant has no locus standi / cause of action. The instant appeal is premature. Hence, liable to be dismissed forthwith.

COMMENTS / REPLY ABOUT GROUNDS:

- A. Since, the appellant does not meet the basic eligibility, hence his qualification is of no value.
- B. The appellant was not deserving for appointment at his own Village Council that is why he was ignored. The question arises that why did the appellant kept mum on the said illegality?
- C. That, the para "C" is not sustainable. The appellant could not be transferred to his own Village Council due to the policy / rules.
- D. The lapses were not curable. The appellant has been removed in the light of the judgment of the Peshawar High Court, Bench Bannu.
- E. The para replied earlier.
- F. The para is not logical. There are some terms and condition prescribed for the post.
- G. The respondent No. 4 / replying respondent had duly applied for the post. The post was required to be advertised again.
- H. In wake of exclusion of the appellant, the next available and deserved candidate is the replying respondent. The Local Government Bodies, for recruitment of class-IV, need not to constitute committees for appointment.
- I. Incorrect, the para is already explained being baseless.
- J. The word "termination" is equivalent word for the word "removal". The ground is mere technicality being not logical.
- K. The para has already been refuted categorically. The appointment was challenged immediately and was subject to the litigation ab-initio which was hit by the judgment in question.

L. The salaries may be recovered from the appellant, which were given to him on his own risk and cost.

M. That, no melafide could be pointed out by the appellant on the part of official respondents, rather the termination was in compliance with the judgment of Peshawar High Court Bench Bannu.

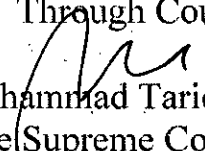
N. That, the following are the documents on which replying respondent No.04 places his reliance:

- (i) Copies of appointment order of replying respondent, arrival report of replying respondent are annexed herewith as Annexure "A,B".
- (ii) Copies of verification reports, judgment of the High Court are annexed herewith as Annexure "C,D".

In wake of the above humble submissions and facts, the appeal in hand may kindly be dismissed.

Dated: 24.03.2019

Replying Respondent No. 04
Through Counsel


Muhammad Tariq Qureshi
Advocate (Supreme Court of Pakistan)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 1078/2018.**

Ahsanullah

Appellant

VERSUS

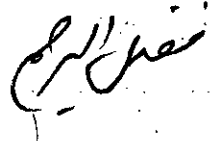
Assistant Director, Local Government & others

Respondents**AFFIDAVIT**

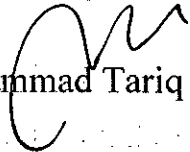
I, Fazl Rahim s/o Abdul Hamid r/o Abba Khel-IV, Tehsil & District Lakki Marwat hereby solemnly affirm and declare that the contents of instant comments / reply are true and correct to the best of my knowledge and belief.

Deponent

Fazl Rahim



Identified by


Muhammad Tariq Qureshi Advocate



6 A
OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVT: & RURAL DEVELOPMENT
DEPARTMENT, LAKKI MARWAT.

Dated April 19 /2018

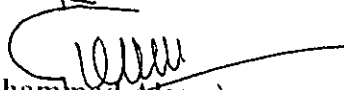
OFFICE ORDER

No. 5307-10 / In pursuance to the judgment dated 28.02.2018 of Peshawar High Court Bannu Bench in Writ Petition No.10-B/2017, Mr. Fazal Rahim S/O Abdul Hamid Khan R/O Abba Khel, Tehsil and District Lakki Marwat is hereby appointed as Naib Qasid in BPS-3 (9610-390-21310) plus usual allowances as admissible under the Rules, on regular basis, against the vacant post at VC Abba Khel-IV, District Lakki Marwat with the following terms and conditions:-

Terms and Conditions.

1. His services will be governed by the rules and regulations as are in vogue and as may be issued by the Government from time to time.
2. His services will be liable to termination on one month notice in advance from either side, but in case of resignation, without notice, two months pay shall be refunded towards Government.
3. He will be on probation for a period of one year extendable for a further period of one year and during this period he will not be entitled to apply for any long leave etc.
4. His services can be terminated at any time in case his performance is found unsatisfactory during probationary period and in case of misconduct he will be proceeded against the Removal from Service (Special Power) Ordinance, 2000 and the rules made from time to time.
5. His services are liable to be terminated if any of his documents is found fake or altered at any later stage and he will not entitle to undergo any litigation.
6. He will report his arrival to all concerned. He will also not entitle to any TA/DA for his first arrival. In case he is not willing to join the duty, he should furnish his un-willingness on a stamp paper to the office of the undersigned.
7. Before submission of pay bill to the District Accounts Officer for pay purpose, all his Certificates and Degrees will be checked and verified from the concerned Board or University as the case may be.
8. The undersigned deserves the rights to amend or add any condition to his appointment order.
9. He is required to produce Health and Age Certificate from the Medical Superintendent DHQ Hospital, Lakki Marwat.

If the above terms and conditions are accepted, he should immediately communicate his willingness and report for duty to the undersigned within 15 days, failing which this appointment order may be treated as cancelled in respect of the candidate.


(Muhammad Aleem)

Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.

Even No. & Date.

Copy forwarded to:-

1. The Director General, Local Govt. & Rural Development Deptt: KP, Peshawar.
2. The District Accounts Officer, Lakki Marwat.
3. The Progress Officer, LGRDD, Lakki Marwat to arrange for verification of documents.
4. Candidate concerned.


Assistant Director
Local Govt. & Rural Development

7 B

The Nazim village council Abba khel 4

Sub; Arrival Report.

In response with the assistant director LG & RDD Lakki Marwat Office order
No 3507-10 dated 19-04-2018. I MR. Fazal Rahim hereby submit my arrival report
As Naib Qasid village council -4 today on 19-04-2018


(Fazal rahim)

N/Qasid V/C-4

Abba khel-4

Office of the Nazim village council-4

Copy forwarded to;

- 1-The Director General LG & RDD K.P Peshawar
- 2-The Assistant Director LG & RDD Lakki Marwat
- 3-The D.A.O Lakki Marwat
- 4-The PO LG & RDD Lakki Marwat

Nazim 

Village council

Abba khel-4

Rehman Ullah Khan
Nazim, V/C Abba Khel-4
Distt. Lakki Marwat

تقدیر کی جاتی ہے۔ کہ میں فضل الرحمن

ولید عبد الحمید خان تحصیل و ضلع ٹکسیر و تھلہ

طوائف ویلیج کونسل ابھیل - 4 کانسٹیبل اور سائز
اور باشندہ ہے۔

R

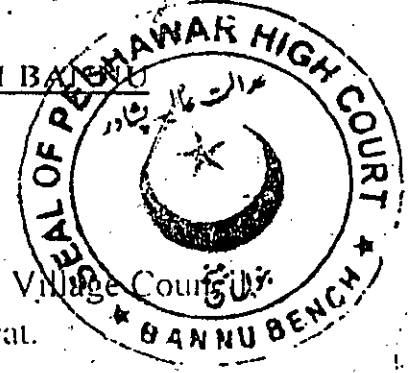
ناظم
ویلیج کونسل ابھیل
4. تحصیل و ضلع ٹکسیر و تھلہ

Rehman Ullah
Nazim VIC Abba K...
Distt: Lakki Marwat

C 9

BEFORE THE PESHAWAR HIGH COURT BENCH BAJAND

Writ Petition No. 285/2016



Shakeel Khan son of Mushk Alam resident of Wanda Rehmana, Village Council
Alam Shah Khel, Tehsil and District Lakki Marwat.

....(Petitioner)

Vs

1. Govt: of Kyber Pakhunkhwa through Secretary Local Govt: and Rural Development Department, Peshawar.
2. Director General, Kyber Pakhunkhwa, Local Govt: and Rural Development Department, Peshawar.
3. Assistant Director, Local Govt: and Rural Development Department Lakki Marwat.
4. Deputy Commissioner, Lakki Marwat.
5. District Accounts Officer, Lakki Marwat.
6. Tahir Khan son of Mirza Ali Khan resident of Begu Khel, Village Council Begu Khel, Tehsil and District Lakki Marwat.

(Respondents)

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN

RESPECTFULLY SHEWETH:

1. That, the petitioner is permanent resident of village Wanda Rehmana and VC also Alam Shah Khel and have educational qualification of SSC.
2. That, the respondent No. 2 advertised the post of Peons/Class-IV, one each in every village Council of District Lakki Marwat.
3. That, the advertisement has having condition that for each UC, the candidates who is the permanent resident of same village will be appointed.

That, the Petitioner being eligible cum fit the post applied and stood most deserved due to qualification and in his village/village council.

ATTESTED

EXAMINER
Peshawar High C.

15 APR 2016

Additional Registrar

(Shakeel Khan Vs Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

2. W.P.No.292-R2016

(Zainullah Khan Vs Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

6. W.P.No.343-R2016

(Shahid Vs Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

7. W.P.No.386-R2016

(Gul Tayaz Khan Vs Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

8. W.P.No.467-R2016

(Zainullah Khan Vs Director General Local Govt. & Rural Development and others).

9. W.P.No.529-R2016

(Parviz Khan Vs Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

10. W.P.No.737-R2016

(Zainullah Khan Vs Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

3. The common facts of all these writ petitions are that the petitioners are the residents of their respective Union Councils. In response to the advertisement made in the newspaper the petitioners applied for their appointments as Class-IV employees, but they were denied appointments and the people from other Union Councils were appointed, hence these constitutional petitions.

3. After arguing the case at great length, the learned counsel for the petitioners stated at the bar that let all these

ATTESTED
 EXAMINER
 Government High Court
 Islamabad

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cases be sent to the competent authority to re-examine the cases of appointment of the private respondents and to find out whether they have been appointed in accordance with law, policy and the terms and conditions incorporated in the advertisement or not. The learned counsel representing the private respondents in all the writ petitions and the learned A.A.G appearing on behalf of official respondents assisted by representatives of the department agreed with the contention of the learned counsels for the petitioners.

4. In view of above, we send back all these cases to the Assistant Director Local Government and Rural Development/competent authority of their respective districts to re-examine the appointments of the private respondents, merit position of the petitioners and pass an appropriate order keeping in mind the rules, policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees, after providing the parties an opportunity of hearing and submit compliance report to Additional Registrar of this Court. The entire process shall be completed within 02 months positively. With these observations the writ petitions are disposed of accordingly.

Announced
Dr: 28.02.2018.

Sd/- Mr. Justice Abdul Shatoor-J

Sd/- Mr. Justice Shakesh Ahmad J

CERTIFIED TO BE TRUE COPY

17/3/18
Sd/- Mr. Justice Abdul Shatoor and Mr. Justice Shakesh Ahmad J

6/11
02/3/2018

Intran

(1) B) Mr. Justice Abdul Shatoor and Mr. Justice Shakesh Ahmad J

2 (11)

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
BANNU BENCH

(Judicial Department)

W.P.No.254-B/2016



Sharifullah

Versus

Govt. of K.P.K through Secretary Local Govt. and
Rural Development and others

JUDGMENT

Date of hearing: 28.02.2018.

Appellant-petitioner by Mr. M. Tariq Qureshi
Adv;

Respondent Govt. by Mr. Shaukat
Naveed Qureshi A.A.S.

ABDUL SHAKOOR, J.- By this single judgment we
propose to decide the following petitions having identical
questions of law and facts:-

1. W.P.No.254-B/2016.
(Sharifullah Vs. Govt. of K.P.K through
Secretary Local Govt. and Rural
Development and others).
2. W.P.No.260-B/2016.
(Naveedullah Vs. Govt. of K.P.K through
Secretary Local Govt. and Rural
Development and others).
3. W.P.No.274-B/2016.
(Muhammad Sabir Vs. Govt. of K.P.K
through Secretary Local Govt. and Rural
Development and others).
4. W.P.No.285-B/2016

ATTESTED

DW
EXAMINER
Peshawar High Court,
Bannu Bench

SCANNED

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(Shakeel Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

5. W.P.No.292-B/2016.
(Zafarullah Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

6. W.P.No.343-B/2016.
(Shafiullah Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

7. W.P.No.386-B/2016
(Gul Tayaz Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

8. W.P.No.467-B/2016
(Zainullah Khan Vs. Director General Local Govt. & Rural Development and others).

✓ 9. W.P.No.529-B/2016.
(Parvaiz Kamal Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

10. W.P.No.535-B/2016
(Fasiullah Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

2. The common facts of all these writ petitions are that the petitioners are the residents of their respective Union Councils. In response to the advertisement made in the newspaper the petitioners applied for their appointments as Class-IV employees, but they were denied appointments and the people from other Union Councils were appointed, hence, these constitutional petitions.

(AD)

3. After arguing the case at great length, the learned counsels for the petitioners stated at the bar that let all these

ATTESTED
EXAMINER
Punjab High Court
Lahore

Inman (D) B) Mr. Justice Abdul Shakoor and Mr. Justice Shakeel Ahmad, JJ

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S. A. No. 1078 /2018

Ihsanullah

versus

Director & Others

REPLICATION**Respectfully Sheweth,****Preliminary Objections:**

All the preliminary objections of the respondents are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no cause of action / locus standi, estoppel, time barred, bad for mis-joinder and non-joinder of necessary parties and has no jurisdiction in the matter. He has not come to the hon'ble Tribunal with clean hands and has concealed material facts and malafide.

ON FACTS

1. Admitted correct by the respondents regarding advertisement. In the advertisement, candidates throughout the Province were directed to apply for the post and the selection will be made on merit, however, preference would be given to the local candidate. The advertisement was not specifically meant for concerned Village Council as is evident from the same.
2. Not correct. The para of the appeal is correct regarding appointment of appellant as Naib Qasid. Rest of the para of reply of respondents is without proof regarding advertisement for the concerned Village Council. Appellant performed his duties at the said post and also enjoyed monthly salaries.

3. Admitted correct by the respondents regarding implementation of the judgment of the High Court. The order of appointment of appellant was made by the respondents after observing the due codel formalities, by keeping in view the advertisement which was for the whole of KPK and not specifically for concerned Village Council.
4. Admitted correct by the respondents regarding Show Cause Notice and its reply. Here it is pertinent to point out that the authority mis-used her power as the candidates were appointed in different Village Council instead of his own one, as the advertisement says so.
5. Not correct. Appellant services were illegally terminated as no fulfilled enquiry was conducted as per the mandate of law and more so, in this para of the appeal, the position has been explained by appointing candidates in other Village Councils instead of in their own Village Council as per advertisement. They are still in service. No surplus employee was ever appointed at the post but should have been adjusted and not appointed.
6. Not correct. When in the Village Council of the appellant another candidate was appointed then it was not the fault of appellant but of the authority. Whole record submitted to the authority was quite clear but it was the authority who despite the complete documents appointed him in other Village Council and even if he was appointed in other Village Council, the same was also not illegal as per the spirit of advertisement. The hon'ble High court did not directed the respondents to terminate services of appellant.
7. Not correct. The para of the appeal is correct regarding submission of appeal before the authority. The newly appointed candidate, R. No. 04 was never gone through the process of selection for the post.

More so, on the same and similar subject matter, the hon'ble Peshawar High Court, Bannu Bench was pleased to dismiss the W.P No. 430-B/18, Jamil Khan vs Govt. of KP & Others on 24-06-2019 by not acceding with his request on the same issue.
(Copy Attached)

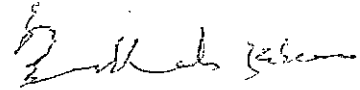
GROUNDS:

All the grounds of the appeal are legal and correct, while that of the comments are illegal and incorrect. The same are once again relied upon. In the advertisement, applications were invited from the candidates of the KP and not of the Village Council concerned, so the appointment of appellant was quite per its mandate. Giving preference to the candidate of concerned Village Council, does not mean that other candidate could not compete for the said post.

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

Appellant

Through



(Saadullah Khan Marwat)

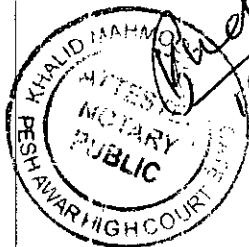
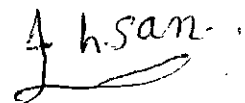
Advocate,

Dated: 11-09-2019

AFFIDAVIT

I, ~~Dr. Saadullah Khan~~, appellant do hereby solemnly affirm and declare that contents of the **Appeal & replication** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

DEPONENT

4

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
BANNU BENCH.**

(Judicial Department)

W.P No. 430-B of 2018



Jameel Khan Vs. Govt: of KP etc:

JUDGMENT

Date of hearing 24/6/2019

Appellant-Petitioner By Masood Adnan Adv. and

Masood Iqbal Khattak Adv.

Respondent(s) By Shalid Hameed Qureshi Adv. & Co.

Order No. 4 By Muhammed Tariq Qureshi Adv. & Co.

SHAKEEL AHMAD, J.--- By means of this

Constitutional petition filed U/A-199 of the Islamic Republic of
Pakistan, 1973, petitioner sought the following relief:-

"It is, therefore most humbly
prayed that:-

I. *the impugned appointment order of the
respondent No.4 may very kindly be set
aside/ cancelled by declaring it to be,
illegal, improper, un-just, discriminatory
and of no legal effect.*

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

SCANNED

II. *The respondents may kindly be directed to appoint the petitioner as class-IV BPS "I" for the village council Aba Khel (I), according to law, rules and policy.*

III. *Any other appropriate remedy according to law as this honorable court deems fit. "*

2. Facts of the case, in brief, are that by means of an advertisement dated 07.7.2015, the respondent No.2 invited applications for appointment against the post of Class-IV employees (BPS-1) on the terms and conditions mentioned therein. In pursuance thereof petitioner applied for the same, competed with others, however, on merit he could not be selected rather one Imranullah/respondent No.4 was appointed as such, hence, this petition.

3. In pursuance of order of this court, respondents No.3 & 4, submitted their para-wise comments raising therein many legal and factual objections.

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

4. It was mainly argued by the learned counsel for the petitioner that respondent No.4, Imranullah, had neither applied against the impugned post nor belongs to village council/Neighbourhood council, Aba Khel-(1), therefore, his appointment is illegal, without lawful authority and the same is liable to be struck down and in his place, petitioner is entitled for appointment.

5. As against that, learned counsel appearing on behalf of respondent No.4 and learned Addl: A.G appearing on behalf of official respondents jointly argued that respondent No.4 belongs to village council/Neighbourhood council, Aba Khel-(1) District Lakki Marwat as is reflected from Annexure-H at Page-15 and minutes of meeting of selection and recruitment committee enclosed as Annexure-A at Page-6 of the comments, and prayed for dismissal of the writ petition.

6. Arguments heard and record perused.

7. It is evident from the record that through a public notice dated 07.7.2015, applications were invited for appointment against Class-IV employees BPS-01 on the terms

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and conditions mentioned therein, pursuant thereto the contesting parties applied for the same, competed with others, however, respondent No.4 was appointed as such, on merit. It was specifically mentioned in the advertisement that posts were to be filed from the District concerned/ village council/Neighbourhood council, and preference will be given to the resident of village council concerned. Perusal of the minutes of the meeting of selection and recruitment committee enclosed as Annexure-A at Page-6 reflects that name of the petitioner appears at S.No.34 and in the column of village council/Neighbourhood council, it was recorded as Abba Khel (1) and the post in question was filled through open competition, also belongs to village council/Neighbourhood council. The question whether the petitioner applied for appointment against the impugned post or not and whether the petitioner belongs to village council, Aba Khel-(1) are purely factual in nature which can only be answered after recording pro and contra evidence and this exercise cannot be done in writ jurisdiction.

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8. For what has been discussed above, this writ petition is dismissed being not maintainable, however, the petitioner shall be at liberty to seek her relief before the court of competent jurisdiction, if so desired.

Announced.
24.6.2019.

Mr. Justice Muhammad Nasir Mahfooz

Mr. Justice Shakeel Ahmad

CERTIFIED TO BE TRUE COPY

28/6/19

Examiner

Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1988

Handwritten signature and date: 20/6/19