

23.11.2021

Petitioner in person present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Atif, Assistant (Litigation) for respondents present.

Petitioner requests for adjournment on the ground that his counsel is not available. Adjourned. To come up for further proceedings on 18.01.2022 before S.B.

  
(MIAN MUHAMMAD)  
MEMBER (E)

18.01.2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Muhammad Atif, Assistant (Litigation) for respondents present.

In pursuance of the order sheet dated 14.07.2021, respondent-department issued office order dated 03.08.2021 whereby appointment order of the petitioner dated 22.08.2016 has been withdrawn/cancelled which is already placed on file duly reflected in order sheet dated 26.08.2021. Learned counsel for the petitioner did not press to further pursue the execution petition. As such the execution petition in hand stands disposed off. File be consigned to the record room.

Announced:  
18.01.2022

  
(Mian Muhammad)  
Member (E)

26.08.2021

Petitioner in person present. Mr. Atif Ahmed, Assistant alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present and produced copy of office order dated 03.08.2021 issued by District Health Officer Mardan, whereby appointment order of the petitioner has been withdrawn/cancelled. Copy of the same handed over to petitioner, who requested for adjournment on the ground that his counsel is not available today, therefore, time may be granted to him. Adjourned. To come up for further proceedings before the S.B on 16.09.2021.



(SALAH-UD-DIN)  
MEMBER (J)

16.09.2021

Petitioner in present and Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Learned counsel for the petitioner is not in attendance and request for adjournment made by the petitioner. Request is accorded. To come up for further proceedings on 25.10.2021 before S.B.



Chairman

25.10.2021

None is present on behalf of the petitioner. Mr. Kabirullah Khattak, Addl. AG alongwith Atif Ahmad, Asstt. for the respondents present.

Notice be issued to the petitioner/counsel for the next date. To come up for further proceedings on 23.11.2021 before the S.B.



Chairman

EP No. 165/2019  
Jamal Qadir vs Govt

14.07.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Atif, Steno for the respondents present.

The petitioner had invoked the jurisdiction of this Tribunal through Service Appeal No. 109/2017 against withdrawal of his appointment order. The said appeal was accepted and the impugned order was set aside with the direction to the respondent department to issue show cause notice to the appellant/petitioner that why his appointment order be not withdrawn on such ground and after reply of the show cause notice, the same be decided within a period of sixty days from the date of receipt of the judgment, positively. The parties are not disputing that the show cause notice after passing of the said judgment, was not issued. So, if the show cause notice was issued, the department was required to conclude the proceedings of the show cause notice preferably within sixty days as directed by the Tribunal. It has been informed on behalf of the respondents that an enquiry was conducted and report is available with the department. Although the conducting of enquiry was not the requirement of the judgment but if at all the department has conducted the enquiry after issuance of show cause notice, the disposal of the matter with conclusive order in either way is part of the implementation of the judgment. Therefore, the respondents are directed to do the needful and implementation report be submitted on 26.08.2021 before S.B.

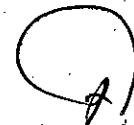
  
Chairman

08.02.2021 Petitioner in person present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Dr. Salim Javid Litigation Officer for respondents present.

Again, a request was made for adjournment on behalf of the petitioner as his counsel is busy in the Apex Court.

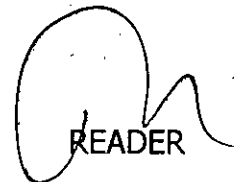
Adjourned to 07.04.2021 for further proceedings, before S.B.



(Rozina Rehman)  
Member (J)

07.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 14.07.2021 for the same as before.



READER

21.09.2020

Petitioner alongwith counsel and Addl. AG for the respondents present.

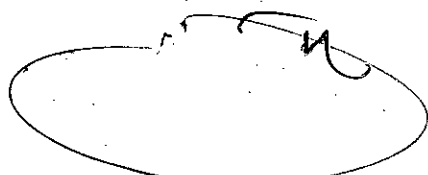
In view of previous orders no material proceedings have been taken place after 26.12.2019 when respondent No. 3 had appeared before the Tribunal. It is considered appropriate to require the appearance of respondent No. 3 alongwith complete relevant record on 04.11.2020 before S.B. Office shall issue necessary notice to the said respondent for next date of hearing.

  
Chairman

04.11.2020

Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Asghar Khan, DHO, for the respondents are also present.

Since the Members of the High Court as well as of the District Bar Association, Peshawar, are observing strike today, therefore, learned counsel for petitioner is not available today. Adjourned to 24.12.2020 on which date to come up for further proceedings before S.B.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

24.12.2020

Petitioner in person and Asstt. AG alongwith Atif, Assistant for the respondents present.

The representative of respondents has provided copy of certificate dated 14.12.2020, wherein, the experience certificate of the petitioner has not been verified from the record. A copy of certificate is handed over to petitioner who requests for adjournment in order to consult his counsel.

Adjourned to 08.02.2021 for further proceedings before S.B.

  
Chairman

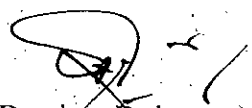
30.03.2020

Due to public holiday on account of COVID-19, the case is adjourned for the same on 22.06.2020 before S.B.

  
Reader

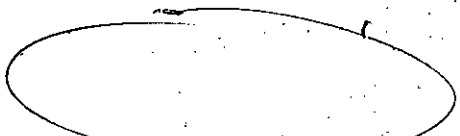
22.06.2020

Petitioner in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General also present. Petitioner seeks adjournment; allowed. Adjourned to 05.08.2020 before S.B.

  
(Rozina Rehman)  
Member (J)

05.08.2020

Neither petitioner nor his counsel is present. Mr. Kabirullah Khattak, Additional AG for the respondents is present. Notices be issued to petitioner as well as his respective counsel for attendance on 21.09.2020 before S.B.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER

20.11.2019

Petitioner in person and Addl. AG alongwith Hazrat Shah, Superintendent for the respondents present.

Learned AAG seeks time to apprise this Tribunal regarding the order, if any, issued in denovo proceedings subsequent to the judgment under implementation.

The needful shall be done on the next date. Adjourned to 26.12.2019 before S.B.

  
Chairman

26.12.2019

Petitioner in person present. Addl: AG alongwith Dr. Obaid ur Rehmna, DHO (respondent no.3) Mr. Atif, Assistant and Mr. Saleem Javed, Litigation Officer for respondents present. Petitioner seeks adjournment as his counsel is not available today. Adjourned. To come up for further proceedings on 12.02.2020 before S.B.

  
Member

12.02.2020

Petitioner in person and Mr. Kabirullah Khattak, Additional AG alongwith M/S Atif, Assistant and Jaffar, Assistant for the respondents present. Petitioner seeks adjournment. Adjourned to 30.03.2020 for further proceeding before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

24.09.2019

Counsel for the petitioner and Addl.AG alongwith Atif, Assistant for the respondents present.

Learned AAG referred to the reply of respondents and the documents attached therewith, he argued that the judgment of this Tribunal stands executed with the issuance of show cause notice dated 03.01.2019. In support of his arguments, learned AAG referred to para-7 of the judgment under implementation.

On the other hand, learned counsel for the petitioner contended that the show cause notice and other departmental proceedings against the petitioner were to be followed by an order but within sixty days of the announcement of judgment. Since the said period has lapsed and at present the respondents are not to exercise their authority or to pass any adverse order against the petitioner.

In view of the arguments of learned AAG as well as learned counsel for the petitioner and the record, more particularly, the show cause notice dated 03.01.2019 and enquiry report dated 20.02.2019 it is considered appropriate to require the attendance of respondent No. 3 in person on next date of hearing. He shall also produce any other record relevant for the purpose.

Adjourned to 21.10.2019 before S.B.

  
Chairman

21.10.2019

Petitioner in person present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present.

Adjourned to 20.11.2019 due to general strike on the call of Provincial Bar Council.



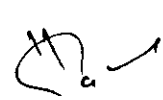
  
Chairman



**Form- A**  
**FORM OF ORDER SHEET**

Court of \_\_\_\_\_

Execution Petition No. 165/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.3.2019	<p>The execution petition of Mr. Jamal Qadir submitted today by Mr. Amjid Ali Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 29/3/19</p>
2-	01/04/19.	<p>This execution petition be put up before S. Bench on <u>16/04/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	16.04.2019	<p>Petitioner in person present. Notice of the present execution petition be issued to the respondents for 23.05.2019. To come up for implementation report/parawise comments on the date fixed before S.B.</p> <p style="text-align: right;"> Member</p>

23.05.2019

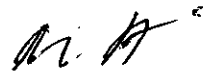
Petitioner in person and Mr. Usman Ghani learned District Attorney present. No one present on behalf of respondents. Fresh notice be issued to the respondents for submission of implementation report. Adjourn. To come up for implementation report/parawise comments on 03.07.2019 before S.B.



Member

03.07.2019

Counsel for the petitioner and Mr. Muhammad Jan, Deputy District Attorney alongwith M/S Hazrat Shah, Superintendent and Atif Ahmad, Assistant for the respondents present. Implementation report/para-wise comments on behalf of respondents not submitted. Representative of the department requested for further adjournment. Adjourned to 27.08.2019 for implementation report/para-wise comments before S.B.



(MUHAMMAD AMIN KHAN KUNDI)

MEMBER

27.08.2019

Nemo for petitioner. Mr. Usman Ghani, District Attorney alongwith Atif Assistant and Saleem Javed, Litigation Officer for the respondents present.

The representative of the respondents has submitted reply to the execution petition alongwith copy of final show cause notice as well as enquiry report dated 20.02.2019. The documents are placed on record. To come up for further proceedings on 24.09.2019 before S.B.



Chairman

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

*Execution petition no. 165/2019*

IN Re:

S.Appeal No.109/2017

Jamal Qadir.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa through  
Secretary, Civil Secretariat & others .....Respondents

**INDEX**

Sr	Documents & Description	Annexure	Page
1.	Application for implementation with affidavit		1-2
2.	Copy of attested copy of judgment dated 18.12.2018 alongwith memo of appeal	A	3-12
3.	Copy of letter dated 08.01.2019	B	13

*Wakalat nama*

*Jamal Qadir*

Applicant

Through

*Amjald Ali*

**Amjald Ali (Mardan)**

Advocate

Supreme Court of Pakistan

Cell: 0321-9882434

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

*Execution Petition no. 165/2019*

IN Re:  
S.Appeal No.109/2017



Jamal Qadir.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa through  
Secretary, Civil Secretariat & others .....Respondents

**APPLICATION FOR IMPLEMENTATION  
OF JUDGMENT DATED 18.12.2018 OF  
THIS HON'BLE TRIBUNAL**

Sir,

Applicant humbly submits as under:-

1. That applicant filed titled Service Appeal No.109/2017 before this hon'ble Tribunal with the prayer that:-

***"the impugned order dated 20.09.2016 passed by D.H.O, Mardan may please be withdrawn/ set-aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit may also be graciously granted"***

2. That appeal of the applicant came up for hearing on 18.12.2018, and this Hon'ble Tribunal was pleased to allow the appeal of the applicant with the following order:-

***"we accept the appeal, set-aside the impugned order with the direction to the respondent-department to issue show-cause notice to the appellant that why his appointment order be not withdrawn on such ground and after reply of the show-cause notice, the same be decided within a period of 60 days from the date of receipt of this judgment positively. However, the reinstatement of the***

**appellant will be subject to the decision/ outcome of the show-cause notice and the same must be communicated to the appellant"**

(Copy of order/ judgment dated 18.12.2018 is Annex "A")

- 3. That after announcement of judgment dated 18.12.2018, the applicant send the attested copy of the said judgment to the respondents through registered letter dated 08.01.2019 for the implementation of the same. (Copy of letter dated 08.01.2019 is Annex "B")
- 4. That since announcement of judgment/ order dated 18.12.2018 the same has not been implemented, despite several request of the applicant, but in vain.
- 5. That omission of respondents to act upon the order of this Hon'ble Tribunal speaks of the fact that respondents has undermined the authority of this Hon'ble Tribunal and have not moved even an inch for implementation of the same.
- 6. That this omission/ act of respondents squarely falls within the ambit of contempt of court as respondents have conveniently ignored the time frame provided by this Tribunal Court.

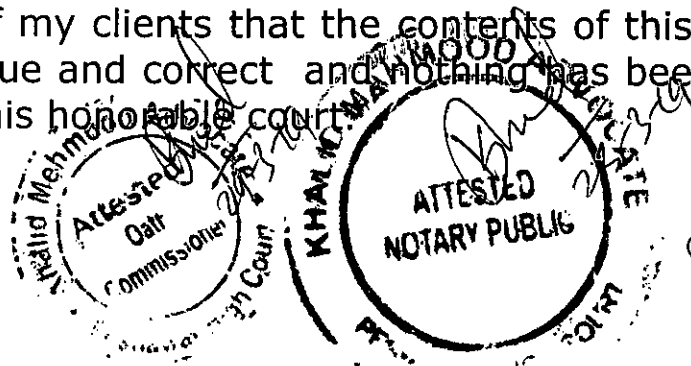
It is therefore, humbly requested to please direct respondents to implement the judgment dated 18.12.2018 in its letter and spirit

Applicant *Tareq Javed*

Through *[Signature]*  
**Amjald Ali (Mardan)**  
Advocate  
Supreme Court of Pakistan

**AFFIDAVIT**

I, do hereby affirm and declare as per instructions of my clients that the contents of this **Application** are true and correct and nothing has been concealed from this honorable court.



DEPONENT

*Tareq Javed*

Ann-A

(3)

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

Service Appeal No. 109 /2017

Jamal Qadir S/o Fazal Qadir  
R/o Garhi Kapura Mardan



Khyber Pakhtunkhwa Service Tribunal

Case No. 149

Date 31-01-2017

**Appellant**

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
2. Director General, Health Khyber Pakhtunkhwa, Judicial Complex, Khyber Road, Peshawar.
3. District Health Officer, District Mardan.

.....**Respondents**

***Appeal u/s 4 of Service Tribunal Act against order dated 20.09.2016 passed by respondent No.3, whereby appellant's service has been withdrawn and departmental appeal dated 10.10.2016 remained un-responded even after 90 days, which is illegal against law and facts.***

Filed to-day  
*[Signature]*  
Registrar  
31/1/17

**PRAYER:**

***On acceptance of instant service appeal the impugned order dated 20.09.2016 passed by D.H.O, Mardan may please***

**ATTESTED**

*[Signature]*  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

(4)

**be withdrawn/ set-aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit may also be graciously granted.**

Sir,

Appellant humbly submits as under;-

1) That appellant is equipped with qualification such as B.A with Diploma in Medical technology, domiciled and NIC of Mardan and two experience certificates i.e.

i. By Chief Executive Mardan Medical Complex from 06.10.2010 till 10.10.2012.

ii. From Jan 2013 till December 2015 by RAHAP Project KPK SDU Building Civil Secretariat Khyber Road, Peshawar.


**(Copy of Certificates/ Experience are Annex "A")**

2) That the Executive District Officer Health, Mardan advertised posts of Medical PHC tech (MP) BPS-12.

3) That appellant applied for the same as per qualification/ experience detailed in Para No.1 of appeal.

4) That appellant was tested and interviewed by the Selection Committee.

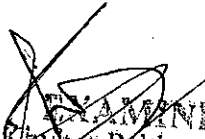
**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

5

- 5) That the Selection Committee recommended appellant for appointment as PHC MP BPS-12.
- 6) That in pursuance of said recommendation by Selection Committee, appellant as PHC (Tech) MP BPS-12 vide appointment order dated 10.08.2016 by the D.H.O, Mardan. **(Copy of appointment order dated 10.08.2016 is Annex "B")**
- 7) That medically the appellant was examined by medical Superintendent, DHQ, Hospital Mardan on 19.08.2016 and found fit. **(Copy of Medical Certificate is Annex "C")**
- 8) That appellant was posted in R.H.C Gumbat vide order dated 22.08.2016. **(Copy of posting order dated 22.08.2016 is Annex "D")**
- 9) That appellant submitted arrival report on the same day i.e 22.08.2016. **(Copy of arrival report is Annex "E")**
- 10) That appellant regularly performed duty and his attendance register and the concerned Superior Officers were satisfied from performance of appellant. **(Copy of attendance register is Annex "F")**
- 11) That vide order dated 20.09.2016, District Health Officer, Mardan cancelled appointment order of appellant with immediate effect, which is illegal, against law and facts. **(Copy**

ATTESTED

  
EXAMINER  
Chayter Pakhtunkhwa  
Service Tribunal,  
Peshawar



(6)

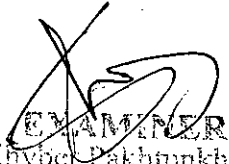
**of impugned order dated 20.09.2016 is Annex "G")**

- 12) That appellant served departmental appeal dated 10.10.2016 before respondent No.2 through registered A.D, which remained unresponded even after lapse of 90 days. **(Copy of Departmental appeal is Annex "H", and P.O receipt is Annex "I")**
- 13) That appellant is jobless since withdrawal order.
- 14) That appellant now approaches this Hon'ble Tribunal on following grounds:-

**GROUND**

- A. Because impugned order is without any reason and is against the 3<sup>rd</sup> Maxim of Natural Justice, **that every order must be supported by cogent reasons.**
- B. Because impugned order is arbitrary, whimsical and passed in cursory and slipshod manner.
- C. Because appellant has been condemned unheard and violated the foremost and 1<sup>st</sup> Principle of Natural Justice, which is well entrenched in even administrative, Quasi Judicial and Judicial System. So much so, that Adam and Eve Devil was afforded opportunity of hearing.

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

D. Because appellant has served to the entire satisfaction of his superiors and there is no complaint against appellant.

E. Because no inquiry has been conducted.

F. Because appellant has not been associated with any inquiry.

G. Because impugned order has been passed at the back of appellant.

H. Because appellant provided all the qualification certificate, degrees/ experience certificates mentioned in Para No.1 of appeal at the time of submission of the documents as well as original at the time of interview before Selection Committee.


I. Because there is no provision in law for appointment of inquiry Officer without charge sheet/ show cause notice and finding of any such committee are nullity in the eye of law and at the best can be termed probe finding inquiry.

J. Because without resort of **KPK E&D Rules, 2011**, appellant can't be terminated from service.

K. Because as per **2006 SCMR 412/413** famous case of Sadullah department can't take benefit of its own omission.

L. Because cancellation/ withdrawal of appointment order are Germane to law/ E&D

ATTESTED

  
K.  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Rules and appellant's appointment order can't be cancelled/ withdrawn without any backing of law.

- M. Because appellant is jobless after cancellation for no fault and is not permitted for duty, therefore, entitled for back benefits.

It is therefore, humbly prayed that, on acceptance of instant service appeal the impugned order dated 20.09.2016 passed by D.H.O, Mardan may please be withdrawn/ set-aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit may also be graciously granted.

Appellant

Through

**Amjad Ali (Mardan)**

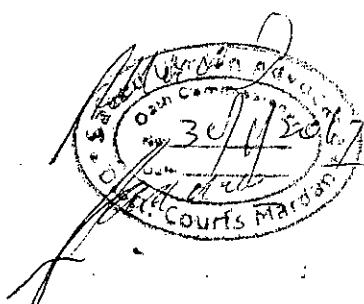
Advocate

Supreme Court of Pakistan

VERIFICATION

It is verified that, the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

Deponent



Certified to be true copy

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Documentation of [unclear] 01-01-19  
Number of Yards 2000  
Cost per Yard 12  
Total Cost 24000  
[Signature]  
Date of Completion of [unclear] 01-01-19  
Date of [unclear] of Copy 01-01-19

9



18.12.2018 Appellant alongwith his counsel present Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed in connected Service Appeal No. 108/2017 "titled Ihtisham ul Haq Versus Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar and two others, we accept the appeal, set-aside the impugned order with the direction to the respondent-department to issue show-cause notice to the appellant that why his appointment order be not withdrawn on such ground and after reply of the show-cause notice, the same be decided within a period of 60 days from the date of receipt of this judgment positively. However, the reinstatement of the appellant will be subject to the decision/outcome of the show-cause notice and the same must be communicated to the appellant. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
18.12.2018

*Muhammad Amin*  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

*Hussain Shah*  
(HUSSAIN SHAH)  
MEMBER

Certified to be true copy  
Peshawar

Date of Presentation of Copy \_\_\_\_\_ 01-01-19

Number of Words \_\_\_\_\_ 460

Copying Fee \_\_\_\_\_ 14

Urgent \_\_\_\_\_

Total \_\_\_\_\_ 4

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Date of Copy made of Copy \_\_\_\_\_ 03-01-19

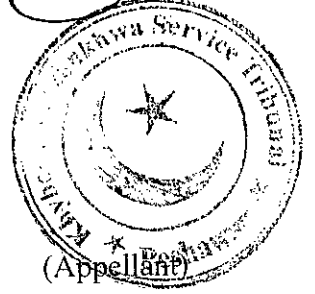
Date of Delivery of Copy \_\_\_\_\_ 03-01-19

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

**SERVICE APPEAL NO. 108/2017**

Date of institution ... 31.01.2017  
Date of judgment ... 18.12.2018

Ihtisham ul Haq S/o Gulzar Ali Khan  
R/o Parkho Dheri Tehsil Takht Bahi, District Mardan.



**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
  2. Director General Health, Khyber Pakhtunkhwa, Judicial Complex, Khyber Road, Peshawar.
  3. District Health Officer, District Mardan.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT  
AGAINST ORDER DATED 20.09.2016 PASSED BY RESPONDENT  
NO. 3, WHEREBY APPELLANT SERVICES HAS BEEN  
WITHDRAWN AND DEPARTMENTAL APPEAL DATED  
10.10.2016 REMAINED UN-RESPONDED EVEN AFTER 90 DAYS,  
WHICH IS ILLEGAL AGAINST LAW AND FACTS.

Mr. Amjid Ali, Advocate. .. For appellant.  
Mr. Riaz Ahmad Paindakheil, Assistant Advocate General .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)  
MR. HUSSAIN SHAH .. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Our this judgment shall dispose of instant service appeal as well as Service Appeal No. 109/2017 titled "Jamal Qadir Versus Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar and two others" as common question of law and facts are involved in both the appeals.

2. Appellants alongwith counsel present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

3. Brief facts of both the cases are that the appellants were appointed as PHC Technician (MP) BPS-12 on the recommendations of Departmental Selection

**ATTESTED**

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

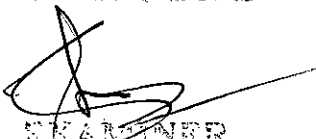
Committee by the competent authority vide order dated 10.08.2016. However, the competent authority withdrawn/cancelled their appointment orders with immediate effect vide order dated 20.09.2016 on the basis of minutes of meeting held in DHO Office on 19.09.2016. The appellants filed departmental appeal on 10.10.2016 which was not responded hence, the present service appeals on 31.01.2017.

4. Respondents were summoned who contested the appeals by filing written reply/comments.

5. Learned counsel for the appellants contended that the appellants were appointed by the competent authority on the recommendation of Departmental Selection Committee as PHC Technician (MP) BPS-12 after fulfilling all the codal formalities. It was further contended that the appellants were medically examined by the Medical Superintendent and found fit. It was further contended that the appellants were posted and they submitted their arrival reports. It was further contended that the appellants were regularly performing their duties and the appellants were fully qualified and having experience for the said post but the competent authority cancelled/withdrawn their appointment orders vide order dated 20.09.2016 without any notice. It was further contended that the respondent-department was bound to issue show-cause notice before passing of adverse order against the appellants regarding withdrawal of their appointment orders. It was further contended that the appellants were condemned unheard and the respondent-department has violated the principle of natural justice therefore, the impugned order is illegal and liable to be set-aside.

6. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellants and contended that a meeting was held under the Chairmanship of DHO Mardan and it was found in the said meeting that the experience certificates of the appellants were not valid. It was further contended that the appellants have got no valid experience certificates and was erroneously given experience marks which was then deducted from the appellant out of total marks therefore, the appellants were not qualified for the said post and the competent authority has rightly withdrawn the appointment orders of the appellants.

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

M/Abm/11  
18.12.2018

(11)

7. Perusal of the record reveals that both the appellants were appointed by the competent authority on the recommendation of Departmental Selection Committee after fulfillment of all the codal formalities vide order dated 10.08.2016. The record further reveals that the appellants were medically examined by the medical Superintendent of DHQ Hospital and they submitted their arrival reports. The record further reveals that the appellants were performing their duties regularly however, vide order dated 20.09.2016 the competent authority cancelled/withdrawn their appointment orders with immediate effect on the basis of minutes of meeting held on 19.09.2016 without issuing of any show-cause notice to the appellants and without giving opportunity of personal hearing, meaning thereby that the appellants were condemned unheard. Although it was mandatory for the respondent-department to issue any show-cause notice before passing any adverse order against the appellants therefore, the respondent-department has violated the principle of natural justice which has rendered the impugned order illegal and liable to be set-aside. As such, we accept the appeals, set-aside the impugned orders with the direction to the respondent-department to issue show-cause notice to both the appellants that why their appointment orders be not withdrawn on such ground and after reply of the show-cause notice, the same be decided within a period of 60 days from the date of receipt of this judgment positively. However, the reinstatement of the appellants will be subject to the decision/outcome of the show-cause notice and the same must be communicated to the appellants. Parties are left to bear their own costs. File be consigned to the record room.

12

ANNOUNCED  
18.12.2018

*Muhammad Amin*  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

*Hussain Shah*  
(HUSSAIN SHAH)  
MEMBER

Certified to be true copy  
Khairpur  
Peshawar

Date of Presentation of Copy ..... 01-01-19  
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Date of Delivery of Copy ..... 03-01-19



To,

Ann-B (13)

The District Health,

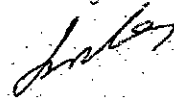
Officer,

Mardan,

**Subject: Application for implementation of judgment .Date: 18-12-2018**  
**Appeal No. 109 / 2017 of the Humble Service Tribunal Peshawar.**

Sir,

That humble Service Tribunal passed judgment appeal No. 109 / 2017 where in appellant has been reinstated (attested copy of judgment is attached) It is therefore humble prayed that judgment Date: 18-12-2018 of humble Service Tribunal may please be implemented in true letter and spirit.



Yours Obediently,

Jamal Qadir S/O Fazal Qadir

CNIC: 16101-9181468-5

P/O: Garhi kapura kandar

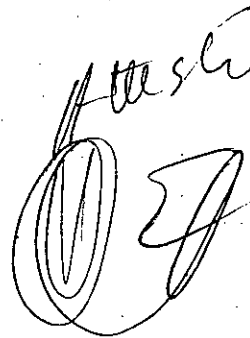
Tehsil: Mardan

District: Mardan

Ex: R.H.C Gumbat

cell No. 0345-9366807

Dated 8/01/2019



Subscribed  
at  
Mardan

29/3/2019

29/3/2019

مورخہ:

بنام:

مقدمہ:

دعویٰ:

حکومت

محال قادر

جرحہ: Implementateion  
باعث تحریر آئندہ

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

ان مقام کیلئے امجد علی ایڈووکیٹ، سپریم کورٹ آف پاکستان اور

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ

برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر

دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظیر ثانی و پیروی کرنے کا

اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و جانہ

التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔

لہذا وکالت نامہ لکھ دیا کہ سنڈ رہے۔

المعتمد

العبد

علی

گواہ

ماہ

29

المرقوم:

العبد

مقام کے لیے منظور ہے۔

مقام

Accepted  
Amjad Ali

Amjad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EP No. 165/2019

in Service Appeal No. 109/2017

Jamal Qadir S/O Fazal Qadir

R/O Garhi Kapura Mardan ..... Appellant

Versus

District Health Officer Mardan & Others ..... Respondent

**PRELIMINARY OBJECTIONS:**

1. That the appellant did not come with clean hands.
2. That the appellant has no cause of action and locus standi at this forum. The appellant has by passed the department and lower courts.
3. That the experience shown by the appellant was not valid. That experience had no dairy number of MMC Mardan and the monogram was not clear (Annex I).
4. That the appellant did not show the salary slip for that experience.
5. That the proper show cause notice was given to the appellant within the time framé by the direction of this Honorable Service Tribunal (Annex II).
6. That a proper departmental enquiry conducted after show cause (Annex III).

**FACTS / GROUNDS:**

- 1) No comments.
- 2) The order was implemented in the light of judgment of Honorable Service Tribunal dated 18-12-2018 (as mentioned in preliminary objections Supra Para No. 5)
- 3) Pertains to record hence no comments.
- 4) Incorrect: Reply given in Supra Para No. 2.
- 5) Incorrect: The appellant is misleading this Honorable Court by making false accusation, the respondent considered this Honorable Tribunal and its judgments as the utmost responsibility to oblige to its orders.
- 6) Incorrect: Reply given in preliminary objections Supra Para No. 5.

**Pray:** For the above reasons it is prayed to dismiss this execution appeal.

1- Secretary Health Services  
Govt: of KP, Peshawar

2- Director General Health  
KP, Peshawar

3- District Health Officer,  
Mardan

His total marks are as below:

1)	Matric Science	50 Marks
2)	PHC Diploma	20 Marks
3)	Higher Qualification	08 Marks
4)	Interview	6.4 Marks
Total		84.4 Marks

He does not fall in selectee list because the last selected candidates got 89.5 marks and the first candidate on waiting list got 88.6 marks.

**Fahim (Computer Operator DHIS Cell DHO Office):**

Mr. Fahim, the computer operator did the clerical mistake. He wrote to Mr. Ihtisham UI Haq the interview marks 13.5 out of total 8 marks. He accepted his mistake for which explanation was also called from him by DHO Mardan. The actual interview marks of Mr. Ihtisham UI Haq are 6.4 as per record (Annex II).


The statements of Mr. Jamal Qadir, Mr. Ihtisham UI Haq and Mr. Fahim are attached to this enquiry report.

**Recommendations:**

Enquiry report in original has been submitted to DHO Mardan for further necessary action please.

Enquiry Members:

  
Dr. Shahid Khan Bacha,  
MS (DHI T) / etc

  
Dr. Fazle Rabi, SMO  
Litigation DHO Office Mardan

Annex - I

**Mardan Medical Complex  
Teaching Hospital Mardan**

(13)

**To Whom It May Concern**

This is to certify that Mr. Jamal Qadir S/o Fazal Qadir has been working in Mardan Medical Complex Teaching Hospital Mardan as a Health Technician from 06-10-2010 to 10-10-2012.

The above named person is fully trained and assist all the senior Professor and Surgeon in a good manner.

During the tenure of his service we found him devoted efficient, punctual and hard working.

His performance is outstanding and his attitude with patient & Staff is good.

We wish him success in his future career.

*S*  
Instructor  
Govt. College of Management  
& Science Mardan

*J. M. Q.*  
Chief Executive  
Mardan Medical Complex  
Teaching Hospital Mardan  
Chief Executive  
Mardan Medical Complex  
Mardan

Annex - II



**DISTRICT HEALTH DEPARTMENT- MARDAN**  
**DISTRICT HEALTH OFFICER MARDAN**  
**KHYBER PAKHTUNKHWA**

Phone # (0937) 9230030 Fax: # (0937)9230349.

No. 1970-73/DHO (P&D) Dated

3/07/2019

Mr. Jaml Qadar s/o Fazal Qadar PHC Technician (MP) Malaria BPS-12 RHC Gumbat village Kandar P.O Garhi Kapura Tehsil & District Mardan

**Subject:- FINAL SHOW CAUSE NOTICE**

I, (Dr. Fazli Hadi District Health Officer ), as competently authority ,under the Khyber r Pakhtunkhwa Government Servants (Efficiency and Discipline ) Rules, 2011, do here by serve ,you ,Mr. Jaml Qadar s/o Fazal Qadar PHC Technician (MP) RHC Gumbat village Kandar P.O Garhi Kapura Tehsil & District Mardan ,as follows:

That consequent upon the completion of Enquiry conducted against you by the Enquiry committee;

I am satisfied that you have committed the following acts /omission specified in rules 3 of the said rules.


- (a). Due to Computer Operator mistake ( written statement placed on record).
- (b). No Valid Experience
- ©. No Salary Slip.
- iv. No. attendance record.

2. As result therefore, I as competent authority, have have decided to impose upon you the penalty of SHOW CASUE under rulers 4 of the said rules. .

3. You are therefore required to show cause as to why the afforded penalty should not be imposed upon you and also intimate whether you desire to be heard in person .

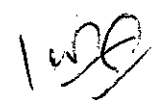
4. If no replay to this notice is received within seven days or not more than fifteen days of its delivery ,it shall be presumed that you have no defense to put in and in that case an ex -part action shall be taken against you.

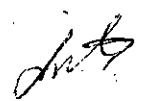
5. A copy of the findings of the inquiry committee is enclosed.

  
District Health Officer  
Mardan.

Copy forwarded to the following for information .

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar for information w/r to his letter No. 89/ST dated 11/01/2019 regarding judgment dated 18/12/2018 passed by Honorable Muhamamd Amin Khan Kundi Member Service Tribunal Member Peshawar.
2. Director General Health Services Khyber Pkahtunkhwa Peshawar.
3. Senior Medical officer Incharge RHC Gumbat.

  
District Health Officer  
Mardan

  
16101-9181468-5

Date = Received = 4/2/2019

Enquiry Report

Dated: 20/02/2019

Enquiry regarding service Tribunal Peshawar case of Mr. Jamal Qadir S/O Fazal Qadir and Mr. Ihtisham Ul Haq S/O Gulzar Ali Khan has been conducted in the light letter No. 3247/DHO dated Mardan the 08-02-2019 with following facts and findings.

1. Statement of Jamal Qadir S/O Fazal Qadir.
2. Statement of Ihtisham Ul Haq S/O Gulzar Ali Khan.
3. Statement of Computer Operator (Mr. Fahim, DHIS Cell DHO Office).

We studied all the above statements carefully and keenly. We also listened them verbally. We studied/checked carefully all the documents of Jamal Qadir and Ihtisham Ul Haq. We checked all the selection process and record of the recruitment of PHC Technicians in disposal of DHO Mardan in August 2016. We the enquiry committee reached to following conclusion.

Jamal Qadir S/O Fazal Qadir:

Jamal Qadir has basic qualification of Matric Science and PHC Technician Diploma. Matric Science and PHC Technician Diploma/Certificates are true. He has shown experience of MMC Mardan for two years after passing the PHC Technician Diploma. But this two years experience was not paid Job. No appointment order of the experience and no salary slip of the experience were found in his documents. According to Esta Code Criteria, experience marks can be given to those candidates who have paid experience from some Govt. or Semi Govt. recognized institute. Since the experience of Jamal Qadir is not paid therefore he is not entitled for experience marks. He has given the following marks as;

1)	Matric Science	:	50 Marks
2)	PHC Diploma	:	20 Marks
3)	Higher Qualification	:	08 Marks
4)	<u>Interview</u>	:	<u>4.5 Marks</u>
	<b>Total</b>		<b>82.5 Marks</b>

His total marks become 82.5 and in the merit list the last candidate got 89.5 marks. So the total marks of Mr. Jamal Qadir are less than the last selected candidate (Annex 1).

Ihtisham Ul Haq S/O Gulzar Ali Khan:

After careful and thoroughly checking of Mr. Ihtisham Ul Haq record it is concluded that:

- His Matric Qualification certificate and PHC Diploma were found true.
- Experience = 03 years in Takka Welfare Organization.

His experience was not considered for weight age due to 25 months before result declaration and less than one year after diploma result declaration.

As per Esta Code Criteria he does not qualifying for marks.

**Interview:** His interview marks were 13.5 instead of 8 marks (claim as clerical mistake).

But his actual marks are 6.4.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 2001 /ST

Dated 29/09/2020

To

The District Health Officer,  
Government of Khyber Pakhtunkhwa,  
Mardan.

SUBJECT: - ORDER IN EXECUTION PETITION NO. 165/2019 MR. JAMAL QADIR.

L

I am directed to forward herewith a certified copy of order dated 21.09.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

*[Signature]*  
REGISTRAR,  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

**No. 1118** For Insurance Notices see reverse. Rs. Ps.  
Stamps affixed except in case of  
uninsured letters of not more than  
the initial weight prescribed in the  
Post Office Guide or on which no  
acknowledgement is due. *[Signature]*

Received a registered\* \_\_\_\_\_ Date-Stamp  
addressed to \_\_\_\_\_

\*Write here "letter", "postcard", "packet" or "parcel"  
initials of Receiving Officer with the word "insured" before it when necessary.  
Insured for Rs. (in figures) \_\_\_\_\_ (in words) \_\_\_\_\_

Weight Kilo  
Insurance fee Rs. \_\_\_\_\_ Ps. \_\_\_\_\_ (in words) Grams  
Name and address  
of sender *[Signature]*

*Insured*





Medical Teaching Institution  
Mardan Medical Complex Mardan

Dr. Tariq Mahmood  
Hospital Director

No. 7489 /MTI, MMC  
Date 14/12 /2020

To

District Health Officer  
Mardan

Sub: VERIFICATION OF EXPERIENCE CERTIFICATE

Reference your office letter No. 15171/DHO dated 10/11/2020, on the subject cited above and to state that experience certificate in r/o Mr. Jamal Qadir S/O Qadir has been checked and found no record of attendance / salary slip in this office.

  
Hospital Director  
MTI, MMC Mardan



مکملہ صحت خیبر پختونخوا

*District Health Department – Mardan*

**DISTRICT HEALTH OFFICER**

**Mardan (Khyber Pakhtunkhwa)**

Ph: # (0937) 9230030 Fax: # (0937) 9230283

Email: [mardandho@gmail.com](mailto:mardandho@gmail.com)

All communications should be addressed to the District Health Officer and not to any official by name.

**OFFICE ORDER:**

As per order of the Honourable Service Tribunal Peshawar dated 14.07.2021, in E.P No. 165/2019, to conclude the proceeding of show cause notice and inquiry, the competent authority is pleased to withdraw/ cancel the appointment order of Jamal Qadir s/o Fazal Qadir (PHC-Technician) at S.No.11 vide letter No. 10042-64/DHO dated 22/08/2016, with immediate effect in large interest of public.

District Health Officer

Mardan

dated 03/08/2021

No. 13452-57 /DHO

Copy forwarded to the:

1. Director General Health Services, Khyber Pakhtunkhwa Peshawar.
2. District Comptroller of Accounts, Mardan.
3. Accountant DHO Office Mardan.
4. DHIS Cell, DHO Office, Mardan.
5. Official concerned.
6. Office copy.

District Health Officer

Mardan