

E.P No. 441/2019
21.07.2020

Mr. Shahzullah, Advocate for the appellant is present. Mr. Kabirullah Khattak, Additional AG alongwith representative of the department Mr. Saleem Javed, Litigation Officer for the respondents is present. Submissions made by learned Additional AG heard. Learned counsel for the petitioner is seeking time for addressing the arguments. Adjourned to 10.08.2020. To come up for remaining arguments before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER

10.08.2020

Nemo for the petitioner. Addl. AG for the respondents present.

Adjourned to 24.09.2020 for further proceedings before S.B.

Chairman 

24.09.2020

Counsel for the ^{Petitioner} ~~Respondent~~ and Addl. AG alongwith Jaffar Shah, Senior Clerk for the respondents present.

Learned counsel states that the petitioner is satisfied from her present place of posting, therefore, does not wish to pursue the instant petition any further.

Consigned to record.

Chairman 

18.12.2019

Nemo for petitioner. Addl. AG alongwith Sher Baz, S.O for the respondents present.

Due to non-availability of petitioner/learned counsel, instant proceedings are adjourned to 04.02.2020 before S.B.


Chairman

04.02.2020

Clerk to counsel for the petitioner present. Addl: AG alongwith Mr. Sher Baz, SO for respondents present. Representative of the respondents submitted reply to the execution petition which is placed on file. Adjourned. To come up for further proceedings on 19.03.2020 before S.B.


Member

19.03.2020

Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the petitioner is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 29.04.2020 for further proceedings before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

21.04.2020

Due to COVID19, the case is adjourned to 21.07.2020 for the same as before.

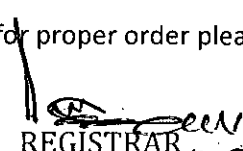

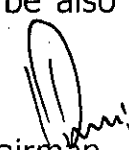

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 441/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.11.2019	<p>The execution petition of Mst. Raheela Ijaz submitted today by Mr. Noor Muhammad Khattak 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 29/11/2019 </p>
2-	02.12.2019	<p>This execution petition be put up before S. Bench on 02-12-2019</p> <p>Counsel for the petitioner present  CHAIRMAN</p> <p>Notice be issued to the respondents for 18.12.2019 before S.B.</p> <p>An application for suspension of operation of order dated 20.11.2019 has also been preferred with the execution petition. Notice of the application be also given to the respondents for the date fixed.</p> <p style="text-align: right;">  Chairman </p>

E. P. No. 441/19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 441 /2019
In
Appeal No.716/2019

RAHEELA IJAZ

VS

HEALTH DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE NO.
1-	Memo of petition	1- 2.
2-	Affidavit	3.
3-	Stay application	4.
4-	Orders & Judgment	A & B	5- 10.
5-	Order	C	11- 12.
6-	Vakalat nama	13.

PETITIONER/APPLICANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

MOBILE NO.0345-9383141

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



**Implementation Petition No. 441 /2019
In
Appeal No.716/2019**

Mst: Raheela Ijaz (PHC) Technician,
BHU Gujjar Ghari, District Mardan.

.....**PETITIONER**

VERSUS

- 1- The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Health Officer, District Mardan.

.....**RESPONDENTS**

**IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
DATED 05.11.2019 IN LETTER AND SPIRIT**

R/SHEWETH:

- 1- That the petitioner filed Service appeal bearing No. 716/2019 before this august Service Tribunal against the transfer order dated 09.11.2018 whereby the petitioner was transferred from BHU Gujjar Ghari Mardan to BHU Kodinaka in violation of the rules and Policy.
- 2- That the appeal of petitioner was finally heard by this august Tribunal on 05.11.2019 and was decided in favor of the petitioner vide judgment dated 05.11.2019 with the view that ***"Due to confusion about the authority competent to notify posting/transfer of the appellant as well as private respondent No.4, we are constrained to accept the present service appeal by setting aside the impugned order dated 09.11.2018, 22.01.2019 and 03.05.2019. The respondents are directed to issue fresh posting/transfer orders of the appellant/private respondents as per law and rules"***. Copies of the orders & judgment are attached as annexure..... **A & B.**
- 3- That after obtaining attested copy of the judgment dated 30.01.2019 the petitioner submitted the same before the respondents for his claim but the respondent Department is not willing to obey the judgment and till date the

- respondents have not been redressed the said grievances of the petitioner.
- 4- That inspite of the clear directions of this august Tribunal the respondents once again transferred the appellant from BHU Gujjar Ghari, Mardan to BHU Kodinaka vide order dated 20.11.2019 in violation of the judgment dated 05.11.2019. Copy of the order is attached as annexure.....C.
- 5- That the petitioner has no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may be directed to implement the judgment dated 05.11.2019 in letter and spirit and not to transfer the petitioner from BHU Gujjar Ghari, Mardan. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER



RAHEEL IJAZ

THROUGH:



NOOR MOHAMMAD KHATTAK



MOHAMMAD ARIF

&



**MIR ZAMAN SAFI
ADVOCATES**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2019
In
Appeal No.716/2019

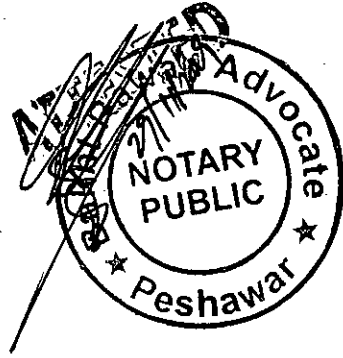
RAHEELA IJAZ

VS

HEALTH DEPTT:

AFFIDAVIT

I Noor Mohammad Khattak, Advocate on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.




NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2019
In
Appeal No.716/2019

RAHEELA IJAZ

VS

HEALTH DEPTT:

APPLICATION FOR SUSPENSION OF OPERATION OF
THE IMPUGNED ORDER DATED 20.11.2019 TILL THE
DISPOSAL OF THE ABOVE MENTIONED APPEAL

R/SHEWETH:

- 1- That the above mentioned implementation petition along with this application has been filed by the appellant before this august Service Tribunal in which no date is fixed so far.
- 2- That appellant filed the above mentioned petition against the action and inaction of the respondents by not implementing the judgment dated 05.11.2019 litter and spirit and issuing the impugned transfer order dated 20.11.2019 in violation of the judgment passed by this august Tribunal.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned order dated 20.11.2019 had been issued by the respondents in utter disregard of law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned order dated 20.11.2019 may very kindly be suspended to the extent of appellant till the disposal of the above mentioned implementation petition.

Dated: 29.11.2019

APPLICANT
THROUGH:

NOOR MOHAMMAD KHATTAK

&

MIR ZAMAN SAFI
ADVOCATES

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA, PESHAWAR.



Office Ph# 091 - 9210269

Exchange# 091 - 9210187, 091 - 9210196,

Fax #091 - 9210230

All communications should be addressed to the Director General Health Services Peshawar and not to any Official by name.

A-5

OFFICE ORDER.

As approved by the competent authority, Mst. Naheed PHC Technician (MCH) BPS-12, attached with DHO, Mardan (BHU Kodinika on general duty at C.D Bijligar) is hereby transferred posted to BHU Gujjar Garhi against the vacant post of PHC Technician (MCH) BPS-12, in the interest of Public Service with immediate effect.

Arrival/ Departure reports should be furnished to this Directorate for record.

Sd/xxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES KPK, PESHAWAR.

No. 9798-801/AE-VI,

Dated Peshawar the 09/11/2018.

Copy forwarded to the:-

- 1) District Health Officer, Mardan.
- 2) DAO, Mardan.
- 3) Supdt: Promotion Cell (to correct the place of posting of official concerned in the seniority list)
- 4) Official concerned.

For information and necessary action.

Deputy Director (Paramedics)
Directorate General Health Services,
Khyber Pakhtunkhwa, Peshawar

attested
q

No 19576-60 DHO Dabul 14-11-2018
copy forwarded to
1- H.O. C.D. Bijligar
2- DAO Mardan
3- H.O. BHU Gujjar Garhi
4- Accounts DHO
5- DHCS Cell for reference

ATTESTED

q

District Health Officer
Mardan

① -> DG Health
have
The power?

② no Reason.

③ not specified my name.



حکومت خیبر پختونخوا

**DISTRICT HEALTH OFFICER
MARDAN (Khyber Pakhtunkhwa)**

Ph: # (0937) 9230030 Fax: # (0937) 9230283
Email: mardandho@gmail.com

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

(Annexure "B")

U

6

OFFICE ORDER:

On the transfer of Mst. Naheed, PHC Technician (MCH) BPS-12 from BHU Kodinaka to BHU Gujar Garhi vide Director General Health Services Khyber Pakhtunkhwa Peshawar office Order No. 9798-80/AE-VI dated 09/11/2018, Mst. Raheela Ejaz, PHC Technician (MCH) BPS-12 of BHU Gujar Garhi is hereby transferred to BHU Kodinaka with immediate effect in the public interest.

Note: Arrival/Departure should be submitted to this office.

on the basis of Ref to DGH

District Health Officer
Mardan

No. 1457-64 /DHO

dated Mardan the 22 /11 /2019

Copy forwarded to the:

1. Director General Health Services Khyber Pakhtunkhwa Peshawar for information w/ref: to office order No. quoted above.
2. District Comptroller of Accounts, Mardan.
3. Incharge of BHUs concerned.
4. DHIS Cell, DHO Office Mardan.
5. Accountant DHO Office Mardan.
6. Officials concerned for information and compliance.

attested

District Health Officer
Mardan

ATTESTED

(Signature)



حکومت خیبر پختونخوا

DISTRICT HEALTH OFFICER
MARDAN (Khyber Pakhtunkhwa)

Ph: # (0937) 9230030 Fax: # (0937) 9230283
Email: mardandho@gmail.com

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

OFFICE ORDER:

Mst. Raheela Ijaz, PHC Technician (MCH) BPS-12 attached to BHU Kodinaka under the control of the undersigned is hereby transferred on general duty basis to BHU Gujar Garhi with immediate effect till further order.

Note: Arrival/Departure should be submitted to this office.

District Health Officer
Mardan

No. 7109-13 /DHO dated Mardan the

03/05 /2019

Copy forwarded to the:

1. Mr. Ifikhar Ali Mashwani, MPA PK-46.
2. Incharge BHUs Kodinaka / Gujar Garhi.
3. DHIS Cell, DHO Office Mardan.
4. Accountant DHO Office Mardan.

concerned.
for information and necessary action.

District Health Officer
Mardan

ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 716/2019

Date of Institution ... 03.06.2019

Date of Decision ... 05.11.2019

B-3

Raheela Ijaz (PHC) Technician at BHU Gujar Gharri D/O Ghafoor-ur-Rahman R/O Mohallah Piran Gujar Ghari, Tehsil and District Mardan. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health Department, Khyber Pakhtunkhwa Peshawar and three other. ... (Respondents)

MR. MOHAMMAD ARIF,
Advocate

For appellant.

MR. ZIAULLAH,
Deputy District Attorney

For respondents

MR. AHMAD HASSAN
MR. MUHAMMAD HAMID MUGHAL

MEMBER(Executive)
MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued being resident of Gujar Ghari, Mardan, she was posted at BHU, Gujar Ghari as PHC Technician, ever-since her appointment. That respondent no.2 through order dated 09.11.2018 posted private respondent no.4 in BHU, Gujar Ghari against the vacant post of PHC Technician (MCH). It merits to mention here that she was performing general duty at BHU Kodinaka at C.D Bijligar. That in continuation of the said notification respondent no.3 through order dated 22.01.2019 transferred the appellant to BHU Kodinaka. However, through another order dated 03.05.2019, the appellant was directed to perform general duty at BHU, Gujar Ghari till further orders. Feeling aggrieved, she filed departmental appeal on 04.02.2019

ATTESTED

(9)

which remained unanswered, hence, the present service appeal. Learned counsel for the appellant further argued that private respondent no.4 maneuvered her transfer by exerting political pressure and to do private practice at the above station. On the other hand the appellant never indulged in private practice. Being a mother of two children, it was not possible to her to perform duty at the place of her new posting. Transfer order was not issued in the public interest and also in violation of Posting/Transfer Policy of the Provincial government.

03. Learned DDA argued that respondent no.2 issued transfer order of private respondent no.4 PHC Technician (MCH) (BPS-12) from BHU, Kodinaka to BHU, Gujar Ghari against a vacant post in the public interest. Respondent no.2 was also competent to issue Posting/Transfer orders of employees from BPS-01 to BPS-16 in Khyber Pakhtunkhwa. Transfer of the appellant was made in accordance with posting/Transfer Policy notified by the Provincial Government. Every government servant is liable to serve anywhere in the province and cannot claim a post of his/her choice.

CONCLUSION:

04. Through order dated 09.11.2018 issued by respondent no.2, private respondent no.4 attached with DHO, Mardan (BHU Kodinaka) on general duty at C.D Bijligar was posted at BHU, Gujar Ghari against a vacant post. When DDA was confronted on the point that the post in question was not vacant but occupied by the appellant was unable to give any satisfactory response. His attention was also invited to inherent contradictions in the para-wise comments submitted by the official respondents. These comments created an anomalous situation both respondent no.2 and 3 were declared as competent authority to issue Posting/Transfer order. However, this fact could not be established by the official respondents with the help of documentary evidence, as to who was the competent authority in the present case? Subsequently respondent no.3 through order dated 22.01.2019 transferred the appellant to BHU, Kodinaka but subsequently withdrawn this

ATTESTED

[Signature]

(10)

order on 03.05.2019. Prima-facie, it appears that competent authority in the present case was DHO, Mardan and powers exercised by the DG Health were beyond his mandate.

The element of political influence, as alleged by the learned counsel for the appellant remained unsubstantiated.

05. Taking this opportunity, we would like to remind the respondents about the issue of private practice, as alleged by the learned counsel for the appellant. Allegedly, prime motive of private respondent no.4 to get her posted at Gujar Ghari was to do private practice. We presume that rules did not allow such practice at official premises and when the officials concerned were also not qualified for the same. It is high time that respondents ^{may} who take remedial steps to stop this practice in the larger interest of poor patients.

06. Due to confusion about the authority competent to notify Posting/Transfer of the appellant, as well as private respondent no.4, we are constrained to accept the present service appeal by setting aside the impugned order date 09.11.2018, 22.01.2019 and 03.05.2019. The respondents are directed to issue fresh Posting/Transfer orders of the appellant/private respondent as per law and rules. Parties are left to bear their own costs.

File be consigned to the record room.

[Signature]
Copy
Peshawar

[Signature]
(AHMAD HASSAN)
Member

[Signature]
(MUHAMMAD HMAID MUGHAL)
Member

ANNOUNCED
04.11.2019

ATTESTED
[Signature]

Date of	5-11-2019
Number of	1200
Copy to	14-
Urgent	✓
Total	14 8
Name of	
Date of	8-11-2019
	8-11-2019



**DISTRICT HEALTH OFFICER
MARDAN (Khyber Pakhtunkhwa)**

Ph: # (0937) 9230030 Fax: # (0937) 9230283
Email: mardandho@gmail.com

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

مکمل صحت خیبر پختونخوا


C-11

OFFICE ORDER:

The following posting / transferred of LHVs are hereby ordered with immediate effect in the best public interest:

S.No	Name	Transfer From	Transfer To
1.	Mst. Naheed Begum	BHU Gujar Garhi	BHU Bagu Banda
2.	Mst. Shamim Akhtar	CD Par Hoti under transfer to BHU Chargulli	BHU Gujar Garhi
3.	Mst. Raheela Ijaz	BHU Gujar Garhi	BHU Kodinaka

Note: Arrival/Departure should be submitted to this office for record.


District Health Officer
Mardan


No. 16726-31 DHO

dated Mardan the 20/11 /2019

Copy forwarded to the:

1. District Comptroller of Accounts Mardan.
2. Deputy DHO Tehsil Mardan.
3. Divisional Monitoring Officer IMU Health, Mardan.
4. MO/Incharge BHU Gujar Garhi/ BHU Bagu Banda / BHU Kodinaka/BHU Chargulli/ CD Par Hoti.
5. DHIS Cell, DHO Office Mardan.
6. Accounts Section, DHO Office Mardan.

For information & necessary action.


District Health Officer
Mardan

ATTESTED



TO,

(12)

THE DIRECTOR GENERAL HEALTH, KPK PESHAWAR

Subject: Departmental Appeal against the transfer order No-16726-31, Dated: 20/11/2019, which is issued by the DHO Mardan in violation of the judgment of the KPK Service Tribunal in acceptance of a Service Appeal NO-716 of 2019, filed against the transfer orders No-9798-801/AE-VI, Dated: 09/11/2018, and order No-1459-64/DHO, Dated: 22/01/2019 and order No-03/05/2019.

Respectfully Shewith;

The appellant submits as under;


1. That the appellant was serving in BHU GujarGharri as PHC technician and feeling aggrieved from the transfer orders mentioned above filed a service appeal which was accepted vide order Dated: 05/11/2019, and the above orders were cancelled and the concerned were directed to issue fresh orders to this effect.
2. That now the DHO Mardan in result of the acceptance of the service appeal issued another order No-16726-31, Dated: 20/11/2019, which is in violation of the judgment of the KPK Service Tribunal wherein the appellant was granted the relief and the above mentioned transfer orders were cancelled.
3. That the appellant prays before this office for the cancellation of the fresh order No-16726-31, Dated: 20/11/2019, and implementation of the judgment of the Service Tribunal in its true sense.

It is therefore most humbly prayed that keeping in view the relief of the appellant in result of the acceptance of the service appeal transfer orders of the appellant against the post of PHC Technician in BHU GujarGharri may kindly be issued.

Dated: 28/11/2019

ATTESTED





Mst. Raheela Ijaz
PHC technician
BHU GujarGharri

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

_____ OF 2019

Raheela Ijaz

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Raheela Ijaz

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. _____/_____/2018



CLIENT



ACCEPTED

NOOR MOHAMMAD KHATTAK

MOHAMMAD ARIF

&

MIR ZAMAN SAPI

ADVOCATES

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No. **0345-9383141**