

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

Service Appeal No. 10406/2020

Date of Institution ... 20.07.2020

Date of Decision ... 29.11.2022

**SCANNED  
KPST  
Peshawar**

Abdul Khaliq Ex-PST, GPS Shakoor Tangi Tehsil & District Charsadda.

... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar and 02 others.

... (Respondents)

MR. YASIR SALEEM,  
Advocate

-----  
--- For appellant.

MR. MUHAMMAD JAN,  
District Attorney

--- For respondents.

SALAH-UD-DIN  
MIAN MUHAMMAD

--- MEMBER (JUDICIAL)  
--- MEMBER (EXECUTIVE)


**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Precise facts forming background of the instant appeal are that the appellant was appointed as PTC Teacher vide appointment order dated 30.09.1989. The appellant was retired from service with full pensionary benefits with effect from 05.10.2015 vide order dated 03.10.2015 passed by the then District Education Officer (Male) Charsadda. It was after retirement of the appellant that a complaint was filed against him on the allegations that his Matriculation certificate was fake and bogus, which resulted in



registration of case FIR No. 02/2016 under Sections 419/420/468/471 PPC read with Section 5 (2) of Prevention of Corruption Act against the appellant in Police Station ACE Charsadda. The appellant was though acquitted in the said criminal case vide judgment dated 25.11.2017 but his pension case was regretted and vide letter dated 31.03.2018, the Sub-Divisional Education Officer (Male) Tangi was asked that the appellant may be intimated that the department was having the right to recover the salaries received by the appellant during his service period as his Matriculation certificate was fake. The appellant filed departmental appeal, however the same was not responded, therefore, he has now approached this Tribunal through instant service appeal for redressal of his grievance.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

  
3. Learned counsel for the appellant has argued that the appellant was appointed as PTC Teacher on 30.09.1989 after fulfillment of all legal and codal formalities. He next contended that after serving the department for about 26 years, he applied for premature retirement from service, which was sanctioned in favour of the appellant vide order dated 03.10.2015, therefore, the appellant was legally entitled for pensionary benefits. He further submitted that the appellant was appointed in the year 1989 and served the department for almost 26 years but even a show-cause notice was not issued to him during the course of his service that his Secondary School Certificate was fake. He

next argued that the alleged verification of his Secondary School Certificate was made after his retirement without even associating the appellant with the process of verification and as the appellant has been acquitted in the criminal case, therefore, the respondents are not justified in not granting the pensionary benefits to the appellant.

4. On the other hand, learned District Attorney for the respondents has argued that the appointment of the appellant was made on fake Secondary School Certificate, which fact has been affirmed by Board of Intermediate and Secondary Education Peshawar, therefore, the appellant is not entitled for any pensionary benefits. He next argued that the appellant had deceived the appointment Authority by committing fraud and his appointment as PTC Teacher was void ab-initio, disentitling him to any pensionary benefits. He further submitted that acquittal of the appellant in the criminal case was on technical grounds, therefore, the same is of no avail to the appellant.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that the appellant was appointed as PTC Teacher vide appointment order dated 30.09.1989 and after serving the department for about 26 years, he applied for pre-mature retirement and vide order dated 03.10.2015 he was retired from service with effect from 05.10.2015. During long service tenure of the appellant, the respondents did not bother to get verified Secondary School Certificate of the appellant from the concerned Board. It is an admitted position that no inquiry proceedings were initiated against the

appellant during tenure of his service. It was after retirement of the appellant that his Secondary School Certificate was allegedly sent to the Board of Intermediate and Secondary Education Peshawar for verification and as per report of Assistant Secretary (Certificates) the same was found fake/bogus. The same allegations of having fake and bogus Secondary School Certificate resulted in registration of case FIR No. 02/2016 under Sections 419/420/468/471 PPC read with Section 5 (2) of Prevention of Corruption Act against the appellant in Police Station ACE Charsadda. The prosecution, however failed to prove the allegations against the appellant and he has been acquitted vide judgment dated 25.11.2017 passed by the then Special Judge, Anti-Corruption, (Provincial), Khyber Pakhtunkhwa Peshawar. The appellant was retired from service vide order dated 03.10.2015, which remained in field and was withdrawn after considerable delay vide order dated 16.11.2020. The appellant has admittedly served the department for almost 26 year and without any order being passed regarding forfeiture of his service, the respondents were not justified in denying him pensionary benefits.

7. It is by now well settled that pension is not a bounty or an ex-gratia payment but a right acquired by an employee in consideration of his past service and the same cannot be withheld arbitrarily. August Supreme Court of Pakistan in its judgment reported as PLD 1973 S.C 514 has held as below:-

*"It must now be taken as well-settled that a person who enters Government service has also something to look forward after his retirement, to what are called*

*retirement benefits, grant of pension being the most valuable of such benefits. It is equally well-settled that pension like salary of a civil servant is no longer a bounty but is a right acquired after putting in satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."*

08. Similarly, in the case of I.A. Sharwani v. Government of Pakistan (1991 SCMR 1041), it was held as follows:-

*"A pension is intended to assist a retired civil servant in providing for his daily wants so long he is alive in consideration of his past services, though recently the above benefit has been extended inter alia in Pakistan to the widows and the dependent children of the deceased civil servants. The raison d'etre for pension seems to be inability to provide for oneself due to old age. The right and extant to claim pension depends upon the terms of the relevant statute under which it has been granted."*

09. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and office order dated 03.10.2015 passed by the District Education Officer (Male) Charsadda regarding pre-mature retirement of the appellant from service stands restored. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
29.11.2022



(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)



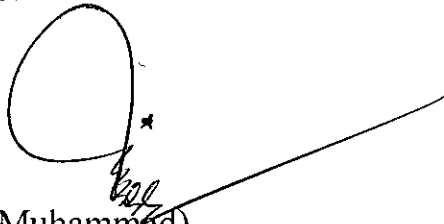
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

ORDER  
29.11.2022

Appellant along with his counsel present. Mr. Muhammad Jan,  
District Attorney for the respondents present. Arguments heard and  
record perused.

Vide our detailed judgment of today, separately placed on file,  
the appeal in hand is allowed by setting-aside the impugned orders and  
office order dated 03.10.2015 passed by the District Education Officer  
(Male) Charsadda regarding pre-mature retirement of the appellant  
from service stands restored. Parties are left to bear their own costs.  
File be consigned to the record room.

ANNOUNCED  
29.11.2022



(Mian Muhammad)  
Member (Executive)



(Salah-Ud-Din)  
Member (Judicial)

16.11.2022

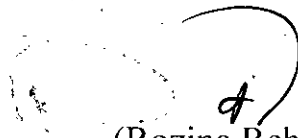
Appellant alongwith counsel present:

Naseer Uddin Shah, learned Assistant Advocate General  
for respondents present.

Learned counsel for appellant requested for adjournment  
as he has not prepared the brief. Adjourned. To come up for  
arguments on 23.11.2022 before D.B



(Fareeha Paul)  
Member (E)

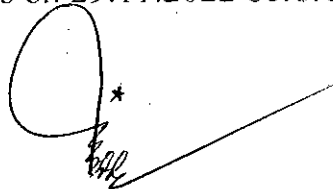


(Rozina Rehman)  
Member (J)

23.11.2022

Mr. Yasir Saleem, Advocate for the appellant present. Mr.  
Muhammad Jan, District Attorney for the respondents present.

Partial arguments heard. To come up for remaining  
arguments on 29.11.2022 before D.B.



(Mian Muhammad)  
Member (E)



(Salah-Ud-Din)  
Member (J)

SCANNED  
KPST  
Peshawar

SCANNED

13.04.2022

No one present on behalf of the appellant. Mr. Kabirullah Khattak, Additional Advocate General alongwith Umar Zaman, DEO for the respondents present.

*Noted 22-6-22*

*[Signature]*

Reply/comments on behalf of respondents submitted which is placed on file. To come up for arguments before the D.B on 08.07.2022. Notice also be issued to the appellant and his counsel for the date fixed.

*[Signature]*

(Rozina Rehman)  
Member (J)

*[Signature]*

Chairman

*8-7-2022*

*Due to Holidays of Eid-UI-Azha  
the case is adjourned to 25-10-2022*

*[Signature]*  
Recorder

25.10.2022

Appellant in person present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the honourable Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 16.11.2022 before the D.B.

*[Signature]*

(Mian Muhammad)  
Member (E)

*[Signature]*

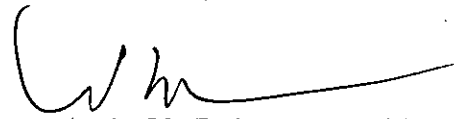
(Salah-Ud-Din)  
Member (J)



03.01.2022

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, AAG for respondents present.

Reply/comments on behalf of respondents are still awaited. Learned AAG sought time for submission of reply/comments. Last opportunity is granted to respondents to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come up for arguments before the D.B on 13.04.2022.

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

~~13.04.2022~~

~~Notice for the respondents present Mr. Kabirullah Khattak, AAG for the respondents present to submit written reply on behalf of the respondents to come up for arguments on 13/04/2022 before the D.B.~~

~~(Signature)~~

10406/20

07.07.2021

Counsel for the appellant present. Preliminary arguments heard.

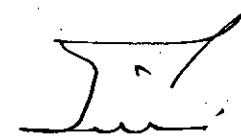
Keeping all just and legal objections intact for determination at the time of regular hearing, let the respondents come with their reply/comments. The appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 18.11.2021 before the D.B.

Appellant Deposited  
Security Process Fee  
10/11/21

  
Chairman

18.11.2021

Clerk of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present and sought time for submission of reply/comments. Adjourned. To come up for submission of reply/comments before the S.B on 03.01.2022.

  
(Salah-Ud-Din)  
Member (J)

05.01.2021

Mr. Taimur Ali Khan, Advocate for counsel for the appellant present.

Requests for adjournment as learned counsel for the appellant is indisposed today. Adjourned to 31.03.2021 for hearing before S.B.

  
Chairman

31.03.2021

Nemo for appellant.

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, instant case is adjourned to 07.07.2021 for hearing before S.B.



(Rozina Rehman)  
Member(J)

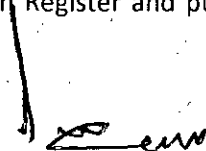
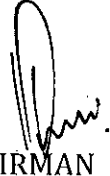

SCANNED  
KPST  
Peshawar

Form- A

FORM OF ORDER SHEET

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

Case No.- 10406/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/09/2020	<p>The appeal of Mr. Abdul Khaliq resubmitted today by Mr. Yasir Saleem Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26/10/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>26.10.2020</p> <p>Appellant in person present.</p> <p>Lawyers are on general strike, therefore, case is adjourned to 05.01.2021 for preliminary hearing, before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>

The appeal of Mr. Abdul Khaliq Ex-PST GPS Shakoor Tangi Tehsil & District Charsadda received today i.e. on 20.07.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of impugned order is not attached with the appeal which may be placed on it.
- 2- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 3- Copy of judgment dated 25.11.2017 mentioned in para-4 of the memo of appeal is not attached with the appeal which may be placed on it.
- 4- Annexures of the appeal may be got attested.
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal which may be placed on it.

No. 1743 /S.T.

Dt. 20/7 /2020.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Yasir Salim Adv. Pesh.

Sir, Resubmitted with clear objection.

  
8/9/20

Respected sir, the judgment dated 25-11-2017 is not available with US/petitioner in aforesaid case.



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

Appeal No. \_\_\_\_\_/2020

Abdul Khaliq Ex-PST, GPS Shakoor Tangi Tehsil & District Charsadda  
.....Appellant  
**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary and others  
.....Respondents

**INDEX**

S. No	Particulars	Annexure	Page No
1	Memo of Writ petition		1-4
2	Affidavit		5
3	<del>.....</del>	<del>.....</del>	<del>.....</del>
4	Copy of office order dated 30.09.1989	A	6
	Copy of retirement order dated 03.10.2015	B	7
5	Copy of order dated 31.03.2018	C	8
6	Copy of departmental appeal dated 20.03.2020	D	9-14
11.	Vakalatnama		15

Through

Appellant

  
**YASIR SALEEM**  
Advocate, Peshawar

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

Khyber Pakhtunkhwa  
Service Tribunal

10406

Appeal No. \_\_\_\_\_/2020

Diary No. 7504

Dated 20/7/2020

Abdul Khaliq Ex-PST, GPS Shakoor Tangi Tehsil & District  
Charsadda.

.....Appellant

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) Charsadda.

.....Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED 31.03.2018 VIDE WHICH THE APPLICATION OF THE APPELLANT WITH REGARD TO PROCESSING OF HIS PENSION CASE HAS BEEN REGRETTED AND AGAINST THE ORDER OF THE RECOVERY OF SALARIES FROM HIM AGAINST WHICH DEPARTMENTAL APPEAL DATED 20.03.2020 HAS NOT BEEN RESPONDED WITHIN THE STIPULATED PERIOD OF TIME.**

Filed to-day

Registrar

20/7/2020

Prayer in Appeal: -

On the acceptance of this service appeal the order dated 31.03.2018 may kindly be set aside and the pension case may kindly be processed and the order of recovery of salaries may also be withdrawn.

**Respectfully sheweth,**

The Appellant humbly submit as under

1. That the appellant has been initially appointed as PTC Teacher (PST Teacher) vide office order dated 30.09.1989. ***(Copy of office order dated 30.09.1989 is attached as annexure A).***
2. That ever since appointment the appellant had performed his duties as assigned with great zeal and devotion and there was no complaint what so ever regarding his performance.
3. That after performing his services for almost 20 years the appellant retired from service w.e.f 03.10.2015. ***(Copy of retirement order dated 03.10.2015 is attached as annexure B).***
4. That after retirement of the appellant requested for the processing of pension case, in the meantime a false complaint was filed against the appellant with the allegation of having fake matriculation certificate. The case before the Special Judge Anti Corruption was also registered. However, in that case charges were not proved and the appellant was acquitted on allegation leveled against him vide order and judgment dated 25.11.2017.



5. That despite of the fact that the appellant has been acquitted by the Judge Anti Corruption Peshawar his pension case has not been processed and instead the salaries which the appellant received during his service have been ordered to be recovered vide order dated 31.03.2018 by the District Education Officer Charsadda. **(Copy of order dated 31.03.2018 is attached as annexure C).**
6. That the appellant approached so many times to the competent authority for processing his pension case but recently flatly refused to do so. The appellant at last file his departmental appeal dated 20.03.2020 for his pension however the appeal is not responded within the stipulated period of time. *(Copy of departmental appeal dated 20.03.2020 is attached as annexure D).*
7. That the appellant pray for the acceptance of service appeal inter alia on the following grounds.

**Grounds:**

- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law are badly violated.
- B. That the appellant is innocent, he performed his duties during his entire service career with zeal and honesty and there is not a single adverse remarks in his ACR which could show

that he has not performed his duties according to the task given.

C. That the salaries which the appellant had been paid during his service were in consideration to his services rendered by him for the department and now recovery of those salaries is not only illegal and unconstitutional but also against the principles of natural justice.

D. That according to Superior Courts judgments there is not limitation in pay and pension. The article 23 of limitation act is very much clear as reoccurring of cause of action.

E. That after rendering his services to the department he is legally entitled for the pensionary benefits and the denial of respondents from pensionary benefits is illegal and ineffective upon the rights of the appellant.

F. That the act of the respondents not issuing pensionary benefits etc per-versant and against the settled principal of natural justice.


G. That the salaries which I had been paid during my service were in consideration of my duties and services rendered by me for the department so now the recovery of those salaries from me is not only illegal and unconstitutional but also against the principles of natural justice.

H. That I belong to a poor family and with holding of my pension case and the recovery for my salaries would amount to great hardships for me and my family.

*It is therefore prayed that on the acceptance of this service appeal the order dated 31.03.2018 may kindly be set aside and the pension case may kindly be processed and the order of recovery of salaries may also be withdrawn.*

Through

*A. Khattak*  
Appellant

  
YASIR SALEEM  
Advocate, Peshawar

**AFFIDAVIT**

It is solemnly affirm and declare on oath that the contents of the above appeal is true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honorable Tribunal.

*A. Khattak*  
Deponent

Annex = A

6

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHARSADDA.

Appointment.

Appointment of the following candidates as untrained BTC teachers is hereby ordered in D.E.S-7 Rs.750/-fixed plus usual allowances with effect from the date of taking over charge in the interest of public service.

Term & Condition.

1. The appointment made purely on temporary basis.
2. They should produce their health and age certificates from the Civil Surgeon concerned before taking over charge. He should not be handed over charge in case he is above 25 years.
3. In case they desire to leave the deptt; they will give one month prior notice, and their pay will be referred to Govt.
4. They should report for duty within ten days positively, otherwise their order will be automatically cancelled.
5. Charge report, should be submitted to all concerned.

S.No. Name/Father's name and address.

School where posted.

- |  |                           |
|--|---------------------------|
| 1. Ayub Khan S/O Gul Fur, Moh: Sulimanzai, Vill: P.C. Shorpa, Teh: Tangi, Distt: Charsadda.                        | GIPS, Khat Turan, zai.    |
| 2. Fazal Hanan S/O Gul Hanan, Vill: Dhori Killi, Teh: Tangi.   | GIPS, Baro Killi.         |
| 3. Nurul Ishaq S/O Inayatullah, Vill: Ali Jan, Killi.  | GIPS, Loggar.             |
| 4. Munir Khan S/O Farid Khan, Vill: Stana Dar Killi, Chah No.6, Teh: Tangi, Distt: Charsadda.                      | GIPS, Jagga Killi.        |
| 5. Shaukat Khan S/O Gul Fur Khan, Moh: Urdugan, Teh: Tangi.  | GIPS, Bashir Khan Killi.  |
| 6. Muhammad Amin S/O Muhammad Zaman, Vill: Shoikhano Bari, Bahal, Teh: Tangi, District Charsadda.                  | GIPS, Ajeon Korona.       |
| 7. Faisal Robbi S/O Muhammad Ghani, Vill: Turdhor Mahal Sarici, Kashman, Teh: Tangi, District Charsadda.           | GIPS, Bahran Khan.        |
| 8. Zarin Khan S/O Bacha Khan, Vill: Sur: Kanan, Mohal: Kooz, Bahran Dhori, Harichand, Teh: Tangi Distt: Charsadda. | GIPS, H. Sanaullah.       |
| 9. Riaz Gul S/O Juna Gul, Moh: Pateh Khol, Teh: Tangi.   | GIPS, Munaf Boba Killi.   |
| 10. Abdul Khaliq S/O I. Ahmad Gul, Vill: Gaydhori, Teh: Tangi.   | GIPS, Palai Qilla.        |
| 11. Muhammad Ayaz S/O Amir Nazam, Moh: Pateh Khol, Teh: Tangi.   | GIPS, Haji Abad.          |
| 12. Ayub Khan S/O Izzat Khan, Vill: Janoodi, Teh: Tangi.   | GIPS, Ghafoor Khan Killi. |
| 13. Salim Khan S/O Haider Khan, Vill: Mianat Abad, Chool Mahal, Teh: Tangi, District Charsadda.                    | GIPS, Muslim Abad.        |
| 14. Syed Ali Gohar S/O Gul Badshah, Vill: Koghan, P.O. Shodag, Teh: Tangi, District Charsadda.                     | GIPS, Israail Khan Killi. |
| 15. Lal Badshah S/O Gul Badshah, Vill: Chool Pagan, P.O. Shodag, Teh: Tangi, District Charsadda.                   | GIPS, Gul Abad Tangi.     |
| 16. Shah Hussain S/O Haji Mohbab Gul, Moh: Khan Abad, Vill: P.C. Shorpa, Teh: Tangi, Distt: Charsadda.             | GIPS, Banjar Sarai.       |

**Attested**

DISTRICT EDUCATION OFFICER,  
(MALE) CHARSADDA.

Encl: No. 7519-39 /-PRG, Dadd Charsadda, the 30 / 09 / 1939.

Copy forwarded to the:  
1. Director of Education (Schools) Peshawar Division, Peshawar.

~~Arrested~~

*[Handwritten signature]*

DISTRICT EDUCATION OFFICER  
(MALE) CHARSAJDA

*[Handwritten signature]*  
2/11/2015

- 1. District Accounts Officer Charsajda
- 2. Sub-Divisional Education Officer (Male) Tangri
- 3. Official concerned
- 4. Office file

Copy for information to the:

Register No. 11883-86 Dated 3/10/2015

(SIRAJ MUHAMMAD)  
DISTRICT EDUCATION OFFICER  
(MALE) CHARSAJDA

book

Note: Necessary entry to this effect should be made in his service book also accorded in his favour.

Sanction of 312 days leave encashment in lieu of LPR (Not availed) is his date of birth recorded in his service book is 01-11-1962.

On his own request, Mr. Abdul Khalid PST GPS Shakoor Tangri is hereby allowed to retire from Govt. Service on premature basis with effect from 05/10/2015 Fore Noon with full pensioner's benefits as admissible under the rules.

OFFICE ORDER

OFF THE DISTRICT EDUCATION OFFICER (MALE) CHARSAJDA

Annex = B

7

Annex - C

8

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHARSAKDA

No 21751 / Dated 31 / 3 / 2018

To

The Sub: Divisional Education Officer (M) Tangi.

Subject: Memo;

**GUIDANCE REGARDING ANTI CORRUPTION COURT DECESSION.**

Reference to your letter No. 5059 dated 16-12-2017 and letter No. 6236 dated 09-03-2018 on the subject cited above and to ask you that the pension case in respect of Mr: Fazli Khaliq Ex-PST GPS Shakoor has been regretted in view of using fake matriculation certificate. Furthermore he may be intimated that this department has the right to recover the salaries he received during his service period as he has illegally deprived public exchequer of millions of rupees.

*[Signature]*  
DISTRICT EDUCATION OFFICER (MALE) CHARSAKDA.

*Recd on 16/4*

*DA*

*Intimate Mr. Fazli Khaliq Accordingly*

*16/4*

*[Handwritten signatures and notes]*

*[Signature]*  
**Attested**

*[Signature]*  
16/4/18

To  
Director,  
Elementary & Secondary Education  
Khyber Pakhtunkhwa  
Peshawar.

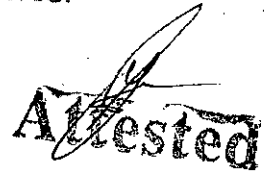
Subject: DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 31.03.2018 VIDE WHICH THE APPLICATION OF THE UNDERSIGNED WITH REGARD TO PROCESSING OF HIS PENSION CASE HAS BEEN REGRETTED AND AGAINST THE ORDER OF THE RECOVERY OF SALARIES FROM HIM

Prayer:  
On the acceptance of this departmental appeal the order dated 31.03.2018 may kindly be set aside and my pension case may kindly be processed.

Respected Sir,

I very humbly submits few lines for your kind and sympathetic consideration.

1. That I have been initially appointed as P.T.C, Teacher (PST Teacher) vide office order dated 30.09.1989.
2. That ever since my appointment I had performed my duties as assigned with great zeal and devotion and there was no complaint what so ever regarding my performance.
3. That after performing my services for almost 20 years I retired from service w.e.f 04.10.2015.
4. That after my retirement I requested for the processing of my pension case, in the meantime a false complaint was filed against me with the allegation of having fake matriculation certificate. The case before the Special Judge Anti Corruption was also registered.

  
Attested

969-A

20-3-20

To

Director,  
Elementary & Secondary Education  
Khyber Pakhtunkhwa  
Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 31.03.2018 VIDE WHICH THE APPLICATION OF THE UNDERSIGNED WITH REGARD TO PROCESSING OF HIS PENSION CASE HAS BEEN REGRETTEED AND AGAINST THE ORDER OF THE RECOVERY OF SALARIES FROM HIM**

Prayer:

On the acceptance of this departmental appeal the order dated 31.03.2018 may kindly be set aside and my pension case may kindly be processed.

Respected Sir,

I very humbly submits few lines for your kind and sympathetic consideration.

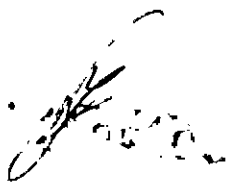
1. That I have been initially appointed as PTC Teacher (PST Teacher) vide office order dated 30.09.1989.
2. That ever since my appointment I had performed my duties as assigned with great zeal and devotion and there was no complaint what so ever regarding my performance.
3. That after performing my services for almost 20 years I retired from service w.e.f 04.10.2015.
4. That after my retirement I requested for the processing of my pension case, in the meantime a false complaint was filed against me with the allegation of having fake matriculation certificate. The case before the Special Judge Anti Corruption was also registered.

  
**Attested**



- D) That according to Superior Court, judgment, there is no limitation in pay and pension. The article 23 of limitation act is very much against a service state of cause of action.
- E) That the act of the respondent, not raising pensionary benefit, etc. per se and against the settled principle of natural justice.
- F) That the salaries which I had been paid during my service were in consideration of my duty and services rendered by me for the department so now the recovery of those salaries from me is not only illegal and unconstitutional but also against the principles of natural justice.
- G) That I belong to a poor family and with holding of my pension case and the recovery for my salaries would amount to great hardship for me and my family.

*It is therefore prayed that on the acceptance of this departmental appeal the order dated 31.03.2018 may kindly be set aside and my pension case may kindly be processed.*

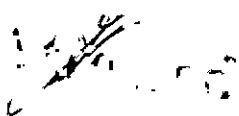


Yours Obediently,

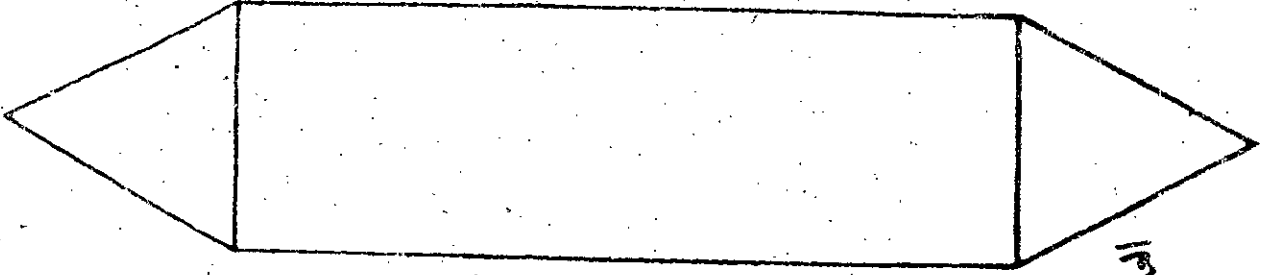
*A. Khalis*

Abdul Khalis Ex-PSI

GPS Shakoor Tungi



# بعدالت سر جس ٹریمینل پٹھان



عبدالحق بنام سحر منجھ

مقدم  
دعوی  
جزم

## باعث تحریر انکم

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب وہی دکل کارروائی متعلقہ آن مقام کے لئے نیا سرسلیک ایڈیشن پیش کیا جی کہ سحر منجھ اور مقررہ کے اقرار کیا جاتا ہے کہ صاحب موصوفت کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز وہیں صاحب کو کرنے راضی نامہ و تقررات و فیصلہ برحسب دیے جواب وہی اور اقبال دعویٰ اور بصورت دیگر کی کرنے اجراء اور وصولی چیک دروپہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق و زراں پر دستخط کرانے کا اختیار ہوگا نیز بصورت عدم پیروی یا دیگر کیفر یا اپیل کی برآمدگی اور منوعی نیز کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی جگہ تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو جس وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پمداختہ منظور و قبول ہوگا و دوران مقدمہ میں جو خرچہ و مہرجاتہ التوائے مقدمہ کے سب سے ہوگا اس کے مستحق وکیل صاحب موصوفت ہوں گے۔ نیز بقایا و خرچہ کی دھولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاخیر پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا نکات نامہ کہہ دیا کہ مستند رہے۔

المترجم  
دکٹر اشرف  
عبدالحق

17102-0444398-9  
A. K. Khan

کے لئے منظور ہے۔  
مقام

However, in that case charges were not proved and I was acquitted on allegation levelled against me

5. That despite of the fact that I have been acquitted by the Judge Anti Corruption Peshawar my pension case has not been processed and instead my salaries which I received during my service have been ordered to be recovered vide order dated 31.03.2018 by the District Education Officer Charsadda
6. That I approached so many times to the competent authority for processing my pension case but recently he flatly refused to do so. Hence the instant departmental appeal.
7. That I pray for the acceptance of departmental appeal inter alia on the following grounds.

Grounds:

- A. That I have not been treated in accordance with law hence my rights secured and guaranteed under the law are badly violated.
- B. That I am innocent, I performed my duties during my entire service career with zeal and honesty and there is not a single adverse remarks in my ACB which could show that I have not performed my duties according to the task given.
- C. That the salaries which I had been paid during my service were in consideration to my services rendered by me for the department and now recovery of those salaries is not only illegal and unconstitutional but also against the principles of natural justice

*Attested*

- D. That according to Superior Courts judgments there is not limitation in pay and pension. The article 23 of limitation act is very much clear as reoccurring of cause of action.
- E. That the act of the respondents not issuing pensionary benefits etc per-versant and against the settled principal of natural justice.
- F. That the salaries which I had been paid during my service were in consideration of my duties and services rendered by me for the department so now the recovery of those salaries from me is not only illegal and unconstitutional but also against the principles of natural justice.
- G. That I belong to a poor family and with holding of my pension case and the recovery for my salaries would amount to great hardships for me and my family.

*It is therefore prayed that on the acceptance of this departmental appeal the order dated 31.03.2018 may kindly be set aside and my pension case may kindly be processed.*

Yours Obediently,

Abdul Khaliq Ex-PST  
GPS Shakoor Tangi

  
Attested

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

Service Appeal No.10406/2020

Abdul khaliq Ex-PST, GPS Shakoor Tangi Tehsil & District Charsadda

..... Appellant

Vs

Government of Khyber Pakhtunkhwa & Others

Written comments on behalf of Respondents. 1 to 3

INDEX

S No	Description	Annexure	Page
1	Comments		1-2
2	Affidavit		3
3	BISEP letter copy	A	4 - 5
4	Photo copy of court Judgment	B	6-13

 27/12/2021  
DISTRICT EDUCATION OFFICER  
(MALE) CHARSAJDA

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

Service Appeal No.10406/2020

Abdul khaliq Ex-PST, GPS Shakoor Tangi Tehsil & District Charsadda  
..... Appellant

Vs

Government of Khyber Pakhtunkhwa & Others

**Written comments on behalf of Respondents**

Respectfully Sheweth:

**Preliminary Objections:**

- A. That the Appellant has no locus standi and cause of action.
- B. That the present Appeal is wrong, baseless and not maintainable, it shows no cause to be taken for adjudication, therefore, the Appeal is liable to be rejected/ dismissed.
- C. That the Appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory costs in favour of Respondents.
- D. That no legal right of the appellant has been violated, therefore, the appellant has no right to file the instant appeal.
- E. That the Appellant is completely estopped/precluded by his own conduct to file this Appeal.
- G. That the Appellant has not come to this Hon' able Tribunal with clean hands. The Appeal also suffers from mis-statements and concealment of facts and as such the Appellant is not entitled to equitable relief.
- H. That the Appellant has no right to file the instant Appeal and the Hon' able Service Tribunal has got no jurisdiction to adjudicate upon and the appeal and is liable to be dismissed.

**PARA WISE REPLY ON FACTS:**

1. That though the appellant was appointed as P.S.T, but over a fake Secondary School Certificate (SSC), and thus void-ab-initio.
2. That upon a complaint against the appellant his Secondary School Certificate was found as fake, hence, is not entitled for any pensionary benefits.

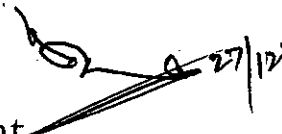
2

3. That the retirement order of the appellant was withdrawn and amended to the extent of no pensionary benefits as premature. (*Copy of revised retirement order is attached as annexure A*)
4. Incorrect, the SSC copy of the appellant had been sent for verification which was declared as fake by the assistant secretary BISE Peshawar. (*copy of letter of BISEP as annexure B*)
5. That Anti-corruption court, though acquitted the appellant on technical grounds, and observed in its para No.24 of the Judgment. The para is reproduced for the kind assistance of this Hon`able Tribunal as under. *It may however be made clear, before parting with the Judgment, That the accused is being acquitted of the charge in this case solely on technical grounds and, therefore, no part of this judgment should be construed in any manner to mean that the questioned certificate of the appellant was genuine.*
6. That as the appellant appointment was void-ab-initio, hence, is not entitled for any kind of relief.
7. That the appellant has no right to file the instant appeal and is liable to be dismissed on the following grounds inter alia amongst other.

**PARAWISE REPLY ON GROUNDS:**

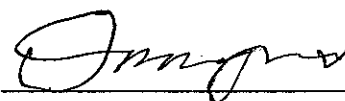
- A. That the appellant first appointment was based on fake SSC document, which is further declared as fake by BISE Peshawar, therefore, is not entitled for pensionary benefits.
- B. That the certificate of the appellant was declared as fake, therefore, is not entitled for any kind of benefits.
- C. That as the appointment of the appellant was void from its inception, hence, is not entitled for any kind of relief.
- D. That appellant was appointed on a fake document, hence, is not entitled for any kind of relief.
- E. That as is replied in the above paras on grounds.
- F. That the appellant is not entitled for the pensoinary benefits being appointed void-ab-initio.
- G. That as the appointment of appellant is based on fake document from its inception, hence, earning and Serving on the bases of fake document makes the appellant for no benefits.
- H. That as the appellant deceived the appointing authority by committing fraud through fake document and gained illegal benefits, hence, is liable to both quasi and non- quasi proceedings.

Respondent

 27/12/2021.

2 The District Education Officer (Male) Charsadda.

3- The Director



3

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

Service Appeal No. 10406/2020  
Abdul khaliq Ex-PST, GPS Shakoor Tangi Tehsil & District Charsadda  
..... Appellant

Vs

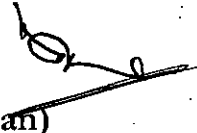
Government of Khyber Pakhtunkhwa & Others

**Written comments on behalf of Respondents**

**AFFIDAVIT**

I Mr. Umar Zaman DEO (M) Charsadda do hereby solemnly affirms that the contents of the Para-wise comments submitted by respondents are true and correct and nothing has been concealed intentionally from this Hon' able court.

Deponent

 27/12/2021.

(Umar Zaman)  
DISTRICT EDUCATION OFFICER  
(MALE) CHARSADDA  
13504-2260739-1





(4)

4

**BOARD OF INTERMEDIATE & SECONDARY EDUCATION**  
**PESHAWAR**

No. 1504/SSC/Cert/BISE/Peshawar

Dated: 04/11/2015

To,

Sub Divisional Education Officer  
(Male) Tangi

Subject: VERIFICATION OF MATRICULATION (SSC) CERTIFICATE

Memo;

Reference to your letter No: 1487 Dated 28/10/2015

Enclosed please find herewith (01) Photostat copy/copies of Original Certificate of SSC Examination in respect of the candidate mentioned in your letter with the remarks noted against each.

R.NO & Session	Name Father Name	Remarks
23921-A-1984	Abdul Khaliq S/O Ahmad Gul	Checked and found FAKE/BOGUS

The Particular of above mention certificate is checked and found FAKE/BOGUS.

Assistant Secretary (Certificate)  
Board of Intermediate & Secondary  
Education Peshawar

5

39



OFFICE OF THE DISTRICT EDUCATION OFFICER  
(MALE) E&SE CHARSADDA

091-9220481 | emischarsadda@yahoo.com

**OFFICE ORDER:**

Consequent upon Director (E&SE) Khyber Pakhtunkhwa Peshawar letter No.3758/F.No.162/Vol:18/Appeal of PST (M) General Dated Peshawar the 27-10-2020, retirement/sanction of leave encashment order in respect of Mr: Abdul Khaliq Ex-PST GPS Shakoor Tangi issued vide order No. 11883-86 dated 03-10-2015 is hereby withdrawn and he is hereby retired from Govt: Service on premature basis w.e.f 05-10-2015 without any pensioner benefits due to eligibility SSC found fake.

Furthermore, retired employee cannot be proceeded under the rules as per the court decisions.

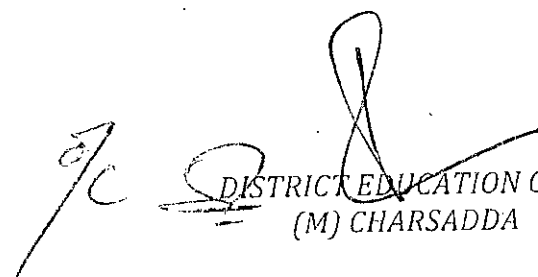
**NOTE:-** 1.Necessary entries to this effect should be made in his S/Book

(JEHANGIR KHAN)  
DISTRICT EDUCATION OFFICER  
(M) CHARSADDA.

Endst: No. 15099-15104 /dated 16/11/2020

Copy to the:-

1. Director (E&SE) Khyber Pakhtunkhwa Peshawar
2. District Account Officer Charsadda.
3. SDEO(M) Tangi
4. Official concerned.
5. Office file.

  
DISTRICT EDUCATION OFFICER  
(M) CHARSADDA

6

In the Court of Special judge, Anti-Corruption, (provincial), Khyber

Pakhtunkhwa, Peshawar.

Case No32 of 2017.

Date of Institution 16.5.2017.

Date of Decision. 25.11.2017.

Stat..... Versus.

Abdul Khaliq S/o Ahmad Gul. R/o Ganderi Payan. District Charsadda.

Case FIR No. 02. Dated 29.11.2016 of P.S ACE, Charsadda. U.s 419/ 420/468/471 of PPC

read with section 5(2) of Prevention of Corruption Act.

Judgment.

- 1) This judgment is being written to decide Case FIR No. 02 dated 29/11/2016 of P.S. Anti-Corruption Establishment (ACE). Charsadda. Where in accused Abdul Khaliq S/o Ahmad Gul has been charged u/s 419/420/471 of PPC read with section 5(2) of Prevention of Corruption Act.
- 2) As the FIR reads. In brief. Complainant Muhammad Yousaf Khan Ex- Circle Officer Anti-Corruption Charsadda. Relying on a source report. Reported to the DACE that in league with the officials of Education, Department accused. Used a fake matriculation certificate and illegally obtained employment as PTC teacher and served for 28 years. Thus by taking salary during this period he deprived the government exchequer of millions of rupees. DACE granted permission for open inquiry No.48/2016 Annual Examination 1984 purportedly issued by BISE Peshawar was sent for verification to BISE which was opined to be bogus and fake. Subsequent Muhammad Amin Senior Auditor ACE., Peshawar was tasked to give detailed audit report and according to his audit report No. 5993- 97ACE dated 27/4/2016 the accused had caused loss of Rs.23.54.394/- to government exchequer by taking salary: the responsibility was fixed on deprived public exchequer of

7

- 2) C contained in letter No.12384- ACE dated 23.11.2016
- 3) After completing investigation: challan was submitted against the accused. He appeared in the court when summoned and after complying with the provision of section 241-A of Cr.PC. Formal charge was framed against him to which he pleaded not guilty and claimed trial.
- 4) In order to prove its case. The prosecution examined as many as three witnesses namely Muhammed Amin as PW-1. Muhammad Yousaf as PW-2 and Qazi Muhammad Aslam as PW-3. All these witnesses were cross examined by the learned counsel for the accused. Thereafter the statement of accused was recorded u/s 342 Cr. PC wherein he performed his innocence. He was however not willing either to be examined on oath or to
- 5) The summary of the statements of the PWs is as following:-
- 6) PW-1 Muhammad Amin Senior Auditor. ACE. Peshawar stated to have conducted audit in the instant case and claimed to have detected the losses in the shape of salary paid to the accused. He verified its contents and his signature over it.
- 7) In his cross examination he stated that:-

It is correct that without written orders of the Director ACE, KPK. He anditor can conduct audit in any case. I have not given/ shown any written order regarding my authority to conduct audit in this case to written order regarding mu authority to conduct audit in this case to the inquiry officer..... I have correctly mentioned in my audit report Ex.PW1/1 that the responsibility of the case also lies on DDO Charsadda and establishment superintendent. It is correct that after recruitment within a period of six months it is the duty and responsibility of the DDO and establishment superintendent to verify the documents fo such Primary School Teacher. It is incorrect to suggest that the audit report Ex.PW1/1 has been made at the behest of 1.0. It is further incorrect to suggest that the instant audit report has been made in vacuum without reference to any document.

- 8) PW-2 Muhammd Yosaf SLACE Swabi stated that:-

As C.O. ACE Charsadda he submitted a source report to the Director CE for permission of open inquiry regarding the appointment of accused on bogus certificate. He verified the source report as allowed and that during inquiry he summoned the accused and placed on file his written statement. He also stated to have collected attested record from the SDEO office and

8

placed the same on file as Ex.PW2/3 consisting of ten pages along with the appointment order Ex.PW2/4 and certificate Ex.PW2/5. He added that vide application mark .A. he sent the certificate of the accused Ex. PW2/5 to controller of BISE for verification and received the report as Ex.PW2/6. He also stated to have submitted and application mark .B. for nomination of auditor. He added that thereafter was transferred and the remaining investigation

9) In his cross examination he stated that:-

.. It is correct that none of the documents which I have placed on file have been taken by me on recovery memo. The source report was drafted b me on 4.4.2016. However I cannot say at what time was the same drafted. The permission for open inquiry was given by the Director ACE Peshawar to me on the same day i.e. 4.4.2016 I cannot say that on 4.4.2016 I was in Peshawar or Charsadda. Similarly I have sent application for verification of the SSC to the BISE vide mark. A. which is undated. I cannot say as to as on which date the receive report Ex.PW2/6 from the BISE Peshawar. I have not recorded the statement of any person whom. Had received this report. Similarly I have not recorded the statement of the author of Ex.PW2/6. According to Ex.PW2/6 the report was also made on 4.4.2016. It is incorrect to suggest that it is not possible to have the source report written. Permission for the open inquiry granted and verification of the SSC by BISE made in one and the same day. Ordinarily office time is 8AM to 4PM. I cannot say whether in the instant case the then DEO Charsadda and Superintendent. Establishment were also held responsible. I cannot say whether it is the responsibility of the DEO and superintendent establishment to verify the documents within first six months. It is incorrect to suggest that since the verification conducted by the then DEO and Superintendent Establishment was genuine and proper. Therefore I did not nominate them as accused in the instant case. It is further incorrect to suggest that accused is innocents the entire process has been malafidely conducted by me only to harass a retired accused at the behest of his rivals. I have not sent the original SSC to BISE. Self-stated that I had sent the photo copy which is Ex.PW2/5. It is correct that on Ex.PW2/5 there is no signature of concerned BISE official declaring it check found fake and bogus.... It is correct that I have not recorded the statement of the SDEO official who brought the record on my request. It is also correct that I have not recorded the statement of the official whom had attested the above mentioned documents. A

9

document can be declared fake and bogus for various reasons e.g. the absence of record tampering of name and no original certificate etc. I have not ascertained the reason as to why the SSC was declared fake and bogus. Nor have I recorded the statement of the person whom has declared the SSC bogus nor has disclosed as to what was the procedure carried out to determine the authenticity of SSC. It is incorrect to suggest that accused official is innocent and has falsely implicated in the instant case. It is incorrect to suggest that I have dishonestly investigated the instant case with a view to malign a retired accused official at the behest of his rivals.

10) PW-3 Qazi Muhammad Aslam. Circle officer. P.S. ACE Charsadda stated to have prepared his final report Ex.PW3/1. He also stated to have registered the case vide FIR Ex. PA after obtaining permission of from the Director ACE vide letter Ex PW3/2. He verified its contents and his signature over it. He stated to have arrested and accused and obtained his one day custody: interrogated him and recorded his statement u/s 161 of Cr.PC. he also informed the court that the accused was not willing to record his confessional statement. He also stated that after completion of investigation he submitted complete challan Ex.PW3/7. He verified the contents of and his signature over the documents prepared by him.

11) In his cross examination he stated that

Before preparing the final report EX.PW3/1. I have gone through the necessary documents collected by my predecessor in office. According to the letter available on page-13 of the SDEO Tangi the name of the appointing authority is the then DEO Mr. Kareemullah Khan. I have mentioned in my final report the name of the DEO as Mohib Ullah Khan Bacha. Self-stated that I have mentioned the name of Mohib Ullah Khan Bacha from the letter available on page-25 of the judicial file ..... it is correct that I have not obtained anything in black & white to support the assertion made by me in my self-statement I have not recorded the statement of any person regarding the letter available at page 25. It is also correct that the letter does not bear any stamp of the signing authority. I am also the investigating officer as well as the officer that had submitted challan in this case. It is correct that there was no allegation against the accused that the PTC certificate obtained by him was fake. Self-stated that we verified the SSC certificate which was found fake. After the entrustment of the investigation to me I only arrested the

which was found fake. After the entrustment of the investigation to me I only arrested the accused and the inquiry was already done by Muhannad Yousaf Khan PW-1 except the assertion made by me in my being an I.O. it is was necessary for me to record the statement of the witnesses instead of merely reliance on the inquiry conducted by the inquiry officer. It is further incorrect to suggest that I did not have evidence because it did not support the case of the prosecution....it is incorrect to suggest that the SSC certificate is genuine and the accused facing trial was falsely enrobed in the instant case.

12) Arguments of learned senior public prosecutor for state and learned defense counsel were heard and the record was gone through with their valuable assistance.

13) Before analyzing the evidence of the prosecution in the instant case it has to be made clear that in the context of the allegations of prosecution. The court, working in the adversarial system, is not to determine whether the questioned certificate is forged or genuine. Rather since it was prosecution which was claiming the questioned certificate to be forged and fictitious. Therefore it was for the prosecution and for the prosecution alone to prove the same to be forged by producing cogent and positive evidence in accordance with the provision of Qanun-e-Shahadat 1984 and the court was to examine the evidence of the prosecution with a view to determine only whether the prosecution had succeeded to discharge its said burden of proof or not.

14) In this regard first of all it may be stated that according to article 75 of the Qanun-e-shahadat documents must be proved by primary evidence except in the cases where secondary evidence is permissible by the other provisions of the said law. Since in the instant case the validity of the questioned certificate was in dispute. Which by all means is covered by the definition of the term document used in Qanun-e-shahadat. Therefore under article 75 read with article 73 thereof. The original of the questioned certificate was required to be examined and reported upon by the concerned officer about its genuineness or otherwise.

15) On the other hand during the entire inquiry/ investigation and trial. The prosecution has relied mainly on the photo copy of the questioned certificate which has been placed on record as Ex. PW2/5 and the original certificate has nowhere surfaced or brought on the fore. The

has also been affixed on the said copy and not on the original certificate. It could not be shown that it at all the accused had got appointment in government department on the basis of said certificate. Why its original certificate was not obtained and sent to concerned authority for verification. It may also be mentioned here that none of the circumstance mentioned in clause (a) to clause (i) of article 76 of Qanun-e-Shahadat was shown to exist to justify the production of secondary evidence. It is also to be noted that with the said remarks of checked & found fake & bogus no seal or signature of any official/officer of the BISE is appearing so that it xord be determined as to who had fixed the said stamp with the said remarks and on whose direction so as to determine the authenticity and legal value of the said remarks. Similarly no official or officer of the BISE was examined by the inquiry officer or investigating officer during the inquiry/investigation who if at all someone had compared the contents of Ex.PW2/5. With the record of the BISE and had had found the same as fake and bogus. It was perhaps therefore that no such person was produced in the court as prosecution witness in the circumstances it is clear that no direct or primary evidence has been produced by the prosecution in the court to prove according to law that the questioned certificate was validity or existence of the documents is in question the primary evidence must be produced except where the law would permit the production of secondary evidence. In this regard the guidelines are taken from the following three precedents.

16) It was laid down in the case law reported in 2014 CLC 773that:-

“Secondary evidence relating to document. Admissibility. Secondary evidence could only be allowed, if the party claiming loss of original documents or possession thereof with the other party. Loss of original documents was a sine qua non in order to permit the production of secondary evidence”

17) Similarly the citation of 2014 MLD 342 read as follows:-

Document, proof of. Procedure. If validity of existence of document is disputed and original is not produced, certified copy is not admissible in evidence without proving non-availability of original and taking permission of court.

18) Likewise it was held in 2013 CLC 343 that:-



"Photostat copy of public document. Not admissible in evidence"

19) It is also to be noted that the questioned certificate having been allegedly used by accused in getting appointment in education department was a public document. According to statement of circle officer (PW-2) he had obtained the copy of the said document from the SDEO office. However there was no certificate of any officer of the SDEO office on the foot of Ex-PW2/5 to the effect that it was a true copy; not did it contain the name of SDEO, not official title not even his official's seal to convert the document into certified copy as required by the article 87 of the Qanun-e-shahdat the 1984. Hence the prosecution had failed to prove that EX.PW2/5 was a certified copy of the document used by the accused for getting his employment as PTC teacher.

20) The other document on which the prosecution had relied to prove the questioned certificate as forged and fictitious is the letter Ex.PW2/6 which had purportedly been written by Assistant Secretary (Certificate) Board of Intermediate and Secondary Education Peshawar. In the said letter it has been written that "the particular(s) of attached SSC certificate bearing S.NO.315699 R.NO.23921 Annual 1984 Abdul khaliq S/o Ahmad Gul is checked and found FAKE/BOGUS." However it is quite strange that neither the said Assistant Secretary (Certificate) Board of Intermediate and Secondary Education Peshawar was examined during inquiry or investigation nor was produced in other official of the office of Assistant Secretary (Certificate) Board of Intermediate and Secondary Education Peshawar was produced in the court for evidence to prove that the said letter had been official issued hence the contents of said document had not been proved according to law.

21) It is beside the point that as per the prosecution version, in the instant case the so8rse report was drafted on 4.4.2016; sent to the Director ACE on 4.4.2016; who granted permission of the inquiry on 4.4.2016; the contents of the c3ertifictae wee checked on 4.4.2016 and the report was also prepared on 4.4.2016. Given the pace of proceedings in other cases it is beyond comprehension that in the instant case all these different stages were covered in ne and the same day.

22) As far as the audit, report is concerned the auditor while appearing as PW-1, has clearly admitted in his cross examination as reproduced in the above excerpts that the responsibility of

the case also lied on DDO Charsadda and establishment superintendent as after recruitment within a period of six months it was the duty and responsibility of the school Teacher. However, neither the DDO Charsadda not the concerned establishment superintendent has been arrayed as accused in this case and no justification what so ever has been furnished why they had been left out of the case. Similarly the auditor while appearing as PW-1 had not produced nor referred to any record, if at all had consulted had caused the loss of Rs.23, 54,394/- to the public exchequer.

23) Keeping in view the above mentioned facts of the case and the legal lacunas, this court is of the view that the prosecution has not been able to prove beyond any reasonable shadow of doubt that the questioned certificate was forged. As such the accused is acquitted of the charges leveled against him in this case. Being on bail he and his sureties are absolved of their liabilities under the bail bonds.

24) It may however be made clear, before parting with the judgment, that the accused is being acquitted of the charge in this case solely on technical grounds and therefore no certificate was genuine.

25) The case property, if any, should be kept intact till the expiry of the period of limitation prescribed for appeal/revision and should be disposed of according to law if no appeal is preferred.

Announced.

Peshawar.

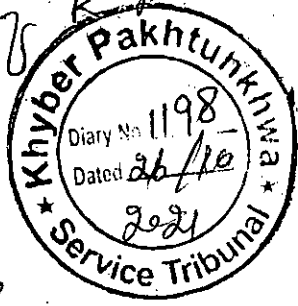
25.11.2017.

Before the Hon'ble ~~\_\_\_\_\_~~ ~~\_\_\_\_\_~~ Tribunal

Recd Appeal No. 10406/2020

Vs. Cont. J. K. P.

Abdul Khalid,



put up to the worthy chair-man with relevant appals.

Application for allowing the

~~\_\_\_\_\_~~ applicant to deposit security fee

~~\_\_\_\_\_~~ in the captioned case.

Reader

R/Sir

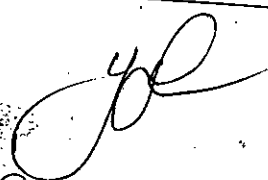
1. That captioned Appeal has been admitted on previous date i.e., 7/7/21 which has now been fixed for 18/11/21.
2. That due to some problems the applicant could not deposit the required fee in time, which now he wants to deposit.

It is therefore requested that the applicant may kindly be allowed to deposit the same.

Allowed  
26/11/21  
1002/11/20

Applicant

H. J.

  
YASIR SAIZEM  
Advocate  
High Court