27.11.2019

Counsel for the appellant and Addl. AG for the respondents present.

Learned counsel requests for withdrawal of instant appeal with the reservation of right of appellant to pursue his further legal remedy, if need be.

Disposed of as withdrawn. File be consigned to the record.

Chail

ANNOUNCED 27.11.2019 04.11.2019

Appellan Peposited Security Process Fee Counsel for the appellant present.

Learned counsel has provided copy of a list issued by District Accounts Officer, North Waziristan Tribal District on 01.11.2019 which contains the name of appellant.

Contends that the appellant has not been paid any amount towards monthly salary from the date of appointment/taking over charge. After protracted correspondence and disposal of Writ Petition by the Honourable Peshawar High Court, an office order was issued by Agency Surgeon North Waziristan Tribal District on 23.04.2019, whereby the appellant was declared entitled to receive the subject salary as no order of termination /discontinuation of his service was ever passed. The respondents, despite the office i order, were not inclined to actualize the payment. On the other hand, an advertisement was floated in the newspaper on 03.10.2019 whereby various posts, including that of the appellant, was advertised for filling up through applications by candidates. It is also the argument of learned counsel that the advertised posts are not available for filling up as the appellant is holding incumbency against one of those.

In view of available record and arguments of learned counsel, instant appeal is admitted for regular hearing subject to all just exceptions. The appellant is directed to deposit of security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 27.11.2019 before the S.B.

Alongwith the appeal an application praying for suspension of advertisement dated 03.10.2019 has also been preferred. Notice of the application be also given to respondents for the date fixed. Till next date the process, with regard to the advertisement dated 03.10.2019, shall not be finalized.

Chairma

Form-A

FORM OF ORDER SHEET

Court of

Case No.-1272/2019 S.No. Date of order Order or other proceedings with signature of judge proceedings 2 1 3 The appeal of Mr. Siraj-ud-Din presented today by Mr. Noor 07/10/2019 1-Muhammad Khattak Advocate may be entered in the Institution Register. and put up to the Worthy Chairman for proper order please. 1 REGISTRAR 7/10/18 This case is entrusted to S. Bench for preliminary hearing to be 2-; put up there on 28/10/29 CHAIR Counsel for the appellant present. 28.10.2019 Learned counsel requests for time to provide the list of officials as noted in the office order dated 23.04.2019 issued by Agency Surgeon North Waziristan Tribal District. Adjourned to 30.10.2019 before S.B. Chairman Counsel for the appellant present. 30.10.2019 Learned counsel requests for further time to do the needful as noted in the order dated 28.10.2019. Adjourned to 04.11.2019 before S.B. Chairman

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL No. 1272 /2019

Sergi ud den photomia Super 15 at A 40 Hospilal Nosth 1092 in/an Dist.

HEALTH DEPTT:

	INDEX	•	•
S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal		1 – 3
2.	Stay application	~~~~~~	4
3.	Letter dated 17.01.2019	Α ·	5
4.	Letter dated 31.01.2019	В	6
5.	Judgment dated 19.03.2019	С	<u>7-8</u>
6.	Appeal	D	. 9.
7.	Office order dated 23.04.2019	E	10
8.	Pay bill	F	11
9.	Observation	G	12
10.	Reply of observation	Н	13
11.	Departmental appeal	I	14
12.	Advertisement	J	15
13.	Vakalatnama		16

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK,

Advocate ROOM NO. 3, UPPER FLOOR, NEW ISLAMIA CLUB BUILDING, KHYBER BAZAR, PESHAWAR CITY 0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 1272 /2019	Khyber Pakhtukhwa Service Tribunal
Serat-ud. Sin Dispenser at AHR	Diary No. 1395
Hospital North waznotas Dist	Dated 7-10-2019
Auguar World - 2 - Co. p	. APPELLANT

VERSUS

- 1- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The District Health Officer, North Waziristan Tribal District.
- 3- The District Accounts Officer, North Waziristan Tribal District.

..... RESPONDENTS

OF APPEAL UNDER SECTION THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST RESPONDENTS BY NOT THE INACTION OF THE MONTHLY SALARIES HAVING BEEN RELEASING THE ALREADY APPROVED VIDE ORDER DATED 23-04-2019 **COMMUNICATED TO THE APPELLANT ON 26-06-2019 AND** IMPUGNED ADVERTISEMENT DATED AGAINST THE 3.10.2019 WHEREBY THE POST OF THE APPELLANT HAS **BEEN RE-ADVERTISED AND AGAINST NO ACTION TAKEN** ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:



That on acceptance of this appeal the impugned ledto-day advertisement dated 3.10.2019 may very kindly be set aside and the respondents may be directed to implement the order dated 23.4.2019 by releasing the monthly salaries of the appellant w.e.f 1.9.2012 till date. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH: ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- That appellant is the employee of the respondent Department and 1had served the respondent department for quite considerable period efficiently and up to the entire satisfaction of his superiors.
- 2-That appellant while performing his duty with respondent no. 2the monthly salaries of the appellant was stopped due to unknown reason against which the appellant filed departmental

- **5-** That some of the colleagues of the appellant approached the appellate for the release of their monthly salaries the appellant. That on the said Departmental appeal the appellate issued directions to the respondent No.2 to release salaries forthwith. Copy of the appeal is attached as annexure**D**.
- **7-** That the bills for monthly salaries were submitted before the respondent no.3 but instead of sanctioning the same the respondent no.3 returned the bills with observations vide letter dated 24-06-2019 which was properly resolved by the respondent no. 1 vide letter dated 24-06-2019 which is pending with respondent no. 2 till date. Copy letters are attached as annexure **G&H**.
- **9-** That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUNDS:

- A- That the act of the respondent no.2 by not sanctioning the bills for monthly salaries of the appellant is against the law, facts, norms of natural justice and materials on the record.
- B- THAT the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That act of the respondent no.3 by not sanctioning the bills for monthly salaries of the appellant is violative of Law and Rules.
- D- That the respondents discriminated the appellant on the subject by not sanctioning the bills for monthly salaries of the appellant.
- E- That the respondents acted in arbitrary and malafide intentions by not sanctioning the bills for monthly salaries of the appellant.
- F- That act of the respondent no.2 by advertising the post of the appellant after having knowing the fact that the appellant is already working on the advertised post which is against the norms natural justice.
- G- That the respondents violated Article 38(e) of the Constitution of Pakistan, 1973 by not sanctioning the bills for monthly salaries of the appellant.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 15.05.2019

THROUGH: NOOR MOHAN ΜΑΟ ΚΗΑΤΤΑΚ ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. _____

____/2019

AND HOSpilal North 1092001 an Dest

HEALTH DEPTT:

APPLICATION SUSPENSION OF OPERATION ON THE IMPUGNED ADVERTISEMENT DATED 03-10-2019

Respectfully Sheweth:,

- 1. That the appellant has filed the above titled appeal before this Honourable Tribunal in which no date has so far been fixed.
- 2. That all the three ingredient required for the grant of stay order are in favour of the appellant.
- 3. That contents of the instant application for suspension of the operation on advertisement may very kindly be consider as part and parcel of the main appeal.

It is therefore, most humbly prayed that on acceptance of this instant application the operation on the impugned advertisement dated 03-10-2019 as the respondent no. 1 has already announced the interview date i.e. 17-10-2019 & 18-10-2019 and if the same is not suspended the very purpose of the instant appeal would become infractuous.

Appellant

Through, NOOR MOHAMMAD KHATTAK, Advocate High Court,

Peshawar

Phone#. 091-9210106 FAX#. 091-9210212 ****

MERGED AREAS WARSAK ROAD PESHAWAR, Mo /DHS/FATA/Admn Dated:-

To

The District Surgeon. Tribal District, NW.

Subject:

APPEAL FOR RELEASE OF SALARIES.

It is in reference to a letter of Government of Pakistan, National commission for Human Rights vide No.08/18/COMP/FATA/NHCR dated 26-12-2018 pertaining to release of outstanding salaries of the appellant Mr.Zalud Noor and others, , wherein the commission has vividly referred the order of Supreme Court of Pakistan in captioned case No.16986-G OF 2018 IN THE MATTER OF REG, NON PAYMENT OF SALARIES TO THE STATE EMPLOYEES, the commission further stated that salaries of other 43 persons have already been released by your office vide No.8506-09 dated 10-05-2018..

It is further added that vide your letter No.938 dated 29-04-2016, No.19-10-2016, No. 1715/C-2 dated 20-07-2016, 6007/C-2 dated 19-12-2017 and No. 6822-23/C-2 vacant position dated 02-01-2018, wherein you have categorically stated that the appellants have not been terminated from services, which has further endorsed by the Agency Accounts officer NW Agency vide his letter No.AAO/MRN/NWA/2018-19:3085 dated 17-09-2018 and intimated that no record of termination orders of the appellants is available at account office NW Agency.

It is pertinent to mention here that the Minister for Health Khyber Pakhtunkhwa has also been directed the undersigned to release the pay of the appellants i.e Mr.Zahid Noor and others, and zaheenullah and others if stopped without assigning any cogent

Consequent upon above you are hereby directed to give them the termination orders if they are terminated from services, and if not terminated then release their salaries from the date of stoppage without no further delay under intimation to this office in frame of General Financial Rules, as stoppage of pay without assigning cogent reason is illegal.

Director Health Services Tribal Districts, Peshawar _/01/2019 12

No. 7/3;-18 /DHS/FATA/Admn Dated: ____ CC for information and necessary action to the:

1- Registrar Services Tribunal, Peshawar.

ALIESTED

2- Coordinator, National Commission for Human Rights w/r to his letter quoted above.

11

- 3- PS to Minister Health, Khyber Pakhtunkhwa, Peshawar w/r orders dated 21-12-2018 on the application of appellants
- DCO Tribal District NW

Medical Superintendent DHQ Hospital Miranshah request for same action please.

Director Health Services Tribal Districts, Peshawar



DIRECTORATE OF HEALTH SERVICES

MERGED AREAS WARSAK ROAD PESHAWAR. No _/DHS/FATA/Admn Dated:-

Phone#. 091-9210106 FAX#. 091-9210212

OFFICE ORDER:

The competent authority is pleased to withdraw the letter vide No.713-18/DHS/FATA/Admn dated 17-01-2018 pertaining to " Appeal for release of salaries " addressed to District Surgeon NW, in the interest of public Service.

Director Health Services Tribal Districts, Peshawar Dated: <u>-}/</u>/01/2019 CC for information and necessary action to the:

1- Registrar Services Tribunal, Peshawar.

No. 170-74 /DHS/FATA/Admn

2- Coordinator, National Commission for Human Rights w/r to his letter quoted above.

ALIESTED

3- PS to Minister Health, Khyber Pakhtunkhwa, Peshawai

4- DCO Tribal District, NW·

5- District Accounts officer, Tribal District, NW.

Director Health Settikes4 Tribal Districts, Peshawa

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Order or other Proceeding

Writ Petition No.1241-P/2019

Court of.....

Date of Order of

Proceedings

2

ORDER

19.03.2019

ATTHEFT

Case No.

Serial No. of

Order of

Proceedings

1

Present: Mr. Muhammad Asif Yousafzai, Adv: for Zahid Noor etc., petitioners.

Judge.

SYED AFSAR SHAH, J.- Zahid Noor etc., the petitioners, through the instant constitutional petition, have asked for the issuance of an appropriate writ declaring that the order dated <u>31,01.2019</u> of the respondents, whereby, letter dated <u>17.01.2019</u> with regard to direction for releasing their salaries, has been withdrawn.

2. We have gone through the available record carefully and considered the submissions of the learned counsel for the petitioners.

3. Since the appeal of petitioners, as per statement of the learned counsel for the petitioners and as is evident from the record, is pending adjudication

8. 2 before respondent No.1, therefore, we, at this stage, wouldn't like either to intervene or to touch / discuss merits of the case, lest it may prejudice the case of either party. However, we while disposing of this writ petition, direct the said authority to decide the appeal of petitioners one way or the other strictly in accordance with law through a speaking order within a fortnight positively, after receipt of this order by communicating the decision to them in a proper mode and manner. This writ petition is disposed of accordingly, Announced. JUDGE 19.03.2019 JUDGE 1158 Date of Presentation CERTIFIED TO BE TRUE COPY No of Page Stanson Copying Lee month Urgen Fee **Total** Date of Preparation Date of Delivery of ed By 🖌 ITESTED (Fayaz) (D.B. of Hon'ble Mr. Justice Sved Afsar Shah & Hon'ble Mr. Justice Abdul Shakoor)

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 OFFICE OF THE AGENCY SURGEON TRIBAL DISTRICT NORTH WAZIRISTAN

 Phone & Fax: 0928300788-311662
 email:agencysurgeonnwa@gmail.com

Miranshah Dated /

E-10

/2019.

OFFICE ORDER:-

No.

In pursuance to the directives /approval of Secretary Health ,Khyber Pakhtunkhwa and DHS Merged Areas Peshawar pertaining to release of salaries of the staff of Merged Area North Waziristan and to avoid the volume of the litigation and to esteem the honorable courts and appellants regarding release of outstanding salaries of the enlisted employees from the date of stoppage, as it is evident from the rerecord of this office that their terminations have not been made which has further rectify by the Agency Accounts officer NW vide his letter No.383DAO/MRN/NWD dated 12-03-2019 wherein it has been vividly intimated that no record of termination orders of the appellants is available at account office NW District hence stoppage of salaries without assigning cogent reason is illegal and violation of General Financial Rules.

Consequent upon above the outstanding salaries of enlisted staff is hereby released from the date of stoppage in the interest of public service.

Agency Surgeon North Waziristan Tribal District

CC 1433-37_/PF/AS/Miranshah dated: 23/04/2019. Copy forwarded for information and necessary action to the:-

- 1. District Accounts officer merged Area NW with request to release the outstanding salaries of enlisted employees/
- 2. Ps to Secretary Health, Khyber Pakhtunkhwa Peshawar.
- 3. PA to DHS Merged Areas, Peshawar.
- 4. Medical Superintendent DHQ Hospital Miranshah with request to release the outstanding salaries of enlisted employees.

ATTESTED

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5. Official concerned.

Received.

Agency Surgeon North Waziristan Triba District

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 Certifies that all the particular mentioned above are correct and the service Book atteched with the proforma is original and h been sined up-to date by the concerned Officer.
 Certified that the employee mentioned above regular in attendance and has not been profeeded abroad Pakistan. prignal and has

AFTESTEL

Cistrict Surgeon NWTD Mitan shah

District Accounts Officer



The District Surgeon, NWTD Miran Shah.

SUBJECT:- OBSERVATION.

Memo,

To,

Kindly refer to your case pertaining drawn salary from the post of charge nurse with fowling observation returned.

1. The salary may be drawn from the regular budget otherwise.

2. Post available from the date of stoppage till date.

3. Secy: Health KPK orders may be attested.

Therefore the above observation may kindly be removed and resubmitted at early date for further processes the case in the best interest of general public.

country WWA Miran

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.u 4

ATTESTED

OFFICE OF THE DISTRICT SUGGEON NORTH WAZIRISTAN (TRIBAL DISTRICT) MIRAN SHAH No. D/S/MRN/NWA/2018-19/ Dated 24/. 6 /2019 2353

The District Accounts Officer, NWTD Miran Shah.

SUBJECT:- OBSERVATION.

Memo,

To,

Kindly refer to your letter No.AAO/MRN/NWA/2018-19/2982 dated 24/06/2019 on subject noted above and stated that the observations is hereby removed and resubmitted to your good office

- 1. The salary may be drawn from the regular budget.
- 2. Post available from the date of stoppage till date.
- 3. Secy: Health KPK orders is duly attested.

Therefore you are requested to process the case as early as possible to resolve the issue once for all please

Distric urgeon NWTZ i**j**an Shah

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ATTESTED 7.1

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		متعلقة شعبه من دوماند في من الملاح من المراجع						
		<mark>ش داخط: -(1) صرف ثارت ایساند امید دارد کا نظرویو کے لئے بلایا جائے گا۔ (2) انٹرویو کے لئے آنے دالوں کوکو کی گی اے ڈی کا ٹے کنٹر دیا این میں (2) بیڈور میں ایر کانڈیر یہ جامع (10) دخوار میں ک ایتر کمیڈ این اور کی میں تقریر کا بیڈیو میں ڈی ڈی ڈیڈ</mark>						
100		ا جائے گا۔ (3) درخواست سادہ کاغذ پر دینا ہوگا۔ (4) درخواست سے ساتھ کیبیوٹرائز میڈی میشاختی کارڈ، تجریز کیزینیکی شادہ ڈونو سال میں یہ دینے کار بیان سال دیا ہوئی دین اول میں (5) مہل ہے ہوجہ یہ کری اللہ یا دونہ ایک محکومات کے میں ال کرم						
		ا کابی اداد در بیک کافذات انٹرویو کے دن شروری لائا ہوگا۔ (5) پہلے سے موجودہ مرکاری اہلکارا پی درخوا شین تحکما یہ توسط سے ارسال کریں۔(6) الابک عرض بیان یہ مدید قدامیں کرمالاتی رکی ہا جو گر (7) جازا اقرار کا کرتا ہم کسی ایک روخوا میں کرمیتہ مگر ۔ زان						
		بالانی مرش دعایت مردجہ تواعد کے مطالق دی جائے گی۔ (7) مجاز اتھادنی کوتمام یکمی ایک درخواست کومستر دکرنے اور آسامیوں کی تعداد میں کی بیشی کا اختیار حاصل ہے۔ (8) تقرری صوبائی سکومت کے مروجہ تواعد دضواط کرتی تحل میں لائی جائے گی۔ (9) نارتھو در سان ٹرائیل ڈسٹرکٹ						
		ا بہتی کا افترار حاس ہے۔(8) نفر رک صوبالی علومت کے مرجد کو اعدوم وابط کے بحث ک میں لاک جائے کی۔(9) ناریک وزیر ان وسٹر کس سے تعلق رکھنے والے کوتر بیچ دی جائے گی۔ یصورت دیگر تر بی اضلاط کے امید داروں کی در دخواستوں میرفور کیا جائے گا۔(10) پہلے سے جنع شدہ						
					ے دانے دری دل جانے ں ما دالوں کو جانے کہ دہ د دبارہ اب			
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مقد مد مندرجه عنوان بالایس این طرف ہے واسطے بیروی وجواب دہی وکل کاروائی متعلقہ آن مقام **مورم محرف ک** کیلئے م مکم مرکز مکن مقرر کر کے افرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقد مہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کوراضی نامه کرنے وتقر رثالت و فیصله پر حلف دیئے جواب دہی اور اقبال دعوی اور یصورت ڈگری کرنے اجراء اور وصولی چیک ورو پیدار عرضی دعویٰ اور در خواست ہر قتم کی تصدیق نر رایں پر دستخط کرانے کا اختیار ہوگا۔ تہ صورت عدم پیر دی یا ڈگری یک طرفه یا ایک کی برا مدگی اور منسوفی نیز دائر کرنے ایک گرانی ونظ ثانی و پیروی کرنے کا مخار ہوگا۔ از بصورت ضرورت مقد مد مذکور کے کل یا جر دی کا روائی کے سطے اور وکیل یا مخار قانونی کو این ہم اور ای این کی برا مدگی تقر رکا اختیار ہوگا۔ اور حافل دائی ورضی دہی ور میں معدر کا مخار ہوگا۔ از بصورت ضرورت مقد مد مذکور کے کل یا جر دی کا روائی کے سطے اور وکس یا مخار قانونی کو این ہمراہ یا این کی برا تقر رکا اختیار ہوگا۔ اور حاف مقرر شار ہو کی دیکی در این کر مند کو ہوں اور دیک یا معار ہوں کے تقر رکا اختیار ہوگا۔ اور حاف مقرر شار ہوگا دور ان مقد مہ میں جو نز چہ ہر جانہ التوائے مقد مہ کے اور اس کا ساخت پر داختہ منظور وقبول ہوگا دور ان مقد مہ میں جو نز چہ ہم جان التوائے مقد مہ کے سبب سے دہوگا۔کوئی تار بن پیش مقام دورہ پر ہو یا حد سے باہر ہوتو دیک صاحب پا بند ہوں سبب میں دوری مراحل کا تو ملہ داخت مقد ہے ہوں ہو ہے معد میں جو کر کو ہو ہوں مار کر کر ہوں

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عدلان مستیشنوی مادیت چرکه متنظر کمانپتاور خرافون: 2220193

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