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Disposed of as withdrawn.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.

Chairman

ANNOUNCED 27.11.2019 04.11.2019

Appellant Thocsited Security & Hocess Fee

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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.

 $\langle \cdot \rangle$ 

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 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.

Chair

#### · Form-A

#### FORM OF ORDER SHEET

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

Case No.-\_ 1251/2019 S.No. Date of order Order or other proceedings with signature of judge proceedings 1 2 3 The appeal of Mr. Farhat Ullah presented today by Mr. Noor 1-07/10/2019 Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR 7/10/19 This case is entrusted to S. Bench for preliminary hearing to be 2put up there on 28/10/19 **CHAIRMAN** 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. 1251 /2019

Farhet allah Malaira Super 15 HEALTH DEPTT: Civil Hospilae Boya North Uszilan Dist

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4.	Letter dated 31.01.2019	B	6	
5.	Judgment dated 19.03.2019	C	7- 8	
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7.	Office order dated 23.04.2019	E	10	
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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. 1251 /2019 Khyber Pakhtukhwa Service Tribunal

parhat ullah Malavia Supervisio Diary No. 1383 Civil Hospilal Boya North Desintan Dist. Dated 7-10-2019 ..... 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

UNDER SECTION OF THE APPEAL KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST INACTION OF THE RESPONDENTS BY NOT THE **RELEASING THE MONTHLY SALARIES HAVING BEEN** ALREADY APPROVED VIDE ORDER DATED 23-04-2019 **COMMUNICATED TO THE APPELLANT ON 26-06-2019 AND** AGAINST THE IMPUGNED ADVERTISEMENT DATED 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:** 

Fiedto-day Registrar 7/10/1 That on acceptance of this appeal the impugned 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.

#### <u>R/SHEWETH:</u> <u>ON FACTS:</u> <u>Brief facts giving rise to the present appeal are as under:-</u>

- **1-** That appellant is the employee of the respondent Department and had 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. 2. the monthly salaries of the appellant was stopped due to unknown reason against which the appellant filed departmental

- 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

APPELLANT

Earhat allah

THROUGH: NOOR MOHAMMAD KHATTAK ADVOCATE

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

#### APPEAL NO. \_\_\_\_/2019

Farhal ullah Malavia Superior VS Cinit Hospital Parija Nor 26 Nospita Dil)

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

MERGED AREAS WARSAK ROAD PESHAWAR, No /DHS/FATA/Admn Dated, Phone#. 091-9210106 FAX#. 091-9210212 To

The District Surgeon. Tribal District, NW.

#### APPEAL FOR RELEASE OF SALARIES Subject:

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.Zaluid 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.

Tribal Districts, Peshawar No. 7/2 ---\_/DHS/FATA/Admn Dated: \_\_\_\_\_/7\_\_\_/01/2019 18 CC for information and necessary action to the:

- 1- Registrar Services Tribunal, Peshawar.
- ÷ i l. 2- Coordinator, National Commission for Human Rights w/r to his letter quoted above.

Diver

- 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

Health Services



## DIRECTORATE OF HEALTH SERVICES

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

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

### OFFICE ORDER:

i

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** No. $\frac{170-74}{0}$ /DHS/FATA/Admn Da CC for information and necessary action to the: Tribal Districts, Peshawar Dated: \_\_\_\_\_/01/2019

1- Registrar Services Tribunal, Peshawar.

- 2- Coordinator, National Commission for Human Rights w/r to his letter 3- PS to Minister Health, Khyber Pakhtunkhwa, Peshawar
- 4- DCO Tribal District, NW
- 5- District Accounts officer, Tribal District, NW.

Dif Tribal Districts, Peshawat

AF, ESTER

## PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Order or other Proceeding

Court of.....

Date of Order of

Proceedings

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ORDER

19.03.2019

Serial No. of

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Writ Petition No.1241-P/2019 Present: Mr. Muhammad Asif Yousafzai, Adv:

for Zahid Noor etc., petitioners.

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**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. 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. 19.03.2019 JUDGE 1158 Date of Presentation CERTIFIED TO BE TRUE COPY No of Pages Conying Fee metter Urgen Fee .y 1 MAR 2019 Total. Date of Preparation Date of Delivery Beceived By Z ATTESTED (Fayaz) (D.B. of Hon'ble Mr. Justice Syed Afsar Shah & Hon'ble Mr. Justice Abdul Shakoor)

D -COLC DESGRAVAN Appeal Ar loration of Subjet: order det \$1/1/0/9 with great suspect it is boought into your King K/Gr, notice that fur salarics were stopped by the Ex. Agening Burgron with out any logent reason In this Connection the Minister Health 14pt chas been issued order to AHS FATA merged area gor kelense & pay In light of minister Directine the DHS path was land enough and issued belease oralin to Ageny Surgimound But suddenly the DHS Fala with drawn his order on 31-1-019 with out my logent reasion. In this regard narious deports of the A surgion has also been submilled to DHS Rada where in it is stand that they were neither to DHS Rada where in it is stand that they were neither levoninalid nor voliased our palavies. There are 47 Therefore, it is funding augured that the Aging bunger NWD may rady be christed to belease which was stopped with out any reason for the larger and also directed the DHS rate restoration orales de 30/1/019, The postigwar High could has already been divided our case and divided the respondent to interest of dierde it within zornigtet is daups. positivity 7, your escaluit en DHO NOTH WARNESST Cahid noor and others -copiet the release to 200K Takeen ullah & others ascentant and Allerlid missee e plo Jest Ann t SNEARS pers herminet onsett - es contra ser an Ser Server Nete ATESTE

 OFFICE OF THE AGENCY SURGEON TRIBAL DISTRICT NORTH WAZIRISTAN

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

Miranshah Dated / /2019.

E-10

#### **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.

ATTESTET.

- 3. PA to DHS Merged Areas, Peshawar.
- 4. Medical Superintendent DHQ Hospital Miranshah with request to release the outstanding salaries of enlisted employees.
- 5. Official concerned.

Allested. Packal

Ageney 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 orignal and has been sined up-to date by the concerned Officer.
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AFTESTE

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District Accounts Officer

Alleshid Varhat

District Surgeon NWTD Mitan shah

OFFICE OF THE AGENCY ACCOUNTS OFFICER NORTH WAZIRISTAN AGENCY MIRAN SHAH 10. AAO/MRN/NWA/2018-19/ 29 8 2 Dated 24 / 6 - 12019

The District Surgeon, NWTD Miran Shah.

#### SUBJECT:- OBSERVATION.

Memo,

Τо,

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.

Artester,

Country NWA Miran

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The District Accounts Officer, NWTD Miran Shah.

No. D/S/MRN/NWA/2018-19/

#### SUBJECT:- OBSERVATION.

Allind . Fachart

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

OFFICE OF THE DISTRICT SUGGEON

NDRTH WAZIRISTAN (TRIBAL DISTRICT) MIRAN SHAH

Dated 24/ 6 /2019

Surgeon

in Shah

Distric

NWT

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14

- 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

ALIESTED

I-14 بحمرصت صاب / المؤسس المارتفير زميرسان الحيشهي لي درواس مازد: حاى تهر من ماد براح منواه Mules Envire autre NW Emiles NW حنا معاليا. مورد مزارس ی جاتی ہے میں من DHO ناع oljo function BRS-12 Euclingin 23/20192 19, 19, 19, 19, 19, 19, 20 is in 5 5 - 20 (2) july in 0, 697 3 t p 26 <u>-</u> 619 11, . . . in stand with the shall be ATTESTED Miran Shah

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of C	يروزيرھ 18-10-19	30:18-ال	میٹرک نیائنس میڈیکل ٹیکٹی (تیبر پینونخوا) سے متعلقہ ( وی سد اور ا	<u>يونېرکليډيکل</u> ميکنيدن (فاريسي)	8		
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	روزيري . 18-10-19	301 18	ستن بیزک سائن مایز یک یکنی (خیر پخون) ہے	ايتستحيريال فيكنيكن	10		
to ith	يروزيدھ بے، ڈی اے بیل ديا	متعلقة شعب بين دومالد في مد مد الدوم الدوم الدوم الدوم الدوم مد					
v e o	رسال کریں۔(6) یوں کی تعداد میں کی	مبائے گا۔(3) درخواست مادہ کاغذ پر دیناہوگا۔(4) درخواست کے ساتھ کمپیڈائزیڈ تو کا شاختی کا دف <sup>ہ</sup> تجر برینظریٹ اورڈ دیسائل کی تصدیق شدہ نوٹو کالی ادر ادریخن کا غذات انٹرو یو کے دان شرود کا لا اہوگا۔(5) پیلے سے موجود میرکا رہی المکاد اپنی درخواست کھمانہ تو سط سے ادسال کریں۔(6) المالی کی عمر میں رعایت مروبہ قواعد کے مطالق دک جائے گا۔(7) مجاز اقلاد کی کو تمام کی کسی ایک دوخواست کو مستر دکرنے ادرآ سامیوں کی تعداد شرک					
e		بیٹن کا اختیار مامس ہے۔ (8) تقرری سوبانی حکومت تر مروجہ قواعد وضوابط کے تحت عمل میں لائی جائے گی۔ (9) نارتھ وزیر ستان فرائیس و مترکت سے تعلق رکھنے والے کوتر بیچ دی جائے گی۔ یصورت دیگر قربی اخلاع کے امید داروں کی درخواستوں پرغور کیا جائے گا۔ (10) پہلے سے تحت شدہ					
	Corrupt		Paretx \$1/0/9	ALL	درخواستوا بح		
	INF(P)41		بي من		ا ڈاکٹ		

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Albertid Fackat

AFTESTEL

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فرضتاله و بمجاب بنام محمو کمک باعشي خرير آنكه مقدمه مندرجه عنوان بالامين ابني طرف سے واسطے ہیروی وجواب دہی دکل کاروائی متعلقہ آن ما مؤر محمد خل الله منذ مسرومان حماق حرار مقرر کر کے اقر ارکباجا تا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز ک وكيل صاحب كوراضي نامه كرنے دتقر رثالت و فيصله برحلف دينے جواب دہى اورا قبال دعوىٰ اور بصورت ذگری کرنے اجراءاور وصولی چیک وروپیدار عرضی دعویٰ اور درخواست ہرتسم کی تصدیق زرای پردستخط کرانے کا اختیار ہوگا۔ نیز صبورت عدم بیردی یا ڈگری یکطرفہ یا ایل کی برامدگ اور منسوخی نیز دائر کرنے اپیل نگرانی دنظر نائی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمه مذکور کے کل یاجر دکی کاروائی کے اسطےاور وکیل یا مختار قانونی کوایے ہمراہ یا اپنے بجائے تقر ركاا ختیار ہوگا۔ادرصاحب مقرر شدہ کوبھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اوراس کاساختہ پر داختہ منظور وقبول ہوگا دوران مقدمہ میں جوخر کیہ ہرجانہ التوائے مقدمہ کے سبب سے وہ وگا کوئی تاریخ بیشی مقام دورہ پر ہو یا حد ہے باہر ہوتو وکیل صاحب یا بند ہوں گے۔ کہ بیرو**ی ن**رکورکریں ۔ لہٰذا دکالت نا یہ کھیدیا کہ سندر ہے۔ المرقيم کے لئے منظور ہے مقام استشف کی مار

چېك متتكر كاپناورش فون: 2220193