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Disposed of as withdrawn.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

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 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.

Appeliant Decosited

Security & Process Fee >

Chairman ^W

Form- A

FORM OF ORDER SHEET

Court of 1254/**2019** Case No.-S.No. Date of order Order or other proceedings with signature of judge proceedings 1 2 3 The appeal of Mr. Muhammad Afzal 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. REGISTRAR 7/10/18 This case is entrusted to S. Bench for preliminary hearing to be 2put up there on 28 10 Lg CHAIRMAN 28.10.2019 Counsel for the appellant present. 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. 1254 /2019

M. AF2al Malaria Supervis VIS at THA Hospical Morth wayns Im Destt?

HEALTH DEPTT:

	<u>INDEX</u>		
S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal		1 – 3
2.	Stay application		4
3.	Letter dated 17.01.2019	A	5
4.	Letter dated 31.01.2019	В	6
5.	Judgment dated 19.03.2019	С	7-8
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	, H	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. 1254 /2019

Service Tribunal Mohd AF 2al Malavia Supervisor Diary No. 1366 at THE Hospilal North 15= Zinstan DISH Dared 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

Khyber Pakhtukhwa

UNDER SECTION OF APPEAL THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT **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:



• `

That on acceptance of this appeal the impugned Fiedto-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:-

- 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

THROUGH: NOOR MOI IAD KHAT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. ____/2019

VS

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

ALS 的复数使导导性 世际的信任同情处理 MERGED AREAS WARSAK ROAD PESHAWAR, No /DMS/FATA/Adma Dated:-Phone#. 091-9210106 FAX# 091-9210212 *** 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.Zahid 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-

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

No. 7/3-18

Tribal Districts, Peshawar[®] _/DHS/FATA/Admn Dated: ___/7__/01/2019 CC for information and necessary action to the:

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

Director

Health Services

Director Health Services

Tribal Districts, Peshawar³²

- 3- PS to Minister Health, Khyber Pakhtunkliwa, Peshawar w/r orders dated 21-12-2018 on the application of appellants
- DCO Tribal District NW 5-
- Medical Superintendent DHQ Hospital Miranshah request for same action please.

AITESTED



Phone#. 091-9210106

091-9210212

FAX#.

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DIRECTORATE OF HEALTH SERVICES

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

OFFICÈ 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.

No. 1/70-74 /DHS/FATA/Admn CC for information and necessary action to the:

Director Health Services 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.

Health Selfices Difector Tribal Districts, Peshawa



PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Order or other Proceedings

Writ Petition No.1241-P/2019

Court of.....

Date of Order of

Proceedings

2

ORDER

19.03.2019

Case No...

Serial No. of

Order of

Proceedings

TCO

Present: Mr. Muhammad Asif Yousafzai, Adv:

Judge.

for Zahid Noor etc., petitioners.

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

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 No of Pages E COPY Copying Fee mount Urgen Fee ېن 7 1984 20 MAR 2019 Total Date of Preparation Date of Delivery (ed By (Fayar) (D.B. of Hon'ble Mr. Justice Syed Afsar Shah & Hon'ble Mr. Justice Abdul Shakoor)

D -Epic Deshawar Appeal por restoration of Subjet: order at \$1/1/0/9 with great suspect it is bos ugut into your King K/ar, notice that Sur salarics were stopped by the Ex- Agenup Burgion with out any logent reason. In this connection the Minister Health scpic has been issued order to AHS PATA merged area gor kelanse & pay In light of minister Direction the DHS pata was land enough and issued belease order to Again Surgimound But suddenly the Dits Fala with drawn his order on 31-1-019 without my execut reasion. In this regard navious reports of the A surgeon has also been submilled to DHS parts where in it is sliched that they were neither levoninalid nor volcased our palavies. There are 47 persons (Copy . Therefore, it is fundly agricule that the Aging bungerin NIVDO may rady be carried to release our Salary which was stopped with out any reason for the larger interest of justice and also directed in DHS min restoration order det 32/1/019. The postigwar High court has already been divided our case and dividend the respondent to dieide il within Fornigtet 15 days. DHO NOTH WORKSSTER posi ani Takid noor and others -report the 1270 -ielensk to rook Taheen ullah & offers a scentarias mittee "4" the cryptodees Allered and Ann R ~~~ SNAM press. werning DTACT the -exert South Street Nete ATTE Miran Shah

OFFICE OF THE AGENCY SURGEON TRIBAL DISTRICT NORTH WAZIRISTAN Phone & Fax: 0928300788-311662 email:agencysurgeonnwa@gmail.com

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

E-10

· 1

/2019.

Dated

CC 1433-3<u>7</u>/PF/AS/Miranshah C_{14} S_{2} /PF/AS/Miranshah dated: $\frac{23}{9}$ $\frac{9}{20}$ $\frac{9}{7}$. 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

5. Official concerned.

Reined.

Agenfey Surgeon North Waziristan Tribal District

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<u>CERTIFICATES</u>

CATES 1 certified that the CNIC issued by NDRA has been verified and found correct

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2 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.

ATTESTE

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3 Certified that the employee mentioned above regular in attendance and has not been proceeded abroad Pakistan.

District/Surgeon NWTD Mitan shah

E - 11

OFFICE OF THE AGENCY ACCOUNTS OFFICER NORTH WAZIRISTAN AGENCY MIRAN SHAH 10. AAO/MRN/NWA/2018-19/ 29 82 Dated 24 1 6 - 12019

To,

The District Surgeon, NWTD Miran Shah.

SUBJECT:- OBSERVATION.

Memo,

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.

ecounts NWA Miran S

5-12

ATTESTED.

DFFICE OF THE DISTRICT SUGGEON NORTH WAZIRISTAN (TRIBAL DISTRICT) MIRAN SHAH lo. D/S/MRN/NWA/2018-19/ Dated 241. h /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

Surgeon District han Shah

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ATTESTED

I-14 المارتين برس Just NW Same Estre autre August in Strange في المالي مورد مرارس می جاتی ہے اس مل DHD ناج oljögime by BRS-12 Jucilizio - Lo Dito gil 7/201 - 1 - 3 2 - 1 - 0 - 2 - 10 - 10 - 2019 - 1, el 63 19/ 20 00 10 in 19/ 19/ 19/ 23/2019211 503 - mail 200 - 1 Silver - 1 Silver us provide the contractor 21/32 - 21/3 - 21/3 - 21/3 - 21/3 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21/32 - 21/3 - 21 26 <u>-</u> 619 11, 11 و ما رواز ، محمد مقبو ATTESTED Came Orth Wainistan Agency Miran Shah

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	18-10-19	301-18-16	مستن میٹرک سائنس میڈیکل فیکلی (خیبر پختو تو) سے اور اور میں اور	ايستعيريان سينيض	10		
to 👔	<u>روز باره</u>		متعلقه شعبه مين ودسالية بلومه				
	ے، در اسے مل دیا۔ سکارتھار کو بیش رفد فہ	2 کے دانوں کولوں کی ا بر سم شقل ہو ان چندہ الل	امیدوارون کوانٹرویو کے لئے بلایا جائے گا۔(2) انٹرویو کے لئے اہوگا۔(4) درخواست کے سماتھ کمیوٹرائزیڈ کو کی شافتی کارڈ، تج	ط: (1) صرف شارت کیسلڈا (2) رفتی مدینہ کانڈ مدینہ	ا شــراند ا		
v) ہوتا۔ (4) (رکواسٹ سے مناطر پیور مرید کا مانا کا کارد، ب ضروری لانا ہوگا۔ (5) پہلے سے موجودہ سرکاری المِکارا بنی درخ				
e S.			رون د ما دون در کا پیچ سے درور مرم دون جمار کی دور با دی جائے گی۔(7) مجاز القابر کی کو تمام یا کمی ایک درخواست				
			ر بالی حکومت کے مردجہ قواعد دضوالط کے تحت عمل میں لا کی جائے				
ie 👘			ا۔ بصورت دیگر قریبی اعتلاع کے امید داردل کی درخواستوں				
			پند در نواشی جمع کریں۔	ل دالول کوچا بیٹے کہ دہ دوباردا۔	درخواستوا		
	Corrupti	on C	1/0/9	کم	. بح		
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باعت تجريراً نكه مقدمه مندرجه عنوان بالامين إين طرف سے داسطے بيردي دجواب دہي وکل کاروائي متعلقة مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقد مہ کی گُل کاروائی کا کامل اغتیار ہوگا۔ نیز وکیل صاحب کوراضی نامه کرنے وتقر رثالث و فیصلہ پر حلف دینے جواب دہی اورا قبال دعویٰ اور بصورت ڈ گری کرنے اجراءاور وصولی چیک وروپیدار عرضی دعویٰ اور درخواست ہرتم کی تصدیق زرایں پردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیردی یا ڈگری یکطرفہ یا اپل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و^{زیا}ر تانی و پیروی کرنے کا مختار ہوگا۔از بصورت ضرورت مقدمه مذکور کے کل یاجروی کاروائی کے سطے اور وکیل یامختار قانونی کوانے ہمراہ یا اپنے بجائے تقر رکاا ختیار ہوگا۔ادرصاحب مقررت، و کوچی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے 🛒 اوراس کاساختہ پر داختہ منظور وقبول ہوگا دوران مقدمہ میں جوخر جگہ ہرجانہ التوائے مقدمہ کے سبب سے دہوگا کوئی تاریخ بیشی مقام دورہ پر ہو یا حد ہے باہر ہوتو وکیل صاحب پابند ہوں گے۔ کہ پیرو**ی ن**دکورکریں ۔ لہٰ داوکالت نا یہ کھھدیا کہ سندر ہے۔ Auned -20-15 بالنور

علالان ستيشنري مارت چېك مشتكر كمايشادر ترانون: 2220193

کے لئے منظور ہے۔