BEFORE THE PESHAWAR HIGH COURT D.I.I

Writ Petition No.599 D/2019

VERSUS

- 1. The Secretary to Govt. of Khyber Pakhtunkhwa, Health Department Peshawar.
- 2. Director General, Health Department Khyber Pakhtunkhwa Peshawar.
- 3. Additional Director General (Admn) DGHS Office Peshawar (Chairman Inquiry Committee).
- 4. Additional Director General (HRM) DGHS Office Peshawar (Member Inquiry Committee).
- 5. Director (Implementation) DGHS Office Peshawar (Member Inquiry Committee).
- 6. District Health Officer, Dera Ismail Khan.
- 7. Chief Executive Officer/Dean Gomal Medical College D.I.Khan.
- 8. Medical Director DHQ Teaching Hospital D.L.Khan.
- 9. Hospital Director DHQ Teaching hospital D.I.Khan.
- 10. District Accounts Officer D.I.Khan.
- 11. Assistant Director Anti-corruption Establishment DIKhan.

.....(Respondents)

Note:-

The address of parties as given above are sufficient for the purpose of service.

PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN

Respectfully Stated,

The petitioner submits as under:-

Brief Facts

1. The petitioner is working in health department KPK since 03.02.1990 and presently working as CT Pharmacy BPS-12 having 30 years regular service on his credit. Copy of the first appointment order is annexed as A.

2. That the petitioner is a real nephew of Dr. Aman Ullah Khan (R) and due to litigation between Dr. Aman Ullah Khan DHQT Hospita MPRNa 5984 DDM 2019 (Chepunds) e post of Medical Superintendent. After retirement of Dr. Aman Ullah Khan by

EXAMINOR COURT



making the petitioner as scapegoat Dr. Karim Shah illegally issued dismissal order without holding the formal inquiry against petitioner on flimsy ground against which an appeal to Chief Executive GMC/DHQ Teaching/MMM teaching hospital D.I.Khan was submitted as he was appellant /competent authority. Copies of C.M in case titled Dr. Aman Ullah Khan V/S Dr. Karim Shah, Govt. Notification regarding the powers of Chief Executive along with some related correspondence, dismissal order, appeal and reinstatement orders are annexed as B, B₁, B₂ B₃ & B₄

- 3. That on 25/9/2014 the petitioner filed a service appeal No. 1190/2014 before service tribunal KPK but during pendency of appeal, Chief Executive Teaching Hospitals D.I.Khan accepted the appeal and the same was withdrawn. Copy of service appeal and its withdrawal are annexed as C.
- then M.S Dr. Karim Shah but he straight away rejected. The copy of arrival report and refusal letter are annexed as D. D_L
- 5. That on 5/6/2016, chief Executive teaching hospitals D.I.Khan Conducted inquiry vide Letter No. 2185/87 dt. 5/6/2015 and according to inquiry report (Conducted by two Professor of BPS-20 & BPS-19) "as Chief Executive has been declared by Govt. of KPK as competent authority thus MS could not dismiss Mr. Khalid Mehmood". Copy of inquiry report is annexed as E.
- That on 19/6/2015 Chief Executive submitted inquiry report vide No. 2320-23 dt. 19/6/2015 to Director General Health Services (respondent No:2). Copy of letter is annexed as F.
- 7. That on 12/8/2015 DG Health sought advice from Secretary Govt. of Health Department vide letter No. 9111-12/AE-V1 dt. 12/8/2015 on the re-instatement of petitioner. The copy of which is annexed as G.
- 8. That on 7/9/2015, the then MS Dr. Karim Shah (now respondent No: 9) sent letter vide No. 6108 to Secretary Health (respondent No:10 which was rejected. Copy of said letter is annexed as II.
- 9. That vide laws No 599 Dio 1208 9 (Erbunds) d 3/2/2016 respondent No: 1 directed respondent No: 2 (DG Health) that

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- as the Chief Executive Teaching Hospital DIKhan has already re-instated the Petitioner, the case may be resolved under the law. Copies of letters are annexed as I & J
- That on 9/4/2016, the then MS Dr. Karim Shah was retired from service as MS DHQT Hospital DIKhan. Copy of his retirement order is annexed as K.
- 11. That on 1/6/2016, petitioner submitted application to Secretary Health (respondent no: 1) for release of salaries. Copy of application is annexed as L.
- 12. That on 1/8/2016, petitioner filed service appeal No. 777/2016 for implementation of re-instatement letter dt. 27/3/2015 approved by Secretary Health dt.3/2/2016. Copy of service appeal is annexed as M.
- 13. That in response to letter dated 1/8/2016 issued by respondent No:1 to respondent No:2 and MS DHQT Hospital DIKhan who accepted the arrival report of petitioner vide his letter dated 23/9/2016 and released the salaries of petitioner. Copy of said letters and Source Form are annexed as N, N₁, N_{2 &} N₃.
- 14. That petitioner started his duty and was assigned the duty as supervisor in Trauma Centre. Copies of said letter orders are annexed as $O \& O_1$
- appointed as Hospital Director and he stopped salaries of petitioner on previous grudges / rivalry when again petitioner sent an application to respondent No.2 (DG Health) on 15/2/2017 on the grounds mentioned therein who accepted the same and transferred the petitioner to District Health Officer D.I.Khan. Copy of notification dated 21-01-2017 copy of application dt. 15/2/2017, transfer letter dt. 28/2/2017 & LPC from finance director are annexed as P, P₁, P₂ &P₃.
- 16. That the petitioner started his duty vide letter No. 2061-66 dated 3/3/2017 at THQ Hospital Paroa issued by DHO DIKhan (respondent No:6) & submitted appeal to respondent No:2 (DG Health) for arrears of Salaries dt. 10/4/2017 and who accepted the appeal and regularized the service of petitioner vide WPt No. 5995 3 of 2019/(Qrounds) py of said letters and appeal dt. 12/4/2017 are annexed as Q, Q₁ & Q₂

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- 17. That on 23/8/2017, after regularization of service from DG Health, the petitioner withdraw his service appeal No. 777-2016 from service tribunal KPK. Copy of order Sheet is annexed as R.
- 18. That 21/9/2017 petitioner filed appeal to respondent No:2 (DG Health) for his up-gradation / promotion, inquiry was conducted on my appeal vide letter no. 17547-54 dt. 2/11/2017 & inquiry officer justified my reservations. Copies of appeal, inquiry report are annexed as S & S₁
- 19. That Dr. Karim Shah has become rival of petitioner and started a campaign of false diffications of corruption against the petitioner in order to ruin his career through anonymous and pseudonymous complaints.
- 20. It is worth noticing that the Honourable Justice of Peace ordered to concerned Police Authorities to lodge FIR against Dr. Karim Shah on his illegal activities for damaging the petitioner. The case is still pending at Peshawar High Court vide Writ Petition No: 1141-D/2017 titled Dr. Karim Shah v/s Khalid Mehmood copy of writ petition is annexed as T.
- 21. That it is pertinent to mention there that ACRs (PER) of 2017-18 has clearly shown that there is nothing against the petitioner. The Copy of no disciplinary Certificate dt. 23/11/2018 & PER are annexed as U & U₁
- 22. That now respondent No:2 vide his letter 8734 dated 27/5/2019 sent the recommendations of enquiry committee to respondent No:6 (DHO DIKhan) to act upon which are as under.
 - a. To restore the order of dismissal with effect from 11/6/2014 as the order of re-instatement by Chief Executive Gomal Medical College was unlawful.
 - b. To recover all the salaries paid to him from 11/6/2014 onwards till date from his GP Fund or other pending liabilities with Government.
 - c. To lodge FIR with Anti-corruption Establishment for loss caused to Govt. exchequer.
 - d. To take disciplinary action against him under 'NWFP Govt. Serval (North 1994) Role 2013 7 (Grounds)

EXAMINOR EXAMINOR COURT



e. To approach KPK Bar Council to suspend his license permanently.

and

f. Disciplinary action may also be initiated against all his accomplices in DGHS office, DHQ, DHO and DAO offices DIKhan who have assisted him or taken unduc favour from him or facilitated him from time to time in making forged letters.

Copies of letter No: 8734 dated 27/5/2019 along with inquiry report, and letter No: 5331-35 dated 31/5/2019 are annexed as V & V₁

23. That above mentioned enquiry is challenged inter-alia on the following grounds as this also envisages the criminal liability also of different officials of various offices including Petitioner, Even the officials of District accounts Office DIKhan upon whom respondent No; 2 (DGHS) has no jurisdiction. As the Petitioner has no efficacious remedy that is why, Extraordinary jurisdiction of this Honourable Court is invoked because when order impugned in Writ Petition is without jurisdiction and remedy of appeal is illusory Writ is maintainable.

GROUNDS:-

- 1. That the whole inquiry conducted by the inquiry committee biased against facts and provisions of KPK Govt. Servants (E&D) Rules 2011
- 2. That Inquiry is self-contradictory when one goes through its contents rather one sided and based on favouratisms with Dr. Karim Shah.
- That a single witness out of officers / officials who had signed all the documents mentioned in the Inquiry report was not called for to give his statement by the learned committee in the presence of petitioner to provide him the opportunity to cross-examine him.
- That whole allegation against petitioner is that all the office orders are taked a WRY 100599 To the 2019 (Grands) has neither

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been proved through Forensic Science Laboratory rather Inquiry is concluded on concocted, manipulated and flimsy grounds.

- That as admitted by learned committee on its first page of Inquiry report that petitioner submitted a detailed reply in response to various queries made by it which consists of 139 pages but no comments have been passed thereupon because these were negating the false allegations leveled against the Petitioner by Dr. Karim Shah Ex-MS.
- That as alleged by the learned committee if Petitioner would have committed any fraud or maneuvered, faked documents why the superior officers have signed those and why were they not called for evidence either to verify the document or disown their signatures therein and how petitioner has been working from 11.6.2014 to May 2019 (for Five years) with the consent of their superiors including respondent No:2 (DGHS) and getting his salary regularly?
- 7. That how the respondent No: 2 (Present DGHS) has negated the letters of then two Ex-DGHS and the then Secretary Health the reference of which too is mentioned in the Inquiry report by the committee itself.
- 8. That Petitioner has been serving and performing his duties regularly for which he is paid his salaries throughout and no loss is caused to Govt. Exchequer as alleged by the learned committee.
- 9. That neither MS nor DHO having same status are competent authorities except Chief Executive of Teaching Hospital as per letter. No: SOH-111/8-90/10(Delegation of powers) dated 24/9/2010, the copy of which is annexed as W
- 10. That whole Inquiry is concluded without recording any evidence as provided under the procedure laid down in KPK Govt Servants (E&D) Rules 2011, hence untenable in the eyes of law and merits to be set-aside by acceptance of this petition.

Court is requested to please:

- Set-aside the whole Inquiry concluded by the learned Inquiry committee being biased and
- To suspWill No 599cocoing 109 (GISWARD) of criminal case against the petitioner as no loss is caused to Govt Exchequer

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issued by respondent No: 2 read with letter No: 5331-35 dated 31/5/2019 issued by respondent No:6 till the decision of this Writ Petition.

Dated:

1 / 6 /2019

Khalid Mehmood (Petitioner)

Through Counsel

Fig. Saveem Jany Advocate High Court

Cartificate

the certified that no other petition is field by the petitioner on the subject agitated herein nor is pending in any court of law.

Petitioner

aidavit

Rhalid Mehmood S/O Ghulam Sarwar R/O Kot Siggar U.C Dhap Should Tehsil Paharpur, presently 10-Civil Line D.I.Khan. the publisher, do hereby solemnly affirm and declare on Oath that contents of the petition are true and correct to the best of my knowledge and wir and that nothing has been concealed from this Honourable Court.

Datel: 1 16 120.19

identified by

Deponent

12101-8684087-1

্র(Saleem Jan) অvocate High Court

WP No.599-D of 2019 (Grounds)

BEFORE THE PESHAWAR HIGH COURT D.I.KHAN

C.M. No.

898-D/2019

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Writ Petition No. 599 - D/2019

Khalid Mchmood



Versus

Secretary Health KPK & etc

Respondent

APPLICATION FOR SUSPENSION OF ORDER NO. 8734 ISSUED BY DIRECTOR GENERAL 27-05-2019 HEALTH SERVICES (RESPONDENT NO.2) READ WITH NO. 5331-35 DATED 31-05-2019 ISSUED DISTRICT HEALTH OFFICER D.I.KHAN. (RESPONDENT NO.6).

Respectfully stated,

- 1. That the petitioner has moved a writ petition with this Hon'able Court, contents whereof may kindly be read in conjecture with the present petition.
- ... That the petitioner has a good, prima-facie case in his favour and is hopeful of its success on merits.
- 3. That the petitioner shall be exposed to irreparable loss and his main petition shall be rendered infructuous if the present C.M his not acceptants.

PRAYER

- 1. It is therefore humbly requested that to suspend the proceeding for registration of criminal case against the petitioner as no loss is caused to Govt. Exchanger.
- 3. To suspend the whole inquiry concluded by the inquiry committee being biased. WP No.599-D of 2019 (CM 698-2019)

Markhigh Lauri

Dated:

/ /2019

Khalid Mehmood (Petitioner)

Through Counsel

Advocate High Court

Petitioner

Affidavit

1. Khalid Mehmood S/O Ghulam Sarwar R/O Kot Siggar U.C Dhap Shumali Tehsil Paharpur, presently 10-Civil Line D.I.Khan, the petitioner, do hereby solemnly affirm and declare on Oath that contents of the C.M are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.

Dated: / / <u>L</u> /2019

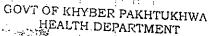
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Deponent

12101-8684087-1

16 alcem Jan Advocate High Court





No. SOH-III/8-90 / 10 (Delegation of Powers) Dated 24th September 2010



The Director General; Health Services, Knyber Pakhtunkhwa, Poshawar.

SUBJECT: DELEGATION OF POWERS.

I am directed to refer to your two letters No. 2199/Personnel defed 06.05.2010 and letter No. 5043/Personnel dated 30.08.2010 on the subject noted above and to state that under the KPK, Appointment, Promotion and Transfer (APT) Rules, 1989 (copy attached), the Head of the Attached Offices are Competent to make appointments through initial recruitment, to the posts in BPS-01 to BPS-15, whereas DGHS is Competent to exercise the powers of Appointing Authority, to posts in EPS-01 to BPS-15 falling vacant within his administrative control, as Field of the Attached Department.

The Medical Colleges and attached Teaching Hospitals, Khyber Pokhtunkhwa are directly under the administrative control of the Provincial Govt. (Health Department) and are headed by their respective Chief Executives who act as Heads of the Attached Offices.

It is therefore, requested that a fresh proposal for delegation of powers to Head/Incharge of sub-offices, falling under the administrative control of DGHS, as Head of the Attached Department, may be sent to this Department for delegation of powers of Appointing Authority for the posts in BPS-01 to BPS-15, so that no duplication

SECTION OFFICER-III

Copy forwarded to:-

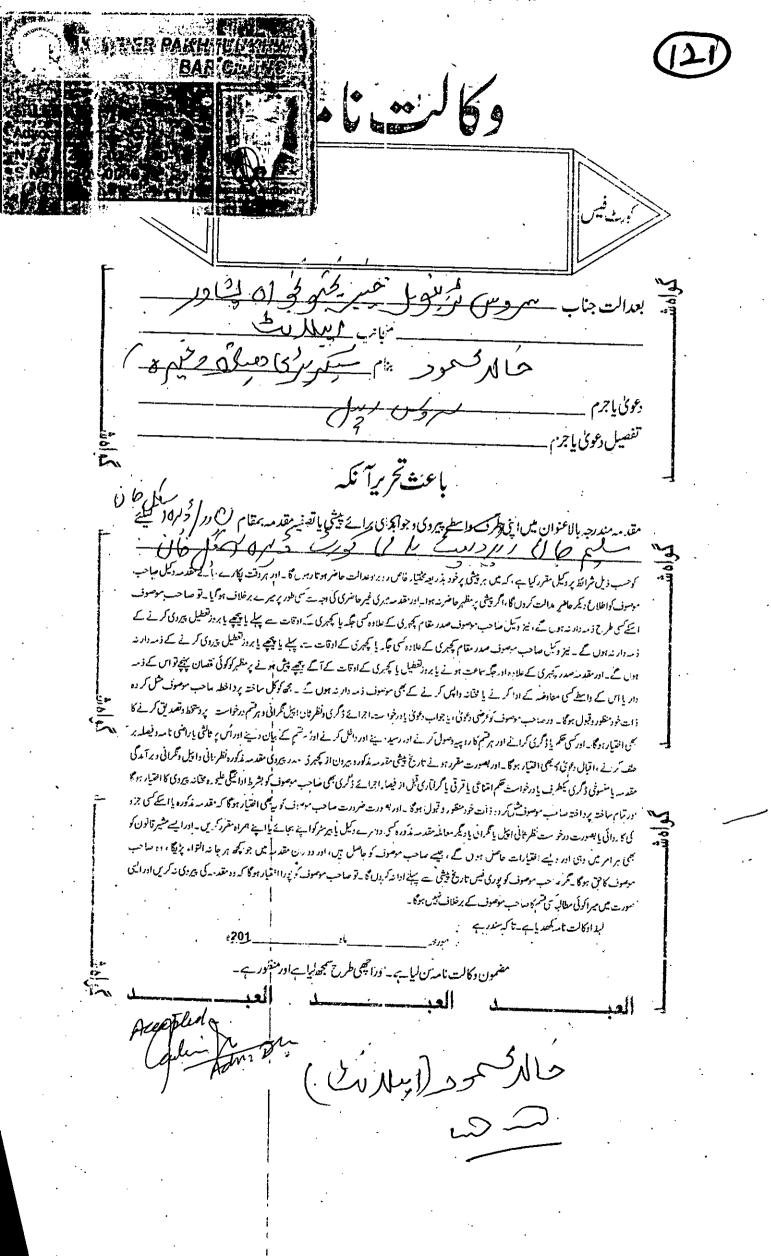
Chief Executive, Group of Teaching Hospitals, Banna.

Chief Executive, Saidu Group of Teaching Hospitals, Saidu

Chief Executive, MM Teaching Hospital, D.I.Khan.

Chief Executive, Mardan Medical Complex Teaching Hospital

าM Teaching Hospital



مرالت مالم معمار ولا جبر وكولواه ليادر 1289/2019 Jest 1289/19821 خالر محور بار میکر بری میلی مراوات عمل ابنداری کارخ بستی مر رائع زير الرائات والما ه. ا۔ یہ کا کا کوئی ایم مؤدی یا الم مدالات عالمیس · @ Fix 27/2/2020 2/96 2: 1 ه. يدك كو كو تيل بيمار مع مرالت من ويدى بين Jery Just Criber i B funs en uni ju 200 --- 20 NG ---بدان طعی درونت معرا مِن کِو مِنْ مِیں رکو مِنْ مِیں رکوا کیا ، عرف - - - عالم محور Bafor the Sexue Tribonel Etyper gakstunkhwe Jeshauer

STA. 1289/2019

Kharid Mahmond Versus Sout of Kphaothers

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Respectfully shouth :.

The appellant submits as order:—

1-that during pendency of Instant service appeal,

The Responded NO. 2 accepted my departmental uppeal detect 13/6/2019 through High court order dated 3/6/2019 via W. PNO 599-D/2019-X

Vernstated me via order NO. 994-98/AB-VI detect 10/3/2020 arlesponded NO. 3 andorsed the Same.

2-that Appelant got vederment from soovice vide order No 10660-65/PF dated 14/9/2020 of Responds no. 3 (District Health offices.) =

Thousand wentioned in application.

~ BLC

Detal 25/9/2020

Khahd Mahmad 12101-8684087-)

note

Robert Order 100 994-98/AB-v1 detel 10/3/2020 X order no. 10660-65/PF Estel 14/9/2020 are attached herewith.

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OFFICE ORDER

In the light of personal hearing dated 16:12 2019 and Luquir Committee Report submitted dated 28/02 2020, which conducted by DHO D.I.Khan and DDHO D.I.Khan in complance of Peshawar High Court Peshawar D.I.Khan Bench Order dated 03 06 2019; in Writ Pention No.5594D 2019 and on acceptance of Departmental Appeal of Mr.Khalid Mehanood, Clinical Technician (Pharmacy) BPS-12, the order No.8734 AEAT, dated 27 05 2019, from this Directorate General Health Services Khyber Pakhtunkhwa is hereby withdrawn ab initio and thus the Office Order No.5331-35 PF, dated 31 7.5 2019 from DHO D.I.Khan is hereby cancelled ab initio.

The appellant Mr.Khalid Mehmood Clinical Technician (Pharmacy) BPS-12 is directed to report to DHO D.I.Khan for further posting.

Arrival reports should be submitted to this Directorate for record.

Sd'xxxxxxxx DIRECTOR GENERAL HEALTH SERVICES KPK, PESHAWAR.

NO. 994-98/AE-VI.

Dated Peshawar the 10/3/2020.

Copy forwarded to he: -

- 1) District Health Officer, D.I.Khan,
- 2) Hospital Director, MMM Teaching Hospital D.I.Khan.
- 3) DAO, D.I.Klinn. -
- 4) Supdt: Promotion Cell DGHS KP (to correct the place of posting of the official concerned in the seniority list).
- ਹੈ। Official concerned.

For information and necessary action.

Stenned will. Cambrapaer DIRECTOR GENERAL HEALTH SERVICES KHYBER PAKHTUNKHY



OFFICE OF THE DISTRICT HEALTH OFFICER DERA ISMAIL KHAN

Phone# 0966-933199

Email: dhodikhan@yahoo.com

No. 10860 -65 1PR

Dated: 14/ 59 / 2020

OFFICE ORDER:-

In terms of Provisions of Rule-20 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules -1981 and instruction issued from time to time, sanction is hereby accorded to the grant of 365 days leave encashment in lieu of L.P.R in respect of Mr. Khalid Mehmood S/O Ghulam Sarwar C.T Pharmacy (BPS-12) attached to Type-D Hospital Parova bearing Personal No. 00191499 (DI-6369-THQ Parova) under the control of this office...

2. In terms of Section-13 of Khyber Pakhtunkhwa Civil Servants Act 1973, the official is retire from Service w.e.f 15-09-2020 (A.N) after completion of more than 30 years' qualifying Service.

District Health Officer Dera Ismail Khan

Cc:-

- 1. Director General Health Services Khyber Pakhtunkhwa Peshawar.
- 2. District Accounts Officer DIKhan.
- 3. Incharge Type-D Hospital Parova.
- 2. Accounts Clerk of this office.
- 3. Service Book Clerk of this office.
- 5. Official concerned with reference to his application dated 05-09-2020.

District Health Officer Dera Ismail Khan