27.11.2019

Ę.

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Disposed of as withdrawn.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.

ANNOUNCED 27.11.2019 04.11.2019

D

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.

Appelle Security & Pro//ess Fee >

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.

Chairman

Form-A

FORM OF ORDER SHEET

Court of

Case No.-1257/2019 S.No. Date of order Order or other proceedings with signature of judge proceedings 2 3 **'1** The appeal of Mr. Muhammad Tariq 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 2/10/ (0 This case is entrusted to S. Bench for preliminary hearing to be 2: put up there on 28/10/13 CHAIRŃ 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. Chair

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL No. 1257 /2019

Moud Tariq Malaria Supervison V/S THO Hospilie mi Ali North Doszintan 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	C	7-8			
6.	Appeal	D	9			
7.	Office order dated 23.04.2019	Ë	10			
8.	Pay bill	F	11			
9.	Observation	G	12			
10.	Reply of observation	H	13			
11.	Departmental appeal	Ι	. 14			
12.	Advertisement	J	15			
13.	Vakalatnama		16			

INDEX

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. 1257 /2019 Khyber Pakhtukhwa Service Tribunal

Mohd Tarig Malania Supervisio THO. Hospital Mir Ali North wayin tan DISH:

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 KHYBER APPEAL PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST RESPONDENTS INACTION OF THE BY NOT THE MONTHLY SALARIES HAVING BEEN RELEASING THE 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 advertisement dated 3.10.2019 may very kindly be set Fiedto-day aside and the respondents may be directed to implement the order dated 23.4.2019 by releasing the monthly egistrar salaries of the appellant w.e.f 1.9.2012 till date. Any other Mar . 10/19 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.
- That appellant while performing his duty with respondent no. 22the monthly salaries of the appellant was stopped due to unknown reason against which the appellant filed departmental

Diary No. 1362 Dated 7-10-2019

... APPELLANT

- **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

M. Tarily APPELLANT

M.h.d. Tarig

THROUGH: NOOR MOHAMMAD KHATTAK ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. ____/2019

Mohd Tarig Malana Supervisie VS THE Hospilal nin Ali Arnthe conjuntan Dist.

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.

M. TANGY Appellant,

Through, NOOR MOHAMMAD KHATTAK, Advocate High Court, Peshawar

Phone#. FAX#.	091-9210106 091-9210212	•	MERGED No	AREAS WAR	S WARSAK ROAD PESHAW /DHS/FATA/Admn	
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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-

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 reason.

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.

No. 7/3-18

Director Health Services Tribal Districts, Peshawar[®] _/DHS/FATA/Admn Dated: _____7__ /01/2019

CC for information and necessary action to the:

Jan .-

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

Direc or Health Services Tribal Districts, Peshawar



091-9210212

DIRECTORATE OF HEALTH SERVICES

MERGED AREAS WARSAK ROAD PESHAWAR No_ _/DHS/FATA/Admn . Dated:-

OFFICE ORDER:

FAX#

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. $\frac{170-74}{10}$ /DHS/FATA/Admn Da CC for information and necessary action to the:

Director Health Services Tribal Districts, Peshawar Dated: <u>____/01/2019</u>

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

N. ANE THE

- 3- PS to Minister Health, Khyber Pakhtunkhwa, Peshawar
- 4- DCO Tribal District, NW
- 5- District Accounts officer, Tribal District, NW.

Tribal Districts, Peshawa

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Order or other Proceedings

Writ Petition No.1241-P/2019

Court of.....

Case No.....

Date of Order of

Proceedings

2

ORDER

19.03.2019

Serial No. of

Order of

Proceedings

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13 14

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

C-7

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 31,01.2019 of the respondents, whereby, letter dated 17.01.2019 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. DGE 19.03.2019 JUDGE 1158 Date of Presentation CERTIFIED TO BE TRU No of Pages ECOPY Copying Fee marine Urgen Fee ... 20 MAR 2019 Total Date of Preparation Date ed By Z Becei ALTESTET. . (Fayaz) (D.B. of Hon'ble Mr. Justice Syed Afsar Shah & Hon'ble Mr. Justice Abdul Shakoor)

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10p (C. Deschanstan Appeal Arr oration of Subjet: order det \$1/1/0/9 with great suspect it is brought into your King K/an notice that fur salarics mere stopped by the Ex. Agening Burgron with out any logent reason. In this Connection the Minister Health alpte has been issued order to DHS FATA merged area for kelease & pay In light of minister Direction the DHS pata was land enough and issued belease order to Ageny Surgrounderst But suddenly the DHS Fala with drawn his order on 31-1-019 with act my logent reasion. In this regard navious reports of the A surgion has also been submilled the DHS Rada where in it is sight that they were neither terminalid nor released our palavics. There are 47 There fore, it is fundly sugarded that the Aging sunger NIVOD may rady be christia to release our salary which was stopped with out any reason for the larger and also directed the DHS rate n order at 32/1/019. The postigwar High court has interest of abready been diended our case and divieled the respondent to dieide il within Fornight 15 daugs. DHO NOTA Wardhorstan posi anil Taked noor and others -report the release to 200K Zaheen ullah & offers of scentario mittel and Allered e po Jees Ann R 1 the agree (ssure 0/40 reminer w Marin onset sam?? Nete rode -energy Miran Shah ALLESTEL My Tarry

 OFFICE OF THE AGENCY SURGEON TRIBAL DISTRICT NORTH WAZIRISTAN

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

 No.____/
 Miranshah
 Dated
 /
 /2019.

OFFICE ORDER:-

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

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.

n M. Janig

- 4. Medical Superintendent DHQ Hospital Miranshah with request to release the outstanding salaries of enlisted employees.
- 5. Official concerned.

Reined.

Agentry Surgeon North Waziristan Triba District

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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.

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

M. Janis

District Surgeon NWTD Mitan shah

10.1



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.

ecount -NWA Miran 8

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M. Taris

OFFICE OF THE DISTRICT SUGGEON NDRTH WAZIRISTAN (TRIBAL DISTRICT) MIRAN SHAH No. D/S/MRN/NWA/2018-19/ Dated 241.6 /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

23. 12.

Distric Surgeon an Shah

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سرصاحب بالركفور زمير سمان الحيتهمي ليتر I-14 محمر صاب / المؤسس ا درواست مزد جای سے صرفام برائے سور in the NW Entre autre in Stranger ف الله مورد، مرارس می حالی سے ایس مراح ناج oljøg fung by BRS-12 June Uniger - 2017 - 2019 - 2 E - 1 - 2 Che of the Che of the Che of the of t 23/292 20 - 1 (1) (1 303 - mail 200 - 1 Silver - 1 Silver us low with the a line of a 2119 فا « ما اردار ، د ماری lame ATTESTED Ma Jari gtre>on ∑ Wwwairistan Aspocy Miran Shah

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h	متسود اخط: - (1) صرف شارت ليعد اميرداردل كوانترويو كے ليے بلايا جائے گا- (2) انترويو كے ليے آنے والول كوكو كى في اے بيس ديا								
	ا جائےگا-(3) درخواست ماده کاغذ پروینا موگا-(4) درخواست کے ساتھ کمپیشرائز یڈتو می شناخی کا دو جبر بیر شقک شده اور دوبیائل کی تصدیق شده فولو								
	کابی اورادر بیش کاخذات انثرویو کے دن ضروری لانا ہوگا۔(5) پہلے سے موجودہ مرکاری المکارا بی در خواشیں تکمانہ تو مط سے ارسال کریں۔(6)								
			ل دی جائے گی۔(7) مجاز اتھارٹی کوتمام ایک ایک درخواست						
			ر بالی حکومت کے مروجہ تو اعد وضوا بط کے تحت عمل میں لائی جائے						
e K	1) پہلے ہے جن ^ع شدہ	پرغور کیا جائےگا۔(0	ا به بصورت دیگر تریمی اصلاع کے امید داردل کی درخواستوں :		- a ne				
	STAN-		پٹے در نواشیں جن کریں۔	ں والول کوچا سیتے کہ دہ دوہارہ ا۔ 	درخماستول				
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の方法の主要になっ



12 Mar May ·iting O/b/E مورخه 100 ri, Deg د عود کی جرم باعت جريرانكه مقدمه مندرجه عنوان بالامیں اپن طرف ہے واسطے ہیردی وجواب دہی دکل کاردائی متعلقہ آن مقام مسلم المجرم كيك كور الجرم معتم المحمد مقررکر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقد مہ کی گل کاروا کی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کوراضی نامه کرنے دتقر رثالث و فیصلہ پر حلف دیتے جواب دہی اورا قبال دعویٰ اور بصورت ذگری کرنے اجراءاور دصولی چیک وروپیدار عرضی دعویٰ اور درخواست ہرشم کی تصدیق زرایں بردستخط کرانے کا اختیار ہوگا۔ نیز صبورت عدم ہیردی یاڈ گری یکطرفہ یا ایل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا۔از بصورت ضرورت مقدمہ مذکور کے کل یاجز وی کا روائی کے سطے اور وکیل یا مختار قانونی کوایے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔اورصاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اوراس کاساختہ پر داختہ منظور وقبول ہوگا دوران مقدمہ میں جوخر کیے ہرجانہ التوائے مقدمہ کے سبب سے وہوگا کوئی تاریخ بیشی مقام دورہ پر ہو یا حد ب باہر ہوتو وکیل صاحب پابند ہوں گے۔ کہ پیرو**ی ن**دکور کریں۔لہذا وکالت نا یکھدیا کہ سندر ہے۔ Angra 20 المرتوم el کے لئے منظور ہے۔ مقام ے مدینیشنر کے مارمے عانان جوك مشتكر كمايشاورش فون: 2220193