

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 823/2022.

Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikhan, Shewa
Tehsil Razzar District Swabi..... Appellant

Case No. 3703

Dated 22/2/2023

VERSUS

1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
- 2&3. Director E&SE Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
5. Assistant Director (Admn) Directorate of E&SE, KP, Peshawar
..... Respondents

INDEX

S#	Description of Documents	Annexure	Page
1	Parawise Comments along-with Affidavit	-	01-07
2	Absence notices	"A"	08-10
3	Publications in two leading Daily News papers	"B"	11-12
4	Removal from Service Notification	"C"	13-14
5	Civil Servants Appeal Rules, 1986	"D"	15
6	2017 SCMR 965	"E"	16-18
7	Civil Appeal No.2100 of 2019	"F"	19-21
8	Judgment 05/10/2021 WP No. 808-M/2019	"G"	22-27
9	Parawise comments in SA No.628/2018	"H"	28-31


**DISTRICT EDUCATION OFFICER
(FEMALE) SWABI**

**District Edu. Officer
(Female) Swabi**

01

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 823/2022.

Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikhan, Shewa
Tehsil Razzar District Swabi..... **Appellant**

VERSUS

1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
- 2&3. Director E&SE Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
5. Assistant Director (Admn) Directorate of E&SE, KP, Peshawar
..... **Respondents**

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 1 TO 5

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

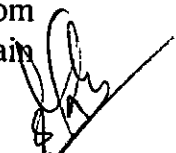
1. That the appellant has filed the instant appeal at much belated stage which is clearly hit by the doctrine of laches. Therefore, this appeal is not maintainable and is liable to be dismissed.
2. That the service appeal No.628/2018 was dismissed as withdrawn by this Honourable Service Tribunal order dated 18/01/2022 and he filed the instant service appeal with the same prayer, facts and grounds, thus the instant service appeal before this honourable service tribunal is barred by the principles of res judicata. Therefore, this appeal is not maintainable and is liable to be dismissed.
3. That the service appeal is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication, therefore, the same service appeal is liable to be rejected/ dismissed.
4. That the service appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory cost in favour of respondents.
5. That no constitutional or legal right of the appellant has been violated, therefore, the appellant is not entitled to invoke the constitutional jurisdiction of this honourable Service Tribunal under Article 212 of the constitution of Pakistan.
That the appellant has not come to the Court/Tribunal with clean hands.
6. That the appellant has concealed the material facts from this Honourable Tribunal.

**District Edu. Officer
(Female) Swabi**

- 7. That the appeal is bad for misjoinder and non-joinder of the necessary party.
- 8. That the appellant has filed the instant appeal just to pressurize the respondents.
- 9. That the appellant has no cause of action to file the instant appeal.
- 10. That the appeal is not maintainable in the eye of law.
- 11. That the instant appeal is not maintainable in the present form and also in the present circumstances of the issue.

FACTS.

- 1. That the para relates to the appointment of the appellant as Chowkidar at GGHS Shewa. He is concealing the material fact, that his appointment dated 07/10/2006 was on contract fixed pay salary basis and subsequently regularized w.e.f. 01/07/2008.
- 2. That it is obligatory for each and every Government servant to discharge his duties up-to the entire satisfaction of his superiors and up-to the best of his capabilities, because he is paid for his job, failing which is liable to be treated under E&D Rules,2011. when he absented himself with out any information to the department. Which was mandatory as per rule 20 of Khyber Pakhtunkhwa Government, servants conduct rules 1987. Thus he has committed mis-conduct includes conduct contrary to Government of Khyber Pakhtunkhwa Government servants conduct rules 1987, for the time being enforced," as per E&D Rules 2011, Section 2 (e)(ii), which states that, misconduct.
- 3. That when the appellant committed misconduct, he was preceded under Section 09 of the E&D Rules, 2011. He has been sent absence notices on his home address.
- 4. That the appellant left the department without any permission/information on 02/02/2012. According to Khyber Pakhtunkhwa Government Servants conduct rules 1987, rules 20 read with E&D rules 2011, Section 2 (e) (ii), he has committed misconduct.
- 5. That Incorrect, hence denied. He remained absent w.e.f. 02/02/2012, he was treated under E&D rules 2011 and was removed from service after observing all codal formalities.
- 6. Incorrect, hence denied. As per rule 20 of Khyber Pakhtunkhwa Government servants conduct rules 1987, he has committed misconduct. Therefore, he was treated under Section 9 of E&D Rules 2011.
- 7. That he himself confesses charge of murder against him but he failed to inform department well in time as per rules. This act of the appellant divests him from the right to remain in service. As per 2017 SCMR 965, Act of absconsion or being fugitive from law could not be regarded as reasonable ground to explain absence."


 District Edu. Officer
 (Female) Swabi

8. That the appellant himself absented from duty willfully w.e.f. 02/02/2012 The FIR No.123 was registered at 18.40 hours after the duty time as murder was occurred at 16.15 hours dated 01.02.2012.
9. Incorrect, hence denied. The appellant did not inform the school's Principal through a written application for leave, on 02/02/2012 at the hand of his father namely Naeem. This stance of the appellant is rejected outright.
10. Incorrect, hence denied. He did not submit any application for leave. His stance is conjectural, contemptuous, frivolous, vexatious and ludicrous.
11. That the appellant left the department without any permission/information on 02/02/2012. According to Khyber Pakhtunkhwa Government Servants conduct rules 1987, rules 20 read with E&D rules 2011, Section 2 (e) (ii), he has committed misconduct.
12. That the appellant himself confesses, that he was acquitted by the learned Additional Session Judge-IV Swabi on 25/03/2016 from the charges leveled against him on the basis of compromise. It cannot be assumed that the appellant has proved his innocence. Furthermore, his removal from service had already been made due to his willful absence as per rule 9 of E&D rules 2011 on 19/02/2013. As he was acquitted on 25/03/2016 but he filed the first departmental appeal in November, 2017 to DEO(F) Swabi, 2nd appeal/representation was made to DEO(M) Swabi on 05/12/2017, both the appeals were badly barred by time and hit by the doctrine of laches. He also been made/submitted another appeal to DEO(F) Swabi on 19/01/2018 without knowing the rejection/acceptance previous one. When the appeal before the authority is time barred, the appeal before the Tribunal is also time barred and hence not maintainable. The appellant has filed the instant appeal at much belated stage which is clearly hit by the doctrine of laches. Reliance is placed on judgment dated 05/10/2021 in WP No. 808-M/2019.
13. Incorrect, hence denied. As per rule 9 the E&D rules, 2011 absence notice have been issued on his home address, absence notice has already been published in two daily leading news papers. The stance of the appellant is conjectural, contemptuous and ludicrous. He wants to lead the department by its nose, which has no legal status.
14. Incorrect, hence denied. The appellant did not approach to any one in the department for duty before November, 2017 while he was released on bail dated 25/02/2016 as per statement of the appellant. He is talking argy bargy. He is trying to create his right of reinstatement falsely.
15. Incorrect, hence denied. The appellant did not file any application/representation to the department, the applications dated 12/01/2016 & 20/04/2016 annexed as E with memo of appeal did not submit to any authority in education department.

These applications are irrelevant and annexed just for creation of his right, which has no legal backup.

16. That the writ petition was withdrawn dismissed. He also filed service appeal No.628/2018 in the Honourable Service Tribunal Peshawar with the same prayer, facts & grounds, which was dismissed as withdrawn by this Honourable Service Tribunal order dated 18/01/2022. Thus the instant service appeal before this Honourable Service Tribunal is barred by the principles of res judicata and is liable to be dismissed. The removal from service dated 19/02/2013 has already been sent on his home address vide Post office Registry No. 1169 on 19/02/2013.

All relevant documents annexed as A,B,C,D,E,F,G,H.

17. That the departmental appeal was barred by time and hit by the principle of laches. The appeal No.628/2018 on the same stance was filed on 19/04/2018 but till 18/01/2022, the same could not admit. Thus his Service Appeal was dismissed as withdrawn.

18. The appeal No.628/2018 on the same stance was filed on 19/04/2018 but till 18/01/2022, the same could not admit. Thus his Service Appeal was dismissed as withdrawn.

19. That the writ petition was not admitted.

20. That appeal/representation to another authority other than the appellate authority could not extend, the period of limitation. Reliance is placed on 2002 SCMR 780. A fugitive from law is not entitled to seek any relief even by review. Same is reported in 1982 SCMR 911.

21. Incorrect, hence denied, the removal order dated 19/03/2013 has been served upon the appellant through registered cover on his home address.

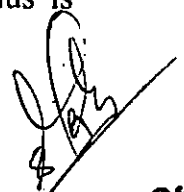
22. That the departmental appeal is barred by time and hit by the principle of laches. The judgment he annexed with memo of appeal has no relevancy to the instant service appeal.

23. That the departmental appeal is barred by time and hit by the principle of laches. The judgment he annexed with the memo of service appeal has no relevancy to the instant case.

24. That appeal/representation to another authority other than the appellate authority could not extend, the period of limitation. Reliance is placed on 2002 SCMR 780.

25. That the departmental appeal filed by the appellant to the appellate authority was badly barred by time and hit by the doctrine of laches.

26. Incorrect, hence denied. The respondent department rejected the departmental appeal which was badly barred by time. Thus is legal, in accordance with law and facts.



District Edu. Officer,
(Female) Swabi

(06)

27. That the appellant is not an aggrieved person at all, because the department has passed the order dated 19/02/2013 and 29/03/2022 as per provision of law, rule and policy in field. Therefore, he has no cause of action to file the instant appeal inter alia amongst the following grounds:-

Grounds:-


- A. Incorrect, hence denied. The appellant absented himself without any permission/information w.e.f. 02/02/2012. Thus after passage of long period of ten years, the instant appeal has no legal status.
- B. Incorrect, hence denied. That when fact of long absence of nine years was admitted neither any regular inquiry was necessary nor order of removal with retrospective effect could be void. Reliance is placed on 1995 PLC (C.S) 435 and 1991 SCMR 2330.
- C. Incorrect, hence denied. All the codal formalities as per rule 9 of E & D rules 2011 have been observed in letter and spirit. Therefore, the order dated 19/02/2013 passed by respondent No.4 and order dated 29/03/2022 passed by respondent No.5 are legal, in accordance with law and facts, liable to be kept intact.
- D. Incorrect, hence denied. The appeal of the appellant is badly barred by time and hit by doctrine of laches. The appellant filed the instant service appeal with the same prayer, facts and ground which was dismissed as withdrawn by this honourable service tribunal order dated 18/01/2022, therefore, this service appeal is hit by the principle of res judicata and is liable to be dismissed.
- E. Incorrect, hence denied. As per rule 20 of Khyber Pakhtunkhwa Government servants conduct rules 1987, he has committed misconduct, as per 2017 SCMR 965, "Act of absconsion or being a fugitive of law could not be regarded as a reasonable ground to explain absence".
- F. Incorrect, hence denied. The instant case is of willful absence; therefore, as per section 9 of E &D rules, 2011, an absence notice issued and also published in two leading Daily News papers. After observing all the codel formalities as mandate of section 9 of E &D rules, 2011. He was removed from service legally and lawfully.
- G. Incorrect, hence denied. He did not file any leave application to any authority in Education Department. The stance of the appellant is conjectural, contemptuous, frivolous, vexatious and ludicrous.
- H. Incorrect, hence denied. The appellant absent himself willfully he did not file any application for to any authority in Education Department, hence the stance of the appellant is rejected outright. He was rightly removed from service as per section 9 of E&D rules, 2011.
- I. Incorrect, hence denied. As per rule 20 of Khyber Pakhtunkhwa Government Service conduct rules 1987, he has committed misconduct. As per 2017 SCMR 965,"Act of absconsion or being fugitive of law could not be regarded as a reasonable ground to explain absence".


District Edu. Officer
(Female) Swab:

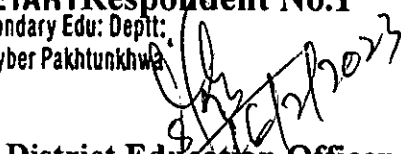
- J. Incorrect, hence denied. The stance of the petitioner is conjectural, contemptuous, frivolous, vexatious and ludicrous. His misconduct and willful absence had been proved. He remained silent for a period of approximately 10 years. Appellant has filed the instant appeal at much belated stage which is clearly hit by the doctrine of laches, therefore, this appeal is liable to be dismissed as per law of the land.
- K. Incorrect, hence denied. As per section 20 of Government servants conduct rules 1987 he has committed misconduct. Therefore, he was removed from service as per law, rules and policy.
- L. Incorrect, hence denied. The removal from service order is a speaking order and was issued in accordance with law, rules and policy.
- M. Incorrect, hence denied. After observing all the codal formalities as per rules 9 of the E&D rules 2011, he was removed from service.
- N. Incorrect, hence denied. He was removed from service in accordance with law, rules and policy in field. He was removed from service by violating rule 20 of Government Servants Conduct rules 1987. The question of exoneration from all charges including absence from criminal law as well as service law is irrelevant in the instant case.
- O. Incorrect, hence denied. Here the stance taken by the appellant is also irrelevant, having no legal backup.
- P. Incorrect, hence denied. The appellant has committed misconduct, thus he has been removed from service after observing all the codal formalities/legal procedure on 19/02/2013.

The respondents seek permission to raise/argue other points on the day of hearing the case.

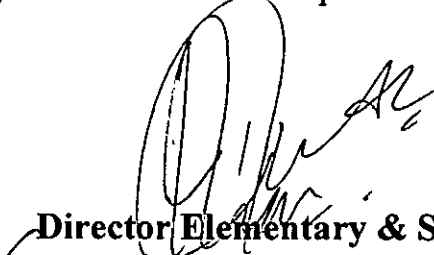
In view of the above stated submissions it is earnestly requested that the appeal may very graciously be dismissed with special compensatory cost.


 Secretary
 E& SE Deptt: Khyber
 Pakhtunkhwa, Peshawar


SECRETARY Respondent No.1
 Elementary & Secondary Edu: Deptt:
 Government of Khyber Pakhtunkhwa


 District Education Officer
 (Female) Swabi
 Respondent No.4

**District Edu. Officer
 (Female) Swabi**


 Director Elementary & Secondary
 Education, Khyber Peshawar.

Respondent No.2 &3
 Director
 Elementary & Secondary Education
 Khyber Pakhtunkhwa Peshawar


 Assistant Director (Admn)
 Directorate of E&SE, Khyber
 Peshawar

Respondent No.5

08

Affidavit

I Sofia Tabssum District Education Officer (Female) Swabi do hereby solemnly affirm and declare on oath that the contents of the comments submitted by respondents is true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.



Sofia Tabssum
15/2/2023
DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

District Edu. Officer
(Female) Swabi

Annexure - A
 08
 [Handwritten initials and scribbles]

For Insurance Notices see reverse
 Stamps affixed except in case of
 uninsured letters of not more than
 the initial weight prescribed in the
 Post Office Guide or on which no
 acknowledgement is due.

Received a registered
 addressed to M. ZAHARA Date 23/4/12

Initials of Receiving Officer M. ZAHARA
 Write here "letter", "postcard", "packet" or "parcel"
 with the word "insured" before it when necessary.

Insured for Rs. (in figures) 1000 (in words) one thousand

Insurance fee Rs. 5 Weight 5 Kilo
 Name and address of sender Sheela B Gram

PRINCIPAL
 A (SWABI)
 /Dated 23/4/2012.

SUBJECT:- SHOW CAUSE NOTIE.

Memo:-
 You have been absent from your duty With effect from 02nd Feburary/2012
 without any information. You are warned to be present on your duty.
 Otherwise strict disciplinary action will be taken against you.

[Signature]
 Principal
 GGHSS Showa
 PRINCIPAL Swabi
 GGHSS SHEWA
 (SWABI)

[Signature]
16/2/2023
 District Edu. Officer
 (Female) Swabi

[Signature]
24/2/2024
 District Edu. Officer
 (Female) Swabi

09

[Handwritten scribbles]

OFFICE OF THE PRINCIPAL
GGHSS SHEWA (SWABI)
No. 043 /Dated 09/5 /2012.

To
MR: MUHAMMAD ZAKARYA
CHOWKIDAR GGHSS SHEWA

SUBJECT:- SHOW CAUSE NOTIE.

Memo:-
You have been absent from your duty With effect from 02nd Feburary/2012.
without any information. You are warned to be present on your duty.
Otherwise strict disciplinary action will be taken against you.

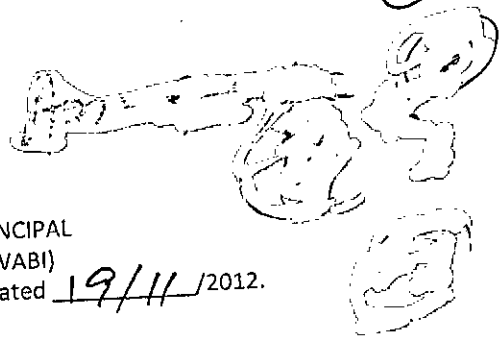
[Signature]
PRINCIPAL
GGHSS Shewa
(Swabi) District Swabi

[Signature]
District Edu. Officer
(Female) Swabi

[Signature]
16/2/2012
District Edu. Officer
(Female) Swabi

Longer
SW 22/11/12

10



OFFICE OF THE PRINCIPAL
GGHSS SHEWA (SWABI)
No 139 /Dated 19/11 /2012.

To
The Executive District Officer
(Elementary & Secondary) Edu:Swabui

SUBJECT:- ABSENT REPORT IN RESPECT OF MUHAMMAD ZAKARYA CHOWKIDAR.

Memo:-
Enclosed please find herewith the all requirements in respect of Muhammad Zakarya Chowkidar in local Institution is submitted herewith for further necessary action.

Enclosed:- As above.

[Handwritten signature]
16/11/2012
District Edu. Officer
(Female) Swabi

[Handwritten signature]
Principal
GGHSS Shewa
PRINCIPAL Swabi
GGHSS SHEWA
(SWABI)

District Edu. Officer
(Female) Swabi

15 دسمبر 2012ء

پیشکش

طاؤس بائوہ مردان میں گرلز پرائمری سکول کے قیام کا مطالبہ

مردان (بھدرہ پورٹ) میں کوشش کی جا رہی ہے کہ ایک بائوہ سکول بنایا جائے۔ اس سکول میں 100 سے زائد بچوں کو داخلہ دیا جائے گا۔ سکول کی تعمیراتی کارروائی کے لیے زمین کی خریداری اور زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔ سکول کی تعمیراتی کارروائی کے لیے 2012-13 کے بجٹ میں رقم منظور کی جائے گی۔

مردان (بھدرہ پورٹ) میں کوشش کی جا رہی ہے کہ ایک بائوہ سکول بنایا جائے۔ اس سکول میں 100 سے زائد بچوں کو داخلہ دیا جائے گا۔ سکول کی تعمیراتی کارروائی کے لیے زمین کی خریداری اور زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔ سکول کی تعمیراتی کارروائی کے لیے 2012-13 کے بجٹ میں رقم منظور کی جائے گی۔

مشاورت

ذریعہ عملی کو ال سال 2012-13 کے بجٹ میں رقم منظور کی جائے گی۔ سکول کی تعمیراتی کارروائی کے لیے زمین کی خریداری اور زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔ سکول کی تعمیراتی کارروائی کے لیے 2012-13 کے بجٹ میں رقم منظور کی جائے گی۔

- 1) ٹینڈر نوٹیفکیشن کے ساتھ زمین کی خریداری کے لیے 2012-13 کے بجٹ میں رقم منظور کی جائے گی۔
- 2) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 3) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 4) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 5) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 6) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 7) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 8) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 9) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 10) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 11) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 12) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 13) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 14) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 15) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 16) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 17) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 18) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 19) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 20) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 21) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 22) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 23) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 24) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔
- 25) زمین کی خریداری کے لیے زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔

INF(SW)191

پیشکش کی خبر دیکھ کر توجہ دینا اور درخواست گزار کو سکول کی تعمیراتی کارروائی کے لیے زمین کی خریداری اور زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔ سکول کی تعمیراتی کارروائی کے لیے 2012-13 کے بجٹ میں رقم منظور کی جائے گی۔

پیشکش

پیشکش کی خبر دیکھ کر توجہ دینا اور درخواست گزار کو سکول کی تعمیراتی کارروائی کے لیے زمین کی خریداری اور زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔ سکول کی تعمیراتی کارروائی کے لیے 2012-13 کے بجٹ میں رقم منظور کی جائے گی۔

www.caapakistan.com.pk

پیشکش

Sl. No.	Area	Plot No.	Area (Sq. Ft)	Value (Rs)
1	140000	4050
2	120000	3650
3	100000	3250
4	600000	13850
5	150000	4250
6	300000	7250
7	175000	4750
8	50000	2850
9	100000	3250
10	150000	4250
11	350000	8250
12	350000	8250
13	120000	3650
14	200000	5250
15	100000	3250
16	250000	6250
17	50000	1250
18	200000	5250
19	1700000	40250
20	100000	3250
21	1000000	21850
22	840000	18850
23	100000	3250
24	200000	5250
25	200000	5250

پیشکش

پیشکش کی خبر دیکھ کر توجہ دینا اور درخواست گزار کو سکول کی تعمیراتی کارروائی کے لیے زمین کی خریداری اور زمین کی تیار کرنے کے لیے سڑکوں کی تعمیر اور پانی کی فراہمی کے لیے لائنوں کی پھیلانے کی ضرورت ہے۔ سکول کی تعمیراتی کارروائی کے لیے 2012-13 کے بجٹ میں رقم منظور کی جائے گی۔

Package No.	Name of work
I	Construction of Building for Gomal College Dikhan.
II	Residence Type-A (18 Marla) supply, sanitary installation.
III	Residence Type-B (13 Marla) supply, sanitary installation /c B/w
IV	Residence Type-C (10 Marla) water supply, sanitary installation.
V	Residence Type-D (07 Marla) water supply, sanitary installation.
VI	Residence Type-E (05 Marla) water supply, sanitary installation.
VII	Residence Type-F (03 Marla) water supply, sanitary installation.
VIII	Construction of Boys Hostel / sanitary installation.
IX	Construction of Cafeteria, supply, sanitary installation (II) C
X	Construction of Library Block 76

District Edu. Office (Female) Swat

District Edu. Office (Female) Swat

پندرہویں آواز آواز اور راہی سے ایک وقت شائع ہونے والا ہے ۱۱ شام ۵ بجے ۵ بجے

روزنامہ

پشاور پاکستان

ایڈیٹر عبدالواحد یوسفی

جلد 23 ہفتہ 15 دسمبر 2012ء یکم صفر 1434ھ قیمت 10 روپے بے پستہ 1 کتبہ شمارہ 335

پندرہویں آواز

12

تعمیرات

12/12/13

نوٹس فیروز حاضری

آپ سکی محمد زکریا چوکیدار گورنمنٹ گرلز ہائر سیکنڈری سکول شیوہ (صوابی) گاؤں وڈاک خانہ شیوہ تحصیل رز و ضلع صوابی مورخہ 02-02-2012 سے مسلسل اپنی ڈیوٹی سے غیر حاضر ہیں دوران غیر حاضری بذریعہ متعلقہ پرنسپل آپ کو گھر کے پتہ پر بالترتیب چشمی نمبر 016 مورخہ 21.02.2012 چشمی نمبر 18 مورخہ 08.03.2012 اور چشمی نمبر 021 مورخہ 22.03.2012 تین رجسٹرڈ نوٹس جاری کئے گئے جن میں آپ کو ڈیوٹی پر حاضر ہونے کی ہدایت کی گئی لیکن اس کے باوجود بھی آپ اپنی ڈیوٹی پر حاضر نہیں ہوئے۔ لہذا آخری بار بذریعہ نوٹس ہذا آپ کو متنبہ کیا جاتا ہے کہ پندرہ (15) دن کے اندر اندر زبردستی کے روبرو پیشہ کر اظہار وجوہ برائے غیر حاضری پیش کریں کہ کیوں نہ آپ کے خلاف تادیبی کارروائی کی جائے۔ عدم تعمیل کی صورت میں آپ کے خلاف حکومت کے عروج و زوال اور ریگولیشن کے مطابق یکطرفہ کارروائی کی جائیگی جو کہ آپ کی ملازمت سے برخواستگی پر منتج ہوگی۔

INF/MR/149

عبدالسلام ایگزیکٹو ڈسٹرکٹ آفیسر (E&SE) صوابی

District Edu. Officer
(Female) Swabi

12/12/13

District Edu. Officer
(Female) Swabi

District Edu. Officer
(Female) Swabi

Annexure - C

13

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) SWABI

NOTIFICATION.

WHEREAS Mr Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 on account of his willful and un-authorized absence from duty w.e.f. 02.02.2012 and was directed to resume duty by the Principal concerned vide her No.016 dated 21.02.2012, No.18 dated 08.03.2012 and No.021 dated 22.03.2012, but he failed to resume his duty.

AND WHEREAS absentee notice was served upon the accused official Mr. Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi through "Daily New Paper "Mashriq" Peshawar dated 15.12.2012 to resume duty within 15 days but he remained absent and did not report for duty in response of the above absence notice.

AND WHEREAS the competent authority i.e the DEO (Female) Swabi after having considered the charges and evidence on record is of the view that the charges of willful and un-authorized absence from duty against the accused have been proved.


NOW, THEREFORE, in exercise of the powers conferred under Section 3 b (iii) of the Khyber Pakhtunkhwa Removal from service under (Efficiency & Discipline) Rules 2011, the competent authority is pleased to impose the major penalty of removal from service upon Mr. Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi with immediate effect. The period of his absence from duty w.e.f. 02.02.2012 till the issuance of this order be treated as un-authorized absence from duty with out pay.

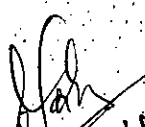
(SAMINA GHANI)
DISTRICT EDUCATION OFFICER
(FEMALE) SWABI


Endst: No. 246 / F.No. / C-IV (M/F) Side dated Swabi the: 17-2-2013.

Copy of the above is forwarded for information and n/action to the:-

1. Director Education Khyber Pukhtunkhwa, Peshawar.
2. District Accounts Officer, Swabi.
3. Principal GGHSS Shewa w/r to his No.139 dated 19.11.2011.
4. Mr. Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi (Under Registered cover).


DISTRICT EDUCATION OFFICER
(FEMALE) SWABI


District Edu. Officer
(Female) Swabi


District Edu. Officer
(Female) Swabi

District Edu. Officer
(Female) Swabi

[Handwritten signature]

[Handwritten text in Urdu]

[Handwritten signature: Mrs. Muhammad Ali Raza]
[Handwritten text: Ghosia, Chakri, Kadir]

District Edu. Officer
(Female) Swabi

[Handwritten signature]



GHS
hyper
count
ectel
02
IT

NOTIFY



40

Annexure - 1
15

Civil Servants (Appeal) Rules, 1986

**Khyber Pakhtunkhwa
Civil Servants (Appeal) Rules, 1986**

[Gazette of Khyber Pakhtunkhwa, Extraordinary, Page No. 1290-1293, 2nd June, 1986]

No. **SORII (S&GAD) 3(4)/78 (Vol. 11)**.---In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, (Khyber Pakhtunkhwa Act XVIII of 1973), read with section 22 thereof, the Governor of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:--

1. **Short title, commencement and application.**---(1) These Rules may be called the Khyber-Pakhtunkhwa Civil Servants (Appeal) Rules, 1986.

(2) They shall come into force at once and shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with the affairs of the Province.

2. **Definitions.**---In these rules, unless there is anything repugnant in the subject or context;

- (a) "Appellate Authority" means the officer or authority next above the competent authority;
- (b) "Competent Authority" means the authority or authorised officer, as the case may be, as defined in the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 1973, or the authority competent to appoint a civil servant under the rules applicable to him; and
- (c) "Penalty" means any of the penalties specified in rule 4 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 1973.

3. **Right of Appeal.**---(1) A civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms and conditions of his service may, within thirty days from the date of communication of the order to him, prefer an appeal to the appellate authority:

Provided that where the order is made by the Government, there shall be no appeal but the civil servant may submit a review petition:

[Provided further that the appellate or the reviewing authority, as the case may be, may condone the delay in preferring the appeal or the review petition, if it is satisfied that the delay was for the reasons beyond the control of the appellant or that the earlier appeal or review petition was not addressed to the correct authority.]

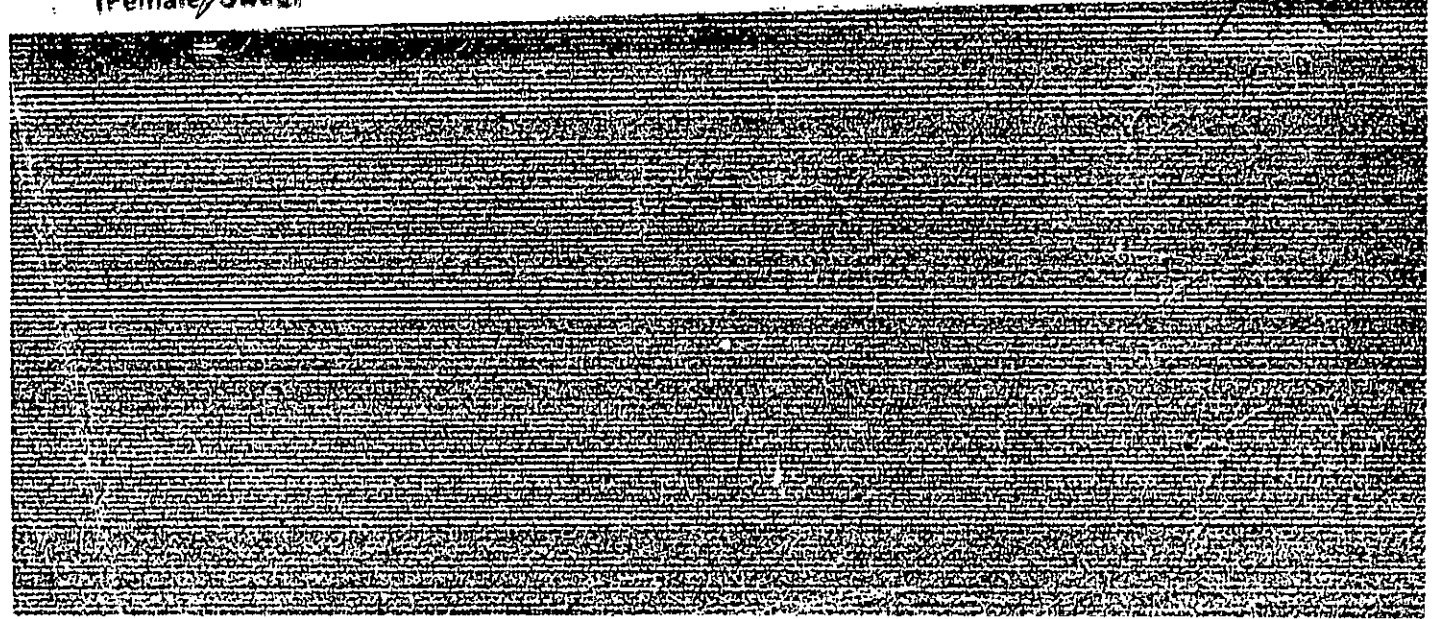
Explanation.---For the purposes of the first proviso, the expression "appeal", where the context so requires, shall mean the "review petition" as well.

(2) Where the order of the competent authority affects more than one civil servant, every affected civil servant shall prefer the appeal separately.

1. Substituted by Notification No. SORII(S&GAD)3(4)/78/Vol.II dated 03-12-1989.

[Signature]
District Edu. Officer
(Female) Swabi

[Signature]
District Edu. Officer
(Female) Swabi



Annexure - F

16

Case Judgment

<http://www.plsbeta.com/LawOnline/law/content21.asp?Cases=2...>

2017 S C M R 965

[Supreme Court of Pakistan]

Present: Sh. Azmat Saeed and Faisal Arab, JJ

**FEDERATION OF PAKISTAN through Secretary Ministry of Defence and another--
Petitioners**

Versus

**BASHIR AHMED, SBA IN MES, MINISTRY OF DEFENCE, GE(ARMY), NOWSHERA--
Respondent**

Civil Petition No. 935 of 2015, decided on 18th April, 2017.

(On appeal against the judgment dated 24.03.2015 passed by the Federal Service Tribunal, Islamabad in Appeal No.745(P)CS-2013)

Civil service--

---Continuous absence from duty---Major penalty of compulsory retirement---Respondent was serving in the Military Engineering Services, Ministry of Defence---During service respondent was nominated as an accused in a murder case and an FIR was lodged against him---Respondent remained absent from duty without any authorization from the day the FIR was registered against him---Show-cause notice and opportunity of personal hearing was provided to respondent but he failed to appear before the Authorized Officer---Major penalty of compulsory retirement was imposed on the respondent on account of his continuous absence from duty---Service Tribunal had held that on account of murder charges and the enmity with the complainant party, his absence was justified, thus, the major penalty of compulsory retirement was converted into minor penalty of withholding of three increments with reinstatement back in service---Legality---Case record showed that during the period of absence, no attempt was made on behalf of the respondent to apply for leave---Criminal case came to an end and respondent was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the compromise was reached with the victim's family members---To seek condonation of absence during his absconsion would amount to putting premium on such act---In the present case, if reason provided by respondent was made a ground for condonation of absence, then in every case where the civil servant was involved in a criminal case and absconded, his absence from duty would have to be condoned---Act of absconsion or being a fugitive from law could not be regarded as a reasonable ground to explain absence---Impugned judgment of Service Tribunal was set aside and departmental action of imposition of major penalty of compulsory retirement was restored---Appeal was allowed accordingly.

Central Board of Revenue v. Shafiq Muhammad 2008 SCMR 1666 distinguished.

Syed Nayyab Hassan Gardezi, Assistant Attorney General and Qari Abdul Rasheed, Advocate-on-Record (Absent) for Petitioners.

Muhammad Shoaib Shaheen, Advocate Supreme Court and Ahmed Nawaz Ch., Advocate-on-Record for Respondent.

Date of hearing: 18th April, 2017.

JUDGMENT

[Signature]
16/7/2021
District Edu. Office
(Female) Swabi

10/2/2017, 9:14 AM

[Signature]
22/2/2021
District Edu. Office
(Female) Swabi

17

FAISAL ARAB, J.—The respondent was appointed as SBA in MES, Ministry of Defence in the year 1990. On 20.06.2010 he was nominated as an accused in a murder case registered vide FIR No.335/2010 under sections 302/34, P.P.C. at Police Station Azakhel, District Nowshera. He remained absent without any authorization from the day the FIR was registered against him. Between 27.06.2010 to 01.09.2010, he was issued five letters calling upon him to resume duty but he failed to do so. On account of his absence, disciplinary proceedings were initiated against him on 26.10.2010. He was then served with show cause notice on 25.04.2011, to which he failed to respond. Ultimately, major penalty of compulsory retirement was recommended on 15.09.2011. The respondent was then given an opportunity of personal hearing but he failed to appear, hence the Authorized Officer imposed major penalty vide order dated 31.01.2012 on account of his continuous absence from duty. The respondent belatedly filed departmental appeal on 03.07.2012 which was considered to be barred by time. The respondent then filed appeal before the Service Tribunal on the ground that he was not given the opportunity of hearing. The Tribunal while disposing of the appeal vide order dated 02.07.2013 directed the petitioner to hear the respondent's departmental appeal afresh and decide within 30 days. After hearing the respondent, the departmental appeal was rejected on 11.10.2013, whereafter he again preferred appeal before the Service Tribunal on 08.11.2013. Before the Tribunal, it was admitted by respondent's Advocate that after the registration, the respondent went underground as he could not live a normal life on account of his involvement in a criminal case and thus remained absent from duty. With regard to the disciplinary proceedings, the Service Tribunal held that on account of murder charges and the enmity with the complainant party, his absence was justified. The Service Tribunal thus converted the major penalty of compulsory retirement into minor penalty of withholding of three increments and reinstated him back in service. Against such decision, present petition for leave to appeal has been preferred. Notice was issued to the respondent.

2. Learned counsel for the petitioners contended that it is an admitted position that the respondent absented himself from 20.06.2010 onwards without seeking leave of absence from the department. The letters calling upon him to resume duty as well as show cause notice delivered at his known address were also not responded to, hence, the department was left with no other option but to initiate disciplinary proceedings. Learned counsel further submitted that the Authorized Officer in fact showed leniency by not dismissing the respondent from service and only imposed a penalty of compulsory retirement, which would still entitle him to receive pensionary benefits for the term that he served from 1990 until he was compulsorily retired on 31.01.2012.

3. Learned counsel for the respondent, on the other hand, contended that the respondent was involved in a murder case on 20.06.2010 and was finally acquitted on 20.09.2012, hence, his absence was not willful, therefore, imposition of major penalty was too harsh. He submitted that at best a minor penalty could have been imposed and the Service Tribunal after taking into consideration all this rightly converted major penalty into minor penalty. In support of his contention he relied upon the case of Central Board of Revenue v. Shafiq Muhammad (2008 SCMR 1666). He also submitted that even otherwise no case of public importance as envisaged under Article 212(3) of the Constitution is made out and this petition may be dismissed on this score alone.

4. It has come on the record that during the period of absence, no attempt was made on behalf of the respondent to apply for leave. The respondent's counsel himself stated before the Tribunal that the reason for his absence was that he went underground being involved in a murder case and it was only on the basis of a compromise with the victim's relatives that he was acquitted in September, 2012. Though the criminal case came to an end in September, 2012 and he was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the

[Handwritten signature]
 District Edco Officer
 (Female) Swabi

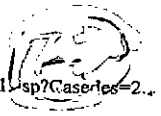
[Handwritten signature]
 16/12/2017
 District Edco Officer
 (Female) Swabi

10/2/2017, 9:14 AM AM

18

Jgement

<http://www.plsbeta.com/LawOnline/law/content21.asp?CaseNo=2...>



compromise was reached with the victim's family members: To seek condonation of absence during his absconsion would amount to putting premium on such act. If this is made a ground for condonation of absence, then in every case where the civil servant is involved in a criminal case and absconds, his absence from duty would have to be condoned. The act of absconsion or being a fugitive from law cannot be regarded as a reasonable ground to explain absence. Even where a person is innocent, absconsion amounts to showing mistrust in the judicial system. Learned counsel for the respondent was asked to show as to whether in any case, this Court has condoned the absconsion and the departmental action was set aside, he was unable to satisfy this Court on this point. In the circumstances, the case relied upon by the respondent's counsel is of no help to the case of the respondent as it has no relevance in the facts and circumstances of this case.

5. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned judgment and restore the departmental action of imposition of major penalty of compulsory retirement.

MWA/F-5/SC

Appeal allowed.

[Handwritten Signature]
15/11/2021
District Edu. Officer
(Female) Swabi

[Handwritten Signature]
21/11/2021
District Edu. Officer
(Female) Swabi

Annexure-F
(13)

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE NAZ UL AHSAN

CIVIL APPEAL NO. 2100 OF 2019.
(Against the order dated 16.07.2019 passed by
the Khyber Pakhtunkhwa Service Tribunal,
Peshawar in Service Appeal No. 690 of 2018).

Government of Khyber Pakhtunkhwa through Secretary
Elementary & Secondary Education, Peshawar and others.

...Appellant(s)

Versus

Riaz Ahmad.

...Respondent(s)

For the Appellant(s): Barrister Qasim Wadood, Addl.
A.G. KP.

For the Respondent(s): Mr. Fazal Shah, ASC.

Date of Hearing: 25.03.2020.

ORDER

GULZAR AHMED, CJ.- The Respondent was employed as a Primary School Teacher in Education Department, Government of Khyber Pakhtunkhwa. An FIR bearing No.130 of 1998, dated 31.07.1998 under Sections 302, 324 & 34, PPC was registered against the Respondent at Police Station, Lachi, Kohat. From the very date of registration of the FIR, the Respondent absconded himself from duty. He was acquitted from the criminal case on 28.11.2013. After issuing a show cause notice, the Respondent was removed from service, vide order dated 20.08.2015. This was challenged by him before the Khyber Pakhtunkhwa Service Tribunal, Peshawar ("the Tribunal")

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

District Edu. Officer
(Female) Swabi

District Edu. Officer
(Female) Swabi

20

23

CIVIL APPEAL NO. 2100 OF 2019

whereupon a denovo inquiry was ordered to be conducted. On conclusion of the denovo inquiry, the Respondent was again removed from service, vide order dated 13.03.2018. The Tribunal in the impugned judgment dated 16.07.2019 though found that the Respondent remained absent from duty for 18 years for which there is no plausible explanation from the side of the Respondent but taking into consideration that he had 14 years service prior to his absconson converted the penalty of removal from service into compulsory retirement.

2. The learned Additional Advocate General, Khyber Pakhtunkhwa contends that where the very fact of Respondent's absence from duty for 18 years stood established and admitted, there was no valid reason or justification by any means for the Tribunal to have taken any lenient view in that the Government Service is a mandatory service which a person is required to attend under the law and if he violates the law, an appropriate penalty has to be imposed upon him. He further contends that 18 years absence from duty attracts no lesser punishment than of dismissal from service, but still the department taking a lenient view imposed a penalty of removal from service upon the Respondent.

3. Heard. Record perused. We find that the ground that the Respondent was having 14 years service was not a sufficient ground for the Tribunal to have taken any further lenient view than the one already taken by the department in the matter of imposition of penalty. Thus, in such view of the

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

[Signature]
24/7/2021
District Edu. Officer
(Female) Swabi

[Signature]
16/7/2023
District Edu. Officer
(Female) Swabi

Scanned with CamScanner

Scanned with CamScanner

21

matter we find that conversion of penalty of removal from service to that of compulsory retirement by the Tribunal was not in accordance with law more particularly in the peculiar facts and circumstances of the case in hand.

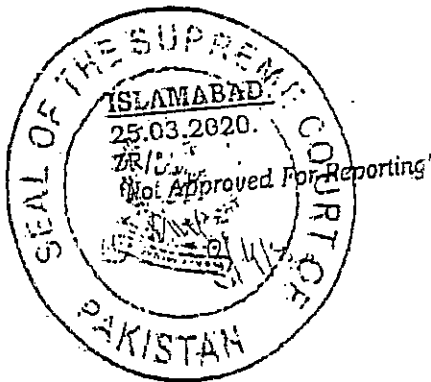
4. In view of the above, we find that the impugned judgment of the Tribunal is not sustainable in law. The same is accordingly set aside and the appeal is allowed.

5. All pending CMAs stand disposed of accordingly.

Sd/-HCJ
Sd/-J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



District Edu. Officer
(Female) Swabi

District Edu. Officer
(Female) Swabi

GR No: 6419/20 Civil/Criminal

Date of Presentation: 25-03-20

No of Words: 900

No of Folios: 9

Registration Fee Rs: 500

Copy Fee in: 558

Court Fee Stamps: 1058

Date of Completion of Case: 25/4/20

Date of delivery of Copy: 21-04-20

Completed by/Prepared by: [Signature]

Received by: [Signature]

~~Annexure-9~~

5
Annexure-9

22

JUDGMENT SHEET

PESHAWAR HIGH COURT, MINGORA
BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P. No. 808-M/2019
With Interim Relief

JUDGMENT

Date of hearing: 05.10.2021

Petitioner:- (Said Ali Jan) by Muhammad Nabi, Advocate.

Respondents:- (Govt. of KPK & others) by Mr. Sohail Sultan, Astd: A.G.

WIQAR AHMAD, J.- This order is directed to dispose of the petition filed by petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

2. Petitioner has contended in his writ petition that in response to a proclamation published in daily newspapers by respondent No. 2 in respect of various posts of Primary School Teacher (hereinafter referred to as "PST"), the petitioner had applied against said posts from four different schools. The petitioner appeared in the written examination conducted under the supervision of National Testing Service (hereinafter referred to as "NTS") and obtained 89.4 marks. Respondent No. 2 had thereafter appointed eight successful candidates vide appointment order dated 29.03.2017, while one candidate namely Muhammad Afzal Khan had not been considered for appointment. The petitioner being placed at 9th position of the merit

Afzal Khan

Q. Khan
DISTRICT EDUCATION OFFICER
(M) DISTT. BUNER

Q. Khan
16/2/2023
District Edu. Officer
(Female) School

list filed an application before respondent No. 2 for his appointment against the vacant post of PST, which was dismissed. The petitioner apprehending that respondents were going to re-advertise the subject post of PST, filed the instant writ petition with the following prayer;

"It is therefore, humbly prayed that, on acceptance of the instant writ petition;

- *The respondents may kindly be directed to appoint the petitioner against the one vacant post of PST in the GPS Toorwarsak No. 1, District Buner.*
- *Any other relief which this Honorable Court deems fit and proper in the circumstances may also be very kindly granted."*

3. Respondents were put on notice, out of whom respondent No. 2 has filed his para-wise comments. It was contended in the comments that the stipulated period for maintaining waiting list is three months according to Notification dated 10.12.2014 of the Establishment Department of Government of Khyber Pakhtunkhwa, while the petitioner had not moved any application during said stipulated period for his appointment as PST. It was also disclosed in the comments that the subject post of PST had subsequently been filled on 28.02.2019.

Attended

[Signature]

DISTRICT EDUCATION OFFICER
(M) DISTT. BUNER.

[Signature]
16/12/2023
District Edu. Officer
(Female) Swabi

24

4. We have heard arguments of learned counsel for petitioner, learned Astt: A.G. for official respondents and perused the record.

5. Perusal of record reveals that the appointment order wherefrom the petitioner has been aggrieved had been made on 29.03.2017 while the writ petition has been filed on 05.07.2019. Respondents have also stated in their comments that the seat which had remained vacant in the earlier recruitment process had also been filled subsequently through appointment order dated 28.02.2019. At the time of filing of the instant writ petition no seat in the subject recruitment process had been available. The delay caused in filing of the instant writ petition has not been a simpliciter delay but during said period the subject seat had also been filled. The instant constitutional petition has been filed after a delay of more than two years. Same was therefore hit by the doctrine laches. The bar of laches has not been an absolute bar, but same require consideration in a case where no justification or plausible explanation is forthcoming on record. Unreasonable and unexplainable delay has always been held to be defeating equity. In grant of discretionary and equitable reliefs, laches has always been considered as a relevant bar. The Hon'ble Dacca High Court in its judgment

Ashtul

[Signature]
DISTRICT EDUCATION OFFICER
(M) DIST. BUNER

[Signature]
16/7/2023
District Edu. Officer
(Female) Swabi

given in the case of "Sabir Ahmed Choudhury vs Province of East Pakistan and another" reported as PLD 1960 Dacca 1025 had also held in this respect;

"It is, therefore, evident that the petitioner delayed more than a year for claiming speedy relief in this Court. It is well-settled that in asking for a speedy relief by way of a writ of mandamus the petitioner himself must come to Court with due diligence and speed. Mr. Hussain has tried to justify the belated application to this Court by the petitioner, by saying, that although the seniority of the petitioner was affected by the impugned order he was further aggrieved by the appointment of respondent No. 2 Acting Chief Engineer by an order passed on the 13th of July, 1960. From the date of the order appointing respondent No. 2 to act as Chief Engineer (the order being notified on the 13th of July, 1960), the petitioner claims to have come to Court without any great delay. We do not think that the petitioner is entitled to wait for more than a year in order to be armed by what he thinks to be a better cause of action. We would, therefore, reject the petition also on the ground of laches and delay."

In the case of "Member (S&R)/Chief Settlement Commissioner, Board of Revenue, Punjab, Lahore and another vs Syed Ashfaq Ali and others" reported as PLD 2003 Supreme Court 132, Hon'ble Supreme Court of Pakistan has also held;

"Law is well-settled that a party guilty of gross negligence and laches is not entitled to the equitable relief."

A similar view has also been expressed by Hon'ble Supreme Court of Pakistan in its judgment rendered given in the case of "Jawad Mir Muhammadi and others vs Haroon Mirza and others" reported as PLD 2007 Supreme Court 472, wherein it was held;

25

Ahmed

DISTRICT EDUCATION OFFICER
(M) DIST. SUNER

16/7/2023
District Edu. Officer
(Female) Suner

"The next issue which requires consideration is whether constitutional petition filed by the appellants was hit by laches and was liable to be dismissed on this ground. The High Court in its judgment observed that there was a delay of 16 months in filing the constitutional petition. Mr. Naeemur Rehman strenuously contended that a constitutional petition involving violation and infringement of fundamental rights of the citizens could not be thrown out on the ground of delay in filing the same and heavily relied on the observations of this Court in the case of Ardeshir Cowasjee v. Karachi Building Control Authority 1999 SCMR 2883. From a perusal of the judgment in the cited case it is observed that this Court while dilating on the question of laches held that laches per se is not a bar to the constitutional jurisdiction and a question of delay in filing would have to be examined with reference to the facts of each case. It was finally concluded that laches of several years could be overlooked if the facts of the case and dictates of justice so warranted or laches of few months may be fatal. It is a settled proposition "that the delay defeats equities or equity aids the vigilant and not the indolent". Relying on the above maxim this Court as well as the High Courts of the Country have refused to come to the aid of a party who had not been diligent, vigilant and acted in a prudent manner. It will be appropriate to reproduce the words of Lord Camden L.C. While dealing with the issue of delay and laches from the judgment of Smith v. Clay (1767) 3 Bro. C.C.639n. at 640n observed as under: -

A Court of equity has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this Court into activity, but conscience, good faith, and reasonable diligence; where these are wanting the Court is passive, and does nothing."

At the end

[Signature]
DISTRICT EDUCATION OFFICER
(M) DIST. SWABH

Further ahead in said judgment, the Hon'ble Apex Court recorded the following observations;

"From a perusal of the passage/ quotations reproduced hereinabove the question of delay/laches in filing the constitutional petition has to be given serious consideration and unless a satisfactory and plausible explanation is forthcoming for the delay in

[Signature]
16/12/2023
District Edu. Officer
(Female) Swabi

filing a constitutional petition, the same cannot be overlooked or ignored subject, of course, having regard to the facts and circumstances of each case."

Petitioner has filed the instant petition at much belated stage which is clearly hit by the doctrine of laches. The instant petition is therefore dismissed, in limine.

ANNOUNCED
Dt: 05.10.2021

JUDGE

Ishtiaq

[Signature]
DISTRICT EDUCATION OFFICER
(M) DISTT: BUNER

[Signature]
District Edu. Officer
(Female) Swat

JUDGE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 628/2018.

Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikh Abad, Post Office Shewa Tehsil Razzar District Swabi..... **Appellant**

VERSUS

1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
4. District Education Officer, Elementary & Secondary Education (Male) District Swabi.
5. Principal GGHSS Shewa Tehsil Razzar District Swabi.
6. Executive District Officer Schools & Literacy Swabi.... **Respondents**

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 1 TO 6

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. That the appellant absented himself from duty w.e.f. 02.02.2012 without giving any information to the department and was removed from service on 19.02.2013. Hence the appeal is not maintainable.
2. That the appellant was appointed against Chwokidar post on contract fixed pay salary basis and subsequently regularized but he left the department without any permission/information on 02.02.2012 . Hence the appeal is not maintainable.
3. That the instant appeal is badly time barred because he was removed from service on 19.02.2013, while he filed appeal in November, 2017. Hence the appeal is not maintainable.
4. That the appellant has no locus standi or cause of action to file the instant appeal.
5. That the appeal is bad for misjoinder and non joinder of necessary party.
6. That the appellant has not come to the Tribunal with clean hands. Hence the appeal is not maintainable.
7. That the appellant concealed the material facts from Honourable Tribunal. Hence the appeal is not maintainable.
8. That the appellant is, estopped by his own conduct to file the instant appeal. Hence the appeal is not maintainable.
9. That the appellant did not impugned his removal from service order. Hence the appeal is not maintainable.

FACTS.

1. That the para relates to the appointment of the appellant as Chowkidar at GGHSS Shewa. He is concealing the fact, that his appointment was on contact fixed pay salary basis and subsequently regularized w.e.f. 01.07.2008. The appellant was removed from service due to his willful long absence, after observing all the codal formalities in this regard. He

[Signature]
16/12/2023
District Edu. Officer
(Female) Swabi



- filed a writ petition No.1513-P/2018 on 09.03.2018 and also filed the instant appeal on 19.04.2018 on the same stance/plea, which is illegal and unlawful. Grounds of Writ Petition, comments, absence notices, Removal from service order, Civil Service Appeal rules 1986 annexed as annexure- **A,B,C,D & E.**
2. Incorrect, hence denied. The appellant is not serving now. It is obligatory for each and every Government servant to discharge his duties up to the entire satisfaction of his superiors and up to the best of his capabilities, because he is paid for his job, failing which is liable to be treated under E&D Rules, 2011. When he absented himself willfully, he was removed from service on 19.02.2013.
 3. That the petitioner himself confesses charge of murder against him, but he failed to inform the department well in time as per rules. This act of the appellant divests him from the right to remain in service. As per 2017 SCMR 965," Act of absconsion or being fugitive from law could not be regarded as a reasonable ground to explain absence". Judgments annexed as **F, G & H.**
 4. That the appellant himself confesses that he became fugitive of law after being charged in the murder case. " Act of absconsion or being a fugitive of law could not be regarded as a reasonable ground to explain absence". The same is reported in 2017 SCMR 965. As he has already been removed from service on 19.02.2013 after observing all the codal formalities due to willful absence from duty, he has no vested right to be posted against the Chowkidar post.
 5. That the appellant himself confesses that he was acquitted by the learned Additional Session Judge-IV Swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. The acquittal was not an honourable acquittal. It shows that the appellant could not remove the allegation of murder through legal proceedings on merit but the acquittal was given only on the basis of compromise, which does not prove the validity of the charge or otherwise. It can not be assumed that the appellant has proved his innocence. Furthermore, his removal from service had already been made due to his willful absence under E&D Rules, 2011 on 19.02.2013.
 6. That the appellant submitted belatedly more than one appeal which the rules do not allow for repeated appeals/representations when the first one is not rejected/decided. It has been reported in 2001 SCMR 912,2004 SCMR 497, 2009 PLC(CS) 89, 2007 PLC(CS)15. The appellant made/submitted first appeal in November, 2017 to DEO(F)Swabi, 2nd appeal/representation was made to DEO(M) Swabi on 05.12.2017, both the appeals were badly time barred, He has also been made/ submitted another appeal to DEO(F) Swabi on 19.01.2018 without knowing the rejection/acceptance of the previous one. When the appeal before the authority is time barred, the appeal before the Tribunal is also time barred and hence not maintainable. As he has committed moral turpitude, hence he is not entitled to be posted/reinstated as chowkidar. The same is reported in 2002 SCMR 1691.

[Handwritten signature]
16/2/2018
District Edu. Office
(Female) Swabi

30

03

The appellant knocked at the door of Honourable Court before 90 days after filing the 3rd departmental appeal which has no legal effect. He filed a writ petition No.1513-P/2018 on 09.03.2018 and also the instant service appeal No.628-2018 on 19.04.2018 on the same stance/ plea. The writ petition was decided on 14.01.2019. Therefore, the instant service appeal is not maintainable and is liable to be dismissed.

7. That appellant is not an aggrieved person at all. Hence has no cause of action to file the instant service appeal inter-alia on the following grounds.

Grounds

- a. Incorrect, hence strongly denied, the non posting/reinstatement of the appellant by the respondent is legal, genuine and according to the norms of justice because he has already been removed from service on 19.02.2013.
- b. Incorrect, hence denied, according to Khyber Pakhtunkhwa Government servants conduct rules, 1987 rule 20, he has committed misconduct. This rule states, " If a government servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction as the case may be to the notice of the Head of office or department immediately or if he is arrested or released on bail, soon after such release". As it was mandatory for the appellant to inform head of the department about his involvement but he did not do so, hence, he committed misconduct as per E&D rules 2011, 2(e) (ii) which states that misconduct includes conduct contrary to Government of Khyber Pakhtunkhwa Government Servants rules 1987 for the time being enforced. He has already been removed from service due to willful absence on 19.02.2013. He is concealing the fact of his removal from service.
- c. Incorrect, hence denied. He has been sent absence notices by the Principal of concerned school. He has been served with first notice on 21.02.2012, 2nd on 08.03.2012 and 3rd on 22.03.2012. All the letters/ notices issued to him, the department received no response from him. Furthermore, it is stated that the EDO Schools and Literacy post was abolished on 31.12.2012 and on 01.01.2013 two new entities were established in Elementary & Secondary Education Department with nomenclature DEO(Male) & DEO(Female). Thus the staff and record was also separated and the Ex-Chowkidar remained at the strength of DEO(Female) and in the process of bifurcation his case remained out sight/misplace and could not process properly in time. Although his misconduct and willful absence had been proved and thus he has been removed from service by DEO(F) Swabi after observing all the codal formalities/legal procedure 19.02.2013.
- d. Incorrect, hence denied. He is not entitled to be posted/reinstated due to his willful absence and negligence. Furthermore, due to his willful absence he has already been removed from service after observing all the codal formalities/legal requirements on 19.02.2013.

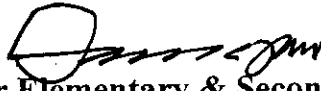
[Signature]
16/2/2023
District Edu. Officer
(Female) Swabi

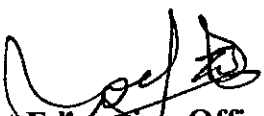
3)

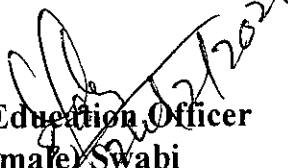
- e. Incorrect, hence denied. What was the source of his income in absconsion. Ignorance of law is no excuse. His removal from service has already been made due to his willful absence after observing all the codal formalities/ legal procedure on 19.02.2013.
- f. That the respondents seek permission to raise other grounds/points on the day of arguments.

In view of the above submission, it is very humbly prayed that the service appeal may very graciously be dismissed with cost in favour of the respondents.

Secretary
E& SE Deptt: Khyber
Pakhtunkhwa, Peshawar
Respondent No.1


Director Elementary & Secondary
Education, Khyber Peshawar.
Respondent No.2


District Education Officer
(Male) Swabi
Respondent No.4 & 6


District Education Officer
(Female) Swabi
Respondent No.3,5&6

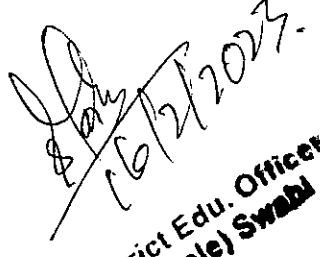
District Edu. Officer
(Female) Swabi

Affidavit

I do hereby solemnly affirm and declare on oath that the contents of the comments submitted by respondents is true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.


DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

District Edu. Officer
(Female) Swabi


16/2/2023.
District Edu. Officer
(Female) Swabi