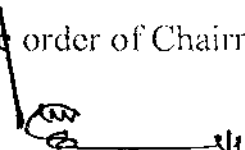


FORM OF ORDER SHEET

Court of _____

Case No.- 323 /2023


S.No	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/02/2023	<p>The appeal of Mr. Altamash Ahmad resubmitted today by Mr. Amjid Ali Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Parcha Peshi is given to appellant/counsel for the date fixed.</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

The amended appeal of Mr. Aftab Ahmad son of Gul Jamal r/o Ismail Abad Post office Jamal Abad District Swabi received today i.e. on 08.02.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal is not signed by the Counsel.
- 2- Affidavit be got attested by the Oath Commissioner.

No. 549 /S.T,

Dt. 09/02 /2023


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Amjid Ali Adv.
High Court Mardan.

Resubmitted after completion
Amjid Ali
15/2/23

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 23 /2023

Aftab AhmadAppellant

VERSUS

District & Sessions Judge, Swabi and others.....Respondents

INDEX

S.No.	Description of documents.	Annexure	Page
1.	Memo of appeal with affidavit.		1-6
2.	Addresses of parties		7
3.	Copy of the CNIC & Domicile	A	8-9
4.	Copy of the drivers' license	B	10
5.	Copy of the appointment order dated 31.03.2022 and service card	C	11-13
6.	Copy of the salary statement	D	14
7.	Copy of the impugned order dated 06.10.2022	E	15
8.	Copy of departmental appeal dated 19.10.2022	F	16-19
9.	Copy of the judgment of the Hon'ble High Court dated 10.11.2022	G	20-31
10.	Waklatnama		32

M. C. W. S.

Appellant

Through

Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

Cell: 0321-9882434

(1)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 323 /2023

Aftab Ahmad S/o Gul Jamal
R/o Ismail Abad, Post Office,
Jamal Abad, District Swabi.Appellant

VERSUS

1. District & Sessions Judge, Swabi.
2. Registrar, Peshawar High Court, Peshawar.
3. Appellate Authority, Senior Puisne Judge Peshawar High Court, Peshawar through Registrar.

....Respondents

**SERVICE APPEAL U/S 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST ORDER NO.6971-94
(F-53) DSJ DATED 06.10.2022 PASSED BY
RESPONDENT NO.2, WHEREBY
APPELLANT HAS BEEN TERMINATED
FROM SERVICE, AND THEREBY
DEPARTMENTAL APPEAL DATED
19.10.2022 REMAINED UN-RESPONDED
AFTER LAPSE OF 90 DAYS, WHICH IS
ILLEGAL, AGAINST LAW AND FACTS.**

Sir:-

(2)

Appellant humbly submits as under:-

- 1) That appellant is a permanent resident of District Swabi as evident from his CNIC and domicile. **(Copy of the CNIC & Domicile is attached as Annexure "A")**
- 2) That appellant is duly qualified and also possesses drivers' license issued by the Khyber Pakhtunkhwa Transport & Transit Department, which is valid till 01.04.2027. **(Copy of the drivers' license is attached as Annexure "B")**
- 3) That appellant was appointed as Driver (BPS-6) in District Judiciary Swabi in open merit vide appointment order dated 31.03.2022. **(Copy of the appointment order dated 31.03.2022 and service card is attached as Annexure "C")**
- 4) That appellant performed duty to the entire satisfaction of his superiors and there is no complaint whatsoever against the appellant.
- 5) That appellant performed duty to the satisfaction of his superiors and received salaries. **(Copy of the salary statement is attached as Annexure "D")**.
- 6) That appellant has been terminated from service with immediate effect vide Office Order No.6971-94/(F-53)/DSJ dated 06.10.2022 passed by the learned District & Sessions Judge, Swabi which is illegal against law and facts. **(Copy of the impugned order dated 06.10.2022 is attached as Annexure "E")**

(3)

- 7) That appellant filed departmental appeal dated 19.12.2022, which remained un-responded after lapse of 90 days which too is illegal, against the law and facts. **(Copy of departmental appeal dated 19.10.2022 is attached as Annexure "F")**
- 8) That the impugned order is illegal, against law and facts on the following grounds:-

GROUND.

- A. Because as per recent judgment of the Hon'ble High Court dated 10.11.2022 in case of "**Irfan Ullah...Vs.. Federation of Pakistan**", It has been held that even a probationer is entitled for regular inquiry. **(Copy of the judgment of the Hon'ble High Court dated 10.11.2022 is attached Annexure "G")**
- B. That because as per 1997 SCMR 1552, the Hon'ble apex Court held as under:-

"Terminating the services of a probationer on the ground of unsatisfactory work will not amount to dismissal or removal from service, however, if such employee is to be terminated on account of certain allegations then even if such employment is contractual yet holding proper departmental proceedings would be mandatory"

- C. Because as per judgments of the Hon'ble Peshawar High Court Peshawar, Services Tribunals & Supreme Court of Pakistan, even a probationer is entitled to the

(4)

proper procedure under KP Efficiency & Discipline Rules, 1973 in the shape of charge sheet, statement of allegation, regular inquiry, show cause notice and personal hearing, if he is charged for misconduct or any offence under the said rules, reliance is placed on **PLD 1974 SC 393**.

- D. Because the impugned Office Order No.6971-94/(F-53)/DSJ dated 06.10.2022 passed by the learned District & Sessions Judge, Swabi is illegal, against law and facts.
- E. Because appellant is innocent and falsely charged.
- F. Because neither any inquiry has been conducted nor the appellant has been associated with any inquiry.
- G. Because neither any charge sheet has been issued nor statement of allegations has been given to the appellant nor any inquiry has been conducted nor any show cause notice has been served upon the appellant.
- H. Because no regular inquiry has been conducted.
- I. Because appellant has been condemned unheard and the principle of *Audi Alteram Partem* is violated which as per consistent judgments of the Hon'ble Supreme Court of Pakistan reported in **PLD 1964 Sc & PLD 2019 SC 119** in famous case of his lordship Justice Qazi Faiz Isa by a full Court decided with a majority held that principle of natural justice like *Audi Alteram Partem* is enshrined in every statute whether specifically provided or not, so non-giving of show cause notice for 04 allegations mentioned in the impugned order dated 06.10.2022 is against the spirit of the said judgments.

- J. Because the date of appointment of the appellant is 31.03.2022 and date of termination is 06.10.2022, whereas the appellant was appointed for an initial probationary period of 01 year extendable upto 02 years and worthy District & Sessions Judge, Swabi was required to assess the performance of the appellant upto 30.03.2023m, but the worthy District & Sessions Judge, Swabi was in so hurry that in short span of 07 months, the impugned order has been passed which is glaring illegality and the impugned order need to be set-aside on this score alone. (5)
- K. Because the allegation No.1 regarding poor driving skills and escaping major accident on motorway on two occasions is also fabricated and self-creation and not supported by any oral and documentary evidence. Moreover, the appellant underwent driving test conducted by the KP Transport & Transit Department, wherein the appellant is issued a proper drivers' license on 31.03.2012 which shows that appellant is a trained and experienced driver for the last 10 years.
- L. Because the second limb of allegation No.1 regarding no knowledge of Traffic signals is squarely against the driving license issued and still valid upto 2027.
- M. Because the non-concentration on driving despite repeated warnings is also incorrect as no warning has been issued to the appellant nor mentioned any date or diary number or receipt and the non-concentration on driving is incorrect as neither supported by any oral or documentary evidence.
- N. Because the worthy District & Sessions Judge, Swabi was taking the duty of cook from the appellant at his official residence at Judicial Colony, Swabi which appellant was performing to the entire satisfaction of his high ups.

appellant was performing to the entire satisfaction of his high ups. (6)

- O. Because the notice mentioned in the impugned order has not been served upon the appellant.
- P. Because impugned order is malice driven and based on malafide and it appears that the post of the appellant is vacated through such illegal orders so as to adjust the blue-eyed of the officials.
- Q. Because appellant is jobless and entitled for back benefits.

PAYER

It is therefore, humbly prayed that on acceptance of this appeal, the impugned Office Order No.6971-94/(F-53)/DSJ dated 06.10.2022 passed by the learned District & Sessions Judge, Swabi may please be set-aside and the petitioner may please be reinstated in service with all service and monetary benefits.

Any other relief which this hon'ble court deems appropriate in the circumstances of the case though not specifically asked for may kindly also be granted.

Dated:

Appellant *Amjad Ali*
ADVOCATE
Through *Amjad Ali* ADVOCATE
Amjad Ali (Madan)
Advocate
Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.



Amjad Ali

(7)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2023

Aftab AhmadAppellant

VERSUS

District & Sessions Judge, Swabi and others.....Respondents

ADDRESSES OF PARTIES

APPELLANT

Aftab Ahmad S/o Gul Jamal
R/o Ismail Abad, Post Office,
Jamal Abad, District Swabi.

RESPONDENTS

1. District & Sessions Judge, Swabi.
2. Registrar, Peshawar High Court, Peshawar.
3. Appellate Authority, Senior Puisne Judge Peshawar High Court, Peshawar through Registrar.

Through

Appellant

Amjad Ali
ADVOCATE
SUPREME COURT

Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

Amir A 8

PAKISTAN National Identity Card
ISLAMIC REPUBLIC OF PAKISTAN

Name: Aftab Ahmed

Father Name: Gul-Jamal

Gender: M Country of Stay: Pakistan

Identity Number: 16202-1014503-1 Date of Birth: 15.03.1981

Date of Issue: 06.09.2021 Date of Expiry: 06.09.2031

Holder's Signature

16202-1014503-1



Registrar General of Pakistan

401061308523
130-01-019677

مشددہ روزہ ملنے پر قریبی ایئر بس میں ڈال دیں

Amir A
Amir A

Amir A
ADVOCATE
SUPREME COURT

DOMINICA REPUBLIC



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[Faint, mostly illegible text, possibly a list or detailed notes]

[Handwritten notes or signatures, possibly including the word 'ALSO']

[Faint, mostly illegible text, possibly a concluding paragraph or signature block]

امام رضا علیه السلام

در سوره اعراف

و انما ارسلنا رسلنا بالبرهان

عقل

در سوره اعراف که هر کس را که از راه حق
دیده اند و چشم بر او نهاده اند و او را
ببینند و او را با خود دارند

و انما ارسلنا رسلنا بالبرهان

عقل
در سوره اعراف

Amir B
80

KHYBER PAKHTUNKHWA
Transport & Mass Transit Department
DRIVER'S LICENSE


Swabi

LTV
11420003577

AFTAB AHMED
GUL JAMAL

DOB 16 Mar 1981
CNIC 18202-1014503
GENDER Male
ISSUED 31.03.2012
EXPIRES 01.04.2027

Issuing Authority



ISMAL ABAD JAMAL ABAD
Blood Group UNKNOWN
Emergency Contact No: 031 3 02 17 11

- 1. Issued by Government of Khyber Pakhtunkhwa Transport Department.
- 2. In the event of loss the card holder should report to the nearest police station.
- 3. If found, please drop into the nearest letter box.
- 4. Valid all over Pakistan.



Holder's Signature
www.transportdata.gov.pk

Amir B
at all

Singad Singh
ADVOCATE
SUPREME COURT



DISTRICT & SESSIONS JUDGE, SWABI

Tel: 0938-280372
Fax: 0938-280117
Email: dsjswabi@gmail.com
dsjswabi@yahoo.com

Amir C
19

Appointment Order

31st March, 2022

On recommendation of the Departmental Selection Committee, the Competent Authority is pleased to order the appointment of the following candidate as Driver (BPS-06), with effect from the date of assumption of charge of the post, subject to production of medical fitness certificate & verification of educational testimonial from the concerned quarter:

Sr. No.	Name of Candidate	Father's Name	Appointed As
I	Aftab Ahmad	Gul Jamal	Driver (BPS-06) (Open Merit)

2. His appointment to the post shall be subject to the following terms and conditions:
- He will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Khyber Pakhtunkhwa Government Servants (Appointment, Promotion & Transfer) Rules, 1989 & other rules applied from time to time.
 - He will be allowed the minimum pay of BPS-06 plus other allowances as admissible under the rules. If the pay of the appointee is more than the minimum of BPS-06, he will be allowed to draw pay which he was drawing before his appointment, subject to permission by the Competent Authority. His pay will be fixed at proper stage in BPS-06.
 - He will be governed by such rules and instructions relating to leave, T.A, and Medical Attendance as may be prescribed from time to time.
 - He will be on probation initially for a period of one year extendable upto two years.
 - He will be eligible for continuance and eventual confirmation in the post on satisfactory completion of his probationary period. His services shall be liable to be dispensed with at any time without notice and assigning any reason before the expiry of the period of his probation/extended period of probation, if, his work or conduct during this period is not found satisfactory. In the event of termination from service, fourteen days notice or in lieu thereof fourteen days pay will be paid by the Government. In case of resignation, he will give one-month notice to the Competent Authority or in lieu thereof one month pay shall be forfeited to the Government. The resignation shall, however, be subject to the acceptance by the Competent Authority.
 - He will be governed by the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and the Khyber Pakhtunkhwa, Government Servants Conduct Rules, 1987 and any other instructions which may be issued by the Competent Authority from time to time.

If the above terms and conditions of appointment are acceptable to him, he should report for duty to the undersigned immediately. The offer of appointment will be deemed to have been cancelled if he fails to report for duty to the undersigned within one week from the date of issue of this order.

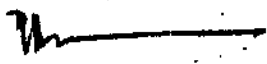
[Handwritten signatures and initials]

Muhammad Rauf Khan
District & Sessions Judge,
Swabi

[Handwritten signature]
ADVOCATE
SUPREME COURT



Copy forwarded for information to:

1. The Worthy Registrar, Peshawar High Court, Peshawar.
2. Mr. Asad Ali, AD&SJ, Mardan (Nominee of Peshawar High Court Peshawar).
3. Mr. Rasheed Ullah Kundi, learned AD&SJ-II, Swabi (Nominee of the Chairman)
4. The learned Senior Civil Judge (Judicial) Swabi.
5. Mr. Akbar Ali, learned Senior Civil Judge (Admn) Swabi.
6. The District Accounts Officer, Swabi.
7. B&A Assistant, Sessions Division.
8. Official concerned by name.
9. Office copy.


District & Sessions Judge,
Swabi

13

DISTRICT JUDICIARY SWABI





Service CARD

Name: **AFTAB AHMAD**
 Designation: **DRIVER**
 B.P.S: **06**

Aftab Ahmad
Card Holder

Name: Aftab Ahmad
 F/Name: Gul Jarnal
 R/Addr: Small Ahad P.O Jarnal Ahad
 District: Swabi
 D.O.B: 15.03.1981
 BG: Q+ive
 CNIC #: 16202-1014503-1
 Cell #: 0313-9821744
 Office: 0938-280372
 In Emer#: 0338-5727603



Aftab Ahmad

Munir
Syed Ali
 ADVOCATE
 SUPREME COURT

Government of Khyber Pakhtunkhwa
District Accounts Office Swabi
Monthly Salary Statement (July-2022)



Annex (D)
124

Personal Information of Mr AFATAB AHMAD d/w/s of GULIAMAL
Personnel Number: 00996316 CNIC: 1620210145031 NTN:
Date of Birth: 15.03.1981 Entry into Govt Service: 01/2022 Length of Service: 00 Years 04 Months 001 Days

Employment Category: Active Temporary
Designation DRIVER 0004451-GOVERNMENT OF KHYBER PAKH

DDO Code: SU4011-DISTT & SESSION JUDGE SWABI
Payroll Section: 002 GPF Section: 002 Cash Center:
GPF A/C No: Interest Applied: Yes GPF Balance: 4,140.00

Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 06 Pay Stage: 0

Wage type	Amount	Wage type	Amount
0001 Basic Pay	15,760.00	1001 House Rent Allowance 45%	2,316.00
1210 Convey Allowance 2005	1,932.00	1300 Medical Allowance	1,500.00
1584 Judicial Allowance	6,000.00	1874 Utility Allowance 2007	6,000.00
2311 Dress Allowance - 2021	1,000.00	2312 Washing Allowance 2021	1,000.00
2313 Integrated Allowance 2021	600.00	2341 Dispr. Red All 15% 2022KP	1,593.00
2347 Adhoc Rel AJ 15% 22(PS17)	1,593.00		0.00

Deductions - General

Wage type	Amount	Wage type	Amount
3006 GPF Subscription	-950.00	3501 Benevolent Fund	-1,200.00
4004 R. Benefits & Death Comp.	-450.00		0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 0.00 Recovered till July-2022: 0.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 39,294.00 Deductions: (Rs.): -1,600.00 Net Pay: (Rs.): 36,694.00

Payee Name: AFATAB AHMAD
Account Number: 3004125637
Bank Details: THE BANK OF KHYBER, 080118 ISLAMIC BANKING BRANCH, SWABI, SWABI, SWABI

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: City: SWABI Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official
Temp. Address: City: Email:

(232428/26.07.2022/21:16:33) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted

[Handwritten Signature]
ADHOC
SUPERVISOR

DISTRICT & SESSIONS JUDGE, SWABI

Tel: 0938-280372
Fax: 0938-280117
Email: dsjswabi1@gmail.com
dsjswabi@yahoo.com

No. 6971-94 / (F- 53) /DSJ

Dated Swabi the: 06/10/2022

Amir E
15

OFFICE ORDER

06.10.2022

WHEREAS, Mr. Aftab Ahmed Driver (BPS-06) has been appointed in this establishment vide Office Order bearing Endst No.2633-40/(F-55)/D&SJ dated 31.3.2022. In Para No.5 of his appointment order, it has been specifically mentioned that he will be on Probation initially for a period of one year extendable upto two years as per the rules and his services are liable to termination, if his services are not found satisfactory during the initial period of probation or during the extended period of probation at any time without assigning any reasons. After his appointment he was posted as driver with the undersigned and remained as such for almost five months.

WHEREAS, his performance remained unsatisfactory on the following grounds:

1. His driving skills are very poor. During his posting as driver with the undersigned on two occasions when he was driving the official car, we narrowly escaped major accidents on motorway. Even he does not know traffic signals. Moreover due to some reasons he does not concentrate on driving and despite repeated warnings, he is unable to drive vehicles.
2. He is not a man of good social values and always speaks lie.
3. He used to roam in the premises of courts during office hours and contact litigants public by gossiping with them in the front of courts. This practise on his part is very objectionable because in such a way impartiality of courts is badly damaged.
4. He used to propagate against the Judicial Officers in front of public litigants.

He was issued notice vide Office Order No. 6276/(F-40)/D&SJ dated 06.09.2022 to improve his performance but he turned on deep ear to the instructions issued to him. Hence under rule 11 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all other laws on the subject, his services stands terminated with immediate effect.

Muhammad Rauf Khaliq
(Muhammad Rauf Khaliq)
District & Sessions Judge,
Swabi

Copy forwarded for information to:

1. All Judicial Officers District Swabi,
2. District Accounts Officer, Swabi,
3. Office Copy
4. official concerned by name.

Advocate
ADVOCATE
SWABI COURT
Muhammad Rauf Khaliq
District & Sessions Judge,
Swabi

6/10/22

6/10/22

Aux. F (16)

BEFORE THE HONORABLE SENIOR PUISNE
JUDGE PESHAWAR HIGH COURT
PESHAWAR AS APPELLATE AUTHORITY

Departmental Appeal No. _____/2022

Diary No

14071

Subject: Departmental appeal against the office order no 6971-94/(F-53)/DSJ dated 06/10/2022 passed by the Learned District and Session Judge Swabi wherein the appellant has been terminated with immediate effect which is illegal against law and facts

Respected Sir,

Appellant humbly submits as under:

1. That appellant is a permanent resident of District Swabi as evident from his CNIC and domicile (**Copy of the CNIC and domicile is attached as Annexure A**)
2. That appellant is duly qualified.
3. That appellant possesses drivers' license issued by the Khyber Pakhtunkhwa Transport & Transit Department which is valid till 01/04/2027 (**Copy of the drivers' license is attached as Annexure B**)
4. That appellant was appointed as Driver (BPS-6) in District Judiciary Swabi in open merit vide appointment order dated 31st March 2022 (**Copy of the appointment order dated 31/03/2022 & service card is attached as Annexure C**)
5. That appellant performed duty to the entire satisfaction of his superiors and there is no complaint whatsoever against the appellant.
6. That appellant performed duty to the satisfaction of his superiors and received salaries (**Copy of the salary statement is attached as Annexure D**)
7. That appellant has been terminated from service with

Amjad Sultani
ADVOCATE
SUIFEDIN, SWABI

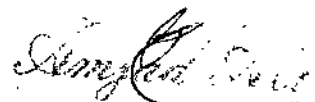
(17)

immediate vide office order no 6971-94/(F-53)/DSJ dated 06/10/2022 passed by the Learned District and Session Judge Swabi which is illegal against law and facts. (Copy of the impugned order dated 06/10/2022 is attached as Annexure E)

8. That finding no other efficacious remedy, appellant approaches this Honorable Appellate authority on the following grounds:

GROUND:

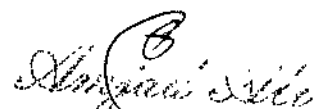
- A. Because as per judgments of the Honorable Peshawar High Court Peshawar, Services Tribunals and Supreme Court of Pakistan, even a probationer is entitled to the proper procedure under KP Efficiency and Discipline Rules 1973 in the shape of charge sheet, statement of allegation, regular inquiry, show cause notice and personal hearing, if he is charged for misconduct or any offence under the said rules. *PLD 1974 SC 393*.
- B. Because the impugned office order no 6971-94/(F-53)/DSJ dated 06/10/2022 passed by the Learned District and Session Judge Swabi is illegal against law and facts.
- C. Because appellant is innocent and falsely charged.
- D. Because neither any inquiry has been conducted nor the appellant has been associated with any inquiry.
- E. Because neither any charge sheet has been issued nor statement of allegations has been given to the appellant nor any inquiry has been conducted nor any show cause notice has been served upon the appellant.
- F. Because no regular inquiry has been conducted.
- G. Because appellant has been condemned unheard and the principle of Audi Alteram Partem is violated which as per consistent judgments of the Honorable Supreme Court of Pakistan reported in PLD 1964 SC and PLD 2019 SC 119 in famous case of his Lordship Justice Qazi Faiz Isa by a full Court decided with a majority held that


SUPERVISOR

(6)
(18)

principle of natural justice like Audi Alteram Partem is enshrined in every statute whether specifically provided or not, so non-giving of show cause notice for 04 allegations mentioned in the impugned order dated 06/10/2022 is against the spirit of the said judgments.

- H. Because the date of appointment of the appellant is 31st March 2022 and date of termination is 6th October 2022, whereas the appellant was appointed for an initial probationary period of 01 year extendable upto 2 years and the worthy District and Session Judge Swabi was required to assess the performance of the appellant upto 30th March 2023 but the worthy District and Session Judge Swabi was in so hurry that in short span of 07 months, the impugned order has been passed which is glaring illegality and the impugned order need to be set aside on this score alone.
- I. Because the allegation no 1 regarding poor driving skills and escaping major accident on motorway on two occasions is also fabricated and self-creation and not supported by any oral and documentary evidence. Moreover, the appellant underwent driving test conducted by the KP Transport and Transit Department wherein the appellant is issued a proper drivers' license on 31.03.2012 which shows that appellant is a trained and experienced driver for the last 10 years.
- J. Because the second limb of allegation no 1 regarding no knowledge of Traffic signals is squarely against the driving license issued and still valid upto 2027.
- K. Because the non-concentration on driving despite repeated warnings is also incorrect as no warning has been issued to the appellant nor mentioned any date or diary no or receipt and the non-concentration on driving is incorrect as neither supported by any oral or documentary evidence.
- L. Because the worthy District and Session Judge Swabi was taking the duty of cook from the appellant at his official residence at Judicial Colony Swabi which appellant was performing to the entire satisfaction of


ADVOCATE
SUIPRA...

- (6) (19)
- Q. Because the notice mentioned in the impugned order has not been served upon the appellant.
- R. Because the impugned order is malice driven and based on malafide and it appears that the post of the appellant is vacated through such illegal orders so as to adjust the blue-eyeds of the officials.
- S. Because appellant is jobless and entitled for back benefits.

PRAYER:-

It is therefore humbly prayed that on acceptance of this departmental appeal, impugned office order no 6971-94/(F-53)/DSJ dated 06/10/2022 passed by the Learned District and Session Judge Swabi may please be set aside and appellant may please be reinstated in service with all service and monetary benefits. Any other relief deemed fit in the circumstances and not specifically asked for may also be graciously granted.

(Appellant) *Aftab Ahmad*
Aftab Ahmad (Ex-Driver BPS-6)
District Judiciary Swabi
S/O Gul Jamal
R/O Ismail Abad Post Office
Jamal Abad District Swabi
Cell No. 0313-9821744

Through *Amjad Ali* (Mardan)
Advocate
Supreme Court of Pakistan

Dated. 19/10/2022

Amjad Ali
ADVOCATE
SUPREME COURT

Amjad Ali
ADVOCATE
SUPREME COURT

(20) Annex-6
12/10

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.2838-P/2021 with IR

Irfan Ullah
Vs.

Federation of Pakistan through Secretary, Higher
Education, Islamabad and others



Date of hearing: 20.10.2022
Date of Announcement: 10.11.2022
Petitioner(s) by: Mr. Amjad Ali, Advocate.
Respondent(s) by: M/s. Bahlol Khattak and Saadullah Khan
Marwat, Advocates.

JUDGMENT

IJAZ ANWAR, J. This writ petition has been filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer:-

"It is, therefore, humbly prayed that on acceptance of this writ petition, the impugned removal order dated 25.06.2021 and advertisement Annex "N" for Manager (Admin) i.e. of petitioner may please be declared as illegal, without lawful authority, jurisdiction coram-non-judice, arbitrary, whimsical may please be set-aside and petitioner may please be reinstated in service with all back benefits.

Any other relief deemed fit may also be graciously granted".

2. In essence, petitioner was appointed against the post of Manager (Admin & Finance) vide Order dated 02.07.2020 in the respondent-University and was confirmed in service on 08.02.2021. He raised objection on the deposit of amount/fund by the Director in his own Account instead of the respondent-University, due to which, he was issued

ATTESTED
EXAMINER
Peshawar High Court

explanation which was duly replied by him, however, vide the impugned letter dated 25.06.2021, he was removed from service. In this regard, his appeal filed to the Chairman of the University was not responded. Hence, this writ petition.

3. Comments were called from the respondents who furnished the same, wherein, they opposed the issuance of desired writ asked for by the petitioner.

4. Learned counsel for the respondents, at the beginning of arguments, raised a preliminary objection to the maintainability of this writ petition on the ground that the respondent-University is a non-statutory organization, having no statutory rules of service and claimed that its employees are having no secured rights in any law or Statutes; as such, cannot maintain writ petition against termination of their services. He placed reliance on the cases titled "Sui Southern Gas Company Limited and others Vs. Saeed Ahmed Khoso and another (2022 SCMR 1256), Pakistan International Airlines Corporation and others Vs. Tanweer-ur-Rehman and others (PLD 2010 SC 676) and judgments of the Hon'ble Islamabad High Court passed in the cases titled Ms. Tauheed Sohail Vs. National University of Computer and Emerging Sciences FAST House, Islamabad and others (W.P. No.1012/2016 decided on 13.04.2016) and Ms. Sidra Irshad Vs. Dr. Amir Muhammad and others (W.P. No.2710 of 2015 decided on 04.02.2016)".

5. In response, learned counsel, representing the petitioner, argued that the National University of Computer & Emerging Sciences, Islamabad (NUCES) is creation of

ATTESTED
EXAMINER
NATIONAL UNIVERSITY OF COMPUTER & EMERGING SCIENCES

Ordinance and the rules were framed in terms of the powers conferred, which according to him, has statutory status amenable to the jurisdiction of this Court. He placed reliance on the cases titled "Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), Sarhad Development Authority through Chairman Vs. Syed Muhammad Latif Shah and others (2015 SCMR 1060), Alam Khan Vs. Board of Intermediate & Secondary Education (2012 PLC 407) and The Secretary, Government of the Punjab, Health Department, Lahore and others (1997 SCMR 1552)".

6. Arguments heard and record perused.
7. This Court, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can issue a writ in the form of prohibition or mandamus only where petition is filed by an aggrieved person and seeks direction against a 'person' performing within the territorial jurisdiction of this Court, functions in connection with the affairs of the Federation, a Province or a local authority. The word "person" used in Article 199 of the Constitution has been defined by the Hon'ble Supreme Court of Pakistan in numerous landmark judgments while for the purpose of enforcement of certain rights of the employees serving under such "persons", the consistent view of the Superior Courts is that the "person" against which a writ is to be issued must be either Government, a body creation of an Act of Parliament or Provincial Assembly and the rules governing their rights and

ATTESTED
EXAMINER
Peshawar High Court

23
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obligations must have statutory status in the eyes of law. The Hon'ble Supreme Court of Pakistan in the case titled "Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), while commenting upon the jurisdiction of the High Court, has enunciated certain principles of law for maintainability of a writ petition as follows:-

- (i) *Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.*
- (ii) *Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.*
- (iii) *In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.*
- (iv) *Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.*
- (v) *That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.*

8. In the instant case, the petitioner claims that his rights to employment in the respondent-University have been violated. To ascertain the status of the respondent University, we may refer to the National University of Computer and Emerging Sciences Ordinance, 2000 (hereinafter to be

ATTESTED
 EXAMINER
 Peshawar High Court

referred as "the Ordinance"), whereunder, the University has been created. The relevant para of its preamble is reproduced:-

"whereas it is in the interest of the country to establish centers of excellence in the emerging disciplines of science and technology to provide a strong base for economic growth and human development and to provide quality education to talented students"

9. By the very name of the University and the preamble above referred, it appears that it was the decision of the Federal Government to establish an Institute/University in the interest and betterment future of this country. Article 25A of the Constitution of Islamic Republic of Pakistan, 1973 was inserted through Constitution (Eighteenth Amendment) Act, 2010 (Act No.X of 2010) which provides for right to education. Article 25A has been added which identifies the education as one of the fundamental rights of the people. Though, the said Article provides for free and compulsory education to all children of the age of 5 to 16, however, provision of educational facilities is also the function of the State from Primary to Secondary and Higher Level as it is an established fact that human resource development is key to all successes and in order to compete with the modern world, the youth of this country must be well equipped with the skill of self employability and as such, the Government has to establish such Institutes/Universities for the purpose of research, professional or technical training or the promotion of special studies. We are of the considered opinion that

ATTESTED
EXAMINER
Government of Punjab

providing venues to the youth of this country for higher education in all fields and industrialization is one of the core function of the State and thus can be conveniently termed as the University is functioning within the affairs of the Federal Government. Reference can be made to the case titled "Fiazat Hussain and others Vs. Federation of Pakistan through Secretary, Planning & Development Division, Islamabad and others (PLD 2012 SC 224)".

10. In terms of Section 9 of "the Ordinance", the President of Pakistan shall be the "Patron" of the University; similarly, under Section 8 of "the Ordinance", the Chancellor of the University is to be appointed by the Patron on the recommendation of the Foundation; while "Foundation" has been defined under Section 2(h) of "the Ordinance" as "Foundation for advancement of Science and Technology (FAST)". Under Section 12 of "the Ordinance", the "Board of Trustees" is constituted which consists of the following members:-

- i. The Chancellor who shall be its Chairperson;
- ii. Chairman, University Grants Commission or his nominee not below the rank of an officer of Basic Pay Scale 20;
- iii. a retired judge of the Supreme Court of Pakistan or a High Court;
- iv. a retired vice-chancellor or an eminent scholar;
- v. two eminent scientists;
- vi. two nominees of the Foundation;
- vii. Rector;
- viii. one nominee of the Board; and
- ix. Secretary, Ministry of Education.

11. Similarly, under Section 13 of "the Ordinance", "Powers and functions of the Board of Trustees" are provided

ATTESTED
EXAMINER
Peshawar High Court

which has, besides the other functions, also the powers and functions "to approve the draft statutes proposed by the Board of Governors"; while Section 14 of "the Ordinance" provides for the constitution of the "Board of Governors" who will be having the general supervision and control of the administrative, academic and financial affairs and the power to lay down the policies of the University. The "Board of Governors" consists of the following members:-

- a) *Rector who shall be the Chairperson of the Board;*
- b) *one retired judge of the Supreme Court of Pakistan or a High Court, to be nominated by the Foundation;*
- c) *Chairman, University Grants Commission, or his nominee not below the rank of an officer of Basic Pay Scale 20;*
- d) *one vice-chancellor of a University to be nominated by the Foundation;*
- e) *Secretary, Ministry of Education, or his nominee not below the rank of an officer of Basic Pay Scale 20;*
- f) *one Dean to be nominated by the Board of Trustees in consultation with the Rector;*
- g) *three persons, prominent in the field of their specialization because of their experience and achievements, to be nominated by the Board of Trustees; and*
- h) *Registrar of the University shall act as Secretary of the Board.*

12. It has also been provided in the powers and functions of the Board in Section 15(b) and (c) of "the Ordinance" "to make rules and regulations" and "to prepare or have prepared and revised from time to time rules and regulations for the efficient and effective operation of the University".

13. Thus, in terms of Section 15(b) and (c) of "the Ordinance", the Board of Governors is empowered to make

ATTESTED
EXAMINER
Peshawar High Court

rules and regulations and to prepare or have prepared and revised from time to time rules and regulations for the efficient and effective operation of the University which will be then placed before the Board of Trustees which has under Section 13(c) of "the Ordinance" the powers and functions "to approve the draft statutes proposed by the Board of Governors".

14. In the case of "Pakistan Defence Officers' Housing Authority and others (2013 SCMR 1707), it is one of the principles enunciated from the case law for the maintainability of the writ petition that "violation of service rules or regulations framed by the statutory bodies under the powers derived from statutes in the absence of any adequate or efficacious remedy can be enforced through writ jurisdiction".

15. The Hon'ble Supreme Court of Pakistan in the case titled "Masood Ahmad Bhatti and others Vs. Federation of Pakistan through Secretary, M/o Information Technology and Telecommunication and others (2012 SCMR 152)", while distinguishing its earlier judgment pertaining to the status of statutory rules i.e. Pakistan International Airlines Corporation and others Vs. Tanweer-ur-Rehman and others (PLD 2010 SC 667), held as under:-

"5. Since the judgment of the High Court is based on the case of Tanweer-ur-Rehman supra, it firstly is to be seen if indeed the principle of law enunciated therein supports the conclusion in the impugned judgment. Para 18 of the cited precedent is of particular relevance in this context. It sets out the circumstances which led to the Court's finding that the regulations which were under consideration in the supra case could not be treated as being statutory in nature. The test laid down for deciding if the regulations were in fact statutory, was stated with

ATTESTED
EXAMINER
Rashidul Karim

great clarity. These regulations had been framed by the Board of Directors of the Pakistan International Airlines Corporation (PIAC) under the PIAC Act 1956. It was observed by the Court that "if the relationship between the [PIAC] and its employees is regulated by statutory provisions and if there is any breach of such provisions, an employee ... may maintain an action for reinstatement". It was further observed that "the PIAC has regulations which have been framed by the Board of Directors of the PIAC, pursuant to the power contained in section 30 of the [PIAC] Act; however, there is nothing on record to indicate that these regulations have been framed with the previous sanction of the Central Government or that they were gazetted and laid before the National Assembly in terms of section 31 of the [PIAC] Act". This finding of the apex Court was, in turn, based on the case titled Raziuddin v. Chairman, PIAC (PLD 1992 SC 531). In short, the reason for holding that the regulations in question were not statutory was that the requirements of sections 30 and 31 of the PIAC Act had not been complied with.

6. The observations in the case of Tanweer-ur-Rehman supra have necessitated an examination of sections 30 and 31 of the PIAC Act to see if these provisions have any parallel or relevance in the present appeals. It is quite clear from the PIAC Act that in order for the regulations to have statutory force, it was necessary that the same be framed "with the previous sanction of the Central Government". Additionally, under section 31 of the PIAC Act, the regulations were required to be gazetted and laid before the National Assembly. It is only because these contentious regulations had not been framed with the previous sanction of the Central Government, and had not been published in the official Gazette, that the Court came to the conclusion the regulations were not statutory in nature. It follows from the cited judgment that if in fact the regulations had fulfilled the requirements of sections 30 and 31 of the PIAC Act, there would have been no dispute or contention as to the statutory status of the said regulations. The circumstances of the present appeals (considered below) are very different from the facts in Tanweer-ur-Rehman's case.

16. In the instant case too, we find that the HR Manual placed on file was framed in accordance with the procedure prescribed under "the Ordinance", which nowhere has provided for framing of the rules by the Government or its placement before the Federal Government; as such, it is held that the rules, framed by the Board of Governors and duly approved by the Board of Trustees, have the statutory status.

ATTESTED
EXAMINER
Peshawar High Court

17. The judgments of the Single Bench of the Hon'ble Islamabad High Court, Islamabad passed in the cases titled "Ms. Tauheed Sohail Vs. National University of Computer and Emerging Sciences FAST House, Islamabad and others (W.P. No.1012/2016 decided on 13.04.2016) and Ms. Sidra Irshad Vs. Dr. Amir Muhammad and others (W.P. No.2710 of 2015 decided on 04.02.2016)" are distinguishable as it has relied upon the judgment of the apex Court in Tanweer-ur-Rehman case and as referred to above, probably the judgment of the Hon'ble Supreme Court of Pakistan reported as "Masood Ahmad Bhatti and others Vs. Federation of Pakistan through Secretary, M/o Information Technology and Telecommunication and others (2012 SCMR 152)", was not brought into the notice of the Hon'ble Court, wherein, the apex Court has clarified the effect of Tanweer-ur-Rehman case on the status of the Rules.

18. Now coming to the merit of the case, the record transpires that petitioner was initially appointed vide Office Order dated 02.07.2020 as Manager (Admin & Finance) and was duly confirmed after satisfactory completing his probationary period vide Office Order dated 08.02.2021. The order terminating the services of the petitioner dated 25.06.2021 under the subject "service no more required" is though argued to be in terms of the initial appointment letter dated 02.07.2020, according to which, in case of confirmation of his services, his services can be liable to be terminated on

ATTESTED
EXAMINER
Peshawar High Court

30

one month notice or payment of one month salary in lieu thereof, however, in the instant matter, the reason given as 'unsatisfactory performance' after his confirmation becomes redundant, as the very termination order carries a stigma in the shape of "unsatisfactory performance" which ultimately would be hurdle for the petitioner while applying to other departments in future. It is pertinent to mention here that from the comments, it can be gathered that the allegations against the petitioner pertain to bypassing a channel in the matter of correspondence and nowhere, it has been alleged that the interest of the University, at any stage, has been compromised. Even otherwise when there were allegations of any kind against the petitioner, the respondent-University was required to have allowed him proper opportunity to defend himself.

19. In the case titled "The Secretary, Government of the Punjab Health Department, Lahore and others Vs. Riaz-ul-Haq (1997 SCMR 1552)", the apex Court, while relying upon different judgments of the Hon'ble Supreme Court of Pakistan, held that "terminating the services of a probationer on the ground of unsatisfactory work will not amount to dismissal or removal from service; however, if such employee is to be terminated on account of certain allegations then even if such employment is contractual, yet holding proper departmental proceedings would be mandatory".

ATTESTED
EXAMINED
Punjab High Court

31
23

20. In view of the above, we find that the petitioner has not been treated in accordance with law and being a confirmed employee, he has been condemned unheard. Accordingly, the impugned termination order dated 25.05.2021 is set-aside and the petitioner is reinstated in service, allowing the respondent-University to proceed afresh against the petitioner strictly in accordance with law if they are so advised. It is further clarified that the question of back wages and benefits of the petitioner shall be decided by the respondent-University after the outcome of any such departmental proceedings, if so conducted.

21. This writ petition is allowed in the above terms.

Announced
D: 10-11-2022



Chief Justice



Judge

(BY) Head Clerk, Justice Order, High Court, Patna

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Date of Presentation of Application.....
 No of Pages..... 19
 Copying fee.....
 Total..... 76
 Date of Preparation of Copy..... 15-11-22
 Date of Delivery of Copy..... 15-11-22
 Received By.....

بعد الت سہی بیرونی اسام

2023 منجانب اسام

انتخاب امجد
سہی بیرونی اسام

مورخہ:
مقدمہ:
دعویٰ:
جزم:

باجت تحریر آندہ

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے بیرونی و جواب دہی وکل کاروائی متعلقہ
آن مقام لیٹا و کیلے امجد علی ایڈووکیٹ، سپریم کورٹ آف پاکستان (امجد علی)

مقرر کر کے قرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ
برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء و معمولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر
دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیرونی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا
اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و جانہ
التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ بیرونی مذکور کریں۔
لہذا وکالت نامہ لکھ دیا کہ سنڈ رہے۔

المرقوم:
العبد
گواہ

Amjad Ali
ADVOCATE
SUPREME COURT

amjadali@supremecourt.gov.pk

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