BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 30/2019

Date of institution ... 2

21.12.2018

Date of judgment

... 10.03.2020

Rasheed Khan S/o Rahmat Said
R/o Khan Sher Killi P/o Gaddar, Tehsil & District Mardan,
Working and posted as Malaria Supervisor (BPS-9), attached to BHU
Fatma, under the Direct Control/Command of the Executive District
Officer Health, Mardan ... (Appellant)

VERSUS

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

2. Agency Surgeon, Parachinar Kurram Agency.

3. Government of Khyber Pakhtunkhwa though Secretary Health, Civil Secretariat, Peshawar.

4. District Health Officer Health Mardan.

(Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST ORAL TERMINATION ORDER AND APPELLATE ORDER DATED 28.11.2018 UPON DEPARTMENTAL APPEAL DATED 19.11.2018, WHEREIN DEPARTMENTAL APPEAL HAS BEEN DISMISSED, WHICH IS ILLEGAL AGAINST LAW AND FACTS.



Mr. Riaz Ahmad Paindakheil, Assistant AG

For appellant.

For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

MR. HUSSAIN SHAH

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: -

Our this

judgment shall disposed of instant service appeal as well as

I. Service Appeal No. 31/2019 titled "Manzoor Badshah Versus Director General Health Services, Khyber Pakhtunkhwa, Peshawar and three others"



- II. Service Appeal No. 32/2019 titled "Iftikhar Khan Versus Director General Health Services, Khyber Pakhtunkhwa, Peshawar and three others"
- III. Service Appeal No. 33/2019 titled "Riaz Ali Shah Versus Director General Health Services, Khyber Pakhtunkhwa, Peshawar and three others"
- IV. Service Appeal No. 314/2019 titled "Samina Shoukat Versus Director General Health Services, Khyber Pakhtunkhwa, Peshawar and three others"
- V. Service Appeal No. 35/2019 titled "Abdul Salam Versus Director General Health Services, Khyber Pakhtunkhwa, Peshawar and three others" as common question of law and facts are involved in all the appeals.
 - 2. Counsel for the appellants and Mr. Riaz Ahmad Paindakheil,
 Assistant Advocate General alongwith Mr. Hazrat Shah,
 Superintendent for the respondents present. Arguments heard and
 record perused.
 - 3. Brief facts of the cases as per presents appeals are that the appellant Mst. Samina Shoukat was appointed as LHV while the other appellants were appointed as Malaria Supervisors (BPS-9) and were transferred to District Mardan. They were receiving their salaries from the date of their appointment but later on the appellants were stopped from performing their duties immediately after October 2014 and their salaries were also stopped. The appellants approached the worthy Peshawar High Court Peshawar for release of their salaries through Writ Petition but their Writ Petitions were dismissed. Some of the appellants also challenged the judgment of the Worthy Peshawar High Court Peshawar before the

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august Supreme Court of Pakistan but their Civil Petition was also dismissed vide order dated 14.09.2018. Thereafter, the appellants filed departmental appeals on 19.11.2018 & 27.11.2018 which were also dismissed vide order dated 28.11.2018 hence, the present service appeals on 21.12.2018.

- 4. Respondents were summoned who contested the appeals by filing written reply/comments.
- 5. Learned counsel for the appellants contended that the appellants were appointed in the year 2007/2008 as Malaria Supervisors/LHV and were performing their duties regularly. It was further contended that the appellants were also receiving salaries regularly. It was further contended that the appellants were transferred to district Mardan by the competent authority but the respondent-department conducted ex-parte inquiry at the back of the appellants and on the basis of said ex-parte inquiry, the appellants were orally stopped from performing their duties and the respondent-department also stopped their salaries immediately after October 2014, therefore, the appellants approached the Worthy Peshawar High Court Peshawar for release of their salaries but the Writ Petitions of the appellants were dismissed. It was further contended that some of the appellants challenged the judgment of the Worthy Peshawar High court Peshawar before the august Supreme Court of Pakistan through civil petition but the same was also dismissed on the ground that the petitioners are going to avail remedy in accordance with law and does not want to press the petition vide order/judgment dated 14.09.2018. It was further contended that thereafter, the appellants filed proper departmental appeals but the same were also rejected hence, the present service

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appeals. It was further contended that the appellants were orally stopped from performing their duties and no termination or removal order was passed by the competent authority. It was further contended that the appellants had more than ten years service in their credit but the same was also not considered by the respondent-department. It was further contended that neither charge sheet, statement of allegation were served upon the appellants nor proper inquiry was conducted nor the appellants were associated in any inquiry proceeding nor the appellants were issued any show-cause notice, therefore, the impugned orders are illegal and liable to be set-aside and prayed for acceptance of appeals.

On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellants and contended that neither any advertisement was published by the respondent-department for the appointment on the said posts nor the appellants were appointed by the competent authority nor any codal formalities before their appointments were fulfilled rather the appellants received their salaries on the basis of fake appointment order. It was further contended that the appellants were transferred to District Mardan but the same was also proved fake through inquiry. It was further contended that the appellants were called by the inquiry committee and they were fully associated in the inquiry proceeding. It was further contended that as per inquiry report, the appointment and transfer orders of the appellants were found fake. It was further contended that the worthy High Court has also dismissed the Writ Petitions of the appellants Iftikhar Khan, Manzoor Badshah and Rasheed Khan on the basis of inquiry report and the august Supreme Court of Pakistan

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also dismissed their civil petition, therefore, the present services appeals are hit by rule 23 of Khyber Pakhtunkhwa Service Tribunal Rules 1974 therefore, it was further contended that their departmental appeals are also time barred and prayed for dismissal of appeals.

Perusal of the record reveals that the appellants were serving

in Health Department. They were transferred to District Mardan. After their transfer a separate inquiry was constituted regarding the appointment and transfer order of the appellants Iftikhar Khan, Manzoor Badshah and Rasheed Khan and as per inquiry report they were properly associated in the said inquiry by the inquiry committee namely Dr. Muhammad Asif, Coordinator Public Health DHO office Peshawar and Dr. Sartaj Khan, Deputy Director (Admin), DHS FATA Peshawar and after examining the relevant record it was concluded that the appointment of the concerned Malaria Supervisors Iftikhar Khan, Manzoor Badshah and Rasheed Khan are confirmed bogus and fake and the transfer orders of the above mentioned Malaria Supervisors shown issued by the Director General Health Services are fake and bogus vide inquiry report dated 29.10.2014. The record further reveals that another inquiry committee was conducted by the District Health Officer Charsadda against the appellant Riaz Ali, Abdul Salam, Samina Shoukat, Rasheed Khan and others wherein the inquiry officer also recommended that the appointment of staff who were appointed in North Waziristan and transferred to Mardan are absolutely fake because there is no record of their appointment, salary drawn at the Agency Account Office and LPC from the concerned AAO as well as FATA Secretariat vide inquiry report (undated). The record further

reveals that the worthy High Court has also dismissed the Writ Petition of the appellants on merit vide order dated 19.04.2016. Operative part of the judgment of Writ Petition decided on 19.04.2016 is reproduced as under.

"Perusal of comments submitted on behalf of respondents and other documents available on file, reveals that an inquiry committee consisting of Dr. Muhammad Asif Coordinator of Public Health (DHO) Office Peshawar and Dr. Sartaj Khan Deputy Director (Admin) DHS FATA Peshawar was constituted by the order of Director General Health Services KPK, to probe into the matter regarding appointments of petitioners. AS per observation of the said Committee, after recording statements of concerned officials as well as perusing the concerned record, it came to the light that no such appointments have been made in the respective Agency Surgeon Offices nor any coal formalities in the shape of demand by the Agency Surgeon, approval for DHS appointment from the advertisement in the press, short listing, test and interviews by the Selection Committee etc were observed nor any source-I was received from the Agency Surgeon for these employees. The concerned record was also checked and verified from the signatories of the alleged appointment letters, transfer orders etc which were denied by the concerned officials being bogus and fake. Moreso, for transfer form FATA to settle areas, an NOC from the competent authority is mandatory which was also not obtained for the said purpose making the same dubious. The material available on file further reveals that fake proceedings for forwarding Source-I of petitioners from DHO Malakand in absence of LPC from concerned Agency Account Office and charge relieving conducted certificates were with connivance of certain concerned officials and salaries were drawn on the basis of said bogus proceedings, causing great loss to Government exchequer. The petitioners failed to bring on record any strong or cogent documentary evidence in support of their stance which could show that they have been appointed after observing all codal formalities were wrongly restrained respondents from performing their duties. So when the foundation of appointments of petitioners is found cracked, then what to say 1. 1

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about the other contentions of petitioners as it is well established proposition of law that fraudulent act vitiate all proceedings. Hence, they were rightly restrained by the respondents from performing their duties, which needs no interference by this Court.

For what has been discussed above, we are of the opinion that the act of petitioners regarding their appointment on fake appointment letters disentitles them for any relief in writ jurisdiction of this Court, therefore, this petition is dismissed in limine."

8. Meaning thereby that the Writ Petition of the appellants was dismissed on merit therefore, the present service appeals are also hit by rule 23 of Khyber Pakhtunkhwa Service Tribunal Act, 1974. The departmental appeals of the appellants are also badly time barred. As such, the appeals have no force which are hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 10.03.2020

MUHAMMAD AMIN KHAN KUNDI)
MEMBER

(HUSSAIN SHAH) MEMBER 10.03.2020

Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith Mr. Hazrat Shah, Superintendent for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of eight pages placed on file, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 10.03.2020

(MUHAMMAD AMIN KHAN KUNDI)

(HUSSWIN SHAH)

03.01.2020

Appellant in person present. Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Appellant submitted rejoinder which is placed on file and requested for adjournment. Adjourned. To come up arguments on 14.02.2020 before D.B.

(Hussain Shah) Member

(M. Amin Khan Kundi) Member

14.02.2020

Appellant alongwith his counsel and Mr. Riaz Paindakhel learned Assistant AG alongwith M/S Hazrat Shah Superintendent and Jaffar Assistant for the respondents present. Arguments heard. To come up for order on 27.02.2020 before D.B.

(Hussain Shah) Member

(M. Amin Khan Kundi)

Member

27-2-20

The learned Members is on tour therefor lase is adjunced to 10-3-2020 for order

Ready

Appellant in person present. Asst: AG for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourn. To come up for arguments on 20.12.2019 before D.B.

Member

Member

20.12.2019

Appellant with counsel present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Saleem Javid Litigation Officer present. Representative of respondents submitted reply. Partial arguments of learned counsel for the appellant heard. Appellant seeks adjournment. Adjourn. To come up for further proceedings/further arguments on 24.12.2019 before D.B.

7

Member

Member

24.12.2019

Appellant in person present. Mr. Muhammad Jan learned Deputy District Attorney present. Appellant seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 03.01.2020 before D.B.

Member

30.08.2019

Appellant in person and Addl. AG for the appellant present.

Despite last chance the respondents have failed to furnish the reply/parawise comments. To come up for arguments before D.B on 21.10.2019.

Chairman

21.10.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Due to general strike on the call of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 14.11.2019 before D.B.

(Hussain Shah) Member (M. Amin Khan Kundi) Member

14.11.2019

Appellant with counsel present. Mr. Usman Ghani learned District Attorney alongwith M/S Saleem Javid Litigation Officer and Jaffar Ali Assistant present. Learned District Attorney requested for adjournment. Adjourn. To come up for further proceedings/arguments on 29.11.2019 before D.B.

Member

30.04.2019

Counsel for the appellant and Mr. Usman Ghani District Attorney for the respondents present.

Learned AAG requests for adjournment to procure the requisite reply from the respondents.

Adjourned to 20.06.2019 for submission for written reply/comments.

Chairman

28.05.2019

Counsel for the appellant and Addl. AG for the respondents present.

Learned AAG states that he has not been contacted by any representative of the respondents today. He, however, requests for a further chance to the respondents for submission of written reply.

Adjourned to 04.07.2019 for submission of written reply/comments as a last chance.

Chairman

04.07.2019

Counsel for the appellant and Addl. AG alongwith M/S Atif and Jaffar Ali, Assistants for the respondents present.

Representative of the respondents seeks further time. Last opportunity granted. To come up for written reply/comments on 30.08.2019 before S.B.

07.02.2019

Counsel for the appellant present.

The proposition involved in the appeal in hand essentially is:-

Whether the salary of appellant could be stopped and his service terminated through oral order?

To resolve the controversy instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 28.03.2019 before S.B.

Appellant apposited Security a Process Fee

Chairman

29.03.2019

Clerk to counsel for the appellant present. Jafar Ali Assistant and Atif Assistant representatives of the respondent department present and requested for time to furnish written reply/comments. Granted. To come up for written reply/comments on 30.04.2019 before S.B.

Form- A

FORM OF ORDER SHEET

| Cou | rt of | | |
|----------|-------|---------------------|--|
| Case No. | | 30 /2019 | |

| | Case No | 30/2019 |
|-------|---------------------------|---|
| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
| 1 | 2 | 3 |
| 1- | 09/1/2019 | The appeal of Mr. Rasheed Khan resubmitted today by Mr. Amjic Ali Advocate, may be entered in the Institution Register and put up to the |
| 2- | 16-01-19 | Worthy Chairman for proper order please. REGISTRAR This case is entrusted to S. Bench for preliminary hearing to be put up there on $07 - 02 - 20.19$ |
| | | CHAIRMAN |
| | | ✓. |
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| | | |

The appeal of Mr. Rasheed Khan son of Rahmat Said r/o Khan Sher Killi Malaria Supervisor BHU Fatma Mardan received today i.e. on 21.12.2018 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 may be got signed by the counsel.
- 2- Copy of judgment is incomplete which may be completed.
- 3- Copy of termination order is not attached with the appeal which may be placed on
- 4- Necessary party may be made in the heading of appeal.

No. 24 42 /S.T.

Dt. 24-12-12018.

SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Mr. Amjid Ali Adv. Mardan.

iv, objectis have been remond. Phere is no termination order in writing, more oral wal order. So may plean be place before The Torbelow.

SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 30 /2018

Rasheed Khan.....Appellant

VERSUS

Director General Health Services, Khyber Pakhtunkhwa, Peshawar & othersRespondents

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| : | | | |

Appellant

Through

Amjad Al (Mardan)

 \sim Advocate $^{\bigvee}$

Supreme Court of Pakistan

Cell: 0321-9882434

Dated:

BEFORE THE KHYBER PAKHTUNKEWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 30 /2010

Diary No. 1782

(1)

Rasheed Khan S/o Rahmat Said
R/o Khan Sher Killi P/O Gaddar, Tehsil & District Mardan,
working and posted as Malaria Supervisor (BPS-9), attached
to BHU Fatma, under the Direct Control/ Command of the
Executive District Officer Health, Mardan.

.....Appellant

VERSUS

- 1) Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- 2) Agency Surgeon, Parachinar Kurram Agency
- 3) Govt. of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.

G. D. H. O Health Mardan.....Respondents

Accessorar:

APPEAL U/S 4 OF KP SERVICE
TRIBUNAL ACT, 1974 AGAINST
ORAL TERMINATION ORDER AND
APPELLATE ORDER DATED
28.11.2018 UPON DEPARTMENTAL
APPEAL DATED 19.11.2018,
WHEREIN DEPARTMENTAL APPEAL
HAS BEEN DISMISSED, WHICH IS
ILLEGAL AGAINST LAW AND FACTS.

PRAYER:

Re-submitted to -day and filed.

Registrar 9)1/19 On acceptance of this appeal, the impugned oral termination order and appellate order dated 28.11.2018 may please be set-aside and appellant may please be reinstated in service with all back benefits.

Sir,

Appellant humbly submits as under;-

- 1) That appellant was appointed as Moharrir Supervisor vide order dated 15.04.2008. (Copy of appointment order is Annex "A")
- That appellant after medical fitness was posted and thereafter series of posting/ transfer orders were passed.

 posting/ transfer orders are Annex "C", Arrival report is Annex "D" and Service book is Annex "E")
- That appellant regularly received salary till October 2014. (Copy of pay slips/ Last pay certificates are Annex "F")
- 4) That an exparte inquiry, at the back of appellant was conducted, wherein, appellant was not associated with the inquiry and inquiry report dated 29.10.2014 was authored. (Copy of inquiry report dated 29.10.2014 is Annex "G")
- 5) That appellant was orally stopped from performing duty immediately after October 2014 and salary of appellant was stopped.
- That appellant immediately approached for release of his salary before hon'ble Peshawar High Court, Peshawar, however, the writ petition was dismissed vide order dated 19.04.2016. (Copy of order of High Court dated 19.04.2016 alongwith grounds of writ petition are Annex "H")
- That appellant approached against the order dated 19.04.2016 passed by the hon'ble Peshawar High Court, Peshawar before the august Supreme Court and after lengthy arguments vide order dated 14.09.2018, received on 14.11.2018, it was held to

avail departmental remedy as no written termination order is in field, plus no charge sheet, no regular inquiry, no show cause notice was given. (Copy of order dated 14.09.2018 of august Supreme Court is Annex "I")

- 8) That appellant filed departmental appeal dated 19.11.2018, which is dismissed vide order dated 28.11.2018. (Copy of departmental appeal is Annex "J" and appellate order dated 28.11.2018 is Annex "K")
- 9) That the impugned oral termination order and order dated 28.11.2018 passed by respondent No.1 is illegal, against law and facts on the following grounds:-

GROUNDS

- A. Because impugned oral termination order is a void order.
- B. Because it is must that for written appointment, there should be written termination order.
- C. Because it is not simple appointment order, but series of orders/ posting/ transfers, wherein salaries has been paid on the basis of appointment order by A.G Office and Accounts Officer of different Districts.
- D. Because appellant is not associated with the fat finding inquiry and is back biting.
- E. Because none of the witness has been examined in presence of appellant.
- F. Because appellant has not been given opportunity of hearing.
- G. Because the procedure under E&D Rules has not been followed.

- H. Because appellant has not been given charge sheets/ statement of allegations.
- Because appellant has not been given any show cause notice.
- J. Because principle of natural justice has been violated, which is well entrenched in our judicial system and even find its traces from Garden of ADAM & EVE.
- K. Because impugned appellate order dated 28.11.2018, is a non-speaking order, not supported by any reason and passed without hearing of appellant.
- L. Because appellant is jobless and entitled for back benefits.

It is therefore, humbly prayed that, the impugned oral termination order and appellate order dated 28.11.2018 may please be set-aside and appellant may please be reinstated in service with all back benefits.

Any other relief deemed appropriate in the circumstances of the case may kindly also be granted.

Appellant

Through

Amjad Ali (Wardan)

Advocate

Supreme Court of Pakistan

VERIFICATION

It is verified 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.

Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR



| Service Appeal No/20 |)18 |
|--|------------|
| Rasheed Khan | Appellant |
| <u>ver</u> | <u>sus</u> |
| Director General Health Service Khyber Pakhtunkhwa, Peshawa | |

ADDRESSES OF PARTIES

APPELLANT

Rasheed Khan S/o Rahmat Said R/o Khan Sher Killi P/O Gaddar, Tehsil & District Mardan, working and posted as Malaria Supervisor (BPS-9), attached to BHU Fatma, under the Direct Control/ Command of the Executive District Officer Health, Mardan.

RESPONDENTS

- 1) Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- 2) Agency Surgeon, Parachinar Kurram Agency

3) Govt. of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.

t) BBO Health mardon

Appellant

Through //

Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

OFFICE OF THE AGENCY SURGEON PARACHINAR KURROM AGEN

<u>OFFICE</u> ORDER



Consequent upon approval accorded by the Departmental Selection Committee Rasheed Khan S/o Rahmat Said, Village Khan Sher Kally P/O Gadar Mardan is hereby appointed as Malaria Supervisor BPS-09 (i.e. Rs.3820-230-10720) plus usual allowances as admissible under the Rules.

His appointment in the Health Department, will be subject to the following terms and conditions.

- He will on probation initially for a period of two years extendable for a further **1.** · : period not exceeding one year.
- His services can be dispensed with during the probation period, if his work 2 and conduct found unsatisfactory.
- 3. His appointment will be subject to Medical fitness and verification of character and antecedents.
- He will not be entitled to any TA/DA for Medical examination and joining the first appointment.
- He will be governed by such rules and orders as may be issued by the 5.
- Government for the category of Government Servant to which he belongs.

 As laid down vide Govt of New Establishment and Administration Department Notification No.E&A (1-13)/2005, dated 10-08-2005, he will not be entitled to pension or gratuity however in lieu thereof, will be entitled to received such amount contributed by him towards the contributory provident fund along with the contributions made by the Government to his account in the said-fund.
- If the wishes to resign from service he will have to submit resignation in 7. writing one month in advance OR deposit one month's pay in the Govt Treasury. However he will continue to serve the Govt, till his resignation is accepted by the competent authority.

If the above terms and conditions are acceptable to him he should report to his Agency Surgeon Parachinar Kurram Agency within fourteen (14) days of the receipt of this order.

> AGENCY SURGEON PARACHINAR KURRAM AGENCY

No. 109-12 NEV-111

Dated: 15 - 04 - 2008

Copy forwarded to:

- The Director Health Services, FATA Peshawar
- The Agency Account Officer, Parachinar Kurram Agency 2.
- 3. Accounts Section.
- Official concerned. 4.

AGENCY SURGEON PARACHINAR KURRAM AGENCY

SUPREME COURT





DIRECTORATE GÜNERAL III. ILLISERVIÇES MHYBER PAKHTUN KHWA PESIIAWAR

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| OFFICE ORDER | | |
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ADVOCATE SUPREME COURT

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (HEALTH), MALAKAND

Office order

Mr. Rasheed Ahmad, Malaria Supervisor, whose services were placed at the disposal of this office, vide Director General Health Service, Khyber Pukhton Khwa Peshawar office order No. 1455-59/E-V, dated 27/01/2011 is hereby adjusted against the vacant post of Jr: Clinical Technician Surgical BPS-9 CH Agra with immediate effect in the interest of Public services.

Executive District Officer, (Health), Malakand.

No_____/

Dated

Batkhela the

/2011

Copy to:

- 1- Director General Health Service, Khyber Pukhton Khwa Peshawar.
- 2- District Account Officer, Malakand.
- 3- Account Section of this office.
- 4- Medical Officer Incharge CH Agra.
- 5- Official Concerned.

Executive District Officer, (Health), Malakand.

SUPREME COURT

A. 15

The Executive District officer. Hali Malalind Sulsoch Assivel on Outy. Reference DGAS, KPK, leskawn office order m. 1455=59 Dt 1-3-2011 Respectfully Enlowed that I have been transferred to Heelt Get malakand & your good self have adjusted me against the Post of ot tech. CH Agra & I therefore treguesty Son South here with My assival Report for Juty on 1-3-2011 FN. For your kind infrareto pl 12als Thedienthy young Rashed Wan Malan'a Sup. D7, 1/3/2011

The Director General Health Services, Khyber Pakhtmkhwa Peahawar,

Through

District Health Officer, Malakand Agency.

Subject,

REQUEST FOR TRANSFER HOME DISTRIC

it is stated with great honor and respected that: I am working in Health Sector Malakand at CH Agra as malaria supervisor

2011 my Parents are old and week there is no one at home to look after them I am a perement Residents of Mardan Now it is requsted in your honer to Kindly Transfer me from District Mardan or Nowshera

> Your bedient Rasheed Khan

Dated. 22 14/2013 forwarded to Director Seneral
Heaville Services lebyton pahhotin likes
for hower for favour of Julius machen
It is Julius added that the
Office have no objection on the efer of the applican

Malanand

SUPREME COURT



OFFICE OF THE DISTRICT HEALTH OFFICER, MALAKAND. Phone 0932-410399, Fax No.0932 413110



OFFICE ORDER,

Mr.Rasheed Khan Malaria Supervisor BPS-09 attached to this office has been transferred to District Mardan vide Director General Health Services, Khyber Pakhtun Khawa Peshawar vide order No.1806-9/AE-VI dated 19-08-2013 is hereby relieved from his duties with immediate effect.

District Health Officer
Malakand.

San Maria

No 3 900_03

Dated

Dated

Batkhela

the 2 /08/20013

Copy forwarded to the:

- 1- Director General Health Services, Khyber Pakhtun Khawa Peshawar.
- 2- District Health Officer Mardan

for information.

Accounts Clerk of this office for information and necessary action.

Mr.Rasheed Khan Malaria Supervisor;

For information and necessary action.

District Health Officer Malakand.

SUPREME COURT

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Máil Address: <u>nv/fpdohs@vahoo.com</u>

OFFICE ORDER:

As approved by the Competent Authority the services of Mr. Khan Malaria Supervisor attached to EDO (Health) Malakand are hereby placed at the disposal of EDO (Health) Mardan for further adjustment against any vacant post in the interest of public service, with immediate effect.

> NB:- Arrival/Departure report should be submitted to this Directorate for record.

> > Sd/xxxxxx

DIRECTOR GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA, PESHAWAR

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No. 1806-9 /AE-VI

Dated

Copy forwarded to the:

- P.S to Minister for Health KPK, Peshawar I.
- EDO (Health) Malakand 2.
- EDO (Health) Mardan 3.
- DAO concerned.

For information and necessary action

ASSISTANT DIRECTOR (P -II) HYBER PAKHTUNKHWA. ESHAWAR

ADVOCATE

SUPREME COURT







OFFICE OF THE DISTRICT HEALTH OFFICER MARDAN

Ph # (0937) 9230030 Fax: # (0937) 9230349 Email: <u>edohmr@yahoo.com</u>

Office Order

Reference Director, General Health Services, Khyber Pakhtunkhwa Peshawar of Reference Director, General Health Services, Khyber Pakhtunkhwa Peshawar of Reference Director, General Health Services, Khyber Pakhtunkhwa Peshawar of Novil806 9/AiE VI dated 19.08.2013, Mr. Rashid Khanidi PHC Technician (Mandan) is here!

Supervisor under transfer from District Malakand to District Mardan is here!

Supervisor under transfer from District Malakand to District Mardan is here!

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DHO dated. Mardan the 21/88/20

- Official concerned:

 for information and n/action.

SUPREME COUR #

OFFICE OF THE DISTRICT HEALTH MALAKAND AT BATKHEL

Dated // /09/2013

To:-

The District Health Officer,

Mardan

Subject:

SERVICES DOCUMENTS

Memo:-

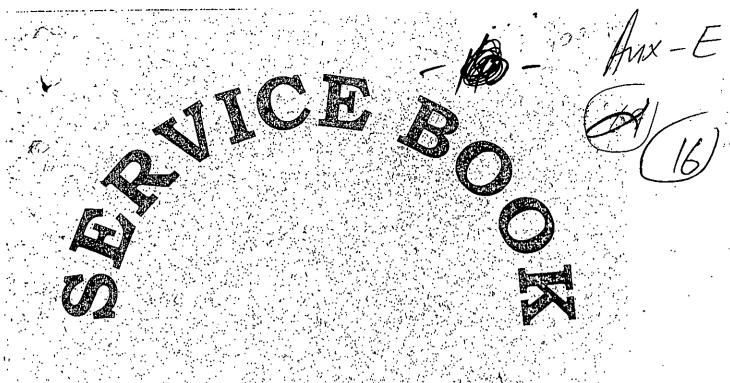
With reference to Director General Health Services Khyber Pakhtunkhwa order No. 1806-9/AE-VI dated 19.8.2013

Enclosed please find herewith Services Book alongwith LPC in ... respect of Mr. Rasheed Khan Jr. Technician for favour of further necessary action please

> District Health Officer, Malakand/at Batkhela

Acett:

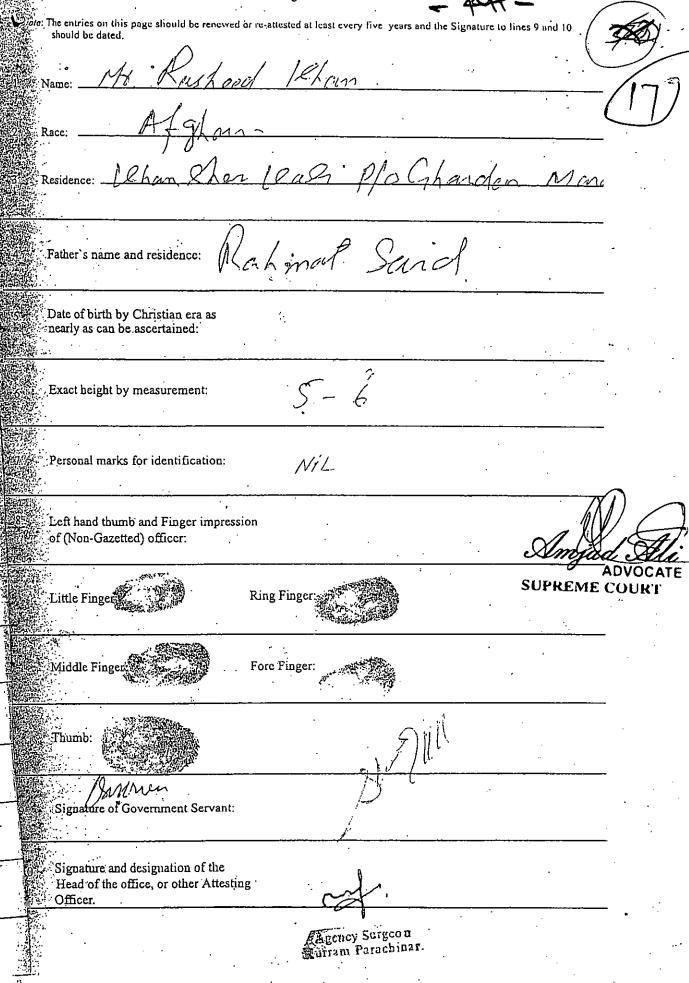
ADVOCATE SUPREME COURT



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SUPREME COURT

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ADVOCATE SUPREME COURT

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ADVOCATE SUPREME COURT

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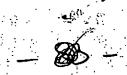
SUPREME COURT

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ENQUIRY REPORT BY THE COMMITTEE

Subject:

ENQUIRY IN TO THE FAKE APPOINTMENT OF THE FACE SUPËRVISORS

Reference Director General Health Services Khyber Pakhtunkhwa Rest order No. 4951-56/AE-VI dated 21/08/2014, the following committee was constituted on the subject noted above.

Dr. Muhammad Asif, Coordinator Public Health DHO office Reshawa

Dr: Sartaj Khan, Deputy Director (Admin), DHS FATA Peshawar

TORs:

To investigate as whether they are actually appointed after observe the codal formalities or otherwise.

To investigate the following officials who got themselves transferred on the basis of bogus office orders.

The enquiry committee enquired the following accused officials

a) Mr. Manzoor Badshah Jr. PHC Tech (MP)/Malaria Supervisor from Malakand to District Mardan (shown appointed on fake appointment force Agency Surgeon SW Wana).

b) Mr. Iftikhar Khan Jr PHC Tech (MP/ Malaria Supervisor from நெடி to District Mardan. (shown appointed on fake appointments order

Surgeon SW Wana) c) Mr. Rashid Khan PHC Tech (MP) Malaria Supervisor from District to District Mardan (shown appointed on take appointment order to Surgeon Kurram Agency).

Proceedings:

To assess the appointment of the officials, who were shown to be appointed on Mr. Rashid khan, (15-04-2008 in Kurram Agency) Mr. Manzoor Badshah (12-02-2008 in SW Agency) and Mr. Iftikhar Khan (03-01-2006, SW Agency) as Malaria. Supervisors BPS-09; The following investigations were carried out.

1. Statements of Ex-Agency Surgeons SWA and Kurram Agency regarding their Fake signature on the Fake Service books and other documents

Annex.— A.

Investigation through relevant record regarding the appointments in DHS.

Investigation through relevant record regarding the appointments in DHS.

Office FATA. Statement of the record keeper & attested by the Deputy.

Director (Admin) DHS FATA — Annex. B.

Statements of the DHO, Deputy DHO Mardan and concerned staff of DHO.

Office Mardan along with relevant record Annex

Record of salaries drawn by the officials from District Ac Mardan, attested by DAO Mardan, Annex + D

SUPREME COUR



5. Checking of the record of anticorruption circle Mardan and letter from the DG Anti-corruption establishment Knyber Rakhtunkhwaito DGHS Knyber

Pakhtunkhwa. Annex – E

6. Statements along with cross examination regarding the posting //stransfer of the officials concerned from the then DHO (Dr. Bakht Zada) and the present DHO (Dr. Muhammad Ali) Malakand Ext. Office Assistant (Mr. Khaliq), present office Assistant (Mr. Ehsan). Ext. Account Assistant (Mr. Khaista Muhammad), and Junior Clerk (Mr. Ayub) along with relevant record. Annex – F

Statement of the DAO Malakand regarding the drawl of salaries of the officials concerned. Annex – G

Statement of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the officials concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the officials concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the officials concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the officials concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the officials concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the officials concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the officials concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the officials concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the officials concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the officials concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Director Rallia (Paramedics) and the official concerned of Mr. Sheraz Khan, Assistant Dir

8. Statement of Mr. Sheraz Khan Assistant Director PIIIII (Paramedics) Assistant Director Mr. Jamil, Assistant Director R. III. Director General Health Services Khyber Pakhtunkhwa office along with the record of the dispatch registers of the concerned date of transfer orders. Annex III.

9. Statement and thorough cross examination of the concerned Malaria Supervisors under enquiry. Annex II.

10. The service books and correspondence file of 03 accused Malaria Supervisors under enquiry provided by Mr. Sheraz Khan ADDP III. DGHS III.

were thoroughly checked and returned back to him.

11. All the relevant informations in this particular case under enquiry were. shared with Dr. Muhammad Qasim, Ex DHO Mardan and he affirmed the 14 To 15 To

observations of the committee.

All the concerned offices were visited by the committee after information written/fax letters.

Observations:

Going through all the available record, statements of the concerned officers/sofficials along with cross examination the committee observed the following

- a. Mr. Manzoor Badshah s/o Haji Lal Badshah was shown appointed as Majaria Mr. Manzoor Badshah s/o Haji Lal Badshah was shown appointed as Malaria: Supervisor in BPS-9 in SW Agency on 12 02 2008; and was transferred on as fake order issued from DGHS vide office order No. 1460-64/E-V/dated 27-01 2011; and was adjusted on the vacant post of Jr. Clinical Tech Pathology vide EDO: (H) Malakand No. 432-35 dated 17/02/2011 fine Malakand and the continued to draw his salary till October 2013; Heawas transferred on a fake order from DGHS bearing No. 29670-72/EV dated 24-09-2013 to DHO Mardan in October 2013; he has not provided UPC transpool Malakand and has not claimed bisscalaries from November 2013; till to the continued to Malakand and has not claimed bisscalaries from November 2013; till to the continued to Malakand and has not claimed bisscalaries from November 2013; till to the continued to Malakand and has not claimed bisscalaries from November 2013; till to the continued to the continued to the continued to draw his salary till october 2013; the has not claimed bisscalaries from November 2013; till to the continued to from DAO Malakand and has not claimedinisisalaries from November 2013 till date inspite of performing his official duties (Annex-J)
- Mr. Iftikhar Khan s/o Said Wali was shown appointed as Malaria Supervisor. BPS 9 by Agency Surgeon SW Agency on 03/01/2006 (fake order) and he was transferred to DHO Mardan through fake order vide? DGHS letter No :2790-94 / AE-VI dated 24/01/2013: His further posting is shown by DHO Mardan on 31-05-2013 with the laps of 04 months and his salary was started from Jüly 2013. Annex--K

SUPREME COURT



- Mr. Rashid Khan s/o Rahmat Said was shown to be appointed as Supervisor in BPS-9 on 15/04;2008 by the Agency Surgeon Kurram and was transferred to DHO Malakand on a fake transfer order from DGHS No: 1455-59/EV dated 27-01-2011. Where he continued to draw his August 2013 and managed to get himself transferred to DHO Mardan on another take order from DGHS No. 1806-9/AE VI. Dated 1908-2013 (Annex-L) In response to letter from DGHS bearing No. 29670-72/EV Dated). 23-10-2013 the service books of Mr. Rashid Khan and Manzoor Badshah was submitted to AD P-III DGHS through special messenger Mr. Ayub Khan of the DHO Office Malakand and DHO Malakand also instructed the DAO Office for stoppage of their salaries.
- stoppage of their salaries.

 d. The transfer letters from the DGHS official the 03 accused officials came suspicious by Dr. Qasim the then DHO Mardan due to an abnormal long blank space before the names on each order and discrepancies in the numbers of DGHS.
- After receiving instructions from DGHS the DHO Mardan stopped the salaries of the accused Mr. Rashid Khan and Mr. liftikhar Khan and deposited Rs. 92,666/-(Mr. liftikhar Khan) and Rs. 69:038/-(Mr. Rashid Khan) in to the government treasury (NBP Mardan) on proper challant A legal notice from Mr. liftikhar Khan and Mr. Rashid Khan was served on DHO Mardan on 07-11-2013 through Syed Ahmed Alis Shan advocates or the
- release for salaries, which was responded by the DHO Mardan till the decision of enquiry DGHS Khyber Pakhtunkhwa.

 It is also worth mentioning that the statements of the accused whirl around the then office assistant Mr. Wazir Zada who died on 26-10-2013 and due to serious illness his charge was handed over to Mr. Fazal Ahad Office assistant on 27-0-2013 but Mr. Wazir Zada was incapacitated and not assistant on the duties 04-05 months prior to the death due to his determined his duties 04-05 months prior to the duties of the dut performing his duties 04-05 months prior to his death due to his detoriating state of health so he should not be accused only for this engineered crime
- The service books of the 03 accused malarian supervisors were found. The service books of the object of concerned agency surgeons fake/bogus as per the statements of concerned agency surgeons

From the observations by the inquiry committee it is proved that durings the pe shown against the appointments, no such appointments were made in the respective Agency Surgeon offices. No. codal formalities like demand by the Agency Surgeon approval for appointment from the DHS FATA advertisement in the press short listing test and interviews by the selection committee etc. were observed.

It was further confirmed from the respective Agency Accounts offices that no source-1 have been received from Agency Surgeons for these employees and no salaries drawn.

All the accused officials also categorically denied their appoin their performance of duties and drawl of any salaries in SW

The alleged transfer orders from the DGHS were tra concerned section (P-III Paramedics). Both the Aps



Jamil P-II) disowned their signatures on the joint order No. 1806-9/AE/VI Dated 19-08-2013 (Rashid Khan & Manzoor Badshah) & Order No. 2790-94/AE VII Dated 19-01-2013 (Mr. Iftikhar Khan). For further confirmation the relevant dispatch register were checked and it was found that transfer order of Mr. Rashid Khan from DHO Malakand to DHO Mardan vide DGHS letter No. 1806-9/AE VII dated 19/08/2013 the record on date: 19/08/2013 start from 15281 and end upon 15286 which do not match with the numbers of transfer orders issued on the same date from DGHS so confirmed to be fake / bogus.

The transfer order of Mr. Manzoor Badshah vide DGHS order, No. 1806-9/AE-VII dated 19/08/2013 (joint) when checked in the dispatched register of DGHS was not matching, hence confirmed to be take and bogus.

The transfer order of Mr. Iftikhar from SW Agencystol Mardan vide DGHS Order No. 20790-94/AE/E dated 24/01/2013 when checked in the dispatch register of the DGHS was found that no entry was made in the register on 24/01/2013 at all. The last running record No does not match with the S No of the fake orders hence proved to be fake/bogus.

It is further added that for transfer from FATA to settle area/districts an NOC from the competent authority is mandatory, which was not accorded.

It is worth mentioning that why the source 1 for the salaries of accused Mir Manzoor Badshah and Rashid Khan was forwarded from DHO Malakand in the absence of JPC from the concerned Agency Account Office and charge relieving certificates duly endorsed by the relevant Agency Surgeon

Conclusion:

Keeping in view the statement of all the concerned and thorough examination of the relevant available record, the committee came to the conclusion that

- 1. The appointments of the concerned Malaria Supervisors Mr. Rashid Khan Manzoor Badshah and Iftikhar khan are confirmed to be bogus and take
- The transfer orders of the above mentioned Malaria Supervisors shown to be issued by DGHS Khyber Pakhtunkhwa are confirmed to be fake and bogus.

Recommendation:

Specific:

- 1. Since the appointment orders are take and bogus so its is recommended that the services of the all the accused Malaria Supervisors (Mr. Rashid Khan, Mr. Manzoor Badshah and Mr. Iftikhar Khan) may be terminated with immediate effect.
- 2. The salaries (to be calculated by the concerned DHOS & DAOS Malakand & Mardan) drawn by the officials concerned may be recovered from all the responsible persons and to be deposited in Government lireasury on proper challan.

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 Being a fraudulent case resulting in to heavy financial loss to the government ex-checker, a proper criminal or legal case may be initiated against the accused officials.

4. Disciplinary action against Mr. Khaista Muhammad the the har Account clerk DHO Office Malakand for manipulation & facilitating the source for Mr. Manzoor Badshah and Mr. Rashid Khan without the LPC of the Agency Account offices resulting to the loss of public money Hele should have kept the record but he failed to produce so. Appropriate action may be taken against him under revised E&D rules 2011

- 5. For forwarding source-I of the officials concerned to the DAO Malakand and adjustment of the Malaria Supervisors (declared dying) cadre in 2006) on Jr technician pathology in district Malakand without fulfilling the codal formalities, a charge sheet may be served on the ex-DHO Malakand Dr. Bakht Zada DDO.
- 6. Overriding the observations of the DAO office Malakand the source-1 were re-submitted by the then acting DHO Dr Fillah Muhammad when Dr. Bakht Zada DHO was abroad for performing Umrah appropriate legal action is recommended as the officer concerned (Dr Tillah Muhammad) has retired on 27-11-2011 from service
- 7. Censure to Dr. Mohtaram Shah the then acting DHO Mardan for his negligence in his official responsibilities being DDO and to be held responsible for the recoveries of the salaries drawn by accused Mr. Rashid Khan & Iftikhar khan to deposit into the Government Treasury/on proper challan.
- 8 Warning is recommended to be served on Dr Abdul Khalig DHO Mardan for retaining the accused Malaria Supervisors on his roll seven after the clear instructions by the DGHS Office Khyber Rakhtunkhwa
- Warning is recommended to the concerned officials working in BHO Office Mardan for not keeping the proper record and tookeep a wigilant eye to identify such like cases in future.
- 10. During the examination of the file at Anti-Corruption circle Mardan it was observed that the case was totally fraudulent and fake and the office filed the enquiry only on the basis of death of Mr. Wazir Zada the then dealing senior Clerk and statements of the accused Malana Supervisors.

The enquiry committee observed that their findings were based only on the record provided by the DHO Office Mardan and statement of the accused The investigation officer has not visited the relevant Agency. Surgeons

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Agency Account offices, DHO Malakand & Director General Khyber

The Director General Anti-Corruption establishment Khyber-Pakhtunkhwas may kindly betapproached to direct the relevant investigation officer for a comprehensive re-inquiry of the case up to the logical & conclusive end.

elĜeneral:

Preparation / maintenance of service books in a sequence of a genuine with fake signature of Agency Surgeon of their respective period putting official stamps awarding annual increments.

Issuance of transfer orders from the DGHS office with fake signature of the relevant officers of the DGHS and putting officers of the DGHS and putting dispatch numbers in a sequence close to running numbers

Forwarding salary source and placement at the DHOs offices could not be made possible without the involvement of the staff of the Directorate and subordinate possible without the involvement of the staff of the Directorate and subordinate possible in the involvement of the staff of the Directorate and subordinate possibility of more such cases could not be ruled out.

Ther committee recommends a detail enquiry to dig out the network of these Black in the DGHS, Directorate FATA, Agency and District Health Offices to sheeps at the DGHS, Directorate FATA, Agency and District Health Offices to sheeps at the offices and heavy financial abolish these fraud practices bringing bad names to the offices and heavy financial losses to the public money.

The committee also recommends to design and link a system of online verification of orders is sued by the Director General Health Services Khyber-Pakhtunkhwa and it subordinate offices.

The inquity report is submitted for onward perusal please.

OK39/14/14.

Dr. SantajiKhan - Deputy Dinector (Admin) - DHS FATA Dr. MuHammad Asif: Public Health Coordinator. DHO Office Peshawar

Inquiry Committee Health Department Khyber-Pakhtunkhwa

Copies/recordiretained.

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PESHAWAR HIGH COURT, PESHAWAR

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| Date of Order or Proceedings | Order of other Proceedings with Signature of Judge. | | | | | |
| 19.04.2016 | WP No.3669-P/2014. | | | | | |
| | Present: Mr. Muhammad Usman Khan Turlaydi | | | | | |

Advocate, for petitioner.

Syed Qaisar Ali Shah AAG, for respondents.

MUHAMMAD DAUD KHAN, J:- Through

Constitution petition, Rasheed Khan, Iftikhar Khan & 7 Manzoor Badshah, the petitioners seek issuance of an appropriate writ directing the respondents to release monthly salaries of petitioners being withheld w.e.f 1.9.2013 to 1.11.2013 and also to restore their real posts/designations by keeping them continuously as regular civil servants against the posts of "Malaria Supervisors".

In essence, the grievance of the petitioners is that despite performing their duties as "Malaria Supervisors" for about 5 years in the respondents' department, their services were terminated and their salaries were stopped on the allegation that they had fraudulently managed their respective appointment orders and they were also restrained from performing their duties. Hence, having no other remedy, the petitioners approached this Court by filing the instant Constitution petition:

SUPREME COURT

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- The respondents were put on notice, who filed their comments denying the allegations of petitioners therein by stating that all the appointments and transfer orders of petitioners are bogus and fake.
- 4. Arguments heard and record perused.
- Perusal of comments submitted on behalf of respondents and other documents available on file, that an inquiry committee consisting of reveals Dr.Muhammad Asif Coordinator Public Health DHO Office, Peshawar and Dr. Sartaj Khan Deputy Director (Admin) DHS FATA Peshawar was constituted by the order of Director General Health Services KPK, to probe into the matter regarding appointments of petitioners. As per observation of the said Committee, after recording statements of concerned officials as well as perusing the concerned record, it came to the light that no such appointments have been made in the respective Agency Surgeon Offices nor any codal formalities in the shape of demand by the Agency Surgeon, approval appointment from the DHS FATA, advertisement in the press, short listing, test and interviews by the Selection Committee etc were observed nor any Source-1 was received from the Agency Surgeon for these employees. The concerned record was also checked and verified from the signatories of the alleged appointment letters,

Na Take

E X AM IN EX eshawar High Court transfer orders etc which were denied by the concerned officials being bogus and fake. Moreso, for transfer from FATA to settle areas, an NOC from the competent authority is mandatory which was also not obtained for the said purpose making the same dubious. The material available on file further reveals that fake proceedings for forwarding Source-1 of petitioners from DHO Malakand in absence of LPC from concerned Agency Account Office and charge relieving certificates were conducted with the connivance of certain concerned officials and salaries were drawn on the basis of said bogus proceedings, causing great loss to the Government exchequer. The petitioners failed to bring on record any strong or cogent documentary evidence in support of their stance which could show that they have been appointed after observing all codal formalities and were wrongly restrained by the respondents from performing their duties. So when the foundation of appointments of petitioners is found cracked, then what to say about the other contentions of petitioners as it is well established proposition of law that fraudulent act vitiate all proceedings. Hence, they were rightly restrained by the respondents from performing their duties, which needs no interference by this Court.

6. For what has been discussed above, we are of the opinion that the act of petitioners regarding their

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appointment on fake appointment letters disentitles them for any relief in writ jurisdiction of this Court, therefore, this petition is dismissed in limine.

Announced. 19.4.2016.

JUDGE

mlls/Y JUDGE

SUPREME COURT

IN THE PESHAWAR HIGH COURT PESHAWAR

In Ref: to WP No. 366 97/2014.

- Rasheed Khan S/O Rahmat Said R/O Khan Sher Killi P/O Gaddar, Tehsil & District Mardan, working and posted as Malaria Supervisor (BPS-9), attached to EHU Fatma, under the direct control/command of the Executive District Officer Health, Mardan.
- 2. Iftikhar Khan S/O Said Wali R/O Katlang Road, Naseer Killi Tehsil & District Mardan, working and posted as Malaria Supervisor (BPS-9), attached to BHU Kodinaka under the direct control/command of the Executive District Officer Health, Mardan.
- 3. Manzoor Badshah Sim S/o Haji Lal Bad Shah R/O Village Gujur Garhi Tehsil & District Mardan, working and posted as Malaria Supervisor (BPS-9), attached to BHU Jamra under the direct control/command of the Executive District Officer Health, Mardan.

PETITIONERS.

VERSUS

SUPREME COURT

EST

- 1. Director General Health Services, Khyber Pakhtunkhwa Peshawar.
- 2. Executive District Officer Health, Mardan....RESPONDENTS.

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN 1973 AS AMENDED UP-TO DATE.

PRAYERS IN WRIT PETITION.

On acceptance of this petition the respondents may be directed to release monthly salaries of the petitioners, withheld w.c.f. 01-10-2013, which are all 2013 respectively and they may further be directed to ensure/restore the real/parent post/designation of the petitioners by keeping them working continuously against the post of Malaria Supervisor, initially held by the petitioners.

Respectfully Sheweth:





1) That all the three petitioners are the citizens of the Islamic republic of Pakistan, domiciled in Khyber Pakhtunkhwa Province and resident of their respective villages given against each.

2) That the petitioners had joined their respective services as Malaria Supervisors (BPS-9) in the year 2008 and the competent authority of the respondent department had passed their appointment/posting orders in the prescribed manner and accordingly the petitioners, after completion of all codal formalities such as medical fitness, Service Books and submission of their arrival report, kept working regularly, drawing their monthly salaries and as a token thereof, some pay-slips duly issued by the office of the Accountant General KPK-Peshawar are enclosed herewith as annexure "A"-"A/2" respectively.

3) That the petitioners, in due course of time/service, were lastly transferred and posted as under:

S.No. Name of Petitioner Transferred from

SUPREME COURT

(i) Rasheed Khan Edo (Health) EDO (Health) Malakand Mardan vide office order passed by the respondent No.1 dated 19-08-2013.

(ii) Iftihar Khan Agency Surgeon EDO (Health) South Waziristan Wana. Mardan vide office order passed by the respondent No.1 dated 24-01-2013.

(iii) Manzoor Khan EDO (Health) · EDO (Health) Malakand Mardan vide office order passed by the respondent No.1 dated 24,09-2015

4) That after performing/rendering at about five years spotless services, all of a sudden, the monthly pay of the petitioners were stopped since October 2013 with a verbal allegation that the petitioners had fraudulently managed their respective appointment

(4-2)

orders and the case beside referring to the Anti-Corruption Authority, was also enquired twice by the Inter-departmental Committee.

- Committee was not yet ascertained. However, the Assistant Director Admn; Anti-Corruption, Khyber Pakhtunkhwa Peshawar while endorsing their remarks in the concluding para has clearly stated that "In view of the above, the subject enquiry has been filed as recommended by the field Staff of this establishment. This office has no objection to release the payoff the concerned officials if any, under intimation to this office." (Copy of the official letter dated 10-06-2014 is annexure "B").
- 6) That since October 2014, the petitioners were verbally restrained to perform their respective duties and were verbally directed not put their appearance/attendance and even their salaries for the work done by them were also denied and hence the case.
- 7) That the petitioners while aggrieved of the discriminative treatment given by the respondents depriving them from their legitimate valuable rights and having no adequate remedy in the circumstances of the case, are constrained to approach this august court on the following amongst other grounds inter-alia.

GROUNDS.

a) That the first appointment/recruitment orders passed/issued by the competent appointing authority (Respondent No. 1), showing the designation as Malaria Supervisors and the said authority is the only custodian of all the relevant service record of the petitioners which have totally been denied and such practice is illegal, unlawful, without lawful authority, unconstitutional, against the law on the subject and against the norms of natural justice and liable to be declare as such.

b) That the respondents have adopted a novel procedure and by playing with the fate of the petitioners, have not yet passed any written order

(43)

detrimental to the terms and condition of the service which could be get impugned before the proper forum and thus verbal order is no order in the eyes of law and the petitioners can never be knock out in such arbitrarily manner.

c) That the first appointment/recruitment orders passed/issued by the competent appointing authority (Respondent No. 1) in the year 2008 and when the petitioners after carrying out all the legal codal formalities, did used to draw their monthly salary for the post of Malaria Supervisor through proper pay-slip from the office of the Accountant General KPK Peshawar, when they were repeatedly transferred/posted by the order of respondent No. 1 as such then such appointment orders have gained legal effect and valuable fundamental rights have been accrued to them which could not be taken away with a single stroke of pen and as such the impugned verbal order is not sustainable in the eyes of law and liable to be reversed.

- d) That the respondents have no authority whatsoever either to stop the monthly salary for the work done by the petitioners or to restrain them from performing/rendering their respective duties as Malaria Supervisors who have already served the department for a long considerable period then all such service proceedings have taken legal effect and thus such impugned verbal orders have been passed in the exercise of colorful authority beyond the legal jurisdiction.
- e) That under no canon of law, a government servant could be denied of his monthly salary whereas he has already worked for that period
- f) That the petitioners being qualified, highly deserving candidates and have performed their respective duties as Malaria Supervisors with great zeal and enthusiasm and since their enlistment / posting as such, no adverse remarks whatsoever have ever been assigned to them from any quarter till date.
- g) That the act of the respondents by stopping the monthly pay and not allowing the petitioners to perform their respective duties by keeping them on their respective post/duty station for which the petitioners were

ADVOCATE

initially recruited and such post/designations were held by the petitioners till leveling verbal allegation is not only deplorable and condemnable but also against the fundamental rights of the petitioners guaranteed by the constitution.

- h) That the respondents have transgressed their powers and the petitioners have been denied of their fundamental rights.
- i) That discrimination in service as observed by the respondents in the matter of not restoring the parent post/designation of the petitioners as Malaria Supervisors is hit by the command of the constitution, being unlawful, without lawful authority, without jurisdiction, against the norms of natural justice and equity hence be declared as such.
- j) That the petitioner being deserving and eligible candidates having legitimate right for their due restoration in the rank of Malaria Supervisors while no adverse remarks whatsoever has ever been assigned to them from any quarter and thus valuable rights have been accrued to them and such rights could not be taken away in an arbitrary, flimsy and fanciful manner.

k) That there is sheer discrimination in the matter of stopping the monthly salary withheld illegally and the respondents have acted according to their own sweet will, wishes, discretion and innovation.

- 1) That the petitioners have not been dealt with in accordance with law and equity and the petitioners have been made as scapegoat who has been penalized for no fault on their part.
- m) That further submission with the prior permission of this august court will be advanced at the time of hearing the petitioners at the bar.

Keeping in view the above mentioned facts and circumstances and on acceptance of this writ petition an appropriate writ period of the passed directing the respondents to 101-09-2013 and 01-11-2013 respectively and as such they may further be directed to ensure/restore the real/parent post/designation of the petitioners by keeping them continuously as regular civil servants

against the post of Malaria Supervisor, initially held by the petitioners enabling the petitioners to enjoy equal protection of law in order to meet the ends of justice.

Any further better relief deemed just and acquit-able in the circumstances of the case may also be granted please.

PETITIONERS.

Through;

Muhammad Usman Khan

Turlandi

Advocate Peshawar.

CERTIFICATE.

No such like petition has ever been filed previously before this august as per instruction of my clients.

LAW BOOKS:-

i. The constitution of Islamic Republic of Pakistan 1973.

ii. Any other law books according to need.

ADVOCATE PESHAWAR.

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Gulzar Ahmed Mr. Justice Magbool Bagar

Civil Petition No.2345 of 2016

[Against the order dated 19.04.2016, passed by the Peshawar High Court, Peshawar in W.P.No.3669-P of 2014]

Rasheed Khan & others.

Petitioner (s)

VERSUS

Director General Health Services, KPK, Peshawar & Respondent (s) another.

For the Pctitioner (s)

Mr. Amjad Ali, ASC

Mir Adam Khan, AOR (Abscnt)

For the Govt. of KPK

Barrister Qasim Wadood, Addl.A.G. KPK

Date of Ilearing

14.09.2018

ORDER

Gulzar Ahmed, J:- After arguing the matter at some length, learned ASC for the petitioners states that petitioners are going to avail remedy in accordance with law and does not press this petition, which is dismissed as such.

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10,09,20 B

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To,

Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

Subject: <u>DEPARTMENTAL APPEAL AGAINST ORAL</u>

<u>TERMINATION ORDER ON THE BASIS OF</u>

<u>FACT FINDING INQUIRY DATED</u>

<u>29.10.2014, WHICH IS ILLEGAL AND</u>

<u>AGAINST THE LAW & FACTS</u>

Prayer On acceptance of this appeal, the oral termination order of appellant may please be set-aside and appellant may please be reinstated in service with all back benefits.

Sir,

Appellant humbly submits as under:-

- 1. That appellant was appointed as Moharrir Supervisor vide order dated <u>(5-4-2008</u> (Copy of appointment order is Annex "A")
- 2. That appellant after medical fitness was posted and thereafter series of posting/ transfer orders were passed. (Copy of medical certificate is Annex "B", posting/ transfer orders are Annex "C", Arrival report is Annex "D" and Service book is Annex "E")
- 3. That appellant regularly received salary till October 2014. (Copy of pay slips/ Last pay certificates are Annex "F")
- 4. That as exparte inquiry, at the back of appellant was conducted, wherein, appellant was not associated with the inquiry and inquiry report dated 29.10.2014 was authored. (Copy of inquiry report dated 29.10.2014 is Annex "G")
- 5. That appellant was orally stopped from performing duty immediately after October 2014 and salary of appellant was sotpped.

fux-J 47).

SUPREMECCIAL

- 48)
- 7. That appellant approached against the order dated 19.04.2016 passed by the hon'ble Peshawar High Court, Peshawar before the august Supreme Court and after lengthy arguments vide order dated 14.09.2018, received on 14.11.2018, it was held to avail departmental remedy as no written termination order is in field, plus no charge sheet, no regular inquiry, no show cause notice was given. (Copy of order dated 14.09.2018 of august Supreme Court is Annex "I")
- 8. That impugned oral termination order is illegal, against law and facts on the following grounds:-

GROUNDS

- A. Because impugned oral termination order is a void order.
- B. Because it is must that for written appointment, there should be written termination order.
- C. Because it is not simple appointment order, but series of orders/ posting/ transfers, wherein salaries has been paid on the basis of appointment order by A.G Office and Accounts Officer of different Districts.
- D. Because appellant is not associated with the fat finding inquiry and is back biting.
- E. Because none of the witness has been examined in presence of appellant.
- F. Because appellant has not been given opportunity of hearing.
- G. Because the procedure under E&D Rules has not been followed.
- H. Because appellant has not been given charge sheets/ statement of allegations.
- Because appellant has not been given any show cause notice.

SUPREME COUNT

It is, therefore humbly prayed that, on acceptance of this appeal, the oral termination order of appellant may please be set-aside and appellant may please be reinstated in service with all back benefits.

Appellant Restaur

Rasheed Khan S/o Rahmat Said R/o Khan Sher Killi P/O Gaddar. Tehsil & District Mardan, working and posted as Malaria Supervisor (BPS-9), attached to BHU Fatma, Direct Control/ under the the Executive of Command District Officer Health, Mardan.

SUPREME COLL

DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA, PESHAWAR.



Office Ph# 091 - 9210269 Exchange# 091 - 9210187, 091 - 9210196,

Fax #091 - 9210230

All communications should be addressed to the Director General Health Services Peshawar and not to any official by name.

No 10546-5/AE-VI,

Dated 38/11/2018

To

- Mr. Manzoor Badshah S/O Haji Lal Badshah Residant of village Gujar Garhi, Tehsil & District, Mardan Ex-Malartia Supervisor DHO Mardan.
- 2. Abdul Salam S/O Muhtajuddin, Residant of village Gujar Garhi, Tehsil & District, Mardan Ex-Malartia Supervisor DHO Mardan.
- 3. Mr.Riaz Ali Shah S/O Aunber Shah, Resident of Bajaur Korona Tehsil Takhtbhai, District Mardan, Ex-Malaria Supervisor DHO Mardan.
- Mst.Samina Shoukat D/O Shoukat Ali, Resident of Abid Khan Kallay, Sardheri, Tehsil & District Charsadda. Ex-PHC Technician (MCH)/LHV.
- Mr.Rasheed Khan S/O Rehmat Said, Resident of Khan Sher Kallay,
 P.O Gaddar Tehsil & District Mardan.
 Ex-Malaria Supervisor DHO Mardan.
- 6. Iftikhar Khan S/O Said Wali, Resident of Naseer Killy Tehsil & District, Mardan, Ex-Malaria Supervisor.

Subject: - DEPARTMENTAL APPLEAL AGAINST ORAL TERMINATION ORDER ON THE BASIS OF FACT FINDING ENQUIRY DATED 29/10/2014, WHICH IS ILLEAGAL AND AGAINST THE LAW AND FACTS.

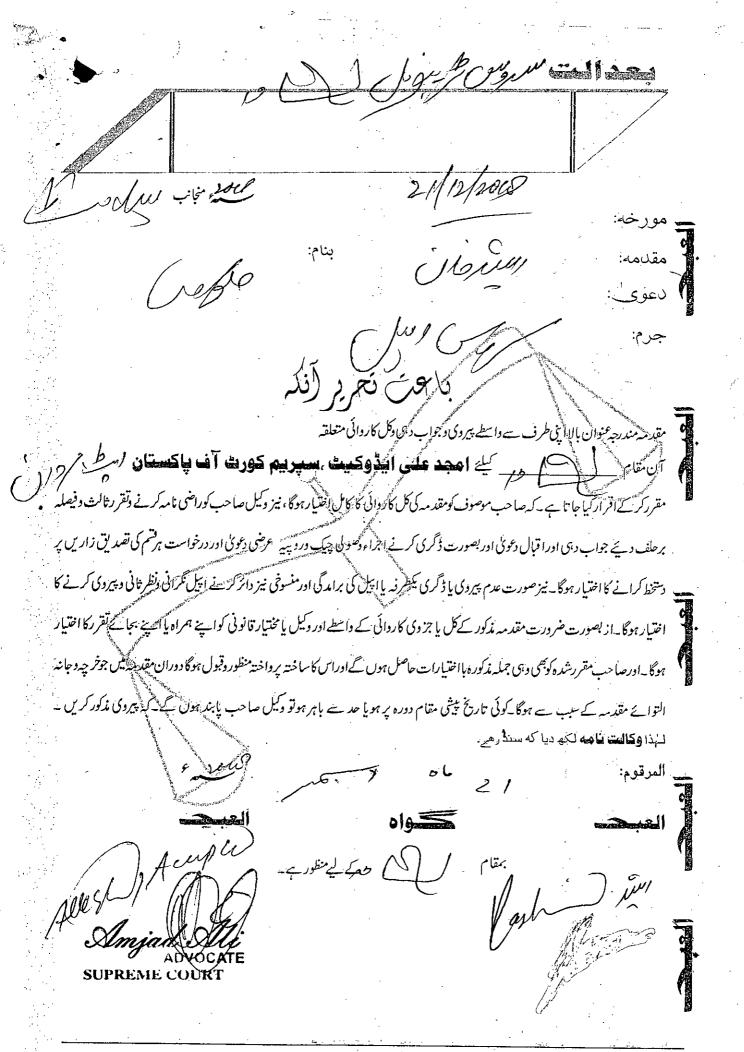
I am directed to refer to your applications dated 19/11/2018 and 27/11/2018, regarding above captioned subject, the above mentioned applicants have submitted departmental appeal against oral termination order and request for reinstatement into Government Service.

Your request for re-instatement is hereby regretted.

DIRECTOR (H.R.M)

DIRECTORATE GENERAL

HEALTH SERVICES KP PESK



BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

S.A.No.30 of 2019

Rasheed KhanV/S... Govt. of Khyber Pakhtunkhwa and others

REJOÏNDER ON BEHALF OF APPELLANT

Respectfully Sheweth;

Preliminary objections:

All the preliminary objections are incorrect, misconceived, denied.

ON FACTS:

- 1-2) That paras No.1 and 2 of the appeal has not been denied which means admission.
- 3) That para No.3 of appeal is correct and that of reply is incorrect. Denied.

Appellant has not been associated with inquiry and no opportunity of cross examination has been afforded and no charge sheet, statement of allegation has been given. Moreover, it is not a single appointment order which could be termed as fake on the basis of probe findings inquiry. In fact, all those who have signed the appointment orders, posting orders, LPCS

etc are required to be arrayed as an accused. 34 months salary of Riaz Ali, Samina Shaukat, Abdul Salam are outstanding inspite of duty performed.

- That para No.4 of appeal is correct and that of reply is incorrect. Denied. Without proper charge sheet/ statement of allegation, the inquiry is probe finding only. There is no service of summon upon Riaz Ali, Samina Shaukat, Abdul Salam. There is no authorization, scope of the so-called inquiry. Moreover, the recommendations are with respect to initiation of disciplinary proceedings, which too has not been acted upon.
- 5) That para No.5 of the appeal is correct and that of reply is incorrect. Denied. There is no recommendation by the so-called one sided inquiry report regarding stoppage of salary. There is no order of termination/ dismissal of appellants.
- 6) That para No.6 of appeal is correct and that of reply is incorrect. Denied.
- 7) That para No.7 of appeal is correct and that of reply is incorrect. The hon'ble Supreme Court permitted appellant for approaching proper forum.
- 8) That para No.8 of appeal is correct and that of reply is incorrect. Denied.
- 9) That para No.9 of appeal is correct and that of reply is incorrect. Denied. moreover, the signature on appointment orders have not been sent to F.S.L. The High Court/ Supreme Court has no jurisdiction in service matters.

GROUNDS

A-L) That all grounds "A to L" of appeal are correct and those of reply are incorrect. Denied.

It is, therefore, humbly requested that appeal may please be accepted and Riaz Ali, Samina Shaukat, Abdul Salem may please be granted salaries for 34 months for which they performed duty.

> . Appellant

Through

Amjad

Supreme Court of Pakistan

AFFIDAVIT

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

Deponent

CERTIFICATE

| This is to certify that Mr. ABDUL So | PLAM | |
|--------------------------------------|----------------------------|-----------------|
| participated in Ten days Refresher | Training Course on Malaria | Microscopy held |
| from 20Th JAN 2011 | to3151 JAN 2011 | |
| | | |
| at TYPE D TORU | in Mardan. | , |



アルベルシルー Executive District Officer (HEALTH) Mardan



Dr. Emel Khan Executive Director Frontier Primary Health Care

Dr. Iftikhar Ali Project Manager





Certificate of Participation

This is to certify that Mr. IMs. ___ ABDUL SALAM

_ has attended

One Day Training on Malaria Information System (MIS) Tools

Date: 28th November, 2014

Venue: Taj Restaurant, Mardan, KPK

Organized by: Association for Community Development (ACD) in collaboration with Roll Back Malaria (RBM) & Directorate of General Health Services Khyber Pakhtunkhwa

& and

Mr. Sajjad Ahmed ACD-Peshawar District Health Officer (DHO) District Mardan, KPK





LIGHTFOR THE WORLD

Certificate of Participation In Training Workshop on Primary Eye Care at Takht Bhai Eye Hospital

30th November to 2nd December 2015

Mr./Ms.

Abdul Salam

Mr. Flda Hussain

Administrator Takht Bhai Eye Hospital

Mr. Israj Gul

Coordinator Eye Care Programs

CHEF International

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

1. Rasheed Khan Service Appeal No. 30 of 2019

2. Manzoor Badsha Service Appeal No. 31 of 2019

-3. Iftikhar Khan Service Appeal No. 32 of 2019

4. Riaz Ali Service Appeal No. 33 of 2019

5. Samina Shaukat Service Appeal No. 34 of 2019 and

· 6. Abdul Salam Service Appeal No. 35 of 2019

Versus

Respectfully Sheweth:

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PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections:-

1. That the Appellants have got neither cause of action nor locus standi to file the instant Appeals.

2. That the Appellants have filed the instant appeal just to pressurize the

respondents.

3. That the instant Appeals are against the prevailing Law and Rules.

4. That the Appeals are not maintainable in the present form and also in the

present circumstances of the issue.

5. That the Appellants have filed the instant Appeals with mala-fide intention hence liable to be dismissed.

6. That the Appellants have not come to the Tribunal with clean hands.

7. That the Appeals are time barred.

8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.

ON FACTS:

1. Para No. 1 pertains to Respondent No. 2 i.e. Agency Surgeon, Parachinar, Kurram

2. Para No. 2 pertains to Respondent No. 2 i.e. Agency Surgeon, Parachinar, Kurram

Agency.

3. In reply to Para No. 3 it is submitted that the Appellants received their salary on the basis of fake appointment letter and other fake orders, which were proved fake

after a thorough inquiry already annexed.

4. Para No. 4 is wrong, incorrect & misleading, hence denied. The inquiry report reveals that all the Applicants were called by the inquiry committee including Manzoor Badshah and others in which Manzoor Badshah Mr. Iftikhar Khan & Rasheed Khan were inquired while the rest of the Applicants do not attend the inquiry proceeding dispite directions of the inquiry committee. The inquiry committee after a thorough procedure gives their observation, suggestion and recommendation which were upheld by the competent authority. According to inquiry committee report the appointment transfer order and others orders of the appellant were found fake.

5. In reply to Para No. 5 it is stated that the salaries of the Petitioners have been

stopped in light of Enquiry Report.

- 6. Para No. 6 is correct. Petition has been dismissed by the Honorable Peshawar High Court, Peshawar.
- 7. Para No. 7 is correct. The Honorable Supreme Court of Pakistan also dismissed the case.
- 8. Para No. 8 is correct. The Appeal has been regretted in light of the order of the High Court/Supreme Court of Pakistan.
- 9. Para No. 9 is incorrect, as explained in Para No. 4 above.

ON GROUNDS:

- A. Para-A is incorrect, as explained in Para No. 4 of the Facts above.
- B. Para-B is incorrect, as explained in Para No. 4 of the Facts above.
- C. Para-C is incorrect, as explained in Para No. 4 of the Facts above.
- D. Para-D is incorrect, as explained in Para No. 4 of the Facts above.
- E. Para-E is incorrect, as explained in Para No. 4 of the Facts above.
- F. Para-F is incorrect, as explained in Para No. 4 of the Facts above.
- G. Para-G is incorrect, as explained in Para No. 4 of the Facts above.
- H. Para-H is incorrect, as explained in Para No. 4 of the Facts above.
- I. Para-I is incorrect, as explained in Para No. 4 of the Facts above.
- J. Para-J is incorrect, as explained in Para No. 4 of the Facts above.
- K. Para-K no comments.
- L. Para-L is subject to proof.

PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the instant Appeal may very graciously be dismissed with cost.

Director General Health Services, Khyber Pakhtunkhwa.

Respondent No. 01

Secretary Health, Khyber Pakhtunkhwa.

Respondent No. 03

District Health Officer Mardan.

Respondent No. 04

ENQUIRY REPORT BY THE COMMITTEE

Subject:

ENQUIRY IN TO THE FAKE APPOINTMENT OF JR PHC TECHNICIANS (MP) MALARIA SUPERVISORS

Reference: Director General Health Services Khyber Pakhtunkhwa Peshawar office order No. 4951-56/AE-VI dated 21/08/2014, the following committee was constituted

- 1. Dr. Muhammad Asif, Coordinator Public Health DHO office Peshawar.
- 2. Dr. Sartaj Khan, Deputy Director (Admin), DHS FATA Peshawar.

TORs:

- To investigate as whether they are actually appointed after observing the codal formalities or otherwise.
- To investigate the following officials who got themselves transferred on the basis of bogus office orders.

The enquiry committee enquired the following accused officials:

- a) Mr. Manzoor Badshah Jr PHC Tech (MP)/Malaria Supervisor from District Malakand to District Mardan (shown appointed on fake appointment order by Agency Surgeon SW Wana)
- b) Mr. Iftikhar Khan Jr PHC Tech (MP/ Malaria Supervisor from DGHS Peshawar to District Mardan. (shown appointed on fake appointment order by Agency
- c) Mr. Rashid Khan PHC Tech (MP) Malaria Supervisor from District Malakand to District Mardan (shown appointed on fake appointment order by Agency Surgeon Kurram Agency).

Proceedings:

To assess the appointment of the officials, who were shown to be appointed on Mr. Rashid khan, (15-04-2008 in Kurram Agency) Mr. Manzoor Badshah (12-02-2008 in SW Agency) and Mr. Iftikhar Khan (03-01-2006 SW Agency) as Malaria Supervisors BPS-09; The following investigations were carried out:

- 1. Statements of Ex-Agency Surgeons SWA and Kurram Agency regarding their Fake signature on the Fake Service books and other documents.
- 2. Investigation through relevant record regarding the appointments in DHS office FATA. Statement of the record keeper & attested by the Deputy Director (Admin) DHS FATA - Annex- B.
- 3. Statements of the DHO, Deputy DHO Mardan and concerned staff of DHO Office Mardan along with relevant record. Annex - C.
- 4. Record of salaries drawn by the officials from District Account Office Mardan, attested by DAO Mardan. Annex - D

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- 5. Checking of the record of anticorruption circle Mardan and letter from the DG Anti-corruption establishment Khyber Pakhtunkhwa to DGHS Khyber Pakhtunkhwa. Annex E
- 6. Statements along with cross examination regarding the posting / transfer of the officials concerned from the then DHO (Dr. Bakht Zada) and the present DHO (Dr. Muhammad Ali) Malakand, Ex- Office Assistant (Mr. Khaliq), present office Assistant (Mr. Ehsan), Ex- Account Assistant (Mr. Khaista Muhammad), and Junior Clerk (Mr. Ayub) along with relevant record. Annex F
- 8. Statement of Mr. Sheraz Khan, Assistant Director P III (Paramedics) Assistant Director Mr. Jamil, Assistant Director P II, Director General Health Services Khyber Pakhtunkhwa office along with the record of the dispatch registers of the concerned date of transfer orders. Annex H.
- 9. Statement and thorough cross examination of the concerned Malaria Supervisors under enquiry. Annex I.
- 10. The service books and correspondence file of 03 accused Malaria Supervisors under enquiry provided by Mr. Sheraz Khan AD P-III DGHS were thoroughly checked and returned back to him.
- 11. All the relevant informations in this particular case under enquiry were shared with Dr. Muhammad Qasim, Ex DHO Mardan and he affirmed the observations of the committee.

All the concerned offices were visited by the committee after information in written/fax letters.

Observations:

Going through all the available record, statements of the concerned officers/ officials along with cross examination the committee observed the following:

- a. Mir. Manzoor Badshah s/o Haji Lal Badshah was shown appointed as Malaria Supervisor in BPS-9 in SW Agency on 12-02-2008 and was transferred on a fake order issued from DGHS vide office order No. 1460-64/E-V dated 27-01-2011 and was adjusted on the vacant post of Jr Clinical Tech Pathology vide EDO (H) Malakand No. 432-35 dated 17/02/2011 in Malakand and he continued to draw his salary till October 2013. He was transferred on a fake order from DGHS bearing No. 29670-72/EV dated 24-09-2013 to DHO Mardan. On arrival to DHO Mardan in October 2013, he has not provided LPC from DAO Malakand and has not claimed his salaries from November 2013 till date inspite of performing his official duties (Annex-J)
- b. Mr. Iftikhar Khan s/o Said Wali was shown appointed as Malaria Supervisor BPS-9 by Agency Surgeon SW Agency on 03/01/2006 (fake order) and he was transferred to DHO Mardan through fake order vide DGHS letter No. 2790-94 / AE-VI dated 24/01/2013. His further posting is shown by DHO Mardan on 31-05-2013 with the laps of 04 months and his salary x/as started from July 2013. Annex--K

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- c. Mr. Rashid Khan s/o Rahmat Said was shown to be appointed as:Malaria Supervisor in BPS-9 on 15/04;2008 by the Agency Surgeon Kurram and was transferred to DHO Malakand on a fake transfer order from DGHS vide letter No: 1455-59/EV dated 27-01-2011. Where he continued to draw his salary till August 2013 and managed to get himself transferred to DHO Mardan on another fake order from DGHS No. 1806-9/AE-V1 Dated 19-08-2013. (Annex-L) In response to letter from DGHS bearing No: 29670-72/EV Dated 23-10-2013 the service books of Mr. Rashid Khan and Manzoor Badshah was submitted to AD P-III DGHS through special messenger Mr. Ayub Khan of the DHO Office Malakand and DHO Malakand also instructed the DAO Office for stoppage of their salaries.
- d. The transfer letters from the DGHS off all the 03 accused officials came under suspicious by Dr. Qasim the then DHO Mardan due to an abnormal long blank space before the names on each order and discrepancies in the dispatch numbers of DGHS.
- e. After receiving instructions from DGHS the DHO Mardan stopped the salaries of the accused Mr. Rashid Khan and Mr. Iftikhar Khan and deposited Rs. 92,666/-(Mr. Iftikhar Khan) and Rs.69,038/-(Mr. Rashid Khan) in to the government treasury (NBP Mardan) on proper challan.
- f. A legal notice from Mr. Iftikhar Khan and Mr. Rashid Khan was served on DHO Mardan on 07-11-2013 through Syed Ahmed Ali Shah advocate for the release for salaries, which was responded by the DHQ Mardan till the decision of enquiry DGHS Khyber Pakhtunkhwa.
- It is also worth mentioning that the statements of the accused whirl around the then office assistant Mr. Wazir Zada who died on 26-10-2013 and due to serious illness his charge was handed over to Mr. Fazal Ahad, Office assistant on 27-12-2013 but Mr. Wazir Zada was incapacitated and not performing his duties 04-05 months prior to his death due to his detoriating state of health so he should not be accused only for this engineered crime.
- h. The service books of the 03 accused malaria supervisors were found fake/bogus as per the statements of concerned agency surgeons.

From the observations by the inquiry committee it is proved that during the period shown against the appointments, no such appointments were made in the respective Agency Surgeon offices. No. codal formalities like demand by the Agency Surgeon, approval for appointment from the DHS FATA, advertisement in the press, short listing, test and interviews by the selection committee etc were observed.

It was further confirmed from the respective Agency Account Offices that no source-1 have been received from Agency Surgeon for these employees and no salaries drawn.

All the accused officials also categorically denied their appointments in the Agencies, their performance of duties and drawl of any salaries in SW and Kurrum Agencies of FATA.

The alleged transfer orders from the DGHS were traced from the record of the concerned section (P-III Paramedics). Both the ADs (Mr. Sheraz Khan P-III & Mr.

Jamil P-II) disowned their signatures on the joint order No. 1806-9/AE/VI Dated 19-08-2013 (Rashid Khan & Manzoor Badshah) & Order No. 2790-94/AE-VI Dated 24-01-2013 (Mr. Iftikhar Khan). For further confirmation the relevant dispatch register were checked and it was found that transfer order of Mr. Rashid Khan from DHO Malakand to DHO Mardan vide DGHS letter No. 1806-9/AE-VI dated 19/08/2013, the record on date: 19/08/2013 start from 15281 and end upon 15286 which do not match with the numbers of transfer orders issued on the same date from DGHS so confirmed to be fake / bogus.

The transfer order of Mr. Manzoor Badshah, vide DGHS order No. 1806-9/AE-VI dated 19/08/2013 (joint) when checked in the dispatched register of DGHS was not matching, hence confirmed to be fake and bogus.

The transfer order of Mr. Iftikhar from SW Agency to Mardan vide DGHS Order No. 20790-94/AE/E dated 24/01/2013 when checked in the dispatch register of the DGHS was found that no entry was made in the register on 24/01/2013 at all. The last running record No does not match with the S.No of the fake orders, hence proved to be fake/bogus.

It is further added that for transfer from FATA to settle area/districts, an NOC from the competent authority is mandatory, which was not accorded.

It is worth mentioning that why the source 1 for the salaries of accused Mr. Manzoor Badshah and Rashid Khan was forwarded from DHO Malakand in the absence of LPC from the concerned Agency Account Office and charge relieving certificates duly endorsed by the relevant Agency Surgeon.

Conclusion:

Keeping in view the statement of all the concerned and thorough examination of the relevant available record, the committee came to the conclusion that:

- The appointments of the concerned Malaria Supervisors Mr. Rashid Khan, Manzoor Badshah and Iftikhar khan are confirmed to be bogus and fake.
- 2. The transfer orders of the above mentioned Malaria Supervisors shown to be issued by DGHS Khyber Pakhtunkhwa are confirmed to be fake and bogus.

Recommendation:

Specific:

- 1. Since the appointment orders are fake and bogus so it is recommended that the services of the all the accused Malaria Supervisors (Mr. Rashid Khan, Mr. Manzoor Badshah and Mr. Iftikhar Khan) may be terminated with immediate effect.
- 2. The salaries (to be calculated by the concerned DHOs & DAOs Malakand & Mardan) drawn by the officials concerned may be recovered from all the responsible persons and to be deposited in Government Treasury on proper challan

- 3. Being a fraudulent case resulting in to heavy financial loss to the government ex-checker, a proper criminal or legal case may be initiated against the accused officials.
- 4. Disciplinary action against Mr. Khaista Muhammad the then Account clerk DHO Office Malakand for manipulation & facilitating the source-I of Mr. Manzoor Badshah and Mr. Rashid Khan without the LPC of the Agency Account offices resulting to the loss of public money. He should have kept the record but he failed to produce so. Appropriate action may be taken against him under revised E&D rules 2011.
- 5. For forwarding source-I of the officials concerned to the DAO Malakand and adjustment of the Malaria Supervisors (declared dying cadre in 2006) on Jr technician pathology in district Malakand without fulfilling the codal formalities, a charge sheet may be served on the ex-DHO Malakand Dr. Bakht Zada DDO.
- 6. Overriding the observations of the DAO office Malakand, the source-1 were re-submitted by the then acting DHO Dr.Tillah Muhammad when Dr. Bakht Zada DHO was abroad for performing Umrah, appropriate legal action is recommended as the officer concerned (Dr. Tillah Muhammad) has retired on 27-11-2011 from service.
- 7. Censure to Dr. Mohtaram Shah the then acting DHO Mardan for his negligence in his official responsibilities being DDO and to be held responsible for the recoveries of the salaries drawn by accused Mr. Rashid Khan & Iftikhar khan to deposit into the Government Treasury on proper challan.
- 8. Warning is recommended to be served on Dr. Abdul Khaliq DHO Mardan for retaining the accused Malaria Supervisors on his roll even after the clear instructions by the DGHS Office Khyber Pakhtunkhwa.
- 9. Warning is recommended to the concerned officials working in DHO Office Mardan for not keeping the proper record and to keep a vigilant eye to identify such like cases in future.
- 10. During the examination of the file at Anti-Corruption circle Mardan it was observed that the case was totally fraudulent and fake and the office filed the enquiry only on the basis of death of Mr. Wazir Zada the then dealing senior Clerk and statements of the accused Malaria Supervisors.

The enquiry committee observed that their findings were based only on the record provided by the DHO Office Mardan and statement of the accused. The investigation officer has not visited the relevant Agency Surgeons /

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Agency Account offices, DHO Malakand & Director General Khyber

The Director General Anti-Corruption establishment Khyber-Pakhtunkhwa may kindly be approached to direct the relevant investigation officer for a comprehensive re-inquiry of the case up to the logical & conclusive end.

General:

Preparation / maintenance of service books in a sequence of a genuine with fake signature of Agency Surgeon of their respective period putting official stamps, awarding annual increments.

Issuance of transfer orders from the DGHS office with fake signature of the relevant officers of their respective periods using the official pad of the DGHS and putting dispatch numbers in a sequence close to running numbers

Forwarding salary source and placement at the DHOs offices could not be made possible without the involvement of the staff of the Directorate and subordinate offices. There seems to be a network who is engaged in parallel administration at all levels. And the possibility of more such cases could not be ruled out.

The committee recommends a detail enquiry to dig out the network of these Black sheeps at the DGHS, Directorate FATA, Agency and District Health Offices to abolish these fraud practices bringing bad names to the offices and heavy financial losses to the public money.

The committee also recommends to design and link a system of online verification of orders issued by the Director General Health Services Khyber-Pakhtunkhwa and its

The inquiry report is submitted for onward perusal please.

Dr. Sartaj Khan Deputy Director (Admin)

DHS FATA

uhámmad Asif

Public Health Coordinator

DHO Office Peshawar

inquiry Committee Health Department Khyber-Pakhtunkhwa

Copies/record retained.

Designation: Malaria Supervisor

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Note: Deposited Govt: Treasury (Challan # 73 dated 16/6/2014) NBP Main Brach Mardan (Copy

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(15-58/14).

PESHAWAR HIGH COURT, PESH

form of order sheet

Order of other Proceedings with Signature of Judge. 19.04.2016

> Present: Mr. Mülrümmad Usman Khan Turlardi Advocate, for petitioner.

> > Syed Qaisar Ali Shah AAG, for responde

MUHAMMAD DAUD KHAN, J Through

Constitution petition, Rasheed Khan, Iftikhar Khan & Manzoor, Badshah, the petitioners seek issuance of an appropriate writ directing the respondents to release monthly salaries of petitioners being swithheld we.T 19:2013 to 1.11.2013 and also to restore their real posts/designations by keeping them continuously as regular civil servants against the posts or "Malaria

In essence, the grievance of the petitioners is that despite performing their duties as "Nialuria Supervisors" for about 5 years in the respondents' department, their services were terminated and their salaries were stopped on the allegation that they had fraudulently managed their respective appointment orders and they were also restrained from performing their duties. Hence, having no other remedy, the petitioners approached this Court by frling the instant Constitution

Supervisors

The respondents were put on notice, who filed their scomments denying the allegations of petitioners therein by stating that all the appointments and transfer orders of petitioners are bogus and fake

Arguments heard and record perused.

Anvoer

Perusid of comments submitted on behalf of respondents and other documents available on file, reveals that an inquiry committee consisting of Dr. Muhammad Asil Coordinator Public Health DHO Office, Peshawar and Dr. Sartaj Khan Deputy Diffector (Admin) DES FATA Peshawar was constituted by the order of Director General Health Services KPK, to probe into the matter regarding appointments of petitioners. As per observation of the said Committee, after recording statements of concerned officials as well as perusing the concerned record, it came to the light that say such appointinents have been made in the respective Agency Surgeon Offices nor any codal formalities in the shape of demand by the Agency Surgeon Capproval for appointment from the DHS FATA, advertisement in the press, short listing, test and interviews by the Selection Committee etc were observed nor any Source I was received from the Agency Surgeon for these employees. The concerned record was also checked and verified from the signatories of the alleged appointment letters,

> XAMINIE Peshawar High Court

transfer orders etc which were denied by the concerned officials being bogus and fake. Moreso, for transfer from FATA to settle areas an NOC from the competent authority is mandatory which was also not obtained for the said purpose making the same dubious. The material available on file further reveals that fake proceedings for forwarding Source-Lof petitioners from DHO Walakand in absence of CPC from concerned Agency Account Office and charge relieving certificates were conducted with the connivance of certain concerned officials, and salaries were drawn on the basis of said bogus proceedings, causing great loss to the Government exchequer. The petitioners failed to bring on record any. strong or cogent documentary evidence in support of their stance which could show that they have been appointed after observing all codal formalities and were wrongly restrained by the respondents from performing their duties. So when the foundation of appointments of petitioners is found cracked, then what to say about the other contentions of petitioners as it is well established proposition of law, that fraudulent act vitiate proceedings. Hence, they were rightly restrained by the respondents from performing their duties, which needs no interference by this Court.

6. For what has been discussed above, we are of the opinion that the act of petitioners regarding their

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appointment on fake appointment letters disentitles them for any relief in writ jurisdiction of this Court, therefore, this petition is dismissed in limine.

Announced. 19.4.2016.

JUDGE

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ADVOCATE
SUPREME COURT

2. Dr. Sartaj, Deputy Director (Admin), DHS FATA, Peshawar.

"A. Quyum"

Mr. Justice Gulzar Almed Mr. Justice Madbool Bagar

Magnist the order dated 19.04.2016, passed by the Peshaw High Court, Peshawar in W.P.No.3669-Por 2014

Rasheed Khan & others.

Petitioner (s)

General: Health Services KPK, Peshawar Respondent (s) Director another.

For the Petitioner (s):

Mr. Amjad Ali, ASC

Mir Adam Khan, AOR (Abscrit)

For the Covt. of KPIS

Barrister Qasim Wadood, Add! A.G. KPK "

Date of Hearing

Benengiil

<u>Talognalřegí</u> 18 99.2038 14.09.2018

ORDER,

Gulzar Ahmed, J: After arguing the mafter at some longth, learned ASC for the petitioners states that petitioners are going to avail remedy in accordance with law and does not press this petition, which is dismissed as

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ATTENDANCE ROLL FOR THE MONTH OF SEPTEMBER GS&PO.NWFP.152/EFOrm Store Jobs-2000 R

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ATTENDANCE REGISTER Attendance Role For the Month. February 2015.





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Attendance Role For the Month. APTIL 2015

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BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

S.A.No.30 of 2019

Rasheed KhanV/S... Govt. of Khyber Pakhtunkhwa and others

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth;

Preliminary objections:

All the preliminary objections are incorrect, misconceived, denied.

ON FACTS:

- 1-2) That paras No.1 and 2 of the appeal has not been denied which means admission.
- 3) That para No.3 of appeal is correct and that of reply is incorrect. Denied.

Appellant has not been associated with inquiry and no opportunity of cross examination has been afforded and no charge sheet, statement of allegation has been given. Moreover, it is not a single appointment order which could be termed as fake on the basis of probe findings inquiry. In fact, all those who have signed the appointment orders, posting orders, LPCS

etc are required to be arrayed as an accused. 34 months salary of Riaz Ali, Samina Shaukat, Abdul Salam are outstanding inspite of duty performed.

- That para No.4 of appeal is correct and that of reply is incorrect. Denied. Without proper charge sheet/ statement of allegation, the inquiry is probe finding only. There is no service of summon upon Riaz Ali, Samina Shaukat, Abdul Salam. There is no authorization, scope of the so-called inquiry. Moreover, the recommendations are with respect to initiation of disciplinary proceedings, which too has not been acted upon.
- 5) That para No.5 of the appeal is correct and that of reply is incorrect. Denied. There is no recommendation by the so-called one sided inquiry report regarding stoppage of salary. There is no order of termination/ dismissal of appellants.
- 6) That para No.6 of appeal is correct and that of reply is incorrect. Denied.
- 7) That para No.7 of appeal is correct and that of reply is incorrect. The hon'ble Supreme Court permitted appellant for approaching proper forum.
- 8) That para No.8 of appeal is correct and that of reply is incorrect. Denied.
- 9) That para No.9 of appeal is correct and that of reply is incorrect. Denied. moreover, the signature on appointment orders have not been sent to F.S.L. The High Court/ Supreme Court has no jurisdiction in service matters.

GROUNDS

A-L) That all grounds "A to L" of appeal are correct and those of reply are incorrect. Denied.

It is, therefore, humbly requested that appeal may please be accepted and Riaz Ali, Samina Shaukat, Abdul Salem may please be granted salaries for 34 months for which they performed duty.

Appellant

Through

Amjad.

Supreme Court of Pakistan

<u>AFFIDAVIT</u>

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

Deponent-

BEFORE THE KHYBER PAKHTUNKE WA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 30 /2018



1782 21-12-20

Rasheed Khan S/o Rahmat Said R/o Khan Sher Killi P/O Gaddar, Tehsil & District Mardan, working and posted as Malaria Supervisor (BPS-9), attached to BHU Fatma, under the Direct Control/ Command of the Executive District Officer Health, Mardan.

...Appellant

VERSUS

- 1) Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- 2) Agency Surgeon, Parachinar Kurram Agency-
- 3) Govt. of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.

G. D. H. O Health Mardan......Respondents

31

APPEAL U/S 4 OF KP SERVICE
TRIBUNAL ACT, 1974 AGAINST
ORAL TERMINATION ORDER AND
APPELLATE ORDER DATED
28.11.2018 UPON DEPARTMENTAL
APPEAL DATED 19.11.2018,
WHEREIN DEPARTMENTAL APPEAL
HAS BEEN DISMISSED, WHICH IS
ILLEGAL AGAINST LAW AND FACTS.

PRAYER:

Re-submitted to -day and filed.

Registrar 9 1 19

On acceptance of this appeal, the impugned oral termination order and appellate order dated 28.11.2018 may please be set-aside and appellant may please be reinstated in service with all back benefits.

ATTORITY TO SERVICE TO

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL **PESHAWAR**

SERVICE APPEAL NO. 30/2019

Date of institution ... 21.12.2018

Date of judgment ... 10.03.2020

Rasheed Khan S/o Rahmat Said R/o Khan Sher Killi P/o Gaddar, Tehsil & District Mardan, Working and posted as Malaria Supervisor (BPS-9), attached to BHU Fatma, under the Direct Control/Command of the Executive District (Appellant) Officer Health, Mardan

VERSUS

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

2. Agency Surgeon, Parachinar Kurram Agency.

3. Government of Khyber Pakhtunkhwa though Secretary Health, Civil Secretariat, Peshawar.

4. District Health Officer Health Mardan.

(Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST ORAL TERMINATION ORDER AND APPELLATE ORDER DATED 28.11.2018 UPON DEPARTMENTAL APPEAL DATED 19.11.2018, WHEREIN DEPARTMENTAL APPEAL HAS BEEN DISMISSED, WHICH IS ILLEGAL AGAINST LAW AND FACTS.

Mr. Amjad Ali (Mardan), Advocate.

Mr. Riaz Ahmad Paindakheil, Assistant AG ...

For appellant. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

MR. HUSSAIN SHAH

MEMBER (JUDICIAL) MEMBER (EXECUTIVE)

JUDGM<u>ENT</u>

MUHAMMAD AMIN KHAN KUNDI, MEMBER: -

Our this

judgment shall disposed of instant service appeal as well as

Service Appeal No. 31/2019 titled "Manzoor Badshah Versus Director I. General Health Services, Khyber Pakhtunkhwa, Peshawar and three others"

- II. Service Appeal No. 32/2019 titled "Iftikhar Khan Versus Director General Health Services, Khyber Pakhtunkhwa, Peshawar and three others"
- III. Service Appeal No. 33/2019 titled "Riaz Ali Shah Versus Director General Health Services, Khyber Pakhtunkhwa, Peshawar and three others"
- IV. Service Appeal No. 314/2019 titled "Samina Shoukat Versus Director General Health Services, Khyber Pakhtunkhwa, Peshawar and three others"
- V. Service Appeal No. 35/2019 titled "Abdul Salam Versus Director General Health Services, Khyber Pakhtunkhwa, Peshawar and three others" as common question of law and facts are involved in all the appeals.
 - 2. Counsel for the appellants and Mr. Riaz Ahmad Paindakheil,
 Assistant Advocate General alongwith Mr. Hazrat Shah,
 Superintendent for the respondents present. Arguments heard and record perused.
 - 3. Brief facts of the cases as per presents appeals are that the appellant Mst. Samina Shoukat was appointed as LHV while the other appellants were appointed as Malaria Supervisors (BPS-9) and were transferred to District Mardan. They were receiving their salaries from the date of their appointment but later on the appellants were stopped from performing their duties immediately after October 2014 and their salaries were also stopped. The appellants approached the worthy Peshawar High Court Peshawar for release of their salaries through Writ Petition but their Writ Petitions were dismissed. Some of the appellants also challenged the judgment of the Worthy Peshawar High Court Peshawar before the

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august Supreme Court of Pakistan but their Civil Petition was also dismissed vide order dated 14.09.2018. Thereafter, the appellants filed departmental appeals on 19.11.2018 & 27.11.2018 which were also dismissed vide order dated 28.11.2018 hence, the present service appeals on 21.12.2018.

- Respondents were summoned who contested the appeals by filing written reply/comments.
- Learned counsel for the appellants contended that the appellants were appointed in the year 2007/2008 as Malaria Supervisors/LHV and were performing their duties regularly. It was further contended that the appellants were also receiving salaries regularly. It was further contended that the appellants were transferred to district Mardan by the competent authority but the respondent-department conducted ex-parte inquiry at the back of the appellants and on the basis of said ex-parte inquiry, the appellants were orally stopped from performing their duties and the respondent-department also stopped their salaries immediately after October 2014, therefore, the appellants approached the Worthy Peshawar High Court Peshawar for release of their salaries but the Writ Petitions of the appellants were dismissed. It was further contended that some of the appellants challenged the judgment of Publishmenthe Worthy Peshawar High court Peshawar before the august Supreme Court of Pakistan through civil petition but the same was

TESTED

ಕ್ರಾಜ್ಯ ಪ್ರಕ್ಷಿಸ್ತರ್ ಪ್ರಕ್ಷಿಸಿಕ್ಕಾರ್ ಪ್ರಕ್ಷಿಸಿಕ್ಕಾರ್ ಪ್ರಕ್ಷಿಸಿಕ್ಕಾರ್ ಪ್ರಕ್ಷಿಸಿಕ್ಕಾರ್ ಪ್ರಕ್ಷಿಸಿಕ್ಕಾರ್ ಪ್ರಕ್ಷಿಸಿ

also dismissed on the ground that the petitioners are going to avail remedy in accordance with law and does not want to press the petition vide order/judgment dated 14.09.2018. It was further contended that thereafter, the appellants filed proper departmental appeals but the same were also rejected hence, the present service

4

appeals. It was further contended that the appellants were orally stopped from performing their duties and no termination or removal order was passed by the competent authority. It was further contended that the appellants had more than ten years service in their credit but the same was also not considered by the respondent-department. It was further contended that neither charge sheet, statement of allegation were served upon the appellants nor proper inquiry was conducted nor the appellants were associated in any inquiry proceeding nor the appellants were issued any show-cause notice, therefore, the impugned orders are illegal and liable to be set-aside and prayed for acceptance of appeals.

6. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellants and contended that neither any advertisement was published by the respondent-department for the appointment on the said posts nor the appellants were appointed by the competent authority nor any codal formalities before their appointments were fulfilled rather the appellants received their salaries on the basis of fake appointment order. It was further contended that the appellants were transferred to District Mardan but the same was also proved fake through inquiry, It was further contended that the appellants were called by the inquiry committee and they were fully associated in the inquiry proceeding. It was further contended that as per inquiry report, the appointment and transfer orders of the appellants were found fake. It was further contended that the

worthy High Court has also dismissed the Writ Petitions of the appellants Iftikhar Khan, Manzoor Badshah and Rasheed Khan on the basis of inquiry report and the august Supreme Court of Pakistan

also dismissed their civil petition, therefore, the present services appeals are hit by rule 23 of Khyber Pakhtunkhwa Service Tribunal Rules 1974 therefore, it was further contended that their departmental appeals are also time barred and prayed for dismissal of appeals.

Perusal of the record reveals that the appellants were serving in Health Department. They were transferred to District Mardan. After their transfer a separate inquiry was constituted regarding the appointment and transfer order of the appellants Iftikhar Khan, Manzoor Badshah and Rasheed Khan and as per inquiry report they were properly associated in the said inquiry by the inquiry committee namely Dr. Muhammad Asif, Coordinator Public Health DHO office Peshawar and Dr. Sartaj Khan, Deputy Director (Admin), DHS FATA Peshawar and after examining the relevant record it was concluded that the appointment of the concerned Supervisors Iftikhar Khan, Manzoor Badshah and Rasheed Khan are confirmed bogus and fake and the transfer orders of the above mentioned Malaria Supervisors shown issued by the Director General Health Services are fake and bogus vide inquiry report dated 29.10.2014. The record further reveals that another inquiry committee was conducted by the District Health Officer Charsadda against the appellant Riaz Ali, Abdul Salam, Samina Shoukat, Rasheed Khan and others wherein the inquiry officer also recommended that the appointment of staff who were appointed in

Rasheed Khan and others wherein the inquiry officer also recommended that the appointment of staff who were appointed in North Waziristan and transferred to Mardan are absolutely fake because there is no record of their appointment, salary drawn at the limit the salary drawn at the faithful Agency Account Office and LPC from the concerned AAO as well as

FATA Secretariat vide inquiry report (undated). The record further

reveals that the worthy High Court has also dismissed the Writ Petition of the appellants on merit vide order dated 19.04.2016. Operative part of the judgment of Writ Petition decided on 19.04.2016 is reproduced as under.

"Perusal of comments submitted on behalf of respondents and other documents available on file, reveals that an inquiry committee consisting of Dr. Muhammad Asif Coordinator of Public Health (DHO) Office Peshawar and Dr. Sartaj Khan Deputy Director (Admin) DHS FATA Peshawar was constituted by the order of Director General Health Services KPK, to probe into the matter regarding appointments of petitioners. AS per observation of the said Committee, after recording statements of concerned officials as well as perusing the concerned record, it came to the light that no such appointments have been made in the respective Agency Surgeon Offices nor any coal formalities in the shape of. demand by the Agency Surgeon, approval for DHS ·the . from appointment advertisement in the press, short listing, test and interviews by the Selection Committee etc were observed nor any source-I was received from the Agency Surgeon for these employees. The concerned record was also checked and verified from the signatories of the alleged appointment letters, transfer orders etc which were denied by the concerned officials being bogus and fake. Moreso, for transfer form FATA to settle areas, an NOC from the competent authority is mandatory which was also not obtained for the said purpose making the same dubious, The material available on file further reveals that fake proceedings for forwarding Source-I of petitioners from DHO Malakand in absence of LPC from concerned Agency Account Office and charge relieving conducted with were certificates connivance of certain concerned officials and salaries were drawn on the basis of said bogus great loss to proceedings, causing Government exchequer. The petitioners failed to bring on record any strong or cogent documentary evidence in support of their stance which could show that they have been appointed after observing all codal formalities restrained were wrongly respondents from performing their duties. So the foundation of appointments petitioners is found cracked, then what to say

Mommin 10.3.2020

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about the other contentions of petitioners as it is well established proposition of law that fraudulent act vitiate all proceedings. Hence, they were rightly restrained by the respondents from performing their duties, which needs no interference by this Court.

For what has been discussed above, we are of the opinion that the act of petitioners regarding their appointment on fake appointment letters disentitles them for any relief in writ jurisdiction of this Court, therefore, this petition is dismissed in limine."

8. Meaning thereby that the Writ Petition of the appellants was dismissed on merit therefore, the present service appeals are also hit by rule 23 of Khyber Pakhtunkhwa Service Tribunal Act, 1974. The departmental appeals of the appellants are also badly time barred. As such, the appeals have no force which are hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 10.03.2020

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

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