

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

In re:
SA No. 381 /2023

Diary No. 3999
Dated 2/3/2023

Zulfiqar ul MulkAppellant

Versus

Govt. of KPK through Secretary
Elementary & Secondary Education and others ..Respondents

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Dated: 03.02.2023

Appellant
Through


Amjad Ali (Mardan)
Advocate Supreme Court

(1)

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In re:

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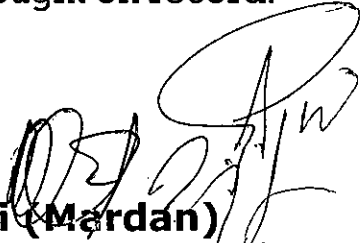
Elementary & Secondary Education and others ..Respondents

*APPLICATION FOR PLACING ON FILE
DEPARTMENTAL APPEAL FILED BY
APPELLANT DATED 18.02.2023
AGAINST THE TRANSFER ORDER
DATED 10.02.2023*

Respectfully Sheweth;

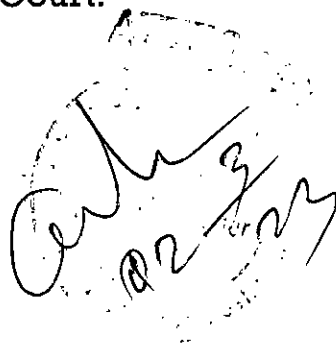
- 1) That the above tilted case is pending before this hon'ble Court, which is fixed for 08.03.2023 before the Chairman Bench.
- 2). That through instant application, the appellants want to place on certain necessary documents, which were not available at the time of filing of titled revision petition.

It is, therefore, humbly prayed that the attached documents may graciously be brought on record.

Appellant
Through 
Amjad Ali (Mardan)
Advocate Supreme Court

Affidavit

I, do hereby solemnly affirm and declare on oath that contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


02/03/2023

DEPONENT 

To
The Worthy Chief Minister,
Khyber Pakhtunkhwa.

SUBJECT: Departmental appeal/review against the transfer order dated 10/02/2023 passed by competent authority/Secretary E&SED wherein Zahid Muhammad has been posted against the post of District Education Officer (M) Mardān which has already been occupied by the appellant vide order dated 20th January 2023 of the competent authority (i.e Chief Minister KP) which is illegal against law and facts without lawful authority, void ab initio and liable to be set aside

Respected Sir,
Appellant humbly submits as under:

1. That appellant is a permanent resident of District Nowshera.
2. That appellant has performed his duty as District Education Officer to the entire satisfaction of his superiors and there is no complaint against the appellant in the past.
3. That a complaint dated 01/06/2020 was lodged against the appellant by a Member of the Provincial Assembly namely Maulana Hidayat ur Rehman on his letter pad that the appellant has not complied with his directions for appointment of class-IV amongst the land donors in Chitral while serving as District Education Officer (M) Chitral.
4. That a fact finding report was given on 16/11/2020 wherein appellant was recommended for a minor penalty of warning to be careful for negligence in future.
5. That the worthy Chief Secretary KP in violation of the recommendation of the fact finding inquiry report dated 16/11/2020 and without asking for another inquiry, issued a charge sheet mentioning the same charges wherein appellant was recommended for warning to be careful in future as not to repeat such negligence in future.

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6. That inquiry officers were appointed vide order dated 22th September 2021.
7. That appellant submitted a detailed reply to the charge sheet.
8. That the inquiry committee conducted the inquiry in question answer form which is against the famous judgment of the Honorable Supreme Court of Pakistan reported in 1993 SCMR 1440.
9. That during disciplinary proceedings, appellant was posted as District Education Officer (M) Mardan vide posting order dated 29/11/2021.
10. That a show cause notice dated 28/02/2022 was issued by the worthy Chief Minister wherein a major penalty of removal from service was proposed.
11. That appellant properly replied to the show cause notice.
12. That vide notification/order dated 1st December 2022, the worthy Chief Minister KP imposed major penalty of compulsory retirement upon the appellant.
13. That appellant filed review petition dated 03/12/2022 before the competent authority/reviewing authority (i.e worthy Chief Minister KP) which is dispatched through TCS wherein the penalty of compulsory retirement is modified to withholding of two annual increments for two years whereas specifically ordering appellant as now District Education Officer (M) Mardan with immediate with order/notification dated 20th January 2023.
14. That appellant continued his duty as District Education Officer (M) Mardan in pursuance of the order/notification dated 20th January 2023 passed by the worthy Chief Minister KP. **(Copy of the order/notification dated 20th January 2023 is attached as Annexure A)**
15. That to the utter shock and dismay of the appellant, the Mr Zahid Muhammad has been posted against the post occupied by the appellant from the post of DEO(M) Bannu vide order dated 10/02/2023 by the Secretary Education which is against the order dated 20th January 2023 of the competent authority (i.e worthy Chief


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Minister) wherein appellant has been declared as District Education Officer (M) Mardan with immediate effect. **(Copy of the order dated 10/02/2023 is attached as Annexure B)**

16. That posting order dated 10/02/2023 passed by competent authority/Secretary E&SED regarding posting of Zahid Muhammad from DEO(M) Bannu against the filled vacancy by the appellant is illegal against law and facts on the following grounds:

GROUND

- A. Because appellant has performed duties to the entire satisfaction of his superiors and there is no complaint against the appellant.
- B. Because appellant has served the Department for more than 33 years to the entire satisfaction of his superiors and there is no complaint against the appellant in the past.
- C. Because it is strange that the worthy Chief Minister has ordered appellant to be the DEO(M) Mardan in his order dated 20th January 2023 in the heading of the order, in the second para of the order and even in the last para of the order as DEO(M) Mardan with immediate effect then posting of respondent no 5 by respondent no 4 vide order dated 10/02/2023 against the post of DEO(M) Mardan which is held by the appellant is certainly illegal.
- D. Because neither appellant nor respondent has completed his normal tenure of posting as per transfer policy in their respective stations.
- E. Because the impugned transfer/posting order dated 10/02/2023 is in contravention of the transfer policy of the Provincial Government wherein it is specifically provided that posting/transfer shall not be misused/abused to victimize a civil servant. The relevant clause is reproduced as under: **(Copy of the transfer policy is attached as Annexure C)**

"i). All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants."


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F. Because appellant is victimized only due to a civil dispute between appellant and respondents wherein the Honorable Peshawar High Court Dar Ul Qaza Bench had restrained the respondents from interfering in the marriage ceremony of the son of the appellant and had also left the appellant at liberty to file suit for damages against the respondents (**Copy of the writ petition along with judgment is attached as Annexure D**)

G. Because the appellant has not completed his tenure at his existing station and therefore the impugned transfer being pre-mature is illegal and against the transfer policy. The relevant clause is reproduced as under:

"iv). Existing tenure of posting/transfer of three

(03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas."

H. Because while making transfer orders, the authority has to look into the following factors:

" xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:

a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.

b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest."

In the instant case, the performance of the appellant has been satisfactory and the tenure of the appellant is not complete at his existing station

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and therefore the impugned transfer is in contravention of the clear policy of transfer of KP Government.

- I. Because impugned transfer orders are the result of political pressure which has been consistently deprecated by this Honorable Tribunal as well as the Honorable Supreme Court of Pakistan.
- J. Because the impugned posting order is in sheer violation order passed by the worthy Chief Minister and is therefore against the service decorum and service discipline and even the Secretary E&SED has made himself vulnerable to disciplinary proceedings.
- K. Because once the outcome of the representation/review to the worthy Chief Minister is culminated in the shape of order dated 20th January 2023 then under no authority of law, cannon and principle of any law, the worthy Secretary can bypass and derogate the order passed by the worthy Chief Minister' in appellate jurisdiction/reviewing jurisdiction.
- L. Because the Executive order of the Secretary can't be equated with the quasi-judicial order passed by the Chief Minister KP under the KP E&D Rules 2011.
- M. Because the worthy Chief Minister has clarified in the order dated 20th January 2023 in clear terms that appellant is now District Education Officer (M) Mardan in three places in the order.
- N. Because the file of the appellant for adjustment has been deliberately placed in missing files despite the File Tracking System (FTS).
- O. Because impugned order is the result of malice and is totally a void order.
- P. Because void order has got no legal status and can't be implemented/obeyed.
- Q. Because impugned order is without lawful authority.
- R. Because the authority competent under the transfer policy to post out/transfer officers in BPS-17 & above is the Provincial Government. Provincial Government is defined as Chief Minister along with his cabinet as per the famous judgment in the case of Mustafa Impex


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reported in PLD 2016 SC 808 read with Article 129 of the Constitution of Pakistan 1973. The instant transfer order is passed by incompetent authority as it has not been passed by the Provincial Government

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S. Because the Departmental Appeal/review is within time.

T. Because giving effect to impugned void order means down-throdding the whole transfer policy.

PRAYER:

It is therefore humbly prayed that on acceptance of this departmental appeal, the impugned transfer/posting order dated 10/02/2023 passed by Secretary E&SED may please be declared as void, illegal without lawful authority, coram non judice and of no legal effect being in contravention of the order dated 20th January 2023 passed by the worthy Chief Minister KP and consequently may please be set aside and appellant may please be permitted to continue his duty as DEO(M) Mardan.

(Appellant)

Zulfiqar Ul Mulk (DEO (M) Mardan)
S/O Ihsan Uddin
R/O Mohallah Ali Garh, Post Office
Khas, Akora Khattak Tehsil and
District Nowshera

Dated: 18/02/2023

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