

S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	18.10.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO. 877/2015 (Waqar Ahamd-vs- Govt: of Khyber Pakhtunkhwa through Secretary Higher Education, College Directorate, and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH , MEMBER:</u></p> <p>Appellant with counsel (Mr. Amjad Ali, Advocate) and Mr. Usman Ghani, Sr. GP for respondents present.</p> <p>2. Appointed as Naib Qasid(BPS-01) in the Govt: Degree College Shewa(Swabi) vide order dated 03.01.2015, The said order was cancelled vide impugned order dated 03.04.2015, hence the appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p> <p>3. Arguments heard and record perused.</p> <p>4. Learned counsel for the appellant in the light of materials available on file submitted that the appellant being duly recommended by the Departmental Selection Committee for appointment as Naib Qasid, the appellant was accordingly appointed. He also submitted arrival report so much so that his salary also started. He further argued that the impugned order is quite unlawful for the reason that no any notice or charge sheet was issued to the appellant and that no reason whatsoever has been given</p>

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in the impugned order for cancellation of the appointment order. He submitted that the impugned order is arbitrary, whimsical and based on malafide in order to create post for the blue eyed. He submitted that the appellant may be reinstated into service with all back benefits.

5. Learned Senior Government Pleader resisted the appeal by stating that the present appeal is not competent for the reason that departmental appeal dated 16.04.2015 of the appellant was rejected on 29.04.2015 which order has not been challenged in this appeal. He further submitted that as no minutes of Departmental Selection Committee were submitted to the high ups therefore, the appellant cannot be stated to have been recommended by the Departmental Selection Committee. He submitted that the appeal may be dismissed.

6. After a careful perusal of the record and hearing pro & contra arguments, we noted that the appellant was duly recommended for selection by Departmental Selection Committee per appointment letter so much so that the appellant in Para-4 of his appeal he has given names of Members of the Departmental Selection Committee. It was not shown that the appellant lacked in criteria for the post in question. We are of the considered view that the principle of locus-poenitentiae is fully applicable in this case. The respondents could not show that when departmental appeal of appellant was rejected so the same was communicated to the appellant. Copy of the said order dated 29.04.2015 is also available on file which shows that the reason given in the same is the same lack of recommendation of the Departmental Selection Committee as in the original order, therefore, this service appeal is not incompetent on the ground that the appellant did not challenge order dated 29.04.2015 on his departmental appeal. Upshot of the foregoing is that the original impugned

order dated 03.04.2015 as well as appellate order dated 29.04.2015 both are not standing on legal firm grounds. The same are liable to be set aside. The same are set aside and the appellant is reinstated into service with all back benefits. The appeal is accepted in the above terms. Parties are left to bear their own cost. File be consigned to the record room.



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

ANNOUNCED
18.10.2016

31.08.2016

Agent to counsel for the appellant Mr. Ziāullain GP for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 18.10.2016 before D.B.

31.08.2016

Counsel for the appellant and Mr. Ziāullain GP for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 18.10.2016 before D.B.

31.08.2016

Counsel for the appellant and Mr. Ziāullain GP for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 18.10.2016 before D.B.

Chairman

31.08.2016

Counsel for the appellant and Mr. Ziāullain GP for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 18.10.2016 before D.B.

31.08.2016

Counsel for the appellant and Mr. Ziāullain GP for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 18.10.2016 before D.B.

31.08.2016

Counsel for the appellant and Mr. Ziāullain GP for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 18.10.2016 before D.B.

26.11.2015

Appellant in person and Mr. Murad Khan, Supdt. alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 24.12.2015 before S.B. The restraint order shall continue.


Chairman

24.12.2015

Since 24.12.2015 has been declared as Public Holiday therefore, the case is adjourned to for the same 1.3.2016.


Reader

01.03.2016

Appellant in person and Mr. Irfan, AD alongwith Addl: A.G for respondents present. Written reply by respondents No. 1 and 2 submitted. The learned Addl: AG relies on the same on behalf of respondent No. 3 while there is no need for submission of written statement by respondent No. 4. The appeal is assigned to D.B for rejoinder and final hearing for 9.6.2016.


Chairman

09.06.2016

Appellant in person and Mr. Murad Khan, Superintendent alongwith Addl: AG for respondents present. Rejoinder submitted, copy whereof handed over to learned Addl: AG. To come up for arguments on 30.08.2016 before D.B.


MEMBER


MEMBER

11.08.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was appointed as Class-IV employee in the prescribed manners where-after he joined his assignment and performed duties and received salary but vide impugned order the appointment order of the appellant was unlawfully cancelled on 3.4.2015 regarding which he preferred departmental appeal on 16.4.2015 which was not responded and hence the instant service appeal on 5.8.2015.

That after the appointment of the appellant and performance of duties including receipt of salary a vested right had accrued to the appellant which could not be unilaterally taken away by cancelling interview conducted by the competent authority.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 12.10.2015 before S.B. Notice of stay application be also issued for the date fixed. Till further orders the vacancy fallen vacant and previously occupied by the appellant shall not be filled in.

App. Deposited
Security & Process Fee


Chairman

12.10.2015

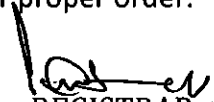

Appellant with counsel and Mr. Riaz Ali Khan, AD (lit.) alongwith Addl. A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 26.11.2015 before S.B. The restraint order shall continue.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 877 /2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	05.08.2015	<p>The appeal of Mr. Waqar Ahmad presented today by Mr. Amjid Ali Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	11-8-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>11-8-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 877 /2015

Waqar Ahmad.....Appellant

VERSUS

Govt of KPK and others.....Respondents

INDEX

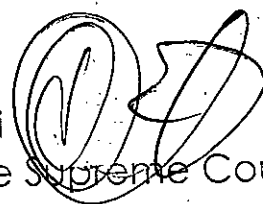
S.No	Description of Documents	Annex	Pages
1.	Grounds of service appeal with affidavit		1-6
2.	Application for interim relief with affidavit		7-8
3.	Addresses of Parties		9
4.	Copy of Registration Card	A	10
5.	Copy of call letter is	B	11-12
6.	Copy of appointment order dt.03.01.2015	C	13
7.	Copy of medical certificate	D	14
8.	Copy of pay slips	E	15
9.	Copy of order dt.03.04.2015	F	16
10.	Copy of departmental appeal	G	17-19
11.	Wakalat Nama		20

Handwritten signature

Appellant

Through

Amjad Ali
Advocate Supreme Court
At Mardan
Cell: 0321-9882434



Date: 5/8/2015

(1)

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 877 /2015

Waqar Ahmad S/o Ghani Rehman
R/o Village Shewa, Mohallah Ibrahim Khel,
Tehsil and District, Swabi.....Appellant

**A.W.F. Province
Service Tribunal**

Diary No. 937

Dated 05-8-2015

V E R S U S

1. Govt of KPK,
Through Secretary Higher Education,
College Directorate, Peshawar
2. Director of Education (Higher Education),
Civil Secretariat, Peshawar
3. Principal,
Govt Degree College, Shewa,
District Swabi
4. Manager Employment Exchange,
District Swabi.....Respondents

Appeal u/s 4 of the KPK Service Tribunal Act, 1974 against the cancellation order dt.03.04.2015 of respondent No.3 and order dt.26.03.2015 of respondent No.2, which is illegal, against law and facts.

~~Waqar Ahmad~~
~~5/8/15~~

Prayer in Appeal:

On acceptance of this appeal, cancellation order dt.03.04.2015 of respondent No.3 and order dt.26.03.2015 of respondent No.2 may please be set aside and appellant may please be reinstated in service with all back benefits.

Respectfully Sheweth:

Brief facts giving rise to the appeal are as under:

1. That respondent invited names of eligible and interested persons for appointment as Class-IV, from the office of Manager Employment, Exchange Swabi.
2. That name of appellant alongwith other was forwarded by respondent No.4 to respondent No.3.
3. That appellant is duly registered with the respondent No.4. (Copy of Registration Card is Annexure "A").
4. That Departmental Selection Committee was constituted which comprises of:
 - a. Muhammad Niaz Khan Assistant Prof.
 - b. Abid Hussain, Lecturer
 - c. Javed Akbar S.O Colleges as Members.

However, copy of the same is not provided to appellant inspite of repeated requests.

5. That call letter was issued vide letter dt.26.12.2014 for interview. (Copy of call letter is Annexure "B").
6. That in consequence of recommendation of DPC, appellant is appointed vide order dt.03.01.2015. (Copy of appointment order dt.03.01.2015 is Annexure "C").
7. That appellant was medically examined and found fit. (Copy of medical certificate is Annexure "D").
8. That service book was prepared.
9. That appellant joined service, performed duty for 3 months to the entire satisfaction of respondents.
10. That salaries for 3 months was also given to the appellant. (Copy of pay slips is Annexure "E").
11. That interview/ appointment order of appellant is cancelled vide letter dt.03.04.2015, on the direction of respondent No.2, which is appellate authority through his letter No.7925 dt.26.03.2015, which is illegal, against law and facts. (Copy of order dt.03.04.2015 is Annexure "F").

12. That appellant filed departmental appeal dt.06.04.2015 through registered post but in vain as appellate authority has already issued order.

(Copy of departmental appeal *Annexure - G*)

13. That order dt.03.04.2015 and 26.03.2015 are illegal, against law and facts, on the following grounds:

GRUNDS:

- A. Because the impugned orders are illegal, against law and facts.
- B. Because principle of locus ponitentiae is applicable to the case of appellant.
- C. Because appointment order has been passed after al formalities.
- D. Because there is no reason for cancellation of impugned order.
- E. Because appellate authority directed for cancellation of appointment order, thus, original appointing authority did not use its independent mind.

- F. Because after appointment, taking over charge, good performance, appellant cannot be terminated from service without reason to E&D Rules, 2011.
- G. Because impugned orders are without any reason, thus, violative of Section 24-A of General Clauses Act.
- H. Because there is no fault of appellant after accepting recommendation of Departmental Selection Committee in the shape of appointment and practical effect in the shape of service/ salary.
- I. Because impugned orders are void.

It is, therefore, most humbly prayed that on acceptance of this service appeal, cancellation order dt.03.04.2015 of respondent No.3 and order dt.26.03.2015 of respondent No.2 may please be set aside and appellant may please be reinstated in service with all back benefits.

[Handwritten signature]

Appellant

Through

[Handwritten signature]

Amjad Ali
Advocate Supreme Court
At Mardan

Date: 5/8/2015

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

6

Service Appeal No. _____/2015

Waqar Ahmad.....Appellant

VERSUS

Govt of KPK and others.....Respondents

AFFIDAVIT

I, Waqar Ahmad S/o Ghani Rehman R/o Village Shewa, Mohallah Ibrahim Khel, Tehsil and District, Swabi, do hereby solemnly affirm and declare on oath that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Waqar Ahmad
DEPONENT

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

7

Service Appeal No. _____/2015

Waqar Ahmad.....Applicant/ Appellant

V E R S U S

Govt of KPK and others.....Respondents

**Application for restraining the respondents
from stopping appellant from performance
of duty, till the final disposal of the
accompanying appeal.**

Respectfully Sheweth:

1. That the above noted service appeal is being filed before this Hon'ble Tribunal, in which no date of hearing has yet been fixed.
2. That the applicant/ appellant has got a good prima facie case in his favour, and is sanguine about its success.
3. That the balance of convenience also lies in favour of the applicant/ appellant.
4. That if the respondents are not restrained from stopping appellant from performance of duty, the applicant/ appellant would sustain irreparable loss.

5. That the facts and grounds of the accompanying service appeal may kindly be read as an integral part of this application.

It is, therefore, respectfully prayed that on acceptance of this application, the respondents may kindly be restrained from stopping applicant/ appellant from performance of duty till the final decision of the case.

21/6/15

Applicant/ Appellant

Through

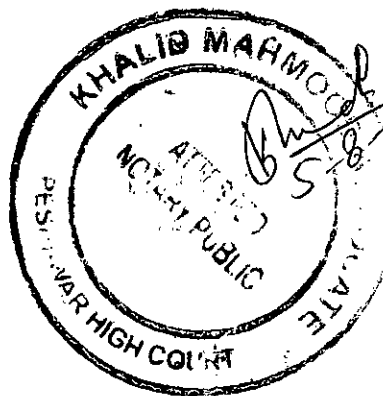
Amjad Ali Mardan

Advocate Supreme Court
At Mardan

Date: 5/8/2015

AFFIDAVIT

I, Waqar Ahmad S/o Ghani Rehman R/o Village Shewa, Mohallah Ibrahim Khel, Tehsil and District, Swabi, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



21/6/15
DEPONENT

(9)

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2015

Waqar Ahmad.....Appellant

V E R S U S

Govt of KPK and others.....Respondents

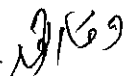
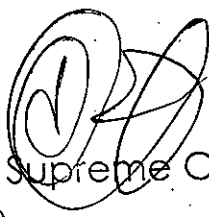
ADDRESSES OF PARTIES

APPELLANT

Waqar Ahmad S/o Ghani Rehman
R/o Village Shewa, Mohallah Ibrahim Khel,
Tehsil and District, Swabi

RESPONDENTS

1. Govt of KPK Through Secretary Higher Education,
College Directorate, Peshawar
2. Director of Education (Higher Education),
Civil Secretariat, Peshawar
3. Principal,
Govt Degree College, Shewa,
District Swabi
4. Manager Employment Exchange, District Swabi

Through  Appellant
Amjad Ali 
Advocate Supreme Court
At Mardan

Date: 5/8/2015

TEVTA
KHYBER PAKHTUNKHWA

استاد اے ایم اے ٹی سی کراچی

Amr A
Amr A
Amr A
Amr A
Amr A

O.P.S.S
SERVICE

UN PAID

Amr A (10)

ضروری

جن اسمیروادوں کے پاس سفارشی کارڈ نمبر (X) موجود نہ ہو
ان کو ایم ای ٹی سی کراچی کا نمبر کرڈ تصدیق کیا جائے۔

۲۴ دسمبر ۱۹۸۱ء ولایت خٹیا الرحمن
مدرسہ تیسرا کلاں آئی/ان/۱۵۷۴۸۱۷ ۲۴ دسمبر ۱۹۸۱ء
تاریخ ۱۱/۱۵/۱۹۸۱ء

Employer
Manager
Teacher
Employer
Smt



۱۵ نومبر ۱۹۸۱ء

جس آپ کو کلاسز میں بلجائے تو فوراً منسلک جوابی کارڈ سے ایم ای ٹی سی کراچی
کو مطلع کریں اس کارڈ پر کٹ لگانے کی ضرورت نہیں۔

مذکورہ جانا سبج سنا حسب
ایم ای ٹی سی کراچی

Office of the principal
G.D.C Shewa (Swabi)
No: 996 Dtd 26/12/14

Ann, B

(11)

To,

The *Muqar Ahmad s/o. Ghani-ur-Rahman*
Address *Moh. Ibrahim Ichait, Shewa (Swabi)*

Subject: Call letter for interview for the post of Class IV
Sweeper/Naib Qasid.

Memo:

Reference the Manager Employment Exchange Swabi you are hereby
informed to appear the interview committee on 31/12/2014 at 9.00AM
G.D.C Shewa (Swabi).

You are further directed to bring your original certificate NIC/registration
Card, Domicile etc along with you to be checked by the interview committee.

[Signature]
Principal
G.D.C Shewa Swabi

Attested
[Signature]
[Signature]
[Signature]

Office of the principal
G.D.C Shewa (Swabi)
No: 996 Dtd 26/12/14

(12)

To,

The *Muqar Ahmad s/o. Ghani-ur-Rahman*
Address *Moh. Ibrahim Ichair, Shewa (Swabi)*

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G.D.C Shewa (Swabi).

You are further directed to bring your original certificate NIC/registration
Card, Domicile etc along with you to be checked by the interview committee.

M. Gh.
Principal
G.D.C Shewa Swabi

OFFICE OF THE PRINCIPAL GOVT: DEGREE COLLEGE SHEWA (SWABI).

Ana ^c

(13)

ORDER.

Consequent upon the recommendation of the Departmental selection committee the Competent authority is pleased to appoint Mr. Waqar Ahmad S/o Ghani Ur Rahman village Shewa Mahallah Ibrahim khail Tehsil Razar Distt: Swabi against the vacant post of Naib Qasid in BPS-01 (4800-150-9300) plus other usual allowances as admissible under Rules from the date of his taking over charge on the terms and conditions mentioned below:-

Allen
00
Amir

TERMS AND CONDITION:-

01. He shall produce health in age from the Medical superintendent / civil surgeon.
02. He will have all the right/ privileges contained in Khyber Pukhtoon Khwa civil servant Act, 1973 with all amendments made there in including Khyber Pukhtoon Khwa civil servant Act, 2005 and Rules made there under.
03. In case of resignation, the official will have to give one month prior notice. In absence of such notice their once months pay shall be forfeited to Government.
04. The Appointed must join his post within 30 days of the issue of this order.
05. In case of Disciplinary matters Khyber Pukhtoon Khwa civil servant Act, 1973 and E& D rules 2011 shall be applicable.
06. He will get pay in BPS-01 including usual allowances as admissible under the rules, he will be entitled to annual increment like other civil servant.

(Prof: Imtiaz Ahmad)
PRINCIPAL
Govt: Degree College Shewa
(Swabi)

Endst:-No 01-3 / Dated 3/11 2015

Copy of the above is forwarded to the:-

01. Director Higher Education Khyber PUKHTOON KHWA Peshawar
02. District Account Officer Swabi
03. Official Concerned.

Imtiaz Ahmad
PRINCIPAL
Govt: Degree College Shewa
(Swabi)



Office Of The Medical Superintendent DHO Hospital Swabi

Telephone & Fax #: 0933-221267

Ann D

MEDICAL CERTIFICATE

Official's Name

Father's Name

Religion

Residence

Date of Birth

Exact height

Mark of Identification

Official Signature

MR. Waqar Ahmad

Ghani M. Rahman

Islam

V.P.O. Shewa Islam

Razvi Dist Swabi

05-09-1991

5'7"

NIL

221267

(14)

Shwa

Shwa

Signature of Deptt: Incharge : _____

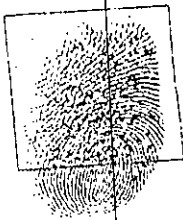
Seal of Deptt: Incharge: _____

I do hereby certify that I have examined Waqar Ahmad a candidate for employment in the Govt Degree College Shewa - N/O and cannot say that he had any disease communicable or other constitutional infection or bodily infirmity except NIL

I do not consider this as disqualification for employment in the Govt Degree College - N/O His/Her age according to his/her own statement is 23 years and by appearance about 23 years.

Shwa
Medical Superintendent
DHO Hospital Swabi
3/1/15
Medical Superintendent
Hospital Swabi

Left/Right hand thumb and fingers impression:



2174 Adhoc Relief Allow-2

13,836.00

DEDUCTIONS
Habib Bank Limited.

443.00-
DAGAI

NET PAY

13,193.00 01.03.2015
Acct.No: 7900036

PAYMENTS
Branch Code: 220323

DAGAI

00734101 UZAIR
P A Y M E N T S

Prev Pers No:
A M O U N T

DESIG: SWEEPER
D E D U C T I O N S

(00001416)
A M O U N T

Grade: 01 NTR:
LOAN/FUND

Buckle No.:
PRINCIPAL

Gazetted/Hon-
REPAID BA

GPF#:

42

0001 Basic Pay	4,800.00	3001 GPF Subscription - Rs	212.00-
1000 House Rent Allowance	891.00	3501 Benevolent Fund	120.00-
1210 Convey Allowance 20	1,785.00	3511 Addl Group Insurance	3.00-
1300 Medical Allowance	1,200.00	3604 Group Insurance	58.00-
1516 Dress/ Uniform Allow	100.00	3990 Emp.Edu. Fund KPK	50.00-
1567 Washing Allowance	100.00		
1971 Adhoc Allowance 2011	445.00		
1973 Adhoc Allowance 2011	1,485.00		
2118 Adhoc Relief Allow (960.00		
2148 15% Adhoc Relief All	720.00		
2174 Adhoc Relief Allow-2	480.00		
PAYMENTS	12,966.00	DEDUCTIONS	443.00-

NET PAY

12,523.00 01.03.2011
Acct.No:

PAYMENTS
Branch Code:

DEDUCTIONS
Payment through DDO

00734108 WAQAS AHMAD
P A Y M E N T S

Prev Pers No:
A M O U N T

DESIG: HAIN-RASID
D E D U C T I O N S

(00000990)
A M O U N T

Grade: 01 NTR:
LOAN/FUND

Buckle No.:
PRINCIPAL

Gazetted/Hon-
REPAID BA

GPF#:

42

0001 Basic Pay	4,800.00	3001 GPF Subscription - Rs	212.00-
1000 House Rent Allowance	891.00	3501 Benevolent Fund	120.00-
1210 Convey Allowance 20	1,785.00	3511 Addl Group Insurance	3.00-
1300 Medical Allowance	1,200.00	3604 Group Insurance	58.00-
1833 Integrated Allunce (360.00	3990 Emp.Edu. Fund KPK	50.00-
1971 Adhoc Allowance 2011	445.00		
1973 Adhoc Allowance 2011	1,485.00		
2118 Adhoc Relief Allow (960.00		
2148 15% Adhoc Relief All	720.00		
2174 Adhoc Relief Allow-2	480.00		
PAYMENTS	13,066.00	DEDUCTIONS	443.00-

NET PAY

12,623.00 01.03.201
Acct.No: 5990-0

PAYMENTS
Branch Code: 231870

TORLANDAI BRANCH SHWA ADA SWABI

DEDUCTIONS
National Bank of Pakistan

443.00-

TORLANDAI BRANCH SHWA ADA SWABISHWABI

00117088 ISLAM ANWAR
P A Y M E N T S

Prev Pers No:
A M O U N T

DESIG: CHOUKIDAR
D E D U C T I O N S

(00000357)
A M O U N T

Grade: 02 NTR: 0
LOAN/FUND

Buckle No.:
PRINCIPAL

Gazetted/Hon-
REPAID BA

GPF#:

EDU 007983

1

0001 Basic Pay	9,490.00	3002 GPF Subscription - Rs	373.00-
----------------	----------	----------------------------	---------

(15) AVE

Handwritten signatures and initials at the top of the page.

Ann F

OFFICE OF THE PRINCIPAL
G.D.C. SHEWA (SWABI)

NO: _____ DTD: 3/4/2015

16

To,

The Director,
Higher Education Khyber Pakhtoon Khwa
Peshawar.

Subject: -

CANCELLATION OF INTERVIEW / APPOINTMENT

Sir,

In response to your letter No: 7925 dated 26/3/2015, the interview conducted on 31/12/2014 by the selection committee stand cancelled. due to which the appointment orders, with the following Endst: No, dated, Names & post should be considered as cancelled.

01. Endst: No: 01-3 dtd 3/1/2015 Mr. Waqar Ahmad S/O Ghani Rahman (N/Qasid)

02. Endst: No: 4-6 dtd 3/1/2015 Mr. Uzair S/O Jan Muhammad (Sweeper)

Note: You are directed to refund the pay from 3/1/2015 to 31/3/2015.

M. J.

Principal,
Govt: Degree College,
Shewa (Swabi)
Principal
Govt: Degree College,
Shewa (Swabi)

Endst: No 100-2

Copy to the:

- 01. Waqar Ahmad N/Qasid
- 02. Uzair Sweeper
- 03. District Account Officer Swabi.

M. J.

Principal,
Govt: Degree College,
Shewa (Swabi)
Principal
Govt: Degree College,
Shewa (Swabi)

To,

Director of Education (Higher Education),
Civil Secretariat, Peshawar

Subject: Departmental appeal against the order dated
dt.03.04.2015 issued by Principal, Govt Degree College,
Shewa, District Swabi, whereby the appellant has been
terminated from service

Respected Sir:

1. That Principal, Govt Degree College, Shewa, Swabi invited names of eligible and interested persons for appointment as Class-IV, from the office of Manager Employment, Exchange Swabi.
2. That name of appellant alongwith other was forwarded Managing Employment Exchange, District Swabi to Principal Govt Degree College, Shewa, District Swabi.
3. That appellant is duly registered with the Managing Employment Exchange, District Swabi. (Copy of Registration Card is attached).
4. That a DPC was constituted which comprises of Muhammad Niaz Khan Assistant Prof, Abid Hussain, Lecturer, Javed Akbar S.O Colleges as Members while copy of the same is not provided to appellant inspite of repeated requests.

NOTICE
for loss or
articles, un
(2)

(17)

Amir
Amir
Amir

5. That call letter was issued vide letter dt.26.12.2014 for interview. (Copy of call letter is attached).
6. That in consequence of recommendation of DPC, appellant is appointed vide order dt.03.01.2015. (Copy of appointment order dt.03.01.2015 is attached).
7. That appellant was medically examined and found fit. (Copy of medical certificate is attached).
8. That service book was prepared and the appellant joined service, performed duty for 3 months to the entire satisfaction of his superiors.
9. That salaries for 3 months was also given to the appellant. (Copy of pay slips is attached).
10. That interview/ appointment order of appellant is cancelled vide letter dt.03.04.2015, on the direction of Director of Education (Higher Education), Peshawar, which is appellate authority through his letter No.7925 dt.26.03.2015, which is illegal, against law and facts. (Copy of order is attached).
11. That the impugned order dated 03.04.2015 is illegal, against law and facts.
12. That appointment order has been passed after all formalities and there is no reason for cancellation of impugned order.

- 13. That after appointment, taking over charge, good performance, appellant cannot be terminated from service without reason to E&D Rules, 2011.
- 14. That there is no fault of appellant after accepting recommendation of Departmental Selection Committee in the shape of appointment and practical effect in the shape of service/ salary.

It is, therefore, most humbly prayed that on acceptance of this departmental appeal, the impugned order dt.03.04.2015 may very kindly be set aside and the appellant be reinstated in service with all back benefits and obliged.

Appellant

21/5/15

Waqar Ahmad
S/o Ghani Rehman
R/o Village Shewa, Moh: Ibrahim Khel
District Swabi

Date: 16/4/2015

بیت القلم سپریم کورٹ ہونہل لیسٹ

2015ء انتخاب سہ ماہی

5/8/2015

مورخہ:

مقدمہ:

دعویٰ:

حکم:

بنام:

صاحب

وقار احمد

S.A

داعیہ نمبر آنکہ

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آئن سٹام کیلئے امجد علی ایڈووکیٹ، سپریم کورٹ آف پاکستان (سٹی مردان) مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار ہوگا، نیز وکیل صاحب کو رضی نامہ کرنے و تقرر ثالث و فیصلہ

پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء و عمل چیک در پیسہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر

دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے سے اپیل گرانے و نظر ثانی و پیروی کرنے کا

اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخست منظور قبول ہوگا در ان مقدمہ میں جو خرچہ جانہ

التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔

لہذا وکالت نامہ لکھ دیا کہ سنڈر ہے۔

المرقوم:

2015ء

کے نامہ الکت

العجب

گواہ

العجب

مقام کے لیے منظور ہے۔

وقار احمد

Attested and signed
Som Adil
[Signature]

امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان، ڈسٹرکٹ کونٹیس، مردان

0321-9882434 0321-9870175

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal 877/2015


Mr. Waqar Ahmad..... Appellant

VERSUS

Govt of Khyber Pakhtunkhwa & others..... Respondents.

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Respondents 1/3/2016

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal 877/2015

Mr. Waqar Ahmad..... Appellant

VERSUS

Govt of Khyber Pakhtunkhwa & others..... Respondents.

SUBJECT:- PARAWISE COMMENTS:-

PRELIMINARY OBJECTIONS:-

Respectfully Sheweth:-

1. That the appellant has got no locus standi/ cause of action to file the instant appeal.
2. That the appellant has concealed material facts from the Hon'able Tribunal.
3. That the Hon'able Tribunal lacks jurisdiction to entertain the instant appeal.
4. That the appellant has not come to the tribunal with clean hands.
5. That the appeal is bad for non joinder and misjoinder of unnecessary parties.

REPLY ON FACTS:-

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Correct to the extent that Departmental Selection Committee was constituted but the same failed to provide recommendations for appointment of Class-IV within reasonable time. Rest of the para is denied.
5. Pertains to record.
6. Pertains to record. Furthermore, it is stated that Departmental Selection Committee failed to provide recommendations for appointment of Class-IV within reasonable time.
7. Pertains to record.
8. Pertains to record.
9. Pertains to record.
10. Pertains to record.
11. Correct. The appointments of Class-IV were cancelled due to the fact that codal formalities were not fulfilled by the appointing authority. Departmental Selection Committee was constituted but it failed to provide minutes of the meeting. Without recommendations issuing of appointment orders are illegal and stand cancelled (Annexure-A) and the Provincial Government directed the appointing authority to schedule new date for the meeting of Departmental Selection Committee.
12. As codal formalities were not fulfilled by committee, therefore, his departmental appeal was regretted (Copy of Departmental reply Annexure-B) .
13. Incorrect. Already explained.


ON GROUNDS:-

- A. Incorrect. The appointing authority failed to comply with rules and procedures for appointment of Class-IV. The impugned order is in accordance with law.
- B. Incorrect. Codal formalities were not fulfilled, thus, Principle of locus penitentea is not applicable.
- C. Incorrect. Proper procedure / codal formalities were not followed by the appointing authority, as minutes of meeting were not prepared within time.
- D. Incorrect. The appointing authority failed to complete all codal formalities which were a valid reason for cancellation of Class-IV appointments.
- E. Incorrect. Proper rules and procedures were not followed by appointing authority.
- F. Incorrect. The appointments were void ab-initio as codal formalities were not fulfilled. Further, illegal act does not create right.
- G. Incorrect. The cancellation order was issued, because no codal formalities were followed so hence section-24A of General Class Act is irrelevant..
- H. Incorrect. Already explain in preceeding Paras.
- I. Incorrect. As explained above.

PRAYERS:-

It is therefore, humbly prayed that the appeal may graciously be dismissed with cost.

Secretary to Govt of Khyber Pakhtunkhwa
Higher Education Department Respondent No.1


Director Higher Education
Khyber Pakhtunkhwa Respondent No.2

Principal Govt Degree College Shewa
District Swabi Respondent No.3

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**Service Appeal 877/2015**

Mr. Waqar Ahmad..... Appellant

VERSUS

Govt of Khyber Pakhtunkhwa & others..... Respondents.

SUBJECT:- **REPLY TO STAY APPLICATION.****PRELIMINARY OBJECTIONS:-**

Respectfully Sheweth:-


1. That the appellant has got no locus standi/ cause of action to file the instant petition.
2. That the appellant has concealed material facts from the Hon'able Tribunal.
3. That the Hon'able Tribunal lacks jurisdiction to entertain the instant petition.
4. That the appellant has not come to the tribunal with clean hands.

FACTS

1. No comments.
2. Incorrect. As the appointment of the applicant was issued without codal formalities, therefore the petition may be dismissed. Further all the three ingredients are in favour of Respondents
3. Incorrect. The appointment was void ab-initio.
4. Incorrect. The appointment of applicant was not made according to law.
5. No comments. However the reply on the appeal may kindly be considered part of this reply.

PRAYER:-

Therefore, It is humbly prayed that the stay application may be dismissed.

Secretary to Govt of Khyber Pakhtunkhwa
Higher Education Department Respondent No.1

Director Higher Education
Khyber Pakhtunkhwa Respondent No.2
Principal Govt Degree College Shewa
District Swabi Respondent No.3

4

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal 877 of 2015

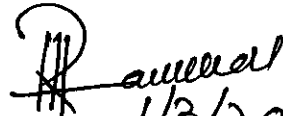
Mr Waqar Ahmad..... Appellants

VERSUS

1. Chief Secretary Govt of Khyber Pakhtunkhwa, Civil Secretarial, Peshawar
2. Secretary Higher Education Department Khyber Pakhtunkhwa
3. Director Higher Education Department..... Respondents.

AFFIDAVIT

I Irfan Ullah khan Assistant Director Litigation Higher Education Department do hereby declare and affirm on oath that the contents of Para Wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'able Court.


Deponent 1/3/2016

CNIC No.11101-6409112-3

Identify by



AMR-A
GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES AND
LIBRARIES DEPARTMENT



18

No. SO (Trg) HE/1-1 Misc/2012
Dated: Peshawar January 12th 2015

1673


To,

The Principal,
Govt. Degree College Shewa, Swabi.

Subject: APPOINTMENT OF CLASS-IV SERVENTS.

I am directed to refer to the subject noted above and to state that minutes of the Departmental Selection Committee meeting regarding Class-IV interview held on 31/12/2014 has not been prepared so far. Without committee recommendations issuing of appointment orders will be illegal and stand cancelled.

Therefore it is requested to complete all the codal formalities and schedule a new date for meeting of the Departmental Selection Committee to recommend candidate for appointment of Class-IV against the vacant post.


(JAVED AKBAR)
Section Officer (Trg)

Endst: No & date even.

A copy of the above is forwarded for information to the:-

1. PS to Minister for Higher Education, Khyber Pakhtunkhwa.
2. PS to Secretary, Higher Education Department.
3. PS to Special Secretary, Higher Education Department.
4. PA to Deputy Secretary (Admn:) Higher Education Department.

Section Officer (Trg)

6

Aner-A-1

243



DIRECTORATE OF HIGHER EDUCATION

KHYBER PUKHTUNKHWA, KHYBER ROAD PESHAWAR

Telephone No.091-9211025-9210217-9210242 Fax-921021

No. 1925 /CA-VII/Estt: Branch/A-167/

Dated 26/3 /2015

To

The Principal
Govt; Degree College
Shewa (Swabi).

Subject: - APPOINTMENT OF CLASS-IV.
Memo:-

Please refer to your letter No.24 dated 24.1.2015 on the subject cited above and to ask you to follow the instructions of the Provincial Government and cancel the interview.

d/c
Banki
DY: DIRECTOR (ESTABLISHMENT)



7
Anex - B
DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA,
KHYBER ROAD PESHAWAR

No. 11070 /CA-VII/Estt: Branch/A-167/

Phone # 091-9210242, 9211025/Fax # 9210215

Dated 22/4 /2015

To

Mr. Waqar Ahmad S/O Ghani Ur Rehman
Resident of Village Shewa Moh: Ibrahim Khel
District Swabi.

Subject: - DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 3.4.2015
ISSUED BY PRINCIPAL, GOVT; DEGREE COLLEGE, SHEWA
DISTRICT SWABI WHEREBY THE APPLICANT HAS BEEN
TERMINATED FROM SERVICE.

Memo:-

I am directed to refer to your appeal dated 6.4.2015 and to inform you that without committee recommendations issuing of appointment orders will be illegal and stand cancelled and your appointment order was issued without the approval of the Departmental Selection Committee, hence your appeal can't be considered at this stage.


DY: DIRECTOR (ESTABLISHMENT)

BEFORE THE KHYBER POKHTOONKHWA
SERVICE TRIBUNAL PESHAWAR.

Service appeal No.877/2015

Waqar Ahmad Vs Govt

REJOINDER/REPLICATION ON
BEHALF OF APPELLANT.

Appellant humbly submitted as under

RESPECTFULLY SHEWETH:-

PRELIMINARAY OBJECTIONS.

all the preliminary objections are incorrect,
misconceived. Denied.

ON FACTS:-

These paras 1,2,3,5,7,8,9,10 are admitted by respondents as they offer no comments, thus the paras of appeal are admitted.

These paras 4,6,11,12,13, of comments/ are incorrect Denied. It is an after thought. ~~There~~ a contrivance to create some thing for reply of the appeal .In appointment order, the opening sentence is as per recommendation of the selection committee the competent authority passed appointment order dated 3-1-2015 available on page 13, appeal after duly signing the some. it given effect and even


salary paid on page 15 of appeal. The ground given in cancellation order Dated 3-4-2015 is different than the one given in comments. The ground in cancellation order is ~~calculated~~ ^{cancellation} of ~~inquiry~~ ^{interview} conducted on 31-12-2014 and given effect in the shape of appointment order dated 3-1-2015 and pay slips, then cancellation of interview in April, That too of class IV is ridiculous.

It is therefore humbly requested that appeal may please be accepted.

Dated. 8/6/2016


Appellant


Through

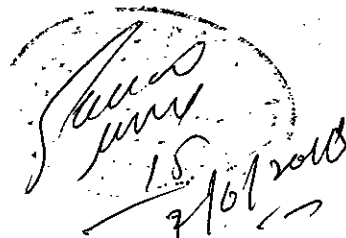

Amjad Ali Advocate
Supreme court of
Pakistan


AFFIDAVIT

I, do hereby solemnly declare and verify 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 Court.

Identified By


Amjad Ali
Advocate


15
2/6/2016


Deponent

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1762 /ST

Dated 25 / 10 / 2016


To

The Principal Govt Degree College,
Shewa Swabi.

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 18.10.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Ann F

OFFICE OF THE PRINCIPAL
G.D.C. SHEWA (SWABI)

NO: _____ DTD: 3/4/2015

16

To:

The Director,
Higher Education Khyber Pakhtoon Khwa
Peshawar.

Subject: - CANCELLATION OF INTERVIEW / APPOINTMENT

Sir,

In response to your letter No: 7925 dated 26/3/2015, the interview conducted on 31/12/2014 by the selection committee stand cancelled, due to which the appointment orders, with the following Endst: No, dated, Names & post should be considered as cancelled.

- 01. Endst: No: 01-3 dtd 3/1/2015 Mr. Waqar Ahmad S/O Ghani Rahman (N/Qasid)
- 02. Endst: No: 4-6 dtd 3/1/2015 Mr. Uzair S/O Jan Muhammad (Sweeper)

Note: You are directed to refund the pay from 3/1/2015 to 31/3/2015.

[Handwritten signature]

Principal,
Govt: Degree College,
Shewa (Swabi)
Principal
Govt: Degree College
Shewa (Swabi)

Endst: No 100-2

Copy to the:

- 01. Waqar Ahmad N/Qasid
- 02. Uzair Sweeper
- 03. District Account Officer Swabi.

[Handwritten signature]

Principal,
Govt: Degree College,
Shewa (Swabi)
Principal
Govt: Degree College
Shewa (Swabi)

To,

Director of Education (Higher Education),
Civil Secretariat, Peshawar

Subject: Departmental appeal against the order dated dt.03.04.2015 issued by Principal, Govt Degree College, Shewa, District Swabi, whereby the appellant has been terminated from service

Respected Sir:

1. That Principal, Govt Degree College, Shewa, Swabi invited names of eligible and interested persons for appointment as Class-IV, from the office of Manager Employment, Exchange Swabi.
2. That name of appellant alongwith other was forwarded Managing Employment Exchange, District Swabi to Principal Govt Degree College, Shewa, District Swabi.
3. That appellant is duly registered with the Managing Employment Exchange, District Swabi. (Copy of Registration Card is attached).
4. That a DPC was constituted which comprises of Muhammad Niaz Khan Assistant Prof, Abid Hussain, Lecturer, Javed Akbar S.O Colleges as Members while copy of the same is not provided to appellant inspite of repeated requests.

NOTICE
of loss or
articles, un
(2)
insurance

17

Amir

Amir

Amir

5. That call letter was issued vide letter dt.26.12.2014 for interview. (Copy of call letter is attached).
6. That in consequence of recommendation of DPC, appellant is appointed vide order dt.03.01.2015. (Copy of appointment order dt.03.01.2015 is attached).
7. That appellant was medically examined and found fit. (Copy of medical certificate is attached).
8. That service book was prepared and the appellant joined service, performed duty for 3 months to the entire satisfaction of his superiors.
9. That salaries for 3 months was also given to the appellant. (Copy of pay slips is attached).
10. That interview/ appointment order of appellant is cancelled vide letter dt.03.04.2015, on the direction of Director of Education (Higher Education), Peshawar, which is appellate authority through his letter No.7925 dt.26.03.2015, which is illegal, against law and facts. (Copy of order is attached).
11. That the impugned order dated 03.04.2015 is illegal, against law and facts.
12. That appointment order has been passed after al formalities and there is no reason for cancellation of impugned order.

191

13. That after appointment, taking over charge, good performance, appellant cannot be terminated from service without reason to E&D Rules, 2011.
14. That there is no fault of appellant after accepting recommendation of Departmental Selection Committee in the shape of appointment and practical effect in the shape of service/ salary.

It is, therefore, most humbly prayed that on acceptance of this departmental appeal, the impugned order dt.03.04.2015 may very kindly be set aside and the appellant be reinstated in service with all back benefits and obliged.

Appellant

وہاقر احمد

Waqar Ahmad

S/o Ghani Rehman

R/o Village Shewa, Moh: Ibrahim Khel

District Swabi

Date: 16/4/2015

بیت الہدایہ سپریم کورٹ فیڈرل کورٹ

۲۰۱۵ء ستمبر

5/8/2015

مورخہ:

مقدمہ:

دعویٰ:

حرم:

بنام:

صوفی

وفا احمد

S.A
باجت تحریر آئے

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

مردان
نواز اور
سید

آئین مقام کیلئے امجد علی اینڈ وکیٹ، سپریم کورٹ آف پاکستان (سید)

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار ہوگا، نیز وکیل صاحب کو رضی نامہ کرنے و تقرر ثالث و فیصلہ

پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء و پہلی چیک درپیش عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر

دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے سے اپیل گرانے و نظر ثانی و پیروی کرنے کا

اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے امراء یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و جانہ

التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔

لہذا وکالت نامہ لکھ دیا کہ سنڈر ہے۔

المرقوم:

5 تا 8 اگست

۲۰۱۵ء

العجب

گواہ

العجب

بمقام کے لیے منظور ہے۔

وفا احمد

Attested and people
Soni Adh
Munir

امجد علی اینڈ وکیٹ سپریم کورٹ آف پاکستان، ڈسٹرکٹ کورٹس، مردان

0321-9882434 0321-9870175

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal 877/2015


Mr. Waqar Ahmad..... Appellant

VERSUS

Govt of Khyber Pakhtunkhwa & others..... Respondents.

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Respondents 1/3/2016

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal 877/2015

Mr. Waqar Ahmad..... Appellant

VERSUS

Govt of Khyber Pakhtunkhwa & others..... Respondents.

SUBJECT:- **PARAWISE COMMENTS:-**

PRELIMINARY OBJECTIONS:-

Respectfully Sheweth:-

1. That the appellant has got no locus standi/ cause of action to file the instant appeal.
2. That the appellant has concealed material facts from the Hon'able Tribunal.
3. That the Hon'able Tribunal lacks jurisdiction to entertain the instant appeal.
4. That the appellant has not come to the tribunal with clean hands.
5. That the appeal is bad for non joinder and misjoinder of unnecessary parties.

REPLY ON FACTS:-

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Correct to the extent that Departmental Selection Committee was constituted but the same failed to provide recommendations for appointment of Class-IV within reasonable time. Rest of the para is denied.
5. Pertains to record.
6. Pertains to record. Furthermore, it is stated that Departmental Selection Committee failed to provide recommendations for appointment of Class-IV within reasonable time.
7. Pertains to record.
8. Pertains to record.
9. Pertains to record.
10. Pertains to record.
11. Correct. The appointments of Class-IV were cancelled due to the fact that codal formalities were not fulfilled by the appointing authority. Departmental Selection Committee was constituted but it failed to provide minutes of the meeting. Without recommendations issuing of appointment orders are illegal and stand cancelled (Annexure-A) and the Provincial Government directed the appointing authority to schedule new date for the meeting of Departmental Selection Committee.
12. As codal formalities were not fulfilled by committee, therefore, his departmental appeal was regretted (Copy of Departmental reply Annexure-B) .
13. Incorrect. Already explained.


ON GROUNDS:-

- A. Incorrect. The appointing authority failed to comply with rules and procedures for appointment of Class-IV. The impugned order is in accordance with law.
- B. Incorrect. Codal formalities were not fulfilled, thus, Principle of locus penitentea is not applicable.
- C. Incorrect. Proper procedure / codal formalities were not followed by the appointing authority, as minutes of meeting were not prepared within time.
- D. Incorrect. The appointing authority failed to complete all codal formalities which were a valid reason for cancellation of Class-IV appointments.
- E. Incorrect. Proper rules and procedures were not followed by appointing authority.
- F. Incorrect. The appointments were void ab-initio as codal formalities were not fulfilled. Further, illegal act does not create right.
- G. Incorrect. The cancellation order was issued, because no codal formalities were followed so hence section-24A of General Class Act is irrelevant..
- H. Incorrect. Already explain in preceeding Paras.
- I. Incorrect. As explained above.

PRAYERS:-

It is therefore, humbly prayed that the appeal may graciously be dismissed with cost.

Secretary to Govt of Khyber Pakhtunkhwa
Higher Education Department Respondent No.1


Director Higher Education
Khyber Pakhtunkhwa Respondent No.2

Principal Govt Degree College Shewa
District Swabi Respondent No.3

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal 877/2015

Mr. Waqar Ahmad..... Appellant

VERSUS

Govt of Khyber Pakhtunkhwa & others..... Respondents.

SUBJECT:- **REPLY TO STAY APPLICATION.**

PRELIMINARY OBJECTIONS:-

Respectfully Sheweth:-

1. That the appellant has got no locus standi/ cause of action to file the instant petition.
2. That the appellant has concealed material facts from the Hon'able Tribunal.
3. That the Hon'able Tribunal lacks jurisdiction to entertain the instant petition.
4. That the appellant has not come to the tribunal with clean hands.


FACTS

1. No comments.
2. Incorrect. As the appointment of the applicant was issued without codal formalities, therefore the petition may be dismissed. Further all the three ingredients are in favour of Respondents
3. Incorrect. The appointment was void ab-initio.
4. Incorrect. The appointment of applicant was not made according to law.
5. No comments. However the reply on the appeal may kindly be considered part of this reply.

PRAYER:-

Therefore, It is humbly prayed that the stay application may be dismissed.

Secretary to Govt of Khyber Pakhtunkhwa
Higher Education Department Respondent No.1


Director Higher Education
Khyber Pakhtunkhwa Respondent No.2

Principal Govt Degree College Shewa
District Swabi Respondent No.3

4

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal 877 of 2015

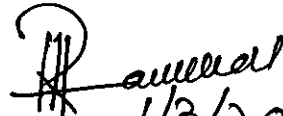
Mr Waqar Ahmad..... Appellants

VERSUS

1. Chief Secretary Govt of Khyber Pakhtunkhwa, Civil Secretarial, Peshawar
2. Secretary Higher Education Department Khyber Pakhtunkhwa
3. Director Higher Education Department..... Respondents.

AFFIDAVIT

I Irfan Ullah khan Assistant Director Litigation Higher Education Department do hereby declare and affirm on oath that the contents of Para Wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'able Court.


Deponent 1/3/2016

CNIC No.11101-6409112-3

Identify by



AMR-A
GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES AND
LIBRARIES DEPARTMENT



18

No. SO (Trg) HE/1-1 Misc/2012
Dated: Peshawar January 12th 2015

1673


To,

The Principal,
Govt. Degree College Shewa, Swabi.

Subject: APPOINTMENT OF CLASS-IV SERVENTS.

I am directed to refer to the subject noted above and to state that minutes of the Departmental Selection Committee meeting regarding Class-IV interview held on 31/12/2014 has not been prepared so far. Without committee recommendations issuing of appointment orders will be illegal and stand cancelled.

Therefore it is requested to complete all the codal formalities and schedule a new date for meeting of the Departmental Selection Committee to recommend candidate for appointment of Class-IV against the vacant post.


(JAVED AKBAR)
Section Officer (Trg)

Endst: No & date even.

A copy of the above is forwarded for information to the:-

1. PS to Minister for Higher Education, Khyber Pakhtunkhwa.
2. PS to Secretary, Higher Education Department.
3. PS to Special Secretary, Higher Education Department.
4. PA to Deputy Secretary (Admn:) Higher Education Department.

Section Officer (Trg)

6

ANER-A-1

243



DIRECTORATE OF HIGHER EDUCATION

KHYBER PUKHTUNKHWA, KHYBER ROAD PESHAWAR

Telephone No.091-9211025-9210217-9210242 Fax-921021

No. 1925 /CA-VII/Estt: Branch/A-167/

Dated 26/3/2015

To

The Principal
Govt; Degree College
Shewa (Swabi).

Subject: - APPOINTMENT OF CLASS-IV.
Memo:-

Please refer to your letter No.24 dated 24.1.2015 on the subject cited above and to ask you to follow the instructions of the Provincial Government and cancel the interview.

d/c
9/2
Barkh.
DY: DIRECTOR (ESTABLISHMENT)



7

Anex - B

23/4/15

**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA,
KHYBER ROAD PESHAWAR**

No. 11070 /CA-VII/Estt: Branch/A-167/

Phone # 091-9210242, 9211025/Fax # 9210215

Dated 23/4 /2015

To

Mr. Waqar Ahmad S/O Ghani Ur Rehman
Resident of Village Shewa Moh: Ibrahim Khel
District Swabi.

Subject: - DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 3.4.2015
ISSUED BY PRINCIPAL, GOVT; DEGREE COLLEGE, SHEWA
DISTRICT SWABI WHEREBY THE APPLICANT HAS BEEN
TERMINATED FROM SERVICE.

Memo:-

I am directed to refer to your appeal dated 6.4.2015 and to inform you that without committee recommendations issuing of appointment orders will be illegal and stand cancelled and your appointment order was issued without the approval of the Departmental Selection Committee, hence your appeal can't be considered at this stage.

Dr. Bashir
BY: DIRECTOR (ESTABLISHMENT)

BEFORE THE KHYBER POKHTOONKHWA
SERVICE TRIBUNAL PESHAWAR.

Service appeal No.877/2015

Waqar Ahmad Vs Govt

REJOINDER/REPLICATION ON
BEHALF OF APPELLANT.

Appellant humbly submitted as under

RESPECTFULLY SHEWETH:-

PRELIMINARAY OBJECTIONS.

all the preliminary objections are incorrect,
misconceived. Denied.

ON FACTS:-

These paras 1,2,3,5,7,8,9,10 are admitted by respondents as they offer no comments, thus the paras of appeal are admitted.

These paras 4,6,11,12,13, of comments/ are incorrect Denied. It is an after thought. Were a contrivance to create some thing for reply of the appeal .In appointment order, the opening sentence is as per recommendation of the selection committee the competent authority passed appointment order dated 3-1-2015 available on page 13, appeal after duly signing the some. it given effect and even


salary paid on page 15 of appeal. The ground given in cancellation order Dated 3-4-2015 is different than the one given in comments. The ground in cancellation order is ^{cancellation} ~~calculated~~ of ^{interview} ~~inquiry~~ conducted on 31-12-2014 and given effect in the shape of appointment order dated 3-1-2015 and pay slips, then cancellation of interview in April, That too of class IV is ridiculous.

It is therefore humbly requested that appeal may please be accepted.

Dated. 8/6/2016


Appellant


Through

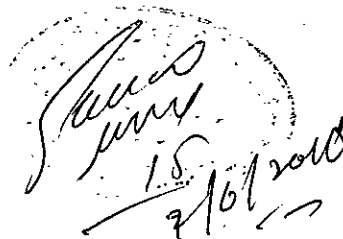

Amjad Ali Advocate
Supreme court of
Pakistan

AFFIDAVIT

I, do hereby solemnly declare and verify 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 Court.

Identified By


Amjad Ali
Advocate


15
2/6/2016



Deponent

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1762 /ST

Dated 25 / 10 / 2016

To

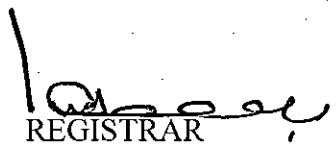
The Principal Govt Degree College,
Shewa Swabi.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 18.10.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.