

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No: 7088/2021


Hakeem Ullah, Naib Qasid GHSS Morilasht Chitral.....Appellant

VERSUS

**Govt: of Khyber Pakhtunkhwa through Director E&SE Khyber
Pakhtunkhwa & others.....Respondents**

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District Education Officer
(Male) Chitral Lower Chitral

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Pakhtunkhwa & others.....Respondents

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No: 1-3.

Respectfully Sheweth,

The Respondent submit as under:-

PRELIMINARY OBJECTIONS.

- 1 That the Appellant has got no cause of action/locus standai to file the instant appeal before this Honorable Tribunal.
- 2 That the appellant is not an aggrieved person within the meaning of Article 212 of the constitution of Islamic Republic of Pakistan.
- 3 That the appellant has concealed material facts from this Honorable Tribunal in the titled appeal.
- 4 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 5 That the appeal is barred by law limitation.
- 6 That the case is bad for mis-joinder and non-joinder of the necessary parties.
- 7 That the Notification/order 21-05-2018 is within legal sphere & liable to be maintained.
- 8 That the plea of the appellant regarding his adjustment w.e.f. 27-01-2015 against the noted post along with back benefits is violation of the cardinal principal of Law *that "where there is no duty, there is no pay"* & relevant provision of law & rules in field.
- 9 That the appellant has not reported for duty against the Class-IV post in view of his first appointment order dated 20-12-2014 to the Department, hence, withdrawn by the Respondent No.2 vide order dated 27-01-2015 on the grounds of non-compliance by the appellant.

ON FACTS.

- 1 That Para-1 is correct to the extent of the order dated 20-12-2014, whereas, rest of the para regarding the duty performance of the appellant is subject to the cogent proof as no verified attendance record of duty has been attached by the appellant in support of his plea. *(Copy of the order dated 20-12-2014 is Annexure-A).*

- 2 That Para-2 is incorrect as the appellant has not reported for duty against the Class-IV post in view of his first appointment order dated 20-12-2014 to the Department, hence, withdrawn by the Respondent No.2 vide order dated 27-01-2015 on the grounds of non-compliance by the appellant. *(Copy of the order dated 27-01-2015 is attached as Annexure-B).*
- 3 That Para-3 is incorrect as no Departmental appeal against the order dated 27-01-2015 of the respondent No.2 has been filed by the appellant, however; the appellant has filed a W.P No. 66-M/2015 under case titled Hakeem Ullah Vs Govt; before the Honorable High Court decided vide judgment dated 24-04-2018 with the directions to the Department for the adjustment of the appellant against the Naib Qasid post & consequent upon the same order of the Honorable Court, the appellant was adjusted against the Naib Qasid post vice order dated 21-05-2018 by the Respondent No.2. *(Copies of the Judgment dated 24-04-2018 & order dated 21-05-2018 are attached as Annexure-C & D).*
- 4 That Para-4 is correct to the extent of the compliance of the High Court order dated 21-05-2018, whereby, the appellant was adjusted against the Naib Qasid post under the provision of APT Rules 1989. However, the appellant is not entitled to Service benefits/Salaries against the post of Chowkidar w.e.f. 27-01-2015 under the cardinal principal of Law that *"where there is no duty there is no pay"* as the appellant has never performed against the post in question during the intervening period.
- 5 That Para-5 is incorrect as no Departmental appeal against the order dated 21-05-2018 has been filed by the appellant till date, hence, got final under the law.
- 6 That Para-6 is also incorrect as the appellant is not an aggrieved person within the meaning of Article 212 of the constitution of Islamic Republic of Pakistan, hence, the appeal in hand is liable to be dismissed on the following grounds inter alia:-


ON GROUNDS.

- A. Incorrect & not admitted. the order dated 21-05-2018 is legal & even in compliance of the Judgment dated 24-04-2018 of the Honorable High Court.
- B. Incorrect & not admitted. As the act of the Respondent Department with regard to the cited order is within legal para meter & liable to be maintained.
- C. Incorrect & not admitted. The appellant has been treated as per Law & Rules & prescribed policy & criteria by the Department vide dated 21-05-2018.
- D. Incorrect & not admitted. The plea of the appellant is illegal & even against the factual position of the case, hence, liable to be rejected.
- E. Incorrect & not admitted. As replied above.
- F. Incorrect & not admitted. The act of the Department regarding the order as cited above is within the ambit of natural justice having no aspect of discrimination towards the appellant from the Department
- G. Incorrect & not admitted. The stand of the appellant is illegal. Therefore, the Respondent also seek leave this Honorable Tribunal to submit additional grounds, record & case law at the time of arguments.

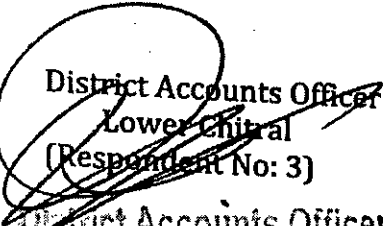
PRAYER

Therefore, in view of the above made submissions, it is most humbly prayed that on the acceptance of this reply, the appeal in hand may kindly be dismissed in favor of the Respondent Department in the interest of justice.

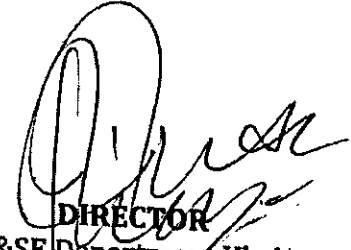
Dated. ___/___/2023.


District Education officer
(Male) Lower Chitral
(Respondent No: 2)

District Education officer
(Male) Lower Chitral


District Accounts Officer
Lower Chitral
(Respondent No: 3)

~~District Accounts Officer
Chitral~~


DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 1)

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

AFFIDAVIT

I, Mahmood Ghaznavi District Education Officer (Male) Chitral Lower, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief.

 Deponent

District Education Officer
(Male) Lower Chitral

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHITRAL

OFFICE ORDER

A-5

Consequent upon the recommendation of the Departmental Selection Committee in its meeting held on 19-12-2014 and in pursuance of the sub Rule (4) of Rule-10 of the Civil Servants (Appointment, Promotion & Transfer) Rule, 1989, appointment of Mr. Hakimullah S/O Hakim Khan resident of Shaghur Mori Tehsil & District Chitral is hereby ordered against the vacant posts of Naib Qasid at GHSS Morilasht Chitral in BFS-01 @ Rs.(4800-150-9300) plus usual allowances as admissible under the rules with effect from his taking over charge in the best interest of public service, subject to the terms and conditions noted below.-

TERMS & CONDITIONS

1. His appointment is purely temporary and liable to termination at any time.
2. He should produce health and age Certificate from Medical Superintendent District Headquarter Hospital Chitral.
3. He will be governed by such rules/regulations issued by the Government from time to time.
4. If any appeal is filed by any one against him and accepted by the Court, then his appointment will stand automatically cancelled and the Department will take no responsibility of it.
5. He should not be handed over charge if his age exceeds 40 years (40 +3 for backward area-43) and below 18 years.
6. The appointee should submit an affidavit regarding regularity in duty. In case of irregularity he will be terminated from service.
7. Charge Report should be submitted to all concerned.
8. If he fails to take over charge of the post within 15 days after the issue of this order, then offer of appointment shall stand cancelled.

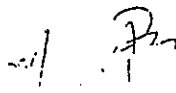
(Moin-ud-Din Khattak)
District Education Officer (Male)
Chitral

Dated Chitral the 20/12/2014

Endst. No 16543-50 /ER(M)/A-6/Appt.C-IVs.

Copy forwarded to the:-

1. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar, for information, please.
2. District Accounts Officer Chitral, for information, please.
3. Principal GHSS Morilasht, for information, please.
4. District Monitoring Officer Chitral, for information, please.
5. Candidate concerned, for information.


District Education Officer (Male)

Chitral.

FE - (11)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHITRAL.
WITHDRAWAL / CANCELLATION OF APPOINTMENT ORDER

Appointment order issued vide this office order Endorsement No. 50 EB(M)/A-6/Apptt. C-IVs dated 20-12-2014 in respect of Mr. Hakimullah Khan resident of Shagur Mori Tehsil & District Chitral as Naib Qasidat at GHSS, is hereby withdrawn/cancelled with effect from the date of issue i.e. 20-12-2014 on non compliance of order.


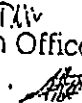
(Moin-ud-Din)
District Education Officer

Endst. No. 1770-74 / EB(M)/A-6/Apptt. C-IVs

Dated 27-10-2015

Copy forwarded to the:-

1. Deputy Commissioner Chitral, for information.
2. District Monitoring Officer Chitral, for information.
3. District Accounts Officer Chitral, for information.
4. Principal GHSS Morilasht, for information.
5. Mr. Hakimullah S/O Hakim Khan resident of Shagur Mori Tehsil & District Chitral for information.

 District Education Officer


27/10/2015

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P. 66-M/2015

Hakim Ullah

(Petitioner)

Versus

Govt. of Khyber Pakhtunkhwa through Secretary,
Education Civil Secretariat, Peshawar and 02 others.

(Respondents)

Present: Mr. Nour Muhammad Khan, Advocate for
the petitioner.

Muhammad Rahim Shah, A.A.G for the official
Respondents alongwith Mr. Ihsanul Haq, DEO
(M) Chitral.

Date of hearing: 24.04.2018

JUDGMENT

MUHAMMAD GHAZANFAR KHAN, J.-

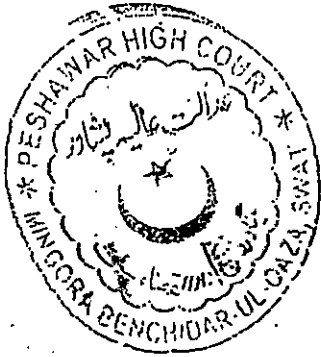
Through this petition, petitioner is imploring the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan with the following relief.

"It is, therefore, requested that on acceptance of this writ petition, the order dated 27.1.2015 may kindly be set aside and the petitioner may be reinstated in service with all back benefits."

2. Brief facts as averred in the petition are that the present petitioner, after proper

ATTESTED

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procedure, was appointed as Naib Qasid at G.H.S.S Mori Lasht, Chitral vide appointment order bearing Endst: No. 16545-50/EB(M)/A-6/Apptt.C-IVs dated 20.12.2014 and he was communicated the appointment order on 10.01.2015, in response to which, the petitioner took over charge of the post on 12.01.2015 and his service book was prepared but suddenly on 27.1.2015, his appointment order was withdrawn by the Respondent No.3. The petitioner submitted departmental appeal before the Respondent No.2 but so far no reply, hence, this petition.

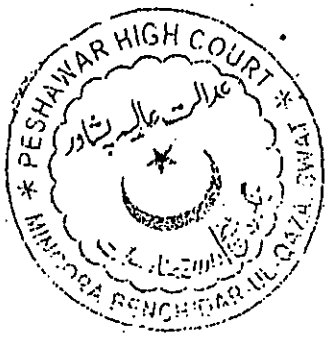
3. On the directions of this Court, the Respondent No.3 filed his comments.

4. Learned counsel for the petitioner argued that the only allegation of the respondents against the petitioner is he has never joined the service within the stipulated period, which is not a justifiable reason for the withdrawal of the appointment order of the petitioner as after receipt of the appointment order on 10.01.2015, he has joined service on 12.01.2015, within two days:

ATTEST

(16)

5. Perusal of the record would transpire that the petitioner was appointed as Naib Qasid vide endorsement No: 16545-50/EB(M)/A-5/Apptt.C-IVs dated 20.12.2014 and the respondents only emphasized that according to the terms and conditions particularly contained in Para No.8 of the appointment order, the petitioner did not join the post within the stipulated period of 15 days of issuance of the appointment order. The learned counsel for the petitioner contended that the petitioner after receipt of the appointment order on 10.1.2015 has submitted the arrival report in the School on 12.1.2015, which fact is proved by the annexure 'C' of the writ petition. The learned counsel for the petitioner further pointed out that after taking over the charge by the petitioner, his appointment order was suddenly withdrawn on 27.1.2015, which is a nullity in the eye of law as the petitioner after joining the service has become a civil servant and for dismissal or removal of a civil servant, the criteria laid down in Services Laws which should have been observed.



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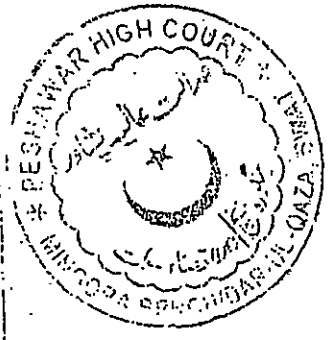
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ATTESTED

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 Registrar
 Peshawar High Court

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6. The Respondent No.3 i.e. the District Education Officer, Chitral appeared in person in response to an order passed by this Court and when he was confronted with the situation that how after joining the service by the petitioner that too without any objection by the respondents, the withdrawal of the appointment order was passed without observing the coding formalities, he candidly conceded that the petitioner will be adjusted against any vacant post. So, in such circumstances, this writ petition is allowed and the respondents are directed to adjust the petitioner on any vacant post of Class-IV as early as possible.



Announced
24.04.2018

JUDGE
[Signature]

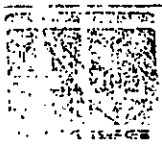
JUDGE
[Signature]

in hand
Name of Applicant.....*H. M. Khan*
Date of Presentation of Application.....*25-5-18*
Date of Completion of Copies.....*25-5-18*
No of Copies.....*2*
Urgent Fee.....*0*
Fee Charged.....*16/-*
Date of Delivery of Copies.....*25-5-18*

Certified to be true copy

[Signature]
EXAMINER
Peshawar High Court, Mingora/Dar-ul-Qaza, Swa

H-18



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
CHITRAL
PHONE NO. 0943-412627 EMAIL ADDRESS: deomchitral@gmail.com.

OFFICE ORDER.

Whereas Mr. Hakim Ullah S/O Hakim Khan Resident of Village Shaghur Mori Tehsil and District Chitral was appointed against vacant Naib Qasid Post at Govt Higher Secondary School Morilasht Chitral vide order No. 16545-50/EB (M) / A-6/ Apptt: /Class-IVs dated 20/12/2014. Whereas the appointment order was withdrawn/ cancelled by District Education Officer (M) Chitral vide this office order No. 1770-737/EB (M) / A-6/ Apptt: /Class-IVs dated 27/01/2015. Whereas the said class-IV filed a case in Honorable Khyber Pakhtunkhwa Peshawar High Court Mingora Bench Dar Ul Qaza Swat against the cancellation order. Whereas Honorable Khyber Pakhtunkhwa Peshawar High Court Mingora Bench Dar Ul Qaza Swat ordered in his decision, that the respondents are directed to adjust the petitioner on any vacant post of Class-IV as early as possible. Whereas in the light of Honorable Peshawar High Court Mingora Bench Dar Ul Qaza Swat, Mr. Hakim Ullah S/O Hakim Khan is hereby adjusted at Govt Higher Secondary School Morilasht District Chitral against vacant Chowkidar post with effect from 24/04/2018.

(Ihsan-Ul-Haq)
District Education Officer,
(Male) Chitral.

Order No. 12160-66 /EB (M) A-6/ Apptt: C-IVs dated Chitral the 21 / 05 /2018.

is forwarded to the:

- 1. The Honorable Registrar Khyber Pakhtunkhwa Peshawar High Court Mingora Bench Dar Ul Qaza Swat, with ref to judgment Writ Petition No. 66-M dated 24/04/2018 for information; please.
- 2. Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar for information, please.
- 3. District Accounts Officer Chitral for information, please.
- 4. District Monitoring Officer (DMO) Chitral for information, please.
- 5. Principal Govt Higher Secondary School Morilasht for information and further necessary action.
- 6. LEMIS of local office for information.
- 7. Official concerned for information.

District Education Officer,
(Male) Chitral.

102-50-EB