


FORM OF ORDER SHEET

Court of _____

Case No. - 558/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/03/2023	<p>The appeal of Mr. Muhammad Usman resubmitted today by Mr. Taimur Ali Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Parcha Peshi is given to appellant/counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;"> REGISTRAR</p>

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

SERVICE APPEAL 558 /2023

Mahammad Usman VS

Secretary (E&SE) & others

**APPLICATION FOR FIXING THE INSTANT APPEAL FOR
PRELIMINARY HEARING AT PRINCIPLE SEAT AT
PESHAWAR OF THIS HONORABLE TRIBUNAL.**

RESPECTFULLY SHEWETH:

1. That the appellant has filed the instant appeal for arrears/back benefits in the shape of salaries in this Honorable Tribunal in which no date has been fixed so far.
2. That the instant appeal is pertain to Camp Court Abbottabad of this Honorable Tribunal.
3. That the counsel for the appellant is practicing at Peshawar and it will be convenient for the counsel to the appellant if the instant appeal is fix for preliminary hearing at principle seat at Peshawar of this Honorable Tribunal.

is therefore, most humbly prayed that acceptance of this application the instant appeal may kindly be fix for preliminary hearing at principle seat Peshawar of this Honorable Tribunal.

APPELLANT
THROUGH:

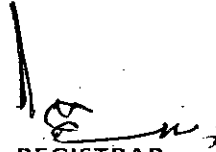

**TAIMUR ALI KHAN
ADVOCATE HIGH COURT**

The appeal of Mr. Muhammad Usman PST GPS Darbani Tor Ghar received today i.e. on 27.02.2023 is incomplete on the following score which is returned to the co Counsel for the appelliant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Memorandum of appeal is not signed by the appelliant.
- 3- Affidavit be got signed by the Oath Commissioner.
- 4- Annexures of the appeal may be attested.
- 5- Copy of reinstatement order dated 03.7.2018 mentioned in para-5 of the memo of appeal are not attached with the appeal which may be placed on it.
- 6- Copy of Affidavit mentioned in para-H of the grounds of appeal (Annexure-J) is not attached with the appeal which may be placed on it.
- 7- Copy of Judgment dated 3.6.2022 is illegible which may be replaced by legible/better one.
- 8- ~~seven~~ more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 805 /S.T,

Di. 28/2 /2023



REGISTRAR

SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv.
High Court Peshawar.

Respected Sir.

1- Removed

2- Removed

3- Removed

4- ~~Removed~~
5- Reinstatement order of appelliant is 10/5/2019
and not 3/7/2018 and order dated 10/5/2019
is attached at page-41

6- Removed

7- ~~Copy of judgment~~ dated 3/6/2022 is not mentioned
in appeal

8- Removed

Resubmitted after compliance



14/3/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 558 /2023

Muhammad Usman

V/S

Education Deptt:

INDEX

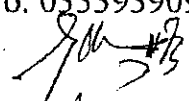
S. No.	Documents	Annexure	P. No.
01.	Memo of appeal	-----	01-06
02	Affidavit	-----	07
03	Copies of appointment order dated 09.04.2016 and withdrawal dated 07.09.2016	A&B	08-12
04	Copies of decree/judgment dated 23.01.2019, judgment dated 25.03.2019 and judgment dated 18.02.2019	C,D&E	13-40
05	Copy of notification dated 10.05.2019	F	41
06	Copies of letter dated 08.08.2019 and notification dated 28.07.2020	G&H	42-43
07	Copy of departmental appeal	I	44
08	Copy of affidavit	J	45
09	Copies of judgments	K	46-61
10	Vakalat Nama	-----	62

APPELLANT

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

Cell No. 03339390916


Sharifullah Torani
Advocate

(7)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 558 /2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3916

Dated 27/2/2023

Mr. Muhammad Usman, PST (BPS-12),
GPS Darbani, District Tor Gahr.

(APPELLANT)

VERSUS

1. The Secretary (Elementary & Secondary Education) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director (Elementary & Secondary Education), Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, (Male) Tor Gahr at Mansehra.
4. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
5. The District Account Officer, District Tor Ghar at Mansehra.

(RESPONDENTS)

~~Filed to day~~

~~Registrar~~

27/2/23

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR DIRECTING THE RESPONDENTS TO GRANT BACK BENEFITS TO THE APPELLANT IN THE SHAPE OF SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 to 09.05.2019 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY KINDLY BE DIRECTED TO GRANT BACK BENEFITS TO THE APPELLANT IN SHAPE OF

SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 TO 09.05.2019 ALONG WITH ANNUAL INCREMENT OF THE YEAR 2016, 2017 AND 2018 AS ON DOMICILE ON WHICH HIS APPOINTMENT ORDER WAS WITHDRAWN HAS BEEN DECLARED CORRECT BY THE CIVIL COURT IN CIVIL SUIT NO.93/1 of 2017. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWTH:

FACTS:

- 1. That the appellant was appointed as PST on 09.04.2016 with other official after fulfilling all codal formalities and has performed his duty till 06.09.2016 and then his appointment order was withdrawn from the date of appointment vide order dated 07.09.2016 on the reason that his domicile has declared unverified by the quarter concerned. **(Copies of appointment order dated 09.04.2016 and withdrawal dated 07.09.2016 are attached as annexure-A&B)**
- 2. That the appellant has challenged the order dated 07.09.2016 in this Honorable Service Tribunal in appeal No. 1243/2016 and at the same time the appellant also filed civil suit No.93/1 of 2017 in the Honorable Civil Court Torghar at Oghi to restore his domicile and to prove that domicile certificate issued to him was in accordance with the procedure mentioned by the authorities which was decreed by the Honorable Court in the favour of the appellant on 23.01.2019, which was challenged by the defendants in appeal No.01/13 of 2019 in the Honorable Court of District Judge Torghar. The Honorable Court dismissed the appeal of the appellant/defendants on 25.03.2019. The Honorable Service Tribunal decided the appeal of the appellant on 18.02.2019 which was partially accepted, set aside the impugned order with the direction to the respondents to issue show cause notice to the appellant that why his appointment order be not withdrawn on such and such allegation and after replying the show cause notice and personal hearing the competent authority may pass proper order deemed appropriate. However, the reinstatement order of the appellant will be subject to the decision/outcome of show cause notice. **(Copies of decree/judgment dated 23.01.2019, judgment dated 25.03.2019 and judgment dated 18.02.2019 are attached as Annexure-C,D&E))**

3. That in compliance of the judgment dated 18.02.2019 rendered in service appeal No.1243/2016, the appellant was reinstated into service from the date of his withdrawn order vide notification dated 10.05.2019 and also mentioned in that order that his service arrears of pay and allowance will be decided on the outcome of de-novo inquiry. **(Copy of notification dated 10.05.2019 is attached as Annexure-F)**
4. That in respect of judgment dated 18.02.2019 of the Honorable Service Tribunal rendered in service appeal No.1243/2016, the Deputy Commissioner Torghar wrote a letter dated 08.08.2019 to respondent No. 3 to considered the order of Civil Judge/District & Session Judge and the service of the appellant was also regularized along with other officials from the date of his appointment vide notification dated 28.07.2020. **(Copies of letter dated 08.08.2019 and notification dated 28.07.2020 are attached as Annexure-G&H)**
5. That in the reinstatement notification dated 10.05.2019 of the appellant, it was clearly mentioned by the competent authority that arrears of pay and allowances of the appellant will be decided on the outcome of de-novo inquiry however, inquiry was not conducted on the domicile of the appellant as the Honorable Civil Court declared the domicile of the appellant correct and genuine in its decree dated 23.01.2019 which was also maintained by the Honorable District Court in its judgment dated 25.03.2019 and in this respect the Deputy Commissioner also wrote the letter dated 08.08.2019 to consider the orders of the Civil Judge and District & Session judge meaning by that the domicile of the appellant was correct and genuine and on the basis of non-verification of domicile of the appellant, his appointment order was withdrawn basis, but his domicile was declared correct by the Civil Court during civil suit, but despite that arrears of pay and allowance has not granted to the appellant and then appellant filed departmental appeal on for grant of back benefits/arrears in the shape of salaries for the period with effect from 07.09.2016 to 09.05.2019, which was not responded within the statutory period of ninety days. **(Copy of departmental appeal is attached as Annexure-I)**
6. That the appellant has no other remedy except to file the instant service appeal in this Honorable Tribunal on the following grounds amongst others.

GROUNDS:

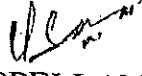
- A. That not taking on the departmental appeal of the appellant within statutory period of ninety days and not granting back benefits/arrears to the appellant in shape of salaries for the period with effect from 07.09.2016 to 09.05.2019 are against the law, facts, norms of justice, material on record, notification dated 10.05.2019, de-novo inquiry report and superior court judgments, therefore, not tenable and the appellant is entitle to back benefits/arrears in the shape of salaries for the period with effect from 07.09.2016 to 09.05.2019.
- B. That the appointment order of the appellant has withdrawn on the reason that domicile of the appellant was unverified, but it was declared correct by the Civil Court in civil suit No.93/1 of 2017 and it was necessary that before withdrawing the appointment order of the appellant proper inquiry should be conducted to dig out the realty about the domicile of the appellant, but no such action has been taken by the department and his appointment order withdraw in slipshod manner, which means that due to the fault of the department the appellant has restrained to perform his duty with effect from 07.09.2016 to 09.05.2019, therefore the appellant is entitle for back benefits/arrears in the shape of salaries for that period.
- C. That in reinstatement notification dated 10.05.2019 of the appellant, it was mentioned that arrears of pay and allowance of the appellant will be decided on the outcome of de-novo inquiry, however the Civil Court declared the domicile of the appellant correct and the Deputy Commissioner Torghar wrote letter dated 08.08.2019 respondent No.3 to consider the orders of Civil Judge and District & Session Judge in respect of the domicile of the appellant on which inquiry was not conducted on the domicile of the appellant and the competent authority considered the orders of Civil Judge and District & Session Judge, but despite that the appellant was deprived from arrears of pay and allowance as per notification dated 10.05.2019, which is against the norms of justice and fair play.
- D. That the reason on which the appointment order of the appellant was withdrawn was that that the domicile of the appellant had declared unverified by the quarter concerned, however the domicile of the appellant was declared correct by the Civil Court, therefore, there remain no ground to deprive the appellant from the back benefits/arrears in the shape of salaries for the period with effect from 07.09.2016 to 09.05.2019.

- E. That the appellant was regularized from the date of appointment, however, annual increments of the year 2017, 2018 and 2019 was not granted to the appellant and the appellant is also entitle to the salaries for the period with effect from 07.09.2016 to 09.05.2019 along with the annual increment of the year 2017, 2018 and 2019.
- F. That the appellant did not willfully remained absent from his duty, but the department restrained him from performing his duty due to withdrawal of his appointment order on wrong presumption of his unverified domicile which was later on declared correct by the Civil Court and as such the appellant cannot be deprived from his back benefits/arrears in the shape of salaries for the period with effect from 07.09.2016 to 09.05.2019 due to the fault of the department.
- G. That as per superior court judgment that once an official was reinstated in service after exoneration of charges leveled against him, the period during which he remained either suspended or dismissed/removed could not be attributed as fault on his part. Absence of official during period of dismissal/removal was not voluntary on his part but it was due to the order of the authority which restrained from attending his job/duty. Therefore, his service record could neither be adversely affected nor could he be denied any benefits to which he would have been entitled had he not been removed/dismissed and as such the appellant is entitle for the back benefits in the shape of salaries for the period with effect from 07.09.2016 to 09.05.2019 on the basis of Apex Court judgment.
- H. That the appellant remained unpaid employees (not remained gainfully employed) for the period from withdrawal of ahis appointment till reinstatement into service which is evident from the affidavit made by the appellant in this respect and as per superior courts judgment, he is entitle for back benefits in the shape of salaries for the period writhe effect from 07.09.2016 to 009.05.2019. **(Copy of affidavit is attached as Annexure-J)**
- I. That similar nature appeals have been allowed by this Honorable Tribunal and the appellant being similarly placed person also entitle the same relief under the rule of consistency. **(Copies of judgments are attached as Annexure-K)**

(6)

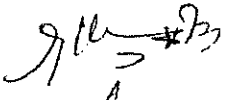
J. That the appellant seeks permission of this Honorable Tribunal to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.


APPELLANT
Muhammad Usman

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT


Shaukat Ali Torani
Advocate

(7)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2023

Muhammad Usman

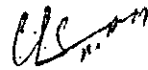
V/S

Education Deptt:

.....

AFFIDAVIT

I, Muhammad Usman, PST (BPS-12), GPS Darbani, District Tor Gahr (Appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this august Court.



DEPONENT

Muhammad Usman
(APPELLANT)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DISTRICT TOR GHAR

A 8

NOTIFICATION

Consequent upon the recommendations of the Departmental Selection Committee, appointment of the following candidates are hereby ordered against the vacant posts of Primary School Teacher (PST) on School based in BPS-12 (Rs.9055-650-28555) @ Rs.9055/- fixed plus usual allowances as admissible under the rules on adhoc basis and school basis initially for a period of one year under the existing policy of the Provincial Government, in Teaching Cadre on the terms and conditions given below with effect from the date of their taking over charge :-

S NO	NAME OF CANDIDATE	FATHER'S NAME	SCORE	WARD/ UNION COUNCIL	NAME OF SCHOOL WHERE APPOINTED	REMARKS
1	Naseeb Rahim	Qareeb Khan	82.37	Balkot	GPS Bateela	Against V/P
2	Umar Habib	Latif Ur Rehman	64.56	Balkot	GPS Balkot	--do--
3	Shabir Ahmad	Habib Ur Rehman	64.03	Balkot	GPS Pakban	--do--
4	Waez Ullah	Muhammad Israr	78.78	Judba	GPS Sormal N/Khail	--do--
5	Rahman Ullah	Muhammad Husan	53.26	Balkot	GPS Sormal N/K	--do--
6	Abdullah	Talug Khan	64.81	Bimbal	GPS Bilyani	--do--
7	Gulab Zada	Naseeb Zada	84.78	Bimbal	GPS Bilyani	--do--
8	Irshad Ullah	Habib Ullah	82.25	Bimbal	GPS Warokay Kilay	--do--
9	Sadiq Zar	Gula Zar	79.8	Bimbal	GPS Warokay Kilay	--do--
10	Muhammad Usman	Khilab Muhammad	80.58	Darbani	GPS Darbani	--do-- ✓
11	Majid Khan	Shahedol	70.05	Darbani	GPS Darbani	--do--
12	Abdul Mujeeb	Fazal Kareem	75.55	Darbani	GPS Jhango	--do--
13	Rozamin	Malik Said	85.44	Bimbal	GPS Khadang	--do--
14	Mastoreen	Moom Zaman	62.86	Darbani	GPS Lashora	--do--
15	Ameer Khan	Muhammad Khan	65.29	Bimbal	GPS Mera Aka Zai	--do--
16	Mumtaz Khan	Ajmal Khan	70.52	Bimbal	GMPS Dilyari	--do--
17	Muhammad Anwar	Gul Nazar Said	81.32	Dour Mera	GPS Dada Banda	--do--
18	Umar Ali	Taliwan Said	77.58	Dour Mera	GPS Dada Banda	--do--
19	Umar Rehman	Ghulam Khan	61.73	Dour Mera	GPS Danda Banda	--do--
20	Muhammad Nawab	Fazal Wahab	73.43	Dour Mera	GPS Dour Pain	--do--
21	Alim Ullah	Taliq Zar Khan	61.98	Dour Mera	GPS Dour Pain	--do--
22	Umar Zahid	Said Fazal Hakeem	73.29	Dour Mera	GPS Dour Mera	--do--
23	Shah Fahad	Israfeel	62.13	Dour Mera	GPS Sado Khan	--do--
24	Nor Nabi Said	Muhammad Akram	60.6	Dour Mera	GPS Zezari	--do--
25	Umar Nosh	Zar Farosh	58.77	Dour Mera	GPS Zezari	--do--
26	Fazal Nawaz Khan	Mir Nawaz Khan	76.48	Gari H/Zai	GPS Ambar Gari	--do--
27	Muhammad Iqbal	Muhammad Laiq	82.02	Gari H/Zai	GPS Bayo	--do--
28	Gul Nabi Shah	Hamza Ali Shah	75.41	Gari H/Zai	GPS Gari Hasan Zai	--do--
29	Jehan Zeb Khan	Farced Khan	70.24	Gari H/Zai	GPS Gari Hasan Zai	--do--

30	Akhtar Muhammad	Yaqeen Khan	67.81	Gari H/Zai	GPS Gari Hasan Zai	--do--
31	Abdul Jalil	Abdul Wahid	106.38	Gari H/Zai	GPS Gari Kotwal	--do--
32	Faiz Ur Rehman	Sahib Rahman	67.27	Gari H/Zai	GPS Gari Kotwal	--do--
33	Raqib Ullah Khan	Amin Khan	87.81	Paloosa	GPS Gatta Umar Khan	--do--
34	Nasoor Ullah	Jehan Zaib	85.92	Paloosa	GPS Gatta Umar Khan	--do--
35	Yousuf Gul	Sahib Gul	75.71	Palosa	GPS Gatta Umar Khan	--do--
36	Ishafaq Ullah	Zareen Khan	65.23	Gari H/Zai	GPS Malyar	--do--
37	Abdus Sadiq	Naseem Khan	61.48	Gari H/Zai	GPS Malyar	--do--
38	Sana Ullah	Abdur Rauf	90.7	Harnail	GPS Petawo Asharay	--do--
39	Gul Farooq Farooqi	Karamat Khan	85.43	Harnail	GPS Shaloon	--do--
40	Hashamali	Hazrat Ahmad	87.15	Harnail	GPS Soray Asharay	--do--
41	Muhammad Islam	Ahmad Latif	79.03	Harnail	GPS Zangia	--do--
42	Bakhtzada	Nawab Muhammad	91.4	Jhatka	GPS Mori Bala	--do--
43	Noor Zada	Ghulam Muhammad	65.46	Jhatka	GPS Shatal	--do--
44	Qadar Muhammad	Taluq Khan	85.56	Judba	GMPS Judba	--do--
45	Ghani Ur Rehman	Rokhman Shah	62.28	Judba	GPS Shadag	--do--
46	Muhammad Ikram	Muhammad Ishaq	55.86	Judba	GPS Shagai	--do--
47	Muhammad Rafiq	Muhammad Niqab	89.01	Judba	GPS Shadag	--do--
48	Fathullah Pathan	Shabir Ahmad	69.25	Judba	GPS Shagai	--do--
49	Atta Ullah	Shehzada	61.38	Harnail	GPS Shadag	--do--
50	Syed Farman Ullah Shah	Syed Usman Ullah Shah	75.28	Kand	GPS Kand Bala	--do--
51	Zafar Ullah	Sher Zada	91.1	Khovar M.K	GPS Chund	--do--
52	Athar Ullah	Muhammad Raheem	85.3	Khovar M.K	GPS Chund	--do--
53	Amin Said	Qeemat Said	83.62	Khovar M.K	GPS Chund	--do--
54	Behrullah	Sher Zada	76.42	Khovar M.K	GPS Gari Mada Khail	--do--
55	Rahman Ullah	Muhammad Hanif	73.32	Khovar M.K	GPS Gari Mada Khail	--do--
56	Faisal	Yad Ullah	80.42	Khovar M.K	GPS Kalsoona	--do--
57	Muhammad Ismaeel	Bakht Zada	103.3	Khovar	GPS Legra	--do--
58	Tahir Muhammad	Baz Muhammad	92.21	Khovar	GPS Sonia	--do--
59	Zahid Said	Umar Said	87.85	Khovar	GPS Tara	--do--
60	Zar Muhammad	Wala Jan	78.49	M M Khail	GPS Chamgah Doga	--do--
61	Ibrahim Khan	Sabit Khan	79.48	M M Khail	GPS Dilo Bala	--do--
62	Zar Muhammad Shah	Muhammad Shah	75.77	M M Khail	GPS Dilo Payeen	--do--
63	Anwar Zaib	Shah Hussain	77.54	M M Khail	GPS Gawandla	--do--
64	Muhammau Shahid	Sheikh Fareen	83.92	M M Khail	GPS Gawandla Bala	--do--

	Muhammad Shoab	Zamin Khan	70.96	M. M Khail	GPS Lakwal	--do--
66	Siraj Ullah	Muhammad Arif	77.09	M M Khail	GPS Mabra	--do--
67	Abu Bakar	Lal Sharif	75.58	M.M Khail	GPS Mabra Bala	--do--
68	Muhammad Hanif	Palas Khan	75.49	M M Khail	GPS Mera K.D	--do--
69	Yas Muhammad	Zubaid Khan	88.96	M M Khail	GPS Shabaz	--do--
70	Saeed Rehman	Saidmar Khan	76.06	M M Khail	GPS Shabaz	--do--
71	Muhammad Zahid	Ghulam Saeed	72.21	M M Khail	GPS Tetay	--do--
72	Abdul Manan	Muhammad Ayub	90.85	Manjakot	GMPS Shanai Pain	--do--
73	Israr Ahmad Khan	Muhammad Farosh Khan	101.24	Tilli	GPS Abo Hasan Zai	--do--
74	Shair Muhammad Zal	Muhammad Afzal	76.82	Manjakot	GPS Abo Mada Khail	--do--
75	Muhammad Ibrahim	Nasrullah Khan	81.69	Manjakot	GPS Doba	--do--
76	Inam Ul Haq	Sahib Shah	78.65	Manjakot	GPS Doba	--do--
77	Irfan Ul Allah	Waris Khan	77.72	Manjakot	GPS Karor	--do--
78	Asif Nawaz Khan	Wahid Gul	73.77	Manjakot	GPS Karor	--do--
79	Imam Gul	Baram Gul	71.68	Manjakot	GPS Karor	--do--
80	Roheeb Gul	Sakhimat Khasn	70.34	Manjakot	GPS Karor	--do--
81	Muhammad Saleh	Wazir Muhammad	66.56	M. M Khail	GPS Manjakot	--do--
82	Khawaj Muhammad	Muhammad Ashraf	67.2	M. M Khail	GPS Manjakot	--do--
83	Zarkhaib Gul	Sakhimat Gul	66.0	Manjakot	GPS Manjakot	--do--
84	Zakir Khan	Nazar Meet Khan	65.2	Manjakot	GPS Manjakot	--do--
85	Naseeb Ullah	Jehanzeb	101.82	Palosa	GPS Kandar Tawara	--do--
86	Muhammad Zahid	Muhammad Naseeb Khan	79.13	Paloosa	GPS Kunhar Sharif	--do--
87	Muhammad Riaz	Karim Shah	79.36	Palosa	GPS Paloosa	--do--
88	Noor Faiser Gul	Gul Khan	69.13	Shingaldar	GPS Banjo Banda	--do--
89	Syed Mehtab Shah	Syed Khitab Shah	82.69	Tilli	GPS Gangat	--do--
90	Abdullah	Mehmood Ur Rehman	99.81	Tilli	GPS Maira Khankhail	--do--
91	Ibrar Ahmed	Muhammad Ferosh Khan	78.15	Tilli	GPS Maira Khankhail	--do--
92	Muhammad Amin	Muhammad Tahir	73.04	Tilli	GPS Mishkot	--do--
93	Syed Muslim Shah	S.Taj Muhammad Shaha	57.9	Tilli	GPS Mishkot	--do--
94	Mohib Ullah	Ghulam Bahadar	62.28	Tilli	GPS Reel	--do--
95	Muhammad Suleman	Abid Khan	53.9	Tilli	GPS Sabay	--do--
96	Syed Sahib Zar shah	Syed Bakht Shah	50.95	Tilli	GPS Tilli Sydan	--do--
97	Syed Bakht Munir shah	Naseebzar Shah	43.86	Tilli	GPS Tilli Sydan	--do--

TERMS & CONDITIONS:

1. NO TA/DA is allowed.
2. Charge reports should be submitted to all concerned in duplicate.

3. Appointment is purely on temporary & adhoc basis initially for a period of one year.
4. They should not be handed over charge if their age is above 35 years or below 18 years.
5. Their Appointments are subject to the condition that their CERTIFICATE/DOCUMENTS AND DOMICILES be verified from the concerned authorities by the District Education Officer before release of their salaries. Anyone who found producing fake documents will be dismissed from service and the case will further be reported to the law enforcing agencies for action under the relevant law.
6. Their services are liable to termination on one month's notice from either side. In case of resignation without notice his one-month pay/allowances shall be forfeited to the Government treasury.
7. Their Pay will not be activated until and unless pay release order is not issued by the competent authority after verification of their documents by the District Education Officer.
8. They should join their post within 10 days of the issuance of this notification. In case of failure to join the post within 10 days of the issuance of this notification, their appointment will expire automatically and no subsequent appeal etc shall be entertained.
9. They should produce Health and Age Certificate from the Medical Superintendent concerned before taking over charge.
10. They will be governed by such rules and regulations as may be issued from time to time by the Government.
11. Their services shall be terminated at any time, in case their performance is found unsatisfactory during their contract period. In case of misconduct, they shall be preceded under the rules framed from time to time.
12. Their appointment is made on School based, they will have to serve at the place of posting, and their services are not transferable to any other station.
13. The competent Authority reserve the right to rectify the errors and omissions, if any noted/observed at any stage in the instant order issued erroneously.
14. Before handing over charge once again their document may be checked by the SDEO (M) Tor Ghar if they don't have the prescribed qualifications prescribed for the post they should not be handed over the charge.

--SD--

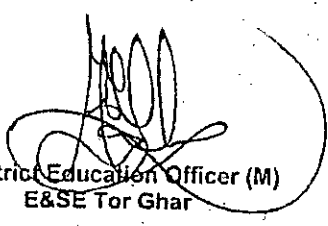
Abduillah

District Education Officer (M)
E&SE Tor Ghar

Endst: No. 908-18/Dated Tor Ghar 09th April 2016.

Copy forwarded for information and necessary action to the: -

1. Secretary to Government of Khyber Pakhtunkhwa E&S Education Department Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. PS to Minister E&SE Department Khyber Pakhtunkhwa Peshawar.
4. Deputy Commissioner District Tor Ghar.
5. District Accounts Officer Tor Ghar at Mansehra.
6. Sub Divisional Education Officer (M) Tor Ghar.
7. District Monitoring Officer (IMU) Tor Ghar.
8. District Education Management Information System (DEMIS) Local Office.
9. Head Teacher GPS Concerned.
10. Official Concerned.
11. Office File.


District Education Officer (M)
E&SE Tor Ghar



B

(12)

NOTIFICATION

Reference to the Deputy Commissioner Tor Ghar letters No. Gen (2016)/DC/TG 1936 Dated 30/08/2016 and Assistant Commissioner Letter No. AC(2016)/TG 2792-93 dated 18/08/2016, in connection with the terms and conditions No. 5 of the Appointment order issued vide this office Notification No.908-18 Dated 09/04/2016, the competent authority E&SE Tor Ghar is pleased to withdraw/denotify the appointment in respect of Muhammad Usman S/O Khitab Muhammad PST GPS Darbani w.e.f the date of his appointment.

—SD—

District Education Officer (M)
E&SE Tor Ghar

Endst: No 2898-2906 Dated 7/9/2016
Copy for information to the.

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Tor Ghar with the remarks that denotification and legal action has been initiated against the teachers as directed.
3. District Police Officer Tor Ghar with request to Lodge FIR as per rules against above mentioned candidate.
4. District Nazim Tor Ghar.
5. District Account Officer Tor Ghar at Mansehra.
6. Sub Divisional Education Officer (M) Tehsil Kandar.
7. District Monitoring Officer (IMU) Tor Ghar.
8. District Education Management Information System (DEMIS) Local office.
9. Office File.

Dy: District Education Officer (M)
E&SE Tor Ghar

Note. All employees education department & other interested ones, please Type "Follow torghardeo" in your mobile message & send it to "40404" to get free tweets of DEO Education Torghar on your mobile.

13

IN THE COURT OF CIVIL JUDGE-I
TORGHAR AT Oghi

u2

Civil Suit No.....93/1 of 2017
Date of Institution.....26.01.2017
Date of Transfer-In.....13.05.2017
Date of Decision.....23.01.2019

Muhammad Usman son of Khtiab Muhammad caste Hassan
Zai, kotwal, resident of Muhammaday Akazai, Tehsil Kandar,
District Torghar.

(Plaintiff)

VERSUS

1. Deputy Commissioner District Torghar.
2. Assistant Commissioner, Torghar.
3. Tehildar, Tehsil Kandar, Torghar.
4. Gardawar Circle, Kandar Torghar.
5. Patwari Halqa Muhammaday Akazai, union council
Darbani, Tehsil Kandar, Torghar.

6. Assistant Director local government, District Torghar.
7. Secretary village council, Darbani, Kandar, Torghar.

(Defendants)

SUIT FOR DECLARATION, MANDATORY INJUNCTION
AND PERMANENT INJUNCTION

Javer
Bakht Zada Khan
Civil Judge, Torghar
(at Oghi)
23-01-19

P
Q
14-2-19

Presence

Mr. Asif Ben Shams,
advocate for plaintiff

District attorney for defendants

JUDGMENT
23.01.2019

Plaintiff Muhammad Usman has brought the
instant suit for declaration against defendants deputy
commissioner and six others, to the effect that plaintiff is
by caste Hassan Zai, Kotwal, Muhammaday Akazai and
is permanent resident of Tehsil Kandar, District Torghar,

14

Muhammad Usman Vs Deputy Commissioner, etc
Suit for Declaration, etc
Case file No. 93/1
Date of institution 26.01.2017

43

and letter No. Gen(2016)/DC/TG/1936 dated 30.08.2016 regarding verification of Domicile of the plaintiff at serial number 145 is wrong, against law and facts and ineffective upon the rights of the plaintiff. That the defendants are bound to restore domicile of the plaintiff dated 27.12.2012 or issue new domicile certificate to him.

The plaintiff alleged that since his forefathers, along with other family members, they are owners in possession of about 3000 Kanal landed property at muaza Soormal Akazai, Tehsil Kandar, Torghar and after completion of his graduation, he applied for domicile certificate, which was issued to him after verification of responsible elders, government servants and fulfillment of legal formalities by defendant No.1 on 27.12.2012. That he was appointed as police constable at District Torghar on 07.03.2013 after clearance. He applied for the post of PST at District Torghar and on 09.04.2016. The plaintiff was appointed as PST and after taking charge of his post, the defendants under the political influence canceled (unverified) the domicile certificate of the plaintiff on 30.08.2016. That he was deprived of his fundamental right.

J. Akbar
Bakht Zada Khan
Civil Judge, Torghar
(at Oghi)
23-01-17

P3

14-2-17

The family tree of the plaintiff is as follows.

Muhammad Usman Vs Deputy Commissioner, etc
Suit for Declaration, etc

Case file No. 93/1

Date of institution 26.01.2017

44

Muhammad Usman son of Khitab Muhammad
son of Gul Muhammad son of Muhammad Sadiq son of
Masoom Baba.

That defendants were asked to restore the domicile
certificate of the plaintiff or issue new one, but they were
reluctant and is refusing to do so for the last 10 days.

The defendants were summoned, who appeared
through their representative and district attorney Torghar,
who submitted written statement on behalf of the
defendants. The defendants alleged in their written
statement that the plaintiff is ex-civil servant and has
submitted his case before the services tribunal and that he
has got no rights to file the instant suit. It is alleged that
neither plaintiff nor his forefathers were resident of
District Torghar. No settlement has taken place in the
District and Domiciles were used to issue at the
verification of any two local persons. After appointment
of the plaintiff in education department, during re-
verification his domicile is found as fake.

J. Akbar
Baloch Zada Khan
Civil Judge, Torghar
(at Oghi)

23.01.17

P. O.
24-2-17

The divergent pleading of the parties were reduced
in to the following issue by my learned predecessor in
office.

Issues:

1. Whether the plaintiff has a cause of action?
2. Whether the plaintiff is estopped to sue?

16

Muhammad Usman Vs Deputy Commissioner, et:
Suit for Declaration, etc
Case file No. 93/1
Date of institution 26.01.2017

43

3. Whether the suit is bad in its present form?
4. Whether this court has got jurisdiction to entertain the instant suit?
5. Whether the plaintiff is bona-fide resident of District Torghar and resulted into the issuance of domicile. If yes if effects?
6. Whether the domicile of plaintiff was rightly cancelled by the defendants? if yes its effects.
7. Whether the plaintiff is entitled for the decree of declaration as per prayer "Alif"?
8. Whether the plaintiff is entitled for the decree of mandatory injunction as per prayer "Bai"?
9. Whether the plaintiff is entitled for decree of permanent injunction as per prayer "Jeem"?
10. Whether the plaintiff is entitled for the decree as prayed for?
11. Reliefs

Both the parties were asked to produce evidence

Bakht Zada Khan
Civil Judge, Torghar
(at Oghl)

23-01-17

Plaintiff recorded his own statement as PW-1. He got exhibited affidavit regarding verification duly signed by Gul Taj Wali (district member), Noureen Khan (Tehsil member), Naseeb Rokhan (Chairman Village Council) and Bakht Munir (vice chairman). He stated that without giving opportunity of hearing to him, defendants issued notification dated: 27.12.2012.

PW-2 is the statement of Gul Taj Wali (member village council), who appeared in support of Ex:PW1/1

P.S.
14-2-9

46

and verified his signature on the same. He was cross-examined by the counsel for the defendant.

Niaz Muhammad Khan also recorded his statement as PW-3 in support of stance of the plaintiff. The plaintiff closed his evidence.

On the other hand, Faisal Latif, assistant at Deputy Commissioner Office recorded his statement as DW-1. According to him, procedure for verification of domicile in District Torghar is different from other districts as no settlement has yet taken place at District Torghar. He stated that verification of domicile is initially made by elders of the locality, which is endorsed by the Patwari and sent the same to Deputy Commissioner Office for issuance of domicile.

[Signature]
Balcht Zada Khan
Civil Judge, Torghar
23.01.18

After closing evidence of the parties, arguments of the counsel for the plaintiff and district attorney for the defendants heard.

With the assistance of learned counsel for the parties, available record perused.

My issue-wise findings are as under.

P-6

14.2.18

Issues No 2

"Whether the plaintiff is estopped to sue?"

The burden of proving this issue is at the shoulders of the defendants, but no evidence is produced to prove the

Muhammad Usman Vs Deputy Commissioner, etc
Suit for Declaration, etc
Case file No. 93/1
Date of institution 26.01.2017

W2

applicability of estoppel against the plaintiff. Issue is decided in negative.

Issue No 3

"Whether the suit is bad in its present form?"

Plaintiff is seeking declaration in respect of his domicile through the instant suit, which is maintainable in its present form. Issue is decided in negative.

Issue No. 4

"Whether this court has got jurisdiction to entertain the instant suit?"

The plaintiff is seeking declaration in respect of his domicile through the instant suit, which is civil in nature and this court has got ample jurisdiction to entertain the same. Issue is decided in positive.

Issues No 5 & 6

"5. Whether the plaintiff is bona-fide resident of District Torghar and resulted into the issuance of domicile. If yes if effects?"

"6. Whether the domicile of plaintiff was rightly cancelled by the defendants? if yes its effects."

Both these issues are linked with each other hence taken together for discussion.

The plaintiff has alleged in his plaint that he is bonafide resident of district Torghar and his family has got about 3000.kanal property at district Torghar. That he was recruited as police constable at district Torghar on the strength of domicile of district Torghar. He later on

J. Akbar

Balqut Zada Khan
Civil Judge, Torghar
(at Oghi)
23-01-19

P.F.

(Signature)

14-2-19

(19)

Muhammad Usman Vs Deputy Commissioner, etc
Suit for Declaration, etc
Case file No. 93/1
Date of institution 26.01.2017

48

was recruited as PST at district Torghar after verification of his domicile and that his domicile is canceled/unverified by the defendants without any notice to him on the ground of political influence.

In reply, defendants in their written statement have alleged that he is not resident of district Torghar. At district Torghar no settlement has been made and for issuance of domicile certificate, the attestation of two elders was required and the plaintiff was also issued the domicile certificate according to the said procedure. Defendants alleged that after getting appointment in education department, he could not prove to be resident of district Torghar and his domicile is declared as fake.

The plaintiff during his statement as PW-1 produced Ex:PW1/1, which is affidavit regarding verification of plaintiff's domicile. Ex:PW1/1 is duly signed and affirmed by Gul Taj Wali, member district council, union council Darbani, District Torghar. He also deposed as PW-2 and stated that he along with chairman village council Naseeb Rokhan has verified the plaintiff as bonafide resident of district Torghar and on the basis of which domicile was issued to the plaintiff. He further verified that plaintiff is resident of district Torghar and his domicile is canceled by the defendants. He also stated that some of elders of district Torghar made

Jacez
Fahim Zada Khan
Civil Judge, Torghar
(at Oghi)
23-01-17

P.C.
14.2.17

Muhammad Usman Vs Deputy Commissioner, etc
Suit for Declaration, etc

Case file No. 93/1

Date of institution 26.01.2017

49

objection on the domicile of the plaintiff as their close relatives were on waiting list for recruitment and the said elders by one way or other got the consent of the member village council and took him to Assistant Commissioner, where his statement was again recorded and due to the pressure of the said elders, he resiled from his previous statement and on the basis of statement of said elders and member village council Naseeb Roukhan, domicile of the plaintiff was canceled by the Deputy commissioner without holding proper inquiry. PW-2 being member district council was cross-examined. He affirmed that Ex:PW1/1 is executed by him in favour of plaintiff to the effect that he is resident of Torghar and the same correctly bears his signature. PW-2 also affirmed being representative of the people of district Torghar that he personally knew the plaintiff as resident of District Torghar, because district Torghar is consisted of very small population and being member district council he knew almost all the families residing in Torghar. During cross examination, single question has not been asked by the district attorney regarding the interest of the elders and pressurizing member village council and non holding of proper inquiry by the defendants and this part of the statement of PW-2 remained unshattered.

Signature
Bakht Zada Khan
Civil Judge, Torghar
(at Oghi)
23-01-17

P-9
Signature
24-2-17

(21)

Muhammad Usman Vs Deputy Commissioner, etc
Suit for Declaration, etc
Case file No. 93/1
Date of institution 26.01.2017

80

The criteria mentioned for issuance of domicile certificate by the defendants in their written statement and by DW-1 in his examination in chief is that an applicant for getting domicile certificate of district Torghar is required to verify from two elders of the locality that he is resident of district Torghar. On the basis of such verification by elders, patwari halqa further attests his application and sends the same to Deputy Commissioner for issuance of domicile.

In the case of the plaintiff, two witnesses Zardost Khan son of Umer Khan and Zareen Taj son of Shireen Taj have signed the application of the plaintiff under the following statement:

Zaker
Baldin Zada Khan
Civil Judge, Torghar
(at Oghi)
23-01-19

It is certified that Muhammad Usman son of Khitab Muhammad, caste Akazai Muhammaday is resident, since his forefathers, of Tehsil Kandar, District Torghar. His photo on the application form is verified. The domicile certificate is being issued to the petitioner at our verification.

P.10
19.2.19

After the above verification by two witnesses, the above statement is further verified and attested by two "Malakan" namely Malak Yaroz Khan son of Muhammad Miskeen (Qabail Rehnuma, District

22

Muhammad Usman Vs Deputy Commissioner, etc
Suit for Declaration, etc

Case file No. 93/1

Date of institution 26.01.2017

51

Torghar) and Malak Bakhti Rawan Khan (Kand Akazai,
District Torghar).

On the verification of witnesses and attestation of
"Malakan"(prominent elders), patwari halqa has reported
that petitioner is by birth resident of District Torghar
since his forefathers.

After the said process, report of Tehsildar is
obtained and the same is countersigned by the District
Revenue Officer, Torghar.

The above process shows that plaintiff has duly
fulfilled the criteria mentioned by the defendants in their
written statement and DW-1 in his examination in chief.

It is proved from the statements of PWs that no
proper inquiry has been conducted by the defendants for
cancellation/verification of plaintiff's domicile. The
defendants in Para-3 of factual objections of their written
statement have also mentioned that

Handwritten signature
Bakht Zada Khan
Civil Judge, Torghar
(Sd/-)
33 02-17

Handwritten signature
17-2-17

فقہہ نمبر 3 ارضی دعویٰ کا جواب یہ ہے کہ ضلع تورغر غیر
بندوبستی ضلع ہے۔ کوئی ریونیو ریکارڈ موجود نہ ہے۔ ضلع ہذا میں
ڈومیسائل کے حصول کے لیے کسی بھی دو افراد کی تصدیق پر
ڈومیسائل جاری کیا جاتا تھا۔ مدعی کو بھی اسی طریقہ پر ڈومیسائل
جاری ہوا تھا تاہم بعد ازاں محکمہ تعلیم میں نوکری ملنے کے بعد
دوبارہ کی گئی تو اس میں مدعی تورغر کا باشندہ ثابت
نہ ہو سکا۔ جس کی بنیاد پر اس کا ڈومیسائل جعلی قرار دیا گیا۔ چونکہ

23

Muhammad Usman Vs Deputy Commissioner, etc
Suit for Declaration, etc

Case file No. 93/1

Date of institution 26.01.2017

52

تورغر میں جعلی ڈومیسائل کے کیسز زیادہ ہیں اس لیے دوبارہ
کی ضرورت پڑی۔

The above para clearly shows that no inquiry has been conducted and even for the verification process the plaintiff has not been given opportunity of hearing and producing evidence in support of his claim. As for as cancellation of domicile of the plaintiff by DC is concerned, the same has not been made in accordance with law. Reliance is placed on 1999 CLC 103 Lahore, which is reproduced below for ready reference.

Cancellation of Domicile Certificate.... District magistrate after issuance of domicile certificate became functus officio... magistrate by cancelling domicile certificate, had acted illegally and arbitrarily as no such power vested in him after issuing a domicile certificate.

b. district magistrate cancels domicile certificate without conducting any detailed inquiry or offering right of hearing to petitioner...effect...cancellation of domicile certificate had no legal justification without joining the petitioners in the inquiry and without obtaining any proof from them about their residence.

[Signature]
Bakht Zada Khan
23-01-17

[Signature]

14-2-17

In the present case, the defendants have neither produced inquiry report nor any verification letter regarding domicile of the plaintiff. The domicile of the plaintiff is canceled/unverified without any notice to plaintiff and witnesses/verifiers, who are prominent

Muhammad Usman Vs Deputy Commissioner, etc
Suit for Declaration, etc
Case file No. 93/1 Date of institution 26.01.2017

53

elders of the locality. The plaintiff has not joined any inquiry.

The above mentioned facts and circumstances clearly indicate that domicile certificate was issued to the plaintiff after proper procedure, while the same has been canceled by the defendants in haste, without holding any inquiry and offering opportunity to the plaintiff for producing evidence and hearing.

The defendants have not initiated any criminal proceedings against the witnesses and verifiers and have not fixed responsibility upon the person, who allegedly have made fake verification for issuance of domicile to the plaintiff.

Over
Balcht Zada Khan
Civil Judge, Torghar
(at Dghh)
23-01-19

P (B)

⊖

14-2-19

The plaintiff has produced copies of CNIC, of his mother and father on which permanent resident address of the plaintiff is mentioned as "Tehsil Kandhar, District Torghar". No letter has been issued to the concerned authorities regarding wrong address in CNIC of parents of the plaintiff.

Issue No. 5 is decided in positive, while issue No. 6 is decided in negative.

Issues No. 1, 7, 8, 9 & 10

"1. Whether the plaintiff has a cause of action?"

"7. Whether the plaintiff is entitled for the decree of declaration as per prayer "Alif?"

25

Muhammad Usman Vs Deputy Commissioner, etc
Suit for Declaration, etc
Case file No. 93/1
Date of institution 26.01.2017

54

"8. Whether the plaintiff is entitled for the decree of mandatory injunction as per prayer "Bai?"

"9. Whether the plaintiff is entitled for decree of permanent injunction as per prayer "Jeem?"

"10. Whether the plaintiff is entitled for the decree as prayed for?"

As per my detailed discussion over issues No. 5 & 6, it has been proved that domicile certificate was issued to the plaintiff after fulfillment of criteria/adopting the procedure mentioned by the defendants in their written statement and as DW-1, but the same has been canceled by the defendants without holding proper inquiry and offering opportunity of producing evidence and hearing to the plaintiff; therefore, issues No. 1, 7, 8, 9 & 10 are decided in positive.

J. Aice
Balcht Zaid Khan
Civil Judge, Ferozpur
(at Ferozpur)
23-01-18

Relief

As sequel to my above issue-wise discussion, the plaintiff proved that domicile certificate was issued to him in accordance with the procedure mentioned by the defendants and after fulfillment of required criteria, while the same has been unverified/canceled without holding proper inquiry and offering opportunity of hearing to the plaintiff; therefore, decree for declaration, permanent injunctions, and mandatory injunctions is hereby granted in favour of the plaintiff against the defendants as prayed

P14

19-2-18

26

Muhammad Usman Vs Deputy Commissioner, etc
Suit for Declaration, etc
Case file No. 93/1
Date of institution 26.01.2017

55

for. No order as to costs. case file be consigned to the
record room after necessary completion and compilation.

Announced:
23.01.2019

Bakht Zada Khan
Civil Judge-I, Torghar at Oghi
Bakht Zada Khan
Civil Judge, Torghar
(at Oghi)

CERTIFICATE

Certified that this judgment consists of fourteen
(14) pages. Each page has been read over, checked and
signed after making necessary correction therein.

Bakht Zada Khan
Civil Judge-I, Torghar at Oghi
Bakht Zada Khan
Civil Judge, Torghar
(at Oghi)

23-01-19

P-18

14-2-19

25/3/19 21/2/19 1/13/19

IN THE COURT OF DISTRICT JUDGE, TOR GHAR

Civil Appeal No. _____/2019

- 1) Deputy Commissioner, Tor Ghar
- 2) Assistant Commissioner, Tor Ghar
- 3) Tehsildar, Teh, Kandar, Tor Ghar
- 4) Chitawar, circle Kandar, Tor Ghar
- 5) Patwari Halka Muhammad Akazai U/C Darbani Teh, Kandar, Tor Ghar
- 6) Assistant Director Local Government District, Tor Ghar
- 7) Secretary U/C Darbani, Tor Ghar

..... (Appellants)

VERSUS

1) Muhammad Usman s/o khitab Muhammad Cast Hassan Zia, kotwal,
resident of Muhmmaday Akazai, Teh, kandar, District Tor Ghar

..... (Respondent)

APPEAL AGAINST THE JUDGMENT / ORDER / DATED 23/01/2019

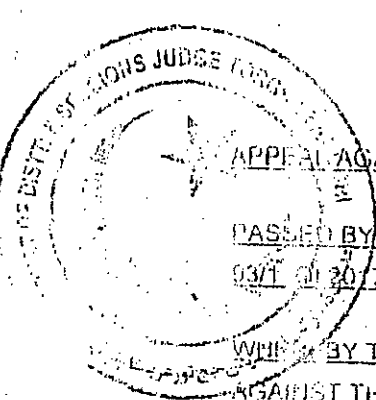
PASSED BY THE LEARNED CIVIL JUDGE-1 Tor Ghar, MR Bakht zada, IN CIVIL CASE / SUIT NO. 93/T. 01/2017 INSTITUTED ON 26/1/2017

WHICH BY THE LEARNED TRIAL COURT DECREED THE SUIT OF PLAINTIFF WHICH IS ILLEGAL AGAINST THE LAW AND INEFFECTIVE UPON THE RIGHTS OF APPELLANTS/DEFENDANTS IS LIABLE TO BE SET ASIDE.

Prayer in Appeal

ON acceptance of this appeal, the impugned judgment / order / decree dated 23/01/19 passed by the learned lower court may kindly be set-aside and the original suit may kindly be dismissed with costs.

Valuation of suit property for the purpose of court fee and jurisdiction. =Rs. 100



TESTED
08/04/19

IN THE COURT OF ASHFAQUE TAL
DISTRICT JUDGE, TORGHAR (AT OGHII)

Civil Appeal No. 01/13 of 2019

Date of Institution: 21.02.2019

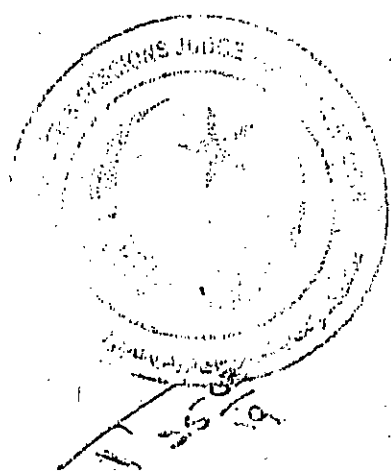
Date of Decision: 25.03.2019

1. Deputy Commissioner, Torghar.
2. Assistant Commissioner, Torghar.
3. Tehsildar, Tehsil Kundar Torghar.
4. Girdawar, Circle Kundar, Torghar.
5. Patwari Halqa Muhammad Akazai U/C Darbani Tehsil Kundar Torghar.
6. Assistant Director Local Government District Torghar.
7. Secretary U/C Darbani, Torghar.....(Appellants)

Versus

Muhammad Usman son of Khitab Muhammad caste Hassan Zai,
Kotwal resident of Muhammaday Akazai, Tehsil Kundar District
Torghar..... (Respondent)

TESTED
2
03/04/2019



JUDGMENT:

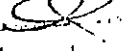
District Attorney Torghar feeling aggrieved from decree/order dated 23.01.2019 passed by learned Civil Judge-I Torghar at Oghi vide which suit of the respondent/plaintiff was decreed, have preferred instant appeal in hand.

Facts in brief are Muhammad Usman son of Khitab Muhammad (hereinafter referred as respondent/plaintiff) brought a suit against Deputy Commissioner Torghar and six others (hereinafter referred as appellants/defendants).

In prayer "Alif" seeks declaration to the effect that respondent/plaintiff Muhammad Usman son of Khitab Muhammad caste Hassan Zai, Kotwal resident of

Muhammaday Akazai Tehsil Kundar District Torghar was a permanent resident of District Torghar Tehsil Kundar and that letter issued by appellant/defendant No. 01 fully mentioned in the heading of the plaint with regard to verification of domicile of respondent/plaintiff was illegal, incorrect, against the facts and therefore was ineffective upon the rights of the respondent/plaintiff. That appellants/defendants were duty bound to restore the domicile dated 27.12.2012 otherwise to issue new domicile of District Torghar.

3

Signature: 
 Date: 03/04/2019



In prayer "Bay", seeks mandatory injunction against appellants/defendants for issuing new domicile or to restore the previous domicile dated 27.12.2012.

In prayer "Jeen" seeks permanent injunction from restraining appellants/defendants from showing him to be resident of some other District.

The suit was contested before the learned trial court by the other party by filing written statement. From divergent pleadings of the parties following contentious issues were framed by the learned trial court:-

1. Whether plaintiff has a cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether the suit is bad in its present form?

4. Whether this court has got jurisdiction to entertain the instant suit?
5. Whether the plaintiff is bonafide resident of District Torghar and resulted into issuance of domicile. If yes its effects?
6. Whether the domicile of plaintiff was rightly cancelled by the defendants? If yes its effects.
7. Whether the plaintiff is entitled for the decree of declaration as per prayer "Alif"?
8. Whether the plaintiff is entitled for the decree of mandatory injunction as per prayer "Bay"?
9. Whether the plaintiff is entitled for decree of permanent injunction as per prayer "Jeem"?
10. Whether the plaintiff is entitled for the decree as prayed for?

(4)

TESTED

Signature



Date

23/04/19

25/4/19

The defense raised by appellant/defendants was that District Torghar was earlier a semi tribal area falling under PATA. That there was no land settlement and revenue record. For grant of domicile, verification of two persons was a criteria. On the same footing respondent/plaintiff was issued domicile. Respondent/plaintiff got a job in Education Department. Education Department sent the domicile for verification to appellants/defendants and the same could not

31

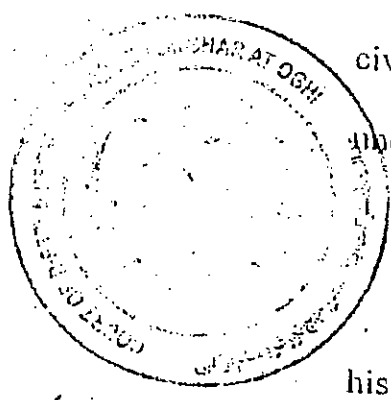
be verified being forged and frivolous one, therefore, the domicile was cancelled. Hence the instant suit was filed.

After recording of evidence of both the parties, the learned trial court decreed the suit and hence the instant appeal was filed.

I have heard learned counsel for both the sides and have gone through the record.

ATTESTED
Signature *[Signature]*
Date 03/04/07

1/25/07



Learned District Attorney was of the view that since the decree holder i-e respondent/plaintiff was a civil servant and the matter pertains to the terms and conditions of civil servant. The jurisdiction was, therefore, barred u/s 23-b of Civil Servant Act. In the instant suit, respondent/plaintiff challenged the fact that his domicile was wrongly cancelled by appellants/defendants. No plea was raised in the plaint about civil service. Therefore, the plea taken that the matter falls under the domain of Services Tribunal have got no force in it.

Muhammad Usman brought this suit with plea that his domicile was wrongly cancelled by appellants/defendants. Verification for domicile Ex.PW1/1. was duly signed and

affirmed by Gul Taj Wali, member of District Council, Union Council Darbani District Torghar. He also appeared and deposed as PW.02 and stated that he alongwith chairman village council Naseeb Rokhan had verified the fact that respondent/plaintiff was bonafide resident of District Torghar and on the basis of which domicile was issued to the plaintiff. He also stated that some residents of District Torghar objected on the domicile of respondent/plaintiff as their close relatives were on waiting list of recruitment. It is on the record that Deputy Commissioner cancelled the domicile without holding proper inquiry. PW.02 Gul Taj Wali affirmed in his cross examination the genuineness of domicile as an elected member of Union Council Darbani.

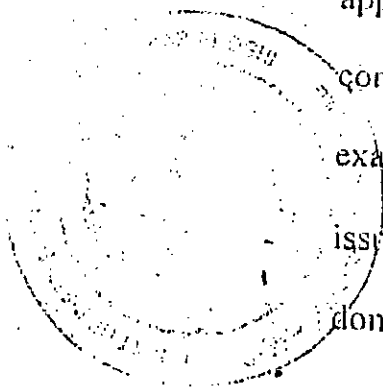
PW.03 is Niaz Muhammad Khan who verified the fact that respondent/plaintiff was resident of District Torghar. On the other hand Faisal Latif, representative of appellants/defendant was examined as DW.01. He denied the contents of the plaint of respondent/plaintiff. In cross examination the witness admitted the fact that domicile was issued to the respondent/plaintiff. He admitted the fact that on domicile signatures of Baroz Khan, tribal Malik as verifier was available. He admitted the fact that report of Patwari Halqa on sheet of domicile was available. He admitted the fact that

ATTESTED

Signature

03/04/09

03/04/09



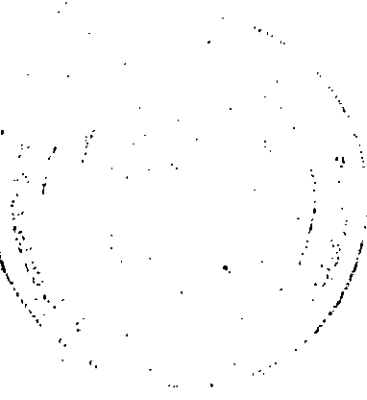
33

domicile could be verified only by the specified persons. He admitted the fact that those persons who objected on the domicile of respondent/plaintiff was not available as witnesses. He admitted the fact that domicile of respondent/plaintiff was rejected after objection but he was unaware of domicile of uncles of respondent/plaintiff was still intact. He admitted the fact that due to non resident of Torghar the domicile of respondent/plaintiff was cancelled but he was unaware that of which District the respondent/plaintiff was resident.

The gist of aforementioned detail discussion is that domicile was issued to respondent/plaintiff after due verification and due process. The witnesses who verified the fact that respondent/plaintiff was resident of Torghar deposed in favour of respondent/plaintiff. By no stretch of imagination, the domicile could be termed as a document depicting the permanent place of abode. In 2018 P.L.C (C.S.) Note 41 (Lahore High Court) it was laid down that, "*Domicile*"---
Meaning--- The place at which a person has been physically present and that the person regards as home; a person's true fixed, principal and permanent home, to which that person intends to return and remain even though currently residing elsewhere. A person has a settled connection with his or her domicile for legal purposes, either because that place is home

7
 03/04/19

25/19

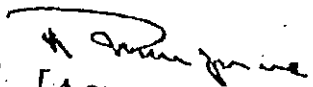


34

or because law has so designated that place. [para.9 of judgment] Black Law Dictionary (Eighth Addition)" Domicile can be granted on the ground that when a person is residing for three years in a particular place. New domicile on changing the place of abode could be granted. The appellants/defendants have failed to establish that why the domicile of respondent/plaintiff was cancelled.

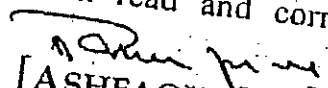
For what has been stated above, the learned trial court has rightly granted decree in favour of respondent/plaintiff. This appeal in hand being without merit is dismissed. Appellant/defendants are burdened with compensatory cost of Rs.10,000/- for filing distorted and mendacious appeal in terms of section 35-A C.P.C. Case file be consigned to the Record Room after completion and compilation while requisitioned record be returned forthwith by placing copy of this judgment on it.

Announced:
25.03.2019


[ASHFAQUE TAJ]
District Judge Torghar,
At Oghi.

CERTIFICATE

Certified that my this judgment consists upon seven (07) pages, each page has been read and corrected wherever it was necessary.


[ASHFAQUE TAJ]
District Judge Torghar,
At Oghi

ATTORNEY
23/04/19

35

ORDER 05:
25.03.2019

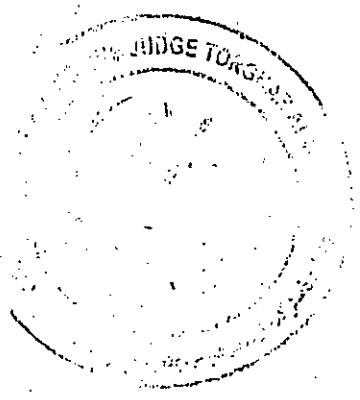
Representative for District Attorney present.
Respondent in person present. Arguments had
already been heard and record perused today.

Vide my detail judgment of today consisting
upon seven (07) pages separately placed on file,
this appeal in hand being without merit is
dismissed. Appellant/defendants are burdened with
compensatory cost of Rs.10,000/- for filing
distorted and a mendacious appeal in terms of
section 35-A C.P.C. Case file be consigned to the
Record Room after completion and compilation
while requisitioned record be returned forthwith by
placing copy of this judgment on it.

Announced:
25.03.2019

Ashfaq Taj
[ASHFAQUE TAJ]
District Judge Torghar,
At Oghi.

ATTESTED
Signature: *[Signature]*
Date: 23/04/19



E(36)

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



Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1298

Dated 16-12-2016

Appeal No. 1243 /2016

Muhamamad Usman S/o Khitab Muhammad (Ex PST Teacher) Govt.
Primary School Barbani Torghar resident of Muhammaday Akazai Tehsil
Kandar District Tor Ghar.

...APPELLANT

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) District Tor Ghar.

...RESPONDENTS

Filed to file
16-12-16
Registrar

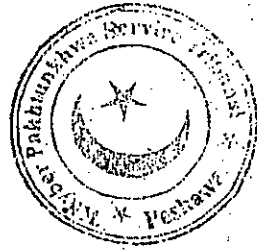
APPEAL UNDER SECTION 4 KPK SERVICE
TRIBUNAL ACT 1974 AGAINST THE IMPUGNED
NOTIFICATION ENDST NO. 2898-2906 DATED
07/09/2016, WHERE BY RESPONDENT NO. 3 WITH
DRAW/DENOTIFY, APPOINTMENT ORDER

ATTESTED

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO. 1243/2016

Date of institution ... 16.12.2016
Date of judgment ... 18.02.2019



Muhammad Usman S/o Khitab Muhammad (Ex-PST Teacher)
Government Primary School Darbani Torghar
Resident of Muhammaday Akazai Tehsil Kandar District Tor Ghar.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) District Tor Ghar.

... (Respondents)

M. Usman
18.2.2019

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION ENDST NO. 2898-2906 DATED 07.09.2016, WHEREBY RESPONDENT NO. 3 WITHDRAW/DENOTIFY, APPOINTMENT ORDER DATED 09.04.2016 WHICH IS ILLEGAL AGAINST THE LAW, AGAINST THE FACTS, NATURAL JUSTICE, AB-INITIO VOID AND LIABLE TO BE SET-ASIDE.

Mr. Hamayun Khan, Advocate.
Mr. Muhammad Bilal Khan, Deputy District Attorney

For appellant.
For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. AHMAD HASSAN

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel present. Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Fakhar Saeed, ADO for the respondents present.

Arguments heard and record perused.

REGISTERED

[Signature]
Member (Judicial)
Khyber Pakhtunkhwa Service Tribunal,
Peshawar

38

2. Brief facts of the case as per present service appeal are that the appellant was serving in Education Department as Primary School Teacher. However, his appointment order was withdrawn by the competent authority vide order dated 07.09.2016 on the allegation that the domicile certificate of the appellant was forwarded to the concerned authority for verification and the same was declared fake/unverified. The appellant filed departmental appeal on 09.09.2016 which was not responded hence, the present service appeal on 16.12.2016.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was appointed as Primary School Teacher after fulfilling of all the codal formalities. It was further contended that the appointment order of the appellant was withdrawn by the competent authority on the aforesaid allegation but neither proper inquiry was conducted nor any show-cause notice was issued to the appellant and the appellant was condemned unheard. It was further contended that after withdrawal of appointment order of the appellant, the appellant also filed civil suit to the effect that the appellant/plaintiff is permanent resident of District Toghbar and letter No. Gen (2016)DC/TG 1963 dated 30.08.2016 regarding verification of domicile of the appellant at serial No. 145 is wrong, against law and facts, ineffective upon the rights of the plaintiff and the defendant are bound to restore the domicile of the plaintiff or issue new domicile certificate to the plaintiff and the competent court also passed a decree in favour of plaintiff vide detailed judgment dated 23.01.2019 therefore, the impugned withdrawal appointment order of the appellant is illegal and liable to be set-aside

Mr. Anwar
18.12.2019

On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that

ATTESTED
[Signature]

39

the appellant was appointed by the competent authority vide order dated 09.04.2016. It was further contended that as per term and condition No. 5 of appointment order of the appellant, the certificate/domicile was to be verified from the concerned authority. It was further contended that the competent authority forwarded the domicile certificate of the appellant to the Deputy Commissioner Torghar for verification and after verification the same was found fake/unverified by the Deputy Commissioner Torghar therefore, the competent authority has rightly withdrawn the appointment order of the appellant on the allegation of fake/unverified domicile certificate of the appellant and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was appointed as Primary School Teacher vide order dated 09.04.2016 and after medical certificate/medical examination, the appellant assumed the charge of his post. The record further reveals that the domicile certificate of the appellant was sent for verification to the concerned Deputy Commissioner Torghar and after verification the same was found unverified/fake therefore, the appointment order of the appellant was withdrawn. The record further reveals that the appellant also filed a civil suit for restoration of his domicile certificate and the same was also decree in the favour of the appellant vide detailed judgment dated 23.01.2019. The record further reveals that the respondent-department was required to issue a show-cause notice to the appellant before passing the impugned/adverse order of withdrawal of appointment order of the appellant but neither any show-cause notice was issued to the appellant before passing the impugned/adverse order against the appellant nor opportunity of personal hearing was provided to the appellant therefore, the impugned order is illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order with the direction to the respondent-department to issue show-

M. Anwar
18.2.2019

[Signature]

40

cause notice to the appellant that why his appointment order be not withdrawn on such and such allegation and after replying the show-cause notice and personal hearing, the competent authority ~~may~~ ^{will} pass proper order deemed appropriate. However, the reinstatement order of the appellant will be subject to the decision/outcome of the show-cause notice. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
18.02.2019

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT ABBOTTABAD

Ahmad Hassan
(AHMAD HASSAN)
MEMBER
CAMP COURT ABBOTTABAD

Certified true copy
[Signature]
K. S. Peshawar

Date of Preparation: 18-02-19
Number of Pages: 1600
Copying Fee: 50/-
Urgent:
Total: 17/-
Name of Officer: *[Signature]*
Date of Issue: 18-02-19
Date of Delivery of Copy: 18-02-19



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
DISTRICT TOR GHAR

Email: torgharemis@gmail.com



F
41

NOTIFICATION

In compliance with the Judgment of Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar Camp Court Abbootabad, dated 18/02/2019, in Service Appeal No. 1243/2016, the services of Mr. Muhammad Usman S/O Khetab Muhammad, Ex-PST, is reinstated as PST BPS-12 at GPS Darbani from the date of his withdrawn order subject to the decision/outcome of the de-novo inquiry findings.

[His arrears of pay and allowances are subject to the outcome of the de-novo inquiry.]

District Education Officer (M)
District Tor Ghar

Encl: No. 4535-45 /Dated 10/15 /2019.

Copy for information to the.

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Tor Ghar.
3. District Monitoring Officer IMU Tor Ghar
4. District Accounts Officer Tor.Ghar
5. Sub Divisional Education Officer Male Judba
6. Teacher Concerned.
7. Office File.

District Education Officer (M)
District Tor Ghar



**Office of the Deputy Commissioner
District Torghar**

No. Dom/DC(2019)/TG/ 2903

Dated Torghar the 08/08/2019

6
42

Fax# 0997-580188
dctorghar@gmail.com

To

The District Education Officer(M)
Torghar.

Subject:

**JUDGMENT OF HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR AT CAMP COURT ABBOTTABAD IN THE
LIGHT OF JUDGEMENT OF DISTRICT JUDGE TORGHAR DATED:25-
03-2019 RENDERED IN APPEAL-NO.01/13 OF 2019 UNDER TITLED
DEPUTY COMMISSIONER AND OTHERS VS MUHAMMAD USMAN**

Reference to your office letter No. 825 Dated: 04-07-2019 on the subject cited above; the domicile certificate issued to Mr. Muhammad Usman S/o Khatib Muhammad was declared as fake/ bogus. As a result he was dismissed from service, working as PST in education department torghar. Aggrieved from the order the said person filed a petition in the court of Civil Judge Torghar.

Therefore the orders of Civil Judge/ Session Judge may be considered please.

**Deputy Commissioner
Torghar**



**OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
DISTRICT TOR GHAR**

Email: torgharemis@gmail.com

43 H
KPESE

NOTIFICATION

In pursuance of the Section -3 of the Khyber Pakhtunkhwa employees of Elementary & Secondary Education Department (Appointment and Regularization of Service Act: 2017 read with Section -1 Sub-section (2) of the act ibid and Elementary and Secondary Education Department Khyber Pakhtunkhwa Notification No. SO(S/F) E&SED/3-2/2018/SITT/Contract, Dated 16.02.2018, Service of the following Teacher (PST BPS-12) appointed on Adhoc basis on Contract, is hereby regularized in BPS-12 on the Same post in Teaching Cadre on the terms and condition given below, with effect from the date of his appointment on the PST post.

S.No	Roll No	Name	Address	Total Marks (out of 200)	School	Appointment order No. & Dated
1	942300049	Muhammad Usman	Muhammaday Aka Zai Tehsil Kandar District Tor Ghar	80.58	GPS Darbani	No.908-18 Dated 09.04.2016

TERMS & CONDITIONS.

1. His service will be governed by the Khyber Pakhtunkhwa Civil Servant Act: 1973 Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teacher, Lecturers, Instructors and Doctors) Regularity Act: 2011 & such rules & regulations as may be issued from time to time by government.
2. His pay will be released subject to verification of academic documents testimonials from the concerned Boards/ University by the District Education Officer Male Tor Ghar, anyone who found fake documents will be dismissed from service and the case will further be reported to the law enforcing agencies for action under the relevant law.
3. His service shall be considered regular and he will be eligible for pension/deduction of GP Fund in the terms of Khyber Pakhtunkhwa Civil Service Act; 1973 as amended in 2013.
4. His service is liable to termination on one month notice from either side. In case of resignation without notice, his one month pay/allowances shall be forfeited to the government Treasury.
5. He possess the requisite qualification and experience required for a regular post.
6. He has not resigned from the services or terminated from services on account of misconduct, inefficacy or any other ground before the commencement of the Act: of 1973.
7. His regularization will not affect the promotion quota of existing holders of posts in cadre of GP PST
8. He will rank to all other employees belonging to the cadre who are in service on regular basis on the commencement of the this act: and will also rank junior to such other persons if any, who in pursuance of the recommendations of the Khyber Pakhtunkhwa public service commission made before the commencement of this act; or to be appointed to the cadre irrespective of his actual date of appointment.
9. The seniority shall be determined on the basis of his continuous service in cadre provided that if the date of continuous service in the case of two or more employees is the same, the employee older in the age shall be rank senior to the younger one.
10. The competent authority reserves the right to rectify the errors and omission, if any noted/observed at any stage in instant order issued erroneously.

--Sd--

District Education Officer (M)
E&SE Tor Ghar

Endst: No 9217-23 / Dated 28/07/2020.

Copy for information to the:

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Tor Ghar
3. District Monitoring Officer (IMU) Tor Ghar.
4. District Account Officer Tor Ghar
5. SDEO Male Hassan Zai.
6. Teacher Concerned.
7. Office File.

28/07/2020
District Education Officer (M)
E&SE Tor Ghar

آ عنوان: درخواست برائے ادائیگی بقایا جات بمع الاونسز

94 حساب عالی

گزارش کی جاتی ہے کہ سائل 2016 کو سپرٹ کی بنیاد پر
جغرف ہوا اور چند صاہ ڈیوٹی سرانجام دینے کے بعد ڈومیسائل و پرفیکشن
لے ہونے کی وجہ سے Withdraw کر دیا گیا پھر سائل نے ڈومیسائل کو
کوڈ میں Challenge کیا جو کہ کوڈٹ نے ڈومیسائل پر جنون قرار دیا
سائل نے سروس ٹریبونل میں اپیل دائر کیا جو کہ سروس ٹریبونل
کوڈٹ نے بھی سائل کو ڈومیسائل ضمیمے کی بنیاد پر دوبارہ بحال کیا
سائل کو Intervening پیریڈ کے بقایا جات ہیں صلے
اس لیے آپ کے درمیت میں عرض ہے کہ سائل کو
Intervening پیریڈ کے بقایا جات کا حکم صادر

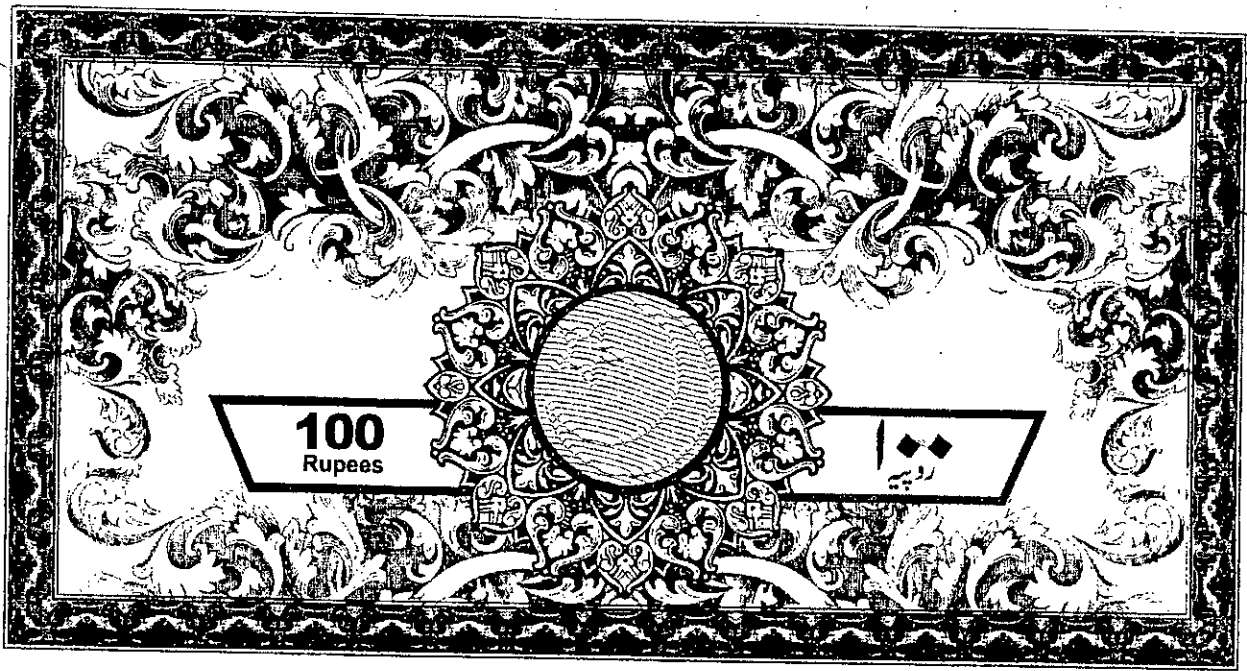
عین لواریش ہوگی

عزیز مشکور فرمائیں

آپ کا تابعدار

محمد عثمان PST
جی بی ایس درہن ضلع لوہان

470
14-11-2022



پانچ سو روپے کا نوٹ (100 روپے)

بیان طیفی

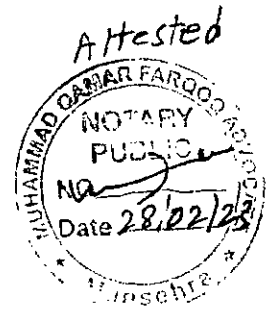
مذکورہ مسی محمد عثمان ولد خطاب محمد اکرم محمد سے اکادمی تحصیل حسن زئی ضلع تورغر حلقہ بیانی ہوں کہ میں
من مقررے 07-09-2016 سے لیکر 10-05-2019 تک کسی بھی سرکاری یا غیر سرکاری ادارے
میں کوئی ملازمت نہیں کی اور نہ ہی اس دوران کوئی روزگار کیا ہے۔

M. Us

مقررہ _____ محمد عثمان

13504-4425882-1

0302-2834652



K 96

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 4971/2021

BEFORE: SALAH-UD-DIN --- MEMBER(I)
MIAN MUHAMMAD --- MEMBER(E)

Muhammad Minhaj, PST (BPS-12), GPS, Bara Banda District Tor Ghar..... (Appellant)

VERSUS

1. The Secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
 2. The Director (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
 3. The District Education Officer (Male) Tor Ghar.
 4. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
 5. The District Accounts Officer, District Tor Ghar at Mansehra.
-(Respondents)

Present:

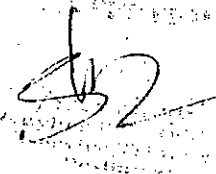
MR. TAIMUR ALI KHAN,
Advocate --- For Appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL
Assistant Advocate General --- For respondents.

Date of Institution ... 26.04.2021
Date of hearing ... 03.06.2022
Date of Decision ... 03.06.2022

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned Notification of respondent No. 3 dated 15.11.2016 whereby appointment Notification of the appellant as PST dated 13.01.2016 was withdrawn and another impugned Notification of respondent No. 3 dated 22.05.2018 when he was reinstated in service under the directions of honourable Peshawar High Court, Abbottabad Bench dated 22.02.2018 and subsequently denovo enquiry also held for verification of his



97

domicile but back benefits (salary/arrears) for the period from 15.12.2016 to 22.05.2018 were not paid to the appellant.

02. Brief facts leading to submission of the instant service appeal are that the appellant was appointed as PST (BS-12) GPS Bara Banda vide Notification dated 13.04.2016 in pursuance of which the appellant started performing his duty. However, his credentials i.e. certificate/documents and domicile were subject to verification from the concerned authorities under Clause 5 of the terms and conditions of appointment. On non verification of his domicile certificate, appointment notification of the appellant dated 13.04.2016 was withdrawn vide impugned Notification dated 15.12.2016. Feeling aggrieved, the appellant filed Writ Petition No. 209-A/2017 before the honourable Peshawar High Court, Abbottabad Bench which vide judgement dated 22.02.2018 accepted the Writ Petition, declared the impugned Notification dated 15.12.2016 as illegal, unlawful, of no legal effect and reinstated the appellant in service leaving the respondents at liberty to proceed against him if they so wished but in accordance with law and rules on the subject. In compliance with the directions of honourable Peshawar High Court, Abbottabad Bench, the appellant was reinstated in service vide notification dated 22.05.2018 and his pay & allowances were left to be decided on the outcome of de novo enquiry. In the de novo enquiry, his domicile certificate was found to have been validly issued to the appellant being bonafide resident of district Torghar. The appellant went in COC No. 137-A-2019 before the honourable Peshawar High Court, Abbottabad Bench against the respondents for disobeying order of the court dated 22.02.2018 and denial of back benefits for the period between 15.12.2016 to 22.05.2018. Petition for COC proceedings against the respondents was however dismissed vide order dated 13.01.2021 on the



Signature and stamp of the authority.

ground that the respondents complied with orders of the court and reinstated the appellant in service whereas there was no direction regarding payment of back benefits to the petitioner in the court judgement and the respondents did mention in Notification of his reinstatement in service dated 22.05.2018 that arrears of pay & allowances will be decided on the outcome of denovo enquiry. The appellant thereafter submitted departmental appeal to respondent No. 2 on 22.01.2021 which was not decided within the statutory period hence the instant service appeal was filed on 26.04.2021.

03. On admission of the appeal, the respondents were put on notice to submit reply/parawise comments on the contents and assertions of appeal. They submitted reply/parawise comments repudiating assertions of the appellant. Stance taken by the respondents in their reply/parawise comments was defended by learned AAG on their behalf. We have heard arguments of learned counsel for the appellant as well as learned AAG and gone through the record with their assistance.

04. Learned counsel for the appellant vehemently contended that the appellant though reinstated in service on 22.05.2018 under the judgement of court dated 22.02.2018 but he was denied the back benefits accrued during the period between 15.12.2016 to 22.05.2018 despite the fact that it was clearly mentioned in the reinstatement notification dated 22.05.2018 that arrears of pay and allowances will be decided on the outcome of denovo enquiry. In the denovo enquiry, domicile certificate of the appellant was found and verified as valid being bonafide resident of district Torghar but even then arrears for the said period were not paid to the appellant. It was further argued that the appellant remained out of service w.e.f. 15.12.2016 to 22.05.2018 for no fault attributable on his part therefore he is entitled to pay and allowances for the said period. Moreover, the appellant was granted

[Handwritten signature]

[Handwritten signature]

annual increments for the year 2016, 2017 and 2018 he is also entitled for the salaries w.e.f 15.12.2016 to 22.05.2018 because the appellant did not remain in a gainful employment during the period and an affidavit to this effect has already been furnished. In support of his arguments, he relied on judgement of this Tribunal dated 29.03.2022 delivered in service appeal No. 4975/2021 titled Abdul Jalil CT (BS-15) GMS Seri Kohani, District Torghar Versus Secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa and four (04) others

05. Learned AAG conversely argued that in compliance with the judgement of honourable Peshawar High Court, Abbottabad Bench dated 22.02.2018, the appellant was reinstated in service subject to the outcome of denovo enquiry regarding verification of his domicile certificate. The denovo enquiry was conducted and the concerned authorities recommended that he is resident of district Torghar and domicile certificate has rightly been issued to him. The appellant has been released pay and arrears for the period of performance of his duty, have also been paid to him. The appellant has been treated in accordance with law and no discrimination has been caused to him, the appeal may therefore be dismissed with costs, he concluded.

06. Perusal of the record reveals that the appellant was appointed as PST (BS-12) vide Notification dated 13.04.2016, however vide Notification dated 15.12.2016, the appointment order of the appellant was withdrawn for the reason that his domicile certificate was not verified as valid from the concerned quarters. The Writ Petition filed by the appellant before the august Peshawar High Court, Abbottabad Bench was accepted and he was reinstated in service vide Notification dated 22.05.2018 wherein it is categorically mentioned that the issue of arrears of pay and allowances will

53

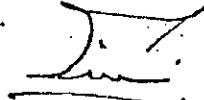
be decided on the outcome of denovo enquiry. It is an admitted fact that domicile certificate of the appellant was found valid during the course of denovo enquiry. therefore, the period during which the appellant remained out of service cannot be considered as a fault on part of the appellant. August Supreme Court of Pakistan in its judgement reported as 2013 SCMR 752 has laid down the principle which is worth mentioning here as follows;

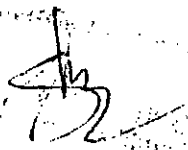
Once an employee is reinstated in service after his exoneration of the charges leveled against him, the period during which he remained either suspended or dismissed cannot be attributed as a fault on his part. His absence during this period was not voluntary on his part but it was due to order of the appellant that he was restrained not to attend his job/duty because on the basis of charge sheet, he was suspended and later on dismissed. At the moment, his exoneration from the charges would mean that he shall stand restored in service, as if he was never out of service of the appellant. If the absence of the respondent or non-attending the work was not volunteer act on the part of the respondent and was due to steps taken by the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended or dismissed.


07. It is an established fact that the appellant remained out of service w.e.f. 15.12.2016 to 22.05.2018 not by choice but due to the acts of respondents which makes him entitled for pay and allowances particularly when he has furnished an affidavit alongwith service appeal to the effect that he did not remain gainfully employed in any service during the said period of his absence. The affidavit so submitted by the appellant, has neither been denied nor contested by the respondents.

08. As a sequel to the preceding Paras, we are of the considered view to allow the instant service appeal on its merit and the appellant is held entitled to the payment of salary w.e.f. 15.12.2016 to 22.05.2018. Parties are left to bear their own costs. File be consigned to the record room.

09. *Pronounced in open court at Peshavar and given under our hands and seal of the Tribunal this 3rd of June, 2022.*


(SALAH-UD-DIN)
MEMBER (J)


(MIAN MUHAMMAD)
MEMBER (E)


(MIAN MUHAMMAD)
MEMBER (E)

Page 6
20/r
35/r

23/2/23

Date of

23/2/23
23/2/23

52

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

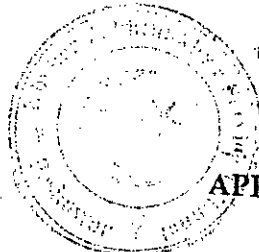
SERVICE APPEAL NO. 4975 /2021

Khyber Pakhtunkhwa
Service Tribunal

Sl. No. 5035

Dated 26/4/2021

Abdul Jalil, CT (BPS-15),
GMS Seri Kohani, District Tor Ghar.



APPELLANT

VERSUS

1. The Secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
2. The Director (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male) Tor Ghar.
4. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
5. The District Account Officer, District Tor Ghar at Mansehra.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR DIRECTING THE RESPONDENT TO GRANT BACK BENEFITS TO THE APPELLANT IN SHAPE OF SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 TO 03.07.2018 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Filed today
Registrar
26/4/2021

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO GRANT BACK BENEFITS TO THE APPELLANT IN SHAPE OF SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 TO 03.07.2018 AS ON DOMICILE ON WHICH HIS APPOINTMENT ORDER WAS WITHDRAWN HAS BEEN VERIFIED AND FOUND CORRECT DURING THE DE-NOVO INQUIRY PROCEEDING. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

APPELLED

[Signature]
Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

53

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 4975/2021

Date of Institution ... 26.04.2021

Date of Decision ... 29.03.2022



Abdul Jalil, CT (BPS-15), GMS Seri Kohani, District Tor Ghar.

... (Appellant)

VERSUS

The secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar and four others.

... (Respondents)

MR. TAIMUR ALI KHAN,
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts leading to filing of the instant Service Appeal are that the appellant was appointed as C.T (BPS-15), vide Notification dated 09.04.2016. The appellant performed his duties till 06.09.2016, however vide Notification dated 07.09.2016 issued from the office of District Education Officer (Male) Torghar, his appointment order was withdrawn on the ground that his domicile certificate was declared unverified by the quarter concerned. The appellant challenged the order dated 07.09.2016 through filing of Writ Petition No. 1082-A/2016 before the august Peshawar High Court, Abbottabad Bench, which was allowed by setting-aside the Notification dated 07.09.2016, however the respondents were left

J. T.

[Signature]
MEMBER (JUDICIAL)

57

at liberty to proceed against the appellant in accordance with law and rules, if they so desire. The appellant was reinstated vide Notification dated 03.07.2018 in light of judgment of august Peshawar High Court, Abbottabad Bench, however the issue of arrears of his pay and allowances was ordered to be decided on the outcome of de-novo inquiry. During the inquiry, the domicile certificate of the appellant was found genuine and Notification dated 29.05.2019 was also issued regarding regularization of his service with effect from the date of his appointment but the arrears of pay and allowances with effect from 07.09.2016 to 03.07.2018 were not granted to the appellant. The appellant agitated the matter before august Peshawar High Court, Abbottabad Bench through filing of COC No. 136-A/2019, which was though dismissed vide judgment dated 13.01.2021, however it was observed that the appellant would be at liberty to approach the appropriate forum provided under the law for redressal of his grievance, if any, in accordance with law qua the issue of back benefits. The appellant then filed departmental appeal, which was not responded within the statutory period, hence the instant service appeal.

2

02. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

03. Mr. Taimur Ali Khan, Advocate representing the appellant has contended that it was categorically mentioned in the reinstatement order dated 03.07.2018 that the issue of arrears of pay and allowances will be decided upon the outcome of de-novo inquiry, however the arrears were not granted to the appellant despite the fact that his domicile certificate was found genuine during the de-novo inquiry. He next contended that as the appellant remained out of service with effect from 07.09.2016 till 02.07.2018 for no fault on his part, therefore, he is entitled to pay and allowances for the said period. He further argued that that appellant has though been granted annual increments pertaining to the years 2016, 2017 & 2018, therefore, he is entitled to be paid the salaries for the period during which he

RECEIVED
JUL 13 2021
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

remained out of service due to fault of the respondents. Reliance was placed on 2013 SCMR 752, 2015 PLC (C.S) 215, PLD 1991 Supreme Court 226 and 2018 SCMR 64.

04. On the other hand, learned Additional Advocate General for the respondents has contended that in view of principle of no work no pay, the appellant cannot claim salaries for the period during which he remained out of service. He further argued that the appeal in hand being barred by time is liable to be dismissed on this score alone. He next contended that the appellant has been dealt in accordance with law and no discrimination has been caused to him, therefore, the appeal in hand may be dismissed with costs.

05. We have heard the arguments of learned counsel for the appellant as well as learned Additional Advocate General for the respondents and have perused the record.

06. A perusal of the record would show that the appellant was appointed as C.T (BPS-15) vide Notification dated 09.04.2016, however vide Notification dated 07.09.2016, the appointment order of the appellant was withdrawn for the reason that his domicile certificate was not verified as valid from the concerned quarter. The Writ Petition filed by the appellant before the august Peshawar High Court, Abbottabad Bench was however allowed and he was reinstated in service vide Notification dated 03.07.2018; wherein it is categorically mentioned that the issue of arrears of pay and allowances would be decided upon the outcome of de-novo inquiry. It is an admitted fact that the domicile certificate of the appellant was found valid during the de-novo inquiry, therefore, the period during which the appellant remained out of service could not be considered as a fault on the part of the appellant. August Supreme Court of Pakistan in its judgment reported as 2013 SCMR 752 has graciously observed as below:-

"Once an employee is reinstated in service after his exoneration of the charges leveled against him, the period during which he remained either suspended or dismissed cannot be attributed as a fault on his part. His

[Handwritten mark]

[Stamp: RECEIVED, JUDGE, PESHAWAR HIGH COURT, ABBOTTABAD BENCH, PESHAWAR]

absence during this period was not voluntary on his part but it was due to order of the appellant that he was restrained not to attend his job/duty because on the basis of charge sheet, he was suspended and later on dismissed. AT the moment, his exoneration from the charges would mean that he shall stand restored in service, as if he was never out of service of the appellant. If the absence of the respondent or non-attending the work was not volunteer act on the part of the respondent and was due to steps taken by the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended or dismissed."

07. While deriving wisdom from the above mentioned judgment of august Supreme Court of Pakistan, we are of the view that the appellant was entitled to pay and allowances for the period during which he remained out of service, particularly when he has submitted an affidavit alongwith his appeal that he did not remain gainfully employed in any service during the period of his absence. The affidavit so submitted by the appellant has not been denied by the respondents through filing of any counter affidavit. So far as the question of limitation is concerned, the issue being one of financial benefits, therefore, the appeal is not hit by law of limitation.

08. The result of the above discussion is that the appeal in hand is allowed and the appellant is held entitled to payment of salaries with effect from 07.09.2016 to 02.07.2018. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.03.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(ROZINA REHMAN)
MEMBER (JUDICIAL)

Page 5
23/2/23
30/5/22

Date
Date of
23/2/23
22/10/22

57

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

SERVICE APPEAL NO. 4976 /2021 Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5034

Dated 26/4/2021

Atta Ullah, PST (BPS-12),
GPS Kopra, Aka Zai District Torghar.



APPELLANT

VERSUS

1. The Secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
 2. The Director (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
 3. The District Education Officer (Male) Tor Ghar.
 4. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
 5. The District Account Officer, District Tor Ghar at Mansehra.
- (RESPONDENTS)**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR DIRECTING THE RESPONDENT TO GRANT BACK BENEFITS TO THE APPELLANT IN SHAPE OF SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 TO 03.07.2018 ALONG WITH ANNUAL INCREMENT OF YEAR 2016, 2017 & 2018 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Filed to-day
Registrar
26/04/2021

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO GRANT BACK BENEFITS TO THE APPELLANT IN SHAPE OF SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 TO 03.07.2018 ALONG WITH ANNUAL INCREMENT OF YEAR 2016, 2017 & 2018 AS ON DOMICILE ON WHICH HIS APPOINTMENT ORDER WAS WITHDRAWN HAS VERIFIED AND FOUND CORRECT DURING THE DE-NOVO INQUIRY PROCEEDING. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 4976/2021

Date of Institution ... 26.04.2021

Date of Decision ... 29.03.2022



Atta Ullah, PST (BPS-12), GPS Kopra, Aka Zai District Torghar.

... (Appellant)

VERSUS

The Secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar and four others.

... (Respondents)

MR. TAIMUR ALI KHAN
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER: Precise facts forming the background of the instant appeal are that the appellant was appointed as PST (BPS-12), vide Notification dated 09.04.2016. The appellant performed his duties till 06.09.2016, however vide Notification dated 07.09.2016 issued from the office of District Education Officer (Male) Torghar, his appointment order was withdrawn on the ground that his domicile certificate was declared unverified by the quarter concerned. The appellant challenged the order dated 07.09.2016 through filing of Writ Petition No. 48-A/2017 before the august Peshawar High Court, Abbottabad Bench, which was allowed by setting-aside the Notification dated 07.09.2016, however the respondents were left at liberty to

58

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 4976/2021

Date of Institution ... 26.04.2021

Date of Decision ... 29.03.2022



Atta Ullah, PST (BPS-12), GPS Kopra, Aka Zai District Torghar.

... (Appellant)

VERSUS

The Secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar and four others.

... (Respondents)

MR. TAIMUR ALI KHAN
Advocate

For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant appeal are that the appellant was appointed as PST (BPS-12), vide Notification dated 09.04.2016. The appellant performed his duties till 06.09.2016, however vide Notification dated 07.09.2016 issued from the office of District Education Officer (Male) Torghar, his appointment order was withdrawn on the ground that his domicile certificate was declared unverified by the quarter concerned. The appellant challenged the order dated 07.09.2016 through filing of Writ Petition No. 48-A/2017 before the august Peshawar High Court, Abbottabad Bench, which was allowed by setting-aside the Notification dated 07.09.2016, however the respondents were left at liberty to.

proceed against the appellant in accordance with law and rules, if they so desire. The appellant was reinstated vide Notification dated 03.07.2018 in light of judgment of august Peshawar High Court, Abbottabad Bench, however the issue of arrears of his pay and allowances was ordered to be decided on the outcome of de-novo inquiry. During the inquiry, the domicile certificate of the appellant was found genuine by the concerned quarter. The appellant was removed from service vide order dated 24.11.2018 on the ground of willful absence from duty, which was challenged by the appellant through filing of departmental appeal. The same was allowed vide order dated 11.07.2019 and the appellant was reinstated in service with effect from the date of his removal from service by treating the intervening period as leave without pay. Vide Notification dated 04.11.2020, the service of the appellant was regularized with effect from the date of his appointment but the arrears of pay and allowances with effect from 07.09.2016 to 03.07.2018 were not granted to the appellant. The appellant agitated the matter before august Peshawar High Court, Abbottabad Bench through filing of COC No. 143-A/2019, which was though dismissed vide judgment dated 13.01.2021; however it was observed that the appellant would be at liberty to approach the appropriate forum provided under the law for redressal of his grievance, if any, in accordance with law qua the issue of back benefits. The appellant then filed departmental appeal, which was not responded within the statutory period, hence the instant service appeal.

02. Notices were issued to the respondents, who contested the appeal by way of submitting joint comments, wherein they refuted the assertions made by the appellant in his appeal.

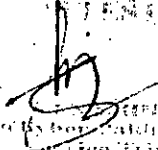
03. Mr. Taimur Ali Khan, Advocate representing the appellant has contended that it was categorically mentioned in the reinstatement order dated 03.07.2018 that the issue of arrears of pay and allowances will be decided upon the outcome of de-novo inquiry, however the arrears were not granted to the appellant despite the fact that his domicile

certificate was found genuine during the de-novo inquiry. He next contended that as the appellant remained out of service with effect from 07.09.2016 till 02.07.2018 for no fault on his part, therefore, he is entitled to payment of salaries as well as annual increments for the said period. Reliance was placed on 2013 SCMR 752, 2015 PLC (C.S) 215, PLD 1991 Supreme Court 226 and 2018 SCMR 64.

04. On the other hand, learned Additional Advocate General for the respondents has contended that in view of principle of no work no pay, the appellant cannot claim salaries for the period during which he remained out of service. He further argued that the appeal in hand being barred by time is liable to be dismissed on this score alone. He next contended that the appellant has been dealt in accordance with law and no discrimination has been caused to him, therefore, the appeal in hand may be dismissed with costs.

05. We have heard the arguments of learned counsel for the appellant as well as learned Additional Advocate General for the respondents and have perused the record.

06. A perusal of the record would show that the appellant was appointed as PST (BPS-12) vide Notification dated 09.04.2016, however vide Notification dated 07.09.2016, the appointment order of the appellant was withdrawn for the reason that his domicile certificate was not verified as valid from the concerned quarter. The Writ Petition filed by the appellant before the august Peshawar High Court, Abbottabad Bench was however allowed and he was reinstated in service vide Notification dated 03.07.2018, wherein it is categorically mentioned that the issue of arrears of pay and allowances would be decided upon the outcome of de-novo inquiry. It is an admitted fact that the domicile certificate of the appellant was found valid during the de-novo inquiry, therefore, the period during which the appellant remained out of service could not be considered as a fault on the part of the appellant. August Supreme Court of Pakistan in its judgment reported as


The Secretary
Government of Punjab
Lahore

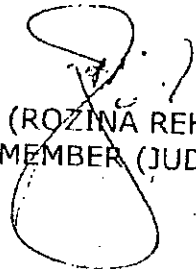
2013 SCMR 752 has graciously observed as below:-

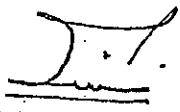
"Once an employee is reinstated in service after his exoneration of the charges leveled against him, the period during which he remained either suspended or dismissed cannot be attributed as a fault on his part. His absence during this period was not voluntary on his part but it was due to order of the appellant that he was restrained not to attend his job/duty because on the basis of charge sheet, he was suspended and later on dismissed. AT the moment, his exoneration from the charges would mean that he shall stand restored in service, as if he was never out of service of the appellant. If the absence of the respondent or non-attending the work was not volunteer act on the part of the respondent and was due to steps taken by the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended or dismissed."

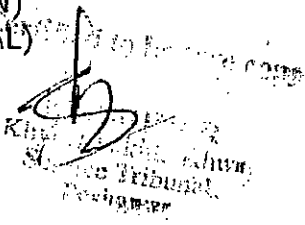
07. While deriving wisdom from the above mentioned judgment of august Supreme Court of Pakistan, we are of the view that the appellant was entitled to pay and allowances for the period during which he remained out of service, particularly when he has submitted an affidavit alongwith his appeal that he did not remain gainfully employed in any service during the period of his absence. The affidavit so submitted by the appellant has not been denied by the respondents through filing of any counter affidavit. So far as the question of limitation is concerned, the issue being one of financial benefits, therefore, the appeal is not hit by law of limitation.

08. In view of the foregoing discussion, the appeal in hand is allowed and the appellant is held entitled to payment of salaries with effect from 07.09.2016 to 02.07.2018 as well as annual increments for the years 2016 to 2018. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.03.2022


(ROZINA REHMAN)
MEMBER (JUDICIAL)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

60

VAKALAT NAMA

NO. _____/202

IN THE COURT OF KP Service Tribunal, Peshawar

Muhammad Usman (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education Department (Respondent)
(Defendant)

I/We, Muhammad Usman

Do hereby appoint and constitute Taimur Ali Khan, Advocate High Court Peshawar, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/202

[Signature]
(CLIENT)

ACCEPTED
[Signature]

TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:
Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar

[Signature]
Shahir Ullah Torani
Advocate