BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTHOONKHAWA PESHAWAR

APPEAL NO. 1379/2019

Ghufran S/O Lajeel

 $\hat{\mathbf{s}}$

.....Appellant

VERSUS

Government of KPK& Others

.....Respondent

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BEFORE THE HONOURABLE SERVICE TRIBUNA

RANNED

APPEAL NO. 1379/2019.

.....Appellant

Ghufran S/o Lajeel Chowkidar Govt Primary School Waliabad District Kohistan

VERSUS

- 1) Government of Khyber pakhtunkhawa through secretary education.
- 2) Director Elementary and Secondary Education Khyber Pakhtunkhawa, Peshawar.
- 3) District Education Officer (Male) Kolai Palas District Kohistan.

....Respondents

Joint Para-wise comments on behalf of respondents

Respectfully Sheweth:

Preliminary objections

- 1) That the appellant has no cause of action/locus standi to file the instant appeal.
- 2) That the appellant has concealed the material facts from the honorable tribunal.
- 3) That the appellant has not come to this honorable tribunal with clean hands.

4) That the appellant has filed the instant appeal on mala fide grounds.

- 5) That the appeal is against the prevailing law and rule.
- 6) That the appellant is estopped by his own conduct to file instant appeal.
- 7) That the claim of the appellant is unlawful, hence the appeal is liable to dismissed.
- 8) That the act of the respondent is within law and rules. Order dated 27.06.2019 was issued after fulfillment of the codal formalities hence appeal is liable to be dismissed.

FACTUAL OBJECTIONS:

- 1) Para No.1 of the appeal relates to appellant's service record, hence no comment.
- 2) Para No.2 is incorrect hence denied appellant was found negligent and inefficient so department removed him from service.
- 3) Para No.3 is incorrect hence denied as the appellant has not submitted valid application for leave purpose and the medical reports attached with service appeal is manipulated/bogus therefore the illness is a pretext for saving his skin. Statement of the appellant regarding FIR and detention in jail period is not clear as no such order sheet and bail order was presented by the appellant with appeal.

Self made medical reports are annexed as "A1"& "A2"

- 4) Para No.4 is incorrect hence denied as reply is given in above para regarding illness and medical advise.
- 5) Para No.5 is incorrect hence denied as appellant remained wilful absent from duty w.e.f 14/04/2015 to 28/05/2019 and made the illness as pretext. All the medical documents produced by the appellant are fake and bogus.
- 6) Para No.6 is incorrect hence denied as the appellant has not approached department for any kind of medical leave and all the medical record as well as application produced by the appellant is self made.
- 7) Para No.7 is incorrect hence denied as the appellant was charged in FIR on 01/05/1998 as per his own statement and acquitted from the same on 01/1/2019, with out producing any acquittal order and court proceedings while on other hand he produced his bogus and fake medical certificates of year-2017 which shows clearly that he remained wilful absent.
- 8) Para No.8 is incorrect hence denied as the appellant was reported wilfully absent from duties w.e.f 14/04/2015 to 28/05/2019 by ASDEO concerned. Keeping in view of ASDEO report SDEO Palas probed the matter of wilful absence wherin he found the report based on facts and recommended appellant for removal from service.On SDEOs recommendation the competent authority served upon him final Show cause /allegation sheet but the appellant failed to satisfy the competent authority.Therefore after fulfilling all the Codal formalities competent authority issued order of removal from servce.

Removal from service order is annexed as "B"

9) Para No.9 is incorrect hence denied as the reply is given in above para.08 of facts.

10) Para No.10 is incorrect hence denied as the appellant has not preferred departmental appeal before the appellate authority. The appeal produced by the appellant with this service Appeal is not valid as there is not any evidence of its proper Recieving and diary number and date. So the appellant has not availed opportunity of departmental appeal to next higher authority. Therefore appellant is not an aggrieved person as he has no cause of action as he already lost the opportunity of filing departmental appeal.

Self made departmental appeal is annexed as "C"

GROUNDS:-

- a) Para of the ground 'A' is incorrect, hence denied as the appellant has been treated as per rule and law as replied in para No.8 of facts.
- b) Para of ground 'B' is incorrect as the replied in para No.8 of facts.
- c) Para of ground C is incorrect, Appellant was properly proceeded according to E&D rules.
- d) Para of ground D is incorrect as impugned act of respondent is according to the laid down procedure and was in the best interest of public service.
- e) Para of ground E is incorrect as the appellant was reported absent by DCMA(IMU) and ASDEO on visiting the school properly and treated accordance with law.Enmity is just pretext for saving his skin.
- f) Para of ground F is incorrect hence denied as the reply regarding illness and medical documents has already been given in above para's.
- g) Para of ground G is incorrect hence denied as replied in para No.8 of facts.
- h) Respondents seek permission of this Honorable court to raise additional grounds at the time of arguments.
- i) Para of ground I is incorrect hence denied as Remedy of departmental appeal was not timely availed by the appellant.

Prayers

It is therefore humbly prayed that in the light of forgoing comments the appeal may graciously be dismissed with cost throughout.

spondent No.1

Secretary E&SE KPK Peshawar

11 Respondent No.2

Director E&SE KPK, Peshawar

Respondent No.3 District Education Officer Male KP Kohistan FORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTHOONKHAWA PESHAWAR

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Appellant

AFFIDAVIT

I Muhammad Idrees legal representative of District Education Officer (M) Kolai palas kohistan do hereby affirm do and declare of oath that contents of Para wise comments are true and correct to the best of my knowledge and believe that no thinghas been concealed from this honorable court.

Oath Commissional t i 08/02/23

Iles

legal representative District Education Officer Kolai Pallas Kohistan

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OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KOLAI

PALLAS KOHISTAN.

ANNEXTUREB

NOTIFICATION.

1.Whereas Mr.Ghufran Chokidar GPS Wali Abad Pals Kohistan ,was proceeded against the Khyber Pakhtunkhwa Government servant (Efficiency & Discipline)Rules 2011 for the charges mentioned in the show cause notice.

- 2- Whereas, per DCMA/IMU report, you have been willful absent from your duty on (11/3/2017), 18-4-2017,06-5-2017)16-6-2017,07-8-2017,21-9-2017,13-10-2017)13-12-2017,26-3-2018,26-4-2018,11-5-2018,27-6-2018,04-9-2018,12-11-2018,17-10-2018, and 04-5-2019 with out proper permission of the competent authority.
- 3- Whereas you have been reported by ASDEO Circle to be willfully absent wef 14-4-2015 to 28-5-2019 without any permission from competent authority.
- 4- Whereas, on the basis of <u>ASDEO</u> Circle report, the Sub Divisional Education Officer (M) Palas Kohistan vide No.Nill/SDEO(M) Pallas Kohistan dated 29.05.2019 where in he has proved the accused as "negligent and irregular" and recommended you for major penalty of Removal from service.
- 5- Whereas he was issued a show cause notice vide No 1531-37 dated 16/05/2019, but you failed to reply.
- 6- Whereas the District Education Officer (M) Palas Kohistan being competent authority after having considered the charges and evidences on record against you as proved long and will full absence from your duty.
- 7- Now, Therefore I Nawab Ali District Education Officer (M) Palas Kohistan being competent authority under E & D rules 2011 do hereby impose upon you " the major penalty of "REMOVAL FROM SERVICE" under 4 (b) (iii) of the ibid rules with effect from the date of absence from duty in the interest of public service.

Dated

Endst: No 😅

- Copy for information and necessary action to: 71
- 1- The Director Elementary & Secondary Edu; KPK Peshawar.
- 2- Deputy Commissioner Kolai Pallas Kohistan
- 3- The DDEO (M) Palas Kohistan,
- 4- The SDEO(M) Palas Kohistan.
- 5- The Official concerned.
- 6- The PA to local Office.

DISTRICT EDUCATION OFFICER (M) KOLAI/PALLAS KOHISTAN

(NAWAB ALI) /) COMPETENT AUTHORITY DISTRICT EDUCATION/OFFICER (M) KOLAI

PALLAS KOHISTAN

12019

ANNESTURE 6

يخدمنت جناب ڈائر يکٹرصاحب ايليمنٹر کی اينٹر ميکنڈری ايجو کيشن صوبہ تيبر پختو تحوا، پنڌاور عنوان: <u>تحکمانیا بیل برخلاف برطرنی آرڈرنسر 71-2965 مورخہ 27106/2019 جاری کردہ</u> <u>ڈسٹر کٹ ایج کیشن آخس (مردانہ) کولی پاکس مزیلے کو ستان-</u>

جناب عاليا المتحجرات التيل فريل بين -

1 - ہیر کہ سائل تکمی^{تعلی}م میں مورخہ 1996 / 104/1 کو بطور ''چو کیدا ر'' تجرتی ہوا۔ چو تکدا س وقت سائل کے والد نے 2-کنال *ا*راضی بحق تحکیہ تعلیم منتقل کی تقل ۔

2۔ بیر کہ سائل نے تکم تعلیم میں بطور''جو کیدار'' بھرتی ہونے کے بعدابینے فرائض منصبی بطریق احسن سرانجام دینے ادر سائل کی ملازمت کے عرصہ 23 سال کے دوران کیھی کی بھی افسران یالاکو سائل سے کوئی شکایت نہیں ہوئی۔

3- میرکد سائل کی تعییاتی ^{در} گورنمنٹ بوائز برائمری سکول ولی آباؤ * میں ہوتی جس اُس وفت کے نقا نون کے مطابق سائل سے والد نے سائل کوبھرتی کرنے کی شرط پراچی ذاتی اراضی تحدادی2 کنال جن صوباتی جکومت تحکمہ تعلیم منتقل کی تھی۔

4- بيك بين شير شير محمد اكبر دلد مرورا در تكل د غيره، جوك مقامى شير بين ادراى سكول شي تعينات بين ، كوسائل كاس سكول بين بعرتى موت برسخت رنجش تقى جس كاا ظهادا نهول في ممائل ك خلاف ايك جمعو في FIR علت تمبر 6 برم 302/34 مورخه 1998/105 كوتفانه بإلس مين درن كردا كرمائل كوجموت مقد مه بين الوث كرديا جوكه جرم ثابت نه موف برمائل كومورنده 11/1099 كوان مقد مه سي ماحزت مرق كرديا حيار

ظلم سیر کر مال کے مذکورہ جھوٹے مقد مدسے باعزت برکی ہوتے پر مذکوران کو خشت صد مدہوا، اور اسی رتبخش کی بناء بر مذکورہ ہیڈ میچر ن ASDEO مرکل کو سائل کی غیر حاضری کی جعلی و فرضی ریور ٹیں کرتے دستے۔ چونکہ مرکل ASDEO بھی مذکورہ ہیڈ شیچر کا قربی رشتہ ہے جس نے ہیڈ شیچر کی جعلی و فرضی غیر حاضری ریور ڈوں کی بناء پر سائل کو بغیر کسی انکوا بری کے ملازمت سے Pemove کردا دیا جو کہ مراسر نا انصافی اور غیر قانونی اور فطری انصاف کے نقاضول کے خلاف فعل ہے۔ بدیں وجہ مذکورہ Remova آرڈر باطل و کا لعدم ہونے کی بناء پر قابل منسوقی ہے۔

6۔ سیر کس اکل نے اب تک اپنی ملازمت کے تقریبا 23 سال مکمل کر لئے ہیں اور سائل اپنی ریٹا نزمنٹ کے قریب

ANNEXTURE (6 10 10 يخدمت جناب ڈائر میکٹرصا حب ایلیمنٹری اینڈ سیکنڈری ایجو کپش صوبہ خیبر پیختو تخوا، عنوان: Reminder بابت تحكماندا يمل برخلاف برطرفي آردر تمبر 71-2965 مورخه و27/06/2019 ماري <u> کردہ ڈسٹر کمٹ ایجو کیشن آقیس (مردانہ) کوئی پالس صلح کو ہتان۔</u> جناب عالی ! Reminder بابت تحکمانه اییل عنوان ذیل میں :۔ 1۔ بیر کہ سائل نے مورجہ 08/07/2019 کو ملازمت سے برطر فی آرڈ رنمبر کی 71-2965 کے خلا ف محکمه ایپل آنجنا ب کوارسال کی تقلی جس پر تا حال سائل کی کوئی شنوائی نہیں ہوئی اور نہ ہی سائل کو ا پیل کی منظور کی یا اخرا بجگی کی با بت کوئی اطلاع دی گئی۔ (نقل ایپل ہمراہ لف ہے) 2۔ ہیر کہ سائل کے برطر فی آرڈر کی دجہ سے سائل کا پورا خاندان معاشی طور پر مفلون ہو چکا ہے اور سخت معاش برّران کا شکار ہے اور ساتھ بی سائل بھی شدید ذہنی کوفت میں بہتلا ہے کیونکہ سائل کے چھوٹ چھوٹ نے بچھوٹ نے بیچ اور بوڑ سے دالد بیت ہیں جن کاداحدسهارا سائل کی ملازمت ہی ہےدیگر کوئی ذریعہ آیدن نہ ہے۔اسطرح سائل کی تحکمانہ اپیل برجلداز جلد قیصلہ ہونا ضروری بے تا کہ سائل کی تکمانہ اپنیل پر جو بھی فیصلہ ہو سائل اس کے مطابق آئندہ کی کوئی قانونی جارہ جوئی کر <u>س</u>کے۔ 3- بيركد ساكل ايك غريب، آدمى بادرا بني زندگى ك عرصه 23 سال محكمه ميں بطور ' چوكيدار' خدمات مرانجام ديت ہونے گزارچکا ہوں۔اب سائل ریٹائزمنٹ کے قریب ہے کہ سائل کوبد ٹیتی کی بنیاد پر ملازمت سے برطرف کردیا گیا ہے چوکہ قانون وانصاف کے تقاضوں کے سراسرمنا فی ہے۔ لېذااستد عاب که Reminder ېزاکې روشنې ميں سائل کې تحکماندا بېل پر جمد دداند نورفر مات جو به جلداز جلد کوئې فيصله صادر فرمايا جاكر سأتل كومطل كباجائ ادرانصاف وقانون كي تقاض يورب كتيجا تمين-المرتوم؛ 26/09/2019 سائل / اپيلانت:

غفران ولد تحيل (چوكېدار)

كدرتمنت بوائز برائمري سكول ولى آبا وجنلع كوستان

the