

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	18.03.2016	<p style="text-align: center;">3</p> <p style="text-align: center;"><u>BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR</u></p> <p style="text-align: center;">Appeal No. 601/2015</p> <p style="text-align: center;">Dr. Muhammad Ismail Khan Versus Government of KPK through Chief Secretary, Peshawar etc.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER.</u>- Counsel for</p> <p>the appellant (Mr. Khalid Rahman, Advocate) and Government Pleader (Mr. Muhammad Jan) for the respondents present.</p> <p>2. Initially appointed as Medical Officer BS-17 on the domicile and quota of FATA on 08.2.2005, appellant was posted in the Civil Hospital, Kalaya, Orakzai Agency transferred to DHQ Hospital Bannu on 03.6.2015 and further transferred to M.S Khalifa Gul Nawaz Hospital, Bannu vide order dated 13.06.2013 wherefrom his services were further placed at the disposal of Director General, Health FATA vide impugned notification dated 23.01.2015 and as his Writ Petition was not entertained for the reason of lack of jurisdiction, hence this appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p> <p>3. Arguments heard and record perused.</p>

4. The learned counsel for the appellant submitted that the appellant is President of Young Doctors Association (Southern Region) Khyber Pakhtunkhwa and being an office bearer, he could not be transferred per instructions vide letter dated 07.07.1992 of the S&GAD. He further submitted that the impugned order is unlawful, without NOC as permission of the Chief Secretary was not obtained. He further argued that relation between the appellant as office bearer of the association and the Chief Executive, Group of Teaching Hospital, Bannu, (respondent No. 5) were not cordial and on the maneuvering of the later, the appellant was unlawfully transferred. In this context it was further submitted that though the appellant made departmental appeal dated 06.02.2015 to the Chief Secretary through Secretary, Health Department but the same has not been forwarded to the Chief Secretary. He contended that the transfer is neither in public interest nor on the basis of exigencies of service, which may be set aside.

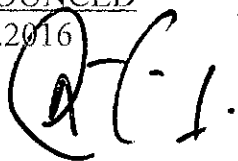
5. The appeal was resisted by the learned Government Pleader on the ground that the appellant was a bonafide resident of FATA had served for sufficient long time in Bannu therefore, the question of his tenure does not arise. He further submitted that the grounds of ban on transfer or incompetency of the Secretary to transfer him without permission of Chief Secretary vide the impugned order have not been taken in the departmental appeal/memo: of appeal, therefore, the same cannot be appreciated by Tribunal. He

also submitted that the transfer has been made on administrative ground and the same is protected on the principles laid down in 2005-SCMR-442. He requested that the appeal may be dismissed.

6. After perusal of the record and hearing pro & contra arguments, it was found that the appellant remained as office bearer who has alleged in the appeal that in order to pressurize the appellant to withdraw from a Writ Petition pending against respondent No.5, the impugned transfer was maneuvered. During the course of arguments, it was also strongly agitated that departmental appeal of the appellant dated 06.02.2015 was not forwarded to the Chief Secretary with malafide. Since departmental appeal of the appellant has not been decided, therefore, we direct that his departmental appeal be placed before the Chief Secretary to be decided as soon as possible but not later than a month of the receipt of this judgment by the respondents. The appeal is disposed off accordingly. The restrain/stay order, if any, granted by this Tribunal shall stand vacated. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

18.03.2016



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

11.01.2016

Appellant in person and Mr. Muhammad Arshed, SO alongwith
Addl: A.G for respondents present. The learned Member (Executive) is
on official tour to Swat as well as non-availability of learned counsel
for the appellant therefore, case is adjourned to 12.2.16 for
arguments. Status-quo be maintained till the date fixed.


MEMBER

12.02.2016

Counsel for the appellant and Mr. Muhammad
Jan, GP for respondents present. Arguments could not be
heard due to shortage of time. Therefore, the case is adjourned
to 17-3-16 for arguments. Status-quo be maintained.


MEMBER


MEMBER

5

24.08.2015

Appellant with counsel, M/S Qibaz Khan, SO and Abdul Ayaz Khan, Litigation Officer alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 22.9.2015. Status-quo be maintained.


Chairman

22.09.2015

Appellant with counsel and Mr. Muhammad Jan, GP with Abdul Ayaz Khan, Litigation Officer for the respondents present. Rejoinder received, copy whereof handed over to the learned GP. To come up for arguments on 6-11-2015. Status quo be maintained till the date fixed.


MEMBER


MEMBER

6.11.2015


Appellant in person and Mr. Abdul Ayaz Khan, Litigation Officer alongwith Addl: A.G for respondents present. Learned counsel the appellant is not in attendance therefore, case is adjourned to 3-12-15 for arguments. Status-quo be maintained till the date fixed.


MEMBER


MEMBER

03.12.2015

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Counsel for the appellant requested for adjournment. Last opportunity is given to the appellant for arguments. To come up for arguments on 11-1-2016. Status-quo be maintained till the date fixed.


Member


Member

03

08.06.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is office Bearer as he was elected as President of Young Doctor Association as evident from notification dated 1.1.2014. That as per the approved policy of the government an office bearer cannot be transferred while holding such office. That the appellant, in the capacity of office bearer, preferred Writ Petition No. 124-B/2015 against respondent No. 4, the Chief Executive, Group of Teaching Hospitals, Bannu and due to the said Writ Petition appellant was malafidely transferred vide impugned order dated 23.1.2015 regarding which he preferred departmental representation dated 6.2.2015 which was not responded and hence the instant service appeal on 4.6.2015.

That the impugned transfer order of appellant dated 23.1.2015 is malafide and against the approved policy of the government referred to above.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 1.7.2015 before S.B. Notice of stay application be also issued to the respondents for the date fixed. Status-quo be maintained.


Chairman

4

01.07.2015

Counsel for the appellant and Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 24.7.2015 before S.B. Status-quo be maintained.




Chairman

Appellant Deposited
Security & Process Fee

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 601/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.06.2015	<p>The appeal of Dr. Muhammad Ismail presented today by Mr. Khaled Rehman Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	5-6-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>8-6-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 601 /2015

Dr. Muhammad Ismail Khan

The Govt. of KPK & others


Versus

.....Appellant

.....Respondents

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4.	Notification of appellant's election as President of Association	01.01.2014	B	0-8
5.	Impugned Notification	23.01.2015	C	0-9
6.	Order of the Hon'ble High Court	11.02.2015	D	10-11
7.	Writ Petition No.124-B/2015		E	12-18
8.	Order of the Hon'ble High Court	12.03.2015	F	19-21
9.	Departmental Representation	06.02.2015	G	22-23
10.	Instructions of the Provincial Government	07.07.1992	H	24-25
11.	Posting/Transfer Policy		I	26-30
12.	Wakalat Nama			


Appellant

Through

Khaled Rahman
Advocate,
Supreme Court of Pakistan
3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: ___/06/2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 601 /2015

**A.W.F. Province
Service Tribunal
Diary No. 645
Dated 04-6-2015**

Dr. Muhammad Ismail Khan
Medical Officer,
DHQ Teaching Hospital, Bannu
Under transfer to Directorate Health Services, FATA.....*Appellant*

VERSUS

1. **The Govt. of Khyber Pakhtunkhwa**
through Chief Secretary,
Civil Secretariat, Peshawar
2. The Secretary to Govt. of Khyber Pakhtunkhwa
Health Department, Civil Secretariat, Peshawar
3. The Director General
Health Services, Khyber Pakhtunkhwa, Peshawar
4. The Chief Executive,
Group of Teaching Hospitals, Bannu
5. The Medical Superintendent,
DHQ Teaching Hospital, Bannu
6. The Director Health Services
FATA, Warsak Road, Peshawar.....*Respondents*

*Filed to-day
4/6/15*

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 23.01.2015 WHEREBY APPELLANT WAS TRANSFERRED FROM DHQ HOSPITAL, BANNU AND HIS SERVICES WERE PLACED AT THE DISPOSAL OF DIRECTOR HEALTH SERVICES FATA AGAINST WHICH APPELLANT PREFERRED A DEPARTMENTAL REPRESENTATION ON 06.02.2015 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE STATUTORY PERIOD OF 90 DAYS.



PRAYER:

On acceptance of the instant appeal, the impugned Notification dated 23.01.2015 to the extent of the appellant may graciously be set aside and the salaries of the appellant be also released.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant was appointed as Medical Officer on the recommendations of the Khyber Pakhtunkhwa Public Service Commission on 08.02.2005 and was posted at Civil Hospital Kalaya, Orakzai Agency. He was then transferred to DHQ Hospital, Bannu on 03-6-2005.
2. That the appellant performed his duties well and was appointed as DMS (Accident & Emergency) at DHQ Teaching Hospital Bannu by the Respondent N0.4 on 07.06.2011. Later on, the appellant was directed by the Respondent No. 4 on political basis to perform his duties under the MS KGN, Bannu vide order dated 13.06.2013 (*Annex:-A*) while drawing pay against his original post under the Respondent No. 5.
3. That in the meanwhile the appellant was elected unopposed President of Young Doctors Association (Southern Region) Khyber Pakhtunkhwa for two years vide Notification dated 01.01.2014 (*Annex:-B*) and as such he has to bring the collective service problems of the Doctors serving in Southern Region KP into the notice of the concerned authorities with earnest request for redressal of the collective service problems. In this way some personal misunderstanding developed in between the appellant and Dr. Muhammad Jehangir Khan, the incumbent of the office of the Respondent No.4 in resolution of the collective service problems of the Doctors serving in the

Group of Teaching Hospitals Bannu.

4. That since the Respondent No.5 was holding the office of the Chief Executive unauthorizedly in utter violation of the Rules, therefore, a writ of quo warranto was instituted in the Hon'ble Peshawar High Court, Bannu Bench requiring Respondent No.5 to explain under what authority of law he is holding such office. Respondent No.5 was accordingly summoned by the Hon'ble Court and now the proceedings are underway but due to the writ petition Respondent No.5 has started victimizing the appellant by using his political and administrative influence and thus succeeded in procuring the impugned Notification dated 23.01.2015 (*Annex:-C*) whereby the appellant was illegally transferred and his services placed at the disposal of the Director Health Services FATA. However, the order was suspended by the Hon'ble Court vide order dated 11.02.2015 (*Annex:-D*).
5. That subsequently, on the direction of the Hon'ble Peshawar High Court, Bannu Bench, the appellant filed a separate Writ Petition No.124-B/2015 (*Annex:-E*) challenging the impugned transfer order but the same was subsequently dismissed vide order dated 12.03.2015 (*Annex:-F*) on the ground of jurisdiction.
6. That being aggrieved of the impugned Notification *ibid*, appellant preferred a departmental Representation (*Annex:-G*) to the appellate authority on 06.02.2015 but the same was not disposed of within the statutory period of 90 days, hence this appeal *inter-alia* on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned Notification, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That as per instructions issued by the Provincial Government as contained in the letter dated 07.07.1992 (*Annex:-H*), the office bearers of the Service Associations shall not be transferred during the period they bear office as such. Thus the impugned Notification is violative of the instructions of the Provincial Government inas much as the same was issued during the office bearer-ship of the appellant as President of the Association.
- C. That the impugned Notification is neither in the public interest nor in exigency of service but the same is the result of political and administrative pressure, hence the same is also violative of the Posting/Transfer Policy (*Annex:-I*) issued by the Provincial Government.
- D. That the impugned Notification has been procured malafide by the Respondent No.5 in order to pressurize the appellant to withdraw from the Writ Petition pending before the Hon'ble Peshawar High Court, Bannu Bench and as such the same is the result of arbitrary exercise of power which is against the ethics of good governance.
- E. That although the appellant is holding FATA (North Waziristan Agency) domicile but is permanently based at Bannu a long with his family owning house for the last more than 50 years, therefore, his transfer to FATA is highly prejudicial, illegal,

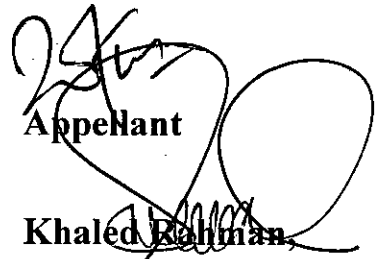
therefore not tenable under the law. It is also a fact that during the current Operation against the militants at the North Waziristan Agency, the inhabitants are IDPs and temporarily are residing at Bannu.

- F. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through


Appellant
Khaled Bahman,
Advocate,
Supreme Court of Pakistan

Dated: ___/06/2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2015

Dr. Muhammad Ismail KhanApplicant

Versus

The Govt. of KPK and others.....Respondents

Application for suspending the operation of the impugned Notification dated 23.01.2015 till the final disposal of the instant appeal.

Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be taken as an integral part of this application, which make out an excellent prima facie case in favour of applicant/appellant.
3. That the balance of convenience also lies in favour of applicant/appellant and in case the impugned Notification is not suspended the applicant/appellant will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned Notification dated 23.01.2015 may graciously be suspended till the final disposal of the main appeal.

Through

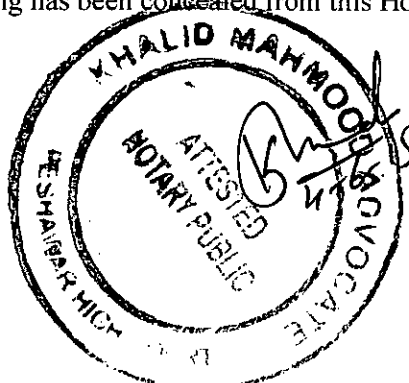
Applicant

Khaled Rahman
Advocate, Peshawar

Dated: ____/06/2015

Affidavit

I, Dr. Muhammad Ismail Khan, Medical Officer, DHQ Teaching Hospital, Bannu Under transfer to Directorate Health Services, FATA, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Deponent

Answer A' (7)

**OFFICE OF THE PRINCIPAL BANNU MEDICAL COLLEGE/
CHIEF EXECUTIVE GROUP OF TEACHING HOSPITALS BANNU**
Khyber Pakhtunkhwa, Pakistan

Ph: 0928-9270356, Fax: 0928-620857, Exchange: 0928-620858-59

OFFICE ORDER

The following inter-hospitals transfers/postings of Doctors are hereby ordered in the interest of the public with immediate effect.

S#	Name	From	To	Remarks
1	Dr. Muhammad Farooq, Consultant ENT (BS-19),	DHQTH Bannu	KGNTN Bannu	
2	Dr. Aziz-ur-Rahman, PMO, BS-19 (Qualified ENT Specialist)	KGNTN Bannu	DHQTH Bannu	To work as ENT Specialist
3	Dr. Muhammad Ismail, MO (BS-17) working as DMS Admn:	DHQTH Bannu	KGNTN Bannu	
4	Dr. Zahidullah, MO (BS-17)	KGNTN Bannu	DHQTH Bannu	

Note: - The above mentioned doctors shall continue to draw their pay etc against their original posts.

Sdxxxxx
Principal BMC /
Chief Executive
Group of Teaching Hospital
Bannu

Endst: No. 1352/CE/ACE/KGN/DBMC

Dated: 13/06/2013

Copy to:

1. Secretary to Govt. of Khyber Pakhtunkhwa, Health Department Peshawar
2. Mr. Shah Muhammad, MPA PK-72 Bannu
3. Mr. Fakhr-e-Azam, MPA PK-71, Bannu
4. Principal BMC Bannu
5. Dr. Muhammad Jehangir Khan, Additional Chief Executive Group of Teaching Hospitals Bannu
6. Medical Superintendent KGNTN/DHQTH Bannu
7. Doctors concerned

With reference to the decision made in the meeting held in the office of Chief Executive, Group of Teaching Hospitals Bannu on 12/06/2012

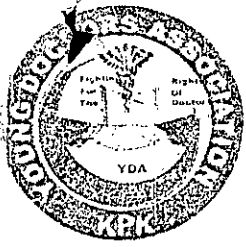
For information and necessary action.

See in 8.13

430
15/6/13
Certified to be True Copy

Principal BMC /
Chief Executive
Group of Teaching Hospital
Bannu

Attested
Adv for PHS



YOUNG DOCTORS ASSOCIATION KHYBER PAKHTUNKHWA

ANNEX B
8



Ref. No. YDA-KPK-02/2014

Date. 01/01/2014

Notification

The young Doctors Association-KPK is pleased to notify that the following have been elected as unopposed office barriers of young doctor association (YDA) Southern Region KPK for the two years of 2014-16.

1. Dr.Muhammad Ismail Khan (President) Southern Region KPK
2. Dr.Naimatullah.(General Secretary) Southern Region KPK

Kohat Division:

1. Dr.Fazal Rahman (President)
2. Dr.Farid Afridi (General Secretary)

Bannu Division:


1. Dr.Muhammad Israr (President)
2. Dr.Ahmad Faraz (General Secretary)

D.I Khan Division:

1. Dr.Fozilu Rahman (President)
2. Dr.Khan Shah (General Secretary)

North Waziristan Agency:

1. Dr.Sadiq Wazir (President)
2. Dr.Zafarullah (General Secretary)


Dr.Alamgir Khan (President)
YDA, KPK

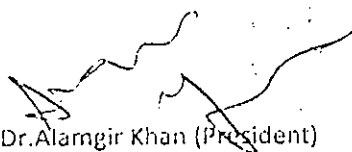
Copy for information to:

1. The Secretary Health Department KPK, Peshawar.
2. DGHS, KPK, Peshawar.
3. DGS, FATA.
4. Offices concerned.
5. Officers concerned.
6. YDA, Pakistan.
7. YDA PIMS, Islamabad

Attested



Adv for P.T. x


Dr.Alamgir Khan (President)
YDA, KPK


Certified to be
True Copy



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

(3)

11/1/15

Dated Peshawar the 23rd January, 2015

(9)

NOTIFICATION.

ANNEX C

No.SO (H)E-II/4-1/2014: The Competent Authority is pleased to retain Dr. Noor Muhammad, MO(BS-17) in RHC Monda Lower Dir and Dr. Muhammad Ismail Khan, MO (BS-17) (waiting for posting) is placed at the disposal of DHS FATA for further posting as substitute of Dr. Noor Muhammad, MO (BS-17), with immediate effect in the public interest.

SECRETARY HEALTH
KHYBER PAKHTUNKHWA

Endst. No. & date even.

Copy to the:

25. Accountant General, Khyber Pakhtunkhwa.
26. Director General Health Services, Khyber Pakhtunkhwa
27. Director Health Services FATA.
28. District Health Officer, Dir Lower.
29. District Accounts Officer Dir Lower.
30. Deputy Director (IT), Health Department, Peshawar.
31. PS to Secretary Health.
32. PS to Special Secretary Health.
33. Officers concerned.

Attested

(Kashif Iqbal Jilani)
Section Officer (E-II)

Adm for PWS

Certified to be
True Copy

10

ANNEX D
PESHAWAR HIGH COURT
BANNU BENCH.

FORM 'A'
FORM OF ORDER SHEET



Date of order or proceedings (1)	Order or other proceedings with signature of Judge (s). (2)
11.02.2015.	<p><u>W.P No.507-B of 2014</u> Present:</p> <p>Sher Muhammad Khan Advocate for petitioner.</p> <p>***</p> <p>Respondents were repeatedly directed for filing comments since 24.12.2014 but they failed to comply with the orders and at last warning was given on 29.01.2015 and the petition was fixed for 04.03.2015. The petitioner moved instant C.M, alleging therein that salary of the petitioner is stopped since December 2014 and has been placed at the disposal of DHS FATA as a counterblast to the instant petition and seeks suspension of the transfer order. Learned AAG present in the Court accepts notice. Meanwhile the impugned notification dated 23.01.2015 shall</p>

Attested

ah

Adv for Pts

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ATTESTED

DA Azam PHC, Bannu.

ENAGNER
Peshawar High Court,
Bannu Bench

16/2/15

D

11



remain suspended till date. Adjournd to
9/02.2015.

Sd/- Abdul Latif Khan, J

Sd/- Muhammad Younis Raheem, J

CERTIFIED TO BE TRUE COPY

[Handwritten signature]

16/2/15

Posho... Bench
Article 87 of
The Qanun-e-Shahadat Order 1984

[Large handwritten signature]

S.No	2090
Date of Presentation of Application	12-2-15
No of Pages	21 P
Copying Fee	42/-
Urgent Fee	
Total	42/-
Date of Prep.	16-02-15
Date Given for Copy	16-02-15
Date of Delivery of Copy	16-02-15

Attested

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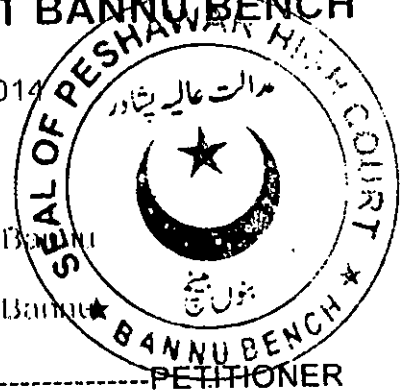
Adv for Ptnr

Certified to be True Copy

Annex - E 12
1

IN THE PESHAWAR HIGH COURT BANNU BENCH

W.P. No. 124-B of 2014



Dr. Muhammad Ismail Khan s/o Umer Khan
R/O: H. No. 68-A, Phase-I, Bannu Township, Bannu

SERVING AS:

Medical Officer in the DHQ Teaching Hospital Bannu
But deputed to perform duties at
KGN Teaching Hospital Bannu-----PETITIONER

VERSUS

The Govt of Khyber Pakhtunkhwa through its;-

1. The Chief Secretary, Govt of KP, Peshawar
2. The Secretary Health Department, Govt of KP, Peshawar
3. The Director, General Health
Govt of KP, Peshawar
4. Dr. Muhammad Jehangir Khan, Incumbent of the office of
The Chief Executive Group of Teaching Hospitals, Bannu
5. The Medical Superintendent
DHQ Teaching Hospital, Bannu
6. The Medical Superintendent
KGN Teaching Hospital, Bannu
7. The Director Health Services (FATA) Peshawar

-----RESPONDENTS

Filed To:-

10 MAR 2015

Additional Registrar

WRIT PETITION UNDER ARTICLE: 199(1)(a)&(c)
OF THE CONSTITUTION OF PAKISTAN-1973

Being aggrieved by and dissatisfied with the illegal and malicious transfer out of Bannu issued and notified by the Respondent No.2 vide Notification No. SO(H)E-II/4-1/2014 dated 23-1-2015 otherwise than in accordance with relevant law/rules/policy, the Petitioner above named prefers this petition for the enforcement of his inalienable constitutional and fundamental rights, inter alia, on the following facts and grounds:-

Copy of the impugned order dated 23-01-2015 is filed herewith as Annex "A".

ATTESTED

EXAMINER
Peshawar High Court,
Bannu Bench

[Handwritten signature]

Contd

P/S R
Adv for Ptns

E

13

FACTS

1. That after selection by the KP Public Service Commission the Petitioner joined service in Health Department (Govt of KP) as Medical Officer (BPS-17) wef 08-2-2005 and was posted from THQ Hospital Kalaya (Orakzai Agency) to serve under the Respondent No. 5 by the Respondent No. 2 vide Notification dated 03-6-2005/6 readwith EDO(H) Bannu Endorsement dated 02-7-2005 and Respondent No.5's intimation report dated 02-7-2005 and as such the Petitioner taken over the charge of his post under the Respondent No. 5 on 02-7-2005. It is pertinent to mention that upon creation of Bannu Medical College and Group of Teaching Hospitals Bannu the Petitioner's services were institutionalized under Section: 11 of the KP Medical and Health Institutions and Regulation of Health Care Services Ordinance-2002 readwith Rule: 10 of the KP Medical Institutions Rules-2001.

Copies of (1)the Respondent No. 2's Notification dated 03-6-2005/6, (2) EDO(H) Bannu's Endst dated 02-7-2005 and (3) Respondent No. 5's Report dated 02-7-2005 are filed herewith and marked as Annex "B/1-3".

2. That the Petitioner performed his duties well and was appointed as DMS (Accident & Emergency) at DHQ Teaching Hospital Bannu by the Respondent NO.4, vide Office Order dated 07-6-2011. Later on the Petitioner was directed by the Respondent No. 4 on political basis; vide Office Order dated 13-6-2013, to perform his duties under the Respondent No.6 while drawing pay against his original post under the Respondent No. 5.

Copies of the Respondent No. 4's Office Orders (1) dated 07-6-2011 and (2) dated 13-6-2013 are filed herewith and marked as Annex "C/1&2".

3. That in the meanwhile the Petitioner was elected unopposed as President of Young Doctors Association (Southern Region) Khyber Pakhtunkhwa for a two years term of 2014-15, duly notified to all concerned by Dr. Alamgiur Khan, President YDA (KP) vide Notification dated 01-1-2014 and as such the Petitioner has to bring the collective service problems of the Doctors serving in Southern region KP into the notice of the concerned authorities with earnest request for redress of the collective service problems. In this way some personal misunderstanding developed inbetween the Petitioner and the Respondent No. 4 in resolution of the collective service problems of the

Filed To:
10 MAR 2015
Additional Registrar

ATTESTED
EXAMINER
Peshawar High Court,
Bannu Bench

Could — P/3 Ad
Adv for Pts

(14)

Doctors serving in the Group of Teaching Hospitals Bannu so much so that the Petitioner has to file on 15-12-2014 a writ of quo warranto bearing W.P. No. 507-B/2014 in this Hon'ble Court against the Respondent No. 4 for his removal from the office of the Chief Executive Group of Teaching Hospitals Bannu.

Copies of the Petitioner's Notification as President YDA and Memo of WP No. 507-B/2014 are filed herewith and marked as Annex "D/1&2", respectively.

4. That that after filing the above writ petition on 15-12-2014, notice of the same was issued to the Respondents No. 2&4 on 24-12-2014 and they were called upon to file their comments within fortnight. However, the Respondents No. 2&4 not only failed to file their comments well in time but also ignored to appear before this Honble Court to attend hearing of the case twice i.e. on 15-1-2015 & 29-1-2015. Therefore, hearing of the matter was adjourned to 04-3-2015 with last warning to the Respondents for filing comments.

Copy of the order sheets in W.P. No. 507-B/2014 is filed herewith as Annex "E".


5. That in repercussion to the above proceedings, the Respondents No. 2&4 started victimizing the Petitioner and tried to restrain the Petitioner by hooks or by crooks from prosecution of the above writ petition at Bannu and to fulfill their malicious designs, the Respondent No. 4 convinced the Respondent No. 2 to issue the impugned Notification No. SO(H)E-II/4-1/2014 dated 23-1-2015 for transfer of the Petitioner out of Bannu without replacement despite the fact that Bannu is facing acute shortage of Doctors because of the settlement of IDPs due to NWA's ongoing operation ZARB-E-GHAZAB.

6. That it is pertinent to mention that the impugned Notification dated 23-1-2015 for transfer of the Petitioner out of Bannu is not only based on the personal malice of the Respondents for restraining the Petitioner from prosecution of the Quo Warranto writ petition No. 507-B/2014 in this Hon'ble Court at Bannu but is also in flagrant violation of Rule: 10 of the KP Medical Institutions Rules-2001 readwith Section: 11 of the KP Medical and Health Institutions and Regulation of Health Care Services Ordinance-2002 because the ibid provisions of law/rules require the Petitioner to serve in the institution of the Group of Teaching Hospitals Bannu till his retirement or death and there is no provision in

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10 MAR 2015
Additional Registrar

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Adv for Ptnr

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the ibid law/rules allowing transfer of an institutional employee out of the institution. Moreover, the Petitioner is an elected President of the Service Association of Young Doctors in Southern Region of Khyber Pakhtunkhwa for 2014-15, therefore, the impugned transfer of the Petitioner out of Bannu flagrantly violates the Provincial Govt's policy circulated by the Services & General Administration Department (Govt of KP) vide letter No. SO-IV(S&GAD)B(167)/92-Vol.VII dated 07-7-1992, which prohibits the transfer of an office bearer of a service association during the tenure of his office.

Copy of the Govt of KP (S&GAD)'s letter dated 07-7-1992 is filed as Annex "F".

7. That although the Petitioner has preferred his appeal/representation dated 06-2-2015 to the Respondent No.1 through proper channel but because of the fact that on one hand the Respondents are pressing hard for implementation of the impugned order and on the other hand the Petitioner has to wait compulsorily for a period of Ninety (90) days; U/S: 4(a) of the KP Service Tribunal Act-1974; prior to approaching the learned KP Service Tribunal for suspension of the impugned order till disposal of the representation and as such the Petitioner is left without remedy during the interim period of compulsory wait. In these circumstances the Petitioner has to approach this Hon'ble Court for grant of interim remedy during the statutory period of compulsory wait, for, it is established principle of law that when there is no remedy, the writ is available.


Copy of the Petitioner's Appeal/Representation dated 06-2-2015 is filed as Annex "G".

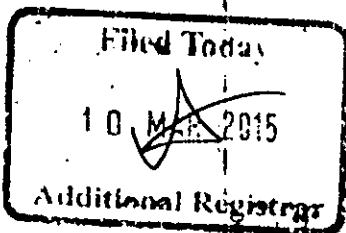
8. That the Petitioner had earlier moved this Hon'ble Court through C.M. No. 45-B/2015 in W.P. No. 507-B/2014 on 09-2-2015 for suspension of the impugned transfer order dated 23-1-2015 because the same had been issued in repercussion to filing of W.P. No. 507-B/2014. It is pertinent to mention that on 11-2-2015 this Hon'ble Court was pleased to suspend the impugned notification dated 23-1-2015 till next date i.e. 24-2-2015 but on 25-2-2015 this Hon'ble Court was pleased to dismiss C.M. No. 45-B/2015 after finding it to be impermissible in a writ of quo warranto.

Copies of the C.M. No. 45-B/2015 and relevant order sheets are filed as Annex "H/1&2"

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Contd - P/5 
Adv for Petr



9. That in the above circumstances the Petitioner is compelled to beseech before this Hon'ble High Court for suspension of the impugned illegal transfer order of the Petitioner, under Article: 199(1)(a&c) of the Constitution of Pakistan-1973; amongst others; on the following grounds:-

GROUNDS.

(A). That the Petitioner has no other alternate and efficacious remedy for getting suspension of the impugned illegal and malicious transfer order because on one hand the Petitioner has to wait per force for the statutory period of 90 days (prescribed U/S: 4(a) of the KP Service Tribunal-1974) prior to approaching the learned KP Service Tribunal for grant of interim relief against the impugned transfer order, while on the other hand the Respondents are bent upon implementing the impugned transfer order immediately for restraining the Petitioner from prosecuting the writ of Quo Warranto against the Respondent No. 4 at Bannu. Therefore, in such like situation this writ petition is maintainable in view of the case law reported as 2008 SCMR 948(a) as relied upon by the Hon'ble Lahore High Court in a case law reported as 2009 PLC(C.S) 44 coupled with the well established principles of law that "no one can be left without remedy" even for interim period and that "when there is no remedy the writ is available".

(B) That the Petitioner is entitled to be dealt with strictly in accordance with law and equally protected under the law; as is guaranteed to him under Articles: 4, 25 & 27 of the Constitution of Pakistan-1973 but the impugned transfer order has been issued otherwise than in accordance with the relevant law/transfer policy of the Provincial Govt having the force of law, for, in the instant case 08 to 10 Doctors with longer tenure at Bannu than that of the Petitioner have been ignored while notifying the transfer of the Petitioner. Therefore, the impugned transfer order, being prejudicial to the existing transfer policy is null and void ab-initio and is required to be set aside.

(C). That the impugned transfer order dated 23-1-2015 has been issued as a result of personal malice of the Respondents No. 2&4, which is prima facie aimed at victimizing the Petitioner for refraining him

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Adv for Petn

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illegally from prosecution of the writ of quo warranto bearing W.P. No. 507-B/2014 pending adjudication in this Hon'ble Court at Bannu against the Respondents No. 2&4 and since presence of malice vitiates all solemn proceedings, therefore, the impugned transfer order of the Petitioner is illegal, null and void ab-initio and is required to be declared as such even for the interim period by this Hon'ble Court.

(D). That the impugned Notification of transfer of the Petitioner dated 23-1-2015 is also in flagrant violation of Rule: 10 of the KP Medical Institutions Rules-2001 read with Section: 11 of the KP Medical and Health Institutions and Regulation of Health Care Services Ordinance-2002 because the ibid provisions of law/rules requires the Petitioner to serve in the institution of the Group of Teaching Hospitals Bannu till his retirement and there is no provision in the ibid law/rules allowing transfer of an institutional employee out of the institution.

(E). That the impugned Notification of transfer of the Petitioner out of Bannu is also violating the provincial Govt's policy on transfer of Office Bearers of Service Associations during tenure of their office duly promulgated by the Services & General Administration Department (Govt of KP) vide letter No. SO-IV(S&GAD)B(167)/92-Vol.VII dated 07-7-1992, which prohibits the transfer of an office bearer of a service association during the tenure of his office, because the Petitioner is an elected President of the Service Association of Young Doctors in Southern Region of Khyber Pakhtunkhwa for the two (02) years' tenure of 2014-15.

(F). That counsel for the Petitioner craves leave of this Hon'ble Court to urge more grounds at the time of hearing of this petition.

PRAYER

10. In view of the above humble submissions, it is earnestly prayed that this Hon'ble High Court may graciously be pleased to:-

Counsel - P/T
Advocate Plus

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Bannu Bench

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(a). Declare that the impugned transfer order of the Petitioner being malicious is illegal, null and void ab-initio and as such ineffective upon the service rights of the Petitioner.

(b). Issue an appropriate writ to the Respondents to re-examine the matter in its true perspective and decided the same afresh after hearing the Petitioner and till then neither the Petitioner shall be disturbed nor any adverse order be passed against him.

(c). That as an INTERIM RELIEF operation of the impugned transfer order dated 23-1-2015 may please be suspended till final disposal of the instant writ petition.

(e). Any other relief, which may be deemed proper in the circumstances of the case, may also be granted.

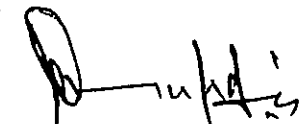
Prayed accordingly in the interest of justice.



PETITIONER

Through:-

Bannu
Dated:- 09-3-2015

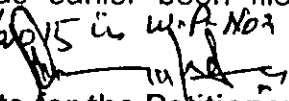

SHER MUHAMMAD KHAN
Advocate High Court at Bannu
I. D. No. BC-09-2433

LAW BOOKS

1. The Constitution of Pakistan-1973.
2. Transfer Policy of the Provincial Govt of KP.
3. The KP Medical Institution Rules-2001.
4. The KP Medical and Health Institutions and Regulation of Health Care Services Ordinance-2002

CERTIFICATE

It is certified that (as per information furnished to me by the Petitioner) no such like Writ Petition has earlier been filed in this Hon'ble Court, except C.M. No. 45-B/2015 in W.P. No. 507-B/14.


Advocate for the Petitioners

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10 MAR 2015
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EXAMINER
Peshawar High Court,
Bannu Bench

Annex - F

(19)

PESHAWAR HIGH COURT,
BANNU BENCH.

FORM 'A'

FORM OF ORDER SHEET

Date of order or proceedings	Order or other proceedings with signature of Judge (s).
(1)	(2)
12.03.2015	<p><u>WP No. 124-B of 2015.</u> Present:</p> <p>Sher Muhammad advocate, for petitioner. ***</p> <p><u>MUHAMMAD YOUNIS THAHEEM, J.-</u></p> <p>Doctor Ismail Khan seeks, constitutional jurisdiction of this Court prayed as:-</p> <p><i>"In view of the above humble submissions, it is earnestly prayed that this Hon'ble High Court may graciously be pleased to:-</i></p> <p>(a). <i>Declare that the impugned transfer order of the petitioner being malicious is illegal, null and void ab-initio and as such ineffective upon the service rights of the petitioner.</i></p> <p>(b). <i>Issue an appropriate writ to the respondents to re-examine the matter in its true perspective and decided the same afresh. after hearing the petitioner and till then neither the petitioner shall be disturbed nor any adverse order be passed against him.</i></p> <p>(c). <i>That as an</i> INTERIM RELIEF</p>

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EXAMINER
Peshawar High Court,
Bannu Bench

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F.

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operation of the impugned transfer order dated 23.01.2015 may please be suspended till final disposal of the instant writ petition.

(e). Any other relief, which may be deemed proper in the circumstances of the case, may also be granted.

Prayed accordingly in the interest of justice.

Admittedly, the petitioner is serving as Medical Officer in Health Department Under Section 10 of the KPK Civil Servants Act, 1973, a civil servant can be transferred during period of his service, which is one of the incident of service, squarely falling under the terms and conditions of service, as such, comes within the domain of Service Tribunal. The constitutional jurisdiction of the High Court, in such like matters, is ousted by explicit provision of Article 212 of the Constitution. Even if, the transfer order is passed on the basis of malafide, coram non judice or is in violation of any rules, the same could only be challenged before the Service Tribunal. It has been settled by the Apex Court time and again that the matter regarding transfer of a civil servants is one of the incident of terms and conditions of service, which could not be agitated before the High

ATTESTED

EXAMINER

Peshawar High Court,
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Courts, through constitutional petition under Article 199 of the Constitution. Article 212 of the Constitution, explicitly bars the jurisdiction of the High Courts in the matters exclusively triable by the Service Tribunal.

For the reasons discussed above, this petition being not maintainable, stands dismissed in limine.

Announced.

12.03.2015

Sd/- Ikramullah Khan, J

Sd/-Muhammad Younis Thaheem, J

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Examiner

10.4.15

Peshawar High Court Bannu Bench
Authorised under Article 87 of
The Qanun-e-Shahadat Order 1984

Handwritten signature and date: 24/3/15

2763

Date of Presentation of Application	12-3-15
No. of Pages	10 P
Copying Fee	20/-
Agent Fee	
Total	20/-
Date of Preparation	31-3-15
Date Given for Delivery	31-3-15
Date of Delivery	10.4.15
Witnessed by	<i>Handwritten signature and date: 23/3/15</i>

The Chief Secretary
Govt of Khyber Pakhtunkhwa
Peshawar

THROUGH PROPER CHANNEL

Annex G

22

Appeal U/S: 26 of the NWFP (now KP) Medical and Health Institutions
and Regulation of Health-Care Services Ordinance-2002 as
Substituted by Section: 3 of Amendment Act-VII of 2010

Your Excellency;

It is respectfully submitted that after selection by the Public Service Commission I was appointed as Medical Officer (BPS-17) and posted in Tehsil HQ Hospital, Kalaya Orakzai Agency wef 16-2-2005, from where I was transferred to DHQ Hospital Bannu and joined duties wef 2-7-2005. After establishment of the institution of Bannu Medical College and Group of Teaching Hospitals Bannu (during December 2006 in terms of Section: 2(1)(a) of the NWFP (now KP) Medical and Health Institutions and Regulation of Health Care Services Ordinance-2002) my services were absorbed (by operation of law contained in Sub-Section: (2) of Section: 11 of the in NWFP (now KP) Medical and Health Institutions and Regulation of Health Care Services Ordinance-2002 read with Rule: 10 of The NWFP (now KP) Medical Institutions Rules-2001) in the service of the institution of Bannu Medical College and Group of Teaching Hospitals Bannu, for all purposes and intents and as such I am required to serve the institution on the existing terms and condition till my retirement from service, as has been held by the Hon'ble Peshawar High Court Abbottabad Bench and upheld by the August Supreme Court of Pakistan in a case reported as 2007 SCMR 1442.

2. It is further pertinent to submit that I have been serving the institution from the core of my heart and rendering professional services to the ailing humanity enthusiastically because of which there is no public or private complaint on record against me till November 2014 but unfortunately with the advent of my election as President Young Doctors Association (Southern Region KP), it was my professional obligation to bring into the notice of the administration collective problems of the Doctors serving in the region and in case the local administration did not solve the collective problems of the Doctors then I was obliged (being President of the Association) to bring the matter into the notice of the high-ups and try to get every possible legal solution of the problem.

3. In wake of the above background, when Dr. Muhammad Jehangir Khan, Assistant Professor (Paeds Surg) in BPS-18 took over as Chief Executive Group of Teaching Hospitals Bannu during October 2013 and started victimizing Doctors as well staff of the Institution then I had to talk to him for amicable solution of the problem but when the said Dr. Muhammad Jehangir Khan did not mend his behavior then (being President of the Association) I had to bring the matter into the notice of the Hon'ble Secretary Health as well as into Your Excellency's notice but when the collective grievances of the members of the Association remained unresolved through departmental channels then I had to file a writ of quo warranto in the Hon'ble Peshawar High Court Bannu Bench on 15-12-2014, for removing the said Dr. Muhammad Jehangir Khan from the illegally usurped post of the Chief Executive Group of Teaching Hospitals


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Bannu, which was registered as Writ Petition No. 507-B/2014. Next date of hearing in the matter has been fixed by the court for 04-3-2015.

4. In these circumstance, the said Dr. Muhammad Jehangir Khan has tried his best to keep me quit for letting him play illegally with the dignity and respect of Doctors and Para-medical staff but when I did not bow before his illegal demands then he attacked my service interest firstly by placing my services at the disposal of the DG Health Service Peshawar and directing illegal stoppage of my pay for the month of December 2014 through the District Accounts Office Bannu and then through his political supporters; consisting of the sitting Speaker Provincial Assembly Mr. Asad Qaisar and Mr. Shah Farman, Provincial Minister for Information; who pressurized the Hon'ble Secretary Health Department to issue Notification No. SO(H)E-11/4-1/2014 dated 23-1-2015, for placing my services at the disposal of Director Health Services FATA for further posting without least considering the provisions of Rule: 10 of the NWFP (now KP) Medical Institutions Rules-2001 and the principle of law laid down by the August Supreme Court of Pakistan in a case reported as 2007 SCMR 599, wherein it has been stressed upon the politicians and the bureaucracy to abstain from exercising and accepting political or external pressure while dealing with terms and conditions of the services of employees.

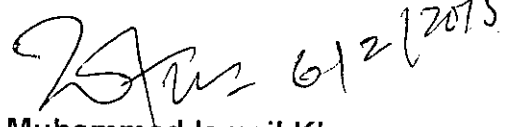
5. Moreover, the ibid transfer order also violate the Provincial Govt's instructions on transfer of Office Bearers of a Service Association contained in the then Govt of NWFP (now KP) S&GAD's letter No. SO-IV(S&GAD)B(167)/92-Vol.VII dated 07-7-1992, which prohibits the transfer of an office bearer of a service association during the tenure of his office.


6. In view of the above humble submissions, it is earnestly requested that Your Excellency may kindly be pleased to direct the Secretary Health Department (Govt of KP) to cancel/withdraw my illegal transfer orders of placing my services at the disposal of the DHS(FATA) Peshawar, contained in the Notification dated 23-1-2015 and direct the Medical Superintendent DHQ Teaching Hospital Bannu as well as District Accounts Officer Bannu to release my pay for the months of December 2014 and January 2015 forthwith.

This appeal is preferred in the interest of rule of law, justice, equity and fair play.

Bannu
Dated:- 06-2-2015

APPELLANT


Dr. Muhammad Ismail Khan
Medical Officer (BPS - 17)
DHQ Teaching Bannu,
Attached with:
KGN Teaching Hospital Bannu

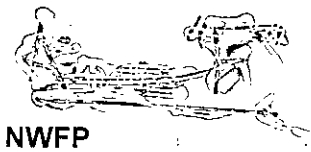
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Adv for Pt. 1/8


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GOVERNMENT OF NWFP
SERVICES & GENERAL ADMINISTRATION DEPARTMENT
(SERVICES WING)

No. SO-IV(S&GAD)B(167)/92-Vol. VII
Dated; Peshawar, the 7th July, 1992

To:-

1. All Administrative Secretaries to the Govt of NWFP.
2. All Commissioners in NWFP
3. Secretary Governor, NWFP
4. All Haeds of Attached Departments in NWFP.
5. All Deputy Commissioner/Political Agents in NWFP.
6. Secretary, Board of Revenue, NWFP.
7. Secretary NWFP Public Service Commission, Peshawar
8. All Districts & Sessions Judges in NWFP.
9. Registrar Peshawar High Court, Peshawar

SUBJECT:-TRANSFER OF OFFICE BEARERS OF ASSOCIATIONS

Sir,

I am directed to refer to this Department letter No. SOR.I(S&GAD)3-4/86, dated 25-3-1986 on the subject noted above and to request once again that the office bearers of the Service Associations should not ordinarily be transferred for the year for which they are office bearers as such.

Attested

Al

Adv for PHS

Your Obedient Servant,

Sd/xxxxxx

SECTION OFFICER (SERVICES-IV)

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H

SERVICE ASSOCIATIONS (SERVICES III)
(SERVICES III)

EQ. NO. IV (REGAD) 3-4/36/92-Vol. VII.
Dated Peshawar the 7th July, 1936.

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(25)

[Handwritten signature]

- 1. All Administrative Secretaries to Govt. of W.P.
- 2. All Commissioners in W.P.
- 3. Secretary to Governor, W.P.
- 4. All Heads of Attached Department in W.P.
- 5. All Deputy Commissioners/Political Agents in W.P.
- 6. Secretary, Board of Revenue, W.P.
- 7. Secretary, W.P. Public Service Commission, Pesh.
- 8. All Districts and Sessions Judges in W.P.
- 9. Registrar, Peshawar High Court, Peshawar.

SUBJECT: TRANSFER OF OFFICE BEARERS OF ASSOCIATIONS.

Sir,

I am directed to refer to this Department letter No. SOR.I(REGAD)3-4/36, dated 25.3.1936 on the subject noted above and to request once again that the office bearers of the Service Associations should not ordinarily be transferred for the year for which they are office bearers as such.

Your obedient servant,

[Handwritten signature: Mian J. M. Ch...]

SECTION OFFICER (SERVICES III)

2

Attested

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Adv for P. H. S.

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[Handwritten signature]



Annex-I

(26)

ESTA CODE

**ESTABLISHMENT CODE KHYBER PAKHTUNKHWA
(REVISED EDITION) 2011**

**A COMPENDIUM OF LAWS, RULES AND INSTRUCTIONS
RELATING TO THE TERMS AND CONDITIONS
OF PROVINCIAL CIVIL SERVANTS**

**COMPILED BY;
(O&M) SECTION
ESTABLISHMENT & ADMINISTRATION DEPARTMENT**

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Posting and Transfer

Statutory Provision.

(27)

Section 10 of the NWFP Civil Servants Act, 1973.

Posting and Transfer. Every civil servant shall be liable to serve anywhere within or outside the Province, in any post under the Federal Government, or any Provincial Government or Local authority, or a Corporation or body set up or established by any such Government:-

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

Provided further that, where a civil servant is required to serve in a post outside a service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

Posting/transfer policy of the Provincial Government.

- ✓ i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ✓ ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas.
- v) ⁷⁹[]

⁷⁹ Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rule of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make Posting/Transfer subject to observance of the policy and rules.

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- ✓ vi) ⁸⁰While making posting/transfers of officers/officials up to BS-17 from settled areas to FATA and vice versa approval of the Chief Secretary, NWFP needs to be obtained. Save Tehsildars/Naib Tehsildars within a division in respect of whom the concerned Commissioner will exercise the same power. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor, NWFP shall be obtained.

Provided that the power to transfer Political Tehsildars and Political Naib Tehsildars within FATA between different divisions shall rest in Additional Chief Secretary FATA.

- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for at least eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officers/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/ transfer of the unmarried female government Servants at the station of the residence of their parents.
- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement

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⁸¹DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;

- xii) In terms of Rule 17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat	
1. Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2. Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3. Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat	
1. Secretaries	Chief Secretary with the approval of the Chief Minister.
2. Other Officers of and above the rank of Section Officers:	
a) Within the Same Department	Secretary of the Department concerned.
b) Within the Secretariat from one Department to another.	Chief secretary/Secretary Establishment.
3. Officials up to the rank of Superintendent:	Secretary of the Department concerned.
a) Within the same Department	Secretary of the Department in consultation with Head of Attached Department concerned.
b) To and from an Attached Department	
c) Within the Secretariat from one Department to another	Secretary (Establishment)

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

- a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/ officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

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xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.

- i) Pre-mature posting/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule – IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S.No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government.
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government.
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed/implemented.

5. All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.

(Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003).

Certified to be
True Copy

WAKALAT NAMA

IN THE COURT OF

Ple Service Tribunal

Dr. Muhammad Iqbal Appellant(s)/Petitioner(s)

Govt of P.W.U. VERSUS

Respondent(s)

I/We Dr. Muhammad Iqbal do hereby appoint Mr. Khaled Rehman, Advocate in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by
Khaled Rehman
Khaled Rehman,
Advocate, Peshawar.

[Signature]
Signature of Executants

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No.601/2015

Dr. Muhammad Ismail Khan..... (Appellant)

Versus

Govt. of Khyber Pakhtunkhwa & Others.....(Respondents)

I N D E X

S NO	Description	Annexure	Page No.
1	Reply to application for suspension of the operation of notification dated 23.01.2015		1
2	Para wise Comments		2-3
3	Relieving Order of the Appellant from Group of Teaching Hospitals, Bannu to Director General Health Services, Khyber Pakhtunkhwa dated 28/11/2014	A	4
4	Notification of Services & General Administration Department regarding Transfer of Office Bearers of Associations dated 07/07/1992 along with legible copy	B	5-6
5	Affidavit		7

Dated 10 /08/2015



(Abdul Ayaz Khan)
Administrative /Litigation Officer
Khalifa Gul Nawaz Teaching Hospital Bannu

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 601/2015

Dr. Muhammad Ismail

..... **Appellant**

VERSUS

Govt. of Khyber Pakhtunkhwa & others

.....

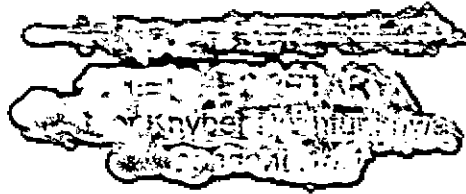
REPLY TO APPLICATION


FOR SUSPENSION OF THE OPERATION OF NOTIFICATION DATED 23/01/2015

Respectfully Shewet;

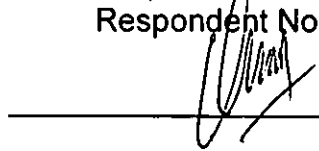
1. Correct
2. Not Correct. Considering the reply of the respondents No. 1 to 4 as integral part of this application would reveal that the applicant-appellant has no prima facia case in his favour.
3. The balance of convenience also does not lie in favour of the appellant and in case the impugned notification is not suspended, he will suffer no irreparable loss

It is, therefore, most humbly prayed that the application for interim relief may please be rejected.

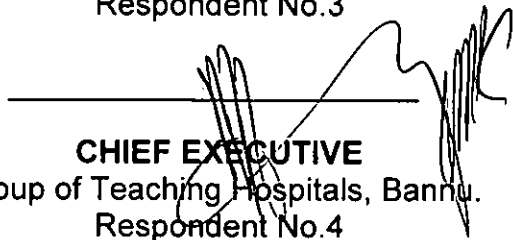




SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
Health Department, Peshawar
Respondent No. 1-2



DIRECTOR GENERAL HEALTH SERVICES
Khyber Pakhtunkhwa Peshawar
Respondent No.3



CHIEF EXECUTIVE
Group of Teaching Hospitals, Bannu.
Respondent No.4



MEDICAL SUPERINTENDENT
DHQ Teaching Hospital, Bannu.
Respondent No.5

19

BEFORE THE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.601/2015

Dr.Muhammad Ismail Khan-----

Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa and others.

Respondents

Paraswise comments on behalf of respondents No.1to 5

Respectfully Sheweth:

Preliminary Objections

1. That the appeal is hit by res judicata.
2. That the appeal is vexatious, frivolous and mala fide.
3. That the appellant has no cause of action to file the appeal.
4. That the appellant has no locus standi to file the instant appeal.
5. That the appeal is not maintainable in its present form.
6. That the appellant cannot approbate or reprobate.
7. The appeal is barred by law.
8. That the appellant has concealed material facts.
9. That the appellant is guilty of perjury and is liable to be prosecuted, inter alia, for contempt of court.
10. That the impugned order is in accordance with section 10 of Khyber Pakhtunkhwa Civil Servants Act, 1973.
11. That Departmental Appeal has ^{not} been filed under section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974.

FACTS

1. **Not correct.** Needs valid documentary evidence
2. **Not correct.** The appellant, inter-alia, was transferred from DHQ Teaching Hospital Bannu to KGN Teaching Hospital Bannu by respondent No.4, in the interest of the public that is why the appellant joined the new assignment without any protest.
3. **Not correct.** The Young Doctors' Association (Southern Region) is working without approval of the Competent Authority, therefore, the alleged election of the appellant is without any legal sanctity and authority. The rest of the para is misconceived, malicious, mal fide and not based on facts. Moreover the respondent No.4 always discharged his duties in the interest of the public, doctors and other employees.
4. **Not correct.** The respondent No.4 has been appointed by the Competent Authority under the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989. Moreover the appellant was relieved from his duties as Medical Officer and directed to report to Director General Health Services Khyber Pakhtunkhwa Peshawar for further posting out of Group of Teaching Hospitals, Bannu to FATA which is his domicile, vide office order dated 28/11/2014 (**Annex-A**). The appellant had completed more than three tenure in Group of Teaching Hospitals Bannu
5. **Correct.**
6. **Not Correct.** The departmental representation referred to in para-6 of the Service Appeal has never been filed in the office of the Respondent No1 as the same is not a part of the official record of the office, of appellate


authority. Hence not maintainable as Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 has not been complied with and the appeal is liable to be dismissed.

GROUND

- A **Not correct.** The appellant has been treated in accordance with the law, rules, policy, and the provisions of the Constitution, therefore, the impugned notification has been issued lawfully.
- B **Not correct.** The appellant is not office bearer of a legally constituted Service Association, therefore, the letter dated 07/07/1992 (**Annex-B**) is not applicable to his case. Moreover the appellant has been transferred for administrative reasons and after completion of more than normal tenure of three years, therefore, his transfer is not ordinary transfer. Any instructions which violate Section- 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, are nullity in the eyes of law.
- C **Not correct.** The transfer orders issued by Respondent No.2 & 4 are in the public interest and exigency of service but not otherwise.
- D. **Not correct.** As replied in para-A to C of the grounds of appeal. Furthermore, the appellant was relieved by Respondent No.4 on 28/11/2014 well before the Writ Petition No.124-B/2014 filed by the appellant on 10/03/2015, therefore, the allegations that transfer order has been issued to pressurize the appellant to withdraw the writ petition is false and misleading.
- E. **Not correct** As Civil Servant the appellant is liable to serve anywhere including FATA (North Waziristan Agency).
- F. The Respondents would also like to offer additional grounds at the bar.

PRAYER

It is, therefore, most humbly prayed that the appeal may please be dismissed with special costs.



SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
Health Department, Peshawar.
Respondent No. 1-2

DIRECTOR GENERAL HEALTH SERVICES
Khyber Pakhtunkhwa, Peshawar
Respondent No.3



CHIEF EXECUTIVE
Group of Teaching Hospitals, Bannu
Respondent No.4



MEDICAL SUPERINTENDENT
DHQ Teaching Hospital, Bannu
Respondent No.5

(4)

OFFICE OF THE
CHIEF EXECUTIVE GROUP OF TEACHING HOSPITALS BANNU
Khyber Pakhtunkhwa, Pakistan

OFFICE ORDER

Dr. Muhammad Ismail, Medical Officer (BS-17), attached to Khalifa Gul Nawaz Teaching Hospital Bannu and drawing pay etc from DHQTH Bannu is hereby relieved from his duties as Medical Officer and directed to report to Director General Health Services Khyber Pakhtunkhwa Peshawar for further posting out of Group of Teaching Hospitals Bannu and Bannu Medical College Bannu, to FATA which is his domicile.

His services are no more required for administrative reasons.

Sdxxxxx

(Prof. Dr. Muhammad Jehangir Khan)

Endst: No. 2020/CE/

Dated: 28/11/2014

Copy to:

1. Chief Secretary to Govt. of Khyber Pakhtunkhwa, Peshawar
2. Secretary to Govt. of Khyber Pakhtunkhwa, Health Department Peshawar
3. Director General Health Services Khyber Pakhtunkhwa Peshawar
4. Brigadier Mukhtiar Muhammad
5. Commissioner Bannu
6. Deputy Commissioner Bannu
7. Assistant Commissioner Bannu
8. Commanding Officer Field Hospital stationed at KGNTH Bannu
9. District Accounts Officer Bannu
10. Medical Superintendent(s) KGNTH/W&CTH/DHQTH Bannu
11. DMS Admn:/RMO/DMS A&E KGNTH Bannu
12. PS to Minister Health Khyber Pakhtunkhwa Peshawar
- ✓ 13. Doctor concerned

For information and necessary action.


ABDUL AYAZ KHAN

Computer Programmer (BS-17)
Khalifa Gul Nawaz Teaching Hospital
Bannu


(Prof. Dr. Muhammad Jehangir Khan)

(6)

SERVICES (SERVICES) SECTION
(SERVICES - I)

FO. NO. IV (REGAD) 3-4/86/92-761.VII.
Dated: September the 21st July, 1993.

1. All Administrative Secretaries to Govt. of H.E.P.
2. All Commissioners in H.E.P.
3. Secretary to Governor, H.E.P.
4. All Heads of Attached Department in H.E.P.
5. All Deputy Commissioners/Political Agents in H.E.P.
6. Secretary, Board of Revenue, H.E.P.
7. Secretary, H.E.P. Public Service Commission, Peshawar.
8. All Districts and Sessions Judges in H.E.P.
9. Registrar, Peshawar High Court, Peshawar.

SUBJECT: - TRANSFER OF OFFICE BEARERS OF ASSOCIATIONS.

Sir,

I am directed to refer to this Department letter No. SER.I(REGAD)3-4/86, dated 25.3.1986 on the subject noted above and to request once again that the office bearers of the Service Associations should not ordinarily be transferred for the year for which they are office bearers as such.

Your obedient servant,

Mansoor Khan

SECTION OFFICER (SERVICES - IV)

Mansoor
ABDUL AYAZ KHAN
Computer Programmer (BS-17)
Khan-e-Gal Nazim Teaching Hospital
Bannu



(6)



LEGIBLE COPY

GOVERNMENT OF NWFP
SERVICES & GENERAL ADMINISTRATION DEPARTMENT
(SERVICES WING)
No.SO-IV(S&GAD)B(167)/92-Vol.VII
Dated: Peshawar, the 7th July, 1992

To:-

1. All Administrative Secretaries to the Govt of NWFP.
2. All Commissioners in NWFP
3. Secretary Governor, NWFP
4. All Haeds of Attached Departments in NWFP.
5. All Deputy Commissioner/Political Agents in NWFP.
6. Secretary, Board of Revenue, NWFP.
7. Secretary NWFP Public Service Commission, Peshawar
8. All Districts & Sessions Judges in NWFP.
9. Registrar Peshawar High Court, Peshawar

SUBJECT: TRANSFER OF OFFICE BEARERS OF ASSOCIATIONS

Sir,

I am directed to refer to this Department letter No. SOR.I(S&GAD)3-4/86, dated 25-3-1986 on the subject noted above and to request once again that the office bearers of the Service Associations should not ordinarily be transferred for the year for which they are office bearers as such.

Your Obedient Servant,

Sd/xxxxxx

SECTION OFFICER (SERVICES-IV)

Certified to be
True Copy



ABDUL AYAZ KHAN

Computer Programmer (BS-17)
Khan Sahib Gal Nawaz Teaching Hospital



15

7

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No.601/2015

Dr. Muhammad Ismail Khan..... (Appellant)

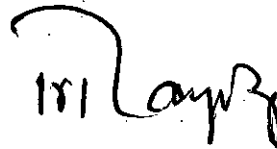
Versus

Govt. of Khyber Pakhtunkhwa & Others.....(Respondents)

AFFIDAVIT

I, **Mr. Abdul Ayaz Khan**, Administrative/Litigation Officer, Khalifa Gul Nawaz Teaching Hospital Bannu, do hereby solemnly affirm and declare on oath that the contents of the accompanying comments furnished by respondents are true and correct to the best of my knowledge and nothing has been concealed from this Honorable court.

Dated 10 / 08 /2015



(**Abdul Ayaz Khan**)
Administrative/Litigation Officer
Khalifa Gul Nawaz Teaching Hospital
Bannu

(Deponent)
CNIC

11101-921826-1



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 601 /2015

Dr. Muhammad Ismail Khan.....Appellant

Versus

The Govt. and others.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Rejoinder with Affidavit			1-4
2.	Letter of Respondent No.2 to Respondent No.4/ Chief Executive for comments.	08.07.2013	Rj/1	0-5
3.	Reminder for Comments		Rj/2	0-6
4.	Certificate of Registration of Young Doctors Association		Rj/3	0-7
5.	Invitation Card/letter for Convention		Rj/4	0-8
6.	Copies of Photograph		Rj/5	0-9
7.	Press-Clipping		Rj/6	0-10
8.	Letter	26.07.2013	Rj/7	0-11
9.	Letter	18.05.2015	Rj/8	0-12
10.	Complaint of appellant submitted against Respondent No.4	11.11.2014	Rj/9	0-13
11.	Statement of appellant	18.11.2014	Rj/10	14-15
12.	Writ of Quo-Warranto No.507-B/2014		Rj/11	16-27
13.	Notification of ban on posting and transfer in Health Department	28.10.2014	Rj/12	0-28

Through

Appellant

Khaled Rahman
Advocate, Peshawar

Dated: 22/09/2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 601 /2015

Dr. Muhammad Ismail Khan.....Appellant

Versus

The Govt. and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS NO.1-5.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. Resjudicata has no application to the case. The appeal is based on bonafide intention for enforcement of fundamental rights. Appellant has got a strong cause of action and for that matter locus standi to file the instant case. The appeal is maintainable in its present form and shape. The appeal is within time and all the facts have been brought fairly and clearly into the notice of the Hon'ble Tribunal and nothing has been concealed.

Facts:

1. Incorrect.
2. Misrepresented. The appellant was detailed from DHQ Hospital, Bannu to KGN Teaching Hospital, Bannu on political considerations as copies of the order have been transmitted to the political authorities, upon which proper objection was brought into the notice of Respondent No.2/Secretary Health, who vide letter dated 08.07.2013 (*Annex:-Rj/1*) called for the

comments of Respondent No.4/Chief Executive followed by a Reminder (*Annex:-Rj/2*) but the same was not responded back.

3. Also misrepresented. As a matter of fact the Young Doctors Association is a registered body vide Certificate of Registration (*Annex:-Rj/3*) issued by the Registration Authority/Competent Authority under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance-1961. On 08.01.2014 a Convention was held of the same Organization vide Invitation Card/letter (*Annex:-Rj/4*) at KGN Teaching Hospital, Bannu which was attended by all the office bearers of the Association and all the doctors wherein Respondent No.4 also delivered his speech vide Photographs (*Annex:-Rj/5*) and Press-Clipping (*Annex:-Rj/6*).
4. Incorrect hence denied. The appointment of Respondent No.4 as Chief Executive is in utter disregard of the Rules and therefore, the same has been called in question before the Hon'ble Peshawar High Court, Peshawar. Respondent No.4 is not the competent authority in the case of transfer and posting of the appellant as is evident from vide circular letter dated 26.07.2013 (*Annex:-Rj/7*). A similar posting of one Medical Officer of DHQ Hospital, D.I. Khan was taken notice of by the Government vide letter dated 18.05.2015 (*Annex:-Rj/8*) and it has been directed to withdraw the same and explain as to why the disciplinary proceedings under the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules-2011 should not be initiated against the concerned. In spite of the same, Respondent No.4, out of malice issued the order dated 28.11.2014. As far as the tenure of the appellant is concerned suffice it to say that during the office bearer-ship, transfer cannot be made as per the instructions of the Provincial Government.

5. Being admitted needs no reply.
6. Incorrect. The appeal has been preferred to Respondent No.1 through proper channel and forwarded by the Medical Superintendent. Interestingly, Respondent No.1 has not submitted the reply and Respondent No.2 has only submitted a reply on his behalf.

Grounds:

- A. Incorrect hence denied. It is pertinent to submit here that a complaint on 11.11.2014 (*Annex:-Rj/9*) was submitted to Respondent No.1 against Respondent No.4 by the appellant in capacity of President Young Doctors Association. The complaint was referred to the Commissioner, Bannu, who further, forwarded the same to Additional Commissioner for enquiry. The later conducted the enquiry, who recorded the statement (*Annex:-Rj/10*) of the appellant on 18.11.2014 and thus Respondent No.4 resorted to pressure tactics by issuing the relieving order of the appellant dated 28.11.2014 ibid out of sheer malice and malafide. The Inquiry Officer, thereafter submitted his Report to the Commissioner Bannu against Respondent No.4 which was remitted back to the worthy Chief Secretary for necessary action, however, so far no outcome of the same could be ascertained. The Hon'ble Tribunal may call for the result of the same Inquiry Report from Respondent No.1.
- B. Incorrect. The appellant is a valid office bearer of the Association. No transfer order can be issued on administrative grounds. The issue of tenure has already been explained. Section-10 of the Khyber Pakhtunkhwa Civil Servants Act has been further explained through policies and instructions by the Provincial Government.
- C. Incorrect. Respondent No.4 is not competent to issue the transfer order of the appellant while the impugned order is the

result of political and administrative influence.

- D. Misstated. The first complaint against Respondent No.4 was submitted on 11.11.2014. The appellant was revengefully relieved on 28.11.2014 while the Writ of Quo-Warranto No.507-B/2014 (*Annex:-Rj/11*) was filed on 15.12.2014 at Peshawar High Court, Bannu Bench and finally the impugned order was issued on 23.01.2015 which is still pending adjudication.
- E. Incorrect as stated. Moreover, as per the Notification dated 28.10.2014 (*Annex:-Rj/12*) ban was imposed on all kinds of the posting and transfers in the Health Department. There are other Doctors domiciled of FATA serving at Bannu having longer tenures as compared to the appellant and likewise numerous other Doctors of FATA domiciled are serving at various hospitals of the settled area.
- F. Needs no reply.

It is, therefore, humbly prayed that the reply of answering Respondents No.1-5 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaled Rahman
Advocate, Peshawar

Dated: 22 /09/2015

Affidavit

I, Dr. Muhammad Ismail Khan, Medical Officer, DHQ Teaching Hospital, Bannu, under transfer to Directorate Health Services, FATA, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED



Deponent



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

5

No. SO (E) H-II/4-1/2013

Dated Peshawar, the 8th July, 2013.

To

The Chief Executive,
Group of Teaching Hospitals Bannu.

RJ/1

Subject: **APPLICATION FOR CANCELLATION OF TRANSFER ORDERS.**

I am directed to refer to the subject noted above and to state that Medical Superintendent DHQ Teaching Hospital Bannu has forwarded an application in respect of Dr. Muhammad Ismail Khan, Medical Officer (BS-17), working as DMS DHQ Teaching Hospital, Bannu. In the subject application the doctor concerned has requested for cancellation of his transfer order from DHQ Teaching Hospital Bannu to KGNTB Bannu issued vide your office order dated 13.06.2013. The concerned Medical Superintendent has also requested for retention of the services of Dr. Muhammad Ismail Khan, MO (BS-17), working as Deputy Medical Superintendent stating that the doctor concerned is helping him in the administration of the institution.

Letter of MS DHQ Teaching Hospital Bannu along with application of Dr. Muhammad Ismail, MO (BS-17), is endorsed for comments, please.

Encls: As Above.

(Misbah Riaz)
Section Officer-II

Even No. & Date

Copy of above is forwarded to:

1. PS to Secretary Health.
2. PA to Special Secretary Health.

Section Officer-II

Copy also available on the website www.healthnwfp.gov.pk

HRD Building, Health Department Govt. of Khyber Pakhtunkhwa, Khyber Road
Peshawar Phone # 091-9210570, Fax # 091-9210419

Attested to
True Copy

RJ/1



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Rj/2

6

Reminder 1st

No. SO (E) H-II/4-1/2013
Dated Peshawar, the 8th July, 2013.

To

The Chief Executive,
Group of Teaching Hospitals Bannu.

Subject: **APPLICATION FOR CANCELLATION OF TRANSFER ORDERS.**

I am directed to refer to this department letter of even number dated 08.07.2013 on the subject noted above and to state that Medical Superintendent DHQ Teaching Hospital Bannu has forwarded an application in respect of Dr. Muhammad Ismail Khan, Medical Officer (BS-17), working as DMS DHQ Teaching Hospital, Bannu. In the subject application the doctor concerned has requested for cancellation of his transfer order from DHQ Teaching Hospital Bannu to KGNTH Bannu issued vide your office order dated 13.06.2013. The concerned Medical Superintendent has also requested for retention of the services of Dr. Muhammad Ismail Khan, MO (BS-17), working as Deputy Medical Superintendent stating that the doctor concerned is helping him in the administration of the institution.

Letter of MS DHQ Teaching Hospital Bannu along with application of Dr. Muhammad Ismail, MO (BS-17), is endorsed to furnish comments at the earliest, please.

Encls: As Above.

(Misbah Riaz)
Section Officer-II

Even No. & Date

Copy of above is forwarded to:

1. PS to Secretary Health.
2. PA to Special Secretary Health.

Attested to be
True Copy

Section Officer-II

Copy also available on the website www.healthnwp.gov.pk

HRD Building, Health Department Govt. of Khyber Pakhtunkhwa, Khyber Road
Peshawar Phone # 091-9210570, Fax # 091-9210419

Rj/2

S.No. 7962



SELF-HELP

SELF-RELIANCE

FORM (C)
(See Rule 6)

7

GOVERNMENT OF KHYBER PAKHTUNKHWA

DIRECTORATE OF SOCIAL WELFARE

CERTIFICATE OF REGISTRATION

Registration DSW/Khyber Pakhtunkhwa/ 3934

I hereby certify that YDA Welfare & Academic Society

House Office Hostel LRM Peshawar

has this day been registered under the

Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961
(XLVI of 1961)

Given under my hand and seal at Peshawar this _____

day of February, 2013.

REGISTRATION AUTHORITY

Registration Authority
Directorate of Social Welfare & R.D.
Khyber Pakhtunkhwa

Note: Loss of this Certificate must be reported to Registration Authority within seven days.

Attested to be
True Copy

ORIGINAL / DUPLICATE / AMENDED

Dated 11/02/2013

RS/3

With us sky is not the limit

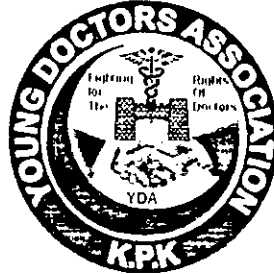
RJ/4

Respected Doctor,

Young Doctors Association cordially invites you to the prestigious occasion of the doctors community of Southern region at

Historical Grand Young Doctors

Bannu, Kohat, D.I. Khan, Tank, Lakki, Karak, Hangu, FRs. Kurram, North & South Waziristan Agencies.



CONVENTION

ON 8th JAN: 2014

ON WEDNESDAY AT 12:00 NOON

AT KHALIFA GUL NAWAZ TEACHING HOSPITAL BANNU

SOUTHERN YOUNG DOCTORS ASSOCIATION

AGENDA

1. Service Structure
2. Job Description for BPS-19/20/21/22
3. NOC from FATA for those who select & qualified for SR/AP/District Specialists Post.
4. Policy for insurance of medical profession by the govt:
5. Regularization of the adhoc Doctors.
6. Restoration of the Distt, Specialist Post of District Bannu.
7. Provision of Doctors & Teaching Staff to the region.
8. Hard area allowances for Doctors of the area.
9. Other Important Issues.

Programme

IN SHA ALLAH

- Talwat kalam Pak
- Introduction of YDA
- Lunch
- Speeches of the participants
- Speeches of the Presidents YDA KPK and Punjab.

Contacts Numbers

<u>Bannu</u>	<u>Kohat/Karak</u>	<u>D.I Khan/Tank</u>	<u>Lakki/Naurang</u>	<u>North & South Waziristan</u>
Dr. Ismail Khan 0334-9026767	Dr. Nimatullah 0334-8258372	Dr. Fuzil 0333-9961101	Dr. Falak Naz 0300-5763117	Dr. Ali Muhammad Dr. Safdar Zaman
Dr. Israr Khan 0334-8801007	Dr. Fazal Rehman 0335-1570243	Dr. Mahmood Jan Battani 0344-5481817	Dr. Taj Nawaz 0301-8077313	Dr. Dilawar Dr. Sultan Muhammad

Attested to be
True Copy

RJ/4



GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No. SO(O&M)E&AD/3-15/2007
Dated Peshawar, the 26th July, 2011

11

To: All Administrative Secretaries,
to Govt. of Khyber Pakhtunkhwa.

Copy No. 198
Date: 29.7.2011
Health Department

Subject: POSTING/TRANSFER

Dear Sir,

I am directed to refer to the subject noted above and to state that the Competent Authority has been pleased to direct that the posting/transfer of the officers upto BPS-18 may be made at the level of the Department concerned in consultation with the Minister in charge. However, the posting/transfer of the officers of BPS-19 and above may be made after seeking prior approval of the Chief Minister, Khyber Pakhtunkhwa.

I am, further, directed to request that the above directions of the competent authority should be strictly complied with.

Yours faithfully,

(KHUDA BAKHSH)
DEPUTY SECRETARY (Reg-III)

Copy for information:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
3. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
4. PS to Additional Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
5. PS to Additional Chief Secretary (FATA), Peshawar.

DEPUTY SECRETARY (Reg-II)

Copy to:

1. All Additional Secretaries in E&A Department.
2. All Deputy Secretaries in E&A Department.
3. All Section Officers in E&A Department.

SECTION OFFICER (O&M)

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11/7

MOST IMMEDIATE.



GOVERNMENT OF KHYBER PAKHTUNKHWA

HEALTH DEPARTMENT

NO. SOH(E-V)2-342/2007/Dr Karim Shah
Dated Peshawar, the 18th May, 2015

To

The Medical Superintendent
DHQ Hospital DIKhan.

Subject: **RELEIVING OF DR.IRUM BATOOL HASHMI SR.GYNAE DHQ HOSPITAL DIKHAN.**

I am directed to refer to your office order No.3902-06/PF dated 14.5.2015 and to state that the Provincial Health Department expressed its utmost displeasure to your this kind of action which leads to a clear violation of the instructions of the Provincial Govt of Khyber Pakhtunkhwa.

You have already been directed by this Department to refrain from relieving of officers of (BS-17) and above and also refrain from direct correspondence with the Provincial Health Department vide this Department letter dated 29.4.2015. It is also pertinent to mentioned that posting/transfer of officers of BS-17 and BS-18 is made by proper approval by the concerned Minister of the Department vide circular of Establishment Department dated 26.7.2014.

It is hereby directed you to withdraw the above mentioned office order under intimation to this Department **THROUGH FAX BY TODAY** positively and explain your position as to why disciplinary proceedings shall not be initiated against you under the Govt of Khyber Pakhturikhwa (Efficiency and Disciplinary) Rules, 2011.


(HINA HAFEEZ)
SECTION OFFICER-V

Endst No & Date Even.

Copy to the:-

1. Director General Health Services Khyber Pakhtunkhwa.
2. Section Officer-I Health Department.
3. District Accounts Officer DIKhan.
4. PS to Secretary Health Department.
5. PS to Special Secretary Health Department.
6. PS to Minister Health Khyber Pakhtunkhwa.
7. Dr.Irum Batool Hashmi Sr.Gynae DHQ Hospital DIKhan.

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SECTION OFFICER-V

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~~134~~

The Chief Secretary,
Khyber Pakhtunkhwa.

~~Amir L/A~~

Subject.

UNLAWFUL ACTIONS/IRREGULARITIES OF DR. JEHANGIR KHAN CHIEF EXECUTIVE GROUP OF TEACHING HOSPITALS BANNU.

Dear Sir,

Respectfully your kind attention is move to the unlawful activities of the CE Group of Teaching Hospitals Bannu Dr. Jehangir has been assigned the duties of CE Group of Teaching Hospitals Bannu. However, it is pertained to mention that the said CE was unlawful / extra powers due to which effects BS-18 and above have been deprived of their due rights. Due to the above circumstances, there is crucial situation in KGN Bannu.

It is therefore requested that an enquiry may be conducted into his activities as CE Group of Teaching Hospitals Bannu and a fulltime Chief Executive may be posted in the public interest.

Dr. Muhammad Ismail Khan
11/11/2014

Dr. Muhammad Ismail Khan

President Young Doctors Association Southern Region KPK

Attested

Dr. Joseph

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RJ/9

RJ/10 14

STATEMENT OF DR. MUHAMMAD ISMAIL KHAN MEDICAL OFFICER KGN TH. BANNU.....PETITIONER

Stated on oath that Dr. Muhammad Jahangir Khan was appointed as Assistant Professor (Paeds Surgery) at Bannu Medical College on 16/03/2009. After taking a charge on 17/04/2009, he remained absent from duty willfully and deliberately for more than three years from 17/04/2009 to 10/07/2012. He was served with a number of explanations & show cause notices from time to time by Chief Executive KGN TH/ Principal BMC and Secretary Health, KPK to resume duty but he did not bother to either return to his duty or respond to a series of notices/explanations even to the wide-spread news papers advertisements issued by the Health Deptt; He enjoyed by drawing all his salaries and basic science incentives and allowances from BMC of his absence period thus causing having financial loss to treasury of Pakistan. All explanations/show Cause notices and press cutting are attached for ready reference. Dr. Jahangir was assigned the charge of Additional Chief Executive illegally by the Chief Executive Dr. Shafiullah and Dr. Shafiullah CE was served with explanation by the Health department in this regard.

Dr. Jahangir is basically a (BS-18) Assistant Professor of Paeds Surgery. He was a promoted (BS-19) as Associate Professor of Paeds Surgery on adhoc basis for the period of one year then he again promoted (BS-20) as Professor of Paeds Surgery in 14 June 2013 on adhoc basis for the period of one year (Two time exceltrated promotion in adhoc is illegal). On 28 October, 2013 the Health Department gave **additional duties** of Chief Executive Khalifa Gul Nawaz Teaching Hospital Bannu as for your kind information **additional charge** rules explained in DDO handbook CH-7 (143) and Govt. of KPK Finance Department letter No.FD(SR-I)3-19/92 dated 12.08.1997 and in the same case FD(SR-D)3-2/2000 dated 18.11.2013. The post of **additional duty** is not more then (Six) 6 months after that the post shall be treated and having been abolished and its duties mentioned becoming part of the normal duties of the original existing post.

Prayer:

1. Dr. Jahangir is no more CE according to law.
2. Recovery should be made of the salaries and incentives / allowances of his absentee period (He was not illegible to get basic-science incentives and allowances because he was on Assistant Professor Post on clinical side).
3. A full time Chief Executive should be appointed for the group of Teaching Hospital Bannu.

He has four key posts in a time:

- i) Professor of Paeds Surgery and Head of Department of Paeds Surgery.
- ii) Chief Executive Group of Teaching Hospital Bannu.
- iii) Project Director Bannu Medical College.
- iv) Project Director Gaju Khan Sawabi.

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He has using three Cars in a same time:

- i) Staff Car bearing registration No.NWFP A-1329(Bannu).
- ii) Staff Car bearing registration No.NWFP A-1328 (Bannu).
- iii) Staff Car Project Director Gaju Khan (applied for)

BT/2
18/11/2014

He has received TA/DA of Gaju Khan Sawabi from Bannu account office as well as Gaju Khan Sawabi. He has also receiving convince allowances.

Reply to RJ/10

- 15
- i) He is known for his misdeed in the Health Department since he was a medical officer. One of his brother whom he was using a front man for his wrong deeds who is still behind the bar which can be check from LRH Peshawar.
 - ii) Group of Teaching Hospitals Bannu as well as Gaju Khan Medical College are situated in opposite corner of KPK and they are full time Job so how he can run so many institution.
 - iii) He did not attend the OPD and OT in KGN Hospital for so long. He remained absent all most in KGN.

Prayer:

- i) Recovery should be made from him.
- ii) He should be bound to his original post to serve the patient.

BRIEF OF CURRENT SEVERE PROBLEM BEING FACED BY THE STAFF OF GROUP OF TEACHING HOSPITAL BANNU.

Constructive / Developmental activity were not made / ignored by the Chief Executive, contrary to this strong tension has been created among the staff of Teaching Hospital.

The Hospitals has been badly suffered due to this Biased / Harsh attitude.

The OPD laboratory test, X-rays decline day by day:

1. Biased behavior of Chief Executive of Medical Superintendent.
2. Withdrawn the powers of DDO from Medical Superintendent and delegate powers of DDO to the Medical Superintendent.
3. Issuance of detailment orders.
4. Reliving orders of (BS-17 & above) without any enquiry.
5. Removal from the services, (BS-09 & above) and then reinstate without legal procedure.
6. Posting and transfer of the staff / doctors / nurses / paramedics / Class-IV etc among the three hospitals whereas the Govt. of Health department has clear policy that general duty policy is abolished.

Prayer:-

He did not comply the order of the Govt. whereas he strictly directed by the Health Secretary.

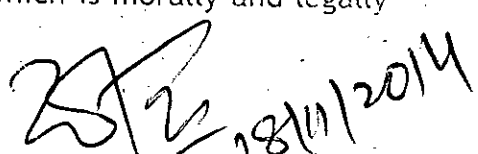
We demand strictly disciplinary action should be placed against him.

Conversion of private rooms in DHQ / W&C hospitals in House Officers residence. Urology and Paeds surgery wards in KGN emerge in ENT and Eye wards whereas both wards are converted in a HOs residence.

Prayer:-

1. He deprived the patient from their basic rights as we have already burden of IDPs in Bannu.
2. He stay in female student hostel in KGN which is morally and legally un-bearable

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(Dr. Muhammad Ismail Khan)
Medical Officer KGN TH Bannu.

RJ/11

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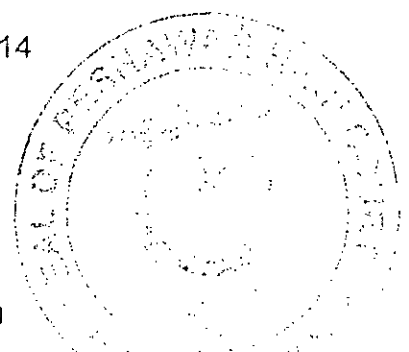
IN THE PESHAWAR HIGH COURT BANNU BENCH

Writ Petition No. 507 of 2014

Dr. Muhammad Ismail Khan s/o Umer Khan
R/O: H. No. 68-A, Phase-I,
Bannu Township, Bannu

SERVING AS:

Medical Officer in the DHQ Teaching Hospital Bannu
But deputed to perform duties at
KGN Teaching Hospital Bannu-----



PETITIONER

VERSUS

The Govt of KPK through its;-

1. The Chief Secretary, Govt of KPK, Peshawar
2. The Secretary Health Department, Govt of KPK, Peshawar
3. The Director General Health Govt of KP, Peshawar
4. Dr. Muhammad Jehangir Khan, Holder of the offices of Professor (Paediatrics Surgeon) Bannu Medical College Bannu and Chief Executive Group of Teaching Hospitals, Bannu.

-----RESPONDENTS

WRIT PETITION UNDER ARTICLE: 199(1)(b)(ii) OF THE CONSTITUTION OF PAKISTAN-1973

With a view to urge and enable this Hon'ble Court to require the Respondent No.4 as to under what authority of law he is holding the public offices of (1) Professor (Paediatrics) Bannu Medical College Bannu and (2) the Chief Executive Group of Teaching Hospitals Bannu; and as to under which authority of law the Respondent No.1 to 3 have facilitated/ issued Notification No. SOH-I/HD/3-5/2013/BMC dated 14-6-2013 and Notification No. SOH-I/HD/ BMC/2013 dated 28-10-2013 for appointment of the Responcent No.4 on the ibid posts; the Petitioner above named earnestly lays before this Hon'ble Court the following facts and grounds;-

Copies of the impugned Notifications are filed herewith and marked as Annex "A/1&2" respectively.

FACTS

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Adv for P/11

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Peshawar High Court,
Bannu Bench

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1. That the Petitioner posted as Medical Officer in DHQ Teaching Hospital Bannu but has been detailed by the Respondent No.4 to perform his duties in KGN Teaching Hospital Bannu. It is pertinent to mention that the Petitioner above named is also holding the office of the President of Young Doctors Association (Southern Region) KPK and in his capacity as President of Young Doctors Association, the Petitioner is bound to highlight any illegality or irregularity committed with Doctors and try to negotiate with the administration for redress of the collective grievances of Doctors/Members of the Association.

2. That the Respondent No.4 was selected by the KP Public Service Commission for appointment as Assistant Professor of Paeds Surgery (BPS-18) in Bannu Medical College Bannu and was appointed as such by the Govt of KP, vide Notification dated 16-4-2009. He took over the charge of the post on 20-4-2009.

Copies of the Respondent No. 4's Appointment Order and his Charge Report are filed herewith and marked as Annex "B/1&2", respectively.

3. That after taking over charge as Assistant Professor in Paeds Surgery (BPS-18) in Bannu Medical College Bannu, the Respondent No. 4 opted to absent himself from his duties without leave and remained absent for a period of more than three (03) years from 01-12-2009 as is evident from 13 x letters exchanged by the Principal Bannu Medical College Bannu and the then Chief Executive Group of Teaching Hospitals Bannu with the Respondent No.2 above named.

Copies of the 14 x Letters regarding absence of the Respondent No. 4 from duty without leave are filed herewith and marked as Annex "C/1-13".

4. That it is pertinent to mention that the ibid correspondence indicate that the Respondent No.4 was promoted as Adhoc Associate Professor (BPS-19) during the period of his absence from duty without leave. It is further pertinent to mention that the Respondent No.4 only appeared at Bannu for his active duties when he was appointed as Adhoc Professor (BPS-20), vide Notification dated 14-6-2013 coupled with assignment of the additional duties of Medical Superintendent KGN Teaching Hospital Bannu and Chief Executive Group of Teaching Hospitals Bannu vide Notification dated 20-10-2013, copies whereof have been filed as Annex "A/1&2", respectively.

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Bannu Bench

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5. That the Petitioner above named craves leave of this Hon'ble Court to reproduce herein verbatim extract items No. 6 & 7 of Appendix to the Govt of KP Health Department's Notification No. SOH-I/HD/8-76/07 dated 05-4-2007, which prescribes the qualifications required for appointment to the posts of Associate Professor (BPS-19) and Professor (BPS-20) in the Specialty of Pediatrics, as under:-

S.No	Nomenclature	Minimum Qualification & Experience for Appointment
6.	<u>Associate Professor</u> Medicine, General Surgery, Eye, Gynecology, ENT, Podiatry and all other Specialties	(a) MBBS or equivalent medical qualification recognized by the council; and (b) FCPS/MS/MD in the respective subject or equivalent qualification in the specialty recognized by the council with three papers on Research Work of which at least two shall be as Principal Author in his capacity of Assistant Professor in the relevant specialty published in a Standard Medical Journal. <u>Experience</u> Five years teaching experience as Assistant Professor in the relevant subject.
7.	<u>Professor</u> (All Specialties)	(a) MBBS or equivalent medical qualification recognized by the council; and (b) FCPS/MS/MD in the respective subject or equivalent qualification in the specialty recognized by the council with two papers on Research Work in the relevant specialty published in a Standard Medical Journal as Principal Author in the capacity of Associate Professor. <u>Experience</u> a) Three years teaching experience as an Associate Professor in the respective subject and a total teaching experience of Eight years as Assistant Professor and Associate Professor; OR b) Nine years teaching experience as Assistant Professor and Associate Professor in the respective subject.

It is pertinent to mention that in view of the above provisions, the Respondent No.4 is not yet able/qualified for his appointment as Associate Professor (BPS-19) then what to say of his appointment as Professor (BPS-20), because he has been appointed and has taken over his charge as Assistant Professor (BPS-18) on 20-4-2009 therefore till 14-6-2013 (i.e. the date of his adhoc appointment as Professor) the said Respondent No. 4 has not yet gained teaching experience of Five (05) years as Assistant Professor (BPS-18) even after counting the period of more than three (03) years of his absence from duty without leave from 01-12-2009 onward) then what to say of his fitness for appointment as Professor (BPS-20) which needs three (03) years teaching experience as Associate Professor or Nine years teaching experience as Assistant + Associate Professor in the respective subject. As for as ability/ fitness of the

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Bannu Bench

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Respondent No.4 for his appointment as Chief Executive Group of Teaching Hospitals Bannu is concerned, Rule: 3 of the KPK Medical Institution Rules-2001, is very much clear to say that "no person shall be appointed as Chief Executive, unless he possesses post-graduate medical management science qualification from a reputable institution with experience in health related management/policy with 10 years experience. Retired Senior Civil Servants and army officer/personnel with experience in senior administrative position are also eligible. The maximum age shall be 65 years". Now when the Respondent No.4 admittedly belongs to teaching cadre and has nothing to do with Management Cadre and is still serving in a junior rank/pay scale of BPS-18 then how his appointments to the Senior Scale Management Post can be justified? Even otherwise appointment on adhoc entails the emergent appointment of a duly qualified person to a post for interim period till availability of a nominee by the Public Service Commission through normal process of selection. Therefore, appointment of the Respondent No. 4 on any of the ibid posts cannot be justified by any stretch of imagination, law or logic.

6. That lack of the required qualification/ability of the Respondent No. 4; for his appointment to the most responsible post of the Chief Executive Group of Teaching Hospitals Bannu; has given rise to numerous administrative problems because of the incapable, irresponsible and immature attitude of the Respondent No.4 in handling administrative problems of the Group of Teaching Hospitals Bannu, for, the Respondent No. 4 never spares no one without subjugation who (of whatsoever high rank might be in the Group of Teaching Hospitals Bannu) tries to be fair in the performance of his duties against the personal wishes of the Respondent No. 4, for example;-

a. Staff Car and DDO powers were snatched from Dr. Jamshed, MS KGN Teaching Hospital Bannu, vide Office Orders No.102 & 103 both dated 12-11-2013, which was declared as unauthorized by the Office of the Respondent No.2 vide letter dated 20-11-2013.

Copies of Office Orders No. 102&103 both dated 12-11-2013 and Respondent No.2's letter dated 20-11-2013 are filed herewith and marked as Annex "Def-3".

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Peshawar Bench
Bannu Bench

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b. Unauthorized and unnecessary interference in the performance of the duties of Dr. Jamshed, MS KGN TH Bannu, who when appointed Dr. Rehman Gul, DMS(Admin) KGNTN to look after the duties of MS KGNTN, vide Office Order No. 101 dated 12-11-2013, was interfered with vide office 105 dated 12-11-2013 for cancellation of the ibid office Order issued by Dr. Jamshed and then at his own accord issued another office order bearing the same number and date entrusting the duties of MS KGN TH Bannu to Dr. Rehman Gul in absence of Dr. Jamshed on leave/tour etc, which is nothing more than a whimsical childish act and unprecedented example of irresponsible attitude.

Copies of the Office Order No.101 dated 12-11-2013 and No.105 twice dated 12-11-2013 are filed herewith and marked as Annex "E/1-3", respectively.

c. Mr. Imran Ali Khan, Director Finance KGNTN was relieved of his duties by the Respondent No. 4 at his own accord and directed to report to Director Establishment office of the Auditor General of Pakistan, Islamabad. The said Imran Ali Khan approached the Respondent No.2 in writing, who admonishingly directed the Respondent No. 4, vide letter dated 19-11-2013, to refrain from unauthorized interference in the duties of others.

Copy of the Respondent No.2's letter dated 19-11-2013 is filed as Annex "F".

d. Dr. Wilayat Khan, DMS(Store) KGN TH Bannu was removed from his duties and replaced by Dr. Aziz Ur Rehman of ENT Department, vide Office Order dated 20-2-2014, which had to be reversed by the Respondent No. 2, vide letter dated 04-3-2014.

Copy of the Respondent No.2's letter dated 04-3-2014 and Young Doctors' Association letter dated 11-4-2014 is filed herewith and marked as Annex "G"/1&2, respectively.

e. Dr. Muhammad Ishaq Principle Medical Officer (BPS-20) and DMS(Accident & Emergency) in KGNTN Bannu was whimsically relieved of his duties by the Respondent No.4 at his own accord and directed to report to the Respondent No. 3, vide Office Order No. 1274 dated 10-7-2014 while deputing Dr. Wilayat Khan, Dental Surgeon to perform the duties of DMS(Accident

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Emergency), in KGNTH Bannu, but on the same day i.e. 10-7-2014 another office order of the same number has been signed by the said Respondent No. 4 speaks that in compliance with telephonic directions of the Respondent No. 2, Dr. Muhammad Ishaq has been relieved of his duties at KGN TH Bannu and directed to report to the Respondent No. 3. but on the 3rd day i.e. 12-7-2014, vide Office Order No. 1312, the earlier transfer orders were withdrawn, which is nothing but a worst type of mockery with a senior medical officer by his junior.

Copies of both the Office Orders No. 1274 and memo dated 10-7-2014 and the withdrawal Office Order No. 1312 dated 12-7-2013 are filed herewith and marked as Annex "H/1-3", respectively.

f. Another example of whimsical performance of duties by the Respondent No. 4 is that Mst. Imrana, Female JCT Cardiology in KGN TH Bannu was removed from service vide Office Order No. 1700 dated 03-9-2014 but was re-instated at his own accord without any representation vide Office order No. 1794 dated 02-10-2014.

Copies of both the office orders no. 1700 dated 03-9-2014 and No. 1794 dated 02-10-1994 are filed herewith and marked as Annex "J/1&2", respectively.

g. Because of the aforesaid immature and irresponsible service attitude of the Respondent No.4, the general condition of the Group of Teaching Hospitals Bannu is that no fair and senior doctor is willing to serve under the Respondent No.4. Resultantly 70-80% posts of Doctors in KGN Teaching Hospital are lying vacant. There is no incumbent of the 20 x posts of Senior/Junior Registrars of the 10 x Departments of KGNTH, no Specialist of the regular rank of Professor and Associate Professor is available in Bannu and if available then his Ward/Department is not functioning, e.g. Surgical, urology and Paediatrics Wards/Departments in KGNTH and Private Rooms in DHQTH & W&CTH have been converted into House Officers' Hostels. While the Girls Hostel of Medical College is being shared with young and immature girls of 1st year MBBS by the said Respondent No.4 alongwith his three other accomplices for their residential purposes and the entire facilities of cooking, electricity are being enjoyed free of cost by the aforesaid

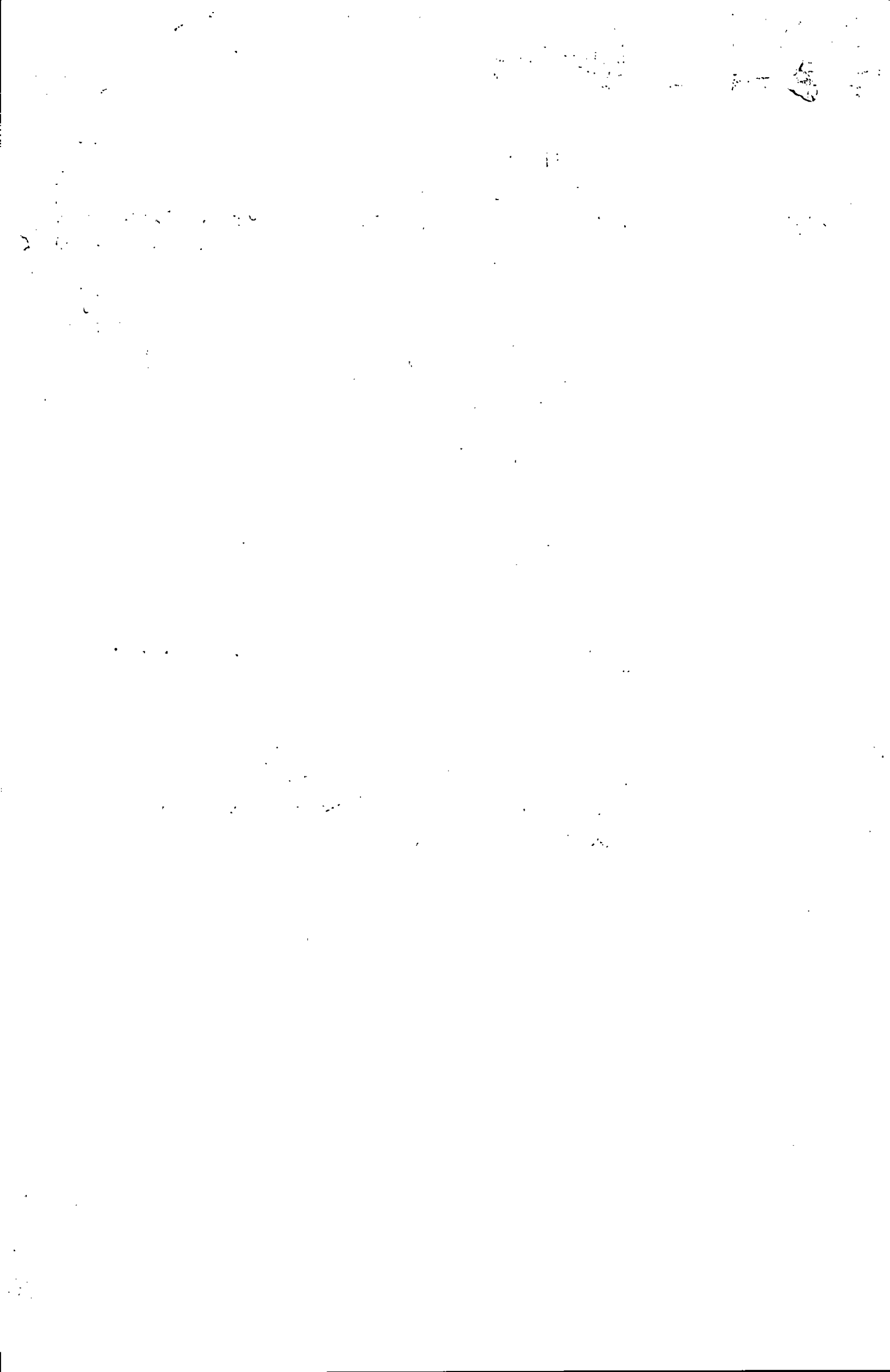
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monopolist i.e. the Respondent No. 4 and his three other close accomplices. This sharing of accommodation with young/immature girls is not free from apprehension of social problems about sexual harassment of the young girls of 1st year MBBS by their teachers/ doctors, who are not obliged to obey any law or morality. It is further pertinent to mention that the said Respondent No. 4 is a regular Assistant Professor (BPS-18) but is so powerful that none of the Medical Superintendents (BPS-20) of the Group of Teaching Hospitals Bannu can take any independent administrative action without his sweet will and wish otherwise the wrong doer are forthwith booked and sent to the pavilion of the Respondents No. 2&3 under the orders of the Respondent No.4. It is for this very reason that during his tenure as Chief Executive Group of Teaching Hospitals Bannu since October 2013 to December 2014 eight (08) Medical Superintendents have been transferred out of Bannu. Round about 15 Specialists Doctors have arrange either their transfer to other stations or to Projects out of the control of the Chief Executive Group of Teaching Hospitals Bannu or resigned or got pre-mature retirement from service, whose replacement is still awaited and their duties have been entrusted to Junior Doctors. Such is the dilemma of Health Service provisions by the Respondent No.4. The high handedness of the Respondent No. 4 may further be appreciated from the fact that after relieving the Director Finance of KGN Teaching Hospital Bannu his duties were entrusted to the Accounts Officer BMC Project namely Mr. Liaquat Ali. During this period the hospital's cash chest/safe was stolen alongwith a cash amount of Rs. 3.5 Million but no one dare to ask as to who has stolen the amount. A sum of Rs. 8 Millions allocated during FY-2013/14 for accident emergency fund in KGNTB Bannu was left to lapse as its expenditure did not suit the personal wishes of the Respondent No.4. It is pertinent to mention that the Directorate General of Monitoring & Evaluation (Govt of KP) has also to some extent commented upon the performance of KGNTH Bannu, vide their letter dated 02-6-2014.

Copy of the DG M&E letter dated 02-6-2014 is filed herewith and will be Annex "K".

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7. That in the above state of affairs, the Petitioner being President of Young Doctors Association was bound to point out the irregularities firstly to the Respondent No. 4 personally but when he did not pay any heed to redress the common doctors-cum-public grievances then the Petitioner had to take up the same with the concerned officials including the Respondents No. 2&3 in a representative capacity through issue of press statements as well as through written complaint dated 11-11-2014 addressed to the Respondent No.1 then the Respondent No.4 firstly issued to the Petitioner a warning letter No. 2005/CE/KGN dated 26-11-2014 and then relieved the Petitioner of his duties at KGN TH Bannu and directed to report to the Respondent No.3, vide letter No. 2020/CE/ dated 28-11-2014.

Copies of the Petitioner's complaint dated 11-11-2014, Respondent No. 4's warning letter dated 26-11-2014 and Petitioner's relieving letter dated 28-11-2014 are filed herewith and marked as Annex "J/1 - 3", respectively.

8. That it is evident from records that the Respondent No.4 is not qualified to hold either the office of Professor (Paediatrics) even on Adhoc basis nor that of the Chief Executive KGN Teaching Hospital Bannu, as yet the Respondents No. 1 to 3 have turned their ears deaf and dum over the hue and cry being made by the Public at large as well the Doctors Association at Bannu and are not ready to rectify the illegality by removing the Respondent No. 4 from the usurped post of Chief Executive Group of Teaching Hospitals Bannu for managing the hospitals properly. Therefore, the Petitioner sees no remedy except to beseech before this Hon'ble Court for grant of remedy against the illegal usurpation of the post of Chief Executive Group of Teaching Hospitals Bannu by the Respondent No.4; inter alia; on the following grounds;-

GROUND

(A). That the Petitioner has no other alternate and efficacious remedy for bringing the law in action against illegal usurpation of the post of Chief Executive Group of Teaching Hospitals Bannu by the Respondent No.4, which has caused worst type of deterioration in delivery of health services to the ailing inhabitants of this backward part of the KPK and against wastage of the hardly earned national exchequer allocated for this backward area.

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Bannu Bench

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(B) That careful study of Rule: 3,13&21 of the KPK Medical Institution Rules-2001 suggests that the Chief Executive is the highest office who supervise the performance of medical and health care institutions because of being a reporting officer over the performance evaluation/annual confidential reports of the Principal/Dean of the concerned faculty of Medical College as well as Medical Superintendents of the Teaching Hospitals. Only this aspect of the duties and responsibilities of the Chief Executive suggest that the incumbent of this office should be senior and mature person, for it cannot be expected of a BPS-18 officer to supervise and report accurately upon the performance and conduct of a BPS-20 officer. Therefore, appointment of the Respondent No.4 to the office of the Chief Executive is not only against the principles of administrative and bureaucratic hierarchy but is creating the sense of deprivation and degradation amongst the senior, able, responsible Doctors which in turn result in deterioration of the required services. Therefore, removal of the Respondent No.1 from the ibid public offices becomes extremely essential in the best public interest.

(C). That since the Respondent No. 1 to 3 have been instrumental in the illegal appointments of the Respondent No.4 to the public offices at Bannu as well as Swabi because of favouritism; therefore, they do not pay any heed to the hue and cry of the public. Therefore the instant Petition is lawfully maintainable for compelling the Respondents to do what the law requires them to do under Article: 4 of the Constitution of Pakistan-1973.

(D). That it is established on record in the shape of the recruitment rules as well as the Govt's notifications (whereby the Respondent No.4 has been appointed to 3 different appointments in district Bannu and Swabi) that the Respondent No.4 is neither qualified to hold the public office of Professor (Paeds Surg) in Bannu Medical College Bannu nor qualified to hold the public office of the Chief Executive Group of Teaching Hospitals Bannu. Therefore, being illegal usurper of the public offices, the Respondent No.4 is liable to be removed from the ibid public offices and directions are to be issued to the Respondent No. 1 to 3 to appointment a

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fully qualified person able to shoulder the heavy responsibilities of the ibid public offices appropriately.

(E). That even otherwise the immature and irresponsible attitude of the Respondent No.4 in absenting himself from the performance of his duties without leave, harassing illegally even the Medical Superintendents of the Group of Teaching Hospital Bannu, Senior Doctors, Nursing and Para-medical staff of the Teaching Hospitals Bannu are sufficient for his removal from the ibid public offices.

(F). That to favour the Respondent No. 4 in his appointment to the ibid public offices the relevant provisions of Health Department (Govt of KPK)'s Notification dated 05-4-2007 and Rule: 3 of the KPK Medical Institution Rules-2001 have fully been bulldozed. Therefore, the instant Petition is lawfully maintainable for directing the Respondents to do what the law requires them to do and to refrain from doing what the law does not allow them to do.

(G). That even ad-hoc appointment of the Respondent No. 4 to the ibid public offices is violative of Section: 4 of the KPK (Appcintment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act-2011, firstly because he does not possess the required qualification and secondly because he is not domiciled of the Southern districts of KPK. Therefore, he is liable to be removed from the ibid public offices.

(H) That counsel for the Petitioner carves leave of this Hon'ble Court to urge more grounds at the time of hearing of this petition.

PRAYER

9. In view of the above humble submissions, it is earnestly prayed that this Hon'ble High Court may graciously be pleased to:-

(a). To require the Respondent No.4 to show cause as to under what authority of law he claim to hold the public offices of Professor (Paediatrics Surgeon) in Bannu Medical College and that of the Chief Executive Group of Teaching Hospitals Bannu; AND

Filed To
16 DEC 2014
Registrar

EXAMINER
Peshawar High Court,
Bannu

Attested to be True Copy
Counsel - P/11 B
Adv for P/11 B

(b). In case of failure of the Respondent No.4 to show cause to the effect that he is legally qualified to hold the ibid public offices then the Writ of Quo Warranto may please be issued for removal of the Respondent No. 4 from the ibid public offices and the Respondents No.1 to 3 may please be directed to arrange immediate appointment of a duly qualified full time Chief Executive Group of Teaching Hospital Bannu.

(c). As a matter of INTERIM RELIEF this Hon'ble Court may graciously be pleased to restrain the Respondent No.4 from exercising the powers and functions Chief Executive Group of Teaching Hospitals Bannu in the best interest of public at large.

(e). Any other relief, which may be deemed proper in the circumstances of the case, may also be granted.

Prayed accordingly in the interest of justice.

[Signature]
PETITIONER

Through:-

[Signature]
SHER MUHAMMAD KHAN

Advocate High Court at Bannu

Bannu
Dated:- 15-12-2014

LAW BOOKS

1. The Constitution of Pakistan-1973.
2. The Govt of KPK Health Department's Notification dated 05-4-2007.
3. The KPK Medical Institution Rules-2001.
4. The KPK (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act-2011,

CERTIFICATE

It is certified that (as per information furnished to me by the Petitioner) no such like Writ Petition has earlier been filed in this Hon'ble Court.

[Signature]
Advocate for the Petitioners

ATTESTED
[Signature]
EXAMINER
Peshawar High Court,
Bannu Bench

Attested to be True Copy
[Signature]

Filed To
16 DEC 2014
Add: Bannu Bench

PESHAWAR HIGH COURT, BANNU BENCH

FORM OF ORDER SHEET

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Date of order or proceedings (1)	Order or other proceedings with signatures of Judge (s). (2)
18.12.2014	<p><u>WP.No.507-B of 2014</u> Present:- Muhammad Qudsi, relative of petitioner. ***** Local Bar is observing strike/ sad demise on the call of Provincial Bar council, due to brutal attack by terrorists at Army Public School, Peshawar. Adjourned to 24.12.2014.</p>

Sd/- Muhammad Dawud Khan, J.
Sd/- Muhammad Ghazanfar Khan, J.

CERTIFIED TO BE TRUE COPY

Examiner 30/12/14

Presiding Judge Bannu Bench
Administered Under Article 87 of
The Qanun-e-Shahadat Order 1934

Attested to be
True Copy



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 28th October, 2014

RS/12

28

NOTIFICATION

NO.E&A(Health)/2-5/posting Transfer/2014. The Competent Authority has been pleased to impose ban on all kinds of posting/transfer in Health Department with immediate effect till further order.

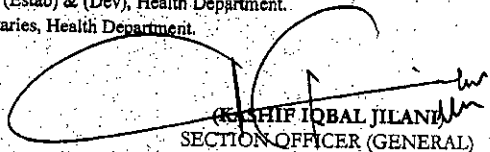
Ban shall not be applicable on the recommendees of Public Service Commission, arrival from leave/deputation and where desired by the competent authority in exigencies of service/greater public interest.

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Endst. No. & date even.

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa, Peshawar.
3. Director Information Khyber Pakhtunkhwa Peshawar.
4. All Chief Executives of Autonomous Teaching Hospitals Khyber Pakhtunkhwa.
5. Director PHSA, Peshawar.
6. Chairman HRA, Peshawar.
7. Deputy Director I.T, Health Department.
8. All Section Officers Health Department.
9. All District Health officers, Khyber Pakhtunkhwa.
10. All MSs DHQ Hospitals, Khyber Pakhtunkhwa.
11. PS to Senior Minister for Health & IT, Khyber Pakhtunkhwa.
12. PS to Secretary Health, Khyber Pakhtunkhwa.
13. PS to Special Secretary Health Department.
14. PAs to Additional Secretary (Estab) & (Dev), Health Department.
15. PAs to all the Deputy Secretaries, Health Department.


KHUSHF IQBAL JILANI
SECTION OFFICER (GENERAL)

Attested to be
True Copy

RS/12

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 285 /ST

Dated 24 / 3 / 2016


To

The Chief Secretary,
Peshawar.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 18.3.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

OFFICE OF THE
CHIEF EXECUTIVE GROUP OF TEACHING HOSPITALS BANNU
Khyber Pakhtunkhwa, Pakistan

OFFICE ORDER

Consequent upon commitment to perform duties honestly and devotedly and supporting the hospital administration and Provincial Government in all just causes, this office orders bearing Endst; No. 2020/CE dated 28/11/2014, whereby Dr. Muhammad Ismail, MO (BS-17) was relieved is hereby withdrawn with immediate effect in the interest of public.

Sdxxxxx

[Prof. Dr. Muhammad Jehangir Khan]

Endst: No. 4260/CE

Dated: 07/01/2016

Copy to the:

1. Chief Secretary to Govt. of Khyber Pakhtunkhwa, Peshawar
2. Secretary to Govt. of Khyber Pakhtunkhwa, Health Department Peshawar
3. Director General Health Services Khyber Pakhtunkhwa Peshawar
4. Commissioner Bannu
5. Deputy Commissioner Bannu
6. Assistant Commissioner Bannu
7. Commanding Officer Field Hospital stationed at KGNTH Bannu
8. District Accounts Officer Bannu
9. Medical Superintendent(s) KGNTH/W&CTH/DHQTH Bannu
10. DMS Admn./RMO/DMS A&E KGNTH Bannu
11. PS to Minister Health Khyber Pakhtunkhwa Peshawar
- ✓ 12. Doctor concerned

For information and necessary action.

[Prof. Dr. Muhammad Jehangir Khan]