

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

Service Appeal No. _____ of 2022

Shabbir AhmedAPPELLANT

VERSUS

Government of Khyber Pakhtunkhwa through
Secretary, Elementary and Secondary Education,
Peshawar etc.....RESPONDENTS.

SERVICE APPEAL

**COMMENTS ON BEHALF
OF RESPONDENT NO.5.**

Respectfully Sheweth!

PRELIMINARY OBJECTION.

1. Appellant has got no cause of action to file the present appeal.
2. Appellant is estopped to sue by his own conduct.
3. Appellant has got no locus standi to file the present appeal.
4. Appeal filed by the appellant is bad in its present form.
5. Appeal is bad due to mis-joinder and non-joinder of necessary parties.

6. Transfer order has been in accordance with the relevant law, rules and regulations which has been passed in public interest.
7. Transfer order has been passed after completion of the tenures of the employees i.e. appellant and the respondent No.5 hence the appellant has got no locus Standi to file the present appeal.
8. Appellant has filed the instant appeal in sheer violation of the relevant law, rules and regulations.
9. The place where the appellant has been **posted** via transfer order in hand is feasible and easily approachable for the appellant.
10. The appellant has been posted/ transferred in his native Tehsil Baffa.
11. Appellant has filed the instant appeal just to pressurize and harass the respondent No.5 for ulterior motives. In case of its dismissal, the appellant would be entitled for special compensatory cost.

FACTUAL OBJECTIONS.

1. Para No.1 of the service appeal does not relate to the appellant hence need

no answer, however, the respondent No.5 is also serving in the education department from a long time.

2. Para No.2 of the service appeal does not relate to the appellant hence need no answer. However, the respondent No.5 is also an honest, dedicated teacher and there is no complaint against the respondent No.5 rather the service career of the respondent No.5 is unblemished and without any stigma.
3. Para No.3 of the service appeal is incorrect. The tenure of the appellant has been completed.
4. Para No.4 of the service appeal is incorrect. Transfer order dated 30.11.2021 has been passed/issued strictly in accordance with the relevant law, rules and regulations and as the said order has been passed/issued after completion of tenure, therefore, the same cannot be termed as premature order.
5. Para No.5 of the service appeal is incorrect. The impugned order has been passed in accordance with law, rules and regulation as well as in the

best public interest, therefore, the appellant has no locus standi to call in question the transfer order.

6. Reply to para No.6 of the service appeal is that as the transfer order was passed in best public interest and the appellant was afforded opportunity of personal hearing, however, the appellant was unable to justify his grievance, after examining the record and keeping in view the policy, the appellant department appeal was rightly rejected by the official respondents.
7. Para No.7 of the service appeal is incorrect. Appellant has got no locus standi to file the present appeal.

GROUND

- A. Para No.(A) of the grounds of service appeal is incorrect. The transfer orders have been issued in accordance with relevant law, rules and regulations. No question of any political victimization do arise nor any specific particulars of political

victimization has been mentioned by the appellant in his appeal. The impugned order has got complete support from the relevant law, rules and regulations as well as policy on the subject.

B. Para No.(B) of the service appeal is incorrect. Impugned orders has been passed strictly in accordance with law, rules and regulations as well as policy on the subject hence the same has legal sanctity in the eyes of law and is not liable to be struck down.

C. Para No.(C) of the service appeal is incorrect. The transfer of the appellant has been carried out strictly in accordance with law, rules and regulations as well as in the light of the policy on the subject. Neither any malafide is discernible from the record nor there is any malafide. The impugned order has been passed after completion of tenure of the appellant hence the same cannot be termed as immature transfer. Furthermore, the appellant has not applied for retirement and according to posting/transfer policy of the Provincial Government i.e.

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Officers/officials due to retire within one year may be posted on their option on post in the District of their domicile. The appellant still have more than 02 years on his credit for retirement on his superannuation. Furthermore, the appellant is the resident of Tehsil Baffa and his order has also been passed in Tehsil Baffa. Furthermore, the distance in between the resident of the appellant and his present place of posting is 18 Kilometers whereas the distance in between the previous place of posting and residence of the appellant is 15 Kilometers whereas the distance in between the residence of the appellant and place of posting i.e. Nawazabad is 60 Kilometer whereas the appellant is also suffering from IPT (falling of platelets) and is suffering from life threats.

- E. Para No.(E) of the service appeal is incorrect. The appellant has not annexed any proof regarding the contents of the instant para.
- D. Para No.(D) of the service appeal is incorrect. departmental appeal of the

appellant has rightly been dismissed
by the department.

- E. Para No.(E) of the service appeal is
incorrect. The official respondents
have applied their powers/jurisdiction
in accordance with relevant law, rules
and regulations.
- F. Para No.(F) of the service appeal is
incorrect. The appellant has been
dealt in accordance with law, rules
and regulations.
- G. Para No.(G) of the appeal is incorrect.
- H. Para No.(H) of the appeal is incorrect.


.....**PRAYER**.....

It is, therefore, most humbly
requested that the appeal filed by the
appellant may please be dismissed
with costs throughout.

Dated 16.05.2022

Zakarullah
...Respondent No.5

Through


JUNAID ANWAR KHAN,
Advocate Supreme Court
Of Pakistan.

AFFIDAVIT.

I, Zakarullah, Headmaster Government High school Nawaz Abad, Tehsil and District Mansehra, respondent No.5, do hereby solemnly affirm and declare on oath that the contents of the foregoing comments/written reply are true and correct and nothing has been concealed from this Honourable Tribunal.

Dated 15.06.2022

Zakarullah
Zakarullah
(DEPONENT)

A handwritten signature in black ink, appearing to be 'Zakarullah', is written over a circular official stamp. The stamp contains some illegible text and a central emblem.

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Government of Khyber Pakhtunkhwa through
Secretary, Elementary and Secondary Education,
Peshawar etc.....RESPONDENTS.

SERVICE APPEAL

Replication on behalf of appellant to
the application for suspension etc.
filed by the appellant.

Respectfully Sheweth!

1. Para No.1 of the application is incorrect.
2. Para No.2 of the application is incorrect. Appellant has got very weak appeal which is liable to be dismissed.
3. Para No.3 of the application is incorrect. Balance of convenience tilts in favour of the respondent No.5.
4. Para No.4 of the application is incorrect. Transfer orders have been passed in accordance with relevant law, rules and regulation as well as


policy on the subject. Appellant would suffer an irreparable loss due to the suspension of the transfer orders.

It is, therefore, most humbly requested that the application filed by the appellant may please be dismissed with costs throughout.

Dated 16.05.2022

Zakarullah
...Respondent No.5

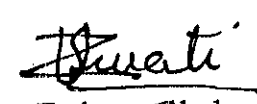
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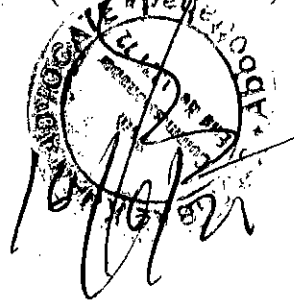

JUNAID ANWAR KHAN,
Advocate Supreme Court
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AFFIDAVIT.

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Dated 15.06.2022


Zakarullah
(DEPONENT)



3049



2022-23

District Bar Association
Multan

DBAM No.

230

BC No.

7/0-1/3/7

S.No

Fee Rs. 100/-

Name of Advocate

جنید انور

وکالت نامہ

قاضی سروس ٹریبونل غیر جنرل فوہ بہادر

بعد البت:

مکروف ویزہ

شہیر الہ

عنوان:

سروس ایبل

ریٹائرمنٹ

منجانب:

باعث تحریر آفیکہ

بہادر

دریں مقدمہ عنوان بالا میں اپنی طرف سے برائے بیوی و صاحبہ کی ہرقاہم کے لئے

جنید انور مان اور ویل سہیم کورٹ آف پائلان

کو بدیں شرائط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رد بروعدالت حاضر ہوں گا اور بوقت پکارے

جانے وکیل موصوف کو اطلاع دیکر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہو اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ

میرے خلاف ہو گیا تو وکیل موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل موصوف صدر مقام پکھری کے علاوہ

کسی اور جگہ پکھری کے مقررہ اوقات سے پہلے یا بروز تعطیل بیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ پکھری کے علاوہ

کسی اور جگہ سماعت ہوا یا پکھری کے اوقات کے آگے پیچھے سماعت ہونے پر مظہر کو کوئی نقصان پہنچے تو وکیل موصوف ذمہ دار

نہ ہوں گے اور وکیل موصوف کو عرضی دعویٰ اور درخواست اجراء ڈگری و نظر ثانی ایبل گمرانی واز کرنے میں ہر قسم کی درخواست

بیان حلفی و تقدیق کرنے اور اسپر دستخط کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور قسم کا روپیہ وصول

کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپر دعاوی ورائٹی نامہ و دستبرداری و اقبالی دعویٰ کا اختیار بھی ہوگا

بصورت ایبل و برآمدگی مقدمہ یا منسوخی ڈگری یا طرفہ درخواست حکم اقبالی یا فیصلہ ایبل از ڈگری اجراء کی وکیل موصوف

کر بشرط ادائیگی علیحدہ محنتانہ ادا کرنے کا مجاز ہوگا اور بصورت ضرورت بددراں مقدمہ یا ایبل و گمرانی کسی دوسرے وکیل یا پیر مشرک

بجائے خود یا اپنے ہمراہ مقرر کریں اور مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے وکیل موصوف کو

اور اگر پوری نہیں تاریخ پیشی سے پہلے ادا نہ کروں گا تو وکیل موصوف کو پورا اختیار ہوگا کہ مقدمہ کی بیروی نہ کریں اور ایسی حالت

میں میرا مطالبہ وکیل موصوف کے برخلاف نہیں ہوگا مجھے کل ساختہ پرواختہ وکیل موصوف مثل ذات خود منظور و قبول ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے اور دستخط/انگوٹھا ثبت کر دیا ہے تاکہ سند رہے۔ مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے۔

مورخہ ۱۵ جون 2022ء

ACCEPTED

برائے
دائراہم پلیمہ ماسٹر کورٹ آف پائلان
کوانز آباد