


23.12.2022


Counsel for the appellant present.

SCANNED
KPST
Peshawar

Naseer Ud Din Shah learned Assistant Advocate
General for respondents present.

Former made a request for adjournment in order
further prepare the brief. Adjourned. To come up for
arguments on 22.03.2023 before D.B.


(Fareeha Paul)
Member (E)

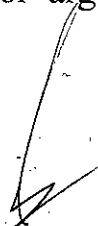

(Rozina Rehman)
Member (J)

22.03.2023

Learned counsel for appellant present.

Mr. Fazal Shah Mohmand, Additional Advocate General for
respondents present.

Learned Member Judicial (Mrs. Rozina Rehman) is on leave,
therefore, case is adjourned to 07.06.2023 for arguments before
D.B. Parcha Peshi given to the parties.


(Muhammad Akbar Khan)
Member (E)

21.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 30.05.2022 for the same as before.


Reader.


30.05.2022

Junior to counsel for the appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.


Former made a request for adjournment as senior counsel is busy before Apex Court. In this regard, proper application seeking adjournment was filed and is placed on file of Service Appeal No.1133/2019 titled "Muhammad Zeeshan Vs. Government of Khyber Pakhtunkhwa". Case is adjourned to 09.08.2022 for arguments before D.B.


(Fareeha Paul)
Member(E)


(Rozina Rehman)
Member (J)

9-8-2022

Due to the Public holiday the case is adjourned to 9-11-2022


Reader

9-11-2022

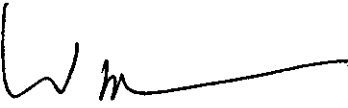
Since 9th November 2022 has been declared as public holiday, therefore the case is adjourned to 23-12-22 for the same.



08.03.2021

Junior to counsel for the appellant and Asstt. AG for the respondents present.

Former requests for adjournment due to engagement of learned senior counsel before the Honourable High Court in many cases today. Adjourned to 15.06.2021 for hearing before the D.B.


(Atiq-ur-Rehman Wazir)
Member(E)


Chairman

15.06.2021

Clerk to counsel for appellant present.

Muhammad Adeel Butt learned A.A.G for respondents present.

Lawyers are on general strike, therefore, case is adjourned. To come up for arguments on 20.10.2021 before D.B.


(Rozina Rehman)
Member (J)


Chairman

20.10.2021

Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Muhammad Saddique, ADO for the respondents present.

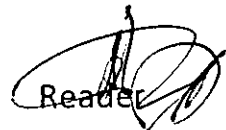
Former requests for adjournment due to engagement of his counsel before the Hon'ble High Court. Request is accorded. To come up for arguments on 21.12.2021 before D.B.


(Salah-Ud-Din)
Member (Judicial)


Chairman

_____ .2020

Due to COVID19, the case is adjourned to
13/8/2020 for the same as before.


Reader

13.08.2020

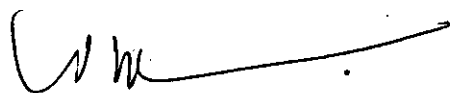
Due to summer vacations case to come up for the same on
16.10.2020 before D.B.


Reader

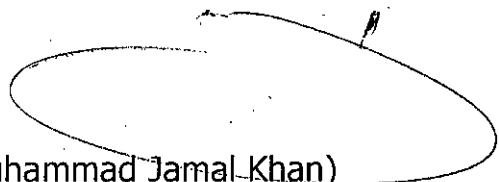
16.10.2020

Counsel for appellant present. Mr. Muhammad Jan
learned Deputy District Attorney for respondents
present.

Former requests for adjournment; granted. To
come up for arguments on 10.12.2020 before D.B.



(Atiq-Ur-Rehman Wazir)
Member

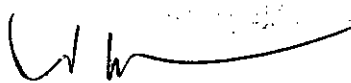


(Muhammad Jamal Khan)
Member

10.12.2020

Miss Rabia Muzaffar, Advocate on behalf of counsel
for the appellant and Addl. AG alongwith Muhammad
Siddique, Litigation Officer for the respondents present.

Requests for adjournment is made as learned senior
counsel for appellant is engaged before the Apex Court at
Islamabad today. Adjourned to 08.03.2021 for hearing
before the D.B.



(Atiq-ur-Rehman Wazir)
Member(E)



Chairman

04.02.2020

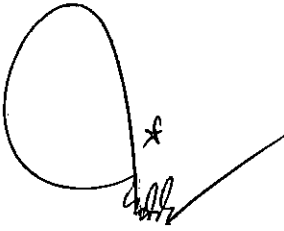
Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 19.03.2020 for rejoinder and arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

19.03.2020

None for the appellant present. Addl: AG alongwith Mr. Zahid Ullah, DEO for respondents present. Due to general strike on the call of Peshawar Bar Council, the case is adjourned. To come up for arguments on 21.05.2020 before D.B.


(MAIN MUHAMMAD)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

11.09.2019

Counsel for the appellant and Addl. AG alongwith Muhammad Siddique ADEO for the respondents present.

Learned AAG requests for further time. Adjourned to 04.10.2019 on which date the requisite reply/comments shall positively be submitted before S.B.

Chairman



04.10.2019

Junior counsel for the appellant Mr. Kabirullah Khattak, Additional AG alongwith Mr. Zahidullah, DEO (M) Upper Kohistan for the respondents present.


Representative of respondents submitted para-wise comments on behalf of respondents No. 1 to 3 which is placed on record. The appeal is posted for arguments for 06.12.2019 before D.B. The appellant may submit rejoinder within fortnight, if so advised.

CHAIRMAN



06.12.2019

Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Zahidullah, DEO (M) Upper Kohistan for the respondents present. Adjourned to 04.02.2020 for rejoinder and arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

20.05.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Primary School Teacher) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 25.05.2018 to the extent of treating the abscondance/absence period and intervening period as extraordinary leave without pay.

Points urged need consideration. The appeal is admitted for regular hearing subject to all the legal objections including the issue of limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 18.07.2019 before S.B.


Member

18.07.2019: Counsel for the appellant present.

An application for extension of time to deposit the security and process fee has been submitted wherein it is stated that the requisite fee could not be deposited due to un-avoidable circumstances.

The application is allowed and period for requisite deposit is extended for 3 days. After deposit by the appellant notices be issued to the respondents for submission of written reply/comments on 11.09.2019 before S.B.

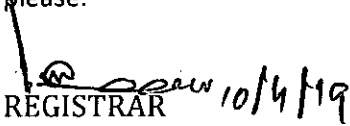
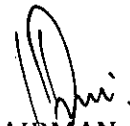

Chairman

Appellant Deposited
Security & Process Fee

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 483/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/04/2019 SCANNED KPST Peshawar	The appeal of Mr. Izat Noor resubmitted today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.  REGISTRAR 10/4/19
2-	11/04/19	This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>20/05/19</u>  CHAIRMAN


Handwritten notes and signatures on the right margin of the page.

The appeal of Mr. Izzat Noor PST Teacher GPS Jamara Jalkot Kohistan received today i.e. on 19.03.2019 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellatant.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Affidavit may be got attested by the Oath Commissioner.
- 5- Annexures referred to in the memo of appeal are not attached with the appeal which may be placed on it.
- 6- Copy of impugned order and departmental appeal against it are not attached with the appeal which may be placed on it.
- 7- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

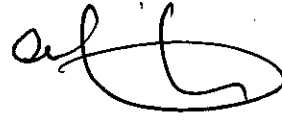
No. 444 /S.T,

Dt. 20-3 - /2019


REGISTRAR -
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Fazal Shah Mohmand Adv.

Sir,
Requested for further time as
copies of relevant documents
are to be filed


Adv
10 days time further extended.

Sir, Resubmitted after necessary
completion


Adv

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No 483/2019

Izzat Noor.....Appellant

V E R S U S

DEO and others.....Respondents


I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-4
2.	Application for condonation of delay with affidavit		5-6
3.	Copy of titled page of Appeal & Judgment dated 26-12-2017	A	7-11
4.	Copy of Office Order dated 07-03-2018	B	12
5.	Copy of Office Order dated 25-05-2018 Copy of Departmental appeal	C	13
6.	Copy of Departmental appeal	D	14
7.	Wakalat Nama		15

Dated:-19-03-2019.


Appellant

Through


Fazal Shah Mohmand
Advocate, Peshawar

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

-/-

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No _____/2019

Izzat Noor, Primary School Teacher, Govt. Primary School Jamara
Jalkot, Kohistan.....

Appellant
Kohistan Pakhtukhwa
Service Tribunal

V E R S U S

Diary No. 353

Dated 19-3-2019

1. District Education Officer (Male) Kohistan.
 2. Director Elementary and Secondary Education, Govt. of KPK Peshawar.
 3. Secretary, Elementary and Secondary Education, Govt. of KPK Peshawar.....
- Respondents**

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 25-05-2018 (COMMUNICATED TO THE APPELLANT ON 30-10-2018) WHEREBY THE PERIOD W.E.F 12-11-2007 TO 06-03-2018 HAS BEEN TREATED AS EXTRAORDINARY LEAVE WITHOUT PAY AND AGAINST WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED DESPITE THE LAPSE OF THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

On acceptance of this appeal the impugned Order dated 25-05-2018 may kindly be modified to the extent of awarding the appellant all the benefits including salaries etc of intervening period w.e.f. 12-11-2007 to 06-03-2018.

Filed to-day
Registrar

13/19

Respectfully Submitted:-

1. That the appellant was appointed as Primary School Teacher on 30-06-1997 and was dismissed from service on the allegations of prolong absence on 11-05-2012, against which he filed departmental appeal and then Service Appeal No 42/2016, which was accepted vide Order dated 26-12-2017, the appellant was reinstated in service and department was directed to hold denovo proceedings within a period of ninety days. (Copy of Judgment is enclosed as Annexure A).
2. That the appellant was accordingly reinstated in service vide Order dated 07-03-2018 and denovo proceedings were ordered during which the inquiry officer only recorded the

-2-

statement of the appellant. (Copy of Order dated 07-03-2018 is enclosed as Annexure B).

3. That finally the appellant was reinstated in service and the period w.e.f. 12-11-2007 to was treated as extraordinary leave without pay vide Order dated 25-05-2018, however copy was malafidely not communicated to the appellant in time and the same was Obtained by the appellant on 30-10-2018. (Copy of Order dated 25-05-2018 is enclosed as Annexure C).
4. That the appellant preferred departmental appeal before respondent No 2 vide diary No 830 dated 26-11-2018 which is still pending and has not been decided despite the lapse of more than the statutory period of ninety days. (Copy of Departmental Appeal is enclosed as Annexure D).
5. That the impugned order dated 25-05-2018 of respondent No 1 is against the law, facts and principles of justice on grounds inter alia as follows:-

GR O U N D S :-

- A. That the impugned order is illegal and void ab-initio.
- B. That the appellant was dismissed from service through an illegal rather void and as such the appellant is entitled to the benefits of the intervening period.
- C. That no proper proceedings were taken. No notice was issued to the appellant nor was any proper inquiry entailing denial of service benefits conducted.
- D. That the appellant after reinstatement was entitled to the back benefits as per the plethora of Judgments of the Apex Court and the denial of respondents amount to denial of accrued rights
- E. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules and salaries have been denied to him in violation of law and rules on the subject.
- F. That there is no omission or commission on part of the appellant as it has been established that the appellant was illegally dismissed from service then law as well as

principles of natural justice are in favor of granting service benefits.

G. That ex parte action has been taken against the appellant and he has been condemned unheard in violation of the principles of natural justice.

H. That the appellant has about 22 years of service with unblemished service record.


I. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-19-03-2019.


Appellant

Through


Fazal Shah Mohmand
Advocate, Peshawar

4-

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No _____/2019

Izzat NoorAppellant

V E R S U S

DEO and others.....Respondents

A F F I D A V I T

I, Izzat Noor, Primary School Teacher, Govt. Primary School Jamara Jalkot, Kohistan, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by



**Fazal Shah Mohmand
Advocate Peshawar**


DEPONENT

-5-

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No _____/2019

Muhammad NabiAppellant

V E R S U S

DEO and others.....Respondents

Application for the condonation of delay if any.


Respectfully submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the impugned order being void ab-initio, illegal and time factor becomes irrelevant in such cases, furthermore the appeal is well within time when copy of impugned order was communicated to the appellant.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit besides the matter is money matter and the appellant as such has continuous cause of action.

It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.

Dated:-19-03-2019.


Appellant

Through

Fazal Shah Mohmand
Advocate, Peshawar

-6-

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No _____/2019

Izzat NoorAppellant

V E R S U S

DEO and others.....Respondents

A F F I D A V I T

I, Izzat Noor, Primary School Teacher, Govt. Primary School Jamara Jalkot, Kohistan, do hereby solemnly 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 honorable Tribunal.

Identified by



**Fazal Shah Mohmand
Advocate Peshawar**



DEPONENT

"A"

7-

(X)

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 42 /2016.

Izzat Noor Ex Primary School Teacher, Govt. Primary School Chitgo
Jalkot S/O Gul Mashal R/O Sew P/O Kamila Tehsil Dasu District
Kohistan.....



Appellant, W.P. Province
Service Tribunal
Slary No. 31
Dated 21-1-2016

V E R S U S

1. Director, Elementary and Secondary Education Govt. of KPK Peshawar.
 2. District Education Officer (Male) Kohistan.
 3. Secretary, Elementary and Secondary Education Govt. of KPK Peshawar.....
- Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER DATED 23-12-2015 PASSED BY
RESPONDENT NO 1 WHERE BY DEPARTMENTAL
APPEAL OF THE APELLANT FILED AGAINST THE ORDER
DATED 11-05-2012 OF RESPONDENT NO 2 HAS BEEN
REJECTED/FILED.

PRAYER:-

On acceptance of this appeal the impugned orders dated 23-12-2015 of respondent No 1 and Order dated 11-05-2012 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

ATTESTED

Respectfully Submitted:-

1. That the appellant joined the respondent Department as Primary School Teacher (herein after referred to as PST) on 30-06-1997, remained posted to various Stations and since then he performed his duties with honesty and full devotion.
2. That the appellant while lastly posted to Govt. Primary School Koat Gali Jalkot District Kohistan, was falsely involved in a murder case vide FIR No 47 dated 22-07-2006 U/Ss 302/324/148/149 PPC of Police Station Dassu and was suspended. (Copy of FIR is enclosed as Annexure A).
3. That the appellant along with two others was dismissed from service by respondent No 2 vide Order dated 11-05-2012. (Copy of Order dated 11-05-2012 is enclosed as Annexure B).

File in-149
11/1/16

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

8-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 42/2016

Date of Institution... 11.01.2011

Date of decision... 26.12.2017



Izzat Noor Ex-Primary School Teacher, Government Primary School, Chortoo,
Jalkoat son of Gul Mashal R/O Sew Post office Kamila Tehsil Dasu, District
Kohistan. ... (Appellant)

Versus

1. Director, Elementary and Secondary Education, Government of Khyber
Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

MR. Fazal Shah Mohmand, Advocate. ... For appellant.

MR. Muhammad Jan, Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, MR. GUL ZEB KHAN, ... CHAIRMAN MEMBER

ATTESTED

JUDGMENT

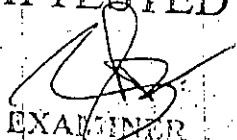
NIAZ MUHAMMAD KHAN, CHAIRMAN: - This judgment shall also dispose of another connected appeal No. 43/2016 Muhammad Nabi as in both the appeals common questions of law and facts are involved.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellants were dismissed from service on 11.05.2012 due to his absence against which they filed departmental appeals (undated) which were rejected on 23.12.2015 and thereafter, they filed the present service appeals on 11.01.2016.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

ARGUMENTS

-9-

3. The learned counsel for the appellants argued that absence of the appellants was due to their involvement in a criminal case in which they were acquitted by learned trial court and thereafter they filed departmental appeals. That the impugned order has been given retrospective effect. That no proceedings under the relevant law in force for the time being i.e. Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 were conducted. That the appellate authority rejected departmental appeal under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 whereas the cases were covered by the RSO mentioned above. That the impugned order was given retrospective effect which was a void order.

4. On the other hand the learned Deputy District Attorney argued that the appeal was time barred as the impugned order was passed on 11.05.2012 and the appellants filed departmental appeals according to para-4 of the appeal on 28.12.2012 and thereafter as per para-6 of the appeal they filed second departmental appeals after acquittal. That the appellants admitted their absence from duty in his memorandum of appeals.

CONCLUSION

5. This Tribunal in a number of cases delivered judgments that retrospective orders are void orders on the basis of judgment of the august Supreme Court of Pakistan reported as 1985-SCMR-1178. The present orders are also void orders and no limitation shall run against void orders. The department has also not complied with the relevant rules in the case of absence. The department has also not taken into consideration involvement of the appellant in criminal case.

6. As a result of the above discussion, this appeal is accepted and the department is directed to hold denovo proceedings within a period of 90 days of the

ATTESTED


ATTESTED

Deputy District Attorney
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

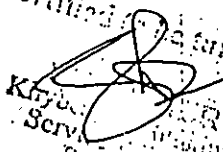
-10-


receipt of this judgment in accordance with the rules, failing with the appellants shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.


(Gul Zeb Khan)
Member


(Niaz Muhammad Khan)
Chairman

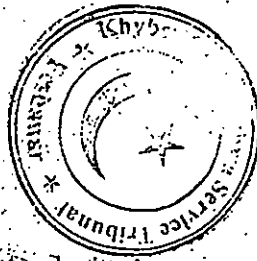
ANNOUNCED
26.12.2017..

Certified true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Appeal 10-01-18
Number of Writs 1250
Copying Fee 8
Urgent 2
Total 10
Name of Applicant 
Date of Claim 10-01-18
Date of Delivery of Copy 10-01-18

ATTESTED


Disc. Application in S.A No. 42/2016



- 11 -

10.1.2018

Counsel for the appellant submitted an application for correction of name of the father of the appellant in the judgment dated 26.12.2017, in service appeal No. 42/2016. File has been requisitioned.

As per CNIC father's name of appellant Izzat Noor is Subhan Shah. Therefore, application is accepted and name of the ^{father} appellant in the judgment dated 26/12/2017 in service appeal No. 42/2016 may be read as "Subhan Shah" instead "Gul Mashal".

Sd/- Chairman

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation: 10-01-18
 Number of Pages: 800
 Copying Fee: 6-
 Urgent: 2-
 Total: 8-
 Name of Applicant: [Signature]
 Date of Copying: 10-01-18
 Date of Delivery of Copy: 10-01-18

RECEIVED

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) KOHISTAN
OFFICE ORDER

Whereas Mr. Ezzat Noor EX PST GPS Kot Gallee Jalkot Tehsil Dasso District Kohistan submitted his service appeal No.42/2016 Dated 11/01/2016 before Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar. The Honorable Service Tribunal Peshawar accepted his appeal, the appellant was Re-instated into service in the case was returned to department for denovo proceeding/inquiry in accordance with the rules as per judgment announced on 26/12/2017.

Whereas the department submitted the case to law department for getting opinion for filing CPLA.

Whereas the meeting of the scrutiny committee was held on 22/02/2018 in the office of Secretary Law department. It was decided with consensus by the scrutiny committee that the subject case was not fit for CPLA and the department was advised to conduct denovo enquiry against the appellant vide No. So (Lit/LD/9-5(14) E&SED /2018/13220-24/ W.E Dated 26/02/2018.

In view of the above facts, Mr. Ezzat Noor EX PST GPS Kot Gallee Jalkot Tehsil Dasso District Kohistan is hereby Re-instated into service conditionally for the purpose of denovo inquiry as per direction of Honorable Service Tribunal Khyber Pakhtunkhwa at GPS Jamra Jalkot against vacant post as PST on his own pay and grade with immediate effect.

Note:

1. No TA/DA is Allowed
2. Charge Report should be submitted to all concerned.

District Education Officer
(Male) Kohistan

Endstt. No. 1762-70 DEO (M) KH Dated Dasso the 7/3/2018

Copy of the above is forwarded to the

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar
3. Advocate General Khyber Pakhtunkhwa Peshawar.
4. Deputy Commissioner Kohistan
5. Deputy District Education Officer (M) Kohistan.
6. District Accounts Officer, Kohistan
7. ADEO (litigation) local office
8. PA to District Education Officer Male Kohistan.
9. Official concerned

District Education Officer
(Male) Kohistan.

7/3/18



**OFFICE OF THE DISTRICT EDUCATION OFFICER (M)
KOHISTAN**

104
-13

OFFICE ORDER

Whereas Mr. Ezzat Noor EX PST GPS Kot Galee Jalkot Tehsil Dassi District Kohistan submitted his service appeal No.42/2016 Dated 11/01/2016 before Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar. The Honorable Service Tribunal Peshawar accepted his appeal, the appellant was Re-instated into service in the case was returned to department for denovo proceeding/inquiry in accordance with the rules as per judgment announced on 26/12/2017.

Whereas the department submitted the case to law department for getting opinion for filing CPLA.

Whereas the meeting of the scrutiny committee was held on 22/02/2018 in the office of Secretary Law department. It was decided with consensus by the scrutiny committee that the subject case was not fit for CPLA and the department was advised to conduct denovo enquiry against the appellant vide No.So (Lit/LD/ 9-5(14) E&SED /2018/13220-24/ W.E Dated 26/02/2018.

Whereas worthy Director appointed Mr, Ali Nawaz Khan Principal GHSS No. 2 Manshra as inquiry officer for denovo inquiry vide. No. 1263/P.No.34/KC/Denovo inquiry dated 08/02/2018. Inquiry officer submitted his report with the recommendation that his absence period w.e.f. 30/11/2008 to 11/05/2012 may be converted into leave without pay and he may be granted suspension pay from his date of custody in law enforcing authorities. As he remained absconder during his involvement in murder case and violated service rules hence he is not entitled for back benefit. However he is recommended to be reinstated into service as acquitted by court and having spotless 14 years 10 months and 11 days long service on his part vide enquiry letter No. 978 dated 10/04/2018.

In view of the above facts. Mr.Ezzat Noor EX PST GPS Kot Galee Jalkot Tehsil Dassi District Kohistan is hereby Re-instated into service as per direction of Honorable Service Tribunal Khyber Pakhtunkhwa at GPS Jamra Jalkot against vacant post as PST on his own pay and grade after impose the following minor penalties as recommended by enquiry officer vide No. 978 dated 10/04/2018.

1. Absconder/absent period w.e.f. 12/11/2007 to 10/05/2012 is converted into extra ordinary leave without pay.
2. The intervening period w.e.f. 11/5/2012 to 06/03/2018 is also treated as extra ordinary leave without pay.

Note:

- 1.No TA/DA is Allowed
2. Charge Report should be submitted to all concerned.

**District Education Officer
(Male) Kohistan**

Endstr: No. 4529-37 DEO (M) KH Dated Dassi the 25/05/2018
Copy of the above is forwarded to the

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar
3. Advocate General Khyber Pakhtunkhwa Peshawar.
4. Deputy Commissioner Kohistan
5. Deputy District Education Officer (M) Kohistan.
6. District Accounts Officer, Kohistan
7. ADEO (litigation) local office
8. PA to District Education Officer Male Kohistan.
9. Official concerned

[Handwritten signature]

25/05/18
**District Education Officer
(Male) Kohistan**

Before the Director Elementary and Secondary Education Khy

Peshawar.

Subject: APPEAL AGAINST THE ORDER DATED 22-02-2018 OF DISTRICT EDUCATION OFFICER (MALE) KHISTAN (Communicated to the appellant on 30-10-2018) WHEREBY THE PERIOD W.E.F. 12-11-2007 TO 02-03-2018 HAS BEEN TREATED AS EXTRAORDINARY LEAVE WITHOUT PAY.

Respectfully submitted:-

The appellant was appointed as Primary School Teacher on 30-06-1997 and was dismissed from service on 11-02-2012, against which he filed departmental appeal and then filed Service Appeal No 42/2016 which was accepted vide order dated 26-12-2017, the appellant was reinstated in service and the department was directed to hold de novo proceedings within a period of ninety days. (Copy of Judgment is enclosed as Annexure A).

That the appellant was accordingly reinstated in service and de novo proceedings were ordered during which the inquiry officer only recorded the statement of the appellant where after the appellant was reinstated in service and the period w.e.f. 12-11-2007 to 02-03-2018 was treated as extraordinary leave without pay vide order dated 22-02-2018 by the District Education Officer (Male)-Kohistan. (Copy of Office Order dated 22-02-2018 is enclosed as Annexure B).

That the impugned order dated 22-02-2018 is against the law and facts as no proper proceedings were conducted against the appellant. No Charge Sheet and Show Cause Notice was communicated to the appellant nor was proper legal inquiry conducted in the matter. The appellant was not employed during this period and even as per law and rules the appellant is entitled to the pay and other benefits of the entire period.

It is therefore requested that on acceptance of this appeal, the impugned Office Order dated 22-02-2018 of the DEO (Male) Kohistan may kindly be set aside and the benefits of the period w.e.f. 12-11-2007 to 02-03-2018 may kindly be ordered to be paid to the appellant.

Last Floor, Primary School Teacher,

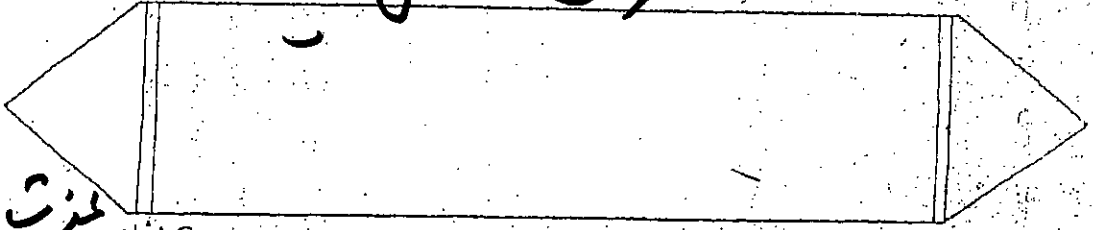
Date: 26-11-2018.

Govt. Primary School Jaisra Jalkot Kohistan.

RECEIVED

26/11/18
830

بعد الت سروس زبول لمد



عزت نور

2م شجانب

عزت نور بنام سیکل و پتہ

موضوعہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنگہ

مقدمہ مندرجہ عنہ بالا میں اپنی طرف سے دائرہ بیرونی اجراء و ای ریکل کارروائی متعلقہ آن مقام کیلئے

مقرر کر کے اترار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز ڈیکل صاحب کو رضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور بلاسورت ڈگری کرنے اجراء اور وصولی چیک درو پیسہ اور عرضی دعویٰ اور اس وقت ہر قسم کی تصدیق زراں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیرونی یا ڈگری کیلبرنہ یا اپیل کی براندگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و بیرونی کرنے کا اختیار ہوگا۔ از بسورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا اجازت برداشت منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جائزہ التوائے مقدمہ کے سب سے وہ ہوگا۔ کوئی تاریخ پیشی مستحکم دورہ پر ہو یا حدیبے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ بیرونی مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

عزت نور

المترجم _____ ماہ _____ 20

واحد الب

کے لئے منظور ہے۔

Abstract

بمقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.483/2019

Izzat Noor

Appellant

VERSUS


1. District Education Officer (Male) Kohistan & others.
2. Director Elementary & Secondary Education KPK Peshawar.
3. Secretary Elementary Secondary Education Govt of Khyber Pakhtunkhwa Peshawar

Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2 & 3.

INDEX

S#	Particulars of documents	Annexure	Pages
1	Comments along with affidavit		1-6
2	Copy of the reinstatement Order	"A"	7


District Education Officer,
(Male) Kohistan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No.483/2019

Izzat Noor **Appellant**

VERSUS

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

Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2& 3.

Respectfully Sheweth:

1. That the appellant did not come to this Honorable Court with clean hands.
2. That the appellant has got no cause of action /locus standi to file the Instant appeal.
3. That the appellant is estopped to sue through his own conduct.
4. That the present appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
5. That the appellant has concealed the material facts from this Honorable Court, hence appeal is liable to be dismissed without any further proceeding.
6. That the appellant has already been removed from Service after completion of all codal formalities.
7. That the appeal is time bared hence not maintainable and liable to be dismissed.

Factual Objections:

1. Para No.1 is Correct to the extent that as per acceptance of Service appeal No 42-A/2016, dated 26-12-2017 by Honorable Tribunal, denovo inquiry was conducted and appellant was re-instated into service on the recommendations of the inquiry.

(Copy of the order is annexed as Annexure "A")

2. Reply of Para No.2 of appeal is that order No.1762-70 dated 7-03-2018 only for purpose of inquiry. Further stated that respondent No.3 initiated DENOVO enquiry in the light of the judgment passed by the Honorable Service Tribunal Peshawar and respondent No. 2 appointed Mr. Ali Nawaz Khan Principal GHSS No.2 Mansera as inquiry officer. The officer gives them a chance of personal hearing and also records the statement.

3. Para No.3 of the appeal is correct to the extent that the appellant was reinstated into service and the inquiry officer submitted his report with the recommendation that the absence period of the appellant may be treated as leave without pay. As he remained absconder during his involvement in murder case and violated service rules, hence the appellant is not entitled for back benefit. The office order dated 25-05-2018 was communicated to the appellant well within time and the appellant was well aware of that order.

4. Reply of Para No. 4 of the appeal is that appellant appeal has not been entertained due to not entitle for having any kind of back benefit as per recommendations of the inquiry report.

5. Reply of Para No. 5 is incorrect and strongly denied that the respondent No.1 treated the appellant as per rules and law.

The instant service appeal may be dismissed on the following grounds.

GROUND.

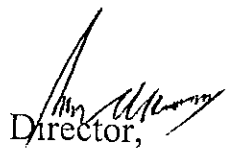
- A. Para No. "A" of the ground is incorrect strongly denied that the appellant has been treated in accordance with law.
- B. Para No. "B" of the ground is incorrect; the appellant was removed from service due to his willful long absence. The appellant remained absconder during his involvement in murder case and violated service rules hence the appellant is not entitled for back benefit.
- C. Para No. "C" of the ground is incorrect and strongly denied that the respondent No.2 appointed Mr. Ali Nawaz Khan Principal GHSS No.2 Mansehra as inquiry officer. The inquiry officer conducted inquiry and submitted his report with the recommendation that the appellant is not entitled for any kind of back benefits.
- D. Para "D" of the ground is that the appellant remain willfully absent from his duties, the respondent No.1 passed the order as per rules and law. Appellant did not perform his duties therefore he is not entitled for any kind of privilege; hence the appeal is liable to be dismissed.
- E. Para No. "E" of the ground is incorrect and strongly denied that the act of the respondent No.1 is as per rules and law and the appellant is treated as per rules and law. The appellant remained willful absent from duty and was terminated due to his willful absence on 11-05-2012, while the Apex Court has laid down the principle, "No Service no pay" hence the whole para is denied.
- F. Para No. "F" of the ground is incorrect; detail reply has been given in above Paras. Appellant was treated as per rule and law.
- G. Replies of Para "G" of the ground is that all the proceeding taken against the appellant as per rules and fulfill all codal formalities.
- H. Para No "H" of the ground relates to appellant service record hence no comments.

I. Reply of Para No "I" of the ground is that respondent seeks permission from
this Honorable Tribunal for additional grounds at the time of argument.

In view of the above made submissions, this Hon'able Tribunal may
very graciously be requested to dismiss the instant appeal in favor of the
Respondents in the interest of equity and justice.



Secretary,
Government of Khyber Pakhtunkhwa,
Elementary & Secondary Education Deptt:
Peshawar.
(Respondent No.3)



Director,
Elementary & Secondary Education
Peshawar.
(Respondent No.2)



District Education Officer (Male)
Kohistan
(Respondent No.1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.483/2019

Izat Noor Appellant


VERSUS

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

Respondents

AFFIDAVIT

I, Mr. Zahid Ullah DEO (Male) Kohistan do hereby solemnly affirm and declare that the contents of amended reply in the above titled Case are true and correct to the best of my knowledge and belief, and that nothing, material has been suppressed from this Honorable court.


DEFONDENT