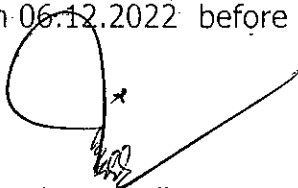


10.10.2022

Junior of learned counsel for the appellant present. Mr. Muhammad Jamil, Litigation Officer alongwith Mr. Muhammad Riaz Khan Painsdakhel, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 06.12.2022 before the D.B.



(Mian Muhammad)  
Member (E)



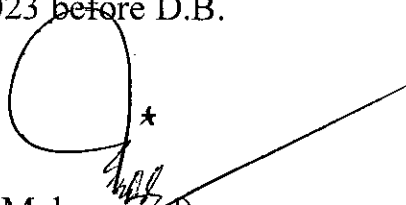
(Salah-Ud-Din)  
Member (J)

06.12.2022

Counsel for the appellant present.

Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Former made a request for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 09.02.2023 before D.B.



(Mian Muhammad)  
Member (E)



(Rozina Rehman)  
Member (J)

09.02.2023

Clerk of counsel for the appellant present. Mr. Naseer Ud Din Shah, learned Assistant Advocate General for respondents present.

Mrs. Rozina Rehman, Learned Member (Judicial) is on leave today, therefore, case is adjourned to 17.05.2023 for arguments before D.B.



(Fareeha Paul)  
Member (E)

SCANNED  
KPST  
Peshawar

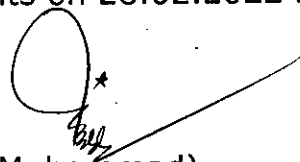
SCANNED  
KPST  
Peshawar

27.10.2021

Appellant alongwith junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant submitted rejoinder, copy of which handed over to learned Additional Advocate General. Junior of learned counsel for the appellant also requested <sup>sought</sup> for adjournment for arguments on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 28.02.2022 before the D.B.

7.



(Mian Muhammad)  
Member (E)



(Salah-Ud-Din)  
Member (J)

28.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 02.06.2022 for the same as before.



Reader.

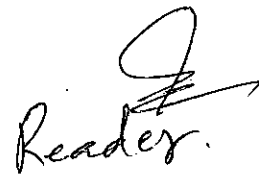
2-6-2022

Proper DB not available the case is adjourned to ~~come up~~ 15-8-2022



15.8.22

Due to Summer Vacation, the case is adjourned to 10-10-22 for the same.



Reader.

21.01.2021

Appellant present through counsel. Preliminary arguments heard. File perused.

Points raised need consideration. Admitted to regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days.

Appellant Deposited  
Security & Process Fee

Thereafter, notices be issued to respondents for written reply/comments. To come up for written reply/comments on 15.04.2021 before S.B.

(Rozina Rehman)  
Member (J)

15.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 10.06.2021 for the same as before.

Reader

10.06.2021

Junior to counsel to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Sajid, ADEO for the respondents present.

The respondents have submitted reply. Placed on record. The appeal is entrusted to D.B for arguments on 27.10.2021.



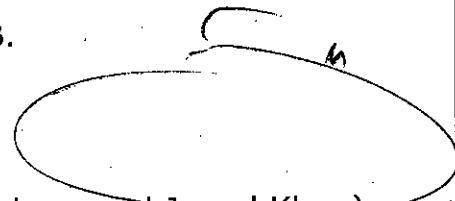
Chairman

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 11017 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/09/2020	<p>The appeal of Mr. Talib Jan presented today by Mr. Javed Iqbal Gulbela Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>05/11/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
05.11.2020		<p>Appellant is present in person.</p> <p>Since the Members of the High Court as well as of the District Bar Association, Peshawar, are observing strike today, therefore, learned counsel for appellant is not available today. Adjourned to 21.01.2021 on which date to come up for preliminary hearing before S.B.</p> <p style="text-align: right;"> (Muhammad Jamal Khan) Member (Judicial)</p>

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

In Re S.A No. 11017 /2020

Talib Khan  
**VERSUS**  
Govt. of Khyber Pakhtunkhwa and Others

**INDEX**

<b>S#</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Pages</b>
1.	Grounds of Petition		1-7
2.	Affidavit		8
2.	Condonation of Delay		9-10
3.	Addresses of Parties.		11
4.	Copy of Advertisement dated 07/08/2008	"A"	12
5.	Copy of Appointment Order dated 05/12/2008	"B"	13
6.	Copies of Impugned Office Order: Endst.No. 2454-73/DCU(M)EA-01 dated 16/03/2009 & Office Order No: Endst No: 2212/9 dated 18/03/2009	"C"	14
7.	Copy of Judgment dated 16/06/2020	"D"	15-18
8	Copy of Departmental Appeal	"E"	19
9	Other Documents		20-28
10.	Wakalat Nama		29

Dated: 17/09/2020

***APPELLANT***

Through

**Javed Iqbal Gulbela**  
Advocate, High Court  
Peshawar.

Off Add: 9-10A Al-Nimrah Centre, Govt College Chowk Peshawar

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

In Re S.A No. \_\_\_\_\_/2020

Talib Khan S/o Shamshad Khan R/o Moh: Gujran  
Fatima, Tehsil & District Mardan.

....*Appellant*

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education, Civil Secretariat, Peshawar.
3. District Education Officer, Mardan.

....*Respondents*

**APPEAL U/S-4 OF THE KHYBER**  
**PAKHTUNKHWA SERVICES**  
**TRIBUNAL ACT 1974 FOR**  
**SETTING ASIDE THE IMPUGNED**  
**ORDERS DATED 16/03/2009 &**  
**18/03/2009 OF THE OFFICE OF**  
**DISTRICT CO-ORDINATOR**  
**OFFICER MARDAN, WHEREBY**  
**THE APPELLANT WAS**  
**TERMINATED FROM HIS**  
**SERVICES ON THE ALLEGED**  
**GROUND OF BEING ILLEGALLY**  
**APPOINTEE & IN VIOLATION TO**  
**THE RECRUITMENT POLICY IN**  
**A CURSORY & WHIMSICAL**  
**MANNER.**

Respectfully Sheweth.

1. That the Appellant is a naturally born bonafide citizen of Islamic Republic of Pakistan & hails from a respectable family of District Mardan have every legal right to file the instant Service Appeal.
2. That the Respondent Department called for Applications for filling of certain vacant posts to be filled in Respondent Department vide Daily Aaj (Newspaper) dated 07/08/2008 & in connection to the same, the Appellant applied for the same. (Copy of Advertisement dated 07/08/2008 is annexed herewith as annexure "A")
3. That after going through the mandatorily required criteria & after being envisaged with the inquisition & ordeals of selection process, the Appellant got inducted onto the rolls of this prestigious department as PST Teacher (BPS-7) vide Order No: 15034-G/APPI:PST dated 05/12/2008 of the office of Executive District Officer Elementary & Secondary Education Mardan. (Copy of Appointment Order dated 05/12/2008 is annexed herewith as Annexure "B").

4. That after induction into service, the Appellant remained a very pragmatic & devoted fellow and have never left any stone unturned in performance of his duties & due to his mental wetted skills, the Appellant always won the hearts of his High-ups and was appraised on certain junctures for his work ethic and behavior.
  
5. The before going to went out spleen upon the injustices meted out to the Appellant, it would be appropriate to mention in here that the service of the Appellant only remained for a short span of 4 months, when suddenly out of the blue, the Appellant along with his other colleagues were terminated from the rolls of the Respondent Department vide impugned Office Order No: Endst.No. 2454-73/DCU(M)EA-01 dated 16/03/2009 & Office Order No: Endst No: 2212/9 dated 18/03/2009 of the office of District Coordination Officer Mardan with the observation that all the appointments carried out therein were irregular & were therein in violation of recruitment policy & prescribed procedure. (Copies of Impugned



Office Order: Endst.No. 2454-73/DCU(M)EA-01 dated 16/03/2009 & Office Order No: Endst No: 2212/9 dated 18/03/2009 are annexed as annexure "C")

6. That other colleagues / batch mates of the Appellant filed Service Appeal before this Hon'ble Tribunal which was allowed & other colleagues of the Appellant were re-instated into their parent department.
7. That Appellant approached to the August Peshawar High Court Peshawar in Writ Petition No: 5408/2019 titled as "Talib Khan VERSUS Govt: of KPK" for setting aside the impugned orders dated 16/03/2009 & 18/03/2009 & for re-instatement into service, which was disposed off with the directions to seek appropriate remedy from the competent forum. (Copy of Judgment dated 16/06/2020 is annexed herewith as Annexure "D")
8. That thereafter, the Appellant filed a Departmental Appeal on 17/06/2020 but here again the deuce fate of the Appellant prevailed, and after the lapse of the statutory period, the same was not decided.

5

(Copy of Departmental Appeal is annexed as Annexure "E")

9. That feeling from the supra-mentioned acts of the Respondent Department, the Appellant approaches this Hon'ble Tribunal upon the following grounds inter-alia:-

**GROUND:-**

- A. That the impugned termination order is illegal, wrong, void ab-intio & is not sustainable at all.
- B. That the impugned termination order is unwarranted, illegal & against the rules, hence not tenable in the eyes of law.
- C. That no proper inquiry was ever conducted in the case of the Appellant nor the Appellant was ever heard in person, that was condemned unheard.
- D. That the Respondent Department has deviated themselves from fulfilling the basic ingredients of law i.e, charge sheet, statement of allegation, show cause notice, inquiry dispensation order, final show cause notice & by doing so the Respondent Department has kept the Appellant in dark.
- E. That as the dictum & law governing the land it is a prima facie that where a law

(6)

requires a thing to be done in a particular manner that has to be done in that manner & not otherwise.

- F. That under the mandate of Article 4 of the Constitution, no one can be treated otherwise than in accordance with law, whereas Article 25 postulates that alike are to be treated alike but here the case of the Appellant is *volta facie* and totally different yardstick has been used to treat the petitioner.
- G. That such reckless demeanor of Respondent Department is an unreasonable departure from principle of Policy contained in Constitution requiring them to secure well being of the Appellant by ensuring equitable adjustment of Rights between employer / Respondent Department & employee/ Appellant.
- H. That from every angle the impugned termination order is wrong, illegal, void, against the rights of the Appellant & is liable to be set aside & by doing so the Appellant is entitled to be re-instated into service with all back benefits.
- I. That the Appellant seeks permission of this Hon'ble Tribunal to advance other relevant grounds at the time of arguments.

It is therefore, most humbly prayed that on acceptance of this Service Appeal, the impugned termination orders No:

7

Endst.No. 2454-73/DCU(M)EA-01 dated 16/03/2009 & Office Order No: Endst No: 2212/9 dated 18/03/2009 of the office of District Co-ordination Mardan may kindly be set aside and by doing so the Appellant may very graciously be reinstated into service with all back benefits.

Any other relief not specifically asked for may also graciously be extended in favour of the Appellant in the circumstances of the case.

Dated: 17/09/2020

*APPELLANT*

Through

**Javed Iqbal Gulbela**

**Saghir Iqbal Gulbela**

**Ahsan Sardar**

**&**

**Tahir Khan**

Advocates, High Court

Peshawar.

**NOTE:-**

As per information of my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.

**Advocate.**

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

In Re S.A No. \_\_\_\_\_/2020

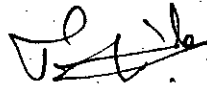
Talib Khan

**VERSUS**

Govt. of Khyber Pakhtunkhwa and Others

**AFFIDAVIT**

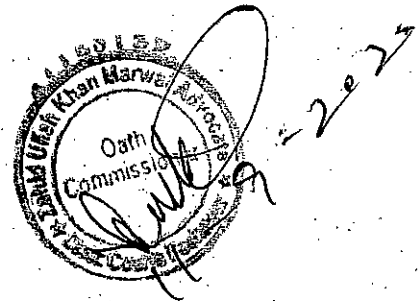
I, Talib Khan S/o Shamshad Khan R/o Moh: Gujran Fatima, Tehsil & District Mardan, do hereby solemnly affirm and declare that all the contents of the instant appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.



DEPONENT  
CNIC:  
CELL NO:

*Identified by:*

**JAVED IQBAL GULBELA**  
Advocate High Court  
Peshawar.



**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

In Re S.A No. \_\_\_\_\_/2020

Talib Khan

**VERSUS**

Govt. of Khyber Pakhtunkhwa and Others

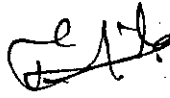
**APPLICATION FOR CONDONATION OF DELAY**

Respectfully Sheweth,

1. That appellant has filed the above titled appeal before this Honourable Tribunal, the contents of which may very graciously be considered as integral part of the instant appeal.
2. That balance of convenience also lies in favor of the Appellant.
3. That meanwhile, the Appellant approached the Hon'ble Peshawar High Court Peshawar in Writ Petition No: 5408/2019, hence could not approach this Hon'ble Tribunal.
4. That other colleagues of the Appellant also approached the Hon'ble Peshawar High Court Peshawar, and since then, the Appellant was waiting for the same to be decided.
5. That due to financial constraints, the Appellant could not approach this Hon'ble Tribunal within time.

- 6. That if the delay is not condoned, the Appellant will suffer irreparable loss.
- 7. That in given circumstances of the case, condonation of delay in the instant appeal is indispensable.

It is therefore humbly prayed that on acceptance of this application, the delay in filing the instant service appeal may graciously be condoned in the best interest of justice.



Dated: 10/09/2020

APPELLANT

Through

**Javed Iqbal Gulbela**

**Saghir Iqbal Gulbela**

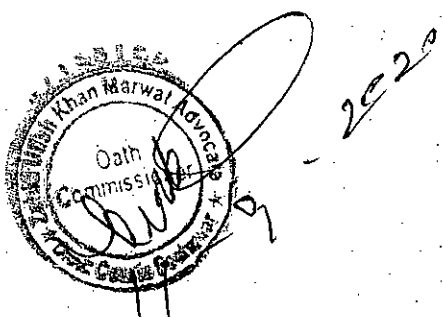
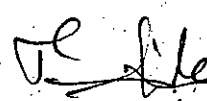
&

**Ahsan Sardar**

Advocates, High Court  
Peshawar.

Affidavit:

I, **Talib Khan S/o Shamshad Khan R/o Moh: Gujran Fatima, Tehsil & District Mardan**, do hereby solemnly affirm and declare that all the contents of the instant application are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT  
CNIC:  
CELL NO

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

In Re S.A No. \_\_\_\_\_/2020

Talib Khan

**VERSUS**

Govt. of Khyber Pakhtunkhwa and Others

**ADDRESSES OF PARTIES**

***PETITIONER.***

Talib Khan S/o Shamshad Khan R/o Moh: Gujran  
Fatima, Tehsil & District Mardan.

**ADDRESSES OF RESPONDENTS**

1. Govt. of Khyber Pakhtunkhwa through Secretary  
Elementary & Secondary Education, Civil  
Secretariat, Peshawar.
2. Director Elementary & Secondary Education, Civil  
Secretariat, Peshawar.
3. District Education Officer, Mardan.

Dated: 10/09/2020

  
**APPELLANT**

Through

**Javed Iqbal Gulbela**  
Advocate, High Court  
Peshawar.



Page No. \_\_\_\_\_

انتخاب روزنامہ اچ من

Abstract from advertisement

روزنامہ اچ من 27 جولائی 2008ء

درخواستیں کے لئے تعلیم میں درج ذیل روزنامہ "انتخاب" کے ذریعے اس میں کی گئی ہے۔  
 سرکاری جوائنٹ ٹیکسٹ بک بورڈ کے سرکاری اور سرکاری تعلیمی و تربیتی  
 کامیابی کے حامل امیدواروں سے بمقام انتخاب اخبار شہر اسلام آباد میں تجویز شدہ  
 فارسی پر درج ذیل جوائنٹ ٹیکسٹ بک بورڈ کے ذریعے اس میں کی گئی ہے۔  
 اور جو امیدوار اس سلسلے میں جوائنٹ ٹیکسٹ بک بورڈ کے ذریعے اس میں کی گئی ہے۔  
 تک پہنچ جائے گا۔

سلسلہ	نمبر	نام	پتہ	تاریخ	مقام	نمبر	نام	پتہ	تاریخ	مقام
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ATTESTED

*Amir*  
*Amir*

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (ELEMENTARY & SECY. EDUC.) MARDAN  
NOTIFICATION:

Consequent upon the advertisement published in the daily "AAJ KAL" Peshawar dated 23/08/2008 and resulted interview held on 23/08/2008 by the District Management/selection committee, the undersigned being competent Authority is pleased to appoint in the post of Mr. Shamsud Khan S/O Shamsud Khan R/O Yahya U/C Fathma as PST (trained) / fresh candidate in BPS-07/RS.3530-190-02344 plus usual allowances as admissible to him/her under the rule against the vacant PST-post at GPS /GMPS Yahya Jaded, with effect from the date of her taking over charge in the interest of public service subject to the following existing terms and conditions:

TERMS AND CONDITIONS:

- 1- Their appointments are made purely on contract policy 2005 and will not be entitled for pension / Gratuity as per policy and are liable to termination at any time without any notice or reason.
- 2- They are required to produce health and age certificates from the concerned Medical Superintendent before taking over charge.
- 3- They are not allowed to take over charge if their age is less than 18 years and above 40 years.
- 4- Their educational/professional certificates/degrees should be verified from the concerned Board/University before by DDO (M) Mardan & Takht Bhai.
- 5- No TA/DA is allowed.
- 6- They will be governed by contract policy 2005 and other policy/rules released by the Govt. from time to time.
- 7- They are entitled for annual increment on completion of one year service.
- 8- They will take over charge of the post within 15 days.
- 9- In case of resignation they will give one month prior notice to the Department or forfeit one month's salary in Government treasury.
- 10- In case of duplication of post the appointment order of junior most will be withdrawn automatically.

(AHMAD HUSSAIN KHAN)  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY & SECY. EDUCATION  
MARDAN

Endst: No 15034-G /App t: PST.

Dated Mardan the 5/12 /2008.

Copy forwarded for information and necessary action to the:

- 1- Director Schools and Literacy-NWFP, Peshawar.
- 2- District Nazim Mardan.
- 3- District Coordination Officer Mardan.
- 4- District Controller of Accounts Officer Mardan.
- 5- Supdt: local office.
- 6- Deputy District Officer (Male) Mardan & Takht Bhai.
- 7- ADO (Estt :) Local Office.
- 8- Head Teachers Concerned
- 9- Candidate concerned.

*Handwritten mark*  
**ATTESTED**

*Handwritten signature*  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY & SECY. EDUCATION  
MARDAN

JAVED IQBAL Gul Beha  
Daudkhil Law Chamber  
Advocate High Court Peshawar

Annexure - C

BETTER COPY

OFFICE OF THE  
DISTRICT COORDINATION OFFICER  
MARDAN

Dated Mardan the 16/03/2009

OFFICE ORDER

Consequent upon the direction of the Competent Authority vide Govt. of NWFP Elementary and Secondary Education Department Peshawar No. SO(S)4-17/08/Ahmad Hussain dt 27.2.2009, the undersigned is pleased to cancel all the irregular appointments made in violation of recruitments policy and prescribed procedure i.e. without DSC, Test, Interview, merit district union quota etc. during the incumbency of Mr. Ahmad Hussain EDO (E&SE) Mardan with effect from the date of issue of a above mentioned orders.

Sd/-

District Coordination Officer,  
Mardan.

Endst. No. 2454-73/DCO(M)EA-01 dated  
Copy for information and necessary action to:

1. Registrar Peshawar High Court Peshawar.
2. PS to Chief Secretary Govt. of NWFP Peshawar.
3. PS to Minister for Elementary Edu: NWFP Peshawar.
4. PS to Secretary to Govt: of NWFP elementary and Secy: Edu. Department, Peshawar.
5. Commissioner Mardan Division Mardan.
6. District Nazim Mardan.
7. Executive District Officer (E&SE) Mardan.
8. Comptroller District Accounts Mardan.
9. District Officer (Male/Female) (E&SE) Mardan.
10. All Deputy District Officer (Male/Female) Mardan/Takht Bhai.

Sd/-

District Coordination Officer  
Mardan.

O/o THE EXECUTIVE DISTRICT OFFICER, ELEMENTARY/SECY MARDAN

Endst. No. 2212/9, Dated Mardan the 18/3/2009

Copy of the above is forwarded for information and strict compliance to the:

1. All the Principals/Head Masters of HSS /GHS/GMS/(Male/Female) in Mardan, District.
2. All Deputy District Officers (M/F) Mardan/Takht Bhai.
3. District Accounts Officer Mardan.
4. P/S to Secretary to Govt. of NWFP Elementary /Secy Edu: Peshawar.
5. P/A to Director Elementary/Secy Edu: NWFP Peshawar.
6. All Dealing Asstt: Local Office.

Sd/-

Executive District Officer,  
Elementary / Secy Edu: Mardan.

JAVED IZAZI  
Daudzai Law Chamber  
Advocate High Court Peshawar  
**ATTESTED**

Ammanee - D

IN THE PESHAWAR HIGH COURT,  
PESHAWAR,  
JUDICIAL DEPARTMENT

W.P. No. 5408-P/2019.

Talib Khan.....Petitioner.

Versus.

Govt of Khyber Pakhtunkhwa... Respondents.

For petitioner: - Mr. Habib Ullah Mehmud  
Advocate.

For respondents:- Mr. Muhammad Riaz Khan  
AAG

Date of hearing: 16.06.2020

J U D G M E N T

MUHAMMAD NAEEM ANWAR, J.- Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks the following prayers:-

“On acceptance of this writ petition, the impugned order dated 16.03.2009 and 18.03.2019 may kindly be set aside be declare null and void, against the law and also against the norms of justice, and the petitioner may kindly be re-instated in the parent department along with all back benefits i.e., wages, salaries etc for which the petitioner is eligible”.

2. The case of the petitioner is that the respondents' department advertised few posts of PST on 07.08.2008 for which the petitioner being eligible had applied and after process of recruitment, he was

JAVED IQBAL Gul Bela  
Daudza Law Chamber  
Advocate High Court Peshawar  
Mob: 0345-9405501

appointed on Union Council basis at Government Primary School, Yahya Jadeed, Mardan, on 05.12.2008. He joined his services and after rendering 4/5 months services, the respondents without assigning any reasons cancelled his appointment order, which act, according to him, is against law and norms of justice. As per averments of the petition, his other colleagues had filed appeal before Service Tribunal, which was allowed, consequently, they were re-instated, however, the petitioner was not re-instated, hence, the instant petition.

3. The respondent No.3, when put on notice, submitted his parawise comments, wherein issuance of the desired writ was opposed.

4. Arguments heard and record perused.

5. It is not disputed that the petitioner was appointed as PST on 05.12.2008, however, his appointment order alongwith others was cancelled vide order No 2454-68 dated 16.03.2009 on ground of being illegal. He did not file appeal against cancellation of appointment order, however, his other colleagues filed Service Appeal No. 1105/2009 titled Gul Jehan vs. The Secretary, Literacy and Secondary Education, Khyber Pakhtunkhwa, before the Khyber Pakhtunkhwa, Service Tribunal, which was decided

on the basis of judgment rendered in writ petition with the following observations:-

"Since the appointments made are proved to have been made in derogation of merit and relevant rules through an inquiry conducted under the aegis of the Provincial Government, no pick and chose can be made by this Court while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, even if it cannot be refuted that some of the appointees may have been appointed on merit. Since all the vacancies have been advertised afresh and the petitioners would be at liberty to apply for them, we would not like to pass any order in this behalf. This petition being without merit is dismissed."

The Service Tribunal while discussing judgment of this court decided the service appeal on 10.02. 2011. The operative part of the judgment of Service appeal is reproduced as under:-

"11. In view of the above, we see no merit in this appeal as the order of High Court has not been challenged before the Hon'able Supreme Court of Pakistan, therefore, the same is very much in the field. The appeal is not maintainable which is hereby dismissed."

6. Apart from the above, as per contents of the petition, the petitioner remained in service for the period of 3/4 months, thereafter, his services were cancelled somewhere in year, 2008 and thereafter, though the other appointees had challenged the cancellation order before this court as well as before

JAVED IQBAL Gul Pata  
Daudzai Law Chamber  
Advocate High Court Peshawar  
MUM. 9000000000

the Service Tribunal. Be that as it may, without discussing merits of the case of rest of the appointees, who had availed the appropriate remedy, admittedly, undisputedly and undeniably from 2008 till filing of this petition, i.e., 8.10. 2019, the petitioner has never approached to the appropriate forum seeking redressal against order considering himself aggrieved therefrom, therefore, the instant petition being hit by the principle of *laches*, is hereby dismissed.

However, the petitioner is at liberty to seek appropriate remedy from the competent forum, if he so desired.

Announced  
16.06.2020.  
\*M.Zafri PS\*

  
CHIEF JUSTICE

  
JUDGE

(DB: Hon'able Mr. Justice Waqar Ahmad Seth, HCJ  
Hon'able Mr. Justice Muhammad Naeem Anwar)

**JAVED IQBAL** Gul Bela  
Daudzal Law Chamber  
Advocate High Court Peshawar  
Mob: 0345-3403301

بخدمت جناب ڈائریکٹر ایجوکیشن اینڈ سائنسز ایجوکیشن ایس۔ پی۔ ایچ۔

Am "E"

اپیل نمبر اردو بارہ خیال

جناب عالی!

موربات گزارش ہے کہ سائل 2008-2012-15 کو

بطور اسناد BPS/7 بھری ہوئی اور احسن طریقے سے اپنے فرانس  
سے آگیا دے دھا تھا کہ اچانک سائل اور اس کے دوسرے  
ساتھیوں کو ٹیچر سی مہقول وہ "سروس" سے نکال دیا گیا  
جس کے خلاف سائل نے ساتھیوں نے سروس اپیل دائر کیا  
ہو کہ منظور ہوا سائل نے ساتھیوں کو دوبارہ خیال کر دیا گیا  
اور سائل نے ایسارڈ کھائی فورٹ ایسارڈ میں wait petition  
دائر کی جو کہ 2020-06-16 کو فیصلہ ہوا

لیذا صاحبان سے استراہ سے کہ سائل کی اپیل کو منظور  
فرمائے سائل کو بھی اپنے دوسرے ساتھیوں کی طرح دوبارہ خیال کیا جائے

الحمد لله  
مورخہ 17-06-2020

سائل طالب خان ولد شمسار خان ساکن علی  
گجران قادیان تحصیل اینڈ ورسٹریٹی سردان



20

*Handwritten signatures and scribbles at the top of the page.*

Serial No.  
143057

# ALLAMA IQBAL OPEN UNIVERSITY, ISLAMABAD PROVISIONAL RESULT CARD



Name: **TALIB KHAN**  
Father's Name: **SHAMSHAD KHAN**  
Address: **VILLAGE P/O FATIMA**

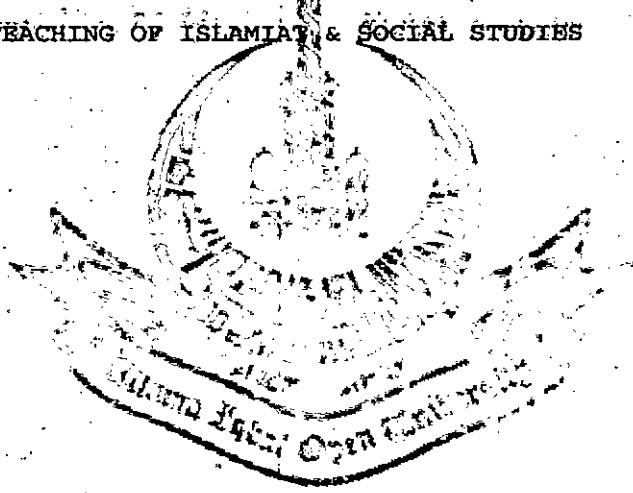
Roll No: **T640485**  
Registration No: **06NMN0043**  
Final Semester: **AUT- 2006**

Tehsil: **MARDAN**  
District: **MARDAN**

has successfully completed **PRIMARY TEACHING CERTIFICATE**

The detail of passed courses are as under:

Semester	Course Code	Title of Course	Marks	
			Maximum	Obtained
SPR- 06	0613	PRINCIPLES OF EDUCATION	100	55
SPR- 06	0614	EDUCATIONAL PSYCHOLOGY	100	55
SPR- 06	0615	SCHOOL ORGANIZATION & MANAGEMENT	100	55
SPR- 06	0616	SCHOOL COMMUNITY & PRACTICAL ARTS	100	50
AUT- 06	0611	PRACTICAL WORKSHOP & TEACHING PRACTICE	100	72
AUT- 06	0617	TEACHING OF URDU	100	61
AUT- 06	0618	TEACHING OF MATHEMATICS	100	72
AUT- 06	0619	TEACHING OF SCIENCE & PHYSICAL EDUCATION	100	67
AUT- 06	0620	TEACHING OF ISLAMIC & SOCIAL STUDIES	100	55



**ATTESTED**

CREDITS: 5

Total Marks / Obtained 900 / 559

Result Declared on **SEPTEMBER 20, 2007**

Percentage / Grade **62 B**

Date of issue **SEPTEMBER 25, 2007**

*Signature*  
**Controller of Examinations**

Disclaimer:  
This result card is issued provisionally, errors and omission excepted, as a notice only. Any entry appearing in this card does not itself confer any right of privilege on a candidate for the grant of certificate/degree/diploma, which will be issued under the rules/regulations on the basis of the original record of the university student.



Serial No. 2248

Registration No. 73

FRONTIER COLLEGE OF COMMERCE & COMPUTER SCIENCES



AFFILIATED WITH BOARD OF TECHNICAL EDUCATION

GOVT. OF N.W.F.P. PESHAWAR

Vide Regd: No. 1007-1011

CERTIFICATE

This is to certify that Mr. Talib Khan

M.O. Shamsud Khan resident of Mohallah

Gujran Vill: Fatma Teh: & Distt: Mardan

has undergone Typing/ Shorthand Training Course in this institute under my supervision from 10.8.96 to 10.2.97.

He took keen interest in his studies during the training period.

At the time of termination of the course his speed of Typing/ Shorthand found was 80 (Eighty) words per minute respectively

Wishing him good luck & Success in his future life.

Date: 10.2.97

ATTESTED

PRINCIPAL

Govt. Principal/ Director of Commerce & Computer Science - MARDAN.

This Certificate is issued without alteration or erasure.





27

MEDICAL CERTIFICATE

Name of Official..... Tarlib Khan

Caste or race..... Mullah

Father's name..... Shamshad Khan

Residence..... Chowki

Date of birth..... 25/1/1973

Exact height by measurement..... 5-5

Personal mark of identification..... Nil

Signature of the Official.....

Signature of head of office.....

Head of Office.....

I do hereby certify that I have examined Mr. Tarlib Khan a candidate for employment in the Office of the SS/L and can not discover that he had any disease communicable or other constitutional affection or bodily infirmity except Nil

I do not consider this as disqualification for employment in the office of the SS/L His age according to his own statement 36 year and by appearance about 36 years.

ATTESTED

LEFT HAND THUMB AND FINGER IMPRESSIONS.....

Medical Superintendent, Civil Hospital.....

Medical Superintendent, District Hospital, Mardan.

6/12/2008

28

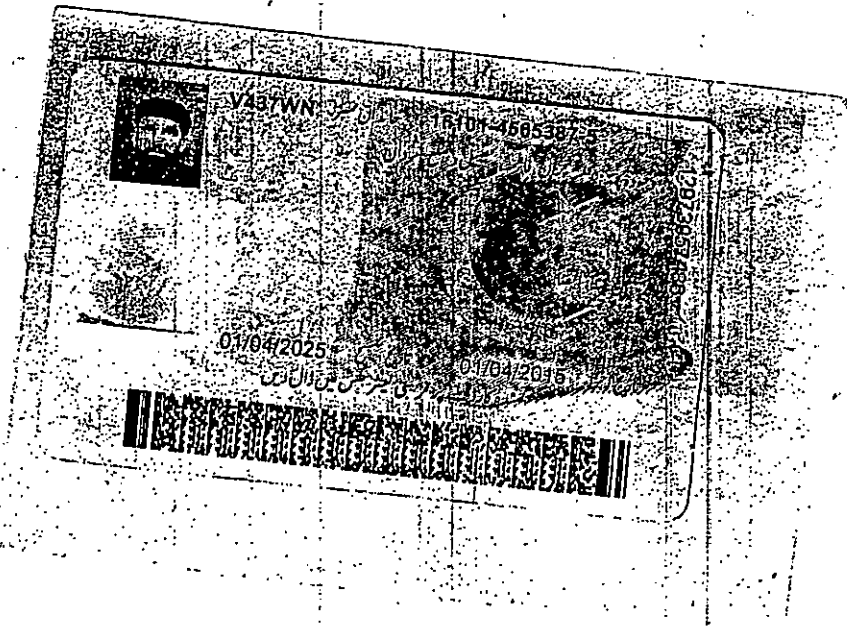
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~~محمد~~ (8) 90  
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8



# وکالت نامہ

بعدالت: صاحب سروس ٹریڈنگ

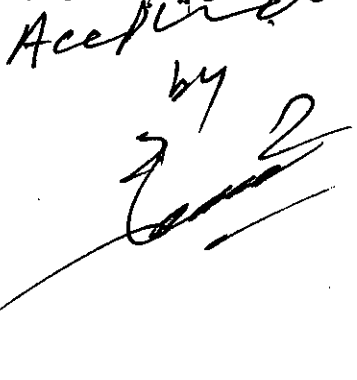
طالب خان	بنام	موصوف صاحب
منجانب ریسلٹ	دعویٰ	س. ا. ا.
تاریخ ۱۱.۶.۲۰		

بعث تحریر آنکہ مقدمہ مندرجہ بالا العنوان اپنی طرف سے ادا لے چکری و جوابدہی بمقام..... کیلئے جاوید اقبال گل بیلہ ایڈووکیٹ ہائی کورٹ کو بکدیں شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا خود یا بزرگیہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا، اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کی کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے۔ اگر مقدمہ علاوہ صدر مقام پکھری کے کسی اور جگہ ساعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کوکل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل و گمرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپروٹالشی و راضی نامہ فیصلہ برخلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم انتہائی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا نیگی علیحدہ مختار نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزوی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا پیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر دہی اور ویسے ہی اختیارات حاصل ہونگے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سند ہے۔ مورخہ ۱۱.۶.۲۰

صاحب سروس ٹریڈنگ  
موصوف صاحب

طالب خان  
ایڈووکیٹ

Accepted by





53

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No.11017/2020.

Talib Khan S/O Shamshad Kham Moh; Gujran, Fatma, Tehsil & Distt. Mardan.  
(Petitioner)


**Versus**

The Secretary (Elementary & Secondary Education) KPK Peshawar & Others  
(Respondents)

**INDEX**

S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES	
1.	Para wise comments along with affidavit		01	06
2	Copy of appointment order	"A"	--	07
3	Copy of High, Court Judgement	B	08	11
4	Copy of Departmental Appeal	C	---	12
5	Copy of Cancellation order	D	---	13
6	Copy of dismissal order	E	--	14
7	Copy of Service Tribunal Judgement	F	15	17

Respondent

  
District Education Officer  
(Male) Mardan

29/03/2021

33

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No.11017/2020.

Talib Khan S/O Shamshad Khan Moh; Gujran, Fatma, Tehsil & Distt, Mardan.  
(Petitioner)

**Versus**

The Secretary (Elementary & Secondary Education) KPK Peshawar & Others  
(Respondents)

**Para Wise Comments on Behalf of Respondents No 1, to 3.**

Sheweth, Respectfully

**PRELIMINARY OBJECTIONS:**

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is badly time barred, hence liable to be dismissed.
3. That the appellant has not come to this honorable Tribunal with clean hands.
4. That the appellant has concealed the material facts from this Hon'ble Tribunal, hence the appeal is liable to be dismissed.
5. The appellant had been appointed **since 2008**. The writ Petition had been filed **since 2019** and the writ petition being hit by the principle of laches is here by dismissed dated 16-06-2020. The departmental appeal has written on dated 17-06-2020, hence the appeal is time bared liable to be dismissed.  
**(Appointment, High Court Judgment, & Departmental appeal are Annexure A, B & C)**
6. That the respondent/ competent authority vide Govt of NWFP Elementary & Secondary Education department Peshawar No SO(S)4-17/08/Ahmad Hussain Dated 27-2-2009, the Competent authority Cancelled all the irregular appointments made <sup>w</sup>violation of recruitments policy and prescribed procedure i.e. without DSC, Test, Interview, Merit, District/ union Quota etc. during the incumbency of Mr. Ahmad Hussain E.D.O (E&SE) Mardan.  
**(Copy of Cancellation order is as Annexure D)**
7. That the Competent Authority (CHIEF MINISTER) has imposed <sup>w</sup>major penalty of Dismissal from Service upon Mr. Ahmad Hussain Ex-Executive District Education Officer (BS-19) E&SE, Mardan.

**(Copy of dismissal order is Annexure E)**

5  
8. That the same nature Service appeal No.1105/2009, decided on dated 10-02-2011, para No. 6, The AAG argued that the appeal is not maintainable as per Honorable High Court Judgement, the relevant portion is reproduced as below:

“Since the appointments made are proved to have been made in derogation of merit and relevant rules through inquiry conducted under the aegis of the Provincial Government, No pick and choose can be made by this court, while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, Even if it cannot be relieved that some of the appointees may have been appointed on merit. Since all the vacancies have been advertised a fresh and the petitioner would be at liberty to apply for them, we would not like to pass any order in this behalf, this petition being without merit is dismissed, hence need no comments.

**(Copy of Service Tribunal Judgement as is Annexure F)**

**FACTS:**

1. Para No 1 Pertains to record, however the appellant has no legal right to file the instant appeal, because the appeal is badly time bared, hence need no comments.
2. Para No 2 Pertains to record, hence need no comments.
3. Para No 3 Pertains to record, however the appointment order of the appellant was cancelled, hence need no comments.
4. Para No 4 Pertains to record, hence need no comments.
5. Para No 5 is incorrect, baseless, against facts as the respondent/ Competent Authority vide Govt of NWFP Elementary & Secondary Education department Peshawar No SO(S)4-17/08/Ahmad Hussain Dated 27-2-2009, the Competent authority cancelled all the irregular appointments made violation of recruitments policy and prescribed procedure i.e. without DSC, Test, Interview, Merit, District/ union Quota etc. during the incumbency of Mr. Ahmad Hussain E.D.O (E&SE) Mardan, hence denied.

**(Copy of Cancellation order is as Annexure D)**

6. Para No 6 pertains to record, however each and every case have their own merits, and the same nature service appeal No.1105/2009, decided on dated 10-02-2011, para No. 6 . the AAG argued that the

50

appeal is not maintainable as per Honorable High Court Judgement, the relevant portion is reproduced as below:

“Since the appointments made are proved to have been made in derogation of merit and relevant rules through an inquiry conducted under the aegis of the Provincial Government, No pick and choose can be made by this court, while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, Even if it cannot be relieved that some of the appointees may have been appointed on merit. Since all the vacancies have been advertised a fresh and the petitioner would be at liberty to apply for them, we would not like to pass any order in this behalf, this petition being without merit is dismissed, hence need no comments.

**(Copy of Service Tribunal Judgement as is Annexure F)**

7. Para No.7 is incorrect, baseless, against facts, as the writ petition is not disposed off while the writ petition being hit by the principle of laches is here by dismissed dated 16-06-2020, hence denied.

**(Copy of High Court Judgement as is Annexure B)**

8. Para No.8 is incorrect, baseless, against facts, as the answering respondent being responsible government officer acted in accordance law and rules, hence denied.
9. Para No.9 needs no comments, grounds as under:

**Grounds:**

- A. Para A is incorrect, baseless, against facts, as the respondent/ Competent Authority vide Govt of NWFP Elementary & Secondary Education department Peshawar No SO(S)4-17/08/Ahmad Hussain Dated 27-2-2009, the Competent authority cancelled all the irregular appointments made violation of recruitments policy and prescribed procedure i.e. without DSC, Test, Interview, Merit, District/ union Quota etc. during the incumbency of Mr. Ahmad Hussain E.D.O (E&SE) Mardan, hence denied.

**(Copy of Cancellation order is as Annexure D)**

- B. Para B is incorrect, baseless, against facts, as the termination/ Cancellation order is legal and is not against the rules, hence tenable in the eye of law, hence denied.
- C. Para C is incorrect, baseless, against facts, as the answering respondent being responsible government officer acted in accordance law and rules, hence denied.
- D. Para D is incorrect, baseless, against facts, as the respondent/ Competent Authority vide Govt of NWFP Elementary & Secondary Education department Peshawar No SO(S)4-17/08/Ahmad Hussain Dated 27-2-2009, the Competent authority cancelled all the irregular

49

appointments made violation of recruitments policy and prescribed procedure i.e. without DSC, Test, Interview, Merit, District/ union Quota etc. during the incumbency of Mr. Ahmad Hussain E.D.O (E&SE) Mardan, hence denied.

**(Copy of Cancellation order is as Annexure D)**


E. Para E is incorrect, baseless, against facts, as the respondent/ Competent Authority vide Govt of NWFP Elementary & Secondary Education department Peshawar No SO(S)4-17/08/Ahmad Hussain Dated 27-2-2009, the Competent authority cancelled all the irregular appointments made violation of recruitments policy and prescribed procedure i.e. without DSC, Test, Interview, Merit, District/ union Quota etc. during the incumbency of Mr. Ahmad Hussain E.D.O (E&SE) Mardan, hence denied.

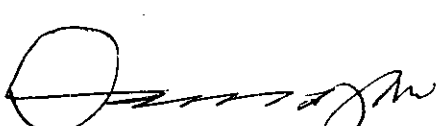
**(Copy of Cancellation order is as Annexure D)**


- F. Para F is incorrect, baseless, against facts, as the respondents have not violated Article 04 & 25 of the constitution of Pakistan 1973. and the appellant has treated as per law, hence denied.
- G. Para G is incorrect, baseless, against facts, the answering respondent being responsible government officer acted in accordance law and rules, hence denied.
- H. Para H is incorrect, baseless, against facts, as the termination/ Cancellation order is legal, valid and is not against the rights of the appellant, and is not liable to be set aside, hence denied.
- I. That the respondents seek permission to raise additional grounds at the time of arguments.

It is therefore humbly prayed that in the light of above facts, the appeal may please be dismissed with cost.

Respondent

  
District Education Officer.  
(Male) Mardan

  
Director of (E & SE) Education  
KPK, Peshawar 30/3/21

  
Secretary of (E & SE) Education  
KPK, Peshawar 5/5/21

48

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No.11017/2020.

Talib Khan S/O Shamshad Khan Moh; Gujran, Fatma, Tehsil & Distt, Mardan.  
(Petitioner)

**Versus**

The Secretary (Elementary & Secondary Education) KPK Peshawar & Others  
(Respondents)

**AFFIDAVIT**

I, Mr. Sajid Khan Litigation Officer Education Department Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted by on behalf of Answering Respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Deponent

Sajid Khan  
16101-6005318-5

Annexure = (A) (7)

47

(A)

Annexure - B

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (ELEMENTARY & SECY EDUCATION) MARDAN  
NOTIFICATION

Consequent upon the advertisement published in the daily AAO JAL Peshawar dated 28/08/2008 and resulted interview held on 28/08/2008 by the District Coordination/Selection Committee the undersigned being competent Authority is pleased to appoint

VO Shanshad Khan as PSE (Grade 1) on the scale of BBS-07(Rs. 3530-190-2230) plus usual allowances as admissible to him, the post of PSE (Grade 1) vacant PST post of G.S. /GMPS Yahya Jaded will be taken over from the date of her taking over charge in the interest of public service subject to the following existing terms and conditions:

TERMS AND CONDITIONS:

- 1- Their appointments are made purely on contract policy 2005 and will not be entitled for pension / Gratuity as per policy and are liable to re-appointment at any time without any notice or reason.
- 2- They are required to produce health and fitness certificates from the concerned Medical Superintendent before taking over charge.
- 3- They are not allowed to take over charge if their age is less than 18 years and above 40 years.
- 4- Their educational/professional certificates/degrees should be verified from the concerned Board/University before by DDO (Elementary & Secy Education) Mardan.
- 5- No TADA is allowed.
- 6- They will be governed by contract policy 2005 and all the policy/rates released by the Govt from time to time.
- 7- They are entitled for annual increment on completion of one year service.
- 8- They will take over charge of the post within 15 days.
- 9- In case of resignation they will give one month prior notice in the Department or forfeit one month's salary in Government treasury.
- 10- In case of duplication of post the appointment order of junior most will be withdrawn automatically.

(ATHYAD HUSSAIN KHAN)  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY & SECY EDUCATION  
MARDAN

Endst: No 15034-G /App #: PST.

Dated Mardan the 5/12 /2008.

- Copy forwarded for information and necessary action to the
- 1- Director Schools and Literacy NWFP, Peshawar.
  - 2- District Nazim Mardan.
  - 3- District Coordination Officer Mardan.
  - 4- District Controller of Accounts Officer Mardan.
  - 5- Supdt: local office.
  - 6- Deputy District Officer (Male) Mardan & Fakir Bhat.
  - 7- ADO (Estt:) Local Office.
  - 8- Head Teachers Concerned
  - 9- Candidate concerned.

ATTESTED

JAVED IQBAL Gul Bela  
Daudzai Law Chamber  
Advocate High Court Peshawar  
Mob: 0345-405507

(Signature)  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY & SECY EDUCATION  
MARDAN

IN THE PESHAWAR HIGH COURT,  
PESHAWAR,  
JUDICIAL DEPARTMENT

B

W.P. No. 5408-P/2019.

Talib Khan.....Petitioner.

Versus.

Govt of Khyber Pakhtunkhwa... Respondents.

For petitioner: - Mr. Habib Ullah Mehmud  
Advocate.

For respondents:- Mr. Muhammad Riaz Khan  
AAG

Date of hearing: 16.06.2020

JUDGMENT

MUHAMMAD NAEEM ANWAR. J.-

petition under Article 199 of the Constitution of the  
Islamic Republic of Pakistan, 1973, the petitioner  
seeks the following prayers:-



"On acceptance of this writ petition, the impugned order dated 16.03.2009 and 18.03.2019 may kindly be set aside be declare null and void, against the law and also against the norms of justice, and the petitioner may kindly be re-instated in the parent department along with all back benefits i.e., wages, salaries etc for which the petitioner is eligible".

2. The case of the petitioner is that the respondents' department advertised few posts of PST on 07.08.2008 for which the petitioner being eligible had applied and after process of recruitment, he was

ATTESTED  
EXAMINER  
Peshawar High Court



appointed on Union Council basis at Government Primary School, Yahya Jadeed, Mardan, on 05.12.2008. He joined his services and after rendering 4/5 months services, the respondents without assigning any reasons cancelled his appointment order, which act, according to him, is against law and norms of justice. As per averments of the petition, his other colleagues had filed appeal before Service Tribunal, which was allowed, consequently, they were re-instated, however, the petitioner was not re-instated, hence, the instant petition.

3. The respondent No.3, when put on notice, submitted his parawise comments, wherein issuance of the desired writ was opposed.

4. Arguments heard and record perused.

5. It is not disputed that the petitioner was appointed as PST on 05.12.2008, however, his appointment order alongwith others was cancelled vide order No 2454-68 dated 16.03.2009 on ground of being illegal. He did not file appeal against cancellation of appointment order, however, his other colleagues filed Service Appeal No. 1105/2009 titled Gul Jerran vs. The Secretary, Literacy and Secondary Education, Khyber Pakhtunkhwa, before the Khyber Pakhtunkhwa, Service Tribunal, which was decided

**ATTESTED**

**EXAMINER**

Peshawar High Court

on the basis of judgment rendered in writ petition with the following observations:-

"Since the appointments made are proved to have been made in derogation of merit and relevant rules through an inquiry conducted under the aegis of the Provincial Government, no pick and chose can be made by this Court while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, even if it cannot be refuted that some of the appointees may have been appointed on merit. Since all the vacancies have been advertised afresh and the petitioners would be at liberty to apply for them, we would not like to pass any order in this behalf. This petition being without merit is dismissed."

The Service Tribunal while discussing judgment of this court decided the service appeal on 10.02. 2011. The operative part of the judgment of Service appeal is reproduced as under:-

11. In view of the above, we see no merit in this appeal as the order of High Court has not been challenged before the Hon'able Supreme Court of Pakistan, therefore, the same is very much in the field. The appeal is not maintainable which is hereby dismissed."

6. Apart from the above, as per contents of the petition, the petitioner remained in service for the period of 3/4 months, thereafter, his services were cancelled somewhere in year, 2008 and, thereafter, though the other appointees had challenged the cancellation order before this court as well as before

ATTESTED  
EXAMINER  
Peshawar High Court

the Service Tribunal. Be that as it may, without discussing merits of the case of rest of the appointees, who had availed the appropriate remedy; admittedly, undisputedly and undeniably from 2008 till filing of this petition, i.e., 8.10. 2019, the petitioner has never approached to the appropriate forum seeking redressal against order considering himself aggrieved therefrom, therefore, the instant petition being hit by the principle of *laches*, is hereby dismissed. However, the petitioner is at liberty to seek appropriate remedy from the competent forum, if he so desired. ✓

**Announced**  
16.06 2020.  
\*M.Zafar PS\*

**CYBER JUSTICE**

**JUDGE**

(DB: Hon'able Mr. Justice Waqar Ahmad Seth, HCJ  
Hon'able Mr. Justice Muhammad Naeem Anwar)

**CERTIFIED TO BE TRUE COPY**

**EXAMINED**  
Peshawar High Court, Peshawar  
Authorized Under Article 167 of  
the Constitution of Pakistan Order 1999

23 JUN 2020

No. 38282  
Date of Presentation of Application 16/6/20  
No of Pages 27  
Copying fee 362  
Total 3782  
Date of Preparation of Copy 23/6/20  
Date of Delivery of Copy 23/6/20

*[Handwritten signature]*

محرمت جنا ڈائریکٹر ایلیمنٹری اینڈ سیکنڈری اسکولس

اپیل نمبر ۱۷۰۰۰۰۰۰۰۰۰۰۰۰  
C

جنا عالی!

موریاں گزارش ہے کہ سائل 2008-012-15 کو

بظور اسناد BPS/7- بھری ہوئی اور احسن طریقے سے ایف م ایف  
سہ آگے دے دیا گیا۔ کہ اچانک سائل اور اس کے دوسرے  
سائقوں کو بغیر کسی مہقولہ سے سروس سے نکال دیا گیا  
جس نے خلاف سائل کے سائقوں نے سروس اپیل دائر کیا  
جو کہ منظور ہوا سائل کے سائقوں کو دوبارہ بحال کر دیا گیا  
اور سائل نے ایسا وہاں کورٹ ایسا وہاں۔ wait petition  
دائر کی جو کہ 2020-06-16 کو فیصلہ ہوا

لیزا صاحبان سے استراہ سے کہ سائل کی اپیل کو منظور  
فرما کر سائل کو بھی ایف م ایف سے سائقوں کی حل دوبارہ بحال کیا جائے۔

الحمد علیہ  
مورف 17-06-2020

سائل طالب خان ولد شمسار خان سائل محلہ  
گجران قاطع تحصیل اینڈ ریسرک مردان

OFFICE ORDER



MARDAN  
Dated Mardan, The 16/12/2009

41

Consequent upon the direction of the Competent Authority vide Govt of NWFP Elementary and Secondary Education Department Peshawar No. SO(S)4-17/08/Ahmad Hussain dated 27-2-2009, the undersigned is pleased to cancel all the irregular appointments made in violation of recruitments policy and prescribed procedure, i.e. without BSC Test, Interview, merit, District/Union Quota etc. during the incumbency of Mr. Ahmad Hussain EDO (E&SE) Mardan with effect from the date of issue of above mentioned orders.

District Coordination Officer,  
Mardan.

Encl. No. 2454-68 DCO(M/EA-01)

- Copy for information and necessary action to:
- 1- Registrar Peshawar High Court Peshawar.
  - 2- PS to Chief Secretary Govt of NWFP Peshawar.
  - 3- PS. To Minister for Elementary/Secy. Edu: NWFP, Peshawar.
  - 4- PS. To Secretary to Govt of NWFP Elementary and Secy. Edu: Deptt: Peshawar.
  - 5- Commissioner Mardan Division Mardan.
  - 6- District Nazim Mardan.
  - 7- Executive District Officer (E&SE) Mardan.
  - 8- Comptroller District Accounts Mardan.
  - 9- District Officer (Male/Female) (E&SE) Mardan.
  - 10- All Deputy District Officer (Male/Female) Mardan/Takht Bhai.

CO-ORDINATOR EXECUTIVE DISTRICT OFFICER ELEMENTARY/SECY MARDAN.  
Dated Mardan, the 18/12/2009

Copy of the above is forwarded for information and compliance to the:-  
1. All the Principals/Head masters of GhSS/GHS/GMS. (Male/Female) in District.  
2. All Deputy District Officers (M/F) Mardan/Takht Bhai.  
3. District Accounts Officer Mardan.  
4. P/S. to Secretary to Govt. of NWFP. Elementary/Secy. Edu: Peshawar.  
5. P.A. to District Officer (E&SE) Mardan.  
6. All Deputy District Officers (M/F) Mardan/Takht Bhai.

District Officer,  
Mardan.

GOVERNMENT OF N.W.F.P.  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

Dated August 6, 2009

NOTIFICATION.

NO.SO(S)4-17/2009/ Ahmed Hussain

WHEREAS Mr Ahmed Hussain, ex-  
Executive District Officer (BS-19) E&SE, Mardan was proceeded against under the  
NWFP Removal from Service (Special Powers) Ordinance, 2000 for the charges  
mentioned in the Charge Sheet and Statement of Allegations dated 1-4-2009.

2. AND WHEREAS Mr Farid Qureshi, Special Secretary (Regulation Wing)  
(BS-20) Establishment Department, Govt NWFP and Syeda Sarwat Jehan, Directress  
(BS-20) Elementary & Secondary Education, NWFP Peshawar were appointed as Inquiry  
Committee to conduct inquiry against the accused officer, for the charges leveled  
against him in accordance with the rules.

3. AND WHEREAS the Inquiry Committee after having examined the charges,  
evidence on record and explanation of the accused officer has submitted the report.

4. AND WHEREAS a show cause notice was served upon Mr Ahmed Hussain,  
ex- Executive District Officer (BS-19) E&SE Mardan dated 10-6-2009.

5. AND WHEREAS the Competent Authority (Chief Minister, NWFP), after  
having considered the charges, evidence on the record, inquiry report, explanation of  
the accused officer in response to the Show Cause Notice & personal hearing is of the  
view that the charges against the officer have been proved.

6. NOW THEREFORE, in exercise of the powers conferred under section 3  
of NWFP Removal from Service (Special Powers) Ordinance, 2000, the Competent  
Authority (Chief Minister, NWFP), is pleased to impose major penalty of "Dismissal  
from Service" upon Mr Ahmed Hussain, ex-Executive District Officer (BS-19) E&SE  
Mardan.

SECRETARY

Endst: of Even No. & Date.

Copy forwarded to: -

- 1- Accountant General, NWFP Peshawar.
- 2- Special Secretary to Chief Minister, NWFP Peshawar.
- 3- The Director, Elementary & Secondary Education, Peshawar.
- 4- Mr Ahmed Hussain, ex-Executive District Officer (BS-19) E&SE Mardan.
- ✓ 5- Executive District Officer, E&SE Mardan.
- 6- District Accounts Officer, Mardan.
- 7- PS to Chief Secretary, NWFP, Peshawar.
- 8- PS to Secretary, E&SE Department, NWFP.
- 9- PAs to Additional Secretary, Deputy Secretary (Admn), E&SE Department.
- 10- Office order file.

(SYED AHMAD KHAN)

5304  
16/8

BOO IIAE  
A.G.

Annexure - F - (15)

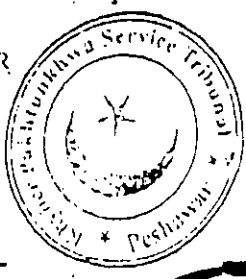
37

BEFORE THE K.P.K SERVICE TRIBUNAL PESHAWAR

Appeal No. 1105/2009

Date of institution - 08.07.2009

Date of decision - 10.02.2011



F

Gul Jehan PST, GPS Maho Nari, Mardan ..... (Appellant)

VERSUS

1. The Secretary Literacy & Secondary Education K.P.K Peshawar.
2. Director Education Peshawar.
3. D.C.O Manshera.
4. The Executive District Officer (E&SE), Mardan.....(Respondents)

Appeal under Section 4 of the K.P.K Service Tribunal Act 1974 against the order dated 16.3.2009 whereby the appointment order of the appellant has been canceled retrospectively.

Mr. Adam Khan, Advocates..... For Appellant.  
 Mr. Sher Afgan Khattak A.A.G..... For Respondents

SYED MANZOOR ALI SHAH ..... MEMBER  
 MR. NOOR ALI KHAN..... MEMBER.

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER: This appeal has been filed by the appellant against the order dated 16.3.2009 whereby his appointment order was canceled retrospectively.

2. Brief facts of the case are that as per advertisement, applications were invited for the post of P.T.C. The appellant accordingly submitted an application. He was appointed as PSC Teacher vide order dated 5.12.2008 after observing all condal formalities. The appellant performed duties satisfactory from the date of assumption of duties. Respondent No. 1 vide order dated 16.3.2009 ordered the cancellation of appointment orders including the appointment order of appellant against which he

ATTORNEY  
  
 ATTORNEY  
 PESHAWAR

3. Arguments heard and file perused.

4. The learned counsel for the appellant argued that the appointment order of the appellant was issued after test and interview and there was no illegality in his appointment order. The appointment has been made under the supervision of District Selection Committee on merit. The laid down procedure has blatantly been violated by the respondents. The impugned order is totally one sided, arbitrary and void ab-initio.

5. The case was fixed for maintainability.

6. The AAG argued that the appeal is not maintainable. As per High Court judgment, the relevant portion is reproduced below :-

"Since the appointments made are proved to have been made in derogation of merit and relevant rules through an inquiry conducted under the aegis of the Provincial Government, no pick and choose can be made by this Court while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, even if it cannot be refused that some of the appointees may have been appointed on merit. Since all the vacancies have been advertised afresh and the petitioners would be at liberty to apply for them, we would not like to pass any order in this behalf. This petition being without merit is dismissed."

7. In the light of the above referred judgment the department advertised the posts afresh and appointments were made in accordance with laid down procedure and rules.

8. Counsel for the appellant argued that the appellant was not party of the writ petition filed before the Peshawar High Court; therefore, he may be given an opportunity to argue the case.

9. The Tribunal holds that the judgment of the High Court is crystal clear in which it has been held that some of the appointees may have been appointed on merit. Since all the vacancies have been advertised afresh and the petitioner would be at liberty to apply for the same. We would not like to pass any order in this behalf.

10. The appellant was given an opportunity to apply against the post advertised afresh. The appellant should have availed the opportunity given to him as a result of High Court judgment.

11. In view of the above, we see no merit in this appeal as the order of High Court has not been challenged before the Hon'ble Supreme Court of Pakistan, therefore, the same is very much in the field. The appeal is not maintainable which is hereby

dismissed.

ATTESTED

Signature  
Khyber Peshawar  
Service Tribunal,  
Peshawar



17

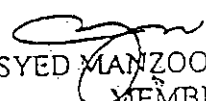
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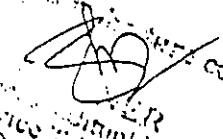
12. This judgment will also dispose of the other connected appeals bearing No. 1121/2009 by Bakht Biland. 1135/2009 by Inamullah. 1130/2009 by Taj Muhsanmad Khan. 1141/2009 by Iftikhar Ali. involving common question of law. in the same manner.

The parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED.  
10.2.2011.

(NOOR ALI KHAN)  
MEMBER.

  
(SYED MANZOOR ALI SHAH)  
MEMBER.

  
Khan  
Service Tribunal  
Peshawar

Date of Presentation of Copy \_\_\_\_\_ 10-12-11  
Number of Words \_\_\_\_\_ 1600  
Copying Fee \_\_\_\_\_ 18-00  
Urgent \_\_\_\_\_  
Total \_\_\_\_\_ 18-00  
Name of Copy \_\_\_\_\_  
Date of Completion of Copy \_\_\_\_\_ 11-12-11  
Date of Delivery of Copy \_\_\_\_\_ 11-12-11

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA PESHAWAR**

In S.A#11017/2020.

Talib khan

Versus

The Secretary (Elementary & Secondary Education) K.P.K and  
Others

**INDEX**

S#	Description of documents	Page No
1	Rejoinder	1-6
2	Affidavit	7

Through

  
Appellant

**JAVED IQBAL GULBELA**

Advocate, Supreme Court of  
Pakistan

Dated: 27/10/2021

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA PESHAWAR**

In S.A#11017/2020

Talib khan

**Versus**

The Secretary (Elementary & Secondary Education) K.P.K and  
Others

**REJOINDER ON BEHALF OF THE APPELLANT TO THE**  
**COMMENTS FILED BY RESPONDENTS NO. 1 TO 3.**

**Respectfully Sheweth,**

**Reply to Preliminary objections:-**

1. Para "1" of preliminary objections is incorrect, wrong & misleading, therefore, denied. Moreover the petitioners have a good cause of action as well as a good locus-standie to file instant suit for redresses of his grievance.
2. Para "2" of preliminary objection is incorrect, wrong, malicious, misleading & fabricated, hence denied. Moreover the appeal of the appellant is well in time.

3. Para "3" of preliminary objection is incorrect, malicious, misleading, hence denied. Moreover, the appellant is entitled to relief as per law.
4. Para "4" of the Preliminary Objections is incorrect & misleading, hence denied. Moreover the appellant rightly comes to this Hon'ble Tribunal for acknowledgment, recognition & for enforcement of his Fundamental right as enshrined, protected & guaranteed by the law of land.
5. Correct to the extent of that the appellant is appointed in 2008, while the remaining para is incorrect, false, frivolous hence denied.
6. Para "6" is incorrect, wrong, misleading, therefore sternly denied. Moreover other colleagues of the appellant have been reinstated into service by the Respondents.
7. Para "7" is misleading, hypocritical, frivolous, and incorrect; therefore sternly denied.
8. Para "8" is misleading, hypocritical, frivolous, and incorrect. Therefore sternly denied.

**On Facts:-**

1. Para "1" is misleading, hypocritical, frivolous, and incorrect. Therefore sternly

denied. While that of the main appeal is true and correct.

2. Para "2" is misleading, hypocritical, frivolous, and incorrect. Therefore sternly denied. While that of the main appeal is true and correct.

3. Para "3" is misleading, hypocritical, frivolous, and incorrect. Therefore sternly denied. While that of the main appeal is true and correct.

4. Para No. 4 of the comments is incorrect & misleading, hence denied; while true and detail picture is given in the main appeal.

5. Para No.5 of the comments is hypocritical & misleading, hence denied; while that of the main appeal is true & correct.

6. Para No.6 of the comments is misleading, incorrect, frivolous & hypocritical therefore, denied. Moreover, true and correct detail is

given in corresponding para of the main Service Appeal.

7. Para No.7 of the comment is incorrect, wrong, fabricated, hypocritical as well as misleading, hence strongly denied. Moreover the writ petition has been remanded by the Hon'ble High Court Peshawar to this Hon'ble Tribunal with direction to seek appropriate remedy, hence the instant service appeal.

8. Para No.8 of the comment is incorrect, wrong, fabricated, hypocritical as well as misleading, hence strongly denied. While true & correct picture is given in corresponding para of main Service Appeal.

9. Para No.9 of the comment is incorrect, wrong, fabricated, hypocritical as well as misleading, hence strongly denied. While

picture is given in the corresponding of main Appeal.


F. Para "F" of the comments is wrong & incorrect, hypocritical & misleading, hence denied. Moreover true & correct picture is given in the corresponding of main Service Appeal.

G. Para "G" of the comments is wrong & incorrect, hypocritical & misleading, hence denied. Moreover true & correct picture is given in the corresponding of main Appeal.

*It is, therefore, most humbly prayed that on acceptance of instant rejoinder, the prayer of the Appellant in the main Service Appeal, may kindly be allowed in the best way of justice.*

Through

  
Appellant

  
**JAVED IQBAL GULBELA**  
Advocate, Supreme Court of  
Pakistan  
&  
**SAGHIR IQBAL GULBELA**  
Advocates High Court  
Peshawar

Dated: 27/10/2021

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA PESHAWAR**

In S.A#11017/2020

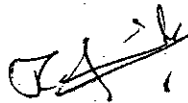
Talib khan

Versus

The Secretary (Elementary & Secondary Education) K.P.K and  
Others

**AFFIDAVIT**

I, Mr. Tayyab Ullah S/o Waheed Ullah Khan R/o Moh:  
Baba Khel, Chamkani, Inqilab Road, Tehsil & District  
Peshawar, do hereby solemnly affirm and declare on oath  
that contents of the Rejoinder are true and correct to the  
best of my knowledge and belief and nothing has been  
concealed from this Hon'ble court.




Deponent

CNIC:17301-2200887-1

Cell No: 0314-4090908

Identified By:-



Javed Iqbal Gulbela  
Advocate Supreme Court of  
Pakistan

