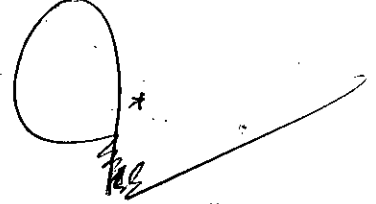


25.11.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Pindakhel, Assistant Advocate General for the respondents present.

Learned Member Judicial Mr. Salah-ud-Din is on leave, therefore, bench is incomplete. Adjourned. To come up arguments on 14.02.2023 before the D.B.



(Mian Muhammad)
Member (E)


14.02.2023

Junior of learned counsel for the appellant present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Umair Azam Khan, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant stated that similar nature Service Appeal bearing No. 10409/2020 is fixed for arguments on 20.03.2023, therefore, the appeal in hand may also be fixed on the said date. Adjourned. To come up for arguments alongwith Service Appeal bearing No. 10409/2020 on 17.05.2023 before the D.B.



(Fareeha Paul)
Member (E)




(Salah-ud-Din)
Member (J)

SCANNED
KP&T
Peshawar

24.08.2022

Mr. Umer Farooq, Advocate (Junior of learned counsel for the appellant) present. Mr. Fazal Amin, Deputy Collector alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present and sought further time for submission of written reply/comments. Vide order dated 09.11.2021, it was directed that the respondents shall submit reply/comments within 10 days in office positively, if the reply/comments are not submitted within stipulated time, right of respondents for submission of reply shall be deemed as struck off. Respondents have failed to submit reply/comments even today, therefore, their right for submission of written reply/comments thus stands struck off. To come up for arguments on 13.10.2022 before the D.B.



(Rozina Rehman)
Member (Judicial)

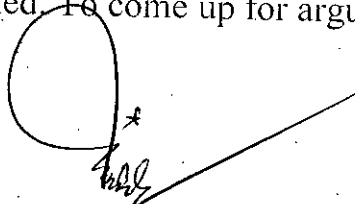


(Salah-Ud-Din)
Member (Judicial)

13.10.2022

Learned counsel for the appellant present. Mr. Fazle Amin, Deputy Collector alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 25.11.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

P.S

05.07.2021

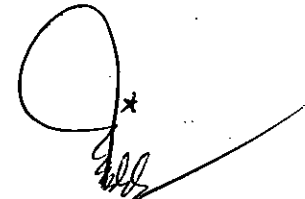
Learned Addl: A.G be reminded about the omission and for submission of Reply/comments within extended time of 10 days.

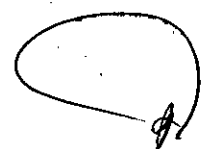

Chairman

09.11.2021 Counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.


Reply on behalf of respondents was not submitted. Learned A.A.G made a request for time to submit reply/comments; granted with direction to furnish the same within 10 days in office, positively. If the reply/comments are not submitted within stipulated time, right of respondents for submission of reply shall be deemed as struck off. To come up for arguments on 02.03.2022 before D.B.


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

02.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 07.06.2022 for the same as before.

7.6.22
Proper D.B is on Tmt
therefor the case is adjourned to
24.8.22 for same

Reader

08.02.2021 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. Thereafter, notices be issued to respondents for written reply/comments. To come up for written reply/comments on 04.05.2021 before S.B.

Appellant Deposited Security & Process Fee

[Handwritten signature]
16/2/21

[Handwritten signature]
(Rozina Rehman)
Member (J)

04.05.2021 Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 22.06.2021 for the same as before.

[Handwritten signature]
Reader

22.06.2021 Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Respondents have not submitted reply/ comments. Learned AAG seeks time to contact the respondents and submit reply/comments. Learned AAG is required to contact the respondents for submission of written reply/comments in office within 10 days, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 09.11.2021 before the D.B.

Stipulated period has passed and reply has not been submitted. This appeal accompanies one other connected appeal,


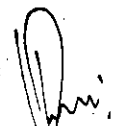
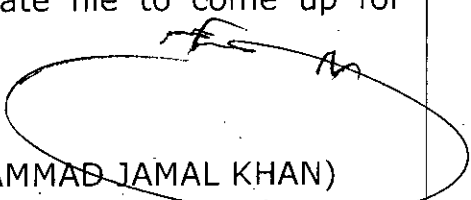
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Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 12443 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/10/2020	<p>The appeal of Mr. Salar Muhammad resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/11/2020</u>.</p> <p> CHAIRMAN</p>
	27.11.2020	<p>Neither appellant nor anyone else representing him has appeared despite having been called time and again, therefore, appellant as well as his respective counsel be noticed for 08.02.2021 on which date file to come up for preliminary hearing before S.B.</p> <p> (MUHAMMAD JAMAL KHAN) MEMBER (JUDICIAL)</p>


Noticed today
8-12-2020
H. A. S.

The appeal of Mr. Salar Muhammad Ex-Beldar office of the Executive Engineer Malakand Irrigation Division Malakand received today i.e. on 18.09.2020 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Annexures-B, C, D and E of the appeal are illegible which may be replaced by legible/better one.
- 2- Copy of appointment order mentioned in para-1 of the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Copies of show cause notice and reply to show cause notice mentioned in para-5 of the memo of appeal are not attached with the appeal which may be placed on it.
- 4- Annexures of the appeal may be attested.
- 5- Annexures of the appeal may be flagged.
- 6- Wakalat nama in favour of appellatant be placed on file.
- 7- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 8- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2735 /S.T,

Dt. 18/09 /2020


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

objection removed Resubmitted

Accordingly

Noor Muhammad Khattak

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 12443 /2020

SALAR MUHAMMAD

VS

IRRIGATION DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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3	Order dated 04.11.2011	B	6.
4	Minutes of DPC	C	7- 10.
5	Judgment	D	11- 21.
6	Apex Court Judgment	E	22- 23.
7	Show Cause notice & Reply	F & G	24- 26.
8	Impugned order	H	27.
9	Departmental appeal	I	28- 29.
10	Vakalat nama	30.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. _____/2020

Diry No. 10476

Dated 18/9/2020

Mr. Salar Muhammad, Ex-Beldar,
O/O the Executive Engineer, Malakand Irrigation Division, Malakand.

.....**APPELLANT**

VERSUS

- 1- The Secretary Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Chief Engineer (North), Irrigation Department, Peshawar.
- 3- The Executive Engineer, Malakand Irrigation Division, Malakand.

.....**RESPONDENTS**

**APPEAL UNDER SECTION- 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER DATED 29.04.2020
WHEREBY THE SERVICES OF THE APPELLANT HAS BEEN
TERMINATED W-E-F 31-10-2011 AND AGAINST THE
INACTION OF THE RESPONDENTS BY NOT DECIDING
THE DEPARTMENTAL APPEAL OF THE APPELLANT
WITHIN THE STATUTORY PERIOD OF NINETY DAYS.**

PRAYER:

That on acceptance of this appeal the impugned order dated 29-04-2020 may very kindly be set aside and the appellant may be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That appellant was appointed as Beldar (BPS-01) in the Irrigation Division, Malakand through Employment Exchange Registration Card vide order dated 31.10.2011. After appointment the appellant submitted his arrival report and started performing his duty quite efficiently and up to the entire satisfaction of his superiors. Copy of the appointment order dated 31-10-2011 is attached as annexure.....**A.**

2- That astonishingly the respondent No. 3 issued the order dated 04.11.2011 whereby the appointment order issued in light of the DPC meeting dated 01-10-2011 of the appellant had been withdrawn without any justifiable reason and without speaking order. Copies of the order dated 04-11-2011 and minutes of the DPC meeting dated 01-10-2011 are attached as annexure.....**B&C.**

3- That feeling aggrieved from the order dated 04.11.2011 the appellant preferred Departmental appeal followed by writ petition No.767-M/2016 before the Peshawar High Court, Mingora Bench Dar-UI-Qaza, Swat which was decided along with other connected writ petitions vide consolidated judgment dated 11.12.2018 with the directions/ observation that:-

"In this view of the matter, all these connected writ petitions are allowed, thereby the impugned order of even date i.e. 04.11.2011 in all these cases is accordingly set aside and all the petitioners be re-instated to their services, however, they cannot be granted the financial benefits because they did not serve against the said posts during the intervening period. Moreover, the respondents are at liberty to initiate departmental proceedings against the present petitioners, if it appears to them that they have procured their appointments through illegal means or have committed any sort of misconduct". Copy of the judgment dated 11-12-2018 is attached as annexure.....**D.**

4- That appellant after obtaining the aforementioned judgment submitted the same before concerned authority for implementation but the authority filed CPLA No.1993 to 1996 of 2019 before the Honorable Supreme Court of Pakistan which was disposed of with the view that:-

"We note that within two months from today the appellant shall initiate the departmental proceedings and conclude the same and during this period the appellant will not be required to re-instate the respondents. However, after two months, it may re-instate them, if the proceedings are not concluded". Copy of the judgment of the apex court dated 10-03-2020 is attached as annexure.....**E.**

5- That it is pertinent to mention here that after the judgment of Honorable Supreme Court of Pakistan a show cause notice dated 02-04-2020 has been issued to the appellant and the same has been replied by the appellant, but the concerned authority has not taken into consideration the aforementioned reply of the appellant. Copies

of the show cause notice and replay are attached as annexure.....**F&G.**

6- That it is worth to mention here that the respondents without fulfilling the codal formalities and rules, straight away issued the impugned order dated 29.04.2020 whereby the appellant has been terminated from service. Copy of the impugned order dated 29-04-2020 is attached as annexure.....**H.**

7- That appellant feeling aggrieved from the impugned order dated 29-04-2020 preferred departmental appeal before the respondent No. 2 but the same has not been responded within the statutory period of ninety days. Copy of the departmental appeal is attached as annexure.....**I.**

8- That having no other remedy the appellant preferred the instant appeal on the following grounds amongst others.

GROUND:

A- That the impugned orders dated 29-04-2020 is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be set aside.

B- That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the respondent acted in arbitrary and mala fide manner while issuing the impugned termination order dated 29-04-2020.

D- That the respondent terminated the appellant in a hasty manner without following the codal formalities.

E- That no charge sheet and statement of allegation has been issued to the appellant before issuance of the impugned termination order dated 29-04-2020.

F- That no chance of Personal Hearing / Defense been provided to the appellant before issuance of the impugned termination order dated 29-04-2020.

G- That no regular inquiry has been conducted against the appellant which is as per Supreme Court judgments is necessary in punitive actions against the civil servant.

H- That appellant has been discriminated on the subject noted above and as such the impugned termination order dated 29-04-2020 is not tenable in the eye of law.

I- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

APPELLANT



SALAR MUHAMMAD

THROUGH:



NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

UMER FAROOQ

&



**MIR ZAMAN SAFI
ADVOCATES**

BETTER COPY OF PAGE-

OFFICE OF THE EXECUTIVE ENGINEER
MALAKAND IRRIGATION DIVISION, MALAKAND

No.2399/7-E(Sub),

Dated Malakand the 31.10.2011

Mr. Salar Muhammad
S/O Fazal Khaliq, Village & P.O Khar (Batkhela)
Tehsil Batkhela District Malakand.

Subject: APPOINTMENT AS BELDAR BPS-01

You are hereby offered the Post of Beldar BPS-01 (4800-150-0300) Plus usual allowances on Contract Basis subject to the following conditions:±

Your services will be governed under the Government of Khyber Pakhtunkhwa Policy 2002 issued vide Secretary to Government of Khyber Pakhtunkhwa Finance Department No.FD(SOSR-II)12-1/2002 dated 26/10/2002 and Establishment and Administration Department letter No.SOR-NI(E&AD)1-13/2001, dated 10-08-2005.

TERMS & CONDITIONS.

1. You will be granted the minimum of BPS-01 with usual allowances as admissible under the contract policy.
2. The appointing authority can terminated the contract on one month notice of one month salary in lieu thereof.
3. You will be provided facilities of contribution of Provident Fund as admissible under the contract policy.
4. You will not contribute G.P Fund and shall not be entitled for pension and gratuity.
5. Any terms and condition issued by the Government hereafter in this regard will also be binding upon you.

If this offer of appointment on contract basis on the above terms and condition is acceptable to you, you should report arrival for duty to the undersigned within one month of the receipt of this letter and produce the following original documents.

- a. Domicile
- b. Medical fitness certificate
- c. That you are not a dismissed government servant.
- d. Character certificate.
- e. Copy of national identity card.

In case the above documents and your reply to the acceptance of this offer is not receive within the stipulated period of one month, the officer of appointment shall stand automatically null and void.

EXECUTIVE ENGINEER

Ph: No. 0932-410492

ATTESTED





**OFFICE OF THE EXECUTIVE ENGINEER
MALAKAND IRRIGATION DIVISION MALAKAND**

Dated Malakand P.O. - 21/11/2013

M. S. Z. Malakand
P.O. Malakand, P.O. & P.O. Khan, P.O. Khela
T.C. P. Malakand, Malakand

APPOINTMENT AS HELDAR BPS-01

You are being offered the Post of Heldar BPS-01 (1309-150-9309) on a contract basis subject to the following conditions.

Your services will be governed under the Government Khyber Pakhtunkhwa Contract Policy and will be subject to Government of Khyber Pakhtunkhwa Finance Department Circular No. 11/2012 dated 26/02/2012 and Establishment and Administration Department Circular No. 10/2012 dated 13/03/2012.

TERMS & CONDITIONS

1. You will be granted the minimum of BPS-01 with usual allowances as admissible under the contract policy.
2. The Appointing Authority can terminate the contract on one month notice of one month salary in lieu thereof.
3. You will be provided facilities of contribution of Provident Fund as admissible under the contract policy.
4. You will not contribute to PFund and shall not be entitled for pension and gratuity.
5. Any Terms and condition issued by the Government hereafter in this regard will also be binding upon you.

If this offer of appointment on contract basis on the above terms and conditions is acceptable to you, you should report for duty to the undersigned within one month of the receipt of this letter and produce the following original documents:

- a. Domicile
- b. Medical Fitness Certificate.
- c. If you are not a dismissed Government Servant.
- d. Certificate
- e. National Identity Card

On receipt of the above documents and your reply to the acceptance of this offer, the contract shall be deemed to be accepted and you shall be appointed as Heldar on a contract basis for a period of one month. The officer of appointment shall stand a term, namely, one month.

EXECUTIVE ENGINEER
Ph: No. 0932-410492

Agency Comptroller of Accounts, Malakand Agency for information.
Sub-Divisional Officer, Head Works Irrigation Sub-Division, Malakand. For information.
D.A. (Account) Head Clerk/Service Book

EXECUTIVE ENGINEER

BETTER COPY OF PAGE-6

OFFICE OF THE EXECUTIVE ENGINEER
MALAKAND EDUCATION DIVISION MALAKAND

No.7454/&-E(Sub),

Dated Malakand the 04/11/2011

OFFICE ORDER

The appointment order of various post issued in light of D.P.C meeting called vide this office letter No.2187/7-E(Sub), dated 01/10/2011 held on 08/10/2011 is hereby withdrawn.

EXECUTIVE ENGINEER

Ph: No. 0932-410492

Copy to the:

1. Agency Accounts Officer, Malakand for information.
2. All Officials concerned.

EXIECUTIVE ENGINEER

ATTESTED





OFFICE OF THE EXECUTIVE ENGINEER
MALAKAND IRRIGATION DIVISION MALAKAND.

B-6

No. 1654 / 17-E(Sub).
Dated Malakand the 04 / 11 / 2011.

OFFICE ORDER

The appointment order of various posts issued in light of D.P.C meeting called vide this office letter No. 11877-E(Sub). dated 01/11/2011 on 03/10/2011 is hereby withdrawn.

EXECUTIVE ENGINEER
Malakand, Dist. 0232-110192

Copy to the

1. Agency Accounts Officer, Malakand for information.
2. All Officials concerned.

EXECUTIVE ENGINEER

ATTESTED

4

BETTER COPY OF ANNEXURE.....C

OFFICE OF THE EXECUTIVE ENGINEER
MALAKAND EDUCATION DIVISION MALAKAND

No.2187/7-E(Sub),

Dated Malakand the 01/10/2011

OFFICE ORDER

A committee comprising of the following is hereby constituted to consider the appointment/Promotion/Re-designation Cases of Class-IV employees in Malakand Irrigation Division Malakand.

1. **Engr: Ghulam Ishaq Khan**
Executive Engineer
Malakand Irrigation Division
Malakand. Chairman

2. **Mr. Muhammad Sajjad**
Sub. Divisional Officer
Head Works Irrigation Sub Division,
Malakand. Member

3. **Mr. Misal Khan**
Section Officer (E) office of the
Secretary Irrigation Department
Khyber Pakhtunkhwa Peshawar.

4. **Mr. Jamal Shah**
Head Clerk
Malakand Irrigation Division Malakand. Secretary

The committee will meet on 08/10/2011 at 10:00 A.M at Divisional Office Malakand.

EXECUTIVE ENGINEER

ATTESTED





C-7

**OFFICE OF THE EXECUTIVE ENGINEER
MALAKAND IRRIGATION DIVISION MALAKAND.**

No. 1187 (F/Sub).
Dated Malakand the 08 of 12 2011.

OFFICE ORDER

A committee comprising of the following is hereby constituted to consider the appointment /Promotion/Re-designation Cases of Class-IV employees in Malakand Irrigation Division Malakand.

1. Engr. Ghulam Ishaq Khan
Executive Engineer
Malakand Irrigation Division
Malakand. Chairman
2. Mr. Muhammad Sajjad
Sub Divisional Officer
Head Works Irrigation Sub Division,
Malakand Member
3. Mr. Misal Khan
Section Officer (F) office of the
Secretary Irrigation Department
Khyber Pakhtunkhwa Peshawar Member
4. Mr. Jamal Shah
Head Clerk
Malakand Irrigation Division Malakand. Secretary

The committee will meet on 08/12/2011 at 10:00 A.M. in Divisional office Malakand.

[Signature]
EXECUTIVE ENGINEER
Ph: No. 0932-410492

Copy to the

1. Section Officer (Establishment), office of the Secretary Irrigation Government of Khyber Pakhtunkhwa Peshawar
2. Sub Divisional Officer, Head Works Irrigation Sub Division Malakand.
3. Head Clerk (Local)

They are requested to attend the meeting on due date & time given above.

ATTENDED

[Signature]

[Signature]

EXECUTIVE ENGINEER

④

Minutes of the Departmental Promotion Committee meeting held on 08/10/2011 under Chairman ship of Engr: Ghulam Ishaq Khan Executive Engineer, Malakand Irrigation Division Malakand

A meeting of Departmental Promotion/Selection Committee was held on 08/10/2011 at 10:00 A.M under the Chairmanship of Engr: Ghulam Ishaq Khan Executive Engineer, Malakand Irrigation Division, Malakand to consider the promotion and appointment cases in Malakand Irrigation Division Malakand.

The following participated in the meeting:-

1. **Engr: Ghulam Ishaq Khan**
Executive Engineer
Malakand Irrigation Division
Malakand. Chairman
2. **Mr. Muhammad Sajjad**
Sub. Divisional Officer
Head Works Irrigation Sub Division,
Malakand. Member
3. **Mr. Misal Khan**
Section Officer (E) office of the
Secretary Irrigation Department
Khyber Pakhtunkhwa Peshawar.
4. **Mr. Jamal Shah**
Head Clerk
Malakand Irrigation Division Malakand. Secretary

After recitation from the Holy Quran, the Chairman welcomed all the particular and asked the Secretary of the committee to highlight the position for promotion/re-designation and appointment cases. He informed the committee that the following posts are required to come up through promotion/re-designation:-

- I. 3-Nos: posts of Mate one each at Amandara, Harichand and Katlang Section.
 - II. One No. Post of Road Roller Cleaner.
1. The Case of Munir Khan for promotion as Mate in Amandara Section against vacancy created due to retirement of Mr. Zarif Khan Mate was discussed. His performance as Beldar during the past has been found satisfactory and being the senior most was found promotion as Mate by the Committee unanimously.
 2. The Post of mate in Harichand Section lying vacant due to retirement of Mr. Wadan mate was also discussed. In this regard the case of Mr. Alamzeb Beldar was Examined in light of recommendations made by Sub Divisional Officer, Irrigation Sub Division Malakand vide his letter No.849/2-E, dated 08/08/2011, the committee unanimously recommended him for promotion as Mate in Harichand Section.

ATTESTED

4

Minutes of the Departmental Promotion Committee meeting held on 08/10/2011 under
Chairmanship of Engr. Ghulam Ishaq Khan Executive Engineer, Malakand Irrigation
Division Malakand

8

A meeting of departmental promotion/Selection committee was held on 08/10/2011 at 10.00 A.M under the Chairmanship of Engr. Ghulam Ishaq Khan Executive Engineer, Malakand Irrigation Division Malakand to consider the promotion and appointment cases in Malakand Irrigation Division Malakand.

The following participated in the meeting:-

1. Engr. Ghulam Ishaq Khan
Executive Engineer
Malakand Irrigation Division Malakand Chairman
2. Mr. Muhammad Sajjad
Sub Divisional Officer,
Head Works Irr. Sub Div. Mkd. Member
3. Mr. Misal Khan
Section Officer (E) office of the
Secretary Irrigation Department
Khyber Pakhtoonkhwa Peshawar Member
4. Mr. Jamal Shah
Head Clerk Irrigation Division Malakand. Secretary

After recitation from the Holy Quran, the Chairman welcomed all the parties and asked the Secretary of the committee to highlight the position for promotion / re-designation and appointment cases. He informed the committee that the following posts are required to be filled up through promotion / re-designation:-

- I. 3 Nos. Posts of Mate one each at Amandara, Harichand and Matlang Section.
- II. One No. Post of Road Roller Cleaner.
- I. The Case of Munir Khan for promotion as Mate in Amandara Section against vacancy created due to retirement of Mr. Zarif Khan Mate was discussed. His performance during the past has been found satisfactory and being the Senior most was found promotion as Mate by the committee unanimously.
2. The Post of Mate in Harichand Section lying vacant due to retirement of Mr. Wajid Mate was also discussed. In this regard the case of Mr. Alimzeb Bader was examined in light of the recommendations made by Sub Divisional Officer, Irrigation Sub Division. vide his letter No. S49/2-F. dated 08/08/2011, the committee unanimously recommended for promotion as Mate in Harichand Section.

ATTESTED



3. The post of Mate in Katlang Section due to retirement of Mr. Azizullah Mate vacant was also examined. Amongst the Senior Most Beldars in Katlang Section the case of Mr. Farid Khan and Mehboob-Ur-Rehman Beldars was considered out of which Mr. Farid Khan to forgo his promotion. The next Senior most Beldar Mr. Mehboob-Ur-Rehman was recommended by the Committee to be promoted as Mate.
4. The request of Mr. Ashfaq Ahmad presently employed as Sweeper was considered. Being Muslim his case for re-designation as Road Roller Cleaner was also examined. The official having relevant experience with driving and cleaning of Vehicles was found fit for Job and the committee unanimously recommended him for re-designation as Road Roller Cleaner with regard to above, the following decision was made.
 1. Mr. Munir Khan Beldar was promoted as Mast in Amandara Section.
 2. Mr. Alamzeb Beldar was promoted as Mate in Harichand Section.
 3. Mr. Mehboor-Ur-Rehman Beldar was promoted as Mate in Katlang Section.
 4. Mr. Ashfaq Ahmad was re-designated as Road Rooller Cleaner.

Besides other vacant posts the appointment cases against vacancies so called above were also discussed. The Committee was informed that as a result of above. 3-Nos: post of Beldars and one number post of Sweeper has become vacant, whereas the following posts lying vacant which needs to be filled up through suitable applicants for proper operation maintenance of the canal system.

1. 1-No. post of Boatman due to retirement of Mr. Gul Muhammad.
2. 1-No. post of Beldar due to death of Mr. Akram Shah beldar.
3. 1-No. Post of Chowkidar due to retirement of Mr. Painsa Gul.
4. 1-No. Post of Road Roller Cleaner.
5. 1-No. Post of Chowkidar likely to become vacant on 29-10-2011 due to retirement of Mr. Umer Ghani.
6. 1-No. Post of Pipe Fitter likely to become vacant on 31-10-2011 due to retirement of Mr. Mehtab.
7. 2-Nos. posts of Operation cum Chowkidar (New) as per page 427 of Budget Book for 2011.
8. 2-Nos: post of Beldars (New) as per Page 427 of Budget Book for 2011-12

In light of above, the following posts are now lying vacant.

1. 6-Nos: Posts of Baldar.
2. 1-No: Post of Sweeper.
3. 1-No: Post of Boatman.
4. 2-Nos: Posts of Chowkidar.
5. 2-Nos: Posts of Operation cum Chowkidar.
6. 1-No: Post of Road Roller Cleaner.
7. 1-No: Post Pipe Fitter.

ATTESTED



9

3. The post of Mate in Kailang Section due to retirement of Mr. Azizullah Mate vacant was also examined. Amongst the Senior most Beldars in Kailang Section the case of Farid Khan and Mehboob-ur-Rehman Beldars was considered out of which Mr. Farid Khan to forgo his promotion. The next Senior most Beldar Mr. Mehboob-ur-Rehman was recommended by the Committee to be promoted as Mate.

4. The request of Mr. Ashfaq Ahmad presently employed as Sweeper was considered. Being Muslim his case for re-designation as Road Roller Cleaner was also examined. The official having relevant experience with driving and cleaning of Vehicles was found to be Mr. Ashfaq Ahmad. The committee unanimously recommended him for re-designation as Road Roller Cleaner. With regard to above, the following decision was made.

1. Mr. Munir Khan Beldar was promoted as Mate in Amindara Section.
2. Mr. Alamzeb Beldar was Promoted as Mate in Harichand Section.
3. Mr. Mehboob-ur-Rehman Beldar was promoted as Mate in Kailang Section.
4. Mr. Ashfaq Ahmad was re-designated as Road Roller Cleaner.

Besides other vacant posts the appointment cases against vacancies, so above were also discussed. The Committee was informed that as a result of above, 3 Nos. of Beldars and one number post of Sweeper has become vacant, whereas the following posts are lying vacant which needs to be filled up through suitable applicants for proper operation and maintenance of the canal system.

1. 1-No. post of Boatman due to retirement of Mr. Gul Muhammad.
2. 1-No. post of Beldar due to death of Mr. Akram Shah Beldar.
3. 1-No. Post of Chowkidar due to retirement of Mr. Painda Gul.
4. 1-No. Post of Road Roller Cleaner.
5. 1-No. Post of Chowkidar likely to become vacant on 29-10-2011 due to retirement of Mr. Umer Ghani.
6. 1-No. Post of Pipe Fitter likely to become vacant on 31-10-2011 due to retirement of Mr. Mehtab.
7. 2-Nos. posts of Operator cum Chowkidar (New) as per Page 427 of Budget Book for 2011-12.
8. 2-Nos. post of Beldars (New) as per Page 427 of Budget Book for 2011-12.

In light of above, the following posts are now lying vacant.

1. 6-Nos. Posts of Beldar.
2. 1-No. Post of Sweeper
3. 1-No. Post of Boatman
4. 2-Nos. Post of Chowkidar
5. 2-Nos. Post of Operator cum Chowkidar.
6. 1-No. Post of Road Roller Cleaner.
7. 1-No. Post of Pipe Fitter

ATTESTED



Several applicants were examined against the above mentioned posts by the Committee accordingly and after thorough scrutiny, the following candidates for appointment against each of the following mentioned posts were recommended by the Committee unanimously.

S#	Name of applicant	Designation	Remarks
1.	Kamran Ali S/O Sher Dil Khan Shergarh District Mardan.	Beldar	Open
2.	Misal Khan S/O Zarif Khan Khar Batkhela (District Malakand)	Beldar	Employee Son
3.	Ibrar Muhammad S/O Gul Muhammad Alladhand (Distt: Mkd)	Boatman	Specialized
4.	Sohail Ahmad S/O Sher Baz Mkd:	Chowkidar	Open
5.	Bahadar Khan S/O Aslam Khan Takht Bhai District Mardan.	Chowkidar	Open
6.	Tariq Hussain S/O Noor Khan Bazar Katlang.	Beldar	Open
7.	Salar Muhammad S/O Fazal Khaliq Khar Batkhela (District Malakand)	Beldar	Employee Son
8.	Ismael S/O Fazal Rehman Maday Baba (District Mardan)	Beldar	Open
9.	Liaqat Ali so Ajmal Ako Dheri Lund Khawar	Sweeper	Open
10.	Daraz Khan s/o Akber Khan Palo Dheri Mardan	Beldar	Disable
11.	Kifayatullah s/o Saeedullah Khan Malakand	Operator cum Chowkidar	Employee Son
12.	Rehmatullah Khan s/o Aziz-ur-Rehman Amin Abad (Distt: Makd)	Operator cum Chowkidar	Employee Son
13.	Liaqat Ali s/o Sher Muhammad Juwar (Kharkai) Dargai District Malakand	Road Roller Cleaner	Open
14.	Fakhri Alam Khan s/o Mir Alam Khan Jalala District Mardan	Pipe Fitter	Open

TESTED



19

Several applicants were examined against the above mentioned posts by the Committee accordingly and after thorough scrutiny the following candidates for appointment were recommended by the Committee unanimously.

S.No	Name of applicant	Designation	Remarks
1	Kamran Ali S/O Sher Dil Khan Shergam District Mardan.	Beldar	Open Employee Son
2	Musal Khan S/O Zarf Khan Khar Bahadri District Matakand	Boatman	Specialized Open
3	Ibrar Muhammed S/O Gul Muhammad Aherkand (Distt: Mkd)	Chowkidar	Open
4	Sohail Ahmad S/O Sher Baz Mkd	Chowkidar	Open
5	Bahader Khan S/O Aslam Khan Tabli Bahai District Mardan.	Beldar	Employee Son
6	Tariq Hussain S/O Noor Khan Bazar Katlang District Mardan.	Beldar	Open
7	Salar Muhammad Bakhshi (District Matakand)	Beldar	Open
8	Ismael S/O Faraz Rehman Maany Luba District Mardan.	Sweeper	Disabled
9	Ladqa Ali S/O Ajmal Abo Dheri Land Harwar District Mardan.	Beldar	Employee Son
10	Danz Khan S/O Akber Khan Pabo Darsi Mardan.	Operator cum Chowkidar	Employee Son
11	Nisarullah S/O Saadullah Khan Pabo Darsi Mardan.	Operator cum Chowkidar	Open
12	Rahmatullah Khan S/O Azwar-Rahwar Abo Dheri District Mkd.	Road Roller Operator	Open
13	Ladqa Ali S/O Sher Muhammad Pabo Dheri Mardan.	Chef	Open
14	Dawaji District Matakand.	Pipe Fitter	
15	Wajid Alam Khan S/O Mir Alam Khan Jalala District Mardan.		

Mr. Jamil Shah
 Sub Divisional Officer
 Head Works Irrigation Sub Division
 Malakand
 (MEMBER)

ATTESTED

Mr. Ghulam Ishaq Khan
 Executive Engineer
 Malakand Irrigation Division
 Malakand
 (CHIEF MAN)

Mr. Misal Khan
 Section Officer (E) office of the
 Secretary Irrigation Department,
 Peshawar
 (MEMBER)

Mr. Jamal Shah
 Head Clerk
 Malakand Irrigation Division
 Malakand
 (SECRETARY)

A

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

A.W.P. No. 767-M/2016

JUDGMENT

Date of hearing: 11.12.2018

Petitioner:- (Misal Khan) Nemo for the petitioner.

Respondents:- (Government of KPK & others) by Mr. Rafiq Ahmad, Astt. Advocate General.

SYED ARSHAD ALI, J.- Vide our detailed judgment in connected writ petition bearing No. 203-M of 2014 titled "Kamran Ali & others vs Govt. of KPK & others", this writ petition is allowed, thereby, the impugned order dated 04.11.2011 is set aside and the petitioner be reinstated to his service, however, he cannot be granted the financial benefits because he did not serve against the said post during the intervening period. Moreover, the respondents are at liberty to initiate departmental proceedings against the present petitioner, if it appears to them that he has procured his appointment through illegal means or has committed any sort of misconduct.

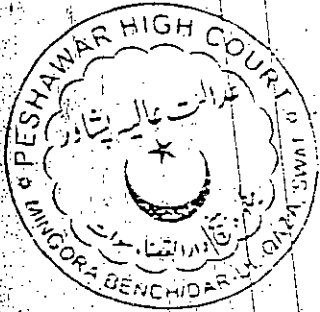
ANNOUNCED
Dr. 11.12.2018

JUDGE

JUDGE

Nawab (D.B.) Hon'ble Mr. Justice Muhammad Ghazafar Khan
Hon'ble Mr. Justice Syed Arshad Ali

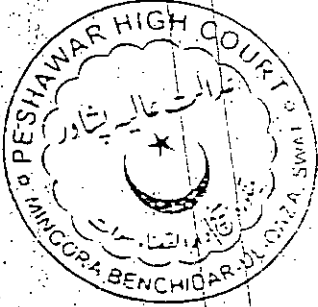
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JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

12



1. A.W.P. No. 203-M/2014

2. A.W.P. No. 767-M/2016

3. A.W.P. No. 768-M/2016

4. A.W.P. No. 769-M/2016

&

5. A.W.P. No. 770-M/2016

CONSOLIDATED JUDGMENT

Date of hearing: 11.12.2018

Petitioners:- (Kamran Ali & others) Nemo for the petitioners.

Respondents:- (Government of KPK & others) by Mr. Rafiq Ahmadi, Asst. Advocate General.

SYED ARSHAD ALI, J.:- Through this common judgment, we intend to dispose of the present petition as well as the connected writ petitions bearing No. 767-M, 768-M, 769-M & 770-M of 2016, as similar question of law are involved/raised in all these connected matters.

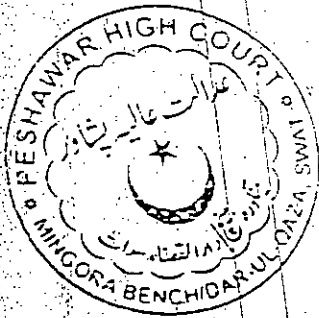
2. In the present writ petition bearing No. 203-M/2014 Kamran Ali & 13 others had earlier filed a writ petition bearing No. 203-M/2014, whereby they had prayed for release of their salaries, however, during pendency of the said writ petition they had applied for amendment in the

Nowad (D.B.): Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali

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writ petition so that the impugned order of withdrawal of their appointment could be challenged, thereby, their request was allowed by this Court vide order dated 27.03.2014. This amended writ petition has been filed by petitioners Kamran Ali, Kifayat Ullah and Rehmat Ullah Khan, however, during pendency of the present petition, petitioner No. 2 Kifayat Ullah and with the consent of petitioner No. 3 Rehmat Ullah Khan his brother Irfanullah were appointed, therefore, to the extent of petitioners No. 2 & 3 this petition has become infructuous.

3. It is averred in the petition, that the petitioner Kamran Ali was appointed on the recommendations of the Departmental promotion committee as 'Belitar' (BPS-1) against the quota reserved for the children of retired government employees vide appointment order dated 31.10.2011. Pursuant to the said appointment letter, the petitioner assumed the charge of his duty, his service book was prepared, however, vide impugned order dated 04.11.2011 his appointment order was withdrawn without any rhyme and reasons. On being noticed, the respondents



ATTACHED

New & (D. It.) Hon'ble Mr. Justice Muhammad Chaudhary Khan
Hon'ble Mr. Justice Syed Arshad Ali

No. 5 & 6 have filed their para-wise comments, (14)

wherein they have stated that the appointment of the petitioner was not based on merit, as neither he has joined his services nor his arrival report was submitted. During the course of arguments, the learned A.A.G has also stated that the petitioner Kamran Ali belongs to District Mardan, therefore, he should have not been appointed against any post in Malakand Division because in appointment of the Class-IV employees' the candidate must be a local.

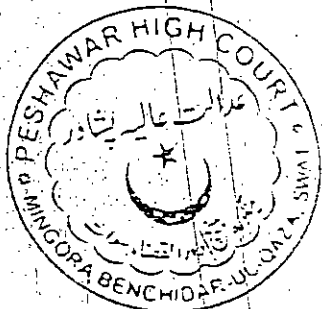
4. It is evident from record that the petitioner was appointed as *Beldar* BPS-1 vide impugned order dated 31.10.2011. His appointment letter does not suggest that he was appointed against the quota reserved for the children of retired government employees', however, the respondents have asserted in their comments that the petitioner had never assumed the charge of his duty nor his service book was prepared, therefore, vide impugned order dated 04.11.2011 his appointment order of was withdrawn by the competent authority. The said order does not contain any reason for withdrawal of the order of appointment of the

ATTACHED

Newab (D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali

petitioner and more so before passing the said impugned order no notice was issued to him.

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5. Similarly, the petitioner Misal Khan of amended writ petition bearing No. 767-M/2016 has alleged in his petition that he was appointed on the recommendations of the Departmental Promotion Committee against the quota reserved for the children of retired government employees vide appointment letter dated 31.10.2011, however, without any notice his appointment order was withdrawn vide impugned order dated 04.11.2011. On being summoned, the respondents No. 5 & 6 have filed their comments and it is averred in the said comments that the petitioner was appointed against the Employee Sons' Quota, however, he was not entitled to be appointed against the said post, therefore, his appointment order was withdrawn.

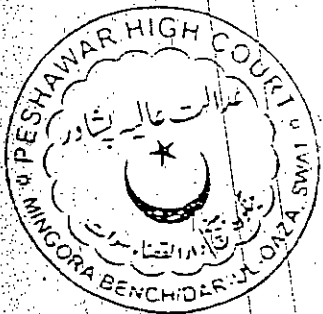
6. It is evident from record that the petitioner was appointed as *Beldar* (BPS-1) vide impugned order dated 31.10.2011. His appointment letter does not give any impression that he was appointed against the quota reserved for the children of retired government employees.

Nawab (D.B.) Hon'ble Mr. Justice Mehammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali

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however, the respondents have placed on file the retirement order of the father of the petitioner and according to which the father of the petitioner got retired on 30.9.2011 on his own request, therefore, vide impugned order dated 04.11.2011 appointment order of the petitioner was withdrawn by the Executive Engineer. The said impugned order neither contained any reason for withdrawal of the order of appointment of the petitioner nor any prior notice was issued to him.

7. As per claim of the petitioner Daraz Khan advanced through his amended writ petition bearing No. 768-M/2016 that he was recommended for appointment against the post of Beldar BPS-1 on 01.10.2011 by the Departmental Promotion Committee under the disable quota; however, he got appointed by the competent authority vide appointment order dated 31.10.2011. The record further reveals that the petitioner assumed the charge of his duty and his service book was also prepared, however, through impugned order dated 04.11.2011 his appointment order was withdrawn. The said order does not contain any reason for withdrawal of the appointment order and similarly



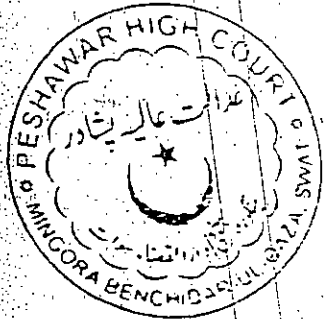
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Nawab (D.B.) Hon'ble Mr. Justice Muhammad Chazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali

no notice prior to the withdrawal of the order of his appointment was issued to him. Even in the para-wise comments, the respondents have not put-forward any reason for withdrawal of the appointment order of the petitioner.

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8. Similarly, the petitioner Fakhar-e-Alam Khan of the amended writ petition bearing No. 769-M/2016 has claimed that he was also recommended by the Departmental Promotion Committee for appointment against the post of Pipe Fitter vide recommendations dated 01.10.2011, however, he was appointed against the said post vide appointment letter dated 31.10.2011. The petitioner claimed that he was appointed against the Employee Sons Quota in his petition, however, it is evident from the recommendations of the Departmental Promotion Committee that he was appointed on open merit. It is further evident from record that the petitioner has assumed the charge of his duty and his service book was also prepared. However, his appointment order was also withdrawn vide impugned order dated 04.11.2011, which neither contains any reason nor before issuing the said order the petitioner was issued any



3/11/11

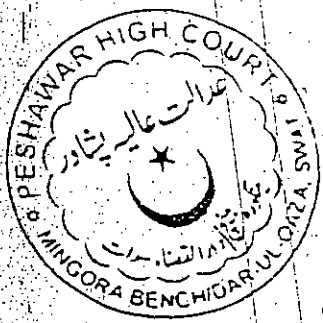
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Noted (D.R.) Hon'ble Mr. Justice Muhammad Ghafoor Khan
Hon'ble Mr. Justice Syed Arshad Ali

jurisdiction, in our humble view, would not be attracted to these connected matters.

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12. In this view of the matter, all these connected writ petitions are allowed, thereby the impugned order of even date i.e. 04.11.2011 in all these cases is accordingly set aside and all the petitioners be reinstated to their services, however, they cannot be granted the financial benefits because they did not serve against the said posts during the intervening period. Moreover, the respondents are at liberty to initiate departmental proceedings against the present petitioners, if it appears to them that they have procured their appointments through illegal means or have committed any sort of misconduct.



ANNOUNCED
Dr. 11.12.2018

[Signature]
JUDGE

[Signature]
JUDGE

S. No. 11
Name of Applicant Samiullah
Date of Presentation of Applicant 12-12-18
Date of Completion of Copies 12-12-18
No of Copies 12-12-18
Urgent Fee.....
Fee Charged 24/-
Date of Delivery of Copies 12-12-18

Certified to be true copy

[Signature]
18-12-18
EXAMINER

Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Constituted under Article 87 of Qanun-e-Shahadat Order, 1982

TESTED

[Signature]
Office
14/12/2018

Nawab (D.B.) Hon'ble Mr. Justice Muhammad Chazafar Khan
Hon'ble Mr. Justice Syed Arshad Ali

[Signature]

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmad, CJ
Mr. Justice Ijaz Ul Ahsan
Mr. Justice Sajjad Ali Shah

Govt: of KPK thr. Secretary Irrigation, Peshawar

.....Appellants in all cases

Versus

Kamran Ali and others
Misal Khan
Daraz Khan
Salar Muhammad

Respondents in CA-1993/19
Respondents in CA-1994/19
Respondents in CA-1995/19
Respondents in CA-1996/19

For the appellants:

Barister Qasim Wadood, Addl. A.G. KP

Date of hearing: 10.03.2020

ORDER

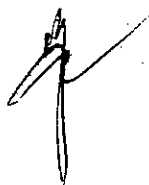
Gulzar Ahmed, CJ:- The learned Division Bench of the High Court, in the operative para of the impugned judgment dated 11.12.2018, has observed as under:-

"in this view of the matter, all these connected writ petitions are allowed, hereby , the impugned order of even date i.e. 04.11.2011 in all these cases is accordingly set aside and all the petitioners be reinstated to their services, however, they cannot be granted the financial benefits because they did not serve against the said posts during the intervening period. Moreover, the respondent are at liberty to initiate departmental proceedings against the present petitioners, if it appears to them that they have procured their appointments through illegal means or have committed any sort of misconduct"

It is stated by the leaned AAG before us that this judgment of the High Court is not being compiled with for the reason that its operation was suspended by this Court and none of the respondents worked with the appellant. We note from the operative part of the impugned judgment that no financial benefits has been allowed to the respondents, however, the appellant has been allowed to initiate departmental proceedings against the respondents. Where the appellant has been given the option to initiate the departmental proceedings, more so, when the law did not permit withdrawal of the appointment letter, in order to do things in accordance with law, the High Court's observation of initiating departmental proceedings, appears to be a correct observation.

2. Consequently, while disposing of these appeals, we note that within two months from today the appellant shall initiate the departmental proceedings and conclude the same and during this period, the appellant will not be required to reinstate the respondents. However, after two months, it may re-instate them, if the proceedings are not concluded. Learned counsel for the respondents has no objection to the disposal of the appeal in the above terms. Disposed of accordingly.

ATTESTED



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SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sajjad Ali Shah

E - 22

Civil Appeals Nos. 1993 to 1996 of 2019

(Against the judgment dated 11.12.2018 of the Peshawar High Court, Mangrove Bench (Dair ul Qasbi Sewer, passed in WP No. 203 of 2018)

... of KTK thr. Secretary Irrigation, Peshawar
and others.

... Appellants in all cases

Versus

Kamran Ali and others
Misal Khan
Daraz Khan
Salar Muhammad

... Respondents in CA-1993/19
... Respondent in CA-1994/19
... Respondent in CA-1995/19
... Respondent in CA-1996/19

For the appellants:

Barrister Qasim Wadood, Addl. A.G. KP

For respondent No. 1 in
CA-1993 & respondents
in CA-1994 & CA-1996:

Mr. Muhammad Siddique Khan Baloch, ASC
Mr. Muhammad Sharif Janjua, ASC

Respondent
in CA-1995/19:

In person.

For respondents 2, 3 in
CA-1993/19:

None.

Date of hearing:

10.03.2020

ORDER

Gulzar Ahmed, CJ. The learned Division Bench of the High Court, in the operative para of the impugned judgment dated 11.12.2018, has observed as under:-

"In this view of the matter, all these connected writ petitions are allowed, thereby, the impugned order of even date i.e. 04.11.2011 in all these cases is accordingly set aside and all the petitioners be reinstated to their services, however, they cannot be granted the financial benefits because they did not serve against the said posts during the intervening period. Moreover, the respondents are at liberty to initiate

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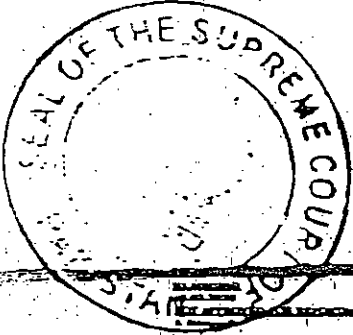
APPROVED
COURT OF PAKISTAN
11-03-2020

23

departmental proceedings against the present petitioners, if it appears to them that they have procured their appointments through illegal means or have committed any sort of misconduct."

It is stated by the learned AAG before us that this judgment of the High Court is not being complied with for the reason that its operation was suspended by this Court and none of the respondents worked with the appellant. We note from the operative part of the impugned judgment that no financial benefits has been allowed to the respondents, however, the appellant has been allowed to initiate departmental proceedings against the respondents. Where the appellant has been given the option to initiate the departmental proceedings, more so, when the law does not permit withdrawal of the appointment letter, in order to do things in accordance with law, the High Court's observation of initiating departmental proceedings, appears to be a correct observation.

2. Consequently, while disposing of these appeals, we note that within two months from today the appellant shall initiate the departmental proceedings and conclude the same and during this period, the appellant will not be required to reinstate the respondents however, after two months, it may reinstate them, if the proceedings are not concluded. Learned counsel for the respondents has no objection to the disposal of the appeal in the above terms. Disposed of accordingly.



Sd/-HCJ
Sd/-J
Sd/-J
Certified to be true Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

GR No: 117566/20 Civil/Crimina
Date of: 12-3-20
No of: 603
No of: 6
Registration Fee Rs: 2
Copy Fee: 2
Court Fee Stamp: 8
Date of Copy: 12-3-20
Date of delivery of copy: 12-3-20
Compendium prepared by: [Signature]

[Signature]

F - (24)



OFFICE OF THE EXECUTIVE ENGINEER

MALAKAND IRRIGATION DIVISION MALAKAND

irrigationmkd@yahoo.com

0932-452049

No: 873 /37-W(AG),
To

Dated Malakand the 02 /04/2020

1. Mr Salar Muhammad S/O Fazle Khaliq
R/O Khar Batkhela
District Malakand.
2. Mr. Kamran Ali S/O Sher Dil Khan
R/O Shergarh, Tehsil Takhtbai
District Mardan.
3. Mr. Rehmat Ullah Khan S/O Aziz-ur-Rehman
R/O Aminabad, Amandara Batkhela
District Malakand.
4. Mr. Daraz Khan S/O Akbar Khan
R/O Paloo Dheri
District Mardan.
5. Mr. Misal Khan S/O Zarif Khan
R/O Khar Batkhela
District Malakand

Subject: - CA 1993 TO 1995/2019 IN CASE TITLED GOVT. OF KP V/S KAMRAN ALI & OTHERS (SHOW CAUSE NOTICE)

You are hereby directed to attend the office of the undersigned on 14-04-2020 at 11:00 AM for personal hearing before the committee.

EXECUTIVE ENGINEER 2/4/2020

Copy of the above is forwarded for information and necessary action to the, with reference to this office letter No.859/7-E(Sub), dated 20/03/2020:-

1. Secretary to Govt: of Khyber Pakhtunkhwa Irrigation Department Peshawar.
2. Chief Engineer (North), Irrigation Department Peshawar.
3. Superintending Engineer Mardan Irrigation Circle Mardan.
4. Mr. Ajmal Khan Deputy Collector, Mardan Irrigation Division, Mardan.
5. Engr: Bakhtiar Khan, Sub. Divisional Officer Head Works Irrigation Sub Division Malakand.
6. Mr. Muhammad Hayat Khan, Sub Divisional Officer, Dargai Irrigation Sub Division, Dargai.
7. Mr. Mir Alam Khan, Head Clerk (Local).
8. Mr. Asadullah Khan, Establishment Clerk (Local).

EXECUTIVE ENGINEER

ATTACHED

To:

The Executive Engineer,
Malakand Irrigation Division, Malakand

G-75

Subject: Reply to the Show Cause notice dated 02/04/2020.

R. Sir,

Reference to the showcause notice dated 02/04/2020 where in it has been alleged that you have menured your appointment order against the post of Baidar dated 31/03/2011 through illegal means.

Respected sir it is humbly stated that the undersigned was appointed against the post of Beldar vide order dated 31/10/2011 through district employment exchange and on the proper recommendations of departmental selection committee held on 01/10/2011. That in response to my appointment order as Beldar dated 31/10/2011 I got myself medically examined from the concerned medical superintendent of District Headquarter Hospital Batkhela, where after my service book was also prepared by your goodself and accordingly I submitted my arrival report dated 01/11/2011.

That after submission of my arrival report I started my duty as Beldar (BPS/03) quite efficiently and upto the entire satisfaction of my superiors including your goodself that in spite of regular performance of duty as Beldar my salaries were not released by your goodself, feeling aggrieved I knocked the door of the Peshawar Highcourt Dar ul Qaza bench at Swat in writ petition number 57-m/2012. That during the pendency of above mentioned writ petition the representative of the department produced the withdrawal order of my appointment order dated 04/11/2011 that where after I withdrew my writ petition number 57-m/2012 from the august Peshawar Highcourt Dar Ul Qaza bench.

That where after I filed writ petition number 203/2014 before the august Peshawar Highcourt Dar Ul Qaza bench at Swat by challenging impugned withdrawal order dated 04/11/2011 and as such the said writ petition was allowed in favour of me vide judgment dated 11/12/2018. That the said writ petition was allowed with the directions to your goodself department to reinstate me and my colleagues but without back benefits. That I visited your goodself office time and again for the implementation of the above mentioned judgment but your good self succumbed on the above mentioned judgment. That where after I and my colleagues knocked the door of PHC Dar Ul Qaza Bench in COC petition No:30-m/2019 but during the pendency of the above mentioned COC your goodself filed CPLA No.s 1993 to 1995/2019 in the august Supreme Court of Pakistan.

That the august Supreme Court of Pakistan vide judgment dated 10/03/2020 disposed of the said CPLAs with the directions that "to initiate departmental proceedings against me and my colleagues and shall conclude the same within two months with the condition that not to reinstate me and my colleagues and if the proceedings are not concluded within two months I and my colleagues be reinstated".


Respected Sir I was appointed against the post of Beldar in light of section 03 of the civil servant Act, 1973 read with Rule 10(2) of the Appointment, Promotion & Transfer Rules, 1989. That no illegality has been committed by myself at the time of my appointment order as Beldar.

That the impugned withdrawal order dated 04/11/2011 is violative of the mother judgement of Supreme Court of Pakistan reported in 2005 TD(s) page 78. That under the principle of locus poenitentiae once an order has been issued cannot be withdrawn unilaterally. So in light of the above mentioned judgment and principle the impugned withdrawal order is not tenable and liable to be set

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It is therefore most humbly requested that the showcause notice dated 02/04/2020 and impugned order dated 04/11/2011 may very kindly be set aside and I may kindly be re-instated into service with all back benefits including seniority and obliged.

Sincerely yours,


Salim Muhammad
510 Fozle Khaliq R/O
Khar Bakkhela



OFFICE OF THE EXECUTIVE ENGINEER

MALAKAND IRRIGATION DIVISION MALAKAND

irrigationmkd@yahoo.com

0932-452049

No. 951/7-E(Sub)

Dated Malakand the 29/04/2020

H-27

OFFICE ORDER

in pursuance to the inquiry report in light of directions issued by the honorable Supreme Court of Pakistan in the order dated 10-03-2020 in (CA 1993 to 1996/2019), the Departmental Committee constituted for the purpose in light of directions issued by the Chief Engineer (North) Irrigation Department Peshawar vide No.763/North/AO, dated 20/03/2020, in its meeting held on 14/04/2020, in Divisional Office Malakand re-examined the recommendations made for appointments in the DPC held on 08/10/2011 and Unanimously concluded / recommended that:-

- (i) None of the candidate, as recommended for appointment by the DPC held on 08/10/2011, could fulfill the eligibility criteria and there by found violating the merit. Thus, the committee declared all the appointments of respondents mentioned below as against the prevailing Government rules and regulations/eligibility criteria and further declared as non-eligible to be appointed against the mentioned positions.
- (ii) Termination of all the respondents, viz (i) Mr. Kamran Ali S/O Sher Dil Khan, (ii) Mr. Rehmatullah S/O Aziz-ur-Rehman, (iii) Mr. Misal Khan S/O Zarif Khan, (iv) Mr. Daraz Khan S/O Akbar Khan (v) Mr. Salar Khan S/O Fazle Khaliq, shall be made through slight modification in the office order No.2454/7-E(Sub) dated: 04/11/2011 by replacing the word withdrawn through TERMINATION.

Therefore as recommended by the Committee, slight modification in the office order No.2454/7-E(Sub), dated 04/11/2011, is here by ordered by replacing the word "WITH DRAWN" in to TERMINATION of their services with effect from 31/10/2011 and I being the Appointing Authority hereby order termination of the services of the following candidates with effect from 31/10/2011. The recommendations of DPC, dated 08/10/2011 also stands terminated.

S#	Name of Candidates (CA 1993 to 1996/2019)	Appointment order No. & Date	Post offered	Status /Decision
1	Mr. Kamran Ali S/O Sher Dil Khan, Village & P.O Shergarh Qasmi Banda, Tehsil Takht Bhai, District Mardan.	No.2404/7-E(Sub), dated 31/10/2011	Beldar	Terminated
2	Mr. Rehmatullah Khan S/O Aziz-ur-Rehman, R/O Amin Abad, Bakhela, District Malakand.	No.2402/7-E(Sub), dated 31/10/2011	Operator Cum Chowkidar	Terminated
3	Mr. Misal Khan S/O Zarif Khan, R/O Khar Bakhela, District Malakand	No.2397/7-E(Sub), dated 31/10/2011	Beldar	Terminated
4	Mr. Daraz Khan S/O Akbar Khan, R/O Palo Dheri, Shah Baz Garhi, District Mardan.	No.2403/7-E(Sub), dated 31/10/2011	Beldar	Terminated
5	Mr. Salar Muhammad S/O Fazal Khaliq, R/O Khar, Bakhela, District Malakand	No.2399/7-E(Sub), dated 31/10/2011	Beldar	Terminated

29/04/2020
EXECUTIVE ENGINEER

P. T. O

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Copy of the above is forwarded to the:-

1. P.S to Secretary to Govt of Khyber Pakhtunkhwa Irrigation Department Peshawar for information.
2. Chief Engineer (North), Irrigation Department Peshawar with reference to above along with copy of the enquiry report with relevant documents for his kind perusal please.
3. Superintending Engineer Mardan Irrigation Circle Mardan with reference to his No.719/72-M, dated.20-03-2020 above along with copy of the enquiry report for his kind perusal please.
4. Mr. Ajmal Khan Deputy Collector, Mardan Irrigation Division, Mardan (Committee Member).
5. Engr. Bakhtiar Khan, Sub Divisional Officer Head Works Irrigation Sub Division Malakand (Committee Member).
6. Mr. Muhammad Hayat Khan, Sub Divisional Officer, Dargai Irrigation Sub Division, Dargai (Committee Member).
7. Mr. Arshad Zaman, District Accounts Officer(Local) (Committee Member).
8. Mr. Mir Alam Khan, Head Clerk (Local) (Committee Member).
9. Mr. Asadullah Khan, Establishment Clerk (Local) (Secretary of the Committee).
10. Candidate concerned (Through Registered Letter).

29/4/2020
EXECUTIVE ENGINEER



To

The Chief Engineer (North),
Irrigation Department, Peshawar.

I-28

Subject:

**DEPARTMENTAL APPEAL AGAINST THE IMPUGNED
ORDER DATED 29.04.2020 WHEREBY THE APPELLANT
HAS BEEN TERMINATED FROM SERVICE.**

Respected Sir,

It is most humbly stated that the appellant was appointed as Beldar (BPS-01) in the Irrigation Division, Malakand through Employment Exchange Registration Card vide order dated 31.10.2011. After appointment the appellant submitted his arrival report and started performing his duty quite efficiently and up to the entire satisfaction of his superiors.

That astonishingly the Competent authority issued the order dated 04.11.2011 whereby the appointment order of the appellant had been withdrawn. That feeling aggrieved from the order dated 04.11.2011 the appellant preferred Departmental appeal followed by writ petition No.767-M/2016 before the Peshawar High Court, Mingora Bench Dar-ul-Qaza, Swat which was decided along with other connected writ petitions vide consolidated judgment dated 11.12.2018 with the directions that:-

"In this view of the matter, all these connected writ petitions are allowed, thereby the impugned order of even date i.e. 04.11.2011 in all these cases is accordingly set aside and all the petitioners be re-instated to their services, however, they cannot be granted the financial benefits because they did not serve against the said posts during the intervening period. Moreover, the respondents are at liberty to initiate departmental proceedings against the present petitioners, if it appears to them that they have procured their appointments through illegal means or have committed any sort of misconduct".

That after obtaining the aforementioned judgment the appellant submitted the same before concerned authority for implementation but the authority filed CPLA No.1993 to 1996 of 2019 before the Honorable Supreme Court of Pakistan which was disposed of with the view that:-

"We note that within two months from today the appellant shall initiate the departmental proceedings and conclude the same and during this period the appellant will not be required to re-instate the respondents. However, after two months, it may re-instate them, if the proceedings are not concluded".

[Handwritten signature]

That it is pertinent to mention here that after the judgment of Honorable Supreme Court of Pakistan a show cause notice has been issued to the appellant and the same has been replied by the appellant, but the concerned authority has not taken into consideration the aforementioned reply of the appellant. That it is also pertinent to mention here that the concerned authority without fulfilling the codal formalities straight away issued the impugned order dated 29.04.2020 whereby the appellant has been terminated from service. That no opportunity has been provided to the appellant and as such the appellant has been condemned unheard while issuing the impugned order dated 29.4.2020.

It is, therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned order dated 29.04.2020 may very kindly be set aside and the appellant may kindly be re-instated into service with all back benefits.

Dated: 18.05.2020

APPLICANT



SALAR MUHAMMAD, Ex-Beldar,
Irrigation Division, Malakand.

ATTESTED



VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

12443 OF 2020

Salar Muhammad (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Irrigation Deptt (RESPONDENT)
(DEFENDANT)

I/We Salar Muhammad
Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ___/___/2020

Salar
CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

MIR ZAMAN SAFI

&

AFRASIAB KHAN WAZIR
ADVOCATES

OFFICE:
Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141