

BEFORE THE HONORABLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Reply

In

Service Appeal No.1639/2022

Khyber Pakhtunkhwa
Service Tribunal

Case No.

5324

Dated

16/5/2023

Muhammad Ayaz S/O Ghulam Shams -u- Tabriz R/O Yar Khan Banda Tehsil
Timergara, District Dir Lower presently posted at Trai No.1 District Dir Lower.

..... (Appellant)

Versus

1. Government of KPK, through Chief Secretary KPK.
 2. District Education Officer Male, Dir Lower
 3. Director, Elementary and secondary Education Khyber Pakhtunkhwa Peshawar.
- (Respondents)

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District Education Officer (M)
Lower
Respondent No.2

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Reply

In

Service Appeal No. 1639/2022

Muhammad Ayaz S/O Ghulam Shams-u-Tabraiz R/O Yar Khan Banda Tehsil
Timergara, District Dir Lower presently posted at Trai No.01 District Dir Lower

.....Appellant

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary and
Others Respondents

PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS NO. 2 AND 3.

Respectfully Sheweth:-

Preliminary objections:

1. That the appellant is not an "aggrieved" person within the meaning of Article 212 of the Constitution of the Islamic Republic of Pakistan 1973.
2. That the appellant has got no cause of action/locus standi.
3. That the appellant has not come to this Hon'ble court with clean hands.
4. That the appellant is estopped by his own conduct.
5. That the instant service appeal suffers from laches, hence not maintainable in the present form.
6. That the instant appeal is liable to be dismissed for mis-joinder of unnecessary and non-joinder of necessary parties.
7. That after reinstatement of the appellant, he did not joined his duty till date.

On facts:

1. Para 01 of the facts pertains to appellant's service record.
2. Para 02 of the facts is correct that the appellant filed a writ petition No.1425/2000 for adjustment as PST, which was dismissed as not pressed by the appellant due to the direction of the ADEO Mr. Muhammad Yousaf i.e. that the appointment order of the appellant is still on file and after creation of vacancies, the petitioner will be given posting/adjustment. The operative part of judgement in the aforesaid W.P. is as follows;

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“the writ petition is dismissed being not pressed with the directions to the respondents to accommodate the petitioners, the moment vacancies become vacant from today onward in areas meant for their recruitment and no fresh appointment be made unless all the petitioners in the writ petition are not posted first. The learned Counsel for the petitioners assured the Court and stated that in case of their posting on the strength of letters of appointment earlier issued, they will not claim any back benefits i.e. Salary etc for the period in which they have not rendered their services. The petitioners are at liberty to approach this Court again in case the respondents violated the orders of this court if occasion arises.”

Now the petitioner had filed the instant service appeal with Prayer “b”

“Grant back benefits from the date of shifting the appellant to surplus pool and thereafter his non adjustment being the sole responsibility of the respondents”

Thus on this ground that the counsel of the appellant has stated at the bar that they will **not claim back benefit** etc for the period they had not served, the instant service appeal is not maintainable.

- 3) Para-3 of the facts also pertains to record, however to the extent of the appellant case; details have been submitted in the Para-3 of the facts above.
- 4) Para- 4 of the facts is correct that the appellant was terminated vide order dated 30-04-2013 w.e.f 15-10-2020 due to willful absentia, wherein, he filed a service appeal No.893/2014, which was decided by this Honorable Tribunal with the direction to reinstate the appellant into service with a de-novo inquiry within the period of two months. In compliance of the judgment in Service appeal No.893/2014, the appellant was reinstated into service and adjusted at GPS Khushmaqam with the condition of the de-novo inquiry vide order dated 10-03-2017, after conducting the de-novo inquiry, the absent period of the appellant w.e.f 15-11-2010 to 09-03-2017, was considered as leave without pay. However it is pertinent to mention here that the appellant is not interested in his service/ duty as he had not joined his service till date, and only spent / waste his valuable time as well as of the official respondents through litigation in

different courts of Law. In this regard, an order book was written to him as well as letter is issued to him to produce, his Re-appointments order, charge reports, vice versa, but he failed to do so. (Copy of the order book, letter dated 29/04/2023 is attached as "A")

- 5) Para-5 of the facts is correct that salary of the appellant has been stopped since 2013 because he was absent from his duty, however later on he was re-instated into service in compliance of the judgment in service appeal No.893/2014, but till date he had not submitted charge report, Service book re-instatement order and other relevant documents for release of, that why his salary has not been released.
- 6) Para-6 of the facts is incorrect and further stated that he had not filed any departmental appeal to the competent authority, however to the extent of the so called departmental appeal dated 28-06-2022, it is sated that the said appeal is barred by time and suffer from laches.

GROUND:

- A. Incorrect, hence denied. The issue of held in abeyance order dated has been decided in the W.P 1425/2000, by the Honorable Peshawar High Court Peshawar.
- B. Incorrect, the act of the department is in accordance to the provision of Articles 24-A of constitution of Pakistan 1973.
- C. Incorrect, hence denied, details have been submitted in the facts above.
- D. Incorrect, hence denied the appellant remained absent from his duty and due to the reason, he was terminated too, however later on re instated but again he is absent from his duty.
- E. Incorrect, details have been submitted in the facts above.
- F. Incorrect, hence denied, details have been submitted in the facts above.
- G. Incorrect, hence denied, details have been submitted in the facts above.
- H. Incorrect, hence denied, details have been submitted in the facts above.
- I. Incorrect and further stated that the appellant was reinstated in compliance of the judgment in W.P 893/2014, while the de-novo inquiry was also conducted within time and the absent period of the appellant was considered as leave without pay. Thus claim of the appellant is rejected.
- J. Incorrect, hence denied, details have been submitted in the Para-2 of the facts above.
- K. Incorrect, hence denied, the appellant has been treated as par law, rules and policies.

L. Incorrect, hence denied, and further stated that after reinstatement, the appellant had not joined his duty till date as no charge has been submitted, that's why he is not entitled for salary neither he had taken his charge report after reinstatement nor he has attached his charge report with the instant service appeal.

M. Incorrect, hence denied, details have been submitted in the facts above.

N. Incorrect, hence denied. He had not submitted any application/relevant papers for pay release vice versa.

O. Incorrect, hence denied, details have been submitted in the facts above.

P. Incorrect, hence denied, details have been submitted in the facts above.

Q. Incorrect, hence denied, details have been submitted in the facts above.

R. Incorrect, hence denied, details have been submitted in the facts above.

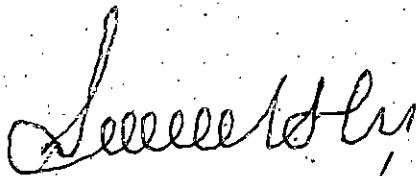
S. Incorrect, hence denied, details have been submitted in the facts above.

T. Incorrect, hence denied, details have been submitted in the facts above.

U. Incorrect, hence denied, details have been submitted in the facts above.

V. Legal; however the official respondents also seeks permission for additional grounds during arguments.

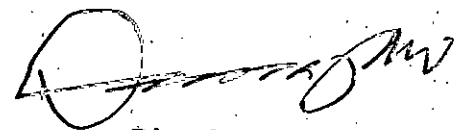
It is therefore most humbly prayed that on acceptance of the above submission, the instant service appeal may very graciously be dismissed in favor of the answering respondents with cost.



District Education Officer

(Male) Dir Lower

(Resp. No.02)



Director

E&SE Peshawar

(Resp. No.03)

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

Reply

In

Service Appeal No.1639/2022

**Muhammad Ayaz S/O Ghulam Shams -u- Tabriz R/O Yar Khan Banda Tehsil
Timergara, District Dir Lower presently posted at Trai No.1 District Dir Lower.**

..... (Appellant)

Versus

- 1. Government of KPK, through Chief Secretary KPK.**
 - 2. District Education Officer Male, Dir Lower**
 - 3. Director, Elementary and secondary Education Khyber Pakhtunkhwa Peshawar.**
- (Respondents)

Affidavit

I, Muhammad Shahab, office of the DEO (M) Dir Lower, do hereby solemnly affirm and state on oath that the whole contents of this reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this August court.



**Deponent
Muhammad Shahab**

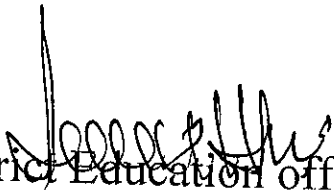


Authority Letter

Mr. Muhamamd Shahab, office of the DEO (M) Dir Lower is hereby authorized to submit the reply in the

Service appeal No.1639/2022

Titled; Muhammad Ayaz Vs Government of KP and others on behalf of the under signed.



District Education officer
Dir Lower
Respondent No.2


لاگ بک (حصہ دوم)

رپورٹ کی روشنی میں سب
انتظامیہ نے جو کارروائی

رائے / رپورٹ معائنہ

2/3/2023

The school was visited today on 2/3/2023. The teaching and non teaching staff were found present and were busy in their duties. All basic facilities are available. The Head teacher is directed to ask/ ~~submit~~ ^{propose} the S/Book and Re-installed order of Mr. Mohd Ayaz psts that their pay to be released w.e.f. their transfer order. otherwise no submission of the documents the teacher concerned not sign in the attendance register.


SDO (M),
2/3/2023

Attested
Shahaf



OFFICE OF THE
SUB DIVISIONAL EDUCATION OFFICER (M)
TIMERGARA DISTRICT DIR LOWER

Fax # 0945-9250081

#.9250082

(-A)

No _____

Dated Timergara the: 29/4/2023

To

Muhammad Ayaz S/O Ghulam Shamsul Tabriz
Presently Posted at GPS Trai No.1 District Dir Lower.

Subject: Provision of service book, first appointment order, reinstatement order, transfer orders, judgments of different courts of Law, along with charge repots.

Memo:

It is stated that you are serving as SPST, at GPS Trai No.1, while filed an appeal No. 1639/2022 Titled Muhammad Ayaz Versus Government of KP and others with prayer that **"C' Include/add the name of the appellant in the HRIS for the purpose of seniority"**.

Furthermore, comments /reply in the instant appeal are also awaited, for which the mention above record is required.

You are hereby directed to provide the captioned above date/ record within 3 days positively for the purpose of including/adding your name in the HRIS as well as for preparation of reply to this office.

Note. Being court Matter please in failure you will be responsible.

sd
Sub Division Officer Male (Timergara)
Dir Lower at Timergara

Endsst No. 1982-33

Copy of the above is forwarded to:

1. The Mr. Nasrullah ASDEO Circle Timergara, with the direction to visit the concerned school immediately and provide the above required data/record positively as directed.
2. The DEO (M) Dir Lower

mmb
Sub Division Officer Male (Timergara)
Dir Lower at Timergara

Attested

Shahaf

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(-B)

**OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DIR LOWER,
ORDER**

The condition adjustment for the purpose of de-novo inquiry in the order issued under Endst;No,2692-94 dated 10/3/2017 in respect of Mohammad Ayaz PST is hereby withdrawn and the mentioned order may be consider as regular.The absent period w.e.f 15/11/2010 to 09/03/2017 be considered as leave without pay.

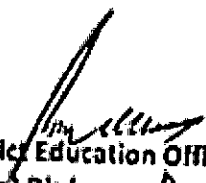
- Note;-
1. Necessary entry to this effect should be made in his Service Book accordingly.
 2. Recovery of pay may be made if paid during absence period.

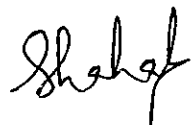
(DR.Hafiz Mohammad Ibrahim)
District Education Officer
(Male) Dir lower.

Endst;No. 10619-22 /Dated Timergara the 05 / 19 /2017

Copy of the above is forwarded to:-

- 1.The Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
- 2.The District Accounts Officer Dir lower.
- 3.The SDEO(M) Balambat.
- 2.The Teacher concerned.


District Education Officer
(Male) Dir lower.

Attested 

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INQUIRY REPORT

(←→)

INQUIRY OFFICERS:

1. MR. SALAHUDDIN PRINCIPAL GHSS MALAYAND DIR LOWER.
2. MR. MUHAMMAD RAMZAN SSS GHSS ZAIMDARA DIR LOWER.

THE OFFICIAL/OFFICER UNDER INQUIRY :

MR. MUHAMMAD AYAZ EX PST GPS SRO GAL MAIDAN DIR LOWER

FINDINGS/PROCEEDINGS

Apropos of your office letter No.2018 dated 8/3/2017 it is submitted that we conducted a thorough probe and inquiry into the said case by personally visiting both the schools i.e GPS Sro Gal and GPS Korshoung and pried and checked minutely the relevant record. The detail is as under:

1. That a questioner was given over to him (Muhammad Ayaz PST) in the written response and answers are attached herewith the report.
2. That Mr. Muhammad Ayaz remained in GPS Sro Gal till 21/10/2010 as shown by the teacher attendance register.
3. That there was no record available in GPS Korshoung regarding the presence of Mr. Muhammad Ayaz as per teacher attendance register.
4. That an inquiry had already been conducted against Mr. Muhammad Ayaz by the then ADO Mr. Muhammad Hussain upon the compliance of the masses of the area.
5. That consequent upon the said inquiry the transfer order (No.21362-67 dated 15/11/2010) was issued to GPS Korshoung.
6. That he (Muhammad Ayaz) declined to take charge in the said school under the pretext of threats to life.
7. That his case was reported to the office of DEO(M) Dir lower by the circle ADO Mr. Akbar Ghani in terms of his absence.
8. That the DEO constituted a committee comprising up Mr. Muhammad Tahir Khan Principal GHSS Jal Qila and Mr. Ali Haidar ADO to probe in to the matter.
9. That the inquiry team investigated and found that no such record of Mr. Muhammad Ayaz's presence in GPS Korshoung whereas he had regularly received his salary in record concerned is witness to his drawing his salary.
10. That consequent upon the said inquiry the DEO stopped his salary vide order No.501 dated 9/02/2013 and the recovery from 13/11/2010 to 9/02/2013 was also ordered.
11. That he was served with a show cause notice vide No.5637 dated 9/03/2013.
12. That his services were terminated vide order No.7983-88 dated 30/4/2013.
13. That Mr. Muhammad Ayaz submitted an appeal to Dy. Director Establishment vide No.45 dated 5/5/2014.

Attested
Shahaf

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14. That then he (Muhamad Ayaz) sued the case in Service Tribunal and the Service Tribunal accepted his appeal saying that respondents are at liberty to conduct DE novo inquiry with in two months.

STATEMENT OF THE OFFICER UNDER INQUIRY.

- I. That my life was under severe and fatal threats and my lodging an FIR in this regard bears testimony to fact which prompted me that I embarked a winding journey of my transfer and kept on shuttling between the offices and my home.
- II. That I was kept in the total darkness regarding my transfer as the transfer order was not conveyed to me.
- III. That the show cause notice has also not been communicated to me for the reasons best known to the office.
- IV. My Service Book speaks volume of my presence because it has properly been updated by the quarter concerned.

SUGESSTIONS/ RECOMMENDATIONS

That the eye balls are raised as to how he was given the salary while he was not around in the school (GPS korshoung).

That his service verification in his Service Book has been Edorsed and authenticated by the then SDEO.

That the Service Book has properly been maintained with requisite entries.

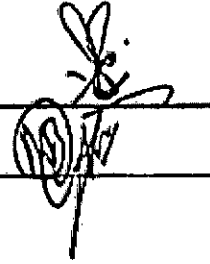
That the given anomalies raise doubts and suspicions and, on a subtle note, about the negligence on the part of quarter concerned.

In view of a bundle of ambiguities in the nature of this case the, Mr. Muhammad Ayaz may please be given the advantage.

Owing to the lack of tangible, cogent, compelling and convincing proofs aganst Mr. Muhammad Ayaz PST, he entails his re- instatement.

1. SALAHUDDIN PRINCIPAL GHSS MALAKAND DIR LOWER

2. MUHAMMAD RAMZA SSS GHSS ZAIMDARA DIR LOWER



Attested *Shahel*