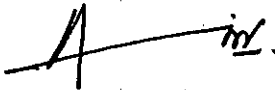


FORM OF ORDER SHEET

Court of _____

Appeal No. 1277/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/06/2023	<p>The appeal of Mr. Naem Ullah presented today by Mr. Athar Abbas Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>09-06-2023</u>.</p> <p>By the order of Chairman  REGISTRAR</p>

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

S.A. No. 1277 /2023

Naeem Ullah.....(Appellant)

V E R S U S

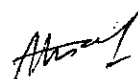
Secretary Public Health Engineering Department Khyber
Pakhtunkhwa and others.....(Respondents)

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Service Appeal		1-4
2.	Affidavit		5
3.	Addresses of the parties		6
4.	Copy of appointment order medical report	A & B	7-8
5.	Copy of salary slip	C	9
6.	Copies of applications and postal receipt	D & E	10-11
7.	Copy of departmental appeal	F	12
8.	Copies of identical appeal and order dated 05/10/2022		13-21
9.	Wakalat Nama		22

Appellant

Through



Dated: 31/05/2023

Athar Abbas
Advocate High Court.
Cell No. 0312-8818812

1

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL, PESHAWAR.

S.A.No.....1277...../2023

Naeem Ullah S/O Haji Aqal Jan R/O village and post office hurmaz, Tehsil Mir Ali North Waziristan Agency. (Valve man . BPS 01)

..... Appellant

VERSUS

1. Secretary Public Health Engineering Department, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. Chief Engineer Public Health Engineering North Khyber Pakhtunkhwa, Peshawar
3. XEN Public Health Engineering Division, Kohat.
4. Chief Engineer, Works and Services merged areas, Civil Secretariat, Peshawar.
5. Accountant General Office KPK Peshawar.

..... Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE
SERVICES TRIBUNAL ACT, 1974 FOR RELEASE
OF PAY/SALARIES OF THE APPELLANT.

Prayer

It is therefore, most humbly prayed that on acceptance of this service appeal, respondents no 1 to 4 may kindly be directed to release the salaries of the appellant along with arrears of pay w.e.f February 2016 till onwards.

Secondly, to declare the act of respondents regarding stoppage of salaries of the appellant as null and void, unjustified, without lawful authority and ineffective upon the legal rights of the appellant, furthermore in the light of reported judgment 1997 PLS (CS) 666, legal action may kindly be taken against the concerned officer for stopping salaries of the appellant, by depriving him from his legal right.

Any other relief specifically not sought, which this Hon'ble Tribunal deems appropriate and to whom the appellant is entitled may kindly be granted.

.....

Respectfully Sheweth:

Brief facts of the instant appeal,

1. That the appellant belongs to a respectable family, was initially appointed as valve man BPS-01 vide order No. 4513/5-E dated. 17/10/2014 issued by office of Executive Engineer Public Health Engineering FATA Division Kohat. It is pertinent to add here that the appellant submitted his arrival report for resumption of his duty on the post of valve man. (copy of appointment order & arrival report are Annexure A & B)
2. That the appellant was regularly performing his duties to the entire satisfaction of his immediate superiors and in this regard the appellant was regularly drawing his salaries since 2014, till January 2016. (copy of salary slip is Annexure C)
3. That all of a sudden the respondents, meanwhile stopped the salaries of the appellant without any reason or cause till date the appellant is deprived from his legal right and in this regard the appellant filed various applications before the respondents no 1 & 2 even personally appeared before respondent no 3 for seeking reason for stopping his salaries but he delayed the matter by one pretext or the other, since then no response has been given to the appellant. (copies of applications and postal receipt are Annexure D & E)
4. That the appellant also filed Departmental Appeal in 2019 in continuation of the applications mentioned in para 3 for release of salaries, but since then no response has been given, nor any written order regarding the stopping of salaries of the appellant has been issued by the respondents. (copy of departmental appeal is Annexure F)
5. Therefore, the appellant being aggrieved having no alternate and efficacious remedy the appellant constrained to approach this Hon'ble service tribunal, filed the instant appeal for redressal of his grievances on the following grounds inter-alia.

GROUND.

- A. That the act of respondents to stop the salary of the appellant is against the law, facts, material available on record and violation of the judgment of superior courts i-e 1997 PLC (CS) 666.
- B. That the act of the respondents is against Article 4, 9, 11, 25 and violation of various other Articles of the Constitution of Islamic Republic of Pakistan as well as judgments of the august Supreme Court of Pakistan as per such directions departmental authorities under law having no

powers to stop the salaries of their employees, without court directions or without adhering due process of law, hence such act is violation of courts orders and against the constitutional rights of the appellant.

- C. That the Hon'ble High Court categorically held in a reported judgment 1997 PLC (CS) 666, "that strict action be taken against such officer who stopped salary of an employee" Even it is also a settled law that, "Pendency of departmental inquiry is no ground to stop the salary of an employee, as the same is fundamental right to livelihood/survival which is essential part of life as embodied in Article 9 of the constitutional of Pakistan"
- D. That the Hon'ble Peshawar High Court, Peshawar categorically held in 2017 (CS) note 14 P.14 that salary on pretext of irregular appointment order was declared to be illegal, department was directed to release the salary of the appellant since the date of its stoppage, it is further held in a reported judgment of august Supreme Court of Pakistan (1991 SCMR 1041) 2005 PLC (CS) 1439, 2006 PLC (CS) 489 that no limitation runs in matters relating to pay and pension, further more it is held that if case has merit limitation may not be a hurdle in the way of appellant (PLD 2002 (SC) 84, 2004 SCMR 527, PLD 2013 SC 724 (K).
- E. That due to such illegal act of the respondents, they not only deprived the appellant they deprived the family of the appellant as a whole because the appellant was the only source of income of his family, hence suffering since long till date, due to illegally stopping salaries of the appellant without any legal justification and without assigning any reason appealable to a prudent mind.it is also a settled law that salary of an employee is no more a state bounty.
- F. Other ground if any will be agitated at the time of arguments, with prior permission of this Hon'ble Tribunal.

Keeping in view, what has been stated above it is; therefore, humbly prayed that on acceptance of this service appeal, respondents no 1 to 4 may kindly be directed to release the salaries of the appellant along with arrears of pay w.e.f 2017 till on wards.

Secondly, to declare the act of respondents regarding stoppage of salaries of the appellant as null and void, unjustified, without lawful authority and ineffective upon the legal rights of the appellant, furthermore in the light of reported judgment 1997 PLS (CS) 666, legal action may kindly be taken

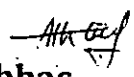
4
against the concerned officer for stopping salaries of the appellant, by depriving him from his legal right.

Any other relief specifically not sought, which this Hon'ble Tribunal deems appropriate and to whom the appellant is entitled may kindly be granted.

Dated: 31 / 05 / 2023

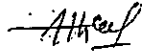
Appellant

Through


Athar Abbas
Advocate High Court

NOTE.

No such like appeal for same appellant, upon the same subject matter has been Filed, Prior to the instant one, before this Hon'ble Tribunal.


Advocate

5

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. /2023

NaeemUllah

Appellant

VERSUS

Govt of KPK & others

Respondents

AFFIDAVIT

I Naeem Ullah S/O Haji Aqal Jan R/O village and post office hurmaz, Tehsil Mir Ali North Waziristan Agency. (Valve man . BPS 01) do hereby solemnly affirm and declare that all the contents of this 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.

Dated. 31 / 05 /2023

N-A
[Signature]
Deponent.

CNIC: 21505-7825634-7

CELL:

Identified by.

Athar
Athar Abbas Advocate

High court Peshawar.

[Signature]
31-5-23

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR.**

Service Appeal No. /2023

Appellant NaeemUllah

VERSUS

Govt of KPK & others

Respondents

MEMO OF ADDRESSES

APPELLANT.

Naeem Ullah S/O Haji Aqal Jan R/O village and post office hurmaz, Tehsil Mir Ali North Waziristan Agency. (Valve man . BPS 01)

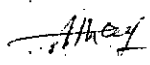
RESPONDENTS.

1. Secretary Public Health Engineering Department, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. Chief Engineer Public Health Engineering North Khyber Pakhtunkhwa, Peshawar
3. XEN Public Health Engineering Division, Kohat.
4. Chief Engineer, Works and Services merged areas, Civil Secretariat, Peshawar.
5. Accountant General Office KPK Peshawar.

Dated: 31 / 05 /2023

APPELLANT

Through


Athar Abbas Advocate



7

Signature A

**OFFICE OF THE
EXECUTIVE ENGINEER
P.H.ENGG: (FATA) DIVISION KOHAT**
HOUSE #: 29, SECTOR #: 5, PHASE #: 1, KDA KOHAT

No. 1513 18-5

Dated Kohat the 7/10/2014

OFFICE ORDER

As recommended the Political Agent North Waziristan Agency Mr. Mahmoodullah S/o Haji Aqal Jan R/o Village & P/o Hurmaz, Tehsil Mir Ali North Waziristan Agency is hereby appointed as Valve Man on Contract Basis on Drinking Water Supply Scheme (Type: B) North Waziristan Agency in BPS-01 (4800-150-9300) plus usual allowance as and in accordance with the rules subject to the following terms & conditions.

1. The appointment is made purely on contract basis and is liable to termination at any time without any notice of reason. If he wishes to resign from the post, he shall give one month notice prior to resignation or one month pay will be deposited in lieu thereof.
2. He shall produce his health and age certificate from the Medical Superintendent Agency Head Quarter Hospital N.W. Agency.
3. He will contribute to GPF and will not be entitled to pension, gratuity benefit, etc.
4. If he accepts the appointment on the terms and condition specified above, he shall report for duty to the Sub Divisional Officer PHE FATA Sub Division North Waziristan Agency within 14-days of order, failing which the order shall be stood cancelled automatically.

EXECUTIVE ENGINEER
PHE FATA DIVISION KOHAT

Copy to the.

1. Medical Superintendent Agency Head Quarter Hospital N.W. Agency.
2. District Accounts Officer Kohat.
3. The Sub Divisional Officer PHE FATA Sub Division North Waziristan Agency.
4. DAO Local.
5. The Official Concerned.

For information & necessary action please.


EXECUTIVE ENGINEER
PHE FATA DIVISION KOHAT

2

MEDICAL CERTIFICATE

Amey B

Name of official *Naemullah*

Caste or race _____

Father's name *Agal Jan*

Residence *Waziristan Agency*

Date of birth *15-3-1993 (21565-7925634-7)*

Exact height by measurement *5' 8"*

Personal mark of identification _____

Signature of the official _____

Signature of head of office _____

Seal of office *[Signature]*

I do hereby certify that I have examined Mr. *Naemullah* a candidate for employment in the Office of the *Executive Engineer PHE (FATA) Division Kohat (Chowkidar)* and cannot 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 *Executive Engineer PHE (FATA) Division Kohat*

His age according to his own statement *21 yrs* year and by appearance about year *Twenty One - 4 years*

[Signature]
MEDICAL SUPERINTENDENT,

CIVIL HOSPITAL
MEDICAL SUPERINTENDENT
D.H.Q HOSPITAL
KOHAT
18/10/2014

LEFT HAND THUMB AND FINGER IMPRESSIONS





PAY SLIP PRINTING

S4:1

P Sec:001 Month:January 2016
 KT9000 -EXECUTIVE ENGINEER PHE FAT
 Min. Of Health

Pera #: 50211835 Suckle:
 Name: NAEEM ULLAH
 VALVE MAN

NTN:
 GPF #:
 Old #:



CNIC No.2150579256347

GPF Interest Applied

01 Active Temporary

KT9000 -

PAYS AND ALLOWANCES:

0001-Basic Pay	6,405.00
1000-House Rent Allowance	891.00
2210-Convey Allowance 2005	1,725.00
1300-Medical Allowance	1,500.00
1525-Unattractive Area Allow	1,000.00
1973-Adhoc Allowance 20100 500	1,495.00
2140-15% Adhoc Relief All-2005	720.00
2174-Adhoc Relief Allow-2014	481.00
2196-Adhoc Relief All 7.51	481.00
Gross Pay and Allowances	14,746.00

DEDUCTIONS:

GPF Balance	3,482.00	Subst:	274.00
3701-Benevolent fund(Exchange)			120.00
3704-Group Insurance(Exchange)			59.00
3701-Addl Group Insurance(Exch)			3.00

کھوسہ صرف XEN میں بیٹے کی پیدائش کو متعلقہ ڈویژن کو اطلاع دینا اور
 درخواست پرائے جاری کرنے سے متعلق

ضابطہ عالی کے تحت طلبہ کے لئے

سائل نمبر 1 میں بیٹے کی پیدائش سے قبل 2014 میں پیدائش ہو اور سال
 تک اعلیٰ درجے سے ایک ضابطہ کے تحت ^{وال} صاحب صاحبہ صاحبہ صاحبہ اور سائل
 کو متعلقہ ڈویژن میں رہنے کی اجازت 2016 کے بعد سائل کو متعلقہ ڈویژن
 کی بنا پر دی گئی سائل کے متعلقہ ضابطہ کے تحت سائل کے
 ساتھ نہ مل سکا کہ جس سے سائل کو متعلقہ ڈویژن کے سائل کے متعلق
 غریب گھرانے سے ہے اس لئے سائل کو انتہائی مالی مشکلات کا سامنا ہے
 انتہائی بے بسی سے التجا ہے کہ سائل کے متعلقہ ضابطہ کے
 سائل کو جاری کرنے کے احکامات اور فریقین سائل کو جاری کر دیا جائے

Dated: 10/04/2016

ایم۔ اے۔ ڈی

سائل
 نعم اللہ ولد فضل خان
 وال میں BPS-7

To-

Annexure E

The Secretary Public Health Engineering Department,
Khyber Pakhtunkhwa, civil secretariat Peshawar.

DEPARTMENTAL APPEAL.

Respected Sir,

With due respect the undersigned submits as under.

1. That the applicant was appointed as valve man BPS-01 vide order No.4513/E-5 dated. 17/10/2014 issued by office of Executive Engineer Public Health Engineering FATA Division Kohat.

2. That the undersigned was regularly performing his duties to the entire satisfaction of his immediate superiors and in this regard the appellant was regularly drawing his salaries since october 2014, till January 2016.

(copy of appointment order & pay slip is attached)

3. That all of a sudden the department, meanwhile stopped the salaries of the undersigned without any reason or cause and till date the appellant is deprived from his legal right which is against the law.

4. That the applicant belongs to a poor family and his financial position is unsound therefore releasing the salaries of the undersigned is his legal right, the same may kindly be released as a whole.

It is therefore humbly prayed that on acceptance of this departmental appeal the salaries of the appellant may kindly be released since January 2016 till date.

Dated. 15/ 09 /2016

N.A.
[Signature]

Yours Sincerely

NaeemUllah

Valve man, BPS. 01

Identical Appeal

(13)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR

15577

S.A.No. _____/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16060

Date 03/12/2020

Zuhran Ullah son of Akhtar Zaman

R/o Phase-II, Hayatabad, Peshawar.

Currently working as Naib Qasid

FATA Division, Public Health Engineering, Division Kohat..Appellant

Versus

- 1) Secretary Public Health Engineering Department Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
- 2) Chief Engineer Public Health Engineering North Khyber Pakhtunkhwa, Peshawar.
- 3) XEN, Public Health Engineering Division, Kohat
- 4) Chief Engineer, Works and Services Merged Areas, Civil Secretariat, Peshawar..... Respondents

*Deleted
vide order
sheet dated
18.5.20*

**SERVICE APPEAL UNDER SECTION 4 OF
THE SERVICES TRIBUNAL ACT, 1974
FOR RELEASE OF PAY OF THE
APPELLANT.**

Filed to-day Prayer:

aw
Registrar
3/12/2020

It is, therefore, humbly prayed that on acceptance of this Service Appeal;

Firstly, to direct respondents No.1 to 4 to forthwith release the salaries of the appellant along with arrears of pay w.e.f. 1st January, 2018 till onwards;

Secondly, to declare the act of respondents regarding stoppage of salaries of the appellant as null and void, without lawful authority, and ineffective upon the accrued rights of appellant;

[Signature]

Thirdly, to take action against the concerned officer for stopping the salary of the appellant in the light of reported judgment in 1997 PLC (CS) 666.

Any other relief which this Hon'ble Tribunal deems appropriate in the circumstances of case and to whom the appellant found entitled may kindly also be granted.

Respectfully Sheweth;

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

- 1) That the appellant was appointed as Naib Qasid vide order No.839/5-E dated 29.03.2013 issued by office of Executive Engineer Public Health Engineering FATA Division Kohat.

It is pertinent to mention that the appellant submitted his arrival report for resumption of his duty on 30.03.2013 on the post of Naib Qasid in view of the appointment order as referred to in the above paras.

(Copies of appointment order dated 29.03.2013 and arrival report are attached as Annex: "A & B").

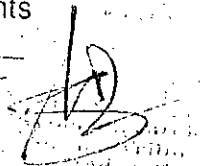
- 2) That the appellant also submitted his medical certificate and accordingly service book was also issued showing his entry and arrival report in service.

(Copies of medical certificate along with extract from service books are Annex: "C and D").

- 3) That the appellant was regularly performing his duties to the entire satisfaction of his immediate superiors and in this regard he was regularly drawing his salaries since 2013 till December 2017.

(Copies of salary slips are Annex: "E to E/8")

- 4) That all of a sudden the respondents without assigning any reason or cause stopped the salaries of the appellant till date and in this regard various applications were filed before respondent No.1 with copies to the remaining respondents



seeking reasons for stopping his salaries for a period of almost two years i.e. for the year 2018 and 2019 but since then no response has been provided to him.

(Copies of applications along with postal receipts are Annex: "F, F/1, F/2 and F/3")

- 5) That appellant also filed Departmental Appeal dated 31.08.2020 in continuation of the applications mentioned in para-4 for release of pay, but since then no response has been provided.

(Copy of departmental appeal is Annex: "G")

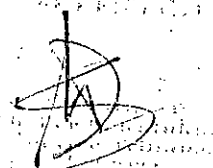
- 6) That since no written orders with regard to stopping salaries of the appellant has been passed by the respondents, therefore, the appellant being aggrieved filed Writ Petition No.5426-P/ 2019 before the Hon'ble Peshawar High Court, Peshawar, which was decided/ dismissed on 19.11.2020 on the point of maintainability by invoking the provision of Article 212 of the Constitution.

(Copy of W.P.No.5426-P/2019 and order dated 19.11.2020 are Annex: "H and I")

- 7) That having no alternate and efficacious remedy, the appellant constrained to approach this Hon'ble Service Tribunal for redressal of his grievance on the following amongst other grounds:

GROUNDS

- a) That the act of respondents to stop the salary of the appellant is against the law, facts and material available on record.
- b) That the act of respondents is violative of Article 4, 9, 11, 25 and various other Articles of the Constitution of Pakistan as well as judgments rendered by the august Supreme Court of



Pakistan that departmental authorities under law having no power to stop the salaries of their employees and that too without adhering/ adopting **due process of law**, which amounts to force labour, hence violative of **Article 11** of the Constitution of Pakistan.

- c) That the Hon'ble High Court categorically held in a reported judgment 1997 PLC (CS) 666

"that strict action be taken against an officer who stopped the salary of an employee".

Even otherwise it is also settled law that:

Pendency of departmental inquiry, if any, is no ground to stop the salary of the appellant as right to livelihood is a fundamental right which is part of right to life as embodied in Article 9 of the Constitution of Pakistan"

- d) That the Hon'ble Peshawar High Court, Peshawar categorically held in 2017 PLC (CS) note 14 p.14 that salary on pretext of irregular appointment order was declared to be held illegal. Department was directed to release the pay of appellant from the date of its stoppage.

It is pertinent to mention that no limitation runs in matters relating to pay and pension. (1991 SCMR 1041, 2005 PLC (CS) 1439, 2006 PLC (CS) 489, 2002 PLC (CS) 1388, 1990 PLC (CS) 95).

If case has merit limitation may not be a hurdle in the way of appellant. (PLD 2002 (SC) 84, 2004 SCMR 527, PLJ 2004 (SC) 306, PLD 2013 SC 724 (k)

- e) That the act of respondents has exposed not only the appellant but his ailing parents to risk of not getting proper care and treatment as the appellant was the only source of

income of his family, hence suffering since the month of December, 2017 till date by illegally stopping his salaries without assigning any reason or cause.

- f) That it is settled law that salary of an employee is no more a State bounty.

Keeping in view, what has been stated above it is, therefore, humbly prayed that on acceptance of this Service Appeal

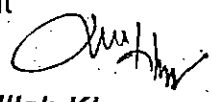
Firstly, to direct respondents No.1 to 4 to forthwith release the salaries of the appellant along with arrears of pay w.e.f. 1st January, 2018 till onwards;

Secondly, to declare the act of respondents regarding stoppage of salaries of the appellant as null and void, without lawful authority, and ineffective upon the accrued rights of appellant;

Thirdly, to take action against the concerned officer for stopping the salary of the appellant in the light of reported judgment in 1997 PLC (CS) 666.

Any other relief which this Hon'ble Tribunal deems appropriate in the circumstances of case and to whom the appellant found entitled may kindly also be granted.

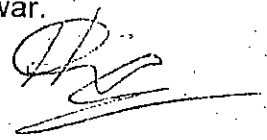

Appellant

Through 
Inayat Ullah Khan
Advocate High Court
LL. M (U.K)

&
Muhammad Haris Sher
Advocate, Peshawar.

Dated: 02.12.2020





KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 15577/2020

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS. FAREEHA PAUL ... MEMBER(E)

Zuhran Ullah S/O Akhtar Zaman R/O Phase-II, Hayatabad,
Peshawar. Currently working as Naib Qasid FATA Division, Public
Health Engineering Division Kohat.

.... (Appellant)

Versus

1. Secretary Public Health Engineering Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 2. Chief Engineer Public Health Engineering North, Khyber Pakhtunkhwa, Peshawar.
 3. XEN, Public Health Engineering Division, Kohat.
- (Respondents)

Mr. Inayat Ullah Khan
Advocate

For appellant

Mr. Muhammad Adeel Butt
Addl. Advocate General

For respondents

Date of Institution.....03.12.2020

Date of Hearing.....05.10.2022

Date of Decision..... 05.10.2022

JUDGEMENT

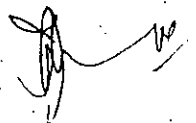
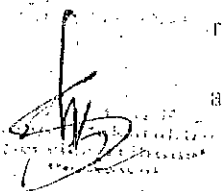
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, with the prayer that on acceptance of the instant service appeal, firstly to direct the respondents to release the salaries of the appellant alongwith arrears of pay w.e.f 1st January, 2018 till onwards; secondly, to declare the act of the respondents regarding stoppage of salaries of the appellant as null and void, without lawful

authority, and ineffective upon the accrued rights of the appellant; thirdly, to take action against the concerned officer for stopping the salary of the appellant in the light of the reported judgment in 1997 PLC(CS)666, and any other relief which this Hon'able Tribunal deems appropriate in the circumstances of the case and to whom the appellant was found entitled.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Naib Qasid vide order dated 29.03.2013, issued by the office of Executive Engineer, Public Health Engineering, FATA Division, Kohat. He submitted his arrival report on 30.03.2013. While regularly performing his duties, the respondents, without issuing reason or cause, stopped the salaries of the appellant. He submitted various applications to Respondent No. 1, with copies to other respondents seeking reason for stopping his salary for a period of almost two years i.e 2018 and 2019 but they were not responded. He also filed departmental appeal dated 31.08.2020 in continuation of those applications, but it was also not responded. Feeling aggrieved the appellant filed writ petition No. 5426-P/2019 before the Hon'ble Peshawar High Court, which was decided/dismised on 19.11.2020 on the point of maintainability by invoking the provision of Article 212 of the Constitution; hence this service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented the case in detail and contended that stoppage of salary was against the law and Constitution of Pakistan. He referred to a reported judgment 1997 PLC(CS)666, which clearly stated that strict action be taken against an officer who stopped the salary of an employee. He



further referred to a settled law according to which pendency of departmental inquiry, if any, was no good ground to stop the salary of the appellant as right to livelihood was a fundamental right which was part of right to life as embodied in Article 9 of the Constitution of Pakistan. He prayed for the release of salary alongwith arrears of pay w.e.f 1st January, 2018 onwards.

5. The learned Additional Advocate General, on the other hand, invited the attention to the appointment order of the appellant and contended that it was declared irregular and fake and that there was a clear difference between the signatures on office order and service book. He further contended that the appellant did not submit his arrival report to his immediate officer, that was the Sub-Divisional Officer concerned, which was then to be reported to the Executive Engineer. He further informed that the department conducted an inquiry regarding fake appointments of Class-IV employees made during period from August 2012 to December 2014, according to which the said recruitments were declared irregular and fake as they were made without observing codal formalities. He further informed that the salary of the appellant had been stopped on source inactive form duly signed by Executive Engineer and Divisional Accounts Officer.

6. In view of the arguments and record presented before us, it transpires that the appellant was appointed as Naib Qasid in the Public Health Engineering, FATA Division Kohat in the year 2013. He started performing his duties and getting salaries. In an inquiry conducted against Mr. Baharullah Khan, Ex-XEN FATA Division, Kohat, it was found that certain irregular appointments of Class-IV employees were made without observing codal formalities. Report of that inquiry has been provided with the reply in view of which salary of the appellant was stopped. It was strange to note that the source form available with the reply indicated stoppage of salary of the appellant from 1st January 2018 because of

absence from duty. As there is a controversy in the reply given by the department followed by the statement of Additional Advocate General and in the source form, we think that the matter needs to be looked into in detail. It is further evident from the record that the appointment order of the appellant is still in place. Neither the appointment order has been withdrawn, nor the appellant has been dismissed from service. Salary slips provided with the appeal indicate that the appellant was an employee in the office of the Executive Engineer PHE, FATA and indicated in the Ministry of Education. Moreover, deduction of G.P Fund, as indicated in his pay slips, was against the terms and conditions of his appointment as indicated in his appointment order dated 29.03.2013 which indicates that he will not contribute to G.P Fund and will not be entitled to pension, gratuity benefits etc.

7. In view of the above discussion, the appeal in hand is allowed with the direction to the department to proceed against the appellant, if they think that the appointment order was fake/bogus, in a way as provided under the law. In the light of the outcome of those proceedings, the department may further look into the extent of salary payable to the appellant. Costs shall follow the events. Consign.

S: Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 5th day of October, 2022.

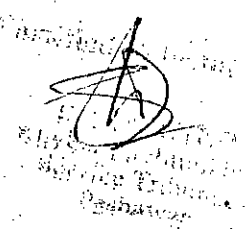


(KALIM ARSHAD KHAN)
Chairman




02/05/23
 page 9
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(FAREEHA PAUL)
Member (E)



Stamp: Tribunal Peshawar

قیمت 50 روپے	45140	  
ایڈووکیٹ: محمد ارشدان صدیقی اور دیگر	بار کونسل ایسوسی ایشن نمبر: Bc-16-6701	
رابطہ نمبر:		پشاور بار ایسوسی ایشن، خیبر پختونخواہ

Hon'ble Services Tribunals K.P.K Peshawar بعد اٹل جناب

Appellant: منجانب	Service Appeal: دعویٰ
نعیم اللہ بنام حکومت کے بی. بی. کے	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:
بابت تحریر آگہ	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کاروائی متعلقہ
آن مقام لیسٹا کے لیے محمد ارشدان صدیقی و دیگر کے درمیان مقررہ
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے
المرقوم:

العواہد العواہد العواہد
مقام کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

Accepted by
M. Arshad

10/11/2024