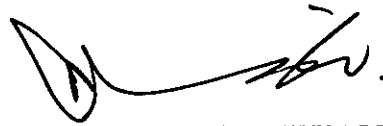


inquiry or without withdrawal/cancelation of the appointment order of the appellant as Medical Technician, would not be justified. Therefore, on allowing this appeal, we direct that the appellant be paid all the withheld dues as per his entitlement for his work against the post of Medical Technician (BPS-12). The department may, at its discretion, conduct inquiry duly associating the appellant to probe into the factum of appointment of the appellant as Medical Technician and in case it is found, in the proper inquiry proceedings that the appointment of the appellant, as Medical Technician (BPS-12), was either irregular or illegal or fake etc., the authority may pass appropriate order accordingly by imposing any penalty on the appellant or else, also deciding about the fate of the appellant as Driver in the circumstances of which come out after holding proper inquiry. The appeal is decided in the above terms. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16th day of ~~May~~ ^{June}, 2023.*



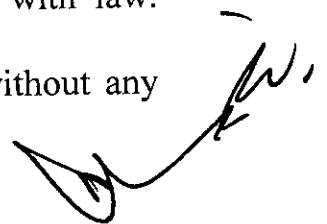
KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

were present and hundreds of ghosts employees were working and getting their salaries unlawfully and the appellant was also one of among them. Similar nature Writ Petitions were dismissed by the Hon'ble Peshawar High Court recently i.e. WP No.5010-P/2021 & WP No.812-P/2021. In these petitions, a list of GHOSTS employees were submitted and the same appellant is also among those Ghosts employees which is on Serial No.18".

7. It appears from the above that the respondents admit the appointment of the appellant as Driver (BPS-06) on the orders of Director Health Service (FATA) dated 10.11.2007. They also, somehow the other, admit that the appellant was appointed as Medical Technician (BPS-12) at Sub Division Hassan Khel, District Peshawar dated 01.10.2019 but they pose a question as to how he was appointed as he was not having the requisite qualification/eligibility criteria for appointment against the post of Medical Technician. This is very strange because the appellant was serving under the respondents and it would be the respondents to have answered their own query instead of making this query a part of reply. If the appellant was appointed as Medical Technician somewhere in the year 2019 and his appointment order was not fake or there was some irregularity or illegality found in appointment of the appellant as Medical Technician (BPS-12), in any of such eventuality, the department is always at liberty to inquire into the matter and to make appropriate order in accordance with law. Admitting the appointment and then stoppage of salary without any



salary of the appellant. Therefore, he requested for acceptance of the instant service appeal.

5. As against that learned District Attorney argued that when the appellant had been appointed as Driver (BPS-06), then how he had been appointed as Medical Technician (BPS-12) as the eligibility criteria for Medical Technician was two years Technical Diploma from Medical Faculty Khyber Pakhtunkhwa. Further submitted that before the merger of the FATA, many irregularities were present and hundreds of ghost employees had been working and getting salaries unlawfully; that similar nature Writ Petitions had been dismissed by the Hon'ble Peshawar High Court. Lastly, he submitted that there was no attendance of the appellant in the department. Therefore, he requested for dismissal of the instant service appeal.

6. The entire defense of the respondents is their reply in Para-03, which is as under:

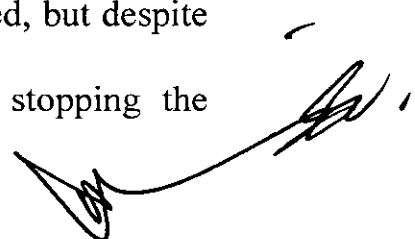
"As the appellant was appointed as Driver (BPS-06) by the Director Health Services (FATA) dated 10.11.2017, then how the appellant was appointed a Medical Technician (BPS-12) at Sub Division Hassan Khel District Peshawar dated 01.10.2019. Needless to mention that for Medical Technician, two years Technical Diploma from Medical Faculty Khyber Pakhtunkhwa Peshawar is must & mandatory. Then how the appellant without two years Medial Diploma is appointed as Medical Technician (BPS-12). Furthermore, it is stated that before the merging of FATA Districts, many irregularities

10.11.2017. In the meanwhile, vide Notification No.DHS/FATA/3357-90 dated 27.02.2013, the services of the appellant were regularized vide order dated 01.10.2019, the appellant was appointed as Medical Technician (BPS-12) at Sub Division Hassan Khel, District Peshawar, through proper channel. All of a sudden, while serving as Medical Technician, his salary was stopped. Feeling aggrieved, he filed departmental appeal to respondent No.4 which was not responded, hence, this appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard appellant and learned District Attorney for the respondents.

4. Learned counsel for the appellant argued that the impugned action of the respondents was illegal, against the principles of administration of justice and without authority, therefore, the same was not tenable. Further submitted that the impugned action of the respondents was not qualifying the requirements of fundamental rights prescribed by the law and the same had been passed in absolute vacuum. Lastly, he submitted that in the light of judgment of the Apex Court, the salary of a public servant could not be stopped, but despite that, the respondents had committed misconduct by stopping the



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.52/2022

Date of presentation of Appeal.....13.01.2022

Date of Hearing.....16.06.2023

Date of Decision.....16.06.2023

Mr. Ashfaq Ahmad S/O Nazeer Ahmad, R/O Arbaban Matta Tehsil Pindiyali, District Mohmand.

.....*Appellant*

Versus

1. **The Secretary Health Department, Civil Secretariat, Khyber Pakhtunkhwa.**
 2. **The Director General Health Services, Khyber Pakhtunkhwa.**
 3. **The Deputy Director, Health Officers, Sub Division Hassan Khel, Peshawar.**
 4. **The District Health Officer, District Peshawar.**
 5. **The Accountant General, Khyber Pakhtunkhwa, Peshawar.**
-(*Respondents*)

Present:

Mr. Nasir Khan Abbakhel, Advocate.....For appellant

Mr. Muhammad Jan, District AttorneyFor respondents.

APPEAL AGAINST ACT/ORDER (IF ANY) OF THE RESPONDENTS, WHEREIN, THE RESPONDENTS WITOUT ANY LEGAL JUSTIFICATION,THE PETITIONER'S SALARY FROM JUNE, 2021 HAS BEEN STOPPED.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that appellant was appointed as Driver in the Regional Program Implementation Unit (FATA) by the Ex-Director Health Service (FATA) Secretariat vide Notification NO.620-22/ASM/NP dated