

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

SERVICE APPEAL NO. 749/2023

Saifur Reham S/O Ziarat Gul R/O Mohallah Shaheen Aabad Saidu Sharif Swat

GGHS Deiolai Swat.....(APPELLANT)

VERSUS

1. Govt; of Khyber Pakhtunkhwa Secretary, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) Swat.
4. Headmistress Government Girls Primary School Afsar Aabad Saidu sharif Swat.

.....(RESPONDENTS)

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DISTRICT EDUCATION OFFICER(F)
Swat (Respondent No.3)

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.....(**RESPONDENTS**)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1,to 4

Respectfully Shewth;

The Respondents submits as under;

Preliminary Objections.

1. *That* the instant appeal is badly barred by time in the eye of law.
2. *That* that appellant has no cause of action and locus standi .
3. *That* the appellant has concealed the material facts from this Tribunal, hence liable to be dismissed.
4. *That* the appellant has not come to this Hon; Tribunal with clean hands.
5. *That* the appellant has filed the instant appeal just to pressurize the Respondents.
6. *That* the appellant filed the instant appeal on malafide motives.
7. *That* the Instant appeal is against the prevailing laws and rules.
8. *That* the appellant is estopped by his own conduct to file the instant appeal.
9. *That* the instant appeal is not maintainable due to legal lacunas.
10. *That* the appeal is not maintainable due to non-joinder and Mis-joinder of the parties.

ON FACTS.

1. *That* although appellant was appointed on disable quota on 9.7.2011 (**Annexure-A**) but due to complaint (**Annexure-B**) an inquiry was conducted to dig out the facts and reality of the allegations ,therefore, inquiry Committed submitted report (**Annexure-C**) in which recommendations were made for the transfer of the appellant after the establishment of allegations and due process of law which was followed by the respondent department and the appellant was transferred to GGHS Deolai swat on 4.10.2022 (**Annexure-D**) and accepted by the appellant and took over charge (**Annexure-E**) at his new station and performing duty till date accordingly. It is worth mentioning here that due to ill behavior and unethical

action of the appellant, the local inhabitants approached to the respondent and demanded departmental action against the appellant and transfer was the sole solution otherwise Law & Order Situation was to be created but the appellant concealed the facts from this Hon; Service

2. *That* this Para-2 as drafted is not admitted and denied because transfer of the the appellant was made on the basis of serious complaint where inquiry committee was constituted and recommendations made by the inquiry committee for the transfer of the appellant for the best interest of Public at large and to maintain Peace and Pleasant situation in the area and for the protection and safety of the appellant but the appellant concealed the facts malafidely, therefore, the instant appeal is liable to be struck down.
3. *That* as far as Complaint and Allegations against the appellant are concerned, Inquiry Committee after due process of law, Established and proved the allegations and provided opportunity of hearing & defense to the appellant but he failed to prove himself as innocent and similarly the inquiry committee recommended him for transfer him which was followed by the respondent and order issued on 4.10.2022 in which the words " ON DISCIPLINARY GROUNDS" has explicitly been incorporated and accepted by the appellant and took over charge without any observation and objection and till date performing duty accordingly. Moreover, appellant failed to make presentation before the appellate authority which is mandatory for an aggrieved person according to the appeal rules, 1986. Hence appeal is badly barred by time as per law of the country and not maintainable and needs to be dismissed.
4. *That* this Para is not admitted and denied because departmental appeal has not been filed by the appellant according to the appeal rules hence the instant appeal is in infructuous and is liable to be dismissed.
5. *That* the appeal in hand is liable to be dismissed inter alia on the following grounds;

GROUNDS

- i. *That* this Para is not admitted and denied because transfer order is legal, lawful and based on principal of natural Justice and within the Rules and Jurisdiction, **Moreover**, it is not the Prerogative of the employee to Claim a right to serve at a Place that he Choose to Serve and at this at this juncture wisdom is drawn from the Judgment of the August Supreme Court of Pakistan, reported in 2020 PLC(CS) 1207 SC, (Copy Annexed)

(Contd...)

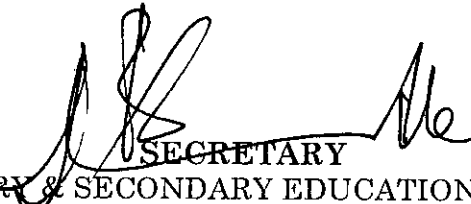
(b) Civil Service;

Prerogative of employer...Government Servant was required to serve where his Employer wanted him to serve; it was not a choice or prerogative of the employee to Claim a right to serve at a place that he choose to serve.

- ii. *That* this Para is not admitted and denied because appellant violated Child rights and Fundamental rights and indulged himself in women Harassment. Moreover, the appellant Violated rules & Regulations of Female Institutions and committed an act due to which the community agitated and approached to the respondent department /DEO(F) Swat and demanded for transfer of the appellant from GGPS Afsar abad and similarly inquiry committee Constituted and the appellant after the recommendations of the inquiry committee, has been transferred on disciplinary ground to GGHS Deolai for the improvement in his conduct which is accessible and a safe place for duty but the appellant concealed the facts and intentionally desire to disturb the peaceful environment. hence the instant appeal needs to be dismissed.
- iii. *That* this Para as drafted is not admitted and denied because the appellant transfer is not against the Fundamental Rights of the disable person but the appellant concealed the facts from this Hon; Service Tribunal Intentionally with malafide motives. Moreover, there is no hurdle in movement here & there but the Stay of the appellant at GGPS Afsra Abad from where he was transferred will have law & Order Situation if he was not transferred for which the appellant knows better about the situation but he concealed the facts intentionally. Hence he is not deserving for GGPS Afsar Abad and the instant appeal is liable to be dismissed.
- iv. That this Para is not admitted and denied and during the inquiry, Committee Proved allegations due to which the appellant has been transferred.
- v. *That* this Para is not admitted and denied because as replied above.
- vi. *That* this Para is not admitted and denied. As replied above.
- vii. *That* this Para is not admitted and denied because order is within the rules and law.
- viii. *That* this Para is not admitted and denied. As replied in the above Paras.
- ix. *That* this Para is as drafted is not admitted because conduct of the appellant and complaint by the community against the appellant, reflects his conduct of due to which he has been transferred to GGHS Deolai. Bu the appellant concealed the facts from this Hon; Service Tribunal.
- x. This Para is not admitted and denied. As replied above.
- xi. That respondents seeks leave to raise additional grounds at the time of arguments.

(Contd.....)

It is, therefore, humbly Prayed that the appeal in hands may graciously be dismissed.



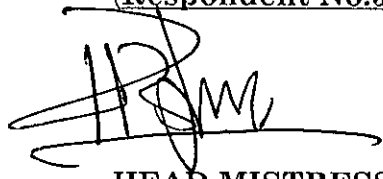
SECRETARY
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No.1)



DIRECTOR
ELEMENTARY & SECONDARY EDUCATION
KP PESHAWAR
(Respondent No.2)



DISTRICT EDUCATION OFFICER(F)
SWAT
(Respondent No.3)



HEAD MISTRESS
GOVER; GIRLS PRIMARY SCHOOL
AFSAR ABAD SAIDU SHARIF SWAT
(Respondent No.4)

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.....(RESPONDENTS)

A F F I D A V I T

I, Mr.Sultan Nabi office of DEO(F) Swat do hereby solemnly affirm and declare that contents of the accompanying Para wise Comments are true and correct to the best of my knowledge and information and nothing has been concealed from this Hon;Service Tribunal.


DEPONENT


Muhammad Ilyas
ADVOCATE
OATH COMMISSIONER
District Courts Swat
No. 88 Date 5/2/23

Annexure - A

⑥

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY & SECONDARY EDUCATION DISTRICT SWAT
OFFICE ORDER

In pursuance to the meeting of Departmental Selection Committee held on 09.07.2011 as contained in the minutes of the meeting issued vide this Office Endst:No 10339-45 dated 9.7.2011 The competent authority is pleased to order the appointment of the following candidates against the post and School mentioned to their names in BPS-01 (4800-150-9300) plus usual allowances as admissible under the rules except section 19 Khyber Pakhtun Khwa rules 1973 subject to the terms and conditions given at the end from the date of their taking over charge in the best interest of public services.

DECEASED EMPLOYEE SONS.

S.No	PK	Name /Parentage	Post where vacant	Post	D/O death	Remarks
1	80	Said Arif Shah S/O Mubarak shah R/O Amankot	GPS Shagai	Chow	13.3.1996	Died
2	80	Mohd: Ghani S/O Amir Sawab R/O Amankot	GGMS Amankot	Sweep	23.1.2011	Died
3	80	Nasrin D/O Abdul qayum R/O Faiz Abad	GGHS Haji Baba	Caller	25.3.2011	Died

RETIRED 25% QUOTA

S.No	PK	Name /Parentage	Post where vacant	Post	D/O retirement	Remarks
1	80	Mohammad Ibrahim S/O Darwesh R/O Khwaja Abad Mingora	GPS Malook Abad	Chow	29.10.1995	Retired
2	81	Sadar Bacha S/O Khairur Rahman R/O Amankot	GPS Palanay	Chow	15.9.1999	Retired
3	80	Farmani Gul S/O Gulbar R/O Gul Kada	GGHS Shah dara	Chow	15.08.2009	Retired

DISABLED IN PK-80

S.No	PK	Name /Parentage	Post where vacant	Post	Remarks
1	80	Saifur Rahman S/O Zinat Gul R/O Shalheen Abad	GGHS Saidu No.1	Chow	Disable

Open PK-80

S.No	PK	Name /Parentage	Post where vacant	Post	Remarks
1	80	Fazal Rabi S/O Nawsherawan R/O Saidu Sharif	GGHS No.11 Saidu	Chow	Open
2	80	Zainullah S/O bahadar Khan R/O saidu Sharif	GCMHS Wadudia	Chow	Open
3	80	Khurshid S/O Sultani Mulk R/O Mingora	GHSS No.11 Mingora	Chow	Open
4	80	Aftab Alam S/o Akbar Ali R/O Ingaro Dherai	GHS Ingaro Dherai	Sweeper	Open

TERMS & CONDITIONS

- 1). No-T/DA is allowed
- 2). Charge report should be submitted to all concerned
- 3). Their Appointment is purely made on contract basis and liable to termination at any stage/time with out Assigning any notice.
- 4). Their posts are not pension able.
- 5). They will produce health & Age certificate from the Medical Superintendent DHQ Hospital Swat
- 6). They will not be handed over charge if their age is less than 18 years and above 45 years.
- 7). In case of resignation they will have to give one month prior notice to the Department or forfeit one Month pay in lieu thereof to the Government.
- 8). They will be governed by Rules and Regulations issued by the Govt. from time to time.

(Sultan Mahmood Mian)
 Executive District Officer
 Elementary & secy: Edu:Swat

Endst:No 10347-57 Class-IV Appointment/2011 dated 09.07.2011
 Copy forwarded to:-

- 01). The Secretary Govt: of Khyber Pakhtunkhwa Elementary & Secy: Education Peshawar.
- 02). The Directress Elementary & Secy: Education Khyber Pakhtunkhwa Peshawar.
- 03). The District coordination Officer Swat.
- 04). The District Accounts Officer Swat
- 05). The DO(M/F) E&SE Swat.
- 06-7). The DDO(M/F) E&SE Swat.
- 08). The Budget & Accounts Officer(E&SE) local Office.
- 09). The Principals/ Head Masters/Head Mistresses concerned
- 10). The Official Concerned
- 11). P.A. local Office.

Attested

[Signature]

[Signature]
 Executive District Officer
 Elementary & secy: Edu:Swat

جناب میڈیٹم صاحبہ -

گزارش ہے کہ کل ہماری بھی جویریہ جو آپ کے زیر سایہ گرنرز پرائمری سکول افسر آباد میں ادنیٰ میں سبق پڑھ رہی ہے۔ کل بتاریخ 21-09-022 کو سکول سے آدھا گھنٹہ لیٹ روئے ہوئی گھر آئی۔ بھی بہت خوفزدہ ہو گئی تھی جب گھر والوں نے ان سے پوچھا تاج کیا تو اس نے بتایا کہ سکول کے چوکیدار نے سیف الرحمان نے مجھے سکول میں آئیے بند کیا اور میرے ساتھ حرکتیں کی جو ہم نے اسے آئیے سامنے زکر کیا۔ چوکیدار کے حرکتوں پر جب بھی لڑنے لگی تو چوکیدار نے بھی کے گلے پہ ہاتھ رکھ کے بھی کو چپ کرنے کی دھمکی دی۔ اس وجہ سے ہم نے یہ درخواست آپ کی خدمت میں پیش کیا کہ آپ صاحبہ اس سچی کو انصاف دلائیں اور چوکیدار سیف الرحمان کے ساتھ جلد از جلد قانونی کھر کاروائی کی جائے۔

کشمیریہ -

العارض - بخت آمین انیس آباد

سید

Date. 22-09-022-

Mst: - Fajeel SDEO (F)
Babozai
Mst: - Zaina Razvi ADEO (F)
PL3 expires the matter
+ report within 02 days.
22/09/2022

(B) C (8)

INQUIRY REPORT PERTAINING TO COMPLAINT AGAINST
SAIF-UR-RAHMAN CHOWKIDAR OF GGPS AFSAR ABAD

Reference:

The undersigned were directed by the DEO (F) Swat on 22-09-2022 to enquire the matter related to a complaint submitted by Mr. Bakht Amin resident of Afsar Abad against Chowkidar Mr. Saif Ur Rahman of GGPS Afsar Abad.

Background:

The inquiry conducted as a result of a written complaint received from Mr. Bakht Amin resident of Afsar Abad whose daughter Javeria read in class Nursery at GGPS Afsar Abad was harassed by the Chowkidar of the school with unethical and bad intentions as stated in the complaint.

Allegation Levelled by the complainant:

- That on 21.09.2022 after off time of the school, Javeria came to home 30 minutes later than the usual routine. She was scared and was crying. She was asked by her father Mr. Bakht Zamin that what has happened to her. Then she uttered that she was locked by the chowkidar in the school with unethical intentions and harassed her. Due to the unethical gestures and acts, the kid started screaming but the chowkidar shut her mouth by gripping her neck and terrorized her.
- As a result the father of Javerai approached to the DEO Female Swat on 22-09-2022 along with his daughter and submitted his complaint and the little kid narrated herself that what she has gone through.

Methodology:

To dig out the factual position, the undersigned paid visit to GGPS Afsar Abad on 23-09-2022 and recorded written statements from the Head Teacher, other staff teachers and chowkidar of the school.

1. Mst. Parveen Begum PSHT, the Head Teacher, recorded her statement and stated that this is not the first time. Students of class 4 have also complained previously about the unethical and bad intentions and acts of the chowkidar that they have been harassed with bad and filthy intentions for which the Chowkidar has been confronted in different meetings and warned but he always denied. She further added that as now the matter has come into the notice of the higher authority therefore, action should be taken to tackle this issue. (Statement attached)
2. Mst. Razia Sultana PST, Class teacher of Grade-4 recorded her statement which reveals that some students of 4th class have previously complained against the Chowkidar about his malicious, dirty intentions and acts with the students. (statement attached)
3. Mst. Naheed Rahmat SPST class teacher of Grade-Nursery reveals in her statement that she has not witnessed any such acts personally but have heard about complaints of calss 4th students about the unethical acts which have been responded by the Head Teacher and warned the Chowkidar during meetings. (Statement attached)
4. A joint statement of teaching staff has also been recorded which portrays the same theme and story and demands for taking action against the accused chowkdiar. (statement attached)

5. The statement of the chowkidar was also recorded in which he denies all the allegations but the fact is contradictory to his statement as per the statements of Head Teacher and other staff members.

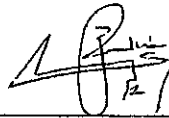
Findings:

Although the chowkidar has denied the levelled allegations but In the light of the written statement of the Head Teacher and other staff members, it has come to the conclusion that the said Chowkidar Mr. Saif Ur Rahman is guilty of being involved in malicious, dirty and unethical acts with students and involved in harassing students whenever he gets chance.

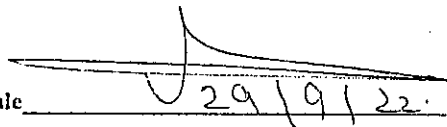
Recommendations:

1. The chowkidar Mr. Saif-Ur-Rahman is proposed to be transferred to any male school of high or higher secondary level. He is not fit for duty in female schools or even in a male school having any female students.
2. All the Head of the schools (Primary / Middle / High / Higher secondary Level) may strictly be directed to not leave the school at off time even if a single student is present in the school. They must have to leave the school after all the students being left the school at off time.

Zakia Raza
Assistant District Education Officer (F)
Swat.


29/09/2022

Fazilat Saddique
Sub-Divisional Education Officer Female
Babuzai


29/9/22



**OFFICE OF THE
DISTRICT EDUCATION OFFICER (FEMALE)
DISTRICT SWAT**

#: (0946) 9240214
Email: deofswat@gmail.com

#: (0946) 9240214
Web: www.female.sed.edu.pk

(10)

D

(10)

OFFICE ORDER.

Whereas: Mr. Saif ur Rahman Chowkidar GGPS Afsar Abad Saidu Sharif performing duty but locals submitted complaint against him regarding unethical attitude and misusing / exploiting his official position / capacity.

Whereas: enquiry committee constituted and enquiry conducted on 22-09-2022 where evidence collected, statements recorded and observations made by the committee & personally investigation made from the official accused where the guilt admitted and confessed.

Whereas: after probing into the matter and the committee for safe and pleasant environment at the school, recommended transfer of the said official accused to far flung areas for improvement and his conduct.

Keeping in view service discipline rules under Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) rules 2011 the official falls within the meaning of misconduct and the undersigned exercise her power conferred under the ibid rules & transfer the official accused on **DISCIPLINARY** grounds as per detail below with immediate effect.

S. No	Name & Post	From	To	Remarks
1	Mr. Saif ur Rahman Chowkidar	GGPS Afsar Abad	GGHS Deolai	On Disciplinary Ground
2	Mr. Pir Muhammad Khan Chowkidar	GGPS Jat Kot Kabal	GGPS Afsar Abad	Vice S. No: 01
3	Mr. Rozi Khan Chowkidar	GGPS Deolai	GGPS Jatkot	Vice S. No: 02

1. Charge report should be submitted to all concerned.
2. No TA / DA is allowed.

DR. SHAMIM AKHTAR
DISTRICT EDUCATION OFFICER (F)
SWAT

Endst: No. 10578-86 / P. F / Saif ur Rahman / Chow / GGPS Afsar Abad. Dated: 04/10 2022

Copy Forwarded for information and necessary action to the: -

1. Director E&SE KP, Peshawar.
2. Deputy Commissioner Swat.
3. District Monitoring Officer / EMA, Swat.
4. District Comptroller of Accounts Swat at Saidu Sharif.
5. Head Mistress GGHS Deolai, Swat with the direction to ensure compliance of the order accordingly under intimation to this office.
6. SDEO (F) Kabal with the direction to follow the order & submit report to the undersigned accordingly.
7. SDEO (F) Babozai with directions to relieve the official accused immediately & do the needful accordingly under intimation to this office.
8. Head teacher GGPS Afsar Abad & GGPS Jatkot Kabal, Swat for the compliance of the order.
9. Official Concerned with the directions to ensure compliance of the order immediately otherwise you will be marked absent and action will be taken against you accordingly.

DR. SHAMIM AKHTAR
DISTRICT EDUCATION OFFICER (F)
SWAT



CERTIFICATE OF TRANSFER OF CHARGE

1. Certified that we have on the fore / afternoon of this day respectively made over and received charge of this office of the, Chowkidar GGHS Deolai on 06.10.2022 A/N vide District Education Officer Female Swat, Endst. No. 10578- 86 Dated.04.10.2022.
2. Particulars of cash and important secret and confidential document handed over are noted on the reverse: -

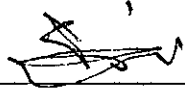
Signature of relived: _____

Government Servant: Rozi Khan

Designation: Chowkidar

Station: - GGHS DEOLAI, SWAT

Dated. 06.10.2022.

Signature of receiving: 

Government Servant: Saifur Rahman

Designation: Chowkidar

NO 82 /

Dated. _____ /2022.

Forwarded to the: -

- 1). District Education Officer (F) Swat.
- 2). District Comptroller of Accounts, Swat.
- 3). Official, Concerned.
- 4). Local Office.

N.W.F.P.Acc:Try:No.421



Principal
Govt:Girls High
School Deolail Swat

AUTHORITY LETTER.

This is to certify that Mr. Sultan Nabi of this office is hereby authorized to attend the Honorable court of Service tribunal camp court at Swat dated, 05-07-2023 in connection with court case appeal No 749/2022 filed by Saifur Rahman V/S Government & others & submit comments/reply with all other relevant record till the final order /judgment of the Honorable court on behalf of the undersigned and Education Department.

For respondent No 1,2,3,4


District Education Officer (F)
SWAT.