


Cost of Rs. 5000/- received in Service Appeal No. 1162/22,

Titled Zargha Nasrullah Jan vs. Health

in the office of Assistant Registrar, Dated: 13/07/2023.

vide order sheet dated: 06/06/2023


Assistant Registrar 13/7/23
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1162/2022

Zarqa Nasrullah Jan.....Appellant

Versus

Government of Khyber Pakhtunkhwa and others.....Respondent

INDEX.

S.No.	Description of documents	Annexure	Page
01	Parawise Comments		01 to 03
02	Annexure (A)		04 to 05
03	Annexure (B)		06
04	Authority Letter		07
05	Affidavit		08

Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department,
Health Department
Khyber Pakhtunkhwa

1

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6450
Dated 13/7/2023

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO.1162 OF 2022

Zarqa Nasrullah Jan.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 03

Respectfully Sheweth:

Preliminary Objections:-

1. That the appellant has got no cause of action or locus standi to file the instant appeal.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in its present form and also in the present circumstances of the issue.
5. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
6. That the appellant has not come to this Honorable Tribunal with clean hands.
7. That the appeal is barred by law and limitation.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
10. The instant appeal has already been infructuous as the appellant has been retired from service vide Notification dated 03-04-2023.

ON FACTS:

1. Pertains to record.
2. Pertains to record.
3. Correct however the appellant has already been retired from Govt. service on attaining the age of superannuation on 25.04.2023 vide this Department's Notification dated: 03.04.2023.

- 2
4. Pertains to record however the Application in respect of appellant (Dr. Zarqa Nasrullah Jan, Principal Dental Surgeon attached to Govt. Naseerullah Khan Babar Memorial Hospital, Peshawar) was received on 28.12.2021 while another Dr. Tahir Farooq Nawaz was promoted to the post of Chief Dental Surgeon (BS-20) on the directions of Peshawar high Court Peshawar through PSB (by circulation) in its meeting held on 14.10.2021 and subsequently posted at Govt. Naseerullah Khan Babar memorial Hospital, Peshawar against the vacant post. Hence there was no vacant post at the hospital.
 5. Correct to the extent that the Appellant was promoted to the post of Chief Dental Surgeon (BS-20) vide this Department's Notification dated: 24.01.2022. However, Due to non-availability of vacant post of Chief Dental Surgeon (BS-20) at Govt. Naseerullah Khan Babar Memorial Hospital, Peshawar, the appellant was posted at DHQ Hospital, Charsadda for actualization of her promotion in BS-20 vide this Department's Notification dated: 12.04.2022.
 6. Pertains to record however detail reply has been given in para 5 above.
 7. Correct to the extent of departmental appeal however, the appellant prior to the instant appeal filed WP No. 1554-P/2022 with the same prayers however, the Peshawar High Court vide order dated 27-04-2022 (Annexure-A) dismissed the WP with the direction to the respondents to decide her departmental appeal. Thereafter, she filed a COC No. 178/2022 which was also disposed of by the Peshawar High Court as the replying respondents already implemented the judgment of Peshawar High Court dated 27-04-2022 by considering her departmental appeal and rejected by the competent authority (Chief Secretary Khyber Pakhtunkhwa) vide order dated 12-08-2022 (Annexure-B).
 8. Pertains to record.
 9. As per para 7 above.
 10. As per para 7 above.
 11. As per para 7 above.
 12. Incorrect. The appellant is not an aggrieved person as no vested right of the appellant has been violated by replying respondents. It is worth to mention that after retirement of the appellant the instant service appeal become infructuous.

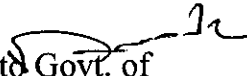
ON GROUNDS:

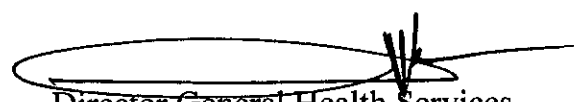
- A. Incorrect. The impugned Notification dated 12-04-2022 is in accordance of law, rules and principle of natural justice.
- B. As in preceding para.
- C. As per Para 5 of the Facts.

- 3
- D. Incorrect. As already explained in the above paras.
E. As per Para A above.
F. As per para 04 & 05 of the Facts.
G. As per Para-A.
H. As per Para-A.
I. As per Para-A.
J. The replying respondents also seek prior permission of this Honorable Tribunal to adduce other grounds during final hearing of the case.

PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the instant appeal of the appellant may very graciously be dismissed with costs.


Secretary to Govt. of
Khyber Pakhtunkhwa Health Department
Respondent No. 01 & 02


Director General Health Services
Khyber Pakhtunkhwa Peshawar
(Respondent No. 03)

DS (leg)

AM

(14) 19

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

COC NO. _____ /2022

IN

WRIT PETITION NO. 1554-P/2022

DR. ZARQA NASRULLAH JAN, Chief Dental Surgeon (BPS-20),
Government Nasrullah Khan Babar Memorial Hospital, Peshawar
Under transfer to DHQ Hospital, Charsadda.

..... PETITIONER

VERSUS

- 1- Dr. Shahzad Bangash, Chief Secretary Khyber Pakhtunkhwa,
Peshawar
- 2- Mr. Tahir Orakzai, Secretary Health Khyber Pakhtunkhwa
Peshawar.
- 3- Dr. Shaheen Afridi Director General Health Services Khyber
Pakhtunkhwa Peshawar.

..... RESPONDENTS

**APPLICATION UNDER ARTICLE- 204 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973 READ WITH SECTION 3 & 4 OF THE
CONTEMPT OF COURT ORDINANCE, 2004 FOR
INITIATING CONTEMPT OF COURT PROCEEDINGS
AGAINST THE RESPONDENTS/CONTEMNORS**

RESPECTFULLY SHEWETH:

- 1- That the applicant/petitioner had filed writ petition No. 1554-P/2022 before this Honorable Court for seeking direction to dispose of the Departmental Appeal of the petitioner in light of Clause-XI of the transfer/posting policy of the Provincial Government.
- 2- That the case for fixed for preliminary arguments on 27-04-2022 and after hearing the case was dismissed but with the direction respondent NO. 1 the operative part is as:

"In view of the above, this writ petition is dismissed, however, the respondent No. 1 is directed to decide the petitioner's appeal within a fortnight. Copy of the judgment dated 27-04-2022 is attached as annexure

..... A



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No. SOH(E-V)/3-3/2022/ Dr. Zarqa Nasrullah Jan
Dated Peshawar the 12.08.2022

To
The Director General Health Services,
Khyber Pakhtunkhwa,
Peshawar

Subject: APPEAL

Madam,

I am directed to refer to your letter No. 22699-700/E.I dated 23.12.2021 on the above captioned subject in respect of Dr. Zarqa Nasrullah Jan, Chief Dental Surgeon (BS-20) under transfer to DHQ Hospital Charsadda for actualization of her promotion as Chief Dental Surgeon (BS-20) against the vacant post.

I am, therefore directed to convey that the Competent Authority (Chief Secretary Khyber Pakhtunkhwa) has considered and regretted the appeal of the doctor concerned due to non-availability of vacant post of Chief Dental Surgeon (BS-20) at Government Naseer Ullah Khan Babar Memorial Hospital Peshawar.

I am further directed to convey that, Dr. Zarqa Nasrullah Jan, Chief Dental Surgeon (BS-20) may be directed to actualize her promotion at DHQ Hospital Charsadda without any further delay.

Section Officer (Lit-ID)
Health Department
Khyber Pakhtunkhwa

SECTION OFFICER (E-V)

Endst. No. & Date Even

Copies to the:-

1. Deputy Secretary (Litigation), Health Department.
2. S, Government Naseer Ullah Khan Babar Memorial Hospital, Peshawar, for similar action.
3. MS, DHQ Hospital, Charsadda, for similar action.
4. PS to Secretary Health Department, Khyber Pakhtunkhwa.

SECTION OFFICER (E-V)

M. S. Teel
S. bag Khan



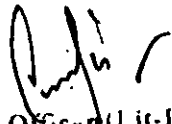
**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

AUTHORITY LETTER

Mr. Safi Ullah, Focal Person (Litigation-II), Health Department, Civil Secretariat is hereby authorized to attend/defend the Court Cases and file comments on behalf of Secretary Health Government of Khyber Pakhtunkhwa before the Service Tribunal and lower Courts.

(MAHMOOD ASLAM)

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
Secretary to Govt. of
Khyber Pakhtunkhwa
Health Department


Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1162/2022

Zarqa Nasrullah JanAppellant

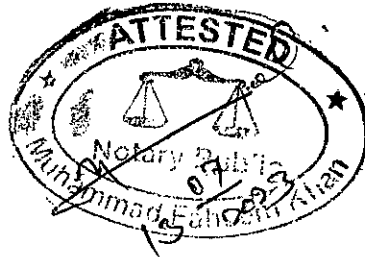
VERSUS

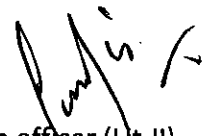
Government of Khyber Pakhtunkhwa and others.....Respondent

AFFIDAVIT

I Muhammad Tufail Section Officer (Lit-II) govt. of Khyber Pakhtunkhwa Health Department do hereby solemnly affirm and declare that the joint parawise comments in Service Appeal No.1162/2022 is submitted on behalf of respondents is true and correct to the best of my knowledge, belief and that nothing has been concealed from this Hon'ble Court.

Identified by:-




Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department
Section Officer (I.II-II)
Health Department
Khyber Pakhtunkhwa