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BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR.

Execution Petition No.164/2021

IN

Service Appeal No.457/2018

Syed Hasnain Kazmi

Versus

Government of Khyber Pakhtunkhwa
Through Secretary LG & RDD and others

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6523

Dated 17/07/23

.....Appellant

.....Respondents

IMPLEMENTATION REPORT IN LIGHT OF ORDER DATED 14/06/2023

Respectfully Sheweth:-

1. That the Respondent Department Compiled with the direction of Hon'ble Khyber Pakhtunkhwa Service Tribunal and reinstated the appellant Mr. Hasnain Kazmi Assistant Director (Sr.) (BPS-18 Personal) and posted him in Haripur.
2. In addition, the matter was taken up with the Establishment Department regarding seniority and regular promotion as Deputy Director (BS-18). The Establishment Department advised that the Local Government Department after fulfilment of codal formalities, as already circulated to all the Administrative Departments with regard to submission of cases to the Provincial Selection Board, may submit the working paper, complete in all respect, with regard to regular promotion of the officer as Deputy Director (BS-18) for consideration of the Provincial Selection Board. In pursuance of the Service Tribunal's judgement, his case has not yet been considered by the PSB for regular promotion to the post of Deputy Director (BS-18), therefore inclusion of his name in the seniority list of Deputy Director (BS-18) is not advisable. However, upon his promotion as Deputy Director (BS-18) on regular basis he would retain his inter-se seniority over his erstwhile juniors under the rules ibid. **(Annex-I).**
3. The Department has regretted the arrears claim and intervening period of the appellant on the following grounds for which he is pressing hard through Hon'ble Service Tribunal:
 - a) The appellant availed unauthorized medical leave, as the competent authority of the respondent department did not sanction the medical leave. The burden lies upon the appellant to prove the same before this Honorable Tribunal.

- b) The intervening period of the appellant would be regularized, however no arrears would be given in light of operative part "No Work, No Pay" of the judgment of Honorable Peshawar High Court Peshawar passed in Writ Petition No.1180/2012- Syed Tahir Abbas VS Govt of Khyber Pakhtunkhwa dated 19/06/2013 (**Annex-II**). As per Law Department advice, it is settled principle of law that when there is no work there is no pay. Reliance is placed on the judgment of Supreme Court of Pakistan 2003 SCMR 228 (**Annex-III**).
- c) The appellant despite being gazzetted officer did not follow the codal formalities and remained willfully absent; therefore, the arrears so claimed are not admissible under the rules. If the arrears claim placed before the Accounts officer without sanctioned leave it will create audit observations and the same will be returned for provision of leave sanctioned order. As there is no leave sanction order in the appellant's case and if the same is entertained, there would be losses to the National Exchequer and this practice would set precedent for others which would further create litigation issues.
- d) The appellant also concealed the facts from the Department as he got himself admitted in Metro College of Technology PVT. Ltd. Australia in a course "Advance Diploma of Management" without prior approval of the Government in violation of the standing orders / laws of the Government (**Annex-IV**).
- e) It is worth to mention that the Hon'ble Service Tribunal in its Judgment dated 04/06/2021 linked the fate of the unauthorized leave of the appellant with the outcome of Standing Medical Board (SMB). The SMB observed that the appellant had been treated for DM & IHD. This Department is of the view that DM (Diabetes Mellitus) and IHD (Ischemic Heart Disease) neither bar someone to attend his routine affairs including official duties nor require him to proceed on medical leave spanning over years.

It is, therefore, humbly prayed that on acceptance of this reply, the Execution Petition filed by the Appellant may please be dismissed being devoid of merit with cost.


SECRETARY
LOCAL GOVT. ELECTIONS & RURAL DEVELOPMENT
DEPARTMENT



Government of Khyber Pakhtunkhwa
ESTABLISHMENT DEPARTMENT

(Regulation Wing)

No.SOR.IV(ED)/6-1/2023

Dated, Peshawar, the February 28th, 2023

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To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Local Government Department.

GOVT. OF KP
Query No 1261
Date 1-3-23
LG & RD

SUBJECT: EXECUTION PETITION NO.164/2021 IN SERVICE APPEAL NO.457/2018 VS GOVERNMENT OF KHYBER PAKHTUNKHWA AND OTHERS.

Dear Sir,

I am directed to refer to your letter No.SO(E-11)LG/3-398/PF/2021 dated 23.01.2023 on the subject noted above and to state that views of the Establishment Department are as under:-

S.No	Queries raised by Administrative Department	Advice of Establishment Department
i.	Whether the name of Syed Hasnain Kazmi, on his reinstatement into service as Assistant Director can be included in the seniority list of his colleagues who are promoted to the post of Deputy Director (BPS-18) during the period of his removal.	<p>As per notified service rules of the Local Government Department dated 1.8.2018 read with Rule-7 of the Civil Servants (Appointment Promotion & Transfer) Rules, 1989, the post of Deputy Director (BS-18) is required to be filled by "promotion on the basis of seniority-cum-fitness from amongst Assistant Directors with at least five years service as such" with the recommendations of Provincial Selection Board and subsequent approval of Chief Minister.</p> <p>Secondly, the inter-se-seniority of a civil servant upon promotion to higher post is determined under Rule-17(4) of Civil Servants (Appointment Promotion & Transfer) Rules, 1989 which stipulates that the inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.</p> <p>Provided that if the date of regular appointment of two or more civil servants in the lower post is the same, the civil servant older in age, shall be treated senior.</p>

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		<p>Since, Syed Hasnain Kazmi has been reinstated into service as Assistant Director (BS-18 personal) by the Local Government Department on 7.12.2021 in pursuance of the Service Tribunal Judgment and his case has not yet been considered by the PSB for regular promotion to the post of Deputy Director (BS-18), therefore, inclusion of his name in the seniority list of Deputy Director (BS-18) is not advisable. However, upon his promotion as Deputy Director (BS-18) on regular basis he would retain his inter-se seniority over his erstwhile junior under the ibid rules.</p>
ii.	<p>Whether his case be considered for promotion to the post of Deputy Director (BS-18) on regular basis.</p>	<p>The Local Government Department after fulfillment of codal formalities, as already circulated to all the Administrative Departments with regard to submission of cases to the Provincial Selection Board, may submit the working paper, complete in all respect, with regard to regular promotion of the officer as Deputy Director (BS-18) for consideration of the Provincial Selection Board.</p>

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Yours faithfully,

Section Officer (R-IV)

Judgment Sh

PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

WP No. 1180/2012.

JUDGMENT

Date of hearing 19.06.2013.....

Petitioners. (Syed Tahir Abbas) *By Mr. M. Zafer Tahir Khedi, Advocate*

Respondents. (Government of Khyber Pakhtunkhwa etc) *By Mr. M. Zafer Tahir Khedi, Advocate*

WAQAR AHMED SETH .I. Petitioner Tahir Abbas

Ex-Assistant Director, seeks the constitutional jurisdiction of this court praying for that:-

"A. for a declaration to the effect that the petitioner being an ex-retrenched Assistant Director (B-17) of PUDB is entitled to be reinstated readjusted/absorbed against the available vacancy as other similarly retrenched Assistant Directors (B-17, who have been reinstated/absorbed in compliance with the direction of the Hon'ble Peshawar High Court

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dated 30.9.1999, as well as the decision in his WP No. 322/2009 dated 06.10.2011 and those of the august Supreme Court of Pakistan on the subject, without discrimination; and

- b. For an order, directing respondents to do the needful.
- c. Any other relief deems appropriate may also be granted."

2. In essence, the grievance of the petitioner is that he was selected as Assistant Director (Civil) and appointed in the Provincial Urban Development Board by the Managing Director vide appointment order dated 18.10.1993 on contract basis for a period of one year. Having served for a period of seven years, without any break his services were terminated along-with 17 others Assistant Directors on 30.5.1998 without prior notice, or reason. Petitioner filed a writ petition No. 978/1998 and petitioner was allowed to continue in service pending adjudication of the main writ petition. Several other employees, whose services were terminated also filed writ petitions and subsequently vide consolidated judgment dated 30.9.1999, all the writ petitions were disposed of directing the respondents to refrain from fresh recruitment without considering the petitioner for appointment on available vacancies on merits and in PMU's Plan

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their cases on the basis of last come first go. Thereafter, petitioner moved the Supreme Court of Pakistan through civil petition No. 1241 of 2002, which was heard by the full bench and disposed of as under:-

"Date of hearing: 16.3.2005: ORDER

At the conclusion of the arguments, it was observed that the petitioner being a junior most, his service was rightly terminated due to retrenchment.

Any how it is stated at the bar that even after his retrenchment the Government has appointed other persons like Ghulam, Sadiq. In the circumstances the petitioner is advised to resort to the Government which, in turn, should consider the case of the petitioner being a previous employee of the Board in accordance with law.

With these remarks the petition is disposed accordingly."

3. Accordingly, petitioner approached the respondent department through application dated 22.12.2005 but the department failed to make any positive response and, as such, petitioner once again filed writ petition No. 322/2009. The said petition came up for hearing before the Division Bench on 6.10.2011 and the Bench was pleased to direct the Secretary Local Government to consider the case of the petitioner fairly, honestly, justly and in accordance with law and the rules on the subject and also to keep in mind the miseries which the petitioner has faced during the long chain of litigation. Moreover, when he has not yet get the fruit of the same and even if his case is not coming within the scheme of rules then, some mercy be

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shown to him on humanitarian grounds while considering the case of petitioner from all angles. Finally, the departmental authority passed order dated 5.23.2012 refusing to adjust the petitioner, hence, this writ petition

4. The case of respondent/department is that petitioner being a project employee and upon winding up of the said project his services was terminated and that all the writ petitions of project employees have been dismissed up to the apex court including the petitioner hence, he has got no fresh cause of action.

5. Arguments heard and record perused.

6. Petitioner was appointed as Assistant Director (Civil) in BPS-17 by the competent authority i.e. Managing Director PUDB but in a project called Management Unit vide letter of appointment dated 18.10.1993. In earlier round of litigation, it was held that the petitioner was employed purely on contract basis till the life of project but again in the year 2009 petitioner filed writ petition No. 322/2009 in which it was held as under, vide order dated 06.1.2011:-

"DOST MUHAMMAD KHAN J. After arguing this case at some length, learned counsel for the parties agreed that the petitioner namely Syed Tahir Abbas, is entitled and deserved to be fairly & properly reconsidered according to the prayer he has made in this petition but the Departmental Authority also keep in kind the judgment of this court dated 30.5.2002 and that of the Hon'ble

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the petitioner would be strictly considered on merits according to the law, rules on the subject and guidance given in the two judgments of this court and the Hon'ble Apex Court and he will not be discriminated in any manner.

Accordingly, this petition is sent in original to the Secretary Local Government (respondent No. 1) with the direction to consider the case of the petitioner fairly, honestly, justly and in accordance with law and rules on the subject and also be kept in kind the miseries, the petitioner has confronted during the long chain of litigation, moreso, when he has not yet got the fruit of the same and even if his case is not coming within the scheme of the rules then, some mercy be shown to him on humanitarian grounds while considering the case from all angles. The Secretary Local Government shall decide the same positively within one month from the date of receiving the case file. In case, respondent No. 1 passed any adverse order against the petitioner then, he shall have to give elaborate judgment, giving strong reasons therefor.

"Petition disposed of accordingly while a set of photocopies of the instant petition be retained by the office for record."

7. Likewise in earlier round of litigation the Hon'ble Apex Court in CP No. 1241 of 2002 titled "Syed Tahir Abbas versus Government of NWFP etc" dated 16.3.2005 ordered:-

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ORDER:

"At the conclusion of the arguments it was observed that the petitioner being a junior most, his service was rightly terminated due to retrenchment.

Anyhow, it is stated at the bar that even after this retrenchment the government has appointed other persons like Ghulam Sadiq. In the circumstances, the petitioner is advised to resort to the government which, in turn, should consider the case of the petitioner being a previous employee of the board in accordance with law.

With these remarks the petition is disposed of accordingly."

8. The record of the department reveals that out of 27 terminated Assistant Directors, 15 were reinstated in various developmental authorities, two (02) were adjusted in provincial Inspection Team and Workers Welfare Board. Three Assistant Directors were adjusted in Community Infrastructure Project, Peshawar. However, 07 Assistant Directors including petitioner were kept waiting for their posting in spite of the fact that number of posts were lying vacant right from 2003.

9. According to document dated 02.10.2003 (Annexure 'D-1) page-49 of the writ petition, there were 20 vacant posts of Assistant Directors PBS-17 in CD & MD and due to the absence of these Assistant Directors the...

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Directors were urgently required to supervise the ongoing project in Rally Model Town, Hayat Abad township and other projects of the city. In spite of all this, petitioner was engaged in litigation during this period.

10. Instead of adjusting the petitioner a number of fresh appointments were made and colleagues of the petitioner were adjusted but petitioner was ignored under malafide intention. Few such appointments are "*Miss Vagma Gul & Tabinda Nosheen*" were appointed vide order No. SO (LG-1) 4-3/Das/09 dated 19.9.2009. In addition to these fresh appointments, one Abdul Ghafoor who has also been readjusted in the light of judgment of the Supreme Court of Pakistan vide Notification No. SO (LG-1) 3-507.PHC/2009 dated 24.3.2010. In addition to this, vide office order 17.3.2003 one Javed Iqbal has been adjusted on the directive of the Hon'ble Chief Minister. KPK and Ghulam Sadiq has been reinstated / regularized vide order dated 22.7.2003. Moreover, one Muhammad Tariq Kundi of Project Management Unit has been reappointed vide order dated 10.1.2011. Annexure 'K' page 77 of the writ petition is referred.

11. The record is suggestive of the fact that after the decision of Supreme Court, a joint seniority list was prepared and the said Abdul Ghafoor, whose case has been found at par with the petitioner.

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has been adjusted on Juxta-position with other 10 Assistant Directors but the petitioner has been discriminated.

12. Today, at the time of arguments the office produced two writ petitions i.e. "Vo 1547/2011 Maqbool Ahmed versus Secretary etc and WP No. 1552/2011 Tariq Mahmood versus Government etc" which were dismissed on 27.2.2013, on perusal whereof, these are found quite different in characteristics and not relevant. Nothing is on the record that both these petitioners approached the court of law or were considered by the department against the vacant posts whereas petitioners attached documents showing that he remained in picture, throughout, hence this writ petition has its own merits.

13. According to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 which reads as under:-

- "Equality of Citizens: 1) All citizens are equal before law and are entitled to equal protection of law.
- (2) There shall be no discrimination on the basis of sex (xxx).
- (3) Nothing in this Article shall prevent the state from making any special provision for the protection of women and children."

Whereas Article 38 (b) says that-

- (b) "Provide for all citizens, within the available resources of the country, for the

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Whereas the respondent is respondent of the fact that the petitioner has been in the same time and again and in view of the above while in the instant with petition, the respondents are directed to admit the petitioner, immediately with all consequential benefits except wages. The reasons for not allowing the wages for the intervening period is that petitioner has not worked during this period and as principle no work no pay. Order accordingly.

Announced
Dated: 19.6.2013


JUDGE


JUDGE

3/7/13

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Whereas, the record is suggestive of the fact that the petitioner has been discriminated time and again and in view of the above, while allowing the instant writ petition, the respondents are directed to adjust the petitioner, immediately with all consequential benefits except wages. The reasons for not allowing the wages for the intervening period is that petitioner has not worked during this period and as principle no work no pay. Order accordingly.

Announced
Dated: 19.6.2013


JUDGE


JUDGE



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ADVANCED DIPLOMA
RTO 31226

This is to certify that

SYED KAZMI

has fulfilled the requirements for:

BSB60407 ADVANCED DIPLOMA OF MANAGEMENT

*This qualification is recognized within
the Australian Qualifications Framework*

A summary of the employability skills developed through this qualification can be downloaded from
<http://employabilityskills.training.com.au>



NATIONALLY RECOGNISED
TRAINING

Date: 30th August 2013
Document No: MCT - GQ0279

Johnson Oyelodi
CEO

METRO

College of Technology
Pty. Ltd.



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Final Record of Achievement

Student Name: SYED KAZMI
Certificate No: MCT- GQ0279
Course Name: BSB60407 ADVANCED DIPLOMA OF MANAGEMENT
Result: COMPETENT
Date: 30th August 2013

Having been assessed in accordance with the requirements of the
BSB07 – BUSINESS SERVICES TRAINING PACKAGE

You have achieved competency in the following units in
BSB60407 ADVANCED DIPLOMA OF MANAGEMENT

<u>UNIT CODE</u>	<u>SUBJECT NAME</u>
BSBINN601B	MANAGE ORGANISATIONAL CHANGE
BSBMGT605B	PROVIDE LEADERSHIP ACROSS THE ORGANISATION
BSBMGT616A	DEVELOP AND IMPLEMENT STRATEGIC PLANS
BSBCOM603C	PLAN AND ESTABLISH COMPLIANCE MANAGEMENT SYSTEMS
BSBINM601A	MANAGE KNOWLEDGE AND INFORMATION
BSBMGT608C	MANAGE INNOVATION AND CONTINUOUS IMPROVEMENT
BSBMGT615A	CONTRIBUTE TO ORGANISATION DEVELOPMENT
BSBR501B	MANAGE RISK

The above results were achieved through enrolment in Metro College of Technology Pty Ltd
BSB60407 ADVANCED DIPLOMA OF MANAGEMENT

Johnson Oyelodi
Chief Executive Officer
Dated: 30th August 2013



GOVT. OF KHYBER PAKHTUNKHWA
LOCAL GOVT. ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT

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17th July, 2023

AUTHORITY LETTER

Mr. Azaz-ul-Hassan, Assistant Director (Litigation), Directorate General LG,E&RD Peshawar is hereby authorized to submit report in case titled "Execution Petition No.164/2021 in Service Appeal No.457/2018- Syed Hasnain Kazmi VS Govt of Khyber Pakhtunkhwa etc" in the Service Tribunal Peshawar on behalf of Secretary LG,E&RDD.


SECTION OFFICER (LITIGATION)

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Execution Petition No.164/2021
In Service Appeal No.457/2018

Syed Hasnain Kazmi

.....Appellant

VERSUS

Govt of Khyber Pakhtunkhwa etc

.....Respondents



AFFIDAVIT

I, Azaz ul Hassan, Assistant Director (Litigation) (BS-17), Directorate General LG&RD Peshawar do hereby solemnly affirm and declare on oath that the report in Execution Petition No.164/2021 in Service Appeal No.457/2018- Syed Hasnain Kazmi VS Govt of Khyber Pakhtunkhwa etc are true and correct to the best of my knowledge & belief and nothing has been concealed from this Honorable Court.

DEPONENT
CNIC#17301-2416976-9
Mobile # 0336-9170959

IDENTIFIED BY





Government of Khyber Pakhtunkhwa
Law, Parliamentary Affairs & Human Rights Department

No. AL/2022/110
Dated: 15-2-2023

15-2/2022/KC
Feb, 2023

To

The Secretary
Government of Khyber Pakhtunkhwa,
Local Government, Election & Rural Development

Attention: Section Officer (E-II)

Subject: MINUTES OF THE MEETING REGARDING EXECUTION PETITION OF SYED HASN, DIRECTOR (BPS-18 PERSONAL)

Dear Sir,

I am directed to refer to your Departmental Order No. 320/DGLG/2021, dated 13-12-2022, on the subject noted above. The Law Department upon the queries is as under:

Queries/points raised by the Administrative Department.	Views of Law Department.
(a) Start de novo inquiry as per approval already granted by the worthy Chief Minister (which could not be started earlier due to very late verification received from the concerned hospital of Australia through email).	That the de novo inquiry falls under the domain of the Law Department, to be conducted within the parameters of the Tribunal. Dated 04-06-2021 in judgment No. 457/2018.
(b) The petitioner is not entitled to arrears and back benefits of the period of willful absence under the policy of "no work no pay" as enshrined in Peshawar High Court judgment in W.P. No.1180/2012 dated 19-06-2013.	It is settled law that when there is no work no pay, Reliance is placed on the judgment of Supreme Court of Pakistan No. R 228. Hence, the petitioner may file an objection petition under Section 47 of the Civil Procedure Code in the Service Tribunal. No.164/2021.

You

AS(Lit) 13/02

9/2/2023

Assistant

Endst: of even No. date.

Copy is forwarded to the:-

1. PS to Secretary, Law Department.
2. Master File.

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DS (Lit) 13/2
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21. Objections to jurisdiction.
22. Power to transfer suits which may be instituted in more than one Court.

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MENTATION OF MI. ASSISTANT

No. SOE/LG/2-
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inquiry falls under the domain of the Law Department, to be conducted within the parameters of the Tribunal. Dated 04-06-2021 in judgment No. 457/2018.

It is settled law that when there is no work no pay, Reliance is placed on the judgment of Supreme Court of Pakistan No. R 228. Hence, the petitioner may file an objection petition under Section 47 of the Civil Procedure Code in the Service Tribunal. No.164/2021.

y,

Assistant

Assistant

parties and have also perused the record of the case. It may be pointed out that under the Rules, the said items are liable to duty tax/royalty and for such purpose publication was made under the Rules and in open auction petitioner being highest bidder was given contract and there is nothing on record to show that any Government department is exempted from tax/duty; thus the contention of Syed Ayyaz Zahoor, Advocate for the petitioners has substance. Admittedly the petitioners are extracting Bajri, sand, stone crush from Hub River and other parts of District Lasbela which is liable to payment of royalty, therefore, petition is allowed as prayed for. Respondent to pay tax in future and also to pay arrears i.e. w.e.f. 24-2-2001 on the material already extracted by them.

(6) Petition is allowed in the above terms with no order as to costs."

The impugned judgment is not open to exception, as it is well-reasoned and based on the law. There is no material irregularity or illegality.

8. For the facts and reasons stated hereinabove, were are of the considered view, that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

Q.M.H./M.A.K./C-64/S

Petition dismissed.

2003 S C M R 228

[Supreme Court of Pakistan]

*Present: Syed Deedar Hussain Shah
and Tanvir Ahmed Khan, JJ*

**Syed NIAZ HUSSAIN SHAH BUKHARI, TECHNICIAN
(PROCESS)---Petitioner**

versus

**OIL AND GAS DEVELOPMENT CORPORATION LIMITED through
Chairman, OGDC Head Office, Islamabad---Respondent**

Civil Petition For Leave to Appeal No.51 of 2002, decided on 11th September, 2002.

(On appeal from judgment dated 2-11-2001 passed by the Federal Service Tribunal, Islamabad, in Appeal No.1076(R)CE of 2000)

(16)
(a) Civil service---

---Pay, entitlement to---When there is no work, there is in no pay.
[p. 231] C

(b) Civil service---

---Salary, refund of---Civil servant after obtaining stay order against his transfer was allowed to continue his duties at original place, where he was paid salary for about three years.---Authority deducted from salary of civil servant the amount paid to him as salary for the period when he remained absent from duty---Service Tribunal dismissed appeal of civil servant---Validity---Civil servant had not performed his duties either at original place or at transferred place, thus, was not entitled to salary---Period for which refund of salary was effected from civil servant was the period for which, he had not worked---When there was no work, there was no pay---Recovery had rightly been effected from civil servant---Impugned judgment was not open to exception as there was no jurisdictional error or misconstruction of facts and law---No substantial question of law of public importance as envisaged under Art. 212(3) of the Constitution was made out---Supreme Court dismissed petition for leave to appeal in circumstances---Constitution of Pakistan (1973), Art. 212(3). [pp. 230, 231] A, B, C, D, E & F

Sadiq Muhammad Warraich, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record (absent) for Petitioner.

Sardar Muhammad Aslam, Dy. A.G. and M.S. Khattak, Advocate-on-Record for Respondent.

Date of hearing: 11th September, 2002.

JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.---Petitioner seeks leave to appeal against that judgment of the Federal Service Tribunal, Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No.1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and Regulations, 1974 and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the respondent started deductions from the salary of the petitioner i.e. the amount which had

SCMR

been paid to him as salary, during the period he worked at Missa Kiswal on the strength of the stay order of NIRC.

3. Feeling aggrieved, the petitioner approached the Tribunal by way of appeal, which was dismissed. Hence, this petition.

4. We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia, contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 13-2-1999 issued by the respondent/Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

5. Sardar Muhammad Aslam, learned Dy.A.G. vehemently controverted the contention of the learned counsel for the petitioner and pointed out that no doubt NIRC issued an injunction to the petitioner but the same was re-called by the Tribunal on 18-8-1996. He has also referred to the appeal of the petitioner which is at page 57 of the paper book, in which he has stated as under:

"I had reported for duty at Pirkoh Gas Field. Therefore, regularizing the period of stay, ordered by the Court as E.O.L is injustice with me."

On his application office submitted summary to the Chief Personnel Officer of the respondent/Corporation, which reads as under:

"(70) Reference para-180/N, it is submitted that as per message No.MK.1331 dated 26-11-1999 (P-244/Cor.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal Oil Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa Kiswal Oil Field, after getting stay order from NIRC. O.M.(F), Missa Kiswal Oil Field, did not confirm whether he performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neither claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharge due to his non-performance of any duty

"(71) In view of above, if approved by Manager (Personnel), his request may be regretted in the light of earlier decision as per para.141-A. please."

The perusal of the above document shows that the petitioner did not perform his usual duties and was not entitled to salary as claimed by him.

6. Sardar Muhammad Aslam, learned Dy.A.G. further pointed out that

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recovery has already been effected from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted to his Managerial post.

7. We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception.

8. Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out.

9. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

S.A.K./N-100/S

Petition dismissed.

2003 S C M R 231

[Supreme Court of Pakistan]

Present: Qazi Muhammad Farooq, Rana Bhagwandas
and Abdul Hameed Dogar, JJ

MUHAMMAD YASEEN---Appellant

versus

THE STATE---Respondent

Criminal Appeal No.109 of 2002, decided on 19th September, 2002.

(On appeal from the judgment dated 31-5-2002 of the Lahore High Court, Lahore, passed in Criminal Appeal No.207 of 1996 and Murder Reference No.134 of 1996).