


ORDER
27.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for official respondent No. 1 to 3 present. Counsel for private respondent No. 4 present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in service appeal bearing No. 1225/2019 "titled Momin Khan Versus Assistant Director, Local Government & Rural Development, Lakki Marwat and three others" is accepted, the impugned order of his termination from service is set aside and appellant is reinstated into service against his respective position with all back benefits with further direction that private respondent also shall not suffer for lapses of the respondents, hence he also be accommodated. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
27.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

06.01.2022

Clerk to counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Clerk to counsel for the appellant requested for adjournment on the ground that counsel for the appellant is not available today, due to general strike of the bar. Adjourned. To come up for arguments before the D.B on 14.01.2022.



(Atiq-Ur-Rehman Wazir)
Member (E)



Chairman

14.01.2022

Learned counsel for the appellant present. Mr. Riaz Khan Paindakheil, Assistant AG for respondents present. Junior to counsel for private respondent No. 4 present and requested for adjournment as senior counsel for private respondent No. 4 is not available today. Adjourned. To come up for arguments before the D.B on 27.01.2022.



(Atiq-Ur-Rehman Wazir)
Member (E)




Chairman

02.11.2021

Counsel for the appellant, Mr. Muhammad Adeel Butt, Addl. AG for the official respondents and counsel for respondent No. 4 present.


The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 07.02.2022 before the D.B.


Chairman

06.12.2021

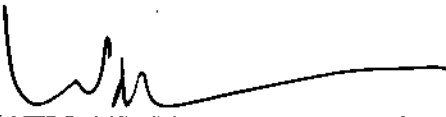
Learned counsel for the appellant present. Mr. Mohsan Khan Kundi, Assistant Director alongwith Mr. Kabirullah Khattak, Additional Advocate General for official respondents No. 1 to 3 and junior of learned counsel for private respondent No. 4 present.


Junior of learned counsel for private respondent No. 4 sought adjournment on the ground that learned senior counsel is busy before the august Supreme Court of Pakistan. Adjourned. Case to come up for arguments on 06.01.2022 before the D.B.


(Salah-ud-Din)
Member (J)


Chairman

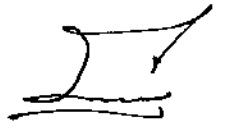
30.06.2021 Mr. Arbab Saif-ul-Kamal, Advocate, for the appellant present. Muhammad Adeel Butt, Additional Advocate General for official respondents No. 1 to 3 present. Mr. Taimur Ali Khan, Advocate, on behalf of private respondent No. 4 present and submitted Memo of appearance with request that he will submit Wakalatnama on behalf of private respondent No. 4 on the next date. The Memo of appearance is placed on file of Service Appeal bearing No. 1080/2018. Adjourned. To come up for arguments before the D.B on 15.07.2021.


(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

15.07.2021 Mr. Arbab Saif-ul-Kamal, Advocate, for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for official respondents No. 1 to 3 present. Mr. Tariq Qurashi, Advocate, on behalf of private respondent No. 4 present and requested for adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments before the D.B. on 16.08.2021.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

16.08.2021 Since 16.08.2021 has been declared as Public holiday on account of Moharram, therefore, case is adjourned to 29.11.2021 for the same as before.


Reader

28-12-2020


Due to summer vacation, case is adjourned to
01-02-2021 for the same as before.

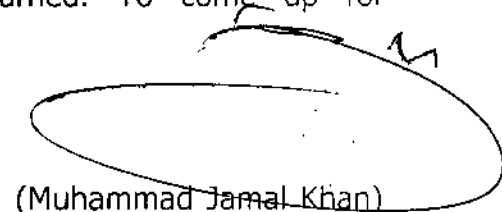

Reader

01.02.2021

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for official respondents No. 1 to 3 and private respondent No.4 in person present.

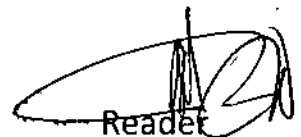
Private respondent No.4 requested for adjournment that his counsel is not available today. Adjourned. To come up for arguments on 30.03.2021 before D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)


(Muhammad Jamal Khan)
Member (J)

30.03.2021

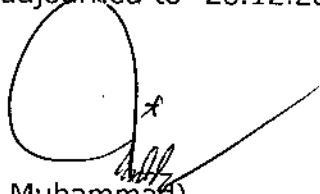
Due to non availability of the concerned D.B, the case is adjourned to 30.06.2021 for the same.


Reader

03.11.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 28.12.2020 for hearing before the D.B.



(Mian Muhammad)
Member

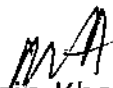


Chairman

05.03.2020

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for official respondents No. 1 to 3 and private respondent No. 4 in person present. Private respondent No. 4 requested for adjournment on the ground that his counsel is not available today. Private respondent No. 4 is strictly directed to produce his counsel on the next date positively. Adjourned to 02.04.2020 for arguments before D.B.


(Mian Mohammad)
Member


(M. Amin Khan Kundi)
Member

2. 6. 2020 *one to public hearing on account of COVID-19 > the case is adjourned. To come up for same on 29.6.2020.*

29.06.2020

Due to COVID-19, the case is adjourned to 24.08.2020 for the same.


Reader


24.08.2020

Due to summer vacation case to come up for the same on 03.11.2020 before D.B.


Reader

12.09.2019 Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Junior counsel for the appellant requested submitted rejoinder, which is placed on record. Junior counsel for the appellant also requested for adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned to 18.11.2019 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

18.11.2019 Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for official respondents No. 1 to 3 and private respondent No. 4 in person present. Private respondent No. 4 requested for adjournment on the ground that his counsel is not available today. Adjourned to 16.01.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member


16.01.2020 Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for official respondents present. Adjourned to 05.03.2020 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

25.04.2019

Appellant in person present. Addl: AG alongwith Mr. Yousaf Jan, Secretary Village Council for official respondents and private respondent no.4 in person present. Written reply on behalf private respondent no.4 not submitted. Requested for adjournment. Adjourned. Case to come up for written reply of respondent no.4 on 19.06.2019 before S.B.


(Ahmad Hassan)
Member

19.06.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for official respondents No. 1 to 3 preset. Joint para-wise comments on behalf of official respondents No. 1 to 3 has already been submitted. Neither private respondent No. 4 present nor written reply on his behalf submitted therefore, notice be issued to him to submit written reply on the next date by way of last chance. Case to come up for written/comments on behalf of private respondent No. 4 on 12.07.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member

12.07.2019

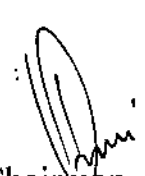
Counsel for the appellant and Addl. AG for official respondents No. 1 to 3 who already submitted written reply. Respondent No. 4 in person present and submitted written reply. To come up for arguments on 12.09.2019 before the D.B. The appellant may submit rejoinder within a fortnight, if so advised.


Member

04.2.2019

Counsel for the appellant and Addl. AG alongwith Yousaf Khan, AD for the official respondents present. Mr. Muhammad Tariq Qureshi, Advocate has submitted Wakalatnama on behalf of respondent No. 4 which is placed on file.

Representative of the official respondents states that the requisite reply is in the process of preparation and will positively be submitted on the next date of hearing. Adjourned to 27.03.2019 before S.B. The private respondent No. 4 may also furnish reply to the appeal on the next date, if so advised.


Chairman

27.03.2019

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Yousaf Khan AD for official respondents present. Learned counsel for private respondent No.4 also present. Written reply submitted on behalf of official respondents. Learned counsel for private respondent No.4 seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on behalf of private respondent No.4 on 25.04.2019 before S.B.


Member

11.12.2018

Counsel for the appellant Farman Ullah present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as Naib Qasid in Local Government Department by the competent authority vide order dated 15.03.2016 on the recommendation of Selection and Recruitment Committee. It was further contended that someone was aggrieved from the appointment order of the appellant therefore, he filed Writ Petition against the appellant in the Worthy Peshawar High Court Peshawar and the Worthy Peshawar High Court Peshawar disposed of the Writ Petition vide order dated 28.02.2018 and directed the competent authority to re-examine the appointment of the private respondents, merit position of the appellant and pass an appropriate order keeping in mind the rules, policy and the terms and conditions incorporated in the advertisement for appointment of Class-IV employees, after providing the parties an opportunity of hearing and thereafter the competent authority vide order dated 18.04.2018 terminated the appellant from service. It was further contended that the appellant filed departmental appeal on 11.05.2018 but the same was not responded hence, the present service appeal. It was further contended that neither the appellant was issued any show-cause notice nor the appellant was provided opportunity of personal hearing but the competent authority has passed the impugned termination order illegally therefore, the impugned order is liable to be set-aside.

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit of security and process fee, thereafter notice be issued to the respondents for written reply/comments for 04.02.2019 before S.B.

Appellant Deposited
Security Fee


(Muhammad Amin Khan Kundi)
Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1147/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/09/2018	<p>The appeal of Mr. Farman Ullah resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 13/9/18</p>
2-	15-9-18 23-10-18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24-10-2018</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p> <p><i>Due to retirement of Honorable Chairman the Tribunal is non functional therefore the case is adjourned to come up for the same on 11-12-2018</i></p> <p style="text-align: right;"><i>[Signature]</i> Reader</p>

The appeal of Mr. Farmanullah son Sakht Amir Khan Ex-Naib Qasid Billage Council Khero Khel Pacca Lakki Marwat received today i.e. on 03.09.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copy of departmental appeal mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 1788/S.T,

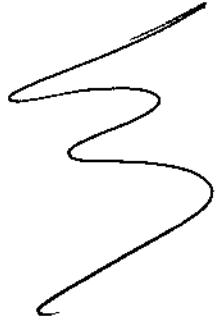
Dt. 03 - 9 /2018.

Saadullah
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

Sir

*Re-submitted after
completion.*



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 1147/2018

Farman Ullah

versus

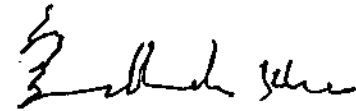
Assistant Director & Others

INDEX

S. No	Documents	Annex	P. No.
1.	Memo of Appeal		1-4
2.	Advertisement dated 04-07-2015	"A"	5
3.	Appointment order dated 15-03-2016 / Arrival report	"B"	6-7
4.	W.P / Judgment dated 28-02-2018	"C"	8-13
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8.	Appointment of R. No. 04, 19-04-2018	"G"	18
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Appellant

Through



Dated: 29.08.2018

Saadullah Khan Marwat
Advocate.
21-A Nasir Mansion,
Shoba Bazaar, Peshawar.
Ph: 0300-5872676
0311-9266609

BEFORE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 1147/2018

Farman Ullah S/O Sakht Amir Khan,
R/O Pahar Khel Pacca, Lakki Marwat,
Ex-Naib Qaisd; Village Council
Khero Khel Pacca,
Lakki Marwat. Appellant

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 1384

Dated 03/9/2018

VERSUS

1. Assistant Director, Local Government
& Rural Development Department,
Lakki Marwat.
2. Director General, Local Government
& Rural Development Department, Peshawar.
3. Secretary, Govt. of KP, Local Government
& Rural Development Department, Peshawar.
4. Kamran Ullah S/O Naik Daraz Khan,
Naib Qasid, Village Council Khero Khel
Pacca, Lakki Marwat Respondents

Filed to-day
Registrar
13/9/18

⇄<=>⇄<=>⇄<=>⇄<=>⇄

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OFFICE ORDER NO. 5222-27, DATED
18-04-2018 OF RESPONDENT NO. 1 WHEREBY
SERVICES OF APPELLANT WERE TERMINATED
AND R. NO. 04 WAS APPOINTED AS NAIB QASID
FOR NO LEGAL REASON:

⇄<=>⇄<=>⇄<=>⇄<=>⇄

Respectfully Sheweth;

1. That on 04-07-2015, R. No. 01 floated advertisement in daily Newspapers for appointment of Class-IV servants in their respective Village Council. (Copy as annex "A")

2. That after going through the prescribed procedure of selection, appellant was appointed as Naib Qasid on regular basis on the recommendations of Selection and Recruitment Committee vide order dated 15-03-2016 and assumed the charge of the said assignment on 18-03-2016. (Copies as annex "B")
3. That on 31-05-2016, R. No. 04 filed W. P. before the Peshawar High Court, Circuit Bench Bannu to declare the order of appointment of appellant as illegal and he be appointed as such, which petition came up for hearing on 28-02-2018 along with other connected Writ Petitions on the same point and then the hon'ble court was pleased to hold that:-

"All the cases are remitted back to R. No. 01 to re-examine the appointments of the private respondents and passed an appropriate order in light of Rules and Policy after providing the parties an opportunity of hearing. The entire process shall be completed within two (02) months positively. The Writ Petitions were disposed off accordingly". (Copy as annex "C")

4. That after remitting of the said judgment to R. No. 01 for compliance, Show Cause Notice was issued on 30-03-2018 to appellant to explain his position which was replied on 12-04-2018. (Copies as annex "D" & "E")
5. That on 18-04-2018, R. No. 01 terminated services of appellant with immediate effect on the score that he was not the appointee of his own Village Council. (Copy as annex "F")

Here it would be not out of place to mention that R. No. 01 appointed numerous other candidates not in their own Village Council but in others i.e. Umair Ahmad Village Council Khero Khel Pakka appointed at Serai Naurang-III, Faheem Ullah VC Khero Khel Pakka appointed at VC Gerzai, Washeullah VC Wanda Aurangzeb appointed at VC Attashi Mechan Khel, Ezat Khan VC Wanda Saeed Khel appointed at VC Kalin, Sher Nawaz VC Issik Khel appointed at VC Wanda Baru, Siffat Ullah VC Khokidad Khel Lakki City appointed at VC Jung Khel, Momin Khan VC Lakki City appointed at VC Abdul Khel, etc their services are still retained till date, so appellant was not treated alike and discriminated.

6. That on 19-04-2018, R. No. 04 was appointed as such by R. No. 01 on the post of appellant. In the judgment, the hon'ble court never directed the authority to appoint R. No. 04 as Naib Qasid and to terminate services of appellant. (Copy as annex "G")
7. That on 11-05-2018, appellant submitted representation before R. No. 02 for reinstatement in service which met dead response till date. (Copy as annex "H")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That appellant has in his credit the educational qualification up to Middle.
- b. That appellant applied to the said post of his own Village Council and it was incumbent upon the department to appoint him as such in his own Village Council and not in any other. He could not be held responsible for the lapses of the respondents, if any.
- c. That when the matter taken to the court, the department was legally bound to transfer appellant even other incumbents to their own Village Council to save their skins.
- d. That as and when Show Cause Notice was issued to appellant regarding appointment in other Village Council, then he should rectify the mistake, if any, because the lapses were on the part of the authority and not of the appellant and in such situation, he could not be made responsible for the same.
- e. That appellant was appointed as per prescribed manner after observing the due codal formalities.
- f. That as per law and rules, appellant is liable to serve anywhere in District, outside District / Province even outside Country, then he can be appointed anywhere for the purpose being citizen of the country.

- g. That it is to be ascertained as to whether R. No. 04 has applied to the said post or otherwise. In such a situation the department was legally bound to advertise the said post.
- h. That R. No. 04 was never gone through the process of selection, so at such a belated stage when his name was not recommended by the Departmental Selection / Recruitment Committee, he could not be appointed straight away as such.
- i. That in the aforesaid circumstances, order of appointment of R. No. 04 was not only illegal but was ab-initio void. The same was based on favoritism.
- j. That service law is alien to the word "Termination", so on this score alone, order of termination of appellant is / was illegal.
- k. That order of appointment of appellant was acted upon, effected and got finality, the same was made by the competent authority and cannot be rescinded in the manner taken.
- l. That appellant was paid Monthly Salaries for about 02 Years and 02 Months which gave vested right to him.
- m. That order of termination of appellant from service is based on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 18-04-2018 of R. No. 01, and appointing R. No. 04 as Village Council be set aside and appellant be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.

فسر 106

Appellant

Through



Saadullah Khan Marwat

Dated.29.08.2018



Amjad Nawaz
Advocates.

A S

دفتر ڈائریکٹر جنرل محکمہ بلدیات و
دیہی ترقی صوبہ خیبر پختونخواہ پشاور

اشتہار برائے کھرتی کلاس-IV (BPS-01)

محکمہ ہذا کی طرف سے درج ذیل خالی آسامیوں کو پُر کرنے کے لئے صوبہ خیبر پختونخواہ کے ڈویژنل کے حامل اہل امیدواروں سے درخواستیں مطلوب ہیں جو کہ اس اشتہار کے اشاعت کے پندرہ یوم کے اندر اندر متعلقہ ضلع کے اسٹنٹ ڈائریکٹر محکمہ بلدیات و دیہی ترقی کے دفاتر میں دفتری اوقات کار کے دوران بمقام تصدیق شدہ دستاویزات جمع کرائی جاسکتی ہیں۔

تفصیل آسامیاں و مطلوبہ قابلیت اور درکار عمر کی حد نیچے درج ہیں۔

نمبر شمار	ضلع	نام آسامی	بنیادی سکیل	مطلوبہ قابلیت	عمر کی حد
1	مستقلہ	کلاس-IV	01	متعلقہ ضلع اور ایچ ایچ ایچ ڈی کنسل کا مستقل باشندہ ہو۔	18-40

1- گورنمنٹ ملازم کو ترجیح دی جائے گی۔

2- متعلقہ ضلع کے باشندے کو ترجیح دی جائے گی۔

مطلوبہ قابلیت اور دیگر شرائط پر پورا اترنے والے امیدواروں سے درخواست اس اشتہار کی اشاعت کے پندرہ (15) یوم کے اندر اندر اپنے دستاویزات اپنے ڈویژنل کے حامل ضلع کے اسٹنٹ ڈائریکٹر محکمہ بلدیات و دیہی ترقی کے دفتر میں جمع کرائے۔

ڈائریکٹر جنرل
محکمہ بلدیات و دیہی ترقی، خیبر پختونخواہ

اسٹنٹ

ص ۱۰ / ۱۵۷ / ۲۰۱۵

ASAS

B 6

OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVT. & RURAL DEVELOPMENT
DEPARTMENT, LAKKI MARWAT



Dated. 15 / 13 / 2016

OFFICE ORDER.

No. 4390-4402 / On the recommendations of Selection and Recruitment Committee, appointment of the following Naib Qasid, Village / Neighborhood Council is hereby ordered in BPS-01 Rs. (6210-195-12060) plus usual allowances as admissible under the rules existing policy of the Provincial government on the terms and conditions given below w.e.f the date of taking over their charge in the interest of public service, they will report for duty in the office of Village / Neighborhood Council Nazim mentioned against each:-

S.No	Name with Address	Village/ Neighborhood Council	Remarks
1	Farmanullah s/o Sakhtameer	Kherokhel Pacca	Against vacant Post

Terms and Conditions.

1. His services will be liable to termination on one month notice in advance from either side, but in case of resignation without notice, one month pay shall be refunded towards Government.
2. He will be on probation for a period of one year extendable for a further period of 12 months and during this probationary period he will not be entitled to apply for any long leave etc.
3. His services will be governed by such rules and regulations as are in vogue and as may be issued by the Government from time to time.
4. His services can be terminated at any time in case his performance is found unsatisfactory during probationary period and in case of misconduct, he will be proceeded against the Removal from Service (Special Power) Ordinance, 2000 and the rules made from time to time.
5. He should report his arrival to all concerned. He will also not be entitled to any TA/DA for his first arrival/joining duty but in case he is not willing to join the duty, he should furnish his un-willingness on a stamp paper to the office of the undersigned.
6. His services are also liable to be terminated if any of his documents is found fake or altered, at any later stage and that he will not entitle to undergo any litigation.
7. The undersigned deserves the rights to amend or add any condition to his appointment order.
8. He is required to produce Health and Age Certificate from the Medical Superintendent DHQ Hospital, Lakki Marwat within 15 days.
9. The appointment is made subject to the conditions that the candidate has a permanent domicile of District Lakki Marwat.

If the above terms and conditions are accepted, he should immediately communicate to this office, and report for duty to the undersigned within (15) days, failing which this appointment order may be treated as cancel in respect of the candidate.

(Ali Asghar)
Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat

Even No. & Date.

Copy forwarded to:-

1. The Director General, Local Govt. & Rural Development Deptt: KP, Peshawar.
2. The District Nazim, District Government Lakki Marwat.
3. The Deputy Commissioner/ Chairman Selection Committee, Lakki Marwat.
4. PS to Senior Minister LG&RDD, Khyber Pakhtunkhwa Peshawar.
5. PS to Secretary LG&RDD Khyber Pakhtunkhwa, Peshawar.
6. The Section Officer (Estab), Khyber Pakhtunkhwa, Peshawar.
7. Tehsil Municipal Officer / Member Selection Committee, Lakki Marwat.
8. The District Accounts Officer, Lakki Marwat.
9. The Nazim NC/VC concerned District Lakki Marwat.
10. All Supervisors LG&RDD, Lakki Marwat
11. Official concerned.
12. Office Order File.

Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat

Adams
B


7

The Assistant Director,
I.G.&RDD Lakki Marwat.

Subject: ARRIVAL REPORT

R/Sir,

In compliance of your order No. 4390-4402 dated 15/03/2016, I Farman Ullah S/O Sakhta Mir submit my arrival report as Naib Qasid (BPS-01) village Council Kheru Khel Pacca District Lakki Marwat today on 18/03/2016 at 10:00 F.N.



Farman Ullah
Naib Qasid
Village Council Kheru Khel Pacca
Lakki Marwat

Copy to:

1. The Secretary, Village Council, Kheru Khel Pacca, Lakki Marwat.

Accepted

KAMRAN ULLAH
Naib Qasid
Village Council Kheru Khel
Pacca Lakki Marwat

Assistant Director
Local Government
District Lakki Marwat


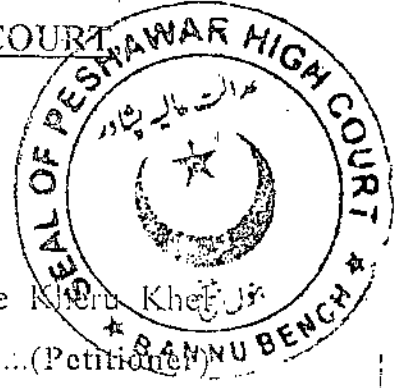
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BEFORE THE AUGUST PESHAWAR HIGH COURT

BANNU BENCH.

Writ Petition No. 316 of 2016.

Kamranullah S/O Naik Daraz Khan R/O village Kheru Khel
Pacca, Tehsil & District Lakki Marwat.....(Petitioner)



.....Versus.....

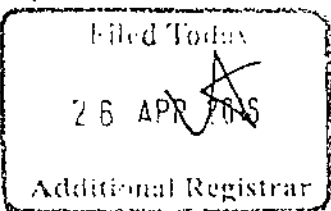
- 1- Government of Khyber Pakhtunkhwa through Secretary Local Govt: KPK and Rural Development Department, Peshawar.
- 2- Director General, Khyber Pakhtunkhwa, Local Government and Rural Development Department, Peshawar.
- 3- Assistant Director General, Khyber Pakhtunkhwa, Local Government and Rural Development Department, Lakki Marwat.
- 4- Deputy Commissioner, Lakki Marwat.
- 5- District Accounts Officer, Lakki Marwat, and
- 6- Farmanullah S/O Sakhtamir Khan R/O Mohallah Naikman Khel village Pahar Khel Pacca, District Lakki Marwat....Respondents.

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth:-

FACTS.

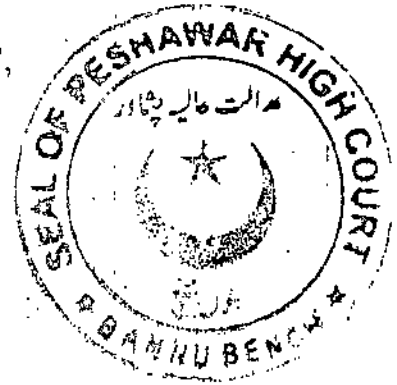
- 1- That, the petitioner is a permanent resident of village Kheru Khel Pacca. *and Testimonial (Copy of the CNIC of the petitioner is annexed herewith as "Annexure-A").*
- 2- That, the petitioner is a young man and is also a Graduate.
- 3- That the respondent No.02 advertised the posts of Naib Qasid/ Class-IV, one each in every village Council of



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ATTESTED
EXAMINER
Peshawar High Court

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)



W.P.No.316-B/2016

Kamranullah

Versus

Govt. of K.P.K through Secretary Local Govt. and
Rural Development and others

JUDGMENT

Date of hearing: 28.02.2018

Appellant-petitioner: By Imamullah Khan

Mansobra Khan Pdu

Respondent By Shahid Hameed Qureshi

addl. P.G. Mr. Muhammad Saleem AD, LG
and Fouzay Khan Progress Officer Lakti.

SHAKEEL AHMAD, J.- Same judgment as in

W.P.No.199-B/2016 (Najibullah Vs. Director General

Local Govt. and Rural Development and others).

Announced
Di: 28.02.2018.

Sd/- Mr. Justice Abdul Shakeer-J

Sd/- Mr. Justice Shakeel Ahmad, J

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103/318

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court Bannu Bench
Authorized Under Article 87 of
The Qanun-e-Mandati Order 1964

SCANNED

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

W.P.No.199-B/2016

Najibullah

Versus

Director General Local Govt. and Rural Development
and others

JUDGMENT

Date of hearing: 28.02.2018.

Appellant-petitioner By Farooq Alam Nazki ADJ;

Respondent By Shahid Hamid Qureshi ADJ

Atul Abdul Hameed A.D.L.G. Bannu, Muhammad Aleem
A.D.L.G. Larki and Yousaf Khan Progress Officer Larki.

SHAKEEL AHMAD, J.- By this single judgment we

propose to decide the following petitions having identical

questions of law and facts:-

1. W.P.No.199-B/2016.
(Najibullah Vs. Director General Local Govt.
and Rural Development and others).
2. W.P.No.206-B/2016.
(Addul Wadood and others Vs. Govt. of
K.P.K through Secretary Local Govt. and
Rural Development and others).
3. W.P.No.261-B/2016.
(Sher Alam Khan Vs. Govt. of K.P.K through
Secretary Local Govt. and Rural
Development and others).
4. W.P.No.271-B/2016
(Umar Jan Vs. Govt. of K.P.K through
Secretary Local Govt. and Rural
Development and others).

SCANNED

Inrawl*

(D.B) Mr. Justice Abdul Shakoor and Mr. Justice Shakeel Ahmad, JJ

ATTESTED

EXAMINER
Peshawar High Court
General Manager

5. W.P.No.278-B/2016.
(Irshadullah Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
6. W.P.No.279-B/2016
(Abdul Haseeb Vs. Govt. of K.P.K through Secretary Local Govt and Rural Development and others).
7. W.P.No.297-B/2016
(Naqibullah Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
8. W.P.No.305-B/2016
(Akhtiar Zaman Vs. Govt. of K.P.K through Secretary Local Govt and Rural Development and others).
9. W.P.No.316-B/2016.
(Kamranullah Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
10. W.P.No.350-B/2016
(Momin Khan and another Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
11. W.P.No.438-B/2016.
(Hassan Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
12. W.P.No.577-B/2016.
(Noor Aslam Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).
13. W.P.No.10-B/2018.
(Fazal Rahim and another Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

2. The common facts of all these writ petitions are that the petitioners are the residents of their respective Union Councils. In response to the advertisement made in the newspaper the petitioners applied for their appointments as

Imran"

(D.B) Mr. Justice Abdul Shakour and Mr. Justice Shakeel Ahmad, JJ

ATTESTED

EXAMINER
Secretary High Court
Islamabad

Class-IV employees, but they were denied appointments and the people from other Union Councils were appointed, hence, these constitutional petitions.

3. After arguing the case at great length, the learned counsels for the petitioners stated at the bar that let all these cases be sent to the competent authority to re-examine the cases of appointment of the private respondents and to find out whether they have been appointed in accordance with law, policy and the terms and conditions incorporated in the advertisement or not. The learned counsel representing the private respondents in all the writ petitions and the learned A.A.G appearing on behalf of official respondents assisted by representatives of the department agreed with the contention of the learned counsels for the petitioners.

4. In view of above, we send back all these cases to the Assistant Director Local Government and Rural Development/competent authority of their respective districts to re-examine the appointments of the private respondents, merit position of the petitioners and pass an appropriate order keeping in mind the rules, policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees, after providing the parties an opportunity of hearing and submit compliance report to Additional Registrar of this Court. The entire process shall be completed within 02

In view of

(D B) Mr Justice Abdul Shakoor and Mr Justice Shakeel Ahmad, JJ

TESTED

EXAMINED
Additional Registrar
District Court

months positively. With these observations the writ petitions are disposed of accordingly.

Announced
Di-28.02.2018

Sd/- Mr. Justice Abdul Shakoer-I

Sd/-Mr. Justice Shakeel Ahmad, II

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28/2/18

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Oath-e-Shahadat Order 1904

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(D.B) Mr. Justice Abdul Shakoer and Mr. Justice Shakeel Ahmad, JJ



OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVT. & RURAL DEVELOPMENT
DEPARTMENT, LAKKI MARWAT

No. 5041-43

Dated March 30, 2018.

To

Mr. Farmanullah
Naib Qasid Village Council
Kheru Khel Pacca District Lakki Marwat

SUBJECT: SHOW CAUSE NOTICE

Memo.

In the light of worthy Peshawar High Court, Bannu Bench, judgment dated 28.02.2018 in WP No.350-B/2016 and WP No.316 the undersigned is going to serve you with the following Show Cause Notice:

(2). That you have been appointed a Class-IV in BPS-3 in the Village Council Kheru Khel Pacca Tehsil and District Lakki Marwat vide Order No.4390-4402, dated 15.03.2016.

(2). That your this appointment order was challenged by the petitioners/other candidates before the worthy PHC Bannu Bench through Writ Petition No.350-B/2016 & 316-B/2016 which were disposed of by the worthy High Court in the following terms:

"In view of the above we send back all these cases to the Assistant Director, Local Govt. & Rural Dev./Competent Authority for their respective District to re-examine the appointment of the private respondents, merit position of the petitioners and pass appropriate order keeping in mind the Rules, Policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees after providing the parties an opportunity of hearing."

(3). That in the light of above mentioned judgment of PHC Bannu Bench, we have re-examined your appointment and merit position, in the light of Rules, Policy and Terms and Conditions, incorporated in the advertisement, for the above mentioned posts of Class-IV and found that you belongs to Village Council Pahar Khel Pacca but have been appointed against the post for Village Council Kheru Khel Pacca. So in this way your appointment against the above mentioned post is against the Rules, Policy and against the terms and conditions incorporated in the advertisement for the above post.

(4). That through this Show Cause Notice you are hereby directed to file your reply, if any, to the office of undersigned within seven (7) days from the receipt of this Show Cause Notice, as why you should not be removed from your service, otherwise ex-parte action will be taken against you.

(5). That if you want personal hiring, in this respect you can approach to the office of the undersigned within 7 days from receipt of this notice in office hours.

Note: After lapse of 7 days from receipt of this notice, you will not be allowed to question any action taken against you in the light of this Notice.


Assistant Director

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To

The Assistant Director,
LGRDD Lakki Marwal.

SUBJECT: REPLY TO THE SHOW CAUSE NOTICE

Respected Sir,

With due respect my reply to the show cause Notice is as under,

1. That according to the advertisement dated 04.07.2015, the condition for appointment of Class-IV was that the candidate must be the resident of District Lakki Marwal. As per afore-said advertisement, the applicant is fully eligible to apply to the vacancy of Class-IV, because applicant is the permanent resident of District Lakki Marwal and has rightly been appointed as Class-IV. However in case of two candidates having equal marks in test/interview then as per advertisement dated 04.07.2015, preference shall be given to the candidate of concerned village/ neighbourhood council. As per merit applicant is the top position holder therefore, applicant being resident of District Lakki Marwal has rightly been appointed. Copies of advertisement dated 04.07.2015, I.D. card and domicile of the applicant are attached as Annexure-A.
2. That LGRDD Department Peshawar issued Notification dated: 03-12-2015 vide which an amendment has been made for the selection of appointment of Naib Qasid / Chowkidar in which criteria laid down for their appointment is that he must be physically sound, preferably literate, about 18 to 40 years aged. There is no such criteria for the appointment of Class-IV that he must be permanent resident of same village council. Again the stance of the applicant has been confirmed by the rules framed by the Department itself where no such condition has been placed that the candidate must be the resident of the same village where he has been appointed. The only condition as mentioned in the advertisement is that he must be the resident of same District where he applies. Copy of Notification dated: 03-12-2015 is attached as Annexure-B. Moreover, the rules and regulations are clear about the appointment of Class-IV employees, since applicant is the permanent resident of District Lakki Marwal.
3. Moreover, Your good Office also filed Comments in all the Writ Petitions in Peshawar High Court Bannu Bench in which your good Office admitted the plea of the applicant that applicant has been appointed as Class-IV according to rules, regulations and policy. Now how come your good office is saying that I am not appointed according to rules, regulations and policy. Copy of Comments filed by your good Office in Connected Writ Petition 350-B/2016 is attached as Annexure-C.

[Handwritten Signature]
3

4. Furthermore, the applicant has been appointed as Naib Qasid according to rules, regulations and policy by the Departmental Selection Committee after due process of law. The Departmental Selection Committee was consisted by Hon. able members of your good Office including the representative from LGRDD Peshawar as well. The Departmental Selection Committee has discussed the case of each appointee and after thorough scrutiny of documents the applicant has been appointed along with 64 others. After appointment on 15.03.2016, the applicant was rendered medically fit for service, the applicant assumed charge of his office and rendered services for about 02 years. The Master file and service book of applicant are also prepared by the your good office. At all these stages, your good office didn't raise any objection regarding the appointment order of applicant. Now after 02 years service of applicant, your office cannot raise any such objection because you are estopped by your own conduct. Furthermore, after 02 years service of applicant, vested right has been accrued to the applicant for appointment. Therefore, if any irregularity whatsoever, has been committed by the official respondents in the procedure / process of appointment (which is not available on record), then for such irregularity the applicant should not be punished. (In this respect guidance can be sought from Judgment of Supreme Court reported as 2009 SCMR page 663). Copy of appointment order, Arrival Report, and service book of applicant are attached as Annexure-D.

5. That even Peshawar High Court Bannu Bench didn't find any irregularity or illegality in the appointment order of applicant and as such Peshawar High Court Bannu Bench allowed the applicant to work as it is.

It is therefore, most humbly stated that on acceptance of my reply to the show cause notice, I may kindly not be made victim of baseless allegations.

APPLICANT

Farman Ullah
Class-IV

Dated 15/04/2018

(Handwritten signature)

Received

(Handwritten initials)

21/4/2018

(Large handwritten signature)



F. 17

Annexure-F

OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVT. & RURAL DEVELOPMENT
DEPARTMENT, LAKKI MARWAT.

Dated April 18, 2018

OFFICE ORDER

No. 5222-27 / The Peshawar High Court Bannu Bench was pleased to announce the following judgment in Writ Petition No.316-B/2016 on 28.02.2018:-
"In view of the above, we send back all these cases to the Assistant Director, Local Govt. & Rural Dev./Competent Authority of their respective District to re-examine the appointment of the private respondents, merit position of the petitioners and pass an appropriate order keeping in mind the Rules, Policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees after providing the parties an opportunity of hearing."

In pursuance of the above judgment the appointment of the following respondent was re-examined:-

#	Name & father's name of Respondent	Parent Village Council.	Village Council where appointed.
1	Farmanullah S/O Sakhtha Mir.	Pahar Khel Pacca	Kheru Khel Pacca

Both the Petitioner and Respondent were heard and examined in detail and record perused. The petitioner Mr. Kamranullah S/O Mir Daraz Khan stated that he applied for the post of Class-IV lying vacant in his parent Village Council but was ignored. The respondent informed that he applied for the post of Naib Qasid in his parent Council. He admitted the fact that he belongs to Pahar Khel Pacca but he was appointed at Village Kheru Khel Pacca which is not his parent Village Council at all.

Keeping in view the above, the competent authority considers appointment order of the petitioner as Naib Qasid at Village Council Kheru Khel Pacca issued vide No.Order No.4390-4402, dated 15.03.2016 against the Rules and Policy and the conditions incorporated in the advertisement for Class-IV. Consequently the said order becomes invalid and services of the respondent stand terminated with immediate effect.

Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.

Even No. & Date.

Copy forwarded to:-

1. The Director General, Local Govt. & Rural Dev. Deptt. KPK, Peshawar.
 2. The Addl: Registrar, Peshawar High Court Bannu Bench.
 3. The Addl: Advocate General, Peshawar High Court, Bannu Bench.
 4. The District Accounts Officer, Lakki Marwat.
 5. The official concerned.
 6. Office Order File.
- For information & necessary action.

Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.



OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVT. & RURAL DEVELOPMENT
DEPARTMENT, LAKKI MARWAT.

OFFICE ORDER

Dated April 19 /2018

No. 5295-98 / In pursuance to the judgment dated 28.02.2018 of Peshawar High Court Bench in Writ Petition No. 316-B/2016, Mr. Kamranullah S/O Mir. Daraz Khan R/O. Village-Kheru-Khel Pacca, Tehsil and District Lakki Marwat is hereby appointed as Naib Qasid in BPS-3 (9610-390-21310) plus usual allowances as admissible under the Rules, on regular basis, against the vacant post at VC-Kheru Khel Pacca, District Lakki Marwat with the following terms and conditions:-

Terms and Conditions

1. His services will be governed by the rules and regulations as are in vogue and as may be issued by the Government from time to time.
2. His services will be liable to termination on one month notice in advance from either side, but in case of resignation, without notice, two months pay shall be refunded towards Government.
3. He will be on probation for a period of one year, extendable for a further period of one year and during this period he will not be entitled to apply for any long leave etc.
4. His services can be terminated at any time in case his performance is found unsatisfactory during probationary period and in case of misconduct he will be proceeded against the Removal from Service (Special Power) Ordinance, 2000, and the rules made from time to time.
5. His services are liable to be terminated if any of his documents is found fake or altered at any later stage and he will not be entitled to undergo any litigation.
6. He will report his arrival to all concerned. He will also not be entitled to any TA/DA for his first arrival. In case he is not willing to join the duty, he should furnish his un-willingness on a stamp paper to the office of the undersigned.
7. Before submission of pay bill to the District Accounts Officer for pay purpose, all his Certificates and Degrees will be checked and verified from the concerned Board or University as the case may be.
8. The undersigned reserves the rights to amend or add any condition to his appointment order.
9. He is required to produce Health and Age Certificate from the Medical Superintendent DHQ Hospital, Lakki Marwat.

If the above terms and conditions are accepted, he should immediately communicate his willingness and report for duty to the undersigned within 15 days, failing which this appointment order may be treated as cancelled in respect of the candidate.

Sd—

(Muhammad Aleem)
Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.

Even No. & Date.

Copy forwarded to:-

1. The Director General, Local Govt. & Rural Development Deptt: KP, Peshawar.
2. The District Accounts Officer, Lakki Marwat.
3. The Progress Officer, LGRDD, Lakki Marwat to arrange for verification of documents.
4. Candidate concerned.

Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.

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D. I.
DATE: 27/8/18
DC LOCAL GOVERNMENT

The Director General,
Local Government and Rural Development Department,
Khyber Pakhtunkhwa Peshawar.

SUBJECT: -DEPARTMENTAL APPEAL

Respected Sir,

With due respect the appellant submits as under,

1. That your good Office advertised vacancies of Class-IV throughout Khyber Pakhtunkhwa vide advertisement dated 04.07.2015 in which the condition for appointment of Class-IV was that the candidate must be the resident of relevant District where he resides. As per afore-said advertisement, the appellant being permanent resident of District Lakki Marwat, applied for the vacancy of Class-IV, appeared in Test / interview and secured top position on merit list. Copy of advertisement dated 04.07.2015 is attached as Annexure-A.
2. That accordingly the Departmental Selection Committee duly approved and recommended the name of appellant for appointment as Class-IV. Where after the Assistant Director LGRDD Lakki Marwat issued appointment order of appellant as Naib Qasid on 15.03.2016 and posted at Village Council ~~Khoro~~ *Khoro* District Lakki Marwat as Class-IV. Copies of Minutes of Meeting of Departmental Selection Committee and appointment Order dated 15.03.2016 of appellant are attached as Annexure-B.
3. That after appointment, the appellant submitted his arrival report and rendered duties for about more than 02 years. The service book and Master file of appellant was also prepared by the Department. Copies of arrival report and service book of appellant are attached as Annexure-C.
4. That it is pertinent to mention here that in response to the advertisement dated 04.07.2015, total 65 Class-IV have been appointed by the Assistant Director LGRDD Lakki Marwat who are also permanent residents of District Lakki Marwat and appointed in different village Councils like appellant.
5. That out of 65 Class-IV employees, 23 appointment orders of Class-IV were Challenged (including the appellant) before Peshawar High Court, Bannu Bench in different writ petitions solely on the ground that appellant belongs to village Council ~~Pahar~~ *Pahar* but he has been appointed as Class-IV in village Council ~~Khoro~~ *Khoro*. The Peshawar High Court Bannu Bench without going into the merit of the case, decided all the 23 Writ Petitions through single Judgment dated 28.02.2018, in the following terms; "In view of the above, we send back all these cases to the Assistant Director, Local Government and Rural Dev; / Competent Authority of their respective District to re-examine the appointment of the private respondents, merit position of the petitioners and pass an appropriate order keeping in mind the rules, Policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees after providing the

Signature

parties an opportunity of hearing". Copy of Judgment dated: 28.02.2018 of Peshawar High Court Bannu Bench is attached as Annexure - D.

6. That as such the Assistant Director LGRDD Lakki Marwat issued show cause notice to the appellant on the basis of afore-said Judgment of Peshawar High Court Bannu Bench dated: 28.02.2018, in which the only objection raised was that appellant belongs to village Council *Pahar khel Pacca* but he has been appointed as Class-IV in village *Kheso khel Pacca* District Lakki Marwat. There was no objection as to the merit position of the appellant in the afore-said Show Cause Notice. The appellant timely replied to the afore-said Show Cause Notice after receipt of the same. Copies of Show Cause Notice and reply of the appellant are attached as Annexure-E.
7. That thereafter the Assistant Director LGRRD Lakki Marwat all of sudden issued termination order dated 18.04.2018 of appellant in which the same reason is given that appellant belongs to village Council *Pahar khel Pacca* but he has been appointed as Class-IV in village Council *Kheso khel Pacca* District Lakki Marwat. Copy of termination order of appellant dated 18.04.2018 is attached as Annexure-F.
8. That as per advertisement dated 04.07.2018, the candidate must be the permanent resident of relevant District. As such appellant is fully eligible to apply to the vacancy of Class-IV because applicant is the permanent resident of District Lakki Marwat and has rightly been appointed as Class-IV in Village Council *Kheso khel Pacca* District Lakki Marwat as per terms and conditions of the afore-said advertisement dated 04.07.2018. But Assistant Director LGRRD Lakki Marwat has wrongly and illegally terminated the appellant from service in order to adjust his blue eyed persons. The Assistant Director LGRRD Lakki Marwat has misconceived and mis-interpreted the Judgment of Peshawar High Court, Bannu Bench dated 28.02.2018 as the merit position of the appellant has not been called in question by the Assistant Director LGRRD Lakki Marwat. At the same time, it is written in the advertisement dated: 04.07.2015, that in case of two candidates having equal marks in test/interview then as per advertisement dated 04.07.2015, preference shall be given to the candidate of concerned village / neighborhood council. But Assistant Director LGRDD Lakki Marwat has misconceived this condition while terminating the appointment order of appellant. As per merit, appellant is the top position holder therefore, appellant being resident of District Lakki Marwat has rightly been appointed. Copies of I.D Card and Domicile of the appellant are attached as Annexure-G.
9. That Local Government and Rural Development Department Khyber Pakhtunkhwa Peshawar issued Notification dated: 03.12.2015 vide which an amendment has been made for the selection of appointment of Naib Qasid / Chowkidar in which criteria laid down for their appointment is that he must be physically sound, preferably literate, about 18 to 40 years aged. There is no such condition / criteria for the appointment of Class-IV that he must be permanent resident of same village council. Again the stance of the appellant has been confirmed by the rules framed by the Department itself where no such condition has been placed that the candidate must be the resident of the same village council where he has been appointed. The only condition as mentioned in the advertisement is that he must be the resident of same District where he applies. As such the reason given for termination of the appellant in the termination order dated 18.04.2018 is against the service rules dated: 03.12.2015 of the Department. And ultimately the afore-said termination order is also against the very spirit of the Judgment dated 28.02.2018 of the Peshawar High Court, Bannu

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Bench. Copy of Service Rules / Notification dated: 03-12-2015 is attached as Annexure-H.

10. That appellant belongs to village Council ~~Khara Khel~~ Pahar uhel ~~face~~ and has been appointed in Village Council ~~Khara Khel~~ District Lakki Marwat. Whereas 64 other Class-IV employees who have been appointed in response to the same advertisement dated 04.07.2015 are similarly placed persons who belong to one Village Council but they have been appointed in other village Council (Like Appellant) but no Show Cause Notice nor any termination order has been issued to them. As for example, in village council Attashi Mechan Khel a candidate namely Wasiullah S/O Shafiullah has been appointed as Class-IV on 15-03-2016 despite the fact that the afore-said candidate namely Wasiullah S/O Shafiullah is the permanent resident of Village Council Wanda Aurangzeb and stranger to the village council Attashi Mechan Khel. But no show cause notice has been issued to the afore-said Wasi Ullah nor has he been terminated from service. Similarly no show cause notice has been issued to 42 other Class-IV employees who are similarly placed as of appellant. Therefore, the termination order dated 18.04.2018 is discriminatory with the appellant. On one hand, Assistant Director LGRKD Lakki Marwat is admitting the appointment orders of similarly placed persons as correct whereas on the other hand he has issued termination order of the appellant. As such the conduct of the Assistant Director LGRRD Lakki Marwat is contradictory in itself. Copy of appointment order of Wasiullah and affidavit dated; 06.08.2016 of Secretary Village Council Attashi Machan Khel are attached as Annexure-I.
11. That appellant has been appointed as Naib Qasid according to rules, regulations and policy by the Departmental Selection Committee after due process of law. The Departmental Selection Committee was consisted by Hon able members of your good Office including the representative from LGRDD Peshawar as well. The Departmental Selection Committee has discussed the case of each appointee and after thorough scrutiny of documents the appellant has been appointed as Class - IV along with 64 others. As such vested right has been accrued to the appellant for appointment and as such termination order dated: 18.04.2018 of appellant is illegal, unlawful and without lawful authority.
12. That after appointment on 15.03.2016, the appellant was rendered medically fit for service, the appellant assumed charge of his office and rendered services for about more than 02 years. The Master file and service book of appellant are also prepared. At all these stages, Assistant Director LGRRD Lakki Marwat didn't raise any objection regarding the appointment order of appellant. Now after more than 02 years service of appellant, Assistant Director LGRRD Lakki Marwat cannot raise any such objection because he is estopped by his own conduct. Furthermore, after 02 years service of appellant, vested right has been accrued to the applicant for appointment. Therefore, if any irregularity whatsoever, has been committed by the Department in the procedure / process of appointment (which is not available on record), then for such irregularity the appellant should not be punished (In this respect guidance can be sought from Judgment of Supreme Court reported as 2009 SCMR-page 663).
13. That LGRDD Department also filed Comments in all the Writ Petitions in Peshawar High Court Bannu Bench in which your good Office admitted the plea of the appellant that appellant has been appointed as Class-IV according to rules, regulations and policy. And there is nothing unlawful in these appointment orders. Now how come Assistant Director LGRRD Lakki Marwat is saying that appellant is not

- appointed according to rules, regulations and policy. Copy of Comments filed by your good Office in Connected Writ Petition 529-B/2016 is attached as Annexure-J--
14. That even Peshawar High Court Bannu Bench didn't find any irregularity or illegality in the appointment order of appellant and as such Peshawar High Court Bannu Bench allowed the appellant to work as it is.
15. That most of the candidates who have been appointed as Class - IV on 19-04-2018 in place of appellant have not filed even applications in response to the advertisement dated 04.07.2015 nor they were on top position on merit list nor the merit position of those candidates are brought to light by the Assistant Director LGRRD Lakki Marwat even than they have been appointed as Class-IV on the next date i.e 19.04.2018 in place of the appellant. The person who has been appointed in the place of appellant is Fazal Rahim S/O Abdul Hamid Khan. Copy of appointment order dated: 19.04.2018 of Fazal Rahim who has been appointed in place of appellant is attached as Annexure - K.
16. That appellant has been terminated from service only upon Show Cause Notice and no regular inquiry has been conducted by the Assistant Director LGRRD Lakki Marwat before issuing termination order dated 18.04.2018 of appellant. Which is against the law, rules and regulations.
17. That no summary of allegation has been given to the appellant nor opportunity of hearing has been given to the appellant before issuing termination order of the appellant. Which act of Assistant Director LGRRD Lakki Marwat is also against the very spirit of the Judgment dated 28.02.2018 of the Peshawar High Court Bannu Bench in which it is clearly held that Opportunity of hearing must be given to the appellant.
18. That compliance report submitted by the Assistant Director LGRDD Lakki Marwat is also against the spirit of the Judgment dated: 28.02.2018 of Peshawar High Court Bannu Bench and also against the law, rules, regulations and principles of Natural Justices. Copy of compliance report of Assistant Director LGRDD Lakki Marwat is attached as Annexure - L.
19. That at time of appointment of Fazal Rahim on 19 /04/ 2018, there was complete ban imposed by the Election Commission of Pakistan on new appointments in all Departments Provincial as well as Federal. As such the appointment order of Fazal Rahim is also against the law and Ban Order.

It is therefore, most humbly requested that on acceptance of my Departmental Appeal, the appointment order dated 19.04.2018 of Fazal Rahim may be cancelled and as such the termination order dated 18.04.2018 of appellant may very graciously be set aside being illegal, unlawful and without lawful authority and appellant may kindly be re-instated in service as Class-IV with all back benefits

Dated:

11-05-18

[Handwritten signature]

APPLICANT / APPELLANT

[Handwritten signature]
 Farman Ullah S/O
 Sakhat Amiriche
 R/O Pabarchel Paccar
 Lakki Marwat

Ex - Mansab Faran
 Mansab Ullah Paccar

بعد التّ جتای سروس ٹریبونل صوبہ سرحد پشاور

منجانب ایڈوائٹ

درمان المہ نامہ ۱۹ عشرہ

دعوی اپیل

باعث شکریمہ ایٹک

بستہ در سندھ جو عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹل اسٹیل انڈسٹریز خان سرور نے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہو گا نیز وکیل صاحب کو کرنے راہی نامہ و تقریر ثالث و فیصلہ بر عطف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور رضی دعویٰ اور درخواست ہر قسم کی نقلہ لیں اور اس پر دستخط کرنے کا اختیار ہو گا نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور سبھی باتیں دائر کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہو گا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے مقرر کا اختیار ہو گا اور اس پر مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہو گا و دوران مقدمہ میں جو خرچہ و ہر جانہ التوا مقدمہ کے سبب سے ہو گا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہو گا اگر کوئی تاریخ پیشی مقام در رہے یا عدسے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ دیکھ دیا کہ سند ہے۔

المرقوم ۲۹ ۸ ۱۸

العبد

العبد

العبد

سید محمد

سید محمد خان مراد

ایڈووکیٹ

ارباب سید انکمال

ایڈووکیٹ

عن رؤیتہ تار

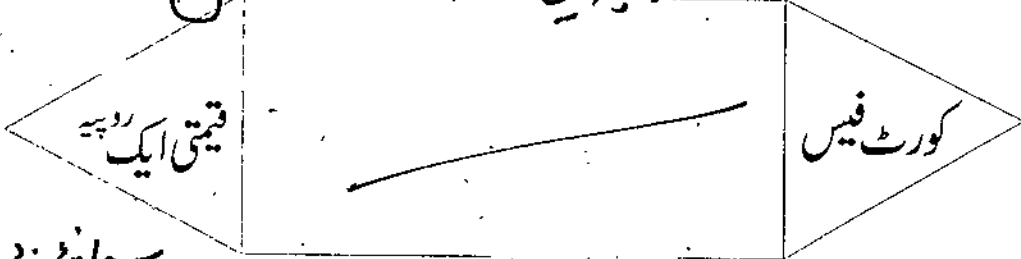
ایڈووکیٹ

دوسرا

فرمان اللہ

وکالت نامہ

بعدالت جسیر حسین صاحب سروسز ٹریڈنگ کمپنی پشاور KPK پشاور



2019ء منجانب سر سید منٹ (کامران اللہ) نام اسٹڈی اینڈ ٹریڈنگ وینچر

فروری 4
فرمان نمبر
SA - 1147/018
باعث تحریر آنکہ

مورثہ
مقدمہ
دعوی
جرم

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب وہی وکل کارروائی متعلقہ آن مقام پشاور کے لئے محمد طارق قریشی ایڈووکیٹ کی طرف سے مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب وہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زر اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور منسوخ واپس کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختیار قانونی کو ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے۔ اور اس کا ساختہ پر ساختہ منظور قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہوں گے۔ نیز بقایا و خرچہ کی وصولی کریں گا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا جگہ سے باہر ہو تو وکیل صاحب پابند ہوں گے کے پیروی مقدمہ مذکور کریں لہذا وکالت لکھد یا تاکہ سند رہے

Accepted
[Signature]

المقام 4 ماہ فروری 2019ء Advو العبد گواہ نشد العبد

العبد
محمد طارق قریشی
کامران اللہ خان

بمقام پشاور کے لئے منظور ہے



محمد طارق قریشی ایڈووکیٹ

سپریم کورٹ آف پاکستان

موبائل: 0300-5768804

یا سرمروت پرنٹنگ پریس پشاور موبائل: 0333-9123075

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No 1147/2018

Farmanullah

Versus

Govt. of KPK & others.

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Deponent



Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.
(Respondent No.1).

Assistant Director
Local Govt: & Rural Dev:
Deptt: Lakki Marwat.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No 1147/2018

Farmanullah S/O Sakht Amir Khan
R/O Village Council Pahar Khel Pacca, Lakki Marwat
Ex-Naib Qasid, Village Council
Kheru Khel Pacca, Lakki Marwat..... Appellant

VERSUS

1. Assistant Director, Local Govt. & Rural Development
Department, Lakki Marwat.
2. Director General, Local Govt & Rural Dev. Department
Khyber Pakhtunkhwa, Peshawar.
3. Secretary, Govt. of Khyber Pakhtunkhwa Local Govt. Elec.
and Rural Development Department, Peshawar.
4. Kamranullah S/O Naik Daraz Khan
Naib Qasid, Village Kheru Khel Pacca
Lakki Marwat.
..... Respondents

PARA-WISE COMMENTS IN RESPECT OF RESPONDENT NO.1, 2 & 3.

Respectfully Sheweth.

PRILIMINARY OBJECTIONS.

1. That the appellant has no cause of action & locus standi.
2. That the appellant has been es-topped by his own conduct to file the appeal.
3. That the instant appeal is time barred.
4. That the appeal is bad for misjoinder and nonjoinder of necessary parties.
5. That the Honorable Court has no jurisdiction to adjudicate the appeal.

ON FACTS.

1. Para No.1 is correct to the extent that the posts of class- IV were advertised by the Director General, LGRDD, KPK, Peshawar on 04/07/2015.
2. Para No.2 is incorrect. The appellant was appointed as Naib Qasid on temporary basis.
3. This is correct to the effect that the writ petition filed by the Respondent No.4 was disposed of by the honorable Peshawar High Court Bannu Bench on 28/02/2018 along with other writ petitions.

4. Correct to the effect that appellant submitted his reply to the Show Cause Notice issued to him by the Assistant Director, LGRDD, Lakki Marwat being respondent No.1 in the present appeal and was found unsatisfactory.
5. That Para No.5 is correct to the extent that the services of appellant were terminated on 18/04/2018 on the grounds that the appellant was not bonafide resident of the Council to which he was appointed in 2016. The advertisement floated in the Daily Newspapers in 2015 bore a condition that the candidate should be inhabitant of the council concerned.
6. That Para No.6 is correct to the extent that the Assistant Director, Local Govt. and Rural Development Department Lakki Marwat (R.No.1) appointed R.No.04 being bonafide resident of the said Council against the post so vacated by the appellant which also was in pursuance of the said judgment dated 28/02/2018 as well as the CMA of the appellant dismissed by the Peshawar High Court Bannu Bench vide its judgment dated 11.12.2018. Copy of the judgment is as Annex-A.
7. In response to Para no.7 it is stated that the appeal of the appellant was considered and filed having no merit.

ON GROUNDS.

- a. That it is upon the appellant to prove his qualifications.
- b. That the Para No. b is incorrect. The appointment of the appellant to another council was violation of the prescribed service rules as well as the advertisement. The Peshawar High Court, Bannu Bench in its judgment 28/02/2018 ordered for reconsideration of appointment of the appellant and issuance of proper order keeping in mind the condition so incorporated in the advertisement, which was done accordingly.
- c. Incorrect. The post of Naib Qasid in the Union Council was not vacant as bonafide resident of the said Council was earlier appointed there.
- d. Incorrect. Since the matter was in the court pending decision and that rectification of the mistake was not possible therefore show cause notice was issued to the appellant and was removed from service to implement the said judgment. Moreover, the post of Naib Qasid was also not vacant.
- e. Incorrect. The appointment of the appellant was contrary to the condition so incorporated in the advertisement as well as the prescribed Service Rules.
- f. Incorrect. The appellant could not be appointed out of his Village/Neighborhood Council.

- g. Incorrect. The post of Naib Qasid in the concerned Village/Neighborhood Council was advertised as per Service Rules.
- h. Incorrect. The Respondent No.4 was found eligible for the post of Naib Qasid by the competent authority and was appointed in pursuance of the decision of the court, as noted in the preceding paras.
- i. As replied in Para-h above.
- j. Incorrect. The word "Termination" prevails in the constitutional provisions regarding terms and conditions of service of civil servants therefore this word is not alien at all.
- k. As replied in Para-b above.
- l. Incorrect. The respondent filed writ petition in Peshawar High Court Bannu Bench which was decided on 28/02/2018. The competent authority implemented the court decision within the time given by the court, therefore, the appellant was not given any vested right.
- m. Incorrect. As replied in Para-b above.

It is therefore requested that this Honorable Tribunal may graciously dismiss appeal of the appellant with cost.



Assistant Director
Local Govt. & Rural Dev:
Deptt: Lakki Marwat.

Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.
(Respondent No.1).

Director General
Local Govt. & Rural Development
Khyber Pakhtunkhwa

Director General
Local Govt. & Rural Development
Department, KPK, Peshawar.
(Respondent No.2).



(SECRETARY)
Govt: of Khyber Pakhtunkhwa
Local Govt: Elections & Rural Dev:
Department

Secretary
Local Govt. & Rural Development
Department, KPK, Peshawar.
(Respondent No.3).

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No 1147/2018

Farmanullah.

-Versus

Govt. of KPK & others.

Affidavit

I, Mr. Yousaf Khan, Assistant Director, Local Govt. & Rural Development Department, Lakki Marwat solemnly affirm that the contents of comments are true and correct to the best of my knowledge, and belief and nothing has been concealed from this Honorable Tribunal.

Deponent



Assistant Director
Local Govt. & Rural Development
Department, Lakki Marwat.
(Respondent No.1).

Assistant Director
Local Govt: & Rural Dev:
Deptt: Lakki Marwat.

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

CM NO.330-B of 2018 in

Writ petition No.279-B of 2016

Hamid Usman
Vs.
Govt. of Khyber Pakhtoonkhwa
and others

JUDGMENT

Date of hearing 11-12-2018

Present: Petitioners by
Rudam Khan Kundli A-12

and Shahid Saleem Mirza bhal A-12


By Shahid Hamid Pasaki A-12

Opp. by Muhammad Anwar Khan Mairaidi A-12

SHAKEEL AHMAD, J.--- Through this common judgment we propose to decide the instant application as well as the following connected applications as common question of law and facts are involved therein:-

1- CM NO.332-B/2018 in WP NO.438-B/2016
(Titled Haroon Khan Vs Govt. of KPK etc)

2- CM No.333-B/2018 in WP NO.260-B/2016
(Titled Yousaf Jamal Vs Govt. of KPK etc)


Assistant Director
Local Govt: & Rural Dev:
Deptt: Lakkj Marwat.

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

- 3- CM No.334-B/2018 in WP NO.278-B/2016
(Titled Alta fur Rahman Vs Govt. of KPK
etc).
- 4- CM No.335-B/2018 in WP NO.305-B/2016
(Titled Farhatullah Vs Govt. of KPK etc)
- 5- CM No.336-B/2018 in WP NO.535-B/2016
(Titled Farooq Khan Vs Govt. of KPK etc)
- 6- CM No.337-B/2018 in WP NO.343-B/2016
(Titled Imtiaz Ahmad Vs Govt. of KPK etc)
- 7- CM No.338-B/2018 in WP NO.529-B/2016
(Titled Muhammad Ismail Vs Govt. of KPK
etc)
- 8- CM No.339-B/2018 in WP NO.22-
B/2016(Titled Siraj-Ud-Din Vs Govt. of
KPK etc)
- 9- CM No.340-B/2018 in WP NO.350-B/2016
(Titled Subzai Khan Vs Govt. of KPK etc)
- 10- CM No.341-B/2018 in WP NO.316-
B/2016(Titled Farmanullah Vs Govt. of
KPK etc)
- 11- CM No.342-B/2018 in WP NO.386-B/2016
(Titled Mumtaz Khan Vs Govt. of KPK etc)
- 12- CM No.343-B/2018 in WP NO.297-B/2016
(Titled Dil Jan Vs Govt. of KPK etc)
- 13- CM No.345-B/2018 in WP NO.285-B/2016
(Titled Tahir Khan Vs Govt. of KPK etc)
- 14- CM No.346-B/2018 in WP NO.261-B/2016
(Titled Irfanullah Vs Govt. of KPK etc)



Assistant Director
Local Govt: & Rural Dev:
Deptt: Lakki Marwat.

ATTESTED

EXAMINER
Peshawar High Court
Karnal Bench


2- Through all these petitions filed under section 47 read with Section 151 CPC, the applicants have called in question the validity of orders, passed by the Assistant Director LG and RDD of their respective districts whereby their services were terminated.

3- According to the learned counsel for the applicants, the respondents have misconceived and misinterpreted the judgment dated 28/02/2018 passed by this Court in Writ Petition No.279-B/2016, and wrongly terminated the services of the applicants through separate office orders, therefore, the same are liable to be set aside.

4- On the other hand, learned counsel appearing on behalf of the private respondents contended that in pursuance of order of this court, the appointment orders of the applications were re-examined and it was found that their appointments were made against the rules, policy and terms and conditions, incorporated in the advertisement, therefore, their services were rightly terminated.

5- Learned Additional AG appearing on behalf of the official respondents, assisted by the Assistant Director L.G & RDD added that the present applications are not competent, and contended that if the applicants feel themselves to be aggrieved from their termination

Azmat Awan (D3) Mr. Justice Muhammad Nasir Mahfooz & Mr. Justice Shakeel Ahmed



Assistant Director
Local Govt: & Rural Dev.
Deptt: Lakki Marwat

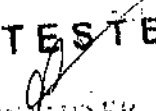
orders, they can challenge the validity of the same through a Constitutional petition.

6- We have heard arguments of learned counsel for the parties and have gone through the record with their able assistance.

7- This court by its judgment dated 28.02.2018 rendered in Constitutional Petition No.279-B/2016 directed the Assistant Director LG and RDD/competent authority of their respective districts to re-examine the appointment orders of the applicants/private respondents, their merit position and pass an appropriate order keeping in mind the rules, policy and terms and conditions incorporated in the advertisement for appointment as Class-IV employee, and after providing the parties an opportunity of hearing and submit compliance report to the Registrar of this court. In pursuance thereof, the Assistant Director Local Government and Rural Development department, examined the cases of the applicants individually in their respective district and held that their appointments were made against the rules, policy and terms and conditions incorporated in the advertisement for Class-IV employees, consequently terminated the applicants from services. Prior to termination order all the applicants were given right of audience. The applicants are not aggrieved from the

Azmat Awan (DB) Mr Justice Muhammad Nasir Mahfooz & Mr Justice Shakeel Ahmed


Assistant Director
Local Govt: & Rural Dev:
Deptt: Lakki Marwat.

ATTESTED

EXAMINER
Peshawar High Court
Banno House

judgment of this court. They have urged before us that their termination order is illegal. Admittedly this court is not acting as an Executing court, therefore, in our view the petitions filed by the applicants U/S 47 read with section 151 Cr.P.C is not competent. It is not open for the applicants to raise the question of validity of the order of their termination through these petitions. The question of validity of the impugned order can be raised by a separate lis. There is nothing in these applications which warrants the proposition that this court can adjudge the validity of the termination order of the applicants.

8- For this reason, we dismiss this petition as well as connected petitions with no order as to costs, however, the petitioners shall be at liberty to seek their relief through separate lis before the appropriate forum, if so desired.

Announced.
11-12-2018

SD-Justice Muhammad Nasir Mahboob

SD-Justice Shakeel Ahmad

Assistant Director
Local Govt. & Rural Dev.
Deptt: Lakki Marwat.

RECEIVED TO SET FREE COPY
11/12/18
District Court, Lakki Marwat
District & Sessions Judge
Lakki Marwat

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1147 / 2018.

Farmanullah

Appellant

VERSUS

Assistant Director, Local Government & others

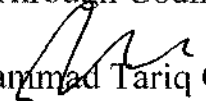
Respondents

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S.No.	Description of Documents	Annexure	Page
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2.	Copy of appointment order of replying respondent	A	6
3.	Copy of arrival report of replying respondent	B	7
4.	Copy of verification reports	C	8
5.	Copy of judgment of the High Court	D	9-12

Dated: 24.03.2019

Replying Respondent No. 04
Through Counsel


Muhammad Tariq Qureshi
Advocate Supreme Court of Pakistan

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 1147 / 2018.**

Farmanullah

Appellant

VERSUS

Assistant Director, Local Government & others

Respondents**PARA-WISE COMMENTS / REPLY ON BEHALF OF PRIVATE****RESPONDENT NO. 4****Preliminary Objections**

- i. This Hon'ble Court has got no jurisdiction to entertain instant appeal.
- ii. Appellant has no locus standi.
- iii. Appellant is not come to this Hon'ble Court with clean hand.
- iv. The instant appeal is time barred.
- v. The appellant has concealed material facts from this Hon'ble Court.
- vi. The appellant is stopped by his own conduct to sue.
- vii. That, there is malafide on the part of the appellant.

COMMENTS ABOUT FACTS:

1. That, the para No.1 is correct and pertains to the record.
2. That, the para No.2 is incorrect. The appellant was not appointed through the said prescribed procedure. The recommendations of the selection and recruitment committee were in clash and contradictory to the terms and conditions lay down in the advertisement and relevant policy. The appellant was not even belonging to the ~~Village~~ Council for which the post was allocated. The post in question was to be filled on the basis of village council, but in the case in hand, even the person appointed i.e. appellant hails from another ~~Village~~ Council. Interesting is the fact that appellant has not joined the service formally / as per law through charge report and he cannot claim a single day in a duty for discharge of his duties. He has not

2

performed duty a single day rather has been enjoyed salaries while sitting at home.

3. That, the para No.3 is correct. The part of the judgment reproduced is fabricated and not the real excerpt from the judgment. The judgment also refers to keep the terms and conditions and merit position of the appellant and replying respondent. The respondents therein were supposed to make order according to the merit, policy and regulation, which the respondent have made accordingly.

4. That, the para No. 4 is correct and pertains to record.

5. That, the appellant was rightly terminated after observance of all the codal formalities and requirements. The appellant badly failed to explain and prove his merit, position and rights. The appellant was not only lagging behind in score but also not permanent resident of the same village council for which the post in question was allotted.

Am
The second paragraph is refuted. No such discrimination persons are there. The stated persons are either on surplus basis or the inquiries into the validity of their appointments are pending against them.

6. That, the replying respondent No. 4 was appointed according to law and to the soul of the said judgment because the replying respondent No.4 was party to the petition whereon the judgment in question was passed. Since, the replying respondent was far better than the appellant, hence he was appointed. In identical cases / matters the High Court has directed the respondents for removal of persons who had been appointed from the outside ~~Village~~ Village Council, Village Council.

7. That, the para No.7 is incorrect. The appellant has no locus standi / cause of action. The instant appeal is premature. Hence, liable to be dismissed forthwith.

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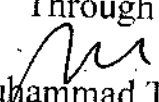
COMMENTS / REPLY ABOUT GROUNDS:

- A. Since, the appellant does not meet the basic eligibility, hence his qualification is of no value.
- B. The appellant was not deserving for appointment at his own Village Council that is why he was ignored. The question arises that why did the appellant kept mum on the said illegality?
- C. That, the para "C" is not sustainable. The appellant could not be transferred to his own Village Council due to the policy / rules.
- D. The lapses were not curable. The appellant has been removed in the light of the judgment of the Peshawar High Court, Bench Bannu.
- E. The para replied earlier.
- F. The para is not logical. There are some terms and condition prescribed for the post.
- G. The respondent No. 4 / replying respondent had duly applied for the post. The post was required to be advertised again.
- H. In wake of exclusion of the appellant, the next available and deserved candidate is the replying respondent. The Local Government Bodies, for recruitment of class-IV, need not to constitute committees for appointment.
- I. Incorrect, the para is already explained being baseless.
- J. The word "termination" is equivalent word for the word "removal". The ground is mere technicality being not logical.
- K. The para has already been refuted categorically. The appointment was challenged immediately and was subject to the litigation ab-initio which was hit by the judgment in question.

- L. The salaries may be recovered from the appellant, which were given to him on his own risk and cost.
- M. That, no melafide could be pointed out by the appellant on the part of official respondents, rather the termination was in compliance with the judgment of Peshawar High Court Bench Bannu.
- N. That, the following are the documents on which replying respondent No.04 places his reliance:
- (i) Copies of appointment order of replying respondent, arrival report of replying respondent are annexed herewith as Annexure "A,B".
 - (ii) Copies of verification reports, judgment of the High Court are annexed herewith as Annexure "C,D".

In wake of the above humble submissions and facts, the appeal in hand may kindly be dismissed.

Dated: 24.03.2019

Replying Respondent No. 04 
Through Counsel

Muhammad Tariq Qureshi
Advocate Supreme Court of Pakistan

5

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1147 / 2018.

Farmanullah

Appellant

VERSUS

Assistant Director, Local Government & others

Respondents

AFFIDAVIT

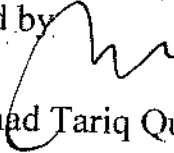
I, Kamranullah s/o Naik Daraz Khan Naib Qasid, Village Council Kheru Khel Pacca, Tehsil & District Lakki Marwat hereby solemnly affirm and declare that the contents of instant comments / reply are true and correct to the best of my knowledge and belief.

Deponent



Kamranullah

Identified by



Muhammad Tariq Qureshi Advocate



OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVT: & RURAL DEVELOPMENT
DEPARTMENT, LAKKI MARWAT.

Dated April 19 /2018

OFFICE ORDER

No. 5295-98 / In pursuance to the judgment dated 28.02.2018 of Peshawar High Court Bannu Bench in Writ Petition No.316-B/2016, Mr. Kamranullah S/O Naik Daraz Khan R/O Village Kheru Khel Pacca, Tehsil and District Lakki Marwat is hereby appointed as Naib Qasid in BPS-3 (9610-390-21310) plus usual allowances as admissible under the Rules, on regular basis, against the vacant post at VC Kheru Khel Pacca, District Lakki Marwat with the following terms and conditions:-

Terms and Conditions.

1. His services will be governed by the rules and regulations as are in vogue and as may be issued by the Government from time to time.
2. His services will be liable to termination on one month notice in advance from either side, but in case of resignation, without notice, two months pay shall be refunded towards Government.
3. He will be on probation for a period of one year extendable for a further period of one year and during this period he will not be entitled to apply for any long leave etc.
4. His services can be terminated at any time in case his performance is found unsatisfactory during probationary period and in case of misconduct he will be proceeded against the Removal from Service (Special Power) Ordinance, 2000 and the rules made from time to time.
5. His services are liable to be terminated if any of his documents is found fake or altered at any later stage and he will not entitle to undergo any litigation.
6. He will report his arrival to all concerned. He will also not entitle to any TA/DA for his first arrival. In case he is not willing to join the duty, he should furnish his un-willingness on a stamp paper to the office of the undersigned.
7. Before submission of pay bill to the District Accounts Officer for pay purpose, all his Certificates and Degrees will be checked and verified from the concerned Board or University as the case may be.
8. The undersigned deserves the rights to amenu or add any condition to his appointment order.
9. He is required to produce Health and Age Certificate from the Medical Superintendent DHQ Hospital, Lakki Marwat.

If the above terms and conditions are accepted, he should immediately communicate his willingness and report for duty to the undersigned within 15 days, failing which this appointment order may be treated as cancelled in respect of the candidate.

(Muhammad Azeem)

Assistant Director

Local Govt. & Rural Development
Department, Lakki Marwat.

Even No. & Date.

Copy forwarded to:-

1. The Director General, Local Govt. & Rural Development Deptt: KP, Peshawar.
2. The District Accounts Officer, Lakki Marwat.
3. The Progress Officer, LGRDD, Lakki Marwat to arrange for verification of documents.
4. Candidate concerned.

Assistant Director

Local Govt. & Rural Development
Department, Lakki Marwat.

TO

The Nazim
Village Council Kheru Khel Pacca
Tehsil and District Lakki Marwat

SUBJECT : REPORT OF ARRIVAL

Sir,

In Compliance with order of the Assistant Director , Local Govt , & Rural
Development Deptt: Lakki Marwat Contained in Office Order No. 5295-98, Dated
19.04.2018, I the Undersigned hereby report my arrival for duty on 20.04.2018
(Forenoon)

(KAMRAN ULLAH)

S/O NAIK DARAZ KHAN

R/O Kheru Khel Pacca, District Lakki Marwat .

OFFICE OTH NAZIM, VILLAGE COUNCIL KHERU KHEL PACCA.

No. _____ /

Dated 20 / 4/2018

Copy Forward :-

1. The Assistant Director LGRDD, Lakki Marwat.
2. The District Account Office, Lakki Marwat.

For information & Necessary Action Please.

Secretary, VC

SECRETARY

V/C Kheru Khel Pacca
Distt: Lakki Marwat


Nazim VC

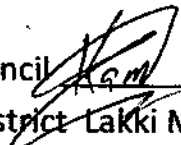
KAMRAN ULLAH

Nazim V/C Kheru Khel
Pacca Lakki Marwat

Certificate

Certified that we personally know Mr, Kamran Ullah S/O Naik Daraz Khan ,He is permanently resident of Village Kheru Khel Pacca, with situated in Village Council Kheru Khel pacca Tehsil Lakki Marwat Distt: Lakki Marwat .


Secretary
Village Council
Tehsil & District Lakki Marwat
SECRETARY
V/C Kheru Khel Pacca
Distt: Lakki Marwat

Nazim
Village Council
Tehsil & District Lakki Marwat

KAMRAN ULLAH
Nazim V/C Kheru Khel
Pacca Lakki Marwat

C 8

BEFORE THE PESHAWAR HIGH COURT BENCH BANNU

Writ Petition No. 285/2016

Shakeel Khan son of Mushk Alam resident of Wanda Rehmana, Village Council Alam Shah Khel, Tehsil and District Lakki Marwat.



....(Petitioner)

Vs

1. Govt. of Kyber Pakhunkhwa through Secretary Local Govt. and Rural Development Department, Peshawar.
2. Director General, Kyber Pakhunkhwa, Local Govt. and Rural Development Department Peshawar.
3. Assistant Director, Local Govt. and Rural Development Department Lakki Marwat.
4. Deputy Commissioner, Lakki Marwat.
5. District Accounts Officer, Lakki Marwat.
6. Tahir Khan son of Mirza Ali Khan resident of Begu Khel, Village Council Begu Khel, Tehsil and District Lakki Marwat.

(Respondents)

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN

RESPECTFULLY SHEWETH:

1. That, the petitioner is permanent resident of village Wanda Rehmana and VC also Alam Shah Khel and have educational qualification of SSC.
2. That, the respondent No. 2 advertised the post of Peons/Class-IV, one each in every village Council of District Lakki Marwat.
3. That, the advertisement has having condition that for each UC, the candidates who is the permanent resident of same village will be appointed.

That, the Petitioner being eligible cum fit the post applied and stood most deserved due to qualification and in his village/village council.

ATTESTED

EXAMINER
Peshawar High C.

15 APR 2016

Additional Registrar

9

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

W.P.No.285-B/2016

Shakeel Khan

Versus

Govt. of K.P.K through Secretary Local Govt. and
Rural Development and others



JUDGMENT

Date of hearing: 28.02.2018

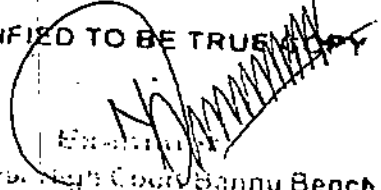
Appellant-petitioner by Mr. Ismailullah
Khan Mandra Khel,
Respondent Govt. by Mr. Shahid
Hameed Qureshi AAG,

ABDUL SHAKOOR, J.- Same judgment as in
W.P.No.254-B/2016 (Sharifullah Vs. Govt. of K.P.K
through Secretary Local Govt. and Rural Development
and others).

Sd/-Mr. Justice Abdul Shakoor-J

Sd/-Mr. Justice Shakeel Ahmad, J

Announced
Di: 28.02.2018.

CERTIFIED TO BE TRUE COPY

Peshawar High Court Bannu Bench
Authorised under Article 87 of
the Qanun-e-Shahadat Order 1987

SCANNED

OH
02/3/2018

10
JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
BANNU BENCH
(Judicial Department)

W.P.No.254-B/2016

Sharifullah

Versus

Govt. of K.P.K through Secretary Local Govt. and
Rural Development and others

JUDGMENT

Date of hearing: 28.02.2018.

Appellant-petitioner by Mr. M. Tariq Qureshi
Adv;

Respondent Govt. by Mr. Shabir
Naveed Qureshi A.A.S.

ABDUL SHAKOOR, J.- By this single judgment we
propose to decide the following petitions having identical
questions of law and facts:-

1. W.P.No.254-B/2016.
(Sharifullah Vs. Govt. of K.P.K through
Secretary Local Govt. and Rural
Development and others).
2. W.P.No.260-B/2016.
(Naveedullah Vs. Govt. of K.P.K through
Secretary Local Govt. and Rural
Development and others).
3. W.P.No.274-B/2016.
(Muhammad Sabir Vs. Govt. of K.P.K
through Secretary Local Govt. and Rural
Development and others).
4. W.P.No.285-B/2016

ATTESTED

dw
EXAMINER
Peshawar High Court,
Bannu Bench

SCANNEL

Imran
D. by Mr. Justice Abdul Shakoor and Mr. Justice Shakeel Ahmad, JJ

(Shakeel Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

5. W.P.No.292-B/2016.

(Zafarullah Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

6. W.P.No.343-B/2016.

(Shafiullah Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

7. W.P.No.386-B/2016

(Gul Tayaz Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

8. W.P.No.467-B/2016

(Zainullah Khan Vs. Director General Local Govt. & Rural Development and others).

9. W.P.No.529-B/2016.

(Parvaiz Kamal Khan Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

10. W.P.No.535-B/2016

(Fasiullah Vs. Govt. of K.P.K through Secretary Local Govt. and Rural Development and others).

2. The common facts of all these writ petitions are that the petitioners are the residents of their respective Union Councils. In response to the advertisement made in the newspaper the petitioners applied for their appointments as Class-IV employees, but they were denied appointments and the people from other Union Councils were appointed, hence, these constitutional petitions.

3. After arguing the case at great length, the learned counsels for the petitioners stated at the bar that let all these

ATTESTED

EXAMINER
Peshawar High Court
Muzaffar Hussain

Inman

(D) Mr. Justice Abdul Shakoor and Mr. Justice Shakeel Ahmad, JJ

cases be sent to the competent authority to re-examine the cases of appointment of the private respondents and to find out whether they have been appointed in accordance with law, policy and the terms and conditions incorporated in the advertisement or not. The learned counsel representing the private respondents in all the writ petitions and the learned A.A.G appearing on behalf of official respondents assisted by representatives of the department agreed with the contention of the learned counsels for the petitioners.

4. In view of above, we send back all these cases to the Assistant Director Local Government and Rural Development/competent authority of their respective districts to re-examine the appointments of the private respondents, merit position of the petitioners and pass an appropriate order keeping in mind the rules, policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees, after providing the parties an opportunity of hearing and submit compliance report to Additional Registrar of this Court. The entire process shall be completed within 02 months positively. With these observations the writ petitions are disposed of accordingly.

Announced.
Di: 28.02.2018.

Sd/- Mr. Justice Abdul Shaboor-ji

Sd/- Mr. Justice Shakeel Ahmad J

CERTIFIED TO BE TRUE COPY

By the Bench
Article 87 of
the Constitution of Pakistan

(1) By Mr. Justice Abdul Shaboor and Mr. Justice Shakeel Ahmad J-2

6/11
02/3/2018

Inron *

4

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
BANNU BENCH.**

(Judicial Department)

W.P No. 430-B of 2018



Jameel Khan Vs. Govt: of KP etc:

JUDGMENT

Date of hearing 24/6/2019

Appellant-Petitioner By Masood Adnan Adv. and
Masood Iqbal Khattak Adv.

Respondent(s) By Shahid Hameed Qureshi Adv. & A/s.
Att. No. 4 By Muhammed Tahir Qureshi A/s.

SHAKEEL AHMAD, J.--- By means of this

Constitutional petition filed U/A-199 of the Islamic Republic of
Pakistan, 1973. petitioner sought the following relief:-

"It is, therefore most humbly
prayed that:-

1. the impugned appointment order of the
respondent No.4 may very kindly be set
aside/ cancelled by declaring it to be,
illegal, improper, un-just, discriminatory
and of no legal effect.

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

II. *The respondents may kindly be directed to appoint the petitioner as class-IV BFS "I" for the village council Aba Khel (I), according to law, rules and policy.*

III. *Any other appropriate remedy according to law as this honorable court deems fit. "*

2. Facts of the case, in brief, are that by means of an advertisement dated 07.7.2015, the respondent No.2 invited applications for appointment against the post of Class-IV employees (BPS-1) on the terms and conditions mentioned therein. In pursuance thereof petitioner applied for the same, competed with others, however, on merit he could not be selected rather one Imranullah/respondent No.4 was appointed as such, hence, this petition.

3. In pursuance of order of this court, respondents No.3 & 4, submitted their para-wise comments raising therein many legal and factual objections.

ATTESTED
EXAMINER
Peshawar High Court
Baitou Baitou

4. It was mainly argued by the learned counsel for the petitioner that respondent No.4, Imranullah, had neither applied against the impugned post nor belongs to village council/Neighbourhood council, Aba Khel-(1), therefore, his appointment is illegal, without lawful authority and the same is liable to be struck down and in his place, petitioner is entitled for appointment.

5. As against that, learned counsel appearing on behalf of respondent No.4 and learned Addl: A.G appearing on behalf of official respondents jointly argued that respondent No.4 belongs to village council/Neighbourhood council, Aba Khel-(1) District Lakki Marwat as is reflected from Annexure-H at Page-15 and minutes of meeting of selection and recruitment committee enclosed as Annexure-A at Page-6 of the comments, and prayed for dismissal of the writ petition.

6. Arguments heard and record perused.

7. It is evident from the record that through a public notice dated 07.7.2015, applications were invited for appointment against Class-IV employees BPS-01 on the terms

Imranullah (D.B) Justice Muhammad Nasir Mahfooz and Justice Shakeel Ahmad

ATTESTED

EXAMINER
Peshawar Court
Bannu Bench

and conditions mentioned therein, pursuant thereto the contesting parties appalled for the same, competed with others, however, respondent No.4 was appointed as such, on merit. It was specifically mentioned in the advertisement that posts were to be filed from the District concerned/ village council/Neighbourhood council, and preference will be given to the resident of village council concerned. Perusal of the minutes of the meeting of selection and recruitment committee enclosed as Annexure-A at Page-6 reflects that name of the petitioner appears at S.No.34 and in the column of village council/Neighbourhood council, it was recorded as Abba Khel (1) and the post in question was filled through open competition, also belongs to village council/Neighbourhood council. The question whether the petitioner applied for appointment against the impugned post or not and whether the petitioner belongs to village council, Aba Khel-(1) are purely factual in nature which can only be answered after recording pro and contra evidence and this exercise cannot be done in writ jurisdiction.

Imranullah (D.B) Justice Muhammad Nasir Mahfooz and Justice Shakeel Ahmad

ATTESTED

EXAMINER
Peshawar High Court
Bannu Bench

8. For what has been discussed above, this writ petition is dismissed being not maintainable, however, the petitioner shall be at liberty to seek her relief before the court of competent jurisdiction, if so desired.

Announced.
24.6.2019.

Sd/- Mr. Justice Muhammad Nasir Mahfooz

Sd/- Mr. Justice Shakeel Ahmad

CERTIFIED TO BE TRUE COPY

28/6/19

Examiner

Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1988

Handwritten signature and date: 26/6/19

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S. A. No. 1147 /2018

Farmanullah

versus

Director & Others

REPLICATION**Respectfully Sheweth,****Preliminary Objections:**

All the preliminary objections of the respondents are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no cause of action / locus standi, estoppel, time barred, bad for mis-joinder and non-joinder of necessary parties and has no jurisdiction in the matter. He has not come to the hon'ble Tribunal with clean hands and has concealed material facts and mala fide.

ON FACTS

1. Admitted correct by the respondents regarding advertisement. In the advertisement, candidates throughout the Province were directed to apply for the post and the selection will be made on merit, however, preference would be given to the local candidate. The advertisement was not specifically meant for concerned Village Council as is evident from the same.
2. Not correct. The para of the appeal is correct regarding appointment of appellant as Naib Qasid. Rest of the para of reply of respondents is without proof regarding advertisement for the concerned Village Council. Appellant performed his duties at the said post and also enjoyed monthly salaries.

3. Admitted correct by the respondents regarding implementation of the judgment of the High Court. The order of appointment of appellant was made by the respondents after observing the due codel formalities, by keeping in view the advertisement which was for the whole of KPK and not specifically for concerned Village Council.
4. Admitted correct by the respondents regarding Show Cause Notice and its reply. Here it is pertinent to point out that the authority mis-used her power as the candidates were appointed in different Village Council instead of his own one, as the advertisement says so.
5. Not correct. Appellant services were illegally terminated as no fulfilled enquiry was conducted as per the mandate of law and more so, in this para of the appeal, the position has been explained by appointing candidates in other Village Councils instead of in their own Village Council as per advertisement. They are still in service. No surplus employee was ever appointed at the post but should have been adjusted and not appointed.
6. Not correct. When in the Village Council of the appellant another candidate was appointed then it was not the fault of appellant but of the authority. Whole record submitted to the authority was quite clear but it was the authority who despite the complete documents appointed him in other Village Council and even if he was appointed in other Village Council, the same was also not illegal as per the spirit of advertisement. The hon'ble High court did not directed the respondents to terminate services of appellant.
7. Not correct. The para of the appeal is correct regarding submission of appeal before the authority. The newly appointed candidate, R. No. 04 was never gone through the process of selection for the post.

More so, on the same and similar subject matter, the hon'ble Peshawar High Court, Bannu Bench was pleased to dismiss the W.P No. 430-B/18, Jamil Khan vs Govt. of KP & Others on 24-06-2019 by not acceding with his request on the same issue. (Copy Attached)

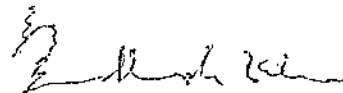
GROUNDS:

All the grounds of the appeal are legal and correct, while that of the comments are illegal and incorrect. The same are once again relied upon. In the advertisement, applications were invited from the candidates of the KP and not of the Village Council concerned, so the appointment of appellant was quite per its mandate. Giving preference to the candidate of concerned Village Council, does not mean that other candidate could not compete for the said post.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.

Appellant

Through



(Saadullah Khan Marwat)

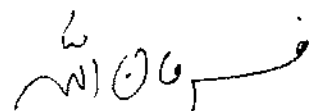
Advocate,

Dated: 11-09-2019

AFFIDAVIT

I, Farmanullah, appellant do hereby solemnly affirm and declare that contents of the **Appeal & replication** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

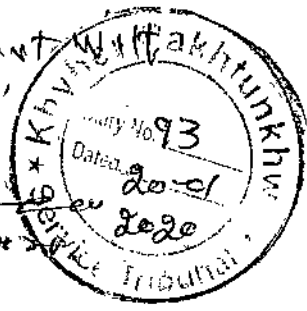
I reaffirm the same on oath once again to be true and correct as per the available record.

DEPONENT

محفوظ جناب جسٹس صاحب اسٹریٹ جرنل

Put up to the court relevant app...



فرمان اللہ لکھنؤ سخت ۱۸
کنڈ لکھی ۳۱

Deerdu

درخواست نامہ ادا بحال کی جائے نائب قاصر و بلج کوئی
نئی صورت

جناب عالی! ۱۔ عہدہ حساب ذیل عمر ۱۵ سال

۲۔ عہدہ حساب ذیل خدمت ۳ سال پوسٹ پر

بھرتی تھا جو کہ ۲ سال نوکری کی تھی

۳۔ عہدہ حساب ذیل نوکری ۲ سال غلط بھرتی دوبارہ

عہدے سے ہٹایا گیا ہے۔ -
۳۔ عہدہ حساب ذیل ساٹھ سال نا اہلی ہوئی ہے۔

۴۔ عہدہ حساب ذیل گھر کا واحد پیشہ ہے

عزیم گھران سے تعلق کے ساتھ لکھنؤ اور اہلکار
عہدہ پر ہے جو کہ تنخواہ لے کر گھر کے کام اجازت

لکھنؤ پوری گھری بقالت کر رہے۔ لکھنؤ اسٹا

تی جائی ہے کہ عہدہ پر دوبارہ بحال کر

دیکھو فرمائیں

فرمان اللہ

فرمان اللہ ڈی-۵۵۵۹۵۹۸-۱۱۲۰۱

To
The Honorable Chairman,
Service Tribunal, Khyber Pakhtunkhwa
Peshawar

Subject: REQUEST FOR APPOINTMENT AS NAIB QASID ON VACANT POST IN LIGHT OF APPEAL NO: 1077/18 SERVICE TRIBUNAL KP "ASSISTANT DIRECTOR, LG & RDD LAKKI MARWAT VS FARMANULLHAN S/O SAKHTA MIR, NAIB QASID VC KHERU KHEL, DISTRICT LAKKI MARWAT"

R/Sir,

It is submitted in your kind control that Mr. Farmanullhan S/O Sakhta Mir Residence of Vc Paharkhel Pakka UC Kherukhel was appointed as Naib Qasid in VC Kheru Khel Pakka and was terminated by the Peshawar High Court Bannu Bench.

Dear Sir,

It is pertinent to note that the post of Naib Qasid is lying vacant in VC Paharkhel Pakka, as the existing Naib Qasid has been retired and he has no sons for posting in the said post. I have already performs services for 02 years on the said post.

It therefore, humbly requested that Assistant Director, LG&REDD Lakki Marwat may be directed for my appointment on the said post in order to recover my previous services please.

Dated: 04/12/2019

Your Obediently,

فرمان اللہ

Farmanullah Khan S/O Sakhta Mir,

Residence of VC Paharkhel Pakka &

Ex-Naib Qasid VC Kherukhel.

Mob# 0341-9494109

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
BANNU BENCH.

(Judicial Department)

W.P No. 430-B of 2018



Jamil Khan Vs. Govt: of KP etc:

JUDGMENT

Date of hearing 24/6/2019

Appellant-Positioner By Masood Adnan Adv. and
Masood Iqbal Chhattak Adv.

Respondent(s) By Shahid Hameed Qureshi Adv. AG.
Other No. 4 By Muhammad Tariq Qureshi Adv.

SHAKEEL AHMAD, J.--- By means of this

Constitutional petition filed U/A-199 of the Islamic Republic of
Pakistan, 1973, petitioner sought the following relief:-

"It is, therefore most humbly
prayed that:-

- I. the impugned appointment order of the
respondent No.4 may very kindly be set
aside/ cancelled by declaring it to be,
illegal, improper, un-just, discriminatory
and of no legal effect.

ATTESTED
[Signature]
EXAMINER
Peshawar High Court
Bannu Bench

II. *The respondents may kindly be directed to appoint the petitioner as class-IV BPS "I" for the village council Aba Khel (I), according to law, rules and policy.*

III. *And other appropriate remedy according to law as this honorable court deems fit. "*

2. Facts of the case, in brief, are that by means of an advertisement dated 07.7.2015, the respondent No.2 invited applications for appointment against the post of Class-IV employees (BPS-1) on the terms and conditions mentioned therein. In pursuance thereof petitioner applied for the same, competed with others, however, on merit he could not be selected rather one Imranullah/respondent No.4 was appointed as such, hence, this petition.

3. In pursuance of order of this court, respondents No.3 & 4, submitted their para-wise comments raising therein many legal and factual objections.

4. It was mainly argued by the learned counsel for the petitioner that respondent No.4, Imranullah, had neither applied against the impugned post nor belongs to village council/Neighbourhood council, Aba Khel-(1), therefore, his appointment is illegal, without lawful authority and the same is liable to be struck down and in his place, petitioner is entitled for appointment.

5. As against that, learned counsel appearing on behalf of respondent No.4 and learned Addl: A.G appearing on behalf of official respondents jointly argued that respondent No.4 belongs to village council/Neighbourhood council, Aba Khel-(1) District Lakki Marwat as is reflected from Annexure-H at Page-15 and minutes of meeting of selection and recruitment committee enclosed as Annexure-A at Page-6 of the comments, and prayed for dismissal of the writ petition.

6. Arguments heard and record perused.

7. It is evident from the record that through a public notice dated 07.7.2015, applications were invited for appointment against Class-IV employees BPS-01 on the terms

Imranullah (D.B) Justice Muhammad Nasir Mahfooz and Justice Shakeel Ahmad

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and conditions mentioned therein, pursuant thereto the contesting parties applied for the same, competed with others, however, respondent No.4 was appointed as such, on merit. It was specifically mentioned in the advertisement that posts were to be filed from the District concerned/ village council/Neighbourhood council, and preference will be given to the resident of village council concerned. Perusal of the minutes of the meeting of selection and recruitment committee enclosed as Annexure-A at Page-6 reflects that name of the petitioner appears at S No.34 and in the column of village council/Neighbourhood council, it was recorded as Abba Khel (1) and the post in question was filled through open competition, also belongs to village council/Neighbourhood council. The question whether the petitioner applied for appointment against the impugned post or not and whether the petitioner belongs to village council, Aba Khel-(1) are purely factual in nature which can only be answered after recording pro and contra evidence and this exercise cannot be done in writ jurisdiction.

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8. For what has been discussed above, this writ petition is dismissed being not maintainable, however, the petitioner shall be at liberty to seek her relief before the court of competent jurisdiction, if so desired.

Announced.
24.6.2019.

Sd/-Mr. Justice Muhammad Nasir Mahfooz J

Sd/-Mr. Justice Shakeel Ahmad J

CERTIFIED TO BE TRUE COPY

28/6/19

Examiner

Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1988

Handwritten signature and date: 20/6/19