

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

7/72
25/8/2023

Service Appeal No. 1448/2023

Zia ur Rahman s/o Habib ur Rahman r/o Village Kankowai Tehsil Mandanr, District Buner

(APPELLANT)

Versus

1. District Education Officer Male District Buner
2. Head Master GMS Wach Khwar Kawga Buner
3. District Accounts Officer Buner
4. Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar

(RESPONDENTS)

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DEPONENT

CNIC No 15101-0882583-3

Service Appeal No. 1448/2023

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(APPELLANT)

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(RESPONDENTS)

Written Reply/Para wise Comments for & on behalf of Respondents No. 1, 2, 3 & 4

Respectfully Sheweth!

Preliminary Objections

- **That the instant appeal is infructuous in that subsequently, the appellant has been proceeded against under E&D Rules 2011 by conducting a regular inquiry and fulfilling all codal formalities and was awarded major penalty of "Removal from Service" vide Notification No.3659-64 dated 01/8/2023. (Notification is attached as annexure "A")**
- **That the remedy of departmental appeal is available to the appellant against the penalty of removal from service and the mandatory statutory period of 90 days is not yet expired, hence the appeal is not maintainable.**
- That the appellant has no vested right to continue or hold a particular post at a particular place of his choice, wish and whim, thus is liable to be transferred anywhere in exigencies of service or on disciplinary grounds, hence the appeal is not maintainable.
- Every Government servant is bound to perform his duties anywhere in the best interest of public service within the legal frame work.
- The Appellant has no cause of action/locus standi to file the instant declaration of right of serving at the place of his choice for a long time.
- The Appellant has concealed the material facts from this honorable court, hence liable to be dismissed.
- That the appeal is wholly incompetent, misconceived and untenable.
- That the appeal for declaration is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication, therefore, the same is liable to be rejected/ dismissed.

②

That the instant appeal is not maintainable in the present form and also in the present circumstances of the issue.

- The Appellant has not come to this honorable court with clean hands.
- The instant litigation is against the prevailing law and rules.
- The appellant has been estopped by his conduct to file the appeal.


Facts

1. Pertains to the record.
2. Pertains to record.
3. Incorrect and hence denied. The head master is the head and manager of the school and is responsible to manage the activities, discipline and classes of the school according to the situation and need of the students. The appellant was neither interested in his classes nor was cooperative with the headmaster, due to which he reported him to the competent authority and requested to transfer him in the best interest of the students. As for as the other allegations against respondents are concerned, these are baseless, fake, fabricated and frivolous. The appellant does not have a single proof to justify and prove his claim.
4. Incorrect and hence denied. The appellant is resorting to aspersion and false accusations. Neither the headmaster nor any other official of school or office has any illegal gains from school. The school has very limited funds, where such like blame of embezzlement has no justification nor the appellant has any proof against the head master. The appellant was transferred on administrative grounds on the report of the Headmaster concerned and it is clearly mentioned in the referred ban notification that transfers on administrative ground are exempted from ban. In addition, the appellant is a habitual problems creator and was always committing misconduct with the headmaster. He was also not performing his duty efficiently, due to which the headmaster reported him to the competent authority who issued his transfer order on administrative grounds in the public interest to prevent the school environment from further aggravation. In addition the question of "spouse policy" is irrelevant as the appellant has been transferred within his own subdivision/tehsil. **(The report of the Head Master against the appellant is attached as Annexure "B")**
5. Incorrect and hence denied. The respondent No. 1 transferred the appellant from GMS Wach Khwar to GHS Janak Banda on the report of the Head Master concerned, however, he did not comply with the orders and submitted an application that they have an old enmity in the locality of GHS Janak Banda and requested to change his place of posting to an other school. **(His application is attached as annexure "C")** Thus on the request of the appellant a corrigendum was made and he was adjusted at GHS Malka, which is situated in his own subdivision/tehsil. **(Copies of transfer order and corrigendum order are**

attached as annexure "D" & "E"). However, the appellant again in violation of rules regulations and different court judgments did not comply with the transfer order and remained willfully absent. Civil Servant could not stay at a place of his choice unless operation of the transfer order stayed, which was not the position in the case. Such view of the issue, according to Service Tribunal if affirmed, would give license to every Civil Servant to file a representation against order of transfer and stay at place from which he did not want to move, as such the same would create administrative chaos. **Same is reported in 2006 SCMR 443.** Similarly, Civil Servant could not disobey transfer order. **Same is reported in 2003 PLC (CS)104.** The appellant has not only committed non-compliance of official order but also violated of the dictums laid down by the August Supreme Court of Pakistan. Going ahead, Service Tribunal had also found after appraisal of material available before it, that transfer order made for administrative reasons in public interest is valid and not for extraneous considerations. Employees was liable to be transferred anywhere in exigencies of service, having no vested right of his choice for a specific place. **Reliance is placed on 1998 SCMR 293.** The transfer of the appellant has been made under Section 10 of NWFP Civil Servants Act, 1973. The Supreme Court of Pakistan judgments are very much clear in this regard. Some reported judgments of Supreme of Pakistan are **1999 PLC 655, 1999 SCMR 755 etc.** As per rules, a civil servant is required to relinquish charge immediately after he is transferred to some other station and he is not allowed to use delaying tactics thereof. Similarly, Civil Servant could not disobey transfer order. **Same is reported in 2003 PLC (CS)104**

In addition, as it has already been averred that he has been removed from service by properly conducting a regular inquiry and after fulfilling all codal formalities, i.e inquiry, showcause etc, his removal from service notification was issued. Therefore, the instant appeal is infructuous and is not maintainable in the present form and circumstances.

- 6. Incorrect and hence denied. As it has already been submitted that the appellant was transferred to GHS Malka and was already relieved from GMS Wach Khwar, **(Relieving certificate is annexed as annexure "F")**, however, he did not take over charge and remained absent there. Due to his non-compliance of office order and absence from the school where he was transferred, his salary was stopped. His forceful entry and sitting in school from where he was transferred, was not only misconduct but violation of rules regulations and directives of various courts judgments. Since, the transfer order was neither suspended by this Honourable court nor any status quo was granted to the appellant, therefore, his forceful entry and sitting there was in violation of rules and policy. In addition, no untoward occurrence was happened and the salary of the appellant was stopped due to his absence from duty at GHS Malka as reported by the Principal concerned.

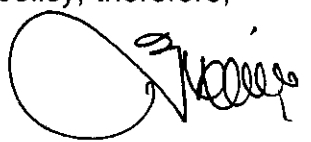


In addition, the respondent No.4 has not accepted his appeal. The annexed documents regarding acceptance of appeal on the body of application is not supported by record of office of the respondent No.4 (Director). Disposal of appeals by the Director is made through a standard procedure, and after proper scrutiny of the case and if needed such further inquiry, the appellate authority decides the case by itself by issuing proper notification and does not send the case to the competent authority for decision or issue directives to the competent authority to cancel the order or vice versa. The plea fabricated and adopted by the appellant is baseless and devoid of any substance.

7. Incorrect and hence denied. The appellant, just to pressurize and compel the respondents to cancel his transfer order, instituted a case under 22-A, Cr.PC for lodging an FIR against the respondent No.1 & 2 in the court of Additional District & session Judge/Ilaqa Qazi Buner, which was dismissed after proper trial and proceedings by the Honourable Court vide judgment dated 15/7/2023, declaring the suit of the appellant to be based on malafide and personal grudges just to escape and avoid the proceedings initiated against the appellant by the respondents. **(Judgment of the Additional District & Session Judge is attached as annexure "G").**

8. Incorrect and hence denied. The earlier transfer order was made in accordance with the law, rules and policy. The respondent No.4 has not accepted his appeal. The annexed documents regarding acceptance of appeal on the body of application is not supported by record of office of the respondent No.4 (Director). Disposal of appeals by the Director is made through a standard procedure, and after proper scrutiny of the case and if needed such further inquiry, the appellate authority decides the case by itself by issuing proper notification and does not send the case to the competent authority for decision or issue directives to the competent authority to cancel the order or vice versa. The plea fabricated and adopted by the appellant is baseless and devoid of any substance.

Furthermore, the appeal is not justified and accordance with rules and policy, therefore, the instant service appeal may be set aside on the following grounds:



Grounds

A. Incorrect and hence denied. Before, giving reply of this para, it is submitted **That the instant appeal is infructuous in that subsequently, the appellant has been proceeded against under E&D Rules 2011 by conducting a regular inquiry and fulfilling all codal formalities and was awarded major penalty of "Removal from Service" vide Notification No.3659-64 dated 01/8/2023. It is further submitted that the remedy of departmental appeal is available to the appellant against the penalty of removal from service and the mandatory statutory period of 90 days is not yet expired, hence the appeal is not maintainable.** As it has already been submitted at para 6 of the Facts that the appellant was transferred to GHS Malka and was already relieved from GMS

Wach Khwar, however, he did not take over charge and remained absent there. Due to his non-compliance of office order and absence from the school where he was transferred, his salary was stopped. His forceful entry and sitting in school from where he was transferred, was not only misconduct but violation of rules regulations and directives of various courts judgments. Since, the transfer order was neither suspended by this Honourable court nor any status quo was granted to the appellant, therefore, his non-compliance of transfer order and forceful entry and sitting in school wherefrom he was transferred is violation of rules and policy.

B. Incorrect and hence denied. After his transfer and relieving from GMS Wach Khwar Kwaga 11-01-2023, the appellant neither took charge of his duty at GHS Janak Banda nor at GHS Malka. And the Head Master GHS Janak Banda communicated the absence report of the appellant from his duty since the date of his transfer, 09-01-2023, vide his office Memo No. 1359 dated 18-02-2023. **(The letter of the Head Master of GHS Janak Banda and GHS MAIka are attached as Annexure "H & I")**, therefore, after waiting till 17/2/2023, he did not take over charge, his salary was stopped vide letter No.824 dated 17/2/2023. Since, he was absent from 10/1/2023, therefore, the salary of February 2023, was not released.

C. Incorrect and hence denied. As already explained at para 5 of the Facts that the appellant was transferred from GMS Wach Khwar to GHS Janak Banda vide order No. 107-11 dated 9/1/2023 on the report of the Head Master concerned, however, he did not comply with the orders and submitted an application that they have an old enmity in the locality of GHS Janak Banda and requested to change his place of posting to an other school. Thus on the request of the appellant a corrigendum No.1130-34 dated 7/3/2023 was made and he was adjusted at GHS Malka, which is situated in his own subdivision/tehsil. Thus both the orders are legal and lawful. However, the appellant again in violation of rules regulations and different court judgments did not comply with the transfer order and remained willfully absent.

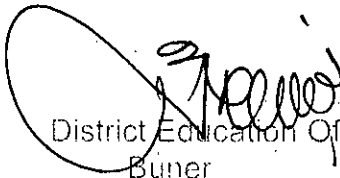
As it has been explained at para 8 of the Facts that the respondent No.4 has not accepted his appeal. The annexed documents regarding acceptance of appeal on the body of application is not supported by record of office of the respondent No.4 (Director). Disposal of appeals by the Director is made through a standard procedure, and after proper scrutiny of the case and if needed such further inquiry, the appellate authority decides the case by itself by issuing proper notification and does not send the case to the competent authority for decision or issue directives to the competent authority to cancel the order or vice versa. The plea fabricated and adopted by the appellant is baseless and devoid of any substance.

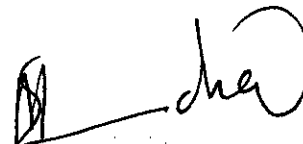
D. Incorrect and hence denied. A detailed report against the appellant was submitted by the headmaster concerned regarding his illegal activities, non-cooperative behavior and misconduct and requested to transfer him to an other

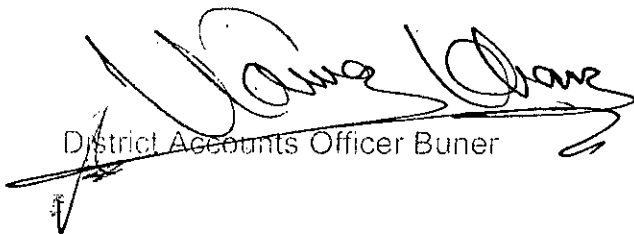
School, as his (appellant) presence at GMS Wach khwar not in the interest of the students. Due to his presence. The congenial educational environment was on the verge of aggravation. Thus keeping aggravating circumstances, he was transferred GMS Wach Khwar to GHS Janak banda. However, he did not over charge there and remained absent .detail reply of the rest of the para has alerdy been given at 5 & 7of the facts.

- E. Incorrect and hence denied. Already explained in the preceding para.
- F. Incorrect and hence denied. Already explained a detail at para 8 of the facts and at para C of the grounds.
- G. Legal.
- H. The respondent also seeks permission of this Honourable Court to rely on additional grounds at the time of arguments.

In view of the above noted submissions, it is humbly requested that this Honourable Court may very graciously be pleased to dismiss the instant appeal with cost in favour of the respondents:


 District Education Officer (M)
 Buner


 Head Master GMS Wach Khwar
 Buner


 District Accounts Officer Buner


 Director
 Elementary & Secondary Education
 Peshawar

①

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4. Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar

_____ (RESPONDENTS)

AFFIDAVIT

I, Ubaid ur Rahman, Superintendent BPS-17, office of the District Education (Male) Buner, do hereby solemnly affirms and state on oath that the whole contents of the reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Deponent

15101-0882586-3



Amman 11/11

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GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DISTRICT EDUCATION OFFICER
MALE BUNER

Phone & Fax No.0939-555110 Email: eaobuner@gmail.com

NOTIFICATION.

1. **WHEREAS** Mr. Zia Ur Rahman PET GMS Wach Khwar Kawga, Buner was reported by the Headmaster concerned for his absenteeism, inefficiency, misconduct and creating embarrassing situation for the department and was transferred on disciplinary ground to GHS Janak Banda Vide Endst: No. 107-11 Dated 9-1-2023.
2. **AND WHEREAS** the official concerned did not comply with the office order and did not take charge at his new station and remained absent w.e.f. 9-1-2023 till date.
3. **AND WHEREAS** in partial modification of the transfer order, a corrigendum made to GHS Malka instead of GHS Janak Banda on his own request vide this office corrigendum Endst. No. 1130-34 Dated 7-3-2023. but again he did not take over charge there and remained wilfully absent.
4. **AND WHEREAS**, he was proceeded against under E & D Rules 2011 for the charges mentioned in charge sheet and statement of allegations.
5. **AND WHEREAS** a formal inquiry was conducted through inquiry committee constituted vide this office No. 2344-47 dated 18-05-2023 comprising of Mr. Pervez Khan Principal BPS-19, GHSS Chanar as Chairman and Mr. Sikandar Hayat BPS-17, SDEO (M) Daggar as member.
6. **AND WHEREAS** the inquiry committee conducted a comprehensive inquiry and submitted its report.
7. **AND WHEREAS** the inquiry committee recommended major penalty of removal from service upon the delinquent official.
8. **AND WHEREAS** a final show cause notice was served to the official concerned vide Endst. No. 2974-77 dated 21-06-2023 through registered courier no. RGL 105799262, RGL 105799263 and RGL 105799264 Dated 22-06-2023, to which the official concerned did not reply till date.
9. **AND WHEREAS** the competent authority, DEO (M) Buner, after having considered the charges, evidences on record, inquiry report, show cause notice, is of the view that the charges against the accused have been proved.

NOW, THEREFORE, in exercise of the powers conferred under the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Disciplinary Rules 2011), I Mr. Iftikhar Ul Ghani DEO (M) Buner, as Competent Authority, am pleased to impose Major penalty of "Removal from Service" upon Mr. Zia Ur Rahman PET GMS Wach Khwar under transfer to GHS Malka Buner, in the interest of public service with immediate effect. The intervening period i.e. w.e.f 9-1-2023 till date, is converted into unauthorized absence.

Note:-

1. Necessary entry to this effect should be made in his service Book accordingly.

(IFTIKHAR UL GHANI)
DISTRICT EDUCATION OFFICER
MALE BUNER.

Endst: No. 3659-641 Dated 01/08/2023

Copy for information to:-

1. Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commissioner Buner.
3. District Monitoring Officer EMA, Buner.
4. District Accounts Officer Buner at Daggar.
5. Head Master/Incharge concerned.
6. Official Concerned.

DISTRICT EDUCATION OFFICER
MALE BUNER.

بخدمت جناب ڈی ای او صاحب ضلع یونین

عنوان: گورنمنٹ مڈل سکول وچ خوڑ کوگا میں پی ای ٹی ضیاء الرحمن کی بے ضابطگیاں

جناب عالی!

مودبانہ گزارش کی جاتی ہے کہ 8 جولائی 2021 سے جب پی ای ٹی ضیاء الرحمن گورنمنٹ مڈل سکول وچ خوڑ آیا ہے۔ تو اس نے سکول میں گروپ بندی شروع کی ہے۔ یہاں تک کہ دفتر ہذا میں بھی جھوٹ بول کر میرے خلاف نفرت پیدا کرنے کی کوشش کی ہے اسکی سب سے بڑی وجہ یہ ہے کہ میں کسی کو c/leave لگانے بغیر نہیں چھوڑتا ہوں۔ اور یہ سب سے زیادہ چھٹیاں کرنے والا ہے مثلاً 8 جولائی 2021 سے 24 دسمبر 2022 تک کل ایام کار 349 ہیں جبکہ اس نے اس میں 279 دن ڈیوٹی کی اور 70 دن سکول سے باہر رہے۔ اسکے علاوہ یہ ایک کام چور اور نا اہل استاد ہے اسکے نا اہلی کی وجہ سے ہم نے گزشتہ سال مڈل سکولز ٹورنامنٹ کے ادبی اور ایتھلیٹکس مقابلوں میں حصہ نہیں لیا تھا۔ جبکہ اس سال میں نے ہر ایک مقابلے کیلئے لڑکوں کی تیاری الگ الگ استاد کے ذمہ لگائی تھی جس میں ملی نغمہ اور قومی ترانہ کیلئے لڑکوں کی تیاری اس ذمہ تھی لیکن اس نے دوسرے اساتذہ کو اپنے ذمہ داری پورا کرنے سے منج کرنے کی کوشش کی اور اپنی ذمہ داری کا احساس تک نہیں کیا یعنی لڑکوں کے نام تک نہیں لکھیں۔

اسکے علاوہ اس نے تین French Leave بھی کی جو دوسرے اساتذہ کیلئے غیر قانونی کام کرنے کی ایک سیڑھی ہو سکتی ہے۔ اس لئے میں نے اس کے خلاف آپ صاحبان کو 20 دسمبر پر ایک درخواست دی تھی جس پر آپ صاحبان نے

Transfer him کے الفاظ لکھے تھے لیکن تا حال کچھ پتہ نہ چلا اس لئے دوبارہ درخواست آپ کے حضور پیش کی جاتی ہے۔

چونکہ مذکورہ مدرس بورڈ اور دفتر ہذا میں نا جائز طریقہ سے تعلقات رکھتے ہیں اسلئے اگر آپ صاحبان کیلئے اس کے تبادلے میں کوئی مشکلات ہو تو پھر میرا تبادلہ ناوہ گنی یونین کونسل کے کسی بھی سکول کو کیا جائے۔

العارض

Atesha

محمد صادق SST

گورنمنٹ مڈل سکول وچ خوڑ کوگا

J. K. K.

06.01.2023

Head Master.

GMS, Wach Khwar,
Kawga Chamba Bunei

بخدمت عزت مآب جناب ڈسٹرکٹ ایجوکیشن آفیسر صاحب ضلع بونیر

10

جناب عالی!

موردانہ گزارش ہے کہ میں نے اپنے ٹرانسفر کے حوالے سے بمورد 13-01-2023 کو اپیل جمع کی تھی اس اپیل میں، میں نے صراحتاً اور واضحاً یہ تحریر دی تھی کہ گورنمنٹ ہائی سکول جانک بانڈہ کو جو میرا تبادلہ کیا گیا ہے وہاں پر ہماری پرانی دشمنی ہے اور اس درخواست کے ساتھ میں نے ایف۔ آئی۔ آر بھی جمع کی تھی اور آپ صاحبان نے بھی مجھے زبانی طور پر کہا تھا کہ آپ وہاں پر چارج نہ لیں اور ہیڈ ماسٹر صاحب کے ساتھ صلح کر لیں تو آپ کا ٹرانسفر آرڈر واپس ہو جائیگا۔ اس کے بعد آپ صاحبان نے 30-01-2023 پر مجھے غیر معافی کا نوٹس بھیجا چونکہ یہاں پر سرمدیوں کی چھٹینیں تھی اور میں نے وہاں گورنمنٹ ہائی سکول جانک بانڈہ میں چارج بھی نہیں لیا تھا۔ اور پھر آپ صاحبان نے 17-02-2023 پر میرے تنخواہ بند کرنے کے احکامات جاری کئے۔

جناب عالی!

مورد 27-01-2023 پر آپ صاحبان نے جو انکو آری مقرر کی تھی اس نے آپ صاحبان کے دفتر میں انکو آری رپورٹ جمع کی اور اسی انکو آری نیم کو میں نے اور ہیڈ ماسٹر صاحب نے یہ تحریر دی ہے کہ میرا بیچول تبادلہ گورنمنٹ ہڈل سکول ڈچ فوڈ کو گاسے گورنمنٹ ہڈل سکول ہڈیر کو کرنے کے احکامات صادر فرمائیں انکو آری سکول کو وہی گئی تحریر درخواست کے ساتھ لگا ہے۔

جناب عالی!

یہ کہہ کر ان دشمنی کے بنام پورے گورنمنٹ ہائی سکول مالک بانڈہ میں بنا، آپ صاحبان کے ضمانت کے چارج لینے سے قاصر ہوں کیونکہ وہاں پر مجھے اور میری جان کو شدید خطرات لاحق ہے۔ اس لئے اگر آپ صاحبان مہربانی کر کے میرے ایپلوں پر نوٹ فرماتے ہوئے میرے ساتھ حسین سلوک کر کے میرا ٹرانسفر آرڈر منسوخ کر کے میرا بیچول تبادلہ گورنمنٹ ہڈل سکول ڈچ فوڈ کو گاسے گورنمنٹ ہڈل سکول ہڈیر کو کرنے کے احکامات صادر فرمائیں۔

جناب عالی!

کیونکہ میری ایپل بھی گورنمنٹ ہڈل سکول ہڈیر میں اپنی ذیوقی سرانجام دے رہی ہے اس لئے بھی اگر آپ صاحبان مہربانی کر کے سپاؤس پالیسی کو مد نظر رکھتے ہوئے میرے ساتھ احسان کا معاملہ معاہدہ معاہدہ فرمائیں۔

جناب عالی!

آپ صاحبان نے 17-02-2023 پر میرے تنخواہ بند کرنے کے احکامات جاری کئے ہیں لہذا استدعا ہے کہ میرے درجہ بنی تقاضوں کو مد نظر رکھتے ہوئے تنخواہ بند کرنے کے احکامات واپس کر دیں تو میں نوآزش ہوگی انتہا آداب۔

انور علی

2/3/23

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نوٹ: یہاں پر ان کی دشمنی ہے۔ ای۔ آئی۔ آر۔ گورنمنٹ ہڈل سکول ڈچ فوڈ کو گاسے۔

20-02-2023

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GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) BUNER

Phone & Fax No. 0939-555110 Email: edobuner@gmail.com

TRANSFER ORDER.

Consequent upon the report submitted by the Head Master CMS Wach Khwar Kawga, Buner Dated 21-12-2022 and the subsequent report dated 06-01-2023 against Zia Ur Rahman PET of the concerned school, the Competent Authority is pleased to transfer Mr. Zia Ur Rahman PET bearing CNIC No. 15101-2047226-9 GMS Wach Khwar, Kawga to GHS Janak Banda on disciplinary grounds on account of absenteeism, inefficiency, misconduct, creating embarrassing situation for the department in the interest of public service with immediate effect.

Note:-

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

(IFTIKHAR UL GHANI)
DISTRICT EDUCATION OFFICER
MALE BUNER

Endst:No. 107-11 /SST-SPET- File2022 Dated: 9/11 /2023

Copy is forwarded for information to the:-

- 1 Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
- 2 District Monitoring Officer EMA at Buner.
- 3 District Accounts Officer Buner at Daggar.
- 4 Principal /Head Master concerned.
- 5 Official concerned.

DISTRICT EDUCATION OFFICER
MALE BUNER
9/11/23

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GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DISTRICT BUNER

Phone & Fax No.0939-555110 Email: edobuner@gmail.com



CORRIGENDUM.

In partial modification of this office transfer order on disciplinary grounds issued vide Endst: No. 107-11 Dated: 09-01-2023, the school name in R/O Mr. Zia Ur Rahman PET may be read as GHS Malka instead of GHS Janak Banda in the interest of public service.

Note:


1. No TA/DA is allowed.

(IFTIKHAR UL GHANI)
DISTRICT EDUCATION OFFICER
MALE BUNER

Endst No: 1130-24 /P.File- Zia Ur Rahman-PET Dated: 07/03/2023

Copy of the above is forwarded for information to the:

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshwar.
2. District Monitoring Officer EMA, Buner.
3. District Accounts Officer Buner at Daggar.
4. Principal/Head Master Concerned.
5. Official concerned.


DISTRICT EDUCATION OFFICER
MALE BUNER

Attested 7/3/23



Amman "F"

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RELIEVING CERTIFICATE

Certified that Mr, ZIA UR RAHMAN PET (BPS-15) GMS Wach Khwar Kawga Buner has been transferred to GHS Janak Banda Buner vide order No:107-11 dated:09/01/2023 by District Education Officer (M) District Buner.

In compliance he is hereby relived of his duties and responsibilities at GMS Wach Khwar Kawga Buner Dated:11/01/2023.

HEAD MASTER
GMS WACH KHWAR KAWGA BUNER
11-01-2023

Endst:No. 4534

- 1. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
- 2. District Education Officer (M), Buner.
- 3. District Accounts Officer, Buner.
- 4. District Monitoring Officer EMA at Buner.
- 5. Head Master GHS Janak Banda Buner.
- ✓ 6. Official Concerned.

HEAD MASTER
GMS WACH KHWAR KAWGA BUNER
11-01-2023

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IN THE COURT OF

ABDUL SALAM KHAN BARKANI KHEL

ADDE. SESSIONS JUDGE/70 LL-OUTPOST JUSTICE OF PEACE BUNER

22-A Petition No. 34-M of 2023

"The (17) National or International Policy"

19.07.2023

Petitioner namely Zia Ur Rahman S/o Habib Ur Rahman
in person present. Mr. Muzhar Ali Shah Dy.PP for Govt
State present. Respondent Muhammad Saadiq S/o
Muhammad Ishaq (Head Master Government Middle
School Wachi Khwar Kawga, Buner) and others present
through counsel.

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5-8-2023

1. The petitioner Zia Ur Rahman S/o Habib Ur Rahman R/o
Karkhwa, Tehsil Mandara, Buner, has filed instant
petition u/s 22-A Cr.PC seeking the directions of this
Court for the registration of case against Muhammad
Saadiq & others.

2. The petition initially explained the fact that petitioner is
PET teacher while respondent No.1 is head master while
respondent No.2 is DEO Male Buner, their dispute
evolved in respect of posting/transfer of petitioner from
GIS Karkala Buner to another school, which he
challenged before several forum and also filed writ
petition No.359-M/2023, dated 03.05.2023, before
Peshawar High Court, Mingora Bench/Dar-ul-Qaza,
Swat, which was dismissed in limine, petitioner is shown

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ADDE. JUDGE BUNER

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to have reportedly knocked the door of service tribunal;

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with such a backdraft of the matter, petitioner alleged to have been beaten by the respondent No.1 on the instigation/abetment of respondent No.2 on 13.04.2023 at about 0930 AM, in front of 8th class students and mentioned eye witnesses Abdul Aziz and Muhammad Rashid and stated to have been threatened for life and alleged to have been illegally detained by the respondent, hence, filed instant petition.

- 3. Upon submission of the petition in hand, comments from SHO PS concerned, sought, received, placed on file.
- 4. Before embarking discussion/finding upon the merits/demerits of the petition, it is utmost necessary to highlight that section 22-A Cr.P.C relates to the issuance of appropriate directions to the police authorities concerned regarding registration of criminal cases, transfer of investigation of criminal cases and in respect of neglect, failure or excess committed by police authority in relation to its function & duties. Rationale behind conferring of powers upon justice of peace under the code is to enable aggrieved person to approach court of justice of peace for redressal of his grievances i.e. non registration of FIRs, excess of police, transfer of the investigation to courts situated at district level or session or at particular session division. However, perusal of 22-

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EXAMINER
District & Session Judge Burewala
Authorized under 137 of
PO No. 20 of 1984

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A petition, comments received from SP complaints officer, Buner, copies/correspondence of posting/transfer order etc of the petitioner, his application to DPO, Buner. OPD slip, application submitted by petitioner before Director Elementary & Secondary Education KPK which was shown endorsed by Rehmat Salam Khattak, Advisor to Chief Minister, E&SE KPK, with the remarks "cancel the order at your end"^{and} further endorsement of Director E&SE for DEO (male) Buner with the remarks "appeal accepted and please withdraw order No.1130-34 dated 07.03.2023, Copies of writ petition No.359-M/2023, dated 03.05.2023, before Peshawar High Court, Mingora Bench/Dar-ul-Qaza, Swat, relieving certificate of Zia Ur Rahman issued by Head Master GMS Wach Khwarr, copies of disciplinary proceedings against petitioner Zia Ur Rahman, time table of the eventful day, application of Head Master GMS Kawga addressed to the AC Tehsil Madanr and application of Head Master Muhammad Sadiq addressed to incharge civil hospital Nawagai for provision of attested copies of outdoor patient and attested copies of OPD slip etc reveals that in fact there is a chronic dispute between the parties over posting/transfer of petitioner Zia Ur Rahman; he is striving his outmost to get cancellation of his transfer

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EXAMINER
District & Session Judge Buner
Authorized under 167 of
B.O. No. 10 of 1984

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order by any means whatsoever for which he might have any reason while on the other hand, department is bent upon the removal of petitioner from service for which department might have reasons^{1807/1167 2} however, this court is not supposed to comment upon this aspect of the matter, which is not within domain of this court. Learned counsel for the respondents stated that even ^{upon} perusal of contents of petition, there appears no cognizable offence and OPD slip reflects nothing and even as per record of school time table and other supporting posting/transfer order, petitioner is not supposed to attend any class and violate service rules and he further argued that no such incident as reported by the petitioner has taken place and para No.5 of the petition is drafted with mala fide improvement by the petitioner and even then, there appears no cognizable offence for which no order for registration of FIR can be passed. Learned counsel for the petitioner failed to controvert legal cum factual aspect of the matter as stated by the counsel for the respondents and record available on file.

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 EXAMINER
 District & Session Judge Buzurg
 Authorized under 187 of
 P.O. No. 10 of 1951

5. In consequence of posting/transfer of petitioner, his relieving from the subject post/position and school for joining the place/^{position} of posting and his resistance to that is another ancillary issue, attached with the main

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controversy and this is also not within the domain of this court to ^{resolve and} give any finding about any party and for that purpose parties if so advised, may ^{resort} resolved to proper legal course.

6. Thus, report SP complaints and available materials on file reveals that dispute over posting/transfer inter-se the parties exists; the matter is still sub-judice before the service tribunal concerned and inquiry proceedings for the removal of petitioner from service have also been shown finalized. In this regard, inquiry report at page 16 to 20 of the documents, relied upon by the respondent No.1 is worth perusal; on file. It is apparent on the file that both sides are locked in dispute over service matter. Against the above peculiar backdrop, SP complaint officer stated that no report, whatsoever was lodged regarding the incident by the petitioner to the local police i.e. initially to the SHO and to the DPO, therefore, application being baseless be dismissed.

Reliance is also placed on P L D 2016 Supreme Court 581 which held that:

"Functions performed by the Ex-officio Justice of Peace were not executive, administrative or ministerial inasmuch as he did not carry out, manage or deal

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EXAMINER
District & Session Judge Buner
Admitted under 187 of
B.O. No. 11 of 1986

Attested
[Signature]

Dist. J. Buner
Dist. J. Buner
Dist. J. Buner

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with things mechanically. Such functions as described in clauses (i), (ii) and (iii) of section 22-A(6), Cr.P.C., were quasi-judicial as Ex-officio Justice of Peace entertained applications, examined the record, heard the parties, passed orders and issued directions with due application of mind. Every lis before him demanded discretion and judgment. Functions so performed could not be termed as executive, administrative or ministerial on any account"

CU No: 3838
Date of Application 05-08-23
Date of Receipt by File 18-07-23
Date of Preparation 05-08-23
Date of Notice
Words 10P
Fees Free of cost
Urgent Fees
Date of Delivery 05-08-23
Signature

7. Since parties have been litigating against each other in respect of service matter, therefore, element of mala fide on the part of the petitioner could not be ruled out.

8. Keeping in view the above discussion, direction could not be passed for the registration of case/FIR against the respondent Muhammad Sadiq etc, therefore, the instant petition is hereby dismissed. Copy of this order be sent to the police station concerned for information.

9. Consign this file to record room after necessary completion & compilation. Requisitioned record be returned, forthwith.

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EXAMINER
District & Sessions Judge Buner
Authorized under 187 of
RD North of 1982

Announced
15.07.2023

(Abdul Salam Khan Sarkani Kuel)
Additional Session Judge/IZQ-1,
Ex-Officio Justice of Peace, Buner

Abdul Salam Khan
Sarkani

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IN THE COURT OF SESSION JUDGE DISTRICT BUNER AT DAGGAR

Petition No. /2023.

Zia Ur Rahman S/O Habib Ur Rahman R/O Kankowai Tehsil Mandanr District Buner/
PET Govt: Middle School Wuch Khwar Kawga Buner. "Petitioner"

Versus

- 1. Mohammad Sadiq S/O Muhammad Ishaq R/O Nawagai Tehsil Mandanr Distt; Buner /Head Master Govt; Middle School Wuch Khwar Kawga Buner.
- 2. Iftikharul Ghani S/O Ghaniur Rehman R/O Managai Distt; Sawabi/DEO (M) Buner. "Accused"
- 3. S.H.O Nowagai police Station Tehsil Mandanr District Buner' "Respondent"
- 4. Director Education E & S Education K.P Province Peshawar. "Proforma Respondent"

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APPLICATION UNDER SECTION 22-A Cr R P C, FOR REGISTRATION OF F.I.R. AGAINST THE AFOREMENTIONED ACCUSED UNDER SECTION 186, 353, 506/34 PPC etc & 7 ATA, WHICH EVER IS APPLICABLE IN THE CASE OF THE ACCUSED AS THE ACCUSED NO.1 UNDER THE VERBAL DIRECTIONS OF THE ACCUSED NO.2 HAS WRONGLY BEATEN WHILE THE COMPLAINANT WAS PERFORMING HIS DUTY AS PET IN GOVT; MIDDLE SCHOOL WUCH KHWAR KAWGA ON DATED 13/04/2023 AT 9-30 AM, AND RESTRAINED THE COMPLAINANT FROM HIS OFFICIAL DUTY GIVING HIM LIFE THREAT TO THE COMPLAINANT IF IN FUTURE THE COMPLAINANT KEEP CONTINUE HIS DUTY IN GOVT MIDDLE SCHOOL WUCH KHWAR KAWGA.

Respectfully sheweth

FACTS

- 1. That the complainant had taken over his charge in Govt; Middle school Wuch Khwar Kawga on dated 08/07/2021, on transfer from GHS Katkala vide transfer order No 2933-45 dated 05/07/2021. Copy of the concerned order is annexed as "A".
- 2. That since 08/07/2021 while the complainant had taken over charge of his duty in GMS Wuch Khwar Kawga, the accused No.1 and then No.2 have on Mala fide intention and ill will has started his negative activities against the complainant on mala fide, and the duty of PET was given to another teacher and consequently the accused No. 1 with collusion of accused No.2 has started writing of secret letters to the accused No.2 just to create false grounds for wrong transfer order of the complainant and basing on that secret complaints, the accused No. 2 made a transfer order No. 107-11 dated 09/01/2023, and then another transfer order on dated 07/03/2023, was issued for the transfer of the complainant with which the complainant was transferred to GHS Malka. Copies of those both transfer orders are annexed as "B" for ready reference and perusal.
- 3. That the complainant then assailed the transfer order concerned impugning that the same was illegal being premature which and also was during Ban, imposed by the Hon; Secretary Education Dept; K.P, vide Notification No. SO(SM)E & SED /5/17/2022/PT/ G DATED 27/12/2022, and also was against the spouse policy while the same order was not a simple transfer order but was a transfer on administrative grounds. Copy of Notification dated 27/12/2022, is annexed as "C" for ready reference and perusal.
- 4. That as a matter of fact as the order of transfer both but even dated 07/03/2023 was illegal and as per lordship of the August Supreme Court of Pakistan Peshora judgment PLD 1995 SC 530 the complainant being subordinate to the accused was not binding to obey that illegal order and should wait for statutory period of 90 days for response of his departmental appeal so filed against. Copy annexed as "D".
- 5. That meanwhile as no counter part of the complainant was ordered, vide both the wrong orders of transfer, hence the complainant being not so relieved from his existing seat, has continuously, been performing h.s duty in GMS Wachhwar Kawga as routine, therefore while the complainant was in class room and was teaching the students of class 8th at about 9-30 AM, on dated 13/04/2023, the accused No.1 under the verbal directions of accused No.2, as per expression of the accused No.1 himself, before the eye witnesses, present on the spot, is 1. Abdul Aziz S/O

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EXAMINER
District & Sessions Judge Buner
Authorized under 187 of
ED No. 11 of 1937
05-08-23

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the school concerned. Then the complainant un avoidably having no alternative and approached the DPO Buner, in written on dated 28/4/2023, but so far he adiso did nothing, copy of the said complaint is also annexed as "G".

9. That the complainant after waiting for a long time but despite that the Respondent No.3, by approaching him through DPO Buner, have again done nothing. Hence the complainant having no alternative adequate remedy except to file this complaint and will advance more grounds at the time of arguments.

Therefore it is most humbly prayed that on acceptance of this complaint the relief sought may be granted and the respondent No.3 may be directed to lodge the FIR in question under the sections of PPC and 7 ATA and other applicable sections. Further relief to which the complainant is otherwise entitle under the law, though not specifically prayed for, may also be granted in favour of the complainant.

25-5-23

Through

Complainant

RAHIM KHAN
Adv high Court
Office at; District Courts Daggar Buner
Cell = 03439049185
Dated, 22/05/2023

STATEMENT ON OATH

I do hereby declare and undertake on oath that the entire contents of this complaint are ture and correct and that no such like complaint has ever been filed earlier befor any competent court or ever decided

Complainant

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EXAMINER
District & Session Judge Buner
Authorized under 157 of
Act No-20 of 1935

27 24/5/2023

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Stamp: RECEIVED
DISTRICT JUDGE
IN THE COURT OF SESSIONS
AT BAGPAT
1923

~~Names of parties.~~

~~Application under Section 482 Cr.P.C.
for quashing of FIR.~~

~~Naval Rahman vs. Navaraj
+ others.~~

~~Session No. 12023.
IN THE COURT OF SESSIONS JUDGE
AT BAGPAT DISTRICT~~

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OFFICE OF THE HEAD MAST

ANAK BANDA DISTRICT BUNER

NO 1359

DATED 18/02/2023

TO,

The District Education Officer (M)
Ele & Sec Buner

Subject: Pay Stoppage I/R of Mr Zia Ur Rahman PET GHS JANAK BANDA (BUNER)

Memo:

Reference Your Letter No. 824 dated 17/02/2023 the above mentioned PET
GMS Wach Khwar Kawga did not report this School up till now dated 18-02-2023.
More over the said employ is not drawing his Pay from this DDO Code,
Dy District Education Officer is the DDO of the concerned employ, there fore
he may please be directed to stop the pay.

(Signature)

(Signature)

(Signature)
Head Master
GHS Janak Banda

ADEO 1846-84

HEAD MASTER
G.H.S Janak Banda
District Buner

(Signature)
18/2/2023

Office of the Head Master GHS 1

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Buner.

No 1-23

Dated 18/05/23

To

The DEO (M),
District Buner.

Subject: Report of Nonarrival in R/O Zia-Ur-Rahman (PE)

It is reported that your office had issued a corrigendum (transfer order) vide Endst. No: 1130-34 dated 07-03-2023 in respect of Mr. Zia-Ur-Rahman PET but he has not taken over charge at GHS Malka and is absent from his duty since 07-03-2023 till date.

(Signature)

Head Master,
GHS Malka,
Distt. Buner.

Head Master,
GHS Malka,
Distt. Buner.

ADeO (Sb-Seq)

18/5/23

(Signature)

Copy forwarded to
1) DEO (M) Buner.

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23/5/23

OFFICE OF THE DISTRICT EDUCATION OFFICER MALE DISTRICT BUNER

AUTHORITY LETTER

Mr. Ubaid Ur Rahman, Superintendent BPS-17, Office of the District Education Officer Elementary & Secondary Education Buner is hereby authorized to submit reply on behalf of the undersigned in connection with the Service Appeal No. 1448/ 2023 titled Zia ur Rahman Versus District Education Officer Male Buner and Others in the Honourable Court of Service Tribunal Khyber Pukhtunkhwa Peshawar.


DISTRICT EDUCATION OFFICER
MALE DISTRICT BUNER