

A. No. 1646/2013  
Enel Hussain vs Govt

17.10.2017

Counsel for the appellants and Mr. Muhammad Jan, Deputy District Attorney along with Mr. Daud Jan, Supdt for respondents present. Arguments heard and record perused.

This appeal is also accepted as per detailed judgment of today placed on file in connected service appeal No. 1645/2013 entitled "Miss. Laila Kamal, (Caller) Government Girls Primary School Shah Hussain Killi Tehsil Bara Khyber Agency -vs- The Agency Education, Khyber Agency at Jamrod and 4 others". Parties are left to bear their own cost. File be consigned to the record room.

Announced:

17.10.2017



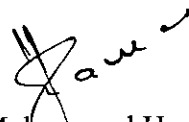
(Muhammad Hamid Mughal)  
Member



(Ahmad Hassan)  
Member

13.07.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Daud Jan, Supdt for respondents present. Learned counsel for the appellant stated that all the affectees except the appellant as well as one Miss. Laila Kamal have been reinstated by the respondent-department. Learned counsel for the appellant seeks adjournment to produce orders to this effect. Adjourned. To come up for arguments on 15.09.2017 before D.B.

  
(Muhammad Hamid Mughal)  
Member

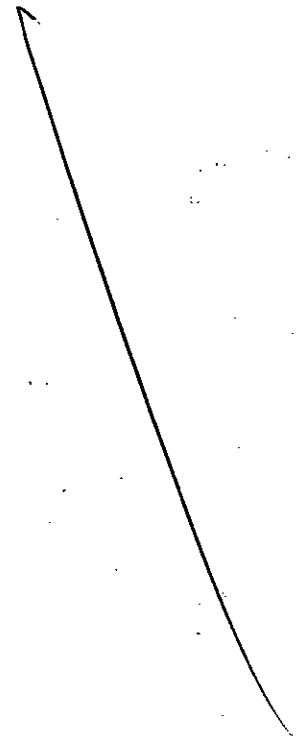
  
(Ahmad Hassan)  
Member

15.09.2017

Counsel for the appellant and Addl: AG alongwith Mr. Daud Jan, Supdt for respondents present. Learned counsel for the appellant submitted copies of reinstatement orders of the other affectees which is placed on file. Learned AAG seeks adjournment. Adjourned. To come up for arguments on 17.10.2017 before D.B.

  
Member  
(Executive)

  
Member  
(Judicial)



Appeal No. 1646/2013  
Gul Hussain vs Govt

22.09.2016

Counsel for the appellant and Mr. Daud Jan, Supdt. alongwith Addl. AG for respondents present. Counsel for the appellant submitted fresh Wakalat Name which is placed on file and request for adjournment. Request accepted. To come up for arguments on 26-1-17.

  
Member

  
Member

26.01.2017

None for the appellant present. Mr. Daud Jan, Supdt. alongwith Mr. Muhammad Jan, GP for respondents present. Notice be issued to the appellant/counsel for the appellant. To come up for arguments on 19.05.2017.

  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

19.05.2017

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 13.07.2017 before D.B.

  
(GUL ZEB KHAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

6

29.07.2015

Father of the appellant and Addl: A.G for respondents present  
Requested for adjournment. To come up for written reply/comments on  
26.10.2015 before S.B.

  
Chairman

7

26.10.2015

Shah Hussain, father of the appellant, on behalf of the appellant  
and Mr. Daud Jan, Supdt. alongwith Assistant A.G for respondents  
present. Written reply not submitted. Requested for further  
adjournment. Last opportunity granted. To come up for written  
reply/comments on 26.01.2016 before S.B.

  
Chairman

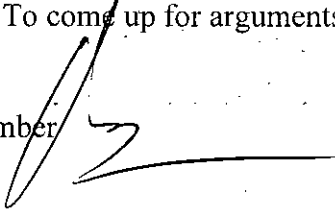
26.1.2016

Shah Hussain father of the appellant and Mr. Daud Jan,  
Supdt. alongwith Addl: A.G for respondents present. Written reply  
submitted. The appeal is assigned to D.B for rejoinder and final  
hearing for 10.5.2016.

  
Chairman

10.5.2016


Counsel for the appellant and Mr. Muhammad Jan, GP for  
respondents present. Rejoinder submitted, copy of which is  
placed on file. To come up for arguments on 22.9.2016.

Member 

Member 

29.05.2015

Petitioner in person present. Original record be requisitioned for 12.06.2015 before S.B.

  
Chairman

4 12.06.2015

Counsel for the petitioner present. Original record perused. The appeal was dismissed in default on 13.5.2015 regarding which restoration application was preferred on 20.5.2015. The same is within time, hence the appeal restored. To come up for preliminary hearing on 2.7.2015 before S.B.

  
Chairman

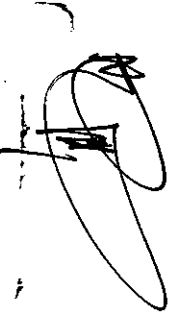
5 02.07.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Chowkidar when terminated from service vide impugned order dated 27.07.2011 regarding which he preferred departmental appeal on 14.5.2012 which was not responded and hence the instant service appeal on 26.12.2013.

That condonation application has already been submitted regarding the delay. That the impugned order is against facts and law as no opportunity of hearing was extended to the appellant and inquiry not conducted in the prescribed manners.

Point urged need consideration. Admit, subject to all legal objections. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 29.07.2015 before S.B.



  
Chairman

Appellant Deposited  
Security & Process Fee 

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Misc. Application No. 50 /2015

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20/05/2015	<p>The application for restoration of appeal No. 1646/2013 submitted by Mr. Gul Hussain Afridi through Mian Sibghatullah Advocate, may be entered in the relevant register and put up to the Court for further order pleases.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This Misc. application be put up before S. Bench on- <u>29-5-2015</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2	25-5-15	

**BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR**

*MISC. Application No. 50/2015*

In Re: Service Appeal No.1646 of 2013

S.W.P. Province  
Service Tribunal  
Dary No. 402  
Dated 20/5/15

Gul Hussain Afridi

Vs

AEO Khyber etc

**APPLICATION FOR RESTORATION OF  
APPEAL WHICH HAS ALREADY BEEN  
DISMISSED IN DEFAULT ON 13.05.2015**

**Respectfully Sheweth:**

The counsel of appellant requests as under, inter alia:

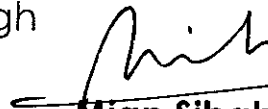
1. That the two Service Appeals No.1645 and 1646 of 2013 of the title "Mst. Laila Kamal Vs AEO Khyber" and "Gul Hussain Vs AEO Khyber Agency etc" were fixed for preliminary hearing on 30.04.2015.
2. That preliminary arguments were observed in Appeal No.1645/13, which was admitted on 30.04.2015 and fixed the next date 29.07.2015 for

written reply. The appellant counsel understand that another Appeal No.1646/2013 of Gul Hussain VS AEO Khyber will be treated accordingly due to same nature/ connection.

3. That now due to such mistake the Appeal No.1646/2013 has been dismissed in default on 13.05.2015.
4. That such mistake was neither intentionally nor deliberate, which is a mistake & misunderstanding, hence wants your kind consideration for restoration.

It is, therefore, most humbly prayed that on acceptance of this application, the Service Appeal No.1646/2013 may please be restored in the best interest of justice and the same may be admitted for written reply on 29.07.2015 alongwith the Appeal No.1545/13of the same nature.

Applicant  
Through

  
Mian Sibghatullah Shah  
Advocate, Peshawar

20/05/2015

*Mian Sibghat Ullah Shah*  
Advocate  
High Court Peshawar



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**SERVICE APPEAL NO.1646/2013**

Gul Hussain.....Appellant

Versus

Agency Education Officer & others.....Respondents

**Para wise reply on behalf of respondents.**

Respectfully Sheweth,

**Preliminary Objections:**

1. That the appellant has got no cause of action /locus standi to file the instant appeal.
2. That the appeal is not maintainable.
3. That the appellant has not come to this Tribunal with clean hands.
4. That the appellant has been estopped by his own conduct to file the appeal.
5. That the instant appeal is time barred.
6. That the appellant was a contract employee, hence the appeal in hand is not maintainable.

**Objection on facts.**

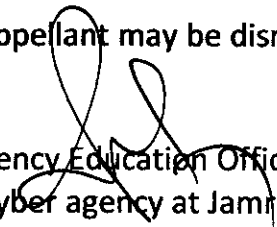
1. Pertains to record, however, the appellant was a contract employee.
2. Needs no comments.
3. Incorrect, the respondent No.1 terminated the services of the appellant on the directives of the FATA Secretariat decision conveyed vide Directorate of Education FATA, Peshawar letter No. 23901-12/AD (C) E-3/File dated Peshawar the 21/12/2009. (Annexure A).
4. Incorrect, the appellant was appointed on contract basis and was liable to be terminated any time without any notice according to the terms and conditions of appellant appointment order. (Annexure B)
5. Incorrect, the appellant departmental appeal was sent back undecided by the appellate authority. In the meanwhile the appellant filed a service appeal in this Hon`ble Service Tribunal.
6. Incorrect, the appellant does not fall in that category to be re-instated.
7. Legal.

**GROUND:**


- a) Incorrect, the respondents have not taken any action against law as all the Govt: servants are bound to perform their duties as per instruction given by the Govt: from time to time.
- b) Incorrect, the action was taken under section 3 (2) (i) Removal from Service Ordinance- 2000.
- c) Incorrect. The termination order of the appellant has been issued by the competent authority according to law.
- d) Incorrect, the action was taken under section 3 (2) (i) Removal from service ordinance- 2000 and all codal formalities were fulfilled.
- e) Incorrect, as explained in paras above that upon direction of FATA secretariat, the appellant was terminated from service.
- f) Incorrect, the appellant was appointed on contract basis and it was the terms and condition included in the appellant appointment order that his services may be terminated at any time without any notice.
- g) The respondents also seek permission to raise additional grounds at the time of arguments.

It is, therefore, humbly prayed the appeal of the appellant may be dismissed with cost.

Respondent No.1

  
Agency Education Officer  
Khyber agency at Jamrud.


Respondent No.2

  
Director of Education FATA  
Warsak Road, Peshawar.


**Affidavit:**

We the respondents No.1 and 2 solemnly affirm and declare that the contents of the para wise reply are correct to the best of our knowledge and belief and nothing has concealed from this Hon'ble Service Tribunal.

Respondent No.1

  
Agency Education Officer  
Khyber agency at Jamrud.

Respondent No.2

  
Director of Education FATA  
Warsak Road, Peshawar.

1 B

(16)

**OFFICE OF THE AGENCY EDUCATION OFFICER KHYBER AGENCY AT JAMRUD**  
**APPOINTMENT.**

Consequent upon the recommendation of Political Administration the following C.IV servants are hereby temporary appointed against the newly created C.IV posts 131 S No.01 Rs, 2150-65-4100 P.M plus usual allowances as admissible under the rules on contract basis with effect from the date of their taking over charge in the school noted their names in the interest of public services.

S.No.	Name	Father's Name	Desig.	School	Remarks
01	Gul Hussain	Shah Hussain	Chow	GGPS Shah Hussain Killi	Against newly created post
02	Hazrata	Bakht Jamal	Caller	do	do

Note:-

1. Charge report should be submitted to all concerned.
2. The appointment of the Candidate being purely on Temporary/ Contract basis and is liable to terminate any time without any notice in case He wishes to resign their post He shall give one Month prior notice or forfeit one Month pay in lieu thereof.
3. Their Documents Date of Birth & Domicile certificate should be checked before handing over charge of the post and attested copies there of kept on record of the office.
4. They should produce Health and Age certificate from the Agency Surgeon concerned.
5. Age should be accorded to the Govt rules.
6. If they fail to report within 15 days the order will be treated as cancelled.
7. The order is made on contract basis

(ABDUR RASHID QUARISHI)  
 AGENCY EDUCATION OFFICER  
 KHYBER AGENCY AT JAMRUD

Dated 16/12 /2006

Indst. No. 13658-62

Copy forwarded to the

1. Director of Education FA/IA (NWFP) Peshawar
2. Political Agent Khyber Agency at Peshawar
3. Agency Accounts Officer Khyber at Jamrud
4. Head Master GHS Durma Kor Loishaman I.K.I.
4. A.A.E.O (Male) Concerned
5. Official Concerned.

(Signature)  
 AGENCY EDUCATION OFFICER  
 KHYBER AGENCY AT JAMRUD

9  
 ATTESTED

(16) (A) 31  
Annex-B

AGENCY EDUCATION OFFICE KHYBER AGENCY AT JAMRUD  
NOTIFICATION

Consequent upon the decision of FATA Secretariat conveyed vide Directorate of Education FATA, Peshawar letter No.23901-12/AD (C.) E-3/File No. 23901-12/AD (C.) E-3 dated Peshawar the 21.12.2009, the following C.IV servants of GGPS Shah Hussain Killi Tehsil Bara Khyber Agency are hereby terminated from service with immediate effect due to their negligence and violation of terms and conditions of their recruitment.

S.No	Name & Designation	Name of institution
01	Gul Hussain Chowk	GGPS Shah Hussain Killi Bara
02	Hazrata Caller	GGPS Shah Hussain Killi Bara

NOTE: - Necessary entry to this effect should be made in their service Book.

(HASHIM KHAN)  
AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

Endst: No. 6211-14 Damage school file Dated 27/07/2011

Copy of the above is forwarded to the: -

01. Director of Education FATA at Peshawar w/r to his No. cited above.
02. Political Agent Khyber Agency at Peshawar.
03. Agency Accounts Officer Khyber at Jamrud
04. Assistant Political Agent Tehsil Bara.
05. AAEO concerned local office.
06. Superintendent/ Accountant local office.
07. Officials Concerned.

  
AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

Mubarak

Received on 27/7/2011  
3.00 PM  
Abdul Husain

9

*Handwritten signature and scribbles at the top of the page.*

Small rectangular stamp or mark at the top right.

Accepted

Reshwar

Handwritten lines and marks below the header.

22/9/16

Main body of handwritten text, including a large circular stamp with a building illustration and the text 'PESHAWAR BAR ASSOCIATION'.

52, Light Hussain St,  
Lal Ahangar, Lahore

<p>Handwritten text in the left column of the form.</p>	<p>Handwritten text in the right column of the form.</p>

K.R.K. Handwritten signature and text below the form.

<p>Handwritten text in the left column of the bottom form.</p>	<p>Handwritten text in the right column of the bottom form.</p>

66200



**Before The Khyber Pukhtunkhwa Services Tribunal, Peshawar**

Service appeal No 1646/ 2013

Applicant ----Mr. Gul Hussain

VS

Agency Education Offices, Khyber Agency and other respondents.

Rejoinder on behalf of applicant in response to parawise comments filled by respondents

**Respectfully Sheweth ,**

**Preliminary Objections:**

All the preliminary objections raised by the answering respondents (Education Deptt FATA) are not correct and are misconceived and misleading. The detailed reply is as under.

1. That the appellant being a permanent Govt. servant BPS-1 with promulgation of North West Frontier Province Employees (regulation of services) Act, 2009 vide its section 3 (Annexure "R/1") has been terminated from services illegally and unlawfully either on malafide basis or on account of ignorance of law. Thus the cause of action and to file this service appeal before the competent service tribunal, KPK for redressal of his grievances.

2&3. That the appellant has come to this Honorable Tribunal with clean hands and no material fact has been concealed. All the relevant supporting materials and documents have been annexed and brought on the record.

4. The appellant has never estopped his right, as the illegal and unlawful termination was pursued at all competent levels including the Education Department Fata and also in the worthy Service Tribunal. Finding no relief from the respondent department, the worthy service tribunal, KPK was approached and hence the rejoinder as reply to the comments of the respondents department.

5. That the appeal was well in time. The appellant was amongst the list of group of 25 appellants vide Director Education Fata No. 6453/E-4, File no 140 where from the legal processes started and this honorable court accorded condonation and hence rejoinder.

6. As per reply to objection No 1 above. The appellant is regular govt employee as per N.W.F.P employee regularization Act 2009 vide its section 3 ( Annx R1) and is maintainable.

**Objection on Facts**

1. The respondents did not consult the record available with them, nor the respondent has the knowledge that the appellant stands regular employee through N.W.F.P Act

of 2009 No XVI ( Annex-R-1). This reply is tantamount to concealment of facts. The appellant version is correct on this score.

2. The respondent perhaps avoids to give comments with reasons best known to them.
3. The reply as "Incorrect" is actually an admission on the part of respondent A.E.O, Khyber being competent authority for class IV servants and also by the Director Education Fata. The sectt letter as mentioned vide No 23901-12-AD(C) E-3 file has neither been annexed as annexer A, nor the Fata Sectt has the legal power to direct the competent appointing authority to terminate a regular govt servant without legal process as derived from the K.P.K civil servant 1973 and the rules thereof. It is to be pointed out that this appellant under the local responsibility being Afridi tribal and son of the Malak is still rendering defense of school responsibility, throughout without any pay.
4. This appellant is regular govt employee as per act 2009 No XVI. Ignorance of law should not be made an excuse to hit the appellants legal right by the respondent department.
5. The joint departmental appeal of similar nature of termination of class IV was rejected when the director education Fata vide his office No 6453/E-4 /file No 140 showed inability to give relief and threw the ball in the court of A.E.O Khyber who had already terminated the appellant. Thus respondent version is without footing and mere excuse, while that of appellant is correct.
6. The appellant being regular Govt employee has every legal right to be heard under the law and if deemed fit by the Honorable Service Tribunal, can make the appellant stand with all back benefits and cost of litigation.
7. This reply is incorrect. Facts have been twisted. Other appellants having similar cases have already been reinstated with all back benefits.

### **Grounds:**

- a. This is no ground. The appellant as chowkidar did every effort to repel the saboteurs, but they arrested the appellant and kept in custody till they blew up the walls of the rooms.  
The political admin and the local people could render the appellant no help. No instructions to the effect of fighting against the dehshatgard have been received from the government or department side till now.
- b. The action against the appellant has been taken in violation of removal from services ordinance 2000.
- c. The termination has been illegally issued without legal procedure.
- d. No legal/codal formalities were adopted and the termination order was passed without being heard or charge sheeted, which is against the cardinal principle of justice that "No one should be condemned unheard".

- e. The Fata Sectt. Has no power to remove a regular Govt servant without being heard under the legal process
- f. The contract Govt servants have already been regularized as regular govt servants through Act XVI 2009 as vide annex R/I and the Govt servant service conditions are to be dealt with according the Civil Servant Act 1973 and the rules therefore. Hence termination of services of appellant is illegal, unlawful and without notice on the pretext of contract condition mentioned the appointment letter.
- g. No comments
- h. As per plea of the appellant in the appeal.
- i. No comments

It is, therefore humbly prayed that the appeal of the appellant be accepted and may be reinstated with all back benefits and with the cost.

Peshawar  
10/5/2010

Through  
Gul Hussain  
Sibhatullah Advocate *PHC*  
Peshawar

### Counter Affidavit

I do hereby solemnly affirm and declare on oath that the contents of the above replications are true to the best of my knowledge and belief.

*Mish*  
09.05.2016.

Advocate  
Sibhaatullah *Shah*.  
Peshawar

*Mian Sibghat Ullah Shah*  
Advocate  
High Court Peshawar



Deponant  
Gul Hussain



Annexure R-1

THE NORTH-WEST FRONTIER PROVINCE EMPLOYEES  
(REGULARIZATION OF SERVICES) ACT, 2009.

NOTIFICATION

Dated Peshawar, the 24<sup>th</sup> October, 2009.

No.PA/NWFP/Bills/2009/38472.--The North-West Frontier Province Employees (Regularization of Services) Bill, 2009 having been passed by the Provincial Assembly of North-West Frontier Province on 15<sup>th</sup> October, 2009 and assented to by the Governor of the North-West Frontier Province on 20<sup>th</sup> October, 2009 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

THE NORTH-WEST FRONTIER PROVINCE  
EMPLOYEES (REGULARIZATION OF SERVICES) ACT, 2009.

(N.-W.F.P. ACT NO. XVI OF 2009)

of  
be

(First published after having received the assent of the Governor of the

North-West Frontier Province in the Gazette of the N.-W.F.P. (Extraordinary).

*Dated the 24<sup>th</sup> October, 2009).*

AN

ACT

*to provide for the regularization of the services of certain employees*

*appointed on adhoc or contract basis.*

**Preamble.** ---WHEREAS it is expedient to provide for the regularization of the services of certain employees appointed on adhoc or contract basis, in the public interest, for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement. --- (1) This Act may be called the North- West Frontier Province Employees (Regularization of Services) Act, 2009.

(2) It shall come into force at once and shall be deemed to have been taken effect at the promulgation of the Ordinance.

2. Definitions. --- (1) In this Act, unless the context otherwise requires,-

- (a) "Commission" means the North-West Frontier Province Public Service Commission;
- (aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment;
- (b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies;
- (c) "Government" means the Government of the North-West Frontier Province ;
- (d) "Government Department" means any department constituted under rule 3 of the North-West Frontier Province Government Rules of Business, 1985;
- (e) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants; and
- (f) "post" means a post under Government or in connection with the affairs of Government to be filled in on the recommendation of the Commission.

(2) The expressions "adhoc appointment" and "civil servant" shall have the same meanings as respectively assigned to them in the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973).

3. Regularization of services of certain employees.--- All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31<sup>st</sup> December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post.

Provided that the service promotion quota of all service cadres shall not be affected.

4. Determination of seniority.--- (1) The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority *interse* of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

4A. Overriding effect.--- Notwithstanding any thing to the contrary contained in any other law or rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect.

5. Repeal.--- The North-West Frontier Province Employees (Regularization of Services) Ordinance, 2009 (N.-W.F.P. Ordinance No. VII of 2009) is hereby repealed.

-----  
By the orders of Mr. Speaker  
Provincial Assembly of Khyber  
Pakhtunkhwa

Secretary  
Provincial Assembly of Khyber  
Pakhtunkhwa



(27) (18) Ann-R-2

**DIRECTORATE OF EDUCATION  
(FATA), FATA SECRETARIAT**

Warsak Road Peshawar Phone No. 091-9210166 Fax No. 091-9210216

No. 6453 /E-4/File No.140

Dated Peshawar the 14/5 /2012

To

The Agency Education Officer  
Khyber Agency at Jamrud.

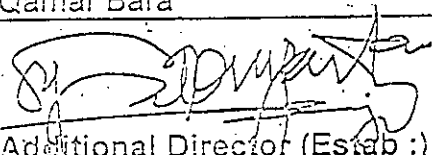
Subject:

RE- INSTATEMENT OF CLASS-IV TEHSIL BARA SCHOOLS

Memo:

Please refer to your letter No. 4596 dated 30.04.2012 on the above noted subject and I am directed to enclose herewith the applications of the following Class IV servants & to ask you that as being competent authority may be dealt with the case at your own level with the consultation of the Political Agent Khyber Agency as per rules / policy in vogue.

S. No.	Name	Station
1	Najma Bibi	GGMS Malang Garhi Alam Gudar Bara
2	Shamshada Bibi	GGPS Ibrahim Aman Kalay Bara
3	Rabia Bibi	GGPS Malang Garhi Alam Gudar Bara
4	Farooq Khan	GPS Haji Zarimat Jan Kalay Bara
5	Zafar Iqbal	GPS Shalobar No. 1 Bara
6	Salihul Haq	GHS Shalobar No. 2 Bara
7	Farhad Ali	GHS Alam Gudar Bara
8	Dilawar Khan	GHS Shalobar No. 2 Bara
9	Akhtar Shah	GPS Akhtar Shah Kalay Bara
10	Muhammad Tariq	GHS Shalobar No. 2 Bara
11	Abdul Jabar	GHS Shalobar No. 2 Bara
12	Khalida Bibi	GGPS Akhtar Shah Kalay
13	Muhammad Sabir	GHS Shalobar No. 2 Bara
14	Gul Jamal	GGMS Malang Garhi Alam Gudar Bara
15	Mosam Khan	GGPS Malik Shin Akbar kalay Bara
16	Nasrin Bibi	GGMS Malang Ghari Alam Gudar Bara
17	Abida Bibi	GGMS Malang Ghari Alam Gudar Bara
18	Ebrahim Khan	GPS Yara Din Kalay Bara
19	Noorul Amin	GGPS Ebrahim Aman Kalay Bara
20	Laila Bibi	GGPS Shah Hussain Kalay Bara
21	Gul Hussain	GGPS Shah Hussain Kalay Bara
22	Mushtari Khanam	GGMS Navay Qamar Bara
23	Basmina Bibi	GGMS Navay Qamar Bara
24	Khan Pari	GGMS Navay Qamar Bara
25	Aurang Zeb	GGMS Navay Qamar Bara

  
Additional Director (Estab :)  
Directorate of Education, FATA

Endst: No. \_\_\_\_\_

Copy forwarded to the:

1. Administrative Officer local Directorate.
2. PA to Director Education FATA

Additional Director (Estab:)

**Before The Khyber Pukhtunkhwa Services Tribunal, Peshawar**

Service appeal No 1646/ 2013

Applicant ----Mr. Gul Hussain

VS

Agency Education Offices, Khyber Agency and other respondents.

Rejoinder on behalf of applicant in response to parawise comments filled by respondents

**Respectfully Sheweth ,**

**Preliminary Objections:**

All the preliminary objections raised by the answering respondents (Education Deptt FATA) are not correct and are misconceived and misleading. The detailed reply is as under.

1. That the appellant being a permanent Govt. servant BPS-1 with promulgation of North West Frontier Province Employees (regulation of services) Act, 2009 vide its section 3 (Annexure "R/1") has been terminated from services illegally and unlawfully either on malafide basis or on account of ignorance of law. Thus the cause of action and to file this service appeal before the competent service tribunal, KPK for redressal of his grievances.

2&3. That the appellant has come to this Honorable Tribunal with clean hands and no material fact has been concealed. All the relevant supporting materials and documents have been annexed and brought on the record.

4. The appellant has never estopped his right, as the illegal and unlawful termination was pursued at all competent levels including the Education Department Fata and also in the worthy Service Tribunal. Finding no relief from the respondent department, the worthy service tribunal, KPK was approached and hence the rejoinder as reply to the comments of the respondents department.

5. That the appeal was well in time. The appellant was amongst the list of group of 25 appellants vide Director Education Fata No. 6453/E-4, File no 140 where from the legal processes started and this honorable court accorded condonation and hence rejoinder.

6. As per reply to objection No 1 above. The appellant is regular govt employee as per N.W.F.P employee regularization Act 2009 vide its section 3 ( Annx R1) and is maintainable.

**Objection on Facts**

1. The respondents did not consult the record available with them, nor the respondent has the knowledge that the appellant stands regular employee through N.W.F.P Act

of 2009 No XVI ( Annex-R-1). This reply is tantamount to concealment of facts. The appellant version is correct on this score.

2. The respondent perhaps avoids to give comments with reasons best known to them.
3. The reply as "Incorrect" is actually an admission on the part of respondent A.E.O, Khyber being competent authority for class IV servants and also by the Director Education Fata. The sectt letter as mentioned vide No 23901-12-AD(C) E-3 file has neither been annexed as annexer A, nor the Fata Sectt has the legal power to direct the competent appointing authority to terminate a regular govt servant without legal process as derived from the K.P.K civil servant 1973 and the rules thereof. It is to be pointed out that this appellant under the local responsibility being Afridi tribal and son of the Malak is still rendering defense of school responsibility, throughout without any pay.
4. This appellant is regular govt employee as per act 2009 No XVI. Ignorance of law should not be made an excuse to hit the appellants legal right by the respondent department.
5. The joint departmental appeal of similar nature of termination of class IV was rejected when the director education Fata vide his office No 6453/E-4 /file No 140 showed inability to give relief and threw the ball in the court of A.E.O Khyber who had already terminated the appellant. Thus respondent version is without footing and mere excuse, while that of appellant is correct.
6. The appellant being regular Govt employee has every legal right to be heard under the law and if deemed fit by the Honorable Service Tribunal, can make the appellant stand with all back benefits and cost of litigation.
7. This reply is incorrect. Facts have been twisted. Other appellants having similar cases have already been reinstated with all back benefits.

### **Grounds:**

- a. This is no ground. The appellant as chowkidar did every effort to repel the saboteurs, but they arrested the appellant and kept in custody till they blew up the walls of the rooms.  
The political admin and the local people could render the appellant no help. No instructions to the effect of fighting against the dehshatgard have been received from the government or department side till now.
- b. The action against the appellant has been taken in violation of removal from services ordinance 2000.
- c. The termination has been illegally issued without legal procedure.
- d. No legal/codal formalities were adopted and the termination order was passed without being heard or charge sheeted, which is against the cardinal principle of justice that "No one should be condemned unheard".

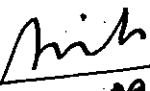
- e. The Fata Sectt. Has no power to remove a regular Govt servant without being heard under the legal process
- f. The contract Govt servants have already been regularized as regular govt servants through Act XVI 2009 as vide annex R/1 and the Govt servant service conditions are to be dealt with according the Civil Servant Act 1973 and the rules therefore. Hence termination of services of appellant is illegal, unlawful and without notice on the pretext of contract condition mentioned the appointment letter.
- g. No comments
- h. As per plea of the appellant in the appeal.
- i. No comments
- It is, therefore humbly prayed that the appeal of the appellant be accepted and may be reinstated with all back benefits and with the cost.

Peshawar  
10/5/2010


Through  
Gul Hussain  
Sibhatullah Advocate  
Peshawar

### Counter Affidavit

I do hereby solemnly affirm and declare on oath that the contents of the above replications are true to the best of my knowledge and belief.

  
09.05.2016.  
Advocate  
Sibhaatullah Shah.  
Peshawar

Mian Sibghat Ullah Shah  
Advocate  
High Court Peshawar

  
Deponent  
Gul Hussain

ANNEXURE R-1

THE NORTH-WEST FRONTIER PROVINCE EMPLOYEES  
(REGULARIZATION OF SERVICES) ACT, 2009.

NOTIFICATION

Dated Peshawar, the 24<sup>th</sup> October, 2009.

No.PA/NWFP/Bills/2009/38472.—The North-West Frontier Province Employees (Regularization of Services) Bill, 2009 having been passed by the Provincial Assembly of North-West Frontier Province on 15<sup>th</sup> October, 2009 and assented to by the Governor of the North-West Frontier Province on 20<sup>th</sup> October, 2009 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

THE NORTH-WEST FRONTIER PROVINCE  
EMPLOYEES (REGULARIZATION OF SERVICES) ACT, 2009.

(N.-W.F.P. ACT NO. XVI OF 2009)

*(First published after having received the assent of the Governor of the  
North-West Frontier Province in the Gazette of the N.-W.F.P. (Extraordinary).*

*Dated the 24<sup>th</sup> October, 2009).*

AN

ACT

*to provide for the regularization of the services of certain employees*

*appointed on adhoc or contract basis.*

Preamble: ---WHEREAS it is expedient to provide for the regularization of the services of certain employees appointed on adhoc or contract basis, in the public interest, for the purposes hereinafter appearing;

It is hereby enacted as follows:-



1. Short title and commencement. --- (1) This Act may be called the North- West Frontier Province Employees (Regularization of Services) Act, 2009.

(2) It shall come into force at once and shall be deemed to have been taken effect at the promulgation of the Ordinance.

2. Definitions. --- (1) In this Act, unless the context otherwise requires,-

(a) "Commission" means the North-West Frontier Province Public Service Commission;

(aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment;

(b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies;

(c) "Government" means the Government of the North-West Frontier Province ;

(d) "Government Department" means any department constituted under rule 3 of the North-West Frontier Province Government Rules of Business, 1985;

(e) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants; and

(f) "post" means a post under Government or in connection with the affairs of Government to be filled in on the recommendation of the Commission.

(2) The expressions "adhoc appointment" and "civil servant" shall have the same meanings as, respectively assigned to them in the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973).

3. Regularization of services of certain employees.--- All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31<sup>st</sup> December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post:

Provided that the service promotion quota of all service cadres shall not be affected.

4. Determination of seniority.--- (1) The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority *inter se* of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

4A. Overriding effect.--- Notwithstanding any thing to the contrary contained in any other law or rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect.

5. Repeal.--- The North-West Frontier Province Employees (Regularization of Services) Ordinance, 2009 (N.-W.F.P. Ordinance No. VII of 2009) is hereby repealed.

-----  
By the orders of Mr. Speaker  
Provincial Assembly of Khyber  
Pakhtunkhwa

\_\_\_\_\_  
Secretary  
Provincial Assembly of Khyber  
Pakhtunkhwa



(27) (18) Ann. R-2

**DIRECTORATE OF EDUCATION  
(FATA), FATA SECRETARIAT**

Warsak Road Peshawar Phone No. 091-9210166 Fax No. 091-9210216

No. 6453 /E-4/File No.140

Dated Peshawar the 14/5 /2012

To

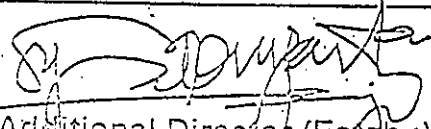
The Agency Education Officer  
Khyber Agency at Jamrud.

Subject: RE- INSTATEMENT OF CLASS-IV TEHSIL BARA SCHOOLS

Memo:

Please refer to your letter No. 4596 dated 30.04.2012 on the above noted subject and I am directed to enclose herewith the applications of the following Class-IV servants & to ask you that as being competent authority may be dealt with the case at your own level with the consultation of the Political Agent Khyber Agency as per rules / policy in vogue.

S. No.	Name	Station
1	Najma Bibi	GGMS Malang Garhi Alam Gudar Bara
2	Shamshada Bibi	GGPS Ibrahim Aman Kalay Bara
3	Rabia Bibi	GGPS Malang Garhi Alam Gudar Bara
4	Farooq Khan	GPS Haji Zarimat Jan Kalay Bara
5	Zafar Iqbal	GPS Shalobar No. 1 Bara
6	Salihul Haq	GHS Shalobar No. 2 Bara
7	Farhad Ali	GHS Alam Gudar Bara
8	Dilawar Khan	GHS Shalobar No. 2 Bara
9	Akhtar Shah	GPS Akhtar Shah Kalay Bara
10	Muhammad Tariq	GHS Shalobar No. 2 Bara
11	Abdul Jabar	GHS Shalobar No. 2 Bara
12	Khalida Bibi	GGPS Akhtar Shah Kalay
13	Muhammad Sabir	GHS Shalobar No. 2 Bara
14	Gul Jamal	GGMS Malang Garhi Alam Gudar Bara
15	Mosam Khan	GGPS Malik Shin Akbar kalay Bara
16	Nasrin Bibi	GGMS Malang Ghari Alam Gudar Bara
17	Abida Bibi	GGMS Malang Ghari Alam Gudar Bara
18	Ebrahim Khan	GPS Yara Din Kalay Bara
19	Noorul Amin	GGPS Ebrahim Aman Kalay Bara
20	Laila Bibi	GGPS Shah Hussain Kalay Bara
21	Gul Hussain	GGPS Shah Hussain Kalay Bara
22	Mushtari Khanam	GGMS Navay Qamar Bara
23	Basmina Bibi	GGMS Navay Qamar Bara
24	Khan Pari	GGMS Navay Qamar Bara
25	Aurang Zeb	GGMS Navay Qamar Bara

  
Additional Director (Estab :)  
Directorate of Education FATA

Endst: No. \_\_\_\_\_ /

Copy forwarded to the:

1. Administrative Officer local Directorate.
2. PA to Director Education FATA

Additional Director (Estab:)



AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

No. \_\_\_\_\_ Dated \_\_\_ /08/2017

To:

The Director of Education,  
FATA Secretariat Peshawar.

Subject: Re-instatement of Class IV.

Reference your letter No.11775 dated 14/07/2017 on the subject cited above.

The following class IV employees have been re-instated by the then AEOs with the approval of Political Agent Khyber Agency and your letter No.6453/E-4 /File No140 dated 14/05/2012 with effect from the date of their terminations as per enclosed photo copies of letters.

S.No	Name	Designation	School	No and Date of Re-instatement
1	Abdul Jabbar	Sweeper	GHS Shalobar Bara	No.3167-74 Dated 17/5/2013
2	Muhammad Sabir	Chowkidar	-do-	-do-
3	Salihul Haq	Lab. Attdt.	-do-	-do-
4	Muhamad Tariq	Behishti	-do-	-do-
5	Aurang Zeb	Chowkidar	GGMS Naway Kamar Bara	No.8080-84 dated 21/10/2014
6	Mushtari Khanum	Caller	-do-	-do-
7	Pari Khanum	Sweeper	-do-	-do-
8	Bameena Bibi	N/Qasid	-do-	-do-
9	Mosam Khan	Chowkidar	GGPS Shin Akbar	No.594-601 Dated 27/01/2010

No reinstatement order has yet been issued by the undersigned in respect of Mr:Gul Hussain Chowkidar S/O Shah Hussain GGPS Shah Hussain Killi Bara and Mrs:Laila Kamal-caller W/O Kamal Khan GGPS Shah Hussain Killi Bara.

They had already been filed case in service tribunal vide appeal no.779/2012.

(MUHAMMAD JADOON KHAN)  
AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

Endst No. 514-19 Dated: 10/08/2017.

Copy of the above forwarded for information to the.

1. Mr:Gul Hussain Chowkidar GGPS Shah Hussain Killi Bara Khyber Agency.
2. Mst:Laila Kamal Caller GGPS Shah Hussain Killi Bara Khyber Agency.
3. AAEO (Female) Bara.
4. Superintendent Local Office AEO Khyber.
5. Office Copy.

AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD



No. \_\_\_\_\_  
Dated Pesh: the / / 2017

To

The Agency Education Officer,  
Khyber Agency.

**Subject: RE-INSTATEMENT OF CLASS IV.**

Memo:

I am directed to enclose here with a self explanatory applications in r/o Mr. Gul Husain S/O Shah Husain Afridi Ex. Chowkidar GGPS Shah Husain Kilay Khyber Agency and Mrs. Laila Kamal W/O Kamal Khan Caller GGPS Shah Husain kilay Khyber Agency on the subject cited above.

You are requested to offer your comments on the enclosed application & inform the applicant accordingly with regard to the re-instatement of the Ex. Class IV employees conveyed to your office vide this office letter No.6453 E-4 File dated 14-05-2012.

Dy Director (F&A)

Endst: No 11776 Dated 14/7 /2017.

Copy Forwarded to the :

1. Mr. Shah Husain Khan Afridi Khyber Agency.

Dy Director (F&A)

14/7/2017  
S  
14/7/17

**DIRECTORATE OF EDUCATION (FATA), FATA SECRETARIAT**



Warank Road Fc. Hwar Phone No. 081-98710166 Fax No. 081-98710275

No. 6453 /E-4 File No. 140

Dated Peshawar the 19/5/2012

The Agency Education Officer  
Khyber Agency, Jamrud

**Subject: RE-INSTALEMENT OF CLASS-IV TEHSIL BARA SCHOOLS**

Memo:

Please refer to your letter No. 4596 dated 30.04.2012 on the above noted subject and I am directed to enclose herewith the applications of the following Class IV servants & to ask you that as being competent authority may be deal with the case at your own level with the consultation of the Political Agent (Khyber Agency as per rules / policy in vogue.

S. No.	Name	Station
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4	Farooq Khan	GPS Haji Zarnat Jan Kalay Bara
5	Zafar Iqbal	GPS Shalobar No. 1 Bara
6	Salihul Haq	GHS Shalobar No. 2 Bara
7	Farhad Ali	GHS Alam Gudar Bara
8	Dilawar Khan	GHS Shalobar No. 2 Bara
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19	Noorul Amin	GPS Ebrahim Aman Kalay Bara
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25	Aurang Zeb	GMS Navay Qamar Bara

Additional Director (Estab.)  
Directorate of Education FATA

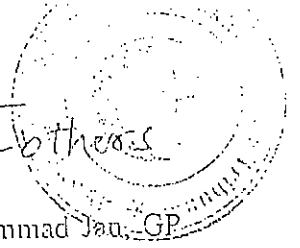
Additional Director (Estab.)  
Directorate of Education FATA

Endst. No. /  
Copy forwarded to the:

- Administrative Officer local Directorate
- PA to Director Education FATA

Additional Director (Estab.)

APPEAL No - 779/2012  
Mst. Rabia vs A.E.O & others



9.6.2014.

Counsel for the appellant and Mr. Muhammad Jan, GP  
with Daud Jan, Head Clerk for the respondents present.  
Representative of the respondents submitted before the court that  
the appellant has been reinstated by the competent authority.  
Counsel for the appellant is satisfied. Hence, the appeal has  
become infructuous and is filed accordingly. File be consigned to  
the record.

Announced  
09.06.2014

Self Member      Self Member

certified to be true copy

Signature of Head Clerk

09-01-2017  
800  
6-0  
6-0  
Signature  
10-01-2017  
10-01-2017

کھوجا DE مہنگا K.P.M

درخواست دریاں میں آ رہا ہے AE صبر عروج

ص 19-54 حورہ 2017/8/10

Reinstatement مطلوبہ صورت AD کے لئے

class - 17

Case No

15/9/2017 | 1645/12 | 1646/12

ص 4-1 اس میں سے یہ ہے صورت کر رہا ہے

ص کا وقت AD کے لئے عدالت کے

آرڈر کے تحت کال کلس

ص 4-1 - براہ کرم تعلقہ صبر عروج لارج

آیا رہا ہے صبر عروج کے حق میں ہے AE کے

ص 4-1 کے تحت کو پیش بر عدالت DB

ص 4-1 کے لئے سے مزید معلومات

ص 4-1 کے لئے سے مزید معلومات

ص 4-1 کے لئے سے مزید معلومات

ص 4-1 کے لئے سے مزید معلومات

ص 4-1 کے لئے سے مزید معلومات

A-D (Lit) 14/9/2017

Phase do as per equipment case 15/9/2017