

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1645/2013

Date of Institution ... 26.12.2013

Date of Decision ... 17.10.2017

Miss. Laila Kamal, (Caller) Government Girls Primary School Shah Hussain Killi
Tehsil Bara Khyber Agency.....

... (Appellant)

VERSUS

1. The Agency Education, Khyber Agency at Jamrod and 4 others.

... (Respondents)

MR. SOPHIA NOREEN KHAN,
Advocate

For appellant.

MR. MUHAMMAD JAN,
Additional Advocate General

...

For respondents.

MR. AHMAD HASSAN, ...
MR. MUHAMMAD HAMID MUGHAL ...MEMBER(Executive)
MEMBER(Judicial)JUDGMENTAHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 1646/2013 titled Gul Hussain as similar question of law and facts are involved therein.

2. Arguments of the appellant and learned Deputy District Attorney for respondents heard and record perused.

FACTS

3. The brief facts are that the vide impugned order dated 19.03.2012 services of the appellant were terminated without adopting prescribed procedure and providing opportunity of defense. She preferred departmental appeal dated nil which was not responded hence, the instant service appeal.

ARGUMENTS

4. Leaned counsel for the appellant argued that as the militants intensified their activities and started destroying girls schools in the area, the school in which the appellant was working was also damaged. No action was taken against the other staff members except the appellant, whose services were terminated vide order dated 19.3.2012. She preferred departmental appeal which was dismissed on 14.05.2012. Moreover, some 25 Class-IV employees were reinstated in service upon acceptance of their appeal vide order dated 14.05.2012. As such the appellant was treated in a discriminatory manner and in violation of Article-25 of the Constitution. No regular enquiry was conducted before terminating her services and as such the said order was void ab-initio. As opportunity of defense and fair trial were denied to her, hence, she was condemned unheard. One Mr. Gul Jamal, Naib Qasid who filed service appeal no. 769/12 was also reinstated by the competent authority and vide judgment dated 09.06.2013, this Tribunal observed that after reinstatement his appeal had become infructuous. In addition to this while reinstating some Class-IV employees vide order dated 10.08.2017, respondent no.1 categorically stated that reinstatement order in respect of Miss Laila Kamal, Caller and Mr. Gula Hassan, Chowkidar was not issued, as they had filed service appeals in Service Tribunal. Reliance was placed on case law as reported in 2004 PLC (C.S) 957, 2015 SCMR 795 and 2009 SCMR 01.

5. On the other hand the learned DDA argued that all codal formalities were completed before termination of services of the appellant. He further contended that appeal was barred by time as impugned order was issued on 19.03.2012 while

departmental appeal was preferred at a belated stage. Reliance was placed on case law as reported in PLD 2006 Supreme Court 572 and 2006 SCMR 453.

CONCLUSION.

6. A careful perusal of the entire record would reveal that as the appellant was a regular government servant so her case should have been dealt with under the invogue law/rules. The respondents were bound to provide opportunity of the fair trial and follow due process before termination of her services. It can be safely said that the appellant was condemned unheard. As more than 25 Class-IV employees upon acceptance of their appeal were reinstated in service vide order dated 14.5.2012, hence the appellant also deserve similar treatment as enshrined in Article-25 of the Constitution. That the department while reinstating some Class-IV employees vide order dated 10.08.2017 admitted that as Miss Laila Kamal, Caller and Mr. Gul Hussain, Chowkidar have filed service appeals in Service Tribunal, so their reinstatement orders have not been issued. Even if the contention of the respondents was that the appellant was a contract employee her services were regularized through Khyber Pakhtunkhwa Provincial Employees (Regularization of Service) Act 2009. Attention is drawn to judgment of this Tribunal dated 13.10.2011 passed in service appeal no. 731/2010, wherein this issue has already been decided once for all. So far as reliance of the learned counsel for the respondents on case law as reported in PLD 2006 Supreme Court 572 is concerned as the impugned order dated 19.03.2013 was passed without following the laid down procedure and as such was void ab-initio. No limitation would run against a void order. Similar view have been upheld by the Supreme Court of Pakistan in case law as reported in 2015 SCMR 795.

7. As a sequel to above, this appeal is accepted and impugned order dated 19.03.2012 and 14.05.2012 are set aside. The intervening period may be treated as leave of the kind due. Parties are left to bear their own cost. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
MEMBER



(AHMAD HASSAN)
MEMBER

ANNOUNCED
17.10.2017

Order

17.10.2017

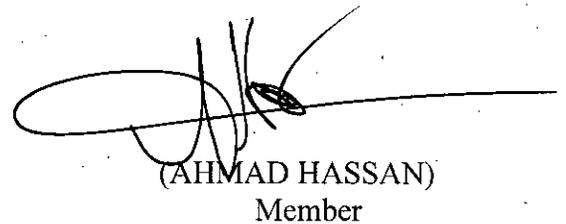
Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Daud Jan, Supdt for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file this appeal is accepted and impugned order dated 19.03.2012 and 14.05.2012 are set aside. The intervening period may be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

Announced:
17.10.2017



(MUHAMMAD HAMID MUGHAL)
Member



(AHMAD HASSAN)
Member

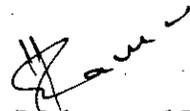
Appeal No- 1645/2013
Miss Laula Kunnal vs Govt

13.07.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Daud Jan, Supdf for respondents present. Learned counsel for the appellant stated that all the affectees except the appellant as well as one Gul Hussain 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.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
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)



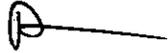
Member
(Judicial)



Appeal No-1645/2013
Miss Laila Kamal 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 AMIR 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

Appeal No. 1645/2013
Miss Laila Kamal vs Govt

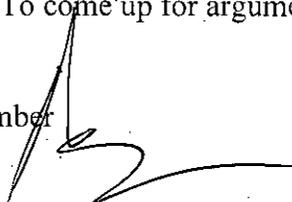
26.10.2015 - Shah Hussain, father in law of the appellant, on behalf of the appellant and Mr. Daud Jan, Supdt. alongwith Assistant A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 26.01.2016 before S.B.


Chairman

26.1.2016 Shah Hussain father-in-law 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

Amr - 1645/2013
Miss Laila Kamal vs Govt

16.4.2015

None present for appellant. Adjourned for preliminary hearing to 30.4.2015 before S.B.


Chairman

30.04.2015

Counsel for the appellant present. Learned counsel for the appellant argued that vide impugned order dated 19.03.2013 appellant was terminated from service without any just cause and without adopting prescribed procedure regarding which she preferred departmental appeal dated nil which was not responded and hence the instant service appeal. That the appellant has submitted application for condonation of delay.

Points urged need consideration. Admit, subject to limitation. Security and process fee be deposited within 10 days, where-after notices be issued to the respondents for written reply/comments for 29.07.2015 before S.B.


Chairman

Appellant Deposited
Security & Process Fee

29.07.2015

Father-in-law of the appellant present. Security not deposited. The same be deposited within a week, where-after notices be issued to the respondents for written reply for 26.10.2015 before S.B.


Chairman

Appeal No. 1645/2013
Miss Laiba Kamal vs Govt

10

11.02.2015

Counsel for the appellant present. Requested for adjournment.
Adjourned for preliminary hearing to 27.2.2015 before S.B


Chairman

27.02.2015

None present for appellant. Notice be issued to counsel for the
appellant for preliminary hearing for 3.4.2015 before S.B.


Chairman

03.04.2015

Mr. Shah Hussain Afridi on behalf of the appellant present.
Requested for adjournment. To come up for preliminary hearing
on 14.04.2015 before S.B.


Chairman

03-04-15.

14.04.2015

Counsel for the appellant present. Fresh Wakalat Nama on
behalf of the appellant filed. Seeks adjournment. Adjourned for
preliminary hearing to 16.4.2015 before S.B.


Chairman

Ao No. 1645/13
Miss Laila Kanwal

7.

07.07.2014

Junior to counsel for the appellant (Muhammad Anwar, Advocate) present and requested for adjournment. Request accepted. To come up for preliminary hearing on 24.09.2014.


Member

8.

24.09.2014

Counsel for the appellant present. Preliminary arguments partly heard. The matter required further clarification, therefore, pre-admission notice be issued to the learned AAG/GP to assist the Tribunal on the point of limitation. To come up for preliminary hearing on 28.11.2014.


Member

9.

Reader Note:

28.11.2014

No one is present on behalf of the appellant. Mr. Kabirullah Khattak, Asst: AG for the respondents present. Since the Tribunal is incomplete, therefore, case is adjourned to 11.02.2015 for the same.


Reader

A.No. 1645/13
MISS Larla Kamal vs Govt

3.
20.02.2014

No one is present on behalf of the appellant. Notices be issued to the appellant/counsel for the appellant. To come up for preliminary hearing on 04.03.2014.


Member

4.
04.03.2014

Clerk to counsel for the appellant present and requested for adjournment due to general strike of the Bar. To come up for preliminary hearing on 17.04.2014.


Member

5.
17.04.2014

Clerk of counsel for the appellant present and requested for adjournment as his counsel was busy in Peshawar High Court, Peshawar. Request accepted. To come up for preliminary hearing on 20.05.2014.


Member

6-
20.05.2014

Clerk of counsel for the appellant present and requested for adjournment due to general strike of the Bar. To come up for preliminary hearing on 07.07.2014.


Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1645/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1		3
1	26/12/2013	The appeal of Miss. Laila Kamal presented today by Sahibzada Asadullah Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing REGISTRAR
2	30-12-2013	This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>20-2-2014</u> CHAIRMAN

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 1645/2013

Miss. Laila Kamal.....Appellant

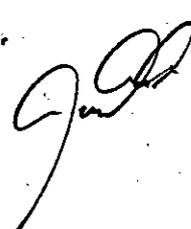
V E R S U S

Agency Education Officer, Khyber Agency at Jamrod

and others.....Respondents

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6.	Copy of order dated 19/03/2012	B	16
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Laila
Appellant 

Through

Dated: 16/12/2013

Sahibzada Asadullah
Advocate, Peshawar.
Office: Abshar Colony Warsak
Road Peshawar
Cell No. 0313-9772262

(1)

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 1645/2012

W.F. Prov
1683
26-12-13

Miss. Laila Kamal, (Caller) Government Girls Primary School
Shah Hussian Killi Tehsil Bara Khyber Agency.....Appellant

V E R S U S

1. Agency Education Officer, Khyber Agency at Jamrod.
2. Director of Education, FATA, Khyber Pakhtunkhwa, FATA Civil Secretariat, WARSAK Road, Peshawar.
3. Political Agent, Khyber Agency at Bara Road, Peshawar Cantt.
4. Additional Director Establishment, Directorate of Education (FATA) FATA Civil Secretariat, WARSAK Road, Peshawar.
5. Additional Chief Secretary FATA Civil Secretariat, WARSAK Road, Peshawar.....Respondents

Filed to-407

[Signature]
26/12/13

**APPEAL UNDER SECTION 4 OF KHYBER
PUKHTUNKHWA SERVICE TRIBUNAL ACT
1974 AGAINST IMPUGNED ORDER No.
4012-18 ENDST: DATED 19/03/2012
TROUGH WHICH THE APPELLANT WAS**

TERMINATED FROM HER SERVICE AND
ORDER No. 6453/E-4/FILE No. 140 DATED
14/05/2012 THROUGH WHICH THE
DEPARTMENTAL APPEAL OF THE
APPELLANT WAS DISMISSED.

PRAYER IN APPEAL:

On acceptance of this appeal the impugned order No. 4012-18 ENDST: DATED 19/03/2012 and order No. 6453/E-4/FILE No. 140 DATED 14/05/2012 may kindly be set aside and the appellant be reinstated in her service with all back benefits and as such any other relief which this august Court deems appropriate under the circumstances of the case may also be awarded to the appellant.

Respectfully Sheweth:

1. That initially on 07/05/2010 the appellant was appointed as Class-IV, Servant (Caller) in Government Girls Primary School Shah Hussain Killi, Tehsil Bara

Khyber Agency. (Copy of Appointment order are attached as annexure "A").

2. That since the Pakistan Army had already launched Military Operation against the militants at Khyber Agency, the militants of the area intensified their sabotage activities and started planting explosive devices in Government Girls High/ Middle/ Primary Schools situated at Bara and thereafter they detonated it and thus the Girls Schools of the area were either destroyed or blown up and in this process the school of the appellant was also damaged by these insurgents.
3. That as the school in which the appellant was performing her duties was also blown up at midnight by the militants, so the respondent No. 1 without going through the matter, in a haste manner terminated the appellant from his services vide impugned order dated 19/03/2012. (Copy of order dated 19/03/2012 is attached as annexure "B").
4. That it would be pertinent to mentioned here that other staff members viz: principle/ teachers/ clerks working in these schools were neither suspended nor their pay was

stopped nor any other adverse action was initiated against them by the respondent No. 1 and thus the appellant was discriminated illegally without any fault on her part.

5. That the appellant preferred departmental appeal against the said termination order and as such later on time and again the appellant approach the concern authorities for her reinstatement and the appellant was hopeful to be reinstated but one way or the other the respondents delayed the matter and as such finally the appellant was directed by the respondents No. 1 and 2 that the appellant will be reinstated as the matter is subjudice before this august Tribunal, so the appellant waited for the commitment made by the respondents but at no avail, but with utmost surprise of the appellant her departmental appeal was dismissed vide order dated 14/05/2012. (Copies of departmental appeal and order dated 14/05/2012 are attached as annexure "C").

6. That it is pertinent to mentioned here that some of the department employees specially in such like cases preferred appeals before this august Tribunal in which this august Tribunal was pleased to passed an order of

reinstatement in their favour. (Copies of appeal and order/ judgment dated 31/10/2011 are annexure "D").

7. That being aggrieved the appellant approached this Hon'ble Tribunal on the following grounds amongst other inter alia:

GROUND:

- A. That the termination order dated 19/03/2012 and dismissal order of the departmental appeal dated 14/05/2012 (impugned herein) of respondents No. 1 and 2 are against facts, law and procedure, hence, untenable being unjust and unfair.
- B. That the appellant was not treated in accordance with law and rules, thus acted in violation of the relevant laws laid down for the purpose.
- C. That now show cause notice and statement of allegation were served upon the appellant. No regular inquiry was conducted against the appellant and the whole departmental proceedings were initiated by respondent No. 1 illegally and unlawfully without observing the legal

codal formalities as required under the Removal from Service (Special Powers) Ordinance 2000 as amended in 2001 and as such the termination orders of appellant are not sustainable in the eyes of law and being bad and void order is to be set at naught.

- D. That respondent No. 1 has taken a unilateral action at the back of the appellant. The appellant has not been afforded an opportunity of being heard and thus he has been condemned unheard and thus the settled principles of natural justice have been violated.
- E. That as mentioned as earlier stated of this appeal, some staff members of the damaged schools are still working and getting their salaries and other benefits. Neither they have been disturbed nor terminated by the respondents/ department and the appellant is the only scapegoat who has been deprived of his services illegally, unlawfully and mechanically by the respondent/ department and thus he has been discriminated by the department/ respondents by violating Article 25 of the Constitution of Pakistan 1973.

- F. That the appellant is a regular Civil Servant and has rendered long service in the department with unblemished service record and he could not be terminated without observing/ fulfilling the legal formalities and thus the action taken by the respondents/ department against the appellant is based on malafide. The appellant has been terminated from services against the rules, regulating the services and are in violation of the established principles of equity and justice, calling for intervention by the Hon'able Tribunal.
- G. That appellant seeks leave of this Hon'able Tribunal to rely on additional grounds at the time of final hearing/ arguments.
- H. That the transfer orders of the appellant are classical examples of political victimization because the appellant was penalized and transferred to General Cadre Post from Management Cadre, that the respondent No. 4 was transferred to the post of appellant which is a post of Management Cadre; so it is a clear violation of the laws and rules laid down for the purpose.

(8)

I. That any other ground may be adduced during the course of argument, with the kind permission of this Hon'ble Court.

It is, therefore, most humbly prayed that on acceptance of this appeal the impugned order No. 4012-18 ENDST: DATED 19/03/2012 and order No. No. 6453/E-4/FILE No. 140 DATED 14/05/2012 may kindly be set aside and the appellant be reinstated in her service with all back benefits and as such any other relief which this august Court deems appropriate under the circumstances of the case may also be awarded to the appellant.

Liala
Appellant 

Through

Dated: 16/12/2013

Sahibzada Asadullah
Advocate, Peshawar.

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2012

Miss. Laila Kamal, (Caller)Appellant

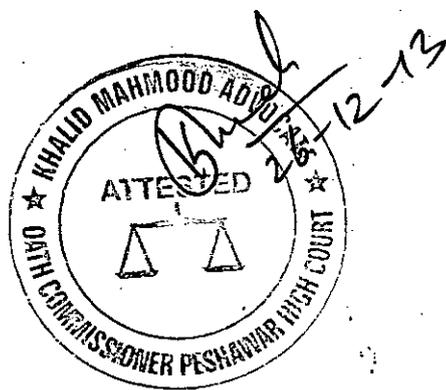
V E R S U S

Agency Education Officer, Khyber Agency at Jamrod

and others.....Respondents

AFFIDAVIT

I, **Sahibzada Asadullah**, Advocate, Peshawar do hereby as per information conveyed to me by my client solemnly affirm and declare that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



A D V O C A T E

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2012

Miss. Laila Kamal, (Caller).....Appellant

V E R S U S

Agency Education Officer, Khyber Agency at Jamrod

and others.....Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Miss. Laila Kamal, (Caller) Government Girls Primary School Shah Hussian Killi Tehsil Bara Khyber Agency

RESPONDENTS:

1. Agency Education Officer, Khyber Agency at Jamrod.
2. Director of Education, FATA, Khyber Pakhtunkhwa, FATA Civil Secretariat, WARSAK Road, Peshawar.
3. Political Agent, Khyber Agency at Bara Road, Peshawar Cantt.
4. Additional Director Establishment, Directorate of Education (FATA) FATA Civil Secretariat, WARSAK Road, Peshawar.
5. Additional Chief Secretary FATA Civil Secretariat, WARSAK Road, Peshawar.

Laila Kamal
Appellant



Through

Sahibzada Asadullah
Advocate, Peshawar.

Dated: 16/12/2013

(11)

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2013

Miss. Laila Kamal.....Appellant

V E R S U S

Agency Education Officer, Khyber Agency at Jamrod

and others.....Respondents

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the captioned appeal has been filed before this august Tribunal with date of hearing not fixed so far.
2. That the appellant along with others filed appeal before the respondent No. 1 which was declined on 14/05/2012.
3. That the appellant was of the opinion that his appeal was also submitted along with others as power of attorney was given but now come to know that the appeal was not filed.
4. That the delay is not willful and hence this condonation application.

It is, therefore, prayed that on acceptance of this application the delay may kindly be condoned to meet the ends of justice.

Laila Kamal
Applicant

Through

Sahibzada Asadullah
Advocate
Supreme Court of
Pakistan.

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2013

Miss. Laila Kamal.....Appellant

V E R S U S

Agency Education Officer, Khyber Agency at Jamrod

and others.....Respondents

AFFIDAVIT

I, **Sahibzada Asadullah**, Advocate, Peshawar do hereby as per information conveyed to me by my client solemnly affirm and declare that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



ADVOCATE

Gen
SERVICE BOOK

BARA
Caller

(13)

(73)

Annex-A

OF

No.	LALLA
NO	KAMAL HUSSIAN
Designation	Caller
Department	GGPS SHAH HUSSIAN KILLI BARA KIA

9
ATTESTED

Entries in this page should be renewed or re-attested at least every five years and the Signature to lines 9 and 10 should be dated.

Name: Miss Laila Kamal

Place: Islami

Residence: Qamber khel Tehsil & P/O Bara Khyber

Age: 3 years

Father's name and residence: Kamal Hussain

Date of birth by Christian era as nearly as can be ascertained: 01-01-1992
(1st January N.H & Ninety two)

Exact height by measurement: 5-3

Date: Personal marks for identification:

Left hand thumb and Finger impression of (Non-Gazetted) officer:

Little Finger: 

Ring Finger: 

Middle Finger: 

Fore Finger: 

Thumb: 

Signature of Government Servant: Laila



Signature and designation of the Head of the Office, or other Attesting Officer.

Agency Education Officer
Bara Agency at Jamrud

(7)
(14)

9
ATTESTED

(15)

AGENCY EDUCATION OFFICE KHYBER AGENCY AT JAMRUD.
APPOINTMENT.

Miss: Laila Kamal W/O Kamal Hussain Afridi is hereby appointed against Caller post on regular basis (Non-Pension able) at GGPS Shah Hussain Killi Tehsil Bara Khyber Agency in BPS No.01 of the National Pay Scale @ (Rs, 2970-90-5870) PM plus usual allowances as admissible under the rules with effect from the date of her taking over charge vice Mst: Hazrata, Caller died on 1/3/2010.

TERMS AND CONDITIONS: -

1. Charge report should be submitted to all concerned.
2. The appointment of the candidate is made purely on Temporary basis & liable to terminate without any notice.
3. If the candidate wishes to resign her post she will give one-month prior notice or her pay for one month will be forfeited in lieu thereof.
4. Her Documents, Date of Birth, NIC and Domicile certificate should be checked before handed over charge if the post and attested copies thereof may be kept on the record of the school/office.
5. She should produce her Health and Age certificate from the Agency Surgeon concerned.
6. She may not be handed over charge if she is below 18 years or above 40 years.
7. If she fails to report her arrival within 15-days of the issue of this appointment order then it will be treated as cancelled.
8. No salary may be drawn before the verification of all the testimonials from the quarters concerned.
9. If any technical legal flaw is pointed out, the appointment will stand as cancelled.
10. She will not be entitled for Pension/Commutation and G.P. Fund emoluments as per Govt. policy.

(HASHAM KHAN AFRIDI)
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD

Dated Jamrud the 7/5 /2010

Endst: No. 2698-2700/C-2/F/Khyber

Copy of the above is forwarded to the:-

1. Director of Education (FATA) NWFP Peshawar.
2. Political Agent Khyber Agency at Peshawar.
3. Agency Accounts Officer Khyber at Jamrud.
4. Agency Surgeon Khyber Agency at Landi Kotal
5. AAEO (Female)/Pay Clerk concerned.
6. E.M.I.S (Computer Cell) local officer.
7. Candidate concerned.


AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD

ATTACHED
2010

(16)

Annex B

AGENCY EDUCATION OFFICE KHYBER AGENCY AT JAMRUD
CORRIGENDUM

"Change of address" of the holder, GGPS Shah Hussain Kili Tehsil Bara Khyber Agency instead of Hazrata, Caller, GGPS Shah Hussain Kili Tehsil Bara Khyber Agency" termination order issued vide this office Memo No. 6211-16/Damages School file dated 27/11/2011.

Note: Necessary entry to an effect should be made in the Service Books.

MUHAMMAD ASHRAF AFRIDI
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD

File No: 4012-18 (Damages School) Date of issue: 19/3/2012
Copy of the order is forwarded to the:

1. Director Education, NWFP, Peshawar.
2. Political Agent Khyber Agency at Peshawar.
3. Agency Accounts Officer Khyber at Jamrud
4. Assistant Political Agent Tehsil Bara
5. AAO concerned local office
6. Non-attached/Accountant local office
7. Office concerned

Muhammad Ashraf Afridi
19/3/2012

AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD

9
RECEIVED

Better Copy (16)

AGENCY EDUCATION OFFICER KHYBER AGENCY AT JAMRUD
CORRIGUNDAM.

Please Laila. Caller GGPS Shah Hussain Killi Tehsil Bara
Khyber Agency instead of Hazrata, Caller GGPS Shah Hussain Killi Tehsil Bara Khyber
Agency termination order issued vide this office Endst: No. 6211-16/Damages School
file dated 27/ /2011.

Note: Necessary entry to this office should be made in her Service Book

(MUHAMMAD ASHRAR AFRIDI)
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD

Endst, No. 4012-18/ Damage School file Dated Jamrud the 19/3/2013²

Copy of the above is forwarded to the:-

1. Director Education (FATA) at Peshawar.
2. Political Agent Khyber Agency at Peshawar.
3. Agency Accounts Officer Khyber at Jamrud.
4. Assistant Politicat Agent Tehsil Bara.
5. AAEC concerned localoffice.
6. Supernatant /Accountant local office.
7. Official Concerned.

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ATTESTED

Amere =

خدمت صاحب ایسی ہوگی جس سے آپ صدمہ و غم نہ ہوگی

اسٹیل ریڈیو کالی بکریس عوا گورنمنٹ

گورنمنٹ کے لئے ریڈیو کالی بکریس عوا گورنمنٹ

صدا عالی (صدا عالی)

بیانیہ خودمانہ گزارش ہے کہ کوالہ آرڈر

کے تحت کوٹریٹ کیا گیا ہے

کوٹریٹ کے تحت کوٹریٹ کیا گیا ہے

لیکن آپ صدمہ کے خدمت میں التماس ہے

کوٹریٹ پوسٹ لیزولی کے احکامات صدمہ فرما کر

شکوہ فرمائیں۔

عین لوزیشن ہوگی جمل حسین

العرض آپ صدمہ کا فرما دے

Liala دسمہ

ATTESTED



(18)

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

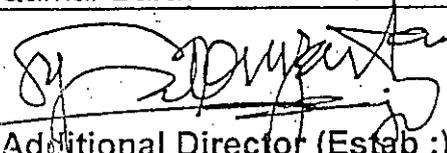
The Agency Education Officer
Khyber Agency at Jamrud.

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

ATTESTED


Additional Director (Estab:)

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Annex 'D'

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

Appeal No. 731 of 2010

Case No. 787
Date 13/4/10

Hazrat Bibi Caller Govt Girls High School, Karigar Ghari,
Tehsil Bara Khyber Agency. Appellant

VERSUS

- (1) Agency Education Officer, Khyber Agency, at Jamrud.
- (2) Director of Education, FATA, NWFP, FATA Civil Secretariat, Warsak Road, Peshawar.
- (3) Political Agent, Khyber Agency at Bara Road, Near Qayyum Stadium, Peshawar Cantt.
- (4) Addl: Chief Secretary, FATA Civil Secretariat, Warsak Road, Peshawar.

..... Respondents

APPEAL UNDER SECTION 4 OF THE NWFP, SERVICE TRIBUNAL ACT, 1974, AGAINST IMPUGNED ORDER NO.64-70 DATED 04/01/2010 OF RESPONDENT NO.1 WHEREBY APPELLANT HAS BEEN TERMINATED FROM SERVICE AND HIS DEPARTMENTAL APPEAL DATED 07/01/2010 BEFORE RESPONDENT NO.2 HAS NOT YET BEEN DECIDED WITHIN THE STATUTORY PERIOD OF 90 DAYS.

1907
13/4/10

Prayer:

On acceptance of this appeal, the impugned order dated 04/01/2010 may please be set aside and appellant be reinstated in service with all back benefits and such other relief deemed fit and appropriate under the circumstances of the case may also be granted with costs.

Respectfully Sheweth:

Shorts facts giving rise to this appeal are as under:

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- 1) That on 08/11/1987 appellant was appointed as Class - IV, servant (Caller) at G.G.H.S, Karigar Ghari, Tehsil Bara Khyber Agency and subsequently his service were regularized by the Provincial Govt. (Copy of appointment order/Pages of Service book and FD Letter dated 29/01/2008 are Annexure "A&A-1").
- 2) That since the Pakistan Army had already launched operation against the militants at Bara Tehsil and as a reaction, the militants of the Area intensified their sabotage activities and started planting explosive devices in Govt Girls High/Middle/Primary Schools situated at Bara and thereafter they detonated it and thus the Girls Schools of the area were either destroyed or blown up and in this process the School of the appellant was also damaged by these insurgents.
- 3) That thereafter, respondents No.3/Political Agent Khyber Agency, by a standing order bearing No.4569 dated 23/11/2009 directed Respondent No.1/AEO Khyber to this effect that all the Class -IV servants working in the school of the appellant be suspended and the salary /pay of all the Class - IV employees of this School may be stopped. (Copy of the order dated 23/11/2009 is Annexure "B").
- 4) That it would be pertinent to mention here that other staff members viz: principal / teachers/ Clerks working in these schools were neither suspended nor their pay was stopped nor any other adverse action was initiated against them by the respondent No.1 and thus the appellant was discriminated illegally without any fault on his part.
- 5) That on 04/01/2010, after suspension of hardly one month, respondent No.1, with one stroke of pen, by an order bearing No. 64-70 dated 04/01/2010 terminated the services of the appellant with immediate effect on flimsy and frivolous grounds. (Copy of termination order dated 04/01/2010 is Annexure "C").
- 6) That it is worth mentioning to submit that while terminating the services of the appellant, no charge sheet /statement of allegation or 'Shew Cause Notice was

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served upon the appellant. No inquiry whatsoever was conducted against the appellant and without fulfilling the required legal formalities the appellant was terminated from service by Respondent No.1 unlawfully and illegally.

- 7) That appellant being aggrieved preferred a departmental appeal dated 07/01/2010 before respondent No.2 for redressal of his grievances. However, the representation of the appellant was not disposed off within the statutory period. (Copy of Departmental appeal dated 07/01/2010 is attached as Annexure "D").
- 8) That appellant further aggrieved and dissatisfied and finding no other remedy, has been constrained to approach this Hon'able Tribunal for redress of his grievances, inter-alia, on the following grounds:

GROUND:

- A) That the impugned order dated 04/01/2010 of respondent No.1 is against law and fact, having been passed without jurisdiction and without lawful authority and as such is liable to be set aside.
- B) That no show cause notice and statement of allegation were served upon the appellant. No regular inquiry was conducted against the appellant and the whole departmental proceedings were initiated by respondent No.1 illegally and unlawfully without observing the legal codal formalities as required under the Removal from service (Special Powers) Ordinance 2000 as amended in 2001 and as such the termination orders of appellant are not sustainable in the eye of law and being bad and void order is to be set at naught.
- C) That Respondent No.1 has taken a unilateral action at the back of the appellant. The appellant has not been afforded an opportunity of being heard and thus he has been condemned unheard and thus the settled principles of natural justice have been violated.
- J. J.*

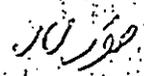
D) That as mentioned in the body of this appeal, some staff members of the damaged schools are still working and getting their salaries and other benefits. Neither they have been disturbed nor terminated by the respondents/department and the appellant is the only scapegoat who has been deprived of his services illegally, unlawfully and mechanically by the respondents/department without any reasons and justification and thus he has been discriminated by the department /respondents by violating Article 25 of the Constitution of Pakistan 1973.

E) That the appellant is a regular civil servant and has rendered long service in the department with unblemished service record and he could not be terminated without observing /fulfilling the legal formalities and thus the action taken by the respondents/department against the appellant is based on malafide. The appellant has been terminated from service against the rules, regulating the services and are in violation of the established principles of equity and justice, calling for intervention by the Hon'able Tribunal.

F) That appellant seeks leave of this Hon'able Tribunal to rely on additional grounds at the time of final hearing /arguments.

It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned order dated 04/01/2010 may please be set aside and appellant be reinstated in service with all back benefits and such other relief deemed fit and appropriate under the circumstances of the case may also be granted with costs.

Dated 12/04/2019

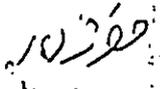
Through 
Appellant
Abdul Hameed
Advocate, Peshawar

Verification:

Verified on oath that the contents of above appeal are correct and true to the best of my knowledge and belief.

Verified this day of 12 April, 2010.

DEPONENT



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(2) (23)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.731/2010

Date of Institution. ... 13.04.2010
Date of Decision ... 31.10.2011

Hazrat Bibi, Caller, Government Girls High School, Karigar Ghari,
Tehsil Bara Khyber Agency. ... (Appellant)

VERSUS

1. Agency Education Officer, Khyber Agency, at Jamrud.
2. Director of Education, FATA, Khyber Pakhtunkhwa, FATA Civil Secretariat, Peshawar.
3. Political Agent, Khyber Agency at Bara Road, Near Qayyum Stadium, Peshawar Cantt.
4. Addl. Chief Secretary, FATA Civil Secretariat, Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST IMPUGNED ORDER NO. 64-70, DATED 4.1.2010, OF RESPONDENT NO.1 WHEREBY APPELLANT HAS BEEN TERMINATED FROM SERVICE AND HER DEPARTMENTAL APPEAL DATED 7.1.2010 BEFORE RESPONDENT NO.2 HAS NOT YET BEEN DECIDED WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate.

... For appellant.

MR. ARSHAD ALAM,
Addl. Government Pleader.

... For respondents.

MR. SULTAN MAHMOOD KHATTAK,
MR. NOOR ALI KHAN,

... MEMBER
... MEMBER

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER.- This appeal has been filed by Mst. Hazrat Bibi, the appellant, U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 4.1.2010, whereby she had been terminated from service and her departmental appeal dated 7.1.2010 before the respondent No.2 has not been decided within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order may be set aside and the appellant may be reinstated in service with all back benefits.

2. Brief facts of the case as narrated in the memo: of the appeal are that the appellant was appointed as Caller on 8.11.1987 on fixed pay and was posted at GGHS, Ghari, Karigar, Tehsil Bara Khyber Agency. Her services were later on

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regularized and she has been awarded Basic Pay Scale No.1 vide Government of Khyber Pakhtunkhwa, Finance Department notification No. BO-I/1-22/2007-08, dated 29.1.2008. Due to military operation in Tehsil Bara, Khyber Agency, the militants of the area intensified their sabotage activities and started planting explosive devices in Government Girls High/Medal/Primary Schools situated at Bara and thereafter they detonated it and thus the Girls Schools of the area were either destroyed or blown up and in this process the school wherein the appellant was serving was also damaged by the militants. On the direction of Political Agent, Khyber Agency, the appellant had been suspended from service and her salary was also stopped vide order dated 23.11.2009. Later on the appellant was terminated from service vide impugned order dated 4.1.2010. Feeling aggrieved, she filed departmental appeal on 7.1.2010, which elicited no response within the statutory period, hence this appeal.

3. Notices were issued to the respondents. They filed their joint written reply and contested the appeal mainly on the grounds that the appeal is not maintainable in its present form; this Tribunal lacks jurisdiction and that the appellant has not come to this Tribunal with clean hands and concealed facts pertaining to her recruitment; that she was appointed on temporary basis at fixed pay @ Rs. 600/- per month and that the school on which the appellant was recruited has been blown up by the miscreants; that the services of the appellant are no more required as such her services terminated and that the services of the appellant were never regularized by the provincial government due to the specific policy in the FATA. The appellant rebutted the claim of the respondents by filing rejoinder. Arguments heard and record perused.

4. The learned counsel for the appellant argued that the appellant is regular government servant. After regularization of her appointment and award of BPS-1 vide Government of Khyber Pakhtunkhwa, Finance Department notification referred to above, it was for the respondents to issue proper order as such. Temporary and permanent government servants all are to be treated in accordance with the law. The appellant was not issued a proper Charge Sheet and Statement of Allegations and no proper enquiry conducted as required under the law. The respondents should have conducted proper departmental enquiry, providing the appellant proper chance to cross examine the witnesses and to produce evidence in support but in the instant case no such enquiry had been conducted. The appellant was not issued proper Show Cause Notice which is mandatory under the law. The appellant has not been given a chance of personal hearing as provided in the law. Therefore, the appellant has been deprived of the

(25)

rule "Audi Alteram Partem" (no one should be condemned unheard). As reported in the 1999-SCMR-2203, the Maxim "Audi Altram Partem" is not confined to proceedings which are judicial in form but extended to all proceedings, by whomsoever held, which may affect the person or property or other rights of the party concerned in the dispute. The appellant has not been intimated any reason as to why his services were terminated. This is clear violation of Section 24-A(2) of the General Clauses Act, 1897 as upheld by the august Supreme Court of Pakistan and reported in 1991 SCMR-2230(c), reproduced here as under:-

"....Departmental proceedings; original, review, representational or appellate---Rejection---Held; even if it was not a mandate by any law that the officer concerned should be informed about the reasons which prevailed with the Authority concerned, it would not be illegal either to give reasons; at least, from now onward---Such rule being the judgment of Supreme Court on a legal question, the same would be observed as a declared law."

5. Counsel for the appellant further argued that the appellant has served the department for sufficient long time and her services could not be terminated on a single stroke of pin. He also argued that other staff of the school such as Principal and teachers etc. are still in service, while the appellant had been discriminated. In support of his arguments, the learned counsel for the appellant relied on judgment dated 16.3.2011 in Service Appeal No.803/2010. He requested that the appeal may be accepted as prayed for.

6. The learned AGP, on the other hand, argued that due to particular situation, appointments of Class-IV servants in the Tribal Areas are usually made by nomination through the community with certain agreements, including to take care of the school and its equipments etc. but due to her negligence the schools and equipments were blown up. He further argued that Charge Sheet/Statement of Allegations and Show Cause Notices are served upon the permanent employees while the appellant was appointed on temporary basis and her services could be terminated without assigning any reason. He requested that the appeal may be dismissed.

7. The Tribunal observes that after issuance of the Government of Khyber Pakhtunkhwa, Finance Department notification referred to above, the services of the appellant have been regularized since July, 2008 and she has been awarded BPS-I.

ATTY: TED

therefore, she is regular civil servant and should be treated in accordance with the law. The issuance of Charge Sheet/Statement of Allegations are mandatory and proper enquiry conducted. Before issuance of termination order, Show Cause Notice has to be issued and the appellant be given personal hearing as required under the law. Moreover, Section 24-A of the General Clauses Act be properly observed. The order itself shows that the same has been issued on the direction of the Director, FATA without observing the legal procedure. As such not maintainable in the eye of law. The appellant has been subjected to the harsh penalty of termination from service through a single stroke of pen. The Tribunal further observes that no action has been taken against other staff members like Principal/Headmaster and teachers while the appellant has been discriminated.

8. In view of the above, the appeal is accepted as prayed for that the impugned order is set aside and the appellant is reinstated in service with all back/consequential benefits. However, if deemed appropriate in view of facts and circumstances of the case, the department may initiate proper departmental proceedings against the appellant but strictly in accordance with the law by providing opportunity of defence and personal hearing to the appellant and in that case, the payment of consequential/back benefits would be subject to the outcome of departmental proceedings/enquiry.

9. There are 25 other connected appeals, having common questions of law and facts, fixed for arguments for to-day. This single judgment will also dispose of these connected Service Appeal Nos. 732/2010, Mehar Gul, 733/2010, Salah-ud-Din, 734/2010, Abdul Aziz, 735/2010, Jan Bibi, 736/2010, Qayyum Khan, 737/2010, Yousaf Khan, 738/2010, Khan Abaz, 739/2010, Saddar-e-Azam, 740/2010, Habib Jan, 741/2010, Islam Gul, 742/2010, Shaheena, 743/2010, Javaid Khan, 744/2010, Shah Faisal, 745/2010, Faizullah, 746/2010, Rozina, 747/2010, Bilal Khan, 748/2010, Adnan, 749/2010, Javed Iqbal, 750/2010, Mst. Zarpoomba, 751/2010, Hassan Raza, 752/2010, Imad, 753/2010, Zarbat Khan, 754/2010, Mst. Warkhameena, 770/2010, Javed Khan and 771/2010, Najeebullah, in the same manner.

10. Parties, are however, left to bear their own costs. File be consigned to the record.

ANNOUNCED
31.10.2011

(NOOR ALI KHAN)
MEMBER

(SULTAN MAHMOOD KHATTAK)
MEMBER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO.1645/2013

Mst Laila Kamal.....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) and Endst No. 6211-16/ Damaged School dated 27/10/2011.
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.

GROUNDS:

- 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.

ccst.

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

(i) The respondents also seek permission to raise additional grounds at the time of arguments.

(ii) No comments.

(iii) The respondents also seek permission to raise additional grounds at the time of arguments.

(iv) The respondents also seek permission to raise additional grounds at the time of arguments.

(v) Incorrect, the appellant was appointed on contract basis and it was the terms and condition included in the appellant appointment order that her services may be terminated at any time without any notice.

(vi) Incorrect, the appellant was terminated from service.

(vii) Incorrect, as explained in paras above that upon direction of FATA secretariat, ordinance-2003 and all codes formalities were fulfilled.

(viii) Incorrect, the action was taken under section 3 (2) (i) Removal from service competent authority according to law.

(ix) Incorrect. The termination order of the appellant has been issued by the

Warsak Road, Peshawar.
 Director of Education FATA
 Khyber Agency at Jamrud.
 Agency Education Officer

Respondent No.1

Respondent No.2

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.

Khyber Agency at Jamrud.
 Agency Education Officer

Respondent No.1

Warsak Road, Peshawar.
 Director of Education FATA

Respondent No.2

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(15)

AGENCY EDUCATION OFFICE KHYBER AGENCY AT JAMRUD.
APPOINTMENT.

Miss: Laila Kamal W/O Kamal Hussain Afridi is hereby appointed against Caller post on regular basis (Non-Pension able) at GGPS Shah Hussain Killi Tehsil Bara Khyber Agency in BPS No.01 of the National Pay Scale @ (Rs, 2970-90-5870) PM plus usual allowances, as admissible under the rules with effect from the date of her taking over charge vice Mst: Hazrata, Caller died on 1/3/2010.

TERMS AND CONDITIONS:-

1. Charge report should be submitted to all concerned.
2. The appointment of the candidate is made purely on Temporary basis & liable to terminate without any notice.
3. If the candidate wishes to resign her post she will give one-month prior notice or her pay for one month will be forfeited in lieu thereof.
4. Her Documents, Date of Birth, NIC and Domicile certificate should be checked before handed over charge if the post and attested copies thereof may be kept on the record of the school/office.
5. She should produce her Health and Age certificate from the Agency Surgeon concerned.
6. She may not be handed over charge if she is below 18 years or above 40 years.
7. If she fails to report his arrival within 15-days of the issue of this appointment order then it will be treated as cancelled.
8. No salary may be drawn before the verification of all the testimonials from the quarters concerned.
9. If any technical legal flaw is pointed out, the appointment will stand as cancelled.
10. She will not be entitled for Pension/Commutation and G.P.Fund emoluments as per Govt. policy.

(HASHAM KHAN AFRIDI)
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD.

Dated Jamrud the 7/5 /2010

Endst: No. 2698-2700/C-2/T/Khyber

Copy of the above is forwarded to the:-

1. Director of Education (FATA) NWFP Peshawar.
2. Political Agent Khyber Agency at Peshawar.
3. Agency Accounts Officer Khyber at Jamrud.
4. Agency Surgeon Khyber Agency at Landi Kotal
5. AAEO (Female)/Pay Clerk concerned.
6. E.M.I.S (Computer Cell) local officer.
7. Candidate concerned.

AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD.

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AGENCY EDUCATION OFFICE KHYBER AGENCY AT JAMRUD
CORRIGENDUM

...ad" (Call) Caller: GGPS, Shah Hussain Killi, Tehsil: Bara, Khyber Agency instead of "Hazrat" (Call) Caller: GGPS, Shah Hussain Killi, Tehsil: Bara, Khyber Agency" termination order issued vide this office Memo No. 6271-16/Damago's School (dated 17/11/2011).

Note: Necessary entry to this effect should be made in her "Water Books".

MUHAMMAD ASHRAF AERIDI
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD

Order No. 4012-18 (Damago's School) Dated Jamrud, the 19/3/2012

Copy of this above is forwarded to the:

- 1. Director Education, AT Agency Peshawar
- 2. Political Agent, Khyber Agency at Peshawar
- 3. Agency Accounts Officer, Khyber at Jamrud
- 4. Assistant Political Agent, Tehsil Bara
- 5. AAO concerned local office
- 6. Assistant Secretary/Accountant local office
- 7. Office concerned

(Handwritten signature)
19/3/12

MUHAMMAD ASHRAF AERIDI
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD

①

Before The Khyber Pukhtunkhwa Services Tribunal, Peshawar

Service appeal No 1645/ 2013

Applicant ----Mst. LAILA Kamal.

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 appellants 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.
4. This appellants 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's version is without footing and mere excuse, while that of appellants is correct.
6. The appellants 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 appellants 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, as the appellants being a female collar works as lady peon and not a warrior to fight against saboteurs, nor any instructions to this effect have been received or the department of education.
- b. The action against the appellants 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

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, as the appellant being a female collar works as lady peon and not a warrior to fight against saboteurs, nor any instructions to this effect have been received ^{from} or the department of education.
- 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.

Mam Sibhaatullah *Shah.*
Peshawar *ADV-PHC -*
10/5/2010 *Pesh.*

Through *Lila*
LAILA Kamal
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
Advocate *09.05.2016*
Sibhaatullah *Shah*
Peshawar

Mian Sibghat Ullah Shah
Advocate
High Court Peshawar

Deponant
Lila

Annexure R-1

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

NOTIFICATION

Dated Peshawar , the 24th 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 15th October, 2009 and assented to by the Governor of the North-West Frontier Province on 20th 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 24th 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 31st 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



(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:)

ATTACHED

10 سب

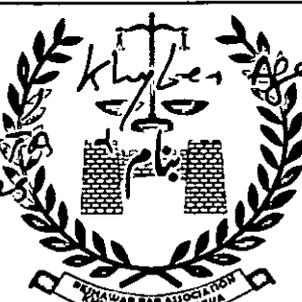
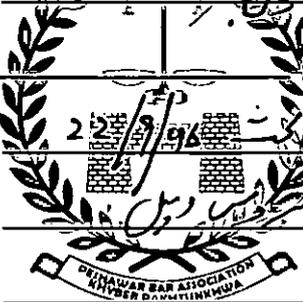


66199

ایڈووکیٹ / دستخط
بار کونسل ابار ایسوسی ایشن
رابطہ نمبر:

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سروس ٹرانسفر کے لیے K.P.K

<p>کیلی کال مخاطب: مسٹر A.E.O. Khyber Agency D.E FATA Dheri</p> 	<p>سروس: اسٹیبلشمنٹ دعویٰ: 1645 معدنہ: 22/9/16 جہاز: پشاور تھانہ: پشاور</p> 
بابت تحریر آنکہ	

مقدمہ مندرجہ عنوان والا میں اپنی طرف سے واسطے پر دی و جواب دی کاروائی متعلقہ
 ان مقام *Sophia Noor* کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو
 راضی نامہ کرنے و تقریر چاہت و فیصلہ برطین دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں بدستخط کرنے کا اختیار ہوگا۔ نیز ضرورت پر دی و جواب دی کاروائی کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر جانی و پر دی و جواب دی کاروائی کا مختار ہوگا اور ضرورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا پھر قانونی کو اپنے ہمراہ یا اپنے مجھے سے تفرک کا اختیار ہو گا اور صاحب
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ماحولہ پر ذراختہ منظور قبول ہوگا دوران مقدمہ
 میں جو خرچہ ہر جانہ اتوائے مقدمہ کے حساب سے ہوگا وہ وکیل موصوف وکیل کے کار اختیار ہوگا کوئی تاریخ پیشی مقام
 دورہ یا مد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیر ذوی الحجہ 1437ھ کو کہیں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: 22/9/16

بدا الع واہ شد الع بدا

مقام Peshawar کے لئے منظور ہے۔

بازار کلاں پشاور

Accepted
Habibullah

Laila x

1-2-1