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Court In "Federation of Pakistan v. Haji Muhammad Salfullah Khan and others" (PLD 1989 SC 166). The action of removal of the respondents clearly did not fall within the scope or ambit of the Care-taker Cabinet whose primary function was to hold election and carry on( day to day administration with the civil servants available and not to throw out those who had been given employment by the previously elected Government."  
[Emphasis supplied]

In the case of Tanveer A. Qureshi v. President of Pakistan (PLD 1997 Lahore 263) it has been held as under: -

"26. Another principal attack on the formation of the C.D.N.S. by the petitioner was that the decision to set up such a council being of great importance and a matter of policy could not have been taken by the Caretaker Cabinet appointed under Article 48(5) of the Constitution. It was emphasised by Mr. Talib H. Rizvi, as also Mr. Abdul Rehman Cheema that the life of the Caretaker Cabinet being for 90 days it cannot take decisions of permanent nature but its activities are confined only to running day-to-day affairs of the Government and should be geared towards holding of free and fair elections. Reliance has been placed on Kh. Muhammad Sharif v. Federation of Pakistan and 18 others PLD 1988 Lah. 725, Federation of Pakistan etc. v. Aftab Ahmad Khan Sherpao and others PLD 1992 SC 723 and Madan Murari Verma v. Ch. Charan Singh and another AIR 1980 Calcutta 95.

28. Article 48(5) of the Constitution enjoins the President to appoint a caretaker Cabinet to run the affairs of the country pending the elections to the National Assembly and formation of Government. The use of word 'Caretaker' is not without significance and has to be given some meaning. The argument of the learned Attorney-General and Mr. Sharif-ud-Din Pirzada that 'Caretaker' signifies the temporary nature of the tenure appears to be attractive and coming from a jurist like Mr. Sharif-ud-Din Pirzada is entitled to great respect but with due deference we are unable to agree with them. A Cabinet appointed by the Prime Minister to run the affairs of the country till the next General Elections by its very nature is temporary and the life of it is limited by the Constitution itself till the next General Elections which are to be held within 90 days. It was thus not necessary to use the word 'Caretaker' to indicate temporary nature of the tenure. On the other hand we are of the view that this word has been used in Article 48(5) to emphasises the purpose of appointment and the nature of the power available to the Caretaker Government. ... ..

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30. ... .. Although no hard and fast rules can be laid down in respect of the, powers available to the Caretaker Cabinet to take decisions as the answer would depend upon facts of each case but generally speaking a major policy-decision which can await the formation of regularly elected Government without causing any disruption or danger to the functioning of the State or orderly running of the country should be left to be determined by the elected representatives of the people, moreso when the Caretaker Cabinet cannot claim to have been given any mandate by the people. There may not be any express restriction on the powers of the Caretaker Cabinet by the Constitution itself but the conclusion reached by us flows from the use of words "Caretaker Cabinet" in Article 48(5) of the Constitution as also very nature of the Caretaker Cabinet and the purpose for which it has been appointed.

In the case of Khawaja Ahmad Tariq Rahim v. the Federation of Pakistan (PLD 1992 SC 646), this Court held as under: -

"5. ... .. The object of the Care-taker Cabinet is to fill a temporary void, so that it may conduct day to day administration, without getting involved in matters of substantive importance or policy or subjects having far-reaching effects, other than during an emergency or some urgency, till the new Government is installed. Above all, it is not supposed to influence the elections or do or cause to be done anything whereby which Government machinery or funds are channelled in favour of any political party."

In the case of Madan Murari Verma v. Choudhuri Charan Singh (AIR 1980 Cal 95), the Court held as under: -

"The President has accepted the resignation of the respondent No. 1 and his Council of Ministers and has asked them to continue in office "till other arrangements are made". It is the limited pleasure indicated and in that field only in my opinion the respondent No. 1 and his Council of Ministers can function. There is no mention of any care-taker Government as such, in our Constitution or in the constitutional law, though Sir Ivor Jennings has described in his book -- Cabinet Government, Third Ed. p. 85 the ministry that was formed by Mr. Churchill in England after the war before and pending the General election in 1945 as care-taker Government. But an extraordinary situation like the present, in my opinion, calls for a care-taker Government and therefore, the respondent No. 1 and his Council of Ministers can only carry on day-to-day administration in office which are necessary for carrying on "for making alternative arrangements". In

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effect the President, in my opinion is therefore, not obliged to accept the advice that the respondent No. 1 and his Council of Ministers tender to him except for day-to-day administration and the Council of Ministers and the respondent No. 1 should not make any decisions which are not necessary except for the purpose of carrying on the administration until other arrangements are made. This in effect means that any decision or policy decision or any matter which can await disposal by the Council of Ministers responsible to the House of People must not be tendered by the respondent number 1 and his Council of Ministers. With this limitation the respondent No. 1 and the Council of Ministers can only function. And in case whether such advice is necessary to carry on the day-to-day administration till "other arrangements are made" or beyond that, the President, in my opinion, is free to judge. It is true again that this gives the President powers which have not been expressly conferred by the Constitution. But, in my opinion, having regard to the basic principle behind this Constitution under Article 75(3) read with Article 74(1) in the peculiar facts and circumstances of this case is the only legitimate, legal and workable conclusion that can be made.

In the case of R. Krishnaiah v. State Of Andhra Pradesh (AIR 2005 AP

10) it was held that: -

"10. In support of his submissions learned Counsel placed reliance on the recommendations of the Sarkaria Commission referred to by a Constitution Bench of the Supreme Court in S.R. Bommal and Ors. etc., etc. v. Union of India and Ors. etc., etc., , more particularly, recommendation No. 6-8-04(A) that after dissolution of the Assembly and till new Government takes over, during the interim period, the Caretaker Government should be allowed to function. But as a matter of convention, Caretaker Government should merely carry on day-to-day Government and desist from taking any major policy decision. He thus urged that issuing Ordinance permitting to withdraw amount from the Consolidated Fund of the State of Andhra Pradesh to meet (a) the grants made in advance in respect of the estimated expenditure for a part of the financial year commencing on the 1st April, 2004 as set forth in Column (3) of the Schedule appended to the Ordinance and (b) the expenditure charged on the Consolidated Fund of the State of Andhra Pradesh, for the part of the same financial year, as set forth in Column (4) of the Schedule, is nothing but a major policy decision which ought not to have been taken.

.....  
16. Therefore, the submission that the Ordinance could not have been promulgated is misconceived. Ordinance has the same force and effect as any Act of the State

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Legislature and there is no prohibition in the Constitution that during the period an Assembly is dissolved and fresh Assembly has not yet been constituted, that Ordinance could not have been promulgated by the Governor. This act of the Governor will be deemed to be an exercise of power of the Legislative Assembly, as envisaged under Article 206 and even under Article 205 and as noticed above. Clause (3) of Article 203 is a prohibition not to withdraw from the Consolidated Fund any amount being subject to provisions of Articles 205 and 206 of the Constitution. The Ordinance having validly been promulgated there is hardly any force in the other submission that a situation has arisen where power must be exercised or directed to be exercised by the President of India under Articles 356 or 360 of the Constitution."

18. The crux of the above case-law and conventions/guidelines is that the Caretaker Government/Cabinet has to confine itself to the running of the day-to-day administration of the State. Indeed, it may take decisions required for ordinary orderly running of the state, but decisions having far-reaching effects should only be taken in extraordinary circumstances, like in war, earthquake, floods, etc. Although there may not be any express restriction on the powers of the caretaker government by the Constitution itself, but a major policy-decision which can await the formation of regularly elected Government without causing any disruption or danger to the functioning of the State or orderly running of the country should be left to be determined by the elected government. Thus, there can be no two opinions that the caretaker government has to exercise the powers for a limited purpose as it has been highlighted hereinabove, namely, relating to the elections and not to make fresh appointments of the civil servants or make appointments of the heads of the Autonomous, Semi-Autonomous Bodies, Corporations, Regulatory Authorities, etc., appointments on contract basis or allowing deputation or promotion to the civil servants without realizing the

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scope of their efficacy to share higher responsibilities to run the affairs of the Government.

19. In the context of instant case, besides relying upon the guidelines in the judgments noted hereinabove, one may conveniently pose a question, particularly in view of Article 48(5) of the Constitution and other constitutional provisions; as to why a caretaker cabinet/government appointed under Article 224 or as the case may under Article 224A of the Constitution, should not exercise powers available to a duly elected government? Answer to this question lies in the expression "Interim Cabinet" used in Article 48(5) of the Constitution, which enables to draw the inference that the interim Cabinet or caretaker Cabinet headed by a Prime Minister means a caretaker cabinet or a government, which has been entrusted temporary charge of government during the period when the National Assembly is dissolved because ordinarily for a period of five years under Article 58, the National Assembly exists for the purpose of running the affairs of the State and in absence of elected Parliament, continuity of the governance system in the country has to be kept intact, otherwise running the affairs of the State would not be possible at all. In addition to it, although in our country in respect of the powers of the caretaker government no conventions have been developed and for such reasons the instant Caretaker Government indulged in taking vital policy decisions and making postings and appointments of heads of statutory bodies, postings and appointments in civil service, statutory bodies, autonomous, semi-autonomous bodies, corporations and regulatory authorities, including appointments on contract or accepting the services of various persons

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on deputation by allowing them to occupy one step higher positions than the one, which they were holding previously.

20. Petitioner Khawaja Muhammad Asif appeared and pointed out that caretaker government had made transfers/postings in civil service, statutory bodies, autonomous, semi-autonomous bodies, corporations and regulatory authorities, etc., the list of which has been made part of the record.

21. The learned Attorney General while appearing in Constitution Petitions No.14 of 2013, etc., made a statement, already mentioned in the order dated 22.05.2013, which is reproduced hereinbelow: -

*"12. That the federation is already on record in taking up a principled stand before this Hon'ble Court that the care-taker government needs only to confine their work to 'day to day' routine matters and effectively maintain the status quo for the incoming elected government, while submitting the views of the federation vide a CMA filed in Constitutional Petition Nos.14, 16 to 18 of 2013. It is submitted that vide the said CMA the Attorney General submitted that the care-taker government should avoid taking and controversial step and should not commit any process that is not reversible by the incoming elected government and further that the care-taker government should restrict itself to activity that is a) routine, b) non-controversial, c) urgent and in public interest, d) reversible by the elected government; and e) any significant appointment thereby avoiding any major decisions except agreed to by the opposition.*

*13. That the learned Attorney General whilst representing the case of the federation in the foresaid constitutional petitions also relied upon Australian Caretaker Conventions*

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and highlighted that the key elements of the code of conduct should include:

- a) avoiding major policy decisions,
- b) avoiding any significant appointments,
- c) signing any major contract,
- d) avoiding international treaty or commitment, etc.

*It was in the same light that the learned Attorney General submitted before this Hon'ble Court that the care-taker government had deferred some items of the Council of Common Interests (CCI) in a recently held meeting and was not, therefore, making any binding decisions/commitments with IMF, World Bank or any other donor agency and had further decided not to enter into any binding agreement or treaty to bind the future elected government. It is submitted, therefore, that the care-taker government having earlier taken a principled stand cannot thereafter be allowed to recuse from the same."*

Similarly, the Law Minister of the Caretaker Government also objected to the appointments, which were being made directly or indirectly under the verbal or written directions/observations of the caretaker Prime Minister or Cabinet Ministers or the heads of different Departments, Divisions, Ministries, etc. Relevant extract from his statement was published in Daily Dawan, Islamabad dated 19.05.2013, which is reproduced hereinbelow: -

*"... caretaker Law Minister Ahmar Bilal Soofi has also criticised the postings and transfers being made by the government of Prime Minister retired Justice Mir Hazar Khan Khoso.*

*He warned the caretaker set-up against transgressing its mandate by making undue transfers and postings in important government departments.*

*In a letter to his cabinet colleagues a copy of which he also sent to the Prime Minister Secretariat and the establishment secretary, Mr Soofi said: "Cabinet members*

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should abide by the legal limitation they enjoy under the constitution. They should not trespass the mandate of the interim government.


"I would again reiterate that we may continue the prevalent transparency and may not take action which may be counter-productive to the important role performed by the caretaker government."

Talking to Dawn on Sunday, the law minister confirmed that he had highlighted in the letter the issue of unnecessary postings and transfers being carried out by some of his colleagues in the cabinet. But he did not mention any specific posting or transfer. He said the letter had been dispatched on Saturday.

In his letter Mr Soofi has also mentioned the cancellation of contract of two officials of the information ministry and the recent replacement of the National Highway Authority's chairman. The letter also referred to a statement he had earlier made in cabinet that it was advisable to avoid making controversial appointments in major departments and leave them to the elected government."

22. We consider it appropriate to make reference of the case titled as In re: Abdul Jabbar Memon (1996 SCMR 1349) wherein it has been observed that the Federal Government, Provincial Governments, Statutory Bodies and the Public Authorities have been making initial recruitments, both *ad-hoc* and regular, to posts and offices without publicly and properly advertising the vacancies and at times by converting *ad-hoc* appointments into regular appointments. It was held that this practice is *prima facie* violative of Fundamental Right enshrined in Article 18 of the Constitution guaranteeing to every citizen freedom of profession, which must be discontinued forthwith and immediate steps should be taken to rectify the situation, so as to bring the practice in accord with the Constitutional requirement. But unfortunately it has been noticed that the guidelines/principles have neither been followed by the duly elected governments in the past nor by the caretaker governments. Inasmuch as, principle of transparency





has not been adhered to in the appointments of the Members of the Federal Public Service Commission under the Ordinance of 1977 to conduct tests/examinations for recruitment of persons to all Pakistan Services, Civil Services of the Federation and civil posts in connection with the affairs of the Federation and Provinces. No transparent system is in place to ensure merit-based selection of persons for appointment as the heads of the autonomous, semi-autonomous bodies, corporations, organizations, etc. Record available in archives would indicate that except for a shorter period, despite presence and availability of renowned knowledgeable and reputable personalities, these vacancies were allowed to be occupied by persons having connections with the higher functionaries of the State, who openly indulged in favouritism and nepotism. In such a scenario, how the object of making appointments on merit could be achieved, including by the elected government.

23. It is to be noted that reportedly there are more than 100 organizations/corporations, which are causing colossal loss of trillion of rupees to the public exchequer, like Pakistan International Airline, Pakistan Railways, Pakistan Steel Mills, PEPCO, PASCO, Utility Stores Corporations, OGDCL, NEPRA, PEMRA, PTA, KESC, SSGPL, NICT, etc. It is a fundamental right of the citizens of Pakistan under Article 9 of the Constitution that the national wealth/resources must remain fully protected whether they are under the control of the banks or the autonomous and semi-autonomous bodies.

24. There are cases where favorites were appointed despite lacking merits to hold such posts/positions. Reference may be made to the case of Adnan A. Khawaja v. The State

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(2012 SCMR 1434) where a convict, who was acquitted of criminal charges taking benefit of NRO, was appointed as the head of OGDCL. Similarly, in the case of Mir Muhammad Idris v. Federation of Pakistan (PLD 2011 SC 213), the validity of the reappointment of Syed Ali Raza as President of the National Bank of Pakistan for fifth time for one year was challenged. The Court declared the said reappointment to be unconstitutional. Relevant para therefrom is reproduced hereinbelow: -

"11. ... Since, admittedly, the amendment made in section 11(3)(d) of the Act of 1974 by the Finance Act, 2007 was unconstitutional and illegal, the appointment of respondent No.3 made under an unconstitutional and illegal legislation would not remain unaffected as the foundation on which its superstructure rested stood removed. The argument of the learned counsel for respondent No. 3 that the appointment of respondent No.3 was made by the Federal Government in exercise of the power conferred upon it by a legislative instrument passed by the concerned legislature, therefore, the same was not liable to be interfered with being a past and closed transaction is not tenable. If the appointments of Judges were affected on account of a similar defect in legislation, how the appointment of respondent No.3, who, too, was appointed under such an unconstitutional and illegal amendment could be protected.

13. ... The reappointment of respondent No.3 Syed Ali Raza as President NBP by way of notification dated 10.4.2010 is declared to be unconstitutional and he shall cease to hold office as President NBP with immediate effect."

In the same context, reference may also be made to the case of Chairman of NICL Ayaz Khan Niazi, who again was appointed without determining whether he is fit and proper person to hold the said post as a result whereof the government exchequer had to suffer an enormous loss, some of its portions have been recovered and still cases are pending before the Courts. This Court in Suo Moto Case No. 18 OF 2010 (PLD 2011 SC 927)

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directed the Secretary Commerce to lodge complaint before FIA against the concerned persons for causing loss to the public exchequer. Similarly, the appointment of one Mr. Tauqir Sadiq as Chairman of the Oil and Gas Regulatory Authority was challenged before this Court on the ground that he did not possess the necessary credentials for holding the said office. The Court in the case reported as Muhammad Yasin v. Federation of Pakistan (PLD 2012 SC 132), after considering the importance of the OGRA and scrutinizing the appointment process of its Chairman, declared his appointment *void ab initio*. There are other cases where some of the persons had succeeded in getting contract employments after their retirement in violation of section 14 of the Civil Servants Act, 1973 as well as instructions contained in ESTA Code. Reference may be made to Suo Motu Case No. 24 of 2010 (PLD 2011 SC 277) wherein it was observed that in the disciplined forces, particularly, like police and FIA where people have to work in a well defined discipline, the persons supervising the forces were permitted to hold charge of the posts on contract basis. It may not be out of context to note that in terms of the definition of section 2(1)(6)(ii) of the Civil Servants Act, 1973, a person who is employed on contract does not fall within the definition of a civil servant, so his authority to command and maintain discipline can be well imagined from the fact that if a person himself is not a civil servant, he is considered only bound by the terms and conditions of his contract and not by the statutory law, because if any condition laid down in the contract is violative of any statutory provision, he would only be

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subject to action under the said contract. In this view of the matter, the officers who were reemployed after retirement, were directed to be removed. In a recent case titled as Muhammad Ashraf Tiwana v. Pakistan (Constitution Petition No.59 of 2011), this Court found that the appointments of Chairman and Members of the Securities & Exchange Commission of Pakistan did not meet the requirement of the Securities & Exchange Commission of Pakistan Act, 1997 as such, the same too, were set aside. Last but not the least, this Court while hearing the case regarding implementation of directions issued in Suo Motu case No.16/2011 regarding law and order situation in Karachi, directed the Government of Sindh to terminate the services of 86 employees appointed in different grades from 12 to 21 on contract basis in various provincial departments.

25. During hearing of the case, it has been pointed out to petitioner Khawaja Muhammad Asif that although he being an elected Member of the Parliament had raised questions touching upon the transparency in the appointment of the heads of the autonomous, semi-autonomous bodies, corporations, regulatory authorities, etc., but in his own capacity as a public representative, he had also to ensure that all the appointments in such like bodies as well as the appointments on contract basis must be made in a transparent manner. In some of the countries, effective steps have been taken to stop such colossal loss of the national resources by day-to-day measures to improve the professional quality and political neutrality of appointments to public bodies/regulatory authorities by ensuring that selection in such bodies is based on merit, fairness and openness. It

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may not be out context to note that in UK, an independent Commissioner is available to regulate, monitor, report and advice the public appointments, the performances etc. All the government departments while making such appointments are bound to follow the code of practice which has been issued by such Commissioner. Similarly, in Canada all appointments for Chief Executives, Directors and Chairpersons of public sector corporations are subject to strict merit-based system. It may be noted that elected government has to heavily rely upon public bodies to implement their policies and the object essentially cannot be achieved if honest and competent persons are not holding such public offices. While making such appointments, following parameters are to be considered: -

(1) Integrity:

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties.

(2) Objectivity:

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choice solely on merit.

(3) Accountability:

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

(4) Openness:

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

(5) Honesty:

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

(6) Leadership:

Holders of public office should promote and support these principles by leadership and example.

26. Be that as it may, in order to ensure the enforcement of the fundamental right enshrined in Article 9 of the Constitution and considering it to be a question of public importance, a Commission headed by and comprising two other competent and independent members having impeccable integrity, may be the Federal Ombudsman or Chairman NAB or a Member of Civil Society having exceptional ability and integrity, is required to be constituted by the Federal Government through open merit based process having fixed tenure of four years to ensure appointments in statutory bodies, autonomous bodies, semi-autonomous bodies, regulatory authorities to ensure appointment of all the government controlled corporations, autonomous and semi-autonomous bodies, etc. The Commission should be mandated to ensure that all public appointments are made solely on merits. The Commission should discharge mainly the following functions: -

- (i) Regulate public appointments processes within his remit;
- (ii) implement a Code of Practice that sets out the principles and core processes for fair and transparent merit-based selections;
- (iii) chair the selection panels for appointing heads of public/statutory bodies and chairs and members of their boards, where necessary;
- (iv) appoint Public Appointments Assessors to chair the selection panels for appointing heads of public/statutory bodies and chairs and members of their boards, where appropriate;

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- (v) report publicly on a public/statutory body's compliance with the Code of Practice, including examples of poor and good performance, and best practice;
- (vi) Investigate complaints about unfair appointment process;
- (vii) Monitor compliance with the Code of Practice;
- (viii) Ensure regular audit of appointments processes within his remit;
- (ix) Issue an annual report giving detailed information about appointments processes, complaints handled, and highlights of the main issues which have arisen during the previous year. The annual report for the previous calendar year should be laid before the Parliament by 31<sup>st</sup> March; \
- (x) Take any other measures deemed necessary for ensuring that processes for public sector appointments that fall in his remit are conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are fully guarded against.

27. The Code of Practice should provide foundations for transparent merit-based public appointments. All public appointments must be governed by the overriding principle of selection based on merit, out of individuals who through abilities, experience and qualities have a proven record that they best match the need of the public body in question. No public appointment must take place without first being recommended by the Commission. The appointments procedures should be subjected to the principle of proportionality, that is, what is appropriate for the nature of the post and the size and weight of its responsibilities. Those selected must be committed to the principles and values of public service and perform their duties with highest level of integrity. The information provided about the potential appointees must be made public. The Commission may from time to time conduct an inquiry into the policies and procedures followed by an appointing authority in relation to any appointment. He may also issue a statement or publish a report commenting publicly on any breach or anticipated breach of the Code. The appointment of the successful candidate must be publicized.

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28. In light of discussion made hereinabove, we hold that: -

(a) The Caretaker Cabinet/Prime Minister appointed under Article 224(1)(2) or 224A, as the case may be, is empowered to carry out only day-to-day affairs of the State with the help of the available machinery/resources/ manpower and also to watch national interest against war or national calamity or disaster faced by the nation, including terrorism, etc.

(b) The civil servants who have already been appointed in accordance with the rules/regulations on the subject ought not to be posted/transferred, etc., except in extraordinary circumstances, that too, temporarily.

(c) Major policy decisions including making of appointments, transfers and postings of the Government servants should be left to be made by the incoming government in view of the provisions of Constitution that the affairs of the State are to be run by the chosen representatives of the people.

(d) As newly elected Government is mandated to perform its functions of achieving the object and purpose of welfare of the people for which it has been duly appointed, therefore, caretaker Cabinet/government/Prime Minister, having no mandate of public support, is only caretaker set up and due to this connotation should detach itself from making permanent policies having impact on future of the country.

29. As we have noted hereinabove that since the Caretaker Government after its appointment, had made more than 400 appointments, transfers and postings of Government servants/employees, including transfer on deputation with promotion to next higher grade or as the case may be, heads of autonomous, semi-autonomous bodies, regulatory authorities, heads of government controlled institution, etc., therefore, it may not be possible for this Court to discuss and deal with each and every case in these



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proceedings, therefore, their cases shall be subject to declaration, which is being made hereinbelow.

30. Thus, at the touchstone of the parameters laid down in the paras supra about the powers of the Caretaker Cabinet/Government, it is declared and held as under: -

(a) The orders of appointment/deputation, transfers as well as postings, etc., of civil servants and Chief Executive Officers of statutory bodies, autonomous/semi-autonomous bodies, corporations, regulatory authorities, etc., made by the Caretaker Cabinet/Prime Minister are hereby declared to be void, illegal and of no legal effect w.e.f. date of issuance of notifications respectively, except the transfers and appointments of senior government officers including the Chief Secretaries and IGP of any of the Provinces during the election process.

(i) However, the Federal Government, in exercise of its powers would be authorized to allow to continue any of such appointments, transfers made by the Caretaker Cabinet/Government in the public interest, subject to following requisite provision of law.

(ii) As far as the issue of notifications in the cases of (i) Mumtaz Khan (CMA 3451/2013), (ii) Muhammad Nadeem, AGM Marketing (CMA 3480/2013) and (iii) General Syed Wajid Hussain, Chairman HIT Taxila are concerned, their notification of appointment shall remain frozen as process of their appointments had taken place before assumption of charge by Caretaker Cabinet/Government but their notifications were issued by the Caretaker Government. However, the Federal

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Government through competent authority shall decide fate of their cases within 15 days after receipt hereof and copy of decision shall be sent to Registrar for our perusal in Chambers.

- (iii) Needless to say that if there are identical cases as noted in para (a)(ii), same shall be dealt with in the same manner.
- (b) All the orders of removal or transfers as well as posting on deputation of civil servants and Chief Executive Officers of statutory bodies, autonomous/semi-autonomous bodies, corporations, regulatory authorities, etc., by the Caretaker Cabinet/Prime Minister are hereby declared void, illegal and of no legal effect w.e.f. date of issuance of notifications respectively, however:
- (i) the Federal Government would be empowered to continue the removal or transfers, etc., of Chief Executive Officers/heads of the departments, statutory bodies, autonomous/semi-autonomous bodies, corporations, regulatory authorities, etc. in the public interest, subject to following requisite provision of law.
- (c) As far as contract employees are concerned, whose contracts have been cancelled or those to whom fresh contracts of service have been given by the caretaker Cabinet/Government, shall stand cancelled as holders of contract employment of both these categories deserve no interference in view of the judgment of this Court in the case of State Life Insurance Employees Federation of Pakistan v. Federal Government of Pakistan (1994 SCMR 1341), because no relief can be granted to them in these proceedings as no question of public importance with

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reference to enforcement of their any of the fundamental rights arises;

- (d) As far as the cases of the transfers of the civil servants/employees before the completion of tenure made allegedly in violation of the law laid down by this Court in Anita Turab case are concerned, the concerned departments of Federal Government shall examine their individual cases on the touchstone of the principles laid down in the said case. However, decision given on the complaint of any of the employees by this Court alleging violation of the principles enunciated in the judgment referred to hereinabove, shall be deemed to be in accordance with law.
- (e) The appointments in autonomous/semi-autonomous bodies, corporations, regulatory authorities, etc., made before the appointment of Caretaker Government shall also be subjected to review by the elected Government by adopting the prescribed procedure to ensure that right persons are appointed on the right job, in view of the observations made in above paras (Para. No. 25 & 26); and
- (f) The Federal Government through the concerned Secretaries shall take up the issue of postings of 100 officers on deputation from Balochistan, as it was pointed out during the hearing of this case on 22.05.2013 and accomplish the same, if required, in accordance with law.

31. The Secretary Establishment is directed to communicate this judgment to all other Divisions, Ministries, Organizations, etc. for implementation of the same.

32. The case of the Ombudsman be de-linked and it shall be heard/decided separately in view of the question of interpretation of law on the subject namely, Establishment of the office of Wafaqi Mohtasib (Ombudsman) Order, 1983.

Const.P.30/13 etc.

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33. In the result, Constitution Petition No.30 of 2013 partially allowed and the titled CMAs as well as CMAs No.2991 & 3015/2013 in Constitution Petition No.23/2012 are disposed of accordingly.

CHHIEF JUSTICE

JUDGE

JUDGE

ANNOUNCED IN OPEN COURT ON \_\_\_\_\_  
AT ISLAMABAD

CHHIEF JUSTICE

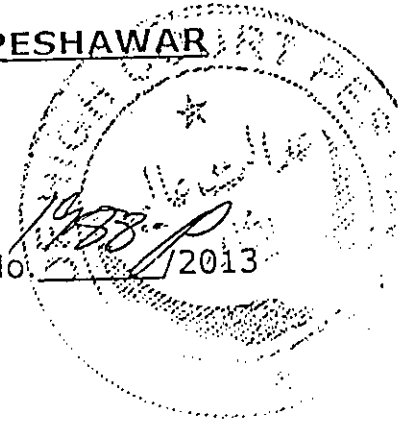
APPROVED FOR REPORTING

R/4

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**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR**



Writ Petition No. 1038/P/2013

Dr. Abdul Ghaffar, Senior Medical Officer,  
City Hospital, Lakki Marwat, Ex. DHO/EDO  
Health, Lakki Marwat. . . . .Petitioner

Versus

1. Chief Secretary, Govt. of KPK, Civil Secretariat, Peshawar.
2. Secretary, Govt. of KPK, Health Department, Peshawar. . . . .Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

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

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**Respectfully Sheweth:**

1. That since the date of induction of petitioner into service, dedicated performances were given to the department as well as to the general public without any complaint.
2. That on 01.03.2012, petitioner was posted as EDO Health, Lakki Marwat. The same nomenclature was later on converted into DHO on 01.01.2013.
3. That General Election took place on 11.05.2013 and for fair and transparent Election, Care Taker Government was formed for limited purpose only to hold the General Election.

FILED TODAY  
Deputy Registrar  
12 JUL 2013

ATTESTED  
EXAMINED  
Peshawar High Court

R/4

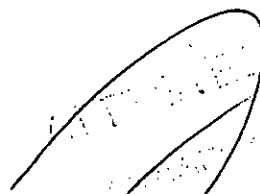
65

## PESHAWAR HIGH COURT, PESHAWAR.

## FORM OF ORDER SHEET

Date of Order or Proceedings	Order or others Proceedings with Signature of Judge
1	2
25-07-2013	<p><u>WP No. 1988-P/2013 with Interim Relief.</u></p> <p>Present: Mr. Saadullah Khan Marwat, Advocate, for the petitioner.</p> <p style="text-align: center;">_____</p> <p><b><u>MAZHAR ALAM KHAN MIANKHEL, J.-</u></b> Through this single judgment, we propose to dispose of the instant Writ Petition No. 1988-P/2013 as well as the connected Writ Petition No. 1989-P/2013 as common questions of law and facts are involved in both these petitions.</p> <p>2. Petitioners through these connected Writ Petitions have asked for issuance of an appropriate writ directing the authority to implement the judgment dated 6.6.2013 of the Apex Court in letter and spirit by declaring notification dated 22.4.2013 of respondent No.1 to be illegal, improper, unjust,</p> <p>M-7</p>

\*Nawab Shah\*



arbitrary, discriminatory, without lawful authority and of no legal effect and further directing the authority to restore them to their original post of D.H.O. Lakki Marwat with all service benefits.

3. At the very outset, learned counsel for the petitioners produced an attested copy of order dated 4.6.2013 passed by this Court in Writ Petition No. 1407-P/2013 and stated that the petitioner therein was transferred by the caretaker government, having no mandate to make posting & transfer as held by the Hon'ble Apex Court in the recent judgment and while disposing of the Writ Petition, it was observed that the Departmental Appellate Authority, who earlier rejected the representation of the petitioner, shall revisit the matter, if not already decided and grievance of the petitioner should be redressed in light of the Supreme Court's judgment within fifteen days positively. Learned counsel

may be

prays that the present petitioners would also be satisfied if these connected Writ Petitions are disposed of in the above terms.

4. So, in this view of the matter, these connected Writ Petitions are disposed of keeping in view the observations made in Writ Petition No. 1407-P/2013 decided on 4.6.2013.

*Sd/- Majher Alauddin* JUDGE  
*Sd/- Musabbat H. Jali* JUDGE

CERTIFIED TO BE TRUE COPY

Commissioner  
Peshawar High Court  
Authorized Under Article 87 of  
The Constitution of Pakistan 1973

1554  
27-7-13  
No. of Presentations .....  
No. of Pages ..... 4P  
Copying fee ..... /  
Urgent Fee .....  
Total ..... 8.00  
Date of Preparation of Copy 31-7-13  
Date Given For Delivery 31-7-13  
Date of Delivery of Copy 02-8-13  
Prepared By *Kamran Abbasi*

31-7-13





GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 3<sup>rd</sup> September 2013.

NOTIFICATION

NO.SOH(E-V)1-450/07 The Competent Authority is pleased to order the following postings/transfers of doctors with immediate effect in the public interest:-

S#	Name of Doctor	Present posting	Proposed posting
1.	Dr Rashid Ahmed (BS-19)	MS DHQ Hospital , Lakki Marwat	Dy DHO Bannu against the vacant post of BS-19
2.	Dr. Nek Nawaz (BS-19)	DHO Lakki Marwat	MS City Hospital Lakki Marwat against the vacant post of BS-19
3.	Dr. Mashal Khan (BS-18)	SMO RHC Gambela, Lakki Marwat	MS DHQ Hospital, Lakki Marwat in his own pay & Scale vico Sr. No.1.
4.	Dr. Abdul Ghaffar (BS-18)	SMO City Hospital Lakki Marwat	DHO Lakki Marwat in his own pay & Scael Vico Sr No.2

SECRETARY HEALTH  
Govt of Khyber Pakhtunkhwa.

Endst. No. & Date even.

Copy to the:-

1. Accountant General Khyber Pakhtunkhw, Peshawar
2. Director General Health Services, Khyber Pakhtunkhwa.
3. District Health Officer, Lakki Marwat.
4. District Health Officer Bannu.
5. Medical Superintendent, DHQ Hospital Lakki Marwat.
6. Medical Superintendent City Hspital Lakki Marwat.
7. District Accounts Officer Bannu/Lakki Marwat.
8. Incharge RHC Gambela, Lakki Marwat.
9. PS to Minister Health Khyber Pakhtunkhwa Peshawar.
10. PS to Secretary Health.
11. Computer Programmer Health Deptt
12. Doctors concerned.

( HINA HAFEEZ )  
SECTION OFFICER (E-V)

27-10-13

Rejection order

216

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Judgment Sheet

**IN THE PESHAWAR HIGH COURT,**  
**BANNU BENCH**

JUDICIAL DEPARTMENT

OSP No 274-13 of 2013

Date of hearing: 22/10/2013

Petitioner(s): Dr Rashid Ahmad, by

M/s M. Shauq Nawaz Khan Qalandar, Framukela, W. P. S.

Respondent(s): Govt of P.P. of Lakki Marwat, P.P. S.

Respect. by M/s Saadullah Khan Marwat, Amirano, Lakki Marwat, P.P. S.

**JUDGMENT**

ROOH UL AMIN KHAN, J. - By way of this

constitutional petition under Article 199 of the Constitution of

Islamic Republic of Pakistan 1973, petitioner Dr. Rashid

Ahmad Khan, seeks indulgence of this Court against his

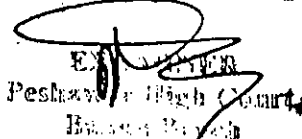
transfer order bearing No.SOH (E-V)-450/-07 dated

03.09.2013, from the post of Medical Superintendent DHQ

Lakki Marwat to District Health Officer, Bannu, alleging the

same to be illegal, void ab initio, against the Tenure Policy and

**ATTESTED**

  
Peshawar High Court,  
Bannu Bench

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Rules and based on political motivations. It is averred in the petition that petitioner being a qualified MBBS doctor, having course of Management, had been posted as MS DHQ hospital Lakki Marwat from the last four months, when all of a sudden and without any lawful justification, vide impugned order, with extreme mala fide, he has been transferred to the post of District Health Officer Bannu and one Dr. Mashal Khan SMO Serai Gambila Lakki Marwat, being a simple Medical Officer in BPS:18 of General Cadre, has been transferred at the place of the petitioner because of his political affiliation, who legally could not be posted at the post of Health management group. hence, seeks setting aside of the impugned order through instant writ petition.

2. We have heard the arguments of the learned counsel for the petitioner and have gone through the record as well as the impugned order.

3. Admittedly, petitioner is a civil servant. As manifest from the impugned order, the same relates to general

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**ATTESTED**  
 JUDGE  
 Peshawar High Court  
 Bannu Bench

MS-1852

transfer of the petitioner in the public interest. There is no mention in the impugned order which depict that the petitioner has been transferred from Management Cadre to the General Cadre. Transfer of an employee/civil servant is the part of terms and conditions of his service. Under section 10 of the NWFP Civil Servants Act, 1973, a civil servant can be transferred during period of his service, which is one of the incidents of service, squarely falling under the terms and conditions of service, as such, comes within the domain of Service Tribunal. Even if, the impugned transfer order is passed on the basis of mala fide, corum non judice, or is in violation of any rules, the same could only be challenged before the Service Tribunal. In service matters, Art. 212 of the Constitution of Islamic Republic of Pakistan, 1973, places complete bar on any other Court, except the Tribunals constituted for that purpose. In pursuance of the said Article, Service Tribunals have been established, which have the exclusive jurisdiction in such matters, whereas, any other

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**ATTESTED**

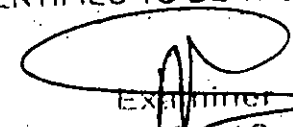
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 Registrar  
 Peshawar High Court,  
 Bannu Bench

Court, including the High Court, has got no jurisdiction to interfere in such matters. In this regard cases titled, "Ayyaz Najum Vs Government of Punjab, Housing and Physical Planning Department through Secretary and others" and "Rafique Ahmad Chaudhry Vs Ahmad Nawaz Malik and others" (1997 S C M R 169 and 170) Miss Rukhsana Ijaz vs Secretary Education, Punjab & others (1997 SCMR 167), Secretary Education NWFP Peshawar and 2 others vs Mustamir Khan and another (2005 SCMR 17) and Peer Muhammad Vs Governemtn of Baluchistan through Chief Secretary & others (2007 SCMR 54) can be relied.

4. In view of the constitutional bar, this Court has got no jurisdiction to entertain the instant petition. Thus this petition is dismissed in limine, for want of jurisdiction.

Announced:  
22.10.2013

*sd/ Rosh-ul-Amin Khan*  
*sd/ Syed Afsan Shah*

CERTIFIED TO BE TRUE COPY  
  
 Examiner  
 Peshawar High Court Bannu Bench  
 Authorised Under Article 87 of  
 The Qanun-e-Shahadat Order 1984

05/11/13

*[Handwritten signature]*

R17 73

**BEFORE THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

CPLA No. \_\_\_\_\_/2013

Dr. Rashid Ahmad Khan S/o Ghulam Akbar Khan (presently M.S DHQ  
Hospital), Lakki Marwat.

Petitioner ...

Versus

1. Government of Khyber Pakhtunkhwa through Secretary, Health Department, Peshawar.
2. Director General, Health Department, Khyber-Pakhtunkhwa, Peshawar.
3. Dr. Mashal Khan, SMO R.H.C. Serai Gambila, Lakki Marwat.

Respondents ...

Counsel for Petitioner....

Muhammad Shoaib Shaheen, ASC  
with Ahmad Nawaz Chaudhry, AOR

Counsel for Respondents...

**CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 185(3)  
OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN,  
1973 AGAINST THE IMPUGNED JUDGMENT DATED 22-10-2013  
PASSED BY THE LEARNED PESHAWAR HIGH COURT,  
IN WRIT PETITION NO.274-B of 2013**

Humbly Sheweth:

I) That the following questions of law of public importance arise for determination by this Honorable Court:-

- i) Whether the impugned judgment of the learned Peshawar High Court is not against the facts and law?
- ii) Whether the impugned judgment passed by the learned Peshawar High Court is not in direct violation of the dictum laid down by this Hon'ble Court in its judgment reported as "PLD 2013 SC 195", wherein the following principle has been laid down:-

**"Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable."**

- iii) Whether the learned Peshawar High Court is not empowered and has the jurisdiction under Article 187(2) of the Constitution to implement the judgment pronounced by this Hon'ble Court as the same issue had already been adjudicated upon in the case reported in PLD 2013 SC 195?
- iv) Whether the petitioner is not legally entitled to the benefit of the judgment passed by this Hon'ble Court in view of the dictum laid down in the judgments reported as "1996 SCMR 1185" and "2009 SCMR 1", wherein it has been made clear that once a question of law has been decided in favour of the similarly placed employees, the benefit of the same may also be extended to other similarly placed employees without compelling them to approach the legal forum for redressal of their grievances and the same principle has also been upheld in the judgment of this Hon'ble Court reported as "PLD 2013 SC 195"?
- v) Whether the impugned transfer order is not coram-non-judice, without lawful authority as the same has been passed on the orders of the Chief Minister on political consideration and just to favour the blue-eyed persons who are not only juniors to the petitioner, but are also at Serials No. 3 to 5 of seniority list of BS-18 officers; whereas, the petitioner is at S.No.45 of BS-19 officers because Chief Minister has no lawful authority to transfer the petitioner on political consideration?
- vi) Whether the learned Peshawar High Court has not failed to appreciate that the Secretary Establishment of Health Department, Government of Khyber Pakhtunkwa, observed in the following terms?-

// "a. Posting of officers of General Cadre against Management Cadre is violation of Government policy.

- b. Posting of Bs-18 officers (s.no.3 & 4) against BS-19 posts is also violation of the government policy needs justification.
- c. Dr. Rasheed Ahmad (s.no.1) has recently been transferred on 16.04.2013 and has yet to complete his normal tenure at this present posting.
- d. Cogent reasons for posting / transfer have not been mentioned.
- e. Substitutes of officers at s.no.3 & 4 have not been proposed.

(vii) Whether the learned Peshawar High Court has not failed to appreciate that the petitioner has been repeatedly transferred from one place to another i.e. 6 times within a period of one year, which is not only violation of the rules on the subject, but also contrary to the dictum laid down by this Hon'ble Court?

II) That the facts giving rise to the instant petition are briefly as under:-

**FACTS:**

(1) That the petitioner has been repeatedly transferred from one place to another with mala fide and ulterior motives as visualized vide orders dated 20<sup>th</sup> December, 2012, 6<sup>th</sup> March, 2013, 22<sup>nd</sup> April, 2013 and last impugned order dated 3<sup>rd</sup> September, 2013:-

S.No.	From	To
1.	DHQ Hospital, Lakki Marwat	Deputy E.D.O (H), Tank
2.	Dy DHO Tank	Dy. DHO Tank against the vacant post of BS-19
3.	Dy DHO Tank	MS DHQ Hospital, Lakki Marwat.
4.	MS DHQ Hospital, Lakki Marwat	Dy DHO Bannu

2) That frequent transfers of the petitioner within a short span of period (i.e. less than one year) are in violation of the dictum laid down by this Hon'ble Court in its judgment of reported as "PLD 2013 SC 195". Being aggrieved, the petitioner preferred



departmental representation before the departmental authorities against the last impugned order dated 3<sup>rd</sup> September, 2013 and finally approached the learned Peshawar High Court, Peshawar vide Writ Petition No.274-B/2013, which has been dismissed vide impugned judgment dated 22-10-2013, hence the petitioner seeks leave to appeal, inter alia, on the following grounds:-

GROUND:

- i. That the impugned judgment of the learned Peshawar High Court is against the facts and law.
- ii. That the impugned judgment passed by the learned Peshawar High Court is in direct violation of the dictum laid down by this Hon'ble Court in its judgment reported as "PLD 2013 SC 195", wherein the following principle has been laid down:-  
  
"Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable."  
  
iii. That the learned Peshawar High Court is empowered and has the jurisdiction under Article 187(2) of the Constitution to implement the judgment pronounced by this Hon'ble Court as the same issue had already been adjudicated upon in the case reported in "PLD 2013 SC 195."
- iv. That the petitioner is legally entitled to the benefit of the judgment passed by this Hon'ble Court in view of the dictum laid down in the judgments reported as "1996 SCMR 1185" and "2009 SCMR 1", wherein it has been made clear that once a question of law has been decided in favour of the similarly placed employees, the benefit of the same may also be extended to other similarly placed employees without compelling them to approach the legal forum for redressal of their grievances and the same principle has also been upheld in the judgment of this Hon'ble Court reported as "PLD 2013 SC 195."

- v. That the impugned transfer order is coram-non-judice, without lawful authority as the same has been passed on the orders of the Chief Minister on political consideration and just to favour the blue-eyed persons who are not only juniors to the petitioner, but are also at Serials No. 3 to 5 of seniority list of BS-18 officers; whereas, the petitioner is at S.No.45 of BS-19 officers because Chief Minister has no lawful authority to transfer the petitioner on political consideration.
- vi. That the learned Peshawar High Court has failed to appreciate that the Secretary Establishment of Health Department, Government of Khyber Pakhtunkwa, observed in the following terms:-

- "a. Posting of officers of General Cadre against Management Cadre is violation of Government policy.
- b. Posting of Bs-18 officers (s.no.3 & 4) against BS-19 posts is also violation of the government policy needs justification.
- c. Dr. Rasheed Ahmad (s.no.1) has recently been transferred on 16.04.2013 and has yet to complete his normal tenure at this present posting.
- d. Cogent reasons for posting / transfer have not been mentioned.
- e. Substitutes of officers at s.no.3 & 4 have not been proposed.

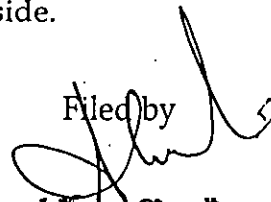
IV. It is, therefore humbly prayed that the petitioner may kindly be granted leave to appeal against the learned Peshawar High Court's impugned judgment dated 22-10-2013 in Writ Petition No.274-B of 2013 and the impugned judgment may kindly be set aside.

Drawn by



( Muhammad Shoaib Shaheen )  
 Advocate  
 Supreme Court of Pakistan  
 H.No.34-C, Neelum Road, G-9/3,  
 Islamabad  
 Cell: 0333-5125403

Filed by



Atimud Nawaz Chaudhary  
 A.S.C.  
 Advocate On Record  
 Supreme Court of Pakistan  
 (Islamabad, Mob: 0300-9511294 )  
 Advocate-on-Record  
 Supreme Court of Pakistan

**BEFORE THE HONORABLE K.P.K SERVICE TRIBUNAL PESHWAR**

Application in Service Appeal No.135/13

Dr. Rashid Ahmed, M.S. DHQ Hospital, District Lakki Marwat. (Applicant/petitioner)

**-Versus-**


1. Govt of K.P.K. & Chief Minister Through Chief Secretary K.P.K. Civil Servants Secretariat, Peshawar.
2. Secretary Health of K.P.K. Civil Servants Secretariat, Peshawar.
3. Secretary Establishment Deptt. KPK, Peshawar
4. The D.G. health Services, KPK Peshawar.
5. Mr.Mashal khan SMO, Gambela Lakki Marwat. (Respondents)

**INDEX**

<b>S. #.</b>	<b>Description of documents</b>	<b>Annex</b>	<b>Pages</b>
1.	Application for impleadment with affidavit		1-2

Appellant/Petitioner:

Through:

  
Ishtiaq Ahmed

Advocate High Court

Dated 14/02/14

**BEFORE THE HONORABLE K.P.K SERVICE TRIBUNAL PESHAWAR**

Application in Service Appeal No.135/13

Dr. Rashid Ahmed, M.S. DHQ Hospital, District Lakki Marwat. (Applicant/petitioner)

**-Versus-**

1. Govt of K.P.K. & Chief Minister Through Chief Secretary K.P.K. Civil Servants Secretariat, Peshawar.
2. Secretary Health of K.P.K. Civil Servants Secretariat, Peshawar.
3. Secretary Establishment Deptt: KPK, Peshawar
4. The D.G. health Services, KPK Peshawar.
5. Mr.Mashal khan SMO, Gambela Lakki Marwat. (Respondents)

Handwritten notes and stamps: "No. 136" and "14/9/14" with a signature.

**APPLICATION FOR IMPLEADING IN THE APPEAL BEING  
NECESSARY PARTY**

Respectfully sheweth, the applicants submits as under;

1. That the above title appeal is fixed on dated 17/02/2014 before this honorable Tribunal.
2. That the applicant seeks impleadment in the appeal in being necessary party on the following grounds, amongst others;

**GROUND**

- A. That applicant is also aggrieved from the same notification and the grievances of the applicant are the same as of the appellant.
- B. That the respondents are included as parties in the appeal filed by the applicant therefore applicant may also allow participate in the proceeding to explain the situation and defend applicant own legal interest.

- C. That any order of the tribunal over the matter in issue can effect the applicant one way or the other that's way it is also necessary to allow applicant as necessary party.
- D. That it is in the interest of justice that applicant may implead as a party to argue the main issue before the tribunal.
- F- That any other ground which has not specifically mentioned in the application in hands the applicant can raise that at the time of arguments.

It is, therefore, respectfully prayed that on acceptance of this application the applicant may implead/include in the appeal being necessary party. Or any other relief, which is deemed proper, may also grant.

Applicant: *Dr. Naeem Nawaz: M.S. City Hospital,*  
Through *LAKHBI Mawla*  
*[Signature]*  
Ishtiaq Ahmed

Dated 14/02/14

Advocate High Court Peshawar

#### AFFIDAVIT

I, Ishtiaq Ahmed advocate, as per instruction of my clients do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct to the best of my knowledge and belief and nothing has been concealed from this honble court.

Dated 14/02/14



*[Signature]*  
Deponent

## **BEFORE SERVICE TRIBUNAL PESHAWAR.**

**Appeal No. 1635/2013.**

Dr.Rashid Ahmad.....**Appellant.**

**Versus.**

2. Secretary to Government of Khyber Pakhtunkhwa, Health Department, Peshawar.
3. Secretary Establishment Khyber Pakhtunkhwa.
4. Director General Health Services Khyber Pakhtunkhwa Peshawar.  
& others .....**Respondents.**

**Parawise comments on behalf of respondent No.2,3 & 4.**

### **Preliminary Objections:-**

1. That the appeal is not maintainable as no vested right of appellant was ever infringed.
2. That on the same subject matter, appellant 1<sup>st</sup> filed writ petition before High Court, Circuit Bench Bannu which was dismissed in limine on 22.10.2013 and thereafter filed CPLA before the apex Supreme Court of Pakistan which was also dismissed in limine on 09.12.2013.
3. That appellant belongs to management Cadre BPS-19 and was posted in the same cadre and scale of the post of Deputy DHO, Bannu.
4. That appellant seeks specific post of MS DHQ Hospital, Lakki Marwat which is against the laid down Law.
5. That the instant appeal is barred by law.

### **ON FACTS.**

1. In response to Para No. 1 of the appeal, it is submitted that appellant vis-à-vis R. No. 5 were appointed against their own cadres. Appellant who claims Management Cadre was posted against Management Cadre as Deputy DHO, Bannu on a vacant post of BPS-19, so he should have no grievance against the respondents.
2. In response to this Para of the appeal, it is submitted that appellant, as per law and rules, shall be transferred anywhere.

2. In response to this Para of the appeal, it is submitted that appellant, as per law and rules, shall be transferred anywhere.
3. In response to this Para, it is also submitted that on promotion to BPS-19, he was posted as Deputy DHO, Charsadda against the vacant post vide order dated 06.03.2013. Appellant was transferred 3 times to various stations but such action was not agitated by him.
4. As above.
5. Not correct. No political interference was ever made. Appellant filed writ petition No. 274-B/2013 in Circuit Bench Bannu which was dismissed on 22.10.2013. The order of transfer is Justal, and Legal.
6. Not Correct. The departmental appeal of appellant was rejected<sup>n</sup> but the same order was not impugned before the honourable Tribunal. The original order was merged in appellate order, so the appellate order was required to be assailed. on 3.9.2013
7. As replied in Para 6.

**GROUND:-**

- a. Not correct. The order dated 03.09.13 in according to law, rules and terms of justice.
- b. Not correct. Appellant has been posted against the Management Cadre and in BPS-19, so no vested right of him was ever infringed.
- c. Not correct. No political pressure was ever exerted.
- d. Not correct. Availing the tenure is not mandatory and if mandatory as stated by the appellant in the para, then such like orders were made time and again since 06.03.2012 which were premature but were not agitated by him.
- e. Not correct. The position has been explained above and more so, in presence of law and rules on the subject, policy has no legal value.
- f. Not correct. The order dated 03.09.2013 is based on valid and grounds.
- g. Not correct. Anita Turab case is not applicable to the case in hand.
- h. Not correct. The order dated 03.09.2013 was made accordance with law and no judgment of the appeal is violated.
- i. Not correct. Appellant was treated in accordance with law, rules and policy.
- j. Not correct. The transfer order was based on public interest. No political whims exists. There were exigency of service and the competent authority issued the impugned order.
- k. The respondents also seek permission to raise additional grounds at the time of arguments.

It is, therefore, most humbly prayed that the appeal of appellant being devoid of merit and without substance be dismissed with cost.

Secretary Establishment  
Government of Khyber Pakhtunkhwa  
Civil Secretariat, Peshawar.  
(Respondent No.03)

[Redacted]  
[Redacted]  
(Respondent No.01)

*26.2.14*  
Director General Health Services,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No.04)

*26/2/14*  
Secretary  
Government of Khyber Pakhtunkhwa  
Health Department, Peshawar.  
(Respondent No.02)



**BEFORE SERVICE TRIBUNAL PESHAWAR.**

**Appeal No.1635/2013.**

Dr.Rashid Ahmad ..... **Appellant.**

**Versus.**

Govt. of KPK & Others..... **Respondents.**

**REPLY TO APPLICATION FOR SUSPENSION OF ORDER DATED**  
**03.09.2013.**

**Respectfully Sheweth,**

1. Needs no comments.
2. Not correct. Neither the impugned order was polititcaly motivated nor was premature nor was passed in violation of any instruction of posting and transfer rules.
3. Totally false and absolutely incorrect. Appellant has relinquished the charge while R. No. 5 has assumed the charge of the assignment on 04.09.2013.
4. Not correct. Appellant has no case. The impugned order is with law full authority and is sustainable in law. No balance of convenience ever lies in favour of petitioner as he has relinquished the charge and R. No.5 has assumed the same. The impugned order has since been acted upon, implemented and got finality. Transfer to any post and anywhere does not give irreparable loss to any servant.
5. That the grounds of para wise comments may also be considered as integral part of this reply.

It is, therefore, most humbly requested that the application of appellant be dismissed with cost.

Secretary Establishment  
Government of Khyber Pakhtunkhwa  
Civil Secretariat, Peshawar.  
(Respondent No.03)

Director General Health Services,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No.04)

Secretary  
Government of Khyber Pakhtunkhwa  
Health Department, Peshawar.  
(Respondent No.02).