

25.07.2016

Counsel for the appellant and Mr. Daud Jan, Superintendent
alongwith Mr. Ziaullah, GP for respondents present. Arguments heard and
record perused.

Vide our detailed judgment of today in connected service appeal
No. 1443/2013 titled "Shahid Rehman-vs-Agency Education Officer, FR,
Lakki Marwat and others", this appeal is also dismissed as per detailed
judgment referred above. Parties are, however, left to bear their own
costs. File be consigned to the record room.

ANNOUNCED
25.07.2016


Member


Member

10 12.05.2015

Counsel for the appellant, M/S Daud Jan, Supdt. for respondent No. 1 and Javed Ahmed, Supdt. for respondent No. 2 alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 29.10.2015.

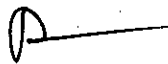

Chairman

10 12.05.2015

29.10.2015

Junior to counsel for the appellant (Ms. Uzma Syed, Advocate) and Asst: AG for respondents present. Rejoinder on behalf of the appellant received, copy whereof is handed over the respondent-department. To come up for arguments on

4-5-16



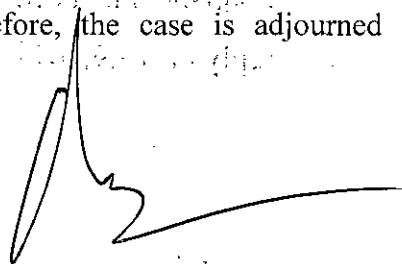
Member



Member

04.05.2016

Counsel for the appellant and Mr. Daud Jan, Supdt alongwith Mr. Muhammad Jan, GP for respondents present. Arguments could not be heard due to leaned Member (Judicial) is on leave, therefore, the case is adjourned to 25.07.2016 for arguments.



Member

2-

15.09.2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Daud Jan, Head Clerk for respondents present. The learned Member (Judicial) is not working due to a recent order of the Hon'ble Peshawar High Court affecting his status as District & Sessions Judge. To come up as before on 26.11.2014.


READER

8-

26.11.2014

Junior to counsel for the appellant and Mr. Muhammad Jan, GP with Daud Jan, Head Clerk for the respondents present. The Tribunal is incomplete. To come up for the same on 10.2.2015.


READER

9

10.02.2015

Agent of counsel for the appellant and Assistant A.G for respondents present. Written reply not submitted. Requested for adjournment. Adjoined for written reply before S.B to 12.05.2015.


Chairman

~~Order of the Tribunal dated 10.02.2015 is hereby set aside and the matter is adjourned for written reply before S.B to 12.05.2015.~~

Appeal No. 1449/2013
Mr. Muhammad Hanjani
Counsel for the appellant present. Preliminary arguments

08.01.2014

heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 11.06.2013, the appellant filed departmental appeal on 28.06.2013, which has not been responded within the statutory period of 90 days, hence the present appeal on 22.10.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 01.04.2014.

08.01.2014

This case be put before the Final Bench

for further proceedings.

Member

Chairman

1.4.2014.

Counsel for the appellant and AAG with Fayaz Ali, AEO and Daud Jan Head Clerk for the respondents present and requested for time. To come up for written reply on 25.6.2014.

MEMBER

MEMBER

25.6.2014.



Counsel for the appellant and Mr. Muhammad Jan, GP with Daud Jan H.Clerk for the respondents present. Respondents need further time. To come up for written reply on 15.9.2014.

MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1442 /2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28/10/2013	<p>The appeal of Mr. Muhammad Kamran resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	30-10-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>8-1-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Muhammad Kamran son of Bahadar Khan Ex-Sweeper GPS Kotka Bahadar Khan FR Lakki Marwat received today i.e. on 22.10.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Law under which appeal is filed is not mentioned.
- 2- Annexures A & B of the appeal are illegible which may be replaced by legible/better one.

No. 1503 /S.T,

Dt. 23/10 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

Sir

*Resubmitted. As regard Act, the
appeal is filed under section 4 of the S.T. Act,
1974.*

by

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A. No. ¹⁴⁴²/2013

M. Kamran

Versus


Agency Education Officer,
FR Lakki, & others.

I N D E X

S.No	Documents	Annex	P.No.
1.	Memo of Appeal		1-2
2.	Creation of Posts, 07.01.2013	"A"	3
3.	Appointment Order, 21.01.2013	"B"	4
4.	Termination Order, 11.06.2013	"C"	5
5.	Representation, 28.06.2013	"D"	6-7

Dated. 22.10.2013

Through

Appellant

Saad Ullah Khan Marwat
Advocate.
21-A Nasir Mension,
Shoba Bazar, Peshawar.

Ph: 0300-5872676

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 1442 /2013

M. Kamran S/O Bahadar Khan
R/O Talib Khel Bhattani, Ex Sweeper,
GPS. Kotka Bahadar Khan FR, Lakki Marwat.... . Appellant

[Stamp]
1448
22/10/13

Versus

1. Agency Education Officer, FR, Lakki Marwat.
2. Director of Education FATA,
FATA Secretariat, Peshawar.
3. Secretary Education FATA,
FATA Secretariat, Peshawar Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 AGAINST THE OFFICE ORDER NO
2027/33 DATED 11-06-2013 OF R. NO. 1 WHEREBY
SERVICES OF THE APPELANT WERE TERMINATED
W.E.F DATED OF APPOINTMENT FOR NO LEGAL
REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth;

1. That on 01-01-2013 Finance Department, FATA Secretariat, Warsak Road, Peshawar circulated/issued letter whereby 1, 797 posts of various nature were created in the schools, etc. including posts for FR Lakki too at serial No. 11. Copy as annex "A"
2. That as per the due procedure, appellant was appointed as such vide order dated 21-01-2013 by Agency Education Officer, FR Lakki Marwat. Copy as annex "B"
3. That appellant used to perform duties in the said school with great deal and zeal when on 11-06-2013, the same authority

[Stamp]
24/10/13

re-submitted to-203
and filed.

[Signature]
28/10/13

issued order of termination of the appellant from service for no legal reason. Copy as annex "C"

4. That on 28-06-2013, appellant submitted appeal before R.NO. 2 for reinstatement in service which met dead response till date. Copy as annex "D"

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

G R O U N D S:

- a. That admittedly Finance Department of FATA Secretariat created the posts of various nature for appointment as such.
- b. That appellant, being land doner and by adhering to law and rules, he was appointed as such.
- c. That no complaint was ever made against the performance of duties of appellant.
- d. That no reason was ever given in the order of termination by Agency Education Officer, FR Lakki Marwat.
- e. That no Executive order could be passed retrospectively.
- f. That appellant had assumed the charge of the post without any complaint.
- g. That the impugned order is not per the mandate of law as neither appellant was served with any notice nor any inquiry was conducted, so the order is ab-initio void and illegal and based on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 11-06-2013 of Agency Education Officer, FR Lakki Marwat, respondent No. 1 be set aside and appellant be reinstated in service with all back benefits.

Dated. 22.10.2013

Through

Appellant
Saad Ullah Khan Marwat

Arbab Saiful Kamal

&

Miss Rubina Naz,
Advocates.

A

13

FATA SECRETARIAT
(Finance Department)
Warsak road Peshawar

No.SO(FII)FD/FA/SNE/2010-II/Vol-III
Dated Peshawar the 7th January 2013

To

The Additional Accountant General,
Pakistan Revenue, Sub Office,
Peshawar.

Subject:- **CREATION OF 1797 POSTS FOR ESTABLISHMENT OF PUBLIC SCHOOLS, HIGH SCHOOLS, MIDDLE SCHOOLS, IT LABS IN HIGH SCHOOLS AND WOMEN TEACHER HOSTELS UNDER SECONDARY EDUCATION FATA IN AGENCIES / FRs.**

Dear Sir,

I am directed to convey sanction of Finance Division, Government of Pakistan, Islamabad, received vide UO No. 5(1)/2011 – DFA (S), dated 21-06-2012 for creation of 1797 for Establishment of 05 Public Schools, 52 High Schools, 115 Middle Schools, 140 IT Labs in High/Middle Schools and 14 Women Teacher Hostels in FATA with the following Agency/FR-wise break up of Educational Institutions with immediate effect:-

S No	Name of Agency/FR	Posts for Public Schools	Posts for High Schools	Posts for Middle Schools	Posts for IT Labs	Posts for Women Teacher Hostels	Total
1	Bajaur Agency	30	82	98	24	15	249
2	Mohmand Agency		55	21	28		104
3	Khyber Agency		54	129	36	20	239
4	Orakzai Agency		37	36	18	10	101
5	Kurrum Agency	30	54	35	30	05	154
6	NW Agency		35	122	34	10	201
7	SW Agency		36	65	30		131
8	FR Peshawar		09	37	14		60
9	FR Kohat		18	29	16		63
10	FR Bannu		27	108	30	02	167
11	FR Lakki	30	18	36			84
12	FR Tank	30	27	71	14	05	147
13	FR D.I.Khan	27	20	35	10	05	97
	Total	147	472	822	284	72	1797

Attest

by

B 4

**OFFICE OF THE AGENCY EDUCATION OFFICER
FR LAKKI DISTRICT COMPLEX TAJAZAI**

APPOINTMENT ORDER

Consequent upon the nomination by APA FR Lakki, the following candidate of FR Lakki are hereby appointed under the Government recruitment Policy, against the newly created Class-IV posts in the Schools noted against their name in BPS-01 @ Rs. 4800/- per Month usual Allowances on regular contract basis with effect from the Date of their taking over Charge in the schools, in the interest of public service.

S.No	Name of Candidate	Post	Name of School	Remarks
1	Adnan Khan s/o Taj Ali Khan village Talib Khel Betani FR Lakki	Lab Att:	Public School Kotka Bahadar Khan FR Lakki	APA FR Lakki No. dated 21-01-2013.
2	Shahid Rehman S/O Bahadar Zaman village Talib Khel Betani FR Lakki	N. Qasid	-do-	-do-
3	Abdullah Khan S/O Bahadar Khan village Talib Khel Betani FR Lakki	Chowk:	-do-	-do-
4	Faisal Ahmed S/O Taj Ali Khan village Talib Khel Betani FR Lakki	Mali	-do-	-do-
5	Muhammad Kamran Khan S/O Bahadar Khan village Talib Khel Betani FR Lakki	Sweeper	-do-	-do-

TERMS AND CONDITIONS

1. That appointments made purely on temporary basis and is subject to the term and condition framed by the Government time to time. The appointments can be with drawn and liable to termination without any notice OR assigning any reason.
2. If He/She/They resign from service they will give on month's prior notice OR one month full pay will be forfeited and lieu thereof.
3. He/She/They will produce their Health and Age Certificate from M/Supdt: DHQ Hospital Lakki Marwat.
4. He/She/They will not be handed over charge if they below 18 years Or above 45 year of age.
5. He/She/They failed to resume the charge within 15 days, their appointment will be consider as cancelled.
6. Charge report should be submitted in duplicate to all concerned.
7. If He/She/They have any other Government Service their appointment will be stand cancelled and disciplinary action will be taken against the defaulters.

(HAJI GHAZI KHAN)
AGENCY EDUCATION OFFICER
FR LAKKI

Endst No. 1698-1702/FR Lakki

Dated the 21/1/2013

Copy to the:-

1. Director Education (FATA) Secretariat Peshawar.
2. Deputy Commissioner District Lakki Marwat.
3. Assistant Political Agent FR Lakki.
4. District Accounts Officer Bannu.
5. AAEO Concerned.
6. Candidate concerned.

AGENCY EDUCATION OFFICER
FR LAKKI

To

D 6

28-6-13

The Director Education, FATA,
FATA Secretariat, Warsak Road,
Peshawar

Subject: APPEAL AGAINST OFFICE ORDER NO. 2027-33
DATED 11.06.2013 OF THE AGENCY EDUCATION
OFFICER, FR LAKKI WHEREBY SERVICES OF
APPELLANT WERE TERMINATED W.E.F. THE
DATE OF APPOINTMENT FOR NO LEGAL
REASON.

Respected Sir,

1. That on 07.01.2013, Finance Department, FATA Secretariat, Warsak Road, Peshawar circulated/issued letter whereby 1,797 posts of various nature were created in the schools etc. including posts for FR Lakki too at S.No.11.
2. That as per the due procedure appellant was appointed as such vide order dated 21.01.2013 by Agency Education Officer, FR Lakki.
3. That appellant used to perform duties in the said school with great deal and zeal when on 11.06.2013, the same authority issued order of termination of appellant from service for no legal reason.

Hence this departmental appeal, inter alia, on the following grounds.

GROUND S:-

- a. That admittedly Finance Department of FATA Secretariat created the posts of various nature,

meaning thereby that the said posts were in existence with the department.

- b. That appellant, being land donner and by adhering to law and rules, he was appointed as such.
- c. That no complaint was ever made against the performance of duties of appellant.
- d. That no reason was ever given in the order of termination by Agency Education Officer, FR Lakki.
- e. That no Executive order could be passed retrospectively.
- f. That appellant had assumed the charge of the post without any complaint.
- g. That the impugned order is not per the mandate of law as neither appellant was served with any notice nor any inquiry was conducted, so the order is ab-inito void and illegal.

It is, therefore, most humbly requested that order dated 11.06.2013 of Agency Education Officer, FR Lakki be set aside and appellant be reinstated in service with all back benefits.

Dated 28.06.2013

No. 384
28-6-13

Alto
ky

Appellant

محمد کسان
Mohammad Kassar
S/o Bahader Khan
R/o Talib Khil Bhuttani
Lakki
En. Sweeper PS Kotla
Bahader Khan, FR,
Lakki

BEFORE THE KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1449/2013

Mr. Kamran S/O Bahadur Khan

r/o Talib Khel Bhattani, Ex-Sweeper GPS Kotka Bahadur Khan FR Lakki Marwat

.....Appellant

.....VERSUS.....

1. The Agency Education Office FR Lakki Marwat.
2. Director Education FATA, FATA Secretariat Peshawar.
3. Secretary Education FATA, FATA Secretariat PeshawarRespondents

PRELIMINARY OBJECTIONS.

1. That the appellant has got no cause of action/locus standi to file the instant appeal.
2. That the appellant has not come to this Honorable Tribunal with clean hands.
3. That the appellant has concealed materials facts from this Honorable Tribunal.
4. That the appeal is not maintainable in its present form.
5. That the appeal is bad due to non-joinder and mis-joinder of necessary parties.
6. That the appellant is estopped by his own conduct to bring the present appeal.

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 AND 2 IN APPEAL NO. 1449/2013.

Respectfully Sheweth.

1. No Comments pertains to record.
2. No Comments pertains to record.
3. The service of the appellant has been terminated by the Competent Authority i.e, Agency Education Officer FR Lakki in the interest of Public Service as the school concerned was not functional. It is further pointed out that no any salary has been drawn by the appellant from the Government treasury. As reported by the Agency Education Officer FR Lakki (copy of the letter is attached as Annexure-A).
4. Incorrect. The departmental appeal of the appellant is not available on the record of the respondent's offices.


Grounds.

- A. No comments pertain to record.
- B. Incorrect. No such revenue record has been submitted by the appellant which shows that the appellant is the land owner of the said school. Further stated that appointments of land doner has been declared illegal by Supreme Court of Pakistan in various judgments.
- C. No comments pertain to record.
- D. As explained in Para-B above.
- E. Incorrect. As the school was not functional therefore the Competent Authority issued the termination order of the appellant.
- F. Incorrect. There is no any other option with the Competent Authority except termination of the appellant.


070
12.05.13

In the light of above facts it is most humbly prayed that the appeal may be dismissed in favor of the respondents with cost throughout.

Respondent No1.


Agency Education Officer
FR Lakki


Respondent No.2


Director Education (FATA)
FATA Secretariat Peshawar

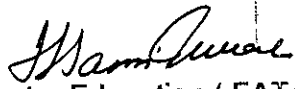


We, the above respondents do hereby declare and affirm that the above comments are true and correct to the best of our knowledge and belief that nothing has been concealed from this Hon'ble Tribunal.

Respondent No1.


Agency Education Officer
FR Lakki

Respondent No.2


Director Education (FATA)
FATA Secretariat Peshawar

OFFICE OF THE AGENCY EDUCATION OFFICER,
FRONTIER REGION LAKKI (TOWN SHIP TAJAZAI)

No 3493 / Dated 5/5 /2015.

To

The Director Education,
(FATA) Peshawar.

Subject:- COMMENTS REGARDING TERMINATION/APPOINTMENT
OF GOVT: MODEL PUBLIC SCHOOL KOTKA BAHADER KHAN FR LKI.


Memo:-

Reference your telephonic message on dated 5/5/2015.

1. It is stated for your kind informations that Class IV Servants have been appointed by this office vide No.1698-1702 dated 24/4/2013 (2013) in the said Model Public School Bahader Khan Sargrah Muhammad Khan F.R. Lakki
2. After that Asstt: Director Syed Manzar Jan Sajid issue a letter vide No: 8244 dated 31/5/2013 and call Explanation from the Ex-AEO Mr, Ghazi Khan to why the Said Model School Post filled without any antimation of this Directorate
3. On dated 10/6/2013 vide your No: 8675 dated 10/6/2013 issue by Syed Manzar Jan Sajid (A.D. Estab:) issue ~~another~~ another letter regarding the above subject.
4. The said five (5) Class IV) have been terminated vide this office order Endst No: 2027-33 dated 11/6/13.
5. It is further stated that no Salary have been drawn to the
Hence report is submitted.

Enclosures

1. Appointment Order.
2. Termination Order.
3. Directorate letters.
4. Service Books in original


* Agency Education Officer,
Frontier Region Lakki.

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 1442/2013

M. Kamran

Versus

A.E.O & Others

REPLICATION

Respectfully Sheweth,

PRELIMINARY OBJECTION.

All the (06) preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why the appellant has no cause of action, he has not come to the Hon'ble Tribunal with clean hands, concealment of material facts from Hon'ble Tribunal, not maintainable in its present form, appeal is bad for mis and non-joinder of necessary parties and estopped by his own conduct to bring the present appeal.

ON FACTS

- 1-2. Para No. 1 & 2, regarding creation of 1797 posts and order of appointment was not commented upon by the respondents, so are admitted correct by them.
3. Not correct. The reason given in the para of the comments, regarding none functional of the school nowhere bore in the order of termination dated 11.06.2013. It is not understood that when the schools were not functional then why order of appointment of appellant was issued by the competent authority, Agency Education Officer, FR Lakki.

As far as letter dated 05.05.2015 of the Agency Education Officer, FR Lakki is concerned, the same is after thought while appeal was filed before the Hon'ble Tribunal on 22.10.2013.

4. Not correct. Departmental appeal was filed on 28.06.2013 vide Registry No. 384 alongwith connected representations addressed to Director of Education FATA, FATA Secretariat, Warsak Road, Peshawar.

GROUNDS:

- a. As above in para No. 1 & 2 of the facts, regarding creation of posts and issuing of order of appointments.
- b. Not correct. The ground of the appeal is correct. Respondents failed to show that who donated the land for the construction of the school building. Moreso, the Supreme Court also held that land owner be appointed at the school as the land was donated to the Government for school building in lieu of appointment.
- c. As above in para No. 1, regarding performance of duties in the school.
- d. Not correct. Order of termination is without any reason.
- e. Not correct. The ground of the appeal is correct, regarding issuing of order of termination with retrospective effect. Here a question arises that why order of appointment of appellant was issued when the school was none functional. The school is functioning till date. Order of termination bore no reason of none functional of the school.
- f. Not correct. If order of termination from service was required, then the same should have been as per the mandate of law by holding full-fledged enquiry.
- g. Not replied by the respondents, so the ground of the appeal is admitted correct by the respondents regarding none service of notice, none holding of enquiry, etc.

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

Through

Appellant



Saadullah Khan Marwat

Dated: 27.10.2015.


Arbab Saif Ul Kamal


Miss Rubina Naz

Advocates,

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 1442/2013

M. Kamran

Versus

A.E.O & Others

AFFIDAVIT

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

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

DEPONENT