

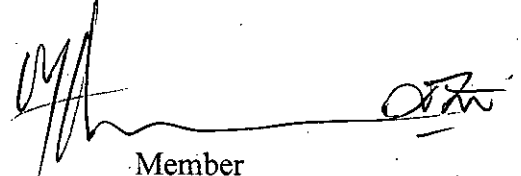
3.
30.01.2014

Appellant in person present. Pre-admission notice be issued to the GP to assist the Tribunal. To come up for preliminary hearing on 26.02.2014.


Member

26.02.2014

Appellant in person present and submitted an application for withdrawal of the appeal with permission to approach proper forum. Application placed on file. His statement also recorded. As such the appeal is dismissed as withdrawn with permission to approach proper forum. File be consigned to the record.


Member

ANNOUNCED
26.02.2014

I want to withdraw instant appeal

MS/MS

26-2-2014

13101-3012981-3


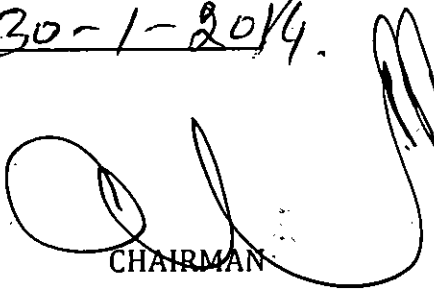
Form- A

FORM OF ORDER SHEET

Court of _____

Case No. _____

1552/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	28/11/2013	3
1	28/11/2013	<p>The appeal of Syed Amjad Hussain Shah presented today by him 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	3-12-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>30-1-2014</u>.</p> <p style="text-align: right;">  CHAIRMAN </p>

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1552 of 2013

Syed Amjad Hussain Shah S/O Miskeen shah, Ex Gestetner Operator, Board of Intermediate and Secondary Education Abbottabad R/O Village Sheikh Ul Bandi, Tehsil and District Abbottabad.

Appellant

Versus

- 1 Secretary, Board of Intermediate and Secondary Education Abbottabad.
- 2 Chairman, Board of Intermediate and Secondary Education Abbottabad.

Respondents

SERVICE APPEAL

INDEX

S.No	DESCREPTION OF DOCUMENTS	ANNEXURES	PAGE NO
1	Memo; of Service Appeal along with Affidavite	----	1 to,6
2	Copy of charge sheet.	A	7 to 08
3	Copy of statement of allegations	B	9
4	Copy of show cause notice.	C	10 to 11
5	Copy of inquiry report.	D	12 to 14
6	Copy of dismissal order.	E	15 to 16
7	Copy of Writ Petition No 253/1999	F	17 to 21
8	Copy of Judgment of High Court	G	22 to 36
9	Copy of Judgment of Supreme Court	H	37 to 41
10	Copy of judicial charge sheet	I	42
11	Copy of Judgment of Senior Special Judge, Anti Corruption K.P.K dated 19/04/2007	J	43 to 49
12	Copy of application 27/04/2007	K	50
13	Copy of High Court judgment dated 19/04/2007 13-10-2013.	L	51 to 55
14	Copy of Impugned Order dated 04/11/2013	M	56

Dated: 25/11/2013.

Amjad
Syed Amjad Hussain Shah
(appellant inperson)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1552 of 2013

B.W.P. Peshawar
1594
28/11/13

Syed Amjad Hussain Shah S/O Miskeen shah, Ex Gestetner Operator, Board of Intermediate and Secondary Education Abbottabad R/O Village Sheikh Ul Bandi, Tehsil and District Abbottabad.

Appellant

Versus

- 1 Secretary, Board of Intermediate and Secondary Education Abbottabad.
- 2 Chairman, Board of Intermediate and Secondary Education Abbottabad.

Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER NO 2093-SECY/BISE/ATD DATED 04/11/2013 ISSUED BY RESPONDENT NO 01 WHEREBY APPELLANT'S APPLICATION DATED 27/04/2007 FOR HIS RE-INSTAEMENT IN SERVICE WITH EFFECT FROM 09/07/1999 WITH ALL BACK BENEFITS, AFTER HIS ACQUITTAL ON 19/04/2007, FROM CRIMINAL CASE BY COMPETANT COURT OF LAW I.E. SENIOR SPECIAL JUDGE ANTI CORRUPTION K.P.K, CAMP COURT ABBOTTABAD I.E. SENIOR SPECIAL JUDGE ANTI CORRUPTION K.P.K, CAMP COURT ABBOTTABAD, IS REJECTED.

[Signature]
28/11/13

PRAYER

It is respectfully prayed before this Honourable Tribunal that on acceptance of this service appeal, Tribunal may graciously be pleased to set-aside the impugned order dated 04/11/2013 and the appellant be re-instated in his service with all back benefits with effect from 09/07/1999.

Respectfully Sheweth,

FACTS

- 1) That the appellant was serving as Gestetner Operator in Board of Intermediate and Secondary Education Abbottabad, was dismissed from service in the year 1998, the same dismissal order had set-aside, quashed the inquiry proceedings, in Writ Petition by Peshawar High Court and respondents once again started re-inquiry in to the matter and appellant was served with fresh charge sheet dated 11/02/1999 along with statement of allegations. Copy of charge sheet and statement of allegations is annexed as **Annexure A & B.**

- 2) That appellant was served with a show cause notice dated 30/04/1999 along with inquiry report and similarly appellant was dismissed from service by the respondents on 09/07/1999 at the same time respondents also submitted written report to Anti-corruption establishment Abbottabad under the quite same allegations which were based for dismissal from service, and case FIR No 04 dated 11/05/1998 was registered by Police Station Anti-corruption establishment Abbottabad. Copy of show cause notice, inquiry report, and dismissal order is annexed as **Annexure C, D, & E.**

- 3) That appellant challenged his dismissal order dated 09/07/1999 through Writ Petition No 253 of 1999 which was dismissed on 30/11/2000 and based on the sole grounds of departmental enquiry and CPLA No 583 of 2001 was also dismissed on 08/01/2002 by Apex Court. Copies of Writ Petition, Order of High Court and Supreme Court are annexed as **Annexure F, G, & H.**

- 4) That on the other hand the Court of Senior Special Judge, Anti Corruption K.P.K Camp Court Abbottabad has framed the charge on 11/07/2001 and started trial. The learned Court acquitted the appellant from all the charges/allegations leveled against him on 19/04/2007, and respondents has not preferred any appeal against the said judgment dated

19/04/2007 thus it attained its finality. Copy of judicial charge sheet & judgment dated 19/04/2007 is annexed as **Annexure I & J.**

- 5) That appellant, after his acquittal, submitted his application to respondents on 27/04/2007 for his re-instatement in service, despite of his numerous requests/reminders/applications to the respondents but they did not decide it, at last for the same purpose appellant filed his Writ Petition No 712-A of 2013 which is decided in appellant's favour and directions were given to respondents for their decision in the long pending application dated 27/04/2007. Copy of application and High Court Order is annexed as **Annexure K, & L.** respectively.
- 6) That respondents under the High Court directions decided the pending application for re-instatement and rejected the same and passed the final order on 04/11/2013 (impugned) and is annexed as **Annexure M.** Hence this Service appeal, inter-alia on the following grounds.

Grounds

- a) That under the law appellant is entitled for his re-instatement in service with all back benefits after his acquittal from all the charges/allegations leveled against him on 19/04/2007 by the competent Court of law, thus the rejection of his re-instatement application (impugned final order) dated 04/11/2013 passed by respondents is arbitrary, unjust, melafide and against all the norms of justice.
- b) That it is admitted facts that both the previous judgments i.e High Court dated 30/11/2000, Supreme Court dated 08/01/2002, were passed on the basis of available record (BISE/departmental proceedings), and these departmental proceedings could not be proved by the respondents before the competent court of law and Judgment of Senior Special Judge, Anti Corruption K.P.K Camp Court Abbottabad dated 19/04/2007 was passed on the same charges and having similar facts and grounds are involved and

findings of Learned Court is totally against the departmental proceedings.

- c) That respondents passed the impugned order dated 04/11/2013 and rejecting the re-instatement application under the main following reasons
 - i) Appellant dismissal order vide 09/07/1999 was passed in the light of departmental proceedings which was challenged by appellant, his Writ Petition and CPLA was also dismissed by Peshawar High Court dated 30/11/2000 and Apex Court dated 08/01/2002.
 - ii) Criminal Proceedings and departmental proceedings are entirely different from each other.
 - iii) Appellant's acquittal does not provide him fresh ground for re-instatement to service more particularly where no specific directions to this effect have been recorded in his acquittal order.

The rejecting reasons are factually and legally incorrect and it is proved that respondents are not being re-instated the appellant malafidely and illegally.

As a matter of facts that previous litigation i.e. Judgments of Peshawar High Court dated 30/11/2000 and Apex Court dated 08/01/2002 were based on available departmental inquiry proceedings and in the said judgments appellant was/is not debarred for his re-instatement in future when appellant got fresh cause of action, more over learned Court of Anti-Corruption has also recorded/mentioned these facts of dismissal of services and judgments of High Court and Apex Court in this respect at page no 2 of its Judgment dated 19/04/2017.

It is admittedly proved that Criminal Proceedings and departmental proceedings were conducted on the basis of quite same allegations/charges and no slight difference is available because charge sheet (**Annexure "A"**), list of allegations (**Annexure "B"**) and inquiry report (**Annexure "D"**) was served to the appellant by the respondents themselves and criminal Charge framed on 11/07/2001(**Annexure "I"**) by the Court of Special Judge of Anti-Corruption on the basis of allegation leveled by respondents too and documents of departmental proceedings **Annexure A, B, & D** is factually and legally same with judicial charge Sheet **Annexure "I"**

Legally the stand of respondents in their impugned order is not only incorrect but committing material irregularity, that in the acquittal order no directions in respect of re-instatement of appellant has been recorded by the Court of Anti-Corruption, factually the matter of only criminal offence was involved before the learned court and Criminal Court has no concern nor has any jurisdiction with the matter of re-instatement of appellant, however court has clearly discussed the matter of dismissal of service in its judgment.

- d) That predetermined story, malafide intension and personal grudges of the complainant has completely shattered when he himself appear as PW-1 before the Court of Anti-Corruption and in his cross examination he also admitted those facts which was opposite to his whole stand of criminal case as well as departmental proceedings these are discussed by learned Anti-corruption Court in his Judgment at page 3 which is much perusal for consideration of this service appeal.
- e) That judgment of Senior Special judge of Anti-Corruption dated 19/04/2007 is the final judgment and respondents has not challenged it in any higher forum thus it attained its legal finality,

ant it is admittedly clear that acquittal of appellant from the illegal criminal case has legally removed all departmental actions including his dismissal from service which is based on same allegations involved in departmental proceedings.

f) That appellant has acquitted from all the charges/allegations leveled against him on 19/04/2007, and under the same position several precedent are available for his re-instatement, some as under.

- 1) 2002 SCMR 57
- 2) 2008 PLC (c.s) 855
- 3) 2001 SCMR 269
- 4) 1991 SCMR 209
- 5) 1985 SCMR 1483
- 6) 2000 PLC (c.s) 331
- 7) 1994 SCMR 247.

It is respectfully prayed before this Honourable Tribunal that on acceptance of this service appeal, Tribunal may graciously be pleased to set-aside the impugned order dated 04/11/2013 and the appellant be re-instated in his service with all back benefits with effect from 09/07/1999 in the interest of justice.

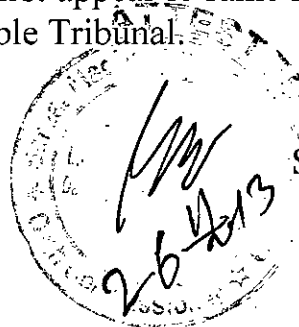
Dated: 25/11/2013.

HS Shah
Syed Amjad Hussain shah
(appellant inperson)

Affidavit

I Syed Amjad Hussain Shah S/O Miskeen shah, Ex Gestetner Operator, Board of Intermediate and Secondary Education Abbottabad R/O Village Sheikh Ul Bandi, Tehsil and District Abbottabad do here by affirm on oath that contents of instant Service Appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Court and this is first appeal & same nature of any other appeal is not pending before Honourable Tribunal.

Dated: 25/11/2013.



HS Shah
Syed Amjad Hussain shah
(appellant inperson)

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, ABBOTTABAD

7

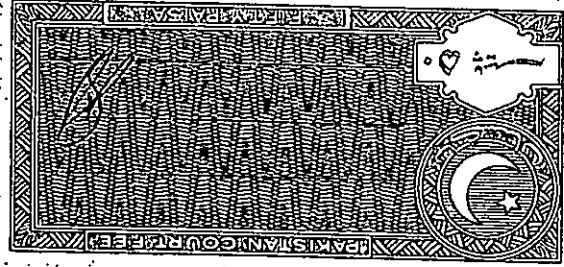
No. 223-30 /CE/ BISE / ATD.

Dated 11 / 2 / 1999

Annexure (A)

From: Sher Ali Khan
Authorized Officer / Controller of Examinations
Board of Intermediate and Secondary Education, Abbottabad.

- To:
- 1) Mr. Amjad Hussain Shah
G. Operator (under suspension),
BISE Abbottabad.
 - 2) Mr. Muhammad Irshad
N. Qasid (Under suspension),
BISE Abbottabad.



Subject: - **CHARGE SHEET**

Enclosed please find herewith Charge Sheet and Statement of Allegations. You are directed to submit your reply within due course of time.

(SHER ALI KHAN)
Authorized Officer / Controller
of Examinations, Board of Intermediate
and Secondary Education, Abbottabad.

Encl: As above

Endstt: No _____ /CE/ BISE/ ATD.

Dated ____ / ____ / ____

Copy for information and n/a to:

- 1) Incharge Establishment Section B.I.S.E. Abbottabad.
- 2) P.S. to Chairman, B.I.S.E. Abbottabad.
- 3) Mr. Jamil Akhtar, Asst. Professor of Math's,
Govt. Post Graduate College Abbottabad. (Chairman Inquiry Committee).
- 4) Mr. Muhammad Rafique Lecturer in Chemistry,
Govt. Post Graduate College Abbottabad. (Member Inquiry Committee)

(SHER ALI KHAN)
Authorized Officer / Controller
of Examinations, Board of Intermediate
and Secondary Education, Abbottabad.

Attested
Attested

CHARGE SHEET

8

You Mr. Amjid Hussain Shah, Gastetnor Operator (Under Suspension) hereby charged as Under -

1. You received Admission forms for Inter (Supply) 1997 Examination and admission fee from 08 (Eight) candidates and did not deposit the fee amounting to RS. 3595.00 (Three thousand five hundred and ninety five) in Bank in Board account.
2. You attached bogus/fake Bank receipts alongwith 08 (Eight) Admission forms for Inter (Supply) Examination 1997.
3. You got bogus attestation of 08 Nos. Admission forms for Inter (Supply) 1997 Examinations.
4. You made/used forged seal on the Admission Forms/Bank receipts.
5. You received Result Gazettes of S.S.C. (Annual) 1997 Examination from the controller of Examinations on production of bogus Bank receipts worth RS. 85,000.00 (Eighty five thousand) in collaboration with Messrs. Malik Abdul Waheed, Senior Clerk (Under Suspension) and Waqar Ali, Ex-Senior Clerk.
6. On the checking of record pertaining to the Account Branch of BISE Abbottabad, irregularities regarding misappropriation of the Board funds were detected. You admitted the above charges in writing and repaid an amount of RS. 3595.00 (Three thousand five hundred and ninety five) and RS. 85,000.00 (Eighty five thousands) as admission fee and cost of Result Gazettes respectively.

In pursuance of Rule 5(2) of the Govt. Servants (E&D) rules 1973, an inquiry committee consisting of the followings has been constituted by the undersigned (Authorized Officer) to conduct the proceedings in this case against you.

1. Mr. Jamil Akhtar, Asst. Professor of Maths.
Govt. Post Graduate College Abbottabad. Chairman.
2. Mr. Muhammad Rafique, Lecturer in Chemistry.
Govt. Post Graduate College Abbottabad. Member.

You are hereby called upon to put in your written defence to the above charges within 14 days of the receipt of this charge sheet to the above inquiry Committee under intimation to the undersigned failing which it shall be presumed that you have nothing to say and action against you will be proceeded ex-parte. In your written explanation to this charge sheet you should also state whether you desire to be heard in person by the undersigned (Authorized Officers) or Not.
Statement of allegation is attached.

(Sher Ali Khan)
Authorized Officer/
Controller of Examinations
Board Of Intermediate &
Secondary Education
Abbottabad.

Accepted
MSJah

STATEMENT OF ALLEGATIONS IN RESPECT OF MR. AMJID HUSSAIN SHAH GESTETNOR
OPERATOR (UNDER SUSPENSION).

1. He received Admission forms for Inter (Supply) 1997 Examination and admission fee from 08 (Eight) candidates and did not deposit the fee amounting to RS. 3595.00 (Three thousand five hundred and ninety five) in Bank in Board account.
2. He attached bogus/fake Bank receipts alongwith 08 (Eight) Admission forms for Inter (Supply) Examination 1997.
3. He got bogus attestation of 08 Nos. Admission forms for Inter (Supply) 1997 Examinations.
4. He made/used forged seal on the Admission Forms/Bank receipts.
5. He in collaboration with Messrs. Malik Abdul Waheed Senior Clerk (Under Suspension) and Waqar Ali Ex-Senior Clerk received Result Gazettes of S.S.C. (Annual) 1997 Examination from the controller of Examinations on production of bogus/fake Bank receipts worth RS. 85,000.00 (Eighty five thousands).
6. On checking the record pertaining to the Accounts Branch of BISE Abbottabad, irregularities regarding misappropriation of the Board funds were detected. He has admitted the above charges in writing and repaid an amount of RS. 3595.00 (Three thousand five hundred and ninety five) and RS. 85,000.00 (Eighty five thousand) as admission fee and cost of Result Gazettes respectively.

Sher Ali Khan
Authorized Officer/
Controller of Examinations
Board Of Intermediate &
Secondary Education
Abbottabad.

Attested
Attestation

BOARD OF INTERMEDIATE & SECONDARY EDUCATION, ABBOTTABAD

10

No. 029-30/CE/BISE/ATD

Dated 30 April, 1999

From: The Authorised Officer/
Controller of Examinations,
Board of Intermediate &
Secondary Education, ATD.

Annexure C

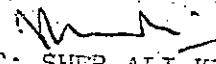
To: Mr. Amjad Hussain Shah,
Gesteamer Operator
(under suspension)
B.I.S.E. Abbottabad.

Mr. Muhammad Irshad,
Naib Qasid (under suspension),
B.I.S.E. Abbottabad.

Subject:- SHOW CAUSE NOTICE

Enclosed herewith please find Show Cause Notice
and a copy of Enquiry Report. You are hereby directed to
submit your reply within due course of time.

Encl: as above.


(PROF: SHER ALI KHAN)
Authorised Officer/
Controller of Exams;
B.I.S.E. Abbottabad.

Attested
Attested

(10)

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, ABBOTTABAD.

Better Copy

No.029-30/CE/BISE/ATD

Dated 30 April-1999

From: The Authorised Officer/
Controller of Examinations,
Board of Intermediate &
Secondary Education, A'Abad.

To: Mr. Amjad Hussain Shah,
Gestetner Operator
(under suspension)
B.I.S.E. Abbottabad.

Mr. Mohammad Irshad,
Naib Qasid (under Suspension),
B.I.S.E. Abbottabad.

SUBJECT: SHOW CAUSE NOTICE.

Enclosed herewith please find Show Cause Notice and a copy of Enquiry Report. You are hereby directed to submit your reply within due course of time.

Encl as above.

— Sd —

(PROF: SHER ALI KHAN)
AUTHORISED OFFICER/
Controller of Exams:
B.I.S.E, Abbottabad

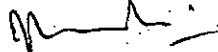
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Attestal

SHOW CAUSE NOTICE:

11

1. WHEREAS YOU, Mr. Amjad Hussain Shah, Jettetar Obera W. BISE Abbottabad were proceeded against under the N.W.F.P. Government Servant Efficiency & Discipline Rules, 1973 for the charges mentioned in the Charge Sheet.
2. AND WHEREAS, an Enquiry Committee was constituted comprising Messrs Jamil Akhtar, Asstt. Professor and Muhammad Rafique, Lecturer of Govt. Postgraduate College No.1 Abbottabad to conduct enquiry in connection with charges levelled against you in the Charge Sheet issued vide No.2229-54/CE/BISE/ATD dated 11.02.1999 in accordance with the procedure laid down in Rule-6 of the said rules.
3. AND WHEREAS, the enquiry committee after having examined the charges, explanation to the charges of the accused official evidence on record, has submitted his report according to which the charges mentioned in the Charge Sheet have been proved against you. A copy of enquiry report is attached herewith.
4. AND WHEREAS, the undersigned (Authorised Officer), agreed with the findings of the enquiry committee has tentatively decided to recommend to impose Major Penalty of Dismissal from service upon you.
5. NOW THEREFORE, you are hereby called upon to Show in writing as to why the proposed action should not be taken against you.
6. your reply should reach the undersigned (Authorised Officer) within fourteen (14) days of the receipt of this notice failing which it will be presumed that you have no written defence/explanation to offer in this behalf.
7. You may also intimate as to whether you want to be heard in person.

Dated 30/4/1999


(PROF: SHER ALI KHAN)
Authorised Officer/
Controller of Examinations,
B.I.S.E. Abbottabad.

Attested
Attested

SHOW CAUSE NOTICE.

Better Copy

11

1. WHEREAS YOU, Mr. Amjad Hussain Shah, Gestetner Operator BISE Abbottabad were proceeded against under the NWFP Government Servant Efficiency & Discipline Rules, 1973 for the charges mentioned in the charge sheet.
2. AND WHEREAS, an Enquiry Committee was constituted comprising Messrs Jamil Akhtar, Asstt: Prof: and Mohammad Rafique Lecturer of Govt: Postgraduate College No.1 Abbottabad to conduct enquiry in connection with charges levelled against you in the Charge Sheet issued vide No.2229-34/CE/BISE/ATD dated 11.2.1999 in accordance with the procedure laid down in Rule-6 of the said rules.
3. AND WHEREAS, the enquiry Committee after having examined the charge, explanation to the charges of the accused official evidence on record, has submitted his report according to which the charge mentioned in the Charge Sheet have been proved against you. A copy of enquiry report is attached herewith.
4. AND WHEREAS, the undersigned (Authorised Officer) agreed with the findings of the enquiry committee has tentatively decided to recommend to impose Major penalty of Dismissal from service upon you.
5. NOW THEREFORE, you are hereby called upon to show in writing as to why the proposed action should not be taken against you.
6. Your reply should reach to the unde-rsigned (Authorised Officer) within fourteen days (14) of the receipt of this notice failing which it will be presumed that you have no written defence/explanation to offer in this behalf.
7. You may also intimate as to whether you want to be heard in person.

Sd-

(PROF. SHER ALI KHAN)
Authorised Officer/
Controller of Examination
BISE Abbottabad.

Dated 30 - 04 /1999

Attested
Attested

INQUIRY REPORT IN RESPECT OF MR: AMJAD HUSSAIN SHAH, GESTETNER,
OPERATOR (UNDER SUSPENSION) OF BOARD OF INTERMEDIATE &
SECONDARY EDUCATION, ABBOTTABAD

1. In response to letter No. 2222-23/CE/BISE/STD dated 11-2-99 from Prof. Sher Ali Khan, Authorized Officer/Controller Examinations BISE Abbottabad we messrs Jamil Akhtar Asstt. Professor and Muhammad Rafique lecturer GPGC No.1 Abbottabad, initiated enquiry proceeding against Mr. Amjad Hussain Shah, Gestetner Operator (under Suspension) of BISE Abbottabad in the case of fraud/embezzlement/mis-appropriation by affixing bogus/fake Bank Receipts alongwith the admission Forms making bogus attestation of admission forms and collection of gazette on production of bogus/fake Bank Receipts. Previously, an enquiry was conducted against the accused by the Board authority, which was challenged by the accused in Honourable Peshawar High Court (Circuit Bench) Abbottabad. The Honourable Peshawar High Court (Circuit Bench) Abbottabad quashed the enquiry and provided option to BISE Abbottabad for re-enquiry vide his judgement and order dated 13-1-1999. To honour the judgement and order of Honourable Peshawar High Court (Circuit Bench) Abbottabad, the BISE Abbottabad opted for re-enquiry.

2. All the documents relating to the case i.e. Admission forms of eight concerned candidates, bogus Bank Receipts pertaining to sale proceed of Gazette SSC (Annual) Examination 1997, written admission of accused, statement of Cashier ABL Board Branch, statements of candidates, specimen signatures of Attesting officers and other related documents were handed over to the committee for reference/guidance, in order to facilitate the enquiry. The Authorized officer (Mr. Sher Ali Khan) accordingly served the charge sheet, alongwith statement of allegations upon the accused vide his letter (with a copy thereof endorsed to the enquiry committee) vide Endt. No. 2229-34/CE/BISE/ATD dated 11-2-1999. The charges/allegations contained in the charge sheet were same upon which the previous enquiry was conducted.

3. The accused failed to furnish a written reply/defence to the charge sheet with-in the stipulated period, therefore, the enquiry committee issued a reminder vide No. 1-2/CEC/GDC/ATD dated 3-3-1999. The reminder was received by accused on 4-3-1999, and he submitted his reply on 13-3-1999, denying all the charges levelled against him in the charge sheet.

4. The concerned candidates were called through registered letters to appear before the Enquiry Committee on 13-3-1999, to clarify the position about their admission forms for the Intermediate (Supply) 1997 Examinations. The accused was also informed to appear before the committee for Cross Examination on the same date. Four candidates appeared before the committee and recorded their statements. It is worth mentioning that the Examination was held in 1997, and re-enquiry is being conducted in 1999. Due to lapse of such a long span of time, out of thirteen candidates, who recorded their statement in the previous enquiry, only five appeared before the enquiry committee. At the time of recording statements of candidates, the accused remained present and availed full opportunity of Cross Examination on 13-3-1999.

5. Three Board officers namely: Mr. Muhammad Taj Account Officer, S Amjad Ali, Asstt. Controller Examinations (Conduct) and Mr. Zulfiqar Khan ACE (Secrecy) were called upon to appear before the enquiry committee to record their statements to the effect that they were witness to the admission made by the accused on 27-2-1998 and 6-3-1998. The officers appeared before the enquiry committee, examined the admission statements and confirmed that the statements were given in their presence without any pressure and owned their signatures. They also clarified that one statement dated 27-2-1998 was written by the accused in his own handwriting in their presence, while the statement relating to Gazette dated 6-3-1998, was signed by accused in their presence. The accused remained present at the time of recording statements by the above said Board officers and availed the opportunity of Cross Examination. He put his signatures on the statement.

6. Mr. Irshad Gul cashier ABL Board Branch was also called on 16-3-1999, to record his statement about deposition of embezzled money by the accused relating to Admission Fee Inter(Supply) 1997, and sale proceed of Gazettes SSC (Annual) 1997. The cashier examined the receipts affixed/pasted on 8 Admission forms as well as detected Fake/Bogus Bank Receipts pertaining to sale proceeds of Gazette

SSC (Annual) 1997: He confirmed that these were not issued by ABL and that the seal as well as the signature on the said receipts are bogus. He reiterated his previous statements to the effect that the accused in collaboration with Malik Abdul Waheed S/Clerk (under Suspension) and Mr. Waqar Ali Ex. S/Clerk have deposited the embezzled amount of Admission Fee amounting to Rs. 3595.00 on 27-2-1998 and 4-3-1998; and sale proceeds of Gazette SSC (Annual) 97 amounting to Rs. 85,000.00 on 3, 4, and 5 -3-1998 vide R.NO 160, 76, 133, and 130 respectively. The accused put irrelevant/personal questions and mis-behaved with the witness during the Cross Examination. Due to negative attitude of accused the atmosphere of proceeding was deteriorated and the committee adjourned the proceeding on 16-3-1999.

Handwritten notes:
No. 14/24

7. The enquiry committee again called the accused for defence statement on 18-3-1999. He appeared and submitted an application dated 18-3-1999 to the effect that his Cross Examination was not completed on 16-3-1999 due to adjournment of proceedings. He requested that he might be given a chance for further Cross Examination on the Cashier's statement. Consequently committee gave him another chance on 20-3-1999 and called the Bank cashier to appear before the committee. The accused completed the Cross Examination and put his signature on the statement of the cashier.

8. After examination of relevant record, statement of witness etc. the allegation wise report of enquiry committee is as under: -

ALLEGATION NO. 1: The accused denied the allegation in his reply to the charge sheet as well as in written defence statement dated 20-3-1999. However, the three candidates directly charged him in his presence stating that they handed over unattested Admission Forms and Fee to the accused. These 3 candidates form part of the lot of 8 candidates mentioned in allegation No 1. The present statements of candidates are similar to the previous statements. The accused also Cross Examined the candidates but could not shutter their statements. Further more, Mr. Irshad Gul cashier ABL Board Booth also examined and recorded his statement according to which the accused (Mr. Amjad Hussain Shah) deposited the amount of Rs. 3,595.00 of Admission Fee of 8 candidates of Inter (Supply) 1997. The present statement of Cashier ABL Board booth dated 16 and 20-3-1999, also tally with his statement recorded during the previous enquiry. The statements of three Board officers namely Mr. Muhammad Taj Audit officer, Syed Amjad Ali Asstt. Controller Exams (Conduct) and Mr. Zulfiqar Khan ACE (Secrecy) were also recorded. They examined the statements of the candidates recorded during the previous enquiry and admitted statement of accused dated 27-2-1998, written in his own handwriting. The Admission statement in the handwriting of accused corroborated, that he received the Admission Fee and unattested Forms and arranged bogus attestation as well as Fake Bank Receipts. The Board officers confirmed that they were witness in the statement of accused as well as the candidates

They further clarified that the admission statement was written and signed by the accused in their presence without any pressure. The accused could not produce any record/evidence and failed to prove himself innocent. In the facts examined from the record, admission statement of the accused, statement of candidates and statements of witnesses (three Board officers and Bank cashier) the charge stands established.

Handwritten notes:
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Amjad

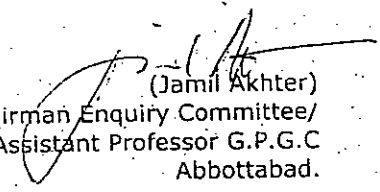
ALLEGATION NO. 2, 3, AND 4: Same remarks as per allegation No. 1 above.

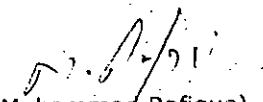
ALLEGATION NO. 5: The accused denied the charge. After examination of record, the witnesses Mr. Zulfiqar Khan, ACE (Secrecy), S Amjad Ali ACE (Conduct), Mr. Muhammad Taj, AO and Mr. Irshad Gul, cashier ABL Board Booth were called to record their statement. The three officers mentioned above, endorsed their witness to the admission statement signed by the accused to the effect that the accused put his signature on the said admission statement dated 6-3-1998 in their presence and was free from any pressure. In his admission statement the accused also requested that the case may be dealt with departmentally instead of handing over the case to Police. Furthermore, Mr. Irshad Gul, cashier ABL Board Booth once again confirmed his previous statement dated 17-3-1998 that Rs. 85,000.00 on account of mis appropriated sale proceeds of Gazette SSC (Annual) 97 was deposited vide R. No 107 dated 3-3-1998 133 dated 4-3-1998 76 dated 4-3-1998 and 130 dated 5-3-1998 by the accused (Mr. Amjad Hussain Shah) in collaboration with Malik Abdul Waheed S/Clerk (under Suspension) and Mr. Waqar Ali Ex. S/Clerk to make the loss good. On the other hand the accused failed to produce any solid proof to prove himself innocent; Hence the charge stands established.

14

ALLEGATION NO. 6: Same remarks as stated against allegation No. 1 and allegation No 5 above.

In view of the facts mentioned above, all the charges levelled in the charge sheet against the accused (Mr. Amjad Hussain Shah G. Operator) regarding gross Mis-conduct/Embezzlement/Mis-appropriation have been established.


(Jamil Akhter)
Chairman Enquiry Committee/
Assistant Professor G.P.G.C
Abbottabad.

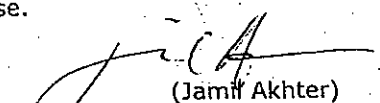

(Muhammad Rafique)
Member Enquiry Committee/
Lecturer G.P.G.C
Abbottabad.

Dated. 23.4.99

No. Eng -

Dated Abbottabad the 23 April 1999

Forwarded in Original to Prof. Sher Ali Khan. Authorized Officer/Controller of Examinations BISE Abbottabad alongwith all the relevant record for further necessary action please.


(Jamil Akhter)
Chairman Enquiry Committee/
Assistant Professor G.P.G.C
Abbottabad.

Attested
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BOARD OF INTERMEDIATE & SECONDARY EDUCATION ABBOTTABAD

No. ___/ADM/15/(A)95/BISE/ATD

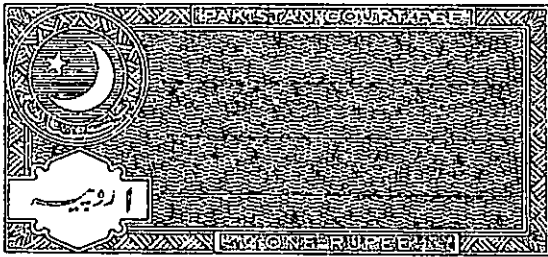
Dated: 9-7-99

Dismissal Order:

1. In the light of Judgement Order of Honourable Peshawar High Court (Circuit Bench) Abbottabad dated 13.1.1999, the option of Re-enquiry was exercised in the Gross Misconduct/Embezzlement/Mis-appropriation case against you, Amjad Hussain Shah, Gestetner Operator (Under Suspension).
2. Professor Sher Ali Khan Controller of Examinations Board of Intermediate & Secondary Education Abbottabad was appointed as Authorised Officer vide letter No. 1063/PS/BISE/ATD dated 10.2.1999. He, accordingly prepared, signed the Charge Sheet/Statement of Allegations and served upon you vide letter No. 2229-30/CE/BISE/ATD dated 11.2.1999. You (Amjad Hussain Shah, Gestetner Operator) were required to reply to the Charge Sheet within 14 days and also state whether you intend to be heard in person or otherwise. Enquiry Committee comprising of M/S Jamil Akhtar Asst. Prof. (Maths) Govt. Post Graduate College Abbottabad and Mr. Muhammad Rafique Lect. (Chemistry) Govt. Post Graduate College Abbottabad was constituted by the Authorised Officer.
3. Instead of furnishing a reply to the Charge Sheet, you submitted an application dated 25.2.1999, to stop the proceedings on the plea that you had challenged the Charge Sheet in the Honourable Peshawar High Court (Circuit Bench) Abbottabad. Neither there was any intimation or stay order from the Honourable Court, nor you produced a copy of petition to the High Court, therefore without legitimate reasons, the enquiry was allowed to proceed without interruption. A reminder bearing No. 1-2/CEC/GPC/ATD dated 3.3.1999, was issued by the Enquiry Committee for the submission of reply to Charge Sheet, which was received by you on 4.3.1999.
4. Instead of furnishing the reply of Charge Sheet to Enquiry Committee, you addressed the same to Authorised Officer indicating date of submission as 3.3.1999. Your reply to Charge Sheet was received by the Enquiry Committee on 13.3.1999 and by the Authorised Officer a few days before. You have deliberately altered the date of its receipt by Authorised Officer to create doubt and confusion.
5. You (Amjad Hussain Shah, Gestetner Operator) also submitted an application to the Authorised Officer showing your lack of confidence in the members of Enquiry Committee. The above application (back dated 16.2.1999) was despatched by you on 12.5.1999 under a registered cover bearing No. 529, which was received by the Authorised Officer on 14.5.1999. Since the enquiry had been completed and the Enquiry Committee had already submitted their findings/report, it was not possible to take cognizance of your application or reverse the process of enquiry proceedings at this juncture. It is also evident from the facts mentioned above, that you have attempted to avail the benefits of doubt through petty means so that the proceedings could be proved partial at a later stage.
6. The Enquiry Committee finalized the enquiry and furnished their report establishing the charges levelled against you (Amjad Hussain Shah, Gestetner Operator) as per Charge Sheet. Consequently, the Authorised Officer served upon you Show Cause Notice vide No. 029-30/CE/BISE/ATD dated 30.4.1999, alongwith a copy of Enquiry Report, directing you to furnish the reply within 14 days. Your reply to Show Cause Notice, received on 17.5.199, was examined and noted that the same was totally false and baseless. The Authorised Officer has, therefore, recommended in your case, the imposition of Major Penalty of "Dismissal" from Service under Rule 4(b) (iv) and 5(4) of E & D Rules 1973 and Board's Calendar.

Amjad Hussain Shah
3-7-99

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Thus, on the charge of Gross Misconduct/Embezzlement/Mis-appropriation of Funds, you (Amjad Hussain Shah, Gestetner Operator) are hereby Dismissed from Service with immediate effect under Board's Calendar and Rule 4(b)(iv) and 5(4) of E Rules 1973 N.W.F.P.

16

Prof. Muhammad Riaz

Authority/Secretary
Board of Intermediate
& Secondary Education
Abbottabad

Endt. No. 7-1b/ADM/15/(A)95/BISE/ATD

Copy forwarded for information and necessary action to:-

1. Prof. Sher Ali Khan Authorised Officer/Controller of Examinations BISE Abbottabad with reference to his report endorsement
2. Mr. Jamil Akhtar Asst. Prof. (Maths) Govt. Post Graduate College Abbottabad.
3. Mr. Muhammad Rafique lect. (Chemistry) Govt. Post Graduate College Abbottabad.
4. The Audit Officer BISE Abbottabad.
5. ✓ Mr. Amjad Hussain Shah Gestetner Operator BISE Abbottabad.
6. S.O(UE) Education Department N.W.F.P. Peshawar.
7. P.S to Governor N.W.F.P Peshawar.
8. Chairman Governor's Inspection Team N.W.F.P. Peshawar.
9. All Chairmen BISEs N.W.F.P.

Muhammad Riaz
19.7.95
Prof. Muhammad Riaz

Authority/Secretary
Board of Intermediate
& Secondary Education
Abbottabad

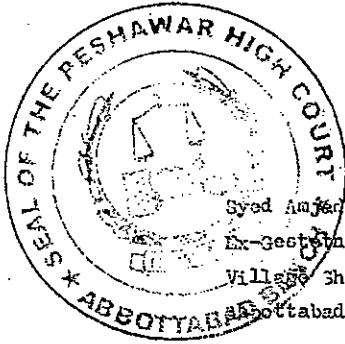
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Annexure F

17

IN THE PESHAWAR HIGH COURT, CIRCUIT BENCH, ABBOTTABAD.

W.P. 253 / 99



Syed Anwar Hussain Shah s/o Miskeen Shah,
Ex-Generator Operator B.I.S.E. Abbottabad r/o
Village Sheikhulbandi, Tehsil and District
Abbottabad,

PETITIONER

VERSUS

1. Board of Intermediate & Secondary Education
Abbottabad through its Secretary,
2. Chairman Board of Intermediate & Secondary
Education Abbottabad,
3. Professor Muhammad Riaz s/o Dost Muhammad
Secretary Board of Intermediate & Secondary
Education Abbottabad r/o Pakki Wchallah
Street No.1, Kehal Abbottabad,

RESPONDENTS



CONSTITUTIONAL PETITION under Article 199

of the Constitution of Islamic Republic of Pakistan, 1973
as amended up-to-date for declaration to the effect that
dismissal order bearing Enst: No.7-16/Admn./15 (A) BISE
Abbottabad dated 09.07.1999 is illegal, malafide and result of
personal grudge and the same with all subsequent actions
taken thereunder may graciously be set-a-side being
void and without lawful authority.

FILED TODAY

Addl Registrar
Peshawar High Court
Circuit Bench
Abbottabad.

29/8/99

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19.8.13

Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 A of the

Respectfully Saeweth:-

Brief facts giving rise to this petition are as under :-

1. That the petitioner was in the service of respondent
No.1 which is a statutory body created under Act No.V

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of 1990 having statutory Rules of Service. Copy of said Act is Annexure-A and that of Service Rules is Annexure-B.

- 2- That the petitioner has been serving in the Respondent Board for the last few years and his performance was upto the mark as nothing adverse against him is available in preceding Annual Confidential Reports.
- 3- That the petitioner was dismissed from his service through letter dated 28/3/1998 which was challenged in the High Court with success. Copies of dismissal order, writ petition and judgment are Annexures C, D & E respectively.
- 4- That while accepting the writ petition this Honourable Court did not debar the Respondents to hold fresh Inquiry, which they opted and the petitioner was served with fresh charge sheet through letter dated 11-2-1999, copy whereof is Annexure-F.
- 5 - That the petitioner questioned the validity of fresh charge sheet before this August Court in writ Petition No.41 of 1999, and the same was subsequently withdrawn. Copy of writ petition is Annexure-G and that of order is Annexure-H.
- 6- That respondents were informed to wait for the result of aforesaid writ Petition and to postpone the Inquiry proceedings but they refused and one sided Inquiry was conducted by a committee comprising of these very persons against whom the petitioner had already expressed his objection of no confidence. In this behalf, copy of application dated 16/2/1999 is Annexure-I.
- 7- Curiously enough, biased witnesses, were first called and examined in the absence of petitioner and then

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Circuit Bench
Abbottabad.

29/9/99

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Peshawar High Court
Abbottabad Bench.

Enforced Under Sec 75 Act 1973

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the latter used to be called if he had any question to put to them. The petitioner protested against this practice. In this way, full opportunity to direct cross-examination was not afforded and this circumstance alone vitiates the whole proceedings. Objection in this behalf is made in application, copy of which is Annexure-J.

- 8- That despite above the petitioner was served with a show cause notice, dated 30/4/1999, a copy whereof is Annexure-K. The petitioner accordingly submitted his reply thereto, in the shape of Annexure-L.
- 9- That the petitioner was shocked to receive Dismissal order, dated 9/7/1999, dismissing the petitioner from service, copy whereof is Annexure-M.
- 10- That feeling aggrieved of the impugned action of dismissal, dated 9/7/1999, the petitioner preferred an appeal on 16/7/1999, which was rejected outright. A copy of appeal is Annexure-N while that of order in this regard is Annexure-O.

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

GROUND:

(a). That the petitioner was dismissed with mala fide intention for his activities in the Employees Union as is evident from Annexure-P, on the allegation of misappropriation of Board's money received from the fee of admission forms and on sale of Result Gazette, whereas petitioner was never assigned such duties. Moreover, he was never entrusted with such money, thus the charge is groundless for lack of the essential element of entrustment.

(b). That the Inquiry was conducted by a committee

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Civil Bench
Abbottabad.

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Abbottabad Bench

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comprising of persons who themselves were under the influence of respondent No.3 with predetermined mind to penalize the petitioner at the instance of respondent No.3 and for whom objection of no confidence was already expressed.

(c). It is worth mentioning that the committee acted upon the previous proceedings against the petitioner which were quashed by this August Court and thus the entire action was void.

(d). That even the partisan and biased witness namely Amir Sultan disowned the statement attributed to him by the Inquiry Committee and except such evidence there is no tangible material against the petitioner.

(e). That no impartial and independent inquiry was conducted, rather the petitioner was victimized for ulterior motive and that the case was manipulated in the Board's office and the legal and legitimate request of the petitioner for the supply of the copies of the statements of witnesses was also denied. In this context, copy of application is Annexure-2.

(f). That the impugned action was beyond the authority of its maker.

(g). That the impugned order is illegal, malicious and unjust resulting in grave miscarriage of justice.

(h). That the impugned action proclaims loudly its own malafide. Malice in fact and in law, whether taken individually or collectively, vitiates the impugned order and the proceedings from which it has flown and spelt out.

(i). That the impugned action ^{is} ~~offences~~ against the provisions of Article-4 of the Constitution to enjoy the protection of law and to be treated in accordance with law which is an inalienable right of every citizen.

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Peshawar High Court
Circuit Bench
Abbottabad
24/8/95

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President of Court
Abbottabad Bench
Constituted Under Section 25 of Ordinance

- (j). That the impugned action is against the cardinal principles of natural justice as the petitioner has been condemned unheard and was deprived of right of cross-examination.
- (k). That the impugned action violently hits at the core of article-25 of the Constitution which enshrines that all citizens are equal before the law and are entitled to equal protection of law.
- (l). That the impugned action is arbitrary, unilateral, illegal and without lawful authority, calling for interference by this honourable court.

It is therefore, prayed that on acceptance of this writ petition this honourable court may graciously be pleased to set-a-side the impugned order dated, 9-7-1999 and actions taken thereunder and petitioner graciously be re-instated in his service with all back benefits.

Amjad
 Syed Amjad Hussain Shah
 PETITIONER

Through:

Tajul
 (BARDAR MUHAMMAD IRSHAD KHAN)
 ADVOCATE HIGH COURT,
 ABBOTTABAD.

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 12.8.13
 Examiner
 Peshawar High Court
 Abbottabad Bench
 Authorized Under Sec-75 Acts & Ordns)

FILED TODAY

Adil Registrar
 Peshawar High Court
 Circuit Bench
 Abbottabad

29/9/99

DATED: 29.9-1999

(BARDAR LAL KHAN ANWAR)
 ADVOCATE HIGH COURT,
 ABBOTTABAD.

Verification

Verified that the contents of the above petition are true and correct and nothing has been suppressed from this honourable court.

Amjad
 Syed Amjad Hussain Shah
 Petitioner.

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Signature
of counsel

Annexure (G)

MSL/117/117 R/117 Court No. 12 04/30/11/11

22

JUDGEMENT SHEET

IN THE PESHAWAR HIGH COURT,
BENCH ABBOTTABAD.

JUDICIAL DEPARTMENT

Writ Petition No. 253 of 1999.

JUDGEMENT

Date of hearing 26.9.2000 & 27.9.2000

Relitioner Shah
Appellant (S. Amjad Hussain) by Sardar Muhammad Irshad advocate.

Respondent (Board of Intermediate & Secondary Education & others) by Mr. Muhammad Aslam Khan and Rawad Saleh advocate.



MASIR-UL-MULK J. vide our detailed judgment of even date in writ petition No. 180/99 (Malik Abdul Waheed vrs The Board of Intermediate & Secondary Education Abbottabad etc) this writ petition No. 253/99 stands dismissed.

Nasir ul Mulk
Announced

30.11.2000

SO: JUDGES
[Signature]

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198/13
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Act, Ordns

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JUDGEMENT SHEET

IN THE PESHAWAR HIGH COURT,
BENCH ABBOTTABAD.

JUDICIAL DEPARTMENT

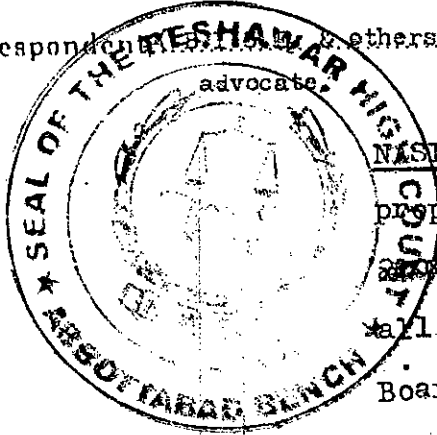
Writ Petition No. 180 of 1999.

JUDGEMENT

Date of hearing 26.9.2000 & 27.9.2000.

Petitioner Appellants (Malik Abdul Waheed) by Sardar Muhammad Irshad, advocate.

Respondents (others) by Mr. Muhammad Aslam Khan, advocate & Mr. Fawad Saleh, advocate.



NASIR-UL-MULK J. By this single judgment we propose to dispose of writ petition Nos. 180/99, 253/99 and 258/99. The petitioners in all the writ petitions were employees of the Board of Intermediate and Secondary Education (BISE) Abbottabad and they were dismissed from service, which they have impugned in their respective writ petitions.

2. Malik Abdul Waheed who has filed writ petition No. 180/99 served as Senior Clerk with B.I.S E and was also President of the Board Employees Union Abbottabad. In the year 1998 disciplinary action was taken against him. After he was charge-sheeted, inquiry was held and eventually dismissed from service on 28.3.1999. Departmental appeal against the order of dismissal was dismissed and the petitioner came to the High Court in writ petition No. 359/98. The writ petition was allowed on 13.1.1999 alongwith two other writ petitions filed by the petitioners, who have now filed writ petition No. 253/99 and 258/99. The entire inquiry proceedings were quashed on account of legal defects in the

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Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Acts Ordinance

conduct of the inquiry. The B.I.S.E was, however, allowed to hold fresh inquiry against the petitioner. Such inquiry was held. New charge-sheet was served on the petitioner on 11.2.1999, the validity of which was challenged in writ petition No. 208/99, but was subsequently withdrawn on 10.3.1999. The charge-sheet ~~was~~ inter-alia alleged that the petitioner;

- (a) had mis-appropriated Rs. 11,240/- received as examination fees from 26 candidates for 1997 Inter(supply) examination which amount was not deposited in the Board's account in the Bank and instead attached bogus bank receipts with the admission forms; and
- (b) In collaboration of Waqar Ali, Senior clerk and Amjad Hussain Shah Gestetner Operator obtained result Gazette of 1997 S.S.C (Annual) examination worth Rs. 85,000/- on the basis of bogus bank receipts.

Professor Muhammad Riaz , the Authorised Officer/ Secretary BISE, who had issued the charge sheet appointed a Committee of inquiry comprising of Shafiqur Rehman Associate Professor Post Graduate College Haripur as Chairman and Faridoon Khan Assistant Professor Govt: Post Graduate College Abbottabad as member . The Committee on 24.3.99 prepared its report and found all the charges against the petitioner established. On the strength of this inquiry report the petitioner was served with a show -cause notice on 27.3.1999, reply to which was submitted by the petitioner on 17.4.1999. The petitioner was eventually dismissed from service by order dated 24.4.1999 by the 'Authority' i.e. Chairman BISE. Appeal against the order of dismissal was preferred by the petitioner on 24.5.1999, which also met the same fate.

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Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Acts Ordms

The appeal was considered in a meeting of the Board members of the B I S E held on 23.6.1999 and dismissed. The petitioner, who had filed the writ petition on 23.6.1999 had impugned the order of dismissal dated 24.4.1999 only.

3. Writ petition No. 253/99 has been filed by Syed Amjad Ali Shah, the then Gestetner Operator BISE. Like Malik Abdul Waheed his earlier dismissal from service was challenged by him in writ petition No. 360/98 and was set aside alongwith other writ petitions. Thereafter fresh inquiry was held. The petitioner was charge-sheeted . The charges against the petitioner in substance were:

- (a) That he received Rs. 3595/- as admission fees from 8 candidates for the Intermediate(Supply) 1997 examination and that he submitted bogus bank receipts in support of the admission forms; and
- (b) that in collaboration with Malik- Abdul Waheed and Waqar Ali he received Rs. 85000/- for the Result Gazette of S.S.C(Annual) 1997 Examination and instead of depositing the same in the bank embezzled it and thereafter produced bogus bank receipts.

Mr. Jamil Akhtar, Assistant Professor, Government College Abbottabad and Mr. Mohammad Rafique lecturer of the same College were appointed inquiry Committee. Evidence was recorded and in its report dated 23.4.1999 the committee found the charges proved. Consequently show cause notice was issued by the Authorised Officer / petitioner on 20.4.99, reply to it was submitted by the petitioner on 17.5.1999.

The Authorised Officer recommended imposition of

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Abbottabad Bench
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major penalty of dismissal from service under Rule 4(b) (iv) and 5(4) of Efficiency and Discipline Rules 1973. The recommendation was accepted by the Authority and the petitioner was dismissed from service. Appeal to the Chairman BISE, the Appellate Authority, was dismissed on 23.6.1999. The petitioner has filed the present writ petition on 29.9.1999 challenging his dismissal from service.

4. Writ petition No.258/99 has been filed by Muhammad Irshad former Naib Qasid BISE who was also dismissed earlier in the year 1998, against which he filed writ petition No.358/98 which was accepted alongwith other writ petitions, the inquiry was set aside but the Board was allowed to hold fresh inquiry. Accordingly fresh inquiry was initiated and the charge-sheet was served on the petitioner. The allegations against the petitioner essentially were:

- (a) That having received admission fees of Rs. 1550/- from 5 candidates for Intermediate(Supply) 1997 examination he did not deposit the same into bank and instead produced fake receipts with the forms; and
- (b) That he made use of forged seals on the admission forms.

The Authorised Officer appointed Assistant Professor Jamil Akhtar and lecturer Mohammad Rafique as Inquiry Committee. After recording evidence the Inquiry Committee in its report dated 23.4.1999 found the charges established, the Authority, i.e. Secretary BISE accepted the

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Peshawar High Court
Abbottabad Bench
Authorized Under Section 75 Acts Ordinance

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recommendations of the Inquiry Committee and dismissed the petitioner from service on 9.7.1999. Appeal was submitted to the Appellate Authority i.e. Chairman BISE on 23.7.1999 which was dismissed on 23.7.1999. The present writ petition was filed on 6.10.1999 wherein the petitioner has challenged his dismissal.

5. The learned counsel representing the three petitioners contended that the entire departmental proceedings against the petitioners were based on malafide as Malik Abdul Waheed petitioner was President of the Employees Union of BISE and in that capacity time and again criticised the Administration for the irregularities committed by the Administration. In this context reference was made to the Press Cuttings of the meetings and Press Conferences held by the office bearers of the Union. It was thus argued that action taken in bad faith can be set aside on this ground alone. Reliance was placed ^{on} Ch: Muhammad Aslam vrs Amanullah (PLD 1990 Lahore 330), Karachi Development Authority vrs Wali Ahmed Khan (1991 SCMR 2434), Abdur Rauf vrs Abdul Hamid Khan and (PLD 1965 SC 671)/ a number of other judgments on the same point. The conduct of the inquiry was objected to on the ground that copies of statements of the witnesses were not provided to the petitioners; that the statement of Mst. Ulfat Jan, one of the witnesses was recorded in the absence of the petitioners and further that the petitioners departmental appeals were dismissed without giving the petitioners

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the opportunity of hearing. In support of these contentions the learned counsel relied upon Mian Nisar Ahmed Vrs Secretary, Government of Pakistan Ministry of Finance Islamabad (1997 P L C (C S) 396), Salih Muhammad Vrs WAEDA (1985 P L C (C S) 478), Shafique Ahmed Ansari Vrs Secretary to Government of Sind, Education Department (1984 P L C (C S) 527), S. Ajjal Shah Vrs. Government of N.W.F.P (PLD 1982 Peshawar 165), Sikandar Hayat Vrs. Deputy Inspector General of Police (1991 P L C (C S) 853), Khushi Muhammad Vrs. Zonal Manager(Punjab) Civil Aviation Authority Lahore (1990 P L C (C S) 304) and Tariq Maseed Vrs Supreme Court Enrolment Committee, Lahore High Court (PLD 1982 Lahore 6). As regards petitioner Malik Abdul Wahed. an additional ground was taken that the Appellate Authority, i.e. the Board, which heard and dismissed the departmental appeal of the petitioner was improperly constituted in that the Secretary of the Board, Muhammad Riaz, who also was the Authorised Officer, participated in the meeting of the Board that dismissed the petitioner's appeal.

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6. The learned counsel representing the Board raised a preliminary objection as to the maintainability of the writ petitions on the ground that there were no Statutory rules governing the services of the employees of the Board and therefore the relationship of the petitioners and the Board was that of 'master & servant', which was not amenable to writ jurisdiction. The learned counsel referred to Section.12(8)(iii) N.W.F.P Act V of 1990, under which X the Controlling Authority, i.e. Governor

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Peshawar Court
Abbottabad Bench
Authorized Under Sec 75 Act Ord

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NWFP or his nominee, has the exclusive powers to make Regulations concerning the Efficiency and Discipline of Employees of Board. Further reference was made to Section 20(i)(ii) of the Act which expressly excludes the powers of Board to make Regulations regarding Efficiency and Discipline of its employees. It was pointed out that the Controlling Authority had not made any Regulations for the Efficiency and Discipline of BISE and that the decision of the Board incorporated at page 169 of the calendar of the Board, to apply Fundamental Rules where the Board's rules are silent, was without lawful authority. The learned counsel therefore relied upon a number of judgments on the proposition that Constitutional petitions are not maintainable to enforce the rights arising out of relationship of 'master & servants'. Some of these judgments are ANWAR HUSSAIN VRS Agricultural Development Bank of Pakistan (PLD 1984 SC 194), Mrs. M N Arshad Vrs Miss Naeema Khan (PLD 1990 SC 612), R.T.H Janjua Vrs National Shipping Corporation (PLD 1974 SC 146) and Ms. Zeba Mumtaz Vrs First Women Bank Ltd (PLD 1999 SC 1106).

As regards merits the learned counsel submitted that after earlier writ petitions filed by petitioners were allowed by this Court, fresh inquiry was conducted and the defects in the previous inquiry removed. It was argued that petitioners participated in the inquiry proceedings and also cross examined the witnesses. That Mst. Ulfat Jan was examined in the absence

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Abbottabad Bench
Organized Under Sec 75 Acts Ordms

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Malik Abdul Waheed of the petitioner/ as he walked-out of the inquiry proceedings when her statement was being recorded. As to the allegations of malafide it was contended that serious charges of misappropriations were brought and established against the petitioners. The learned counsel referred to the conduct of the petitioners of trying to delay the conclusion of the inquiry proceedings by making unnecessary objections and applications as well as filing of writ petitions in this Court during the pendency of the fresh inquiry which ultimately were dismissed as withdrawn. The learned counsel pointed out that copies of the statements recorded by the Inquiry Committee were being supplied to the petitioners which they refused to receive. Reference was made to the correspondence between the petitioners and the Authorised Officer. The learned counsel relied upon the judgment of the Supreme Court of Pakistan in Azizur Rehman Vrs FATA Development Corporation (1988 SCMR 1944) and contended that writ petition No.180/99 filed by Malik Abdul-Waheed is liable to dismissal as he had not challenged the order passed in the departmental appeal, the result of which came to his knowledge during the pendency of the writ petition.

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7. We will take up the objection to the maintainability of the writ petitions first, which is based on the ground that the Board do not have any Statutory Rules which can be enforced through Constitutional petitions. The merit of this objection need not be gone into for a number of reasons. The disciplinary

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Abbottabad Bench
Authorized Under Sec 75 A & B Ord 1973

action taken by the Board itself was under the Government Servants (Efficiency and Discipline) Rules, 1973 as is revealed by the charge sheets as well as the orders of dismissal of the petitioners. The inquiry had proceeded on the premises that the employees were objected to the Disciplinary Rules applicable to Civil Servants in N.W.F.P. The Board had not taken up this plea in the earlier writ petitions which were therefore allowed on the assumption that the NWFP Efficiency and Discipline) Rules 1973 were applicable and it was on account of this assumption that the inquiry proceedings were set aside and the Board allowed to hold fresh inquiry. Further more the respondents have not even raised this plea in their comments but had taken it for the first time at the hearing of the writ petition. Additionally the acceptance of this objection made on behalf of the Board would amount to a declaration that the services of all the employees of the Board do not have statutory protection. Such a declaration would affect the services of the other employees. The contentions of the learned counsel for the respondents that no statutory service rules exist is based on section 12 (iii) and Section 29(ii) of the NWFP Act V of 1990 which only empowers the Controlling Authority and not the Board to make Regulations concerning Efficiency and Discipline of Officers. Thus even if the Board had unauthorisedly adopted the Efficiency and Discipline Rules of the Provincial Government the wrong exercise of power would only be regarding procedure to be followed in disciplinary action against the employees. The terms of

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 Abbottabad Bench
 Authorized Under Sec 75 Act 1973



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employment of the employees of the Board are not regulated by the Efficiency and Discipline Rules. It is therefore wrong to refer to the Efficiency and Discipline Rules for determining the nature of the service of the employees of the Board. The objection to the maintainability of the writ petitions is therefore over-ruled.

8. The previous writ petitions of the petitioners were allowed by this Court on the ground of irregularities committed during the inquiry against the petitioners, such as the improper appointment of the Authorised Officer and the members of the Inquiry Committee as well as making of dismissal order by an un-authorized officer and so also the dismissal of the appeals of Anjad Ali Shah and Muhammad Irshad petitioners by the Board whereas the Chairman was the Appellate Authority to have disposed of the same. From the proceedings of the fresh inquiry it appears that the earlier faults were not repeated. None was pointed out on behalf of the petitioners.

9. The thrust of the arguments for the petitioners is mala-fide of the respondents. Malik Abdul Waheed petitioner is stated to be the president of the Union of the employees of the Board. It is possible that in that capacity differences may have developed between him and the Administration. However, his position would not lead to the conclusion that the disciplinary action must have been taken against him on account of ulterior motive. If this contention of the petitioner is accepted it would amount to a declaration that no disciplinary action

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could ever be taken against members of the union as it could always be termed as malafide. To establish the plea of malafide the petitioner had to show something more than just being the President of the Union. The charge against the petitioner is that of misappropriation and not of any indiscipline which could be linked with the petitioner's office as President of the Union. The contentions relating to malafide thus fails not only as regards Malik Abdul Waheed but also regarding the other petitioners, who have been linked with Malik Abdul Waheed on the premises of malafide.

10. Regarding the inquiry against Malik Abdul Waheed it was also pointed out that one of the witnesses Mst.Ulfat Jan was examined in the absence of the petitioner. The position has been explained by the respondents in their comments that the petitioner though present at the time of recording the statement of the witness but walked out as a protest against the non acceptance by the Inquiry Committee of the plea of the petitioner that further proceedings be suspended till the decision in the writ petition filed in the High Court. This position taken by the respondents is not controverted by the petitioner. That being so the Inquiry Officer was right in not postponing the inquiry because the High Court had not passed any order of status-quo in the writ petition filed during the pendency of the inquiry and which was ultimately withdrawn. The petitioner therefore has no grouse as he had no justification for not participating in the proceedings when the statement of Mst.Ulfat Jan was being recorded.

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Peshawar High Court
Abbottabad Bench
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11. Another point was taken that the statements of the witnesses were not provided to the petitioners by the Authorised Officer after the show cause notices were issued to them. Alongwith the comments, filed in the writ Petition No. 180/99 of ~~vs~~ by Malik Abdul Waheed, the respondents had filed certain documents which reveals the deliberate attempt of the petitioner to ~~obstruct~~ ^{thwart} and delay the inquiry proceedings. After receipt of the report of the Inquiry Committee dated 24.3.1999 show cause notice was issued to the petitioner as to why action should not be taken on the report of the Committee which found the charges against the petitioner proved. The petitioner instead of replying to the show cause notice requested for the supply of statements of the witnesses by letter dated 27.3.1999. Another similar application was made on 9.4.1999 . The Authorised Officer by letter dated 12.4.1999 responded that the statements of the other witnesses had already been supplied to the petitioner by the Chairman of the Inquiry Committee whereas the statement of Mst.Ulfat Jan was being enclosed with the letter. On this letter dated 12.4.1999 it was noted by the ^{P.S to} Chairman that the petitioner refused to receive the letter. The letter was also sent through Registered Post, which the petitioner refused to receive. The show cause notice was issued on 27.3.1999 and reminder given through letter dated 10.4.1999 yet no reply was submitted by the petitioner. In such circumstances the Authorised Officer had no option but to proceed with the case in absence of reply by the petitioner to the show cause notice. The other two petitioners i.e. Anjad Ali Shah and Muhammad Irshad did reply to

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the show cause notices and their explanations were not found satisfactory by the Authorized Officer.

12. The objection to the constitution of the Board for disposing of appeal of Malik- Abdul Waheed on the ground that Authorized Officer, i.e. Secretary of the Board, participated in the meeting of the Board has no force. He is not a member of the Board, the constitution of which is stated under section 5 of the Act. As Secretary of BISE he acts as Secretary of the meeting of the Board and does not participate in its deliberations or voting. The factual findings of the Inquiry Committee were not seriously contested and in deed they could not be questioned/ⁱⁿ Constitutional petition. There was no flaw in the conduct of the inquiry. The petitioners were provided ample opportunity to cross examine the witnesses. Thus no exception can be taken to the Inquiry proceedings. At the hearing of the writ petitions it was, however, argued that the petitioners were not given personal hearing by the Appellate Authority before disposing of their appeals. No such ground had been taken in the writ petitions so as to provide an opportunity to the respondents to comment upon it in their comments. The memo. of appeals filed alongwith the writ petitions also do not include the request for personal hearing. In fact Malik Abdul Waheed had filed his writ petition even before his appeal had been decided. This contention thus also fails.

13. The learned counsel for the petitioners has, after the judgments in the case were reserved

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furnished a copy of the judgment of this Court in writ petition No. 743/97 in which the dismissal orders of the petitioner therein, an employee of the Board of Intermediate and Secondary Education Swat, was set aside. It is true that in that case too the petitioner was President of the Joint Association of the NWFP Secondary Boards Employees, however, the decision was made on the ground that the petitioner therein was, during an early inquiry, was declared innocent and in the findings in the second inquiry also did not unequivocally declare the petitioner guilty. In the present case there has been clear finding of guilt against the petitioner.

14. For the reasons above stated we do not consider that the petitioners had made out a case for interference of this court in its Constitutional jurisdiction. The writ petitions are therefore dismissed with no order as to costs.

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Abbottabad Bench
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30.11.2000.

SD: JUDGES

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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PRESENT

Annexure A,

MR.JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY
MR.JUSTICE HAMID ALI MIRZA
MR.JUSTICE TANVIR AHMED KHAN

CIVIL PETITIONS FOR LEAVE TO APPEAL NO.583 AND 1145 OF 2001.

(On appeal from the judgment dated
30.11.2000 of the Peshawar High Court,
Abbottabad Bench, Abbottabad, passed
in Writ Petitions No.180/99, 253/99 and
258 of 1999)

Syed Amjad Hussain Shah Petitioners
(C.P.No.583 of 2001)
Malik Abdul Waheed
(C.P.No.1145/2001)

Versus

Board of Intermediate & Secondary Respondents
Education, Abbottabad & others

For the petitioners: Mr.Abdur Rashid Awan, ASC with
Mr.M.A.Zaidi, AOR.

Respondents: Not represented.

Date of hearing: 8th January, 2002.

ORDER

TANVIR AHMED KHAN, J. Both these petitions are directed
against a common judgment dated 30.11.2000 passed by a learned
Division Bench of the Peshawar High Court, Circuit Bench at
Abbottabad, whereby their respective writ petitions against their
dismissal from service were dismissed.

The facts briefly stated for the disposal of these petitions are
that the petitioners along with one Muhammad Irshad, who were
employees of the Board of Intermediate & Secondary Education,
Abbottabad (hereinafter referred to as the BISE), were charge-sheeted for

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

misappropriation as they received examination/admission fees from different candidates by issuing fake receipts. Enquiries in these cases were conducted and the petitioners were dismissed from service on different dates by the BISE. Against their dismissal, the petitioners filed different writ petitions in the Peshawar High Court, which were allowed through an order dated 13.11.1999, whereby enquiry proceedings conducted against them were quashed on account of legal defect in the conduct of the enquiries. The BISE was, however, allowed to hold fresh enquiries against the petitioners.

Subsequently, fresh charge-sheets were issued to the petitioners. In case of petitioner Malik Abdul Waheed, Professor Muhammad Riaz, the Authorised Officer/Secretary of BISE, issued charge-sheet and appointed enquiry committee comprising Mr.Shafiqur Rehman, Associate Professor, Postgraduate College, Haripur, as the Chairman and Mr.Faridun Khan, Assistant Professor, Postgraduate College, Abbottabad, as Member. In case of petitioner Syed Amjad Hussain Shah, the Authorised Officer, appointed enquiry committee comprising Mr.Jameel Akhtar, Assistant Professor, Government College, Abbottabad, and Mr.Muhammad Rafiq, Lecturer of the same College. The respective enquiry committees recorded evidence and found the charges against the petitioners proved. The Authorised Officer on receipt of the enquiry reports issued show cause notices and recommended the imposition of major penalty of dismissal from service upon the petitioners. The Authority on receipt of recommendations of the Authorised Officer dismissed the petitioners from service. The appeals preferred by the petitioners to the Chairman of the BISE, being the appellate authority, were dismissed. The petitioners then filed writ petitions in the Peshawar High Court, which have been dismissed through the impugned judgment dated 30.11.2000. Hence, - these petitions for leave to appeal.

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Supreme Court of Pakistan
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We have considered the contentions of the learned counsel for the petitioners and have gone through the well-reasoned judgment of the learned Division Bench of the Peshawar High Court. We have noticed that the charges against the petitioners were found established during the course of enquiries. The arguments of the learned counsel that action against the petitioners had been taken in a mala fide manner and they were not provided copies of the statements of the witnesses and further the statement of Mst.Ulfat Jan was recorded in the absence of the petitioners, have not been substantiated during the course of the arguments. The plea of mala fide has been baldly raised by the petitioners and was not substantiated during the course of arguments before the learned Division Bench. Simply because Malik Abdul Waheed petitioner was President of the Employees Union of BISE, it cannot be presumed without there being cogent particulars that action had been taken against him in a mala fide manner. On the contrary, it is established on record that the petitioners were non-cooperative during the course of enquiry proceedings and they tried every aspect to thwart the proceedings initiated against them. It is reflected from the record that while the statement of Mst.Ulfat Jan was being recorded, Malik Abdul Waheed petitioner boycotted the proceedings and walked out as a protest. The other plea of the petitioners that they were not supplied the statements of the witnesses is also devoid of any force. In this regard it would be apt to reproduce the determination of the learned Division Bench of the High Court whereby this stance taken by the petitioners was rejected. The same reads as under:-

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"Another point was taken that the statements of the witnesses were not provided to the petitioners by the Authorised Officer after the show cause notices were issued to them. Along with the comments filed in the writ petition No.180/99 of Malik Abdul Waheed the respondents had filed

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ISLAMABAD

certain documents which reveal the deliberate attempt of the petitioner to thwart and delay the inquiry proceedings. After receipt of the report of the Inquiry Committee dated 24.3.1999 show cause notice was issued to the petitioner as to why action should not be taken on the report of the Committee which found the charges against the petitioner proved. The petitioner instead of replying to the show cause notice requested for the supply of statements of the witnesses by letter dated 27.3.1999. Another similar application was made on 9.4.1999. The Authorised Officer by letter dated 12.4.1999 responded that the statement of the other witnesses had already been supplied to the petitioner by the Chairman of the Inquiry Committee whereas the statement of Mst.Ulfat Jan was being enclosed with the letter. On this letter dated 12.4.1999 it was noted by the P.S. to Chairman that the petitioner refused to receive the letter. The show cause notice was issued on 27.3.1999 and reminder given through letter dated 10.4.1999 yet no reply was submitted by the petitioner. In such circumstances the Authorised Officer had no option but to proceed with the case in absence of reply by the petitioner to the show cause notice. The other two petitioners i.e. Amjad Ali Shah and Muhammad Irshad did reply to the show cause notice and their explanations were not found satisfactory by the Authorised Officer."

It is pertinent to mention here that Malik Abdul Waheed petitioner even did not submit reply to the show cause notice issued to him after the conclusion of the enquiry by the Authorised Officer. Furthermore, as reflected from the record, he filed writ petition in the Peshawar High Court even before his appeal was decided by the appellate authority. All this shows that the petitioners were dealt strictly in accordance with law and the rules and they were afforded full

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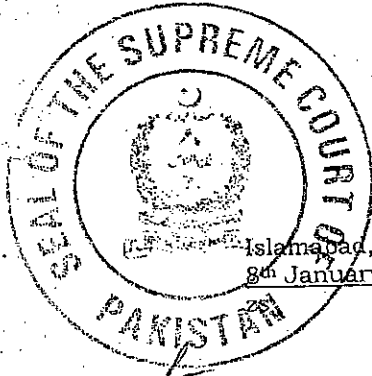
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opportunity to put up their case. At the cost of repetition, it may be stated that their main aim was to prolong the enquiry proceedings and to frustrate the same by resorting to undue pressure of unionism.

For the foregoing reasons, both the petitions being without any merit are dismissed and leave to appeal is refused. -

Ret. Justice Muhammad Chaudhry, J
Ret. Justice Asif Muneer, J
Ret. Justice Anwarul Karim, J



15-1-2002

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

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GR No:	5696/13	Civil/Criminal
Date of Presentation:	2.5.13	
No. of Words:		1500
No. of Follies:		
Requisition Fee Rs:	8.00	
Copy Fee in:	8.30	
Court Fee stamps:	14.80	
Date of Completion of Copy:	16/5/13	
Date of delivery of Copy:		
Compared by/Prepared by:		
Received by:		

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Charge sheet.

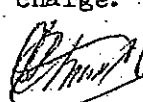
- State Versus:-
- 1) Malik Abdul Waheed, s/o Malik Mohammad Gharib, r/o Mohallah Kholia Keyal, H.No. 320/21, Senior clerk, BISE, Abbottabad.
 - 2) Waqar Ali s/o Zulfiqar Ali, r/o Mohallah Keyal, Attd., Senior clerk, BISE, Attd. .
 - 3) Amjad Hussain shah s/o Miskeen shah r/o Sheikhul Bandi, Gestatnor Operator, BISE, Abbottabad.
 - 4) Mohammad Irshad s/o Anwar shah, r/o Botigram, Serikot, Naib Qasid, BISE, Attd. .
 - 5) Syed Baddr Hussain s/o Ahmed shah r/o Tori sharif Boui, Naib Qasid, BISE, Attd. .
 - 6) Mohammad Nisar s/o Mohammad Amin, r/o Botigram, Serikot, Distt: Haripur, Naib Qasid, BISE, Abbottabad.

I, Ghulam Mohyuddin Malik, Special Judge, Anti-Corruption NWFP (Camp at Abbottabad) hereby charge you accused named above as follows: -

That you accused Malik Abdul Waheed, Waqar Ali, the then senior clerks, Amjad Hussain shah, Gestatnor operator, Mohammad Irshad, Syed Baddr Hussain and Mohammad Nisar the then Naib Qasids in the office of Board of Intermediate and Secondary Education (BISE), Abbottabad by abusing your official position as public servant received a sum of Rs. 85,000/- as sale proceedg of Gazette result and under head admission form received a sum of Rs. 31,255/- from candidates/students in the year 1997 and place/on record fake, fictitious and bogus bank receipts dishonestly and thereby embezzled and misappropriated the aforesaid amount by causing wrongful loss to the government ex-chequer and corresponding gain to yourselves.


By doing so you have committed an offence punishable u/s 409/420/468/471/109/PPC read with section 5(2)Pc Act and within my cognizance.

And I hereby direct that you accused be tried by me on the above charge.


Special Judge,
Anti-Corruption NWFP.

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Attd.

TESTED

BY 
Court of Special Judge
Anti-corruption
NWFP, Peshawar.
24/1/98



The charge has been read over and explained to the accused.

Q. Have you heard and understood the above charge ?

A. Yes.

Q. Do you wish to plead guilty or claimed trial ?

A. I do not plead guilty and claimed trial.

RO & AC.

Malik Abdul Waheed.

Waqar Ali.

Amjad Hussain Shah.

Mohammad Irshad.

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EX JUDICE
Court of Special Judge
Anti-Corruption
NWFP, Peshawar.

2/11/01

Baddar Hussain.

Mohammad Nisar.

(Certified that the above mentioned examination of the accused is taken in my presence, hearing and that the record contains the account of the statement made by accused)

Abbottabad.
11.7.2001.

Special Judge,
Anti-Corruption NWFP (Camp at Atd:

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Annexure J

43

In the Court of Sharif Ahmad, Senior Special Judge, Anti-Corruption NWFP, (Camp at Abbottabad).

Case No.128 of 2004.

Date of Decision.19.04.2007.

State.....Versus:

- 1) Malik Abdul Waheed,
S/o Malik Mohammad Gharib, ✓
R/o Mohallah Khola Keyal,
H.No.320/21, Ex-Senior clerk,
BISE Abbottabad.
- 2) Waqar Ali s/o Zulfiqar Ali,
R/o Mohallah Keyal, Atd.,
Senior clerk, BISE Abbottabad.
- 3) Amjad Hussain Shah,
S/o Miskeen Shah,
R/o Sheikhul Bandi, Gestetnor
Operator, BISE Abbottabad.
- 4) Mohammad Irshad s/o Anwar Shah,
R/o Botigram, serikot, Naib Qasid,
BISE Abbottabad.
- 5) Syed Baddar Hussain s/o
Syed Ahmad shah r/o Tori Sharif boui,
Naib Qasid, BISE, Abbottabad.
- 6) Mohammad Nisar s/o Muhammad Amin,
R/o Botigram, serikot, Dist: Haripur,
Naib Qasid, BISE, Abbottabad.

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Court of Special Judge
Anti-Corruption
NWFP, Ferozpur.

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19/4/07
SPECIAL JUDGE
Corruption NWFP
Ferozpur

Case FIR No.04 dt: 11.05.1998 U/s 409/420/468/471/109/PPC read with section 5(2)PC Act of P.S. ACE, Abbottabad.

Judgement:-

The accused Malik Abdul Waheed, Waqar. Ali, Amjad Hissaom Shah, Muhammad Irshad, Syed Baddar Hussain and Muhammad Nisar were employees in the Board of Intermediate and Secondary Education (BISE) Abbottabad. It was noticed in the year 1998 that sale proceed of the SSC Annual Gazette sold by controller of examination was less than the estimated receipts. This prompted a probe to scrutinize the receipts which resulted in discovery that misappropriation through bogus and fake receipts

had been made. As a result of this probe the matter was referred to ACE by the Secretary BISE Abbottabad through its letter No.1330 of 21.4.98. Permission was granted by the Director ACE vide letter No.2188 of 25.4.98 and subsequently case was registered on 11.5.98 against the above stated 6 accused i.e. Malikk Abdul Waheed, Waqar Ali senior clerks, Amjad Hussain Gestatnor operator and Muhammad Irshad, Syed Baddar Hussain and Muhammad Nisar Naib Qasids.

Allegations are that Malik Abdul Waheed pocketed Rs.11,240/-, Waqar Ali pocketed Rs.10,510/- and Amjad Hussain Shah pocketed Rs.3,595/- on account of SSC 1997 examination admission forms by wrong verification of bogus bank receipts. Joint allegations against all these three accused, besides the above are that they, in connivance with each other, misappropriated Rs.85,000/- result gazette proceed, by using bogus and fake bank receipts. Allegations against Muhammad Nisar, Muhammad Irshad and Syed Baddar Hussain accused are that they pocketed Rs.2830/-, Rs.1550 and Rs. 1530/- respectively received from the candidates using bogus and fake receipts on record. Per contents of the original report on which the FIR is based, the accused admitted their guilt before the probing body, deposited the amount in favour of the board and prayed for clemency in course of inquiry.

Besides above, another inquiry was initiated on the basis of source report as the matter found place in press which inquiry was however subsequently merged into this case as FIR was registered. As a result of departmental action, the accused were dismissed from service, appeal against dismissal order preferred to the chairman of the board met failure. Writ petitions however succeeded and the inquiry proceedings were quashed allowing the board authorities, however, to initiate fresh proceedings/inquiry according to the law (Ref: judgement of 13.1.99 delivered in writ petition No.360/98).

Investigation was conducted and challan was submitted against the accused. Trial commenced and charge was framed to

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EXAMINER
Writ. of Special Judge
Anti-corruption
W.P.P. Faisalabad.
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SPECIAL JUDGE
Anti-Corruption N.W.F.P.
Faisalabad

which all the accused plead their innocence and prosecution evidence was recorded.

Resume of the prosecution evidence is as follows:-

Professor Muhammad Riaz PW-1 was Secretary BISE Abbottabad on whose report the present case was registered. He confirmed his report Ex.PW1 as correct. He referred to inquiry report according to which the accused had embezzled Rs.85,000/- on account of gazette sale proceed and Rs.31,255/- on account of examination forms using fake and bogus bank receipts. According to the witnesses the accused refunded the embezzled amount to the board account and resultantly they were dismissed from service. He confirmed provision of the incumbency list Ex.PW1/1 to the I.O. and the record mentioned in Ex.PW1/2. In his cross examination he admitted that the gazette copies were sold by the controller of examination; the accused were not authorised to sell the gazette. It was further admitted that according to the rules the fee had to be remitted to the secretary of the board and the accused were not competent to receive the fee from the candidates. He further admitted that on transfer of the controller Sagheer Hussain Shah (PW-4) a sum of Rs.1,15,000/- was shown as arrears in his LPC on account of gazette proceed. According to the witness he was not present at the time of inquiry proceedings and the admission about the guilt was not made before him. He deposed that he know nothing about the author of the forged receipts as these were not prepared in his presence.

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EXAMINER
Court of Special Judge
Anti-corruption
NWFP, Peshawar.

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SPECIAL JUDGE
Anti-Corruption N.W.F.P.
Peshawar

PW-2 Muhammad Ilyas DSP was C.O. ACE Abbottabad in the relevant days. He conducted partial investigation, procured record from BISE through recovery memo Ex.PW2/2 sent in response to a letter Ex.PW2/1. He collected ABL bank receipts through recovery memo Ex.PW2/3 and procured written statement of Irshad cashier Ex.PW2/4. He prepared final report Ex.PW2/5 and after approval of committee No.3 Ex.PW2/6 submitted challan in the case for trial. Prior to him Jehanzeb, Shamsur Rehman and Alamzeb had conducted investigation. He admitted that he had not collected record about refund/deposit of fee in the bank. He

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deposed that he had not seen as to who had deposited/returned the money in the bank.

PW-3 Muhammad Taj was audit officer BISE Atd: in the relevant days. According to him the concerned candidates were called when certain dubious receipts were noticed who pointed out the accused employees as receipts of the admission fee. According to the witness the accused Abdul Waheed, Waqar Ali and Amjad Hussain shah admitted receipt of sale proceed of the gazette in their admission Ex.PW3/1, Ex.PW3/2. & Ex.PW3/3 and in course of inquiry deposited the embezzled amount voluntarily. The witness confirmed inquiry report Ex.PW3/4 as correct and similarly Ex.PW3/5 & Ex.PW3/6. The witness, in his cross examination admitted that the gazette copies remain in custody of controller and accused had no concerned with the sale proceed of the gazette.

PW-4 Sagheer Hussain, Assistant Professor was authorised officer in the departmental inquiry who issued show cause notice Ex.PW4/1 to the accused Abdul Waheed, Amjad Hussain shah and Waqar Ali and constituted an inquiry committee which committee submitted its report and the witness forwarded this report alongwith his findings Ex.PW3/6. The witness, in his cross examination, admitted that the High Court gave a decision in the matter. He also admitted that the gazette copies were in the custody of secrecy branch under his charge and that he (the witness) had not delivered any gazette copy to any of the accused.

PW-5 Sajid khan was C.O. ACE Abbottabad. He is marginal witness to recovery memo Ex.PW2/2 vide which the I.O. took into possession the documents Ex.P-1 to P-35 and he confirmed his signature on the same.

PW-7 Irshad Gul was cashier ABL BISE Atd: branch in the relevant days and according to him the accused deposited in the bank the embezzled amount. He confirmed his written statement Ex.PW2/4 given to the C.O. ACE. In his cross examination he

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Court of Special Judge
Anti-corruption
NWFP, Peshawar.

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[Handwritten mark]

admitted that the candidates are required to deposit their fee in the bank.

PW-8 Jehanzeb was C.O. ACE Atd: during the relevant days. He by Ex.PA/1 procured permission of the Director ACE and registered FIR Ex.PA. In his cross examination he admitted that no candidate from whom the accused had received the fee was examined in course of investigation and the investigation conducted by the secretary was relied upon in course of investigation.

PW-9 Fida Muhammad C.O. ACE, submitted supplementary challan against the accused Muhammad Nisar.

PW-10 Alamzeb the then C.O. ACE Atd: obtained 204 Cr. PC. Warrant against one absconding accused Muhammad Nisar.

PW-11 Muhammad Hashim ADC, ACE Hazara division conducted raid on 13.5.98 at BISE office and procured attested copies of the relevant record. He confirmed his signature on the raid report Ex.PW11/1.

PW-12 Bibi Rabia a candidate paid money to be deposited with the BISE in 1997 but she could not recall name of the receipt ^{employee}. This amount was not deposited and she had to re-deposit the amount. Similar is the case of PW-13 Mst: Memona Bibi. PW-13 & Sohail Khurshid PW-14 (whose brother Bilal Khurshid had handed over money to the BISE employee for deposition).

PW-18 to 53 mentioned in the calander of witnesses were abandoned as the I.O. had not recorded their statement u/s 161 Cr. PC and the prosecution evidence was closed.

In their statements recorded u/s 342 Cr.PC, all the accused denied the allegations. They denied receipt of amount from any of the candidate and pocketing the gazette sale proceed. They denied any admission before the inquiry committee and return of the embezzled amount.

TESTED

EX. JUDGE
no. of Special Judge
Anti-corruption
F.P.P., Rawalpindi
26/5/08

Attested
Attested

Signature
19/4/07
SPECIAL JUDGE
Anti-Corruption F.P.P., Rawalpindi

Sheikh Zahoor Ahmed APP Atd: on behalf of the prosecution and defence counsel were heard in detail and the record was gone through.

The accused, all the 6, were employees in the BISE Abbottabad which is an established fact. The allegations against all the six are that they pocketed the money which they received from the candidates as examination admission fee and placed on file bogus receipts. An amount of Rs.11,240/-, Rs.10,510/-, Rs.3595/-, Rs.2830/-, Rs.1550/- and Rs.1530/- has been attributed to the accused Abdul Waheed, Waqar Ali, Amjad Hussain, Muhammad Nisar, Muhammad Irshad and Syed Baddar Hussain Shah, respectively, on this account. It is evident from the recorded evidence that any one of the accused charged on this account had hardly ^{any} concern with the admission process. Abdul Waheed and Waqar Ali and senior clerk, Amjad Hussain gestatnor operator and rest three accused are Naib Qasid. The prosecution fails to convincingly bring on record the modus operandi adopted by the accused which matter is imperative when seen in the context of status of the accused who had otherwise no approach to such record and especially the Naib Qasid and gestatnor operator accused. Except PW-12, 13 & 14 no one of the scores of candidates has been produced as PW to confirm receipts of amount by the accused. PW 12, 13 & 14 stated nothing favourable or significant to the prosecution version on this account. An admitted position is that it were for the candidates to deposit the admission fee in the bank in the name of secretary board. The accused had no concern with the process and the candidates never complained of a foul played to them. In such a position the accused against whom no otherwise incriminating evidence, has been produced can be held responsible.

TESTED

EXAMINER
Court of Special Judge
Anti-Corruption
NWFP, Peshawar

24/5/08

Attested
M. Shad

[Signature]
24/4/08
Court of Special Judge
Anti-Corruption
NWFP, Peshawar

The accused Malikk Abdul Waheed, Waqar Ali, Amjad Hussain have further been charged for pocketing Rs.85,000/- from proceed of gazette copies. The concerned prosecution witnesses are however unanimous on the point that the gazette copies were in the custody of the secrecy or controller and no one of these three

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accused had any concern or approach to the stuff. It has not been proved that any of these three accused were officially connected to the sale of gazette proceed and they officially played any role in this regard. This lacuna give rise to so many questions favourable to the accused.

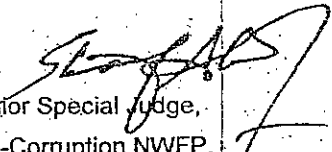
These facts make out a position in which it could not be safely held that the prosecution has discharged its duty to prove the allegations against the accused beyond shadow of doubt and the accused all the six deserve to be extended with the benefit of doubt.

In these circumstances, all the 6 accused named above are acquitted from the charges levelled against them. They are on bail and their bail bonds shall stand discharged.

The case property, be kept intact till the expiry of the period of limitation, prescribed for appeal/revision.

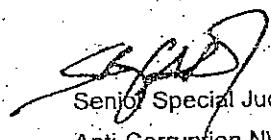
File be consigned to the record room after its necessary completion.

Announced.
Abbottabad.
19.04.2007.


Senior Special Judge,
Anti-Corruption NWFP,
(Camp at Abbottabad).

Certificate.

Certified that this judgement consists on Seven pages. Each page has been corrected and signed by me wherever necessary.


Senior Special Judge,
Anti-Corruption NWFP,
(Camp at Abbottabad).

TESTED

EXAMINED
Special Judge
Anti-corruption
NWFP, Peshawar.
24/04/08

Attested
M. H. Jhal

Annexure K,

بخدمت جناب چیئرمین صاحب بورڈ آف انٹرمیڈیٹ اینڈ سیکنڈری ایجوکیشن ایبٹ آباد

درخواست بمراد حکم صادر فرمانے بحالی سائل در ملازمت بمعہ جملہ قواعد ملازمت۔

جناب عالی! بیان درخواست درج ذیل ہے۔

- ۱۔ یہ کہ سائل B.I.S.E ایبٹ آباد میں مورخہ 07-01-1993 کو بطور Gestetner Operator بھرتی ہوا اور بھرتی ہونے کے بعد اپنے فرائض منصبی خوش اسلوبی سے با احسن ادا کرتا رہا۔
- ۲۔ یہ کہ سائل ادارہ ہذا میں اپنی یونین کا سیکرٹری تھا اور سائل کی اس وقت کی انتظامیہ سے جائز مطالبات کی بناء پر اختلافات پیدا ہوئے جنہوں نے سائل کو ایک جھوٹے اور من گھڑت مقدمہ میں نوکری سے برطرف کر دیا اور سائل کے خلاف ایف۔آئی۔ آر نمبر 4 مورخہ 14 مئی 1998ء کو درج کروائی۔
- ۳۔ یہ کہ سائل کے خلاف ایٹنی کرپشن کورٹ میں مقدمہ چلا رہا اور بعد از قلمبندی شہادت سائل کے خلاف لگایا گیا الزام ثابت ہونے پر سائل کو مورخہ 19-04-2007 کو باعزت بری کر دیا۔ نقل فیصلہ لف ہے۔
- ۴۔ یہ کہ سائل کو جس الزام کی بناء پر سروس سے Terminate کیا گیا اور وہ الزام ثابت نہ ہونے کے بعد اور اپیلانٹ کا اس مقدمہ میں اس الزام میں باعزت بری ہونے کے بعد سائل اپنی سروس پر بعد از فیصلہ عدالت بمعہ جملہ قواعد ملازمت کے بحال ہونے کا حقدار ہے۔
- ۵۔ یہ کہ سائل نے سروس سے Terminate ہونے کے بعد عدالت سے فیصلہ ہونے تک تا حال نہ تو کوئی سرکاری اور نہ ہی کوئی پرائیویٹ کام کیا ہے۔ بلکہ سائل نے روزگار ہے۔

Attested
Attest

27-4-2007

لہذا استدعا ہے کہ سائل کو اپنی سروس پر بحال ہونے کے احکامات صادر فرمائے جاویں۔

سائل آپ کی عمر درازی و بلند فرتیہ کا دعا گو رہے گا۔

المقوم ایبٹ آباد

Sd/

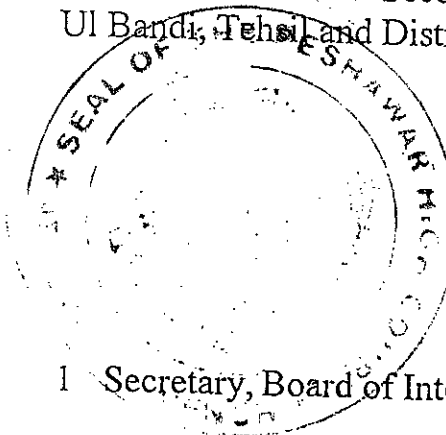
سائل سید امجد حسین شاہ ملازم سابقہ B.I.S.E ایبٹ آباد

(51) 2

Annexure L,
IN THE PESHAWAR HIGH COURT ABBOTTABAD BENCH.

Writ Petition No: 712.A of 2013

Syed Amjad Hussain Shah S/O Miskeen shah, Ex Gestetner Operator, Board of Intermediate and Secondary Education Abbottabad R/O Village Sheikh Ul Bandi, Tehsil and District Abbottabad.



Petitioner

Versus

- 1 Secretary, Board of Intermediate and Secondary Education Abbottabad.
- 2 Chairman, Board of Intermediate and Secondary Education Abbottabad.

Respondents

20/9/13

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973, FOR DECLARATION THAT UNDER THE LAW, RESPONDENTS ARE BOUND TO DECIDE THE APPLICATION RECEIVED BY THEM DATED 27/04/2007, SUBMITTED BY PETITIONER FOR HIS RE-INSTATEMENT IN SERVICE WITH ALL BACK BENEFITS, AFTER HIS ACQUITTAL ON 19/04/2007, FROM CRIMINAL CASE BY COMPETANT COURT OF LAW I.E. SENIOR SPECIAL JUDGE ANTI CORRUPTION K.P.K, CAMP COURT ABBOTTABAD I.E. SENIOR SPECIAL JUDGE ANTI CORRUPTION K.P.K, CAMP COURT ABBOTTABAD.

Respectfully Sheweth,

FACTS

- 1) That the petitioner was serving as Gestetner Operator in Board of Intermediate and Secondary Education Abbottabad, was dismissed from service on 09/07/1999 after biased and one sided departmental enquiry proceedings, similarly respondent no 1 also submitted written report to Anti-corruption establishment Abbottabad under the quite same allegations which were based for dismissal from service, and case FIR

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14/12
20/9/13
20-9-13
Attached
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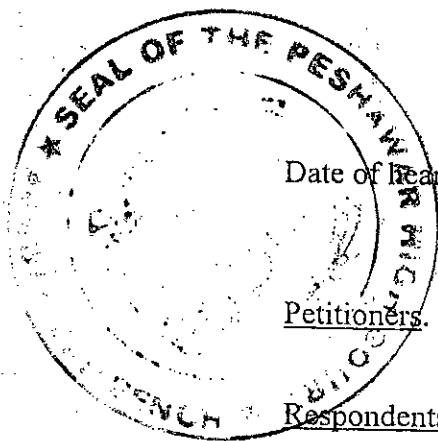
Judgment Sheet

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

WP. No. 712-A/2013.

JUDGMENT



Date of Hearing.....-03.10.2013.....

Petitioners. (Syed Amjad Hussain Shah in person.....

Respondents.

WAQAR AHMED SETH J. Syed Amjad Hussain

Shah, seeks constitutional jurisdiction of this court praying

that:-

Petitioner's writ petition may kindly be accepted and respondents be directed to reinstate in servicer with all back benefits by deciding the application for reinstatement in service dated 27.4.2007 according to law within reasonable time in the interest of justice. Any other relief for which the petitioner is entitled and the same is not

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Court
Abbottabad Bench
[Signature]

asked/prayed specifically may kindly be granted in favour of the petitioner too."

2. In essence, the grievance of the petitioner is that the petitioner was appointed as Gestetner Operators on regular basis in Board of Intermediate & Secondary Education, Abbottabad. That the petitioner was dismissed from service on the basis of ex parte proceedings and departmental inquiry. This dismissal order was challenged by the petitioner through a writ petition before this Bench which was dismissed on 30.11.2000. That the petitioner filed an appeal before the Supreme Court against the judgment and order of this court vide CPLA No. 1145 which was also dismissed on 08.1.2002. However, the petitioner was acquitted by the learned Special Judge, Anti Corruption, KPK vide judgment and order dated 19.4.2007 which order has not been appealed against, therefore, the same has attained finality and the petitioner is entitled to be re-instated in service. That the petitioner after acquittal by the learned Special Judge Anti Corruption, submitted an application on 27.4.2007 to the Secretary BISE,

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Abbottabad for his reinstatement in service but this application of the petitioner is pending since long and no order whatsoever has been passed thereon by the Secretary, BISE Abbottabad. Hence, the petitioner has invoked the constitutional jurisdiction of this court through the present writ petition.

3. It is an admitted fact that the petitioner was in service of BISE Abbottabad and was dismissed from service on the ground of alleged corruption. His dismissal order was maintained up-to the apex court. However, he was acquitted by the learned Special Judge, Anti corruption, KPK. Thereafter, petitioner has submitted an application to respondent No. 1 for his reinstatement in service which is pending since 27.4.2007. As the petitioner has been acquitted of the charge by the learned Special Judge, Anti corruption, KPK, therefore, without going into deep appraisal of the case, it would be better to refer the case of the petitioner to respondent No 1 for early decision on his application pending before him since 27.4.2007. The petitioner after arguing the case himself also requested the

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Allegation*

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14/11/13*

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court that his departmental appeal/application for re-instatement is pending before respondent No.1 be disposed of on an early date. The request seems to be genuine.

4. In view of the above, it would be appropriate not to pass any order on the merits of this writ petition but on the request of the petitioner to refer the same to respondents No 1 with the direction to consider the departmental appeal/application of the petitioner and in case of refusal it is directed that a speaking order in this respect be passed in writing with a copy to the petitioner.

5. Accordingly, this writ petition is disposed of in the above terms.

Attested
Attested

Announced.
Dated: 03.10.2013.

SD: WAQAR AHMED JETHI

SD: MRS. IRSHAD GAISER

JONES

14.10.13

Parvez***



Annexure, M,

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BOARD OF INTERMEDIATE & SECONDARY EDUCATION ABBOTTABAD

No. 2073 - Secy/BISE/ATD

Dated: 04-11-2013

To

Mr. Amjad Shah (S/O Syed Miskeen Shah)
Ex-Gestator Operator
Village Small Sheikhubandi, Teh: & Distt: Abbottabad

Subject: - **DISPOSAL OF APPLICATION FOR REINSTATEMENT**

In compliance with the directions of the Honourable High Court recorded in your writ petition No 712/A/2013 dated 03-10-2013, the Board has re-examined the contents of your application for reinstatement in service in the light of the departmental proceedings resulting into your ultimate dismissal vide order dated 09-07-1999, the Board has come to the following conclusion:

1. In your instant application your claim to your entitlement for reinstatement in service on the basis of your acquittal from criminal charges by the Honourable judge Anti Corruption vide his decision dated 19-04-2007. In this regard the Board has also submitted detailed comments and report to the worthy Chief Minister Khyber Pakhtunkwa as were required by him on your various applications made to him and you are fully aware of the same.
2. That after perusal of the entire record including the relevant Law and the judgments of the Honourable High Court Peshawar and that of the Apex Court, whereby your writ petition and appeal had been dismissed. The Board has come to the conclusion that your present application is meritless. You can not claim reinstatement in service on the basis of your acquittal from criminal charge because criminal proceedings and departmental proceedings are entirely different from each other and your acquittal does not provide you a fresh ground for reinstatement to service more particularly where no specific directions to this effect have been recorded in your acquittal order.

You are therefore, hereby informed that the Board did not find any flaw in its previous decision and therefore your application, for the reasons recorded above, cannot be entertained and as such stands rejected.

Secretary
BISE Abbottabad

A Copy is forwarded for Information: PS to Chairman BISE Abbottabad.

Attested
H. Shah

BEFORE CHAIRMAN KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 1552 of 2013

Syed Amjad Hussain Shah S/O Miskeen shah, Ex Gestetner Operator, Board of Intermediate and Secondary Education Abbottabad R/O Village Sheikh Ul Bandi, Tehsil and District Abbottabad.

Appellant

Versus

- 1 Secretary, Board of Intermediate and Secondary Education Abbottabad.
- 2 Chairman, Board of Intermediate and Secondary Education Abbottabad.

Respondents

APPLICATION FOR FIXATION OF CASE AT PRINCIPAL SEAT PESHAWAR BEING AN OLD CASE AS THE DATE OF APPELLANT'S DISMISSAL FROM SERVICE IS 09/07/1999.

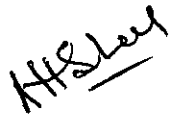
Respectfully Sheweth,

It is requested that appellant is being filed his service appeal before this Honourable Tribunal, the case of his dismissal from service is 09/07/1999 and he is still suffering from his unemployment since long.

It has come to know that in the Camp Court already heavy burden of pending cases are available while in the Peshawar appellant can get short date and case would be decided so early as compare to Camp Court Abbottabad.

It is humbly requested that proper directions to the office of service tribunal for fixation of appellant's case at Peshawar may kindly be passed in the interest of justice.

Dated: 27/11/2013.


Syed Amjad Hussain Shah
(appellant inperson)