

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

In Re to S.A 621/2022

Mst. Bakht Pari SST (BPS-16) GGHS Daskor Bala, District Dirr Upper

VERSUS

Director E & SE Department Khyber Pakhtunkhwa Peshawar and Others


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Dated: 23/08/2023

Appellant

Through


**Muhammad Usman Khan
Turlandi
Advocate, Supreme Court**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7441

Dated 12/09/23

In Ref: to Service Appeal No. 621/2022.

Mst; Bakht Pari, SST (BPS-16) GGHS Daskor-Bala, District Dir

~~Lower~~ Upper **Appellant.**

Versus

Director E & SE Department Khyber Pakhtunkhwa & others.

Rejoinder on behalf of the appellant to the comments
filed by the Respondents No. 1 & 3 filed in Service Appeal
No.621/2022.

Respectfully Sheweth;

The appellant humbly submits as under:

Reply to the Preliminary objections:

1. Incorrect. The instant appeal having a solid locus standi and cause of action.
2. Incorrect. The Appeal in hand is fully competent and maintainable being well within time.
3. Incorrect. The appellant has nothing to do with any alleged concealment of facts on her part as she possessed the requisite qualifications from the competent/registered/recognized Institutions and had duly submitted her entire testimonials with the Respondents which were duly accepted and no objection whatsoever was forwarded at that time.
4. Incorrect. All necessary parties have fully been arrayed in the hierarchy of Respondents.
5. Incorrect. The impugned order dated 08-02-2022 is illegal, unlawful, without lawful authority, unconstitutional; un-Islamic, whereas serious discriminatory treatment is meted out to the appellant for no reason much less plausible and respondents are guilty for committing violence to the command of the constitution, and strict prohibitory language, contained in Article 25 of the Constitution, therefore, no principle of estoppel would operate against the appellant because the cause of action is a recurring one and continuous in nature.

6. Incorrect. Detailed reply has been given in Para-"5" above.
7. Incorrect. The degree, "Sanad-ul-Firagh, Shahadat-ul-Alamia" from Darul Uloom Islamia, Anwar-ul-Uloom Nali par Dang Baba Mardan was already recognized in the year 1987 by the Government of the then NWFP, Education Department and properly affiliated vide Affiliation No. 3 with Pakistan Madrassa Education Board Islamabad dated 23-12-2003. (Copy of the official letter of recognition and affiliation with Pakistan Madrassa Education Board Islamabad is annexure "A" & "B" respectively). Moreover, the Madrassa Islamia Anwar-ul-Uloom Nali par, Dang Baba Mardan has also been registered under registration No. 9/159 dated 09-12-1967 under the Society Act and similarly Darul Uloom Ittehad ul Madaris Par Hoti Mardan has also been stand registered under the Society Act vide registration No. 78/5/41 dated 30-09-2005. (Copy of the registration No. 9/159 dated 09-12-1967 and No. 78/5/41 dated 30-09-2005 are annexure "C" & "D" respectively). Furthermore, HEC Islamabad official letter dated 07-04-2004 (Annex-"G" with the comments) has no retrospective effect and hence not attractive to the case of the appellant. Furthermore, the Government of Khyber Pakhtunkhwa has laid down the method of recruitment, qualification and other condition vide Notification dated 13-11-2012 and whereas qualification for Arabic Teacher has been given as under.
 (1) "Second class secondary School Certificate from a recognized Board with Shahadatul Alamia Fil Uloomul Arabia wal-Islamia from a recognized Tanzeematul Wifiqal Madaris or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Daroosh Chitral and any other government run Darul Uloom, as notified by the Government from time to time: or Second Class Master Degree from recognized University. (Copy of the Notification dated 13-11-2012 is annexure "E")
8. Incorrect. The instant appeal is fully competent, vigorously maintainable and the appellant has genuine cause of action & locus standi and this august Tribunal has the jurisdiction to adjudicate upon the matter.

REPLY ON FACTS:-

1. Incorrect. Admittedly the respondents are safe custodian of the entire office record whereas, initially, at the time of first appointment of the appellant, the entire educational testimonials were provided and were

kept on tidy record and thereafter, when litigation was started; the entire record of the case was procured by the respondents.

2. Incorrect. Detailed reply has been given in Para-"7" of the preliminary objections above.
3. Incorrect. Detailed reply has been given in Para-"7" of the preliminary objections above.
4. Incorrect. The reply by the respondents to para-4 of the appeal is ambiguous, misleading and frivolous one which has no relevancy to the facts and circumstances of the case. It is pertinent to mention here that BPS-14 granted by the parent department has never been withdrawn yet but the monitory benefits have illegally been withheld by the respondents No. 2 & 4.
5. Incorrect. Incorrect. Detailed reply has been given in Para-"7" of the preliminary objections above.
6. Incorrect. Detailed reply has been given in Para-"4" of the preliminary objections above.
7. Incorrect. Detailed reply has been given in Para-"7" of the preliminary objections above.
8. Incorrect. The stance of the appellant is fully supported by the observation and direction of this august Tribunal given in similar Service Appeals No. 490, 491, 492/2005 which have further been upheld by the Apex Supreme Court of Pakistan and hence principle of consistency also demands equal treatment and as such, the impugned order is liable to be struck down.
9. Incorrect. Detailed reply has been given in Para-"8" of the preliminary objections above.
10. Incorrect. The order dated 05-04-2012 passed by the Peshawar High Court Peshawar in WP No. 2819/2009 was reversed by the Apex Supreme Court dated 24-05-2013 in favor of the appellant.
11. Incorrect. In light of the orders passed by the Apex Supreme Court dated 24 05-2013, the appellant was succeeded to get equivalency Certificate and hence no any impediment was left to the appellant.
12. Incorrect. The verdict passed by the Apex Supreme Court dated 24 05-2013 is self-explanatory and the orders dated 05-04-2012 passed by the Peshawar High Court Peshawar in WP No. 2819/2009 was ceased to remain more in field.
13. Para-13 is admitted by the respondents, hence need no reply.
14. Incorrect. The appellant came to this honorable court with a genuine cause for the enforcement of her legally vested and acknowledged rights with quite clean hand and the appellant has a candid & straight

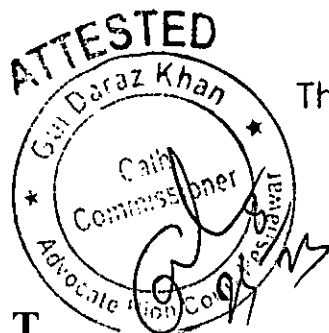
forward stance and cause of action having relying on the accepted norms of justice is but optimistic to acquire relief in the instant case from this honorable Tribunal.

On Grounds:-

- a) Incorrect and denied. Detailed reply has been given in Para-"5" of the preliminary objections given above.
- b) Incorrect and denied. Detailed reply has been given in Para-"5" of the preliminary objections given above.
- c) Incorrect and denied. Detailed reply has been given in Para-"5" of the preliminary objections given above.
- d) Incorrect and denied. Detailed reply has been given in Para-"8" of the Facts given above.
- e) Incorrect and denied. Detailed reply has been given in Para-"8" of the Facts given above.
- f) Incorrect and denied. Detailed reply has been given in Para-"7" of the preliminary objections given above.
- g) Incorrect and denied. Detailed reply has been given in Para-"4" of the facts given above.
- h) Incorrect and denied. Detailed reply has been given in Para-"5" of the preliminary objections given above.
- i) Incorrect and denied. Detailed reply has been given in Para-"5" of the preliminary objections given above.
- j) Para-"J" is legal one, hence needs no reply.

It is, therefore, requested that on accepting the instant rejoinder, the comments of the respondents be set at naught and the appeal may kindly be accepted/allowed as prayed for.

APPELLANT



Through

A handwritten signature in black ink, appearing to read "Muhammad Usman Khan".

Muhammad Usman Khan
Turlandi
Advocate Supreme Court.

AFFIDAVIT

I, Mst; Bakht Pari, SST (BPS-16) GGHS Daskor-Bala, District Dir Lower.; Naila Gul D/O Shafique Ullah R/O Mohallah; Shagai, Village; Turlandi, Tehsil; Razzar and District Swabi, the appellant do hereby solemnly affirm that the contents of the accompanying "Rejoinder" in the subject appeal is true and correct to the best of my knowledge and belief and nothing has been kept or concealed therein from this honorable Tribunal.

Mst; Bakht Pari, (Appellant)

Dated: 22/08/2023.

A

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B

ANNEXURE

The Director of Education
(Schools) NWFP Peshawar.

No. 9388-93/S-12/Reg D/uloom.

Dated Peshawar the 17/5 1987.

To,

1. The District Education Officer,
(Male) Mingora Swat.
2. The District Education Officer,
(Male) Mardan

Subject:- PERMANENT RECOGNITION OF DEFNI MADARIS.

Memo:

Reference Divisional Director of Education (Schools) Malakand Memo No.9197/PD-17/Recog: dated: 05.04.1987 and District Education officer (Male) Mardan Memo No.26091 dated: 19.11.1986.

The Secretary to Government of N.W.F.P Education Department Peshawar has been pleased to accord permanent recognition of the following Darul Uloom with immediate effect.

1. Darul Uloom Madrassa Taleemul Quran Cloth Market Mingora Swat.
2. Darul Uloom Islamia, Anwar ul Uloom Nali Par Dang Baba Mardan.

S. J. J.
Deputy Director (Schools)
For/Director of Education
(Schools) N. W. F. P Peshawar.

Endst No. 9388-93 / Dated Peshawar the 17/5 1987.
Copy of the above is forwarded to the:-

- 1-2 Divisional Director Education (M. Malakand Division Saidu Sharif Swat, and Peshawar Division Peshawar.
- 3-4 Muhtamims Darul Uloom, Concerned.
- 5 Section Officer agre: Tech: Government of N. W. F. P Education Department Peshawar. w/r to his Memo No: Agre: Tech: 3-21/87-Deeni Eadu dated 11.05.1987.
- 6 P.A to Director of Education (Schools) N. W. F. P Peshawar.

M. J. J.
Deputy Director (Schools)
For/Director of Education
(Schools) N. W. F. P Peshwar.

محمد اسحاق خان

(45)

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(6)

B

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پاکستان مدرسہ ایجوکیشن بورڈ

اسلام آباد

حکومت پاکستان کے آرڈی نرس نمبر XL
مجرہ ۱۸-اگست ۲۰۰۱ء کے تحت قائم شدہ
۱-8-2001

تاریخ: ۲۳ دسمبر ۲۰۰۳ء

حوالہ نمبر: ۷(۱) پی ایم ای بی

مہتمم، دارالعلوم اسلامیہ انوار العلوم
نالی پار ہوتی، مردان

عنوان: الحاق ہمدان پاکستان مدرسہ ایجوکیشن بورڈ۔ (الحاق نمبر: ۳)

بحوالہ آپ کی درخواست برائے الحاق آپ کو مطلع کیا جاتا ہے کہ پاکستان مدرسہ ایجوکیشن بورڈ نے الحاق کمیٹی کی سفارش پر "دارالعلوم اسلامیہ انوار العلوم"، نالی پار ہوتی، مردان کی پاکستان مدرسہ ایجوکیشن بورڈ کے ساتھ الحاق کی منظوری عطا کر دی ہے۔

کرنال، مردان
(ڈاکٹر محمد میاں صدیقی)
کوآرڈینیٹر ایگزیکٹوز الحاق کمیٹی

الحاق
مفتی محمد سعید
مفتی محمد سعید
ATTESTED TO BE
TRUE COPY
نالی پار ہوتی مردان

محمد سعید
مفتی محمد سعید

پاکستان مدرسہ ایجوکیشن بورڈ، حاجی کمپ، بلاک نمبر ۵۵، اسلام آباد۔ فون نمبر: ۹۲۲۸۱۶۳، ۹۲۲۸۱۶۲، ۹۲۲۸۱۶۱۔ فیکس: ۹۲۲۸۱۶۲

Muhammad
Tufandi
Advocate Supreme Court
Pakistan. No: 5045

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دارالدارم
مدرسہ اسلامیہ
9/159

Amex. - B

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ANNEXURE F

CERTIFICATE OF REGISTRATION OF SOCIETIES.

ACT XXI OF 1860.

No. 9/159 of 19 1967.

I hereby certify that Madrasa Islamia Nawarul-
Uloom, Haveli, Peshawar,

has this day been registered under the Societies
Registration Act, XXI of 1860.

Given under my hand at Peshawar.

this 9th day of December

One thousand nine hundred and sixty seven.

Shamshad Ali 9/12/67

Asstt. Registrar of Joint Stock Companies,
Peshawar Region, Peshawar.

J. S. C. 34.

P. P. W. Karachi-19-10-27-1, 1141

150 8041 9-12-67

TESTED TO BE
TRUE COPY
مدرسہ اسلامیہ دارالدارم

Shamshad Ali
9/12/67

Muhammaad
Turkandi
Advocate Supreme Court
Pakistan. No: 5045

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ANNEX

CERTIFICATE OF REGISTRATION OF SOCIETIES.

ACT XXI OF 1860.

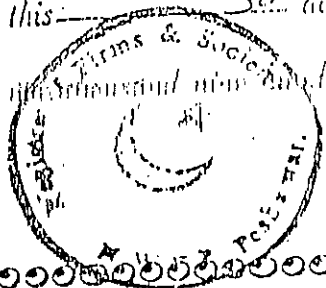
No. 78. / 15/4/196. Date 30/09/1965

I hereby certify that DARU E-ULOM TTEHOUE MADARIS AL-ISLAMIA, PAR HOPI DISTRICT NAUDAN.

has this day been registered under the Societies' Registration Act XXI of 1860.

Given under my hand at PESHAWAR.

this 30th day of SEPTEMBER (1965).



Registrar of Joint Stock Companies & Societies, N.W.F.P., Peshawar.

ATTESTED TO BE TRUE COPY

Handwritten signature and date 15/10

Handwritten signature and date 15/10

Muhammad Usman Tufandi Advocate Supreme Court Pakistan. No: 5045

مسلم خان جوانی نائب صدر آل نوریل ایجوکیشن ٹیچرز ڈگری
2012/192/193

لجہ الدین
GHS No 5
03009307800

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.



NOTIFICATION

مسلم خان جوانی
لجہ الدین

Peshawar, dated the November 13, 2012.

No.SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all Notifications issued in this behalf, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby lays down the method of recruitment, qualification, and other conditions specified in the Appendix to this Notification which shall be applicable to all the posts specified in Column No. 2 of the said Appendix and the schedule therewith.

KPK
دوان

SECRETARY TO GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

Encls. No. & Date as above.

Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General, Khyber Pakhtunkhwa Peshawar.
6. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
7. The Director Education (FATA), Peshawar.
8. Copy to Malgari Ustazen KPK

لجہ الدین
مسلم خان
GHS No 5

مسلم خان

E

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Arabic Teacher (AT) (BPS-15).	(i) Second Class Secondary School Certificate, from a recognized Board with Shahdatul Alamia Fil Uloomul Arabia wal Islamia from a recognized Tanzimatul Wafaqul Madaris: or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Arabic from a recognized University.	20 to 35 years.	By initial recruitment
11. Theology Teacher (TT) (BPS-15).	(i) Second Class Secondary School Certificate, from a recognized Board with Shahdatul Alamia from a recognized Tanzimatul Wafaqul Madaris or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Islamiyat from a recognized University.	20 to 35 years.	(a) Seventy-five per cent by initial recruitment; and (b) twenty-five per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Qaris, with at least five years service and having qualification prescribed for initial recruitment of Theology Teacher. <i>Note:</i> In case of non availability of suitable person for promotion, then by initial recruitment.
12. Senior Qari (BPS-15).			By promotion, on the basis of seniority-cum-fitness, from amongst Qaris, with at least five years service as such and having qualification prescribed for initial recruitment.
13. Certified Teacher (General) (BPS-15).	Bachelor's Degree or equivalent qualification from a recognized University with Certified Teacher	18 to 35 years.	(a) Forty per cent by initial recruitment; and

Handwritten signature and date: 15/11/2017