

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1770 /2022

Naimatullah S/O Syed Khan Marjan, Store Keeper (BPS-11), Village Danday Saidgi, Tehsil Ghulam Khan North Waziristan.....(Appellant)

Versus

1. District Health Officer, District North Waziristan.
2. Director General Health Services Khyber Pakhtunkhwa Peshawar.
.....(Respondents)

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Respondent No. 2.

DHO North Waziristan

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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 1770 /2022

Naimatullah S/O Syed Khan Marjan, Store Keeper (BPS-11), Village Danday Saidgi, Tehsil Ghulam Khan North Waziristan.....(Appellant)

Versus

Khyber Pakhtunkhwa
Service Tribunal

1. District Health Officer, District North Waziristan.

Diary No. 7527

2. Director General Health Services Khyber Pakhtunkhwa Peshawar, dated 14-09-23

.....(Respondents)

Joint Para-wise comments on behalf of respondents No. 1 & 2.

Preliminary objections.

1. That the appellant has got no cause of action and locus standi to file the instant appeal.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in its present form.
5. That the appellant has filed the instant appeal with mala-fide intention, hence liable to be dismissed.
6. That the appellant has not come to this Honorable Tribunal with clean hands.
7. That this Honorable Tribunal has no jurisdiction to adjudicate upon the matter.
8. That the instant appeal is bad for mis-joinder and non-joinder of necessary parties.
9. That the appeal is badly barred by law and limitation.
10. That the appellant is not "AGGRIEVED" person within the meaning of Article 199 of the Constitution of Pakistan.

Respectfully Sheweth:-

1. Pertains to record and subject to proof.
2. Correct:- But codel formalities were not adopted during appointment of the appellant and his recruitment order has been issued without conducting any interview.



- 3. Incorrect:- That Respondent No.2 constituted a committee for interview and selection of eligible candidates to fill the advertised vacancies, but unfortunately interview was not conducted due to cancellation of all the process by the higher authorities. Also the Appellant is disqualified and having no diploma, required for the post of store keeper.
- 4. Incorrect:- That the vacancies were advertised and committee was also constituted for selection, but interview was cancelled by higher authorities, resultantly selection process and preparation of merit list is continuously pending up till now and the Appellant has been appointed without any interview / merit list.
- 5. Incorrect:- That due to cancellation of interview by the higher authorities the process remained incomplete and the appointments were made without conducting any interview, as a result merit list was also not maintained. Therefore Provincial Inspection Team was inquired into the matter and all the appointments issued during the entire period were cancelled vide Secretary to Government of Khyber Pakhtunkhwa Health Department Peshawar letter No. SOH(E-V)4-4/2021/Inquiry Report dated 22.04.2021 and Director General Health Services Khyber Pakhtunkhwa Peshawar (Respondent No.1) endorsement No.7047-50/E.I dated 06.05.2021(Attached as Annexure-A), which has already been witnessed by the honorable Peshawar High Court Bannu Bench vide Para No.9 of judgment dated 06.09.2022 "It is transparent from record that the services of the petitioners have been highlighted during the impartial inquiry to be against the Law, Rules and regulations rather the same were based on utter violation of the merit coupled with based on favoritism & Nepotism" in Writ Petition No.420-B/2021 and Writ Petition No.425-B/2022, and both the cases has dismissed on the basis of bereft of merits (Judgment dated 06.09.2022 is attach as Annexure-B).
- 6. Incorrect and misleading as replied in preceding Paras.
- 7. Incorrect and misleading as replied in preceding Paras.
- 8. ~~Needs no reply being formal.~~ *incorrect*


GROUNDS:-


- A) ~~Pertains to record and Para-A of the grounds needs no comments.~~
- B) Incorrect:- That appointment order of the Appellant has already been cancelled in the light of inquiry conducted by Provincial Inspection Team Khyber Pakhtunkhwa Peshawar vide Secretary to Government of Khyber Pakhtunkhwa Health Department Peshawar letter No. SOH (E-V)4-4/ 2021/

Inquiry Report dated 22.04.2021, attached in Para No.5 above as Annexure-A, wherein a chance for whiteness was given to all candidates by the Provincial Inspection Team KP in accordance with prevailing rules, but unfortunately all candidates including the Appellant were not yet appeared before the Provincial Inspection Team, which is a question on their parts that there are no clear evidences with them.

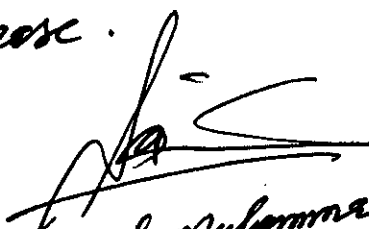
- C) Incorrect:- That cases of all the illegal appointees including the Appellant has been proceeded / decided in accordance with Government prevailing rules and regulations. Therefore fundamental rights of the appellant have not been violated.
- D) Incorrect and misleading as replied in preceding Paras.
- E) Incorrect and misleading as replied in preceding Paras.
- F) Incorrect:- That neither Appellant along with other colleges were appointed after adopting prevailing codel formalities, nor verified their Educational and Technical qualification from the concerned Board / Faculty in accordance with law.
- G) The answering respondents also seek prior permission of this Honorable Tribunal to adduce additional grounds at the time of arguments.

Keeping in view of the above, the honorable Service Tribunal is humbly prayed that present Service Appeal of the appellant may kindly graciously be dismissed.



 Director General Health Services
 Khyber Pakhtunkhwa Peshawar.
 Respondent No. 01


 District Health Officer
 North Waziristan Miranshah.
 Respondent No. 02

Submitted for vetting please.


 Mr. Syed Muhammad
 Lit: Asstt. DHO Office NWID.
 10-08-2023

*Vetted
 Subject to correction
 concerned all relevant
 documents along with index
 and affidavit. Syed Masud
 10/8/23*

Submitted for approval of AAG

 Additional Advocate General
 Khyber Pakhtunkhwa
 Service Tribunal Peshawar

Annexure - A

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

NO. SOH(E-V)4-4/2021/Inquiry Report
Dated Peshawar the April 22nd, 2021

To, The Director General Health Services,
Khyber Pakhtunkhwa,
Peshawar

4136
277414

Subject: REQUEST FOR INQUIRY AGAINST DHO NORTH WAZIRISTAN

Dear Sir,

I am directed to refer to the subject noted above and state that the Establishment & Admin Department (Regulation Wing) has submitted Inquiry Report of Khyber Pakhtunkhwa Provincial Inspection Team regarding illegal appointment/regularization made by Dr. Hameedullah, Ex-DHO North Waziristan. The following recommendations may be implemented:-

1. Cancel/ withdraw all the irregular adjustments/ regularizations and appointment of the employees during the tenure of Dr. Hameedullah and Dr. Israr ul Haq, Ex-DHO, North Waziristan as indicated in the inquiry report.
2. The credentials/ antecedents of all the employees working under the administrative control of DHO, North Waziristan may be verified from the concerned Boards/ Universities/ Faculties under the prevailing rules.
3. The clerical staff working in the office of DHO, North Waziristan were found involved in concealment of the office record for their vested interest, therefore, they may be transferred out of District of North Waziristan and must never be posted in North Waziristan in future.

I am, further directed to state that the above mentioned recommendations may be implemented under intimation to this Department, please.

Yours faithfully,

E.I
[Signature]

(Latif Ur Rehman)
SECTION OFFICER (E-V)

22/4/21

IMPORTANT/URGENT

OFFICE OF THE DIRECTORATE GENERAL HEALTH KPK PESHAWAR

No. 7047-S/E.I

Dated: 05/05/2021

Copy of the above is forwarded to the:-

1. Deputy Director Paramedics DGHS Office Khyber Pakhtunkhwa, Peshawar.
2. AD/In-charge (Personnel Section) DGHS KP, Office.
3. The District Health officer North Waziristan Merged District at Miranshah.

For information and immediate necessary action.

ADDL. DIRECTOR GENERAL (HRM) HEALTH
KHYBER PAKHTUNKHWA PESHAWAR

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Attache

District Health Officer,
Tribal District North Waziristan
Miranshah

IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(Judicial Department)

W.P. No. 425-B/2021

NoumanUllah & 100 others

Versus

Government of Khyber Pakhtunkhwa,
through Chief Secretary, KPK, Civil
Secretariat Peshawar & 04 others

JUDGMENT

Date of hearing 06.09.2022.

For petitioners: Mr. Masooq Iqbal Khattak,
advocate.

For the State: Sardar Muhammad Asif,
Asstt:A.G. with Dr.Asif Iqbal
ADHO.

MR.SHAHID KHAN, J.- Vide common judgment
of today placed on *W.P. No.420-B/2021 (Hussain
Ahmad & 217 others Vs Govt.: of Khyber
Pakhtunkhwa, through District Health Officer,
District North Waziristan & 02 others)* the instant
petition being bereft of merit is hereby dismissed.

Announced.
06.09.2022.

Attested

Imranullah PS

District Health Officer,
Tribal District North Waziristan
Muzaffargarh

(D.B)

Hon'ble' Mr. Justice Sahibzada Asadullah & Hon'ble Mr. Justice Shahid Khan

SCANNED

09 SEP 2022

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10/9

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(Judicial Department)

W.P. No. 420-B/2021

Hussain Ahmad & 217 others
Versus
Government of Khyber Pakhtunkhwa,
through District Health Officer, District
North Waziristan & 02 others

JUDGMENT

Date of hearing 06.09.2022.

For petitioners: Messrs. Noor Muhammad
Khattak and Bashir Khan
Wazir, advocate.

For the State: Sardar Muhammad Asif,
Asstt.A.G with Dr.Asif Iqbal
ADHO.

MR.SHAHID KHAN, J.- The subject judgment shall dispose of the instant writ petition and connected *W.P. No.425-B/2021 (Nouman Ullah etc Vs Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar etc)*, as the facts & circumstances coupled with the subject matter of both is identical & same to the good extent.

2. Petitioners, remained employees of Health Department, Khyber Pakhtunkhwa, have

District Health Officer,
Tribal District North Waziristan
Miran Shah

~~Extra Copies~~
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approached this Court through instant
constitutional petition praying for:-

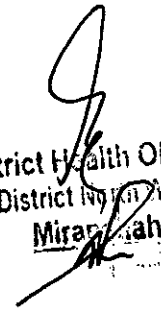
✓
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"On acceptance of this writ petition an appropriate writ may please be issued declaring that petitioners have been validly appointed on sanctioned posts, the petitioners are still working against the said posts with no complaint whatsoever, the respondents No.2 & 3 are reluctant to release the outstanding salaries of the petitioners since their appointments till now without any plausible reasons, the acts and conduct in respect of withholding of salaries of the petitioners, is illegal, unlawful, without lawful authority and of no legal effect, the same is liable to be struck down, the petitioners are also entitled for their due and outstanding salaries. The respondents be directed and ordered to release the entire outstanding salaries of the petitioners and further they may be restrained from withholding of salaries of the petitioners in future. Any other relief, not specifically asked for may also graciously be extended in favour of the petitioner in the circumstances of the case."

3. It is alleged that petitioners were appointed in Health Department through various appointments letters bearing their respective dates and the appointees assumed the charges of their respective posts accordingly. Thereafter they performed their duties with due zeal & zest. The

Attested


District Health Officer,
Tribal District No. 1, Waziristan
Miranshah

along with endorsement of the appointments orders of petitioners to respondent No.2 & 3, but unfortunately the respondent No.2 withheld the salaries of petitioners without any plausible reasons. The appointees/petitioners discharged their obligations, commitments & duties to best of their extent but their salaries have been withheld and none of them has been paid the same by the respondents No.2 & 3.

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3/3

4. In compliance of Court directions, respondents No.2 & 3 offered their comments contending therein that after an inquiry conducted by Provincial Inspection Team of Government of Khyber Pakhtunkhwa and the Secretary to Government of KPK, Health Department, Peshawar vide notification bearing No. SOH (E-V)4-4/2021/Inquiry Report dated 22.04.2021, ordered, cancellation of the appointments of the petitioners and the said cancellation was thereafter conveyed by the respondent No.1 to respondent No.2 through letter No. 10414-19 dated 10.05.2021, therefore, the respondents resisted the issuance of the desired writ.

Attested

District Health Officer,
Tribal District of Waziristan
North West Frontier Province

5. Learned counsel for the petitioners contended that the petitioners do qualify the

requisite criteria for the job so assigned to them and have delivered their services to the best of their ability and due satisfaction of the competent authority. Added, during the discharge of their official obligations, no complaint, whatsoever, has either been flouted by the general public or even by their senior colleagues & competent authority rather their services have been found as up to the mark. Also added, the petitioners in discharge of their duties have never ever been found as otherwise. Their salaries was withheld without any valid and genuine reason coupled with proper due notices to the petitioners, however, it was released by order of the Court of competent jurisdiction being found as illegal, unlawful & void ab-initio, and the court not only ordered its release but also against the natural justice. The conduct and demeanor of the authority with the petitioners is discriminatory and against law of land. The appointment of the petitioners is not only in accordance with law and procedure but also on merit and the petitioners discharged their duties with full devotion, as such the petitioners deserved

[Handwritten signature]

Attested

District Health Officer,
Tribal District North Waziristan

[Handwritten signature]

of their salaries. The

against the petitioners amounts to discharge from their official obligations is illegal, unlawful, void ab-initio and against natural justice for the simple reason that the petitioners have been deprived of their inherent right of defense, as such, condemned unheard. Concluded, on acceptance of the petition in hand, an appropriate writ in favour of the petitioners in respect of their selection & valid appointments on the sanctioned posts coupled with to continue their discharge of duty and release of their arrears under the head of their salaries etc shall meet the ends of justice.

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6. As against it, learned Assistant Advocate General at the very outset highlighted that the very selection of the petitioners was against the law, rules & regulations on the subject on the ground that the same is based on favouritism, nepotism, discrimination & vested interests, therefore, to ensure transparency, merit & good governance, the competent authority/provincial Government opted for inquiry through Provincial Inspection Team and Secretary Health, Government of KPK so as to ensure the merit.

Attest

District Health Officer,
Tribal District Nowshera Vaziristan
Miran Sah
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Added the report of Provincial Inspection Team...

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the subject have not been complied with in its letter and spirit, as such; it was cancelled by the competent authority accordingly. Concluded the reservations of the petitioners in respect of the subject petition are unjust & uncalled for and worth dismissal.

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7. There is no denial to the proposition that the petitioners succeeded to encash a chance for their selection as Medical Technicians and different cadres, Chowkidars, Sweepers, Store Keepers, Lady Health Visitors & others officials in Class-IV category. But it shall not escape the attention of the Court that opinion of the public-at-large on the subject selection and recruitment was to the effect that not only the merit has been violated but even the Rules & Regulations have also been brushed aside in respect of the subject selection rather it is based on Nepotism, Favourtism & Foul play. To address the reservations and general complaints, the competent authority opted for due inquiry to verify the validity, genuineness, impartiality, merit based or Nepotism in respect of the subject selection and

Attested

Handwritten signature
District Health Officer,
Tribal District North Waziristan
Miranshah

Officer concerned to the Director General, Health Peshawar with the recommendations which are reproduced hereunder:-

(i) *Cancel/withdraw all the irregular adjustments/legalizations and appointment of the employees during the tenure of Dr.Hameedullah and Dr.Israr-Ul-Haq, Ex-DHO, North Waziristan as indicated in the inquiry report.*

(ii) *The credentials/antecedents of all the employees working under the administrative control of DHO North Waziristan may be verified from the concerned Boards/Universities/Faculties under the prevailing rules.*

(iii) *The clinical staff working in the office of DHO, North Waziristan were found involved in concealment of the office record for their vested interest, therefore, they may be transferred out of the District of North Waziristan and must never be posted in North Waziristan in future.*

8. On the basis of the inquiry report, the competent authority dispensed with the services of the appointees in question accordingly.

9. It is transparent from the record that the services of the petitioners have been highlighted during the impartial inquiry to be against the law, Rules & Regulations rather the same were based on utter violation of the merit coupled with based on Favourtism & Nepotism.

Attested

District Health Officer,
Tribal District North Waziristan
M. Mehab

10. At the bar, nothing such has been

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to be presumed that the findings of the inquiry in question is against the ground realities and the observation of Nepotism, Favouritism as well as violation of Rules & Regulations and are not based on proper appraisal of facts and circumstances.

11. Other then it, judicial conscious of the Court has not been satisfied at the bar to dispense with the petitioners from their services on the basis of due inquiry is against the Rules & Regulations coupled with the ground realities. It is hard fact that merit in selection and recruitment process is of a paramount consideration and its utter violation shall touch the very roots of the Society and may amounts to anarchy ultimately.

12. Resultantly, the instant petition as well as the connected *W.P. No.425-B/2021 (Nouman Ullah etc Vs Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar etc)* being bereft of merits are hereby dismissed.

Announced.
06.09.2022.

Imranullah PS

AA
17/9
2022

Allysted

District Health Officer,
Tribal District No. 10, Peshawar
Waziristan
[Signature]

N. 60

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11/08/2025

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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 1770 /2022

Naimatullah S/O Syed Khan Marjan, Store Keeper (BPS-11), Village Danday Saidgi, Tehsil Ghulam Khan North Waziristan.....(Appellant)

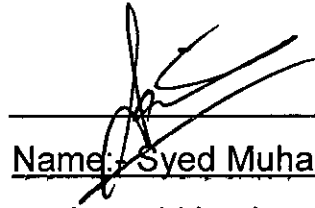
Versus

1. District Health Officer, District North Waziristan.
2. Director General Health Services Khyber Pakhtunkhwa Peshawar.
.....(Respondents)

AFFIDAVIT.

I Mr.Syed Muhammad Litigation Assistant do affirm & declare on oath on behalf of the respondents that the contents of the Para wise comments are true and correct to the best of my knowledge and belief and nothing has been kept secret from this honourable Court.

Deponent



Name: Syed Muhammad.

Designation :- Litigation Assistant.

CNIC #: 21506-4089120-5

Mob:0333-1901113

Attested

Oath Commissioner
Advocate High Court



674

(15)

OFFICE OF THE DISTRICT HEALTH OFFICER
NORTH WAZIRISTAN TRIBAL DISTRICT MIRANSHAH.

Tel: (0928) 300788 FAX: (0928) 311662 Email: agency Surgeon nwt2019@gmail.com

No. /Litigation/Court Case, Dated Miranshah the 09/08/2023.

AUTHORITY LETTER.

Mr. Syed Muhammad Litigation Assistant attached to this office is hereby fully authorized to attend the Khyber Pakhtunkhwa Service Tribunal Peshawar on behalf of the undersigned as representative of Health Department North Waziristan Tribal District in Service Appeal No. 1770 /2022.

N.B:- TA/DA will be paid by this office as per Government rules.

SD/x x x
District Health Officer,
North Waziristan Tribal District.

No. 3792-93/Litigation/Court Case,
Copy forwarded to:-

1. The Additional Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. Mr. Syed Muhammad Litigation Assistant of this office.


District Health Officer,
North Waziristan Tribal District.