

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

Application under section 12(2) of the Code of Civil Procedure, 1908  
In  
Service Appeal No.1217/2023

Ghulam Dastagir

versus

Deputy Commissioner and 2 others

**ORDER**

22<sup>nd</sup> September, 2023.

1. Learned counsel for the Petitioner, Mr. Muhammad Jan learned District Attorney for the official respondents, learned counsel for the private respondent and Mr. Taj Muhammad Khan, Assistant Commissioner Revenue, Peshawar are present and have been heard.
2. This is an application under section 12(2) of the Code of Civil Procedure, 1908, filed by the Petitioner in Service Appeal No.1217/2023 titled "Ghulam Dastagir versus the Deputy Commissioner etc", which was dismissed by the Tribunal on 07.08.2023.
3. The learned counsel for the Petitioner argued that on the day when the appeal was dismissed, the appellant had filed an application making a request to dispose of the appeal in view of latest order (dated 25.07.2023) of transfer of the petitioner as Patwari Halqa Wadpaga with a further prayer to direct the respondents to allow the appellant to complete normal tenure as Patwari Halqa Wadpaga. It is contended by the learned counsel for the petitioner that this application was neither considered nor decided so much so no mention of this application, *it was made &* in the judgment. He submitted that the application might be accepted as prayed for.
4. Conversely the learned counsel for the private respondent argued that heading of the application made by the petitioner does not show anything on which the provisions of section 12(2) of the Code of Civil Procedure, 1908/ *it could be involved &* He referred to




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order sheet dated 04.08.2023 passed in the main appeal and submitted that the Tribunal had already made observation that the subsequent transfer order (dated 25.07.2023) of the Petitioner was issued by mentioning "in pursuance of Service Tribunal order dated 30.05.2023" whereas this Tribunal had not directed for transfer/posting of appellant (petitioner herein) as Halqa Patwari Wadpaga and further that the order was not in accordance with direction of the Tribunal. The department was directed to be careful while passing any order using the name of Service Tribunal in such cases. Concluding his arguments, he submitted that there was no fraud, misrepresentation etc done in this matter and supporting the judgment dated 07.08.2023, <sup>he said that</sup> therefore, the application might be dismissed.

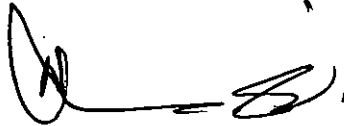
5. Having heard and considered the rival arguments we find that although the Tribunal <sup>to</sup> in order dated 04.08.2023 had observed that the subsequent transfer order dated 25.07.2023 was passed by mentioning "in pursuance of Service Tribunal order dated 30.05.2023" whereas this Tribunal had not directed for transfer/posting of appellant (petitioner herein) as Halqa Patwari Wadpaga and further that the order was not in accordance with direction of the Tribunal and the department was directed to be careful while passing any order using the name of Service Tribunal in such cases, yet the order dated 25.07.2023, of transfer of the petitioner against the post of Patwari Halqa Wadpaga, is still in the field as this fact has not been disputed rather admitted at the bar by the departmental authorities (worthy Assistant Commissioner Revenue, Peshawar, who also said that the petitioner was still holding the post of Patwari Halqa Wadpaga). As the order dated 25.07.2023 is still in the field and the petitioner is also admittedly working against the post of Patwari Halqa Wadpaga, therefore, anybody feeling aggrieved, of the order dated 25.07.2023, may trace his steps to proper course against the order under which the petitioner is holding the post for another reason also that that was not under

challenge before the tribunal. We expect that in order to avoid further unnecessary litigation, the departmental authorities would honour the tenure provided in their own posting/transfer Policy and the petitioner should not suffer otherwise than due course of policy.

6. The application is disposed of in the above terms. Consign.
7. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 22<sup>nd</sup> day of September, 2023.



(Muhammad Akbar Khan)  
Member(Executive)

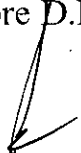



(Kalim Arshad Khan)  
Chairman

21<sup>st</sup> Sept. 2023

1. Junior to counsel for the petitioner present. Mr. Muhammad Jan, District Attorney for official respondents No.1 & 2 present. Private respondent No.3 present through counsel.

2. Former made a request for adjournment as senior counsel is not available today. Adjourned. To come up for arguments by tomorrow i.e. 22.09.2023 before D.B. P.P given to the parties.

  
(Muhammad Akbar Khan)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*

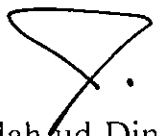
05.09.2023

Learned counsel for the petitioner present. Mr. Asad Ali Khan, Assistant Advocate General for official respondents No. 1 & 2 present. Private respondent No. 3 alongwith his counsel also present.

Reply on behalf of respondent No. 3 submitted, copy of which handed over to learned counsel for the petitioner. Learned Assistant Advocate General requested for further time for submission of reply/comments. Adjourned. To come up for reply/comments on behalf of official respondents as wells as arguments before the D.B on 14.09.2023. Parcha Peshi given to the parties.

RECEIVED  
14.09.23  
Peshawar

  
(Fareeha Paul)  
Member (E)


  
(Salah-ud-Din)  
Member (J)

\*Naeem Amin\*

14<sup>th</sup> Sep, 2023

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General alongwith Mr. Muhammad Taj, Assistant Commissioner (Revenue) for official respondents present. Learned counsel for private respondent No. 3 present.

2. Reply/comments on behalf of official respondent No. 1 submitted which are placed on file. Learned counsel for the appellant sought time to go through the same. Adjourned. To come up for arguments on 21.09.2023 before the D.B. P.P given to the parties.

  
(Muhammad Akbar Khan)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

RECEIVED  
14.09.23  
Peshawar

\*Kamranul.h\*