

**BEFORE KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No.364/2023

Mr. Saleem khan lab: Attendant GHS Musa kor Amabar District Mohmand

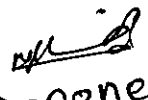
**Versus**

Secretary Elementary and Secondary Education Khyber Pakhtunkhwa & others.

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27-09-23  
Peshawar.

  
Deponent  
Cell. 03419080936

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BEFORE KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.364/2023

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**Versus**

Secretary Elementary and secondary Education Khyber Pakhtunkhwa & others.

**Para-wise comments on behalf of respondents No.1,2 & 3.**

Khyber Pakhtunkhwa  
Service Tribunal

**Respectfully Sheweth.**

Case No. 7936

**Preliminary Objections.**

Dated 26-09-23

- I. That the Appellant has no cause of action, locus standi to file the instant Appeal.
- II. That the instant appeal is not maintainable under **order 11 rule 2 CPC**
- III. That the appellant has not come to this Honorable Tribunal with clean hands.
- IV. That the appellant has concealed material facts from the Honorable Tribunal.
- V. That the appeal is barred by law and limitation.

**ON FACT**

1. Pertain to record.
2. That the appellant was charged on misconduct and removed from his service by the competent authority after fulfilling the codal formalities. The appellant filed departmental appeal against his removal from service order. The appeal was accepted and the appellant was re-instated and adjust against the vacant post of Class-IV. The appellant took his charge without any agitation. Furthermore, Mr. Nawaz khan was appointed against the vacant post of lab: Attendant in GHSS Ghallanai on the recommendation of DSC.
3. As elaborated above in Para 2.
4. Correct to the extent the appellant was adjusted at GHS Ghai Baig against the vacant post of Lab Attendant vide No. 2999-3104 dated 13.06.2022 but he failed to comply the order and he was receiving salaries against the post of Caller without rendering any kind of duty which is against this court decision of dated 13.06.2021 in appeal No. 1689/2010 i.e., "No work No pay" so his pay was stopped as he was not performing his duties. Then he submitted departmental appeal to wrong forum i.e. the Secretary Elementary and Secondary Education Department and he directed to the District Education Officer to adjust him and in compliance of his office order, he was adjusted against the vacant post of Lab Attendant at GHS Musa Kor vide this office No.7938-44 dated 17.05.2023 (copy of the order **Annexure-A**).
5. Incorrect, hence denied as elaborated at Para 4.
6. Incorrect, hence denied as explained at Para 4.
7. Pertains to record, however, the appeal seems to be fabricated as there is no diary number on the appeal as **Annexed-H** of his appeal and no marking of the Director.
8. That the appellant filed a service Appeal No. 3146/2021 before this Honorable Service Tribunal against the adjustment order vide No.3597-36021 dated 26-1-2021 and the instant appeal No. 3146/2021 was dismissed by this Honorable Service Tribunal on 06.07.2023 (Copy of the order is attached **Annexure- B**). The appellant now filed another Service Appeal No. 364/2023 before this Honorable Service Tribunal in the same cause of action. It's requested to dismiss this Service Appeal under **order 11 rule 2 CPC** of the constructive resjudicata.

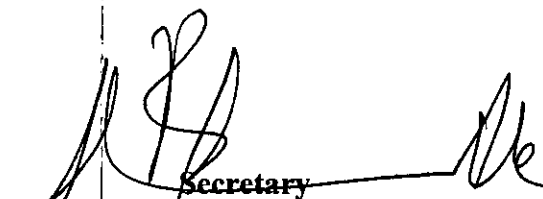
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**GROUND.**

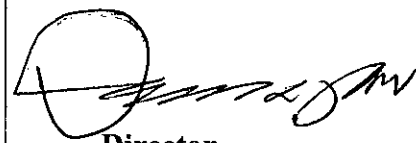
- A. Incorrect, hence denied. That the appellant is performing his duty against the post of Lab: Attendant at GHS Musa Kor Ambar.
- B. Incorrect, hence denied.
- C. As elaborated above in fact Para 4.
- D. Incorrect, hence denied. That the appellant is performing his duty against the post of Lab: Attendant at GHS Musa Kor Ambar.
- E. Incorrect, hence denied.
- F. As mentioned above fact in Para 4.
- G. Incorrect, hence denied.
- H. That the respondents seek permission to advance any other ground at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may kindly be dismissed with cost.

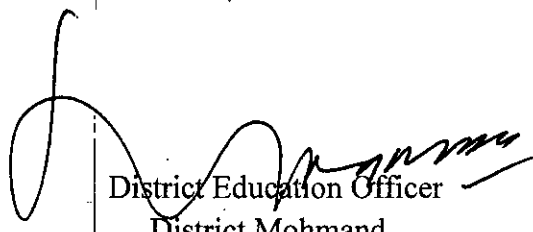
Respondent No.1

  
**Secretary**  
Elementary and Secondary Education Department,  
Government of Khyber Pakhtunkhwa

Respondent No.2

  
**Director**  
Elementary and secondary Education department  
Government of Khyber Pakhtunkhwa

Respondent No.3

  
District Education Officer  
District Mohmand  
B

**SERVICE BEFORE KHYBER PAKHTUNKHAWA TRIBUNAL PESHAWAR**

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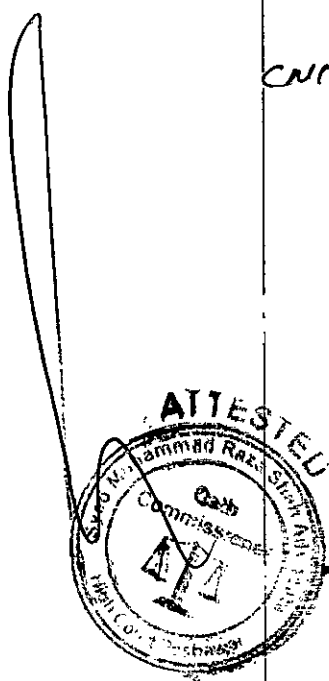
**AFFIDAVIT**

I am Mr. Noor bad shah ADEO litigation District Education office Mohmand do hereby declare and affirm on oath that above comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon, rabble Tribunal.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense is struck off.

  
Deponent

CNIC. 03419030936



26 SEP 2023



OFFICE OF THE DISTRICT EDUCATION OFFICER  
DISTRICT MOHMAND

Email:- deomohmand@gmail.com



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**ADJUSTMENT ORDER**

1. Whereas Mr. Saleem Lab Attendant Personal No 00132556 pay was stopped by the DDO concerned as he was getting pay against the post of caller from MG6013 without performing any kind of duty.
2. And whereas in the light of the inquiry recommendation, Noor Hassan Khan, the then DEO (M) Mohmand imposed upon him major penalty of "Dismissal from Service" upon him with immediate effect vide No 5786-93 dated 18/11/2020
3. And whereas an inquiry was constituted vide Directorate of E&SE KP Peshawar Notification No 7163-66 dated 22/12/2020 in the light of Departmental Appeal filed by Mr. Saleem ex-Lab Attendant against the said Notification of the DEO (M) Mohmand. The inquiry officer, Mr Javid Deputy Director P&D Directorate recommended that the impugned Notification of the DEO (M) Mohmand vide No 5786-93 dated 18/11/2020 may be cancelled as the requisite formalities have not been observed as per law and the then DEO (M) Mohmand may be warned for the ignorance of the rules.
4. And whereas a letter was received from the Directorate of E&SE KP Peshawar vide No 6996 dated 1/6/2021 directed the DEO (M) Mohmand to adopt proper procedure in the inquiry and issue charge sheet and statement of allegations against Saleem ex-Lab Attendant and also give him the opportunity of personal hearing if deem necessary and then decide the case accordingly.
5. And whereas a show cause Notice was issued to him vide this office No 1000-04 dated 2/8/2021 and personal hearing opportunity was also given to him vide this office No 780-82 dated 17/07/2021 by the then DEO (M) Mohmand.
6. And whereas a letter was received from the Directorate of E&SE KP Peshawar No 13968 dated 11/10/2021 with the direction to the then DEO (M) Mohmand to implement the recommendation of the inquiry report as mentioned in Para No 2 above.
7. And whereas the then DEO (M) Mohmand reinstated Mr. Saleem ex-Lab Attendant into service vide 3467-72 dated 20/10/2021.
8. And whereas a complaint was received to this office regarding illegal reinstatement of the ex-official which was forwarded with a comprehensive report to the Directorate of E&SE KP Peshawar vide this office No 7038 dated 21/2/2023.
9. And whereas an inquiry was constituted in the instant case vide Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar office Notification No 17961-64 dated 17/3/2023 and the official was called for personal hearing by the inquiry officer on 6/5/2023 vide DEO (M) Lakki Marwat office No 3550 dated 4/5/2023 but he failed to appear before the inquiry officer.
10. And whereas at the same time, another inquiry was conducted through Mr. Bilal Khan Section Officer (secret) E&SED vide Govt of Khyber Pakhtunkhwa Notification No. SO (Inq)E&SED/1-1/2023/Mr.Saleem/Lab Attendant/Mohmand dated 15/3/2023.
11. And whereas a comprehensive report was submitted to the inquiry officer vide this office No 7351 dated 28/3/2023.
12. And whereas a letter was received on 12/5/2023 from Govt of Khyber Pakhtunkhwa E&SED vide No. SO (Inquiries) E&SED/1-1/2023/Mr. Saleem Ex-Lab Attendant/Mohmand dated 8/5/2023 stating that the competent authority has approved the recommendation of the inquiry officer and order to implement the recommendations of the inquiry officer under intimation to the department.
13. And whereas another letter was received on 16/5/2023 from Govt. of Khyber Pakhtunkhwa E&SED vide his good office No. SO (PE/M)E&SED/5-1/G.Misc/Mr.Saleem Khan/Mohmand/2023 dated 15/5/2023 along with inquiry report to implement the recommendations of the inquiry report at the earliest and recommendation of the inquiry report reproduced as "The complainant Mr. Saleem already reinstated by the Directorate needs to be adjusted in his original post of Lab Attendant as the guidance which was sought by the DEO(M) District Mohmand from Directorate of E&SE regarding Rules 17(2) of ED Rules,2011 is crystal clear that the services of the complainant was restored by setting aside the orders of then DEO(M), District Mohmand vide Notification No 5786-93 dated 18/11/2020. Such practice is also implied in the field formation of Education Department as is evident from Annex-X. Drawing salary against the wrong post is the mistake of DEO office which needs to be avoided."

In view of the above, Mr. Saleem Lab Attendant is hereby adjusted against his original vacant post of Lab Attendant at GHS Musa Kore Tehsil Ambar with immediate effect & the intervening period w.e.f. 1/2/2023 till date is treated as EOL.

(LIAQAT ALI)  
District Education Officer  
(Male) Mohmand

Endst No 7938-44 Dated: 17/5/2023  
Copy to the:

- 1) Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar in compliance of his order cited above.
- 2) Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
- 3) District Accounts Officer Mohmand.
- 4) DMO Education Monitoring Authority Mohmand.
- 5) Principal/HM concerned with the direction to do the needful & to ensure his duty at school.
- 6) Official concerned.
- 7) Office copy.

Dy: District Education Officer  
(Male) Mohmand

17/05/2023

Salim Khan - S-A 3146/2021

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6<sup>th</sup> July, 2023

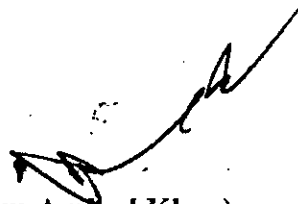
1. Nobody present on behalf of the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. The case was called time and again but neither appellant nor his counsel put appearance, therefore, the appeal in hand is dismissed in default.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 6<sup>th</sup> day of July, 2023.*



(Rashida Bano)  
Member(J)



(Kalim Arshad Khan)  
Chairman

\*Adnan Shah, P.A.\*

SCANNED  
KFS  
Peshawar

