


18.05.2023

Junior of learned counsel for the appellant present. Syed Alamzeb Shah, ADEO alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

File to come up for alongwith connected Service Appeal No. 930/2020 on 04.08.2023 before D.B. Parcha Peshi given to the parties.



(Muhammad Akbar Khan)
Member (E)



(Salah-ud-Din)
Member (J)

kamranullah

4th August, 2023 1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General alongwith Syed Alamzeb Shah, ADO (Lit) for the respondents present.

2. Learned counsel for the appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 04.12.2023 before the D.B. PP given to the parties.



(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)

*Kaleemullah

SCANNED
KPST
Peshawar

SCANNED
KPST
Peshawar

08th Feb, 2023

Junior of learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant stated that similar appeals titled "Rahatullah etc Versus Education Department" have been fixed on 09.03.2023 before Principal Bench of this august Tribunal at Peshawar, therefore, let this appeal be fixed on the said date at Principal Bench.

Let it be fixed at Principal seat of this august Tribunal to see the nature of all the appeals at Peshawar for 09.03.2023.

SCANNED
KPST
Peshawar



(Salah-ud-Din)
Member (J)
Camp Court Swat



(Kalim Arshad Khan)
Chairman
Camp Court Swat

09th March, 2023

Junior of learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant has proceeded to his native village due to some domestic engagement. Adjourned. To come up for arguments on 18.05.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar



(Salah-ud-Din)
Member (J)



(Kalim Arshad Khan)
Chairman

10th Nov, 2022

Due to public holiday on account of Allama Iqbal Day, the case is

SCANNED
KPST
Peshawar

adjourned to 07.12.2022 for the same as before.


Reader

07.12.2022

Tour is hereby cancelled, therefore, the case is adjourned to 04.01.2023 for the same as before.

05.01.2023


Junior to counsel for the appellant present. Reader




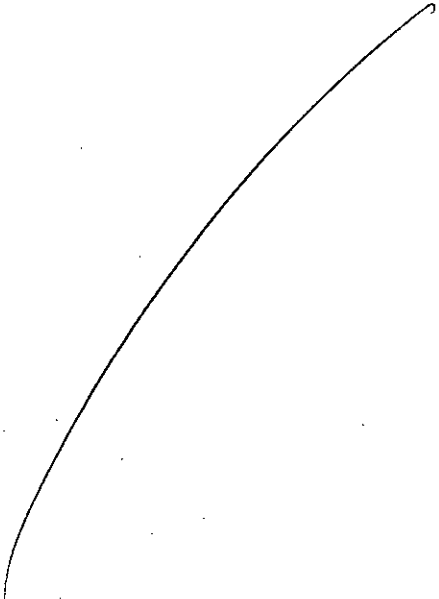
Muhammad Riaz Khan Piandakhel learned Assistant Advocate General for respondents present.

File to come up alongwith connected Service Appeal No. 278/2020 titled "Badshah Shareen Vs. Education Department" on 08.02.2023 before D.B at camp court Swat.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)
(Camp Court Swat)


(Rozina Rehman)
Member (J)
(Camp Court Swat)



ORDER
04.10.2022


SCA
K
Peshawar


Learned counsel for the petitioner present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments on restoration application heard and record perused.

The Service Appeal bearing No. 279/2020 titled "Bahadar Khan Versus Secretary, E&SE Department, Khyber Pakhtunkhwa, Peshawar and three others", was dismissed in default vide order dated 05.07.2022. According to learned counsel for the petitioner, he was busy in the august Peshawar High Court, Peshawar as well as Principal bench of this Tribunal at Peshawar, therefore, he could not appear before the Tribunal on the said date. The petitioner has submitted an application for restoration of appeal on 22.07.2022, which is well within time. The application for restoration of service appeal is supported by duly sworn affidavit. Law also favours adjudication on merit by avoiding technicalities.

The application in hand is, therefore, accepted and Service Appeal bearing No. 279/2020 stands restored on its original number. To come up for arguments on 09.11.2022 before the D.B at Camp Court Swat.

ANNOUNCED
04.10.2022


(Rozina Rehman)
Member (J)
Camp Court Swat

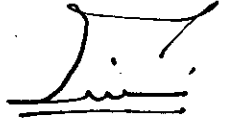

(Salah-Ud-Din)
Member (J)
Camp Court Swat

05.09.2022

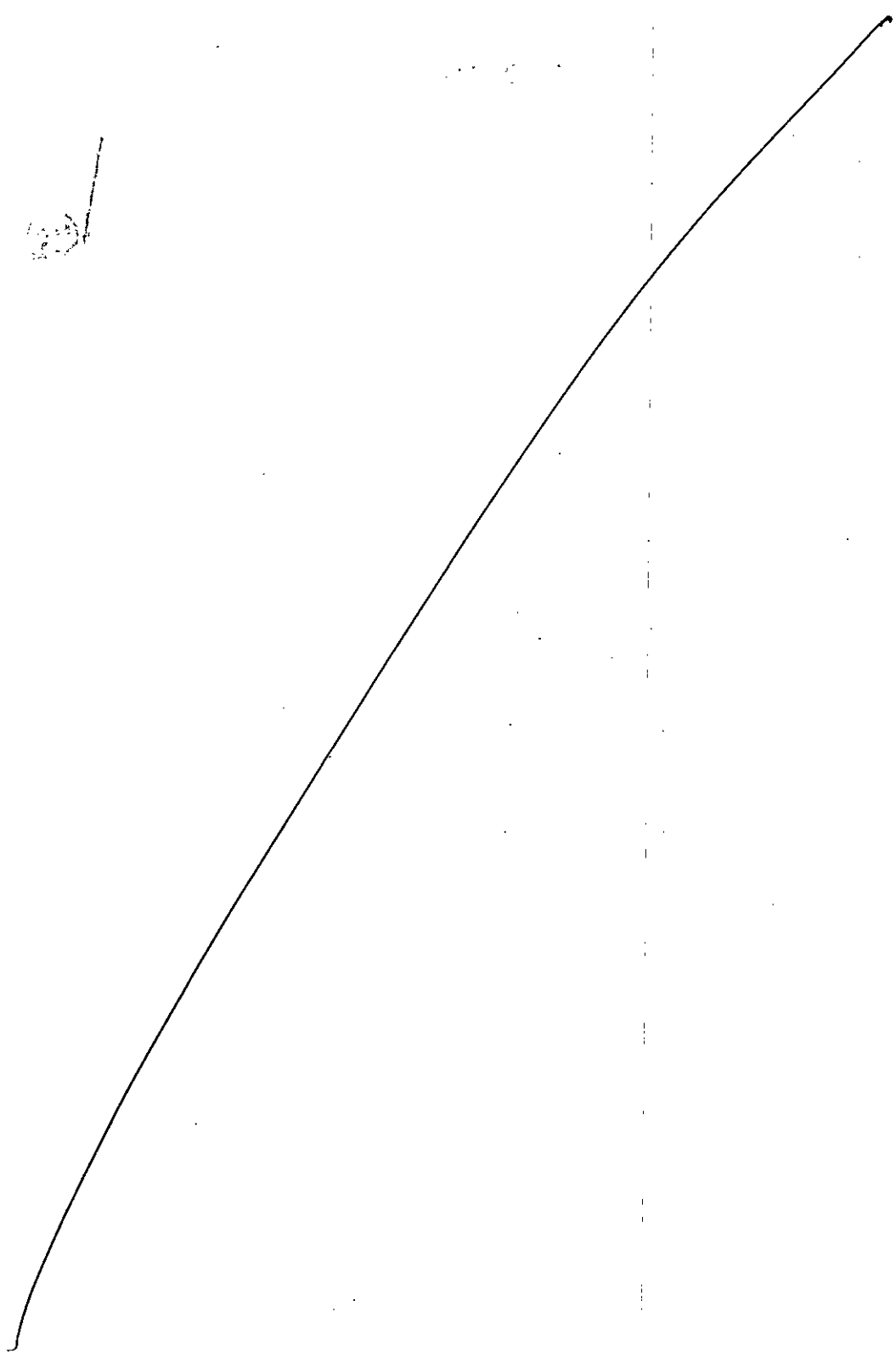
Clerk of learned counsel for the applicant present. Notice be issued to the respondents for submission of reply as well as arguments on restoration application on 04.10.2022 before the D.B at Camp Court Swat.



(Mian Muhammad)
Member (Executive)
Camp Court Swat




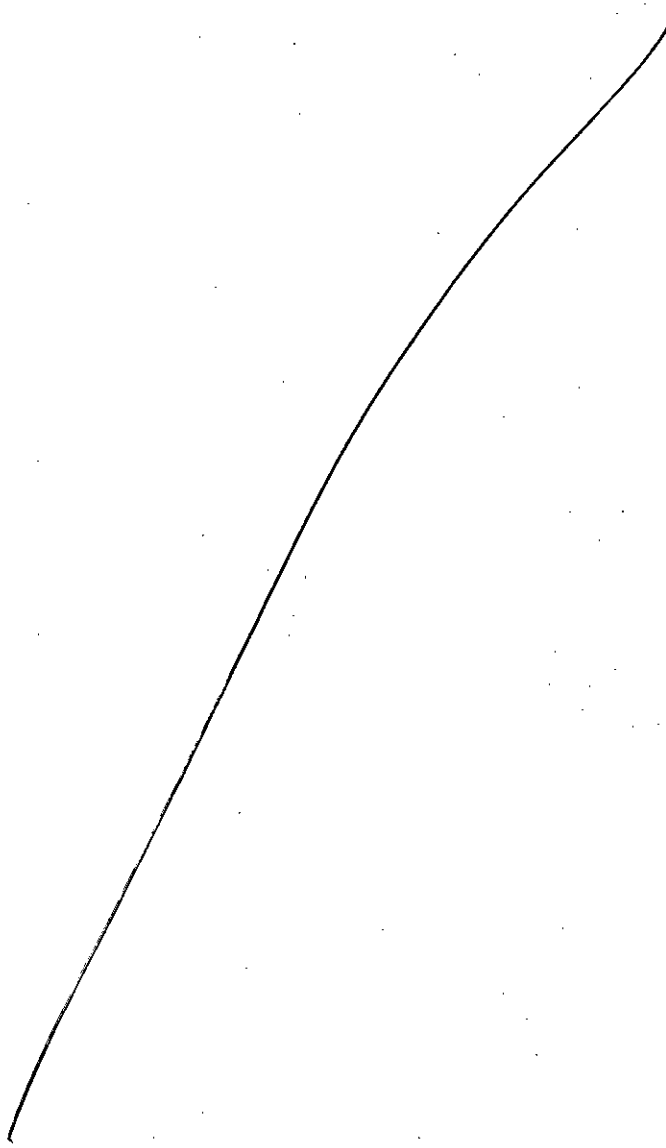
(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat



Form-A
FORM OF ORDER SHEET

Court of _____

Restoration Application No. 412/2022

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.07.2022	<p style="text-align: center;">The application for restoration of appeal No. 279/2020 submitted today by Mr.Noor Muhammad Khattak Advocate. It is fixed for hearing before touring Division Bench at Swat on <u>5-9-22</u>. Original file be requisitioned. Notices to the applicant and his counsel be also issued for the date fixed.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p> 

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Restoration Appli. no. 412/2022

CM. NO. _____/2022

IN

APPEAL No. 279/2020

BAHADAR KHAN

VS

EDUCATION DEPT.

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of application	1
2.	Affidavit	2
3.	Order dated 5-7-2022	A	3-4

0334-5277323

APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK

ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Restoration appli. no. 412/2022
Khyber Pakhtunkhwa
Service Tribunal

CM. NO. _____/2022

IN

APPEAL No. 279/2020

Diary No. 760

Dated 22/7/2022

BAHADAR KHAN

VS

EDUCATION DEPT.

APPLICATION FOR RESTORATION OF THE ABOVE
MENTIONED APPEAL

R/SHEWETH:

- 1- That the above titled service appeal was pending adjudication before this Honorable tribunal which was fixed on 05-07-2022.
- 2- That the counsel for the petitioner was busy in The Peshawar High Court at Peshawar as well as was engaged at principal bench of this honourable tribunal at Peshawar. That it is also worth mentioning that the subject appeals were not noted in the diary on that date.
- 3- That the mentioned service appeal was dismissed for non-prosecution vide order dated 05.07.2022. Copy of the order sheet 05.07.2022 attached as annexureA.
- 4- That as the matter pertaining in the instant appeal has not been decided on merit, therefore the mentioned service appeal may be restored for the sack of justice.
- 5- That there is no legal bar in restoring the mentioned appeal.

It is therefore, most humbly prayed that on acceptance of this application the above mentioned service appeal may very kindly be restored.

Dated:

PETITIONER/APPLICANT

Through:

NOOR MUHAMMAD KHATTAK

Advocate, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

CM. NO. _____/2022

IN

APPEAL No. 279/2020

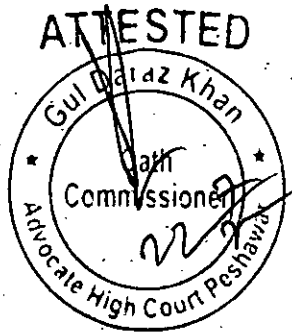
BAHADAR KHAN

VS

EDUCATION DEPT.

AFFIDAVIT

I, Noor mohammad khattak advocate, do hereby solemnly affirm that the contents of this **Restoration Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



DEPONENT

07.06.2022

Appellant in person present. Mr. Kabirullah Khattak,
learned Additional Advocate General for the respondents present.

Counsel are on strike. Adjourned. To come up for
arguments on 05.07.2022 before D.B at camp court Swat.



(Mian Muhammad)
Member (E)
Camp Court Swat



(Kalim Arshad Khan)
Chairman
Camp Court Swat

05.07.2022

Nemo for appellant.

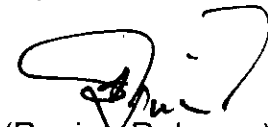
Noor Zaman Khan Khattak, learned District Attorney alongwith
Nasim Khan Section Officer for respondents present.

Case was called time and again but neither the appellant nor
his counsel turned up till rising of the Bench. Consequently, instant
service appeal is hereby dismissed in default for non-prosecution.
Parties are left to bear their own costs. File be consigned to the
record room.

Announced.
05.07.2022



(Fareeha Paul)
Member(E)
Camp Court, Swat



(Rozina Rehman)
Member(J)
Camp Court, Swat

D

01.11.2021

Junior to counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 03.02.2022 before D.B. Respondents be put on notice to submit reply within 10 days in office.


Chairman

03.02.2022

The Tribunal is non-functional, therefore, the case is adjourned to 15.04.2022 before S.B for the same.


Reader

15.04.2022

Counsel for the appellant present. Mr. Kabirullah Khattak Addl. AG for respondents present.

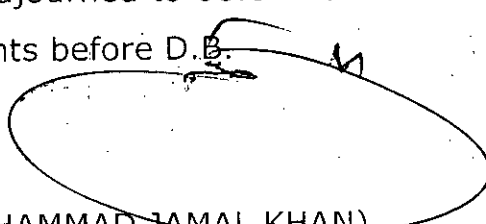
Written reply/comments on behalf of respondents not submitted. Learned AAG seeks time to file written reply/comments. Last opportunity is granted to respondents for submission of written reply/comments. To come up for written reply/comments on 11.05.2022 before S.B at Camp Court Swat.


Chairman

11.01.2021

Mr. Noor Muhammad Khattak, Advocate, for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of respondent No. 2 Mr. Naseeb Khan, Section Officer (Litigation), is also present.

Written reply on behalf of respondents not submitted despite last chance given in the preceding order sheet dated 19.11.2020, therefore, the appeal is adjourned to 08.04.2021 on which date file to come up for arguments before D.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

08.4.2021

Due to demise of Honable Chairman the Tribunal is defunct, therefore the case is adjourned to 26.07.2021 for the same as before.


Reader

26.07.2021

Mr. Noor Muhammad Khattak, Advocate, for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not met preparation for arguments. Adjourned. To come up for arguments before the D.B on 01.11.2021.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

05.08.2020

Mr. Noor Muhammad Khattak, Advocate for appellant is present. Mr. Kabirullah Khattak, Additional AG alongwith representative of the department Mr. Mohibullah, Assistant are also present.

Representative of the department requested for time to furnish written reply/comments. Time is granted. File to come up for written reply/comments on 29.09.2020 before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER

29.09.2020

Junior to counsel for the appellant and Addl. AG alongwith Sajid Superintendent, and Ahmad Hassan, Litigation Officer for the respondents present.

Representative of the respondents seeks further time to furnish reply/comments. Adjourned to 19.11.2020 on which date the requisite reply/comments shall be submitted without fail.


Chairman

19.11.2020

Junior to counsel for the appellant and Addl; AG present. No representative of respondents is available.

Learned AAG is required to contact the respondents and submit written reply/comments on 11.01.2021, as last chance.


Chairman

30.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 19.06.2020 before S.B.


Reader

19:06.2020

Counsel for the appellant present.

Contends that appellant was initially appointed as PTC now PST as stop gap arrangement but his services were dispensed with in 1997. He then submitted an application for his reinstatement on promulgation of KP Sacked Employees Act, 2012 which was not considered. He, therefore, filed Writ Petition which was allowed and the appellant was appointed. His departmental appeal for fixation of pay was not responded. It was further submitted that in the light of Rule 2.3 of the West Pakistan Pension Rules, 1963, the appellant is entitled for the grant of pay fixation from the date of initial appointment.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Notice be issued to the respondents. To come up for written reply/comments on 05.08.2020 before S.B.

Appellant deposited
Security and Process Fee

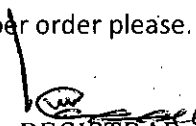

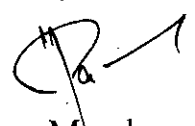

(Rozina Rehman)
Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 279/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/01/2020	<p>The appeal of Mr. Bahadar Khan presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 09/01/2020</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>10/02/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>10.02.2020</p> <p>Learned counsel for the appellant present. Heard.</p> <p>Learned counsel for the appellant could not demonstrate that the appellant can claim service back benefits under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. Learned counsel for the appellant seeks adjournment for proper assistance. Adjourn. To come up for preliminary hearing on 30.03.2020. Learned counsel for the appellant may also submit copy of the judgment in Writ Petition bearing No.3-M of 2014 dated 28.03.2014 on the next date fixed.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 279 /2019

BAHADAR KHAN

VS

EDUCATION DEPTT:

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2	Second appointment order	A	4.
3	Judgment	B	5- 14.
4	Appointment order	C	15- 16.
5	Medical certificate	D	17- 18.
6	Departmental appeal	E	19.
7	Vakalat nama	20.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK,
ADVOCATE

Flat No. 3, Upper Floor,
Islamia Club Building,
Khyber Bazar, Peshawar
0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 279 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 288

Dated 09/11/2020

Mr. Bahadar Khan, PST BPS-12,
GPS Karkabanj, District Dir Upper.....**APPELLANT**

VERSUS

- 1- The Secretary, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The District Education Officer, District Dir Upper.

.....**RESPONDENTS**

**APPEAL UNDER SECTION- 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 FOR FIXATION OF PAY IN
BPS-12 w.e.f. 30-11-1995 I.E. FROM THE DATE OF INITIAL
APPOINTMENT TO THE POST OF PST AND AGAINST NOT
TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE
APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY
DAYS.**

PRAYER:

That on acceptance of this appeal the appellant may kindly be allowed/granted pay fixation w.e.f. 30-11-1995 with all back benefits. Any other remedy which this august Service Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to-day
Registrar

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:

- 1- That the appellant was initially appointed in the respondent Department as PTC now PST vide order dated 30/11/1995 as stop gap arrangement.
- 2- That later on the appellant was appointed against regular post vide order dated 09/04/1996 w.e.f. the date of his first appointment i.e. 30/11/1995. (Copy of second appointment order is attached as annexure..... **A**)
- 3- That it is worth mentioning here, that in 1997 the services of the appellant along with others were dispensed with on the ground that their services were no more required to the Department.

- 4- That it is also worth mentioning, that on promulgation of KP Sacked Employee Act, 2012 appellant submitted an application for his reinstatement being covered under the said law but the same was not considered, hence the appellant filed writ petition no. 663/2017 before Peshawar High Court Mingora Bench Dar-Ul-Qaza, Swat, which was allowed vide judgment dated 13/02/2018. Copy of judgment dated 13/02/2018 is attached as annexure **B).**
- 5- That the appellant was appointed as PST w.e.f. taking over charge in light of Peshawar high Court Darul qaza Bench judgment vide order dated 27/03/2018. That in response the appellant submitted charge report and started his duty quite efficiently and up to the entire satisfaction of his superiors. Copy of the appointment order dated and medical certificate are attached as annexure **C & D).**
- 6- That the appellant filed Departmental appeal before respondents for fixation of pay w.e.f. the date of his first appointment i.e. 30/11/1995 but the same has not been responded within stipulated period of ninety days. Copy of departmental appeal is attached as annexure..... **F).**
- 7- That feeling aggrieved and having no other remedy the appellant filed the instant appeal on following grounds inter alia.

GROUND:

- A- That the inaction of respondents by not allowing pay fixation to the appellant w.e.f. 30-11-1995 is against the law, facts, norms of natural justice and materials on the record.
- B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and mala fide manner by not allowing pay fixation to the appellant w.e.f. 30-11-1995 and as such the inaction of the respondents is violative of law and rules.
- D- That the inaction of the respondents is discriminatory and against the norms of natural justice, therefore not tenable in the eye of law.
- E- That under Article 38 (e) of the Constitution of Pakistan, 1973 state is bound to reduce disparity in the income and earning of the individuals including persons in the various services of Pakistan, therefore in light of the above mentioned Article the appellant is fully entitled for the grant of pay fixation w.e.f. the date of initial appointment.

F- That promulgation of Sacked Employee Act, 2012 established that dismissal of appellant along with others from services was against the law, hence the appellant is entitled to pay fixation from date of his first appointment.

G- That in light of Rule 2.3 of the West Pakistan, Pension Rules, 1963 the appellant is fully entitle for the grant of pay fixation from the date of initial appointment.

H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 20.12.2019

APPELLANT

Bahadar Khan
BAHADAR KHAN

THOROUGH:

Noor Mohammad Khattak
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

&

Mir Zaman Safi
**MIR ZAMAN SAFI
ADVOCATES**

OFFICE ORDER:-

Consequent upon the non availability of duly verified trained PTCs, in the merit list, continuous appointment of the following PTC, ~~xxxxxxx~~ untrained teachers in the BPS, NO.7 Rs. 1480-81/2695 are hereby ordered with effect from the date of their last appointment.

<u>SNO.</u>	<u>Name of Teacher.</u>	<u>Name of School.</u>
1.	Mohd Din Khan,	MPS, Srafo.
2.	Vali Khan,	GPS, Serai.
3.	Sultan Alam,	: Gamdat,
4.	Nahid Shah,	: Charkom.
5.	Gulzarat Khan,	: Badalai.
6.	Shawkat Ali,	: Tatogram,
7.	Anwar Zaib,	: Shagai,
8.	Iqbal Khan,	: Shalgah.
9.	Shad Mohd,	: Mithrowara,
10.	Anwar Said,	Dabona,
11.	Badshah Zada,	: Barkha,
12.	Nizamud Din,	: Jai,
13.	Hayat Mohd,	: Kamalai,
14.	Haq Nawaz Khan,	: Qunjai.
15.	Yar Mohd,	: Chapar,
16.	Sher Akbar,	: Kaganokhavar,
17.	Shahinullah,	: Arak,
18.	Rahatullah,	: Mithrowara,
19.	Sahibzada,	: -80-
20.	Fazal Bagia,	: Jugha,
21.	Maswar Khan,	: Serrai.
22.	Bahadar Khan,	: Birarai,
23.	Mohd Alam Jan,	: Tatogram,

1. Their appointment are purely on temporary basis and can be terminated at any time without notice.
2. Other conditions are the same as given in their Isti:appoint-ment orders.

(FAZLI NAEEM KHAN)
DISTT: EDUCATION OFFICER (M)
PRIMARY DIR AT TIMERGARA.

OFFICE OF THE DISTT: EDUCATION OFFICER (M) PRY: DIR AT TIMERGARA.

Endst: NO. 1165 / PED/lett: 2-7 Dated Timergara the 21/4/96

Copy forwarded for information to the SDEO (M) Wari for information and record.

M. Anwar/

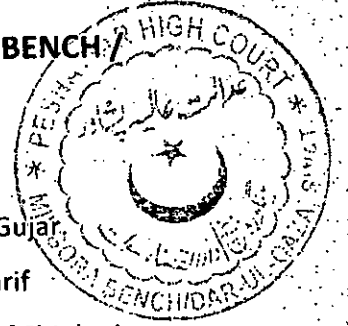
Attested
Mushtaq Din
STT B-16 GHS Shinkari
Distt: Dir Upper

M. Anwar
(DY: EDUCATION OFFICER)
FOR/DISTT: EDUCATION OFFICER (M)
PRIMARY DIR AT TIMERGARA.

B - 5
P

**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH
DAR UL QAZA SWAT**

W.P. 663-M -M/2017



1. Ali Rehman Son of Mian Said Aziz Resident of Mala Gujar
2. Anwar Saeed Son of Abdullah Resident of Moha Sharif
3. Bahadar Khan Son of Muhammad Zaman Resident of Shinkari
4. Rahat Ullah Son of Muhammad Tahir Shah Resident of Sahib Abad
5. Hamid Ullah Son of Abdullah Resident of Panjkoro
6. Muhamamd Hamayoon Khan Son of Sanobar Khan All Residents of Tehsil Wari District Dir Upper..... Petitioners

VERSUS

- 1) Govt. of Khyber Pakhtunkhwa, through Secretary E&SE Khyber Pakhtunkhwa at Peshawar.
- 2) Director Secretary E&SE Khyber Pakhtunkhwa at Peshawar
- 3) District Education Officer (Male) District Dir Upper
..... Respondents

**WRIT PETITIONER UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973**

Respectfully Sheweth;

The facts of the instant are as under.

FACTS

1. That the Petitioners are permanent residents of Tehsil Wari District Dir Upper.

FILED TODAY
15 SEP 2017
Additional Registrar

Attested
Mushtaq Din
STT B-16 GHS Shinkari
Distt: Dir Upper

1

(6)

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P. No. 663-M/2017

JUDGMENT

Date of hearing: 13.02.2018

Petitioners:- (Ali Rahman & others) by Syed Abdul Haq, Advocate.

Respondents:- (Government of KPK & others) by Mr. Rahim Shah, Asst. Advocate General.

MOHAMMAD IBRAHIM KHAN, J.- Ali Rahman

& 5 others Petitioners herein, are imploring the constitutional jurisdiction of this Court for issuance of an appropriate writ as per their prayer set-out in their petition in the following form:-

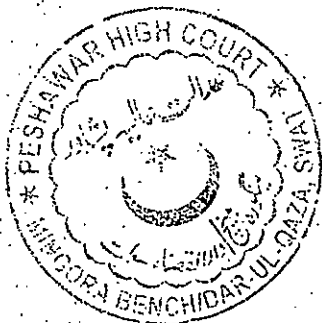
He
" It is, therefore, humbly prayed that on acceptance of this writ petition in the light of aforementioned submissions, this Court may kindly issue appropriate writ to the Respondent No.3 to reinstate the Petitioners on their own posts with all back benefits, according the spirit of act."

2. That this honorable Court may also issue directions to the concerned Respondents to count their seniority from the date of their first appointment mentioned in Para-2 of this petition."

Hon'ble (D.B.) Hon'ble Mr. Justice Muhammad Ibrahim Khan
Hon'ble Mr. Justice Ishaq Ishaq

Attested
Mushtaq Din
STT B-16 GHS Shinkar
Distt: Dir Upper

2. In essence the present Petitioners were PST teachers in different schools of District Dir Upper. Subsequently, their services were dispensed with by the Respondents being no more required as they have been appointed purely on temporary basis as stop-gap arrangements.



3. In the meanwhile, the Government of Khyber Pakhtunkhwa passed the "Sacked Employees Act, 2012", wherein it has been decided that only those government employees will be given the benefit of reinstatement who have been terminated during the period from 1st day of November 1996 to 31st day of December 1998. After promulgation of the *ibid* Act, some of the Petitioners submitted applications for their reinstatement on 20.10.2012 before the competent authority, while the others ^{had} approached the Service Tribunal for redressal of their grievance. Yet despite all these visible efforts, the Respondents are not willing to compensate the Petitioners by way of their re-appointment as school teachers. In such

 Nawab (D.B.) Hon'ble Mr. Justice Mohammad Ibrahim Khan
 Hon'ble Mr. Justice Khiaq Ibrahim

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circumstances, they have knocked the door of this Court through the writ petition in hand *inter-alia* on the grounds enumerated therein.

8



4. The Respondents were put on notice, amongst whom, comments were sought from the Respondent No. 3 on 11.10.2017 but the same are still awaited and from such careless attitude of the concerned Respondent i.e. District Education Officer (Male) District Dir Upper, it seems that, the said officer has nothing to say in his defence, therefore, despite lapse of such considerable time the reply on his behalf is still awaited.

5. Having heard arguments of learned counsel for the Petitioners and learned Asst. Advocate General appearing on behalf of official Respondents being present in Court in connection with some other cases, the available record placed on file was gone through with their valuable assistance.

6. Before rendering any findings in respect of the grievance of the Petitioners, it

Attested
 Nawab (D.B.) Hon'ble Mr. Justice Mohammad Ibrahim Khan
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would be appropriate to reproduce the relevant provisions of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act 2012, which runs:-

Preamble:-

Whereas, it is expedient to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1st day of November, 1993 to the 30th day of November 1996 (both days inclusive) and were dismissed, removed or terminated from service during the period from 1st day of November, 1996 to 31st day of December, 1998 on various grounds.

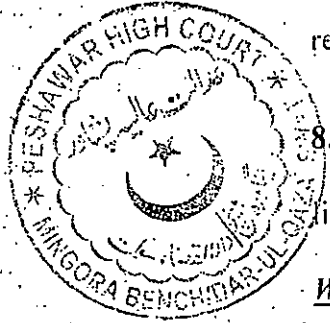
S. 2 (g):- "sacked employee" means a person who was appointed on regular basis to a civil post in the Province and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November, 1993 to 30th day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November, 1996 to 31st day of December, 1998 on the ground of irregular appointments."

7. It is crystal clear from above quoted provisions of the Act *ibid* that only those persons/employees would be given benefit of reinstatement, who were appointed on regular basis to a civil post, possessed the requisite/prescribed qualification and experience for the subject post and above all

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terminated from service during the period from 1st day of November, 1996 to 31st day of December, 1998. A bare perusal of the record would reveal that the services of the Petitioners were terminated on 13.02.1997, so by means they are falling within the cut-off date as referred to above.



8. Earlier, similarly placed persons, like Petitioners approached this Court through W.P. No. 1662-P of 2013 titled "Hazrat Hussain V/S The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar", which was allowed in the following manner:-

"It is worth to note that persons similarly placed with the petitioners have been reinstated by the department while giving effect to the judgments given the Khyber Pakhtunkhwa Service Tribunal. More so, one Mst. Gul Rukh whose services were terminated by the respondents along with the petitioners, has been appointed under the Act vide order dated 09.05.2013. It is cardinal principle of law that similarly placed persons should be treated alike and no different yard stick should be used while redressing their grievances. It is hallmark and grundnorm of our constitution that every person is entitled to equal protection of law. Not only similarly placed colleagues of the Petitioners have been appointed by the respondents but the petitioners are also

Nowah (D.B.) Hon'ble Mr. Justice Mohammad Ibrahim Khan
Hon'ble Mr. Justice Ishfaq Ibrahim

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entitled to the relief given to the sacked employees under the Act.

For what has been discussed above, we admitted and accept both the writ petitions and direct the respondents to consider the petitioners for their appointment in accordance with the provisions of the Act."

(15)

The above-referred judgment of this Court was assailed before the Hon'ble Supreme Court of Pakistan in Civil Appeal No. 401-P of 2016 under the title: "Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar V/S Iftikhar Khan etc" along with other identical matters. The Hon'ble apex Court vide its judgment dated 24.5.2017 upheld the verdict of this Court in the following manner:-



" We have been apprised by the learned counsel for the respondents that according to the advertisement and appointment letter issued to the respondents, two kinds of candidates could be appointed (i) those who have the requisite academic qualifications and training; (ii) those who have the requisite academic qualifications but do not possess the necessary training. As regard the second category, such persons would be provided with an opportunity to complete the training within a specific period. This is exactly what the learned High Court has allowed in the relief granting portion of the impugned judgment. Undoubtedly, this is in consonance with the Department's own advertisement and the terms and conditions of service, therefore, the learned High Court did not fall into any error by requiring the Department to allow the respondents to complete the

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Hon'ble Mr. Justice Ishfaq Ibrahim

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training within a specific period of time and to take action against them in case of failure to do so. No exception can be taken to the impugned judgment, which is upheld. Resultantly, Civil Petition No. 401-P/2016 is dismissed on merit. The connected petitions are also dismissed on the above score and being time-barred as no sufficient cause has been shown for condonation of delay.

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9. In the above developed scenario, there is no denial of the fact that the services of the Petitioners were terminated within the cut-off date i.e. 1st day of November 1996 to 31st day of December 1998 coupled with the fact that similarly placed persons like Petitioners have been given the benefit of reinstatement by this Court, which judgment has been upheld by the Hon'ble Supreme Court of Pakistan, so, on this score too, the Petitioners deserves to be given the same benefit of re-instatement being similarly placed persons.

10. However, since no record of the educational credentials of the Petitioners has been placed on record, in view of which, their present educational status/competency could be ascertained qua their eligibility for the subject posts of PTS. Even otherwise, it is appealable to

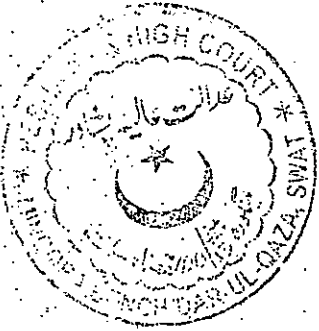
Nawab (D.I.) Hon'ble Mr. Justice Mohammad Ibrahim Khan
Hon'ble Mr. Justice Ishfaq Ibrahim

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(13)

prudent mind that during the intervening period i.e. from the date of their termination up till now the Petitioners would have not improved their educational skills further and would have just waited for final outcome of their case. Learned Astt: Advocate General present in Court submits that if all the cases of Petitioners fall under the *ibid* Act, he would have no objection of their re-instatement subject to their eligibility for the subject posts of teachers. Moreover, the answering Respondent No. 3 despite Court direction has so far been unable to file the requisite comments, so, it is presumed that he is answerless in the matter.



11. In view of the above discussion, this writ petition is disposed of in terms that the Respondents/Department is directed to consider the case of Petitioners for their re-instatement under the umbrella of Sacked Employees Act 2012 coupled with the fact being similarly placed persons but subject to their eligibility for the requisite posts of PST teachers within a period of one month positively. Since the

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Petitioners are languishing for the ultimate outcome of their wheel of fortune since the year 1997; therefore, it is expected from the answering Respondents that this issue will be put to an end once for all within the target span.

14



ANNOUNCED
Dr. 13.02.2018.

[Signature]
JUDGE

[Signature]
JUDGE

The
16/02/18

S.No. 37
Name of Applicant W/ear
Date of Filing of Application 19-02-18
Date of Issuance of Copies da
No of Copies 10 P
Name of Applicant 207
Date of Issuance of Copies 19-02-18

Certified to be true copy

[Signature]

EXAMINER 19-02-18

Peshawar High Court, Miayora/Dar-ul-Gaza, Swat
Authorized Under Article 21 of Shikpa-a-Shahadaat Rules, 1974

Attested

Muhammad Durr
SIT B-16 GHS Shinkarj
Distt: Dir Upper

District Education Officer Male District Dir Upper



PH No. 0944-881400-Fax-880411
E-mail deomdirupper@gmail.com

C-15

APPOINTMENT.

In the light of the judgement passed by the Honorable Peshawar High Court Mingora Bench/Dar-ul-Qaza Swat in W-P NO. 663-M/2017 dated 13-02-2018. WP No. 700-M/2017 dated 22-11-2017, and in pursuance of Khyber Pakhtunkhwa sacked employees Act 2012 and out of quota @ 30% of the advertised posts, the following sacked employees are hereby appointed conditionally as Primary School Teacher (PST) in BPS No. 12 (Rs.13320-960-42120) Plus usual allowances as admissible under the rules & the existing policy of the Provincial Government in Teaching Cadre on the terms and condition given below with effect from the date of taking over charge.

S. No	Name	Father Name	Place of Posting	CNIC	Remarks
01.	Alam Khan	Pass Muhaminad Khan	GPS Gogyal	15000-1876353-5	
02.	Haq Nawaz	Saeed Khan	GPS Chapper	15702-7240984-1	
03.	Bahadar Khan	Mohammad Zaman Khan	GPS Karkabanj	15702-2520269-9	
04.	Anwar Saeed	Abdul Ahad	GPS Moha	42501-4272039-5	
05.	Hamid Ullah	Abdullah	GPS Behsomal	15702-3398037-3	

TERMS AND CONDITIONS.

01. The appointment of sacked employee shall be made only on regular bases to a civil post during the period from 1st day of November 1993 to the 30th day of November 1996 (both days inclusive) and were dismissed/ removed, or terminated from service during the period of 1st day of November, to 31st day of December, 1998 on various ground.
02. Appointment of sacked employee subject to section 7 may be appointed in their irrespective cadre of his department, concerned in which he occupied civil posts before his dismissal, removal and termination from service.
03. The sacked employee shall be appointed against thirty percent of the available vacancies in the department.
04. As per court decision if the appointee fail to acquire the training PTC and the required qualification (FA/FSc within three years, their appointment will be considered as cancelled after the expiry of the period.

Attested

Mushtaqul Din
STT B-16 GHS Shinkari
Distt: Dir Upper

1734-40
9/15/18

Appointment Order PST (M) Sacked Employees

05. The appointee will provide undertaking that they will be completed the requisite training during a period of three years,
06. The appointee will provide Health and age certificate from the concerned Medical Superintendent.
07. The sacked employee shall not be entitled to claim seniority and other back benefits. They shall submit an undertaking on judicial stamp paper for not claiming any back benefits. A sacked employee appointed under section 3 shall not be entitled to make any claim of seniority, promotion or other back benefits and their appointment shall be considered as fresh appointment.
08. All the drawing and disbursing officers are directed to get a stamp paper as mentioned in S.No.07 and verify their academic and professional certificates/degree etc from the quarter concerned before starting their salaries otherwise they will be held responsible for the consequences if occurred in this regard.
09. The appointee will be governed by such rules and regulations/policies as prescribed by the Government from time to time.
10. If the appointee fail to take over charge with in fifteen days after issuance of this order, their appointment will be deemed as automatically cancelled.
11. Charge report should be submitted to all concerned.
12. The errors and omissions etc if found at any stage shall be rectified. In case of termination of said candidate, they will have no right to claim the order already issued in any court.
13. Their appointment order is subject to the final outcome of the Supreme Court of Pakistan judgment.
14. No TA/DA is allowed.

(16)

**District Education Officer,
Male dir Upper**

Endst: No. / File No.123/AppH/ DEO (M)/ADO (P) Dated Dir (U) the /03/2018.

Copy forwarded for information and necessary action to the:-

01. Director of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
02. District Accounts Officer Dir Upper
03. Dy. District Education Officer Male Dir Upper.
04. Sub. Divisional Education Officer Male Wari.
05. Official Concerned.
06. M/File

**District Education Officer,
Male dir Upper**

Attested
Mustaqud Din
ST B-16 GHS Shinkor
Distt. Dir Upper

MEDICAL CERTIFICATE

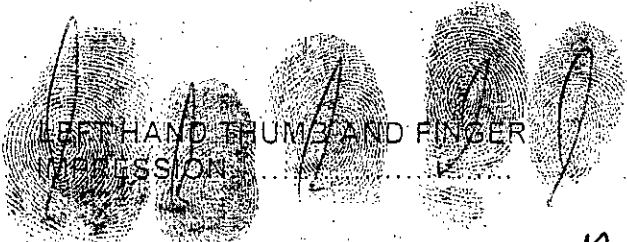
D-17

Name of Official Bahadur Khan
 Cast or race Muslim / Pathan
 Father's Name Muhammed Raman
 Residence village S. PO Shadkoti, Faisla
 ward, District Upper Dir
 Date of Birth 1-1-1962 (According to card)
 Exact height by measurement
 Personal mark of identification Nil
 Signature of the official
 Signature of head of office

Seal of Officer.....

I do hereby certify that I have examined Mr. Bahadur Khan, a
 candidate for employment in the office of the Education Deptt and
 cannot discover that he had any disease communicable of other constitutional
 affection or bodily infirmity except. Nil

I do not consider this as disqualification for employment in the office of the
 Education Deptt. His age according to own statement 56 years
 and by appearance about 56 Year.



30-3-2018
 Medical Superintendent
 Civil Hospital

Attested
 Mushtaq Din
 STT B-16 GHS Shinkari
 Distt: Dir Upper

صاحب المکتبہ

(18)

5625-27
5-12-95
12
1995

آج کل کے حالات اور اس کی وجہ سے

PS کے اساتذہ، کارکنان، اور دیگر

مشورہ سے اس کے لیے صاحب المکتبہ

داری کو اس کے لیے ارسال کر رہے ہیں۔

صاحب المکتبہ
صاحب المکتبہ

Head Teacher
GPS Birari Manzai
Sub Division Wari Dir (U)

Attested

Mushtaq Din
STT B-16 GHS Shinkari
Distt: Dir Upper

صاحب المکتبہ

صاحب المکتبہ

5-12-1995
Head Teacher
GPS Birari Manzai
Sub Division Wari Dir (U)

To

The Director, E&SE Department,
Khyber Pakhtunkhwa, Peshawar.

E-19

DEPARTMENTAL APPEAL FOR FIXATION OF PAY IN BPS-12 w.e.f.
30-11-1995 i.e. FROM THE DATE OF INITIAL APPOINTMENT

Respected Sir,

It is most humbly stated that was appointed before your good self Department as PTC vide order dated 30-11-1995 as stop gap arrangement later on I was regularly appointed against the said post vide order dated 09.04.1996 w.e.f. the date of my first appointment i.e. 30.11.1995. That in year 1997 the services were dispensed with on the ground that his services was no more required to the Department. That on promulgation of KP Sacked Employee Act, 2012 I was submitted an application for reinstatement being covered under the said law but the same was not considered. Feeling aggrieved I was filed writ petition before the Peshawar High Court Mingora Bench which was allowed. Dear Sir; I was appointed as PST w.e.f. taking over charge in light of Peshawar High Court Darul Qaza Bench judgment. That in response I have submitted my charge report and started duty quite efficiently and up to the entire satisfaction of my superiors. That I am entitle for fixation of pay from the date of my initial appointment i.e. 30.11.1995 but the concerned authority has been appointed me with immediate effect i.e. from the date of taking over charge. Sir, I am feeling aggrieved preferred this Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal I may kindly be allowed for pay fixation w.e.f. 30.11.1995 with all consequential benefits. Any other remedy which your good self deems fit that may also be awarded in my favor;

Dated: 18.09.2019

M

Your's Sincerely,
Bahadar Khan
BAHADAR KHAN, PST
GPS, Karkabanj, Dir Upper

VAKALATNAMA

Before the 12th session Tribunal, Peshawar

OF 2019

Bahadar Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Bahadar Khan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2019

Bahadar Khan
CLIENT

[Signature]
ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

[Signature]
MIR ZAMAN SAFI
ADVOCATES

OFFICE:
Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No. 279/2020

Bahadarkhan, PST (BPS-12)GPS karkaban, District Dir Upper
..... (APPELLANT)

Versus

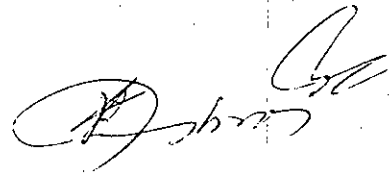
1. Secretary, Elementary and secondary Education Khyber Pakhtunkhwa Peshawar.
2. Secretary Finance Department, Khyber Pakhtunkhwa Peshawar.
3. Director, Elementary and secondary Education Khyber Pakhtunkhwa Peshawar.
4. District Education Officer (M) DIR Upper

..... (RESPONDENTS)

JOINT PARA WISE COMMENTS ON & FOR BEHALF OF RESPONDENT NO: 4 & Other

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District Education Officer (M)
Dir Upper

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 279/2020

Bahadar Khan, PST (BPS-12) GPS karkaban Wari, District Dir Upper
..... (APPELLANT)

Versus

1. Secretary, Elementary and secondary Education Khyber
Pakhtunkhwa Peshawar.
2. Secretary Finance Department, Khyber Pakhtunkhwa Peshawar.
3. Director, Elementary and secondary Education Khyber
Pakhtunkhwa Peshawar.
4. District Education Officer (M) DIR Upper

..... (RESPONDENTS)

JOINT PARA WISE COMMENTS ON & FOR BEHALF OF RESPONDENT NO: 4& Other

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS.

1. That the Appellantis not the "aggrieved" persons with the meaning of Article 212 of the Constitution of the Islamic Republic of Pakistan 1973.
2. That the Appellant has got no cause of action /locus standi to file the instant appeal because the Appellant did not come on merit.
3. That the Appellant has not come to this Honorable court with clean hands.
4. That the Appellant is estopped by his own conduct.
6. That the instant writ petition suffers from laches, hence not maintainable in the present form.
7. That as per section 5 of the Sacked Employee Act 2012 the appellant is neither eligible nor entitled for the relief he prayed in the instant appeal.

ON FACTS.

1. Para -1 of the facts is correct hence need no comments.
2. Para- 2of the facts is also correct hence need no comments.
3. Para-3 of the facts is correctup to the extent of the judgment in the writ petition No.855-M/2016, in compliance the appellant was appointed with immediate effect.

4. Para-4 of the facts is correct that the appellant was appointed as per judgment of the Honorable Peshawar High Court Mingora Bench.

Para-5 of the facts pertain to record up to the extent of the departmental appeal, furthermore the appellant was re-appointed as per judgment of the Honorable Peshawar High Court Mingora Bench with immediate effect whereas in section 5 of the SACKED EMPLOYEE ACT 2012, it is clearly stated that the appellant will not be entitled to claim seniority and other back benefit. It is also pertinent to mention here that as per terms and conditions No.08 of the appointment order dated 23/08/2018, "the Sacked Employees shall not be entitled to claim the seniority and other back benefits as sacked employee appointed under section 3 shall not be entitled to claim any seniority, promotion or other back benefits and his appointment order shall be considered as fresh appointment".

6. Para-6, need no comments.

GROUND.

A) In correct. The respondents always follow rules and policies consigned by government and the Appellant has been treated as per law rules and policies.

B.) Incorrect, hence denied, the official respondents always follow rules and policies in letter and spirit and no illegality has been done by the official respondents.

C) Need no comments.

D) In correct hence denied. Detail reply has been submitted in the above Para's.

E) Need no comments.

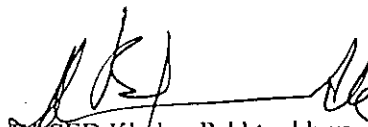
F) Incorrect hence denied and as per section f of the ACT ibid the appellant is not entitled for any back benefits.

G) Need No comments.


H) Legal, However the official respondent also seeks permission for additional grounds during arguments.

It is, therefore, humbly prayed that on acceptance of the above submission, the instant service appeal may very graciously be dismissed in favor of the answering respondents with cost.

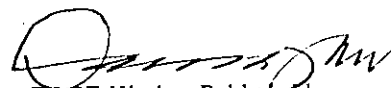
Secretary:

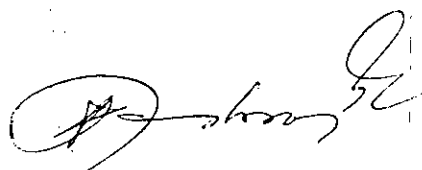

E&SED Khyber Pakhtunkhwa
(Respondent No. 1)

Secretary:


Finance Department Khyber Pakhtunkhwa
(Respondent No. 2)

Director:


E&SE Khyber Pakhtunkhwa
(Respondent No. 3)


District Education Officer (M)
Dir Upper
(Respondent No. 4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 279/2020

**Bahadar Khan, PST (BPS-12) GPS karkabanj Wari, District Dir
Upper**

..... **(APPELLANT)**

Versus

- 1. Secretary, Elementary and secondary Education Khyber
Pakhtunkhwa Peshawar.**
- 2. Secretary Finance Department, Khyber Pakhtunkhwa Peshawar.**
- 3. Director, Elementary and secondary Education Khyber
Pakhtunkhwa Peshawar.**
- 4. District Education Officer (M) DIR Upper**

..... **(RESPONDENTS)**

Affidavit

I, **Syed Alamzeb Shah** Litigation officer DEO (M) Dir Upper do hereby solemnly affirm and state on oath that the whole contents of this reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this August court.

Identified by

Addl; Advocate General
Khyber Pakhtunkhwa.

Deponent

Syed Alamzeb Shah
Dir Upper
Litigation Officer DEO (M) Dir Upper

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 278/2020

Bahadar Khan, PST (BPS-12) GPS karkabanj, District Dir
Upper

..... (APPELLANT)

Versus

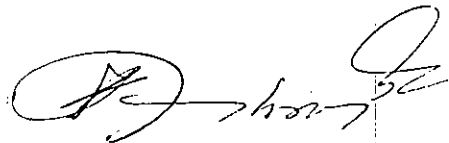
1. Secretary, Elementary and secondary Education Khyber
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3. Director, Elementary and secondary Education Khyber
Pakhtunkhwa Peshawar.
4. District Education Officer (M) DIR Upper

..... (RESPONDENTS)

AUTHORITY LETTER

Mr. Syed Alamzeb Shah Litigation Officer of the office of the
undersignedis hereby authorized to submit the comments /reply in the
service appeal No.279/2020

Title: Bahadar Khan v/s Govt: of KP on my behalf.



District Education officer (M)

District Dir

Upper