

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 137/2023

Dr. Fareed ullah Shah(Appellant)

Versus

Government of Khyber Pakhtunkhwa and others

.....Respondents

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Handwritten signature and date: 21/9/23

Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 137 OF 2023

Khyber Pakhtunkhwa
Service Tribunal

Case No. 7989
Date 28/09/23

Dr. Fareed Ullah Shah.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 & 02

Respectfully Sheweth:

Preliminary Objections:-

1. That the appellant has got no cause of action or 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 and also in the present circumstances of the issue.
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 the appeal is barred by law and limitation.
8. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

ON FACTS:

1. Pertains to record.
2. Pertains to record. However, it is worth to mention that one post of Assistant Professor (BPS-18) in Bacha Khan Medical College Mardan was advertised vide Advertisement No. 01/2015 Sr. No. 35 wherein the appellant was recommended vide letter dated 21.10.2015 of Khyber Pakhtunkhwa Public Service Commission hence, the post was specifically advertised for BKMC Mardan against which the appellant was appointed.
3. Pertains to record. However it is worth to mention that the posts of Civil Servant in MTI's are specifically created for the MTIs which are even not

transferrable therefore maintaining the seniority of all employees of the MTI's including the Civil Servant and subsequent promotion is the responsibility of the MTIs.

4. Correct to the extent of letter dated 06.10.2017 with further clarification that respondent No. 01 with reference to request made by the Dean, Bacha Khan Medical College Mardan, duly shared copy of the policy checked out by the provincial Govt. Khyber Pakhtunkhwa as quoted by the appellant in his appeal for the guidance of the concerned quarters.
5. Pertains to record. As stated in para 03 above the Health Department forwarded the letter dated 28.06.2019 for promotion of the appellant being appointed specifically in the MTI.
6. Not related to the answering respondents. However, as stated in para 03 above, the employees being specifically appointed in the institution were promoted by the MTI as Associate Professor (BPS-19).
7. Pertains to respondents No. 03 to 07. However, as stated in para 03 above, the appellant being specifically appointed in the institution was promoted by the MTI as Associate Professor (BPS-19) vide order dated 26.08.2019.
8. Pertains to record. However detail reply has been given in para 03 above.
9. Pertains to record. However detail reply has been given in para 03 above.
10. Pertains to record.
11. Correct to the extent of retirement Notification dated 26.08.2022 so far as the entitlement of the appellant is concerned the respondents No. 03 to 07 would be in better position to respond to the matter as the appellant was though a civil servant however; he was specifically appointed in the BKMC Mardan who was empowered to promote him as he was promoted vide Notification dated 26.08.2019. It is further to clarify that the replying respondents promote those civil servants who are posted in the institutions of the replying respondents in accordance with rules whereas promotion of civil servants in MTI's are made by the MTI's.
12. Pertains to record. However, detail reply has been given in para 11 above.

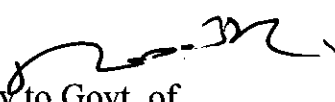
ON GROUNDS:


- a) Pertains to respondents No. 03 to 07. As detail reply has been given in para 11 of the facts.

- b) Incorrect. The Supreme Court of Pakistan has held in a reported judgment 2010 PLC (CS) SC 924 "every case has different facts and circumstances, needs to be decided on its own merits". The appellant has not mentioned that there was any vacant post of Professor (BPS-20) in the MTI and his eligibility along with seniority position hence the appellant is not entitled for proforma promotion.
- c) As per para "b" above.
- d) Incorrect. Already replied in para "b" above.
- e) The replying respondents acted as per law and rules however, the appellant is not entitled for proforma promotion
- f) The appellant admitted stance of the replying respondents however detail reply has been given in para "b" above.
- g) Already replied in para "b" above.

PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the instant appeal of the appellant may very graciously be dismissed with costs.


Secretary to Govt. of
Khyber Pakhtunkhwa Health Department
(Respondent No. 01)


Director General Health Services
Khyber Pakhtunkhwa
(Respondent No. 02)

Prof's
8/9/23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 137/2023

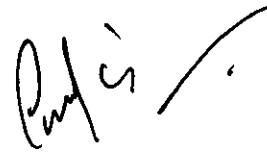
Dr. Fareedullah ShahAppellant

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health
.....Respondents

AFFIDAVIT

I Muhammad Tufail Section Officer (Lit-II) govt. of Khyber Pakhtunkhwa Health Department do hereby solemnly affirm and declare that the joint parawise comments in Service Appeal No. 137/2023 is submitted on behalf of respondents is true and correct to the best of my knowledge, belief and that nothing has been concealed from this Hon'ble Court. It is further stated on oath that in this appeal the answering respondent have neither been placed ex-party nor their defense have been struck-off are any cost imposed.

 25/9/23

Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

AUTHORITY LITTEr

Mr. Safi Ullah, Focal Person (Litigation-II), Health Department, Civil Secretariat is hereby authorized to attend/defend the Court Cases and file comments on behalf of Secretary Health Government of Khyber Pakhtunkhwa before the Service Tribunal and lower Courts.

(MAHMOOD ASLAM)

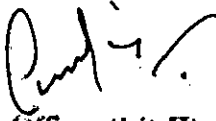
Secretary to Govt. of Khyber Pakhtunkhwa

Health Department

Secretary to Govt. of

Khyber Pakhtunkhwa

Health Department


Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

9/15/23