

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO.324 _____/2023

ABDUL SABOOR KHAN

VS

EDUCATION DEPARTMENT:

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Ahmadud Din ADEO (Lit)

District Education Office Lower Chitral

15.8.23

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Appeal No 324/2023

AWP No. 13-M/2018

MR. Abdul Saboor Khan Junior Clerk (BPS-11) GHS Domil District Lower. Chitral

..... **APPELLANT**

1. The Secretary E&SE Department Khyber Pakhtunkhwa Peshawar.
2. Secretary Finance Department Khyber Pakhtunkhwa Peshawar
3. Director E&SE Department Khyber Pakhtunkhwa Peshawar.
4. District education officer chitral lower.


..... **RESPONDENTS**

JOINT PARA WISE COMMENTS/REPLY ON BEHALF OF THE RESPONDENTS NO.1,2,3 & 4

Respectfully Sheweth:-

On facts

The respondents submit as under:

1. That the appellant has got no cause of action to file the instant appeal before this Honorable Service Tribunal.
2. That the appellant has concealed material facts from this Honorable Tribunal in the Titled appeal.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. Incorrect, the appellant did not file an application for reinstatement within stipulated time on the promulgation of the Khyber Pakhtunkhwa sacked employees Act 2012 and could not be appointed/reinstated. Feeling aggrieved the petitioner filed WP 12-M/2018 in PHC Darul Qaza Swat seeking his reinstatement and grant of back benefit. The said WP 12-M/2018 has allowed on the grounds that the petitioner would not insist for the payment of back benefits. It is also worth mentioning here that the act does not allow the petitioner to claim back benefit, even section 5 of the act ibid is very much clear regarding non claiming of basic benefits (Judgment of the Honorable Court and statement of the then DEO (M) Chitral Mr. Ihsanul Haq annexed as "A" 
5. Correct. The appeal for the payment of back benefits rightly rejected, under the sacked employees Act 2012, the appellant is not entitled for payment of back benefits/ fixation of pay from the date of his initial appointment 20-04-1995.
6. Correct.
7. The appellant has no cause of action to file this instant appeal.

Grounds


- A. Incorrect. That the appellant is not entitled for back benefits/ pay fixation WEF 20-04-1995, so the appeal was rightly rejected.
- B. Incorrect. That the appellant has been treated according to rule of Law and the constitution.

- C. Incorrect. That the respondents act are according to the law and the constitution, and the acts of respondents are not beyond the limits of law and the constitution.
- D. The appellant has been treated according to the law in vogue.
- E. Incorrect. The constitutional rights of the appellant have been appreciated. The appellant has been appointed/reinstated in the pursuance of the Honorable PHC Mingora Bench judgment dated 19-11-2019 which does not allow payment of back benefits WEF 20-04-1995 Judgment & order in COC annexed as "B "
- F. It is upon the Honorable Court.

Therefore, it is humbly prayed that the instant service appeal may be Dismissed.

Respondents 1, 2, 3 & 4
Through AG.

Respondent No. 1



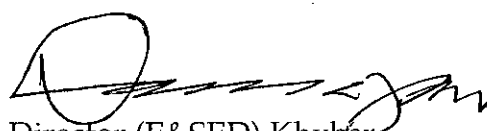
Secretary (E&SE Department) Govt of
Khyber Pakhtunkhwa Civil Secretariat
Peshawar

Respondent No. 2



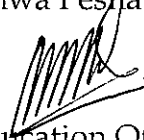
Secretary Finance Department
Khyber Pakhtunkhwa Peshawar

Respondent No. 3




Director (E&SED) Khyber
Pakhtunkhwa Peshawar

Respondent No. 4



District Education Officer
(M) Lower Chitral



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 324 /2023

ABDUL SABOOR KHAN

VS

EDUCATION DEPARTMENT:

Affidavit

I Ahmadud Din ADEO (Lit) District Education Office (Male) Lower Chitral on behalf of respondents No1,2,3 & 4 do hereby solemnly affirm and declare that the contents of this para wise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court. It is further stated on oath in

this appeal the answering respondents have neither been placed ex-parte nor their defence struck off/cast. 15201-06024979

Ahmadud Din ADEO (Lit)
District Education Office Lower Chitral

ATTESTED
Notary Public
10.10.2023

PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-OAZA), SWAT

FORM OF ORDER SHEET

Court of

Case No..... of.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	19.11.2019	<p><u>W.P 12-M/2018</u></p> <p>Present: Qazi Muhammad Fayaz Ahmad, Advocate for the Petitioner.</p> <p>Mr. Wilayat Ali Khan, A.A.G for the official Respondents alongwith Mr. Ihsanul Haq, DEO, Chitral.</p> <p style="text-align: center;">***</p> <p><u>WIQAR AHMAD, J.-</u> Before taking up the main writ petition for hearing, the applications (C.Ms Nos. 152 & 883 of 2019) which are meant for additional documents stand allowed and accordingly documents annexed therewith be considered as part and parcel the main writ petition.</p> <p>2. Through this constitutional petition, the petitioner seeks the constitutional jurisdiction of this Court with the following prayer.</p> <p>“In view of the above mentioned facts and circumstances, it is therefore, most humbly prayed that this writ petition may be accepted in favour of the petitioner against the respondents and following directions be given to the respondents.</p> <ul style="list-style-type: none"> i. To reinstate the petitioner. ii. To grant back benefits to the petitioner for the period, during which he remained terminated/suspended/dismissed illegally from

[Handwritten signature]

Attest
[Handwritten signature]

Sabz Ali/*

(D.B)

HON'BLE MR. JUSTICE SYED ARSHAD ALI
HON'BLE MR. JUSTICE WIQAR AHMAD

- the service.
- iii. To count the terminated/suspended dismissal period as the period in service of the petitioners and grant him promotion as well as seniority on the basis of the above mentioned period.
- iv. In alternative, the respondents be directed to decide the applications of the petitioner pending before them in accordance with law.
- v. To grant the ad-interim relief under clause (i to iv) of the prayer.
- vi. Any other relief which this Hon'ble Court may deems fit and just may also be granted.
- vii. Grant of cost of this petition.

3. The record would show that pursuant to the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 ("Act"), the present petitioner had filed an application under section 7 of the Act for his reappointment. His name was enlisted in the list of applicants to be reappointed/reinstated under the Act. However, the grievance of the petitioner is that despite his application within time he was ignored by the respondents.

4. Mr. Ihsanul Haq, DEO, Chitral present in the Court alongwith the learned A.A.G has stated that indeed the petitioner had filed an application for his appointment under the Act but he was not appointed/reinstated because he was insisting for his appoinment with all back benefits whereas such plea of the petitioner was against the Act itself. He has also stated at the bar that if the petitioner is not insisting for his reappointment with back benefits, he will be



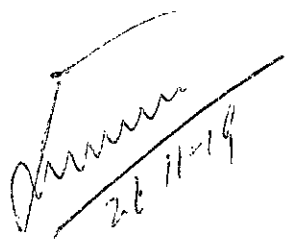

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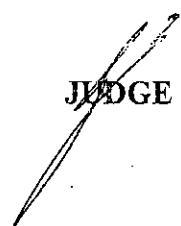

appointed/reinstated against 30 percent quota earmarked under the Act for appointment of the sacked employees subject to availability of the vacancy on his own turn.

5. In view of the above, this writ petition is allowed with the directions to the respondents to reinstate/reappoint the petitioner against 30 percent quota reserved under the Act for the appointment of sacked employees subject to availability of the vacancy, strictly in accordance with law, on his own turn.

Announced
19.11.2019


JUDGE


26/11/19


JUDGE

Registered
Date: 26/11/19

39
Hazrat Usman
26-11-19
26-11-19
cl-p
26/11-19

Attested


Office
23/11/19

DE




**DIRECTORATE ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR.**

AUTHORITY LETTER

I Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar do hereby authorize Mr. Muhammad Imran Assistant (Litigation) of this Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar to attend the Khyber Pakhtunkhwa Service Tribunal in connection with filing of para wise comments in Service Appeal No. 324/2023 Titled Abdul Sabir Khan VS Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department.

Dated 05/10/2023


Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.