

25.09.2023

Learned counsel for the appellant present.
Mr. Lutf Ullah, Assistant alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Para-wise comments on behalf of respondents received through office. Copy of the same handed over to learned counsel for the appellant, who requested for adjournment on the ground that he has not gone through the para-wise comments submitted by the respondents. Adjourned. To come up for preliminary hearing on 23.10.2023 before the S.B at Camp Court Abbottabad. Parcha Peshi given to the parties.



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

Naeem Amin

19th June, 2023

1. Learned counsel for the appellant present and has been heard.

2. Though the appeal has been resubmitted after fifty two (52) days as against fifteen (15) days given to the appellant yet in the interest of justice the office objection is removed subject to the objection regarding the limitation if any taken by the other side and the office is directed to assign appeal number to this appeal.

3. Let pre-admission notice be issued to the other side. To come up for written reply/comments as well as preliminary hearing on 25.09.2023 before the S.B at camp court Abbottabad. P.P given to the parties.




(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

Adnan Shah, P.A

29.03.2023

Appellant present through counsel.

He made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on office objection on 25.04.2023 before S.B at Camp Court, Abbottabad. Parcha Peshi given to the appellant.


(Rozina Rehman)
Member (J)

Camp Court, Abbottabad

25.4.23

Due to public holiday to come
up for the same as before on 19/6/23


Rashid

Respected Sir,

It is submitted that the present appeal was received on 12.12.2022 after thoroughly scrutinizing the same many deficiencies were found in it which was returned to the counsel for the appellant for completion and resubmission within 15 days which was to be resubmitted on 28-12-2022 but counsel for the appellant re-filed the same through registered post which was received on 20.02.2023 late by 52 days without removing the objection no.6, 8 & 11.

The appeal is submitted to your Honour under rule-7(c) of Khyber Pakhtunkhwa Service Tribunal rules 1974 for appropriate order please.

REGISTRAR

20/2/2023

Worthy Chairman

The appeal submitted by Mr. Muhammad Arshad Khan Tanoli Advocate today i.e. on 12.12.2022 is incomplete on the following score which is returned to him for completion and resubmission within 15 days.

1. ✓ Check list is not attached with the appeal.
2. ✓ Appeal has not been flagged/marked with annexures marks.
3. ✓ Annexures of the appeal may be attested.
4. ✓ Affidavit may be got attested by the Oath Commissioner.
5. ✓ In the memo of appeal many places have been left blank which may be filled up.
6. ⑥ Copy of first appointment and termination order mentioned in para-1 of the memo of appeal (Annexure-A) are not attached with the appeal which may be placed on it.
7. Copy of Order dated 05.04.1997 attached with the appeal is illegible which may be replaced by legible/better one.
8. ⑧ Address of appellant is hand written which is not acceptable the same may be written according to Khyber Pakhtunkhwa service tribunal rules 1974.
9. ✓ Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.
10. Wakalat nama in favour of appellant be placed on file.
11. ⑪ The documents that are to be provided must be legible.

No. 3579 /S.T.

Dt. 13-12 /2022

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

M. Arshad Khan Tanoli Adv.
High Court A.Abad.

*in documents and
service appeal is
re-submitted as
desired*

Muhammad Arshad Khan Tanoli
Advocate Supreme Court of Pakistan
Office # 33 Jinnah Road Adjacent to
Dist: Bar Abbottabad

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWA

CHECK LIST

M. Iqbal Muhammad **Versus** Govt of KPA & others
 Appellant Respondents

S NO	CONTENTS	YES	M
1.	This petition has been presented by: <u>Miss Sadia Advocate Supreme Court & Reha.</u>	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?	√	
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled

Name:- Zahid Nawaz

Signature:- [Signature]

Dated:- 17/02/23

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

Service Appeal No. 2015 2023

Niaz Muhammad CT GHSS Kuzabandq Distt
Balla-grame

....APPELLANT

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary and
Secondary Education, Khyber Pakhtunkhwa, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

INDEX

S.#	Description	Page No.	Annexure
1.	Service appeal along with affidavit	1 to 6	
2.	Copy of appointment order and termination order of the appellant	7-9	"A"
3.	Copy of appointment order dated 28.02.2018 of the appellant	10-11	"B"
4.	Copy of department appeal	12	"C"
5.	Wakalatnama	13	

Muhammad
...APPELLANT

Dated: _____/2022

Through

Muhammad Arshad Khan Tanoli
(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan
at Abbottabad

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

Registry No. 2246

Dated 12/12/22

Service Appeal No. 2015/2023

Niaz Muhammad CT G.H.SS Kuzehanda Dist
Battagram

....APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education (E&SE), Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Battagram.

...RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT 1974 FOR DECLARATION TO THE EFFECT
THAT THE APPELLANT WAS APPOINTED ON
12-9-195 AND WAS TERMINATED FROM THE
SERVICE ON 5-4-97. THEREAFTER, THE
APPELLANT GOT APPOINTMENT AS CT ON
28.02.2018, AS PER KP SACKED EMPLOYEES
APPOINTMENT ACT 2012, BUT PREVIOUS

SERVICE W.E.F 12-9-95 TO 5-4-97 AND
2012 TO 28.02.2018 HAS NOT BEEN COUNTED
TOWARDS CALCULATION OF PENSION BY THE
DEPARTMENT.

PRAYER: ON ACCEPTANCE OF INSTANT
SERVICE APPEAL, THE RESPONDENTS'
DEPARTMENT MAY GRACIOUSLY BE DIRECTED
TO COUNT PREVIOUS SERVICE W.E.F 12-9-95
TO 5-4-97 AND 2012 TO 28.02.2018 OF THE
APPELLANT TOWARDS CALCULATION OF
PENSION AND COMMUTATION.

Respectfully Sheweth;-

The facts forming the background of the instant service
appeal are arrayed as under;

1. That the appellant got appointment in the
respondents' department on 12-9-95 and his
service was terminated on 5-4-97. Copy of
appointment order and termination order of the
appellant is annexed as Annexure "A".

2. That, the Khyber Pakhtunkhwa announced KP Sacked Employees appointment Act 2012, wherein, the employees appointed in the year 1993-94 and was terminated in the year 1997-98 were to be re-instated in service.
3. That, as per KP Sacked Employees appointment Act 2012, the appellant was appointment CT on the 28.02.2018, but his previous service w.e.f 12-9-05 to 5-4-97 and 2012 to 28.02.2018 has not been counted towards calculation of pension/commutation of the appellant. Copy of appointment order dated 28.02.2018 of the appellant is annexed as Annexure "B".
4. That, the appellant filed departmental appeal to respondents' department but of no avail. Copy of departmental appeal is annexed as Annexure "C". Hence, the instant service appeal is filed inter-alia on the following grounds.

GROUND:-

- a. That as per judgment of service tribunal as well as of the Apex Court protected period of service has been declared to be counted

towards calculation of pension/
commutation of the sacked employees.

Therefore, the appellant is entitled to have
the period w.e.f 12-9-95 to 5-4-97
and 2012 to 28.02.2018 counted towards
calculation of pension and commutation.

- b. That, department was supposed to count the
above mentioned period of the appellant
towards calculation of pension etc on the
analogy of similar and similarly placed
employees.
- c. That the respondents' department is
supposed to have one yard stick while
dealing with the employees who are
similarly placed. Besides, once a point of
law is decided by the Superior Courts that
must be made applicable to all the
employees who are similarly placed and no
discrimination may be made out.
- d. That the matter in issue relates to the terms
and conditions of service, therefore, the
Honourable Tribunal has jurisdiction to

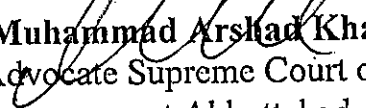
entertain the lis under Article 212 of the
Constitution.

It is therefore, very humbly prayed, that on
acceptance of instant service appeal, the respondents'
department may graciously be directed to count previous
service w.e.f 12-04-95 to 5-4-97 and 2012 to
28.02.2018 of the appellant towards calculation of
pension and commutation.


..APPELLANT

Through;

Dated; _____/2022


(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan
at Abbottabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. _____ 2022

Niaz Muhammad ET A HSS Kanze Banda
Distt Battagram

....APPELLANT

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary and
Secondary Education, Khyber Pakhtunkhwa, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, Niaz Muhammad ET A HSS Kanze Banda, Battagram

do hereby solemnly affirm and declare that the contents of foregoing appeal
are true and correct to the best of my knowledge and belief and nothing has
been concealed therein from this Honourable Court.


DEPONENT

P 07 Annex-A

OFFICE OF THE DIVL. DIRECTOR OF EDUCATION (S) HAZARA DIVISION, ABBOTTABAD.

OFFICE ORDER NO: 82 / AB-III /
 DATED ABBOTTABAD THE 17/11/95.

APPOINTMENT:-

The following appointment of candidates are hereby ordered on (S) posts as noted against each in NPS-9 (Rs. 1605-94-3760) and NPS-14 (Rs. 2055-101-4480) in case of trd./E.A.B. Sc with 2nd Trial + usual allowances as admissible under the rules on the following terms and conditions:-

S.No.	Name of candidate with qualification & address.	School where appointed.	Remarks.
1.	Hajz Muhammad S/C Ferooz Khan R/C Kaza Banda Batagram.	MS Khabal Haripur.	Against Vacant of post.

CONDITIONS:-

- The appointments are purely on temporarily basis and liable to termination at any time without notice or assigning reasons.
- They should produce their age and health certificate from the concerned Medical Superintendent.
- The Head of Institutions/Office are required to check all the original Educational Qualification/Professional Certificates before handing over charge.
- The newly appointed Head of Institution/Office are required to get verify their academic certificate from Board/University concerned.
- Appointment of trained candidates who passed their Professional Exam from other than NWFP, is provisional & subject to the verification of certificate.
- In case they wish to resign from service/post they will have to give one month's prior notice or forfeit one month's pay in lieu of short notice.
- The appointment shall stand automatically cancelled if they failed to join the post within 15 days of the issue of this order.
- Special relaxation of upper age limit for 2 yrs has already been allowed vide Govt. of NWFP, S&GAD letter No: SCS-III (S&GAD) (4) 94, dated 18.7.1994.
- They should not be handed over charge if their age exceed 5 years or below 14 years.
- No TA/DA is allowed on 1st appointment.
- Charge reports should be sent to all concerned.

(HAJI SARFRAZ KHAN)
 DIVL. DIRECTOR OF EDUCATION (S)
 HAZARA DIVISION, ABBOTTABAD.

Sub: 82/AB-III / 1995 (S) Dated / Abad the 17/11/95.

Copy of the above is forwarded to the:-

1. P/S to Minister for Education (S/O) NWFP, Peshawar.
2. P/S to Minister for
3. Director Secy: Education, NWFP, Peshawar.
4. District Education Officer (Male/Female) / Abad, Mensehra, Haripur & Kohistan.
5. Principal, Headmaster, Headmistress, CPSS/GAS/GPS Khabal Haripur.
6. District Accounts Officer, / Abad, Mensehra, Haripur & Kohistan.
7. Candidate concerned. (A) A.D.S.O. (B) Local Office. (C) P/A to DDE(S) Hazara.
8. Office order file.

C.T.C

For/Divl. Director of Edu: (S)
 Hazara Division Abbottabad.

W.A. (Pul Sehahe) M.Ed. Guidance
 Headmaster
 G.M.S. Bandi Gulo Teh. Haripur

نیاز ۱۸

12/8/94

OFFICE OF THE DIVL: DIRECTOR OF EDUCATION (S) HAZARA DIVISION, ABBOTTABAD.

OFFICE ORDER NO: 86 / AE-III /
DATED ABBOTTABAD THE 12/8/94.

P-08

APPOINTMENT:-

The following appointment of _____ candidates are hereby ordered on _____ post as noted against each in MFS-9 (Rs. 1605-04-3060) and MFS-14 (Rs. 2065-161-4480) in case of Trd/BA.B. Sc with 2nd Div + usual allowances as admissible under the rules on the following terms and conditions:-

S.No.	Name of candidate with qualification & address.	School where appointed.	Remarks.
1.	Niaz Muhammad S/O Farooz Khan A/C Kaza Bahda Batagram.	GMS Khabal Haripur.	Against Vacant of Post.

CONDITIONS:-

- The appointments are purely on temporarily basis and liable to termination at any time without notice or assigning reasons.
- They should produce their age and health certificate from the concerned Medical Superintendent.
- The Head of Institutions/Office are required to check all the original Educational Qualification/Professional Certificates before handing over charge.
- The newly appointed Head of Institution/Office are required to get verify their academic certificate from Board/University concerned.
- Appointment of trained candidates who passed their Professional Exam from other than NWFP, is provisional & subject to the verification of certificate.
- In case they wish to resign from service/post they will have to give one month's prior notice or forfeit one month's pay in lieu of short notice.
- The appointment shall stand automatically cancelled if they failed to join the post within 15 days of the issue of this order.
- Special relaxation of upper age limit for 2 yrs: has already been allowed vide Govt of NWFP, S&GAD letter No: SCS-III (S&GAD) 8(4) 94, dated 13.7.1994.
- They should not be handed over charge if their age exceed _____ years or below 18 years.
- No TA/DA is allowed on Int appointment.
- Charge reports should be sent to all concerned.

[Handwritten signature]

(HAJI SARFRAZ KHAN)
DIVL: DIRECTOR OF EDUCATION (S)
HAZARA DIVISION, ABBOTTABAD.
Dated A/Abad the 12/8/94.

Subst: No: 21910-15

Copy of the above is forwarded to the:-

- P/S to Minister for Education (S/O) NWFP, Peshawar.
- P/S to Minister for
- Director Secy: Education, NWFP, Peshawar.
- District Education Officer (Male/Female) A/Abad, Manselma, Haripur & Kohistan.
- Principal, Headmaster, Headmistress, GMS/GAS/GSS Khabal Haripur.
- District Accounts Officer, A/Abad, Manselma, Haripur & Kohistan.
- Candidate concerned. (S) A.D.E.O. (E) Local Office. (D) T/A to DDE(S) Hazara.
- Office order file.

C.T.C

For/Divl: Director of Edu: (S)
Hazara Division Abbottabad.

[Handwritten signature]
B.A. (Pol Science) Ph. Ed. Guidance

P-9

12-14 CT 3/16

GMS

- 243. Abdul Khalil S/O Mohd: 14.2.52 243/60 GMS, Pashtoo Vice Mohd: early transfer
- 244. Attiullah S/O Mohd: 19.6.55 244/60 GMS, Kaktai Vice M. Ayub CT as not selected
- 245. Ishtaq Ahmad CT-Trd: 1.1.62 245/60 GMS, Sarhan Vice Iftikhar CT, terminated selected.
- 246. Niazur Rahman S/O 4.3.65 246/60 GMS, Kaktai Post already by him.
- 247. Asad Gul Dani, GMS, Banda Flaw-arian Abbottabad. 5.1.69 247/60 GMS, Nara Vice Mohd: Salim terminated as selected.
- 248. Waheed Khan S/O Malik 2.10.69 248/60 GMS, Kuza-Banda Vice Mohd: S/ CT, terminated not selected
- 249. Mohammad Rahim ETC, GMS 10.1.70 249/60 GMS, Chakai Vice Mr. Manswa CT, terminated selected.
- 250. Dilfraz S/O. Seraj Islam Manshra. 1.4.70 250/60 GMS, Sehaki-Bala Msh: terminated selected.
- 251. Mohammad Fiaz S/O Mohd: Zaman K/Ship Haripur. 2.2.70 251/60 GMS, Parla am. zai. Vice Zaifer Iqbal CT, transferred.
- 252. Mazhar Sher Khan S/O Mohd: Riaz Khan Haripur. 13.2.70 252/60 GMS, Ferobala Vice Mohd: Naeem Terminated as selected on me
- 254. Tariq Mahmood S/O Mohd: Mahmood Abbottabad. 7.2.71 254/60 GMS, Hotel Bathool Vice Sajid CT, terminated not select
- 255. Mohd. Tanveer S/O Maqbool-ur Rehman R/O Abbottabad. 20.5.71 255/60 GMS, Gantar Vice Niaz Mohd Terminated.
- 256. Rashid Mahmood S/O Mohd: Sadiq Haripur. 20.1.66 256/60 GMS, Sumner-Nallah Koh: Vice Shoukat CT, terminated selected o
- 257. Sagheer Ahmad ETC, GMS, Jabri Abbottabad. 1.6.71 257/60 GMS, Kanai Vice Said M: terminated selected on
- 258. Mohammad Manzoor S/O Mohd: Akber Khan Abbottabad. 18.2.73 258/60 GMS, Pashtoo Vice Abdul Kh: terminated as selected on n
- 259. Amanullah Khan CT, GMS, Jab Haripur. 1.1.75 259/60 GMS, Jab Post already by him.
- 260. Mohammad Sakkael S/O Mohd: Sadiq Manshra. 25.3.75 260/60 GMS, Birsherial Vice Mohd: Qureshi as not s
- 1. Shad Mohammad S/O Sherafzal Battagram, CT, GMS, Rajmaira. 1.5.52 261/60 GMS, Rajmaira Post alre occupied,

[Handwritten signature]



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
BATTAGRAM

Email: emisbattagram@gmail.com Ph# 0997-543539/543540

APPOINTMENT OF SACKED EMPLOYEES AGAINST CT POST

In compliance of the Judgment of Honorable Peshawar High Court Abbottabad Bench Dated: 24-05-2016 in W.P No.516-A/2013 upheld by Honorable Supreme Court of Pakistan Vide Order dated: 24-05-2017 passed in Civil petition No: 401-P/2016, other connected civil petitions and the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 & recommendation of the Departmental Selection Committee, appointment of the following sacked employees is hereby ordered against the vacant posts of Certified Teachers (CT) in BPS-15 @ (Its: 16120-1330-56020) plus usual allowances as admissible under the rules & existing policy of the Provincial Government, in Teaching Cadre at Schools mentioned /noted against each on the terms and conditions given below with effect from the date of their taking over charge:

S. No	M. No	Name	Father Name	Date of Birth	CNIC	Qualif.	Village/ UC	Place of Posting
1	1	Niaz Muhammad	Fairoz Khan	06/01/1967	13202-0767568-5	BA/CT	Kuzabanda	GHSS Kuzabanda
2	2	Mohammad Furhad	Sarwar Khan	14/03/1967	13201-4955222-9	FA	Rabat	GMS Gangwal
3	3	Muhammad Anwar	Rahdar Khan	12/02/1968	13201-1831466-9	BA/CT	Pokal	GHS Gantar
4	4	Amanullah	Saif Ul Malook	04/03/1970	13202-0761553-1	FA	Ajmera	GMS Dehri Mashakhil
5	7	Abdul Khaliq	Firdos	15/04/1972	13202-0758528-1	FA	Kuzabanda	GHS Dagai
6	8	Haji Muhammad	Noor Ahmad Shah	31/01/1973	13202-0766043-7	FA	Pirhari	GHS Meeran
7	11	Zain Ul Abeddin	Khwaja Muhammad Sahibzada	09/05/1974	13202-0785350-9	BA/CT	Shamlai	GHS Shamlai
8	13	Said Mohammad	Gul Mohammad	05/11/1975	13202-6365780-9	FA	Kuzabanda	GMS Jesole

TERMS & CONDITIONS:

1. Their services will be considered as regular in terms of section 19 of the KP Civil servant act 1973 amended in 2013 issued vide Govt of KP Finance Department (Regulation wing) No SOS R-III/FD/12-1/2005 dated 27-02-2013. They will be governed by such rules and regulations as may be framed by the Govt from time to time for the category to which they belong.
2. This appointment order is subject to the Court decision in W.P.No: 1187-A of 2015, W.P.No: 1135-A of 2015 & W.P.No: 1056-A of 2015.
3. They will be on probation for a period of one year extendable to another year keeping in view their performance.
4. Their appointments have been made in pursuance of Khyber Pakhtunkhwa Sacked Employee (Appointment Act: 2012), hence under section 5 of the said Act: they shall not be entitled to any claim of seniority, promotion or other back benefits.
5. The period during which they remained dismissed, removed or terminated from service till the date of their appointment shall have been deemed automatically relaxed. Their appointment has been made in pursuance of Khyber Pakhtunkhwa Sacked Employee (Appointment) Act 2012, Hence under section 4 of the said Act the period during which they remained dismissed, removed or terminated from service till the date of their appointment shall have been deemed automatically relaxed.
6. Their Services are liable to termination on one month prior notice from either side. In case of resignation without prior notice, their one month pay plus allowances shall be forfeited to Government treasury.

[Handwritten Signature]

P-~~2~~ P-N

The appointment is made subject to the condition that the candidate is permanent domicile holder of District Battagram.

8. If their performance is found un-satisfactory, they will be proceeded under E&D Rules, 2011.
9. DDO Concerned will submit copies of their documents to this office for verification after 30 days of the issuance of appointment order to be sent for verification to concerned Board/ Universities. Pay will not be released by the DDO Concerned until and unless notification to this effect is issued by this office that their certificates are verified, anyone found producing bogus, forged documents his appointment order shall stand automatically cancelled from the date of his appointment order & will be reported to law enforcing agencies.
10. They shall obtain Medical fitness certificate from Medical Superintendent / Civil Surgeon DHQ Hospital Battagram within seven days from the date of taking over charge.
11. The competent authority has the right to rectify the errors / omissions if any noted / observed at any stage.
12. Before handing over charge, once again their documents may be checked by the DDO concerned.
13. The prescribed qualification for appointment of CT as per appointment Policy in vogue during 1996-97 is Intermediate or equivalent qualification from a recognized Board with CT Certificate / ADE from a recognized University / Institute. Candidates not in possession of requisite training shall acquire the same within 03 Three years from the date of issuance of this appointment order, failing which their appointment order shall stand cancel automatically, in the light of Judgment passed by the Peshawar High Court Abbottabad bench dated: 24-05-2016 upheld by the Supreme Court of Pakistan vide order dated: 24-05-2017.
14. They shall join their post within 30 days of the issuance of this appointment order if no willingness or response is received / failed to assume the charge of his/ their post within stipulated period, their / his candidature will stand automatically cancelled and the next senior sacked employee shall be considered for appointment in the light of section 7(3) of Khyber Pakhtunkhwa SACKED Employees (Appointment) Act, 2012.
15. Charge reports should be submitted to all concerned.
16. No TA/DA is allowed.


Jehan Muhammad
District Education Officer (M)
Battagram

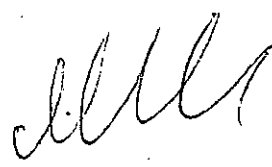
Dated 28/02/2018

Endst No 1765-74 /EB-III/ CT Sacked

Copy forwarded for information and necessary action to the:-

1. Additional Registrar Peshawar High Court Abbottabad Bench w/r to Judgment passed in W.P No.516-A / 2013 announced on 24.05.2016.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. PS to the Secretary to Govt. Khyber Pakhtunkhwa E&SE Department Peshawar.
4. Deputy Commissioner Battagram.
5. District Accounts Officers Battagram.
6. District Monitoring Officer IMU Battagram.
7. All the Principals/HMs of the concerned schools
8. B&AO Local Office
9. Teachers Concerned.
10. Master File.


District Education Officer (M)
Battagram



P-12

بخدمت جناب ڈائریکٹر صاحب ایلمنٹری اینڈ سیکنڈری ایجوکیشن خیبر پختونخواہ پشاور

Annex-C

عنوان: درخواست برائے ادائیگی سابقہ تقاضات و سروس

جناب عالی!

گزارش ہے کہ سائل 12-09-1995 (C.T) پوسٹ پر بھرتی کیا گیا تھا۔ پھر 1997ء کو سیاسی بنیاد پر ملازمت سے برطرف کیا گیا۔ اور بعد ازاں وفاقی حکومت نے 1997ء کے برطرف ملازمین بحالی کیلئے ایک صدارتی آرڈیننس 11 of 2009 جاری کیا۔ جس کے تحت سائل کی بحالی 1997ء سے تھی۔ جبکہ صوبہ خیبر پختونخواہ حکومت نے 2012ء میں Sacked Employees 2012 Act جاری کیا لیکن سائل کے بارہا درخواستیں دینے کے باوجود DEO بگرام نے بحال نہیں کیا۔ بلکہ DEO صاحب بگرام نے 28 فروری 2018ء آرڈر نمبر 74-1765 کو نئے سرے سے تعینات کیا۔ جبکہ سائل نے 2012ء ایکٹ کے تحت بحال ہوا اور نہ صدارتی آرڈیننس کے تحت مراعات دیئے۔ استدعا ہے کہ سائل کو صدارتی آرڈیننس 2009ء کے تحت مراعات و سروس کے احکامات جاری فرمانے کا حکم صادر فرمایا جاوے۔

المقوم:

العارض۔

نواز محمد ولد فیروز خان (C.T) گورنمنٹ ہائی سیکنڈری سکول کوزہ بانڈہ

رابطہ نمبر: 0302-8129991

کورٹ فیس

P-13
وکالت نامہ

Service Tribunal KPP Peshawar عدالت

Niaz Khan عنوان: لٹا اسٹاپ نام

Apprent منجانب:

نوعیت مقدمہ:

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آل مقام

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پر داختم جھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بہر اد استجارت ناش بصدقہ مفلسی کے دائرہ کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔ لہذا وکالت نامہ تحریر کیا تاکہ سند رہے۔

المرقوم:

بمقام:

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL CAMP COURT ABBOTTABAD

SERVICE APPEAL No. _____ of 2023

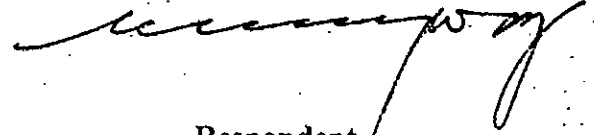
Niaz MuhammadAppellant

VERSUS

Government of Khyber Pakhtunkhwa through Secretary E&SE KPK
Peshawar and others.....Respondents

Index

S. No	Description /Documents	Annexure	Pages
1	Comments		1 to 3
2	Affidavit		4
3	Copy of Sacked Employees Act 2012	A	
4	Copy of Judgment	B	



Respondent

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL CAMP COURT ABBOTTABAD

SERVICE APPEAL No. _____ of 2023

Niaz Muhammad.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Secretary E&SE KPK
Peshawar and others.....Respondents

**Joint Para-wise comments /Reply on behalf of
Respondents NO. 1 to 3**

Respectfully Sheweth:

Preliminary Objections

1. That the appellant has no cause of action/locus standi to file the present appeal.
2. That the appellant has concealed the material facts from this Hon'ble Tribunal.
3. That the appellant has not come to this Hon'ble Tribunal with clean hands.
4. That the appellant has filed the instant appeal on malafide grounds, just to put pressure on the respondent Department for illegal pension benefits.
5. That the appellant's appeal is against the prevailing rules and law.
6. That the appellant is estopped by his own conduct to file the instant appeal.
7. That the instant appeal is not maintainable in its present form and also in the present circumstances of the issue.
8. As per Law/ Section 5 of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act 2012, a sacked employee appointed under Section. 3. shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment; hence the instant appeal is liable to be dismissed without any further proceeding.
9. That the instant appeal is against the terms and conditions of the appellant's appointment and also Sacked Employees Appointment Act 2012, hence not

maintainable and liable to be dismissed without further proceedings.

ON FACTS

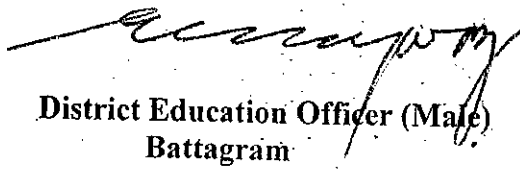
1. Para No. 1 of the appeal is correct. Pertaining to the appointment and further termination of the appellant; hence needs no comments.
2. In reply of Para No. 2, it is submitted that the appellant was appointed as a fresh appointee along with others in the light of Khyber Pakhtunkhwa Sacked employees Appointment Act 2012.
3. Para No. 5 of the appeal is incorrect and denied. As per Section 5 of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act 2012, it is clearly mentioned that **“a sacked employee appointed under Section. 3. shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment”**. Hence the plea of the appellant is against the law/act and also the judgments of this Hon'able Court in this regard. (Copy of, the Act and Judgment of Service Tribunal are attached as **“Annex. A & B”**).
4. The appellant has no cause of action.

ON GROUNDS:

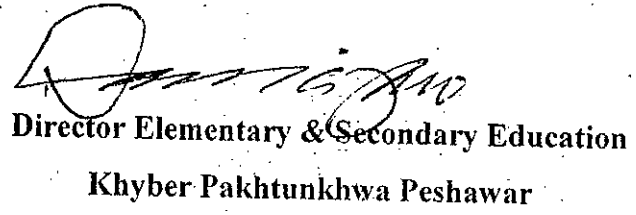
- a. Ground “a” of the appeal is incorrect, hence denied. The appellant is appointed in the light of Sacked Employees Appointment Act 2012 and it is clearly mentioned in the Act that this appointment shall be a fresh appointment and the appointee shall not be entitle for any kind of back benefits, hence respondents are not bound to obey the demands of the appellant in contrary with the Act.
- b. Ground “b” of the appeal is incorrect. Detailed reply is given in the preceding paras.
- c. Ground “c” of, the appeal is incorrect. Detailed reply is given in the preceding paras..
- d. Respondents seek permission of this Honour able Court to agitate other legal and factual ground at the time of arguments.

It is therefore humbly prayed that on acceptance of above Para-wise comments, the appeal of the appellant may graciously be dismissed with cost.

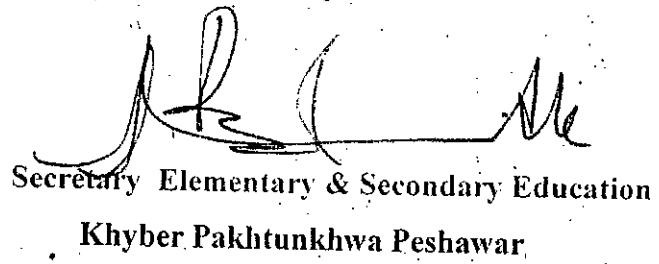
RESPONDENT NO. 3


District Education Officer (Male)
Battagram

RESPONDENT NO. 2


Director Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

RESPONDENT NO. 1


Secretary Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL CAMP COURT ABBOTTABAD

SERVICE APPEAL No. of 2023


Niaz MuhammadAppellant

– VERSUS

Government of Khyber Pakhtunkhwa through Secretary E&SE KPK
Pesbawar and others.....Respondents

AFFIDAVIT

I Hafiz Muhammad Nawaz. District Education officer (Male) Battagram
do hereby affirm and declare on oath that contents of accompanying Joint Para-
wise comments on behalf of respondent NO. 1 to 3 are true and correct to the
best of my knowledge and belief that nothing has been concealed from this
Honorable Court.


DEPENDENT
CNIC: 611 011 883953



(5)

Annex - A

THE KHYBER PAKHTUNKHWA
SACKED EMPLOYEES (APPOINTMENT) ACT, 2012.
(KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)

CONTENTS

PREAMBLE

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Appointment of sacked employees.
4. Age relaxation.
5. Sacked employees shall not be entitled to claim seniority and other back benefits.
6. Preference on the basis of age.
7. Procedure for appointment.
8. Removal of difficulties.
9. Act to override other laws.
10. Power to make rules.

**THE KHYBER PAKHTUNKHWA
SACKED EMPLOYEES (APPOINTMENT) ACT, 2012.**

(KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)

[first published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa (Extraordinary), dated the 20th September, 2012].

**AN
ACT**

to provide relief to those sacked employees in the Government service, who were dismissed, removed or terminated from service, by appointing them into the Government service.

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;

WHEREAS the Federal Government has also given relief to the sacked employees by enactment;

AND WHEREAS the Government of the Khyber Pakhtunkhwa has also decided to appoint these sacked employees on regular basis in the public interest;

It is hereby enacted as follows:

1. Short title, extent and commencement.—(1) This Act may be called the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.

(2) It shall apply to all those sacked employees, who were holding various civil posts during the period from 1st day of November, 1993 to 30th day of November, 1996 (both days inclusive).

(3) It shall come into force at once.

2. Definitions.— In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say:-

(a) "civil post" means a post created by the Finance Department of Government for the members of civil service of the Province;

- (b) "Department" means the Department and the Attached Department as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985, including the Divisional and District Offices working thereunder;
- (c) "Government" means the Government of the Khyber Pakhtunkhwa;
- (d) "Prescribed" means prescribed by rules;
- (e) "Province" means the Province of the Khyber Pakhtunkhwa;
- (f) "rules" means the rules made under this Act; and
- (g) "Sacked employee" means a person who was appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa 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 the 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;

3. Appointment of sacked employees.— Notwithstanding anything contained in any law or rule for the time being in force, on the commencement of this Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service:

Provided that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department:

Provided further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority.

4. Age relaxation.— The period during which a sacked employee remained dismissed, removed or terminated from service, till the date of their appointment shall be deemed to have been automatically relaxed and there shall be no further relaxation under any rules for the time being in force.

5. Sacked employees shall not be entitled to claim seniority and other back benefits.— A sacked employee appointed under section 3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.

6. Preference on the basis of age.— On the occurrence of a vacancy in the respective cadre of the concerned Department of the sacked employee against the thirty percent available share, preference shall be given to the sacked employee who is older in age.

7. Procedure for appointment.—(1) A sacked employee, may file an application, to the concerned Department within a period of six months from the date of commencement of this Act, for his appointment in the said Department:

Provided that no application for appointment received after the due date shall be entertained.

(2) The concerned Department shall maintain a list of all such sacked employees whose applications are received under sub-section (1) in the respective cadres in chronological order.

(3) If any vacancy occurs against the thirty percent available share of the sacked employee in any Department, the senior in age from such sacked employee shall be considered by the concerned Departmental Selection Committee or the District Selection Committee, as the case may be, to be constituted in the prescribed manner, for appointment:

Provided that no willingness or response is received within a period of thirty days, the next senior sacked employee shall be considered for appointment.

(4) The Concerned Departmental Selection Committee or District Selection Committee, as the case may be, will determine the suitability or eligibility of the sacked employee.

(5) If no sacked employee is available against thirty percent vacancy reserved in respective cadre in a Department, then the post shall be filled through initial recruitment.

8. Removal of difficulties.— If any difficulty arises in giving effect to any of the provisions of this Act, the Chief Minister Khyber Pakhtunkhwa may issue such order not inconsistent with the provision of this Act as may appear to him to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from coming into force of this Act.

9. Act to override other laws.—Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have overriding effect and the provisions of any other law or rules to the extent of inconsistency to this Act, shall cease to have effect.

10. Power to make rules.— Government may make rules for carrying out the purposes of this Act.

(9)

Annex - B

Service Appeal No. 691/2019 titled "Muhammad Miskeen-vs-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", Service appeal No. 577/2019 titled "Afreen Khan-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", Service appeal No. 578/2019 titled "Ghulam Yousaf-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" and Service Appeal No. 579/2019 titled "Abdul Aziz-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" decided on 21.07.2022 by Division Bench comprising Kullin Arshad Khan, Chairman, and Salah Ud Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH UD DIN ... MEMBER (JUDICIAL)

Service Appeal No.691/2019

**Mohammad Miskeen S/O Abdul Latif Khan, presently Serving SPST
GPS, Thaya District Battagram.**
.....(*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
 2. Director (Estab) Elementary & Secondary Education, Khyber Pakhtunkhwa.
 3. District Education Officer (Elementary & Secondary Education) Male Primary Battagram.
 4. District Account Officer, Battagram.
-(*Respondents*)

Present:

Abdul Aziz Khan Tanoli,
Advocate.....For appellant.

Mr. Kabiruallah Khattak,
Additional Advocate General,

Mr. Noor Zaman Khattak,
District Attorney.....For respondents

Date of Institution.....03.05.2019
 Dates of Hearing.....21.07.2022
 Date of Decision.....21.07.2022

Service Appeal No.577/2019

**Afreen Khan S/O Tor Khan R/O presently serving as Junior Clerk
GGHS, Gul Muhammad Abad, District Battagram.**
.....(*Appellant*)

Service Appeal No. 691/2019 titled "Muhammad Afiskeen-vs-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", Service appeal No. 577/2019 titled "Afsreen Khan-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others". Service appeal No. 578/2019 titled "Ghulam Yousaf-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" and Service Appeal No. 579/2019 titled "Abdul Aziz-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" decided on 21.07.2022 by Division Bench comprising Justice Arshad Khan, Chairman, and Salah Ud Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad

Versus

- 5. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
- 6. Director (Estab) Elementary & Secondary Education, Khyber Pakhtunkhwa.
- 7. District Education Officer (Elementary & Secondary Education) Male Primary Battagram.
- 8. District Account Officer, Battagram.

.....(Respondents)

Present:

Abdul Aziz Khan Tanoli,
Advocate.....For appellant.

Mr. Kabiruallah Khattak,
Additional Advocate General,

Mr. Noor Zaman Khattak,
District Attorney.....For respondents

Date of Institution.....03.05.2019
 Dates of Hearing.....21.07.2022
 Date of Decision.....21.07.2022

Service Appeal No.578/2019

Ghulam Yousaf S/O Molvi Khan Wali R/O Presently Serving SPST GPS, Dood Pati, District Battagram.

.....(Appellant)

Versus

- 9. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
- 10. Director (Estab) Elementary & Secondary Education, Khyber Pakhtunkhwa.
- 11. District Education Officer (Elementary & Secondary Education) Male Primary Battagram.
- 12. District Account Officer, Battagram.

Service Appeal No. 691/2019 titled "Muhammad Miskeen-vs-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", Service appeal No. 577/2019 titled "Afrin Khan-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", Service appeal No. 578/2019 titled "Ghulam Yousof-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" and Service Appeal No. 579/2019 titled "Abdul Aziz-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" decided on 21.07.2022 by Division Bench comprising Kalif Arshad Khan, Chairman, and Salah Ud Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad.

.....(Respondents)

Present:

Abdul Aziz Khan Tanoli,
Advocate.....For appellant.

Mr. Kabiruallah Khattak,
Additional Advocate General,

Mr. Noor Zaman Khattak,
District Attorney.....For respondents

Date of Institution.....03.05.2019

Dates of Hearing.....21.07.2022

Date of Decision.....21.07.2022

Service Appeal No.579/2019

Abdul Aziz S/O Haji Abdullah R/o presently serving PST GPS,
Gulibagh, District Battagram.

.....(Appellant)

Versus

- 13. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
- 14. Director (Estab) Elementary & Secondary Education, Khyber Pakhtunkhwa.
- 15. District Education Officer (Elementary & Secondary Education) Male Primary Battagram.
- 16. District Account Officer, Battagram.

.....(Respondents)

Present:

Abdul Aziz Khan Tanoli,
Advocate.....For appellant.

Mr. Kabiruallah Khattak,
Additional Advocate General,

Mr. Noor Zaman Khattak,

Service Appeal No. 691/2019 titled "Muhammad Miskeen-vs-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", Service appeal No. 577/2019 titled "Afreen Khan-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", Service appeal No. 578/2019 titled "Ghulam Yousaf-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" and Service Appeal No. 579/2019 titled "Abdul Aziz-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" decided on 21.07.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad.

District Attorney.....For respondents

Date of Institution.....03.05.2019
Dates of Hearing.....21.07.2022
Date of Decision.....21.07.2022

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST APPELLANT IS WORKING IN THE RESPONDENTS DEPARTMENT AND HIS SERVICES WERE TERMINATED ON 28.07.1997 THEREAFTER UNDER THE KHYBER PAKHTUNKHWA ACT XVII 2012 AND IN THE LIGHT OF JUDGMENT PESHAWAR HIGH COURT ABBOTTABAD BENCH DATED 17.01.2013 THE APPELLANT WAS APPOINTED AS PST IN BPS-12, VIDE ORDER DATED 15.02.2013, THE APPELLANT IS ENTITLED FOR BACK BENEFITS FROM THE DATE OF TERMINATION I.E 28.07.1997 TO THE DATE OF ORDER DATED 15.02.2013 BUT THE RESPONDENTS DID NOT GRANTED ALL CONSEQUENTIAL BACK BENEFITS FROM THE DATE OF TERMINATION TO THE ORDER DATED 15.02.2013 WHICH IS AGAINST THE PROVISIONS OF SAID ACT, AS WELL AS DISCRIMINATION AS OTHER DEPARTMENTS ALLOWED THE BACK BENEFITS TO THE OTHER EMPLOYEES AS WELL. THE CONDUCT OF THE RESPONDENTS TOWARDS THE APPELLANT IS ILLEGAL, MALAFIDE, UNLAWFUL, WITHOUT LAWFUL AUTHORITY, WITHOUT JURISDICTION, ARBITRARY, PERVERSE, HARSH, VOID AB-INITIO AND AGAINST THE PRINCIPLE OF NATURAL JUSTICE INEFFECTIVE UPON RIGHT OF THE APPELLANT.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: This judgment shall dispose of the instant service appeal as well as connected service appeals No.577/2019 titled "Afreen Khan -vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", appeal No. 578/2019 titled "Ghulam Yousaf-vs- Government of Khyber

Service Appeal No. 691/2019 titled "Muhammad Miskeen-vs-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", Service appeal No. 577/2019 titled "Afreem Khan-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", Service appeal No. 578/2019 titled "Ghulam Yousof-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" and Service Appeal No. 579/2019 titled "Abdul Aziz-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" decided on 21.07.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad.

Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" and appeal No. 579/2019 "titled Abdul Aziz-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" as similar questions are involved in all these appeals.

2. The facts surrounding the appeals are that the appellants of this appeal and of the connected appeals were appointed as PST (BS-07) and Junior Clerk by the respondent-department; that they were terminated/dismissed vide impugned order; that again they were was appointed as PST (BS-12) and Junior Clerk (BS-07) vide order dated 15.02.2013 on the basis of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 as well as judgment of the Hon'ble Peshawar High Court, Abbottabad Bench dated 17.01.2013, but without back benefits; that some conditions were mentioned in the appointment orders of the appellants by the respondent-department that the appellant will not claim back benefits but later on the said terms and conditions were withdrawn by the respondent-department; that the appellants were terminated without any reason, therefore, they were entitled for back benefits for the period they remained out of service; that the appellant filed departmental appeals which were not responded within the statutory period of ninety days, compelling them to file these appeals.

[Handwritten signature]
21.7.22

ATTESTED
[Handwritten signature]
SECRETARY
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 691/2019 titled "Muhammad Miskeen-vs-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", Service appeal No. 577/2019 titled "Afreem Khan-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", Service appeal No. 578/2019 titled "Ghulam Yousaf-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" and Service Appeal No. 579/2019 titled "Abdul Aziz-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" decided on 21.07.2022 by Division Bench comprising Kulim Arshad Khan, Chairman, and Salah Ud Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellants.

4. We have heard learned counsel for the appellants and District Attorney as well as learned Additional Advocate General for the respondents.

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned AAG controverted the same by supporting the impugned order.

6. It is not disputed that initially the appellants were appointed as PSTs and Junior Clerk. Later on when it came to the notice of the respondents that their appointments were made in violation of rules, they were terminated vide the impugned orders. In the meanwhile the Provincial Government promulgated the Khyber Pakhtunkhwa Sacked Employees Appointment Act 2012. When grievances of the appellants were not redressed at the departmental level he resorted to litigation by filing writ petition in the Hon'ble Peshawar High Court, Abbottabad Bench. Finally in pursuance of the directions of the Hon'ble Peshawar high Court, Abbottabad Bench they were appointed as PSTs and Junior

Clerk with immediate effect vide order dated 15.02.2013. The

Service Appeal No. 691/2019 titled "Muhammad Misker-vs-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others". Service appeal No. 577/2019 titled "Afriz Khan-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others". Service appeal No. 578/2019 titled "Ghulam Yousaf-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" and Service Appeal No. 579/2019 titled "Abdul Aziz-vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" decided on 21.07.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad.

appellants are asking for reappointment from the date of their termination from service. But Section-5 of the aforementioned Act, lays down that the sacked employee should not be entitled to claim seniority and other back benefits. The relevant provision is reproduced below for ready reference:-

"A sacked employee appointed under Section-3, shall not be entitled to any claim of seniority, promotion or other back benefits and, his appointment shall be considered as fresh appointment"

7. When the learned counsel for the appellants was confronted with the above provision of law, he did not defend the situation and rightly so because he does not defend which is indefensible.

08. As a resultant consequence, this and the connected appeal being groundless are dismissed. Costs shall follow the event. Copy of this judgment be placed in the connected files. Consign.

9. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 21st day of July, 2022.*



[Signature]
KALIM ARSHAD KHAN
Chairman
Camp court Abbottabad

[Signature]
SALAH UD DIN
Member (Judicial)
Camp court Abbottabad

[Signature]
Secretary
Khyber Pakhtunkhwa Service Tribunal
Camp Court Abbottabad

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