

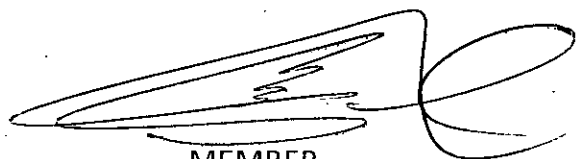
30.12.2015

Counsel for the appellant and Mr. Usman Ghani, Sr.GP with Muhammad Siddique Admn. Officer for the respondents present. Arguments heard and record perused. Vide our detailed judgment of today in connected appeal No. 665/2014, titled "Farhanullah Versus Govt. of KPK through Secretary, Public Health Engg. Department, Civil Sectt. Peshawar and others.", this appeal is also disposed of as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
30.12.2015



MEMBER



MEMBER

24.12.2015

Since 24.12.2015 has been declared as public holiday therefore, the case is adjourned to for the same 30.12.2015.

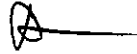

READER

~~28.12.2015~~

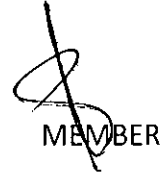
Learned counsel for the appellant submitted that despite of existence of a vacant post created on retirement of one Aurangzeb BPS-7 Mechanic, the appellant was unlawfully declared surplus and posted against BPS-1 post in the Office of DC Mardan. He further submitted that the impugned order is the result of malafide and is against the rules and policy of the government. Points raised need consideration. Admitted for regular hearing subject to all legal objections. Appellant is

21.10.2015

Counsel for the appellant and Mr. Muhammad Sadique, Admin Officer alongwith Mr. Usman Ghani, Sr. GP for respondents present. Since connected appeals have been fixed for arguments therefore, this case is also adjourned to 19-11-15 for order.



MEMBER



MEMBER

19.11.2015

Appellant with counsel and Mr. Muhammad Sadique, Admin Officer alongwith Mr. Usman Ghani, Sr.GP for respondents present. Since arguments in some connected appeal have been heard today and fixed for order on 2.12.2015 therefore, this appeal is also adjourned to 2.12.2015 for arguments alongwith connected appeals.



MEMBER



MEMBER

2.12.2015

Counsel for the appellant and Sr.GP with Muhammad Siddique Admn. Officer for the respondents present. Since the court time is over, therefore, case is adjourned to 3.12.15 for order.

Member



Member

3.12.2015

Counsel for the appellant and Sr.GP with Muhammad Siddique Admn. Officer for the respondents present. There are three other similar appeals of Abdullah Noor etc. fixed for to-day in which the appellants have not yet submitted their rejoinder and requested for adjournment. Hence, we prefer to keep these appeals pending till appeals of Abdullah Noor etc. are ripe. Therefore, case is adjourned to 24.12.15 for order.



Member



Member

31.08.2015

Counsel for the appellant and Muhammad Yaseen, Supdt alongwith Mr. Ziaullah, GP for the respondents present. Learned counsel for the appellant stated that he has come from D.I. Khan for these appeals but in the way he came to know about general strike of the Bar. He requested that the cases are old once and the appellants are badly suffering which may be dealt with priority. He requested for a short date. Hence to come up for arguments alongwith the connected appeals on 21-09-2015. Office is directed to place the case at top of the cause list.



Member



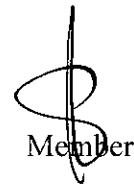
Member

21.09.2015

Counsel for the appellant and Mr. Muhammad Sadique, Admin Officer alongwith Mr. Usman Ghani, Sr.GP for respondents present. Arguments heard. To come up for order on 21-10-15.



Member



Member

26.1.2015 Counsel for the appellant and Mr. Muhammad Jan, GP with Muhammad Yaseen, Supdt. for the respondents present. Learned Judicial Member is on official tour to D.I.Khan, therefore, case is adjourned to 18.3.2015 for arguments.



MEMBER


18.3.2015 Junior to counsel for the appellant and Mr. Muhammad Jan, GP with Muhammad Yaseen, Supdt. for the respondents present. Due to general strike of the legal fraternity on account of murder of their colleague, counsel for the appellant is not available. Therefore, case is adjourned to 21.5.2015 for arguments.


MEMBER


MEMBER

21.05.2015 Counsel for the appellant and Addl: A.G for respondents present. Learned counsel for the appellant requested for adjournment. To come up for arguments on 12.8.2015.


Member


Member

12.08.2015 Counsel for the appellant and Muhammad Yaseen, Supdt alongwith with Mr. Ziaullah, GP for the respondents present. Arguments could not be heard due to Learned Member is on leave, therefore the case is adjourned to 31-8-2015 for arguments.


Member

22.08.2014

Counsel for the appellant and Mr. Kabeerullah, Asstt. A.G with Muhammad Yaseen Superintendent for the respondents present. The learned Member is on leave, therefore, case to come up for the same on 18.09.2014.


READER

18.09.2014

Counsel for the appellant, and Mr. Muhammad Adeel Butt, AAG with Muhammad Yaseen Supdt. for the respondents present and reply filed. Copy handed over to clerk to counsel for the appellant. To come up for rejoinder on 17.10.2014.



MEMBER

17.10.2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Muhammad Yaseen, Supdt. for the respondents present. Rejoinder received and placed on file. Copy handed over to the learned AAG. To come up for arguments on 04.12.2014.



MEMBER

4.12.2014

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP with Muhammad Yaseen, Supdt. for the respondents present. The Tribunal is incomplete. To come up for the same on 26.1.2015.


READER

Appeal No. 728/2014
Mr. Muhammad Ali Noon

09.06.2014

Counsel for the appellant present and filed an application for early hearing. Case file requisitioned. Application accepted. Preliminary arguments partly heard. Counsel for the appellant stated that similar nature of appeal of Mr. Muhammad Jamil has already been admitted and pending before the camp court D.I. Khan. The above mentioned service appeal may be requisition. Meanwhile pre-admission notice be issued to the GP to assist the Tribunal on the point of maintainability. To come up for further preliminary hearing on 13.06.2014.

Member

13.06.2014

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 14.02.2014, he filed departmental appeal on 25.02.2014, which has not been responded within the statutory period of 60 days, hence the present appeal on 23.05.2014. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections including limitation. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 22.08.2014.

Member

13.06.2014

This case be put before the Final Bench 17 for further proceedings.

Chairman



Appellant deposited security & process fee B/160/- Bank receipt attached with the file

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Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 728/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/05/2014	<p>The appeal of Mr. Muhammad Ali Noor presented today by Syed Tehseen Alamdar Advocate, may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	9-6-2014	<p>This case is entrusted to <u>Reston Bandy Magi.</u> for preliminary hearing to be put up there on <u>7-8-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE HONOURABLE SERVICE TRIBUNAL K.P.K.

PESHAWAR

S.T.A. No. 728 / 2014

Muhammad Ali Noor **Appellant**

VERSUS


Government of KPK etc..... **Respondents**

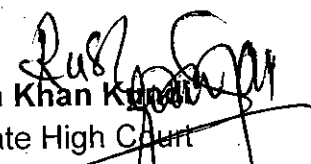
INDEX

S.No	Description	Annexure	Page No.
1	Memorandum of Appeal		1-3
2	Copy of Appointment Oder Dated 02.03.2009	I	4
3	Copies of Show Cause Notice Dated 21.01.2014	II	5
4	Copy of termination order No. 42-E Dated 14.02.2014 (under Objection)	III	7
5	Copy of reply Dated 18.02.2014	IV	8
6	Copy of Departmental Appeal on 25.02.2014	V	10
7	Copy of PLJ 2005 SC page 561	VI	16
5	Vikalat Nama		

Dated: 15 / 2014

Your Humble Appellant


Muhammad Ali Noor
Through Counsel


Rustam Khan
Advocate High Court

22
17
15

1

BEFORE THE HONOURABLE SERVICE TRIBUNAL K.P.K.

PESHAWAR

S.T.A. No. 728 / 2014

Muhammad Ali Noor S/O S. Noor Muhammad, R/O Haroon Abad Colony,
Yaar Street Bannu Road Dera Ismail Khan.

..... **Appellant**

VERSUS

~~W. J. P. Khan~~
~~23/5/2014~~
758
23/5/2014

1. Government of K.P.K. Province Through Secretary Public health Engineering Department Peshawar.
2. The Chief Engineer (South) K.P.K. R Public health Engineering Department Peshawar.

..... **Respondents**

FURTHER REPRESENTATION (APPEAL) UNDER SECTION 4 OF S.T.A. ACT 1974 R/W 19 E & D RULES 2011 AGAINST THE DECLINING OF DEFINITE AND EXPRESS DECISION ON DEPARTMENTAL APPEAL (DATED 25.02.2014) MADE TO THE RESPONDENT NO. 1 & AGAINST THE ORDER OF TERMINATION OF SERVICES OF APPELLANT AS INCUMBENT OF BPS 11 PASSED BY THE RESPONDENT NO. 2 ON 14-02-2014 WITHOUT PERSONAL HEARING OF APPELLANT.


Prayer.

ON ACCEPTANCE OF THE INSTANT REPRESENTATION/APPEAL, TO SET ASIDE THE IMPUGNED ORDER NO.42/E-4/PHE DATED 14.02.2014 OF THE RESPONDENT NO. 2 AND AS A CONSEQUENCE THERETO, TO THE REINSTATE THE APPELLANT IN HIS INCUMBENCY OF SUB-ENGINEER (BPS 11) WITH ALL BACK BENEFITS.

The Appellant, amongst other grounds; respectfully submits as follows:-

1. The Appellant was appointed on the recommendation of Departmental Selection Committee as Sub-Engineer, PHED (BPS11) w.e. from 02.03.2009 vide order No. 05/E-4/PHE Dated 02.03.2009 and had been performing his such duties

regularly without any break to the entire satisfaction of the Appointing Authority (C.E. PHED now C/E (S)/KPK) Copy of the appointment order is enclosed as **Annexure-I.**

2. The appellant was allowed all fringe benefits and perks of a regular employee since 02.03.2009 through regular entries in Service book and the Appointing Authority (now substituted by C.E. (S) PHED) didn't indicate any cause of complaint before the issuance of Show-Cause notice (Copy enclosed as **Annexure-II**) dated 21-01-2014.
3. The appellant submitted reply on 18.02.2014, but before 18.02.2014, the services of the Appellant were terminated vide order No. 42-E-4/PHE dated 14.02.2014 (Copy enclosed as **Annexure-III**) and copy of reply dated 18.02.2014 is enclosed as **Annexure-IV.**
4. The Appellant was relieved off on 14.02.2014 (Copy is enclosed as **Annexure-V**).
5. The Respondent No.1 has declined to pass order on the Departmental appeal by 30.04.2014 (at the expiry of 60 days from the date of appeal in his office) and has impliedly concurred the order dated 14.02.2014.
6. From the act of omission of the Respondent No. 1 and against the act of commission dated 14.02.2014, the appellant is aggrieved and for redress of the cause of grievance, no other adequate remedy is available except the appellate Forum of the Honorable Service Tribunal, hence the present appeal is preferred under S-4 of the service Tribunal Act (1) 1974 r/w the appellate clause of the E & D rules 2011.

GROUND'S of APPEAL:

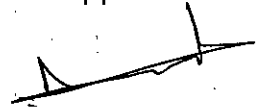
- i. The Appointment through initial recruitment on 02.03.2009 as Sub-Engineer by the competent authority was against a regular vacancy and the Appellant was thus not a temporary Civil Servant.
- ii. The abrupt impugned order dated 14.02.2014 without reasonable period of "Wait" for the show cause notice dated 21.01.2014 is an act of despotism and is violative of the dictates of E & D Rules, 2011 and the checklist of 1985 under E & D Rules, 1973.
- iii. The nonaffording of opportunity of personal hearing by the Respondents is violative of E & D Rules 2011 and the Appeal Rules 1986.
- iv. The impugned proceedings since 21.01.2014 till 14.02.2014 are tainted with malafide in order to create vacancies for the would be chosen candidates (favorites) of the Ruling Regime and is an instance of suppression of legitimate Expectations and offending against rule of locus ~~personae~~ ^{potentia} when the Appellant has crossed the bar of prescribed age-limits for direct recruitment in some other cadre or Deptt. and has caused irreparable/substantial injury to Appellant.

v. The impugned order is inconsistent with the pronouncement of Supreme Court (PLJ 2005 SC page 561) copy is enclosed as **Annexure-VI**, and is thus non sustainable and liable to be set aside.

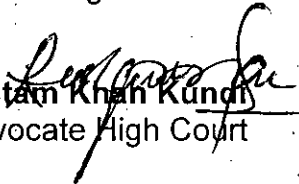
It is therefore **PRAYED** that the instant Appeal may graciously be accepted.

Dated: 22/11/2014

Your Humble Appellant



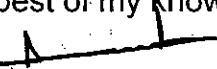
Muhammad Ali Noor
Through Counsel



Rustam Khan Kundli
Advocate High Court

Syed Tehseen Alamdar
Advocate High Court

It is solemnly affirm that the content of the memo of the Appeal is true and correct to the best of my knowledge and believes.



Muhammad Ali Noor
Appellant

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Annexure J

OFFICE OF THE CHIEF ENGINEER
PUBLIC HEALTH ENGG:DEPARTMENTNo. 05 / E-4/PHEDated Pesh: the 2 / 03 / 2009.OFFICE ORDER.


On the recommendation of the Department Selection Committee as per its meeting held on 13/08/2008, the competent authority is pleased to offer a post of Sub Engineer (BPS-11) to Mr. Muhammad Ali Noor S/O SNoor Muhammad R/O Haroon Abad Colony Yar Street Bannu Road D.I.Khan on the following terms and conditions :-

- 1) He will get pay at the minimum of BPS-11 (Rs.4115 - 275 - 12365) including usual allowances as admissible under the rule. He will also be entitled to annual increment as per existing policy.
- 2) He shall be governed by the NWFP Civil Servants Act 1973 and all the laws applicable to the Civil Servants and Rules made there under.
- 3) He shall, for all intents and purposes, be Civil Servant except for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount contributed by him towards Contributory Provident Funds (C.P.F) alongwith the contributions made by Government to his account in the said fund, in the prescribed manner.
- 4) His employment in the PHE Department is purely temporary and his services are liable to be terminated without assigning any reason at fourteen (14) days notice or on the payment of 14 days salary in lieu of the notice. In case he wishes to resign at any time, 14 days notice will be necessary or in lieu thereof 14 days pay will be forfeited.
- 5) He shall, initially, be on probation for a period of two years extendable upto 3 years.
- 6) He shall produce a medical certificate of fitness from Medical Superintendent, District HQ Hospital Shangla before reporting himself for duty to the Deputy Director W&S Shangla, as required under the rules.
- 7) He has to join duty at his own expenses.
- 8) If he accepts the post of these conditions, he should report for duty to the Deputy Director W&S Shangla within 14 days of the receipt of this offer and produce original certificates in connection with his qualifications, domicile and age.

CHIEF ENGINEER

Copy to the :-

- 1) Deputy Director W&S Shangla.
- 2) ✓ District Accounts Officer Shangla
- 3) Mr. Muhammad Ali Noor S/O SNoor Muhammad R/O Haroon Abad Colony Yar Street Bannu Road D.I.Khan

Attested



 CHIEF ENGINEER



OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

No. 32 / E-4 / PHE

Dated Peshawar, the 21 /01/2014

To

- | | |
|-------------------------------|----------------------------|
| 1. Mr. Tariq Nawaz | Sub Engineer, |
| 2. Mr. Sajjad-Khan | Sub Engineer, |
| 3. Mr. S. Muhammad Ihsan Shah | Sub Engineer, |
| 4. Mr. S. Muhammad Ali Sajjad | Sub Engineer, |
| 5. Mr. Abdul Samad | Sub Engineer, |
| 6. Mr. Shaukat Ali | Sub Engineer, |
| 7. Mr. M. Ali Noor | Sub Engineer, |
| 8. Mr. Irshad Elahi | Sub Engineer, |
| 9. Mr. Hussain Zaman | Sub Engineer, |
| 10. Mr. Salim Nawaz | Sub Engineer, |
| 11. Mr. S. Ashfaq Ahmad | Sub Engineer, |
| 12. Mr. Murtaza Ali | Sub Engineer, |
| 13. Mr. Sahar Gul | Sub Engineer, |
| 14. Mr. Ishfaq | Sub Engineer, |
| 15. Mr. Abdul Shahid | Sub Engineer, |
| 16. Mr. Kashif Raza | Sub Engineer, |
| 17. Mr. Waqas Ali | Sub Engineer, |
| 18. Mr. Muslim Shah | Sub Engineer, |
| 19. Mr. Ishtiaq Ahmad | Sub Engineer, |
| 20. Mr. Zuhib Khan | Sub Engineer, |
| 21. Mr. S. Hassan Ali | Sub Engineer, |
| 22. Mr. Mohsin Ali | Sub Engineer, |
| 23. Mr. Muqtada Qureshi | Sub Engineer, |
| 24. Mr. Ishfaq Ahmad | Sub Engineer, |
| 25. Mr. M. Qaiser Khan | Sub Engineer, |
| 26. Mr. Nomanullah | Senior Scale Stenographer, |
| 27. Mr. M. Imran | Steno Typist, |
| 28. Mr. M. Jamil | Steno Typist, |
| 29. Mr. Iftikhar | Steno Typist, |
| 30. Mr. Shah Khalid | Steno Typist, |
| 31. Mr. Aziz Ullah | Steno Typist, |
| 32. Mr. Farhan Ullah | Steno Typist, |
| 33. Mr. Farman Ali | Data E/Operator, |
| 34. Mr. Murtaza Qureshi | Data E/Operator, |

Subject: SHOW CAUSE NOTICE

In compliance of Supreme Court of Pakistan decision dated 15.1.2014 action against all illegal appointee's are being taken immediately. As such you are hereby served with this show cause notice regarding your appointment as under:

1. In light of S&GD letter No.SOR-I(S&GAD)/1-117/91(C) dated 12.10.1993 the appointment of Sub Engineer, Steno Typist/Stenographer and Data E/Operator continued to be made through recommendation of Public Service Commission. Whereas you have been appointed without the recommendation of Public Service Commission which is contrary to the prevailing rules. Therefore you are directed to provide recommendation of Public Service Commission, if any.
2. Your appointment orders have been made in contravention of Govt led down policy vide circulated notification No. SOR-VI/EXAD/1-10/2005/Vol-VI dated 15.11.2007.

Attended



Page -2

3. The content of your appointment orders reveal that you have been appointed without recommendation of the Public Service Commission, of Khyber Pakhtunkhwa. No NOC obtained from the Public Service Commission for recruitment, **no requisition** submitted to Secretary Works & Services Department, **no sanction/approval** was obtained from Administrative Secretary, no Departmental Promotion Selection Committee **constituted** by the Secretary Works & Services Department, not advertised and nor the appointment are modified in terms of para-13 and 14 of N.W.F.P Civil servant (appointment, promotion and transfer rules 1989). Codal formalities have not been fulfilled in your appointments.
4. Necessary sanction to **condonation** of the **violation** of codal formalities have not been accorded by the competent Authority.

Keeping in view the above, you are directed to furnish reply to the show cause notice within 15-days positively; otherwise it will be presumed that you have nothing in your defense. As such ex-party action will be taken against you under the E&D rules which will entail your termination from service.

Chief Engineer (South)

Copy forwarded to:

1. The Secretary to Govt of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
2. The Chief Engineer (North) Public Health Engg: Department Peshawar.
3. All Superintending Engineers/Executive Engineers in South/North Public Health Engg: Department. They are directed to serve the show cause noticed to the above named officials working in your office.

Attended

Chief Engineer (South)



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Annex 1A

OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

No. 42 / E-4 / PHE.

Dated Peshawar, the 14 / 02 / 2014

To


Mr. M. Ali Noor s/o S.Noor Muhammad
Sub Engineer P.H.Engg Division
Tank

Subject: TERMINATION FROM SERVICE.

Your recruitment in PHED made vide this office letter No.05/E-4 /PHE dated 02.03.2009 was illegal and unlawful due to non-fulfillment of codal formalities.

2. Your appointment as a Sub Engineer has been reviewed on the direction of Supreme Court of Pakistan Order dated 15.01.2014 in the civil petition No.2026 and 2029 of 2013, Mushtaq Ahmad and Muhammad Nasir Ali and others. The Supreme Court of Pakistan directed the undersigned to finalize action against all illegal appointees within one month. In this regard direction of Establishment & Administration Department vide his No.SOR-V(E&AD)/15-3/2009 dated 30.1.2013 received through Secretary PHE Department Khyber Pakhtunkhwa Peshawar No.SO(Est)/PHED/1-90/2012-13 dated 3.2.2014 record of the recruitment of Sub Engineer and other staff has been checked and found the following irregularities committed by the appointing authority in your appointment.

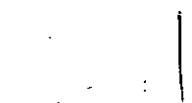
1. Vacancies/posts of Sub Engineers were not advertized through news paper.
2. Initial recruitment of Sub Engineers will continue to be made through recommendation of the Public Service Commission in light of S&GAD letter No.SOR-I (S&GAD)1-117 /91(c) dated 12.10.1993. in this case NOC was not obtained from Public Service Commission before issuance of your appointment order. A requisition for filling up these posts were not placed with Khyber Pakhtunkhwa Public Service Commission and you have not qualified test and interview conducted by the Public Service Commission during this period. As such your appointment without recommendation of the Public Service Commission is invalid and unlawful.
3. Approval from Administrative Secretary was not obtained by the appointing authority before making your appointment.
4. Departmental selection committee was not constituted by the Administrative Secretary.
5. You have also failed to reply to the show cause notice issued vide this office No. 32/E-4 /PHE dated 21.01.2014 in your defense with in stipulated period.
6. The above mentioned irregularities committed by the appointing authority in your appointment process prove that you were illegally appointed and there is no justification to retain you in the service of PHED. You are therefore terminated from the Post of Sub Engineer with immediate effect.


Chief Engineer (South)

Copy forwarded to:

1. The Secretary to Govt of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
2. PS to Minister for Public Health Engg: Department Khyber Pakhtunkhwa Peshawar.
3. The Accountant General Khyber Pakhtunkhwa Peshawar.
4. The Chief Engineer (North) Public Health Engg: Department Peshawar.
5. The Chief Engineer (FATA) Works & Services Department Peshawar.
6. All Superintending Engineers/Executive Engineers in South/North P.H.Engg: Department.
7. All District Accounts Officer in Khyber Pakhtunkhwa.

Attested


Chief Engineer (South)

To

8

Annexure (IV)

The Chief Engineer (South),
Public Health Engineering Department,
Peshawar.

Subject: - SHOW CAUSE NOTICE.

Reference: - Your No.32/E-4/PHE dated 21-01-2014 received by me on 6/02/2014 which shows that the same has un-lawfully and malafidely been issued by you in the back date.

Para wise explanation is submitted as under:-

1. In this connection your attention is invited to E.A.D letter No.SOS-Pool(E&AD)/1-10/2002 dated 08/4/2006 declaring the posts in B-1 to B-15 in W&S Department (i.e. C&W and PHE) as District Cadre Posts and outside the purview of P.S.C. Therefore, W & S Department was directed neither to place any such requisition before the P.S.C. nor the P.S.C. was required to advertise such posts (Annexure-I). The E&A Department, vide letter No.SOR-V(E&AD)/1-368/2005(SE) dated 02/5/2007 addressed to P.S.C. and copy thereof endorsed to Secretary W&S Department, further stated that the requisition made by the W&S Department, for filling in the vacant posts may be considered as withdrawn (Annexure-II). In the circumstances, the recommendation of P.S.C. for appointment against such posts, were uncalled for.
2. My appointment against the post was made by the Competent Authority as I having the prescribed qualifications for the same. Hence there involve no contravention to Govt. Policy.
3. As explained in the above paras, it was not the purview of P.S.C. to make recommendation against these Posts, therefore there was no need of N.O.C etc: from them. From the above letters it reveals that requisition for the vacant posts was made, but the same was withdrawn by the E&A Department. Therefore, the Secretary W&S Department, vide his Notification No. E&A/W&S/11-23/2007 dated 30-4-08 assigned all the Establishment matters of officials from BPS-1 to BPS-15 to the respective Chief Engineers of the C&W and PHE Wings of W&S Department (Annexure-III). Therefore, his approval/sanction for appointment against such posts was not required. Moreover, my appointment was made by the competent authority through the DSC.
4. As a candidate and junior employee of the Department, I do not know about any violation of codal formalities in the process of appointment. However, if there is some lapse in procedure, that is supposed to be tackled by the concerned hands with the competent forum for rectification/regularization, rather to proceed against me without any fault of mine at this belated stage/time where I have spent the useful part of my life of about 4 Year 11 Month years and have since crossed/near to cross the upper age limit of 30 years and have been overaged.

It is added that I am not party in the case of Mushtaq Ahmad & others C.P No.2026/13 & Muhammad Nasir Ali & others CP No.2029/13, therefore, the decision of the Honourable Supreme Court of Pakistan dated 15.01.2014 is not applicable upon me.

In view of above explanation, it is very humbly prayed that the charges may be dropped.

Thanking you.

Yours Obediently,

Muhammad Ali Noor.

PHE Department Tank.

Dated 18/02/2014.

Attested

Copy to the:-

1. Registrar, Supreme Court of Pakistan, Islamabad with reference to C.Ps N.2026 & 2029 of 2013.
2. Registrar, Peshwar High Court, Peshawar w/r to W.Ps No,271-P & 663-P of 2013 w/r to above.

They are requested to direct the Chief Engineer (South) PHE Peshawar to avoid from taking such drastic & one sided action i.e without proper enquiry & opportunity of hearing etc; as required under the law/ natural justice.

3. PS to Secretary PHE Department Peshawar.

Dated: 18 /02/2014

Muhammad Ali Noor.

Tank.
PHE Department Peshawar.

Attended

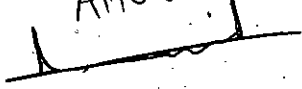
To

The Secretary,
Government of Khyber Pakhtunkhwa,
Public Health Engineering Department,
Peshawar.

Subject: Departmental appeal under Section 22 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 3 of the KP Civil Servants (Appeal) Rules, 1986 against the impugned order dated 14.02.2014 whereby the services of appellant was terminated with immediate effect by the Chief Engineer (South) of the Public Health Engineering Department, Peshawar.

Respected Sir,

1. That appellant being qualified for the post of Sub Engineer so he applied for the existed vacancies of Sub Engineers in the Public Health Engineering Department Khyber Pakhtunkhwa Peshawar. After observing the codal formalities, on the recommendation of **Departmental Selection Committee** he was appointed as Sub Engineer (BPS-11) on regular basis from his respective date of appointment issued by the Chief Engineer.
2. That after completing the requisite formalities including medical fitness certificate, the appellant joined duties at his respective place of posting. The respondent department also maintained the service book of the appellant and necessary entries have been made therein from time to time.
3. That the appellant is regular employce of the respondent department working against the permanent post since his respective appointment having more than five years service at his credit with excellent service record.
4. That some other employees whose appointments were made on adhoc basis so they agitated their regularisation under the **Khyber**

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Pakhtunkhwa Employees (Regularization of Services) Act, 2009 before this Hon'ble Court through two separate writ petition NOs.271-P/2013 and 663-P/2013 which were dismissed by common judgment passed on 02.10.2013.

5. That the impugned judgment was challenged by the same employees before Hon'ble Supreme Court of Pakistan through C.P. No.2026 and 2029 of 2013 but same were also dismissed on 15.01.2014. However during the proceedings, Mr. Sikandar Khan Chief Engineer, Public Health Engineering Department, Khyber Pakhtunkhwa orally brought into the notice of Hon'ble Supreme Court of Pakistan about the existence of illegal appointees in the department and accordingly he was directed to finalize the action against such illegal appointees within one month.
6. That a joint show cause notice was issued to appellant alongwith others vide letter No.32/E-4/PHE dated 21.01.2014 by Chief Engineer (South) therein he has unlawfully and malafidely shown the appointments of appellant and others as illegal. Since the copy of show cause notice was not received within stipulated time therefore he submitted an application before the Chief Engineer (South) requesting for extension in period of reply but before submitting the requisite reply, now which had been submitted, the Chief Engineer (South) had issued the impugned order dated 14.02.2014 thereby his services were terminated with immediate effect.

Grounds:

- A. That the appointment of appellant was made by competent authority on regular basis on the recommendation of **Departmental Selection Committee**. He was within age limit, having prescribe qualifications thus in such circumstances the Chief Engineer (South) was unjustified to treat the valid appointment of appellant as illegal.

Attested

- B. That it is pertinent to mention that by notification vide No:SO(O&N)E&AD/8-16/2000 dated 01.08.2001 the three departments namely Public Health Engineering, Physical Planning & Housing and Communication and Works Department were merged into Works and Services Department as mentioned in order dated 05.11.2001 and meanwhile the Khyber Pakhtunkhwa Local Government Ordinance, 2001 was also promulgated (now repealed) and under section 14 thereof the administrative and financial authority for management of the offices of the government specified in Part-A of the first schedule was decentralized to district government. Similarly the posts in BPS-01 to 15 in the Works and Services Department were also declared as district cadre posts vide notification No.SO(Estt:)W&S/13-1/77 dated 22.03.2005 as referred in letter dated 08.04.2006 by the Establishment Department to W&S Department.

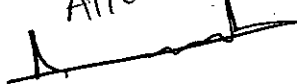
- C. That when the posts in BPS-01 to 15 in W&S Department were declared **District Cadre Posts including the post of appellant** then a letter was written to Secretary Khyber Pakhtunkhwa Public Service Commission, Peshawar on 02.05.2007 therein requested for withdrawal the requisition for filling in the vacant posts of Sub Engineers (B-11) in the W&S Department and done accordingly. In such circumstances the plea of Chief Engineer (South) regarding non fulfilling the requirements of recommendation of **Public Service Commission, Khyber Pakhtunkhwa** in the cases of appellant is unjustified, unreasonable, mala fide and without lawful authority and not sustainable under the law and rules.

- D. That in view of clause 5 of the appointment order of each appellant, his service was placed on probation for a period of two years extendable upto three years which the appellant has completed satisfactory becoming a confirmed employee of the office Chief Engineer. At the time of passing of impugned order the appellant has rendered more

Attended

than five years service to the department efficiently, satisfactory and without any complaint. Therefore the Chief Engineer has not acted in accordance with law and rules and unlawfully passed the impugned order without observing codal formalities as required in the case of a confirmed employee. Therefore the impugned order thereby appellant was terminated has no legal sanctity being without lawful authority.

- E. That clause 2 of appointment orders of appellant provides that he will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made thereunder and similarly in the impugned show cause notice mentioned that action would be taken under the Efficiency and Disciplinary Rules, 2011 but the Chief Engineer has not followed any law in passing the impugned order which is arbitrary, unjust and unfair and not warranted, liable to be set aside.
- F. That in the impugned order, Chief Engineer used the word of "termination" which neither applicable in the case of appellant being confirmed employees of the department nor prescribed in the E&D Rules, 2011 therefore the impugned order is ambiguous, vague and illegal not sustainable under the law and rules.
- G. That Chief Engineer has malafidely brought in the notice of the Hon'ble Supreme Court of Pakistan during the hearing of an other case. Neither he supplied any list of illegal appointments to Hon'ble Supreme Court of Pakistan at that very moment nor specified such illegal appointments but in general way he mentioned the existence of illegal appointments in the department which now he has exploited the situation and purposely held the appointments of appellant and others as illegal and issued the impugned order of termination without legal justification.

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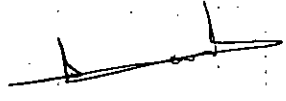
- H. That the impugned order has been passed at the back of appellant. Neither any regular enquiry has been conducted nor a fair opportunity was provided to them to defend their cases therefore the impugned order is illegal, without lawful authority being violative of principle of natural justice.
- I. That the appellant was continuously serving the department having more than five years service at their credit without any complaint which accrued vested rights in his favour which could not be taken away or withdrawn by the authority under the principle of locus poenitentiae.
- J. That in case of any defect in the appointment of appellant is existed for which only the departmental authority is responsible and not the appellant therefore the action of the Chief Engineer is not warranted under the law and rules and the impugned order is illegal and of no legal effect.
- K. That the appellant is a permanent and confirmed employee of the department and performing his respective duty efficiently since the date of his appointment during which he was provided all the benefits and privileges attached with his post including annual increments. Now the appellant has crossed the upper age limit, supporting a family with his children who are getting education in various schools and colleges thus in such circumstances, the Chief Engineer has no legal and moral justification to hold the appointment of appellant as illegal. Therefore the act and action of the Chief Engineer is tainted with malafide intention, unlawful and not operative against the vested rights of appellant.

It is, therefore, humbly prayed that on acceptance of this departmental appeal, the impugned order dated 14.02.2014 thereby the services of appellant

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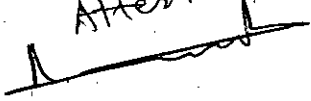
Was terminated with immediate effect, may kindly be set aside and applicant may graciously be reinstated with all back benefits.

25-2-2014



Yours sincerely,
Muhammad Ali Noor
S/O S Noor Mohammad

Office Address:- PHE Division Tank

Attested


PLJ 2005 SC 561
[Appellate Jurisdiction]

Present: IFTIKHAR MUHAMMAD CH., RANA BHAGWANDAS AND
SARDAR MUHAMMAD RAZA KHAN, JJ.
MUHAMMAD AKHTAR SHIRANI and others--Petitioners

versus

PUNJAB TEXT BOOK BOARD etc.--Respondents

Civil Review Petition No. 73-L of 2001, decided on 14.2.2004.

(On appeal against the judgment dated 27.7.2001 passed by this Court in
Civil Petitions Nos. 2215-L and 2259-L of 2001)

Civil Service--

---Wrong exercise of power--Illegal appointments--Penalizing petty employees--Valid--Beneficiary of illegal appointment cannot be blamed alone because primarily the authority who had actually wrongfully exercised its powers, for the reasons known to it, was bound to be held responsible for the same--Instead of penalizing such employees like Chowkidar, Naib-Qasid, Junior clerk etc. who had to earn livelihood to support their families and if after having served for a long period they were removed from service discriminately, such action would give rise to a number of problems--Instead of removing them from service action should be taken against the authority who wrongly exercised its powers. [P. 566] C

Punjab Text Book Board Employees Service Regulations, 1980--

---Regul. 11--Constitution of Pakistan, 1973, Art. 188--Supreme Court Rules, 1980, O.XXVI, R. 1--Review of judgment--Rectification of error of record--Illegal appointments--Reinstatement in service--While disposing of civil petition for leave to appeal, conclusion of High Court escaped notice of Supreme Court for the reason that at that stage petitioners could not file concise statement and their counsel verbally emphasized the question of discrimination with vehemence but the same was not entertained for want of material--Such material however was produced before High Court, who on basis of same, had concluded that 304 employees of the P.T.B.B. who were still working had been appointed contrary to Regul. Employees Service Regulations, 1980--Such finding of High Court had never been controverted before Supreme Court--Counsel for Board had conceded that a good number of employees whose appointments had also taken place on the recommendations of the authority other than the Chairman of the Board, were in service--Effect--in such view of the matter an error seemed to be apparent on the face of record--Judgment passed by Supreme Court was recalled and civil petitions filed by the Board were dismissed--Board was also directed to reinstate the employees from the date of removal from service--Review [Pp. 565 & 567] A & D

AKHTAR SHIRANI

Section 3 defines various terms relevant to the electronic crimes. During the Workshop it was agreed by most of the participants that this part needs re-writing and definitions should be more precise. Further, the definition of "computer" itself is missing from the whole body of the Bill. It is well-understood that the definition of "electronic system" will also include computer. However, as most of the e-crimes are result of use of computer itself, therefore, it would have been a better approach to incorporate proper definition of computer. Singapore's Computer Misuse Act, 1993 defines the word "Computer", from where help can be taken. It is to be noted that in Singapore's Computer Misuse Act and Trinidad-Tobago's e-crime law, the calculators, automated typewriters and other non-programmable devices have been excluded from the device that may be called "electronic system". In the same way, in our proposed Bill, the definition of "digital signatures" has not been incorporated. It will create some difficulties when the question of electronic documents and the crime of fraud and forgery will be raised under this proposed Bill. Further, the definition of "electronic document" is also missing. In 2002, first Pakistani law on electronic transactions, the Electronic Transaction Ordinance, 2002 (L.I of 2002), was promulgated that has definitions of terms "digital signature" and "electronic document". Perhaps, this is the reason for not defining these two terms in this proposed Bill. Although different countries have adopted different scheme of arrangements of e-crime law but it would have been a better approach if comparative study and the relevant case law on the point given due consideration so that an exhaustive and articulate drafting may be enacted instead of vague and general legislation. Therefore, definition clause needs re-writing in many aspects.

Sections 4 to 19 define specific electronic crimes and their punishments. The punishments provided for the offences so defined include imprisonment and fine. If we compare our proposed Bill with that of the United Kingdom's Computer Misuse Act, 1990, we will find that harsh punishments have been provided in this Bill. However, in the USA, Florida law on e-crimes contains the harshest punishments whereby some offences provide punishment up to 15 years' imprisonment. For example, suppose if a student sitting in his school or college commits the offence of "criminal access" as defined in sec.4 of the Bill, he may be punished for two years' punishment or fine of three hundred thousand rupees. Where are the exceptions? How to find the intent for the purposes of commission of an e-crime? What if the offences so defined are committed unintentionally but caused a major loss to the target systems? Whether a criminal who damages only 100kb (one hundred kilobytes) file in my computer, which may be a simple letter addressed to someone and another offender who has damaged an electronic system of a banking company consisting of hundreds of

Public Functionaries

Implementation of illegal orders-Principles-Supreme Court had noted with concern that departmental authorities had never felt hesitation in implementing even illegal order issued by their superiors according to their whim and wishes. They did so while knowing well that it had no legal sanction. Supreme Court time and again had emphasized that the functionaries were only obliged to carry out lawful orders of their superiors and if they were being pressurized to implement an illegal order, they should put on record their dissenting note and if such practice was followed chances of issuing/passing such orders would be minimized.
(P. 565) B

PLD 1995 SC 530; PLD 2003 SC 724 and 2004 SCMR 303 ref.

Hafiz Tariq Nasim, ASC and Mr. Tanver Ahmed, AOR (absent) for Petitioners.

Mr. Muhammad Arif Raja, ASC and Ch. Muhammad Latif, AOR (absent) for Respondents Nos. 1 to 3.

Mr. Muhammad Zaman Bhatti, ASC for Respondents Nos. 4 and 5.

Date of hearing: 1.4.2004.

JUDGMENT

Ifikhar Muhammad Chaudhry, J.-Petitioners seek review of the judgment dated 27th July, 2001 passed by this Court in Civil Petitions Nos. 2215-L and 2259-L of 2001, mainly on the ground of discriminatory action of Respondent No. 1 in removing the petitioners from the service *qua* a good number of its employees whose appointments were also made on the recommendation of the Provincial Minister for Education, without advertisement of the posts etc. but no action has been taken against them. Relevant para from the judgment under review, dealing with the question of discrimination, reads as under thus:

"As regards plea of discrimination, suffice it to say that it is not squarely attracted in the cases of the private respondents/petitioners because they were not only appointed in violation of the rules regarding advertisements of the posts but also on the recommendations of the Minister for Education. The relevant Record of the employees who were earlier appointed without advertisement of the posts, is not before us and it is not even so much as alleged by Hafiz Tariq Nasim that they were also recommended by any person other than the competent authority. The case of *Sui Southern Gas Company Ltd. v. Engr. Naraindas and others* (2001 PLC (C.S.) 743) relied upon by Hafiz Tariq Nasim in support of plea of discrimination is not attracted to the facts and circumstances of these cases in that the appointees in the precedent case were not appointed in the manner in which the private

respondents herein had been appointed i.e. under the orders of the Minister for Education."

2. Precisely stating the facts of the case are that petitioners were appointed in BS-1 to BS-15 in different cadres by the Chairman of the Punjab Text Book Board, Lahore [herein after referred to as 'the Board'] on the directives of Provincial Education Minister issued between the period of 1990-95 on various dates. Subsequent thereto services of some of them were regularized on the recommendations of a Scrutiny Committee appointed by the controlling authority. It is to be noted that despite of regularizing their services, some of them apprehended their removal from service as such they invoked the Constitutional jurisdiction of the Lahore High Court, Lahore by filing appeals and got disposed them of in view of the statement made on behalf of the Board that they are regularized employees, therefore, they are not being removed. Later on, again towards the year 1996-97 some of the petitioners approached the High Court to obtain restraint order against the Board not to remove them from services. This petition Being No. 3789/1997 was disposed of on 15th March, 1999 in view of the statement made by counsel for the Board namely that the petition is premature; as presently the Board has no intention to terminate their services and in case the Board decided to pass any adverse order, they shall be given due notice and they shall be heard. After having passed this order by the High Court, petitioners received Show-Cause Notices dated 12th June, 2000 wherein it was mentioned that their appointments were, *prima facie*, found contrary to the provisions of West Pakistan Text Book Board Ordinance, 1962 and Punjab Text Book Board Employees Service Regulations, 1980, as they were appointed under political consideration and without advertising the posts. On receipt of these notices, petitioners again invoked the Constitutional jurisdiction of the High Court by filing Writ Petition Nos. 12555 and 11865 of 2000 which were dismissed on 13th October, 2000, with direction to the petitioners to file reply of Show-Cause Notices, which would be duly considered and disposed of by the competent authority. In compliance of such directions the Board passed separate orders in each case on 16th October, 2000 holding that their appointments and regularization was illegal, void *ab initio* and of no legal effect. Petitioners preferred departmental appeals, before the Governor Punjab and also approached the High Court by assailing the said order. The learned Single Judge in the Chambers of the High Court issued the writ as prayed for *vide* order dated 13th June, 2001 against which Civil Petitions were filed Being Nos. 2215-L and 2259-L of 2001. Petitioners contested the petitions by filing caveat. However, said petitions were converted into appeals and allowed by means of impugned judgment as such instant petition has been filed for review of the same.

3. Learned counsel vehemently contended that petitioners got produced record from the office of the Board during hearing of the writ petitions before the High Court to substantiate that besides them, there are

Attended

304 employees who were also appointed by the Board without advertisement of the posts on various dates but they had been allowed to continue in service, whereas, the petitioners had been removed from service discriminately. But this Court instead of granting leave to appeal and allowing opportunity to petitioners to produce documents to substantiate their plea of discrimination, converted the petitions into appeals and allowed the same, as such the judgment under review suffering from error deserves to be recalled in exercise of powers under Article 188 of the Constitution of Islamic Republic of Pakistan.

4. On the other hand learned counsel appearing for the Board contended that appointments of the petitioners took place contrary to the Punjab Text Book Board Employees Service Regulations, 1980, as in pursuance of its Regulations Nos. 11 and 13(2), the appointing authority is the Chairman of the Board in respect of the employees in the cases of BS-1 to BS-16. As far as Minister for Education to the Provincial Government is concerned, he is only controlling authority but has nothing to do with the appointments, therefore, petitioners were rightly removed from service. However, he frankly conceded that there is a good number of employees, who were also appointed on the directions of Education Minister without advertisement from 1991 to 1993, therefore, following the doctrine of past and closed transactions their cases have not been re-opened.

5. We have heard both the sides and have also undertaken an exercise with the assistance of the learned counsel appearing for the Board to ascertain as to whether, *prima facie*, petitioners were eligible to hold the posts and on the basis of the material produced before us which was also produced by the Board before the learned Single Judge in Chambers of the High Court and on the basis of the same we feel no hesitation in holding that most of them were qualified for appointment against the posts being held by them. It is an uncontroverted fact that petitioners were appointed in the years 1994-95 by the Chairman of the Board on the directions of the Provincial Minister for Education temporarily, however, later on, on the recommendation of Scrutiny Committee the Board had regularized their services and they did perform their duties as regular employees still the date of their removal from service i.e. 16th October 2000 satisfactorily when there were so many other employees who were also appointed in the same manner by the Board but they were allowed to continue in service. In this behalf learned Single Judge having taken into consideration the material available on record held as under:

"There is merit in the contention of the learned counsel for the petitioners that the petitioners have been unfairly discriminated against. A perusal of the list of appointees placed before this Court shows that out of 373 officials recruited in the Board since, 1962, 304 officials were recruited without inviting applications through an advertisement in newspaper and only 69 officials were appointed after the posts had duly been advertised. Appointments of 30 officials

in the respondent Board were, therefore, also contrary to Regulation No. 11.....

6. It is to be seen that while disposing of Civil Petitions for leave to appeal, the above conclusion of the High Court escaped from the notice of the Court, probably for the reason that at the leave granting stage petitioners could not file concise statement and their counsel verbally emphasized the question of discrimination with vehemence but the same was not entertained for want of material. Although, such material was produced before the High Court, who while believing the same had concluded that 304 employees of the Board who are still working were appointed contrary to Regulation No. 11 of the Punjab Text Book Board Employees Service Regulations, 1980. Such findings of the High Court had not been controverted either at the time of hearing of Civil Petitions for leave to appeal before this Court or now by the learned counsel appearing for the Board. Besides it, he had frankly conceded that a good number of the employees, whose appointments had also taken place on the recommendations of the authority, other than the Chairman of the Board on in service. Thus in such view of the matter an error seems to be apparent on the face of the record in the judgment which calls for rectification.

7. We have noted with pain that departmental authorities responsible to run its affairs do submit to whims and wishes of their superiors and never feel hesitation in implementing even an illegal order, knowing well that it has no legal sanction and if such order is implemented it is bound to give rise to a number of complications in the future. This Court time and again has emphasized that the departmental functionaries are only obliged to carry out lawful orders of their superiors and if they are being pressurized to implement an illegal order, they should be put on record their dissenting note and if such practice is followed chances of issuing/passing illegal orders shall be minimized. However, reference in this behalf may be made to the case of *Zahid Akhtar v. Government of Punjab through Secretary, Local Govt. & Rural Development and others* (PLD 1995 SC 530). Relevant para there from is reproduced herein below:

".... We need not stress here that a tamed and subservient bureaucracy can neither be helpful to Government nor it is expected to inspire public confidence in the administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait in a bureaucrat. Elected representatives placed as incharge of administrative departments of Government are not expected to carry with them a deep insight in the complexities of administration. The duty of a bureaucrat, therefore, is, to apprise these elected representatives the nicety of administration and provide them correct guidance in discharge of their functions in

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notice, the legal infirmities in such orders/directions may sometimes amount to an act of indiscretion on the part of bureaucrats which may not be justifiable on the plane of hierarchical discipline. It hardly needs to be mentioned that a Government servant is expected to comply only those orders/directions of his superior which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-compliance would have exposed the concerned Government servant to the risk of disciplinary action."

8. It may be observed that for such reason beneficiary cannot be blamed alone because primarily the authority who had actually mis-exercised his powers, for the reasons known to it, is bound to be held responsible for the same, instead of penalizing the petty employees like Chowkidar, Naib Qasid, Junior Clerks etc. who have to earn livelihood to support their families and if after having served for a long period they are removed from service discriminatorily, such action would not promote the cause of action and it would give rise to a number of problems to them. In this regard at a number of occasions, it has been held by this Court that instead of removing the employees from service, action should have been taken against the authority who had mis-exercised its powers. Reliance in this behalf can be made to the judgment reported as *Managing Director, SSGC Ltd. v. Ghulam Abbas* (PLD 2003 SC 724). Relevant para therefrom are reproduced herein below:

"As far as second argument is concerned, same is also not acceptable because a perusal of appointment letter reproduced herein above indicates that the appointment was given to them with reference to their applications and subsequent tests/interviews which would mean that they were also recruited on merits. In view of such position statement of the learned counsel that respondents got their appointment due to political influence does not seem to be correct. Assuming that appointments of some of the respondents were contrary to Rules/Regulations then the authority who was in the helm of the affairs may have declined to honour the directions of political personalities. However, for any flaw or defect in the appointments as far as respondents are concerned, they cannot be blamed as it has been held in the case of *Secretary to Government of N.W.F.P. Zakat/Social Welfare Department, Peshawar and another v. Sadullah Khan* (1996 SCMR 413). Relevant para therefrom reads as under thus:

"6. It is disturbing to note that in this case Petitioner No. 2 had himself been guilty of making irregular appointment on what has been described 'purely temporary basis'. The petitioners have now turned around and terminated his services due to irregularity and violation of Rule 10(2) *ibid*.

The premise, to say the least, is utterly untenable. The case of the petitioner was not that the respondent lacked requisite qualification. The petitioners themselves appointed him on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to take benefit of their lapses in order to terminate the services of the respondent merely because they have themselves committed irregularity in violating the procedure governing the appointment. In the peculiar circumstances of the case, the learned Tribunal is not shown to have committed any illegality/irregularity in reinstating the respondent."

The above view has also been reiterated in the case of *Abdul Hafiz Abbasi and others v. Managing Director, Pakistan International Airlines Corporation, Karachi and others* (2002 SCMR 1034). It is to be noted that in the impugned judgment Federal Service Tribunal has correctly appreciated and applied the principle laid down in the judgments of Saleem Mustafa Sheikh, etc. thus the contention of the learned counsel being without force is rejected."

9. The above principle has also been re-affirmed in the case of *Collector of Customs and Central Excise v. Abdul Waheed* (2004 SCMR 303).

10. Thus for the foregoing reasons, review petition is allowed, consequently judgment dated 27th July, 2001 passed by this Court is recalled and Civil Petitions Nos. 2215-L and 2259-L of 2001 filed by the Board are dismissed with the observation that petitioners shall be reinstated in service from the date of their removal from service without financial back benefits and the Chairman of the Board/competent authority shall be free to examine their cases, if need be, to ascertain as to whether they are eligible to hold the post or not and shall dispose of the same after providing opportunity of hearing to them.

(J.R.)

Review petition accepted.

PLJ 2005 SC 567
(Shariat Appellate Jurisdiction)

Present: ABDUL HAMEED DOGAR, CHAIRMAN, MUHAMMAD NAWAZ ABBASI,
MIAN SHAKIRULLAH JAN, DR. ALLAMA KHALID MAHMOOD AND
DR. RASHID AHMED JALLUNDHARI, JJ.
Syed NADEEM SHAH and others--Appellants

versus

STATE and another--Respondents

Crl. Misc. Application No. 54(S)/2004, Crl. Shariat Appeals No. 10(S) and
11(S) of 2003, decided on 5.10.2004.

وکالت نامہ

کورٹ فیس

728/14

بعدالت جناب سر سٹریٹریٹس KPK بشارت
 منجانب امیدانت
محمد علی نذر نام کلومت KPIK دیکرہ
 دعوے یا جرم _____
 تفصیل دعوے یا جرم _____

S.A

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے بیروی و جوابدہی برائے پیشی یا تصفیہ مقدمہ بمقام ڈی۔ اے۔ / شہادہ کیلئے
سید خان لندی ایڈووکیٹ / سید حسین علی ادریس ڈیڑھ درسیا

کوجب ذیل شرائط پر وکیل مقرر کیا ہے۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص روبرو عدالت حاضر ہوتا ہوں گا۔ اور بروقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا۔ اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح پر ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پیچھے یا بروقت تظیل بیروی کرنے کے ذمہ دار نہ ہوں گے۔ اور مقدمہ صدر کچہری کے علاوہ کسی اور جگہ سماعت ہونے پر بروز تظیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضے کے ادا کرنے یا جتانہ کے واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرداخت صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعوے یا جوابدہی یا درخواست اجرائے ڈگری و نظر ثانی اپیل نگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرانے اور ہر قسم کارروائی وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر تاشی و راضی نامہ و فیصلہ برحلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا۔ اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ بیرون از کچہری صدر بیروی مقدمہ مذکورہ درخواست نظر ثانی و اپیل و نگرانی و برآمدگی مقدمہ یا منسوفی ڈگری یا کطرف یا درخواست حکم انتہائی یا ترقی یا گرفتاری قبل از فیصلہ و اجرائے ڈگری بھی صاحب موصوف کو بشرط ادا تنگی عٹھہ مختانہ بیروی کا اختیار ہوگا۔ اور تمام ساختہ پرداخت صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اس کے کسی جزو کی کارروائی یا بصورت درخواست نظر ثانی اپیل یا نگرانی یا دیگر معاملہ مقدمہ مذکورہ کی دوسرے وکیل یا بیرسٹر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ویسے ہی اختیار حاصل ہونگے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التوا پڑے گا۔ وہ صاحب موصوف کا حق ہوگا اگر صاحب موصوف کو پوری فیس یا سبج پیشی سے پہلے ادا نہ کرے گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیروی نہ کریں۔ اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا وکالت نامہ لکھ دیا ہے کہ سند رہے۔

مورخہ _____ ماہ _____ 201 _____ مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے۔ اور منظور ہے۔
 22/5/14
 محمد علی نذر

Accepted
 Ad
 22/05/2014

محمد علی نذر

محمد علی نذر

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

Appeal No 728/2014

Mohammad Ali Noor S/O Syed Noor Mohammad R/O Haroon Abad Colony year
street Bannu Road Dera Ismail Khan (Appellant)

Versus

1. Secretary to Govt: of Khyber Pakhtunkhwa Public Health Engg:
Department Peshawar.
2. Chief Engineer Public Health Engg: Department Govt: of Khyber
Pakhtunkhwa Peshawar. (Respondents)

**WRITTEN REPLY ON BEHALF OF
RESPONDENTS NO 1 & 2**

Respectfully stated

Para-wise comments of the Respondent 1 & 2 are as under:-

PRELIMINARY OBJECTIONS.

1. That the appellant has got no cause of action.
2. That the appellant is estopped by his own conduct to bring the instant appeal.
3. That the present appeal is not maintainable in its present form and shap.
4. That the appellant has got no locus standi.
5. That the appellant has not come to the court with his clean hand.
6. That the appeal is bad for non-joinder of the necessary parties.
7. That the appeal is barred by Law & limitation.
8. That this Honourable Service Tribunal has no jurisdiction to entertain the present appeal.

FACT.

- 1). **INCORRECT:-** Departmental Selction Committee (DSC) is not authorized to make recommendation for the appointment of Sub Engineer BPS-11 on regular basis. The unauthorized DSC without advertizing the Vacancies of Sub Engineers BPS-11, without conducting test and interview and without obtaining NOC from Public Service Commission appointed the appellant on the unlwful order of the Chief Minister Khyber Pakhtunkhwa (Copy enclosed as Annexure-I).

According to ESTA Code (Annex-II) and Public Service Commission Ordinance, (Annex-III) recruitment to posts of Sub Engineers BPS-11 falls with in purview of Public Service Commissio. The appellant has not availed the opportunity to appear in the test and interview conducted by Public Service Commission advertized on 07.4.2011 (Annexure-IV). The appellant has come through back door and his appointment is against the norms of merit. Necessary sanction to condonation of the violation of codal formilities has not been accorded by the competent authority.

- 2). **INCORRECT:-** The Chief Engineer Public Health Engineering Department Khyber Pakhtunkhwa had actually wrongfully excercised by appointing the appellant on regular basis without the recommendation of Public Service Commission which is prerequisite for any appointment in BPS-11 and above according to ESTA Code and Public Service Commission Ordinance. On the report of Chief (South) Public Health Engineering Department

Khyber Pakhtunkhwa , Secretary to Govt: of Khyber Pakhtunkhwa PHED forwarded the illegal appointment case of the appellant and other 23 Sub Engineers BPS-11 to establishment Department for advice on 12.11.2011 and 24.12.2013 (Annex-V). The establishment department vide letter No SOR(E&AD)/15-3/09 dated 30.1.2014 (Annexure-v) and letter No SOR-V (E&AD)/15-3/2009 dated 17.3.2014 (Annexure-VII) declared the appointment as illegal.

District Account Officer Tank has also raised observation on illegal appointment of one of the Sub Engineer in his batch. Letters of District Accounts Officer Tank and Accountant General in this connection are presented for further clarification of the matter. (Annex-VIII). The issue of illegal appointment of the appellant and 23 other Sub Engineers was raised in the Supreme Court of Pakistan on 15.1.2014 by some other terminated Sub Engineers in civil petition No 2026 and 2029 of 2013. The Supreme Court after hearing both the parties decided to finalize action against all illegal appointees with in one Month (Annex-IX).

- 3). **INCORRECT:-** The appellant failed to submit reply within the stipulated time hence a valid and sound order was passed against him.

- 4). *The appellant was illegally appointed without advertizing the vacancies, test and interview and obtaining NOC from Public Service Commission. Therefore appellant was terminated from service of Public Health Engg: Department Khyber Pakhtunkhwa on receiving decision from Establishment Department and direction from Supreme Court of Pakistan.*
- 5) *Representation made by the appellant has no weight-age. Hence could not be considered by the competent authority.*
- 6) **Incorrect**. *The appellant was illegally appointed through back door without obtaining NOC from Public Service Commission and without recommendation of Public Service Commission and failure of the appellant to appear in any test/interview conducted by Public Service Commission which is pre-requisite for appointment as Sub Engineer in the Department. Therefore the appeal of the appellant may kindly be dismissed.*

GROUND

- i). **INCORRECT:-** *Chief Engineer Public Health Engg: Department is not the competent authority to make recruitment of Sub Engineers BPS-11 on regular basis against regular vacancy. According to ESTA Code (Annexure-II) and Public Service Commission Ordinance (Annexure-III), the appointment of Sub Engineer will be made through the recommendation of Public Service Commission. The appellant was appointed on the unlawful order of the Chief Minister's Khyber Pakhtukhwa which is against the norms of merit and contrary to the prevailing rules and Public Service Commission Ordinance. As such the appellant does not come under civil servant category.*

- ii). **INCORRECT:-** The appellant failed to submit reply in more than two weeks after issuance of show cause notice. The case of illegal appointment of Sub Engineers was sent to Establishment Department for advice. In the meantime the Supreme Court of Pakistan in a civil petition No 2026 and 2029 of 2013 had given one month deadline to finalize action against all such illegal appointees (Annexure-IX). So on receiving decision from Establishment Department (Annexure-VI & VII), service of the appellant and others were terminated. The appellant was appointed through back door and does not come under category of civil servant. Therefore E&D rules 2011 and check list of 1985 under E&D rules 1973 are not applicable in this case.
- iii). **INCORRECT.** Show cause notice was served upon the appellant in which sufficient time was given to him to clarify his position. The appellant does not come under category of civil servant being illegal appointee, Therefore E&D rules 2011 and the appeal rules 1986 are not applicable in his case.
- iv). **INCORRECT.** Sub Engineers are appointed through the recommendation of Public Service Commission. There are no chances of nepotism and political interference in selection process of Public Service Commission. Protection to those who come through back door cannot be given. The appellant should have applied to Public Service Commission on 07.4.2011 for regularization of his service. The appellant had missed this golden opportunity.

v). *The referred Judgement of Supreme Court of Pakistan pertains to petty employees like Chowkidar, Naib Qasid and Junior Clerks non commissioned posts recruited illegally in Semi Government Department i.e Punjab Text Book Board. This Judgement is not applicable on the posts fill through Public Service Commission in the government Departments. The appellant was terminated on the basis of decision of Supreme Court of Pakistan dated 16.1.2014 (Annexure-IX). The termination Order of the appellant is consistent with the Judgement of Supreme Court of Pakistan dated 17.3.2014 in constitutional petition No 6 of 2011 CMA 5216 of 2012 Syed Mubashir Raza Jaffari verses EOBI (Annexure-X).*

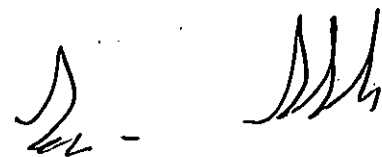
The prescribed procedure in ESTA Code was not followed. The principle of natural justice has been violated. Applications were not invited through advertisement No interview and written test was got conducted.

In this case article 25 of the constitution has been violated by not giving equal right of opportunity to the citizen of the Khyber Pakhtunkhwa and FATA having the requisite Qualification zonal allocation formula has been violated. Appointment of the appellant is without lawful authority and of no legal effect. It is therefore humbly prayed that in view of the above written reply, the appeal of the appellants may kindly be dismissed with cost.



SECRETARY

TO GOVT: OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT
(Respondent No 1)



CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA
(Respondent No 2)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,

PESHAWAR.

1. Service Appeal No.

728/2014.

2. Muhammad Ali Noor

Appellant

Versus

3. Govt. of Khyber Pakhtunkhwa through
Secretary PHE Deptt: Peshawar

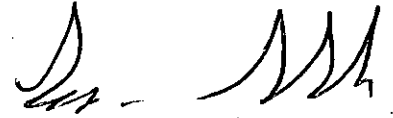
..... Respondent

2. Chief Engineer (South) PHED Peshawar

..... Respondent

AFFIDAVIT

I, Sikandar Khan, Chief Engineer (South) Public Health Engineering Department Peshawar do hereby solemnly affirm that the contents of the accompanying written statements are true and correct to the best of my knowledge and nothing has been concealed from this honourable ~~Court~~ *Tribunal*.



DEPONENT

MINUTES OF THE MEETING OF D.S.C (PHED) HELD ON 13/08/2008
AT 10.00 A.M. REGARDING SELECTION OF SUB ENGINEER /
STENOTYPISTS & DEO UNDER THE CHAIRMANSHIP OF CHIEF
ENGINEER PHE DEPARTMENT NWFP.

A meeting of the DSC was convened on 13.08.2008 at 10.00 A.M in this office for selection of the candidates for the posts of Sub Engineer / Stenotypists & DEO. The following attended the meeting:-

- | | | |
|----|--|-----------|
| 1) | Mr. Allauddin Khan Gandapur
Chief Engineer PHE | Chairman |
| 2) | Syed Baqir Shah
Section Officer (E-II)
W&S Department. | Member |
| 3) | Mr. Bashir Ahmad
ADO PHE Peshawar | Member |
| 4) | Mr. Afsar Ali Qureshi
Administrative Officer PHE | Secretary |

The Chairman of the Committee after welcoming the participants highlighted the objective of the meeting and stated that the Department is having a number of vacant posts of Sub Engineer / Steno typist & DEO etc; where, as per procedure these posts are to be filled in through PSC. But due to implementation of Devolution Plan, the Commission is not clear as to whether appointments against such posts come under the domain of District or Provincial Governments. The posts therefore, are running unfilled since long for want of clarification..

The Honourable Chief Minister NWFP, taking notice of the situation has provided a list of applicants through his Political Secretary (Annex-I) for their appointments against these posts by the Departmental Authority which is placed before the Committee for consideration & selection of the applicants containing in the said list.

The Chairman further reiterated that the matter was also discussed by him with worthy Secretary Works & Services Department who giving the reference of a Notification issued by his office bearing No.E&A/W&S/11-23/2001, dated 30.04.2008 (Annex-II) where-under all the appointments, transfer & postings of employees from BPS-01 to BPS-16 have been assigned to the Chief Engineer PHE, therefore the orders of Honourable Chief Minister NWFP, may be complied with by the Chief Engineer at his level.

The Committee examined the applications / documents made available by the Chief Minister's House in detail & found the same other wise eligible, hence unanimously recommended the applicants for their appointments against the relevant existing and future vacancies as under:-

<u>S.No.</u>	<u>Name of Applicant</u>	<u>Name of Posts</u>
1.	Mr. Tariq Nawaz Khan S/O Amir Nawaz Khan District Bannu.	Sub Engineer
2.	Mr. Muhammad Sajjad S/O Banut Khan District D.I.Khan	-do-
3.	Mr. S.M. Ihsan Shah S/O S.M.Hassan Shah District D.I.Khan	-do-

<u>S.No.</u>	<u>Name of Applicant</u>	<u>Name of Posts</u>
1.	Mr. S.M Ali Sajjad S/O S.Abid Hussain Shah District D.I.Khan.	-do-
2.	Mr. Abdul Samad S/O Abdul Mueed District Malakand.	-do-
3.	Mr. Shaukat Ali S/O Ghulam Qadir District Karak.	-do-
4.	Mr. Muhammadi Ali Noor S/O Noor Muhammad District D.I.Khan	-do-
5.	Mr. Irshad Elahi S/O Shah Nawaz District D.I.Khan	-do-
6.	Mr. Hussain Zaman S/O Syed Zamen District Malakand.	-do-
7.	Mr. Saleem Nawaz S/O Karim Nawaz District D.I.Khan.	-do-
8.	Mr. S.Ashfaq Ahmad S/O S.Jamil ud Din District Malakand.	-do-
9.	Mr. Murtaz Ali S/O Abdul Haq District Malakand.	-do-
10.	Mr. Sahar Gul S/O Abdul Jalil District Lakki Marwat.	-do-
11.	Mr. Samiullah S/O Khuda Baksh District D.I.Khan.	-do-
12.	Mr. Abdul Shahid Sadiqui S/O Abdul Azim District Dir Upper.	-do-
13.	Mr. Asfaq Ahmad S/O Muhammad Shuiab District Malakand.	-do-
14.	Mr. Kashif Raza S/o S.Abid Hussain District D.I.KI.han.	Sub Engineer
15.	Mr. Waqas Ali S/O Farznad Ali District Nowshera.	-do-
16.	Mr. Muslim Shah S/O Mehmood Shah District Mardan.	-do-
17.	Mr. Ishtiaq Ahmad S/O Tahmeed Ullah District Charsadda.	-do-
18.	Mr. Zohaib Khan S/O Jehanzeb Khan District Mardan.	-do-
19.	Mr. S. Hassan Ali S/O S.Ajmal Shah District Charsadda.	-do-
20.	Mr. Mohsin Ali S/O Muhammad Pervez District D.I.Khan.	-do-
21.	Mr. Muqtada S/O Afsar Ali District Peshawar.	-do-
22.	Mr. Iftikhar S/O Chainar Gul District Mardan.	Stenotypiest
23.	Mr. Noor Muhammad /O Jamroz Khan District Peshawar.	-do-
24.	Mr. Aziz Ullah SD/O Abid Ullah District Bannu.	-do-
25.	Mr. Farhan Ullah S/o Aziz Ullah District Bannu.	-do-
26.	Mr. Murtaza S/O Afsar Ali District Peshawar.	D.E.O

(ALLAUDDIN KHAN GANDAPUR)
Chief Engineer PHE (Chairman)

(ABDUL BASTIR)
ADO PHE (Member / Representative)

(SYED BAQIR SHAH)
Section Officer (E-II)
W&S Deptt: (Member)

(AFSAR ALI GURESHI)
Administrative Officer PHE
(Secretary)

Subject:-

APPOINTMENTS AGAINST THE VACANT POSTS OF SUB
ENGINEER / STENOTYPIST & DEO.

It has come in to the notice of Honourble Chief Minister, NWFP, that a number of posts of Sub Engineer / Stenotypists & DEO are lying vacant in PHE. While discussing the matter of appointments against these posts with Chief Engineer PHE on more than one occasions, it was told that the posts of BPS-10 and above are to be filled-in through PSC. Where on the other hand due to implementation of Devolution Plan, the Commission is not clear as to whether appointments against these posts, is the prerogative of the respective District or Provincial Governments.

In view of above, the Honourble Chief Minister NWFP, has been pleased to direct to consider the application of the following personnels for their appointments against the vacant posts by the Departmental Authority to bridge the gap of the staff & to ensure smooth working of the newly separated / established PHE Department. Necessary sanction to the condonation of the requisite codal formalities if any will be accorded by the competent authority at due course of time separately:-

<u>S.No.</u>	<u>Name of Applicant</u>	<u>Name of Post</u>
1.	Mr. Tariq Nawaz Khan S/O Amir Nawaz Khan District Bannu.	Sub Engineer
2.	Mr. Muhammad Sajjad S/O Banut Khan District D.I.Khan.	-do-
3.	Mr. S.M. Ihsan Shah S/O S.M.Hassan Shah District D.I.Khan	-do-
4.	Mr. S.M Ali Sajjad S/O S.Abid Hussain Shah District D.I.Khan.	-do-
5.	Mr. Abdul Samad S/O Abdul Mueed District Malakand.	-do-
6.	Mr. Shaukat Ali S/O Ghulam Qadir District Karak.	-do-
7.	Mr. Muhammad Ali Noor S/O Noor Muhammad District D.I.Khan	-do-
8.	Mr. Irshad Elahi S/O Shah Nawaz District D.I.Khan	-do-
9.	Mr. Hussain Zaman S/O Syed Zaman District Malakand.	-do-
10.	Mr. Saleem Nawaz S/O Karim Nawaz District D.I.Khan.	-do-
11.	Mr. S.Ashfaq Ahmad S/O S.Jamil ud Din District Malakand.	-do-
12.	Mr. Murtaz Ali S/O Abdul Haq District Malakand.	-do-
13.	Mr. Sahar Gul S/O Abdul Jalil District Lakki Marwat.	-do-
14.	Mr. Samiullah S/O Khuda Baksh District D.I.Khan.	-do-
15.	Mr. Abdul Shahid Sadiqui S/O Abdul Azim District Dir Upper.	-do-
16.	Mr. Asfaq Ahmad S/O Muhammad Shuiab District Malakand.	-do-
17.	Mr. Kashif Raza S/o S.Abid Hussain District D.I.KLhan.	-do-
18.	Mr. Waqas Ali S/O Farznad Ali District Nowshera.	-do-
19.	Mr. Muslim Shah S/O Mehmood Shah District Mardan.	-do-
20.	Mr. Ishtiaq Ahmad S/O Tahmeed Ullah District Charsadda.	-do-
21.	Mr. Zohaib Khan S/O Jehanzeb Khan District Mardan.	-do-
22.	Mr. S. Hassan Ali S/O S.Ajmal Shah District Charsadda.	-do-
23.	Mr. Mohsin Ali S/O Muhammad Pervez District D.I.Khan.	-do-
24.	Mr. Muqtada S/O Afsar Ali District Peshawar.	-do-
25.	Mr. Iftikhar S/O Chainar Gul District Mardan.	Stenotypiest
26.	Mr. Noor Muhammad /O Jamroz Khan District Peshawar.	-do-
27.	Mr. Aziz Ullah SD/O Abid Ullah District Bannu.	-do-
28.	Mr. Farhan Ullah S/o Aziz Ullah District Bannu.	-do-
29.	Mr. Murtaz S/O Afsar Ali District Peshawar	D.E.O

Political Secretary to
Chief Minister NWFP

ANNEXURE - II

ESTA CODE

(Establishment Code)

Khyber Pakhtunkhwa

Rs. 875

Law Books Publishers

S

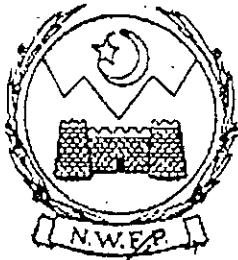
- (viii) Shirani Area.
- (ix) Merged Areas of Hazara and Mardan Division and Upper Tanawal.
- (x) Swat District.
- (xi) Upper Dir District.
- (xii) Lower Dir District.
- (xiii) Chitral District.
- (xiv) Buner District.
- (xv) Kala Dhaka Area.
- (xvi) Kohistan District.
- (xvii) Shangla District.
- (xviii) Gadoon Area in Swabi District.
- (xix) Backward areas of Mansehra and District Batagram.
- (xx) Backward areas of Haripur District, i.e. Kalanjar Field Kanungo Circle of Tehsil Haripur and Amazai Field Kanungo circle of Tehsil Ghazi.

RECRUITMENT INCLUDING AGE RELAXATION POLICY

Subject:- RECRUITMENT POLICY FOR THE PROVINCIAL SERVICES AGE RELAXATION FOR SPECIAL POSTS.

I am directed to refer to this Department circular letter of even number dated 1st February, 1993, on the subject cited above, and to say that new recruitment policy has been reviewed by the Provincial Government. It has been decided to revise the existing policy as under:-

- (a) Recruitment to posts in BPS-16 and above as well as the posts of Assistant Sub-Inspectors of Police, Naib Tehsildars, Zilladars and Sub-Engineers will continue to be made through the NWFP Public Service Commission. However, the Commission may make efforts to finalize the recruitment within six months of the receipt of the requisition duly completed from the Administrative Department.
- (b) Recruitment to posts in the various Government Departments as indicated below will also henceforth be made by the NWFP Public Service Commission:-
 - (i) **All Departments including Board of Revenue, NWFP-**
 - (1) Senior Scale Stenographer(B-15)
 - (2) Data Processing Supervisor(B-14)
 - (3) Junior Scale Stenographer(B-12)
 - (4) Assistant (B-11)
 - (5) Draftsman(B-11)
 - (ii) **Board of Revenue-**
 - (1) Sub-Registrar(B-14)
 - (2) Excise and Taxation Inspector(B-11)



GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT

(REGULATION WING)

No. SOR-VI/E&AD/1-10/2005/Vol:IV
Dated Peshawar, the 15th November, 2007

To

The Accountant General
NWFP, Peshawar.

Subject: NEW RECRUITMENT POLICY/PROCEDURE OF
CONTRACT EMPLOYEES.

Dear Sir,

I am directed to refer to your letter No.T-23(48)Vol-VIII/2559-60 dated 30-10-2007 on the subject noted above and to enclose herewith copies of the following letters as desired:-

- 1.No.SORI(S&GAD)1-117/91(C) dated 12-10-93
- 2.No.SORVI(E&AD)1-10/2005 dated 9-5-2006
- 3.No.SORVI(E&AD)1-3/2007 dated 22-3-2007

Yours faithfully,

(MUHAMMAD MASOOD)
SECTION OFFICER (REG-VI)

OFFICE OF THE ACCOUNTANT GENERAL NWFP, PESHAWAR.
No.T-23(48)/CoA/Vol-VIII/3012

Dated:-11-12-2007

Copy alongwith its enclosure forwarded for information and necessary action to:-

1. PA to Addl: AG NWFP.
2. All DAGs in Main Office.
3. All DAOs/AAOs in NWFP.
4. All Pay Roll in AG Office.

11/12/07
ACCOUNTS OFFICER (C&M)
NWFP PESHAWAR

GOVERNMENT OF N.W.F.P.
SERVICES & GENERAL ADMINISTRATION DEPARTMENT
(REGULATION WING)

Subject:

RECRUITMENT POLICY FOR THE PROVINCIAL SERVICES AGE RELAXATION
FOR SPECIAL POSTS

I am directed to refer to this Department circular letter of even number dated 1st February, 1993, on the subject cited above, and to say that new recruitment policy has been reviewed by the Provincial Government. It has been decided to revise the existing policy as under:-

- (a) Recruitment to posts in BPS-16 and above as well as the posts of Assistant Sub-Inspectors of Police, Naib Tehsildars, Zailadars and Sub-Engineers will continue to be made through the NWFP Public Service Commission. However, the Commission may make efforts to finalize the recruitment within six months of the receipt of the requisition duly completed from the Administrative Department.
- (b) Recruitment to posts in the various Government Departments as indicated below will also henceforth be made by the NWFP Public Service Commission:-
- (i) All Department including Board of Revenue, NWFP-
- (1) Senior Scale Stenographer (B-15)
 - (2) Data Processing supervisor (B-14)
 - (3) Junior Scale Stenographer (B-12)
 - (4) Assistant (B-11)
 - (5) Draftsman (B-11)
- (ii) Board of Revenue-
- (1) Sub-Registrar (B-14)
 - (2) Excise and Taxation Inspector (B-11)
- (iii) Home & Tribal Affairs Department-
- (a) Police Department:
- (1) Prosecuting Sub Inspector (B-14)
- (b) Inspectorate of Prisons:
- (1) Assistant Jail Superintendent (B-11)
- (c) Reclamation and Probation Department:
- (1) Parole/Probation Officer (B-11)
- (iv) Industries, Commerce, Mineral Development, Labour and Transport Department-
- (a) Directorate of Industries:
- (1) Assistant Industrial Development Officer/Assistant Price Stabilization Officer (B-11)
 - (2) Royalty Inspector (B-11)
 - (3) Surveyor (B-11)
- (b) Directorate of Manpower Training:
- (1) Instructor T.T.C (B-14)
- (v) Coöperative Societies:
- (1) Inspector (B-11)

- (v) Cooperative Societies:
 - (1) Inspector (B-11)
- (vi) Communication and Works Department-
 - (1) Assistant Architectural Draftsman (B-14)
 - (2) Senior Draftsman (B-13)
- (vii) Irrigation Department-
 - (1) Computer Supervisor (B-14)
- (viii) Public Health Engineering Department-
 - (1) Motivation Officer (B-15)
 - (2) Assistant Motivation Officer (B-14)
 - (3) Lady Health Educator (B-12)
- (ix) Electric Inspectorate-
 - (1) Sub-Inspector (B-11)
- (x) Food Department-
 - (1) Assistant Food Controller (B-8)
 - (2) Food Grain Inspector (B-6)
- (xi) Directorate of Archives and Libraries-
 - (1) Preservation Assistant (B-11)
 - (2) Cataloguer/Classifier (B-11)

(c) Initial recruitment to posts in BPS-15 and below other than the posts in the purview of the Public Service Commission, in all the departments shall continue to be made in accordance with Rules 10, 11 and 12 (Part-III) of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the criteria as laid down in SGAD letter No. SORJ(S&GAD)4-1/75, dated 11.2.1987 and the zonal allocation formula contained in S&GAD notification No. SOS-III(S&GAD)3-39/70, dated 2.10.1973 as amended from time to time.

(d) No adhoc appointment against any post in any pay scale shall be made.

(e) Relaxation in maximum age limit may be allowed to candidates for various posts having prescribed qualifications in specific fields upto a period of 5 years by the Competent Authority and for not more than 10 years by the S&GAD. The details of such posts are indicated in the annexure to this letter.

The age relaxation in respect of posts other than posts mentioned above may be confined to 5 years only. The Competent Authority may allow relaxation upto 2 years whereas the S&GAD may relax the age upto a period of 5 years.

*The age limit in respect of Govt. Servants who have completed at least four years service in the Government, on the closing day for submission of applications for the posts, shall be automatically relaxed by 10 years or a number of years an officer/official has actually served, whichever is less.

All the proposals for the grant of relaxation in upper age shall continue to be accompanied by:-

- (i) Full justification in support of the proposal; and
- (ii) A certificate to the effect that no eligible candidate within the prescribed age limits are/were available.

** An over age candidate shall be entitled to only one age concession whichever is beneficial to him.

35 ✓
(f) The Regional/Zonal quota if not filled will be carried forward till suitable candidates are available from the Region/Zone concerned. No. "Substitute" recruitment shall be made. Existing backlog, if any, in respect of any zone will not be carried forward and the Commission shall take a fresh start in respect of the posts under its purview. However, this condition will not be applicable in respect of posts which have already been advertised by the NWFP Public Service Commission.

(g) The vacancies in all the Departments shall be advertised in leading newspapers on ~~Sundays~~. The advertisement in electronic media should be to the extent of drawing attention of all concerned to the relevant newspapers in which the vacancies are advertised.

(h) Initial Recruitment to all the vacant posts shall be made on regular known periodic intervals in February and August each year after proper advertisement through electronic and national/regional media. After advertisement, a minimum period of 30 days should be allowed for receipt of applications. A waiting list of the eligible candidates shall be maintained for a period of six months.

(i) [Deleted].

**** (j) 2% quota for disabled persons already fixed earlier shall stand and should be enforced strictly. However, 2% quota has also been fixed for female candidates in all the services which are filled up through initial recruitment. The Commission shall revise the Requisition Form for all such posts for specifying the women's quota in the available vacancies and the Administrative Department shall indicate the quota for women in the Requisition Form accordingly. The 2% quota shall be over and above the selection of women, if any, under general quota of merit etc. This quota shall, however, be restricted to those Departments where no separate female cadres exist.

(k) For initial appointment to posts in BPS-17 and below in the Autonomous Bodies/Corporations, the zonal-allocation formula applicable for Provincial Services may be adopted. The method of recruitment shall also conform to sub-para (c) above.

(l) The Provincial Government have already agreed that recruitment to the post of PTC in Education Department in various districts shall be made on constituency-wise basis. For this purpose, the existing districts have been divided into various zones. Each zone shall correspond to the area of constituency of the Provincial Assembly. However, recruitment to the posts shall, in each case, be 50% on merit in open competition on district basis and 50% on constituency basis.

2. I am directed to request that the above decisions of the Provincial Government may be brought to the notice of all concerned for strict compliance.

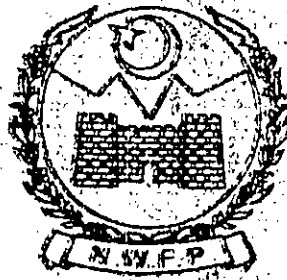
Government of NWFP, S&GAD's
letter No.SORI(S&GAD)1-117/91(C) dated.12.10.93

• Added vide No.SOR-I(S&GAD)1-117/91(C)Vol-I dated 7.1.1999
•• Added vide No.SOR-I(S&GAD)1-117/91(C)Vol-I dated 8.10.1999
••• Substituted vide No.SOR-I(S&GAD)1-117/91(C) dated 22.11.1997
•••• Substituted vide No.SOR-I(S&GAD)4-1/80(III) dated 19.2.1999

EXTRAORDINARY

REGISTERED NO. P. 111

GOVERNMENT



GAZETTE

North-West Frontier Province

Published by Authority

PESHAWAR, FRIDAY, 9TH AUGUST, 2002.

GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE,
LAW DEPARTMENT.

NOTIFICATION

9th August, 2002.

No. LEGIS-1(20)/73/6131.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:—

**THE NORTH-WEST FRONTIER PROVINCE
PUBLIC SERVICE COMMISSION (AMENDMENT)
ORDINANCE, 2002.**

N.-W.F.P. ORDINANCE NO. XXVII OF 2002.

**AN
ORDINANCE**

*further to amend the North-West Frontier Province
Public Service Commission Ordinance, 2002.*

WHEREAS it is expedient further to amend the North-West Frontier Province Public Service Commission Ordinance, 1978 (N.-W.F.P. Ord. No XI of 1978), for the purposes hereafter appearing;

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, as amended upto date, and the Provisional Constitution Order No. 1 of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

(2)

1. **Short title and commencement.**—(1) This Ordinance may be called the North-West Frontier Province Public Service Commission (Amendment) Ordinance, 2002.

(2) It shall come into force at once.

2. **Amendment of section 3 of N.W.F.P. Ord. No. XI of 1978.**—In the North-West Frontier Province Public Service Commission Ordinance, 1978, hereinafter referred to as the said Ordinance, in section 3,—

(a) in sub-section (3), the full stop appearing at the end shall be replaced by a colon and thereafter the following proviso shall be inserted, namely:

“Provided that a serving member of the Commission may be appointed as Chairman for a term not exceeding the un-expired portion of his term as such member.”

(b) in sub-section (4), the words and figure “and has been retired in basic pay scale 20 or above” shall be added after the word “years” appearing at the end.

3. **Amendment of section 4 of N.W.F.P. Ord. No. XI of 1978.**—In the said Ordinance, in section 4, for sub-section (1), the following shall be substituted, namely:

“(1) A member of the Commission shall hold office for a term of five years from the date on which he enters upon office and shall not be eligible for re-appointment.

Provided that a person holding office as Chairman or a member immediately before the commencement of the North-West Frontier Province Public Service Commission (Amendment) Ordinance, 2002, shall cease to hold office on such date as the Governor may direct.”

4. **Insertion of new section 4A to N.W.F.P. Ord. XI of 1978.**—In the said Ordinance, after section 4, as so amended, the following new section 4A shall be inserted, namely:

“4A. **Oath of office.**—Before entering upon office, the Chairman and a member shall take oath in the form set out in the Schedule to this Ordinance, before the Governor in the case of Chairman, and before the Chairman in case of a member.”

5. **Insertion of new section 5 to N.W.F.P. Ord. XI of 1978.**—In the said Ordinance, for section 5 omitted by N.W.F.P. Act No. XX of 1987, following shall be inserted, namely:

“5. **Ineligibility for further employment.**—On ceasing to hold office, a member shall not be eligible for further employment in the Service of Pakistan.”

(2)

1. **Short title and commencement.**—(1) This Ordinance may be called the North-West Frontier Province Public Service Commission (Amendment) Ordinance, 2002.

(2) It shall come into force at once.

2. **Amendment of section 3 of N.-W.F.P. Ord. No. XI of 1978.**—In the North-West Frontier Province Public Service Commission Ordinance, 1978, hereinafter referred to as the said Ordinance, in section 3,—

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“(1) A member of the Commission shall hold office for a term of five years from the date on which he enters upon office and shall not be eligible for re-appointment.”

Provided that a person holding office as Chairman or a member immediately before the commencement of the North-West Frontier Province Public Service Commission (Amendment) Ordinance, 2002, shall cease to hold office on such date as the Governor may direct.”

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“4A. **Oath of office.**—Before entering upon office, the Chairman and a member shall take oath in the form set out in the Schedule to this Ordinance, before the Governor in the case of Chairman, and before the Chairman in case of a member.”

5. **Insertion of new section 5 to N.-W.F.P. Ord. XI of 1978.**—In the said Ordinance, for section 5 omitted by N.-W.F.P. Act No. XX of 1987, following shall be inserted, namely:

“5. **Ineligibility for further employment.**—On ceasing to hold office, a member shall not be eligible for further employment in the Service of Pakistan.”

- (iii) on any other matter which the Governor may refer to the Commission.

Explanation.—In this section, recruitment means initial appointment other than by promotion or transfer.

(2) Recruitment to the following posts shall be outside the preview of the Commission:

- (i) post in the Governor's House;
- (ii) posts to be filled on adhoc basis for a period of six months or less; provided that before filling the post, prior approval shall be obtained from the Commission;
- (iii) posts to be filled by re-employing a retired officer; provided that the re-employment is made for a specified period not exceeding two years in a post not higher than the post in which the person was employed on regular basis before ^{retirement} recruitment.

7. **Insertion of Section 10A of Ordinance XI of 1978.**—In the said Ordinance after section 10, the following new section shall be inserted, namely:

“10A. Power of the Commission to make regulation.—Subject to the provisions of this Ordinance and the rules made thereunder, the Commission may make regulations for carrying out the purposes of this Ordinance.”

8. **Addition of Schedule to the N.-W.F.P. Ordinance XI of 1978.**—In the said Ordinance, the following Schedule shall be added at the end, namely:

“SCHEDULE

[(Section 4A)]

I, _____ do solemnly swear that I will bear true faith and allegiance to Pakistan. That, as a Chairman (or Member) of the North-West Frontier Province Public Service Commission, I will discharge my duties and perform my functions honestly, to the best of my ability and faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law and always in the interest of the solidarity, integrity and well-being and prosperity of Pakistan.

That I will not allow any personal interest to influence my official conduct or my official decisions and that in the performance of my functions, whether in the selection of persons for recruitment or appointment or in any other way, I will act without fear or favour, affection or ill-will."

Peshawar,
Dated the 6th August, 2002.

Lt. Gen. (Rtd.) IFTIKHAR HUSSAIN SHAH,
Governor of the North-West Frontier Province.

SALIM KHAN,
Secretary to Government of North-West Frontier Province,
Law Department.

*Printed by the Controller,
Pig. & Staty. Dept., NWFP, Pesh.*

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

2- Fort Road Peshawar Cantt:

Website: www.nwfppsc.gov.pk

Tele: Nos. 091-9214131, 9213563, 9213750, 9212897

Dated: 07.04.2011

ADVERTISEMENT No. 02 / 2011.

Applications, on prescribed form, are invited for the following posts from Pakistani citizens having domicile of Khyber Pakhtunkhwa / F.A.T.A by 07.05.2011 (candidates applying from abroad by 21.05.2011). Incomplete applications and applications without supporting documents required to prove the claim of the candidates shall be rejected without intimation to the candidates.

AGRICULTURE, LIVESTOCK & CO-OPERATIVE DEPTT:

1. FIVE (05) POSTS OF FEMALE LIVESTOCK PRODUCTION OFFICER (HEALTH) IN L&DD DEPTT:

QUALIFICATION: (i) B.Sc (Hons) Animal Husbandry from a recognized University; OR (ii) Doctor of Veterinary Medicine (DVM) or equivalent qualification in veterinary sciences from a recognized university and registered with Pakistan Veterinary Medical Council.

AGE LIMIT: 22 to 35 years. PAY SCALE: BPS-17 ELIGIBILITY: Female.
ALLOCATION: Two to Zone-1 and One each to Zone-2, 3 and 5.

2. THREE (03) POSTS OF SOIL CONSERVATION ASSISTANT

QUALIFICATION: (a) M.Sc Agriculture (Soil Science) from a recognized University; OR (b) B.Sc (Hons) Agriculture with Soil Science as major subject obtained after four years of academic instructions after F.Sc from a recognized university; OR (c) B.sc Agriculture Engineering from a recognized university.

AGE LIMIT: 21 to 35 years. PAY SCALE: BPS-17 ELIGIBILITY: Both Sexes.
ALLOCATION: One each to Merit, Zone-1 and 5.

3. ONE (01) POST OF BIO-CHEMIST

QUALIFICATION: Doctor of Veterinary Medicine (DVM) or equivalent qualification in veterinary sciences with M.Sc in Biochemistry or M.Sc (Hons) in Animal Nutrition recognized by Pakistan Veterinary Medical Council.

AGE LIMIT: 25 to 32 years. PAY SCALE: BPS-17 ELIGIBILITY: Both Sexes.
ALLOCATION: Merit.

C & W DEPARTMENT

4. THIRTEEN (13) POSTS OF JUNIOR SCALE STENOGRAPHER.

QUALIFICATION: (i) Intermediate or equivalent qualification from recognized a Board (ii) A speed of 60 words per minute in Shorthand in English and 35 words per minute in typewriting in English and knowledge of Computer in using MS Word and MS Excel.

AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-12 ELIGIBILITY: Both Sexes.
ALLOCATION: Three to Zone-1 Five each to Zone- 3 and 5.

EIGHT (08) POSTS OF JUNIOR SCALE STENOGRAPHER.

QUALIFICATION: (i) 2ND Class Intermediate/ D.com or equivalent qualification from recognized a Board; and (ii) A speed of 50 words per minute in English Shorthand and 35 words per minute in English Typing.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-12 **ELIGIBILITY:** Both Sexes
ALLOCATION: Two each to Zone-1, 2 & 3 and One each to Zone-4 and 5.

76. EIGHTEEN (18) POSTS OF SUB ENGINEER CIVIL.

QUALIFICATION: Three years Diploma of Associate Engineering Civil from a recognized Institute.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-11 **ELIGIBILITY:** Male
ALLOCATION: Four each to Zone-1, 2, 3 and Three each to Zone-4 and 5.

77. TWO (02) POSTS OF SUB ENGINEER CIVIL (WOMEN QUOTA).

QUALIFICATION: Three years Diploma of Associate Engineering Civil from a recognized Institute.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-11 **ELIGIBILITY:** Female
ALLOCATION: Merit.

78. FOUR (04) POSTS OF DRAFTSMAN.

QUALIFICATION: (i) Second Division Secondary School Certificate from a recognized Board and (ii) Two years duration Certificate Course in Civil Draftsmanship from a recognized Board of Technical Education.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-11 **ELIGIBILITY:** Both Sexes
ALLOCATION: One each to Zone-1, 2, 3 and 4.

PROVINCIAL PUBLIC SAFETY AND POLICE COMPLAINT COMMISSION**79. ONE (01) POST OF FEMALE JUNIOR SCALE STENOGRAPHER CUM COMPUTER OPERATOR**

QUALIFICATION: (i) FA/ F.SC in second division from recognized Board (ii) One year diploma in Computer Science from an institute recognized by the Board of Technical Education. (iii) A speed of 60 words per minute in English Shorthand and 35 words per minute in English Typewriting.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-12 **ELIGIBILITY:** Female
ALLOCATION: Merit

SPORTS, TOURISM, CULTURE, ARCHAEOLOGY & MUSEUMS DEPARTMENT**80. ONE (01) POST OF ADMINISTRATOR**

QUALIFICATION: Bachelor Degree from a recognized university with at least five years experience in management / administration.

AGE LIMIT: 21 to 35 years. **PAY SCALE:** BPS-17 **ELIGIBILITY:** Male
ALLOCATION: Zone-1

- Detail Marks Certificates for all the examinations shall necessarily be required and these should be attached with the application forms.
- (iii) Ex-armed Forces Personnel must send copy of Discharge Certificate with their applications. Govt. / Semi Govt. / Autonomous / Semi Autonomous Bodies employees may apply direct but their Departmental Permission Certificates should reach within 30 days of the closing date.
 - (iv) Applications should be on the prescribed application form obtainable from the listed below branches of the NATIONAL BANK OF PAKISTAN. Application Fee is Rs.285/- (Rupees Two Hundred Eighty Five only) for all the candidates. In addition to the application fee, the candidates will have to pay Rs.15/- (rupees fifteen only) on account of Bank Charges. Separate application form will be required for each advertised category of posts. Application forms obtained other than the specified branches of the National Bank will be considered invalid and such applications will not be entertained. The applications on plain paper or Photostat shall not be accepted. Incomplete and late applications shall also be ignored.
 - (v) Applications must be submitted within time as no extra time is allowed for postal transit. The applications if submitted on the last date for receipt of applications must reach the Commission's office by the closing hours.
 - (vi) Applicants married to Foreigners are considered only on production of the Govt: Relaxation Orders.
 - (vii) No applicant shall be considered in absentia on paper qualifications unless, he/she possesses exceptionally higher qualifications than the minimum prescribed qualification for a particular post(s).
 - (viii) Govt. reserves the right not to fill any or fill more or less than the advertised post(s).
 - (ix) Candidates who have already availed three chances by physical appearance before the Commission and have failed for the post(s) having one and the same qualifications and scale of pay shall be ineligible.
 - (x) Experience wherever prescribed shall be counted after the minimum qualifications for the post(s), if not specifically provided otherwise against the advertised post(s).
 - (xi) In case the number of applications of candidates is disproportionately higher than the number of posts, short listing will be made in anyone of the following manner: -
 - (a) Written Test in the Subject.
 - (b) General Knowledge or Psychological General Ability Test.
 - (c) Academic and/or Professional record as the Commission may decide.

SPECIFIED BRANCHES OF THE NATIONAL BANK OF PAKISTAN.

- (1) Main Branches of:
Parachinar, Mardan, Swabi, Malakand, Shangla, Chitral, Timargara, Daggar, D.I.Khan, Bannu, Karak, Kohat, Hangu, Lakki Marwat, Abbottabad, Haripur, and Mansehra
- (2) Saddar Road Branch, Tehkal Payan Branch, and G.T Road (Nishtar Abad) Branch Peshawar.
- (3) Tehsil Bazar Branch Charsadda, Nowshera Cantt: Branch, Bank Square Branch Mingora and City Branch Tank

Note: -The candidate who apply for the post(s) are advised to make sure that they are eligible for the post in all respects because eligibility of the candidate will be determined strictly according to the rules after conduct of all essential tests.

(ATTA-UR-REHMAN)
Secretary
Khyber Pukhtoonkhwa
Public Service Commission
Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

No.SO(Estt)/PHED/1-90/2010

Dated Peshawar, the November 12, 2011

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Establishment Department Peshawar

Subject: APPOINTMENT OF SUB ENGINEERS.

Dear Sir,

I am directed to refer to the subject noted above and to state that the Chief Engineer PHED has reported that ex-Chief Engineer PHE (Mr. Allauddin) has appointed 24-No Sub Engineers (BS-11) without observing procedures and nodal formalities during the period from 10/2008 to 01/2010, copies of their appointment orders are enclosed herewith. However, appointment of Sub Engineers (BS-11) comes under the purview of Public Service Commission. The Department has thoroughly examined the case and has noted the following shortcomings in the case:-

1. No such requisition has been sent to the Public Service Commission.
2. NO NOC was obtained from the Public Service Commission.
3. No approval/sanction of the administrative department has been obtained for appointment of said Sub Engineers.
4. No Departmental Selection Committee was constituted.
5. The posts were also not advertized in the newspapers.

2. It is also added that the officer concerned has been retired from Govt service on 15.01.2010 and all the said Sub Engineers are still working in the Department.

3. In view of above, it is requested that this department may kindly be advised that what action is required to be taken by the Department at this stage.

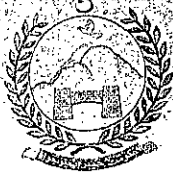
Yours faithfully

(SHABBIR AHMED AWAN)
SECTION OFFICER (ESTT)

Sub Engineer

24 + 6 = 30

6 stenographers



ANHEXURE - V
GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG. DEPARTMENT

No. SO(Estt)/PHED/1-90/2012-13
Dated Peshawar, the December 24, 2013

To

The Secretary to Govt. of Pakhtunkhwa,
Establishment Department.

Subject:- **APPOINTMENT OF SUB ENGINEERS**

Dear Sir,

I am directed to invite your kind attention to this Department's letter No.SO(Estt)PHE/1-90/2010, dated 12th November, 2011 (copy enclosed) wherein advice was sought for action against 24-Nos Sub Engineers (BPS-11), appointed by the Chief Engineer (Mr. Alla ud Din, now retired) during the period from 10/2008 to 01/2010, without observing procedures & codal formalities. Similarly some of the stenotypist/stenographer has also been appointed. (Copies of appointment orders issued are enclosed herewith for examination.

2. It is added that a reference bearing No.SO(Estt)PHE/1-90/2012, dated 24th May, 2013 (copy enclosed) was also made to the Anti-Corruption Establishment as the officer has since been retired from the service. However, ACE expressed inability on the grounds that there are no criminal proceedings involved in the matter and that the department may resolve the issue at his level.

3. In view of the above, I am to request as to what action is required to be taken at this stage.

Yours faithful!

SECTION OFFICER (ESTT)

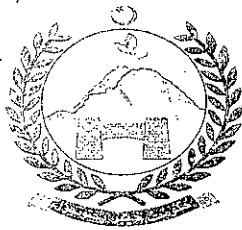
ENDST: OF EVEN NO. & DATE

Copy forwarded to the:-

- 1) PS to Minister for PHE Department KPK Peshawar.
- 2) PS to Secretary PHE Department, KPK Peshawar.

SECTION OFFICER (ESTT)

Immediate Court Case



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMIN: DEPARTMENT
(REGULATION WING)

No.SOR-V(E&AD)/15-3/09
Dated 30th January, 2014

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
PHE Department.

Subject: APPOINTMENT OF SUB ENGINEERS

Dear Sir,

I am directed to refer to your letter No.SO (Estt)PHED/1-90/2012-13 dated 22-1-2014 on the subject noted above and to state that the appointment, promotion and transfer rules 1989 and recruitment policy of the Provincial Government is quite clear and the Department may look/examine the appointment of Sub Engineer in the light of the rules and policy of the Provincial Government and firm up their views for final decision and take necessary action if the appointment proved illegal and apprise the Supreme Court of Pakistan accordingly. Moreover the Department should also initiate disciplinary action against the officers who was/were involved in appointment of illegal Sub Engineer and brought him/them to the justice.

DSC(A)
SO(E)

Rm W/a

Handwritten signature/initials

Yours faithfully,

~~Handwritten signature~~
(SHABBIR AHMAD)
SECTION OFFICER (REG-V)

Handwritten notes: 3/12, 2014, 2014

348
987



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No.SOR-V(E&AD)/15-3/2009
Dated 17th March, 2014

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
PHE Department.

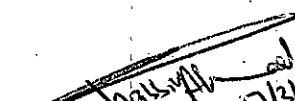
Subject: ADVICE REGARDING STATUS OF APPOINTMENT.

f-112/c

Dear Sir,

I am directed to refer to your letter No.SO(Estt)/PHED/1-90/2012-13/321 dated 04-3-2014 on the subject noted above and to state the post of Sub Engineer is Provincial Cadre post and fall under the purview of Public Service Commission. The Department is not empowered to fill the post without the recommendation of Public Service Commission. Therefore the person so appointed on the post of Sub Engineer BPS-11, his appointment is irregular, illegal. However the Department should initiate disciplinary action against the officer/officers who was/were involved in appointment of such illegal appointment of Sub Engineers and brought him/them to the justice.

Yours faithfully,


(SHABBIR AHMAD)
SECTION OFFICER (REG-V)


Copy No. 4035
Date: 18-3-14

Copy No. 411
Date: 18-3-14

DS/AJ

18/3/14

S/E
18/3/14
Put up on

Prepared by

Supd

201/6

OFFICE OF THE DISTRICT ACCOUNTS OFFICER TANK

NO.DAO/ TANK/APPOINTMENT/2010-11/ 805-11

Dated: 26/05/2011

To

The Accounts General,
Khyber Pakhtunkhwa.
Peshawar.

SUBJECT: APPOINTMENT OF SUB ENGINEER BY DEPARTMENTAL AUTHORITY

MEMO:

Kindly refer to your letter No: H-24(110)/TANK/VOL-II/2010-11 dated 30.07.2010 on the subject noted above (copy enclosed)

It is again submitted that the department of the incumbent sub engineer has been failed to produce the requisite NOC by the Public Service Commission Khyber Pakhtunkhwa.

It is further stated that department of public health engineering is reluctant to decide/regularize the case of appointment of sub engineer in light of Para 13 & 14 of Khyber Pakhtunkhwa civil servants appointment/promotion transfer rule 1989

The original appointment order has been made in contravention of Government laid down policy vide circulated notification No: SOR-VI/EXAD/1-10/2005/VOL-VI dated 15.11.2007.

The contents of appointment order reveal that incumbent of sub engineer has been appointed on regular basis without recommendation of Public Service Commission Khyber Pakhtunkhwa (copy enclosed), NOC in case obtained is not being furnished by the department nor the appointment is modified in terms of Para 13 & 14 of appointment promotion and transfer rule 1989.

This office is of the view that the appointment of the sub engineer is invalid abinitio until reviewed as per your office clarification dated 30.07.2010. The presumption of this office if correct may be confirmed.

AAO

DISTRICT ACCOUNTS OFFICER
TANK

Copy forwarded to all concerned for information and further necessary action please

- (1) Secretary to the Government of PHE, Khyber Pakhtunkhwa, Peshawar
- (2) Chief engineer, PHE Department, Peshawar
- (3) District Coordination Officer, Tank
- (4) District Comptroller of Accounts, D.I.Khan
- (5) XEN, PHE, Tank
- (6) XEN, PHE, D.I.Khan

DISTRICT ACCOUNTS OFFICER
TANK

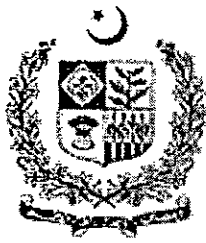
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P-179/e

copy file please

344



Office of the
Accountant General
Khyber Pakhtunkhwa Peshawar
Phone: 091 9211250-54

No:H-24(110)/Tank/Vol-III/2010-11

1984

Dated. 06.2011

To

✓ The Chief Engineer,
Public Health Engineering Deptt.
Khyber Pakhtunkhwa, Peshawar.

Subject: **Appointment as Sub Engineer by Departmental Authority.**

Kindly find enclosed herewith copy (along with its enclosures) of DAO Tank Memo No. DAO/Tank/Apptt:/2010-11/805-11 dated.26.05.2011 and letter dated. 23.07.2010 on the above subject.

In light of S&GAD letter No.SOR-I(S&GAD)1-117/91(C) dated. 12.10.1993, the appointment of Sub Engineer will continue to be made through the recommendation of Public Service Commission, where as Mr. Kashif Raza has been appointed without the recommendation of Public Service Commission vide office order No.11/E-4/PHE dated. 13.01.2010 which is contrary to the prevailing rules. The said officer was allowed salaries for the services recorded in light of Para-13 & 14 of NWFP Civil Servant (Appointment, Promotion and Transfer) Rules 1989, which provide that appointment can be made on adhoc basis for the period of six months.

It is therefore, requested to provide the recommendations of Public Service

Commission or regularize the appointments from Establishment Deptt. in relaxation of rules or reconsider the appointment order for future course of action.

Any appropriate action taken in this regard may kindly be intimated, otherwise the salary of the official being irregular appointed will be discontinued.

Jahid Muhammad
ACCOUNTS OFFICER(HAD)

DAC & M DESKTOP\Desktop\C&M\HAD\HAD Section\sub engineer.doc

AD
is kept in the
Sub-engineer's concerns
SE State of Khyber
be highlighted
according to
presenting Khyber
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C.E.P.H.E. Deptt. (Settle)	
File No.	763
Date	2/1/11
Case No.	
C.E.P.H.E.	
Director K.G.	
re/initial	
Director	
AD	
SAO	

Copy to:

1. Establishment Department Khyber Pakhtunkhwa, Peshawar
2. Deputy District Officer WS&S Tank
3. Mr. Kashif Raza, Sub Engineer office of Deputy District Officer Works & Services Tank(WS&S)
4. DAO Tank with reference to your letter referred above and intimate that why the Pay beyond 06 months was allowed without any consultation with high ups.

Sd/-

ACCOUNTS OFFICER(HAD)



Office of the
Accountant General
Khyber Pakhtunkhwa Peshawar
Phone: 091 9211250-54

2007/c

No. 24(110)/Tank:/Vol-II/2010-11/
To

Dated. 30.07.2010

The District Accounts Officer,
Tank.

Subject: APPOINTMENT OF SUB-ENGINEER BY DEPARTMENTAL
AUTHORITY

Kindly refer to your office letter No: DAO/TK/Appointment/2010-11/742-
44 dated: 23-07-2010 on the above subject.

In the case if the necessary NOC has been obtained by the Public Service
Commission, then the case may be decided in the light of Para -13 & 14 of NWFP Civil
Servant (Appointment, Promotion, & Transfer) Rules 1989.

[Signature]
ACCOUNTS OFFICER (HAD)
KHYBER PAKHTUNKHWA PESHAWAR.

Copy to:

1- Chief Engineer,
Public Health Engineering Deptt: Khyber Pakhtunkhwa Peshawar.

ACCOUNTS OFFICER (HAD)
KHYBER PAKHTUNKHWA PESHAWAR.

25

Ph: 9082235
Fax:9220406

REGISTERED
Nos. C.P. 2026 & 2029 of 2013 - SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 16/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

The Registrar,
Peshawar High Court,
Peshawar.

Subject: **CIVIL PETITION NOS. 2026 & 2029 OF 2013.**
Mushtaq Ahmed & another ...in C.P. 2026/2013
Muhammad Nasir Ali & others ...in C.P. 2029/2013
VERSUS
Government of Khyber Pakhtunkhwa through Chief Secretary,
Peshawar & others ...in both cases

**On appeal from the Judgment/Order of the
Peshawar High Court, Peshawar dated
02.10.2013 in W.P. 271-P & 663-P/2013**

Dear Sir,

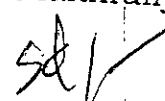
I am directed to enclose herewith a certified copy of the Order of this Court dated 15.01.2014 **dismissing** the above cited civil petitions with **directions** for information and further necessary action.

I am also to invite your attention to the directions of this Court contained in the enclosed Order.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order

Yours faithfully,



(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Copy with a certified copy of the Order of this Court dated 15.01.2014 is forwarded to Mr. Sikandar Khan, Chief Engineer, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar for immediate necessary action and report compliance.

Encl: Order



ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI.
MR. JUSTICE EJAZ AFZAL KHAN.

C. Ps. No. 2026 and 2029 of 2013.

(On appeal against the judgment
dt. 2.10.2013 passed by the
Peshawar High Court, Peshawar in
W. Ps. No. 271-P and 663-P of 2013).

Mushtaq Ahmed and another.
Muhammad Nasir Ali and others.

(in CP. 2026/13)

(in CP. 2029/13)

...Petitioners

Versus

Government of KPK through Chief Secretary,
Peshawar and others.

(in both cases)

...Respondents

For the petitioners: Mr. Ghulam Nabi Khan, ASC.
Syed Safdar Hussain, AOR.

For the respondents: Sikandar Khan, Chief Engineer, PHEK, KPK.
(on court notice)

Date of hearing: 15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments of the learned ASC for the petitioners and careful perusal of the case record particularly the reasons assigned in the impugned judgment, we are satisfied that no case for grant of leave to appeal is made out, including the plea of discrimination raised by the petitioners, as one wrong or any number of wrongs, cannot be made basis to justify an illegal action under the garb of Article 25 of the Constitution. Both these petitions are, therefore, dismissed. Leave is refused.

2. So far as some other illegalities in the appointments brought to our notice is concerned, in response to our earlier order dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health Engineering, Department, KPK is present in Court, he states that

ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

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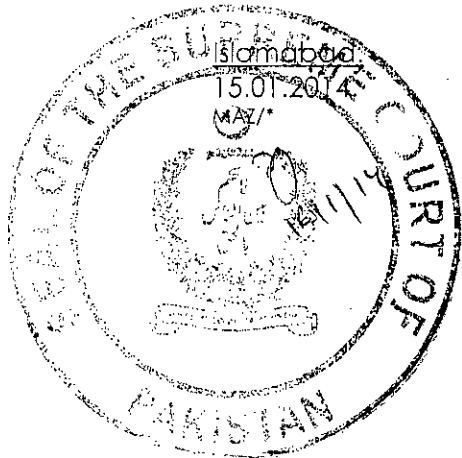
although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/- Anwar Zaheer Jamali, J
Sd/- Ejaz Afzal Khan, J

Certified to be True Copy

Supintendent
Supreme Court of Pakistan
Islamabad



GR No: 640/14 Civil/Criminal

Date of Presentation: 15-1-14

No. of Words: 600

No. of Folios: 6

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Court Fee stamps: 8.12

Date of Completion of Copy: 18-1-14

Date of delivery of Copy: 18-1-14

Compared by/ Special by: Zahid Jan

Received by: _____

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Mushir Alam

**Constitution Petition No.6 of 2011, C.M.A.
No.5216 of 2012 and H.R.C. No.49012-P of 2010**

Constitution Petition No. 6 of 2011
(Against illegal appointments and corruptions in EOBI)

Syed Mubashir Raza Jaffri, etc.

Petitioners

Versus

Employees Old Age Benefits Institutions (EOBI) through its
President of Board, Board of Trustees, & others

Respondents

Petitioners No.1 & 2: In person.

For respondents No. 1 & 3: Mr. Saiful Malook, ASC
Mr. M. S. Khattak, AOR

On behalf of Federation: Mirza Waqas Rauf, DAG
Mr. Pervaiz Khan, D.G., H.R.

On Court Notice: Mr. Abdul Latif Yousafzai,
Advocate General, KPK
Malik Faisal Rafique, Addl. A.G,
Punjab.

Other respondents: N.R.

AND

**C.M.A. No. 5216 of 2012 in
Constitution Petition No. 6 of 2011**
(Against appointment of Raja Azeemul
Haq as Executive Director of the World Bank)

For the Federation: Mirza Waqas Rauf, DAG
Mr. Pervaiz Khan, DG, HR, EOBI.

On behalf of Raja Azeemul Haq: Ch. Afrasiab Khan, ASC
Mr. M. S. Khattak, AOR *a/w applicant.*

AND**H. R. C. No. 48012-P of 2010**

(Application by Tajamal Hussain against illegal appointments and massive corruption in EOBI)

For the applicant: In person.

For appointed officials: Sardar M. Aslam, ASC

For Chairman EOBI: Mr. Saiful Malook, ASC
Mr. M.S. Khattak, AOR

For Raja Azeemul Haq: Ch. Afrasiab Khan, ASC
Mr. M. S. Khattak, AOR *a/w applicant*

For applicants Mutali Khan, etc: Mr. Athar Minallah, ASC
Mr. M. S. Khattak, AOR

For applicants/Intervener: Mr. Abdul Hafeez Pirzada, Sr. ASC
Mian Gul Hassan Aurangzeb, ASC

For applicants in CMA 1720/2011: Nemo.

Date of hearing: 11.12.2013

Judgment

Anwar Zaheer Jamali, J - On 2.2.2011, the petitioners brought Constitution Petition No.6 of 2011, under Article 184(3) of the Constitution of Islamic Republic of Pakistan 1973 ("the Constitution"), for agitating their two fold grievances against the Employees Old Age Benefit Institution ("EOBI"), a body established under the Employees Old Age Benefit Act XIV of 1976 ("the Act 1976"), and its management, arraying EOBI, the Federation of Pakistan through Ministry of Labour and Manpower, M/s Zafar Iqbal Gondal, Chairman, EOBI, Mushtaq Samoo, Director, EOBI/Secretary Board of Trustees, Kanwar Waheed Khursheed, Director General

(Investment)/Convener of Selection Committee-2, Muhammad Hanif, Officiating Director General/ Convener of Selection Committee-I and Mirza Imtiaz Ahmed, Acting Director General (Finance & Accounts), Convener of Selection Committee-3, as respondents. The averments made in the petition reveal that the first grievance of the petitioners is regarding appointment of more than 213 persons in BPS-16 to BPS-20, as detailed in the petition, in a patently illegal manner on the basis of political influence, nepotism and cronyism, under the chairmanship of respondent No.3 (Zafar Iqbal Gondal), in league with respondents No.4 to 7, while the other grievance is as regards large scale financial corruption and mismanagement of funds of the EOBI, as detailed in the petition. Based on such allegations, reliefs prayed for in the petition read as under:-

- i) Declare that all the impugned appointments made in the Respondent No.1/EOBI are unlawful, illegal and void ab initio and in violation of prescribed recruitment procedure/ operating manual.
- ii) Declare that EOB Fund cannot be utilized or invested in contravention and violation of EOB Act 1976 and EOB (Investment) Rules, 1979.
- iii) Declare that any amount utilized in corrupt practices by the EOBI Management/Respondents and others are without lawful authority and the same may be recovered from the Respondents.
- iv) Direct that the respondents that any Fund invested against the spirit of EOB Act 1976 and EOB (Investment) Rules 1979 shall be disinvested.

- v) Grant any other relief which as deemed appropriate, just and proper by this Hon'ble Court in very circumstances of the case."

2. Since thereafter, during the proceedings of this petition, several orders of interim nature have been passed by the Court, primarily, to find out the substance of these allegations against the respondents, whereupon several miscellaneous applications/concise statements/replies and documents have been submitted and brought on record by the respondents in an attempt to justify such appointments and to explain their position as regards mismanagement of funds of the EOBI. In addition to it, in response to our order dated 12.9.2013, directing publication of general notice regarding the present proceedings in some newspapers of wide circulation from Islamabad and Karachi, for information of the appointees of EOBI whose appointments have been challenged or who are likely to be affected with the outcome of these proceedings, many miscellaneous applications for impleadment as party to these proceedings have been received from various groups/individuals, who, according to their claim are such appointees or are likely to be affected from any final outcome of these proceedings, which have been entertained and allowed.

3. Another human rights case on the same subject and relating to similar grievances, bearing No.48012-P of 2010, which is based on the complaint dated 30.9.2010, made by

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one Tajamul Hussain has also been tagged with this petition, in terms of order dated 20.4.2011, which has thus proceeded along with this petition. In the said human rights case, inter alia, illegal appointments allegedly made in EOBI have been brought to the Court's notice and challenged on the basis of facts detailed in the said complaint.

4. It seems that while proceedings in these two cases were sub-judice before the Court, with reference to a programme aired through some T.V. channel on 27.6.2013, titled as "corruption scandal of more than forty billion rupees in the EOBI" on 29.6.2013, a detailed note was submitted by the Registrar of the Court before the Honourable Chief Justice of Pakistan, unfolding therein the attributions of the participants of the said programme against EOBI with specific reference to the (i) purchase of plots in DHA, (ii) purchase of Crown Plaza in F-7 Markaz, Islamabad, (iii) purchase of two controversial plots in Sukkur, (iv) development of cricket ground in Islamabad, (v) purchase of several plots from CDA, (vi) purchase of forty kanals sixteen marlas land in Lahore, (vii) purchase of four floors of plaza/hotel in Lahore, (viii) construction of seven star hotel in front of Lahore Airport, (ix) construction of M-9 motorway by EOBI, (x) purchase of twenty acres land near Karachi Airport in billions and (xi) purchase of two 4300 cc parado jeeps for personal use of the Chairman, EOBI. Taking notice of such allegations contained in the note

of the Registrar, per order of the Honourable Chief Justice dated 29.6.2013, it was converted into Constitution Petition No.35 of 2013, which is now separately proceeding to probe into the allegations of financial corruption and misuse of funds allegedly made in the EOBI by its management and other high ranking Government officials involved in the said scam. Since the issue of financial corruption and misuse of funds etc. in EOBI has now been taken up separately in the said Constitution petition of which this Court is seized, and proceedings are pending, we deem it appropriate to proceed further and adjudicate the present petition alongwith HRC No.48012-P of 2010 and CMA No.5216 of 2012, only to the extent of the case of the petitioners/complainant regarding illegal appointments in EOBI, leaving the other aspects relating to the financial corruption, misuse of funds and mismanagement etc. in EOBI to be exclusively dealt with in other Constitution petition No.35 of 2013.

5. Reverting to the facts and the grounds stated in Constitution Petition No.6 of 2011 and HRC No.48012-P of 2010 in this context and for their proper understanding, it will be useful to summarize the same as under:

6. The petitioners in Constitutional Petition No.6/2011 have called in question the manner in which more than 213 appointments were made in EOBI (which is said to form almost 40% of the total strength of its Officer cadre)

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alleging that as such appointments were made in flagrant violation of the prescribed recruitment procedure set out, *inter alia*, in Clause No. 02.05.2 of the EOBI Operating Manual Chapter 2, they are therefore unlawful, illegal and liable to be set aside.

7. It has been contended that in April 2009, EOBI advertised vacancies inviting applications to fill a large number of posts from grades 16 to 20 against which 23648 applications were received and from which suitable applicants were to be shortlisted. It was alleged that even before commencement of the normal recruitment procedure, appointments against 132 vacancies were already finalized and made on the basis of political pressure, nepotism and cronyism, while some other persons managed their appointments on deputation basis against regular posts for which vacancies had already been advertised. Many of whom were later absorbed as Regular Officers in violation of the quota earmarked for different provinces, they did not belong to. The petitioners have also submitted that some lists of names were sent by the Personal Secretary to the Federal Minister of Labour and Manpower, which were then forwarded to the then Deputy Director General (HRD) Javed Iqbal and these persons were later appointed in Grade 16 and above, as opposed to those individuals who had applied through the advertisement. Moreover, as per the regulations, shortlisted candidates were

to be called for a written test on the basis of the requirement of Operating Manual as well as the resolutions passed by the Board of Trustees, but this procedure was completely ignored. The petitioners have been further aggrieved by the purported act of the respondents for allegedly issuing back-dated appointment letters to various handpicked persons in order to avoid being in contempt of an interim order of the Peshawar High Court passed in Writ Petition No. 209/2010 whereby the respondents were restrained from issuing any appointment letters till the disposal of the said petition.

8. The petitioners in this case have further raised their finger towards the manner in which appointments were fast-tracked; the committees established to interview applicants concluded their interviews on 1st June 2010 and appointment letters were issued on 2nd June 2010, indicating that the committee's recommendations were approved by Respondent No. 3 within one day, after which appointment letters were sent to all within the span of one working day. The petitioners have also been aggrieved by the fact that these unlawful appointees did not provide any documents proving their educational qualifications etc. that had to be attached with each candidate's application, subject to verification by the HEC. Indeed, there were apparently many appointees who claimed to have completed their education in 2010, whereas

the selection process called for all applications that fitted the requisite educational criteria in the year 2009.

9. In Human Rights Case No. 48012/P-2010, nearly identical allegations regarding irregular appointments have been levelled against the respondents (EOBI). It has been forcefully alleged that the recruitments were made in a *mala-fide* manner whereby those individuals who had links with politically influential persons within the then ruling PPP government were appointed. The petitioner reiterated and drew court's attention towards the fact that all posts had been filled without completion of the requirement of written tests which is against the EOBI recruitment procedure. Moreover, the then Chairman EOBI, Mr. Zafar Iqbal Gondal, was also accused of making a large number of appointments from the elected constituencies of his elder brother, Mr. Nazar Muhammad Gondal, former Federal Minister of Food and Agriculture, District Mandi Bahauddin and Mr. Nadeem Afzal Chann, MNA (NA 64 Sargodha) sitting Chairman, PAC, on the basis of nepotism and corruption.

10. In addition to it, another action regarding the purported irregular appointment of Mr. Raja Azeem-ul-Haq Minhas, as Executive Director, World Bank has been challenged through CMA No 5216/2012 in Constitutional Petition No.6/2011. In this regard, notice was taken by the Court after certain news reports highlighting the issues

surrounding his appointment, promotion, deputation etc. It was contended that he did not have the requisite experience or qualifications for the job and was appointed Executive Director in the World Bank due to political pressure as he was son-in-law of the then Prime Minister, Raja Pervez Ashraf at the time of his appointment to the World Bank. A look at his service record reveals that Mr. Minhas was serving as Senior Joint Secretary on a grade 21 post because of out of turn promotions received by him due to his personal affiliations with persons who held high political offices, otherwise he was an officer of the income tax group, working in grade 18 when the PPP government came into power. He left this post and was hired by the EOBI in grade 20 on 2.6.2010 and then went on to hold the Acting Charge of the post of Director General on BS 21 from 15.02.2012 till 23.05.2012, after which he assumed the post of Senior Joint Secretary on deputation basis at the Prime Minister Secretariat. To examine these aspects, on 21.2.2013 notices were ordered to be sent to the Establishment Division, Federation of Pakistan to furnish details regarding his appointment to the World Bank. However, during the course of such proceedings on 6.6.2013 he resigned from the post of Executive Director, World Bank. Nevertheless, his appointment in EOBI pursuant to the aforesaid advertisement or otherwise is to be examined like other cases of appointment in order to

see whether there was any illegality or irregularity attached to it or it was made in a transparent manner on merit criteria.

11. It will be pertinent to mention here that in their detailed reply earlier submitted by respondent No.1, though they conceded to certain material illegalities/irregularities committed in the process of appointments by the management of EOBI, still they attempted to defend and justify these appointments on the pretext that all individuals were appointed on the basis of recruitment procedure laid down in the relevant rules and regulations. However, due to the qualifications of some candidates and urgency in the matter regarding filling up the vacant seats, candidates were only called for interviews, without written test. Such a decision, it was submitted, was not contrary to rule regulation or earlier practice of the EOBI and that it was settled law that a practice followed persistently by a department itself takes the place of a 'rule'. Furthermore, according to the 'Investment Personnel (Contract Appointment) Regulations, 2007 issued by the Board of Trustees u/s 45 of the Act, it allows selection committees to conduct "interviews or tests". Moreover the respondents strongly challenged the maintainability of the petition, protesting that the petitioner had neither pointed towards any fundamental right that was being adversely affected, nor the core requirement of "public interest" was fulfilled as the issue

revolved around a restricted group of persons appointed in the EOBI and not in respect of the nation or the public at large.

12. We have heard the arguments of learned ASCs, who are representing different parties to these proceedings as well as for the interveners, and with their assistance carefully perused the bulky case record of these proceedings. As called upon by the Court, the petitioner Syed Mubasshar Raza Jaffery in Const. P. No.6 of 2011 and Mr. Tajammal Hussain in HRC No.48012-P of 2010 made their respective submissions only to the extent of allegations of illegal appointments in EOBI, which are in line with the contentions raised in their respective petitions. In this regard, they further made reference to several documents as well as applicable service/ appointment rules and regulations of EOBI, which were daringly and dishonestly circumvented and violated by the officials of EOBI, at the helm of the affairs at the relevant time. The pith and substance of their arguments was that whatever grievances they have voiced in the present proceedings, those has been fully substantiated and corroborated from the documents produced by them and the report of fact finding committee on recruitment/appointments constituted by the present management of EOBI, has remained undisputed/ uncontroverted, rather conceded by the learned ASC for the official respondents Mr. Saiful Malook, Mirza Waqas Rauf, D.A.G. for the Federation of Pakistan and even learned ASCs

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for the interveners have not ventured to say much to the contrary regarding the authenticity of such report, except that all this has happened due to change in the management of EOBI.

13. Mr. Abdul Hafeez Pirzada, learned Sr. ASC for the interveners during his arguments firstly stressed upon the humanitarian aspect of the case. According to him it will be highly unjust, unfair and harsh that in case these petitions are allowed so many appointees in the EOBI, who have been performing well to the satisfaction of the institution for many years, for no fault on their part, will now be removed from service and rendered jobless. More particularly, in the circumstances when already percentage of unemployment in the country has reached at a very high level, which is resulting in sheer frustration amongst the educated class of the country. He, however, seriously questioned the maintainability of the petition and H.R.C. within the ambit of Article 184(3) of the Constitution. According to him, such course, if followed by the Court, will negate the vested rights of the appointees with reference to Articles 4 and 10A of the Constitution, which ensures that every citizen is to be dealt with in accordance with law and has a right to fair trial. In support of his submissions, he placed reliance on the cases of Managing Director, SSGC Ltd. Versus Ghulam Abbas (PLD 2003 S.C. 724) and All Pakistan Newspapers Society versus Federation of

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Pakistan (PLD 2004 S.C. 600). In the 1st case the apex Court dealt with hundreds of petitions of the employees of Sui Southern Company Limited in relation to their service dispute and in that context also considered the question of discrimination on the yardstick of Article 25 of the Constitution and scope of review under Article 188 of the Constitution. As a result the review petitions were allowed and cases were remanded to the Federal Service Tribunal for decision of their dispute afresh. In the 2nd case, broad principles for invoking jurisdiction of the Supreme Court under Article 184(3) of the Constitution were discussed. It was held that it provided an expeditious and inexpensive remedy for protection of fundamental rights from legislative and executive interference, particularly, in a situation when there is no other adequate remedy and that question of public importance with reference to enforcement of fundamental rights was involved. With these observations, the petition under Article 184(3) of the Constitution, challenging the vires of 7th Wage Board Award was held not maintainable, as the said award was only valid to the extent of working journalists and did not affect the public at large qua fundamental right of speech under Article 19 of the Constitution.

14. In the end Mr. Abdul Hafeez Pirzada reiterated his submission that for the sake of smooth functioning of the institution (EOBI) and to save the families of such appointees

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from starvation, a lenient view of the matter may be taken as regards the purported irregularities in their appointments. However, those responsible for such illegalities may be separately taken to task in accordance with law.

15. We have given due consideration to the submissions of the learned Sr. ASC, relating to exercise of our jurisdiction under Article 184 (3) of the Constitution, but are in disagreement with him for the reason that the controversy involved in the present petition and connected human rights case is clearly within the domain of public interest litigation qua violation of fundamental rights of citizens at large by a public body (EOBI) in the matter of selection and appointments. In such circumstances, it is the respondent No.1 EOBI, whose affairs are being probed and looked into by the Court and not the individual grievance by or against the appointees, who may be the affectees of the ultimate decision of the Court in these proceedings. As a matter of fact, on 12.9.2013 order for publication of general notice regarding the pendency of these proceedings was passed by this Court in order to afford an opportunity of hearing to the appointees of EOBI, whose appointments are under challenge in these proceedings or who are likely to be affected with the outcome of these proceedings. It was for this reason that office was directed to publish a general notice in few newspapers of wide circulation from Islamabad and Karachi, apprising all such

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employees of EOBI about the pendency of these proceedings so that in case, anyone of them has any interest in the fate of these proceedings, may appear and contest the matter. Thus, it was in the larger interest of justice and for the above reason that all the applications of interveners, who are more than 190 in number, were entertained and opportunity of hearing was allowed. Otherwise, they had no independent right to participate in the proceedings of this case or to allege violation of Articles 4 & 10A of the Constitution in their individual cases. If any case law is needed to fortify this view, reference can be made to the case of Sindh High Court Bar Association versus Federation of Pakistan (PLD 2009 S.C. 879), wherein the Court while expounding upon the ambit of Article 184 (3) settled the law by stating that it is now a well-entrenched principle that the breach of fundamental rights of a "*class of persons, who collectively suffer due to such breach, and there does not seem to be any possible relief being granted from any quarter due to their inability to seek or obtain relief, ... are entitled to file petition under Article 184(3)*". Such a view lends full support to the maintainability of the petition as the grievance in hand concerns the rights of more than 23,127 applicants whose applications were passed over due to nepotism and political pressure, in contravention of their fundamental rights enshrined under the Constitution, which in turn also affects the public at large as it calls into question

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the manner in which the bureaucratic system is being abused by the ruling elite. Such a view is also supported by another case of Syed Mahmood Akthar Naqvi v. Federation of Pakistan, (PLD 2013 SC 195) wherein the Court held that as the issue under examination concerned political pressure placed on the civil service by the executive, the petition was maintainable under Article 184(3) as it relates to the infringement of fundamental rights of civil servants under Article 9, 14 and 18 of the Constitution. It was recognized as being an issue of public importance as the civil service is deemed to be an essential component of the executive arm of the state. Yet another judgment of five member Bench of this Court, which supports the maintainability of this petition under Article 184(3) of the Constitution, is in H.R.C. No.40927-S of 2012 regarding pensionary benefits of the Judges of Superior Courts (PLD 2013 S.C. 829), wherein combined effect of Articles 184(3), 187 and 188 of the Constitution has been dilated with the observation that the apex Court has unlimited jurisdiction to set the law correct, to cure injustice, save it from becoming an abuse of the process of law and the judicial system and for this pass any order to foster the cause of justice; eliminating the chances of perpetuating illegality and to save an aggrieved party from being rendered remediless. Thus we have no doubt about the maintainability of this petition and the human rights case and the arguments of learned Sr. ASC Mr. Pirzada as

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regards the limited scope of Article 184(3) of Constitution are devoid of force.

16. M/s Sardar M. Aslam and Athar Minallah, two other learned ASCs for some other appointees/respondents in these proceedings, have adopted the arguments of Mr. Pirzada with their additional submissions that in case an adverse order is passed against the appointees, whose appointments have been assailed in these two cases, their future will be ruined, therefore, a via media may be sorted out to accommodate them at their jobs or atleast in the fresh process of selection and appointments in the EOBI.

17. Ch. Afrasiab Khan, learned ASC for Raja Azeem-ul-Haq Minhas has made reference to various replies submitted on his behalf in response to C.M.A. No.5216 of 2012, which has been heard together with these petitions and contended that since during the pendency of these proceedings on 6.6.2013 he has resigned from his post in the World Bank, therefore, any further action against him would not be justified. However, as regards the irregularities highlighted by the petitioners in the appointment of Raja Azeem-ul-Haq Minhas in the EOBI qua his rapid promotions and deputation etc., he insisted that there is no such procedural lapse in this regard, which can be termed as illegal or mala-fide. Mere fact that he is son-in-law of the then Prime Minister Raja Pervaiz Ashraf cannot be taken as his disqualification to hold such

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high posts or get rapid promotions as it was done solely on merit criteria. However, he did not argue much as to the manner of his appointment and frequent promotions in the EOBI as mentioned in the report of fact finding committee, which also forms part of this judgment.

18. Conversely, Mr. Saiful Malook, learned ASC for respondents No.1 to 3, has uprightly supported the case of petitioners as regards hundreds of illegal appointments made in the EOBI during the period from January, 2009 to May 2012 and onwards, which are now under challenge in these two petitions or subject matter of contempt proceedings regarding other appointments made in EOBI during the pendency of these proceedings. He candidly stated that the earlier reply to these petitions submitted on behalf of EOBI was based on concocted facts and managed at the behest of the then Chairman, EOBI, who thought that he was above all laws of the land. He made reference to several documents, particularly, the lists of illegal appointees given in the memo of these petitions and the detailed report of fact finding committee on recruitment/appointments to show that how the practice of nepotism, corruption and political exigencies was rampantly followed in a *mala-fide* manner for making such illegal appointments. To sum up, he stated that all illegal appointments challenged in these proceedings or otherwise made during the pendency of these proceedings may be set

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aside and directions be issued to the management of EOBI for undertaking this exercise afresh in a transparent manner strictly in accordance with the rules and regulations of appointment and on merits.

19. Detailed facts recorded in the preceding paragraphs of this judgment, particularly, with reference to the undisputed documents gain full support from the report of fact finding committee on recruitment/appointments submitted by respondent No.1 before the Court on 28.8.2013. Therefore, before proceeding further it will be useful to reproduce the same as under:-

“Report of Fact Finding Committee on Recruitment/Appointment

Recruitments made in the Institution (EOBI) since 2009 are under judicial scrutiny of the Hon'able Supreme Court of Pakistan in constitutional petition No.6 of 2011 and Human Rights Case No.48012-P of 2010.

2. In order to firm-up its position in the matter subjudice before the apex court and to examine the process of recruitment adopted in the Institution during the last three years, the new management of EOBI decided to carry out a fact finding exercise. A Committee comprising of the following officers was constituted to ascertain the facts of the recruitment made by the Institution during these years commencing from January 2009 vide Office Order No.259/2013 dated 25.7.2013 (**Annex-I**). The Committee was required to indicate irregularities/ violation of codal formalities of the prescribed procedure/ process of recruitment.

- | | | |
|------|---------------------------------|-------------------|
| i. | Pervaiz Ahmed, DG (Audit) | Convener |
| ii. | Javed Iqbal DG (HR &GAD) | Member |
| iii. | M. Meraj Nezamuddin, DDG (HR) | Member/ Secretary |
| iv. | Ch. Abdul Latif, Director (Law) | Member |

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v. Ferozuddin Sheikh, AD (Recruitment) Member

Mr. Ayaz Ahmed Uqaili DDG, IT has been co-opted as member vide Office Order No.286/2013 dated 26.8.2013.

3. EOBI (Employees' Service) Regulations, 1980 having been framed under Section 45 of EOB Act, 1976 and notified vide S.R.O. 413(1)/81 of Ministry of Labour, Manpower and Overseas Pakistanis (Labour Division) dated 9th May, 1981 published in the Gazette of Pakistan (Extra ordinary), EOBI Recruitment Procedures framed under Regulations-10 of EOBI (Employees' Service) Regulations, 1980 and relevant provisions of the Operating Manual (clause 02.4.3) approved in 64th meeting of the Board of Trustees held on 09.05.2003 regulate Recruitment in EOBI.

4. History of recruitment in EOBI reveals that whenever appointments to the posts of Executive Officer (Grade-6/BPS-16) & Assistant Director (Grade-07/BPS-17) had been made, written tests of the shortlisted candidates had been done. In 2007 written tests were held to short list the applicants even for the post of Deputy Director (Finance) in view of the large number of applications received for the posts so advertised.

5. From the records maintained in HR Department, EOBI Head Office, Karachi, it was observed that following recruitments had been carried out during the relevant period.

- A. Recruitment of 132 officers in June 2010 as per advertisement of 16.4.2009 (Annex-II)
- B. Recruitment by Absorption of seven (07) deputationist in March 2010 (Annex-III).
- C. Contract Appointment of 238 officials and their subsequent regularization by the Cabinet sub-committee from Sept 2011 to May 2012.

A. Recruitment of 132 Officers:

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6. It has been observed that the Institution (EOBI) called for applications through public notice published in leading newspapers on 16.4.2009 to fill up 213 vacant posts of officers and staff. Applications for the advertised posts were called through a Web-Portal specifically hosted for the purpose besides through P.O Box as per convenience of the applicants. **(Annex-II):**

7. As per record of the IT Department, which was managing the data of applicants, 23,137 applications (officers-19,195), staff-3,942) were received through post and e-mail. 17,979 applications were received by the cut-off date (15.5.2009) by web portal, whereas data entry of 5,158 applications received by post was completed by 14th July, 2009. After necessary filtration, data of 21,236 (officers-17,569 and staff-3,667) (Annex-IV) emerged to be referred as the "**Original List**" in the report subsequently. Post wise break-up of the applications received is detailed as under:-

i.	Dy. Director General	124
ii.	Director (Ops)	158
iii.	Director (Law)	48
iv.	Dy. Director (Ofc)	157
v.	Dy. Director (Ops)	411
vi.	Assistant Director (Ofc)	2502
vii.	Assistant Director (Ops)	4345
viii.	Assistant Director (Finance)	3925
ix.	Assistant Director (Law)	197
x.	Assistant Director I.T (Net Working)	1646
xi.	Assistant Director I.T (Software)	491
xii.	Assistant Director I.T (S&C)	542
xiii.	Executive Officer (Office)	3023
	Total (Officers)	17569
	Staff	3667
	Total (Officers and Staff)	21236

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8. While the HR Department in close liaison with IT Department (**Annex-V**) was gearing up to further process the recruitment against 132 posts of Officers, the EOBI management was changed. Mr. Mushtaq Ahmed Samo assumed additional charge of the Head of H R Department in addition to his own duties as Secretary BoT. Complete data file was handed over to Mr. Mushtaq Ahmed Samo who under supervision of Dr. Imtiaz, then Special Assistant to the Chairman further processed the recruitment. Short-listing of the candidates were not done by the relevant Departmental Selection Committees. Three different Selection Committees were notified for conducting interviews for the posts of Executive Officers, Assistant Directors and Deputy Directors for all cadres viz. Operations, Office, Finance, IT and Law on geographical basis. Whereas, EOBI Recruitment Procedures prescribe one standing Departmental Selection Committees for each Cadre. (**Annex-VI**). Therefore, seven selection committees were required to be constituted for conducting interviews for the posts of Executive Officer, Assistant Director & Deputy Director in Operation/Office, Finance, I.T. and Law Cadres and for Director (Law), Director (Operations) and Deputy Director General (Operations).

9. Written Test for short listing of the large number of applications as detailed above should have been held as per practice and as required under clause 02.5.2.1(b) of the Operating Manual (**Annex-VII**). However, the recruitment process was finalized without any such written tests for the positions of Dy. Director/Assistant Director/Executive Officer and offers of appointment were issued (**Annex-VIII**). The whole process was completed by 01.06.2010.

10. Number of applications at the time of interview subsequently risen to 23,648 (**Annex-IX**). No record of call letters issued was maintained and original evaluation sheet (grade assessment) filled by the members of the Selection Committees were not preserved and placed on records to scrutinize/authenticate average marking prepared for appointments. Similarly police verification and medical tests of the appointed persons were not carried out in most of the cases.

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11. Scrutiny of the records reveal that 132 appointment letters were issued on 02.06.2010 to various persons across Pakistan on 01.06.2010 perhaps to escape from the injunctive order dated 02.06.2010, passed by the Peshawar High Court, Abbottabad Bench in writ petition No.209/2009 (**Annex-X**) restraining EOBI to issue appointment letter to any person. These appointment letters had been sent without any dispatch numbers and entering into the register for record maintenance and tracking.

12. Scrutiny of the records, relevant files and data submitted by IT Department during the process of recruitment, the Committee observed that a number of discrepancies/irregularities in the process of recruitment were carried out in these appointments. Defective short-listing owing to which candidates having un-matched/irrelevant qualifications, acquiring qualification after appointment, deficient post qualification experience, over-age and without required domiciles were entertained as indicated below:

- i. Unmatched/irrelevant qualifications: 21 cases
- ii. Acquiring qualifications after appointments: 29 cases
- iii. Deficient post qualification experience: 8 cases
- iv. Over age: 21 cases

B. Recruitment by absorption of seven (07) deputationists in March 2010.

13. Seven officials working on deputation in Grade-03, 06 & 07 as Assistant, Executive Officer and Assistant Director respectively were absorbed in EOBI w.e.f. 30th March 2010 vide Office Order No.53/2010 (**Annex-III**). It was observed that while absorbing these deputationists requirement of provincial/regional quota was not observed. It was also noted that in one case qualification prescribed for the post was also not observed.

C. Contract Appointment of 238 officials on contract/daily wages/contingent basis/internee & their subsequent regularization by the Cabinet sub-committee from September 2011 to May 2012:

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management of EOBI speaks volumes about the mismanagement, corruption, nepotism and politicising of the disputed appointments in a mala-fide manner, thereby crushing the merit criteria in a public owned establishment of the Government. It is extremely sad that despite the guidelines given by the apex Court in a series of judgments with reference to fundamental rights guaranteed to each citizen of this country in terms of Articles 4, 9 & 25 of the Constitution, qua selection and appointments in government service and public owned corporations and institutions, many persons like the then Chairman, did not realize or adhere to the reality of merit criteria and were adamant to play with the future of the younger generation for their own good and to achieve their nefarious designs. Though there is ample material available on record, *inter alia*, in the form of detailed list of hand picked appointees, reproduced in paragraph 14 of the memo of petition No.6 of 2011, and several others such lists placed on record of connected human rights case, containing large number of names of politicians, elected members of the National and Provincial Assemblies, Ministers and other persons of so called elite class in the country, however, we have purposely refrained from reproducing such lists to avoid exposing these persons at this stage as it may scandalize them or otherwise cause prejudice to their interest. But as a test case, to demonstrate how persons belonging to one political

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group and from two constituencies/areas (Mandi Bahauddin/Sargodha) from where Mr. Nazar Muhammad Gondal, brother of Chairman, EOBI Mr. Zafar Iqbal Gondal, was the elected M.N.A. (N.A. 109 Mandi Bah-u-din) and sitting Minister of Food & Agriculture/CADD from the ruling party, while Mr. Nadeem Afzal Chann, M.N.A. (N.A. 64 Sargodha) and sitting Chairman, PAC, nephew of Mr. Zafar Iqbal Gondal, Chairman, EOBI, were out of way, in an illegal manner obliged and accommodated in the matter of their appointments in bulk, and for the sake of ready reference, a chart prepared and produced by the petitioners, which remained uncontroverted, is reproduced as under to fortify this position:-

Sr. No	Name of Employee	Designation	Personal No	District / Domicile
1	Mutalli Khan Gondal	Director	924345	Mandi Baha-u-din
2	Muhammad Tahir	Asstt Director	924583	Mandi Baha-u-din
3	Pervez Iqbal Mughal	Asstt Director	927844	Mandi Baha-u-din
	Amir Shoaib	Asstt Director	924572	Mandi Baha-u-din
5	Shehzad Aleem	Asstt Director	925906	Mandi Baha-u-din
6	Wajid Waseem	Asstt Director	924629	Mandi Baha-u-din
7	Sheraz Tanveer	Asstt Director	925315	Mandi Baha-u-din
8	Faisal Shehzad	Asstt Director	925622	Mandi Baha-u-din
9	Imtiaz Ahmad	Asstt Director	928007	Mandi Baha-u-din
10	Khawaja Zulqarnain	Asstt Director	925166	Mandi Baha-u-din
11	Waqas Noor	Asstt Director	925984	Mandi Baha-u-din
12	Hafiz Qamar Abbas	Asstt Director	924594	Mandi Baha-u-din
13	Zaman Gondal	Asstt Director	924801	Mandi Baha-u-din
15	Sarfraz Ahmad Gondal	Executive Officer	925995	Mandi Baha-u-din
16	Imran Gondal	Executive Officer	924618	Mandi Baha-u-din
17	Syed Asad Ali	Executive Officer	926001	Mandi Baha-u-din

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18	Zaheer Abbas	Executive Officer	925600	Mandi Baha-u-din
19	Aftab Gondal	Executive Officer	925224	Mandi Baha-u-din
20	Gulzar Ahmad Tulla	Superindent	924083	Mandi Baha-u-din
21	Mudassar Shehzad Gondal	Asstt.	926669	Mandi Baha-u-din
22	Muqaddas Shehzad Gondal	Asstt.	927402	Mandi Baha-u-din
23	Muhammad Nawaz	Asstt.	927377	Mandi Baha-u-din
24	Muhammad Bux Tahir	Asstt.	926976	Mandi Baha-u-din
25	Muhammad Arshad	Asstt.	927479	Mandi Baha-u-din
26	Mukhtar Ahmad	Asstt.	928018	Mandi Baha-u-din
27	Naeem Abbas	Asstt.	927004	Mandi Baha-u-din
28	Nadeem Akhtar	Asstt.	927162	Mandi Baha-u-din
29	Sumera Yaseen	Asstt.	926987	Mandi Baha-u-din
30	Muhammad Razaq	Asstt.	926692	Mandi Baha-u-din
31	Rizwan Farooq	Asstt.	927275	Mandi Baha-u-din
32	Sajjad Akbar	Asstt.	926307	Mandi Baha-u-din
33	Irfan Ali	Asstt.	926921	Mandi Baha-u-din
34	Qamar Zaman	Asstt.	928041	Mandi Baha-u-din
35	Muhammad Bashir	Asstt.	928030	Mandi Baha-u-din
36	Iqbal Hussain	Asstt.	926829	Mandi Baha-u-din
37	Syed Qasim Raza	Asstt.	926512	Mandi Baha-u-din
38	Shama Mughees	Asstt.	926998	Mandi Baha-u-din
39	Tahira Najaf	Asstt.	928029	Mandi Baha-u-din
40	Aoon Raza	Asstt.	927048	Mandi Baha-u-din
41	Maryam Noreen	Asstt.	926830	Mandi Baha-u-din
42	Umer Draz	Asstt.	927991	Mandi Baha-u-din
43	Nisar Ahmad	Asstt.	927037	Mandi Baha-u-din
44	Muhammad Shoaib	Asstt.	926614	Mandi Baha-u-din
45	Shahwez Ahmad	Driver	926545	Mandi Baha-u-din
46	Malik Ahsan Sajjad	Driver	928074	Mandi Baha-u-din
47	Imran Nazeer	N.Q	926272	Mandi Baha-u-din
48	Naveed Hayder	N.Q	927151	Mandi Baha-u-din
49	Umair Ul Hassan	NQ	926374	Mandi Baha-u-din
50	Safdar	NQ	928198	Mandi Baha-u-din
51	Nasar Abbas	NQ	927140	Mandi Baha-u-din
52	Mohsan Raza	NO.	927071	Mandi Baha-u-din
53	Adnan Raza	NQ	927082	Mandi Baha-u-din
54	Umer Draz	N.Q	927297	Mandi Baha-u-din
55	Kashif Nawaz	N.Q	927300	Mandi Baha-u-din
56	Sajid Naeem	NQ	926750	Mandi Baha-u-din
57	Amjad Farooq	N.O.	927184	Mandi Baha-u-din

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58	Sajid Mehmood	N.Q	927322	Mandi Baha-u-din
59	Nadeem Hayat Gondal	Asstt Director	925939	Sargodha
60	Anees Ul Hassan Naqvi	Asstt Director	926636	Sargodha
61	Rizwan Ajmal Bhatti	Asstt Director	924641	Sargodha
62	Abdul Hafeez	Asstt Director	924607	Sargodha
63	Shoaib Harral	Asstt Director	925597	Sargodha
64	Qaisar Zaman	Asstt Director	925326	Sargodha
65	Muhammd Farman	Executive Officer	926896	Sargodha
66	Imran Faisal	Executive Officer	924709	Sargodha
67	Amjad Umer	Asstt.	927264	Sargodha
68	Muhammad Arshad	Asstt.	926965	Sargodha
69	Aoon Abbas Shah	Asstt.	927253	Sargodha
70	Ejaz	Asstt.	927311	Sargodha
71	Faisal Nadeem	Asstt	926910	Sargodha
72	Abdul Ghaffar	Asstt.	927286	Sargodha
73	Junaid Hassan	Assn.	926681	Sargodha
74	Muhammad Imran	Asstt.	927106	Sargodha
75	Muhammad Saglaln	Asstt.	927242	Sargodha
76	Liaquat Ali	N.Q	924141	Sargodha
77	Azhar Abbas	NQ	928187	Sargodha
78	Muhammad Ijaz	NQ	927311	Sargodha
79	Mumtaz Ahmad	NQ	927446	Sargodha
80	Punan Khari	NQ	928085	Sargodha
81	Tauseef Ahmad	NQ	927435	Sargodha
82	Nadeem Akhtar	Asstt.	927162	Sargodha

Thus, to cut the long story short, the respondents and the interveners have nothing with them to defend these palpable illegalities in the process of appointments.

21. A careful examination of the whole record appended with these petitions, in particular the detailed order dated 25.3.2011, thereby taking cognizance of these allegations of corruption in the matter of appointments in EOBI, under Article 184(3) of the Constitution, and various subsequent orders passed in this case, go to show that ample opportunity was allowed to the respondents to defend their misdeeds in

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this regard, but to no avail, rather in the form of the report of the fact finding committee on recruitment/appointment, as reproduced above, eventually the respondents have conceded to the case of the petitioners in this regard, we, therefore, need no further deliberations and reasons to undo such wrongs and illegalities. If any case law is needed to fortify our view, a reference can be made to the following cases:-

- (1) Muhammad Yasin versus Federation of Pakistan (PLD 2012 S.C. 132)
- (2) Muhammad Ashraf Tiwana versus Pakistan (2013 SCMR 1159)
- (3) Tariq Aziz-ud-Din: in re (2010 SCMR 1301)
- (4) Mahmood Akhtar Naqvi versus Federation of Pakistan (PLD 2013 S.C. 195)
- (5) Contempt proceedings against Chief Secretary, Sindh and others (2013 SCMR 1752).

22. In the 1st case of **Muhammad Yasin** (*supra*) the appointment of Chairman Oil and Gas Regulatory Authority (OGRA) was declared illegal. In the 2nd case of **Muhammad Ashraf Tiwana** (*supra*) the appointment of the Chairman Securities and Exchange Commission of Pakistan (SECP) was held to be in contravention to statutory requirements. Both these cases reiterated the principle that appointments made in a statutory body or Corporation under the control of Provincial or Federal Government in an arbitrary and capricious manner cannot be allowed to hold the field. In the 3rd case of **Tariq Aziz-ud-Din** (*supra*) this Court

underscored the integral link between good governance and a strong and honest bureaucracy. It was stated that this could only come about if appointments made were based on a clear merit criterion, in accordance with the relevant laws and rules as opposed to favouritism and nepotism. In the 4th case of **Syed Mahmood Akthar Naqvi** (*supra*) the Supreme Court, examining the issue of political pressure placed on the civil service by the executive, held that the matter was one of public importance as such undue influence by political powers infringed the fundamental rights under Articles 9, 14, 18 and 25 of the Constitution. In the 5th case, which is a more recent judgment of this Court, relating to **contempt proceedings against the Chief Secretary Sindh and others** (2013 SCMR 1752), wherein, *inter alia*, vires of certain legislative instruments introduced by the Sindh Government regarding regularization and absorption of civil servants (particularly, in the police department) was under scrutiny/challenge, the Court examined all the relevant aspects of the case in detail and expressed its views about the maintainability of petitions, absorption, deputation, out of turn promotions and reemployment in Government service qua their subsequent validation through some legislative instruments; principle of locus poenitentiae and effect of such legislation attempting to nullify the effect of the judgments of the Superior Courts. In this regard, while striking down these pieces of legislation,

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being contrary to the spirit of Articles 240 and 242 of the Constitution and various provisions of Sindh Civil Servants Act 1973, it laid down several guiding principles. The principle of law propounded in this judgment, with reference to many other earlier judgments of the Apex Court, lend full support to the case of the present petitioners, as regards illegal appointments, contract appointments, absorptions and their regularization etc., particularly, when these acts are motivated to frustrate and nullify some earlier judgments/orders of the Superior Court in a dishonest, colourful and *mala-fide* manner, as discussed in the earlier part of this judgment and hereinafter. All the cases discussed above reveal that the jurisprudence of this Court has been clear and consistent with regard to the manner in which appointments to public offices are to be made strictly in accordance with applicable rules and regulations, without any discrimination and in a transparent manner. Thus, it is essential that all appointments to public institutions must be based on a process that is palpably and tangibly fair and within the parameters of its applicable rules, regulations and bye-laws. But conversely, it is a sad fact of our bureaucracy that it can be so susceptible to the whims and wishes of the ruling elite class etc, which results in an obvious weakening of state institutions such as the EOBI, whereby the general public, whose interest such establishments have been

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charged with protecting, are adversely and heavily affected in different ways.

23. Indeed, if we allow these petitions substantial hardship is likely to be caused to many of the respondents/appointees who will lose their appointment/jobs because of the illegalities in their respective appointments committed by EOBI, but the fact remains that such ill-gotten gains cannot be defended/protected under any cannon of law or even on humanitarian considerations, as, such gains availed by the illegal appointees were at the cost of other deserving candidates who had applied for these posts, being citizens of this country, with a legitimate expectation that they would be able to seek appointment on the basis of their eligibility-cum-merit criteria to be observed as per the applicable rules and regulations of the EOBI. From the material available on record, it is crystal clear that even the respondents in EOBI against whom allegations of nepotism, corruption and mala-fide have been levelled have offered no legitimate defence except to say that such exercise may be protected for the benefit of appointees. Similar is the position in the case of appointment of Raja Azeem-ul-Haq Minhas, as evident from the material placed on record, which shows that how after his resignation from a post in BS-18 in the Income Tax Group, he jumped in the EOBI, got appointment and promotions from one step to another to reach BS-21 within a short period of three years.

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We have specifically asked Chaudhry Afrasiab Khan, learned ASC to show us any provision of law, whereby an employee of the institution like EOBI can be appointed on deputation in the Prime Minister Secretariat as Joint Secretary (BS-20) and within no time of his coming back, promoted as Director General (BS-21), but he had no plausible answer to such query. As a matter of fact, looking to the material available on record, the discussion about illegal appointments in the EOBI, made in the preceding paragraphs of this judgment is a drop in the bucket what has exactly happened in this whole process during the year 2009 and thereafter from time to time.

24. Having discussed as above, another important aspect of the case, which needs serious consideration is about the fate of the illegal appointees, which is subject matter of consideration in the present proceedings. If we look at this aspect of the case from the angle of those who have succeeded to get appointments in the manner, as discussed above, some of them may claim that since they met the requisite qualifications for the posts and were thus appointed, they cannot be made to suffer due to illegalities committed by the management of EOBI. However, when we place their cases for appointment in juxtaposition to the other applicants, who had applied for these vacancies and are 23648 in number, we find that these candidates having equal right of opportunity as citizens of this country, in terms of Article 25 of the

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Constitution were thrown out of the competition despite the fact that they also met the requisite qualifications and might have been more meritorious, but could not exert either political pressure or avail the fruits of nepotism and corruption, forming basis for the selection and appointment of other candidates, many of whom had not even applied for the job in terms of the advertisement for these vacancies made in the month of April, 2009, and in this manner they succeeded in getting entry from the backdoor at the cost of many other *bona-fide* candidates, whose applications were literally thrown in the dust bin in an un-ceremonial manner just for the sake of accommodating the blue eyed ones. All these factors, are over and above the violation of rules, regulation and other codal formalities meant for these appointments, *inter alia*, highlighted by the fact finding committee on recruitment/ appointment in its report, which is a serious subject for the reason that it is based on examination of the entire original record of such proceedings of appointments, right from the date of publication of advertisement regarding these vacancies, and till date none has come forward to question the impartiality of the committee or the authenticity and correctness of such report. In these circumstances, in our opinion, if the appointment of any single appointee during this process is protected on one or the other pretext or for any other consideration it will amount to protecting their ill-gotten

gains, acquired through unlawful means, and to perpetuate corruption and discrimination under the guise of sympathetic consideration for such appointees for the sake of their economic well being.

25. In the same context, we have also considered as to whether the appointees in the EOBI, who may be the ultimate affectees of this judgment's fall out, could be allowed to participate in the fresh process of selection and appointments in terms of this order? Our answer to this question is twofold. Firstly, though the appointments of these persons have been challenged under Article 184(3) of the Constitution within the ambit of public interest litigation and none of other applicants, who were more than 23127 in numbers, has come forward to agitate/assert his own individual grievance before the Court, nevertheless, their legal and Constitutional rights have been widely infringed at the hands of the then management of EOBI. Thus, even in their absence their interest is to be equally safeguarded on the principle of justice and fair play; secondly, it may amount to giving a premium to the appointees coming from the backdoor if we allow their participation in the forthcoming process of appointment in the EOBI as a special case. In these circumstances, we deem it proper to leave it open for the management of EOBI to decide the question of participation of the affectees of this judgment in the fresh/new process of

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selection and appointments in the affirmative or otherwise. But in case decision of the management of EOBI is in the affirmative, it will be implementable only in the situation when the record of other applicants in response to the earlier advertisement of April, 2009 etc., is intact with them and they are also allowed equal opportunity of participation. To put it in other words, in case the management of EOBI decides to allow all those applicants who have submitted their applications in response to the advertisement made in April, 2009 or thereafter, which as per report of the fact finding committee are more than 23,127 in numbers, then the affectees of this judgment will also be entitled for similar treatment. Needless to observe that for the process of selection and appointments as per criteria fixed by the management of EOBI fresh applications will also be invited and processed in a transparent manner without any discrimination, on requisite merit criteria for each post.

26. Another aspect of the case, which needs further examination, is the appointment of 238 employees/officials in the EOBI on contract/daily and contingency basis during the period September, 2011 to May, 2012 and their purported regularization. In this regard, apart from the material placed on record by the petitioners alongwith the contempt application in HRC No.49012-P of 2010, duly accompanied with requisite documents in support thereof,

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there is also the report of the fact finding committee on recruitment/ appointment, reproduced above, which goes to show that these 238 employees in Grade-1 to Grade-9 were initially appointed on contract basis and for this purpose procedure prescribed under the rules and regulations of respondent EOBI was again flagrantly and ruthlessly violated. Not only this, subsequently, in a colourable and *mala-fide* manner, for their regularization some summaries were floated and their illegal approval was obtained from the Cabinet Sub-Committee, which otherwise neither figures anywhere in the hierarchy of EOBI nor has any legal authority to rectify such illegal, wrong and corrupt practice of appointments. It is strange to notice that these appointments were made at a time when there were no available posts for these persons and this whole exercise was, on the face of it, undertaken on the basis of nepotism and political pressure in vogue during that period. The learned ASC for the respondent EOBI and the D.A.G. have not defended this action, while the learned ASCs representing some of these appointees have also not been able to satisfy this Court that how the Cabinet Sub-committee can intervene in the functioning of the EOBI and commit such illegality in violation of its rules and regulations to protect these illegal appointments or to bless them with any form of legitimacy. In addition to it, it is also pertinent to mention that all this exercise was undertaken by the respondents despite specific

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stay order issued by this Court on 21.1.2011, which reads as follows:-

“Mr. Tajammal Hussain son of Khadim Hussain, Senior Assistant, EOBI has moved an application to Honourable Chief Justice of Pakistan alleging serious allegations qua fresh recruitments made by the Chairman, EOBI in flagrant violation of the prevalent rules, regulations and policy.

2. After having gone through the entire record furnished by the complainant as well as press clippings (Daily News & Jang), wherein all the necessary details qua each of the new appointee have been furnished. We are tentatively of the view that prima facie the prescribed procedure was never followed and for the sake of arguments if it is admitted that there is no prescribed procedure, the principles of natural justice have been violated ruthlessly. It is worth mentioning that on 15.5.2009, applications were called against 250 vacant vacancies in EOBI. It is amazing that no short listing could be made, no interview or written test whatsoever was got conducted, but on the contrary the vacant vacancies have been distributed under political pressure and to oblige the people of 'Mandi Bahauddin' which is the constituency of the Chairman.

3. Chairman, EOBI is present and has attempted to justify his actions but failed to point out that under which provision of the law of Employees' Old Age Benefit Act, 1976 (in short EOBI Act) he was competent to make all such appointments, including appointments on contract basis that too from Mandi Bahauddin. It is conceded that no advertisement was made for contract appointments as the nature whereof was ad-hoc and temporary.

4. Be as it may, it appears that every appointment has been made in a reckless, careless and irresponsible manner without adhering to the relevant procedure and provisions of law enumerated in the EOBI Act and rules/regulations made there under. The explanation furnished by the Chairman, EOBI and Secretary, Ministry of Labour and Manpower is

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unsatisfactory. However, in the interest of justice matter is adjourned enabling the Chairman, EOBI and Secretary, Ministry of Labour and Manpower to furnish a concise statement indicating all the details qua appointments made pursuant to the advertisement appeared in various newspapers, whereby applications were invited on 15.5.2009 or otherwise. The details regarding appointments made on contract basis shall also be furnished. Entire record regarding above mentioned appointments shall be produced on the next date of hearing. Chairman, EOBI and Secretary, Ministry Labour and Manpower may also furnish additional documents, if need be, before the next date of hearing. Similarly, the complainant is also at liberty to file additional documents. It is, however, directed that till disposal of this human rights case, no more appointment shall be made by the Chairman EOBI, Secretary Ministry of Labour and Manpower and at the direction of concerned Minister. Matter adjourned and shall be treated as part heard. To come up on 8.2.2011.². [underlining given for emphasis]

Obviously, in such circumstances all the appointments made in violation of the directions/order of this Court are nullity in the eyes of law, thus, cannot be blessed with any legitimacy or protection under any canon of law. As a matter of fact, this matter would require further probe into these allegations in the context of violation of the stay order dated 21.1.2011. To sum-up, the 238 appointments, separately referred to and discussed in the report of fact finding committee are also to be struck down, being illegal, void and of no legal consequence, while contempt proceedings against those responsible for this highhandedness and illegality are to be initiated and continued separately, for which the office shall prepare a separate file and issue notices to the concerned officials of EOBI and all others found involved in this scam.

27. As a sequel of above discussion, both these petitions are allowed and disposed of in the following terms:-

- (a) All the illegal appointments, deputations and absorptions made in the EOBI, as detailed in the report of fact finding committee on recruitment/ appointment, are declared to be without lawful authority and of no legal effect. Accordingly their services stand terminated forthwith;
- (b) All these vacancies and other available vacancies in EOBI shall be advertised and filled afresh strictly in accordance with applicable rules and regulations, subject to prescribed quota, requisite qualifications and merit criteria, for which the Chairman, EOBI shall be personally responsible to ensure transparency;
- (c) The matter regarding all the illegal appointments, including the appointment of Raja Azeemul Haq Minhas in the World Bank, shall be investigated by the NAB authorities; the respondents No.3 to 7 and all others directly or indirectly involved in the process of such illegal appointments on the basis of corruption, nepotism and political exigencies shall be proceeded against in accordance with law with intimation regarding compliance of these directions to this Court within two months.

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(d) Office shall prepare and maintain a separate file for initiating contempt proceedings, under Article 204 of the Constitution and other enabling provisions of contempt laws, against all those who are, *prima-facie*, found guilty of violation of order dated 21.1.2011 in H.R.C. No.48012 of 2010, particularly in the process of appointment of 238 employees/officials during the period September 2011 to May 2012.

In view of the above, other miscellaneous applications filed in the Constitutional Petition No.6 of 2011 and H.R.C. No.49012-P of 2010 also stand disposed of.

Judge

Judge

Judge

Announced at Islamabad
on 17th March, 2014

Judge

Approved for reporting
Riaz

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BEFORE THE HONORABLE SERVICE TRIBUNAL K.P.K

In re

S.T.A No. 728/ 2014`

Muhammad Ali Noor

V/S

Govt: of K.P.K and others.

Rejoinder to the reply dated 18/09/2014 from the Respondent No. 1 & 2

The Appellant: amongst other grounds: respectfully submits as follows:-

A. PRELIMINARY OBJECTIONS

- i. The removal from service after without any fault affords a valid cause of action to the Appellant and the objection is misplaced in points of facts and misoriented in points of law.
- ii. The appellant was persuaded to appear before the internal/ Departmental Selection Committee of the Respondents and instead the Respondents due to their own estoppel are now unjustified to raise such objection.
- iii. The grounds of alleged non-maintainability have not been clearly spelt out and the objection is routine objection and ill- founded.
- iv. It is contest for the sake of contest.
- v. The objection is without pointation of such parties.
- vi. It is not supported by valid ground.
- vii. The violation of terms and conditions of services is justiciable before the Tribunal. The objection is misconceived.

B. OBJECTION ON FACTS OF THE REPLY.

- i. Adhocim and contractual appointments are always in line with the provisions of various service enactments and the Respondent No. 1 had consented to the constitution of internal D.S.C and the Respondents long inaction of non reference to the P.S.C is not the fault of the Appellant (PLJ 2005 SC -561 is referred) copy of letter No. 02/^{E-4}~~CE~~/PHE dated 06/03/2013 is enclosed.
- ii. The objection is reiteration of objection vide para-1 and is flawed when the then regime upto Feb: 2013 had not raised any such cavil and the bypassing

of P.S.C since 2008 till December 2013 is not the fault of the Appellant and the Indoor correspondence between the various organs of the Respondent No. 1 is beyond the reach and obligation of the Appellant. the objection is misconstrued. There is provision of Post-Facto approval in case the Appellant is eligible Cum-holder of merit criteria of Academics, genuineness of documents, age qualification and absence of any other disqualification i.e Zonal Allocation.

- iii. It is mistaken. Reply is constructed after formal receipt of the Show Cause at the place of posting and there occurred undue haste vide impugned order dated. 14/02/2014.
- iv. It is founded on wrong exercise of jurisdiction by the Respondent No.1 under the under hand pressure of the ruling regime.
- v. The Respondent No. 1 has violated the remedial provisions of the "Right to Public Services Act 2014" and they have become liable for levy of compensation to the Appellant.
- vi. The right of Appeal is statutory and the objection misconstrued.

C. OBJECTION ON GROUNDS OF THE RESPONDENTS.

All these objections, in all possibility, have been answered in Part "A" Supra and the terms and conditions of the Appointment order dated 02/03/2009 (Annexure-I) are quite clear and not susceptible to any other interpretation, and termination beyond the probation period of one year is flawed and faulted.

The E.O.B.I case has own peculiar circumstance when it has own Board of Trustees, analogous to B.O.G of statutory Corporation and is not a "stare decisis for the disputes/ affairs under Civil Servants Acts and the Rules made there under.

All the case laws are always amenable to distinguishability and contra-distinguishability in the contest of other pronouncements made from time to time.

The Appellant's counsel may be permitted to urge further grounds during the hearing of the Appeal.

It is therefore Prayed that the objections of the Respondents may be brushed aside and the Appeal may kindly be accepted.

[Handwritten signature]

Your Humble Appellant

AFFIDAVIT

It is solemnly affirmed on oath that the contents of the Rejoinder are true and correct to the best of my knowledge and belief.

through - Ali Noor
16/10/14

Attested by
M. E.
SALIM BALOCH A.D.V.
R.O. & A.C.
Oath Commissioner D.I. Khan
- 16-10-14

[Handwritten signature]

Muhammad Ali Noor
Deponent

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OFFICE OF THE CHIEF ENGINEER(SOUTH)
PUBLIC HEALTH ENGG:DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

No. 02 / E-4 / PHE

Dated Pesh: the 06 / 03/2013.

To

The Section Officer (Estt.),
Public Health Engg: Department,
Peshawar.

Subject:- ADHOC / CONTRACT APPOINTMENTS MADE AGAINST
REGULAR POSTS.

It is stated for your information that 19 Nos Sub Engineers (BPS-11) were appointed by this office on Adhoc basis for a period of one year which period has been expired on 28.02.2013 (Annex-I). Moreover, appointments of 30 Sub Engineers (BPS-11) and 6 Stentypiest (BPS-14) against the Regular posts have been made on Regular basis as per list attached (Annex-II & III).

Encl: As above.


CHIEF ENGINEER