

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

SERVICE APPEAL NO. 1472/2022

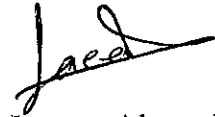
Hidayat Ullah.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

Index

S. No.	Description	Annexure	Pages No.
1	Comments		1-3
2	Letter dated 24/09/2012	A	4
3	Letter dated 10/01/2013	B	5
4	Judgment dated 15/02/2022	C	6-8
5	Affidavit		9
6	Authority letter		10



Laeq Ahmad,
Focal Person (Litigation)
office of DGHS, Khyber
Pakhtunkhwa, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR, CAMP COURT DI KHAN

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 1472 /2022

Diary No. 8599

Dated 25-10-23

Hidayat Ullah

VERSUS

Govt. of K.P.K and others

JOINT PARA-WISE REPLY ON BEHALF OF RESPONDENTS NO. 1 to 3

Respectfully sheweth;

PRELIMINARY OBJECTIONS

1. That the appellant has no locus standi to file this instant appeal.
2. That the appellant has got no cause of action.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. That the appeal is bad for misjoinder of necessary parties.
5. That the appellant is stopped by his own conduct from instituting this appeal.
- ~~6. That the instant appeal is barred by law.~~
7. That the instant appeal is badly time barred.
8. That the case of the appellant has been dismissed by the Peshawar High Court Bench DI. Khan, hence, according to the section 23 of the service tribunal Act. 1974 this tribunal has no jurisdiction to entertain the instant appeal.

ON FACTS:

1. Para No. 1 is pertain to record.
2. Incorrect. The appellant was appointed by the former DHO Tank Dr.Aslam Baloch vide order No.2564 dated 24-09-2012 purely on temporary basis which is clearly mentioned in the said order and it is also clearly mentioned in the said order that his services are liable to be terminated at any time without giving notice, but soon after the

appointment order of the appellant was withdrawn by the then DHO Tank vide order No.745 dated 10-01-2013 Moreover, the sanction post of Naib Qasid was one but the appointment order were issued to two persons and the salary disbursement authority was TB Control Office. Copies of the orders are enclosed as **Annexure A, B.**

3. Incorrect. The writ petition of the appellant was dismissed in *limini* being barred by law and the appellant was never directed by the Honorable Peshawar High Court bench DI Khan to approach the proper forum. Copies of the orders are enclosed as **Annexure C.**
4. Incorrect. The appellant was well aware of the vide order No.745 dated 10-01-2013 from the very day on which it was issued, hence, time barred.
5. Incorrect. The present appellant did not make any appeal/representation to the respondents. Therefore, the appellant cannot invoke the jurisdiction of service tribunal in absence of departmental appeal.
6. Incorrect. The act of the respondent is as per law and rules.

ON GROUNDS:

- a) Incorrect. As already explained that the appointment order of the appellant was withdrawn by the respondent vide Order No. 745 Dated: 10-01-2013.
- b) Incorrect. Already explained in preceding paras.
- c) Incorrect. Already explained in preceding paras.
- d) Incorrect. Already explained in preceding paras.
- e) Incorrect. Already explained in preceding paras. The instant appeal of the appellant is badly time barred and on this sole ground the same is liable to be dismissed.
- f) The respondents may also be allowed to raise additional grounds at the time of arguments.

PRAYERS

It is, therefore, prayed that the appeal in hand being devoid of merit, may graciously be dismissed with cast.

- 712 -
Respondent No. (1)
Secretary Health Department
Khyber Pakhtunkhwa.

[Signature]
Respondent No. (2)
Director General Health Services
Khyber Pakhtunkhwa.

[Signature]
Respondent No. (3)
District Health Officer
District Tank

OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH
DISTRICT TANK.

Amir A
U

No: 2564

Dated: 24/9/2012

To

Mr. Hidayatullah, S/O Aziz Khan
R/O Village Khano District Tank.

Subject: - OFFER OF APPOINTMENT

Memo

The Govt. hereby offers you a post of Naib Qasid against the vacant post at District TB Control Office Tank under the control of this office in BPS-01 Viz: @ Rs.4800-150-9300/-PM plus usual allowances as admissible under the rules and subject to revision time to time on the following terms and conditions according to the Government Policy.

1. Your appointment in the Health Department is purely on temporary Basis and your services are liable to be terminated at any time without giving notice or assigning irrespective of the facts that you may belong to a post other than one to which you are recruited.
2. You have to join duty at your own expenses in case you wish to resign at any time one month notice will be essential or in lieu thereof one month pay shall be forfeited.
3. You will be governed by such rules and orders relating to leave, TA, Medical charges as may be issued by the Govt. from time to time for the category of Government Servant to which you may belong.
4. You will not be entitled to pension or Gratuity as laid down policy of the Government of Khyber Pakhtunkhwa, Peshawar.
5. If you accept the offer on the above conditions you should report to District TB Control Officer Tank for further duty within fifteen (15) days of the receipt of this letter, failing which your services will be terminated.
6. The appointment will be subject to the production of Medical Fitness Certificate.

sk
EXECUTIVE DISTRICT OFFICER
(HEALTH) TANK.

Cc: -

1. District TB Control Office Tank.
2. District Accounts Officer, Tank.
3. Head Clerk of this office.
4. Account Clerk of this Office.

EXECUTIVE DISTRICT OFFICER
(HEALTH) TANK.

Attested
[Signature]

Amma... (B)



Office of the
District Health Officer
TANK.



5

Ref. No. 745
Date: 10-1-2013

The District Accounts Officer
Tank.

Subject: WITHDRAWAL OF THE OFFER OF APPOINTMENT

Reference: This office letter No. 2564 of 24th September, 2012.

Owing to clerical mistake and oversight the offer of appointment extended to Mr. Hidayat Ullah s/o Aziz Kahn resident of Village Khanu, District Tank vide the above referenced letter is hereby withdrawn.

You are therefore, requested to incorporate necessary correction in relevant record with reference to above letter.

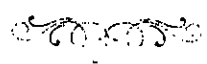
Thanks and regards,

(DR. MUHAMMAD ASLAM BALUCH)
DISTRICT HEALTH OFFICER
TANK.

c.c.

- The District TB Control Officer, Tank.
- Head Clerk of this office.
- Accounts Section.

(DR. MUHAMMAD ASLAM BALUCH)
DISTRICT HEALTH OFFICER
TANK.



Attested

①

Amended (C)



JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
D.I.KHAN BENCH
(Judicial Department)

6

Writ Petition No.418-D/2018

Hidayatullah
Vs.
Govt. of Khyber Pakhtunkhwa & others

For petitioners: Mr. Damsaz Khan Gandapur Advocate

For Respondents: Nemo (motion case)

Date of hearing 15.02.2022

JUDGMENT

ABDUL SHAKOOR, J.- Petitioner through the instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, prayed for the issuance of direction to respondents allow the petitioner to perform his duties and to release his salaries.

2. Facts of the case are that the petitioner was appointed as Naib Qasid in the T.B. Control Office Tank vide appointment order dated 24.09.2012 and he after submission of his medical fitness certificate and arrival

32
AS

TESTED

21.6.2022
EXAMINOR

Peshawar High Court Bench,
Dera Ismail Khan

38 - (2)

report, started to perform his official duties and accordingly marked his attendance in the relevant register. but respondents failed to release his monthly salaries and also stopped him from performing duties. Thus, he filed the present petition. 7

3. - Respondent No.4 in the compliance of order of this Court submitted his para-wise comments, wherein he opposed the issuance of desired writ.

4. Arguments heard and record gone through.

5. A meticulous sifting of the record transpires that the petitioner was appointed as Naib Qasid on 24.09.2012 and as per attendance registered, copies annexed with the petition, reflect his attendance up-to 3rd of January, 2014. There can be no cavil with the proposition that by dint of the appointment letter, the petitioner is a civil servant and he also marked his attendance for about 16 months. Undeniably, the salary of a civil servants falls within the definition of Section 2(1)(e) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, and is also covered by Section 17 of the said Act. Hence, the matter of payment of monthly salaries being fall within the contemplation of Terms & Conditions of the Civil Servants, the jurisdiction

ATTESTED
27.6.22
EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

39

8

of this Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan 1973.

8

6. In view of the above discussed legal position, this constitutional petition is not maintainable and thus dismissed in limine. The petitioner is, however, at liberty to avail the proper forum, if so desired.

Announced.
15.02.2022
(*M/Subhan)

File
18/02

JUDGE

JUDGE

ATTESTED
21.6.02
EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

(D.B)

Hon'ble Mr. Justice Abdul Shakoor & Hon'ble Mr. Justice Sahibzada Asadullah

9

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

SERVICE APPEAL NO. 1472/2022

Hidayat Ullah.....Appellant

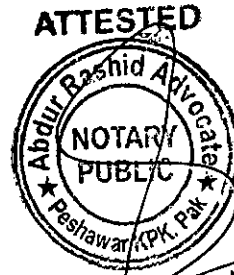
Versus

Government of Khyber Pakhtunkhwa & othersRespondents.

Affidavit

I, Laeeq Ahmad, Focal Person (Litigation) office of the Director General Health Services, Khyber Pakhtunkhwa, Peshawar, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondent are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off / costs.

Laeeq
Deponent



25/10/2023



DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

*All communications should be addressed to the Director General Health Services
Peshawar and not to any official by name
Office # 091-9210269 Fax # 091-9210230*

10

AUTHORITY LETTER

Mr. Laeeq Ahmad Focal Person (Litigation) Directorate General Health Services, Khyber Pakhtunkhwa, is hereby authorized to submit parawise comments in Service Appeal No. 1472/2022 titled Hidayat Ullah VS Govt. of Khyber Pakhtunkhwa & others on behalf of the undersigned.

Director General Health Services
Khyber Pakhtunkhwa, Peshawar.