

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 476/2015

Date of Institution ... 20.05.2015

Date of Decision ... 31.10.2019

Asad Ullah S/O Haji Zafarullah, Ex.Tubewell Operator Govt: Degree College
Badhber, Peshawar. ... (Appellant)

VERSUS

Principal Govt: Degree College Badhber Peshawar and one other.
... (Respondents)

MALIK NASRUM-MINALLAH,
Advocate

For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

For respondents

MR. AHMAD HASSAN

MEMBER(Executive)

MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that Mr. Gul Jehan was working as Chowkidar in the office of respondent no.1 since 02.03.2012. On the request of the said official, the Principal vide order dated 03.12.2013 converted the post of Chowkidar to Tubewell Operator. As this order was passed without lawful authority, therefore, the matter was brought to the notice of respondent no.2 vide letter dated 12.05.2014. On the other hand, the appellant was appointed as Tubewell Operator vide order dated 27.06.2014. After appointment of the appellant Mr. Gul Jehan filed writ petition no. 2235/2014 in Peshawar High Court, Peshawar on

10.07.2014 and vide order dated 15.07.2014, the court directed to maintain status-quo. Resultantly, vide impugned order dated 20.03.2015 services of the appellant were terminated without observance of codal formalities. Furthermore, he was asked to refund salary of nine months received by him through office order dated 11.04.2015. He filed departmental appeal on 26.03.2015, which was dismissed on 16.04.2015, hence, the present service appeal. Impugned order was passed without holding regular enquiry and opportunity of defense to the appellant. In these circumstances he was condemned unheard.

03. Learned Asst: AG argued that appointment of the appellant was not made by the Principal who was the competent authority in this case. His appointment was made by the DDO, who had not been delegated powers to decide such cases. He also conceded that the Principal was not authorized to re-designated any post without prior approval of the Finance Department. As the appellant was in probation period so there was no need of holding any enquiry, therefore, respondent no.1 rightly terminated his services vide impugned order dated 20.03.2015.

CONCLUSION:

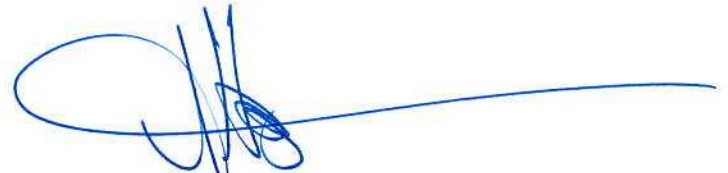
04. The record placed before us revealed that Mr. Gul Jehan was working as Chowkidar in the office of respondent no.1 since 02.03.2012. On his written request the Principal converted the post of Chowkidar to Tubewell Operator through order dated 03.12.2013. Under the rules it was not the prerogative of the Principal to pass such an order, as it fell in the domain of the Finance Department, and rightly pointed out in letter dated 12.05.2014.

05. On the other hand the appellant was appointed as Tubewell Operator vide order dated 27.06.2014. After his appointment Mr. Gul Jehan filed writ petition no. 2235/2014 in Peshawar High Court, Peshawar on 10.07.2014 and through order dated 15.07.2014, the court directed to maintain status-quo. It is further clarified that the appellant was not arrayed as a necessary party in the writ petition referred to above nor his appointment order was assailed by the petitioner. Moreover, Peshawar high Court, Peshawar did not suspend the order assailed by the petitioner thus it was crystal clear that the order of status-quo had no adverse implications on the fate of the appellant. Now coming to the impugned order dated 20.03.2015, the same was passed on the strength of order dated 15.07.2014 handed down by the Peshawar High Court in writ petition referred to above. This order was based on wrong interpretation and spirit of the order of Peshawar High Court referred to above. To cut it short it was an illegal and unlawful order. To set the record straight, it was further added that Mr. Gul Jehan withdrew writ petition vide order of Peshawar High Court dated 24.01.2017. After withdrawal of the said order, the implications of order of status quo earlier granted by the Peshawar High Court disappeared from the scene.

06. It is alleged that the appointment of the appellant was notified in pursuance of approval granted by the DDO whereas appointing authority in the case in hand was respondent no.2. Furthermore, services of the appellant were terminated without affording opportunity of defense/showing cause. After appointment he remained in service for nine months and many vested rights accrued to him. Attention is invited to Clause-5 of the appointment order that in case of disciplinary matters he should be dealt with under E&D Rules 2011. Admittedly, the respondents failed to act according to the prescribed procedure for reasons best

know to them. Even services of a probationer cannot be dispensed with without proper opportunity of defense as held by the superior courts in its various judgments. In the present case adverse order was passed against the appellant without following the due process of law thus it was void-abitio, illegal and unlawful. In order to digout the facts leading to his appointment proper enquiry under E&D Rules 2011 is required to be conducted and thereafter appropriate orders could be passed by the respondents.

07. As a sequel to the above, the present appeal is accepted, the impugned order dated 20.03.2015 and 16.04.2015 are set aside and the appellant is reinstated into service. The respondents are directed to conduct proper enquiry under E&D Rules 2011 within a period of ninety days from the date of receipt of this judgment and thereafter pass order as deemed appropriate. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
Member



(MUHAMMAD AMIN KHAN KUNDI)
Member

ANNOUNCED
31.10.2019

Order


31.10.2019 Appellant with counsel present. Asst: AG for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the present appeal is accepted, the impugned order dated 20.03.2015 and 16.04.2015 are set aside and the appellant is reinstated into service. The respondents are directed to conduct proper enquiry under E&D Rules 2011 within a period of ninety days from the date of receipt of this judgment and thereafter pass order as deemed appropriate. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
31.10.2019



(Ahmad Hassan)
Member




(Muhammad Amin Khan Kundi)
Member

28.08.2019 Counsel for the appellant present. Asst:AG alongwith Mr. Asghar Ali, H.C for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. Case to come up for arguments on 12.09.2019 before D.B.


Member


Member

12.09.2019 Appellant in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. Appellant requested for adjournment on the ground that his counsel is busy before the Hon'ble Peshawar High Court, Peshawar. The appeal pertains to the year 2015, therefore, adjourned to 30.09.2019 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

30.09.2019 Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Usman Ghani, District Attorney for the respondents present. Adjourned to 31.10.2019 for arguments before D.B.

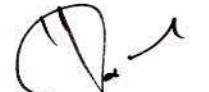

(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

12.04.2019

Appellant in person and Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Appellant requested for adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 28.06.2019 before D.B.


Member


Member

28.06.2019

Appellant in person and Addl: AG alongwith Mr. Abdul Karim, Technologist for respondents present. Appellant submitted an application for adjournment wherein he stated that his counsel was busy before the Peshawar High Court, Peshawar. Adjourned. Case to come up for arguments on 27.08.2019 ~~for arguments~~ before D.B.



Member


Member

27.08.2019

Appellant with counsel present. Mr. Riaz Paindakheil learned AAG present. Arguments could not be heard due to non-availability of member copy of the present service appeal. Learned counsel for the appellant requested for a short adjournment to submit the same. Adjourn. To come up for arguments on 28.08.2019 before D.B.


Member


Member

24.12.2018

Counsel for the appellant present. Mr. M. Riaz Khan Paindakhel, Asst:AG for respondents present. Arguments heard. Case to come up for order on 24.01.2019 before D.B.



(Ahmad Hassan)
Member



(M. Amin Khan Kundi)
Member

24.01.2019

Counsel for the appellant present. Mr. M. Riaz Khan Paindakhel, Asst:AG for respondents present. Order could not be announced due to paucity of time. Case to come up for order on 25.01.2019 before D.B.



(Ahmad Hassan)
Member



(M. Amin Khan Kundi)
Member

25.01.2019

Appellant in person present. Mr. M. Riaz Khan Paindakhel, Asst:AG for respondents present. Some points needs further clarification, therefore, order could not be announced. Case to come up for re-arguments on 04.02.2019 before D.B.



(Ahmad Hassan)
Member



(M. Amin Khan Kundi)
Member

04.02.2019

Appellant in person present. Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 12.04.2019 for arguments before D.B.




(AHMAD HASSAN)
MEMBER




(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

27.06.2018

Appellant in person present. Learned counsel for the appellant is absent. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 07.08.2018 before D.B.



(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

07.08.2018

Appellant in person and Muhammad Jan learned Deputy District Attorney present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 25.09.2018 before D.B.



(Muhammad Hamid Mughal)
Member


(Muhammad Amin Kundi)
Member

25.09.2018


Appellant in person present. Learned counsel for the appellant is absent. Mr. Riaz Ahmad Paindakhel, Assistant AG for the respondents present. Appellant requested for adjournment. Last opportunity granted. To come up for arguments on 13.11.2018 before D.B.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

13.11.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 24.12.2018 before D.B.


Reader

06.12.2017

Counsel for the appellant present. Asst: AG alongwith Mr. Murad Khan, Supdt for respondents also present. Representative of the respondents is directed to produce all relevant record. Learned counsel for the appellant is also directed to bring complete record of the writ petition. Adjourned. To come up for such record and arguments on 12.12.2018 before D.B.



(Ahmad Hassan)
Member (E)



(Muhammad Amin Khan Kundi)
Member (J)

12.02.2018

Appellant absent. Mr. Riaz Paindakhel, Assistant AG for the respondent present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for arguments on 17.04.2018 before D.B.


Member
Chairman

17.04.2018

Appellant in person present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 15.05.2018 before D.B.



(Ahmad Hassan)
Member



(Muhammad Amin Khan Kundi)
Member

15.05.2018

Appellant absent. Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents ~~also~~ present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 27.06.2018 before D.B.



(Muhammad Amin Khan Kundi)
Member



(Muhammad Hamid Mughal)
Member

20.06.2017

Appellant with counsel and Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Appellant requested for adjournment. Adjourned. To come up for arguments on 25.08.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member


(Gul Zeb Khan)
Member

25.08.2017

Appellant in person and Adll: AG for the respondents present. Appellant seeks adjournment. Adjourned. To come up for arguments on 06.12.2017 before D.B.


(Gul Zeb Khan)
Member


(Ahmad Hassan)
Member

06.12.2017

Counsel for the appellant present. Asst: AG alongwith Mr. Murad Khan, Supdt for respondent also present. ~~Representative of the respondents is directed to produce all relevant record.~~ Learned counsel for the appellant ^{vs} also directed to bring complete record of the writ petition. Adjourned. To come up for such record and arguments on 12.12.2017 before the D.B.

(Ahmad Hassan)
Member (E)


(Muhammad Amin Khan Kundi)
Member (J)

30.12.2016

Appellant in person and Mr. Murad Khan, Supdt. alongwith Addl. AG for respondents present. Arguments could not be heard due to incomplete bench. Case adjourned to 07.02.2017 for arguments before D.B. Till then status-quo be maintained.


Chairman

07.02.2017

Junior to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Junior to counsel for the appellant requested for adjournment as his senior counsel was busy before Peshawar High Court, Peshawar. Request accepted. To come up for arguments on 09.03.2017.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

09.03.2017

Appellant with counsel and Mr. Muhammad Jan, GP for respondents present. Appellant with counsel requested for adjournment. Request accepted. To come up for arguments on 20.06.2017 before D.B.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

27.06.2016

Counsel for the appellant and Assistant AG for the respondents present. Learned counsel for the appellant seeks adjournment for submission of rejoinder and also requested for suspension of status-quo already granted. Request accepted. To come up for filing of rejoinder on 21.09.2016. Till then status-quo be maintained.



MEMBER



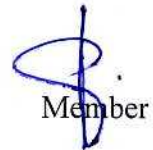
MEMBER

21.09.2016

Appellant in person and Mr. Murad Khan, Superintendent alongwith Mr. Usman Ghani, Sr.GP for respondents present. Rejoinder submitted, copy whereof handed over to learned Sr.GP. To come up for arguments on 21-11-16 before D.B. Till then status-quo be maintained.



Member



Member

21.11.2016

Appellant in person and Addl: AG for respondents present. Appellant seeks adjournment as his counsel was busy before the Hon'able Peshawar High Court, Peshawar. Request accepted. To come up for arguments on 30.12.2017. Till then status-quo be maintained.



(ABDUL LATIF)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

21.09.2015

Appellant in persona and Ms. Shehnaz, Assistant along with Assistant AG for respondents present. Requested for adjournment. To come up for written reply/comments on 26.11.2015 before S.B.


Chairman

26.11.2015

Appellant in person, M/S Zahir Shah, Assistant Professor and Murad Khan, Supdt. alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 2.3.2016 before S.B.


Chairman

26.1.2016

Counsel for the appellant present. Application for suspension of the impugned order dated 16.4.2015 submitted. Notice be issued to respondents for the date already fixed i.e 2.3.2016 before S.B. Till then recovery of amount paid to the appellant in the shape of salary shall not be made.


Chairman

02.03.2016

Appellant in person and Mr. Murad Khan, Supdt. alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 27.6.2016.


Chairman

3

28.05.2015

Appellant in person present and requested for adjournment due to strike of the Bar. Adjourned to 11.06.2015 for preliminary hearing before S.B.


Chairman

4

11.06.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was appointed as Tubewell Operator at Government Degree College Badaber vide order dated 27.6.2014. That prior to the said order of appointment of the appellant one Gul Jehan Chowkidar was posted as Tubewell Operator on temporary basis vide order dated 3.12.2013. That aggrieved from the appointment order of the appellant, the said Gul Jehan preferred Writ Petition No. 2235/2014 wherein status-quo order was passed by the Hon'ble Court vide order dated 15.7.2014. That on the basis of the said status-quo order, the services of the appellant was terminated dated vide impugned order dated 20.3.2015 regarding which departmental appeal was preferred on 26.3.2015 which was rejected on 16.4.2015 followed by service appeal on 22.5.2015.

That the appointment order of the appellant was made in the prescribed manners and that the orders of status-quo passed by the Hon'ble High Court were not warranted termination of service of the appellant.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 21.9.2015 before S.B.


Chairman



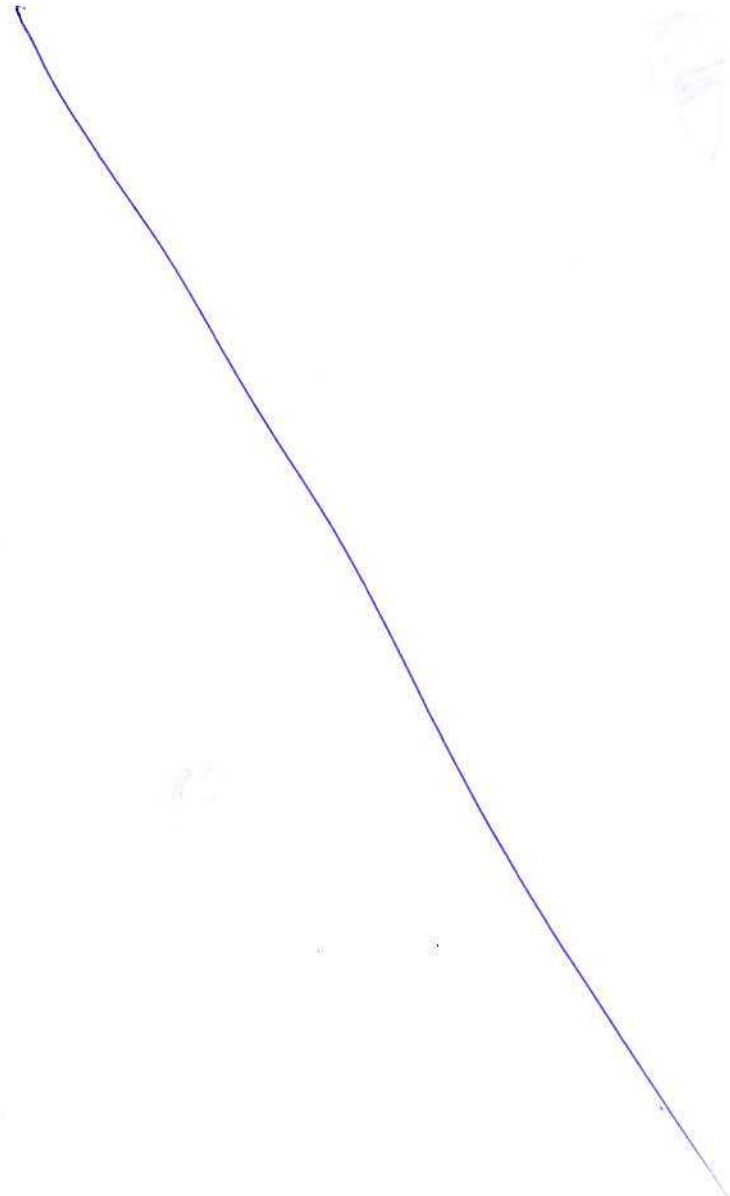
Appellant Deposited
Security & Process Fee



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 476/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	22.05.2015	<p style="text-align: center;">The appeal of Mr. Asadullah resubmitted today by Mr. Farhanullah Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28-5-15</u></p> <p style="text-align: right;"> CHAIRMAN</p> 

The appeal of Mr. Asad Ullah son of Haji Zafrullah Ex-Tubewell Operator received to-day i.e. on 20.05.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Memorandum of appeal may be got signed by the appellant.

No. 770 /S.T,

Dt. 21/5 /2015

to
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Farhanullah Adv. Peshawar.

Needful has been done and
Resubmitted for further proceedings

Farhan Ullah Adv

Farhan
22/05/2015

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Appeal No. 476 / 2015.

Asad Ullah

.....Appellant.

VERSUS

Principal Govt. Degree College Badhber and & another.

.....Respondents.

I N D E X


Sr. No.	Description of Documents	Annexure	Page No.
1)	Memo of Appeal Along with Affidavit and Addresses of the Parties		1-6
2)	Copy appointment order dated:27.06.2014.	A	7
3)	Copy of order dated:03.12.2013	B	8
4)	Copy order dated:12.05.2014	C	9
5)	Copy of W.P and order dated:15.07.2014.	C/1 & D	10-14
6)	Copy of Letter of Directorate and termination order dated:20.03.2015.	E & F	15-16
7)	Copy of Departmental Appeal & Order dated:16.04.2015.	G & H	17-20
8)	Waqalat Nama		21

Dated; 20/05/2015.

APPELLANT.


(Farhan Ullah)
Advocate High Court,
PESHAWAR

Through:-


(Malik Nasrum-Minallah)
Advocate High Court,
PESHAWAR

Cell No.0333-9148358

Office- F.F 29 Bilor Plaza Peshawar Cantt,

وکالت نامہ

بعدالت سروس ٹریبونل خبر بخوشحالیت

اسد اللہ نام برائے گورنمنٹ ڈرائنگ روم صاحب بدھو بہرہ والا

منجانب: سہیل دہوئی یا جرم سروس ایپل

تھانہ - ایف آئی آر - تاریخ -

باعث تحریر آنکہ مقدمہ مندرجہ بالا عنوان اپنی طرف سے واسطے پیروی و جوابدہی

بمقام سہیل کیلئے نصر من اللہ اینڈ میاں محمد ذیشان ایڈووکیٹس ہائی کورٹ فیضان اللہ ایڈووکیٹس

کو بدیں شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا ہوں گا۔ بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کی کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختارانہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی و دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ فیصلہ برخلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمد کی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختارانہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزوی کارروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا ہیرٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر وہی اور ایسے ہی اختیارات حاصل ہوں گے جیسے کہ صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا۔ کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا لہذا مختار نامہ لکھ دیا کہ سندر ہے۔

مورخہ ۲۵ مئی ۲۰۱۲ مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

Accepted by

A. K. K.

S.

اسد اللہ ولد ظفر اللہ بہنہ ساہوکار کوئی اور پیش

1

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Appeal No. 476 / 2015.

K.P.K. Provincial
Service Tribunal
Diary No. 514
Dated 20/5/2015

Asad Ullah S/O Haji Zafarullah ex. Tubewell Operator Govt. Degree College
Badhber Peshawar.

.....Appellant.

V E R S U S

- 1) Principal Govt. Degree College Badhber Peshawar.
- 2) Director Higher Education K.P.K Peshawar.

.....Respondents.

APPEAL U/S 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED:16/04/2015, received by the
appellant on 20.04.2015, WHEREBY THE DEPARTMENTAL
APPEAL/REPRESENTATION OF THE APPELLANT AGAINST
THE termination ORDER NO.101-106 dated:20.03.2015.
WAS DISMISSED.

PRAYER

On acceptance of the appeal the order
dated:16/04/2015, received by the appellant on
20.04.2015 dismissing the departmental appeal of the
appellant against the order NO.101-106 dated:20.03.2015
may graciously be set aside, and the appellant may
graciously be reinstated in service with all back benefits etc,
and any other orders deemed proper may also be passed in
the matter.

Filed to-day
[Signature]
20/5/15

re-submitted to-day
and filed.

[Signature]
Registrar
22/5/15

2

Respectfully Sheweth:-

1. That the appellant after due process and on completion of all codal formalities and recommendation of departmental selection committee was appointed as tube well-operator on the vacant post vide office order No.1342-44, dated:27.06.2014, and during his entire service he has got no adverse remarks or any other charge and as such having an excellent record and spot less service.

(Copy annexed as A)

2. That prior to the appointment of the appellant the post of tube-well operator was vacant in the college, therefore to meet the day to day requirement of water supply to the college GulJehan (chowkidar) upon his request was transferred from the post of chowkidar/watchman and posted as tube-well operator by the respondent No.1 (principal) vide order dated:03-12-2013.

(Copy of order is annexed as B)

3. That after clarification by the finance department respondent No.1 (principal), vide letter No.2159 dated:12.05.2014, cancel his earlier order and Mr. Gul Jehan was reverted to his original post as chowkidar/watchman.

(Copy of order is annexed as C)

4. That after appointment of the appellant Mr. Gul Jehan filed a writ petition No.2235/2014, on 10-07-2014 for setting aside the order dated:12.05.2014, who neither disclosed the facts that appellant has been appointed on the post of tube-well operator, nor made the appellant as respondent in the said writ petition.

5. That above titled writ petition was heard on 15-07-2014 by the Hon,able Peshawar High Court Peshawar , and was pleased to order for maintaining status-quo till the next date of hearing i.e 5-08-2014 as interim relief.

(Copy of Writ Petition and order is annexed as C & D)

6. That on the basis of the aforesaid order of this Hon,able Peshawar High Court Peshawar respondent No.1 (principal) after consultation with directorate terminated the appellant from service and was order to refund the salaries drawn by him from the government treasury within 07 days, vide office order No.101-106 dated:20.03.2015.

(Copy of letter of directorate and termination order is annexed as E & F)

1) That aggrieved from the impugned order No.101-106 dated:20.03.2015, the appellant filed a departmental appeal/representation to the respondent No.2 which was not considered and turn down vide impugned order dated:16.04.2015, received by the appellant on 20.04.2015.

(Copy of appeal and order is annexed as G & H)

2) That the appellant now approaches this Hon,able court / tribunal for setting aside impugned orders and re-instatement in service on the following grounds amongst others.

GROUNDS.

- A. That the both the orders of the respondent No.1 & 2 are against the law, facts and violation of the procedure as provided under the law, hence the same is liable to be struck down.
- B. That the both respondents No.1 & 2 has totally misunderstand and misinterpret the order of Hon,able Peshawar High Court Peshawar court while terminating the service of appellant, furthermore the no final order ~~was~~ passed in the said writ petition and the same is still pending adjudication, hence the impugned orders are based on miss application of mind and is not sustainable.
- C. That the appellant has been condemned totally unheard and as such the basic principle of natural justice is violated in the case of the appellant.
- D. That even the order passed by the respondent No.1 (principal)while posting the Mr. Gul Jehan as tube-well operator was void abi-initio and against the rules regulations and as such was rightly cancelled subsequently by the respondent No.1 (principal).
- E. That no show cause notice was served to the appellant nor any inquiry was conducted in accordance with law, rules and procedure, thus the order passed without show cause notice and proper inquiry in the matter is having no sanctity in the eye of law.
- F. That being a regular employee the appellant has served the department honestly and whole heartedly for sufficient time, and perform his duties candidly and unequivocally thus the the appellant cannot be terminated from his service with a stroke of pen as done by the respondent No.1 & 2.

- G. That the conduct of the respondent No.1 & 2 clearly suggests that appellant has highly been discriminated which is not permissible under the constitution of Islamic Republic of Pakistan 1973.
- H. That as per facts and circumstances of the case the principle of locus poenitentiae is also attracted in the case of the appellant.
- A. The contents of the departmental appeal/representation may be considered as integral part of the instant appeal.
- B. That on the permission of this Hon, able court the appellant may urge other additional ground if any, at the time of arguments.

it is therefore most humbly prayed that On acceptance of the appeal the order dated: DATED:16/04/2015, received by the appellant on 20.04.2015 dismissing the departmental appeal of the appellant against the ORDER NO.101-106 dated:20.03.2015 may graciously be set aside, and the appellant may graciously be reinstate in service with all back benefits etc, and any other orders deem proper may also be passed in the matter.



APPELLANT

Dated; 20/05/2015.

Through:-



(Farhan Ullah)
Advocate High Court,
PESHAWAR



(Nasrum-Minallah)
Advocate High Court,
PESHAWAR

5

BEFORE THE K.P.K SEVICES TRIBUNAL PESHAWAR.

Appeal No. _____ / 2015.

Asad Ullah

.....Appellant.

VERSUS

Principal Govt. Degree College Badhber and & another.

.....Respondents.

AFFIDAVIT

I, Asad Ullah S/O Haji Zafarullah ex. Tubewell Operator Govt. Degree College Badhber Peshawar, do hereby solemnly affirm and states on oath that the contents of accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon' able Court.

(Deponent)

17301-0570563-5

ATTESTED

(6)

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Appeal No. _____ / 2015.

Asad Ullah

.....Appellant.

V E R S U S

Principal Govt. Degree College Badhber and & another.

.....Respondents.

ADDRESSES OF THE PARTIES

Asad Ullah S/O Haji Zafarullah ex. Tubewell Operator Govt. Degree College
Badhber Peshawar.

.....Appellant.

V E R S U S

1) Principal Govt. Degree College Badhber Peshawar.


2) Director Higher Education K.P.K Peshawar.


.....Respondents.

A P P E L L A N T .

Dated; 20/05/2015.

Through:-


(Farhan Ullah)
Advocate High Court,
PESHAWAR


(Nasrum-Minallah)
Advocate High Court,
PESHAWAR

(7)

Annex A

OFFICE OF THE PRINCIPAL GOVERNMENT DEGREE COLLEGE BADHBER,

PESHAWAR.

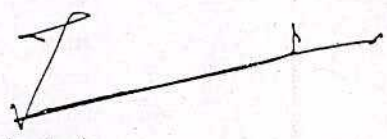
Office Order

Dated 27/06/2014

Consequent upon the recommendation of the Departmental selection Committee, the competent authority is pleased to appoint the Candidate Mr. Asad Ullah son of Zafar Ullah Khan as Class-IV in BPS-1 (4800-150-9300) plus other usual allowances vacant post of class-IV (Tube Well Operator) at Govt. Degree College, Badaber Peshawar as admissible under the Rules from the date of taking over charge on the terms and conditions mentioned below:-

TERMS AND CONDITIONS:-

- 1) He shall, for all intents and purposes are civil servant, except for the purpose of pension and Gratuity. In lieu of the same they shall be entitled to receive contributory provident fund for the said fund 10% by the Civil servant concerned in the prescribed manner. Provided further that in the event of death of the civil servant, whether before or after retirement their family shall be entitled to receive the said amount, if it has not already been received by the concerned deceased civil servant.
- 2) He will have all the right/privileges contained in Khyber Pakhtunkhwa civil servant Act 1973 with all amendments made there in including Khyber Pakhtunkhwa civil servant Act 2005 and rules made there under.
- 3) In case of resignation, the official will have to give one month's prior notice. In absence of such notice their one month's pay shall be forfeited to Government.
- 4) The appointee must join his post within 30 days of the issue of this order.
- 5) In case of disciplinary matters, Khyber Pakhtunkhwa civil servant Act 1973 and Khyber Pakhtunkhwa civil servant removal from service (Special powers) ordinance E & D 2011 shall be applicable.



Principal,

Govt. Degree College, Badaber

Encls: No. 1342-441.

Copy forwarded to the:-

1. Director, Higher Education, Govt. of Khyber Pakhtunkhwa, Peshawar.
2. Accountant General Khyber Pakhtunkhwa, Peshawar.
3. Official Concerned.

o/c



Principal

11/6/14
ATTESTED

(8)

Annex "B"

OFFICE ORDER.

Dated 03/12/2013.

Mr. Gul Jehan is working as Chowkidar (BPS-1) Since 02/03/2012. The post of Tube Well Operator is still vacant and on the request of the employee concerned the status of the post chowkidar may kindly be convet to Tube Well Operator.

S/D
(Prof: Jehanzeb)

Principal,

Govt. Degree College, Badaber.

Principal

GOVT. DEGREE COLLEGE,
BADABER (DISTT. PESH.)

Endst :: No. 1860-61 Dated 03 / 12 / 2013.

Copy forwarded to the :-

1. Director of Higher Education, Govt. of Khyber Pakhtunkhwa, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.

C/f

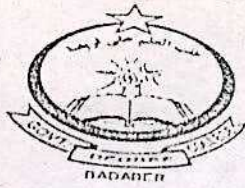
S/D
Principal,

Govt. Degree College, Badaber.

Principal

GOVT. DEGREE COLLEGE,
BADABER (DISTT. PESH.)

Gul Jehan
ATTESTED



9

Annex "C"

GOVERNMENT DEGREE COLLEGE BADABER PESHAWAR.

No. 2158

GDC, Badaber

Dated Peshawar the 12/5/2014.

From:

The principal,
Govt: Degree College, Badaber, Peshawar.

To

The Director,
Higher Education Department,
Govt. of Khyber Pakhtunkhwa,
Peshawar.

Subject:-

CANCELLATION OF DESIGNATION CHANGE FROM CHOWKIDAR TO
TUBEWELL OPERATOR

Memo:

Reference of this office Endst: No.1960-61 dated 03-12-2013.

The post of Tubewell Operator has been newly created vide Finance Department letter No. BOV/FD/6-11/2011-12 dated nil for this office which under the rules of Government shall be filled through initial appointment, no transfer can be affected on such post.

The transfer of Gul Jehan Chowkidar on the post of Tubewell Operator is totally wrong according to rules.

Principal,
GOVT: DEGREE COLLEGE,
BADABER (DISTT: PESH.)
Govt: Degree College, Badaber

Endst: No. 2160-61 / Dated 12/5 /2014.

Copy forwarded to the:-

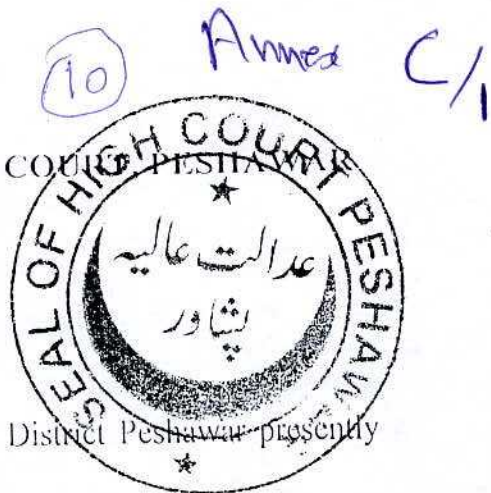
1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Assistant Director, P&D, Higher Education Department, Khyber Pakhtunkhwa, Peshawar.

Principal,
Govt: Degree College, Badaber

ATTESTED

BEFORE THE HONORABLE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 2235 of 2014



Gul Jehan S/O Shah Jehan R/O Mashogagar, Tehsil & District Peshawar presently
employee government degree college Badaber Peshawar

.....Petitioner

VERSUS

1. Principal
Government Degree College, Badabher Peshawar
2. Government of Khyber Pakhtunkhwa
Through Director of Higher Education, Civil Secretariat,
Peshawar

.....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973

Humbly Sheweth:

- 1) That the petitioner was appointed as Chowkidar, Basic Pay Scale (BPS-1)
in Government Degree College, Badaber Peshawar on 02/03/2012.
- 2) That the post of Tube-Well Operator was lying vacant in the said
Government Degree College, Badaber, thus upon request the petitioner

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Deputy Registrar
10 JUL 2014

ATTESTED
EXAMINER
Peshawar High Court.
16 JUL 2014

(~~11~~)

(11)

was adjusted against the vacant post of tube-well operator and his designation was converted to that of the tube-well operator from earlier held post of Chowkidar through the order of the principal of the said college dated 03/12/2013

Copy of the Order is annexed herewith – Marked A

- 3) That on the retirement of the said principal another employee took over as principal of the college on acting charge basis who vide his order 12/05/2014 withdrawn/revoked the earlier order dated 03/12/2013 stating that under the rules of the government the position should have been filled through initial recruitment.

Copy of the Order is annexed herewith – Marked B

- 4) That the petitioner made departmental representation before the Director Higher Education Khyber Pakhtunkhwa but to no avail.

Copy of the Order is annexed herewith – Marked C

- 5) That the petitioner is left with no other adequate alternative remedy thus constrained to approach this on the following grounds *inter alia*:

GROUND:

A. Because the impugned order passed by respondent No. 1 is arbitrary and against the law and rules, thus ineffective upon the rights of the petitioner.

B. Because, the petitioner has worked on the post of tube-well operator for good seven months, have received salaries for

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Deputy Registrar
10 JUL 2014

ARRESTED
EXAMINER
Peshawar High Court
16 JUL 2014

(12)

the same period and vested right have accrued to him on the basis of the principle of locus Poenitentiae and these rights cannot be unilaterally withdrawn.

- C. Because the impugned order violates fundamental principle of natural justice as no notice was served on the petitioner, nor was he afforded an opportunity of hearing, rather he was condemned unheard in the matter affecting his rights and the impugned order was passed on his back.
- D. Because except for ulterior motive no other valid reason or lawful reason exists to justify the impugned order passed by respondent No. 1.
- E. Because the reason advanced by the respondent No. 1 to justify the impugned order changing the post and designation of the petitioner is both legally and factually incorrect.

PRAYER:

By reason of the aforementioned, it is most humbly prayed that on acceptance of this writ petition the Honourable Court may graciously declare the Impugned Order Dated 12/05/2013 passed by the Respondent as illegal, *void ab initio* and ineffective upon the rights of the petitioner. Any other relief fit and appropriate under the circumstances may also be granted.

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Deputy Registrar
10 JUL 2014

ATTESTED
EXAMINER
Peshawar High Court,
16 JUL 2014

13

(4)

INTERIM RELIEF

By way of ad-interim relief the impugned order Dated 12/05/2013 issued by Respondent No. 1 may kindly be suspended till the final decision of the instant writ petition.

PETITIONER

8th day of July, 2014

Through

Sangeen Khan

(M. Sangeen Khan)
Advocate High Court(s)

CERTIFICATE:

Certified that no such Corpus petition has earlier been filed on the subject matter before this Honorable Court.

Sangeen Khan

ADVOCATE

LAW BOOKS:

1. Constitution of Pakistan
2. Any other reference book and case law as per need.

FILED TODAY
Deputy Registrar
10 JUL 2014

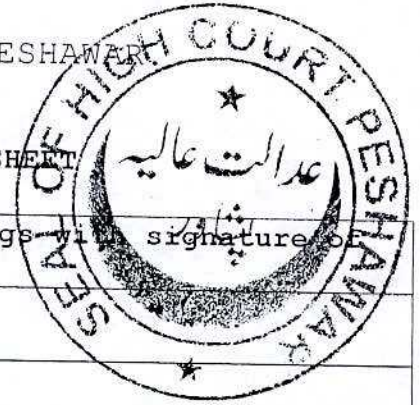
ATTESTED
EXAMINER
Peshawar High Court
16 JUL 2014

14

Annex "D"

PESHAWAR HIGH COURT, PESHAWAR

FORM 'A'
FORM OF ORDER SHEET



S.No.	Date of order	Order or other proceedings with signature of the Judge
1	2	3
	15-7-2014	<p><u>WP No.2235-P/2014</u></p> <p>Present: Mr. M. Sangeen Khan, Advocate, for the petitioner.</p> <p>_____</p> <p>Mian Arshad Jan, AAG, present in Court in some other case, accepts notice of this case on behalf of respondents and seeks time to prepare it. Adjourned to 5.8.2014.</p> <p><u>Interim Relief</u></p> <p>Notice for the date fixed. Till then, status quo shall be maintained.</p> <p><i>Sd/- Yaqub Afshar</i> <i>Sd/- Muzammat Dilber</i></p> <p>_____</p> <p>JUDGE</p>

887

No. _____

Date of Presentation of Application 15/7/2014

No of Pages 5

Copying Fee _____

Urgent Fee _____

Total 10-00

Date of Preparation of Copy 16/7/2014

Date Given For Delivery 16/7/2014

Date of Delivery of Copy 16/7/2014

Received By Sd/- Muzammat Dilber

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-Shahadat Order 1984

16 JUL 2014

15

Annex "E"

OFFICE OF THE PRINCIPAL GOVERNMENT COLLEGE
BADABER, PESHAWAR

OFFICE ORDER

In compliance with the order sheet No 2235 dated 15.07.2014 of Peshawar High court Peshawar wherein interim relief/ status quo granted to Gul Jahan of Govt College Badaber, Peshawar coupled with the advisory opinion/ expert guidance of the Director Higher Education Khyber Pakhtunkhwa, Peshawar No 6937/CA-VII/Estt:Branch/A-167 dated 18.3.2015, the status quo in r/o of Gul Jahan as Tube Well Operator of the said College is kept intact and maintained. The services of Asadullah as Tube Well Operator (probationary) of the College are terminated ab initio as his appointment was made ultra vires and violative of the Order Sheet of the honourable Peshawar High Court Peshawar. Asadullah ex-Tube Well Operator of the College is directed to refund all the salaries drawn to the Government Treasury within 07-days.

SA
PRINCIPAL

Government College Badaber,
Peshawar

Endst. No *101-106* dated 20.03.2015

Copy to:

1. Director Higher Education Khyber Pakhtun Khwa, Peshawar
2. Accountant General Khyber PakhtunKhwa, Peshawar
3. Registrar Peshawar High Court Peshawar
4. Gul Jahan Tube Well Operator of Govt College Badaber, Peshawar
- ✓ 5. Asadullah of Govt College Badaber, Peshawar
6. Office Assistant of the College for record

SA
PRINCIPAL

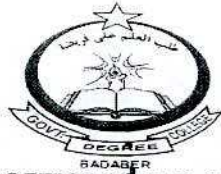
Government College Badaber,
Peshawar

Principal
GOVT: DEGREE COLLEGE,
BADABER (DIST: PESH.)

Attested
ATTESTED

(16)

Amree "F"



OFFICE OF THE PRINCIPAL, GOVERNMENT DEGREE COLLEGE BADHBER, PESHAWAR

No. GC Badaber/ 193

Dated: 11-4-2015
Reminder- 1

To

Mr. Asad Ullah S/O Zafar Ullah Khan
EX- Tubewell Operator.
Govt. Degree College. Badaber.
Peshawar.
Mohallah Ghali Khel, Mashogagar,
Badaber, Peshawar.

Subject: **REFUND OF SALARIES**

Memo:

You, Asad Ullah S/O Zafar Ullah Khan, were directed to refund the salaries for the period of July, 2014 to March, 2015(9 Months), deposited the same in Government Treasury on challan and produced the said challan before the undersigned vide this office order No.101-106 dated 20-03-2015 but you failed to do so. You are again directed to refund the salaries and deposited the same in the Government Treasury within three days of the receipt of this letter, otherwise legal action shall be taken against you under the law.

Principal,

Govt. Degree College Badaber Peshawar

Endst: No. _____ Dated _____

Copy Forwarded to the:-

1. Director, Higher Education, Khyber Pakhtunkhwa, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Office record.

Principal
GOVT: DEGREE COLLEGE,
BADABER (DISTT: PESH.)

S.d.

Principal,

ATTESTED

عنوان :-

ڈیپارٹمنٹل ایڈیل بر طرف آفس آرڈر
106-107 مورخہ 20-3-2015 جس کے تحت
ایڈوانٹ اسٹڈی اسٹڈی ونگ عالی نوالہ
سکول ماسٹرنگر سٹاڈی کو اسٹڈی سے برطرف
کیا گیا۔

RECEIVED ON
26 MAR 2015
Diary # 1916 Page # 276
D/Clerk

جناب عالی!

ایڈوانٹ صوبہ ویل عرصہ رساں ہے۔

- 1- یہ کہ ایڈوانٹ کو بحوالہ آفس آرڈر نمبر 44-1342 مورخہ 20-3-2015-6-27 کو ڈیپارٹمنٹل سلیکشن کمیٹی جو کہ محاذ اعلیٰ ترقی کی منظوری کے بعد بطور ٹیوب ویل آفیسر (کلاس فور) گورنمنٹ ڈگری کالج بڑھو پیر سٹاڈی میں بحیثیت سول سرفیسٹیشن کیا گیا۔
- 2- یہ کہ ایڈوانٹ نے جامع سنبھالنے کے بعد ملازمت شروع کی اور مورخہ 20-3-2015 تک انی ڈیوٹی، خواتین منڈی پوری دلچسپی سے اہم فرائض اور فرض شناسی سے ادا کرتا رہا۔
- 3- یہ کہ ایڈوانٹ سے قبل مسیحی گل جہان ولد شاہ جہان جو کہ بطور چوکیڈار گورنمنٹ ڈگری بڑھو پیر میں تعینات تھا جس کو سابقہ پرنسپل جہان زیب صاحب نے اس کی درخواست پر چوکیڈار کی آسامی سے ہٹا کر اس کا کیڈر ٹیبل کرنے پر

ATTESTED

بطور ٹیوب ویل آپریٹر تعینات کیا۔ کیونکہ اس وقت کالج
بذمہ ٹیوب ویل آپریٹر کی پوسٹ خالی تھی۔

4- یہ کہ اپڈیٹ کی تعیناتی سے پہلے گل جہان ولہر شاہ جہان بطور

ٹیوب ویل آپریٹر کالج میڈیا میں کام کر رہا تھا۔ جو قبلہ سابق
میرنسل نے مسیحی گل جہان کی تعیناتی غنائس ڈیپارٹمنٹ اور کالج

سیکشن کسٹی کی منظوری کے بغیر عمل میں لائی تھی۔ لہذا گل جہان

کو اپڈیٹ سے قبل ہی مورچہ 2014-5-12 کو ٹیوب ویل آپریٹر

کی پوسٹ سے ہٹا کر واپس جو کیدار کی پوسٹ پر تعینات کر دیا گیا۔

5- یہ کہ مذکورہ آرڈر کے خلاف مسیحی گل جہان نے عدالت عالیہ شہاد
W-2 ریٹ پٹیشن نمبر 2235 دائر کی جس میں مورچہ 2014-7-15

کو عدالت جوں کے توں (مذکورہ صورت) دیکھنے کی احکامات جاری کیے گئے۔

6- یہ کہ مذکورہ حکم کے تحت میں نے نو اپڈیٹ کو بطور فرق شامل

کیا گیا اور وہی اپڈیٹ کے خلاف باہر طرفی کی بابت کوئی حکم جاری کیا گیا۔

7- یہ کہ اپڈیٹ کو مذکورہ حکم کو بنیاد بنا کر مورچہ 2014-3-25 کو ملازمت

سے مورچہ میرنسل صاحب محمد عمارتی نے برطرف کر دیا ہے۔

8- یہ کہ اپڈیٹ چونکہ سول سروسٹ ہے اور سول سروسٹ کو ملازمت

سے برطرف کرنے کے لیے صوبہ قانون کاروائی ضروری ہے لیکن نہ اپڈیٹ

ATTESTED

کے خلاف کسی قسم کی کارروائی کی گئی اور نہ ہی کوئی شرکاز نوٹس جاری کیا گیا اور نہ ہی کسی قسم کے دفاع کا موقع فراہم کیا گیا ہو کہ سربراہ قانون کے خلاف ہے یہ کہ حکم 9-14-014 جو کہ عدالت عالیہ کے حلالاٹوں کو (حالیہ موجودہ) آگے کی بابت صادر فرمایا تھا اور جس کا اہلی مکمل فیصلہ ہی صادر نہ ہوا ہے کو غلط اور بے بنیاد طریقے سے اپیلانٹ کے خلاف استعمال کیا گیا اور

اپیلانٹ کی برطرفی بغیر کسی وجہ کی گئی ہے۔ یہ کہ اپیلانٹ نے دوران ملازمت اپنے فرائض منصبی بطریق احسن سر انجام دیئے ہیں اور کسی قسم کی کرناہی نہ برتی ہے، جبکہ اس کے برعکس مسجلی صاحبان کے خلاف کالج انتظامیہ کی ٹی شکایات ریکارڈ پر موجود ہیں، جس کو کالج انتظامیہ سے معلوم کیا جا سکتا ہے۔

لینڈا استدعا یہ کہ منظور کی ڈیپارٹمنٹل
اپیل جج احکم و آفس آرڈر صدر
20-3-2015 کو خلاف قانون و ضابطہ
قرار دیا جا کر کالعدم فرمایا جاوے اور
اپیلانٹ کو دوبارہ ملازمت پر بحال کرنے
کا حکم صادر فرمایا جاوے۔

دستخط

آسید اللہ ولد حاجی نواز اللہ خان
ٹیوب ویل آفیسر (ٹراس فور)

ATTESTED



(20) Annex "H"

DIRECTORATE OF HIGHER EDUCATION
KHYBER PUKHTUNKHWA, KHYBER ROAD PESHAWAR
Telephone No.091-9211025-9210217-9210242 Fax-921021

No. _____ /CA-VII/Estt: Branch/A-167/

Dated Peshawar the 16/4 /2015.

To

Mr. Asad Ullah S/O Haji Zafarullah Khan
Tube Well Operator Govt; Degree College
Badber (Peshawar).

Subject: - DEPARTMENTAL APPEAL.

Memo:-

I am directed to refer to the subject cited above and to state that the Principal of your college, being Competent Authority has rightly dispensed with your services upon the directions of the order of the honorable Peshawar Higher Court Peshawar by restoring Mr. Gul Jehan to its own post of Tube Well operator. Furthermore the instant appeal is not worth consideration on the lone ground of issuance of an appointment order having no statutory backing of proper procedure adopted in your appointment process as the question of legality of conversion of designation of the said post is still within the ambit of the jurisdiction of the court.

DY: DIRECTOR (ESTABLISHMENT)

Endst.No 10047

Copy of the above is forwarded to the Principal Govt; Degree College Badaber Peshawar for information and further necessary action please.

S. Barhi
DY: DIRECTOR (ESTABLISHMENT)

Noted
[Signature]

Dated 20-04-2015

[Signature]
ATTESTED

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No 476/2015

Mr. ASADULLAHAppellant

VERSUS

1. PRINCIPAL GOVT DEGREE COLLEGE BADABER PESHAWAR
2. DIRECTOR HIGHER EDUCATION KHYBER PAKHTUNKHWA,PESHAWAR

.....Respondents

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8.	Termination & refund of salaries	D1,E	11-12
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Ramiah
Respondents 13/2016.

1.

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No 476/2015

Mr. ASADULLAHAppellant

VERSUS

1. PRINCIPAL GOVT DEGREE COLLEGE BADABER PESHAWAR
2. DIRECTOR HIGHER EDUCATION KHYBER PAKHTUNKHWA,PESHAWAR

.....Respondents

SUBJECT: PARAWISE COMMENTS

Preliminary Objections:

Respectfully Sheweth:

- I. That the Appellant has got no locus standi/cause of action to file the instant appeal.
- II. That the Appellant has not come to the Tribunal with clean hands.
- III. That the Appellant is trying to conceal the real/actual facts from the Honourable Tribunal.
- IV. That the Honourable Tribunal lacks jurisdiction to entertain the instant appeal.
- V. That the Appellant is estopped by his own conduct to file the instant appeal.

ON FACTS:

1. Incorrect. The appointment of appellant was not made according to rules but was made by Drawing and Disbursing Officer (DDO) who is not a competent authority. Furthermore it is pertinent to mention that appointment was also held to be invalid by inquiry officer (Annexure-A).

2. Correct to the extent that Mr. Gul Jehan Chowkidar was appointed as tube well operator upon his own request by the Principal. According to rules of business creation, abolition and conversion of post is the sole prerogative of Finance Department and the Principal is not authorized to do, so since no post can be created without the prior approval of Finance Department. Therefore, in the same analogy no post can be converted from one status to another without prior approval of the competent authority, hence this conversion by the Principal is not according to rules. When later on the Principal concerned was informed by the Directorate about this illegality, the Principal in his own writing addressed a letter to inquiry officer explained his position with the request to reverse the concern order (Annexure-B&C).

3. Correct as explained in preceeding para.

4. Para No.4 is not related to respondent department hence no comments.

5. Correct, hence no comments.

6. Correct. It is further mentioned that in compliance to order sheet No.2235/2014 dated 15/07/2014 of Peshawar High Court Peshawar the service of Asad Ullah as tube well operator(probationary) of the College was terminated ab initio as his appointment was made ultra vires of the order sheet of Hon'able court and the appellant was further directed to refund all salaries (Annexure-D), refund of salaries and office order of termination(Annexure-E&E supra).

7. Correct. But the same was turned down by the respondent Department as the instant Writ Petition No.2235/2014 Gul Jahan versus Govt of KPK through Principal GDC Badabher, Peshawar being pending adjudication in the Hon'able Peshawar High Court Peshawar and question of legality of the conversion of post is still within the ambit of jurisdiction of the court and further status quo has also been granted in the subject case (Departmental reply attached as Annexure-F).

8. no comments.

GROUND

- A. Incorrect. Proper procedure was adopted under the relevant rules and laws and the respondent department has performed its function in compliance to the orders of Peshawar High Court Peshawar.
- B. In reply to Para -B it is pertinent to mention that the Hon'able Peshawar High Court has granted status quo in writ petition No.2235/2015 in respect of Mr. Gul Jehan of Govt Degree College Badabher Peshawar and there is no question of misunderstanding and misinterpretation of the court order.
- C. Incorrect. As there is no violation of natural justice on the part of respondent.
- D. Correct. As explained in Para-6.
- E. Incorrect. The Appellant (Probationary) remained absent from duty in the whole month of July, 2014 without fulfilment of legal requirements. (Annex 6)
- F. Incorrect. It is further mentioned that the same was done strictly in compliance to High Court order as explained.
- G. Incorrect. No discrimination has been done to the appellant.
- H. Incorrect. As explained in Para-6.
- I. No comments.
- J. That the defendants also seek permission to urge other additional ground if any, at the time of arguments.

PRAYER

It is therefore, humbly prayed that the appeal in hand may graciously be dismissed.


Director Higher Education

Khyber Pakhtunkhwa Respondent No.2


Principal Govt Degree College Badabher
Peshawar Respondent No.1

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No 476/2015

Mr. ASADULLAHAppellant

VERSUS

1. PRINCIPAL GOVT DEGREE COLLEGE BADABER PESHAWAR
2. DIRECTOR HIGHER EDUCATION KHYBER PAKHTUNKHWA,PESHAWAR

.....Respondents

AFFIDAVIT

I Irfan Ullah khan Assistant Director Litigation Higher Education Department do hereby declare and affirm on oath that the contents of Para Wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'able Court.


Deponent 1/3/2016.

CNIC No.11101-6409112-3

Identify by

9 After specific interpretation of the court directives the Principal terminated the services of the new selectee and reinstated Gul Jehan Chowkidar to the post of TWO on the advice of the Director Higher Education—Annex-S₁₋₂.

Since, by the time the court issued status quo order, appointment order of the complainant had already been cancelled and new appointee had taken over charge of the post, therefore, it needs clarification from the Advocate General about the real meaning of the status quo at that point.

10 In his written statement before the enquiry officer, the complainant Gul Jehan has once again accused Prof. Jehandad of favoritism. He also stated that the appointment order of the new selectee by Prof. Jehandad was issued in back date. As proof he pointed certain discrepancy in the issue numbers allotted to his cancellation order and new appointment order—(Annexure-Q₂₋₆)

As matter of fact, cancellation order of his appointment as TWO was issued vide number 2160-61 on 12/05/2014. However, appointment order of the new selectee against the vacated post was issued at a later date on 27/06/2014 vide issue number 1342-44. It appears that instead of increasing the issue number has descended during the month. The enquiry officer personally checked the issue register and found that it was a clerical mistake and the official incharge of the issue register has mistakenly issued 1282 after 2181 and afterwards all the issue numbers are issued in the same sequence. This is a clerical mistake and not a fraudulent activity on the part of any one. The same fact was clarified before the complainant (Annexure-T₁₋₂).

11 Statement of the member of Departmental Selection Committee, Mr. Irfan Ullah, Associate Professor and that of departmental representative Mr. Wajid Ali, Assistant Professor testifies that the interview was held on 19/05/2014 (Annexure—U₁₋₃). Similarly medical checkup of the new incumbent Assad Ullah was carried out on 28/06/2014 (Annexure—V). All these documents show that the appointment procedure was conducted on the dates shown on record and the appointment order was not issued in back date as claimed by the complainant.

12 During the investigation it was also revealed that the complainant, Gul Jehan is not an efficient and obedient employee. He was appointed under political pressure. After appointment he did not take interest in the official duties. He used to send his brother to perform his duties as Chowkidar. As per statement of the Ex-Principal Jehandad even his brother was found absent from his duties. When the fact was brought into the knowledge of the Ex-Principal, he changed his duty from the night shift to the day shift but the complainant did not accept the change. Resultantly, the Principal marked him absent in the attendance register. However, after some time Gul Jehan came to the Assistant office along with an outsider, snatched the attendance register from the Assistant and turned his absentees into presence. It was also revealed that for a long time he unlawfully kept his service book in his custody and did not return it to the office despite several reminders (Annexure-W₁₋₁₈)

Conclusion

i. The appointment order of Gul Jehan Chowkidar against the vacant post of Tube well operator issued by Prof. Jehanzeb was not according to rules. The appointment was made on the desire and aspiration of only one candidate. The post was required to be filled in through departmental selection committee by following the proper procedure and by giving opportunity of competition to all the desirous candidates, whether in-service or otherwise.

ii. The findings reveal that while appointing Assad Ullah on the post of Tube well operator most of the codal formalities have been observed by Prof. Jehandad. The appointment was made through departmental selection committee. However, not all the candidates on the list of the employment exchange were informed about the date of interview. Nor the complainant was informed about the interview. Hence, the process of selection cannot be termed as

In light of the above, both the appointment orders issued against the same post of Tube well Operator are not according to rules. Therefore, fresh appointment against the same post may be made through departmental selection committee after following the proper procedure.

iii. Gul Jehan Chowkidar, the complainant is a disobedient and inefficient employee. He may be proceeded under the Efficiency and Discipline rules for the reasons depicted under Findings-B Para-12.

iv. Since, by the time the court issued status quo order, appointment order of the complainant had already been cancelled and new appointee had taken over charge of the post, therefore, it needs clarification from the Advocate General about the real meaning of the status quo at that point.

Prof. Muhammad Tariq Khan
Enquiry Officer
Principal GC Hayatabad

23/04/2015

**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA,
KHYBER ROAD PESHAWAR**

Phone # 091-9210242, 9211025/Fax # 921021
No. 3072 / CA-VII/Estt: Branch/A-167/ GDC, Badaber (Peshawar)

Dated Peshawar the 9/6/2011

Annex A
Annexure - L 635

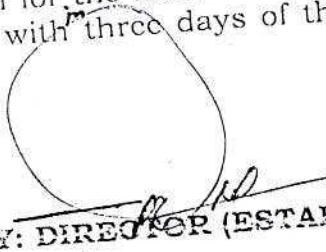
The Principal
Govt; Degree College, Badaber
(Peshawar).

OFFICE ORDER/EXPLANATION.

OBJECT
Memo:


I am directed to refer to your Endst; No. 1960-61 dated 6.12.2013 and No. 2159 dated 12.05.2014 on the subject cited above and to inform that why you have issued office order of Chowkidar to the post of Tube Well Operator. As you are not competent for the purpose ^{because} the change of post can't be made without the approval of Finance Department Govt; of Khyber Pakhtunkhwa.

Please explain your position for the issuance of illegal order. Your explanation should reach to this office with three days of the receipt of this letter.


BY: DIRECTOR (ESTABLISHMENT)

To Inquiry Officer

It is Submitted that An. Jahan applied for the conversion of the post from Chowkidar to Tubewell operator. The post of Tubewell operator was lying vacant in the college and the college was facing shortage of water all the time. I asked the directorate for advice regarding my authority for the conversion of the post. The directorate ~~did~~ ^{did} not respond and I asked the Senior principal about my jurisdiction regarding the conversion of the post. They said that many colleges has done this and I being the principal can do the same. So I converted the post of Chowkidar to Tubewell operator in good faith. After my retirement the new principal ^{appointed} another person on the same post which created rift and tussle between these two. Later on I was informed by the directorate that the conversion was illegal and I have done the same in good faith, if it is not in the interest of the public, the conversion order may please be reversed.


 Principal (RTD),
 G.C. Banderker
 K.P.K. Peshawar

Better copy Annex B!

33
8

TO INQUIRY OFFICER

It is submitted that Gul Jehan applied for the conversion of the post from chowkidar to tube well operator the post of tubewel operator was laying Vacant in the college and the college was facing shortage of water all the time. I asked the directorate for advice regarding my authority for conversion of the post. The directorate did not respond and I asked then other senior principals about my jurisdiction regarding the conversion of the post. They said that many colleges has done this and I being the principal can do the same. So I converted the post of chowkidar to tube well operator in good faith. After my retirement the new principal appointed another person on same post which created rift and tussle between these two. Later on I was informed by the directorate that the conversion was illegal as I have done the same in good faith if it is not in the interest of the public. the concern order may please be reversed.

J. Principal (RTD) 25/2/2015
GDC Badabair KPK Peshawar

1. Principal Govt. Degree College Charsadda
2. Copy Forwarded to Principal GDC Badabair

Annex C

52
Amendments-1



GOVERNMENT DEGREE COLLEGE, BADABER, PESHAWAR

OFFICE ORDER

Dated Peshawar the ___/___/2014

Reference of this office Endst: No. 1960-61 dated 03/12/2013.

Mr. Gul Jehan ^{has been} working as chowkidar (BPS-1) since 02/03/2012. The proposal of conversion from the post of chowkidar to the post of Tube Well Operator has been cancelled due to administrative ground.

He is hereby directed to continue his duty as chowkidar. Further more the transfer/ selection was mad without the approval^{of} selection committee.

Principal,

Govt. Degree College, Badaber.

Endst: No. 1288-89 / Dated 27/05 /2014.

Copy forwarded to the:-

1. Director, Higher Education Khyber Pakhtunkhwa, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.

JK

Principal

Personal no.
684250
S/o Shahr Jehan

Annex D 31/5
Annex R5

PESHAWAR HIGH COURT, PESHAWAR

FORM 'A'
FORM OF ORDER SHEET



S.No.	Date of order	Order or other proceedings with signature of the Judge
1	2	3

15-7-2014

WP No.2235-P/2014

Present: Mr. M. Sangeen Khan, Advocate, for the petitioner.

Mian Arshad Jan, AAG, present in Court in some other case, accepts notice of this case on behalf of respondents and seeks time to prepare it. Adjourned to 5.8.2014.

Interim Relief:

Notice for the date fixed. Till then, status quo shall be maintained.

Sd/- Yaqub Afridi
Sd/- Misbah ul Beq

887

No.

Date of Presentation of Application 15/7/2014

No of Pages 5-7

Copying fee

Urgent Fee

Total 10-00

Date of Preparation of Copy 16/7/2014

Date Given For Delivery 16/7/2014

Date of Delivery of Copy 16/7/2014

Received By Bhemantra Khan

CERTIFIED TO BE TRUE COPY

Peshawar Examiner
Peshawar High Court, Peshawar
Authorized under Article 87 of
The Qanun-o-Shahadat Order 1988

16 JUL 2014



OFFICE OF THE PRINCIPAL, GOVERNMENT DEGREE COLLEGE BADABER, PESHAWAR



No. GC Badaber: 123

Dated: 11-4-2015
Reminder- I

To

Mr. Asad Ullah S/O Zafar Ullah Khan
Ex- Tubewell Operator.
Govt. Degree College. Badaber.
Peshawar.
Mohallah Ghali Khel, Mashogagar,
Badaber, Peshawar.

Subject: REFUND OF SALARIES

Memo:

You, Asad Ullah S/O Zafar Ullah Khan, were directed to refund the salaries for the period of July, 2014 to March, 2015 (9 Months), deposited the same in Government Treasury on challan and produced the said challan before the undersigned vide this office order No.101-106 dated 20-03-2015 but you failed to do so. You are again directed to refund the salaries and deposited the same in the Government Treasury within three days of the receipt of this letter, otherwise legal action shall be taken against you under the law.


Principal,


Govt. Degree College Badaber Peshawar

Endst: No. _____ Dated _____

Copy Forwarded to the:-

1. Director, Higher Education, Khyber Pakhtunkhwa, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Office record.

Principal
GOVT: DEGREE COLLEGE,
BADABER (DIST: PESH.)


Principal,


ATTESTED


ATTESTED

OFFICE OF THE PRINCIPAL GOVERNMENT COLLEGE
BADABER, PESHAWAR

OFFICE ORDER

In compliance with the order sheet No 2235 dated 15.07.2014 of Peshawar High court Peshawar wherein interim relief/ status quo granted to Gul Jahan of Govt College Badaber, Peshawar coupled with the advisory opinion/ expert guidance of the Director Higher Education Khyber Pakhtunkhwa, Peshawar No 6937/CA-VII/Estt:Branch/A-167 dated 18.3.2015, the status quo in r/o of Gul Jahan as Tube Well Operator of the said College is kept intact and maintained. The services of Asadullah as Tube Well Operator (probationary) of the College are terminated ab initio as his appointment was made ultra vires and violative of the Order Sheet of the honourable Peshawar High Court Peshawar. Asadullah ex-Tube Well Operator of the College is directed to refund all the salaries drawn to the Government Treasury within 07-days.

SA
PRINCIPAL

Government College Badaber,
Peshawar

Endst. No *101-106* dated 20.03.2015

Copy to:

1. Director Higher Education Khyber Pakhtun Khwa, Peshawar
2. Accountant General Khyber Pakhtun Khwa, Peshawar
3. Registrar Peshawar High Court Peshawar
4. Gul Jahan Tube Well Operator of Govt College Badaber, Peshawar
- ✓ 5. Asadullah of Govt College Badaber, Peshawar
6. Office Assistant of the College for record

SA
PRINCIPAL

Government College Badaber,
Peshawar

Principal
GOVT: DEGREE COLLEGE,
BADABER (DISTT: PESH.)

Attested
ATTESTED



DIRECTORATE OF HIGHER EDUCATION
KHYBER PUKHTUNKHWA, KHYBER ROAD PESHAWAR
Telephone No.091-9211025-9210217-9210242 Fax-921021

No. _____/CA-VII/Estt: Branch/A-167/

Dated Peshawar the 16/4 /2015.

To

Mr. Asad Ullah S/O Haji Zafarullah Khan
Tube Well Operator Govt; Degree College
Badber (Peshawar).

Subject: - DEPARTMENTAL APPEAL.
Memo:-

I am directed to refer to the subject cited above and to state that the Principal of your college, being Competent Authority has rightly dispensed with your services upon the directions of the order of the honorable Peshawar Higher Court Peshawar by restoring Mr. Gul Jehan to its own post of Tube Well operator. Furthermore the instant appeal is not worth consideration on the lone ground of issuance of an appointment order having no statutory backing of proper procedure adopted in your appointment process as the question of legality of conversion of designation of the said post is still within the ambit of the jurisdiction of the court.

DY: DIRECTOR (ESTABLISHMENT)

Endst.No 1000/17

Copy of the above is forwarded to the Principal Govt; Degree College Badaber Peshawar for information and further necessary action please.

DY: DIRECTOR (ESTABLISHMENT)

Noted

[Signature]

Dated 20-04-2015

[Signature]
ATTESTED

[Handwritten mark]

Daily Attendance Register of the

G.

14

for the month of July 2014

Serial No.	Name	Father's Name	Rank	Days											Total No. of Days	Remarks																				
				1	2	3	4	5	6	7	8	9	10	11			12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
①	Jehanzeb Awan		Assit.																																	
②	Asad ur Rehman		JTC																																	
③	vacant post		s/c																																	
④	Abdul wali		L/Assit	P	A	A	A	A		P	P	P	P	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P		
⑤	M. Jij Saddique		L/Assit	A	A	A	A	A		A	A	A	A	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P		
⑥	Ubaid Ullah		L/Assit	A	A	A	A	A		A	A	A	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑦	Mubtashir Sher		L/Asst	P	P	P	P	P		P	P	P	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑧	Abdul Rehman		"	P	P	P	P	P		P	P	P	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑨	Farrid Ullah		"	P	P	P	P	P		P	P	P	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑩	Shehar Gul		N/O	P	P	P	P	P		P	P	P	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑪	Muhammad Ilyas		Male	P	A	A	P	P		A	A	A	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑫	Faizad Khan		Behishti	P	P	P	P	P		P	P	P	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑬	Muhammad Shah		Driver	P	P	P	P	P		P	P	P	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑭	Gul Jehan		Chow.	P	P	P	P	P		P	P	P	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑮	Hazrat Shah		"	P	P	P	P	P		P	P	P	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑯	Misbahullah		Inspector	P	P	P	P	P		P	P	P	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑰	Noor ul Banoor		"	P	P	P	P	P		P	P	P	P		P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P		
⑱																																				

Record shows that Asadullah Tube well Operator has not performed his duty in the month of July 2014

over written Present by Gul Jahan

BEFORE THE K.P.K SEVICES TERIBUNAL PESHAWAR.

In Ref. of Appeal No.476/ 2015.

Asad Ullah

.....Appellant.

V E R S U S

Principal Govt. Degree College Badhber Peshawar & Others.

.....Respondents.


I N D E X


Sr. No.	Description of Documents	Annexure	Page No.
1)	Memo of Rejoinder		1-4

A P P E L L A N T

Dated; 21 /09/2016.

Through:-


(Farhan Ullah)
Advocate High Court,
PESHAWAR


(Malik Nasrum-Minallah)
Advocate Supreme Court,
of Pakistan

Cell No.0333-9148358

Office- F.F 29 Bilor Plaza Peshawar Cantt,

BEFORE THE K.P.K SEVICES TERIBUNAL PESHAWAR.

In Ref. of Appeal No.476/ 2015.

Asad Ullah

.....Appellant.

V E R S U S

Principal Govt. Degree College Badhber Peshawar & Others.

.....Respondents.

REJOINDER ON BEHALF OF APPELLANT.

Respectfully Sheweth:-

Para-wise Reply to the preliminary objections.

1. Para 1 of the preliminary objections is incorrect and baseless as the appeal of the appellant fully disclose the cause of action, and based on substantial points of law and facts, moreover as the appellant is aggrieved from the impugned order of the respondents thus he has locus standi to file the present appeal.
2. Para 2 of the preliminary objections is incorrect, and without substance, the appellant has no malafide to file the instant appeal rather in written reply the respondent has twisted the real facts and manipulated the record.
3. Para 3 of the preliminary objections is also incorrect and all necessary facts which was in the knowledge of the appellant has been mentioned in the appeal, further the appeal is having the support of affidavit.
4. Para 4 of the preliminary objections is incorrect and against the law and facts, as this Hon,bale court/tribunal having the jurisdiction to entertain the appeal of the appellant.

5. Para 5 of the preliminary objections is also incorrect, against facts and record, the appellant having all the rights to challenge the illegal and biased order of respondent before this Hon,able court/tribunal.

ON FACTS.

1. Para 1 is incorrect and against the facts, the appellant was appointed by the respondent No.1 after due process and on completion of all codal formalities and recommendation of departmental selection committee was appointed as tube well-operator on the vacant post as reflected in office order No.1342-44, dated:27.06.2014. furthermore the inquiry was conducted much after the termination order of the appellant as the appellant was terminated from his service on 20.03.2015 while the inquiry officer has given his findings on 23.04.2015, hence the same is having no bearing on the case of the appellant, it is further submitted that initially an inquiry was conducted by Professor Nazir of Govt. Post Graduate College Charsadda who submitted the same to Deputy Director Higher Education on 13.02.2015, which was in favor of the appellant but the same has not been brought on record by the respondents with malafide intention, appellant request the requisitioning of the same from the respondents.

(Copy appointment order is attached with appeal)

2. Para 2 of written reply of the respondents is need no reply on behalf of the appellant.
3. Para 3 of written reply of the respondents is need not comments being admitted as correct.
4. Para 4 of written reply of the respondents is need no comments on behalf of the appellant.

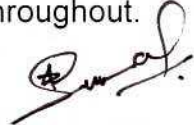
5. Para 5 written reply of the respondents is also admitted as correct hence need no comments.
6. Para 6 of written reply also incorrect and against the facts, as both respondents No.1 & 2 has totally misunderstand and misinterpret the order of Hon,able Peshawar High Court Peshawar court dated:15.07.2014, while terminating the service of appellant, furthermore the no final order was passed in the said writ petition and the same is still pending adjudication, hence the impugned orders are based on miss application of mind and is not sustainable, moreover the Hon,able Peshawar High Court Peshawar never ordered for termination of services of the appellant.
7. Para 7 of written reply is also contradictory to the stance of the respondents as the writ petition is pending adjudication before the august Peshawar high Court Peshawar, then even the termination order of the appellant is not sustainable on this ground alone.

ONGROUNDS.

- A. Para A of written reply is in-correct and against the facts and record the impugned orders are totally in contrast to the rules and procedure, hence the impugned orders are not tenable in the eye of law.
- B. Para B of written reply is also in-correct detailed reply has been given in the preceding paras.
- C. Para C of written reply is also in-correct and against the facts neither any show cause was issued to the appellant nor any explanation was sought from the appellant, similarly no opportunity personal hearing was provided to the appellant, moreover no regular inquiry was conducted against the appellant and as such he has been condemned totally unheard.
- D. Para D of written reply need no reply.

- E. In response to Para E of written reply it is submitted that the respondents have absolutely failed to understand the contents of the appeal of the appellant and reply to ground E is not proper and just.
- F. Para F of written reply is in-correct and illegal, the appellant has wrongly be punished to save the skin of superior officers who were responsible for the illegal conversion order of GUL JEHAN from the post of Chowkidar to Tube-well operator.
- G. Para G of written reply is incorrect, impugned orders were neither legal nor based on the rules and policy of government on the subject.
- H. Para H of written reply also incorrect, detailed reply has been given in the preceding paras.
- I. Para I needs no reply.
- J. Para K also needs no reply.

It is therefore most humbly prayed that in the light of the above submission and grounds taken in the appeal, the appeal of the appellant may graciously be accepted throughout.



APPELLANT

Dated; 21/09/2016.



(Farhan Ullah)
Advocate High Court,
PESHAWAR

Through:-



(Malik Nasrum-Minallah)
Advocate Supreme Court,
of Pakistan

Before The Hon,able K.P.K Services Tribunal Peshawar.

Mis: Petition No. _____ / 2016.

In Service Appeal No. 476/2015

K. P. K. Province
Service Tribunal
Case No. 35
Dated 18-1-16

Asad Ullah

.....Petitioner/Appellant.

V E R S U S

Principal Govt Degree College Badhber & othes

.....Respondents.

Application For Suspension of Operation of the impugned Order dated: 16.04.2015, along with order dated: 20-03-2015 and to restraining the respondents from affecting recovery pursuant to the order dated: 20/03/2015, and as such letter no.3295/ACE, dated: 03/03/2015 and letter no 12154 dated: 23/11/2015 on behalf of respondent no.2 against the petitioner is liable to be stop with immediate effect till the final decision of main appeal.

That the petitioner respectfully submits as under.

1. That the petitioner/appellant has filed the above tilted service appeal no.476 of 2015 before this Hon'able tribunal, wherein next date of hearing is fixed for 02.03.2016.
2. That the petitioner/appellant having prima facie good case and sanguine about its success, further the balance of convenience also tilt in favor of petitioner.
3. That prior to the impugned order respondent No .01 vide order dated 20.03.2015 directed the petitioner to refund all the salaries within seven days and to this effect through a complaint No.7398 dated 04.09.2015 was forward to the Director Anti corruption & anti corruption without due process of law vide latter No3295 dated 03.03.2015 conducted an inquiry and there after recommended departmental action against petitioner/Appellant.
(Copy of latter No 3295 dated 03.03.2015 is annexed)

4. That the director anti corruption vide letter No 12154 dated 23.11.2015 which was forwarded to respondent No .2 and now they are willing to lodge in F.I.R against the petitioner/Appellant if the petitioner failed to refund the salaries wherein against the termination order dated 20.03.2015 appeal of the petitioner is pending before this Hon,able court, further when the legality of the termination order is already been challenged by the Appellant through appeal any adverse action taken by the respondent is amount to discrimination without law full authority and fall within the domain of contempt of court, Hence justice demand that respondent be restrained from any action against petitioner (copy of latter No 12154 dated 23.11.2015 is annexed)
5. That in case if the operation of the impugned order has not been stayed the petitioner will suffer irreparable loss.
6. That the facts & grounds mention in the main appeal of the petitioner/appellant may kindly be considered as an integral part of this application.
7. That there is no legal bar in suspension of impugned order dated 16-04-2015 along with termination order dated:20-03-2015, till the decision of application of 12(2) C.P.C, rather it would meet the end of justice.

It is therefore prayed that on acceptance of this application the operation of impugned order dated:16.04.2015 may kindly be suspended along with directions to the respondents not to take any adverse actions against the petitioner regarding recovery of salaries in pursuant to the order dated: 20/03/2015, till the final decision of the main appeal of the petitioner.

PETITIONER

Dated: 12/01/2016.

Through:-

(Farhan UNah)
Advocate High Court, Peshawar

AFFIDAVIT.

I, petitioner/Applicant, do hereby solemnly affirm and states on oath that the contents of accompanying application are true and correct to the best of my knowledge and belief.

Deponent

Nic No. 17301-0570563-5

ATTESTED





DIRECTORATE OF
ANTI-CORRUPTION ESTABLISHMENT,
KHYBER PAKHTUNKHWA,
PESHAWAR.

3295
No. /ACE, Dated 31/13/2015.

To The Director,
Education Colleges,
Khyber Pakhtunkhwa,
Peshawar.

Subject: - Complaint-No. 7398, dated 4.9.2014 against Asadullah Khan, Tub-well operator Govt: College Badhabher District Peshawar and others.

A complaint submitted by Head Clerk, Govt: College Badhabher District Peshawar, containing allegation of corruption, irregularities in the appointment of Tube-Well Operator and illegal drawal of monthly salary by the subject official etc.

The matter was enquired through Circle Officer, ACE, Peshawar but during the course of enquiry the field staff of this Establishment recommended the complaint for departmental action against the subject Tube-Well Operator, Govt: College, Badhabher Peshawar.

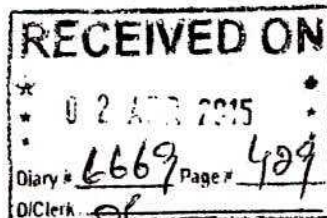
Hence the complaint alongwith photocopies of relevant documents are sent herewith for further necessary action, under intimation to this office.

Assistant Director(Admn:),
For Director Anti-Corruption Estt,
Khyber Pakhtunkhwa,
Peshawar.

No. /ACE, Dated 31/03/2015.

Copy forwarded to the:-

1. Assistant Director Crimes, Peshawar alongwith complaint file.
2. Office concerned.



Assistant Director(Admn:),
For Director Anti-Corruption Estt,
Khyber Pakhtunkhwa,
Peshawar.



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**DIRECTORATE OF
ANTI-CORRUPTION ESTABLISHMENT
KHYBER PAKHTUNKHWA
PESHAWAR**

No. 12/54 Dated 23 /11/2015.


To,

The Director,
Higher Education,
Khyber Pakhtunkhwa,
Peshawar.

Subject:- Complaint against Asadullah Khan Tube Well Operator, Government Degree College Badaber Peshawar and other.

Enclosed please find herewith a complaint received from Principal, Govt: Degree College, Badaber, Peshawar vide letter No.280, dt.21.9.2015, for further necessary action at your end please.

Encls (08)


Assistant Director(Admn),
For Director Anti Corruption Estt:
Khyber Pakhtunkhwa,
Peshawar.

