

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 465/2015

Date of institution ... 20.05.2015

Date of judgment ... 07.02.2019

Zahid Ali Shah S/o Ajam Ali Shah
R/o Dara Bakhel Manduri, Kohat,
Presently appointed as Lab Assistant,
Government Degree College Lachi, Kohat (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through its Secretary, Higher Education, Peshawar.
2. Director of Higher Education, Government of Khyber Pakhtunkhwa, Peshawar.
3. Principal Government Degree College, Lachi, Kohat.
4. Account Officer/Accountant Government Degree College, Kohat. ... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 FOR
RELEASE/RESTORED OF SALARY STOPPED SINCE
01.02.2013, TILL DATE OF THE APPELLANT, WHILE THE
DEPARTMENTAL REPRESENTATION IS STILL
UNANSWERED.

Mr. Hassan U.K Afridi, Advocate. .. For appellant.
Mr. Kabirullah Khattak, Additional Advocate General .. For respondents.

MR. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. AHMAD HASSAN .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: Appellant

alongwith his counsel present. Mr. Kabirullah Khattak, Additional Advocate

General for the respondents present. Arguments heard and record perused.

M. Amin
7.2.2019

2. Brief facts of the case as per present service appeal are that the appellant was serving in Higher Education Department as Lab Assistant (BPS-7) in Government Degree College Lachi, Kohat. His salary was stopped since 01.02.2013 on the allegation of absence from duty. The appellant filed departmental appeal on 16.02.2015 but the same was not responded hence, the present service appeal on 20.05.2015.

3. At the very outset learned Additional Advocate General for the respondents contended that the appellant has filed the present service appeal for release of salary with effect from 01.02.2013 however, respondent-department has removed him from service vide order dated 10.09.2015 on the allegation of willful absence from duty therefore, the present service appeal regarding the release of salary become infructuous therefore, prayed for dismissal of appeal being infructuous.

4. On the other hand, learned counsel for the appellant opposed the contention of learned Additional Advocate General and prayed for acceptance of appeal.

5. Admittedly, the appellant has filed the present service appeal for release of his salary since 01.02.2013 on the ground that the respondent-department has stopped his salary on the allegation of absence from duty while the appellant was performing his duty regularly. During the pendency of the appellant, the respondent-department has removed the appellant from service with immediate effect due to willful absence from duty and the absence period with effect from 01.02.2013 was treated as unauthorized absence from duty without pay vide order dated 10.09.2015 therefore, in our opinion the present service appeal for release of salary become infructuous. As such, the present

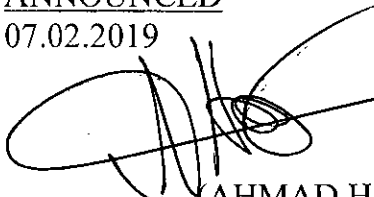
M. Ahmad
7.2.2019

service appeal has no force which is hereby dismissed being infructuous.

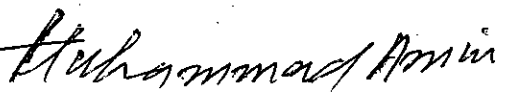
Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

07.02.2019



(AHMAD HASSAN)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

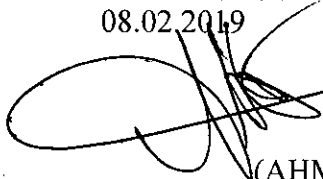
Service Appeal No. 465/2015

07.02.2019

Appellant alongwith counsel present. Mr. Kabirullah Khattak,
Additional Advocate General for the respondents present. Arguments heard
and record perused:

Vide our detailed judgment of today consisting of three pages
placed on file, the present service appeal has no force which is hereby
dismissed being infructuous. Parties are left to bear their own costs. File
be consigned to the record room.

ANNOUNCED
08.02.2019



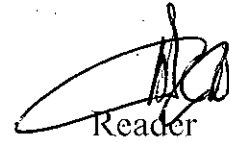
(AHMAD HASSAN)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

29.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 13.12.2018.


Reader

13.12.2018

Appellant in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Appellant seeks adjournment on the ground that his counsel is not available today. Last opportunity is granted for arguments. Adjourned. Case to come up for arguments on 18.01.2019 before D.B.



Member

Member

18.01.2019

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Junior to counsel for the appellant seeks adjournment on the ground that senior counsel was not available today. Adjourned. To come up for arguments on 06.02.2019 before D.B.



(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

06.02.2019

Appellant in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Appellant seeks adjournment due to general strike of the Bar. Granted. To come up for arguments on 07.02.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

Service Appeal No. 465/2015

05.03.2018

Appellant in person and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Murad Khan, Superintendent for the respondents present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for record and arguments on 03.05.2018 before D.B.



(Muhammad Hamid Mughal)
Member



(Muhammad Amin Khan Kundi)
Member

03.05.2018

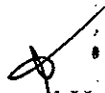
Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 13.07.2018 before D.B

13.07.2018

Clerk to counsel for the appellant and Mr. Sardar Shaukat Hayat learned Additional Advocate General present. Clerk to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 06.09.2018 before D.B.



Reader
Sardar Shaukat Hayat



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

06.09.2018

Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Mr. Murad Khan Superintendent for the respondents present. Clerk to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not available. Adjourned. To come up for arguments on 19.10.2018 before D.B.




(Muhammad Amin Kundi)
Member




(Muhammad Hamid Mughal)
Member

10.07.2017


Counsel for the appellant and Addl. AG for the respondents present. The record requisitioned on 15.3.2017 has not been produced. The department is directed to produce such record positively on 08.11.2017 before the D.B.



Member


Chairman

08.11.2017


Learned counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the official respondents also present. Counsel for the appellant submitted application for requisition of record. Notice be issued to respondent department for submission of all relevant record on 02.01.2018 before the date fixed.



(Gul Zeb Khan)
Member (E)


(Muhammad Amin Khan Kundi)
Member (J)

02.01.2018

Appellant in person present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Murad Khan, Superintendent for the respondents also present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for record and arguments on 05.03.2018 before D.B.


(Ahmad Hassan)
Member(E)


(M. Amin Khan Kundi)
Member (J)

19.07.2016

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Rejoinder submitted, copy whereof handed over to learned GP. To come up for arguments on

~~8-11-16~~ before D.B.


MEMBER


MEMBER

08.11.2016

Appellant in person and Mr. Murad Khan, Supdt alongwith Asst: AG for respondents present. Appellant seeks adjournment. Adjourned. To come up for arguments on 15.03.2017.


(MUHAMMAD AAMIR NAZIR)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

15.03.2017

Appellant in person and Addl:AG for respondents present. Rejoinder not submitted. Appellant submitted an application for requisition of record. Respondent-department is directed to produce all relevant record on the next date. To come up for rejoinder as well as record and arguments on 10.07.2017 before D.B.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

4

24.08.2015

Appellant in person and Mr. Muhammad Kaleem, Principal
alongwith Addl: A.G for respondents present. Requested for adjournment.
To come up for written reply/comments on 10.11.2015 before S.B.


Chairman

10.11.2015

Appellant in person and Mr. Muhammad Karim, Principal
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 22.12.2015 before
S.B.


Chairman

22.12.2015

Counsel for the appellant and Mr. Murad Khan, Supdt.
alongwith Assistant AG for respondents present. Para-wise comments
submitted. The appeal is assigned to D.B for rejoinder and final
hearing for 5.4.2016.


Chairman

05.04.2016




Appellant in person and Asstt: AG for respondents present..
Appellant requested for adjournment. To come up for
rejoinder/arguments on 19.07.2016.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 465/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20.05.2015	<p>The appeal of Mr. Zahid Ali Shah presented today by Mr. Hassan U.K Afridi 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>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>27-5-2015</u></p> <p style="text-align: right;"> CHAIRMAN</p>
3	27.05.2015	<p>Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Lab-Assistant in Govt. Degree College Lachi, Kohat when his salary was stopped with effect from 1.2.2013 regarding which he preferred departmental appeal on 16.2.2015 which was not responded and hence the instant service appeal on 20.5.2015.</p> <p>That the appellant was neither subjected to any inquiry nor any other justifiable reason has been put-forth by the respondents for withholding the salary of the appellant.</p> <p>Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents 24.8.2015 before S.B. Notice of application be also issued for the date fixed.</p> <p style="text-align: right;"> Chairman</p>

Appellant Deposited Security & Process Fee



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

Service Appeal No. 465 /2015

Zahid Ali Shah **Applicant / Appellant**

V E R S U S

Government of Khyber Pakhtunkhwa
Through its Secretary & others..... **Respondents**

I N D E X

S.#	Description of Documents	Annex	Pages
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6.	Letter absence from duty dated 30.04.2014		13
7.	Stoppage of salary		14
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9.	Wakalatnama		16

Petitioner

Through

Hassan U.K Afridi
Advocate, Peshawar
Cell No. 0300-9151963

Date: 19/05/2015

BEFORE THE KHAYER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 12012

Appellant
 Presently appointed as Lab Assistant,
 Government Degree College Lachi, Kohat,
 R/o Dara Bakht Mandui, Kohat,
 Sajid Ali Shah S/o Ajam Ali Shah

V E R S U S

1. Government of KPK Through its Secretary, Higher Education, Peshawar
 2. Direction of Higher Education, Government of Khyber Pakhtunkhwa, Peshawar
 3. Principal Govt. Degree College, Lachi, Kohat
 4. Account Officer/Accountant Government Degree College, Kohat
- Respondents

APPEAL U/S 4 OF THE KHAYER
 PAKHTUNKHWA SERVICE TRIBUNAL
 ACT, 1974, FOR RELEASE/RESTORED
 OF SALARY STOPPED SINCE
 01.02.2013, TILL DATE OF THE
 THE WHILE
 DEPARTMENTAL REPRESENTATION IS
 STILL UNANSWERED.

[Stamp]

219
 10-2-2012

Respectfully Sheweth:-

1. That the appellant has been appointed as Lab Assistant BPS-07 in Government Degree College Lachi, Kohat on 05.03.2005. (Copy of appointment letter is attached).
2. That the appellant has been performing his duties well, honestly and to the entire satisfaction of the authorities.
3. That the appellant received a letter that he remained absence from duty since 28.04.2014, while the appellant regularly attended the college. (Copy of the letter is attached).
4. That the salary of the appellant has been stopped since 01.02.2013, due to unknown reason.
5. That the appellant filed departmental appeal but no reply has been received until now, hence this service appeal is filed in this Hon'ble Tribunal on the following amongst other grounds:-

G R O U N D S :-

- A. That the stoppage / attachment of the salary of the appellant , without any reason, is against law and

procedure and liable to be release with all benefits/allowance etc. as annexed by the Government.

- B. That the appellant is still in service and is legally entitled for the said salary.
- C. That there is no law/rules available according to which the respondents have authority to stopped/withheld the salary of the appellant.
- D. That the appellant has been deprived fro his legal rights, which is against the fundamental rights of the appellant.
- E. That the appellant is regularly attending the college and performed his duties.
- F. That some other grounds may be adduced at the time of arguments with the permission of this Hon'ble Tribunal.

It is, therefore, humbly prayed that on acceptance of this appeal, the salary of the appellant may kindly be released from 01.02.2013 uptill now, with all the benefits/allowance etc. as announced by the Govt. for government servant.

**DIRECTOR HIGHER EDUCATION
NWFP PESHAWAR**

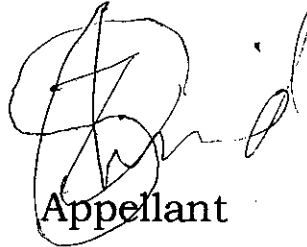
Dated Peshawar the 05/03/2002

Consequent upon the recommendation of Departmental Selection Committee, the Competent Authority is pleased to appoint the following male candidate as Lab. Assistant against the vacant post in BPS-07 viz (2220-120-5820) plus other usual allowances admissible under the rules (On contract basis) from the date of their taking over charge on the terms and condition mentioned below.

S.No.	Name/Father's name/ Address	Posted as Lab. Asst:	Remarks
45.	Shah Dara Bakht Manduri Teh. & Distt. Kohat	GC, Jachi	Against V/post

Handwritten signatures and initials

Any other relief, which this Hon'ble Tribunal deem necessary for the safe administration of justice.



Appellant

Through

Dated 19.05.2014



Hassan U.K. Afridi
Advocate, Peshawar

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

Service Appeal No. _____/2015

Zahid Ali Shah **Appellant**

V E R S U S

Government of Khyber Pakhtunkhwa
Through its Secretary & others..... **Respondents**

A F F I D A V I T

I, Zahid Ali Shah S/o Ajam Ali Shah R/o Dara Bakhel Manduri, Kohat, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by:


D E P O N E N T

Hassan U.K Afridi
Advocate, Peshawar



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

C.M. No. _____/2015

In

Service Appeal No. _____/2015

Zahid Ali Shah**Applicant/Appellant**

V E R S U S

Government of Khyber Pakhtunkhwa
Through its Secretary & others.....**Respondents**

**APPLICATION THE RELEASE UPCOMING
SALARY OF THE APPELLANT**

Respectfully Sheweth:-

1. That the above titled service appeal has been filed with this application, which has bright chance to succeed.
2. That the salary of the appellant has been stopped since 01.02.2013, which is against law and justice.
3. That the appellant is poor man and a large family to maintain but his salary has been withheld due to unknown reason.

4. That some other grounds may be adduced at the time of arguments with the permission of this Hon'ble Tribunal.

It is, therefore humbly prayed that on acceptance of this application, the upcoming salary of the appellant may kindly be released.

Through


Applicant/Appellant


Hassan U.K. Afridi
Advocate, Peshawar

Dated 19.05.2014

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

C.M. No. _____/2015

In

Service Appeal No. _____/2015

Zahid Ali Shah **Applicant/Appellant**

V E R S U S

Government of Khyber Pakhtunkhwa

Through its Secretary & others..... **Respondents**

A F F I D A V I T

I, Zahid Ali Shah S/o Ajam Ali Shah R/o Dara Bakhel Manduri, Kohat, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by:


D E P O N E N T

Hassan U.K Afridi
Advocate, Peshawar



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

Service Appeal No. _____/2015

Zahid Ali Shah **Applicant/ Appellant**

V E R S U S

Government of Khyber Pakhtunkhwa
Through its Secretary & others..... **Respondents**

ADDRESSES OF PARTIES

A P P E L L A N T :-

Zahid Ali Shah S/o Ajam Ali Shah
R/o Dara Bakhel Manduri, Kohat,
Presently appointed as Lab Assistant,
Government Degree College Lachi, Kohat

R E S P O N D E N T S :-

1. Government of KPK Through
Its Secretary, Higher Education, Peshawar
2. Direction of Higher Education,
Government of Khyber Pakhtunkhwa, Peshawar
3. Principal Govt. Degree College, Lachi, Kohat
4. Account Office/Accountant
Government Degree College, Kohat

Appellant
Through

Dated 19.05.2014

Hassan U.K. Afridi
Advocate, Peshawar



**DIRECTOR HIGHER EDUCATION
NWFP PESHAWAR**

Dated Peshawar the 05/03/2005

Consequent upon the recommendation of Departmental Selection Committee, the Competent Authority is pleased to appoint the following male candidate as Lab. Assistant against the vacant post in BPS-07 Viz (2220-120-5820) plus other usual allowances admissible under the rules (On contract basis) from the date of their taking over charge on the terms and condition mentioned below.

S.No.	Name/Father's name/ Address	Posted as Lab. Asstt:	Remarks
45.	Zahid Ali Shah S/o Ajam Ali Shah Dara Bakhel Manduri Teh. & Distt. Kohat	GC, Lachi	Against V/post

[Handwritten signature]

[Handwritten signature]

Date of Post war. No. 25/03/2005.

14/03/05

Consequent upon the recommendation of Departmental Selection Committees, the Competent Authority is pleased to appoint the following male candidates as Lab Assistant against the vacant post in BS-07 viz (2220-120-5820) plus other usual allowances as admissible under the rules (on contract basis) from the date of their taking over charge on the terms and conditions mentioned below.

S.No	Name/Father's name/ Address.	Posted as Lab/Asstt;	Remarks
01.	Fawad Sardar S/o Sardar Hussain Resident of Yusuf Abad Mardan.	CPGC Mardan.	Against V/post.
02.	Sabir Hussain S/o Munir Khan Village Said Abad P.O Pump Koorom Tehsil Takhti Bahi Distt;Mardan.	GC, Toru.	Against V/post.
03.	Haider Ali S/o Ali Akbar Village Flour Mills Road Qandhara Tehsil Takht Bahi Distt;Mardan.	GC No.2 Mardan.	Against V/post
04.	Wazir Dad S/o Kamin Dad Village Koh Bahol Tehsil & Distt; Mardan.	GC, Baboozai Mardan.	Against V/post
05.	Hakeem Khan S/o Nausher Khan Village P.O Shergarh Teh;Takht-i-Bahi Mardan.	GC, Lund khawar (Mardan)	Against V/post.
06.	Ali Akbar Khan S/o Sher Zaman Wazir Kalay P.O Sugar Crops Research Institute Distt; & Teh;Mardan.	GC, Khairabad	Against V/post.
07.	Mohammad Abdul Salam S/o Fazli Akbar Vill.Dheri Lekpani P.O.Sheri Lekpani Katlang Mardan.	GC, Baboozai	Against V/post.
08.	Hayat Shah S/o Mahmood Shah Kalo Tehsil Takhti Bahi Mardan.	GC, Baboozai	Against V/post.
09.	Sheraz Khan S/o Haji Shamsur Rehman Vill. Takkar Moh. Shehbaz Khel, Takht Bahi District Mardan.	GC, Bakhshali (Mardan).	Against V/post.
10.	Mohammad Ibrahim S/o Hassan Sher Village & P.O Jangora Bakhshali Teh; & Distt; Mardan	GC, Baboozai (Mardan)	Against V/post
11.	Safdar Khan S/o Said Tahir Moh. Shegai Village Ambar Teh; Lahor Distt; Swabi.	GC, Gandaf (Swabi).	Against V/post.
12.	Attique Rehman S/o Lutkur Rehman Village & P.O Marghuz Teh; & Distt; Swabi.	GC, Kotha (Swabi).	Against V/post
13.	Bin Amin S/o Fazli Amin Village P.O. Lahor Moh. Tajwahi District Swabi.	GC, Gandaf (Swabi).	Against V/post

(P.T.O)

[Handwritten Signature]



**OFFICE OF THE PRINCIPAL
GOVERNMENT DEGREE COLLEGE LACHI (KOHAT)**

Email: gdelachi@gmail.com

No. 2718 / 1

Dated Lachi the. 30/4/2014



To

Zahid Ali Shah,

Lab: Assistant GDC Lachi (Kohat).

Address: Mohalla Darab khel, Village and post office,
Manduri, Tehsil Lachi District (Kohat).

Subject: - Absence from Duty.

Memo:-

Reference to the subject noted above, it is stated that you Mr. Zahid Ali Shah Lab: Assistant GDC Lachi (Kohat) remained absent from duty since 28/04/2014.

Moreover, you have not made necessary entries in your service book for maintaining your leave account.

You are directed therefor, to come to college and complete your service book within seven (07) days of the receipt of letter, otherwise disciplinary action will be initiated against you according to E&D rules 2011 Khyber Pakhtunkhwa, which can result in your termination from service

[Signature]

Principal

GDC Lachi (Kohat)

Principal

Government Degree College
Lachi (Kohat)

[Signature]
[Signature]

**PAYROLL SYSTEM
AMENDMENT FORM
SINGLE EMPLOYEE ENTRY**

Form: PAY02

Date: 02/02/2013

Page No. 2

OFFICE OF THE Principal Govt Degree College (Ladki Mohal)
FOR THE MONTH OF February 2013

DDO Code ⁵
(Cost Center)

KT 4071

Description

Stop pay for the month of 02/2013 and onwards.

Personnel
Number ⁷

00208847

Employee
Name ⁸

Fahid Ali Shah

Grade (Pay
Scale Group) ¹⁰

07

Laborary Assistant

National ID
Card No. ⁹

14301440569

Salary ¹²
Status

Start

Stop

GENERAL DATA CHANGE ¹³

CHANGE IN PAYMENTS/DEDUCTIONS ¹⁷

New Contents ¹⁶	Wage Type ¹⁸	Amount			Effective Date ²¹	Remarks ²²
		Rupees ¹⁹	Paisa	Adj ²⁰		
Stop pay w.e.f. 01/02/2013 and onward.					01/02/2013	Mr. Fahid ^{Mr.} Shah has been remained absent and so with explanation but he failed to comply to duty nor submitted with explanation for remain absent.

ed By ²³

Auditor/Charman DU 22

[Signature]

14

[Handwritten signature]

The principal,
Govt Degree College,
Lachi, Kohat.

15

Subject: Application for the release of salary

Respected/sir

It is humbly stated that I have been working as a laboratory assistant in the said college since 01-04-2005. My salary has been stopped since 01-02-2013 till presently. The honored principal considers me absent from college since 01-02-2013 from rendering my official duties without informing high authorities. Since I had been present and performing my duties with full enthusiasm in the said college. Honestly stated that if I had been absent from my duties than how my services be justified in the service book, which is clearly mentioned in letter #: 2608 dated 27.04.2014, which shows my presence in the college and performing my duties. Since in the light of above facts I humbly request you, that my case be proceeded to the higher authorities and release my salary as soon as possible. I hope that I can perform my duties without facing domestic problems. I hope my case would be considered kindly, consequently I could start with my duties regularly and humbly, and I assure my principal and high authorities that I would not let them complain against me honestly.

I shall be very thankful to you for this act of kindness.

Thanking you in anticipation.

Yours' obediently



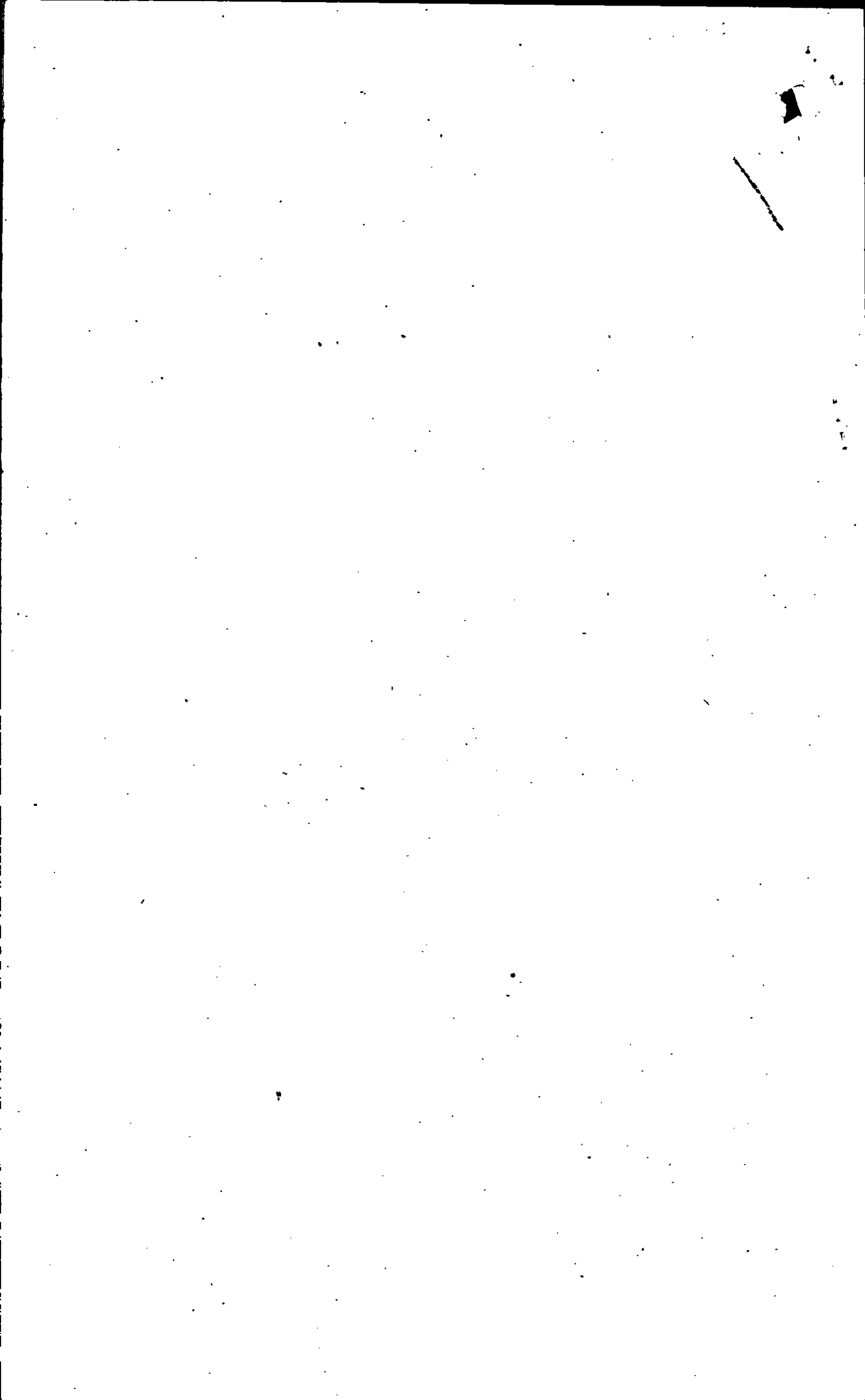
(Zahid Ali Shah)

Copy to

1. Copy to principal Government Degree College Lachi, Kohat
2. Director Higher Education, KPK
3. Secretary Higher Education, KPK
4. Minister Higher Education, KPK
5. Chief Minister, KPK

Date: 16-02-2015





BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.465/2015

Mr. Zahid Ali Shah..... Appellant

VERSUS

Director Higher Education and others Respondents

INDEX

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Respondents

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.465/2015

Mr. Zahid Ali Shah Appellant

VERSUS

Director Higher Education and others Respondents

SUBJECT:- **PARAWISE COMMENTS:-**

PRELIMINARY OBJECTIONS:-

Respectfully Sheweth:-

1. That the appellant has no locus standi/ cause of action to file the instant appeal.
2. That the Hon'able Tribunal lacks jurisdiction to entertain the instant appeal.
3. That the instant appeal is badly time barred.
4. That the appellant is trying to conceal material facts from the Hon'able Tribunal.
5. That the appellant has not come to the Tribunal with clean hands..
6. That the instant appeal is based on misconception/ mis-statement, therefore liable to be dismissed.

REPLY ON FACTS:-

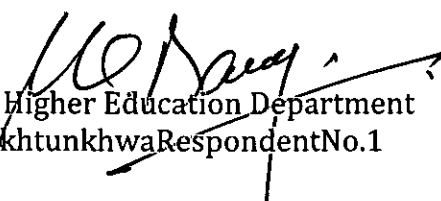
1. Pertains to record, hence needs no comments.
2. Incorrect. The Appellant remained absent from duty since January 2012(Annexure-A). Explanation was called from the appellant dated 01/01/2012(Annexure-B). The appellant was directed by the College Administration to perform his duty regularly and his reply to explanation was found unsatisfactory (Annexure-C). Furthermore, show cause notice was served on appellant on 13/10/2012 on account of wilful absence from 10/09/2012(Annexure-D). After issuing show cause notice, the appellant did not bother to reply or to appeared in person, hence his salary was stopped on 01/02/2013.
3. Incorrect. As the appellant remained absent without any solid reason consequently his salary was stopped. The appellant was served notices regarding his wilful absence on 26/06/2013(Annexure-E) but all in vain as the appellant neither appeared in person nor replied to show cause notices. Furthermore, another notice regarding his absence was sent on 30/04/2014 (Annexure-F).
4. Incorrect. The appellant remained absent from duty without any solid grounds, consequently his salary was stopped as explained above.
5. Incorrect. The appellant did not show reasonable cause for his wilful absence within reasonable time and his departmental appeal was time barred.


ON GROUNDS:-

- I. Incorrect. Already explained above, furthermore as the appellant remained absent and did not bother to show cause of his absence, therefore his salary was rightly stopped according to rules and regulations.
- II. Incorrect. The appellant has been removed from service according to Efficiency & Disciplinary Rules-2011, due to wilful absence from duty from January 2012 to 2014(notices have been annexed in preceding paras). Absence letter was again sent to appellant on 08/04/2015(Annexure-G). Notices were published in daily news paper which are appended as H& H1. The appellant did not pay any attention resultantly Disciplinary action was taken against him and was removed from service on 10/09/2015(Annexure-I).
- III. Incorrect. According to E&D Rules-2011, wilful absence from service without showing cause entails punishment i.e. removal from service.
- IV. Incorrect. The appellant committed grave mis- conduct i.e. wilful absence without any solid reason.
- V. Incorrect. The appellant remained absent from duty as explained in preceding paras,
- VI. The Respondents also seek permission of Hon'able Tribunal for further grounds.

PRAYERS:-

It is therefore, humbly prayed that the appeal is not maintainable and may graciously be dismissed with costs.


Secretary Higher Education Department
Khyber Pakhtunkhwa Respondent No.1


Director Higher Education
Khyber Pakhtunkhwa, Peshawar
Respondent No.2


Principal Govt Degree College
Lachi District Kohat Respondent No.3

TEACHER'S ATTENDANCE REGISTER

For the month of January 2012

No. 1

No. 2

No. 3

No. 4

Name: Saeed ur Rehman Tanzees Ahmad Zahid Ali Shah Muhammad Nadeem
 Designation: S/c St. Lab. Lab. Asst. N.I. Asst.

Dates	No. 1				No. 2				No. 3				No. 4			
	Arr.	Sig.	Dep.	Sig.	Arr.	Sig.	Dep.	Sig.	Arr.	Sig.	Dep.	Sig.	Arr.	Sig.	Dep.	Sig.
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ADJUSTMENT AT GPO

SARAF

STATEMENT OF LEAVES TAKEN

	ABSENT				SICK				CASUAL				PRI.			
	Sick	Casual	Pri.	Total	Sick	Casual	Pri.	Total	Sick	Casual	Pri.	Total	Sick	Casual	Pri.	Total
This month:																
Previous																

B

5

OFFICE OF THE PRINCIPAL GOVERNMENT DEGREE COLLEGE LACHI (KOHAT)

No 2112 /

Dated Lachi the 01/12/2012.

To

Zahid Ali Shah
Lab Assistant
Government Degree College Lachi,
(Kohat)

Subject: EXPLANATION.

Memo:


Reference to the subject cited above It is stated that you have been remained absent from your duties in the College. You have neither ^{informed} ~~in found~~ the Principal verbally/Telephonically nor submitted Leave Application. The same is evident in the daily attendance register for the Month of January 2012.

Why not disciplinary action will be taken against you. Explain your Position within a week after receipt of this letter.

Postal Address:

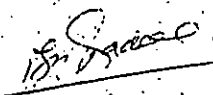
Zahid Ali Shah
son of
Ajam Ali Shah
Village Mandoori
P.O. Lachi,
District Kohat.

03018155272


PRINCIPAL,
GOVERNMENT DEGREE COLLEGE LACHI
(KOHAT)

Mr. Zahid Ali Shah Lab Assistant was contacted by Mr. Muhammad Anisam N/A GDC Lachi and also informed telephonically vide call no. 03018155272.

Mr. Zahid Ali Shah responded that he is in Rawalpindi and keep the letter with your custody.


07/02/2012

MINUTES OF COLLEGE COUNCIL MEETING.

The College Council Meeting was held on 23/2/2012 in the office of the Principal at 11.00 am.

Meeting Started with the recitation of the Holy Quran By Zahid Ullah Lecturer in Islamiyat. Scheduled agenda already notified was discussed point by point and the following suggestion/decisions were taken.

1. Establishment/Ministrial Staff issues.

i. Mr, Tanveer Ahmed working as J/Clerk for the last five years now promoted and adjusted at the same College as S/Clerk. His attitudes/ relationship with the Staff, Class four, and Students was discussed. the misbehaviour of Mr, Tanveer Ahmad with sbulKalam (Librarian) in demand of Payroll was high lighted and the following decisions were taken.

a. Warning should be issued to Mr, Tanveer Ahmad for cordial relationship with the staff, Otherwise disciplinary action should be taken against him.

b. Collection of Payroll from the accounts office and delivery to staff members be assigned to Classfour.

II. The explanation served upon to Mr, Zahid Ali Shah (Lab Assistant) and his written explanation was discussed.

The reasons explained by Mr, Zahid Ali Shah in his own defence were not satisfactory and were based on false hood. It was decided that

a. Mr, Zahid Ali Shah is liable to perform his duty regularly punctually and honestly.

b. He should revise the explanation that should be based on reality.

c. Professor Asif Shah Bukhari and Lecturer Farrukh Kamran will mediate the issue between Zahid Ali Shah and Principal.

III. The Classfour issues were discussed and it was decided that Mr, Najeeb Ullah and Rehmat Ali Shah (both Sweepers) should manage their domestic Problems by themselves otherwise honararia will be paid from their Salary for engagement of Sweepers.

IV. Appointment/Adjustment against Vacant Post of J/Clerk Lab/Asstt: and Driver for College vehicle should be demanded from high-ups that is essential for the betterment of Institution.

(2) ACADEMICS.

Timely conduct of Intermediate Pre-board/home examination by the staff and Participation of Students was appreciated. It was decided that.

(a) The awardlist should be submitted to Controller Office Upto 29/2/2012.

(b) The Students absent in home Exam with Zero attendance in theory Classes should be Struckoff from College roll.

(c) Degree Classes will be engaged upto April 2012 and fine will be Collected from the absent student at the time of Clearance.

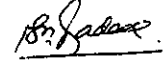
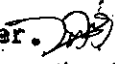



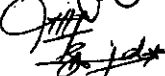
(3) Inspection of Staff/Student Hostel, the Committee has been Constituted by Secretary Higher Education to inspect newly constructed Staff/Student hostel in near future.

(a) The Director and Representative of Secretary Higher Education will visit the College and all concerned should note.

(4) COLLEGE PROSPECTICS.

The Printing of College Prospectics for the Comming Session 2012-13 was discussed. It was decided that Photo Session for Staff Photo and format of Prospectus and admission forms will be discussed in next meeting.

SIGNATURE OF PARTICIPANTS.

<u>S.No.</u>	<u>Name& Designation.</u>	<u>Signature.</u>
1.	Muhammad Abdul Qadeer Principal.	
2.	Sher Afzal Afridi. Asstt:Proff:	
3.	Asif Shah Bukhari. -do-	
4.	Farrukh Kamran. Lecturer.	
5.	Zahid Ullah. Lecturer.	
6.	Sharifullah. Lecturer.	
7.	Hazrat Ali. Lecturer.	
8.	Nasir Islam. Lecturer.	
9.	Sajjid Khan. ^{Ali Shah} Lecturer.	



PRINCIPAL,
GOVERNMENT DEGREE COLLEGE LACHI,
(KOHAT)

D

8

OFFICE OF THE PRINCIPAL G.D.C LACHI, (KOHAT)

No 2287-88 / Lab Assistant

Dated Lachi the 13/10/2012

To,

Zahid Ali Shah,
Lab Assistant,
G.D.C Lachi, (Kohat).

Subject: Show Cause Notice

Memo:


Reference to the subject noted above, it is stated that you have been informed to be regular and punctual for duty as per decision of the college council meeting dated 23/ 2/ 2012. Now you have remained absent without leave application w.e.f 10/9/2012 till now as evident from the daily attendance register for the month of September 2012.

Why not disciplinary action should be taken against you. Explain your position with in a week after receiving of this letter

Encl:

- Minutes of College Council Meeting

o/c


13/10/2012
Principal
G.D.C Lachi (Kohat)

Copy to:

- Director Higher Education Khyberpakhtunkhwa Peshawar

E

③

Office of the Principal GDC Lachi Kohat

No 2433 / 1

Dated lachi the 26/06/2013

To,

Zahid Ali shah,
Lab Assistant,
GDC Lachi, (Kohat)

Address:

Mohalla Darab khel, Village and post office
Manduri, Tehsil Lachi District Kohat

Subject: -

Absence From Duty.

Memo:-

Reference to the subject cited above it is stated that:

.You Mr.Zahid Ali Shah Lab Asstt: have been remained absent from duty/ was served explanation vide letter No. 2112 Dated lachi the 01/02/2012.

.you had been warned to be regular and professional in duty as lab Assistant in future.

.you further remained absent w.e.f. 10/09/2012/ was served show cause notice vide letter No.2287 dated lachi the 13/10/2012 but you failed to report for duty.

.Due to your deliberate negligence/absence from duty your salary had been stopped/inactive w.e.f. 01/02/2013 till now.

.A self explanatory application submitted by Miss Deena khan, Manager (Tech) National Development complex Islamabad asking for Provision of Security against Threats is hereby attached for information.

You have been recommended to the Education Department/Provincial Government for taking Disciplinary action against you under Efficiency & Discipline (E&D) Rules. In case of grievance you can make representation to the Director Higher Education Khyber pakhtun khwa Peshawar.


o/c Principal
GDC Lachi kohat

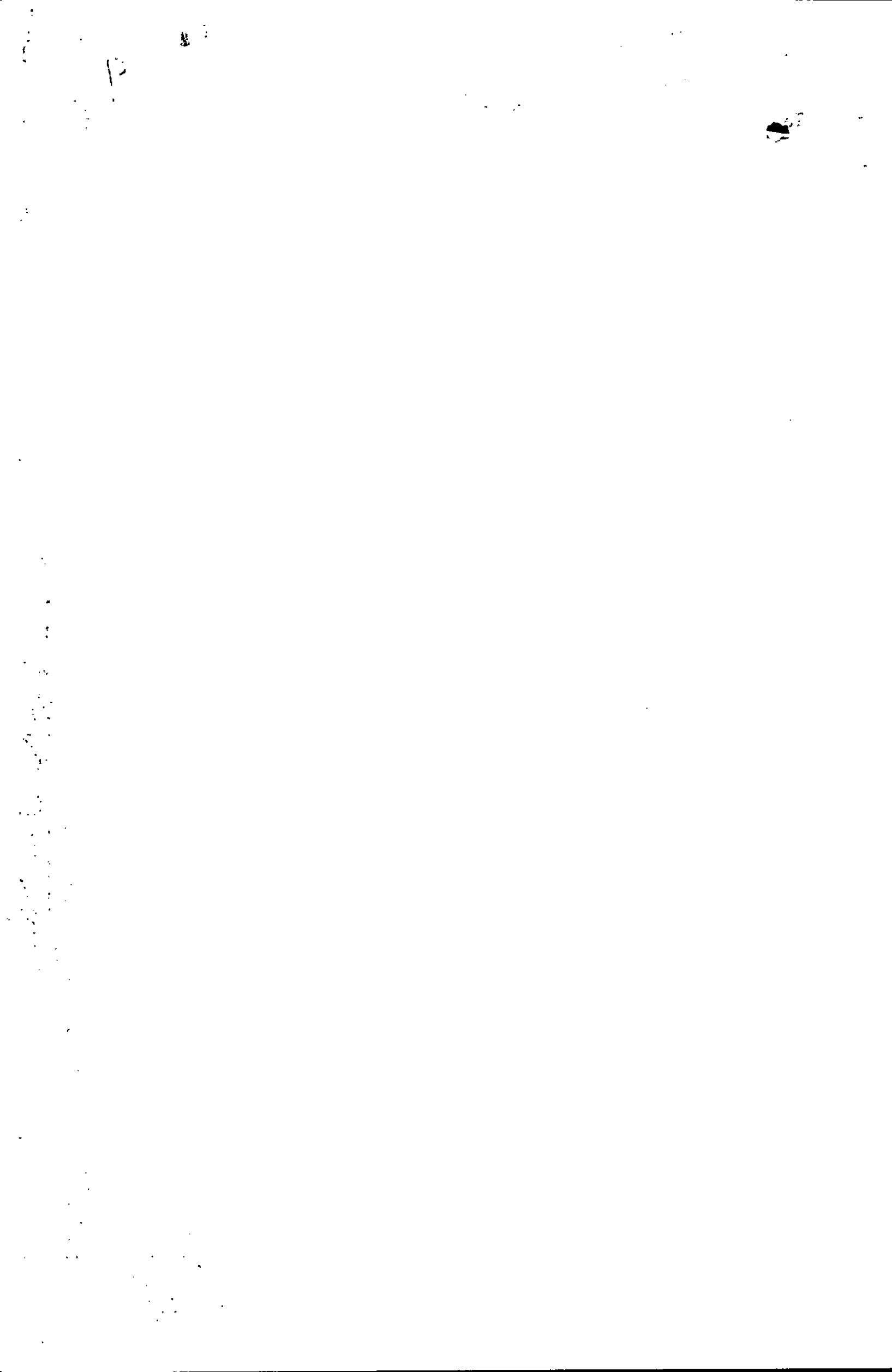
Endost No. 2434-35 Dated 26/06/2013

Copy to.

1. The Director Higher Education Khyber pakhtun khwa Peshawar.

2. Lt. Col. (R) Ghulam Haider T.I (M) Additional Director (Admin). With reference to his letter No. SD (5/13)-06-(GM)/13 Dated 11th June, 2013


o/c Principal
GDC Lachi kohat





OFFICE OF THE PRINCIPAL
GOVERNMENT DEGREE COLLEGE LACHI (KOHAT)

Email:gdclachi@gmail.com

No. 2718

Dated Lachi the. 30/4/14

FHO



To

Zahid Ali Shah,

Lab: Assistant GDC Lachi (Kohat).

Address:

Mohalla Darab khel, Village and post office,

Manduri, Tehsil Lachi District (Kohat).

Subject: -

Absence from Duty.

Memo:-

Reference to the subject noted above, it is stated that you Mr. Zahid Ali Shah Lab:Assistant GDC Lachi (Kohat) remained absent from duty since 28/04/2014.

Moreover, you have not made necessary entries in your service book for maintaining your leave account.

You are directed therefour, to come to college and complete your service book within seven (07) days of the receipt of letter otherwise disciplinary action will be initiated against you according to E&D rules 2011 Khyber Pakhtunkhwa, which can result in your termination from service

o/c
Principal
GDC Lachi (Kohat)



OFFICE OF THE PRINCIPAL
GOVERNMENT DEGREE COLLEGE LACHI (KOHAT)

Email:gdclachi@gmail.com Phone #.0922-551010

No. 2829-201 Dated Lachi the. 8/4/2015



From

The Principal
GDC Lachi (Kohat)

To

Mr. Zahid Ali Shah Lab: Assistant GDC Lachi (Kohat).

Subject:

Absence from Duty.

Memo:

It is stated that you have been absent from college since 1st February 2013. You have been intimated regularly by the former principals regarding your absence. You are once ^{again} directed to report for duty within ~~15~~ ^{fifteen} days of the receipt of this registered letter and submit documentary proof regarding your absence, otherwise disciplinary action will be taken against you under E & D rules.

o/c
Principal
GDC Lachi (Kohat)
Principal
Government Degree College
Lachi (Kohat)

Copy to:

1. the Director Higher Education for information and necessary action
- 2. Office record.

Received
29/4/2015
Zahid

نوٹس غیر حاضری

تاریخ غیر حاضری	کانج	عہدہ	نام
1/2/2013	گورنمنٹ ڈگری کالج لاچی (کوہاٹ)	لیبارٹری اسٹنٹ	(1) مسی زاہد علی شاہ
1/1/2014	گورنمنٹ ڈگری کالج ایس۔ کے۔ بالا بنوں	//	(2) مسی ندیم کوثر
5/9/2014	گورنمنٹ ڈگری کالج زیدہ (صوابی)	//	(3) مسی محمد طیب
29/12/2014	گورنمنٹ ڈگری کالج شیروان (ایبٹ آباد)	//	(4) مسی طاہر رؤف

آپ سب مندرجہ بالا تاریخوں سے مسلسل اپنی ڈیوٹی سے غیر حاضر ہیں۔ آپ سب کو متعلقہ کالج کے پرنسپل صاحبان نے آپ کے گھر کے پتے پر ڈیوٹی پر حاضر ہونے کیلئے اطلاع کئی بار بذریعہ سرکاری خط دی گئی لیکن آپ حضرات ڈیوٹی پر حاضر نہیں ہوئے۔ آپ کو آخری بار اس نوٹس کے ذریعے آپ کے مفاد میں مطلع کیا جاتا ہے کہ آپ سب اس اشتہار کی اشاعت کے پندرہ دنوں کے اندر اندر اپنی ڈیوٹی پر حاضر ہو جائیں اور اپنی مسلسل غیر حاضری کی معقول وجہ بیان کریں۔ بصورت دیگر آپ سب لوگوں کے خلاف تادیبی کارروائی کی جائے گی۔ عدم تعمیل کی صورت میں آپ سب کے خلاف خیبر پختونخوا کے سرکاری ملازمین انکوائسٹری اینڈ ڈسپلن (E&D) رولز مجریہ 2011 کے تحت یکطرفہ کارروائی عمل میں لائی جائے گی اور آپ ملازمت سے برخاست کر دیئے جائیں گے۔

ڈپٹی ڈائریکٹر اسٹیڈی اسٹینٹ ہائیر ایجوکیشن خیبر پختونخوا

(NF(P) 3236

Also available on www.khyberpakhtunkhwa.gov.pk

دوبارہ نوٹس نیلامی

نوٹس غیر حاضری

تاریخ غیر حاضری	کالج	عہدہ	نام
1/2/2013	گورنمنٹ ڈگری کالج لاہی (کوہاٹ)	لیہارڈری اسٹنٹ	(1) مسی راہیل شاہ
1/1/2014	گورنمنٹ ڈگری کالج ایس۔ کے۔ بالاہنوں	//	(2) مسی ندیم کوثر
5/9/2014	گورنمنٹ ڈگری کالج زبیدہ (صوابی)	//	(3) مسی محمد طیب
29/12/2014	گورنمنٹ ڈگری کالج شیروان (ایبٹ آباد)	//	(4) مسی طاہر رؤف

آپ سب مندرجہ بالا تاریخوں سے مسلسل اپنی ڈیوٹی سے غیر حاضر ہیں۔ آپ سب کو متعلقہ کالج کے پرنسپل صاحبان نے آپ کے گھر کے پتے پر ڈیوٹی پر حاضر ہونے کیلئے اطلاع کئی بار بذریعہ سرکاری خط دی گئی لیکن آپ حضرات ڈیوٹی پر حاضر نہیں ہوئے۔ آپ کو آخری بار اس نوٹس کے ذریعے آپ کے مفاد میں مطلع کیا جاتا ہے کہ آپ سب اس اشتہار کی اشاعت کے پندرہ دنوں کے اندر اندر اپنی ڈیوٹی پر حاضر ہو جائیں اور اپنی مسلسل غیر حاضری کی معقول وجہ بیان کریں۔ بصورت دیگر آپ سب لوگوں کے خلاف تادیبی کارروائی کی جائے گی۔ عدم تعمیل کی صورت میں آپ سب کے خلاف خیبر پختونخوا کے سرکاری ملازمین ایلفینٹنسی اینڈ ڈسپلن (E&D) روڈز مجریہ 2011 کے تحت یکطرفہ کارروائی عمل میں لائی جائے گی اور آپ ملازمت سے برخاست کر دیئے جائیں گے۔

ڈی ڈائریکٹر اسٹیبلشمنٹ ہائیر ایجوکیشن خیبر پختونخوا

(NF/R) 3236 Also available on www.khyberpakhtunkwa.gov.pk

دوبارہ نوٹس نیلامی



DIRECTORATE OF HIGHER EDUCATION

KHYBER PUKHTUNKHWA, KHYBER ROAD PESHAWAR
Telephone No.091-9211025-9210217-9210242 Fax-921021

Dated 10/10/2015

ORDER

The Competent Authority is pleased to remove Mr. Zahid Ali Shah Laboratory Assistant GDC, Lachi (Kohat) from Government service, with immediate effect due to his willful absence from duties.

The absence period w.e.f 1.02.2013 till date may be treated as unauthorized absence from duty without pay.

**DIRECTOR
HIGHER EDUCATION KHYBER PAKHTUNKHWA**

Endst. No 21554-56 / CA-VII/Estt. Branch

Copy of the above is forwarded for information and necessary action to the:-

1. Principal Government Degree College, Lachi (Kohat).
2. District Accounts officer Kohat.
3. Official concerned.

T. Basha
**DEPUTY DIRECTOR (ESTABLISHMENT)
HIGHER EDUCATION KHYBER PAKHTUNKHWA**

(1)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In Re:
Service Appeal No.465/2015

Zahid Ali Shah **Petitioner**

Versus

Govt. of KPK & others **Respondents**

REJOINDER/REPLY OF PARAWISE
COMMENTS

Respectfully Sheweth:

Preliminary Objections:

1. That the appellant has the cause of action.
2. That the Honourable Tribunal has the jurisdiction.
3. That the appeal is within time.
4. That the respondents are not honest to clarify the true facts.
5. That the appellant has a good prima facie case.
6. That Para No.6 is incorrect, the respondent is trying to conceal the true aspects of the case.

REPLY ON FACTS:

1. No need to reply.
2. That Para No.2 is incorrect if the appellant was absent from duty since 01.01.2012, then why the service of the appellant was verified in his service book on 31.12.2013, further that respondent No.3, awarded experience certificate to the appellant vide dated 09.04.2014, according to which the appellant was on duty till 09.04.2015.
3. That Para No.3 is incorrect, the respondent No.3, sent a letter vide dated 08.04.2015 according to which the appellant was absent since 2013 and since 2013 no disciplinary proceedings have been stated against the appellant, which is unbelievable and another letter vide dated 30.04.2014, has been sent to the appellant, while actually this letter issued on 03.12.2014, and it has shown on 30.04.2014, which also shows the malafide on the part of the respondents. Further that there is no law available for stoppage of salary of any civil servant due to absence of his duty.

4. That Para No.4 is denied, the appellant attended the college, further that the respondent No.3, have no attendance register of the absence of appellant, further that the respondents have no authority to stop the salary of the appellant and they have only the way to proceed against the appellant.
5. That Para No.5 is incorrect, the appellant attended the college, but the respondent No.3 malafidely treated with the appellant and the appeal of the appellant is within time.

GROUNDS:-

- I. That Para No.1 is incorrect, the respondents have no authority to stop the salary of the appellant.
- II. That Para No.11 is denied, because if the appellant was absent service 2012, then why the appellant removed from service on 10.09.2015, because the appellant filed appeal on 19.05.2015, against the illegal stoppage of salary of the appellant, letter dated 27.04.2014 clearly shows that the appellant was present and performing his duty.

- III. That Para No.III is denied, the disciplinary action is against law because it has been initiated and completed during the pendency of present appeal and based on malafidely, further that the order of removal from service of the appellant is against law and is liable to be set aside.
- IV. That the Para No.IV is incorrect.
- V. That Para No.V is also incorrect.
- VI. No need of rely

It is, therefore humbly prayed that on acceptance of this rejoinder/reply, the appeal of the appellant may kindly be allowed as prayed for.

Through Petitioner / *[Signature]*

Hassan U.K Afridi
Advocate, Peshawar
[Signature]

Dated: 18.07.2016

5

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In Re:
Service Appeal No.465/2015

Zahid Ali Shah **Petitioner**

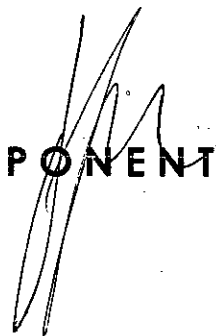
Versus

Govt. of KPK & others **Respondents**

AFFIDAVIT

I, Hassan U.K Afridi, Advocate High Court as per instructions of my client, do hereby solemnly affirm and declare on oath that the contents of the accompanying **rejoinder/reply** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.

DEPONENT





Government Degree College

LACHI (KOHAT)

No. 2602

Date 09/04/2014.

EXPERIENCE CERTIFICATE

Certified that Mr. ZAHID ALI SHAH S/O AJAM ALI SHAH employed in Higher Education Department as Lab Assistant at Government Degree College Lachi (Kohat) w.e.f 01/04/2005 till date. The work of Mr. ZAHID ALI SHAH is satisfactory. I wish him good luck for future.

Saeed Ullah
Principal

Government Degree College
Lachi (Kohat)

Principal
Government Degree College
Lachi (Kohat)

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR.

No. 268 /ST

Dated 13 / 02 / 2019

To


The Principal Government Degree College,
Government of Khyber Pakhtunkhwa,
Kohat.

Subject: -

JUDGMENT IN APPEAL NO. 465/2015, MR. ZAHID ALI SHAH.

I am directed to forward herewith a certified copy of Judgement dated 07.02.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.