

BEFORE THE HONOURABLE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No.967-A/2023

Muhammad Asif.....**APPELLANT.**

VERSUS

1. Secretary Elementary & Secondary Education KPK Peshawar.
2. Director Elementary & Secondary Education KPK Peshawar.
3. District Education Officer (Male) Mansehra.....**RESPONDENTS.**

PARAWISE COMMENTS / WRITTEN REPLY ON BEHALF OF RESPONDENTS

NO 1,2 & 3:-

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DISTRICT EDUCATION OFFICER
(MALE) MANSEHRA

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NO 1,2 & 3:-

Secretary Elementary & Secondary Education
KPK Peshawar

9041

15-11-2023

PRELIMINARY OBJECTIONS:-

1. That the appellant has got no cause of action locus standi.
2. That the instant service appeal is badly time barred. Hence liable to be dismissed.
3. That the appellant has concealed material facts from his Honorable Tribunal in the instant service appeal. Hence not entitled for any relief and appeal is liable to be dismissed without any further proceeding.
4. That the instant service appeal is based on malafide intentions.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appellant is not entitled for the relief he has sought from this Honorable Tribunal.
7. That the instant service appeal is against the prevailing law and rules.
8. That the appeal is based on malafide intentions just to put extra pressure on the Respondents for gaining illegal service benefits.
9. That the instant service appeal is not maintainable in its present form.
10. That the service appeal of the Appellant is infructuous as per Khyber Pakhtun khawa sacked employee appointment Act, 2012. Under section 5, wherein sacked Employee shall not be entitled to claim seniority and other back benefits.

FACTUAL OBJECTIONS:

5. Para No.1 is correct to the extent that the aforementioned appellant was appointed contrary to law and policy, then such irregularly appointees were later on declared illegal and were terminated.

Attorney
[Signature]

2. Para No.2 is correct to the extent that the Government of Khyber Pakhtun Khawa promulgated Khyber Pakhtun Khawa Sacked Employee Appointment Act, 2012.
3. Para No.3 is correct to the extent that the Appellant filed a writ petition before Honorable High Court Abbottabad Bench, which was decided on 24-05-2017, and also filed a COC against non-compliance of the judgment *ibid*, wherein respondent Department appointed the appellant as PST vide dated 20-06-2019 under KPK Sacked Employee Act, 2012, as well as the direction of Honourable High Court Abbottabad Bench. A sacked Employee appointment under section 3, shall not be entitled for any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.
4. Para No.05 is incorrect that the appellant did not filed any departmental appeal to the appellate authority. Whereas *as per sacked Employee appointment Act,2012, under section 5, sacked Employee shall not be entitled to claim seniority and other back benefits: A sacked Employee appointment under section 3, shall not be entitled for any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment. That the appellant is not aggrieved person in the meaning sacked Employee Act, 2012 inter-alia, on the following grounds.*

GROUND:-

- a. Incorrect and denied, the appellant was appointed in the light of sacked Employee Act 2012, as per rules and policy and also direction of Honourable Peshawar High Court Abbottabad Bench. The appointment order of the appellant was issued in accordance with the rules, Act and policy of the Government. Whereas *as per sacked Employee appointment Act,2012, under section 5, sacked Employee shall not be entitled to claim seniority and other back benefits: A sacked Employee appointment under section 3, shall not be entitle for any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment. Hence the appellant is not entitled to any claim of the back benefits. The same nature case has been dismissed by this Honourable Service Tribunal vide Judgenment dated 20/2/2019 in service appeal No. 1377/2015 titled " Syed Naveed Hussain shah vs Govt of KPK and others.*

(Copy of Sacked Employees (Appointment) Act,2012 and Judgment
20/02/2019 are annexed as annexure A & B)

- b. Incorrect and denied, the appellant has been treated as per law and rules & act, wherein no question of violation of law, rules & policy. detail reply has already been given in above Paras.
- c. Incorrect and denied, the appellant has been treated as per law and rules & act, wherein no question of violation of law, rules & policy. Respondent department bound to exercise his

power justly fairly, honestly in the light of laws and rules Governed by the Government, not whim and wishes of any body.

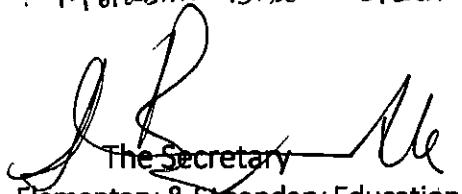
d. As stated above. The Respondents seek leave of this Honorable Tribunal to submit addition grounds & record at the time of arguments before this Honorable Bench.

e.

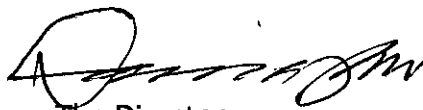
PRAYER:

In the view of above made submissions, it is requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favor of the Respondent Department in the interest of justice.

: Motasim Billah Shah / secretary E & SE


The Secretary
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.

: Farid Khatkhat / Director E & SE


The Director,
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

: Muhammad Ishtiaq Khan Jadoon / DEO (M) Mansehra


The District Education Officer,
(Male) Mansehra

Mansehra

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PARAWISE COMMENTS / WRITTEN REPLY ON BEHALF OF RESPONDENTS

NO 1,2 & 3:-

AFFIDAVIT

I, Mr. Muhammad Ashfaq Khan Jadoon District Education Officer (M) Mansehra do, hereby solemnly affirm and declare that the Para wise comments of the Service Appeal No.967/2023 titled Muhammad Asif versus Govt, is true to the best of my conviction and belief and nothing has been concealed from this Honourable Court. *It is further stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor their defense is struck off.*

DISTRICT EDUCATION OFFICER
(MALE) MANSEHRA



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(S)
Amendment 06/12

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

CONTENTS

PREAMBLE

SECTIONS

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

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

(KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)

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

AN
ACT

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

WHEREAS it is expedient to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and were dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on various grounds;

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

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

It is hereby enacted as follows:

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

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

(3) It shall come into force at once.

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

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- (a) "civil post" means a post created by the Finance Department of Government for the members of civil service of the Province;
 - (b) "Department" means the Department and the Attached Department as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985, including the Divisional and District Offices working thereunder;
 - (c) "Government" means the Government of the Khyber Pakhtunkhwa;
 - (d) "Prescribed" means prescribed by rules;
 - (e) "Province" means the Province of the Khyber Pakhtunkhwa;
 - (f) "rules" means the rules made under this Act; and
 - (g) "Sacked employee" means a person who was appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments;

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

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

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

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

Aty...
*

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

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

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

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

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

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

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

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

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

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

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

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(2)

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

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

Att. 1/2/20

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT ABBOTTABAD.

Service Appeal No. 1377/2015

Date of Institution ... 10.12.2015

Date of Decision ... 20.02.2019



Syed Naveed Shah son of Muazzam Shah, PST, Govt: Primary School Maira Hajaam, District Mansehra. ... (Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa; through Secretary Elementary and Secondary Education, Peshawar and two others. ... (Respondents)

MR. MUHAMMAD ARSHAD KHAN TANOLI,
Advocate ---

For appellant.

MR. MUHAMMAD BILAL,
Deputy District Attorney ---

For respondents

MR. AHMAD HASSAN, ---
MR. MUHAMMAD AMIN KHAN KUNDI ---

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

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

ATTEST

[Signature]
Secretary
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ARGUMENTS

2. Learned counsel for the appella it argued that he joined the Education Department as PST on 22.11.1994. That his services were terminated vide order dated 13.02. 997. After promulgation of Khyber Pakhtunkhwa Sacked Employees Appointment Act. 012, all the employees who were appointed in the year 1993-96 and terminated in 19 7-98 were reinstated. As the appellant was not reinstated so he filed writ petition no 401-A/2012 before the Peshawar High Court, Abbottabad bench. Judgment of the Peshawar High Court Abbottabad bench dated 22.05.2013 was not implemented by the respondents so C.O.C no. 70-A/2013 was filed. Resultantly, vide impugned order dated 01.07.2015, the appellant was reinstated in service with immediate effect. Feeling aggrieved, he filed

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departmental appeal on 29.07.2015 which was not responded within the stipulated period, hence, the present service appeal. The appellant is required to give all service benefits w.e.f 03.02.1997 to 01.07.2015.

3. Learned Deputy District Attorney argued that as the appellant was appointed in violation of invogue rules, hence, his services were terminated vide order dated 13.02.1997. Under the Khyber Pakhtunkhwa Sacked Employees Appointment Act 2012, he was reappointed as PST vide order dated 01.07.2015. According Section-5 of the said Act sacked employees shall not be entitled to claim seniority and other back benefits. Appellant was treated according to law and rules.

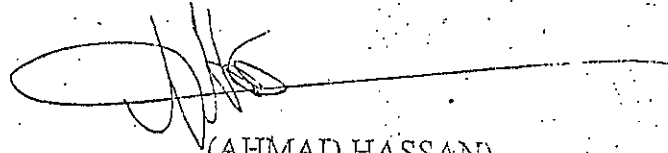
CONCLUSION.

It is not disputed that initially the appellant was appointed as PST at GPS D m Nalla on 22.02.1994. Later on when it came to the notice of the respondents that his appointment was made in violation of rules, hence, his services were terminated vide order dated 13.02.1997. In the meanwhile the provincial government promulgated Khyber Pakhtunkhwa Sacked Employees Appointment Act 2012. When grievances of the appellant were not redressed at departmental level he resorted to litigation by filing writ petition in Peshawar High Court, Abbottabad Bench. Finally in pursuance of the directions of the Peshawar high Court, Abbottabad Bench he was appointed as Pst at GPS Mira Hajam with immediate effect vide order dated 01.07.2015. The appellant is asking for reappointment from the date of his termination from service dated 03.02.1997. Attention is drawn to Section-5 of the aforementioned Act, wherein it is clearly laid down that the sacked employee shall not be entitled to claim seniority and other back benefits. The relevant provision is reproduced below:-

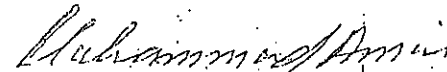
"A sacked employee appointed under Section-3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment"

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5. As a sequel to above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
Member
Camp Court Abbottabad.


(MUHAMMAD AMIN KHAN KUNDI)
Member

ANNOUNCED
20.02.2019

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