FORM OF ORDER SHEET

Court of _____

Appeal No. 2309/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/11/2023	The appeal of Mr. Riaz Muhammad resubmitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshai is given to the counsel for the appellant. By the order of Chairman REGISTRAR

The appeal of Mr. Riaz Muhammad son of Wali Muhammad Ex-Lab Attendant GHS Mela Shahab Khel Lakki Marwat received today i.e on 27.10.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Appeal has not been flagged/marked with annexures marks.
2- Annexures of the appeal are unattested.
3- Annexure-C of the appeal is missing.
4- Annexures of the appeal are not in sequence be annexed serial wise as mentioned in the memo of appeal.
5- Five more copies/sets of the appeal along annexures i.e. complete in all respect may also be submitted with the appeal.

No. 3473 /S.T,

Dt. 30/10 /2023.

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv.
High Court Peshawar.

Sir,

Re-submitted after removing the objections.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A. No. 2309 /2023

Riaz Muhammad versus DEO (M) & Others

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Appellant

Through

Saadullah Khan Marwat
Advocate
21-A, Nasir Mansion,
Shoba Bazaar, Peshawar

Ph: 0300-5872676

Dated 24-10-2023

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

Appeal No. 2309 /2023

Riaz Muhammad S/O Wali Muhammad,
R/O Mela Shahab Khel,
EX-Lab Attendant, Govt. High School
Mela Shahab Khel, Lakki Marwat . . . . . Appellant(s)

Verses

1. District Education Officer (M),
   Elementary & Secondary
   Education Department,
   Lakki Marwat.

2. Director, Elementary & Secondary
   Education Department, GT Road
   Hashtnagri, Peshawar City.

3. Secretary, Govt. of KP,
   Elementary & Secondary Education
   Department, Civil Secretariat,
   Peshawar. . . . . Respondent(s)

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE ORDER NO. 3353-63 DATED 28-04-2023 OF R. NO. 01 WHEREBY ORDER OF APPOINTMENT DATED 10-10-2007 WAS WITHDRAWN FOR NO LEGAL REASON.

27/10/23

⇔<=>⇔<=>⇔<=>⇔<=>⇔=

Respected Sir:

1. That on 11-06-2007, Asadullah Khan filed suit before the court of Senior Civil Judge, Lakki Marwat to appoint him as Class-IV servant in the school on the basis of donation of land free of cost for its construction. (Copy as annex "A")

2. That on 10-10-2007, appellant was appointed as Lab Attendant by R. No. 01. (Copy as annex "B")

3. That on 08-05-2008, EX post facto sanctioned was accorded by the authority and services of appellant along with another was regularized. (Copy as Annex "C")

4. That the said Asadullah khan filed amended suit before the said court to appoint him as such in the school. (Copy as Annex "D")

5. That on 20-09-2008 and 06-10-2008, department and appellant submitted written statement before the court concerned by denying the claim of the said Asadullah Khan. (Copies as annex "E")

6. That on 10-11-2008, appellant submitted application under O-7 R-11 before the court to reject the plaint of Asadullah Khan complainant. (Copy as Annex "F")

7. That on 28-01-2009 the learned court accepted application of O7 R-11 and rejected the plaint of Asadulalh Khan complainant. (Copy as annex "G")

8. That on 10-02-2009, complainant filed Appeal before the court of District Judge which was too dismissed on 04-02-2010. (Copies as annex "H" & "I")

9. That on 26-04-2010, Revision Petition was filed before the High Court Circuit Bench D. I. Khan by the complainant to set aside the judgments of the courts below and then remanded the same to Trial Court with direction to decide the same in accordance with law after recording pro and contra evidence. (Copies as annex "J" & "K")

10. That on 14-03-2013, the Trial Court decided the matter after recording evidence. Plaintiffs suit (Asadullah Khan) regarding entitlement to the appointment on the subject post and recovery of compensation of the donation of land was not substantiated / rejected, however, the appointments of appellant was declared as illegal and unlawful. (Copy as annex "L")

11. That on 13-04-2013, appellant filed appeal before the court of District Judge, Lakki Marwat to set aside the impugned judgment and decree of the learned Trial Court and decree the suit in favor of appellant as prayed for which appeal was dismissed on 16-12-2013. (Copies as annex "M" & "N")

12. That on 27-02-2014, appellant and Riaz Muhammad filed Revision Petition before High Court Bannu Bench for setting aside the judgment and decree of the courts below which was also dismissed on 29-09-2021 by the hon'ble Court. (Copies as annex "O" & "P")

13. That on 25-05-2021, complainant Asadullah Khan filed Execution Petition to honor the judgment dated 14-03-2013 which came up for hearing on 30-03-2023, where appointment order of appellant was declared as illegal and un-lawful and directed the authority to issue Notification of removal of appellant from service and submit the order before the court within 30 days of the receipt of this order. (Copies as annex "Q" & "R")

14. That on 15-04-2023, appellant filed Revision Petition to declare Execution Petition of complainant Asadullah Khan being not maintainable. (Copy as annex "S")

15. That on 28-04-2023, order of appointment of appellant was withdrawn by R. No. 01 which order was received through Postal Service. (Copy as annex "T")

16. That on receipt of the said order, appellant submitted representation before R. No. 02 on 26-05-2023 which met dead response till date. (Copy as annex "U")

17. That the said Revision Petition came up for hearing on 17-04-2023 and judgment dated 30-03-2023 was suspended. However, on 16-09-2023 the said Revision Petition was dismissed by the learned Additional District Judge, Lakki Marwat. (Copy as annex "V")

18. That on 20-10-2023, appellant submitted reminder before the authority to decide the representation of appellant in one way or the other and to also reinstate them service. (Copy as annex "W")

Hence, this appeal, inter alia on the following grounds:

GROUNDS.

a. That appellant was appointed at the said post in prescribed manner and served the department for considerable time.

b. That complainant Asadullah Khan first filed Civil Suit in the court of Senior Civil Judge, Lakki Marwat for his appointment and compensation of the donated land. No claim was made ever against appellant.

c. That in the subsequent suit whole theme of the matter was changed by impleading appellant as respondents. Here it would be not out of place to mention that appellant was never appointed at the post of complainant Asadullah Khan but in open merit.

d. That the courts never took into consideration this aspect of the case and appointment of appellant was targeted for no legal reason the available record was not appreciated in its true perspective.

e. That while issuing order dated 28-04-2023, by withdrawing order of appointment of appellant with retrospective effect is not justified in any manner. Nether any notice was served upon him nor any enquiry was conducted.

f. That appellant served the department till 16-09-2023 and on account of illegal withdrawal appellant service was redundant with malafide.

g. That the said post is still lying vacant with the department.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 28-04-2023 of R. No. 01 be set aside and appellant be reinstated in service with such other relief as may be deem proper and just.

ریاض محمد بقلم خود
Appellant

Through

Saadullah Khan Marwat

Arbab Saiful Kamal

Amjad Nawaz

Advocates

Dated: 26-10-2023

CERTIFICATE:

As per instructions of my client, no such like Service Appeal has been earlier filed by the appellant before this Hon'ble Tribunal.

Advocate

AFFIDAVIT

I, Riaz Muhammad (appellant), do hereby solemnly affirm and declare that contents of **Service Appeal** are true and correct to the best of my knowledge and belief

KHALID MAHMOOD ADVOCATE ★ PESHAWAR HIGH COURT ★ Oath Commissioner

DEPONENT

A 6

11-6-07

(1)

لعدالت جناب سینئر سول جج لکی مروت

رسید اللہ خان ولد یار محمد قوم بنگش سکنہ میلہ شہاب خیل تحصیل و ضلع مروت

(مدعی)

بنام

1 سیکرٹری ریجوینشن صوبہ سرحد پشاور۔ 2 ڈائریکٹر سکولز اینڈ لیٹریسی صوبہ سرحد پشاور

3 ایجوکیشنل ڈسٹرکٹ آفیسر سکولز اینڈ لیٹریسی مروت۔ 4 ڈسٹرکٹ آفیسر سکولز اینڈ لیٹریسی مروت

(اصل مدعیلیہ نمبر 4)

5 مسماۃ زیبگیم بیوہ۔ 6 تاجعلی خان۔ 7 حمید اللہ خان۔ 8 عبید اللہ خان۔

9 فتح اللہ خان پسران زینت النساء۔ 10 زیب النساء۔ 11 ضیاء النساء

12 فروالنساء۔ 13 رخت النساء۔ 14 نعیم جان۔ 15 نورشیدہ

دختران یار محمد قوم بنگش سکنان میلہ شہاب خیل تحصیل

ضلع مروت

(ترتیب مدعیلیہ 5 تا 15)

(مدعا علیہ نمبر 2)

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

(جزو الف) مظہران مینے ڈگری استقراریہ بحق مدعی و تریشی مدعا علیہم نمبر 3 تا 16 برخلاف

اصل مدعا علیہم نمبر 1 تا 4 بابت اراضی کھاتہ نمبر 276 خسرہ نمبر 4210 تعدادی 0-8 کنال مرلہ

کھاتہ نمبر 294 خسرہ نمبر 4209 تعدادی 6-2 و کھاتہ نمبر 312 خسرہ نمبرات

4206 جملہ تعدادی 17-5 کنال مرلہ و کھاتہ نمبر 315 خسرہ نمبر 4211 تعدادی 2-3 کنال مرلہ واقع

مقام ننگر ضلع مردان تحصیل و ضلع بصورت بدیں مضمون کہ من مدعی و تریشی مدعا علیہم نے فور

یا تحصیل دیگر محکمہ کو استعمال کیلئے 8929 تبدیل ملکیت مصدقہ 4/22 رقبہ تعدادی 0-2 کنال بلاعوض

بنام محکمہ تعلیم صوبہ سرحد انتقال کیا تھا۔ اور محکمہ تعلیم نے اس سے وعدہ کیا تھا کہ وہ

اراضی بالا پر سکول تعمیر کرینگے اور اس سکول میں درجہ چہارم ملازمین کی بھرتی

میں آپکو پہلا حق دینگے۔ اس اراضی پر اب بلڈنگ گورنمنٹ مائی سکول

میلہ شعاب خیل تعمیر شدہ ہے جبکہ مدعا علیہم نے خسرہ 4211 میں جسکے من مدعی و تریشی مدعا علیہم 10 مرلہ

پر بغیر تصدیق استعمال سے جبری طور پر بلڈنگ تعمیر کردی ہے اور اب اس سکول کیلئے

کلاس فور ملازمین بھرتی کیلئے جا رہے ہیں۔ جسمیں من مدعی و تریشی مدعا علیہم بھرتی کے

مستحق ہیں۔ اور یوں بھرتی کلاس فور ملازمین بھی بنتا ہے یہیں

ڈگری فرمایا جاوے۔ معہ خرچہ مقدمہ و دیگر دادرسی جو قرین انصاف ہو۔

(جزو ب) مظہران مینے ڈگری حکم امتناعی دوامی تائیدی کیخلاف بابت اراضی متذکرہ بالا جزو الف بدیں مضمون

کہ اصل مدعا علیہم نمبر 1 تا 4 کو منع فرمایا جاوے کہ وہ اراضی متذکرہ میں تعمیر شدہ بلڈنگ گورنمنٹ مائی سکول میلہ شعاب خیل

پر قبضہ کرنے۔ اسمیں کلاسیں شروع کرنے اور سکول بالا کیلئے کلاس فور ملازمین بھرتی کرنے اور

بھرتی کیلئے اشتہار / تحریری بذریعہ اخبار جاری کرنے سے باز و ممنوع رہیں۔ نیز اگر کسی صورت میں

اصل مدعا علیہم نے بھرتی کی ہو۔ یا بھرتی کیلئے اشتہار جاری کردیا ہو۔ اور سکول کی بلڈنگ پر قبضہ کر لیا ہو تو

تو قبضہ ختم کرکے بھرتی کلاس فور ملازمین منسوخ کردیں۔ اور اشتہار بھی منسوخ کردیں۔ من مدعی

و تریشی مدعا علیہم برخلاف اصل مدعا علیہم معہ خرچہ مقدمہ و دیگر دادرسی جو قرین انصاف ہو۔

جناب عالی ۔ دعویٰ مدعیان ذیل گزارش ہے ۔

(1) یہ کہ من مدعی و تربیتی مدعا علیہم کے فورث یارقدہ و نگران کمیٹی نے بحوالہ انتقال نمبر 4949 تبدیل ملکیت مندرجہ 9 8/52 رقبہ تعدادی ۔ 2 کنال بلامعاوضہ بنام محکمہ تعلیم تصدیق کر لیا تھا ۔ اور مدعا علیہم نے اس سے وعدہ کیا تھا کہ مذکورہ بالا اراضی پر سکول تعمیر ہوگا ۔ اور سکول میں کلاس فور ملازمین کی بھرتی میں آپ کو استحقاق دینگے ۔ مذکورہ اراضی کے عوض من مدعی و تربیتی مدعا علیہم کی اراضی کو تا سال 315 طرہ 1211 پر بھی محکمہ تعلیم (مدعا علیہم اصل) نے بلا معاوضہ اراضی اور بغیر اجازت کے بلڈنگ گورنمنٹ ہائی سکول میلہ شہاب خیل تعمیر کر دیا ہے ۔ اب سکول بالا میں کلاس فور ملازمین بھرتی کئے جا رہے ہیں مگر اصل مدعا علیہم اپنے کئے ہوئے وعدہ سے منحرف ہیں ۔ اور ہمیں بھرتی کلاس فور ملازمین میں استحقاق دینے میں لیت و لعل کر رہے ہیں ۔ حالانکہ بلامعاوضہ اراضی دیتے وقت مدعا علیہم نے کلاس فور ملازمین کی بھرتی میں حق دینے کا وعدہ کیا تھا ۔ اور اسی وعدہ اور شرط کی بنا پر ہمارے فورث یارقدہ نے محکمہ تعلیم کو اراضی بلامعاوضہ دی تھی ۔ کلاس فور ملازمین کے بھرتی میں ہمیں استحقاق دلایا جاوے ۔

(2) یہ کہ اب اصل مدعا علیہم سینہ زوری اور زبردستی طور پر جدید تعمیر شدہ بلڈنگ گورنمنٹ ہائی سکول میلہ شہاب خیل نیل رہنے والی جائیداد کو اپنے تحویل میں لینے اور کسی سے کلاس فور ملازمین بھرتی کرنے اور بھرتی میں مشتہر اخبار کرنے کے درپے ہیں ۔ جسکا انہیں کوئی حق حاصل نہیں ہے اور اصل مدعا علیہم کے ان افعال سے من مدعی و تربیتی مدعا علیہم کو ناقابل تلافی نقصان کا احتمال ہے

(3) یہ کہ اگر کسی صورت میں اصل مدعا علیہم نے سکول بالا پر قبضہ کر لیا ہو ۔ اور بھرتی کلاس فور ملازمین کی یا کوئی اشتہار برائے بھرتی کلاس فور ملازمین جاری کیا ہو ۔ تو اصل مدعا علیہم کو تائیدی حکم فرمایا جاوے کہ وہ سکول بالا پر قبضہ ختم کر کے بھرتی کلاس فور ملازمین اور اشتہار برائے بھرتی منسوخ کر دیں ۔ اور آئندہ کیلئے افعال بالا سے باز ممنوع کئے جاویں ۔

ارشاد ہو ۔

ATTESTED
Examiner to
District & Session Judge
Lakki Marwat

(4) یہ کہ مدعی نے کئی بار مدعا علیہم نمبر 1 تا 4 سے کہا کہ اراضی متدعویہ بالا سے بے دخل ہو جائیں اور مدعی کا حق تسلیم کریں مگر وہ انکاری ہیں

اور اراضی متدعویہ کا قبضہ دینے اور اراضی متدعویہ کی بے دخلی نہ کرنے اور رشتہ داروں سے بے دخلی نہ کرنے کا مطالبہ کیا مگر بیس سال قبول کرنے سے صاف انکاری ہوئے

(5) یہ کہ مدعی کو بنا تے دعوی روز وقوعہ انکار مدعا علیہم سے اندر حدود تحصیل و ضلع لکی مروت حاصل ہوئی ہے۔ سماعت دعوی عدالت عالیہ قابل سماعت عدالت جناب سینئر سول جج لکی مروت ہے۔

(6) یہ کہ مالیت بغرض کورٹ فیس . بغرض اختیار سماعت

	مالیت بغرض کورٹ	بغرض اختیار سماعت	کورٹ فیس
جزو الف	-/200	-/200	صادر ہے
جزو ب	-/200	-/20000	صادر ہے

(7) لہذا دعوی ہے کہ ڈگری مستقرہ بعنوان بالا بحق مدعی بر خلاف مدعا علیہم نمبر 1 تا 4 بر خلاف مدعا علیہم نمبر 5 تا 6 مع خرچہ مقدمہ دیگر داد رسی جو شریک انصاف ہو۔ صادر فرمائی جائے

مورخہ 11/6/2007

(مسعود اللہ خان ولد یار محمد قوم ... سکنہ ... تحصیل و ضلع لکی مروت
مسعود اللہ خان
(مدعی)

تصدیق عبارت ... مورخہ 11/6/2007

بالا مندرجات بیان کیا . ہر جملہ عبارت عرضی دعوی ہذا درست ہے

(مسعود اللہ خان مدعی)
مسعود اللہ خان

300
11/6/2007

ATTESTED
Examiner
District & Sessions Judge
Lakki Marwat

B 10

10-10-07

OFFICE OF EXECUTIVE DISTRICT OFFICER SCHOOLS & LITERACY LAKKI MARWAT

OFFICE ORDER

As approved by the competent authority, appointment of the below named fixed class –IV is hereby ordered @ of Rs 4000/- per month, in the school shown against his name in the interest of public service with immediate effect with the following terms and conditions.

S.No	Name & father name and address	Date of birth	Design:	Place of posting	Remarks
1	Riaz Muhammad S/O Mr.Wali Muhammad. SSC(04-13-15)	24 / 12 /1974	Lab: Attdt;	GHS Mela Shabab Kl	Against a newly cre -ted Pos

TERMS & CONDITIONS

1. The appointment has been made purely on contract basis and can be terminated any time without any notice.
2. Their monthly pay is Rs 4000/- fixed and will be rendered as admissible under the rules.
3. Their services will be governed by the rules and regulations applicable from time to time.
4. They is directed to produce health and age certificate from the medical superintendent DHQ Lakki Marwat
5. Charge report should be submitted to all concerned.

(Attaullah Khan Mina Khel)
Executive District Officer
Schools & Literacy Lakki Marwat

Endst: No. 16114-18 /1-6/Estab: Dated Lakki the 10.10.2007

Copy for information to the:-

1. Distt Co ordination Officer Lakki Marwat
2. District Accounts Officer Lakki Marwat
3. District Officer (M) local office
4. Medical Superintendent DHQ Lakki Marwat
5. Headmaster schools concerned
6. Candidates Concerned

Takkover charge on 10/10/07 (AN)

Executive District Officer
Schools & Literacy Lakki Marwat

EAPONY\appointment.doc

C 11

Executive District Office Schools & Literacy
Department Lakki Marwat

Ref: _____ Date _____

OFFICE ORDER:-

Consequent upon non implementation of office orders bearing Endstt:Nos 16114-18 dated 10/10/07 and 16165-70 dated 10/10/2007,due to lack of legal proc-edure as Executive District Officer(S&L)Lakki Marwat, "LOOK AFTER" the undersigned has been pleased to accord the "EX-POST FACTO SANCTION" in favour of the following appointees in the best interest of public service with retrospective effect i.e 10/10/2007.

S.No.	Name/Father's Name	Design:	Place of Posting	Remarks
1.	Mr.Riaz Muhammad S/O Mr.Wali Muhammad R/O Moh:Mina Khel,Lakki-Marwat.	Leb Attdt: (Fixed:)	GHS Mela Shahab Khel	-
2.	Mr.Dilawar Khan S/O Abdullah Khan R/O village Mela Shahab Khel,Lakki Marwat.	Chowkidar (Fixed)	GHS Mela Shahab Khel	-

NOTE:-

Necessary entry to this effect should be made in the Service Book and other record of the official concerned.

(MIR ALAM KHAN)
Executive District Officer
(Schools/Lit:)Lakki Marwat

Endst:No. 1796-Pol/ Dated Lakki the 08/05/2008.

Copy to the :-

(1) Director Schools & Literacy,NWFP / Peshawar.
(2) District Coordination Officer,Lakki Marwat .
(3) District Accounts Officer,Lakki Marwat.
(4) Headmaster,GHS Mela Shahab Khel(Lakki Marwat.
(5)-(6) official concerned.

Mir Aslam J.C
[illegible]

Executive District Officer
(Schools/Lit:)Lakki Marwat
6/5/08

BETTER COPY

EXECUTIVE DISTRICT OFFICE SCHOOLS & LITERACY DEPARTMENT LAKKI MARWAT

Ref:_____ Date _____

OFFICE ORDER

Consequent upon non implementation of office orders bearing Endst PEs, 16114-18 dated 18.10.07 and 16165-70 dated 10.10.2007, due to lack of legally procedure as Executive District Officer (B&L) Lakki Marwat to Look After the undersigned has been pleased to accord the EX POST FACTO BANTION in favour of the following appointees in the best interest of public service with retrospective effect i.e. 10.10.2007.

S No	Name/ Father name	Design	Place of Posting	Remarks
1.	Mr. Riaz Muhammad S/o Mr. Wali Muhammad R/o Moh Mina Khel Lakki Marwat	Lab Attdt Fixed	GHs Mela Shahab Khel	----
2.	Mr. Dilawar Khan S/o Abdullah Khan R/o Village ela Shahab Khel Lakki Marwat	Chowkidar (Fixed)	GHS Mela Shahab Khel	---

Note;
Necessary entry to this effect should be made in the service Book and other record of the office concerned.

Mir Asam Khan
Executive District Officer
(Schools Lit:) Lakki Marwat

Endst No. 1796-1801/- Date Lakki the 08.05.2008.
Copy to the:-

1. Director Schools & Literacy NWFP/ Peshawar.
2. District Coordination Officer, lakki Marwat.
3. District Accounts Officer, Lakki Marwat.
4. Headmaster, GHS Mela Shahab Khel (Lakki Marwat)
5. Official Concerned.

Sd/-
Executive District Officer
(Schools Lit:) Lakki Marwat

D 12 8-5-08

بعدالت جناب سینئر سول جج صاحب لکی مروت

ترمیمی عرضی دعویٰ

(پیشی 6/10 2008)

(1) اسعد اللہ خان ولد یار محمد قوم پٹھان ساکنہ ملہ شہباز خیل تحصیل و ضلع لکی مروت
(2) زرشت النساء (3) زیب النساء دختران یار محمد ساکنان ملہ شہباز خیل تحصیل و ضلع لکی مروت ..... مدعی

بنام

1. ضلعی حکومت لکی مروت بذریعہ ڈی سی او لکی مروت 2. ایگزیکٹو ڈسٹرکٹ آفیسر سکولز اینڈ لٹریسی لکی مروت
3. ڈسٹرکٹ ایجوکیشن آفیسر سکولز اینڈ لٹریسی لکی مروت 4. ہیڈ ماسٹر گورنمنٹ ہائی سکول ملہ شہباز خیل لکی مروت
5. دلاور خان ولد عبداللطیف چوکیدار (فعلی) گورنمنٹ ہائی سکول ملہ شہباز خیل لکی مروت (6) ریاض محمد ولد [illegible] اسسٹنٹ (فعلی) گورنمنٹ ہائی سکول ملہ شہباز خیل لکی مروت اور (7) اسسٹنٹ گوارڈینیشن [illegible] ..... [اصل مدعا علیہم]
(8) مسماۃ ممتاز بیگم بیوہ (9) تاج علی خان (10) حمید اللہ خان (11) حبیب اللہ خان (12) فتح اللہ خان پسران (13) زیب النساء (14) [illegible] (15) [illegible] (16) فیض النساء (17) رفعت النساء (18) نسیم جان اور (19) مسماۃ خورشیدہ دختران یار محمد قوم پٹھان ساکنان ملہ شہباز خیل تحصیل و ضلع لکی مروت ..... [ترتیبی مدعا علیہم]

جناب عالی! حسب ذیل عرض ہے:-

دعویٰ علیحدہ ڈگری (الف): استقرار یہ کہ عدالت قرار پائے بدیں طور کہ حکمنامہ تعیناتی No.16114-18/ESH مورخہ 16165-70/ESH مورخہ 2007/10/15 بحیثیت اسسٹنٹ اور چوکیدار بالترتیب گورنمنٹ ہائی سکول ملہ شہباز خیل لکی مروت بلا قانون، بلا اختیارات اور برخلاف حکومتی پالیسی و سفارشی ہے اور منسوخ۔ مدعی اور ترتیبی مدعا علیہم 8 تا 19 پر غیر مؤثر اور کالعدم ہے۔ مزید یہ قرار پائے کہ بطور [illegible] مدعی اور ترتیبی مدعا علیہم مدعا علیہم بالا دو آسامیوں میں سے کسی ایک پر تعیناتی کا حقدار ہے اور اسی لئے پوسٹ مدعی و ترتیبی مدعا علیہم

اراضی بمندرجہ کھاتہ 276 خسرہ 4210 و کھاتہ 294 خسرہ 4209 و کھاتہ 312 خسرہ 4205، 4206 اور کھاتہ 315 خسرہ 4211 میں سے رقبہ 2 کنال بلا معاوضہ بنام محکمہ تعلیم برائے تعمیر عمارت گورنمنٹ ہائی سکول ملہ شہباز خیل لکی مروت مورخہ 9/8/72 بروئے انتقال نمبر 8929 تصدیق کرائی تھی۔ جبکہ مزید 10 مرلے رقبہ اصل مدعا علیہم نمبر 1 تا 4 نے تعمیر عمارت گورنمنٹ ہائی سکول ملہ شہباز خیل کھاتہ 315 خسرہ 4211 حصہ مدعی و ترتیبی مدعا علیہم پر بغیر ملکیت اراضی قبضہ جمالیا ہے۔ اور عمارت ہائی سکول ملہ شہباز خیل تعمیر کرائی ہے۔ نیز مدعا علیہم 5 و 6 کو بغیر قانونی ادائیگی شدہ تنخواہ واپس داخل خزانہ کے احکامات جاری ہوں۔

(ب): بصورت دیگر مدعا علیہم اتمام موجودہ قیمت بازاری اراضی قبضہ شدہ برائے تعمیر عمارت گورنمنٹ ہائی سکول ملہ شہباز خیل ملکیہ مدعی و ترتیبی مدعا علیہم 8 تا 19 ادا کرے یا عمارت گورنمنٹ ہائی سکول ملہ شہباز خیل ہٹا کر اپنی خرچہ پر اراضی ملکیہ مدعی و ترتیبی مدعا علیہم سے خالی کرے۔

{بقایا صفحہ 3 پر}

8.6.08

[right margin, vertical:] ترمیمی عرضی دعویٰ [illegible] 12-7-12

Examined
District & Session Judge
Lakki Marwat

۱. یہ کہ مدعی و ترتیبی مدعا علیہم اور اصل مدعا علیہ ۶، ۵ سکنائے موضع سیلہ شیاب خیل نیوں ہیں جبکہ دیگر اصل مدعا علیہم حکومتی اہلکار اور کارندے ہیں۔

۲. یہ کہ مورث مدعی و ترتیبی مدعا علیہ نے بروئے انتقال نمبر 8929 مورخہ 9/8/1972 رقبہ اراضی ۲-۲ مرلہ کا شنزرت سال عملدرآمد 2003-04 موضع سیلہ شیاب خیل برائے توسیع و ترقی و تعمیر عمارت گورنمنٹ گرلز سکول سیلہ شیاب خیل بلا معاوضہ بدیں شرط و منشاء مطابق مروجہ پالیسی بنام محکمہ تعلیم ملکیت منتقل کر دی تھی۔ کہ مذکورہ سکول میں درجہ چہارم کی آسامیوں میں مناسب حصہ پر مورث مدعی و ترتیبی مدعا علیہ کے نامزد کردہ اشخاص کو تعینات کیا جائیگا۔ نقول فرد جمعبندی اور انتقال مذکورہ بالا اصل عرضی دعویٰ کے ساتھ مسل پر موجود ہیں۔

۳. یہ کہ مورخہ 09/10/2008 بروئے چٹھی نمبر BOV/FD/2-31/06-07 محکمہ ایجوکیشن صوبہ سرحد ایک آسامی چوکیدار اور ایک آسامی لیبارٹری اسسٹنٹ گورنمنٹ گرلز سکول سیلہ شیاب خیل کیلئے منظور کی گئی۔ اور دوسرے ہی دن مدعا علیہ ۲ جو کہ وقتی طور صرف نظام کی دیکھ بھال کیلئے فرائض سونپے گئے تھے نے مدعا علیہ ۶، ۵ کو بذریعہ حکمنامہ نمبر 16114-18/ESH اور No.16165-70/ESH مورخہ 10/10/07 بالترتیب چوکیدار (عارضی) اور لیبارٹری اسسٹنٹ (عارضی) بھرتی کئے۔ نقول ہر دو تعیناتی کے لف A B C ہیں۔ نیز نقل چٹھی نمبر SO(S)4-16/07 Umar khan مورخہ 5/10/07 لف "D" ہے۔

۴. یہ کہ مدعا علیہ ۱ نے حکم نمبری 6714 مورخہ 17/10/07 کے ذریعہ مندرجہ بالا تعیناتی مدعا علیہ ۶، ۵ منسوخ کر دی۔ اور مدعا علیہ ۲ کو یاد دلایا۔ کہ ان کو صرف دیکھ بھال کیلئے مقرر کیا گیا ہے۔ جبکہ مدعا علیہ ۲ سرکشی کا مظاہرہ کرتے ہوئے بذریعہ چٹھی نمبری 11550-52 مورخہ 18/10/2007 اپنے ناجائز اور غیر قانونی احکامات تقرری مدعا علیہ ۶، ۵ کا دفاع کیا۔ نقول ہر دو حکمنامے اور چٹھی 6622 مورخہ 6/10/2007 از مدعا علیہ ۱ بنام مدعا علیہ ۲ لف E, F, G ہیں۔

۵. یہ کہ آخر کار مدعا علیہ ۲ نے ایک سازش اور بلا اختیار حکمنامہ منظوری مؤخر بہ ماضی (Ex Post Facto Sanction) بذریعہ چٹھی نمبر 1796-1804 مورخہ 8/5/2008 جاری کیا۔ اور مدعا علیہ ۳ نے ناجائز اور بے ضابطہ تنخواہ روک شدہ حق مدعا علیہ ۶، ۵ کی ادائیگی کی منظوری بروئے چٹھی 923 مورخہ 24/3/2008 دے چکے تھے۔ جس کو ڈسٹرکٹ اکاؤنٹ آفیسر لکی مروت روک چکے تھے۔ نقول لف H-I-J ہیں۔

یہ کہ ضلعی ناظم لکی مروت نے بذریعہ چٹھی نمبری DN/LM/88 مورخہ 19/5/08 منجانب مدعا علیہ ۱ حکمنامہ منظوری مؤخر بہ ماضی (Ex-Post Facto Sanction) منجانب مدعا علیہ ۲ بلا جواز و بلا اختیار اور بلا منظوری قرار دیا۔ اور فوری طور مدعا علیہ ۶، ۵ کو ادا شدہ تنخواہ واپس کرنے اور داخل خزانہ کے احکامات جاری کئے۔ کیونکہ مقدمہ عدالت ہذا زیر تجویز ہے۔ نقل چٹھی DN/LM/88 مورخہ 19/5/2008 لف "K" ہے۔

بقیہ صفحہ 3 پر

۷. یہ کہ اس قبل ایک دعویٰ مورخہ 6/07/11 کو سینئر سول جج صاحب درابن لکی ۔ جس میں مدعا علیہا کے اشخاص کا درخواست التوا دی گئی تھی۔ جبکہ اس وقت نہ تو اسامیاں مشتہر ہوئی تھیں اور نہ ہی مدعا علیہ نمبر ۶ تا ۷ بھرتی کئے گئے تھے۔ نہ وہ مقدمہ میں فریق بنائے گئے۔ اور دوران مقدمہ مدعا علیہم نمبر ۱ تا ۴ نے غیر قانونی احکامات جاری کرکے مدعا علیہ ... کو جواز اور نفاذ فراہم کیا۔ اور حقوق مدعی و دیگر مدعا علیہم ۸ تا ۱۹ کو نقصان پہنچایا۔

۸. یہ کہ دعویٰ متذکرہ اسامیاں جو کہ دوبارہ مشتہر ہوئیں از مورخہ 9/10/08 پہلی مرتبہ مدعی کو حق دعویٰ اور دفعتاً فوقتاً مدعا علیہم ۱ تا ۴ و ۷ کے ناجائز احکامات و غیر قانونی فعل سے پیدا ہوا۔ لہٰذا بہ منظوری و اجازت صاحب مدعی عرضی دعویٰ دائر کر رہا ہے۔ جبکہ دھوکہ دہی کے بنیاد پر کارروائی برخلاف مدعا علیہم ۲، ۵، ۶ اور ۷ کیلئے حق محفوظ رکھتا ہیں۔

۹. یہ کہ مالیت نالش بغرض کورٹ فیس و اسکو مبلغ 200/- روپے اور بغرض سماعت مبلغ 200/- مقرر کرتے ہیں۔ جبکہ مدعی بمدد عدالت کے حکم سے ... کورٹ فیس درخواست ادا کرنے کا یقین دلاتے ہیں۔ فی الوقت مبلغ 2000/- بطور کورٹ فیس مقرر کرکے اور ... کورٹ فیس ادا ... ہے۔

لہٰذا استدعا ہے۔ کہ ڈگری مضمون سرورق حسب عرضی دعویٰ بحق مدعی و دیگر مدعا علیہم برخلاف اصل مدعا علیہم مع خرچہ مقدمہ و دیگر دادرسی جو قرین انصاف ہو۔ صادر فرمائی جائے۔

فقط 6/6 ماہ ترمیمی عرضی دعویٰ 2008

اسعد اللہ خان

عرضی اصل دعویٰ 11/6/2007

اسعد اللہ خان ۔ ۔ ۔ مدعی بذریعہ وکیل ...

عبدالعزیز ایڈووکیٹ ... 8/6/08

تصدیق ترمیمی عرضی دعویٰ

حلفاً تصدیق کرتا ہوں کہ مندرجہ ترمیمی عرضی دعویٰ میرے علم و یقین اور اطلاع کے مطابق درست ہیں۔

اسعد اللہ خان

اسعد اللہ خان

مدعی

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

E 15 6-10-08

بعدالت جناب سول جج صاحب نمبر 6 لکی مروت

اسعد اللہ بنام سیکرٹری ایجوکیشن وغیرہ

دعوی استقراریہ/حکم امتناعی

جناب عالی :- جواب دعوی منجانب مدعاعلیہ نمبر 6 ذیل ہے ۔

عذرات تمہیدی :- (1) مدعی کو کوئی بنائے دعوی حاصل نہ ہے ۔

(ii) دعوی مدعی اندر میعاد نہ ہے ۔

(iii) دعوی مدعی موجودہ شکل میں قابل سماعت نہ ہے ۔

(iv) دعوی مدعی زیر آرڈر 7 رول 11 قابل اخراج ہے ۔

(v) مدعی دعوی ھذا دائر کرنے سے [illegible] ہے ۔

(vi) ضروری اشخاص کو فریق مقدمہ نہیں بنایا گیا ہے ۔

(vii) مدعی نے کورٹ میں صاف بیان نہیں کی ہے ۔ بدیں وجہ دعوی ھذا قابل اخراج ہے ۔

(viii) مدعی کا مقصد صرف مدعاعلیہ کو تنگ کرنا ہے ۔ اسلئے مدعاعلیہ زیر دفعہ 35-A ض د سپیشل ہرجانہ ازاں مدعی وصول کرنے کا حقدار ہے ۔

عذرات واقعاتی :-

(1) فقرہ نمبر 1 کا تعلق مدعاعلیہ سے نہ ہے ۔

(2) غلط ہے ۔ گورنمنٹ سکول کی تعمیر کیلئے اراضی سال 1976ء میں اہلیان دیہہ شہاب خیل نے مشترکہ طور پر بلا معاوضہ منتقل کی تھی باقی فقرہ مبنی بر دروغ ہے ۔ متذکرہ سکول میں درجہ چہارم کی آسامیوں پر بھرتی کرنے کی بابت مورث مدعی کے ساتھ کوئی معاہدہ یا اقرار نہیں ہوا اور نہ ہی اس بابت کوئی ثبوت موجود ہے ۔ بلکہ حکومت صوبہ سرحد کی اس بابت پالیسی بالکل واضح ہے اور عدالت عظمی نے بھی اپنے فیصلے 1993ء میں سرکاری ملازمت کے عوض سرکاری تعلیمی اداروں اور دفاتر کیلئے اراضی کی حصول کی ممانعت کی ہے ۔ ثبوت کیلئے عدالت عظمی 1993 امر ضمیمہ ضوابط 6 (ای اینڈ اے ڈی 1-10/2007ء پشاور مورخہ 2 جنوری 2008ء حکومت صوبہ سرحد محکمہ تعلیم (ریگولیشن ونگ) ، ضمیمہ (صفحہ نمبر ای اینڈ اے) 1-1/2004 مورخہ 4 دسمبر 2003ء محکمہ تعلیم و انتظامیہ ریگولیشن ونگ، نقل روزنامہ ایکسپریس 6 جنوری 2008ء منسلک ہیں ۔

ATTESTED

Examiner
District & Session Judge
Lakki Marwat

(5) فقرہ ھذا محفوظ ہے۔ مدعا علیہ کے بحیثیت کمرہ کے اختیارات اپیل Competent Authority نے جاری کیے ہیں۔ صحیح دیگر متعلقہ افسران نے بھی دستخط فرما دیا ہے۔

(6) فقرہ ھذا محفوظ ہے۔ مدعی کا مقصد صرف مدعا علیہ کو تنگ و ہراساں کرنا ہے۔ جس کیلئے مدعا علیہ سیشل ہرجانہ ازاں مدعی وصول کرنے کا حقدار ہے۔ باقی فقرہ بھی محفوظ تسلیم ہے۔

(7) فقرہ ھذا کا تعلق مدعا علیہ سے نہ ہے۔ البتہ مدعا علیہ کے بحیثیت ہونے کے احکامات دستخط ہوئے Competent Authority نے جاری کیے ہیں۔

(8) محفوظ ہے۔ مدعی کو کوئی بنائے دعوی حاصل نہیں ہے۔

(9) محفوظ ہے۔ مدعی کو مطالبہ کرنے کا کوئی حق حاصل نہ ہے۔

(10) قانونی و تامیلی ہے۔ البتہ مدعی نے کورٹ میں صحیح بیان نہ کی ہے۔

لہٰذا جواب دعوی ہے کہ دعوی مدعی بمعہ خرچہ مقدمہ خارج فرمایا جائے۔

6 10/08

دیانت حسین ولد ولی محمد لیبارٹری اسسٹنٹ
مدعا علیہ نمبر 6

بذریعہ وکیل

ATTESTED
Examiner
District & Sessions Judge
Lakki Marwat

تصدیق کیا جاتا ہے کہ مسمی دیانت حسین ولد ولی محمد نے 6 10/08 کو مدعی کے جواب دعوی پر اپنے دستخط ثبت فرمائے ہیں۔

دیانت حسین ولد ولی محمد (مدعا علیہ)

F 17 30-11-08

[illegible] بنام [illegible] 2 [illegible]

[illegible] ضلع [illegible]

دعوی [illegible]

[illegible] دعوی مدعی

حاضر [illegible] مدعا علیہ [illegible] حسب ذیل [illegible]

1. [illegible] دعوی مدعی [illegible] شہادت [illegible]

شہادت [illegible] حاصل [illegible]

[illegible]

2. [illegible] مدعی [illegible] دعوی [illegible]

[illegible]

[illegible]

[illegible] دعوی مدعی [illegible] حاصل [illegible]

[illegible]

30-11-08

ATTESTED
Examiner to
District & Session Judge
Lakki Marwat

[illegible] مدعا علیہ [illegible]

OS.....30.
28.01.2009.

Civil Judge/Judicial Magistrate-VII
Lakki Marwat

2426
2009

Parties present. Arguments already heard.

My this order aims at the disposal of instant application submitted by the defendants for rejection of plaint under Order-7 Rule-11 CPC alleging therein that plaint be rejected under the said provision as the plaintiff has got no cause of action. Replication was submitted.

Counsel for the defendant argued that the instant plaint be rejected as the instant suit is obviously hit by the provision under Order-7 Rule-11 CPC on the ground that plaintiff has got no cause of action and barred by law.

Counsel for the plaintiff vehmently resisted the application that according to the version of the plaint, a cause of action definitely acrued to the plaintiff and the suit is also not barred by law.

After hearing arguments of both the learned counsels for the parties and perusal of record reveals that the plaintiff has filed the instant suit one for declaration to the effect that being the predecessor in interest of the plaintiff/grantees of the suit land free of cost for the building of Govt High School, Mela Shahab Khel, Tehsil & District Lakki Marwat, the plaintiff is entitled to the post of Class-IV service/job in the said school. It is evident from the prayers of the plaintiff that plaintiff is claiming the service

P.T.O

ATTESTED

Examiner to
District & Session Judge,
Lakki Marwat

against the land grant and not on the basis of merits. Thus apparently he has got no cause of action and secondly in the light of the decision of Hon'ble Supreme Court, SCMR, 1993, Page-1294 citation-C.

"As regards the policy of making appointment against land grants we find that this amount to infact sale of public office for property. Not only it is against the constitutional law applicable to public office but is not conducting to public interest what could be done within the frame work of the law was to creat ammargin of preference for those who make such grants other conditions of eligibility and suitability and fitness being equal. we, therefore, over rule this practice prospectively".

In view of the reliance placed upon the stated dictum of August Supreme Court. I hold that the prayers of the plaint as per heading of the plaint, plaintiff is not entitled for the appointment on the said post and he also has got no cause of action. Hence, the instant application under Order-7, Rule-11 CPC is hereby accepted and the suit is stands rejected. No order as to cost.

File be consigned to record room after its completion.

Announcec.
28.01.2009.

Muhammad Abbas
Civil Judge-VII,
Lakki Marwat.

Decree sheet Attested

C.D. No. 3391
Application received on 7-8-23
Copying Fee deposited on
Judgment received for copying 8-8-23
No. of words 280
Copying Fee
Search Fee
Urgent Fee
Name of Copyist C.D
Copy Completed on 8-8-23
Copy Delivered on 8-8-23
Name of Examiner

ATTESTED

Examiner
District & Sessions Court
Lakki Marwat

H 20 10-2-09

IN THE COURT OF DISTRICT JUDGE LAKKI MARWAT

Civil Appeal No.____/13 for the year 2009

ASADULLAH KHAN s/o Yar Muhammad,
r/o Mela Shab Khel, Lakki Marwat ... Appellant/A

Versus

1. The Distt:Govt through;
DCO Lakki Marwat.
Ex 2. Executive Distt:Officer,
(S&L) Lakki Marwat.
Ex 3. The Distt:Officer(S&L),
Lakki Marwat.
4. Headmaster, GHSchool,
Mela Shab Khel, Lakki Marwat.
5. Dilawar Khan s/o Abdullah Khan,
Chowkidar(on contract)GHSchool,
Mela Shab Khel, Lakki Marwat.
6. Riyaz Muhammad s/o Wali Muhammad,
Lab:Attd(on contract)GHSchool,
Mela Shab Khel,
Ex 7. Asstt:Co-ordination Officer,
O/O DCO Lakki Marwat. ... Real-Respodt/defd
8. Mst:Mumtaz Begum-- widow,
dc 9. Taj Ali Khan,
10. Hamidullah Khan,
11. Obidullah Khan,
12. Fatehullah Khan-- Sons,
13. Zaibul Nisa,
14. Zaitum Nisa,
15. Khairun Nisa,
16. Farmun Nisa,
17. Rakhtun Nisa,
18. Naeem Jana,
19. Mst:Mursheeda -- Daughters,
of Yar Muhammad resd/of
Mela Shab Khel,Lakki Marwat .. Pro-forma -do- -d

Superintendent
District & Sessions Judge
Lakki Marwat
10/2/2009

ATTESTED

Examiner
District & Session Judge
Lakki Marwat

CIVIL APPEAL UNDER O.41 R 1 of CPS-1908 FROM THE LEARNED CIVIL JUDGE LAKKI:VII DATED 28.01.2009 (OS-30) passed in suit No.62/1 of 2007 WHEREBY REJECTED SUIT OF THE PLAINTIFF U/O 7 R 11 FOR HAVING NO CAUSE OF ACTION.

Respectfully Sheweth;

The appellant above named, being aggrieved from the impugned order (having the force of a decree u/s 2(2) of CPC-1908 dated 28.01.2009 (OS-30) passed in

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title suit No.141/1 of 2007 by the learned civil Judge No.VII Lakki Marwat and beg to prefer this appeal from the same and sets-forth the following grounds of objection, amongst others, thereto, as under;

2. Copy of the plaint, the impugned and copies of application and replication under O.7 r 11 are annxed as A, B, C and D. Annex: ABCD.

(3. The impugned order is illegal may it be passed in good-faith, prima facie, comes within the mischief of S.219 PPC for which the appellant hereby reserved his right to move the proper forum as such.)

G R O U N D S :-

A. The impugned order/decree is patently against the law and facts of the case and therefore, the judicial approach of the learned CJ-7 does not deserve approval.

B. There is no concept under O.7 r 11 to reject the 'suit'.

C. The learned trial judge has not been gone through the record and file of the case and mis-understood the 'Relief' claimed by the plaintiff in part(a) declaration with consequential and in part(b)an alternate.

D. The learned trial judge has wrongly followed and relied the judgemen of the August Supreme Court in the last sentence of citation 'c';"we, therefore, overrule this practice prospectively" as well as of the sentence; " whithin the framework of the law to create a margin of PREFERENCE for those who make such grants".

E. The learned trial judge No.7 has without exercise of judicious mind ignored the Relief at part (a) for declaration of the appointment of Respondents No.5 &6 illegal as well as the relief in part(b) in alternate for payment of cost of land donated & rejected the suit illegally,discussing only about the 'consequential relief' in part(a) in its impugned order.

F. The learned trial judge No.7 has exercised his judicial power in aid of corruption, transgress of power and misuse of official position by respondent No.2 and 7 openly and also the trial judge No.7 ignored the provision of cpc-1908.

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ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

G. The impugned order is not sustainable in law needs to be set aside as well as to be condemned for the sake of justice.

Yours Appellant

ASADULLAH KHAN
through Counsel

(Abdul Aziz) Dalo K
Advocate, HC
Lakki Marwat.

Judl:complex Lakki,
Dated:10.07.2009.

Verification:-

This is to verify on oath that the contenys of this appeal are correct and true according to the belief of the applicant and his knowledge, & information. Its grounds have been prepared by my counsel and he would appear on appellant behalf.

Appellant.

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

I 23 4-2-10

IN THE COURT OF MR. MEHMOOD-UL-HASSAN KHATTAK
ADDITIONAL DISTRICT JUDGE-I, LAKKI MARWAT.

Civil Appeal No.....80/13 of the year 2009
Date of the Institution.....10.02.2009
Date of the Decision.....04.02.2010

Asadullah Khan son of yar Muhammad resident of Village Mela Shahab Khel.....Appellant

.....Versus.....

The District Government through D.C.O, Lakki Marwat and others.....Respondents

JUDGMENT

This appeal has been directed against the decree/ order dated 28.01.2009. passed by the then learned Civil Judge-7, Lakki Marwat, Mr.Abbas Khan, whereby suit of the plaintiff/ appellant was rejected under Order-7 Rule-11 C.P.C.

Facts in brief of the case are, that plaintiff (appellant herein) brought a suit against the defendants/ respondents for declaration to the effect that his predecessor-in-interest had transferred landed property in favour of Education Department for construction of a school free of cost vide mutation No. 8929 attested on 09.08.1972, whereupon now Government High School, Mela Shahab Khel has been constructed and that it was agreed between the parties and that he or his nominee would be employed as against Class-IV post etc., but instead thereof and in violation of the said agreement, the appointments of defendant No. 5 and 6 has been made by the defendants as chowkidar and laboratory attendant respectively, which is against the policy and is thus effective upon his rights, and therefore, prayed to declare such appointments as unlawful and of no legal effect, by giving proper relief in his favour.

Plaintiff also in alternative prayed for award of compensation of the land, donated by him for the said school.

Suit of the plaintiff was controverted by the defendants and submitted an application for rejection of the plaint under Order 7 Rule 11 C.P.C for want of cause of action on the grounds that the suit of the plaintiff is not maintainable, as donation of land for construction of school in lieu of employment is illegal, which agreement is not enforceable.

That application of the defendants was accepted and the plaint was ultimately rejected by the trial court vide its impugned order. Hence the appeal.

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

Addl: Distt: Judge-I

It was argued by the learned counsel for the appellant that impugned order / decree is patently against the law and facts and has been passed without applying judicial approach and thereby ignored the reliefs sought by the plaintiff / appellant, thus the impugned order is not sustainable and needs to be set aside on acceptance of the appeal.

On the other hand to the contrary, the learned counsel for the respondents fully defended the impugned order / decree about rejection of the plaint and argued that the plaintiff had though transferred his landed property in favour of Education Department of construction of school free of cost, but no agreement in written form has been executed between the parties for the provision of Class-IV posts to him or to his nominees, and otherwise too, if there was any agreement between the parties in this regard, even then, such agreement cannot be enforced, being illegal and void, as declared so by the Hon'ble Supreme Court of Pakistan in its verdicts reported in 1993 SCMR, 1287 and 1997 SCMR, 855.

That so the suit of the plaintiff has been very rightly rejected by the trial court through its impugned order, which is well reasoned and requiring no interference.

Having heard on both sides and on going though the available material on record, it revealed that admittedly plaintiff has sought for his employment in the Govt. High School, Mela Shahab Khel, on account of providing their landed property free of cost for the said school and not on the basis of merits and has pleaded that under an agreement, his predecessor transferred the land in favour of Education Department through the above mentioned mutation dated: 09-08-1972 for construction of Govt. High School subject to condition that appointments against Class-IV posts in the said School shall be made according to his will and that instead thereof respondent No. 5 and 6 are appointed on the said posts and therefore, there is a breach of agreement and sought cancellation of such appointments, but firstly no such like agreement in written form has been produced by the plaintiff / appellant to reveal that really it was so agreed between the parties, but however if it is supposed the existence / execution of the alleged agreement, even then it cannot be enforced, for the reasons, that agreement to transfer land in consideration for employment was in the nature of sale of public office and such agreement was illegal and against the public policy, being hit by section 23 of Contract Act 1872 and specific performance of

ATTESTED
Examiner to
District & Session Judge
Lakki Marwat

such agreement whereof, couldn't be granted. as reported in 1993 SCMR, 1287 as well as 1997 SCMR, 855.

So for as the other alternate claim of the plaintiff / appellant with regards to compensation of his land is concerned, it is held that he is estopped under the law to claim for such relief, as his predecessor had transferred his landed property in the year 1972 in favour of Education Department free of cost, with no condition precedent and now after lapse of about 35 years of such transfer, the plaintiff cannot claim any sort of compensation of the land, or for demolition of super structure of the School.

Therefore, having reliance on the above referred dictums of the august Supreme Court, I have reached to a firm conclusion that plaintiff has got no cause of action in respect of the claims, being sought by him and that his plaint has been very rightly rejected by the trial court through its impugned order, so as to nip the evil in the bud.

Resultantly the appeal fails, and hereby stands dismissed.

With no order as to costs.

File be consigned to the record room after its necessary completion and compilation.

Announced.
04-02-2010

(Mehmood-ul-Hassan Khattak)
Addl: District Judge-I,
Lakki Marwat.

CERTIFICATE:

It is certified that this judgment consists of three (03) pages. Each page has been checked, corrected and signed by me wherever it was necessary.

Addl: District Judge-I,
Lakki Marwat.

C.D. No. 5390
Application received on 7-8-23
Copying Fee deposited on 8-8-23
Judgment received for copying 8-8-23
No. of words 700
Copying Fee
Search Fee
Urgent Fee
Name of Copyist
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Copy Delivered on 8-8-23
Name of Examiner

ATTESTED

Examiner to
District & Session Judge,
Lakki Marwat

26-4-10

J 26

PESHAWAR HIGH COURT - BENCH DERA ISMAIL KHAN

IN THE PESHAWAR HIGH COURT,CIRCUIT BENCH, D.I.KHAN

Civil Revision No. 26/ 2010.

Asadullah Khan S/O Yar Muhammad,
R/O Melah Shahab Khel,
Tehsil & District Lakki Marwat.....Petitioner.

VERSUS

1) The Disttrict Govt; through DCO Lakki Marwat.

2) Executive District Officer, (S & L) Lakki Marwat.

3) The District Officer (S&L)Lakki Marwat.

4) Headmaster G.H.S..Melah Shahab Khel.

5) Dilawar Khan S/O Abdullah Khan, Chowkidar on contract, GHS Melah Shahab Khel, Lakki Marwat.

6) Riaz Ahmed S/O Wali Muhammad, Lab Assistant, GHS Melah Shahab Khel.

7) Assistant Co-Oridination Officer C/O, DCO Lakki Marwat.....Real Respondents.

8) Mst. Mumtaz Begum Widow.

9) Taj Ali Khan.

10) Hamidullah Khan.

11) Obaidullah Khan.

12) Fatehullah Khan Sons of

13) Mst. Zaibun Nisa.

14) Mst. Zaitun Nisa.

15) Mst. Khairun Nisa.

16) Mst. Farmun Nisa.

1537
22/4/10

ATTESTED
EXAMINER
Peshawar High Court Bench,
Dera Ismail Khan
15/10/21

27

17) Mst. Rakhtun Nisa.

18) Mst. Naeem Jana.

19) Mst. Khursheeda, Ds/O,
Yar Muhammad, Rs/O Melah Shahab Khel,
Lakki Marwat.....Profarma Respondents.

.....

REVISION PETITION AGAINST THE JUDGMENT/ DECREE/ ORDER DATED 04-02-2010 PASSED BY ADDITIONAL DISTRICT JUDGE-I LAKKI MARWAT IN CIVIL APPEAL NO. 80/13 OF 2009 VIDE WHICH APPEAL FILED BY THE PETITIONER AGAINST THE JUDGMENT/ DECREE/ ORDER DATED 28-01-2009 PASSED BY CIVIL JUDGE-VII LAKKI MARWAT IN SUIT NO.213/1 OF 2007 HAS BEEN DISMISSED.

.....

PAYER:

On acceptance of instant Civil Revision, both the impugned Judgments/Decrees / Orders of the courts below may please be set aside and the case may be remanded back to the trial court for decision afresh after recording of pro and contra evidence of all the contesters to secure the ends of justice with cost throughout.

.....

Respectfully Sheweth:-

Brief facts giving rise to instant revision are as under.

FACTS:-

1) That in the year 1972 the predecessor in interest of the petitioner and proforma respondents donated land measuring 2 kanal with possession to the education department for the construction of High School with the commitment of the official respondents that all class IV vacancies will be given to the donor in lieu of the aforementioned donation but surprisingly the school was constructed in the year 2007 and the

ATTESTED
EXAMINER
Peshawar High Court Bench
Dera Ismail Khan
15/10/12

petitioner was astonished to know that strangers i.e. respondent No.5 & 6 were directly appointed therein against the class-IV vacancies hence committed breach of trust which was challenged through the suit No. 213/1 dated 11-06-2007 and without framing of issues and recording of evidence, the suit was dismissed under Order 7 Rule 11 by Civil Judge-VII Lakki Marwat vide Judgment /Decree/ order dated 28-01-2009. (Copies of Judgment/ Decree / order dated 28-01-2009, plaint, written statement, and application under order 7 rule 11 are attached as annexure-A, B, C & D respectively).

2) That being aggrieved of the Judgment/ Decree / order of the learned Civil Judge petitioner filed an appeal No. 80/13 of dated 10-02-2009 which met the same fate and was dismissed vide Judgment/ Decree / order dated 04-02-2010 passed by learned Additional District Judge-I Lakki Marwat. (Copies of Judgment/ Decree/order dated 04-02-2010 alongwith appeal are attached as Annexure E & F).

3) That being aggrieved of the aforementioned impugned Judgments/ Decrees/ orders, petitioner, approach this honourable court on the following grounds amongst others inter alia:-

ATTESTED

Peshawar High Court Bench
Dera Ismail Khan

GROUNDS:-

1) That both the impugned Judgments/ Decrees/ orders of the courts below are against the law, facts and the out come of haste without application of judicial mind & result of misreading and nonreading of the material available on file hence untenable.

2) That the valuable rights of the petitioner is involved and has suffered irreparable loss but knocked out on technical ground which is against the fundamental principles of natural justice and on this score alone both the impugned judgments/ decrees/ orders deserve to be set at naught.

3) That learned trial court has graciously erred to accept the application of defendants under Order 7 Rule 11, likewise lower appellate court has maintained the same judgments /decrees / orders of Civil Judge although it

was a clear case of interference in exercise of appellate jurisdiction.

4) That though the petitioner did not appear in the competition but that is not the requirement and direct appointments were made without any publication/ test/ interview and if that be considered the criteria than case of the petitioner is on better footing being the donor and better qualified then one of the appointee i.e. respondent No. 5 and the learned courts below were supposed to record pro & contra evidence to reach the just and fair conclusion but the main suit was dismissed in haphazard manner and denial of such alienable right of the petitioner has caused grave miscarriage of justice, hence needs interference of this august court.

5) That position of the petitioner as donor has already been admitted by both the courts below has given birth to cause of action and its denial is colourful exercise of their respective jurisdiction and is nullity in the eyes of law.

6) That the Question involved in the case is a question of fact, which was to be determined after recording pro and contra evidence of both the parties but both the court below exceeded the jurisdiction vested in them and caused grave miscarriage of justice hence needs interference by this august court.

7) That the impugned judgment /decrees / orders of the learned trial court regarding acceptance of application under order 7 rule 11 and dismissal of appeal by the lower appellate court is based on conjectures and surmises and in no way tenable.

8) That the impugned judgments /decrees / orders of the learned courts below suffers from material irregularities and illegality in exercise of jurisdiction.

9) That the dictum of apex court has been miss-interpreted by both the courts below which caused grave miscarriage of justice.

ATTESTED

EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

15/10/21

10) That any other ground with the permission of this honourable court will taken during the course of argument on the petition.

It is, therefore, humbly prayed that on acceptance of this Revision Petition, both the impugned Judgments/ Decrees / orders may please be set aside and the case be remanded back to the trial court for decision afresh after recording of pro and contra evidence of all the contesters to secure the ends of justice with cost throughout.

Any other relief not specifically prayed for and deemed appropriate by this honourable court in circumstances of the case may also be granted to the petitioner.

Dated: 26/04/2010

Petitioner

Through

Abdus Samad Khan Marwat
Advocate Peshawar.
0301-8939962
0333-911 0762

26/4/10

Certificate:

Certified that no such like revision petition has earlier been filed by the petitioner as per instruction of my client before this honourable court.

Advocate.

ATTESTED
EXAMINER
Peshawar High Court Bench.

15/6/21

K 31 12-9-11

PESHAWAR HIGH COURT - BENCH DERA ISMAIL KHAN

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

C.R. No. 210 of 2010.
With C.M. 157/10.

JUDGMENT

Date of hearing 12-9-2011.

~~Appellant~~-Petitioner Asadullah Khan by Mr. Abdul Samad Khan Marwat Advocate.

Respondent D.G.H. Govt. & others by Mr. Khan Wali Khan Mahsood AAG. M/s Noor Gul Khan & M. Farooq Khan Advocate for respondents 5 to 19.

MIFTAHUDDIN KHAN, J.- The petitioner Asadullah Khan has filed the present revision petition against the judgment/order dated 04.2.2010 of learned Additional District Judge-I, Lakki Marwat whereby the appeal of the petitioner against the judgment and decree dated 28.01.2009 of learned Civil Judge-VII, Lakki Marwat was dismissed.

2. The facts giving rise to the instant revision petition, in brief, are that the petitioner filed a suit against the respondents for declaration to the effect that his predecessor-in-interest had transferred landed property in favour of Education Department for construction of a school free of cost vide mutation No.8929 attested on 09.8.1972 and it was agreed between the parties that employment of Class-IV post would be given to the petitioner but instead, respondents No.5 and 6 have been appointed which is against the

ATTESTED
EXAMINER
Peshawar High Court Bench,
Dera Ismail Khan
15/10/11

policy and may be declared as unlawful and of no legal effect.

3. The respondents submitted an application for rejection of the plaint under Order VII Rule 11 C.P.C. After contest, the application was accepted by the learned trial Court and the plaint was rejected vide judgment and decree dated 28.01.2009. Aggrieved from the same, the petitioner filed appeal No.80/13 of 2009 which was dismissed by the learned Additional District Judge-I, Lakki Marwat on 03.02.2010. Aggrived from the concurrent findings, the petitioner has lodged the present revision.

4. Mr. Abdul Samad Khan Marwat, learned counsel for the petitioner contended that in the plaint, the appointment of respondents was challenged on the other grounds as well, that the posts were sanctioned on 09.10.2007 but neither any advertisement was made nor the petitioner was given an opportunity to apply for the said post and the same were filled up within one day on 10.10.2007 without any approval from Departmental Selection Committee under the rules and policy of Government. He further submitted that as mixed questions of law and facts were involved, therefore, the same were required to be decided after recording pro and contra evidence but both the Courts below rejected the plaint of the petitioner wrongly and illegally by ignoring the fact that from the averments made in the plaint, the suit of the petitioner was not barred by any law. He

placed reliance on ***2011 CLC 83, 2008 MLD 786, 2008 CLC 1507, 2010 YLR 1548 and PLD 2008 SC 650.***

5. The learned Additional Advocate General and Mr. Noor Gul Khan Marwat Advocate for the respondents defended the orders of both the Courts below and contended that the plaint of the petitioner was rightly rejected by the Courts below in accordance with the provisions of Order VII Rule 11 C.P.C. They placed reliance on ***1993 SCMR 1283, 2007 SCMR 74, 2007 SCMR 296 and 1997 SCMR 855.***

6. After hearing the learned counsel for the parties, I have come to the conclusion that for rejection of plaint, the averments in the plaint have to be taken into consideration. Perusal of plaint of the petitioner reveals that besides the land given in lieu of service, the same also contains a bundle of other factual allegations which have to be decided after recording pro and contra evidence. From the averments in the plaint, the plaint of the petitioner is not at all barred by any law. Rather the same discloses a valid cause of action that the respondents were appointed without advertisement of the posts and observing the policy of Government in respect of appointments. Similarly, the appointments were also made without constitution of D.S.C and approval by the Departmental Selection Committee which are the relevant facts requiring recording of pro and contra evidence. Thus, by placing reliance on this Court Judgments delivered in ***2008 MLD 786, 2008 CLC 1507 and 2010***

YLR 1548. I accept the present revision petition, set-aside the judgments/orders of both the Courts below and remand the case to the learned trial Court with the directions to decide the same in accordance with law after recording pro and contra evidence. The learned trial Court shall summon the parties after receipt of record.

Announced.
Dt:12.9.2011.

JUDGE

14/9/11.

ISSUE
Addl Registrar
Date 15/9/11

ATTESTED
EXAMINER
Peshawar High Court Bench,
Dera Ismail Khan
15/9/21

35 14-3-13

BEFORE THE COURT OF SENIOR CIVIL JUDGE, LAKKI MARWAT

Civil Suit No.: 62/1-R of 2007 Institution: 11-06-07 Date of Decision: 14-03-13

1. Asadullah Khan s/o Yar Muhammad
2. Mst Zeenat-un-Nisa d/o Yar Muhammad
3. Mst Zaib-un-Nisa d/o Yar Muhammad, Caste Pathan

R/o Mela Shahab Khel, District Lakki Marwat ..... Plaintiff

Versus

1. District Government through DCO, Lakki Marwat.
2. Executive District Officer, Schools & Littacy, Lakki Marwat.
3. District Officer, Schools & Littacy, Lakki Marwat.
4. Head Master, Government High School, Mela Shahab Khel
5. Dilawar Khan s/o Abdullah Khan, Chowkidar, GHS, Mela Shahab Khel,
6. Riaz Khan s/o Wali Muhammad Lab: Attendant, GHS, Mela Shahab Khel
7. Assistant Co-ordination Officer, Lakki Marwat

..... Real Defendants

8. Mst Mumtaz Begum widow, 9. Taj Ali Khan, 10. Hameed-ullah Khan,
11. Ubaidullah Khan 12. Fateh-ullah Khan. Etc

.....Proforma Defendants

SUIT FOR A: DECLARATION;
B: RECOVERY OF LAND or COMPENSATION in alternate.

JUDGMENT:

1. Briefly narrated factual backdrop of the instant case is that plaintiff No.1 sought declaration to the effect that he was entitled to employment in Education Department against the vacant posts of chowkidar or Laboratory Attendant in Government High School, Mela Shahab Khel, hereinafter described as the school, on the ground that his predecessor-in-interest had donated his land free of cost for the construction etc of the school with the purpose, in accordance with the prevailing rules that against the appropriate portion of the vacant posts of the school, only his nominees should be appointed. That the vacancies of Chowkidar and Laboratory Attendant were sanctioned vide notification No. BOV/FD/2-31/06-07 dated 09-01-2008 and on the very second day, the defendant No.2, who was entrusted with administrative powers only, had unlawfully appointed the defendants No. 5 & 6 without adopting the proper procedure. Plaintiff assailed the validity of appointment orders of defendant No. 5, & 6 on the said posts, being illegally affected against the recruitment policy and, therefore prejudicial to plaintiff right thereto. The plaintiff claimed entitlement to the appointment as land-owner. Several requests were extended to the defendants for making appointment of plaintiff to the said post but they refused to act accordingly, therefore the instant suit. The plaintiff prayed for the declaration of his entitlement and permanent injunction against the defendants and in alternative they prayed for payment of the compensation for the donated land or restoration of the land.

2. Defendants summoned and duly served. Defendants appeared through authorized representative and in person and contested the suit by submitting the written statement. The contradictory pleadings of contesting parties were reduced into following issues.

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Senior Civil Judge/Mag:
Sec:30 crpc Lakki Marwat

ISSUES:

1. Whether the plaintiff has the cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether the suit in hand is barred by limitation?
4. Whether this court has jurisdiction to entertain the suit in hand?
5. Whether plaintiff is eligible to be appointment as chowkidar/Lab: Attendant on seat of land donor?
6. Whether appointments of defendants No. 5 & 6 were unlawfully made?
7. Whether the suit in hand is false and frivolous and defendants are entitled to the compensatory cost?
8. Whether the plaintiff is entitled to decree as prayed for?
9. Relief.

3. Both the parties adduced evidence, official as well as documentary in support of their claims and contentions. Statements were duly recorded and the record is placed on file. During the proceedings, the proforma defendants No. 13 & 14 were transposed in the penal of plaintiff.

4. Valuable arguments of the learned counsels for the parties to the lis heard attentively and the available record meticulously perused with their due assistance. Taking stock of all the features of the case into consideration, my issue-wise findings are as below:

ISSUE No. 5:

5. Plaintiff' contention regarding donation of land by his predecessor-in-interest namely Yar Muhammad was not categorically denied by the defendants in the written statements.

6. Patwari (PW-1) produced the revenue record, pertaining to khata No.276 Khasra No. 4210 Khata No. 294 Khasra Nos. 4209 Khata No. 312 khasra No. 4205, 4206 and Khata No. 315 Khasra No. 4210 of Mauza Mela Shahab Khel, which reveals that plaintiff' father was co-owner in the said property, who had alienated his ownership in tune of 02 kanals in favour of Education Department vide mutation No. 8929 attested on 1972 free of cost. ADK (PW-1) produced the mutation No. 8929 (Exbt.PW-1/1) dated 09-08-1972 and verified the due attestation thereof.

7. Plaintiff' attorney (PW-7) reiterated the claims and contentions of plaint in respect of the subject matter. PW-8, special attorney for the plaintiffs No.2 & 3 also corroborated the instances. DWs have admitted the factum of the alienation of land though controverted plaintiff' claim for appointment on the basis of land donation.

8. Evaluation of the testimony on record reveals that witnesses testified and record corroborated the factum of donation of land by Yar Muhammad, father of plaintiff in tune of 02 kanals vide mutation No. 8929 (Exbt.PW-1/1) dated 09-08-1972. However, it is observed that when the land was donated to the Education Department, the status of school was Government Primary School and subsequently it was upgraded to Middle School. Thereafter, further up-gradation was accorded to Government High School in the year 2006. The subject vacancies were sanction for the Government High School vide Notification No. BOV/FD2-31 (2006-07) Lakki dated 09-10-07.

9. Plaintiff contended that the alienation of land was granted with stipulation, as per prevailing policy that against the vacancies of Class-IV of the school, only the nominee of the donor would be appointed. Plaintiff failed to proof existence of any such stipulation in making the donation of land.

10. It is by now well-entrenched law that the policy of grant of land in lieu of job amounts to sale of public office, which is not only against the constitutional law but also not conducive to the public interest. And realizing the irrationality and in compliance of the verdicts of August Apex Courts, the

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said policy was admittedly rescinded by the competent authority. And this ground is not presently recognized by law and rescission of the policy by the competent authority has made it impermissible.

11. It is also surprising to note that once a land was donated for the school, how the donor or his legal heirs can enjoy the encumbrance or lien in perpetuity on every vacancies of Class-IV even after forty (40) years; and the same is not allowed by the prevailing Government policy.

12. Therefore, this court holds that the plaintiff' contention regarding his eligibility to be considered for appointment on the basis of land donor' policy, is not legally tenable. The issue No. 5 is decided in negative.

ISSUE No. 6:

13. Defendants contended that the appointments of defendant No. 5 & 6 were lawfully made after proper adoption of the prescribed procedure. Officials of Education Department are examined as PWs and DWs. Record, pertaining to the impugned appointments was produced and placed on file.

14. Evaluation of the available testimony transpires that Dilawar Khan (defendant No. 5) and Riaz Muhammad (defendant No. 6) were appointed against the posts of chowkidar and lab: assistant respectively vide appointment orders No. 16165 dated 10-10-07 and No. 16114 dated 10-10-07 by the then EDO, Mr. Atta-ullah Khan Mina Khel, EDO (Bannu), holding the additional charge of office of EDO, Lakki Marwat. It is observed that Vide notification No. 6622-23 dated 09-10-2007 (Exbt.PW-2/2), Atta-ullah Khan, EDO (S&L) Bannu was entrusted with additional charge to 'look-after' the office of EDO (S&L) Lakki Marwat. The defendants No. 5 & 6 were appointed on 'fixed pay' i.e on contract basis and their appointment was subsequently regularized, in general order.

15. Later on, the ex-post facto sanction was granted by EDO (S&L) Lakki Marwat to the defendants' appointment w.e.f 10-10-07 by Mir Azam Khan, EDO Lakki Marwat vide No. 1796-1801 dated 08-05-08 (Exbt.PW-5/2).

16. And vide No.DM/LM/188 dated 19-05-2008 (Exbt.PW-5/2) District Nazim, Lakki Marwat withdraw the ex-post facto sanction of the disputed posts and asked DCO Lakki Marwat to reimbursement of the released salaries. Remarks of DCO, Lakki Marwat that only office of DCO was empowered to grant ex-post facto sanction. Vide order No. 6714 dated 17-10-07 (Exbt.PW-2/3) DCO, Lakki Marwat had cancelled the order pertaining to Riaz Muhammad (Defendant No. 5). Vide Order No. 8578-80 dated 25-08-08 (Exbt.PW-5/1) by EDO (E&S), Lakki Marwat, addressed to Head Master, GHS, Mela Shahab Khel and DDO, GHS, Mela Shahab Khel, whereby the salary of Class-IV of GHS, Mela Shahab Khel was stopped. However, the order withdrawn on 16-09-08, as no court directive was in existence. Letter No. 16550-52 dated 18-10-07 issued by EDO, Lakki Marwat to DCO, Lakki Marwat was sent in reply to the letter No. 6714 dated 17-10-07.

17. Application, submitted by defendants No. 5 & 6 to DCO for release of salary dated 19-03-2008 was 'approved' by DCO, Lakki and directed to DAO concerned for release of their salaries. Vide Endst: No. 924-25/DCO/LM Dated 24-03-2008 (Exbt.PW-3/1) the then ACO ordered the release of salary of all the employees, appointed by the ex-EDO (S&L) Lakki Marwat (Mr. Atta-ullah Khan Mina Khel) on the basis that the ex-post facto sanction was already ordered by the then District Nazim, Lakki Marwat and the cases of defendants No. 5 & 6 were recommended to the DAO, Lakki Marwat for favourable consideration.

18. It is also observed that the ex post facto sanction granted vide Order No. 1796-1801 dated 08-05-08 by EDO, Lakki Marwat during pendency of instant lis.

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19. The arrival report of Muhammad Riaz (Annexure-C) contained Order No. 11614 dated 10-10-07 and that of Dilawar Khan (Annexure-D) contained the arrival report Order No. 11619 dated 10-10-07, which contained glaring inconsistency regarding the description of the order. Such a glaring mistake in entries of both the arrival report cannot be termed as mere co-incidence.

20. The appointment methodology adopted by the then EDO, Lakki Marwat is subjected to the litmus test under the prescribed rules of initial recruitment. It is observed that vide Notification No. BOV/FD2-31 (2006-07) Lakki dated 09-10-07, it is directed that the new recruitment for the subject school shall be made after obtaining NOC from Surplus Pool of the Establishment Department and subject to observance of all the codal formalities.

21. In case of appointment of Class-IV appointments, the selection authority is District Selection Committee. Selection Authority: u/s 2 (j) of the KPK Civil Servants Act, 1973 selection authority means, the Provincial Public Service Commission, a departmental selection Board, Departmental Selection Committee or other authority or body on the recommendation of or in consultation with which any appointment or promotion as may be prescribed, is made. Legally, the appointment of the vacancies of BPS-I to IV shall be required to be made through DSC after advertisement in newspaper. Under section 11 of the KPK, Civil Servants (Appointment, promotion & Transfer) Rules, 1975 the initial appointment to the posts in BPS-1 to 4 shall be made on recommendation of the DSC after the vacancies have been advertised in newspaper. It is observed that vide SOR-V(E&AD)2-7/2003 Dated Peshawar the 17th May 2007 constitution of the DSC/DPC for BPS-1 to IV revised i.e. EDO, Nominee of DCO, District Officer concerned. DW-3 admitted that no selection committee was constituted for appointment of defendants No. 5 & 6. It is observed that vide notification No. SOR-VI (E&AD)1-10/2005 dated 09-06-2006, the Provincial Government has also envisaged that the procedure of publicity through advertisement and recommendation of District Selection Committee shall be observed from appointment on contract basis as well. Although, the notification has not been brought on record however, judicial notice can be taken thereof.

22. The then EDO was only authorized to 'look after' the office of EDO, Lakki Marwat and no order, expressed or implied, to make any kind of appointment etc has been made. Therefore, it is admitted fact that the then EDO was not entrusted with the power to make appointment, either on contract or permanent basis. The then EDO, Atta-ullah was not legally competent to make the appointments. He was restrained from making appointments, posting and transfers. It was based on Provincial Government Notification No. 5054-16/2007 dated 05-10-2007 (Exbt.PW-4/1). The posting order of EDO, Lakki was cancelled vide office order No. 6714 dated 17-10-07 (Exbt.PW2/3).

23. Beside, advertisement of the vacancies through leading newspaper was absolutely mandatory as the Employment Exchange Commission was non-existent in District Lakki Marwat at the time of impugned appointments. It is also worth-mentioning that vide Notification No. SOR-VI (E&AD)1-3/2008 dated 3rd November, 2008 the second proviso to the Rule 10 sub-rule (2) was added. Therefore, the procedure of appointment through Employment Exchange Commission was not available to the Appointing Authority and it should have observed the mandate of Sub-rule 2. In absence of the Employment Exchange Commission in Lakki Marwat, the defendants No. 1 to 4 were legally bound to make advertisement of the subject vacancies; defaulted.

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Sec:30 crpc Lakki Marwat

24. It is astonishing to note that the defendants claimed to have been registered with Employment Exchange Commission, Bannu. Riaz Muhammad holds the registration No. 534/06 Dated 14-05-06 (Exbt.DW-2/8) and Dilawar Khan vide No. 521/ED/2006 Occupation No. 5-89-20 dated 01-05-06 (Exbt.DW-1/1). The written statements of defendants are destitute of these contentions. No official of the Employment Exchange Commission, Bannu has been examined to testify in this regard. It is observed that the Employment Exchange Commission has been established at District Lakki Marwat vide Notification No. DTE&MT/EE/M/1-20/332-36 dated 07-01-2010. Admittedly, the Employment Exchange Commissions are constituted on district level and registration with the Employment Exchange Commission of the other district is nowhere commanded by the law.

25. It is also interesting to note that defendants No. 5 & 6, in their statements as DWs claimed to have submitted applications (Mark-A & B) for the subject appointment. The deposition runs contrary to their instance regarding the appointment through Employment Exchange Commission. On the other hand, the official record of EDO office is destitute of any such application, which facts are admitted by the official of Education Department, examined as DW-3.

26. All the official PWs and DWs categorically testified that no advertisement was made regarding the appointment on disputed vacancies; and no documentary evidence has been brought on record by the defendants to substantiate their appointed to have been done in accordance with the law. DW-3 admitted that no advertisement was issued regarding the subject vacancies and no such commission was constituted for District Lakki Marwat.

27. On the other hand, under the rule No. 12 (3) of the KPK Civil Servant (Appointment, Promotion and Transfer) Rules 1989, the initial recruitment to the posts of BPS-1 and 2 or equivalent shall ordinarily be made on local basis. The school is located in Mauza Mela Shahab Khel. The defendants No. 5 Riaz Muhammad is resident of Lakki Mina Khel, which falls within different Union Council.

28. Concluding the findings, it is held that the subject appointments were made in absolute violation of the prescribed rules. The appointing authority did not have the power to make the appointments and the mandatory elements of recommendation of selection authority i.e. District Selection Committee, publicity through advertisement, appointment of locals were completely flouted and therefore the appointments of defendants No. 5 & 6 are held as unlawfully made and motivated for extraneous considerations other than merit.

29. It is worthy to mention that inquiry was conducted by the orders of CM, Khyber Pukhtunkhawa against the delinquent EDO, Lakki Marwat regarding the impugned appointments in question vide HRC No. 4402-N/2010 Notification No. SO(S/M)E&SED/4-17/2009 office Order No. 6714/DCO/Lakki Marwat/HRDO-5 dated 17-10-2007 (Exbt.PW-6/1 to 6/4). The record of inquiry has been produced before this court. And on conclusion thereof, vide notification No. SO(S/M)E&SED/4-17/2009/Atta-ullah Ex: EDO (E&SE) Lakki Marwat dated 28-09-12 (Exbt.PW-6/3), Mr. Atta-ullah Khan, the then EDO, Lakki Marwat was penalized for the misconduct.

30. Consequent upon these findings, it can be safely held that the appointments of defendants No. 5 & 6 was against the rules and regulations the rules and therefore are held as illegal. The issue No. 6 is decided in affirmative.

GHULAM ABBAS
Senior Civil Judge/Mag:
30 crpc Lakki Marwat

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ISSUE No. 2:

31. It is observed that the land was unconditionally donated by the predecessor-in-interest of the plaintiff. The school building has been constructed thereupon and predecessor-in-interest, in his lifetime has never assailed the same. The donor and his successors (the plaintiffs and proforma defendants) are therefore estopped to claim its compensation or restoration of the donated land. The doctrine of estoppel shall be attracted to the plaintiffs' case in respect of his averments as to recovery of compensation or restoration of the donated land.

32. On the other hand, the plaintiff admittedly has not submitted any application for appointment as no recruitment procedure was ever adopted by the competent authority. He had instituted instant lis prior to the impugned order, however, the appointments were made without advertisement. For that purpose, the doctrine shall not come into play against him. The issue No. 2 is decided accordingly.

ISSUE No. 3:

33. The limitation for declaratory suit is governed by Article 120 of the Limitation Act; the period of limitation for institution of the declaratory suit is six years, which reckoned from the date when the right to the plaintiff accrues. Plaintiff claimed to have cause of action from the date of knowledge about the recruitment on vacancies in the School and filed suit in hand on 11-06-07. Subsequently, the impugned appointments of defendant No. 5 & 6 were made and through amended pleadings those appointment orders were also challenged. Cause of action, if any, would have accrued in favour of plaintiff, firstly, from date of creation of the vacancies and secondly from the date of issuance of the appointment orders against the subject posts. Therefore, the suit in hand is held to be within time. The issue No. 3 is decided in negative.

ISSUE No.4:

34. Plaintiff through instant lis has sought declaration of his entitlement for the appointment to the posts of Chowkidar or Laboratory Assistant in the Government High School, Mela Shahab Khel on the basis of land donation; and assailed the appointments of defendants No. 5 & 6, allegedly being made unlawfully and recovery of the compensation or land.

35. It is well-settled law that mala fide on part of public servant, in discharge of his official duties can be made subject to the judicial cognizance. Beside, vide judgment dated 12-09-2011 rendered by Worthy Peshawar High Court in CR No. 210 of 2010, the maintainability issue of the lis has been already settled. Besides, the right to be considered for appointment to certain post after giving opportunity of appearing in the recruitment process was legal right, which was denied by the defendants making appointment directly without adopting the prescribed procedure. And this court, being the court of ultimate jurisdiction has ample jurisdiction to entertain the suit in hand. The issue No. 4 is decided in affirmative.

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

ISSUE No. 7:

36. Plaintiff has filed the suit seeking declaration regarding his eligibility to be appointed against the subject posts on the basis of land donor' policy and challenged the validity of the appointments of defendants No.5 & 6 being unlawfully done. Legal procedure of recruitment was not followed, therefore, plaintiff' case hold justifiable footing. No ill-will or malice is substantiated against plaintiffs, therefore, no question of compensatory cost arises. The issue No. 7 is decided in negative.

GHULAM ABBAS
Senior Civil Judge/Judicial
Sec:30 cpc Lakki Marwat

ISSUES No. 1 & 8:

37. Plaintiffs, claiming entitlement to be appointment as chowkidar and Laboratory Assistant on the basis of land donor' policy and challenged the appointment of defendants No. 5 & 6 being unlawfully procured. Donation of

land does not ipso facto vests any right of appointment to the plaintiff and the same policy has already been shunned by the Provincial Government. However, the impugned appointment were not made on merit and in violation of the Rules, therefore plaintiff has ample cause of action in respect of the subject matter. The issue No. 1 is decided in plaintiff' favour.

38. Sequel to the findings on afore-discussed issued, this court is of opinion that the plaintiffs does not have right for appointment on the basis of land donor' policy. However, the appointments of defendants No. 5 & 6 have not been made in accordance with the mandatory prescribed procedure of recruitment and in gross violation of the Rules and therefore are declared as unlawful *ab initio*; and the benefits accrued therefrom are also illegal. The defendants No. 1 to 4 shall re-advertise the vacancies, and the recruitment shall be made strictly in accordance with the law. The defendants No. 1 to 4 shall also initiate proceedings against the defendants No. 5 & 6, as per rules.

39. On the other hand, it is held that the plaintiffs are neither entitled to the compensation nor restoration of the donated property as prayed for. The issue No. 8 is decided in above terms.

RELIEF:

40. Taking the afore-mentioned findings into consideration, this court is of the considered view the plaintiff' suit, regarding their entitlement to the appointment on subject posts and recovery of compensation or donated land have not been substantiated; however, the appointments of defendants No. 5 & 6 are declared as illegal and unlawfully made, therefore, the suit in hand is, hereby partially decreed to the extent of declaration of appointments of defendants No. 5 & 6 as unlawful, whereas, the rest of suit is dismissed. Costs shall follow the event. Case file be consigned to the record room after its completion.

ANNOUNCED
14-03-13

Ghulam Abbas,
Senior Civil Judge, Lakki Marwat
GHULAM ABBAS
Senior Civil Judge/Mag:
Sec:30 crpc Lakki Marwat

CERTIFICATE:

Certified that the instant judgment consists of seven pages; and every page have been checked and signed by me.

Ghulam Abbas,
Senior Civil Judge, Lakki Marwat
GHULAM ABBAS
Senior Civil Judge/Mag:
Sec:30 crpc Lakki Marwat

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ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

M 42 13-4-13

BEFORE THE HONOURABLE DISTRICT JUDGE, LAKKI MARWAT

Civil Appeal No._____of 2013.

Asadullah Khan S/O Yar Muhammad R/O Village Melah Shahab Khel, Tehsil & District Lakki Marwat .....Petitioner.

Versus

1) District Co-Ordination Officer/Deputy Commissioner, Lakki Marwat.
2) Executive District Officer/District Education Officer Elementary & Secondary Education, Lakki Marwat.
3) Headmaster Government High School, Melah Shahab Khel Lakki Marwat.
4) District Officer Elementary & Secondary Education, Lakki Marwat.
5) Riaz Muhammad S/O Wali Muhammad R/O Mohallah Mina Khel, Lakki Marwat, Presently Lab Attendant, G.H.S. Melah Shahab Khel, Tehsil & District Lakki Marwat.
6) Dilawar Khan S/O Abdullah Khan, R/O Nawar Khel presently Chowkidar, G.H.S.Melah Shahab Khel, Tehsil & District Lakki Marwat.
7) Government of K.P.K. through, Secretary Elementary & Secondary Education, Peshawar.
8) Assistant Co-Ordination Officer/ASSISTANT COMMISSIONER Lakki Marwat .....Real Respondents.

9) Mst. Mumtaz Begum Widow.
10) Hamidullah Khan.
11) Obaidullah Khan
12) Fatehullah Khan Sons
13) Mst. Khairun Nisa
14) Mst. Farmun Nisa
15) Mst. Rakhtun Nisa
16) Mst. Naeem Jana
17) Mst. Khursheeda, Ds/O, Yar Muhammad, Rs/O Melah Shahab Khel, Lakki Marwat.....Performa Respondents.

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ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

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A13

CIVIL APPEAL U/S 96 C.P.C. R/W ALL ENABLING PROVISIONS OF LAW GOVERNING THE SUBJECT, AGAINST THE IMPUGNED JUDGMENT/ ORDER/ DECREE DATED 14-03-2013 OF THE LEARNED TRIAL COURT LAKKI MARWAT WHERE BY THE SUIT OF THE APPELLANT WAS PARTIALLY DECREED.

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PRAYER IN APPEAL:

On acceptance of this appeal the impugned judgment/ order/ decree of the learned trial court dated 14-03-2013 may kindly be modified to the extent of issue No. 2 [redacted] and Issue No.5 in favour of the petitioner and the suit of appellant be decreed as prayed for with cost throughout to meet the ends of justice.

.....

RESPECTFULLY SHEWETH:

Brief facts giving rise to instant appeal are as under.

FACTS:

1) That Appellant brought **Civil Suit No.62/1-R of 2007** for declaration etc to the effect that he was entitled to employment in education department against the vacant posts of Chowkidar or Laboratory Attendant in the Government High School, Melah Shahab Khel on the ground that his pre-decessor in interest donated his land free of cost for the construction of the school with the understanding that class-IV appointments in the school will be made through his family members/ nominees.

2) That the vacancies of Chowkidar and Laboratory attendant were sanctioned and on the very second day, the respondent No. 2, who was entrusted with administrative powers only i.e. Look After, unlawfully appointed the defendants No.5 & 6 without adopting the proper procedure and in contrast to the Govt; policy and rules governing the subject, Plaintiff/Appellant assailed the validity of appointment orders of Respondent No. 5 & 6 on the said posts, being illegally affected against the recruitment policy and, therefore prejudicial to plaintiff/appellant right thereto rather plaintiff claimed entitlement to the appointment as land donor. The plaintiff prayed for the declaration of his entitlement and permanent injunction against the defendants and in

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District & Session Judge
Lakki Marwat

alternative prayed for payment of the compensation for the donated land or restoration of the land.

3) That respondents contested the suit and after recording the pro and contra evidence of parties leaned trial court partially decreed the suit to the extent of declaring the appointments of respondent No.5 & 6, illegal, against the law and void-ab-initio vide judgment/ order/ decree dated 14-03-2013 whereas the remaining relief was discarded. (Copies of judgment/ order/ decree dated 14-03-2013 and plaint are attached as Annexure-A & B respectively.

4) That being aggrieved of the aforementioned Judgment/ order/ decree of the learned trial court dated 14-03-2013 to the extent of **issue No. 2** [redacted] **and Issue No.5** appellant prefers instant appeal on the following grounds amongst others inter alia.

GROUNDS :

a) That the impugned judgment/ order/ decree of learned trial court on **issue No. 2** [redacted] **and Issue No.5** is against the law, facts, without substance, in utter disregard of material available on record as well in utter disregard of relevant law point, as such untenable in the eyes of law.

b) That the findings of the leaned trial court regarding **issue No. 2** [redacted] **and Issue No.5** is the outcome of haste and without application of judicial mind & result of misreading and non-reading of the material available on file hence untenable.

c) That the learned trial court has graciously erred to make its own interpretation in contrast to the apex Supreme Court judgments is in excess of jurisdiction which has caused grave miscarriage of justice.

d) That the despite of the fact that the illegal appointments respondent No.5 & 6 has been discussed in detail in the light of Government policy and apex Supreme Court verdict but while deciding **issue No. 2** [redacted] **and Issue No.5** learned trial court surprisingly deviated from the normal course of justice hence needs interference of this honourable court by setting aside the same at naught and modifying the same in favour of appellant.

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Exam[illegible]
District & Session Judge
Lakki Marwat

e) That the impugned judgment/ Decree to the extent of **issue No. 2 [redacted] and Issue No.5**, is based on conjectures and surmises and is the result of misreading and non-reading of evidence as well as wrong interpretation of law, hence is liable to be set aside by this honourable court.

f) That plaintiff has proved his case to the hilt and defendants have badly failed to prove their stance but despite the same pronouncing the judgment and denying the right of appellant on **issue No. 2 [redacted] and Issue No.5**, is colourful exercise of jurisdiction and the trial court exceeded the jurisdiction vested in her and caused grave miscarriage of justice hence needs probe by this august court.

g) That the impugned judgment /order/ decree of the learned trial court trial court regarding the **issue No. 2 [redacted] and Issue No.5**, suffers from material irregularity and illegality in exercise of jurisdiction.

h) That the dictum laid down by apex Supreme Court in numerous Judgments has been misinterpreted by the learned trial court and new interpretation at her own is un-warranted.

i) That the valuable rights of the appellant are involved and appellant suffered a lot at the hands of respondents, and despite all evidence in-favour of appellant, diverting to a new standard of interpretation on **issue No. 2 [redacted] and Issue No.5** is flat denial of material available on file and in disrespect & disregard to the verdict of superior judiciary hence needs interference of this august court to intervene into the matter in the appellate jurisdiction.

j) Any other ground, with the permission of this august court will be taken at the time of arguments.

It, is therefore, that On acceptance of this appeal the impugned judgment/ order/ decree of the learned trial court dated 14-03-2013 may kindly be modified to the extent of **issue No. 2 [redacted] and Issue No.5** in favour of the appellant and the suit of appellant be fully decreed as prayed for with cost throughout to meet the ends of justice.

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District & Session Judge
Lakki Marwat

OR

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Any other relief not specifically prayed for and deemed appropriate by this honourable court in circumstances of the case may also be granted to the appellant.

Dated: 03-04-2013.

Appellant

Through

Abdus Samad Khan Marwat
Advocates Peshawar.

Certificate:

Certified on oath that the contents of instant appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this honourable court.

ATTESTED

H. Muhammad Akram Khan Advocate
NOTARY PUBLIC
Dist: Courts Lakki Marwat

13/4/13

DEPONENT

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

16-12-13

IN THE COURT OF JAVAID UR REHMAN
ADDITIONAL DISTRICT JUDGE, LAKKI MARWAT.

Civil Appeal No.....22/13 of 2013.

Date of Institution.....06-05-2013

Date Of Decision.....16-12-2013.

22/13	Asad Ullah s/o Yar Muhammad r/o Mela Shahab Khel, District Lakki Marwat.	VERSUS	D.C.O and others.
20/13	Riaz Muhammad s/o Wali Muhammad r/o Minakhel, Lakki Marwat.		Asad Ullah s/o Yar Muhammad and others.
21/13	District Government through D.C.O presently Deputy Commissioner and others.		Asad Ullah s/o Yar Muhammad r/o Mela Shahab Khel, District Lakki Marwat.
23/13	Dilawar Khan s/o Abdullah Khan r/o Mela Shahab Khel, Lakki Marwat.		Asad Ullah s/o Yar Muhammad and others.
24/13	Mst Zeenat un Nisa, Zaib un Nisa daughters of Yar Muhammad.		District Government through D.C.O, Lakki Marwat.
	Appellants		Respondents

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

Consolidated Judgment:

Through this single judgment, I intend to dispose of the present civil appeal in hand i.e. No. 22/13 of 2013 titled Asad Ullah vs DCO etc and four other connected appeals bearing No.20/13, 21/13, 23/13 and 24/13 of 2013 filed by the appellants against the judgment / decree of learned Senior Civil Judge, Lakki Marwat tiled Asad Ullah Khan etc Vs DCO and ten others announced on 14-03-2013 in civil suit No.62/1-R of 2007, as by the impugned judgment of learned Senior Civil Judge, Lakki Marwat, both the then plaintiff and the then respondents preferred the instant appeals being unsatisfied on various grounds mentioned therein in their respective appeals.

The crux of the previous civil suit between the parties can be summarized as under.

The appellant / plaintiff Asad Ullah Khan s/o Yar Muhammad sought declaration to the effect that he is entitled to be employed in the

JAVAID UR REHMAN
Addl. District Judge

Education Department against the vacant post of "Chowkidar" or "Laboratory Attendant" as the two posts were laying vacant in Govt: High School, Mela Shahab Khel, for which his father has donated a very valuable piece of land free of cost for the construction of school with the purpose that according to the prevailing rules, he being the legal son of the deceased father be appointed to the vacant post of Class-IV employees in the said school vide notification No.BOV/FC/2-31/06-07 dated 09-01-2008.But defendant No.2 i.e. Executive District Officer (S&L) Lakki Marwat who at that time was entrusted administrative powers only, but unlawfully and illegally appointed defendant No.5 and No.6 without adopting the proper legal procedure. The appellant Asad Ullah claimed to be entitled to the appointment of one of the above referred posts, for this purpose he visited defendant No.1 to 4 but to no fruitful result, hence has got no option but to knock the door of law through the civil suit.

Defendants put their appearance and submitted their respective written statement, totally denying the rights mentioned by the present appellant. Learned Senior Civil Judge, Lakki Marwat framed as well as 08 issues which are as under:

ISSUES:.

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1- Whether the plaintiff has got cause of action?
2- Whether the plaintiff is stopped to sue?
3- Whether suit in hand is barred by limitation?
4- Whether the Civil Court has jurisdiction over the subject matter?
5- Whether the plaintiff was eligible to be considered for the disputed posts on basis of land donor policy?
6- Whether appointments of defendant No.5, 6 was unlawfully made?
7- Whether the suit in hand is frivolous and defendants are entitled to compensation cost?
8- Whether plaintiff is entitled to the decree?
9- Relief.

The parties interested were directed to produce their relevant evidence. After hearing the arguments of the parties, the suit of the present appellant was partially decreed to the extent that appointments of the then defendants No.5 and 6 (appellant Riaz Muhammad and Dilawar Khan of appeal No.20/13 and 23/13 respectively) were declared

to be illegal and unlawfully made and partial decree of declaration was granted in favour of the present appellant while rest of his claim was turned down to be not proved in the circumstance discussed in the judgment / decree.

The learned Senior Civil Judge, Lakki Marwat has emphasized that although the then plaintiff (present appellant) does not have any right of appointment on the basis of land donor policy but since appointment of defendant No.5 and 6 were not made according to the rules, hence declared as unlawful ab anitio and the benefits accrued there from were also declared illegal, Similarly the then defendant No.1 to 4 (appellants in civil appeal No.21/13) were directed to re-advertise the vacancies and recruit eligible persons strictly in accordance with law.

It is also pertinent to mention here that during previous litigation the matter also went up to the august Peshawar High Court, Peshawar D.I. Khan Bench which was the result of rejection of the plaint by the then competent court and decision on the same in appeal in the appellate forum, however, through CR No.210 of 2010 dated 12-09-2011 both the judgments and orders of the courts were set aside and directions were issued to decide the case of the parties in accordance with law after recording pro and contra evidence.

Case file alongwith available record thoroughly perused and arguments advanced by learned counsel for the parties heard at some length. Learned counsel for the present appellant Asad Ullah contended that although the learned lower court has turned the appointed of Riaz Muhammad and Dilawar Khan as illegal, however, the appellant being the lawful son of the land donor may be given priority if advertisement is issued to the above referred posts of "Chowkidar" and "Lab Attendant". He relied upon:

2010 PLC (CS) 626 Muhamamd Nawaz Chema etc Vs Principal Secretary to CM Punjab etc.

PLD 2010 Supreme Court 759 (c) in human rights case No.4668, 1111 and 15283-G

2000 PLC (CS) 1145 Sher Alam Vs Got of N-W.F.P and others. And 1993 SCMR 1287.

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Examiner to
District & Sessions Judge

Learned counsel for the present appellant is also of humble view that although the partial decree granted in favour of appellant is strictly according to law and in consonance of the judgment mentioned in 1993 Supreme Court 1287, but since the present appellant is the son of the land donor, he may be given some preference over the fresh persons who have to file their applications for the above referred posts after advertisement, hence to this extent directions may be given to the respondents/defendants. In this reference learned counsel relied upon an unrepeated decision of Hon'ble Peshawar High Court, Peshawar in writ petition No.1665/2010 dated 16-09-2010 wherein which the Hon'ble Court has directed the respondents in a similar nature of case to "consider" the then petitioner if he is otherwise fit to be appointed on merit.

Now, I would like to throw some light on the averments of learned counsel for the respondents / appellants Riaz Muhammad and Dilawar Khan as well as the education department . Conversely the main contention of the learned counsel appearing on behalf of appellants/respondents, is that although they were appointed on contract basis, however, the Provincial Government through a notification, copy of which is available on record as "Annexure H" dated 29-01-2008, the contract / fixed pay employees of Class-IV were regularized and that since the first day of appointment, both the appellant are regularly doing their jobs to the utmost satisfaction of the concerned quarter, even the revised pay scale and annual increments were also given to the present appellants being regular government servants, however, the learned lower court while disposing the vital issues No.2 and 5 not only terminated the lawful services of the appellant but also had acted beyond his jurisdiction by directing the then defendant No.1 to 4 for conducting fresh exercise of advertisement and appointment of fresh persons for the said posts which were not even asked by the plaintiff / appellant Asad Ullah in his plaint. Thus to the said extent also, the judgment and decree of the learned Senior Civil Judge Lakki Marwat needs rectification. They further argue that both the appellants are hailing from district Lakki Marwat, Employment Exchange Certificates are being issued in the name of appellants and even the so

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District & Session Judge

called irregularity in the appointment by the then EDO (E&SE) has been later on rectified by issuing Ex Post Facto Sanction by the EDO (E&SE) Lakki Marwat to the present appellants with effect from 10-10-2007 vide notification No.1796-1801 dated 08-05-2008 Ex PW-5/2. Similarly vide order No. DM/LM/188 dated 19-05-2008 by the District Nazim Lakki Marwat dated 19-05-2008, although due the above referred Ex Post Facto Sanction, the salary of the appellants were stopped but later on the District Coordination Officer, Lakki Marwat released the salary of the appellants vide Endst No.924-25/DCO/LM dated 24-03-008 Ex PW-3/1.

Chain of authorities of superior courts were referred, some of which are:

2004 SCMR page 49, 303,1077,

1996 SCMR 413,

1999 SCMR 1004

And 2009 SCMR 663

Similarly appellants of appeal No.21/13 as well as 24/13 also seeks the acceptance of their respective appeals on the grounds mentioned therein. It is very astonishing to note that as per concise statement / comments given from and on behalf of Secretary (E&SE) department government of KPK in the human right case No.2204-N/2010 in present appointment of Riaz Muhammad and Dilawar Khan, before the Supreme Court Of Pakistan, has made it clear that since the enquiry regarding appointment and release of pay of Riaz Muhammad and Dilawar Khan (appellant / respondents) by the competent enquiry officer has recommended disciplinary action against Atta Ullah Khan the then EDO (E&SE) during his tenure of additional charge, is under process for approval to Chief Minister KPK / competent authority and the DCO concerned, however, cancelled the illegal appointment of Riaz Muhammad Lab Attended and Dilawar Khan Class-IV in Govt: High School, Mela Shahab Khel. (copy is present on file).But the said admission has totally been ignored by the Education department (defendants No.1 to 4)

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Learned counsel for appellants / respondents stressed on the point that for the Class-IV post, there is no need for advertisement in the daily newspapers and that when the competent authority cancelled the

regularized service of Civil Servant, the same could not be reversed. He further relied upon:

2004 SCMR 1077(c)

Furthermore, he is of the view that since the present appellants / respondents are in service for the last so many years, therefore, without affording opportunity of hearing and completion of mandatory formalities, their service can not be terminated. He relied up:

2004 SCMR 49 and

2004 SCMR 303.

He emphasized that if for the sake of arguments, the appointment of the appellants / respondents (Riaz Muhammad and Dilawar Khan) was not according to the procedure and rules even then they can not be punished for the illegal and unlawful acts of the appointing/competent authority.

It is a now settled law that donation of a piece of land in exchange of appointment of Class-IV employees, have been termed as *"appointment against land would amount to sale of public office for property. Such policy was not only against the Constitutional Law applicable to public office but was also not conductive to public interest. What would be done within the framework of the law was to create a margin of preference for those who make such grant, the condition of eligibility and fitness being equal"*. Reliance is placed on 1993 SCMR 1287.

Thus keeping in view the circumstances of the present case, appellant Asad Ullah may apply for the post of "Chowkidar or Lab Attendant" after advertisement, if he is eligible otherwise for the post as it is held that the learned lower court has rightly terminated the services of the then defendant No.5 and 6 (present appellants in appeal No.20/13 and 23/13 respectively). It is also held appropriate, as this court is in full consonance with the lower court's judgment and decree, that since it has been established that the post of "Chowkidar" and "Lab Attendant" were neither advertised nor the petitioner Riaz Muhammad and Dilawar Khan hails from the same union council where the school is situated. Similarly the certificate of Employment Exchange were obtained from district Bannu and not from district Lakki Marwat. Its seem that their

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appointment were totally against the rules and policy of concerned department, if there exist no Employment Exchange in the said district then for the fresh appointment advertisement is must. It is also proved that at that time when the said posts were filled, in district Lakki Marwat there was no office of the Employment Exchange and similarly no other person applied for the said posts except the present appellants(Riaz Muhammad and Dilawar Khan). Therefore, he best course to resolve the matter is to re-advertise the posts and each and every eligible person should be allowed to file fresh applications including appellant Asadullah, if he is otherwise eligible.

The judgment and decree of the learned Senior Civil Judge, Lakki Marwat/trial court being based on proper appreciation of law and facts need no interference of this court , resultantly the instant appeal No.22/13 with connected appeals No.20/13, 21/13, 23/13 and 24/13 are dismissed in the manner discussed above. Copy of this judgment be placed in above referred appeals. However, the parties will have to bear their own costs. File be consigned to the record room after its necessary completion and compilation.

Announced:
16.12-2013.

16.12.13
(Javaid ur Rehman)
Additional District Judge-IV,
Lakki Marwat

CERTIFICATE:

Certified, that this judgment of mine consists of 07 pages. Each has been read, signed and verified by me after necessary correction wherever necessary.

16.12.13
(Javaid ur Rehman)
Additional District Judge-IV,
Lakki Marwat

C.D. No. 3302
Application received on 17-5-23
Copying Fee deposited on
Judgment received for copying 17-5-23
No. of words 9P
Copying Fee
Stamp Fee
Urgent Fee
Name of Copyist
Date of Completion 17-5-23
Date of Delivered on 17-5-23
Signature of Examiner

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

54 27-2-14

BEFORE PESHAWAR HIGH COURT, BENCH BANNU

CR No 145-B / 2014

1) Riaz Muhammad S/O Wali Muhammad resident of Lakki Mina Khel presently laboratory attendant government high school Mela Shahab Khel Tehsil & Distt: Lakki Marwat.
2) Dilawar Khan S/O Abdullah Khan resident of village Mela Shahab Khel Tehsil & Distt: Lakki Marwat

SEAL OF PESHAWAR HIGH COURT BANNU BENCH

Versus

1) Asad Ullah Khan
2) Taj Ali Khan
3) Hamid Ullah Khan
4) Ubaid Ullah Khan
5) Fateh Ullah Khan — sons of Yaar Muhammad
6) Mumtaz Begum — widow of Yaar Muhammad
7) Zinat un Nisa
8) Zebun Nisa
9) Kherun Nisa
10) Farmun Nisa
11) Rifatun Nisa
12) Naem Jana
13) Mismat Khurshida — Daughters Yaar Muhammad Qaom Phatan Sakna Residence of Mela Shahab Khel (Real Respondents)
14) Deputy Commissioner Lakki Marwat
15) District Education Officer Lakki Marwat
16) Sub District Education Officer Lakki Marwat
17) Headmaster GHS Mela Shahab Khel
18) Deputy Assistant Commissioner Lakki Marwat
19) Government of KPK through Secretary Education Peshawar
20) Dilawar Khan S/O Abdullah Khan Chowkidar / Peon in government GHS Mela Shahab Khel Lakki Marwat (Proforma Respondant)

Filed Today
Additional Registrar
3-3-14

CIVIL REVISION PETITION UNDER SECTION 115 CPC AGAINST THE JUDGMENT AND DECREE OF ADDITIONAL DISTRICT JUDGE NO.4 LAKKI MARWAT DATED: 16.12.2013 AND ALSO AGAINST THE JUDGMENT AND DECREE OF SENIOR CIVIL JUDGE LAKKI MARWAT DATED: 14.03.2013 IN CIVIL SUIT NO – 62/1-R.

ATTESTED

EXAMINER
Peshawar High Court
Bannu Bench

Prayer:- By acceptance of instant civil Revision Petition to set aside the Judgments & Decrees of Courts below and to Dismiss whole of the suit of the plaintiff / Respondent No.1 .

Respectfully Sheweth:-

1. The, Plaintiff/Respondent No.1 herein preferred a declaratory and permanent injunction And alternate prayed for alternate compensation of donated land or separation of land, fully detailed in the head note of the plaint, which was contested by Departments/Petitioner herein. The said suit was rejected under order 7 rule 11 CPC by trial court and on dated: 4-2-2010, the appeal against the said order was also dismissed by Additional District Judge No.1 Lakki Marwat. While the revision petition against the said order was accepted by this court and remand the case to trial court with direction to decide the case after recording pro and contra evidence. Copies of plaint, applications under order 7 rule 11, order of trial court, judgment of ADJ 1 Lakki and order of High Court are annexed herewith as annexure "A", "B", "C", "D", "E".

2. That, after remand, the defendants submitted written statement. After submission of written statement, divergent pleadings of both the parties were reduced as many as nine issues including relief. Copies of written statement, list of witnesses and issues are Annexed herewith as Annexure "F", "G", and "H".

3. That, after that, the parties were directed to produce evidence. On plaintiff side, Ghulam Dastagir ADK as PW1 Noor ul Amin and Bakhtiar Ahmad as PW2 and PW3, Saed Israr Ali HRD as PW3 Shafiullah PS to DCO as PW4, Mir Ajab record keeper as PW5, Hidayat Ullah record keeper education as PW6, Ubaid Ullah as PW7 Nasir Iqbal as PW8, got recorded their statements while in defence, Dilawar Khan (Petitioner no.1 herein) as DW1, Riaz Muhammad (Petitioner no.2 herein) as DW2, and Mir Ajab record keeper EDO office as DW3 got recorded their statements. It is pertinent to mention here that profarma Respondents 13-14, were transposed in the penal of plaintiff. Copies of statements of witnesses along with exhibited documents are annexed herewith as Annexure "I".

Filed Today
Additional Registrar
3-3-14

4. That, subsequently, arguments were heard and trail court was pleased to decree the suit partially to the extent of declaration of appointments of defendants 5 and 6 (petitioners herein) as unlawful and the rest of suit was dismissed. Copies of judgment and decree sheet of trial court are annexed herewith as Annexure "J" and "K".

ATTESTED

EXAMINER
Peshawar High Court,
Bannu Bench

5. Being aggrieved, the present Petitioners/Respondent 5 & 6 preferred an appeal in the Court of Distt: Judge Lakki Marwat which remained uninterrupted / un interfered. The same nature of appeal where also moved to the same court resulting out from the same judgment and decree/trail court which got same fate as dismissed. Copies of grounds of appeal, judgments and decree sheets of Additional District Judge are annexed as Annexure "L", "M", "N".

6. Aggrieved from the said judgment & decree, petitioners have no other remedy but to invoke the revisional jurisdiction inter alia on the following grounds.

GROUNDS:

1. That, the Courts below have fully failed to dispense the true justice. The judgments and decrees of Courts below are results of mis-reading and non-reading of evidence and record on file. The whole suit (partially decreed) is liable to be dismissed.

2. That, courts below have not put right verdict regarding issues No.1 to 4 and 6 to 9. Hence all the judgments are not sustainable in law.

3. That, the trail court declares in his verdict in deciding issue No. 5 that plaintiffs have no cause of action/locus standi to sue yet the suit has been partially decreed. Which is not maintainable.

4. That, petitioners were appointed on fixed pays for which no conditions/qualifications were ascertained prior to appointment but such appointments were made solely on the recommendations of Respective competent Authority and Petitioners were regularized and rewarded permanency to the service/appointment.

5. That, petitioners are highly qualified. Besides having basic requisite qualifications for job/appointment in questions, petitioners are over qualified and are registered with "Employment Exchange". They (petitioners) had already applied for the jobs. But, the court below has not given any attention to this factum.

Filed Today
Additional Registrar
3-5-14

6. That, petitioners have been given permanency according to the Govt's policy and now their terminations is being made mere on technicalities which is not fair and sheer injustice. It is Ultra-virus to terminate some one on the gist of such verdicts of courts for which, court is not empowered as once petitioners have been categorized

ATTESTED
EXAMINER
Peshawar High Court,
Bench Bannu

as "Civil Servants" And for civil service cases, the lower civil courts are not empowers.

7. That, petitioners are serving on posts in question for last six years and have been over-age during the service. Now, petitioners have becomes ineligible for any other Govt: job due to age factor. This factor has been admitted by Representative for Secretary Education.

8. That, petitioner's appointments were made on fixed pays by EDO/DEO Atta Ullah Khan which were granted by the later DEO/EDO Mr. Mir Azam Khan as "Ex Posts facto sanctions" and approved the same by accepting the petitioners applications for release of salaries. It was also justified by directions to Distt: Account Office about release of salaries.

9. That, Plaintiffs/Respondents have not made the appointing authority as a "party" to the suit nor he has been sued for that. The said appointment authority once has been penalized for the same act and can not be penalized twice as barred by law and rule of "Double Jeopardy".

10. That, Plaintiffs does not come in the purview of definitions of "Plaintiffs" and aggrieved party". Yet, partial Decree has been passed in favor of Plaintiffs/Respondents.

11. That, the counsel for Petitioners seeks leave of rising further grounds having legal bearings before this Honorable Court.

It is therefore humbly prayed that on an acceptance of instant Revision Petition, the judgments and decrees of courts below may kindly be set aside and dismissed whole the suit of the plaintiffs / Respondents.

Dated: 27-02-2014

Petitioners

دلاورخان
Dilawar Khan

Riaz Muhammad

Through counsel

Muhammad Tariq Qureshi
Advocate
Lakki Marwat

Filed today
Additional Registrar
3-3-14

ATTESTED

EXAMINER
Peshawar High Court
Bannu Bench

P 58

29-9-21

JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

C.R. No. 45-B/2014

Riaz Muhammad & another.
versus
Asad Ullah Khan and 19 others

JUDGEMENT

Date of hearing: 29.09.2021

For petitioners: - M/S Muhammad Tariq Qureshi and Younas Ali Khan Marwat, Advocates.
For official respondents: Saif-Ur-Rehman Khattak, AAG.
For private respondents: Mr. Muhammad Usman Khan, Advocate

MUHAMMAD NAEEM ANWAR, J.- The petitioners have challenged the validity of consolidated judgment and decree of learned Additional District Judge-IV, Lakki Marwat, dated 16.12.2013 whereby their appeals were dismissed, consequently, the judgment and decree dated 14.03.2013 passed by learned Senior Civil Judge, Lakki Marwat, was maintained.

02. Facts making back ground of the instant petition are that respondent No.1/plaintiff has filed a suit for declaration contended therein that he is the resident of Mela Shahab Khel and for the post of class VI or lab attendant the residents of Mela Shahab Khel were entitled to be posted after adopting due course of law but the official respondents without inviting application through advertisement or from the employment exchange appointed petitioners/defendants No 6 & 7, furthermore that official respondent had no authority to make any appointment because he was given additional charge of District Lakki Marwat that too only to after the ingoing official matters, he also prayed that his

predecessor in interest has donated the land for construction of school thus, he has a preferential right for his appointment against the vacant post in comparison with petitioners therefore, the appointments may be declared as illegal, without lawful authority, against the law and ineffective upon his rights with an added prayer that he may be appointed. It was also prayed that in alternate the due compensation @ market rate may de awarded to him

03. Suit was contested by the respondents on various legal and factual objections. After framing of issues, the parties were directed to produce their evidence. On completion of evidence, learned trial court vide its judgment dated 14.03.2013 granted partial decree in favour of plaintiffs to the extent of declaring the appointment of petitioners Riaz Muhammad and Dilawar Khan as illegal and unlawful while rest of the claims of the respondent No.1 were turned down, being not contented with the same, the petitioners and respondents No.1,7,8 and 14 assailed the same through filing as many as five appeals which were dismissed on 16.12.2013 through consolidated judgment and decree hence, this petition.

04. Learned counsel for petitioners contended that the suit of respondent No.1 was incompetent from its inception, being filed for declaration U/S. 42 of the Specific Relief Act, 1877 without asserting any right and that too without accrual of any cause of action for the reason that suit was based upon alleged transfer of immovable property in favour of Education Department against which no service could be claimed, in accordance with dictum laid-down by the Hon'ble Supreme Court of Pakistan. He vociferated

that the suit was defective for non-joinder and mis-joinder of the parties and that civil court has got no jurisdiction when the petitioners were appointed initially against fixed pay and later on were regularized; thus, only Service Tribunal can adjudicate upon the suit against them. He added that neither respondent No.1 has submitted any application for his appointment nor he was registered with Employment Exchange and as for as the post of Lab: Attendant and Chowkidar respondent No.1 has got no vested right for his appointment against any one of these posts thus no declaration could be granted against the petitioners. He also added that though it was pleaded that the petitioners were appointed against fixed pay but even than learned trial court has not framed any specific issue as such the judgment against them is the result of mis-reading and non-reading of evidence. Lastly, he contended that through Ex.PW-5/3, DEO, i.e., Executive District Officer Schools and Literacy Department Lakki Marwat has accorded Ex-post facto sanction in favour of petitioners and respondent No.1 has got no locus-standi to file a suit.

05. As against them, learned counsel for respondent No.1 contended that it was the bounded duty of education department to fill the vacancies through proper advertisement or through employment exchange by which a right to all including the plaintiff/respondent No.1 be afforded so that he could compete with petitioners being the resident of Mela Shahab Khel for the post of Chowkidar and Lab Attendant, by not inviting applications and by making the appointment of petitioners, the plaintiff's right was infringed for which he has got every right to seek declaration from

the court of competent jurisdiction. He submitted that the grievance of the plaintiff/respondent No.1 was only against petitioners and the appointing authority who have properly been arrayed as a party and that Mr. Attaullah Khan Mina Khel who had no authority for appointment for the reason that he was temporarily given additional charge to deal with and to look after the affairs of Education Department, Lakki Marwat, while he was working at District Bannu. The appointments of the petitioners are illegal, corm-non-judice, un-warranted, against the law and policy of the government. He referred to letter dated 17.11.2011 pertaining to the violation of rules and misuse of authority in appointment and release of salary to M/S. Riaz Muhammad and Dilawar Khan (petitioners) initiation of inquiry proceedings, statement of allegations, charge-sheet, complaint inquiry against Mr. Attaullah Khan Ex-DEO (E&SE) Lakki Marwat, inquiry report and the notification dated 28.09.2012 whereby minor penalty of withholding of two annual increments for two years were imposed upon Mr. Attaullah Khan Ex-DEO(E&SE)Lakki Marwat. He added that the law requires that appointment against a post could only be made either through registered candidates from Employment Exchange of a particular district or through advertisement, but the case in hand was result of sheer violation, misuse of authority by which the then EDO has made appointment of petitioners that too without any authority, which was rightly set-at-naught by the learned courts below and now there are concurrent findings which are immune while invoking revisional jurisdiction U/S. 115 CPC.

06. Arguments heard; record perused.

07. It appears from the contents of the plaint that though the plaintiff has sought declaration to the effect that he be declared entitled for his appointment against the post of either Lab: Attendant or Chowkidar being qualified and eligible for the same on the ground that the land was donated by his grandfather, however, record reflects that his this plea was not considered either by the learned trial court or by the learned appellate court and even he has not challenged the findings of the learned appellate court and to this effect both the learned courts below have correctly made reliance upon the dicta laid-down by the apex court in case titled "**Munawar Khan V Niaz Muhammad**" (1983 SCMR 1287) and case titled "**Hameed Ullah and 09 others V Head Mistress Government Girls School, Cholkara District Karak and 05 others**" (1997 SCMR 855), thus, the arguments of learned counsel that no appointment could be made against the donation of land has got no force because neither this relief was granted nor it is the prayer of respondent No.1 today before this Court.

08. Intrinsically, grievance of the plaintiff was that not only he is qualified and eligible but also belongs to the same vicinity in which the school is situated, he deserves to be appointed against the post of Class-IV that too in accordance with law, When the learned counsel for respondent was confronted about the entitlement of respondent as against petitioners for the post of Chowkidar or Lab Attendant, he admitted it correct at the bar that respondent No.1 has not submitted any application to the Education Department, but he added that even the respondents (education department)

has not invited the applications for the vacant position and that Mr. Attaullah Khan the then EDO was given an additional charge of Lakki Marwat only for looking after the matters but he could not make any appointment against the post of Class-IV or the Lab: Attendant. Record also reflects that respondent No.1 has approached to different forums to the effect that Mr. Attaullah Khan EDO was lacking the authority for making the appointment in Lakki Marwat, thus, the orders made by him were unjustified. The submission of the respondent No.1 was substantiated through letter dated 17.11.2011 when through notification No. SO(S/M) E&SED/4-17/2009/ by which charge against Mr. Attaullah Khan was about violation of rules, misuse of powers, on the basis of which Dr. Mukaram Khan (BPS-20) Principal Government Degree College Peshawar and Mr. Zahir Shah DCO, Bannu were appointed as members of Inquiry Committee to conduct the inquiry against Mr. Attaullah Khan for alleged violation. Record also reflects that Mr. Attaullah Khan was charge-sheeted, statement of allegations further substantiates the contention of respondent No.1. Inquiry was initiated and recommendations were forwarded to the effect that" (1) Mr. Attaullah Khan, the then, EDO (E&SE) Bannu in Charge EDO(E&SE) Lakki Marwat violated rules and misuse his official powers as Mr. Attaullah Khan was not legally empowered for any appointment or transfer in Lakki Marwat (2) Moreover, complainant is claiming that he is the land owner but as per decision of the Hon'ble Supreme Court of Pakistan, the land owner has no right to be appointed as Class-IV." Inquiry committee has submitted report with the following findings and recommendations/suggestions:

ATTESTED

FINDINGS

(1) Attaullah Khan the then EDO of Bannu held dual charge only for look after the work of office of EDO, Lakki Marwat and is not empowered for any appointment or transfer in District Lakki Marwat.

(2) The proper procedure for recruitment of Class-IV has not been adopted.

(3) The headmaster of the concerned school is still drawing the pay of the Class-IV while the then competent authority has been cancelled the appointment order on 17.10.2007.

(4) The case has been filed in the august Peshawar High Court Bench D. I. Khan vide W.P. No.491/2010 which is under trial.

(5) That as per relevant policy of Government Mr. Attaullah Khan the then Incharge EDO(E&SE) Lakki Marwat is not empowered for fresh appointment in District Lakki Marwat.

(6) That the proper procedure for recruitment against Class-IV vacancies modified by the Government vide Local Government and Rural Division Department has not been observed.

(7) Mr. Attaullah Khan the then EDO (E&SE) has not involved the District Selection Committee during the recru9itment process.

(8) That the competent authority (Zilla Nazim) has expressed displeasure on appointment order issued without the approval of Zilla Nazim and DCO at the District and has cancelled this order forthwith with remarks issued to District Account Officer, Lakki Marwat not to honor pay bill of the officials vide EDO (E&SE) office order issued under No. 1614-18 dated 10.10.2007 & No. 16165.70 dated 10.10.2007 but the headmaster concerned draw their pay regularly.

RECOMMENDATION/SUGGESTION

All the above noted facts prove that Mr. Attaullah Khan the then EDO (E&SE) Bannu Incharge EDO(E&SE) Lakki Marwat violated the rules and misused official power as Mr. Attaullah Khan the then EDO is not empowered for any appointment or transfer in District Lakki Marwat.

Moreover, the complainant is claiming that he is land donor but as per the decision of the Hon'ble Supreme Court the land donor has no right to be appointed as Class-IV.

ATTESTED

09. On receipt of inquiry report notification dated 28.09.2012 was issued vide which the Secretary Education Government of Khyber Pakhtunkhwa under Rule-3 of Khyber Pakhtunkhwa Government Servants Efficiency and Disciplinary Rules, 2011, imposed minor penalty of withholding of two annual increments for two years. All the above-mentioned documents were properly placed on file in the statements of PWs though the official witnesses were cross-examined but undisputedly the proceedings were taken against Mr. Attaullah Khan and ultimately penalty was imposed. When the allegations against Mr. Attaullah Khan were approved to the effect that he was given additional charge to look after into the matters of Education Department Lakki Marwat then he could not make any appointment, thus, the appointments of petitioners being without authority was of no legal effect. It is also pertinent to mention here that petitioners were appointed initially on fixed pay through order dated 10.10.2007 whereas the suit was instituted on 08.06.2008 till then the petitioners were not regular employees of Education Department as such at the time of institution of the suit no rights whatsoever was accrued in favour of petitioners. Record also reflects that after institution of the suit, petitioners have submitted application for rejection of plaint and after hearing the parties the learned trial court through its order dated 28.01.2009 rejected the plaint against which an appeal was filed which too was dismissed on 04.02.2010, thereafter, respondent No.1 approached this Court through **C.R.No.201-B/2010**, which was allowed and the judgment and orders of both the courts below were set-aside and the case was remanded to the learned trial court with direction to decide the same in accordance

with law. Petitioners were given proper opportunity to defend their right and to contest the suit of respondent No.1, however, they could not substantiate their version. Both the learned courts below have properly appreciated the facts of the case and evaluated the evidence in true perspective as such the concurrent findings of both the courts below are well-reasoned, legally correct whereby suit of respondent No.1 was partially decreed and it was held that appointments of present petitioners were without lawful authority, unlawful and illegal. Likewise, the regularization of service could only be made when at the time of appointment proper procedure was adopted i.e., duly qualified person appointed in accordance with the prescribed method of recruitment. It is well settled principle of law that where a law requires doing of something in a particular manner it has to be done in the same manner and not otherwise. Reliance in this respect is place upon the cases of *Muhammad Hanif Abbasi v. Imran Khan Niazi* (PLD 2018 SC 189), (*Shahida Bibi v. Habib Bank Limited* (PLD 2016 SC 995) and *Human Rights Cases Nos.4668 of 2006 and others* (PLD 2010 SC 759).

10. Moreover, though learned counsel for petitioners has strongly contended that an incompetent suit was filed by respondent No.1 without impleading the Provincial Government as a party, suffice it to say that the suit was instituted by respondent No.1 by seeking therein that he was entitled to be appointed being resident of Mela Shahab Khel and the appointments of the present petitioners were made without adopting the proper procedure and without any authority. Though there was a relief that

compensation of the property at the market rate may be awarded in his favor, however, this relief as well as the relief for his appointment was dismissed, thus, petitioner's suit was rightly held maintainable even other-wise non-joinder or mis-joinder ipso facto cannot be resulted into dismissal of suit in accordance with the procedural law as provided under order I rule 9 CPC, that "*no suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it*".

11. More important it was also argued that petitioners remained in service for considerable period and for no fault on their part their services could not be declared illegal for which learned counsel for petitioners has relied upon **2011 SCMR 1581** wherein the appointment orders of the then petitioners were found fake and bogus and the appointees remained in service, however, in the appointment of appointees' proper procedure was adopted as there were no allegations that the appointments were made by an incompetent person and without authority. The only allegations against the appointees were that he procured the appointment order by concealing his dismissal from Pak Army, this judgment is distinguishable as in the instant matter even the authority was incompetent, proper procedure was not adopted neither the posts were advertised nor the applications were invited. Similarly, the record does not suggest that petitioners were registered with Employment Exchange. No other person was given an opportunity to compete with the petitioners, thus, mere on the ground that

petitioners remained in service and received salary, principle of *locus poenitentiae* cannot be attracted, reliance may be placed upon the case titled "*Muhammad Nadeem Arif Vs IGP Punjab Lahore*" reported as 2011 SCMR 408 and a case titled "*Nadeem Ahmad Panhwar V Government of Sindh through Chief Secretary Sindh*" (2009 PLD CS 161). Like-wise, the contention of learned counsel for petitioners that civil court has got no jurisdiction and to this effect he made reliance upon 2004 SCMR 303, this argument of learned counsel has got no force because on the application filed under order VII rule 11 & under order VII rule 10 for return of plaint for want of jurisdiction the plaint was rejected and the appeal also failed nevertheless, the revision petition C.R.No.201-B/2010 filed before this court was allowed and the case was remanded. It is pertinent to mention that order of this court was not assailed before apex court as such it attained finality. It is now well settled that an issue decided against a party, if not challenged, shall attained the finality. Reliance in this regard is placed on the cases reported as "*Muhammad Aslam and 2 others v. Syed Muhammad Azeem Shah*" (1996 SCMR 1862) and "*Kanwal Nain v. Fateh Khan*" (PLD 1983 SC 53).

12. Apart from the above, impugned are the concurrent findings of fact recorded against the petitioners which do not call for any interference by this Court in exercise of its revisional jurisdiction in absence of any illegality or any other error of jurisdiction. Rel: (2006 SCMR 1304), (2007 SCMR 926), (PLD 2003 SC 155) and (2014 SCMR 1469). Petitioners have not been able to point-out any illegality or mis-reading and non-reading of record perversity

-6-9

in the impugned judgment, thus, the instant petition being without substance is hereby dismissed with no order as to costs.

Announced.
29.09.2021.

Imranullah PS
(S.B) Hon'ble Mr. Justice Muhammad Naeem Anwar

CERTIFIED TO BE TRUE COPY

02/10/

Peshawar High Court
Authorized Under Article 87
of Qanun-e-Shahadat Ordinance 1984

SCANNED
3 0 SEP 2021
Khalid Khan

70 25-5-21

بعدالت جناب سینیئر سول جج صاحب تحصیل و ضلع لکی مروت

مسٹ ڈگری بیدار ڈگری مندرجہ ذیل کی اجراء کی بابت درخواست حسب آرڈر قاعدہ ۱۱ مجموعہ ضابطہ دیوانی								
10	9	8	7	6	5	4	3	2
طریقہ جس سے عدالت کی امداد مطلوب ہے [illegible]	شخص جس کے خلاف اجراء مطلوب ہے	NIL. [illegible]	NIL. اخراجات ڈگری [illegible]	NIL. [illegible]	NIL. [illegible]	آیا اپیل کی گئی ہے یا نہیں - اپیل [illegible]	14/03/2013 تاریخ ڈگری	اسعد اللہ ولد یار محمد سکنہ بیلا شاہ خیل تحصیل و ضلع لکی مروت (ڈگری دار) بنام ① حکومت خیبر پختونخواہ بذریعہ سیکرٹری ایجوکیشن پشاور ② ڈپٹی کمشنر ضلع لکی مروت ③ DEO لکی مروت ④ Sub DEO (سب ڈسٹرکٹ ایجوکیشن آفیسر) لکی مروت ⑤ ڈپٹی اسسٹنٹ کمشنر لکی مروت ⑥ ہیڈ ماسٹر GHS بیلا شاہ خیل (دلوخان)

جناب عالی! ذیل عرض ہے

① یہ کہ من سائل ڈگری دار نے دعویٰ استقرار بہ حکم امتناعی دائر کیا تھا جس میں من سائل نے ملازمت کی تقرری وغیرہ کی appeal کی تھی۔ عدالت سینیئر سول جج صاحب نے فریقین ڈگری کر دیا ہے۔ محمد ولد ولی محمد سکنہ لکی شاہ خیل تحصیل و ضلع لکی مروت و دلاور خان ولد عبداللہ خان سکنہ بیلا شاہ خیل تحصیل و ضلع لکی مروت کی Appointment غیر قانونی قرار دی ہے۔ اور ان کی نوکری کو Null & Void ڈکلیئر کیا ہے (نقل عرضی دعویٰ ہمراہ حکم و فیصلہ مورخہ 14/03/2013 ہمراہ لف ہے)

ATTESTED
Examiner to District & Session Judge Lakki Marwat

② یہ کہ من سائل نے حکم و فیصلہ و مذکورہ ڈگری کے خلاف اپیل دائر کی واسی طرح دلاور خان وغیرہ

ٹ لکی اپیل ڈسٹرکٹ جج لکی مروت دائر کیں۔ عدالت ایڈیشنل ڈسٹرکٹ جج
لکی مروت حامد الرحمن صاحب نے پانچوں اپیل ہا کو Consildate کر کے
مورخہ 16/12/2013 کو پانچوں اپیل ہائے خارج کر کے حکم و فیصلہ سول جج
صاحب لکی مروت مورخہ 14/03/2013 کو برقرار رکھا ہے۔ (حکم و فیصلہ 16/12/2013
ہمراہ درخواست لف ہے)

③ یہ کہ ایڈیشنل ڈسٹرکٹ جج صاحب لکی مروت کے حکم و فیصلہ مورخہ 16/12/2013 کے خلاف
دلاور خان وغیرہ نے سول نگرانی پشاور ہائی کورٹ بنوں بینچ میں دائر کیا جو کہ
مورخہ 29/9/2021 کو پشاور ہائی کورٹ بنوں بینچ نے خارج کر کے فیصلہ مورخہ
14/03/2013، سینئر سول جج صاحب لکی مروت کو برقرار رکھا ہے۔ (نقل حکم و فیصلہ ہمراہ لف ہے)

④ یہ کہ مدعیان اب عدالت ہذا سے حکم و مورخہ 14/03/2013 (سینئر سول جج صاحب
لکی مروت) کی تکمیل لینا چاہتے ہیں اور کسی پیشی ہو رہے ہیں۔

لہذا استدعا ہے کہ مدعیان کو حکم و فیصلہ مورخہ 14/03/2013
سینئر سول جج صاحب لکی مروت کی تکمیل کرنے کے احکام
صادر ہوں۔

25/5/2021

اسعد اللہ (ڈگری دار)

بمراد وکیل

اسعد اللہ خان

ATTESTED

Examiner to District & Session Judge Lakki Marwat

لکھا بقلم [illegible] لکی مروت
بالا شدہ اردو صاف بیان لکھا گیا
درخواست اجراء سن و سمجھ لیا ہے
جو لکھا ہے درست ہے

العبد
اسعد اللہ (ڈگری دار)
اسعد اللہ خان

R 72 30-3-23

IN THE COURT OF SENIOR CIVIL JUDGE (JUDICIAL),
LAKKI MARWAT.

Execution Petition No. 07/10 of 2022
Asad Ullah vs Govt of KPK etc

Or.....18
30.03.2023

Parties present.

Mine this order shall address and dispose of matter of maintainability of execution petition in hand on points of limitation and decree holder's locus standi.

Arguments already heard and record perused.

Brief facts of the case are that petitioner/decree holder (here after called as petitioner) Asad Ullah and others have brought a civil suit for declaration etc against the District Government through DCO and EDO (School and Literacy) etc. In the suit, appointment orders of defendants No. 5 and 6 (hereafter called as respondents only) issued by defendants No.2 and 3 were challenged. The then learned Senior Civil Judge vide its judgment dated 14.03.2013, dismissed the plaintiffs' suit to the extent of their entitlement to the appointments, recovery of compensation or recovery of donated land. However, the appointments of respondents No. 5 and 6 were declared illegal and unlawful.

Both the parties challenged the decree and judgment by filling their civil appeals before the Court of learned District Judge, Lakki Marwat. Finally, the Additional District Judge-IV,

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat.

Lakki Marwat vide its consolidated judgment disposed of civil appeals No. 20/13 to 24/13 (five civil appeals), maintained the decree and judgment of the learned Trial Court. Respondents No. 5 and 6 filed civil revision before the august Peshawar High Court Bannu Bench. The worthy Bench while disposing the civil revision No. 45-B/2014, vide its judgment dated 29.09.2021, dismissed the revision and uphold the concurrent findings of the learned Trial Court and first Appellate Court.

Petitioner filed the execution petition in hand on 25.05.2022. He initially sought execution against the official respondents with prayer for removal/dismissal of private respondents' No. 5 and 6. respondents No. 5 and 6 on their own appeared and engaged Younas Ali Khan Advocate, who submitted memorandum and with the permission of Court submitted wakaltnama. Vide Order No. 9 dated 10.11.2022 they were allowed to contest the execution petition.

Learned counsel for private respondents and District Attorney for official respondents raised questions upon maintainability on the touch stone of limitation and locus standi of the petitioner for filling the execution petition.

30/03/23

Arguments from both the sides heard.

Asad Ullah the petitioner was plaintiff No.1 in the suit and till the decision in revision petition his status as plaintiff

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

years is counted from the said date, then the execution petition is within time.

Learned counsel for private respondents submitted that their CPLA is pending in the august Supreme Court of Pakistan and submitted copies of CPLA No. 6435/2021 and also requested for carrying proceedings in the instant execution petition according to **Section 82 CPC**. The request is valid, thus, entertained. In compliance of the said Section this Court deems it fit to refer the matter of executing the decree in the instant execution petition to the Secretary Education Peshawar, Deputy Commissioner (the then DCO), District Education Officer Lakki Marwat. They are directed to declare the orders of private respondents No. 5 and 6 as illegal and unlawful and issue office notifications and submit the same before the Court within 30 days of the receipt of this order.

Muharrir is directed to issue notices for compliance and execution of decree along with copy of this order and others documents i.e. plaint, decrees and judgments of learned Trial Court and worthy High Court. File to come up for compliance report along with notifications from the quarter concerned on

9-4-23 2436

Announced
30.03.2023

(**Hamid Kamal**)
Senior Civil Judge (Judicial)
Lakki Marwat.

ATTESTED

Examiner
District & Session Judge
Lakki Marwat

No. of Application received on 3.4.23
Copying Fee deposited on 6-4-23
Judgment received for copying
No. of words 375
Copying Fee
Search Fee
Urgent Fee
Name of Copyist
Copy Completed on 6-4-23
Copy Delivered on 6-4-23
Name of Examiner

No.1 remained undisputed and un-rebutted on the points of locus standi. When this point has finally been disposed of and has got finality how this Court can discuss or decide the status of petitioner and his locus standi now in execution petition. Moreover, law on the subject has very much clear and Section 47 CPC clearly envisages and defines the parties in the execution petition in the explanation appended with the **Section 47 CPC**. Therefore, the objection of respondents that petitioner has got no locus standi to bring the instant execution application because some of his claim has been declined by the Court, is of no legal worth, thus, declined.

Another objection raised by the respondents is that decree has been passed by Trial Court on 14.03.2013 while in the instant execution petition has been filed on 25.05.2022, thus, in view of **Section 48 CPC**, it is barred by limitation. Learned counsel for petitioner argued that starting point for purpose of limitation as provided in Section 48 CPC would be counted and calculated from the date of Appellate decree or from the date of decision in revision application. He relied upon case law i.e. **2021 CLC 126 [Lahore]**, **1989 MLD 3617 [Lahore]** and **2021 YLR 1222 [Peshawar (Abbottabad Bench)]**. In the instant case judgment in revision petition has been rendered on 29.09.2021, therefore, if the period of three

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

5 76 15-4-23

IN THE COURT OF DISTRICT JUDGE, LAKKI MARWAT

Civil Revision No._____/2023

1. **Riaz Muhamrnad S/O Wali Muhammad**
   R/O Mohallah Mina Khel, Lakki Marwat,
   Presently Lab Attendant, G.H.S. Mela Shahab Khel,
   Tehsil & District Lakki Marwat.
2. **Dilawar Khan S/O Abdullah Khan**
   R/O Village Mela Shahab Khel,
   Tehsil & District Lakki Marwat.

...Petitioner(s)

Versus

1. **Asadullah Khan S/O Yar Muhammad**
   R/O Mela Shahab Khel
   Tehsil & District Lakki Marwat.

...Real Respondent(s)

2. **Government of Khyber Pakhtunkhwa**
   Through Secretary Education Peshawar.
3. **Deputy Commissioner**
   District Lakki Marwat.
4. **District Education Officer (Male)**
   District Lakki Marwat.
5. **Sub District Education Officer (Male)**
   District Lakki Marwat.
6. **Headmaster GHS**
   Mela Shahab Khel
   District Lakki Marwat.

...Proforma Respondent(s)

Examiner to District & Session Judge Lakki Marwat

ATTESTED

Supdt. Distt. Court 17-4

CIVIL REVISION PETITIONU/S 115 CPC AGAINST THE JUDGEMENT/ ORDER/ DECREE DATED 30.03.2023 PASSED BY MR. HAMID KAMAL, THE SENIOR CIVIL JUDGE, LAKKI MARWAT IN THE EXECUTION PETITION NO. 07/10 OF 2022 VIDE WHICH THE OBJECTION TO THE MAINTAINABILITY OF THE SAID EXECUTION PEITITION IS BEING DISPOSED OF AND DECLARED EXECUTION PETITION MAINTAINABLE.

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS CIVIL REVISION PEITITION, THE EXECUTION PETITION NO 07/10 OF 2022 MAY KINDLY BE DISMISSED BEING NON-MAINTAINABLE AND THEORDER DATED: 30-03-2023 OF THE LEARNED SENIOR CIVIL JUDGE, LAKKI MARWAT, MAY KINDLY BE SET ASIDE.

NOTE:If no Civil Revision lies against the impugned Judgement/ Decree/ Order and the impugned Execution Petition, then the instant Civil Revision Petition may be kindly converted into Civil Appeal.

Respectfully Sheweth:

Brief facts giving rise to instant appeal are as under.

17-4-23

FACTS:

1. That Respondent No.1 brought Civil Suit No. 62/1-R of 2007 in which a partial decree to the extent of declaration was passed in favour of the Respondent No. 1 and against the Petitioners by declaring the appointments of defendants No. 5 and 6 (Petitioners herein) as unlawful and the rest of suit was dismissed dated 14.03.2013. (Copies of *decree sheet and judgement of learned Trial Court*are annexed as Annexure "A")
2. Both parties being aggrieved from the judgement of Civil Suit No. 62/1-R of 2007, challenged it and preferred an appeal in the Court of District Judge, Lakki Marwat. The said appeals were dismissed dated 16.12.2013 and judgement and decree of the learned Trial Court was maintained. (Copy of *Judgment and decree of Additional District Judge-IV*is annexed as "Annexure B")

ATTESTED

Examiner to
District & Sessions Judge
Lakki Marwat

3. That Petitioners filed Civil Revision No. 45-B/2014before the august Peshawar High Court, Bannu Bench. The worthy Bench while disposing of the saidCivil RevisionPetition vide its judgement dated 29.09.2021 dismissed the said Civil Revision Petition and uphold the concurrent findings of the learned Trial Court and First Appellate Court.
4. That a CPLA No. 6435/2021, in the meanwhile, is also pending in the august Supreme Court of Pakistan regarding the same matter at hand. (Copy of the *CPLA No. 6435/2021* is annexed as "Annexure C")
5. That the Respondent No. 1in pursuance of the judgement passed in Civil Suit No. 62/1-R filed an Execution Petition No. 07/10 of 2022 dated 25.02.2022. The Petitioners challenged the maintainability of the said Execution Petition. That the learned Senior Civil Judge, Lakki Marwatthrough an order dated 30.03.2023 disposed of the issue by declaring the Execution Petition maintainable. (Copy of the*Order*dated 30.03.2023 is annexed as "AnnexureD")
6. That being aggrieved from the aforementioned order of the learned Senior Civil Judge, Lakki Marwat dated 30.03.2023, the Petitionersprefer instant appeal on the following grounds interalia.

GROUNDS:

a. That the impugned order dated 30.03.2023 is against the law, facts, without substance, in utter disregard of material available on record as well in utter disregard of relevant law point, as such untenable in the eyes of law.
b. That the findings of the learned Court are the outcome of haste and without application of judicial mind and result of misreading and non-reading of the material available on file hence untenable.
c. That the order of the learned Court is prejudicial to the interests of the

Petitioners. The learned Court did not appreciate the arguments advanced by the Petitioners' counsel.

d. That the learned Court has graciously erred to make its own interpretation in contrast to the apex Supreme Court judgements is in excess jurisdiction which has caused grave miscarriage of justice.

e. That impugned order of the learned Court regarding execution of the petition suffers from material irregularity and illegality in exercise of jurisdiction.

f. That the dictum laid down by apex Supreme Court in numerous judgements has been misinterpreted by the learned Court and new interpretation at her own is un-warranted.

g. That the learned Court has totally disregarded the fact that the judgement passed by the learned Trial dated 14.03.2013 and subsequently held by the First Appellate Court and august Peshawar High Court, Bannu Bench, is Declaratory in nature which is not executable as per the law.

h. That the Respondent No. 1 has got no cause of action for the reason that when the suit was brought the Petitioners were appointed on fixed pay and later on their status changed to Civil Servants by Mir Azam Khan, the then EDO (S&E) vide Letter No. 1796-1801 dated 08.05.2008 which granted Ex-Post Sanction and as a result the services of the Petitioners were regularized. In this regard, an entry dated 01.07.2008 in the service book was made regarding the Notification for Regularization vide Letter No. BO-1/1-22/2007-08 dated 29.01.2008. (Copies of the *Letter No. 1796-1801 dated 08.05.2008* & *entry in the Service Book dated 01.07.2008* are annexed as "Annexure E & F")

i. That the Respondent No. 1 had got no locus standi once declaratory decree dated 14.03.2013 is passed in his favour and against the Petitioners.

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

j. That the instant Civil Revision Petition is witnin time.

k. Any other grounds, with the permission of this Hon'ble Court will be advanced at the time of arguments.

PRAYER:

IT IS, THEREFORE, MOST HUMBLY PRAYED THAT ON ACCEPTANCE OF THIS CIVIL REVISION PETITION, THE EXECUTION PEITION NO. 07/10 OF 2022 BEING NON-MAINTAINABLE MAY GRAUCIOUSLY BE DISMISSED AND THE ORDER DATED: 30.03.2023 PASSED BY THE LEARNED SENIOR CIVIL JUDGE, LAKKI MARWAT, MAY KINDLY BE SET ASIDE.

Any other relief not specifically prayed for and deemed apopropriate by the Hon'ble Court in circumstances of the case may also be granted.

Dated: 15.04.2023

PETITIONER(s)

ATTESTED

Examiner
District & Session Judge
Lakki Marwat

Through

YOUNAS ALI KHAN
Advocate High Court
Lakki Marwat

T 81

25-4-23

Office of The District Education Officer
Male Lakki Marwat

Phone & Fax: (0969)538291, Email: [illegible]
www.facebook.com/deomale Lakki, www.twitter.com/deo_m_lakki

OFFICE ORDER:

In Pursuance to the Judgment of Honorable Peshawar High Court Bannu Bench in Civil Revision Petition Bearing No.45-B/2014 Dated. 29-09-2021, Execution Petition Order Sheet No.18 Dated. 30-3-2023 of the Honorable Senior Civil Judge Lakki Marwat and joint/unanimous decision of the committee held under the chairmanship of the worthy Additional Secretary (General) E&SE Department conveyed vide No.SO (Primary-M) /E&SED/ 2-1/ Posting-Transfer/ 2023 Dated. 27.04.2023. The competent authority (District Education Officer Male Lakki Marwat) is pleased to withdraw the appointment order bearing No. 16114-18 dated. 10-10-2007 in respect of Riaz Muhammad S/O Wali Muhammad Lab: Attendant GHS Mela Shahab Khel with immediate effect.

District Education Officer
(Male) Lakki Marwat

Endst: No. 3364-74 Dated. 28/04/2023

Copy forwarded to:

1. PS to Secretary Elementary and Secondary Education Peshawar, Khyber Pakhtunkhwa.
2. Section Officer (Primary Male), E&SE Department Peshawar.
3. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
4. Deputy Commissioner (The than DCO), Lakki Marwat.
5. Additional Registrar PHC Bannu Bench.
6. The Honourable Senior Civil Judge Lakki Marwat.
7. District Attorney, Lakki Marwat
8. District Account Officer, Lakki Marwat.
9. Head Master GHS Mela Shahab Khel with the direction for necessary entries in his Service Book and stoppage of pay.
10. Riaz Muhammad S/O Wali Muhammad R/O Mohalla Mina Khel Lakki Marwat.
11. Office File

District Education Officer
(Male) Lakki Marwat

82 26-5-23

بخدمت جناب ڈائریکٹر تعلیمات، خیبر پختونخواہ،

پشاور

Dy No - 397/398
dated 26-5-23

اپیل برخلاف حکم مورخہ 28.04.2023 جس کی رو سے من سائل کی تقرری کا آرڈر واپس لیا گیا۔

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

1۔ یہ کہ مورخہ 11.06.2007 کو اسداللہ خان نے دعویٰ بعدالت سینئر سول جج صاحب بابت تقرری کلاس IV بدلے زمین دائر کیا، جس میں مسئول الیہ کی برطرفی کا کوئی ذکر نہ ہے۔

2۔ یہ کہ سائل مورخہ 10.10.2007 کو بحیثیت چوکیدار/لیب اٹنڈنٹ بھرتی کیا گیا۔

3۔ یہ کہ مورخہ 08.05.2008 کو اتھارٹی نے اسامیوں مذکورہ کی بحوالہ خط نمبری 1801-1796 منظوری دی۔

4۔ یہ کہ مورخہ 08.06.2008 کو مدعی اسداللہ خان وغیرہ نے بعدالت جناب سینئر سول جج صاحب لکی مروت ترمیمی عرضی دعویٰ بابت تقرری خود داخل کی۔

5۔ یہ کہ مورخہ 06.10.2008 کو سائل نے بعدالت حضور جواب دعویٰ داخل کیا اور مدعی کے دعویٰ سے انکاری ہوا۔

6۔ یہ کہ مورخہ 10.11.2008 کو سائل نے برائے اخراج دعویٰ مدعی درخواست زیر آرڈر VII رول 11 ضابطہ دیوانی دی۔

7۔ یہ کہ فریقین کے دلائل سننے کے بعد مورخہ 28.01.2009 کو درخواست زیر دفعہ آرڈر VII رول 11 ضابطہ دیوانی منظور کی اور دعویٰ مدعی خارج فرمائی۔

8۔ یہ کہ حکم بالا کے خلاف مدعی نے اپیل بعدالت ڈسٹرکٹ جج صاحب دائر کی جو مورخہ 04.02.2010 کو خارج فرمائی گئی۔

9۔ یہ کہ مورخہ 26.04.2010 کو مذکورہ بالا فیصلے کے خلاف مدعی نے بعدالت ہائی کورٹ سرکٹ بینچ ڈی۔آئی۔خان نگرانی داخل کی جو مورخہ 12.09.2011 کو منظور ہوکر مقدمہ بالا ٹرائل کورٹ کو ریمانڈ کر کے شہادت ریکارڈ کرنے کا کہا گیا۔

10۔ یہ کہ مورخہ 14.03.2013 کو عدالت سینئر سول جج نے تقرری مدعی و ہرجانہ سکول خارج فرمائی۔البتہ بابت تقرری سائل غیر قانونی قرار دیا گیا۔

11۔ یہ کہ مورخہ 13.04.2023 کو فیصلہ بالا کے خلاف سائل نے عدالت ڈسٹرکٹ جج میں اپیل دائر کی جو کہ مورخہ 16.12.2013 کو خارج فرمائی۔

12۔ یہ کہ سائل نے ہائی کورٹ میں متفرق درخواست نگرانی کے ساتھ بابت عارضی حکم امتناعی داخل کی جو مورخہ 02.06.2014 کو سٹیٹس کو کر دیا گیا۔

13۔ یہ کہ بعدازاں سائل نے بعدالت ہائی کورٹ سرکٹ بینچ بنوں میں نگرانی داخل کی جو مورخہ 29.09.2021 کو ڈسمس کی گئی۔

14۔ یہ کہ مدعی نے مورخہ 25.05.2021 کو عدالت سول جج میں فیصلہ بالا پر عمل درآمد پر فیصلہ جات سائل وغیرہ کو نوٹس دی۔

15۔ یہ کہ بعدازاں سائل نے متفرق درخواست بمقدمہ نگرانی برائیگزیکیوشن پٹیشن داخل کی جو مورخہ 17.04.2023 کو عملدرآمد کو سسپنڈ کیا گیا۔

16۔ یہ کہ مورخہ 28.04.2023 کو ائیگزیکیوشن پٹیشن پر حکم جاری کیا جو کہ سائل کے تقرری آرڈر مورخہ 10.10.2007 کو مورخہ 28.04.2023 کو واپس کیا گیا۔

17۔ یہ کہ فیصلہ ہائی کورٹ کے خلاف سائل نے سپریم کورٹ میں پٹیشن داخل کی جو

تاحال زیرالتواء ہے۔

لہٰذا اپیل ھٰذا کی ضرورت لاحق ہوئی۔

الف۔ یہ کہ مدعی کا سائل سے کوئی بھی واسطہ وتعلق نہ تھا اور نہ ہے۔ سپریم کورٹ نے اپنے فیصلہ جات میں متعدد بار فیصلہ دیا ہے کہ سرکاری عمارت کیلئے زمین دینے پر کوئی بھی تقرری کا حقدار نہ ہے اور کسی بھی عدالت نے اپنے فیصلے میں مدعی کے تقرری کے بارے میں کوئی ہدایت نہیں دی ہے۔

ب۔ یہ کہ ایگزیکیوشن پٹیشن میں عدالت کو یہ ہدایت محکمہ کو نہیں دینے چاہئے تھی کہ وہ عدالت کے فیصلوں پر عملدرآمد کرے کیونکہ معاملہ مذکورہ تاحال زیر تجویز عدالت عظمیٰ ہے۔

ت۔ یہ کہ ہائی کورٹ سے کیس ریمانڈ ہونے پر یہ ہرگز تصور نہیں کیا جانا چاہئے کہ ہائی کورٹ نے سائل کی سروس سے بے دخلی کا حکم صادر کیا ہے۔

ث۔ یہ کہ مدعی نے بابت ملکیتی زمین جو دعویٰ کیا ہے سکول مذکورہ کی عمارت مشترکہ پراپرٹی پر تعمیر کیا گیا ہے نہ کہ مدعی کی زمین پر۔

ج۔ یہ کہ سائل کو سروس سے نکالنے پر محکمہ کو چاہئے تھا کہ وہ نوٹس دیتے لیکن ایسا نہ کر کے مجاز اتھارٹی نے غیر قانونی عمل کا ارتکاب کیا ہے جو قرین انصاف نہ ہے۔

د۔ یہ کہ عدالت بالا کا متعلقہ معاملے کا صحیح و قانونی رسائی نہ ہونے پر غلطی کا ارتکاب کیا ہے مدعی نے کیس پر بھی سائل کی تقرری کو چیلنج کیا ہے بلکہ اپنے تقرری کیلئے دعویٰ جات صحیح طور پر ان کے دعوی کو مسترد کیا ہے۔

ذ۔ یہ کہ مذکورہ بالا معاملہ میں نہ ہی محکمہ نے اور نہ ہی عدالتوں نے قانونی پوزیشن کو مدنظر رکھا ہے بلکہ خود ساختہ وضاحت سے کام لیکر سائل کو نہ صرف گوناگوں مشکلات سے دوچار کیا ہے بلکہ اس کو سروس سے بھی برطرف کیا گیا ہے جو کہ متذکرہ عمل مبنی بر بدنیتی و امتیاز ہے۔

استدعا ہے کہ حکم مورخہ 28.04.2023 کو کالعدم قرار دیکر سائل کو تمام سابقہ مراعات کیساتھ سروس پر بحال کرنے کا حکم صادر کیا جائے۔

المرقوم 26.05.2023

سائل

دلاور خان ولد عبداللہ خان

چوکیدار گورنمنٹ ہائی سکول میلہ شہاب خیل، لکی مروت

ریاض محمد ولد ولی محمد

لیب اٹینڈنٹ گورنمنٹ ہائی سکول میلہ شہاب خیل لکی مروت

17-4-23

Os.....3
17-04-2023

Petitioners through counsel present and submitted instant revision petition with an application for suspension of execution proceedings in order dated 30-03-2023 of learned trial court. It be registered. Preliminary arguments heard. The application seems genuine, hence, allowed and the operation of execution proceedings in the impugned order & decree dated 30-03-2023 is hereby suspended till date fixed. Notice to the respondents be issued for 6/5/23

17/04/2023

Adam Khan Suleman Khel
Addl. District Judge-II,
Lakki Marwat.

No 3876
Application received on 24.4.23
Copying Fee deposited on
Judgment received for copying 24.4.23
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ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

16-9-23

IN THE COURT OF ADAM KHAN SULEMAN KHEL
ADDL: DISTRICT JUDGE-II, LAKKI MARWAT

Civil Revision No.....8 of 2023
Date of institution.....18-04-2023
Date of decision.....16-09-2023

Riaz Muhammad s/o Wali Muhammad r/o Mohallah Mina Khel, 2. Dilawar Khan s/o Abdullah Khan r/o Village Mela Shahab Khel Tehsil and District
.....Petitioners

Versus

1. Asadullah Khan s/o Yar Muhammad r/o Mela Shahb Khel, District Lakki Marwat. .....(**Real Respondents**)
2. Govt of KPK through Secretary Education Peshawar
3. Deputy Commissioner, Lakki Marwat
4. District Education Officer(Male), Lakki Marwat
5. Sub District Education Officer(Male), Lakki Marwat
6. Head Master GHS, Mela Shahab Khel, District Lakki Marwat.

(Proforma respondents)

JUDGMENT.

1. My this order is aim to dispose off the revision petition filed by the respondent/petitioner No.5 & 6 against the order of learned Senior Civil Judge (Judicial) Lakki Marwat vide which the execution petition of respondent/plaintiff Asadullah was declared maintainable while objection of the petitioners/defendants was turned down.
2. Brief facts o f the case, as per plaint, are that plaintiff No.1 sought declaration to the effect that he was entitled to be appointed in Education Department against the vacant posts of chowkidar or laboratory attendant in Govt High School, Mela Shahab Khel, hereinafter described as the school, on the ground that his predecessor-in-interest had donated his land free of cost for the construction etc of the school with the purpose in accordance with the prevailing rules that against the appropriate portion of the vacant posts of the school, only his nominees should be appointed. That the vacancies of chowkidar and laboratory attendant were sanctioned vide

ATTESTED
Examiner to
District & Session Judge
Lakki Marwat

16/09/2023

notification No.BOV/FD/2-31/06-07 dated 09-01-2008 and on the very second day, the defendant No.2, who was entrusted with the administrative powers only had unlawfully appointed the defendants No.5 & 6 without adopting the proper procedure. Plaintiff assailed the validity of appointment orders of defendant No.5 & 6 on the said posts, being illegally effected against the recruitment policy and therefore, prejudicial to plaintiff's right thereto. The plaintiff claimed entitlement to the appointment as land owner. Several requests were extended to the defendants for making appointment of plaintiff to the said post but they refused to act accordingly, therefore, the instant suit was filed. The plaintiff prayed for the declaration of his entitlement and permanent injunction against the defendants and in alternative they prayed for payment of the compensation for the donated land or restoration of the land, hence, the present suit.

3. Defendants were summoned, who appeared and submitted written statement. From the pleadings of the parties, issues were framed. Parties were given ample opportunity to adduce their evidence, to which they did and after heard arguments, suit of the plaintiff was dismissed by SCJ (Judicial) Lakki Marwat vide Judgment and decree dated 14-03-2013. Aggrieved from the said judgment, an appeal was filed by Asadullah etc before the learned District Judge, Lakki Marwat which was marked to Addl District Judge-IV, Lakki Marwat and after heard arguments of the parties, the appeal was dismissed vide consolidated judgment dated 16-12-2013, again Riaz Muhammad and Dilawar Khan (respondent No.5 & 6) filed an appeal before the august Peshawar High Court, Bench Bannu and the appeal was also dismissed by upholding both the concurrent finding of learned trial court and first appellate court vide judgment dated 29-9-2021. An execution petition was filed by Asadullah while defendants also submitted objection over the execution petition being not maintainable and time barred, however, after heard arguments of counsel for the parties, the learned trial court SCJ (Judicial) maintained the execution

Addl. Session Judge
Lakki Marwat
09/08/23

ATTESTED

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District & Session Judge
Lakki Marwat

petition, while plea of defendants that the execution petition being time barred was turned down vide order dated 30-3-2023.

4. Aggrieved from the said order the instant revision submitted under section 115 of CPC by petitioners/respondents No.5 & 6.
5. Arguments heard and record perused.
6. Perusal of the record shows that one Saadullah etc had filed a declaratory suit against the respondent/defendants and after full dressed, suit of the plaintiff was dismissed by learned Senior Civil Judge(Judicial) Lakki Marwat, however, the appointments of defendant No.5 &6 were declared unlawful vide judgment and decree dated 14-3-2013. Aggrieved from the said judgment an appeal filed by Asadullah etc before District Judge, Lakki Marwat which was marked to Addl District Judge-IV, Lakki Marwat and after heard arguments of the parties the appeal was dismissed vide consolidated judgment dated 16-12-2013, again Riaz Muhammad and Dilawar Khan (respondent No.5 & 6) filed a revision petition before the august Peshawar High Court, Bench Bannu, however, the same was also dismissed by upholding both the concurrent finding of learned trial court and first appellate court vide judgment dated 29-9-2021. Although Riaz Muhammad has filed an appeal before august Supreme Court of Pakistan, however, no stay order for suspension of execution proceedings pending before the Executing Court/SCJ(Judicial) Lakki Marwat has been provided. Respondent raised two points before the executing court to declare the execution petition being not maintainable and barred by law. The first objection raised by the respondents that petitioners have no locus standi for filing the execution petition and another objection that the execution petition is time barred under section 48 CPC.
7. Regarding the first objection, raised by the private respondents Riaz Muhammad and Dilawar Khan that petitioner has got no locus standi to file the execution petition. In this regard I am of the view that the petitioner Asadullah had filed suit for declaration, although to the extent of his appointment, his suit was dismissed while on the other

Examiner
District & Sessions Judge
Lakki Marwat

Addl: District Judge-IV
Lakki Marwat

16/09/2023

hand, on the strength of the said suit, his plea for declaring appointment of respondent No.5 & 6 as unlawful, was accepted and in the said judgment appointment of respondents 5 & 6 was declared unlawful. Meaning thereby that he has locus standi, to the extent of declaring appointments of defendant No.5 & 6 as unlawful, which is intact up to the Worthy Peshawar High Court bench Bannu and executing court has rightly declared that Asadullah has the right to file execution petition to act upon the judgment dated 14-3-2013 of Senior Civil Judge, Lakki Marwat and of the first appellate court as well as of the worthy Peshawar High Court, Bannu bench as well in its letter & spirit.

8. Another objection raised by the private respondent that the execution petition is barred by limitation u/s 48 of CPC. Although initial decree was passed on 14-3-2013 by learned SCJ Lakki Marwat, an appeal against the said judgment was dismissed on 16-12-2013 by ASJ-IV, Lakki Marwat and thereafter the revision against the concurrent findings of the trial court and first appellate court was also dismissed by the worthy Peshawar High Court Bench Bannu vide Judgment dated 29-9-2021 and trial court has rightly declared that the execution petition filed by the petitioners is well within time because if the period of three years be reckoned from the judgment of worthy Peshawar High Court Bench Bannu dated 29-9-2021, then the execution petition is within time. Similarly, the executing court has rightly issued direction to the concerned authority to declare appointment of respondent No.5 & 6, illegal and unlawful within 30 days and the concerned authority in compliance of direction of the executing court/SCJ (Judicial) dated 30-3-2023 vide office order dated 28-4-2023 and withdrawn the appointment order of respondent No.5 & 6 namely Riaz Muhammad and Dilawar Khan with immediate effect. As no order regarding stay/execution proceeding has been brought by the respondent/petitioners from the August Supreme Court of Pakistan under Order XLI Rule-5 CPC and thereafter executing court issued proper direction to the concerned authority for

Civil Judge
Lakki Marwat
16/09/2023

ATTESTED

Examiner
District & Sessions Judge

withdrawal of appointment order of respondent No.5 & 6 being unlawful and the concerned authority in compliance of the direction of the executing court rightly withdrawn their order vide office letter No.3364-74 dated 28-4-2023.

9. In view of the above, the order dated 30-3-2023 of the trial court/executing court is in accordance with law, needs no interference, therefore, instant revision petition stands dismissed . No order as to costs.

10. File be consigned to the record room after necessary completion and compilation.

Announced
16-09-2023

16/09/023

(Adam Khan Suleman Khel)
Add District Judge-II
Lakki Marwat

CERTIFICATE

Certified that this judgment consists of five pages. Each page has been read and signed by me after necessary correction.

16/09/023

Addl District Judge-II,
Lakki Marwat.

ATTESTED

Examiner to
District & Session Judge
Lakki Marwat

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Copy Delivered on 16-10-23
Name of Examiner

W 93 20-10-23

بخدمت جناب ڈائریکٹر تعلیمات، خیبر پختونخواہ،
پشاور

درخواست بمراد فیصلہ کرنے اپیل مورخہ 26.05.2023۔

جناب عالی! ذیل عرض ہے۔

یہ کہ سائل نے مورخہ 26.05.2023 کو بابت بحالی اپیل دائر کی تھی جو تاحال زیر تجویز ہے۔(نقل اپیل لف ہے)۔ نیز سائلان کو سروس بحال کرنے کا حکم بھی صادر فرما دیں۔

لہذا استدعا ہے کہ بمنظوری درخواست ھذا سائل کے اپیل پر ہمدردانہ غور کر کے مناسب فیصلہ صادر فرماویں۔

المرقوم 20.10.2023

اپیلانٹس/سائلان:

دلاور خان ولد عبداللہ خان

چوکیدار گورنمنٹ ہائی سکول میلہ شہاب خیل، لکی مروت

ریاض محمد ولد ولی محمد

لیب اٹینڈنٹ گورنمنٹ ہائی سکول میلہ شہاب خیل لکی مروت

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No._____/2023

Riaz Muhammad versus DEO (M) & Others

APPLICATION FOR CONDONATION OF DELAY, IF ANY.

Respectfully Sheweth:

1. That the subject appeal is filed in this hon'able Tribunal.

2. That due to the lengthy process of the case in the legal forums between the parties, finally R. No. 01 did withdraw order of appointment of applicant vide order dated 28-04-2023.

3. That thereafter too, the matter was pending adjudication between the parties and applicant served the department till 16-09-2023.

4. That on 17-04-2023, judgment was suspended by the hon'ble court after dismissing Revision Petition on 16-09-2023.

5. That as per the aforesaid circumstances, the appeal in hand is well within time or if any delay exists, the same shall be condoned in the best interest of justice.

6. That the apex Supreme Court held time and again in its judgments that vested rights shall not be killed on the score of limitation and cases be decided on merit.

It is, therefore, most humbly requested that delay, if any, be condoned in the best interest of justice.

Applicant

Through

Saadullah Khan Marwat
Advocate

Dated: 03-11-2023

AFFIDAVIT

I, Riaz Muhammad S/O Wali Muhammad, Ex-lab attendant, govt. high school mela shahab khel, lakki marwat (Appellant), do hereby solemnly affirm and declare that contents of the Application are true and correct to the best of my knowledge and belief.

DEPONENT

KHALID MAHMOOD ADVOCATE
Oath Commissioner
PESHAWAR HIGH COURT

بعدالت جناب سروس ٹریبونل صوبہ سرحد پشاور

منجانب اپیلانٹ

ریاض محمد بنام محکمہ تعلیم

دعویٰ اپیل

باعث تحریر آنکہ

بمقام مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کارروائی متعلقہ آن مقام پشاور کیلئے اسحاق اللہ خان صاحب ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کرکے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ وتقرر ثالث وفیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک در روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق اور اس پر دستخط کرانے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظرثانی وپیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ وہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا وخرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حدود سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہٰذا وکالت نامہ لکھ دیا کہ سند رہے۔

المرقوم 24/1/23

الـعـبـد — الـعـبـد — الـعـبـد

ریاض محمد المعلم

سید اللہ خان مرتضیٰ
ایڈووکیٹ

ارباب سیف الکمال
ایڈووکیٹ

امجد نواز
ایڈووکیٹ