

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.

Appeal No. 42/2016

Date of Institution... 11.01.2011

Date of decision... 26.12.2017

Izzat Noor Ex-Primary School Teacher, Government Primary School, Chortoo;
Jalkoat son of Gul Mashal R/O Sew Post office Kamila Tehsil Dasu, District
Kohistan. ... (Appellant)

Versus

1. Director, Elementary and Secondary Education, Government of Khyber
Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

MR. Fazal Shah Mohmand, ... For appellant.
Advocate.

MR. Muhammad Jan, ... For respondents.
Deputy District Attorney

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. GUL ZEB KHAN, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - This judgment shall also
dispose of another connected appeal No. 43/2016 Muhammad Nabi as in both the
appeals common questions of law and facts are involved.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellants were dismissed from service on 11.05.2012 due to his
absence against which they filed departmental appeals (undated) which were
rejected on 23.12.2015 and thereafter, they filed the present service appeals on
11.01.2016.

ARGUMENTS

3. The learned counsel for the appellants argued that absence of the appellants was due to their involvement in a criminal case in which they were acquitted by learned trial court and thereafter they filed departmental appeals. That the impugned order has been given retrospective effect. That no proceedings under the relevant law in force for the time being i.e. Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 were conducted. That the appellate authority rejected departmental appeal under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 whereas the cases were covered by the RSO mentioned above. That the impugned order was given retrospective effect which was a void order.


4. On the other hand the learned Deputy District Attorney argued that the appeal was time barred as the impugned order was passed on 11.05.2012 and the appellants filed departmental appeals according to para-4 of the appeal on 28.12.2012 and thereafter as per para-6 of the appeal they filed second departmental appeals after acquittal. That the appellants admitted their absence from duty in his memorandum of appeals.

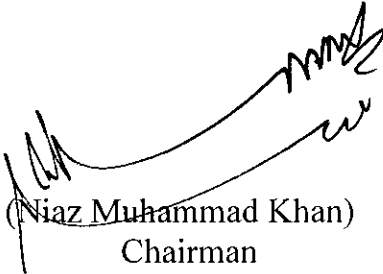
CONCLUSION

5. This Tribunal in a number of cases delivered judgments that retrospective orders are void orders on the basis of judgment of the august Supreme Court of Pakistan reported as 1985-SCMR-1178. The present orders are also void orders and no limitation shall run against void orders. The department has also not complied with the relevant rules in the case of absence. The department has also not taken into consideration involvement of the appellant in criminal case.

6. As a result of the above discussion, this appeal is accepted and the department is directed to hold denovo proceedings within a period of 90 days of the

receipt of this judgment in accordance with the rules, failing with the appellants shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.


(Gul Zeb Khan)
Member


(Niaz Muhammad Khan)
Chairman

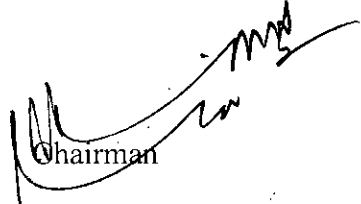
ANNOUNCED
26.12.2017

Misc. Application in S.A No. 42/2016

10.1.2018

Counsel for the appellant submitted an application for correction of name of the father of the appellant in the judgment dated 26.12.2017 in service appeal No. 42/2016. File has been requisitioned.

As per CNIC father's name of appellant Izzat Noor is Subhan Shah. Therefore, application is accepted and name of the ^{father} appellant in the judgment dated 26/12/2017 in service appeal No. 42/2016 may be read as "Subhan Shah" instead "Gul Mashal".


Chairman

Before the Chairman Service Tribunal KPK Peshawar ⑤

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No 42/2016

Diary No. 62

Jazzat Noor VS Director and others Dated 11/01/2018

Application for correction of father name of the appellant
in the titled appeal

Respectfully Submitted:-

1. That the captioned service appeal has been accepted by this honorable Tribunal vide order and judgment dated 26.12.2017. (Copy of judgment is attached)

2. That ~~the~~ inadvertently the father name of the appellant has been written as Gul Mashal instead of

Subhan Sheh. Furthermore there was another appeal of the same nature and being connected with titled appeal, and mistakenly his father name was written in instant appeal as well. (Copy of copy is attached,

3. that there is no bar on correcting the father name of appellant rather the same would serve the ends of justice.

It is therefore prayed that the father name of the appellant may kindly be corrected as Subhan Sheh.

Putu P D M
Lead along
with original
file
Sardar
11/1/18
Recd
C. M. Khan
be made accordingly
11/1/18

~~Signature~~

(2)

Appellant/Plaintiff

Dated 11-1-2018

Through

~~Signature~~

Fazal Shah Mohmand

Advocate Peshawar

~~Signature~~

Muhammad Zubair Khalil

Advocate Peshawar

Affidavit

Stated on oath that the contents of this application are true and correct and nothing has been concealed from this honorable Tribunal.

~~Signature~~

Deponent

ATTESTED 11 JAN 2018

DIWOOD KHAN ADVOCATE
NOTARY PUBLIC
Date _____
High Court Peshawar

~~Signature~~

(1)

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unal



BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 42 /2016.

Izzat Noor Ex Primary School Teacher, Govt. Primary School Chortoo
Jalkoat S/O Gul Mashal R/O Sew P/O Kamila Tehsil Dasu District
Kohistan.....Appellant

V E R S U S

- Khyber Pakhtunkhwa
Service Tribunal
Diary No. 31
dated 11-1-2016
1. Director, Elementary and Secondary Education Govt. of KPK Peshawar.
 2. District Education Officer (Male) Kohistan.
 3. Secretary, Elementary and Secondary Education Govt. of KPK Peshawar.....Respondents

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER DATED 23-12-2015 PASSED BY
RESPONDENT NO 1 WHERE BY DEPARTMENTAL
APPEAL OF THE APPELLANT FILED AGAINST THE ORDER
DATED 11-05-2012 OF RESPONDENT NO 2 HAS BEEN
REJECTED/FILED.**

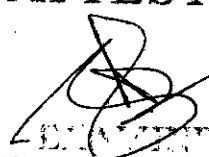
PRAYER:-

On acceptance of this appeal the impugned orders dated 23-12-2015 of respondent No 1 and Order dated 11-05-2012 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

- Filed in day*
11/1/16
1. That the appellant joined the respondent Department as Primary School Teacher (herein after referred to as PST) on 30-06-1997, remained posted to various Stations and since then he performed his duties with honesty and full devotion.
 2. That the appellant while lastly posted to Govt. Primary School Koat Gali Jalkot District Kohistan, was falsely involved in a murder case vide FIR No 47 dated 22-07-2006 U/Ss 302/324/148/149 PPC of Police Station Dassu and was suspended. (Copy of FIR is enclosed as Annexure A).
 3. That the appellant along with two others was dismissed from service by respondent No 2 vide Order dated 11-05-2012. (Copy of Order dated 11-05-2012 is enclosed as Annexure B).

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

Appeal No. 42/2016

Date of Institution... 11.01.2011
Date of decision... 26.12.2017



Izzat Noor Ex-Primary School Teacher, Government Primary School, Chortoo,
Jalkoat son of Gul Mashal R/O Sew Post office Kamila Tehsil Dasu, District
Kohistan. ... (Appellant)

Versus

1. Director, Elementary and Secondary Education, Government of Khyber
Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

MR. Fazal Shah Mohmand,
Advocate.

For appellant.

MR. Muhammad Jan,
Deputy District Attorney

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

CHAIRMAN
MEMBER

JUDGMENT

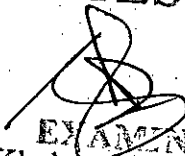
NIAZ MUHAMMAD KHAN, CHAIRMAN: - This judgment shall also
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appeals common questions of law and facts are involved.

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FACTS

2. The appellants were dismissed from service on 11.05.2012 due to his
absence against which they filed departmental appeals (undated) which were
rejected on 23.12.2015 and thereafter, they filed the present service appeals on
11.01.2016.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ARGUMENTS

3. The learned counsel for the appellants argued that absence of the appellants was due to their involvement in a criminal case in which they were acquitted by learned trial court and thereafter they filed departmental appeals. That the impugned order has been given retrospective effect. That no proceedings under the relevant law in force for the time being i.e. Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 were conducted. That the appellate authority rejected departmental appeal under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 whereas the cases were covered by the RSO mentioned above. That the impugned order was given retrospective effect which was a void order.

4. On the other hand the learned Deputy District Attorney argued that the appeal was time barred as the impugned order was passed on 11.05.2012 and the appellants filed departmental appeals according to para-4 of the appeal on 28.12.2012 and thereafter as per para-6 of the appeal they filed second departmental appeals after acquittal. That the appellants admitted their absence from duty in his memorandum of appeals.

CONCLUSION

5. This Tribunal in a number of cases delivered judgments that retrospective orders are void orders on the basis of judgment of the august Supreme Court of Pakistan reported as 1985-SCMR-1178. The present orders are also void orders and no limitation shall run against void orders. The department has also not complied with the relevant rules in the case of absence. The department has also not taken into consideration involvement of the appellant in criminal case.

6. As a result of the above discussion, this appeal is accepted and the department is directed to hold denovo proceedings within a period of 90 days of the

ATTESTED

Khyber Pakhtunkhwa
Tribunal
Peshawar

receipt of this judgment in accordance with the rules, failing with the appellants shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.

Announced s/f Niaz Muhammad Khan
26-12-2017 Chairman

Certificate of true copy
Khy
Munakhwa
Tribunal,
Peshawar

s/f Gulzar Khan
Member

Date of Presentation of Petition 10-01-2018
Number of Words 1200
Copying Fee 8-00
Urgent 2-00
Total 10-00
Name of Copyist [Signature]
Date of Completion 10-01-2018
Date of Delivery of Copy 10-01-2018

7

حکومت پاکستان

قومی شناختی کارڈ

13401-1509275-7



[Signature]

دستخط مال کارڈ

نام: عزت نور

جنس: مرد

والد کا نام: سہیل شاہ

شناختی ادارہ: کوئی نہیں

1975

عثمان یوسف حسین
تاریخ پیدائش:

دستخط مسٹر جنرل

شناختی نمبر: 13401-1509275-7 خاندان نمبر: V4M8MQ



موجودہ رہنے والا، واسو، ضلع کوہستان

مستقل رہنے: سوڑوگا، بڑی بارا، ڈاکخانہ واسو، تحصیل واسو، ضلع کوہستان

تاریخ اجراء: 28/11/2016 تاریخ سسج: 28/11/2026

گمشدہ کارڈ ملنے پر قریبی کسٹمر سروس میں ڈال دیں

12876044024
قومی شناختی کارڈ



26.12.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Muhammad Alam, ADO for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman

ANNOUNCED
26.12.2017

09.02.2017

Clerk to counsel for the appellant and Addl. AG alongwith Rashid Ahmad, ADEO, Kohistan for respondents present. Rejoinder submitted. To come up for arguments on 13.06.2017 before D.B.


(ASHFAQUE TAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

13.06.2017


Counsel for the appellant present. Mr. Abdul Wali, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 10.10.2017 before D.B.



(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

10.10.2017

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak learned Assistant Advocate General alongwith Mr. Muhammad Alam (ADEO) for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 27.12.2017 before S.B.


(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

Appeal No. 42/2016.
Mr. Azzet Noor

19.01.2016

Counsel for the appellant present and heard. He submitted that the appellant was charged in a murder case in which his BBA was conformed on 8.12.2012, however, prior to this he had been dismissed from service vide impugned order dated 11.5.2012. Learned counsel further submitted that the dismissal order is being illegal for the reasons that no charge sheet was issued to the appellant nor inquiry was conducted and that no opportunity of hearing was provided to the appellant. It was also submitted that the impugned order has been passed with retrospective effect which is against the law. That the departmental appeal of the appellant is also rejected on 23.12.2015 and the instant appeal was submitted on 11.1.2016 which is within time.

Appellant Deposited
Security & Process Fee

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 19.05.2016.


MEMBER

19.05.2016

Clerk of counsel for the appellant and Addl: AG for respondents present. Written reply by respondents not submitted. Learned Addl: AG requested for further time for submission of written reply. To come up for written reply/comments on 8.04.16 before S.B.


Member

06.10.2016



Appellant in person and Mr. Hashir Ahmad, DEO alongwith Addl: AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 9.02.2017.


(Muhammad Aamir Nazir)
(Member)

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. _____ 42/2016 _____

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11.01.2016	<p>The appeal of Mr. Izzat Noor presented today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR -</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>19-1-16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 42 /2016.

Izzat Noor.....Appellant

VERSUS

Director & others.....Respondents.

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-4
2.	Application for condonation of delay with affidavit		5-6
3.	Copy of FIR	A	6
4.	Copy of Order dated 11-05-2012	B	7
5.	Copy of Order dated 08-12-2014 & Departmental Appeal dated 28-12-2014	C & D	8-9
6.	Copy of Order & Judgment dated 16-02-2015	E	10
7.	Copy of departmental appeal & Order dated 23-12-2015	F & G	11-12
8.	Wakalat Nama		13

Dated:-11-01-2016.


Appellant

Through


Fazal Shah Mohmand
Advocate Peshawar.

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar
Cell# 0301 8804841

1

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 42 /2016.

Izzat Noor Ex Primary School Teacher, Govt. Primary School Chortoo
Jalkoat S/O Gul Mashal R/O Sew P/O Kamila Tehsil Dasu District
Kohistan.....

Appellant,
P.W.F. Province
Service Tribunal
Dary No. 31
Dated 11-1-2016

V E R S U S

1. Director, Elementary and Secondary Education Govt. of KPK Peshawar.
 2. District Education Officer (Male) Kohistan.
 3. Secretary, Elementary and Secondary Education Govt. of KPK Peshawar.....
- Respondents**

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER DATED 23-12-2015 PASSED BY
RESPONDENT NO 1 WHERE BY DEPARTMENTAL
APPEAL OF THE APPELLANT FILED AGAINST THE ORDER
DATED 11-05-2012 OF RESPONDENT NO 2 HAS BEEN
REJECTED/FILED.**

PRAYER:-

On acceptance of this appeal the impugned orders dated 23-12-2015 of respondent No 1 and Order dated 11-05-2012 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant joined the respondent Department as Primary School Teacher (herein after referred to as PST) on 30-06-1997, remained posted to various Stations and since then he performed his duties with honesty and full devotion.
2. That the appellant while lastly posted to Govt. Primary School Koat Gali Jalkot District Kohistan, was falsely involved in a murder case vide FIR No 47 dated 22-07-2006 U/Ss 302/324/148/149 PPC of Police Station Dassu and was suspended. **(Copy of FIR is enclosed as Annexure A).**
3. That the appellant along with two others was dismissed from service by respondent No 2 vide Order dated 11-05-2012. **(Copy of Order dated 11-05-2012 is enclosed as Annexure B).**

Filed to do
11/1/16.

4. That when the appellant assured the complainant party of his innocence, the matter was patched up and the appellant was released on Pre-Arrest Bail vide Order and Judgment dated 08-12-2012, where after the appellant filed departmental appeal before respondent No 2 on 28-12-2012. **(Copy of Order dated 08-12-2012 & Departmental appeal are enclosed as Annexure C & D)**
5. That finally the appellant was discharged/acquitted of the charges by the learned Sessions Judge Kohistan vide Order and Judgment dated 16-02-2015. **(Copy of Order dated 16-02-2015 is enclosed as Annexure E).**
6. That after acquittal the appellant filed appeal before respondent NO 1 which was rejected vide Order dated 23-12-2015. **(Copy of Departmental appeal & Order dated 23-12-2015 are enclosed as Annexure F & G).**
7. That the impugned orders dated 23-12-2015 of respondent No 1 and order dated 11-05-2012 of respondent No 2 are against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the impugned orders are illegal and void abinitio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules and the appellant did nothing that amounts to misconduct.
- C. That no charge sheet and show cause notice were communicate to the appellant.
- D. That exparte action has been taken against the appellant and he has been condemned unheard.
- E. That no inquiry was conducted to find out the true facts and circumstances.
- F. That the impugned Order is void being without jurisdiction and legal authority.
- G. That the impugned order is not maintainable being passed with retrospective effect.

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- H. That even otherwise the absence from duty was neither willful nor deliberate rather the same was because of circumstances compelling in nature and were beyond the control of the appellant being falsely charged in a concocted case.
- I. That the impugned orders are not speaking orders and thus not tenable in the eyes of law.
- J. That even the appellant has been acquitted of the charges by the Court of competent jurisdiction and as such he is entitled to be reinstated in service..
- K. That the appellant was not provided the opportunity of personal hearing and the impugned order is defective as well.
- L. That the appellant did nothing that would amount to misconduct.
- M. That the appellant has about 15 years of service with unblemished service record and is jobless since his illegal dismissal from service.
- N. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.


It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief not specifically asked for and deemed appropriate in the circumstances of the case, may also be granted in favor of the appellant.

Dated:-11-01-2016.

Through


Appellant


Fazal Shah Mohmand
Advocate, Peshawar.

AFFIDAVIT

I, Izzat Noor Ex Primary School Teacher, Govt. Primary School Chortoo Jalkoat S/O Gul Mashal R/O Sew P/O Kamila Tehsil Dasu District Kohistan, do hereby solemnly affirm and declare on oath that

4

the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

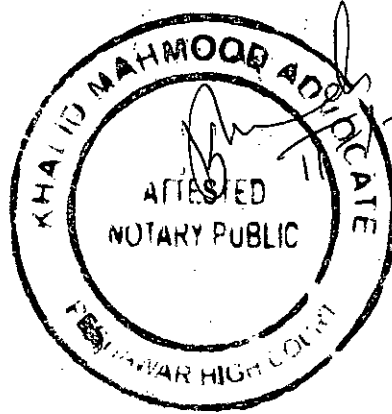
Identified by



Fazal Shah Mohmand
Advocate Peshawar



DEPONENT



5

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2016.

Izzat Noor.....Appellant

VERSUS

Director & others.....Respondents

Application for the condonation of delay if any.

Respectfully submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the impugned order being void abinitio, illegal and time factor becomes irrelevant in such cases.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit.

It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.

Dated:-11-01-2016.

[Signature]
Appellant

Through

[Signature]

Fazal Shah Mohmand,
Advocate, Peshawar

AFFIDAVIT

I, Izzat Noor Ex Primary School Teacher, Govt. Primary School Chortoo Jalkoat S/O Gul Mashal R/O Sew P/O Kamila Tehsil Dasu District Kohistan, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

[Signature]

Fazal Shah Mohmand
Advocate Peshawar



[Signature]
DEPONENT

اہل اہل اطلالی رپورٹ

مجلس اہل اہل نسبت عزم قومی دست اندازی میں رپورٹ شدہ روزی وفد ۱۵ نومبر ضابطہ فوجداری

ضلع کوئٹہ

تاریخ ۱۷/۱۱/۲۰۲۳ ۴۷

تین دنوں کی رپورٹ ۱۷/۱۱/۲۰۲۳ ۲۸/۱۱/۲۰۲۳ ۱۹/۱۱/۲۰۲۳

پہلے دنوں کی رپورٹ ۱۷/۱۱/۲۰۲۳ ۲۸/۱۱/۲۰۲۳ ۱۹/۱۱/۲۰۲۳

مختصر کیفیت (موافقہ) ۱۷/۱۱/۲۰۲۳ ۲۸/۱۱/۲۰۲۳ ۱۹/۱۱/۲۰۲۳

پہلے دنوں کی رپورٹ ۱۷/۱۱/۲۰۲۳ ۲۸/۱۱/۲۰۲۳ ۱۹/۱۱/۲۰۲۳

دورانِ رپورٹ کے متعلق کی گئی اگر اہل اہل اور ان کے قریبی رشتہ داروں کو جہاں کہیں سے بھی اطلاع ملے کہ وہ کسی طرح سے رپورٹ میں حصہ لیں یا کسی اور طرح سے رپورٹ میں حصہ لیں یا کسی اور طرح سے رپورٹ میں حصہ لیں

تاریخ ۱۷/۱۱/۲۰۲۳

پندرہ روزہ

اہل اہل اطلالی نیچے درج کرو جو وقت سے پہلے رپورٹ میں حصہ لیں

۱۔ کوئٹہ کے اہل اہل اور ان کے قریبی رشتہ داروں کو جہاں کہیں سے بھی اطلاع ملے کہ وہ کسی طرح سے رپورٹ میں حصہ لیں یا کسی اور طرح سے رپورٹ میں حصہ لیں یا کسی اور طرح سے رپورٹ میں حصہ لیں

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۳۱-۱۱-۲۰۲۳

پندرہ روزہ

کوئٹہ

۱۷/۱۱/۲۰۲۳

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ نو جداری

ضلع کوسٹان

تھانہ داسو

تاریخ وقت وقوعہ 22/7/06 وقت 12-00 بجے

ملٹ نمبر 47

تاریخ وقت رپورٹ 22/7/06 وقت 14:00 بجے	تاریخ وقت وقوعہ 22/7/06 وقت 14:30 بجے
نام و سکونت اطلاع دہندہ مستفیث رحیمی رحمت ولد فخرت قوم بٹ قبل سکند شاہ	
مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو	PPC 302-324-148-149
جائے وقوعہ فاصلہ تھانہ اور سمت راستہ رونیہ ریشال جانب شمال بفاصلہ 1/2 میل کوئٹہ انڈیا	
نام و سکونت ملزم	
کیروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وجہ بیان کرو	سر رسیم گہرا سلمہ بھعدہ منہ رونا رستم دھوا
قدت روائی کی تاریخ وقت	بطور قبل رپورٹ

ابتدائی اطلاع نیچے درج کردہ بوقت معذرا ایک تقریر مہر اسلمہ مہر تہہ

مظاہرین فان ASI تھانہ داسو بہت نیشنل لیاقت 356 عوصول ہو کر دن ذیل پہ خدمت آفسیر

دفعہ تھانہ داسو امرینہ واقعہ ہذا کی اطلاع پاکر معزز پولیس کے ذمہ شاہ خانہ مقبول عبد الجلیل

شاہ قوم بٹ قبل سکند شاہ اپنی بوقت معذرا رحیمی رحمت ولد فخرت قوم بٹ قبل بھعدہ منہ رونا رستم دھوا

اسی خانہ مقبول ملاقات ہو کر رپورٹ کرنا ہے کہ آج میں مع ماہوں عبد الجلیل، البر ایسم ولد

منظمت الرحمن ولد نعیم شاہ وہی گلانا آئے داسو سے اپنے گھر کی طرف آئے تھے جب راستہ

پر گذرے شاہ نے ہمیں کو ہیمان رنگ سالو عظمت نور لہر ان سیمان شاہ امین نور ولد صاحب

لہر ان فقیر شاہ ولد عفتو بیچ اقوام بت قبل ساکنان دہلیہ باصلح آئین بٹھے ہوئے تھے جنہوں

نے ہم کو دیکھ کر ہراسہ مہر بارادہ قتل فائرنگ شروع کر دی جو پیر بادع ملہر سان کی فائرنگ سے ماہوں

آہ عبد الجلیل فھو وقع ہر جاں بحق ہو گیا اسی اثنا میں سیمان سیمان شاہ ولد نعیم شاہ عبد السلام

عبد الرحمن لہر ان سیمان شاہ براق شاہ ولد عفتو ملندہ رو ولد شعل ذریعہ ولد نعیم سونا ولد

صاحب اقوام بت قبل ساکنان دہلیہ امہر نے ملکہ کے گھر سے ہم لہر خائرت کی ہم نے ہارگ کرانی جانیں

جا اپنی سلمہ مان لہر فائرنگ وقوعہ سے زاری ہوئے واقعہ ہذا بعد اسیان نے ہتھیاروں کے ساتھ واقعہ

واقعات متنازعہ پائی و تحویات فوجی میں ماہوں آہ عبد الجلیل کو قتل کرنے اور لہر اور

بھعدہ منہ رونا رستم دھوا لہر بارادہ قتل فائرنگ کرنے کے بر خلاف منہ لہر ہارا رحو لہر ایوں اللعبد

مسبب گفتہ سائل کی رپورٹ دفعہ ہو کر لہر لہر سنا تھی جیہ نے دست تسلیم کر کے ذمہ بیان خود سٹو

نسبت کیا مکی میں لہر لہر کرتا ہوں لہر مقبول خانہ خود میں پڑھی ہے صلاحہ بن مقبول سے

ایک زخم دیکھیں نسی لہر لہر زخم دیکھیں روہ کی لہر لہر زخم دیکھیں باہیں سلسلوں نسبت لہر لہر

ایک زخم بائیں ران پر اندرونی جانب ایک زخم دائیں سیدھی پر پائے جا کر
فرصت مل لقمہ غیر مدرب ہو کر لغزش مقبول کو بہت یوسٹ مارٹم
حفاظت یا سن 641 نیپل RHC داسو بھوئی جاتی ہے مضمون رپورٹ

سے سرپرست صورت جسم بالائی مائی جا کر مرسلہ لغزشی فائبرس مقدمہ
بدست نیپل ایفٹ 633 ارسال بھانڈے مقدمہ دنار جبر دیکر کا لغزش

پرچہ مع اصل مرسلہ لغزشی فائبرس عقب انچارج اوسٹی گیشن کھینچا بھوایا
جان مرسلہ بطور رپورٹ گزارش ہے دستخط انگریزی فضل الرحمن

تھانہ داسو 22/7/06 کاروائی نظام آفرہ مرسلہ دف بخرف دنار بالائی کوکر

مقدمہ مجموعی بالائی جا کر ہوا نقل پرچہ مع اصل مرسلہ لغزشی

گفتش عقب انچارج اوسٹی گیشن ٹاف کھینچا بھوایا جانے

افسران بالا کو مزید بھیجی جا رہی ہے پرچہ بطور رپورٹ

گزارش ہے

دستخط انگریزی

IHC P.S. Dassu.

22-7-06

"B"
7

OFFICE OF THE EXECUTIVE DISTRICT OFFICER, ELEMENTARY AND SECONDARY EDUCATION DISTRICT KOHISTAN.

Phone & Fax No. 0998-407128.

OFFICE ORDER

The following PST teachers/Chowkidar of E&S Education are hereby dismissed from Services due to their prolong absence from school duties without any information/leave, with effect from the date of their absence mentioned against each, in public interest, as reported by the Deputy District Officer, (M) E&S Education Kohistan

- 1. Mohammad Nabi PST GPS Chorloo Jal Koat WEF 16.12.2003
- 2. Izzat Noor PST GPS Koat Gali Jal Koat WEF 12.11.2007
- 3. Qalash Khan Chowkidar GPS Morogah WEF 12.11.2007

Jawid
Executive District Officer,
E & S Education Kohistan.

E/No.17/Esstt: 1599-1603 /EDO dated 11/5 /2012.

Copy forwarded to:

- 1. The District Coordination Officer, Kohistan.
- 2. The P.S to Secretary to Govt. of Khyber Pakhtunkhwa, E&S Education
- 3. The P.A. to Director, E&S Education Khyber Pakhtunkhwa.
- 4. The District Accounts Officer, Kohistan.
- 5. The Deputy District Officer, (M) E&S Education Kohistan.

Jawid
Executive District Officer,
E & S Education Kohistan.

D/A for m/a
16/5

ATTESTED

[Signature]
to be true copy
Advocate

Order3
08-12-2014

Present: Mr. Sarfaraz Khan Advocate for petitioners.
Mr. Nazir Naib Court for state.

This order will dispose of BBA No. 283/4 (Izat Noor etc Vs State) and 299/4 (Abdul Salam etc Vs State) both of year 2014 arising out of one and the same FIR bearing No. 47 dated 22-07-2006 U/S 302/324/148/149 PPC registered in PS Dassu. Petitioners in both these applications approached this court for their release on BBA which was provisionally granted to them and today the matter has come up before me for its final disposal.

At very outset learned counsel appearing on behalf of petitioners submitted at the bar that parties have effected compromise. In this regard an affidavit EX-PE, Ex-PD and Proforma Ex-PA/3 were produced. Statements of Tamar Shah (Father of deceased Abdul Jameel) and joint statement of Rajee Rahmat (Complainant), Ibrahim and Habib-ur-Rahmat (Injured/ victim) recorded in court while statements of Baroo Bibi, Gul Kunar Bibi (widows of deceased Abdul Jameel) and Fana Bibi (Mother of deceased Abdul Jameel) recorded through commission wherein they admitted compromise and stated that they are legal heirs of deceased and that in addition to them there are five minor L.Rs of deceased namely Noor Alam, Saranzeb, Said Alam, Muhammad Hussain and Hafeeza Bibi. The accused have transferred landed property measuring 4 Kanals in favour of above minors through registered deed No: 192 dated 5-12-2014 which is Ex-PE. The major L.Rs have granted pardon to the accused in the name of Almighty Allah and did not intend to proceed ahead with the case against accused/petitioners. The compromise appears genuine and in the interest of both the parties as it would eliminate the enmity between them. The petitioners stood charged in the FIR for commission of offences U/S 302/324/148/149 PPC which according to 2nd schedule of Cr.P.C are compoundable and the L.Rs of deceased could compound the same within the meaning of section 345 Cr.P.C. The original deeds are placed on file. In this state of affairs application in hand is allowed and pre-arrest bail earlier granted to petitioners stand confirmed on basis of compromise on existing bonds. File be consigned to record room.

ANNOUNCED
08-12-2014

(SARDAR MUHAMMAD IRSHAD)
Sessions Judge
KOHISTAN.

Certified to be True Copy

Examiner
Magistrate & Sessions Judge
Kohistan at Dassu
Under Section 75 Acts Order

No. 1353
Date of presentation of application 19-12-2014
No. of page 02
Copying fee
Urgent fee
TOTAL
Name of Copyist
Date of examination of copy 19-12-2014

Copy Advocate

3 8 11 C

9
کرت ما - ڈسٹرکٹ ایجوکیشن آفیسر (جیو) کوٹھمان

عنوان = درخواست برائے بحالی

آپ کی طرف سے پیش کی گئی درخواست کو رقم کے سہولت سے منظور کیا گیا

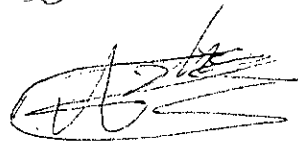
سراجام کے لئے منظور کیا گیا۔ اس دوران میں کوئی اضافہ

دفتر میں سے Dismiss کیا گیا اور کارروائی میں۔ رقم کے سہولت

میں سے ہوا۔ آپ سے ملنے والی فراہم شدہ اسناد کے

استدعا کے لئے ملنے والی فراہم شدہ اسناد

الغیر



عزت نور، آئی

GPS کوڈنگ

28-12-14

الغیر

ATTESTED

to be true copy
Advocate

پشاور ہائی کورٹ
نمبر 19/19-015

47/06
10

Present: Mr. Muhammad Nazir Naib Court for state.
Mr. Muhammad Aslam Advocate alongwith accused on bail.

0-----2
16-02-2015

At very out-set learned counsel appearing on behalf of accused drew attention of this court towards compromise effected between the parties at bail stage and submitted that the same be taken into consideration for the purpose of decision of main case. In the light of above position I perused record which revealed that accused stand charged in FIR for commission of offences U/S 302/324/148/149 PPC and was released on bail through order dated 08-12-2014 on basis of compromise. The statements of LRs of deceased and complainant towards compromise were recorded at bail stage wherein they stated to have waived off their right of Qisas/Diyat as have forgiven the accused in the name of Almighty Allah. The compromise effected at bail stage appears genuine and free from any coercion, undue influence and duress. The offences with which accused stand charged in FIR are compoundable according to 2nd schedule of Cr.P.C and the legal heirs of deceased/victim can compound the same U/S 345 Cr.P.C.

It is almost settled that compromise effected at bail stage can be taken into consideration for disposal of main case. wisdom in this regard can be derived from case of Syed Sabir Hussain Shah and another VS Syed Ifikhar Hussain Shah and another (NLR 1996 Criminal 179) wherein bail was granted at bail stage on basis of compromise and at trial stage complainant tried to resile therefrom but the same was not permitted by Hon,ble Peshawar High Court Bench Abbottabad and observed.

" In my opinion once a compromise has been effected it cannot be withdrawn and I am also clear in my mind that it is incompetent for any person, once having entered into a valid composition /compromise to withdraw from the same"

Above view of Hon,ble Peshawar High Court was upheld by Hon,ble Supreme Court in a judgment reported as 1998 SCMR 466.

For what has been stated above and while respectfully following the law laid down in above judgments compromise effected at bail stage is acceded to and accused facing trial namely Izat Noor etc stand discharged on basis of compromise. They are on bail, their bail bonds stand cancelled and their sureties are relieved of the liabilities upon bonds. Case property be kept intact till expiry of period of Appeal/Revision. File be consigned to record room after completion.

No. 1354
Date of presentation of application 19-12-015
No. of page 01
Copying fee /
Urgent fee /
TOTAL /
Name of Copyist N.S. 02
Date of examination of copy 19-12-015
Date of delivery of copy 19-12-015

ATTESTED
Advocate

Order Announced.
16-02-2015

Certified to be True Copy

(SARDAR MUHAMMAD IRSHAD)
Sessions Judge,
Kohistan.

Executive
District & Sessions Judge
Kohistan. District
Authorized Under Section 13-A of Cr.P.C.

The Director,
Elementary & Secondary Education
Khyber Pakhtunkhwa,
Peshawar.

SUBJECT:-

APPEAL FOR RE-INSTATEMENT IN SERVICE PTC TEACHER MR.
IZZAT NOOR S/O SUBHAN SHAH R/O JALKOT KOHISTAN.

Dear Sir,


It is stated that I have performed my duty as a teacher at GPS Kot Gali due to local enmity an FIR has been launched against me and many other people of my tribe.

I have been dismissed from service on 12.11.2007. Now I appeared before Court and the Court has granted bail in my case. District Education Officer Kohistan passed the dismissal orders showing prolonged absence all the FIR and Court decisions are with my application.

Therefore it is humbly requested that I may be re-instated against that post of teacher.

Thanks,

Yours faithfully,


(IZZAT NOOR)
S/o Subhan Shah
R/o Jalkot Kohistan.

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Advocate

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POWER OF ATTORNEY

In the Court of Service Tribunal KPK Peshawar

133at Noor S/O Haji Subhan Shah For
Ex Primary School Teacher Plaintiff
Appellant
Petitioner
Complainant

Director & others **VERSUS**
Defendant
Respondent
Accused

✓
Appeal/Revision/Suit/Application/Petition/Case No. 2016 of _____
Fixed for _____

I/We the undersigned, do hereby nominate and appoint

FAZAL SHAH MOHMAND, ADVOCATE, HIGH COURT, PESHAWAR

My/our true and lawful attorney, for me/our in my/our name and on my/our behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any appellate Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions, an appeal statements, accounts, exhibits, compromise or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other execution, warrants or order and to conduct any proceedings that may arise there out, and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other legal practitioner authorizing him to exercise the powers and authorities here by conferred on the Advocate whenever he may think fit to do so, any other lawyer may be appointed by my said Counsel to conduct the case who shall have the same powers.

AND to do all acts legally necessary to manage and conduct the said case in all respects whether herein specified or not, as may be proper and expedient.
AND I/we here by agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we under take at time of calling of the case by the Court my/our authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte, the said Counsel shall not be held responsible for the same. All costs awarded in favor shall be the right of the Counsel or his nominee, and if awarded against shall be payable by me/us.

IN WITNESS, where of I/We have signed at Peshawar
This 7th day of January in the year 2016.
Executant/Executants [Signature]
Accepted subject to the terms regarding fee [Signature]

Attested and Accepted by:
[Signature]
Fazal Shah Mohmand
Advocate High Court

OFFICE:- Cantonment Plaza, Flat, 3/B Khyber Bazar Peshawar. Cell # 0301 8804841

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 42 OF 2016

Izzat Noor -----

Petitioner

VERSUS

- 1. Director Elementary & Secondary Education KPK Peshawar
 - 2. District Education Officer Male Kohistan
 - 3. Govt of Khyber Pakhtunkhwa through Secretary (E&S) Education Peshawar
- **Respondents**

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO1,2 & 3.

INDEX

S#	Particulars of documents	Annexure	Pages
1	Comments along with affidavit		1-4
2	Copy of leave rules	A	5
3	Copy of comments	B	6
4	Copy of order of rejection	C	7

Dated 04.04.2016

[Handwritten Signature]
Respondent No.2

99

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 42 OF 2016

Izzat Noor

Petitioner

VERSUS

1. Director Elementary & Secondary Education KPK Peshawar
2. District Education Officer Male Kohistan
3. Govt of Khyber Pakhtunkhwa through Secretary (E&S) Education Peshawar

Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO1,2 & 3.

Respectfully Sheweth:

PRILIMINARY OBJECTIONS:-

- I. That the appellant has not come to this Honourable Court with clean hands.
- II. That the appellant has got no cause of action/ locus standi to file the instant appeal.
- III. That the appeal has been filed to pressurize the respondents.
- IV. That the appellant is estopped to sue through his own conduct.
- V. That the present appeal is not maintainable due to mis-joinder and non-joinder of necessary parties.
- VI. That the appellant has concealed the material facts from this Honourable Court. Hence not entitled for any relief and appeal is liable to be dismissed.
- VII. That the appellant has been removed from service due to involvement in murder case and being absconder and willful absent from duty. Hence liable to be dismissed.
- VIII. That the competent authority has removed the appellant after fulfillment of all codal formalities, hence appeal is liable to be dismissed.
- IX. That the appellant never attended the school and remained absent from his duty from 22.07.2006 to till date due to his involvement in murder case and being absconder in the case.
- X. That the appellant was appointed as PST on 30.06.1997 and absented himself from duty with effect from 22.07.2006 to till date due to involvement in murder case and being absconder in the case, therefore the service of the appellant has automatically been ceazed as per service rules.
- XI. That the appeal is time barred, hence liable to be dismissed.

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Factual Objections:

1. Para No. 1 is correct to the extent of appointment of the appellant, and the remaining Para is incorrect hence denied.
2. Para No. 2 relates to record.
3. Para No 3 is correct. Further stated that the appellant was appointed as PST on 30/6/1997 and with a continuous service less than 10 years has been charged in a murder case Vide FIR No 47 dated 22/7/2006 and became absconder and after that did not perform his duty with effect from 22.07.2006 to 11.5.2012 (The date of dismissal) and in this why the appellant absented himself from his duty with effect from 22.07.2006 to till date and during that period the appellant never applied for any kind of leave with /without pay. In this way the appellant willfully absented himself for more than 05 years 10 months and 22 days on the date of dismissal and **according to the leave rules of civil servants Rule 12 (1) extraordinary leave may be granted outside leave account on each occasion to a maximum period of five years at a time provided that the civil servant to whom such leave is granted has been in continuous service for a period of not less than ten years. In case a civil servant not completed ten years of continuous service extra ordinary leave without pay for a maximum period of two years may be granted at the discretion of leave sanctioning authority,** that the appellant willfully absented himself for a period more than 5 years 10 months and 22 days) with a continuous service less than 10 years, hence the service of petitioner has automatically been seized as per leave rule **(Copy of leave rules is attached as Annexure A)** and consequently the competent authority after the fulfillment of all codal formalities dismissed the appellant from service under the Khyber Pakhtunkhwa Government Servant(Efficiency & Disciplinary) Rules 2011 due to willful absence from duty Vide Office Order issued Under Endst: No 1599--1603 dated 11/5/2012.
4. Para No 4 is incorrect strongly denied, that the matter of FIR was patched up between the parties and accepted by the Session Judge Kohistan Vide Order No 3 dated 08/12/2014 not on 08/12/2012 and after that the appellant submitted an appeal for re instatement in service to Respondent No 1 not to Respondent No 2 and the Respondent No 1 asked to respondent No 2 for comments and on the submission of comments to respondent No 1 Vide letter No 755 dated Kohistan 09.02.2015 (Copy attached as Annexure A), the respondent No 1 (being competent authority) in the light of comments and on the basis of evidence on record reject the appeal of appellant (Copy of Order is attached as Annexure B).
5. Para No. 5 is not concerned with the respondents.
6. As stated in Para No 4 above.
7. Incorrect strongly denied that the Order of respondent No 1 and 2 are according to law, rules and facts.

GROUNDS

- A. Incorrect, strongly denied that the order dated 23.12.2015 of respondent No 1 and order dated 11.05.2012 of respondent No 2 are according to law, facts, norms and natural justice and the appellant was dismissed from the service after fulfilling of all the codal formalities.
- B. Incorrect, strongly denied, as stated in Para A of grounds that the order dated 23.12.2015 of respondent No 1 and order dated 11.05.2012 of respondent No 2 are according to law, facts, norms and natural justice and the appellant was dismissed from the service after fulfilling of all the codal formalities
- C. Incorrect hence denied.
- D. Incorrect, hence denied.
- E. Incorrect statement, hence denied. As stated in Para 3 of facts.
- F. Incorrect hence denied. As stated in Para 3 of facts.
- G. Incorrect statement, as stated in Para 3 of facts.
- H. Incorrect hence denied.
- I. Incorrect hence denied. The competent authority has proceeded against the appellant as per prescribed law and rules.
- J. Incorrect hence denied.
- K. Incorrect hence denied.
- L. Incorrect hence denied.
- M. Incorrect statement that as stated in Para No 3 of facts.
- N. That the respondents seeks permission for arguing the other points at the time of arguments.

It is therefore, in the light of above stated facts and circumstances, Very humbly prayed that the appeal in hand may please be dismissed with cost.

(Handwritten signature)

Respondent No. 2
District Education Officer,
(Male) Kohistan

(Handwritten signature)
21/4/2016

DIRECTOR
Elementary and secondary Education
Khyber Pakhtunkhwa Peshawar

(Handwritten signature)
9/5/2016

SECRETARY
Elementary and secondary Education
Khyber Pakhtunkhwa Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 42 OF 2016

Izzat Noor

Petitioner

VERSUS

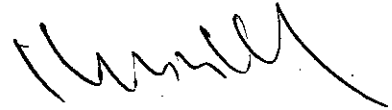
1. Director Elementary & Secondary Education KPK Peshawar
2. District Education Officer Male Kohistan
3. Govt of Khyber Pakhtunkhwa through Secretary (E&S) Education Peshawar

Respondents

AFFIDAVIT.

I, Riasat Khan DEO (Male) Kohistan do hereby solemnly affirm and declare that the contents of Parawise comments in the above titled case are true and correct to the best of my knowledge and belief, and that nothing, material has been suppressed from this Honourable court.

Identified by,



DEPONENT.

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**OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
KOHISTAN**

Ph: & Fax No. 0998407128

No. 755 ~~758-0~~ Dated Kohistan the 9/02 /2015

To

The Director
Elementary and Secondary Education KPK Peshawar.

Subject: APPEAL FOR RE-INSTATEMENT IN SERVICE
Memo:-

Kindly reference your letter No. 1801/F.No.6/Vol:1/PST (M) Kohistan dated Peshawar the 12/1/2015 on the subject cited above.

I have the honor to requested that the subject appellat ~~Muhammad Nabi Ex-PST~~ and Izat Noor Ex-PST were dismissed from service due to their prolong absent from school duties ie 16/12/2003 to 11/5/2012 vide office order no 1599-1603 dated 11/05/2012 (copy attached) record already submitted by the appellat along with your appeal.

Hence report is submitted for your kind information and further necessary action please.

District Education Officer
(Male) Kohistan.

Endstt; /No./Estab: 756-00

Copy of the above is forwarded to the:-

1. Deputy Director (Estt) Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

District Education Officer
(Male) Kohistan.

service, disabled by injury, ailment or disease contacted in course or in consequence of duty or official position.

2) The leave salary during disability leave shall be equal to full pay for the first one hundred and eighty days and on half pay for the remaining period.

12. **Extraordinary leave (Leave without pay)**-(1) Extraordinary leave may be granted outside leave account on each occasion up to a maximum period of five years at a time; provided that the civil servant to whom such leave is granted has been in continuous service for a period of not less than ten years. In case a civil servant has not completed ten years of continuous service, extraordinary leave without pay for a maximum period of two years may be granted at the discretion of the leave sanctioning authority, This leave can be granted irrespective of the fact whether a civil servant is a permanent or temporary employee.

2) The maximum period of extraordinary leave without pay combined with leave on full pay and leave on half pay shall be subject to the limit of 5 years prescribed in FR-18, i.e. the maximum period of extraordinary leave without pay that would be admissible to a civil servant who has rendered continuous service for a period of not less than 10 years shall be 5 years less the period of leave on full pay and leave on half pay so combined.

3) Extraordinary leave may be granted retrospectively in lieu of absence without leave:

4)* Notwithstanding anything to the contrary contained in the preceding sub-rules, the Finance Department may in cases of individual hardship, grant extra-ordinary leave in excess of the maximum leave admissible to a civil servant under sub-rule(1) or sub-rule(2), as the case may be. *Added vide No.FD.SO(SR-IV)5-54/80.Vol-IV dated 6-7-1999.

CLARIFICATION.

i) Extra ordinary leave (Leave without pay) of 5 years is admissible to a Government servant for 'each spell' of 10 years of continuous service. If, however, a civil servant has not completed 10 years of continuous service on each occasion/time, Extra Ordinary leave (leave without pay) for maximum period of two years may be granted at the discretion of the Competent Authority.

ii) Maximum leave availed during one continuous period of 10 years should also not exceed 5 years. The cases already decided need not be reopened.

No. FD/SO(SR-IV)5-54/80/Vol-III, dated 31.7.91.

13. **Leave on Medical Certificate.** Leave applied for on medical certificate shall not be refused. The authority competent to sanction leave may, however, at its discretion, secure a second medical opinion by requesting the Civil Surgeon or the Medical board to have the applicant medically examined. The existing provisions contained in Supplementary Rules 212,213 and Rules 220 to 231 for the grant of leave on medical grounds will apply.

14. **Leave preparatory to retirement-** The maximum period up to which a Civil Servant may be granted leave preparatory to retirement shall be 365 days only. It may be taken subject to availability in the leave account, either on full pay or partly on full pay and partly on half pay, or entirely on half pay, at the discretion of the Civil Servant and it will not extend beyond the age of superannuation.

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DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA

ORDER.

1. WHEREAS, Mr. Izat Noor PST GPS GPS Koat Gali Jalkoat found absent from was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011^{on} account of wilful absence from duty w.e.f 12.11.2007.
2. AND WHEREAS the above named PST teacher was charged in murdered case and FIR was lodged against him in police station Dassu on 22.07.2006.
3. AND WHEREAS, the DEO (M) Kohistan dismissed the teacher from service vide office order No.159-1603 dated 11.05.2012 due^{to} absconder w.e.f 22.07.2006.
4. AND WHEREAS, the DEO (M) Kohistan has submitted his comments in the light of this office letter No.6862 dated 24.06.2015.
5. AND WHEREAS, the competent authority (Director Elementary and Secondary Education Khyber Pakhtunkhwa) after having considered the charges and evidence on record, is of the view that charges against accused teacher have been proved.
6. NOW THEREFORE, in exercise of powers conferred under Khyber Pakhtunkhwa Servants (Efficiency & Discipline) Rules-2011 the appellate authority has decided to reject the appeal of Mr. Izat Noor Ex-PST GPS Koat Gali Jalkoat Kohistan on the above ground.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 3269-73 /F No.6/Vol:1/PST (M) Kohistan

Dated Peshawar the 23/12/2015.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Kohistan w/r to his No. 12678 dated 20.11.2015.
2. Teacher concerned.
3. P/A to Director E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Master File.

A/E
pl file
@
supd
4/1/16

Resolving District Office
Dist. No. 25
Date 27/1/16
Khyber Pakhtunkhwa

Deputy Director (Estbs)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

23/1/16

BEFORE THE SERVICE TRIBUNAL KPK
PESHAWAR.

Service Appeal No 42/2016.

Izzat Noor.....Appellant

V E R S U S

Director & Others.....Respondents

REPLICATION ON BEHALF OF THE APPELLANT..

REPLY TO PRELIMINARY OBJECTIONS.

All the preliminary objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action/locus stand to file instant appeal, instant appeal is well within time, in which all necessary parties have been imp leded, appellant has concealed nothing from this honorable Tribunal and have come to this honorable Tribunal with clean hands. The appellant is not stopped by his conduct to bring instant appeal, instant appeal has been filed by the appellant to impugn his illegal dismissal order, respondents have not fulfilled the codal formalities besides the principles of natural justice, while taking action against the appellant, the circumstances leading to his removal no more exist and the appellant is as such entitled to be reinstated in service.

REPLY TO FACTS/GROUNDS.

Comments of the respondents are full of contradictions and are based on malafide. Respondents have failed to show that the impugned order is legal and justified. The comments amount to admissions on part of the respondents, as they have failed to deny the plea of the appellant. The malafide of the respondents is proved from their contradictory version, regarding the dismissal of the appellant. Respondents have admitted that the appellant was dismissed from service due to involvement in criminal case, from which he has been acquitted by the competent jurisdiction and as such he is entitled to be reinstated in service. It is pertinent to mention here that the appellant was dismissed w.e.f. 12-11-2007 and as such the version of the respondents regarding the long absence of the appellant is incorrect and against h the record as well. Respondents have also admitted

that the procedure set forth in law and rules have not been adopted and as such the appellant has been condemned unheard. Even no notice was issued to the appellant either on his home address nor in the press, as such exparte action has been taken against the appellant in violation of principles of natural justice.

No charge sheet and show cause was issued to the appellant and no inquiry has been conducted in the matter, the appellant thus was not provided reasonable and proper opportunity to defend himself. Even the opportunity of personal hearing was not provided to the appellant, the orders are as such void abinitio.

Even no omission or commission on part of the appellant has been found leading to the misconduct. Respondents have failed to substantiate their version and bring anything on record in support of their version; as such the impugned orders are not maintainable in the eyes of law and liable to be set aside.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-09-02-2017

Appellant

Through


Fazal Shah Mohmand

Advocate Peshawar

AFFIDAVIT

I, Izzat Noor S/O Subhan Shah Ex Primary School Teacher, GPS Koat Gali Jalkot Tehsil Dasu District Kohistan, (The Appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by


Fazal Shah Mohmand

Advocate Peshawar.




DEPONENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 44 /ST

Dated 10/01/2018


To

The District Education Officer (Male),
Government of Khyber Pakhtunkhwa,
Kohistan.

Subject: **JUDGEMENT/ORDER IN APPEAL NO. 42/16 MR. IZZAT NOOR. AND ONE OTHER**

I am directed to forward herewith a certified copy of Judgment/Order dated 26/12/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

