

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT ABBOTTABAD

Service Appeal No. 390/2016

Date of Institution... 07.04.2016

Date of decision... 22.11.2017

Abdul Basit, Ex-PST (Teacher) Jhangra Tehsil and District, Abbottabad.  
... (Appellant)

Versus

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa,  
Peshawar and two others. .... (Respondents)

MR. RIZWANULLAH,  
Advocate

... For appellant.

MR. KABIR ULLAH KHATTAK  
Additional Advocate General

... For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. AHMAD HASSAN,

... CHAIRMAN  
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: Arguments of the learned counsel  
for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on 25.11.2015 with retrospective effect, against which the appellant filed departmental appeal on 09.01.2016 which was not responded to and thereafter, the present service appeal on 07.04.2016. The charge against the appellant was his wilful absence from duty.

### ARGUMENTS

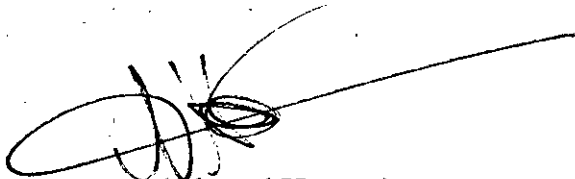
3. The learned counsel for the appellant argued that the very impugned order is void as it has been given retrospective effect. In this regard the learned counsel for the appellant relied on certain rulings of the august Superior Courts reported as 1985-SCMR-1178, 1996-SCMR-201, PLD 2007-Supreme Court-52, 1989-SCMR-1690, 2007-PLC (C.S)5 and judgment of this Tribunal dated 17.10.2016 in service appeal No. 478/2016 entitled "*Abdul Sahkoor Versus the Secretary Education, Khyber Pakhtunkhwa Peshawar and others*". The learned counsel for the appellant further argued that no limitation shall attract to the present appeal as the order is a void order. The learned counsel for the appellant next contended that the merits of the case cannot be touched by this Tribunal as the impugned order is a void order.

4. On the other hand, the learned Addl. Advocate General contended that under Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 this Tribunal can modify the order. He further argued that the department had fulfilled the requirements of due process by issuing charge sheet and statement of allegations by conducting the enquiry.

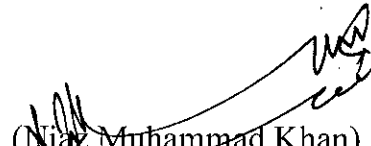
### CONCLUSION.

7. Admittedly the impugned order has been passed retrospectively and in view of the judgment relied upon by the learned counsel for the appellant retrospective orders are void under the law and no limitation shall run in void orders. This Tribunal can also not modify any void order under Section 7 referred to by the learned AAG. Since this Tribunal has held that the order is void further merits of the appeal cannot be discussed.

8. In view of the above, the present appeal is accepted and the appellant is reinstated in service, however, the department is at liberty to hold denovo proceedings in accordance with the law. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)  
Member



(Niaz Muhammad Khan)  
Chairman  
Camp Court, A/Abad

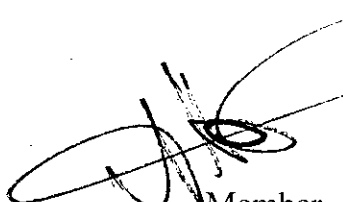
ANNOUNCED


22.11.2017

22.11.2017

Counsel for the appellant and Addl: AG alongwith Mr. Sohail Ahmad Zeb, Assistant 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 cost. File be consigned to the record room.


  
Member

  
Chairman  
Camp Court, A/Abad.

ANNOUNCED  
22.11.2017

20.10.2016

Appellant in person and Mr. Sohail Ahmad Zeb, Assistant alongwith Mr. Muhammad Siddique, Sr.P for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for. 17.04.2017 at camp court, Abbottabad.

  
Chairman  
Camp Court, A/Abad

17.04.2017


Appellant in person and Mr. Sohail Ahmad Zaib, ADO alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Rejoinder submitted. Due to non-availability of D.B arguments could not be heard. To come up for final hearing before the D.B on 20.09.2017 at camp court, Abbottabad.

  
Chairman  
Camp court, A/Abad

20.09.2017

Appellant in person and Mr. Muhammad Bilal, Deputy District Attorney alongwith Sohail Ahmed Zeb, Assistant for the respondents present. Appellant seeks adjournment as his counsel is not in attendance today. Adjourned. To come up for arguments on 22.11.2017 before D.B alongwith connected Service Appeal No. 1640/2013 at camp court, Abbottabad.

  
Member

  
Chairman  
Camp court, A/Abad.

Appeal No. 390/2016  
Abdul Basit vs Edu: Deptt:

25.4.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as PST and vide impugned order dated 25.11.2015 dismissed from service on the allegations of willful absence with retrospective effect on 10.08.2010 communicated to the appellant on 5.1.2016 where-against he preferred departmental appeal on 09.1.2016 which was not responded and hence the instant service appeal on 07.04.2016.


That the prescribed procedure for enquiry was not followed and appellant deprived of his right of fair trial and neither any charge sheet was served nor opportunity of hearing afforded to the appellant and that recovery of salary against the appellant for the period of absence is also void and not tenable in the eyes of law.

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 20.07.2016 before S.B at camp court, Abbottabad. Till further orders recovery shall not be effected from the appellant.

  
Chairman

20.07.2016

Appellant in person present. Security and process fee deposited late, therefore, notices could not be issued. Notices be issued to the respondents. To come up for written reply/comments on 20.10.2016 before S.B at camp court, Abbottabad. The restraint order shall continue.

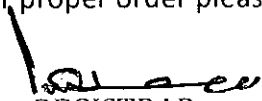

  
Chairman  
Camp court, A/Abad,

Appellant Deposited  
Security & Process Fee

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_


Case No. 390/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12.04.2016	<p>The appeal of Mr. Abdul Basit resubmitted today by Mr. Rizwanullah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2	14-4-16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>25-4-16</u>.</p> <p> CHAIRMAN</p>

This is an appeal filed by Mr. Abdul Basit today on 07/04/2016 against the impugned order dated 25-11-2015 against which he preferred/made a departmental appeal on 09.01.2016 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action.

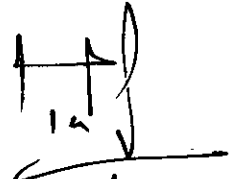
No. 570 /S.T,  
Dt. 7-4 /2016

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Rizwan Ullah Adv. Pesh.


Sir,

After expiry of statutory period of 90 days, the appeal is re-submitted.

  
12/4

Worthy Registrar

as the needful according to rules.

  
12/4/16



**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 390 /2016

1. Mr. Abdul Basit, Ex-PST (Teacher) Jhangra Tehsil and District Abbottabad.

**APPELLANT**

**VERSUS**

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others.

**RESPONDENTS**

**I N D E X**

S.No	Particulars	Annexure	Pages #
1	Service Appeal	—	1-9
2	Affidavit	—	10
3	Copy of impugned order dated 25-11-2015	"A"	11
4	Copy of postal receipt 5-1-2016	B	12
5	Copy of departmental appeal dated 9-1-2016	C	13-14
6	Copy of postal receipt and acknowledgement due card	D & E	15-16
7	Application for stay order		17-18
8	Vakalatnama	—	—

*Basit*  
Appellant

Through

*Rizwanullah*  
Rizwanullah  
M.A. LL.B

Dated:- 7-4-2016

Advocate High Court, Peshawar.

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 390 /2016

**S.W.F Province  
Service Tribunal  
Diary No 347  
Dated 07-04-2016**

1. Mr. Abdul Basit, Ex-PST (Teacher) Jhangra Tehsil and District Abbottabad.

**APPELLANT**

**VERSUS**

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer, (Male) Abbottabad.

**RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE  
IMPUGNED ORDER DATED 25-11-2015  
PASSED BY THE DISTRICT  
EDUCATION OFFICER (M)  
ABBOTTABAD (RESPONDENT NO.3)  
WHEREBY THE APPELLANT WAS  
AWARDED MAJOR PENALTY OF  
DISMISSAL FROM SERVICE  
AGAINST WHICH A  
DEPARTMENTAL APPEAL WAS  
FILED WITH (RESPONDENT NO.2)  
BUT THE SAME WAS NOT  
RESPONDED WITHIN THE  
STATUTORY PERIOD OF LAW.**

Filed to the  
Registrar

As submitted to the  
and filed.

Registrar

12-14/16

**Prayer in Appeal**

By accepting this appeal, the impugned order dated 25-11-2015 passed by the District Education Officer (Male) (respondent No.3) whereby the appellant was awarded major penalty of dismissal from service with retrospective effect from 10-8-2010 and that the disputed amounts of salaries were also ordered to be recovered from him may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

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

**Respectfully Sheweth,**

*Short facts giving rise to the present appeal are as under:-*

1. That the appellant was serving as PST (Teacher) at the relevant time. He had 29 years unblemished service record to his credit.
2. That the appellant was performing his duty with great zeal, zest and devotion. But strangely, he was awarded major penalty of dismissal from service and that the disputed amounts of salaries were also ordered to be recovered from him in utter violation of law vide order dated 25-11-2015 passed by the District Education Officer (Male) (respondent No.3). This order was received by appellant on 5-1-2016 and a receipt in this respect was also obtained from the concerned post office.

(Copy of impugned order and its postal receipt are appended as Annex-A & B).

3. That no charge sheet alongwith statement of allegations was served on the appellant to explain his position regarding the so-called allegations of unauthorized absence from duty. Similarly, no fair and

impartial inquiry was conducted nor any show cause notice was given to him before awarding the major penalty of dismissal from service.

4. That the appellant was also not provided any opportunity of personal hearing before passing the impugned order being the mandatory requirement of law.
5. That the appellant felt aggrieved by the said order, filed a departmental appeal on 9-1-2016 with the Director Elementary & Secondary Education (respondent No.2). But the same was not responded within the statutory period of law.

**(Copy of Departmental appeal and its postal receipts alongwith acknowledgement due card are appended as Annex-C & D).**

6. That the appellant is jobless since his dismissal from service.
7. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds within the statutory period of law.

### **GROUND OF APPEAL**

- A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned orders are not sustainable in the eye of law.
- B. That the impugned order of dismissal from service of the appellant was passed on 25-11-2015 and the same was made enforceable with retrospective effect from 10-8-2010. It is well settled law that the executive/departmental authority has no power to pass orders with "**retrospective effect**". Reliance in this respect can be placed on the judgments of august Supreme Court of Pakistan reported in 1985-SCMR-1178 (citation-c), 1996-SCMR-201 (citation-c) &

**PLD-2007-SC-52 (citation-f).** The relevant citations of the aforesaid judgments are reproduced herein for facility of reference:-

**1985-SCMR-1178 (citation-c)**

**(c) Civil Service—**

**Removal from service--Order purporting to give retrospective effect to order of removal from service, held, patently unlawful and void in relevant regard--Such order could not be given effect to.**

**1996-SCMR-201 (citation-c)**

**---Dismissal---Order of dismissal of employee purported to be retrospective in effect is not sustainable.---[Civil service].**

**PLD-2007-SC-52 (citation-f)**

**(f) Order---**

**---Executive---order-Retrospective effect  
Executive/departmental authority has no power to pass orders with retrospective effect.**

It is also axiomatic principle of law that when the basic order is illegal and void the entire superstructure built on it would fall on the ground automatically. Reliance can be placed on the dictum of august Supreme Court of Pakistan reported in **PLD-2008-SC-663 (citation-c)**. The relevant citation is as under:-

**PLD-2008-663(citation-c)**

**(b) Void order---**

**----When the basic order is without lawful authority and void ab initio, then the entire superstructure raised thereon falls on the ground automatically.**

The decision of august Supreme Court of Pakistan is binding on each and every organ of the state by virtue of **Article 189 & 190 of the Constitution of Islamic Republic of Pakistan, 1973**. Reliance can be placed on the judgment of apex court of the country reported in **1996-SCMR-284 (citation-c)**. The relevant citation is mentioned below.

**1996-SCMR-284(c)**

**(c) Constitution of Pakistan (1973)---**

**----Arts. 189 & 190---Decision of Supreme Court---Binding, effect of---Extent--Law declared by Supreme Court would bind all Courts, Tribunals and bureaucratic set-up in Pakistan.**

But the Competent Authority has blatantly violated the above dictums of august Supreme Court of Pakistan by passing the impugned order with retrospective effect. Therefore, the same is liable to be set aside on this count alone.

C.

That the Competent Authority was under statutory obligation to have served a charge sheet alongwith statement of allegations on the appellant to explain his position in respect of so-called allegations of absence from duty. But he failed to do so and as such blatantly violated the law laid down by august Supreme Court of Pakistan reported in **2000-SCMR-1743 (citation-a)**. The relevant citation of the judgment is as follows:-

**2000-SCMR-1743**

**Civil Service**

**Dismissal from service---Framing of charge and its communication to civil servant alongwith statement of allegations was not mere a formality but was a mandatory requisite which was to be followed.**

Therefore, the impugned order is bad in law.

**D.**

That the appellant was awarded major penalty of dismissal from service but no regular inquiry was conducted against him in order to substantiate his guilt regarding the so-called absence from duty and as such the respondent No.3 has blatantly violated the law laid down by august Supreme Court of Pakistan reported in **2008-SCMR-1369 (citation-a) & 2009-SCMR-412 (citation-c)**. The relevant citations are as under:-

**2008-SCMR-1369 (citation-a)**

**---S. 5---Misconduct---Dismissal from service---Non-holding of departmental Enquiry--- Violation of principles of natural justice---Effect---Held, in case of imposing a major penalty, the principles of natural justice required that a regular enquiry was to be conducted in the matter and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.**

**2009-SCMR-412 (citation-c)**

**Major penalty, awarding of--  
Principles---In case of awarding  
major penalty, a proper inquiry is  
to be conducted in accordance  
with law, where full opportunity  
of defence is to be provided to  
delinquent officer**

Therefore, the impugned order has no sanctity under the law.

- E.** That **Article 10-A** was inserted in the Constitution of 1973 through 18<sup>th</sup> Amendments whereby fair trial was made the fundamental right of every citizen. But the Competent Authority failed to follow the said Article and did not conduct a fair and impartial inquiry against the appellant. Mere issuance of show cause notice and affording an opportunity of personal hearing are not sufficient to fulfil the requirement of fair trial. Reliance in this respect can be placed on **2015-PLC-CS-381**. Thus, the impugned orders are not warranted by law.
- F.** That the appellant had performed duty in accordance with law and received his legitimate pay/salary for the disputed period. No complaint whatsoever was either made by the Head Master, Inspection Party or public at large against him for so-called allegations of unauthorized absence from duty. Therefore, the impugned order is against the spirit of administration of justice.
- G.** That the so-called disciplinary action against the appellant was initiated under the **Khyber Pakhtunkhwa Efficiency & Disciplinary Rules, 2011** wherein no provision of punishment of dismissal from service was enumerated for unauthorized absence from duty by virtue of **Rule 9 ibid**. Hence, the impugned order is not warranted under the law.
- H.** That the respondent No.2 was under statutory obligation to have decided the departmental appeal with cogent reasons within reasonable time. But he failed to do and as such blatantly violated the law laid down by august Supreme Court of Pakistan reported in



**2011 SCMR 1 (Citation -b)**. The relevant citation is reproduced herein for facility of reference:-

**2011 SCMR 1 (Citation -b)**

**(b) General Clauses Act (X of 1897)**

**----S. 24-A ---Speaking order- Public functionaries are bound to decide cases of their subordinates after application of mind with cogent reasons within reasonable time.**

Thus, the impugned order is liable to be reversed on this score alone.

- I. That the impugned order is suffering from legal infirmities and as such caused grave miscarriage of justice to the appellant.
- J. That the impugned order is against law, facts of the case and norms of natural justice. Therefore, the same is not tenable under the law.
- K. That the Competent Authority (respondents No.3) has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice. Thus, the same is not tenable under the law.
- L. That the impugned order is based on conjectures and surmises. Hence, the same is against the legal norms of justice.
- M. That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

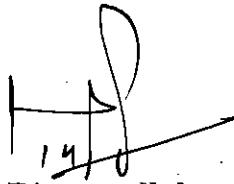
In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order dated 25-11-2015 passed by the District Education Officer (Male) (respondent No.3) whereby the appellant was awarded major penalty of dismissal from service with retrospective effect from 10-8-2010 and that the disputed amounts of salaries were also ordered to be

recovered from him may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits .

Any other relief deemed proper and just in the circumstances of the case, may also be granted.

  
Appellant

Through



**Rizwanullah**  
M.A. LL.B  
Advocate High Court, Peshawar.

Dated: 7-4-2016

&



**Kamranullah**  
Advocate High Court, Peshawar

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2016

1. Mr. Abdul Basit, Ex-PST (Teacher) Jhangra Tehsil and District Abbottabad.

**APPELLANT**

**VERSUS**

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others.

**RESPONDENTS**

**AFFIDAVIT**

I, Mr. Abdul Basit, Ex-PST (Teacher) Jhangra Tehsil and District Abbottabad, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



*Ab Sit*  
**DEPONENT**



بھنور جناب ڈائریکٹر نظامت تعلیمات خیبر پختونخواہ، پشاور۔

عنوان:- حکمانہ اپیل برخلاف نوٹیفکیشن / آرڈر نمبری 272-75/PFA Abdul Basat

PST محررہ 25-11-2015 جاری کردہ ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ) ایسٹ آباد۔

جناب عالی! اپیل ذیل عرض ہے۔

۱۔ یہ کہ سائل محکمہ تعلیم ضلع ایسٹ آباد میں 26-11-1987 میں بطور پرائمری ٹیچر تعینات ہوا اور اس کے بعد سائل عرصہ دراز سے اپنے فرائض احسن طریقے سے سرانجام دیتا رہا ہے اس دوران سائل نے اپنے پیشہ تدریسی کے فرائض احسن طریقے سے سرانجام دیئے۔ اس دوران سائل کے خلاف کبھی بھی کوئی حکمانہ کاروائی اور شکایت نہ ہوئی اور کوئی اعتراض نہ آیا۔ جو کہ سائل کی فاضل شناسی کا واضح ثبوت ہے۔

۲۔ یہ کہ محکمہ نے سائل کی ٹرانسفر گورنمنٹ پرائمری سکول جھنگڑہ سے گورنمنٹ بوائز پرائمری سکول کھن خورد میں نوٹیفکیشن نمبری 95-10687-10687 محررہ 28-07-2010 کے تحت کر دی جس کی بابت سائل نے حکمانہ اپیل دائر کی مگر اس دوران سائل بوجہ بیماری ڈاکٹر کے پاس گیا جو ڈاکٹر نے سائل کی بیماری کو مد نظر رکھتے ہوئے فوراً آپریشن کا کہا جو کہ سائل نے اپنا آپریشن با امر مجبوری گرمیوں کی چھٹیوں میں کروایا جس سے سائل کی بیماری میں کچھ افادہ ہوا اسی دوران سائل کو دور دراز اسٹیشن گورنمنٹ پرائمری سکول کھن خورد میں تبدیل کر دیا گیا جو سائل نے اپنی بیماری کی وجہ سے اپیل نزد DCO کو 02-08-2010 داخل کرائی اور اپنے تمام حالات بیان کیے اس دوران سائل کو دوبارہ تکلیف شروع ہو گئی سائل مسلسل بیمار رہنے لگا جو ان حالات میں سائل نے اپنی تمام روداد اپنے سرکل انچارج کو بتائے اور بتانے کے بعد ان کی رضامندی سے ڈاکٹر سے اپنا علاج دوبارہ کروایا۔ (تمام ڈاکٹری رپورٹس لف اپیل ہیں)

۳۔ یہ کہ سائل کی اپیل پر تو سائل کو محکمہ سے کوئی باضابطہ آرڈر جاری نہ ہوا مگر اپنے سرکل انچارج کے حکم پر سائل نے اپنے تبدیل شدہ سکول گورنمنٹ پرائمری سکول کھن خورد میں حاضری کی اور انہی کے کہنے پر زبانی اپنے پرانے سکول گورنمنٹ پرائمری سکول جھنگڑہ میں کام جاری رکھنے کا حکم دیا کیونکہ سائل کی بیماری اس نوعیت کی تھی کہ وہ دور دراز پہاڑی علاقہ اور دشوار گزار ایریا میں اپنی ڈیوٹی سرانجام نہ دے سکتا تھا ان حالات میں سرکل انچارج نے انسانی ہمدردی اور سائل کی پوزیشن کو مد نظر رکھتے ہوئے اپنے پرانے سکول میں ڈیوٹی سرانجام دینے کا حکم دیا جس کی سائل نے پاسداری کی اور اپنی ڈیوٹی سرانجام دیتا رہا۔ جبکہ سائل کی تنخواہ گورنمنٹ پرائمری سکول کھن خورد سے ہی بنتی رہی اور اپنی تنخواہ بغیر کسی رکاوٹ وصول کرتا رہا۔ جو سائل کی اپنی ڈیوٹی سرانجام دینے کا واضح ثبوت ہے۔

۴۔ یہ کہ سائل کی تمام سروس بعد از بیماری گورنمنٹ پرائمری سکول جھنگڑہ میں آفیسر مجاز کے حکم سے ہی رہی۔ اس دوران سائل نے انتہائی محنت اور فاضل شناسی سے اپنی ڈیوٹی سرانجام دی۔ دوران ڈیوٹی سائل اپنی بیماری کے باوجود بھی اپنی ڈیوٹی دیتا رہا اور اس دوران اپنا چیک اپ کرواتا رہا اس دوران سائل کو مکمل بیڈ ریٹ بھی Advise ہوئی جو سائل نے اپنے آفیسر مجاز کے نوٹس میں لائی اور اپنا علاج معالجہ کرواتا رہا۔ (تمام لیبارٹریز اور ڈاکٹر رپورٹس لف اپیل ہذا ہیں)

۵۔ یہ کہ سائل تمام عرصہ میں اپنی ڈیوٹی بھی سرانجام دیتا رہا مگر اس دوران سائل کی نہ تو کوئی میڈیکل چھٹی منظور ہوئی نہ ہی سائل کو کوئی اطلاعیاتی کی گئی کیونکہ سائل اپنی ڈیوٹی سرانجام دینے کے بعد اپنے گھر چلا جاتا تھا نہ تو سائل کو کبھی اس بات کی خبر ہوئی اور نہ ہی پتا چل سکا کہ سائل کے خلاف اندر ہی اندر کیا محاذ بنایا جا رہا ہے۔ سائل اپنی ڈیوٹی دیتا رہا اور ہر ماہ اپنی تنخواہ لیتا رہا جو سائل ان تمام حالات سے بے خبر رہا ہے۔

۶۔ یہ کہ سائل کی سروس کو جو دورانیہ بطور Detial گورنمنٹ پرائمری سکول جھنگڑہ میں ہے بعد میں محکمہ اس کو سائل کے خلاف منفی استعمال کرے گا جو کہ سائل کے علم میں بھی نہ تھا۔

۷۔ یہ کہ اس تمام عرصہ میں دوران Detial ڈیوٹی کوئی ایسا حکم ملا اور نہ ہی سرکل انچارج نے سائل کو کہا کہ وہ اپنے سکول میں ڈیوٹی دے جو سائل اس طرح گورنمنٹ پرائمری سکول جھنگڑہ میں ہی ڈیوٹی دیتا رہا۔ سائل کو نہ تو کبھی Explanation بابت غیر حاضری ملا اور نہ ہی محکمہ نے کبھی کوئی Explanation سائل کی جائے تعیناتی عارضی گورنمنٹ پرائمری سکول جھنگڑہ میں اور نہ ہی سائل کے گھر کے پتہ پر بھیجا اور نہ ہی کسی اور ذریعہ سے علم میں لایا گیا۔ کیونکہ سائل کی تنخواہ تو ماہانہ بنیادوں پر جاری تھی جس کا علم سائل کے محکمہ کے تمام اہلکاروں اور دفتر اکاؤنٹ کو تھا۔

۸۔ یہ کہ سائل کو نہ تو Explanation Letter جاری کیا گیا اور نہ کوئی Show Cause جاری کیا گیا نہ تو دفتر ہی گھر ملو پتہ پر ارسال کیا گیا جو کہ تمام جملہ کاروائی نسبت نوٹیفیکیشن متدعو یہ بدینتی سے بدوں کسی اطلاعیاتی نوٹس کے کرنا خلاف قانون اور خلاف قاعدہ ہے جو سائل کی حد تک قابل منسوخی و نا قابل بحالی ہے اور بدینتی کا نتیجہ ہونے کی بناء پر حقوق سائل پر سکت و کالعدم ہے۔

۹۔ یہ کہ سائل کو حالات بالا اور محکمہ کی بدینتی کا علم اس وقت ہوا جب سائل کو آفس سے جاری کردہ آرڈر نمبری 272-75-PF Abdul Basat PST مورخہ 25-11-2015 کا جاری کردہ سائل کے گھر کے پتہ پر مورخہ 05-01-2016 موصول ہوا کہ سائل کے خلاف تمام کاروائی بالا بغیر کسی Personal hearing کے روڈ اور پالیسی کے منافی کاروائی مبنی بر بدینتی کرتے ہوئے Dismissal from Service کا حکم موصول ہونے پر ہوا جو کہ آفیسر مجاز کا مذکورہ فعل غیر قانونی اور خلاف واقعہ ہونے اور حقوق سائل پر کالعدم و سکت ہے۔ سائل نے اپنی زندگی کے قیمتی سال محکمہ تعلیم ضلع ایبٹ آباد کی خدمت میں گزارے ہیں اور اپنی جوانی ملک کے نو بہانوں کو سنوارنے میں صرف کی ہے۔

۱۰۔ یہ کہ سائل کے خلاف کی گئی کاروائی مذکورہ سرورس روڈ کی مکمل نفی کرتے ہوئے کی گئی ہے۔ اگر سائل اس تمام عرصہ میں غیر حاضر رہا تھا تو محکمہ کے افسران بالا نے سائل کے خلاف کاروائی کرنے کے عمل کو کیوں خفیہ رکھا اور دیگر دادرسی بر خلاف سائل کا اطلاق کیوں نہ کیا۔۔۔؟

۱۱۔ یہ کہ آرڈر جاری کردہ DEO آفس یہ تحریر کردہ کہ سائل عرصہ 10-08-2010 تا 30-06-2015 غیر حاضر رہا تو اس دوران محکمہ سے سائل کی تنخواہ کس بات کی جاری ہوتی رہی اور اب جاری کردہ آرڈر مورخہ 25-11-2015 غیر قانونی اور خلاف واقعہ مبنی بر بدینتی و سازش کا نتیجہ ہے اور حقوق سائل بھی سکت و کالعدم ہیں۔

۱۲۔ یہ کہ سائل کے خلاف تمام تر کاروائی ذاتی رنجش کا نتیجہ لگی ہے جو مذکورہ نوٹیفیکیشن عمل میں لانے سے قبل تمام جملہ قواعد و ضوابط اور قانونی تقاضے نسبت Dismissal of Service سائل کسی بھی طریقہ سے نہ تو سرانجام دیئے گئے اور نہ ان کا اطلاق کیا گیا ہے جو اس طرح مذکورہ نوٹیفیکیشن خلاف آئین، خلاف سرورس اور سائل کے بنیادی حقوق کے منافی ہونے کی بناء پر قابل منسوخی اور نا قابل بحالی ہے۔

۱۳۔ یہ کہ سائل نے بعد از وصول جاری کردہ لیٹر DEO ضلع ایبٹ آباد اپنے سکول سے بابت ریکارڈ سابقہ حاصل کرنا چاہا جو کہ سابقہ تمام ریکارڈ دینے سے پس و پیش کر رہے ہیں اور خدشہ ہے وہ ریکارڈ سائل ضائع کر دیں گے۔ سائل کے چھوٹے چھوٹے بچے ہیں اور سائل کا ذریعہ آمدنی بھی اس نوکری کے علاوہ کوئی نہ ہے۔ جو آرڈر متدعو یہ سے سائل اور اس کے خاندان کو فاقوں کا اندیشہ اور سائل کے چھوٹے چھوٹے بچوں کو پستی کے اندھیروں میں دھکیلنے کے مترادف ہے۔

۱۴۔ یہ کہ اپیل ہذا اندر معیاد ہے اور سائل کے قیمتی حقوق کا سوال ہے۔

لہذا استدعا ہے کہ بمظہوری اپیل ہذا آرڈر جاری کردہ ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ)، ضلع ایبٹ آباد نوٹیفیکیشن نمبری 272-75 PF Abdul Basit PST مورخہ 25-11-2015 کو کالعدم قرار دیا جا کر سائل کو اس کی ملازمت پر بحال فرمایا جائے اور اس کی سابقہ تنخواہ عرصہ برخواستگی بھی جاری کرنے کا حکم صادر فرمایا جاوے۔

المرقوم: 2016-7-9

عبدالباسط۔۔۔ اپیلانٹ

PST گورنمنٹ پرائمری سکول کھن خورد

Abasit

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

Application is Service Appeal No. \_\_\_\_\_/2016

1. Mr. Abdul Basit, Ex-PST (Teacher) Jhangra Tehsil and District Abbottabad.

**APPELLANT/APPLICANT**

**VERSUS**

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others.

**RESPONDENTS**

**APPLICATION TO THE EFFECT**

**THAT THE RESPONDENTS MAY**

**GRACIOUSLY BE RESTRAINED TO**

**MAKE RECOVERY FROM**

**APPELLANT FOR THE DISPUTED**

**PERIOD, till the disposal of appeal.**

**RESPECTFULLY SHEWETH,**

**Short facts giving rise to the present application are as under:-**

1. That the appellant has filed service appeal along with this application in which no date has been fixed so far.
2. That the facts enumerated and taken in the body of service appeal may kindly be considered as an integral part of this application, which make out an excellent prima facie case in favour of the appellant.

3. That the appellant was performing his duty with great zeal, zest and devotion. But strangely, he was awarded major penalty of dismissal from service and that the disputed amounts of salaries were also ordered to be recovered from him in utter violation of law vide order dated 25-11-2015 passed by the District Education Officer (Male) (respondent No.3).
4. That the appellant had performed duty in accordance with law and received his legitimate pay/salary for the disputed period. No complaint whatsoever was either made by the Head Master, Inspection Party or public at large against him for so-called allegations of unauthorized absence from duty.
5. That in case the respondents are not restrained from making the disputed amount, the very purpose of service appeal would be defeated and the appellant/applicant will suffer irreparable loss.

In view of the above narrated facts, it is, therefore, humbly prayed that the respondents may graciously be restrained to make recovery from appellant/applicant for the disputed period.

Any other relief deemed proper and just in the circumstances of the case, may also be granted to the petitioner.

*Abasit*  
Appellant/Applicant

Through

*[Signature]*

Rizwanullah  
M.A. LL.B

Advocate High Court, Peshawar

Dated: 7-4-2016

### AFFIDAVIT

I, Mr. Abdul Basit, Ex-PST (Teacher) Jhangra Tehsil and District Abbottabad, do hereby solemnly affirm and declare that the contents of this application are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

*Abasit*  
DEPONENT





10  
Jalal  
Lawyer




ایڈوکیٹ / دستخط  
بار کونسل ابار ایسوسی ایشن  
رابطہ نمبر: 0300-596-5843





پشاور بار ایسوسی ایشن، خیبر پختونخوا

BEFORE HON'BLE CHAIRMAN, KPK. SERVICE TRIBUNAL: بعدالت جناب:

<p>منجانب:</p> <p><b>Abdul Basit</b></p>  <p>Secretary Elementary &amp; Secondary Education etc.</p>	<p>دعوی: SERVICE APPEAL</p> <p>معدت: NIL</p> <p>مورثہ: 7-4-2016</p> <p>جرم: NIL</p> <p>تھانہ: NIL</p>
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### بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ  
 ان مقام پیشاوردہ کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقریر جانے و فیصلہ برطین دینے جواب دعوی اقبال دعوی اور درخواست از ہر قسم کی تصدیق  
 زریں مدد دستخط کرنے کا اختیار ہوگا، نیز ضرورت عدم پیروی یا تاخیر کی صورت میں یا اہل کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اہل نگرانی و نظربانی و پیروی کرنے کا اختیار ہوگا اور ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کاروائی کے واسطے اور وکیل یا مختار قانون کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب  
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پورا اختہ منظور و قبول ہو گا و دران مقدمہ  
 میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہو گا وہ وکیل موصوف و متول کرنے کا حقدار ہو گا کوئی تاریخ پیشی مقام  
 دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

Abbas

المرقوم: 7 اپریل، 2016

الع بد ————— واہ شد ————— الع بد

مقام پیشاوردہ کے لئے منظور ہے۔