

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Appeal No. 1477/2023

1. Tariq Muhammad R/O Village Spin Kanry Kalan, Tehsil Pabbi, District Nowshera.

..... Appellant

VERSUS

1. Director General, Local Government Elections & Rural Development Department (LGE&RDD), Phase-V, Hayatabad, Peshawar.
2. Assistant Director, Local Government & Rural Development Department (LG&RDD), Road Nowshera Kalan.
3. District Education Officer (Male), Nowshera

..... Respondents

INDEX

S.No	Description of Documents	Annexure	Page No
1	Joint Parawise Comments/replies	-	1-2
2	Affidavit	-	3
3	Response to the request for the retention of a lien against the post of Village Secretary vide letter No. Director (LG)3-1/Establishment/2022-23/1125-28 dated 26 th June, 2023	A	4
4	Lien Policy	B	5
5	Resignation of Tariq Muhammad	C	6
6	Authority	-	7

Respondents

Through

26-12-2023

Assistant Director (Senior)

Local Government & Rural Development
Department, Nowshera

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3. District Education Officer (Male), Nowshera..... Respondents.

Para wise Comments on behalf of Respondents 1 to 2.

Khyber Pakhtunkhwa
Service Tribunal

Respectfully Sheweth:

Diary No. 9691

Preliminary Objections:

Dated 05-12-23

- i. That the appellant has got no cause of action/locus standi.
- ii. That the appellant has not come to this honorable court with clean hands.
- iii. That the instant appeal is based upon, malicious/vexatious, frivolous grounds.
- iv. That the appellant is stopped by his own conduct to file the instant appeal.
- v. That the instant appeal is against the relevant rules/policy.
- vi. That the instant appeal is bad for mis-joinder and non-joinder of the necessary parties.
- vii. That the instant appeal is badly time barred.
- viii. That the instant appeal is not maintainable in its present form.

On Facts:

1. Correct up to the extent that, the appellant was appointed as Village Secretary BPS-09.
2. Correct up to the extent that, NOC was issued to the appellant for the submission of his application for the post of PST Teacher BPS-12.
3. No comments being irrelevant.
4. Correct up to the extent, that though the appellant applied for his relieving and further to join the post BPS-12 on contract basis, but he was specifically relieved off on the submission of his resignation in which he had opted whether his lien may be kept intact or otherwise.

Hence keeping in view the importance of Village Secretary post which cannot be retained vacant for a longer time as always, required in case of lien. Moreover the post he was going to join as a PST Teacher BPS-12 was on contract basis, hence lien cannot be granted to the person who is going to join the contract post.

Later on the vacant post was advertised and refilled on merit as the Village Secretary post cannot be retrained or kept vacant for a longer period of time.

5. Incorrect, the appellant submitted his application on dated 16/06/2023 to the Director General LG&RDD requesting for the provision of lien, but the same has been rejected/turndown/regretted. **(Annex-A)**
6. No comments.

On Grounds:

- A. The appeal submitted by the appellant requesting for the grant of lien has been rejected strictly in accordance with the rules of lien, wherein lien facility cannot be granted to the officers/officials, who were going to join the contract post **(Annex-B)**
- B. No violation has been made of the Article 4&5 of the Constitution of Islamic Republic of Pakistan 1973, all the process regarding the consideration and disposed of the case

pertaining to the appellant has been carried out under the observance of the relevant rules/regulation.

- C. The appellant was relieved off from the post of Village Secretary BPS-09 and to join the PST Teacher BPS-12 contract post in education department by tendering his resignation having the content of his option that the appellant may be relieved off with/without lien. (**Annex-C**)


It is pertinent to mentioned here that the Village Secretary is a single entity post in the Village Council establishment, who is responsible to perform various jobs/duties i.e. provision of secretariat services to the council, Birth, Death, Marriage certificate and participation service provider in the National campaign in Polio/Dengue/Flood etc.


Hence keeping in view the post of Village Secretary cannot be retained vacant for a longer period of time, and thus required to be filled immediately otherwise the general public will be suffered due to non-provision of the above mentioned facilities/services.

- D. No comments.
- E. No violation of the fundamental rules 14(A) has been caused by the department as the whole case has been processed under the observance of rules/regulation. Moreover if an officer/official is going to join a higher contractual post/scale his lien cannot be retrained/granted.
- F. No violation of the Article 4 & 38 section (e) of the Constitution of Islamic Republic of Pakistan 1973, has been done, the post of the Village Secretary caused vacant on the resignation of the appellant is filled on merit and currently there is no any post of Village Secretary available in the Local Government Department Nowshera.

Due to resignation of appellant the post of Village Secretary caused vacant was specifically filled in the larger interest of general public as no compromised could be made for the non-provision of the basic rights like Birth/Death/marriage to the general public.

It is humbly prayed that the appeal of the appellant may be dismissed being baseless and not based on fact/not genuine.


Shabir Hussain
Respondent No. 2
Assistant Director LG & RDD
District Nowshera


Iftikhar Alam
Respondent No. 1
Director General LG& RDD
Khyber Pakhtunkhwa

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AFFIDAVIT

I, Shabir Hussain Assistant Director (Senior) Local Government and Rural Development,
Department Nowshera solemnly affirm and declare on oath that Joint Para wise reply in
Appeal. No 1477/2023, Tariq Muhammad VS Government of Khyber Pakhtunkhwa etc. are
true and correct to the best of my knowledge & belief and nothing has been intentionally
concealed from this Honourable Tribunal. It is further stated on oath that in this appeal the
answering respondents have neither been placed ex-parte nor their defense has been struck
off.



DEPONENT

CNIC 17301-2612844-1

Cell #: 0334-9444482

Shabir Hussain

Respondent No 12

Identified by

**Advocate General,
Khyber Pakhtunkhwa**

ATTESTED





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DIRECTORATE GENERAL
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA

No. Director(LG)3-1/Establishment/2022-23/1125-28
Dated Peshawar the, 26th June, 2023

To,
Mr. Tariq Muhammad
(Ex-Village Secretary)
District Nowshera.

Subject: REQUEST FOR RETENTION OF LIEN AGAINST THE POST OF VILLAGE SECRETARY.

I am directed to refer to your application No. Nil dated Nil on the subject cited above and to state that as per instruction of Establishment Department, lien can be granted to a civil servant who has been confirmed after successful completion of his probation period and is appointed to another regular post under Provincial Government or Federal Government. In the instant case you were appointed on contract basis and hence not entitled for retention of lien.

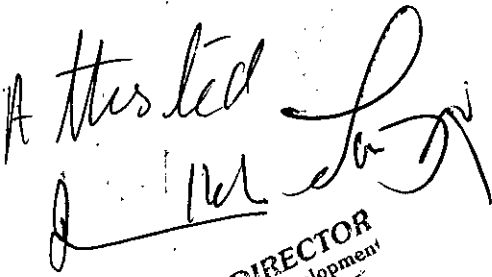

ASSISTANT DIRECTOR (ADMIN/HR)
LG&RD

Endst: No. & date even:

Copy forwarded to the:

1. Assistant Director (Senior), LG & RDD, Tehsil Headquarter District Nowshera.
2. PS to Minister, LG,E & RDD, Khyber Pakhtunkhwa.
3. PA to Director General, LG & RDD, Khyber Pakhtunkhwa.


ASSISTANT DIRECTOR (ADMIN/HR)
LG&RD

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ASSISTANT DIRECTOR
Local Govt. & Rural Development
Department Nowshera

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(5)

not be withheld even when their work and conduct during the probationary period had been unsatisfactory. Government are gravely perturbed over this situation and have decided to make it obligatory on the Administrative Departments/ Appointing Authorities to pass an order on the completion of the initial probationary period, either (i) confirming the appointment; or (ii) extending the period of probation or (iii) dispensing with his services, if he was appointed by initial recruitment or (iv) reverting him to his former post, if he was appointed otherwise and if there is no such post dispensing with his services. In case the period of probation is extended, it would be binding on the Administrative Department/ Appointing authorities to issue another order before the expiry of the extended period of probation, either confirming the officer or reverting him.

I am to add that Government would take serious notice of non observance of these instructions and would take disciplinary action against the officers found responsible for not complying with them.

This letter will take effect from 1st January, 1968. In the meantime in all pending cases the past appropriate orders may be passed.

(Authority:- S&GAD's letter No.SOXII(S&GAD)2-133/63, dated 7.10.67)

Retention of Lien

Under the existing rules, lien of a civil servant can only be retained if he is a confirmed employee and is working against a permanent post. Despite completing the extended period of probation, the Government servants are not being confirmed for obvious reasons for no fault of theirs. As a matter of principle a regular Government servant who has completed his prescribed period of probation inclusive of the extended period of probation has a right to be confirmed.

2. It has been brought to the notice of this Department that a large number of unconfirmed employees on their selection for different jobs in Government and Autonomous Organizations ask for retention of lien and right of reversion to their parent Departments which is not permissible presently. Resultantly such employees hesitate to join the service elsewhere.

3. Keeping in view the acute un-employment in the country in general and in NWFP in particular it has been decided to give right of reversion initially for two years extendable by a further period of one year if a request in this behalf is received from those employees who are selected for appointment under Federal and other Provincial Governments provided they have served on regular basis for at least two years or who have completed the extended period of probation but could not be confirmed for obvious reasons.

(Authority:-S&GAD's letter No.SORI(S&GAD)1-62/80, dated 17.4.1989)

Confirmation of Lien

I am directed to refer to the subject noted above and to state that the lien of a civil servant accrues when he is appointed substantively against a permanent post. Substantive appointment means confirmation. The confirmation of a Government servant in a cadre can

Attested
[Signature]
ASSISTANT DIRECTOR
Local Govt. & Rural Development
Department Nowshera

[Signature]

Service/Recruitment
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To

The Assistant Director,

LG&RDD Nowshera

Subject RESIGNATION

R/Sir,

With due respect I have been serving as secretary village council and last year I had applied through proper channel in the education department for the post of PST (BPS -12) and luckily I have been selected.

I had submitted application for proper relieving with lien or without lien on dated 08/07/2020 Dairy No 593

Now for the stoppage of salary in LG&RDD Nowshera department as per demand of LG&RDD Nowshera department I want to resign from the post of secretary village council.

Kindly relieve me properly with effect 01/07/2020 after noon.

Yours sincerely,
Tariq Muhammad
Secretary village Council LG&RDD

*Resignation
Approved*

Approved

*Attested
M. H. H.*

S. J.

ASSISTANT DIRECTOR
Local Govt. & Rural Development
Department Nowshera



**OFFICE OF THE ASSISTANT DIRECTOR (SENIOR)
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT, NOWSHERA**

AUTHORITY LETTER

Mr. Inam Ullah Office Assistant LG&RDD Nowshera is hereby authorized to submit Joint Parawise Comments in Appeal No. **1477/2023 Tariq Muhammad VS Government of Khyber Pakhtunkhwa** in the Khyber Pakhtunkhwa Service Tribunal, Peshawar on behalf of respondent No. 2.

Assistant Director (Senior)
Local Government & Rural Development
Department, Nowshera