

12.03.2018

Counsel for the appellant and AAG alongwith Mr. Attaullah Minakhel, DEO and Mr. Muhammad Kamran, ADO for the respondents present. Arguments of the learned counsel for the appellant heard. The learned AAG requested for adjournment on the ground that their file is incomplete. Adjourned. To come up for arguments tomorrow on 13.03.2018 before the D.B at camp court, D.I.Khan.



Member


Chairman
Camp Court, D.I.Khan

13.03.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Attaullah, DEO and Mr. Muhammad Kamran, ADO for the respondents present. Further arguments heard. To come up for order on 14.03.2018 before this D.B at camp court, D.I.Khan.

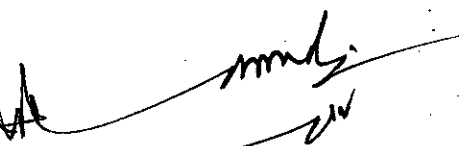

Member


Chairman
Camp Court, D.I.Khan

14.03.2018

Junior to counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Attaullah, DEO and Mr. Muhammad Kamran, ADO for the respondents present. Arguments already heard. Record perused. Vide our detailed judgment of today in service appeal No. 943/2012 entitled "Mst. Mehnaz Begum Vs. The Government of Khyber Pakhtunkhwa through Secretary, E&SE, Peshawar and others" this appeal is also dismissed. Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman
Camp Court, D.I.Khan

22.02.2018


Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Kamran, ADO for respondents No. 1, 2 & 5 and Mr. Naveed Zafar, Assistant Account Officer for respondent No. 4 also present. None present on behalf of respondent No. 3 hence, proceeded ex-parte. Written reply on behalf of respondent No. 4 submitted. Written reply on behalf of respondents No. 1, 2 & 5 already submitted. Adjourned. To come up for rejoinder and arguments on 12.03.2018 before D.B at Camp Court D.I.Khan.



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan


30.11.2017

Appellant in person present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Kamran, ADO (litigation) and Mr. Naveed Zafar, Assistant Account Officer for the respondents also present. Written reply on behalf of respondents No. 1, 2 and 5 submitted. Representative of respondent No. 4 requested for adjournment for filing of written reply/comments. Representative of respondent No. 3 is not in attendance therefore, notice be issued to respondent No. 3 with the direction to direct the representative to attend the court and submit written reply on the next date positively. Another last opportunity granted to respondents No. 3 & 4 for filing of written reply. Adjourned. To come up for written reply/comments on behalf of respondents No. 3 & 4 on 25.01.2018 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

25.01.2018

Appellant in person present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Kamran, ADO (litigation) and Mr. Naveed Zafar, Assistant Account Officer for the respondents also present. Written reply on behalf of respondents No. 1, 2 and 5 already submitted. Representative of respondent No. 4 requested for further adjournment. Another last opportunity granted. Adjourned. To come up for written reply/comments on behalf of respondents No. 3 and 4 on 22.02.2018 before S.B at Camp Court D.I.Khan.

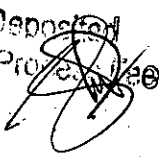

(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan


23.08.2017

Counsel for the appellant present. It was contended by learned counsel for the appellant that this Tribunal has already admitted service appeals of similar nature appeal for regular hearing, therefore, this appeal may also be admitted for regular hearing.

The contention raised by learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing. Appellant is directed to deposit the security and process fee within 10 days thereafter, notices be issued to the respondents for written reply/comments for 26.10.2017 before S.B at Camp Court D.I.Khan.


Appellant Deposited
Security & Process Fee




(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

26.10.2017

Counsel for the appellant present. Mr. Kamran ADO (Litigation) alongwith Mr. Farhaj Sikandar District Attorney for the respondents present. Representative of the respondents department requested for further time to file written reply. Request accepted by way of last chance. To come up for written reply on 30.11.2017 at Camp Court D.I.Khan.


Muhammad Hamid Mughal
Member (J)
Camp Court D.I.Khan

26.01.2016

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 23.2.16 at camp court, D.I.Khan.


MEMBER
Camp court, D.I.Khan

23.2.2016

Counsel for the appellant present. Preliminary arguments heard which shows that the appellant has already gone through many forums including the hon'ble High Court for redressal of his grievances. It was also brought into the notice of the Tribunal that there were about 1630 sacked employees and presently more than 200 appeals are pending at different stages on various dates and that the matter involved is one and the same. Hence, it is deemed proper to consolidate all the appeals for hearing in order to avoid conflicting situation and decisions. Hence, case to come up for further proceedings with connected appeals on 26.7.16 at camp court, D.I.Khan.


MEMBER
Camp Court, D.I.Khan

26.07.2016




Since tour is hereby cancelled, therefore, the case is adjourned for the same on 23.08.2017.

Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1250/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10.11.2015	<p>The appeal of Mr. Haji Muhammad resubmitted today by Mr. Muhammad Anwar Awan 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 Touring Bench D.I.Khan for preliminary hearing to be put up thereon <u>23-11-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	23.11.2015	<p>Counsel for the appellant present. Pre-admission notices be issued to the respondents and case to come up for preliminary hearing on <u>29-12-2015</u>, at camp court, D.I.Khan.</p> <p style="text-align: right;"> MEMBER Camp Court, D.I.Khan</p>

The appeal of Mr. Haji Muhammad S/O Khuda Bakhsh R/O Shah Davo (GPS Kurar) D.I.Khan received to-day i.e. on 22.09.2015 is incomplete on the following score which is returned to his counsel for completion and resubmission within 15 days.

1. In the copy of judgment dated 27.10.2011 of this Tribunal name of the appellant with service appeal has not been shown. Complete copy of judgment may be placed on file.
2. Copy of the enquiry report annexed at page-23 is also incomplete, which may be completed.

No. 1465 /ST,

Dated 22-9 /2015


REGISTRAR
KPK SERVICE TRIBUNAL,
PESHAWAR.

Mr. Muhammad Anwar Awan, Advocate

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal no. *1950*... of 2015.

Haji Muhammad

VERSUS

Govt; Of KPK and others

INDEX

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1	Appeal		<i>1-4</i>
2	Copy Advertisement	A	<i>5</i>
3	Copy of Appointment Order	B	<i>6</i>
4	Copy of Judgment Dated 27.10.2011	C	<i>7-21</i>
5	Copy of Inquiry Report Dated 26.01.2012.	D	<i>22-27</i>
6	Copy of Order Dated 14.03.2012.	E	<i>28-30</i>
7	Copy of Writ & Order Dated 14-05-2015.	F	<i>31-40</i>
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Your humble Petitioner

H. Muhammad
Haji Muhammad

Dated: *4*-09-2015.

Mohammad Awan
Mohammad Awan Awan
Advocate Supreme Court.

Two hundred
and thirty
four

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**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR
CAMP COURT AT D.I.KHAN.**

Appeal no...1250... of 2015.

A.W.P. Province
Service Tribunal
Diary No. 1103
Dated 22-9-15

Haji Muhammad S/O Khuda Baksh R/O Shah Dawo (GPS
Kurar) D.I.Khan.

VERSUS

1. Director Elementary and Secondary Education Deptt: Peshawar.
2. District Education officer (Elementary and Secondary Education Deptt:) D.I.Khan.
3. Deputy Commissioner D.I.Khan.
4. Account Officer Kechary Road Dera Ismail Khan.
5. Government of KPK through secretary Elementary and Secondary Education Deptt: Peshawar.

**APPEAL U/S 4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST
ILLEGAL AND MALAFIDE BACK DATED TERMINATION ORDER
08.02.2012 FROM SERVICE ON THE BACK OF APPELLANT.**

That the brief facts of the case are as under:

- 21/9/15
1. That the appellant is permanently resident of Tehsil and District D.I.Khan and having qualification of PST along with F.A.
 2. That the respondent advertised some post in daily Mashriq Peshawar dated 7th April 2007 of different categories including PST. The appellant applied for the post and appeared in test and interview. The appellant was appointed as PST on 01-09-2007. Copies of advertisement and appointment order are Annexure A & B.
 3. That the appellant after getting medical certificate, took the charge and performed his duty to the ut-most satisfaction of his high-ups.
 4. That the some so called inquiries were conducted against some appointment and they terminated all the appointment orders during January 2007 to 30th June 2008 including the appellant. The appellant challenged the impugned order through service appeal which was accepted and impugned termination orders in their cases.

is set aside and remanded/sent back the cases to the Secretary Education for consideration in the light of above observation for reinstatement of qualified appellants. Copies of Judgment dated 27.10.2011 are Annexure C.

5. That according to the order of learned service tribunal, the secretary education conducted so called inquiry, inviting the appellant in circuit house D.I.Khan and Clerk of education department provided a Proforma, which were filled by the appellant and submitted the same to the clerk. The Proforma contain inquiry regarding qualification of the appellant in which no show cause was given nor it contained charges of allegation. The inquiry committee after submission of Proforma, prepared his report in which recommendations were made against appellant and other for their termination due to the reason that they were appointed without observing codal formalities. Copy of recommendation dated 26.01.2012 is Annexure D.
6. That the inquiry report was produced before the service tribunal who directed the department to ensure the compliance with the recommendation without any wastage of time, so the aggrieved persons can seek remedy available to them. Copy of order Dated 14.03.2012 is Annexure E.
7. That appellant after the inquiry report waiting for the decision and implementation of department and contacted several time for their reinstatement or termination order but they reluctant to issue any such order. Feeling aggrieved from the act of the respondents, the appellant alongwith other filed writ petition before Hon'ble High Court for redressal of their grievances in which respondent filed their comment along with termination Order of petitioner. On the basis of comments filed by the respondents and termination Order delivered to the appellant in the court so appellant does not want to press the constitution petition which was disposed of by the Hon'ble High Court. Copies of writ along with judgment dated 14-05-2015 and termination Order are Annexure F & G.
8. That feeling aggrieved from the illegal back dated termination order the appellant filed department appeal on 27-05-2015 which was not decided by the respondents till now. Copy of departmental appeal alongwith postal receipt is Annexure H.

Annexure

9. That feeling aggrieved from above said action appellant is constrained to approaches this honorable court on the following amongst other:

GROUNDS;

1. That the appellant is not treated in accordance with law and the actions of the respondents are malafide besides being discriminatory and harsh.
2. That the report of committee is nothing more than a recommendation to Government. The said report could not be made sole ground for termination of large number of civil servants.
3. That the report of committee is not based on the direction of the service tribunal in which it is clearly mentioned that qualification of the teacher should be checked but committee terminated them on the basis of non observance of codal formalities which issued was already decided by the Hon'ble Service Tribunal in his judgment dated 27-10-2011.
4. That appellant is being penalized without giving them any opportunity of hearing, they were neither associated with the proceeding of standing committee nor have given any show cause notice by the department, which is against the principal of natural justice and equity.
5. That the respondent on the direction of Hon'ble court prepared back dated termination order in booklet shape from which it is evident that they had not issued any order to the appellant nor it was communicated to them.

Answer

In view of the above, It is, therefore, most respectfully prayed that on acceptance this appeal this honorable court may pleased to declare that the back dated termination order dated 08.02.2012 communicated to the petitioner on

14-05-2015, be without lawful authority and of no legal effect and respondents may pleased be directed to reinstate the appellant with all back benefits.

YOUR HUMBLE APPELLANT

H. Muhammad
Haji Muhammad
Through Counsel

Dated; 14-09-2015.

Anwar Adv
Mohammad Anwar Awan
Advocate Supreme Court

AFFIDAVIT

Haji Muhammad do hereby solemnly affirm and declare on OATH that the contents of the same are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable court.

H. Muhammad
Deponent.

Date: _____
Commissioner
R. A.C.
H. Adv
No. 1619/15

OFFICE OF THE EXECUTIVE DISTRICT OFFICER, SCHOOLS & LITERACY
DIKHAN

APPOINTMENT ORDER

Consequent upon the approval of Selection Committee the following Fresh Male is hereby appointed against vacant post of P.T.C. in the school noted against their name in 07 plus usual allowances being a qualified, fresh candidate as per existing policy in the interest of public service. W.e. from the date of taking over charge on the following terms and conditions.

S. No.	Name of Candidate with Father's Name	School where posted.
1.	Haji Muhammad S/O Khuda Bakhsh R/O D.I.Khan	G.P.S Kumar D.I.Khan

TERMS & CONDITIONS

1. Charge reports should be submitted to all concerned
2. No pensioner benefit will be available
3. The services of the above named candidate is made purely on temporary basis & liable to terminate at any time without assigning any specific reason
4. The candidate will produce Health & Age certificate from the M.S. concerned
5. The original documents may be checked/verified by concerned Board, University through DDO concerned before handing over charge
6. No TADA is allowed

Sd/-

EXECUTIVE DISTRICT OFFICER,
SCHOOLS & LITERACY DIKHAN

Endst: No. 16203-051 Dated D.I.Khan the 21/09/2007

Copy to the:-

1. Director Schools & Literacy N.W.F.P Peshawar
2. District Co-ordination Officer, D.I.Khan,
3. District Account Officer, D.I.Khan
4. Headmistress/Headmaster concerned.
5. Candidate concerned.

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Executive District Officer,
(Literacy & L. Govt) D.I.Khan

Manwar
EXECUTIVE DISTRICT OFFICER,
SCHOOLS & LITERACY DIKHAN

C-7

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.



SERVICE APPEAL NO. 1407/2010

Date of institution ... 21.07.2010

Date of judgment ... 27.10.2011

Abdul Salam S/o Shah Suliman,
D.I.Khan, Ex. P.T.C GPS, Kamal Kheir

..(Appellant)

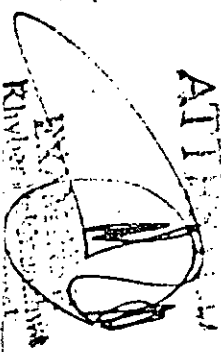
VERSUS

1. Province of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar.
2. Director of Education (E&S) Khyber Pakhtunkhwa, Peshawar.
3. Executive District Officer (E&S) Dera Ismail Khan.
4. District Coordination Officer, Dera Ismail Khan. ... (Respondents)

APPEAL UNDER SECTION 4 OF NWFP (KHYBER PAKHTUNKHWA) SERVICE TRIBUNALS ACT, 1974 AGAINST IMPUGNED ORDER DATED 04.9.2009, WHEREBY THE APPELLANT HAS BEEN TERMINATED FROM SERVICE, BY THE INCOMPETENT AUTHORITY, DISREGARD OF THE RULES, AND WITHOUT OBSERVING THE LEGAL REQUIREMENTS, AND HIS DEPARTMENTAL APPEAL ELICITED NO RESPONSE WITHIN STATUTORY PERIOD.

1. Shahzada Irfan Zia, Advocate for the appellant
 2. Ashraf Ali Khattak
 3. Ghulam Nabi
 4. Saadullah Khan Marwat
 5. Muhammad Arif Baloch
 6. Muhammad Anwar Awan
 7. Shaukat Ali Jan
 8. Matiullah Rand
 9. Abdul Qayyum Qureshi
 10. Muhammad Ismail Alizai
 11. Abdul Hamid Khan
 12. Muhammad Waqar Alam
 13. Muhammad Saeed Bhutta
 14. Muhammad Saeed Khan & M. Asghar Khan
 15. Rustam Khan Kundi
 16. Gul Tiaz Khan
 17. Zahid Muhibullah
 18. Khalil-ur-Rehman Hissam
 19. Fazal-ur-Rehman Baloch
 20. Javed Iqbal
 21. Yasir Zakria Baloch
 22. Allah Nawaz, Advocates
- Advocates from S.No.2 to 22 for the remaining appellants.
Mr. Sher Afgan Khattak, AAG. .. For respondents

Anwar
M. ANWAR
AWAN
Advocate



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Mr. Qalandar Ali Khan
Syed Manzoor Ali Shah

Chairman
Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:- This single judgment is also directed to dispose of the appeals mentioned in the list appended herewith, as common questions of law and facts are involved in all the appeals.

2. In the Daily 'Mashriq' Peshawar dated 7th April 2007, a publication/ advertisement appeared from the Executive District Officer (EDO), E&SE, D.I.Khan, inviting applications for unspecified posts, both male and female of C.L. Drawing Masters (D.M), Physical Education Teachers (PET), Arabic Teachers (A.T), Islamiyat (Theology) Teachers (TT), Qari; and Primary School Teacher (PST) by 20.4.2007, and alongwith other conditions for selection of the candidates, the minimum qualification for the posts, dates of test and interview as well as places/venues of interview were also mentioned. The record would show that a large number of applications were received. Test and interview were also conducted for the said posts, resulting in appointments not only against the above mentioned posts but also against other posts like Junior Clerks, Lab Assistants and Assistant Store Keeper (M) in the year 2007. However, in the year 2008, a local Member of the Provincial Assembly, raised question No.31 regarding recruitment/appointments made in the Education Department of District D.I.Khan by the EDO D.I.Khan, which was referred to Standing Committee No.26 for Elementary & Secondary Education, by the Provincial Assembly. The Standing Committee deliberated upon the issue, during which the Committee was informed that inquiries had also been conducted into appointments in Education Department of District D.I.Khan and Inquiry Committee/Inquiry Officers have made recommendations for appropriate legal/departmental action. After deliberations, the Standing Committee recommended

ATTESTED

Secretary
Khyber Pakhtunkhwa
Services Commission
Peshawar

Anwar
M. ANWAR AWAN
Advocate

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that within one month the department should cancel appointment orders of those persons who were illegally appointed during the period between 1st January 2007 and June 2008 and also take stern disciplinary action against officers/officials found involved in illegal appointments. The record further shows that a Writ Petition was lodged in the High Court Bench D.I.Khan, which was accepted and an Hon'ble Bench of the Peshawar High Court D.I.Khan Bench directed the department to act upon the inquiry report dated 05.01.2009 positively within two months from 11.6.2009, where upon the District Coordination Officer (DCO) D.I.Khan passed office order dated 4.9.2009 thereby implementing the decision of the Standing Committee No.26, order of the Peshawar High Court D.I.Khan Bench dated 11.6.2009 and order of the Chief Minister NWFP (Khyber Pakhtunkhwa) contained in the Elementary & Secondary Education Department letter dated 26/8/2009, and terminated services of all the 'illegally/irregularly' appointed teachers, detail of which was given in Annexure to the office order. This office order of the DCO D.I.Khan was followed by a letter dated 7.5.2010 from the FDO(E&SE) D.I.Khan to all concerned for implementation of termination orders issued by the DCO on 4.9.2009, and also a corrigendum on 20.5.2010 thereby terminating all the personnel appointed from January 2007 to 30th June 2008 except 131 (F)PST, 309 (M) PST + deceased son quota, disabled quota and minority quota in the light of decision of the Peshawar High Court, D.I.Khan Bench. It is against the said order of DCO D.I.Khan that the appellant in the instant appeal as well as appellants in the connected appeals, listed in the enclosed list, first preferred departmental appeals and then lodged these appeals. In the meantime, some of the appellants had also approached Peshawar High Court, D.I.Khan Bench and had filed Writ Petitions which were returned to the petitioners for presentation to the proper forum (KPK Service Tribunal) if they so desire, vide order dated 29.4.2010. The petitioners moved the august Supreme Court of Pakistan where from the petitions were withdrawn and consequently dismissed by a Hon'ble Bench of

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EDUCATION
PESHAWAR
11/05/2010

M. Anwar Awan
M. ANWAR AWAN
Advocate

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august Supreme Court of Pakistan vide order dated 28.6.2010 with the observation that if the petitioners approached proper forum for redressal of their grievances, the question of limitation be considered sympathetically if so raised. There-after, the appellants started lodging these appeals one by one, inter-alia, on the grounds that the impugned order dated 4.9.2009 was void, illegal and without jurisdiction because DCO D.I.Khan was not competent to terminate the services of officials in BPS-I to BPS-10; that the DCO did not apply his independent mind and just acted upon the direction of Chief Minister and recommendation of a politically constituted standing Committee; that before passing the impugned order, legal requirements were not fulfilled and the appellants were terminated from service without any charge sheet and/or show cause notice; that no chance of personal hearing was afforded to the appellants before passing the impugned order, hence they were condemned unheard; that even during the course of successive inquiry proceedings, the appellants were not associated to justify their respective position and thus the entire proceedings were conducted ex-parte; and that if there was any fault or lapse on the part of the department in the selection process, the appellants should not have been punished for the same.

3. It may be mentioned here that quite a number of affectees of the impugned termination order had also approached this Tribunal in the year 2009 and vide order dated 10.2.2009, this Tribunal had disposed of around 49 appeals with direction to the Secretary to Government of NWFP (S&L) to constitute a committee of experts of his department and, if need be, of the Establishment Department and Finance Department, to consider the cases of all the appellants named in the order as well as cases of all similarly placed persons, and decision regarding the same be given at the level of the competent authority, so that the parties are saved from unnecessary litigation, in the interest of justice, and in the interest of public work. It was expected that such a committee would be in a position to finalize its findings, and the competent authority may be in a position

ATTESTED
Kh. Iqbal Hussain
Secretary
Peshawar

M. Anwar Awan
M. ANWAR AWAN
Secretary

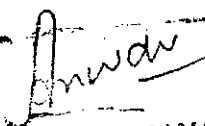
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to grant a decision in these cases, within a period of three months from the date of delivery of the order. The said order was not implemented within the specified time, therefore, implementation petitions were lodged, wherein directions were accordingly issued to the department for implementation of the order, following which, a committee comprising a Chairman and three other Members was constituted, which conducted its proceedings and submitted its report, which has been kept in the office record, while a copy of report/findings/recommendations has been placed on this file. The Scrutiny Committee concluded that appointments of all the appellants, except that of Shahana Niazi D/o Ghulam Sadiq (Service Appeal No.2177/2010), were illegal and irregular. The report/findings/recommendations of the Scrutiny Committee reveals appointments of more than two thousand teachers of various categories against following 1390 sanctioned posts:-

PST	961
AT	61
TT	59
Qari	50
CT	171
DM	45
PET	45
<u>Total</u>	<u>1390</u>

4. The respondents defended the impugned termination order and resisted the appeals on several legal and factual grounds including the one that the services of a civil servant can be terminated without notice during the initial or extended period of his probation under section 11(i) of the NWFP (Khyber Pakhtunkhwa) Civil Servants Act, 1973. They alleged, in their written reply/comments, that the appellants were neither eligible/qualified for the posts, nor requisite codal formalities for appointment were observed, hence the appointments were illegal and fake. They contended that more than one inquiries were conducted and the matter was taken up in the Provincial Assembly and that it was recommended as a result of inquiries as well as by the Standing

ATTENTION


M. ANWAR AWAN
Advocate

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Committee, recommendations of which were unanimously adopted by the Provincial Assembly, to terminate the services of all persons illegally appointed. They maintained that all the appointments were found illegal and in violation of recruitment policy except 309 (M) and 131 (F) PST. They concluded that the decisions of the Inquiry Committees and recommendations of the Standing Committee, adopted unanimously by the Provincial Assembly, were also confirmed by the Chief Minister as well as by the Peshawar High Court D.I.Khan Bench, which were followed by the DCO by terminating the services of all those persons who were illegally/irregularly appointed and that the order of DCO was also followed by corrigendum issued by the EDO.

5. Arguments of the learned counsel for the appellants and learned AAG heard, and record perused.

6. The main thrust of the arguments of the learned counsel for the appellants was against the impugned order dated 4.9.2009 of the DCO D.I.Khan, which was a general order in all the cases of 'illegal/irregular' appointments. The objections to the impugned order were two-fold. Firstly, the order was general in nature on the direction/recommendation of the Standing Committee of the Provincial Assembly without application of mind to each and every case, and thereby services of around 1613 male and female teachers of various categories were terminated with one stroke of pen; and, secondly, the order was passed by the DCO D.I.Khan who was not appointing authority for employees in BPS-1 to BPS-10, and thus not competent to dispense with their services. The learned counsel further laid stress on the non-observance of codal formalities essentially required for termination of services of civil servants, like service of charge sheet and/or show cause notice and providing them opportunity of defence and hearing. They also alleged non-association of appellants in the inquiry proceedings conducted in the matter. The learned counsel contended that the appellants were appointed after qualifying test and interview for the posts conducted in pursuance of

ATTESTED
M. ANWAR AWAN
Advocate

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Advocate

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advertisement/publication made in the newspaper by the department/authority and after their applications for the posts were found in order by the department. They maintained that the appellants had joined service and performed their duty without any complaint about their performance from the quarter concerned.

7. The learned AAG assisted by the representatives of the department vehemently contested claim of the appellants/counsel for the appellants and argued that the appointments were made without first obtaining proper sanction of the posts, without advertisement, and without observance of the codal formalities including test and interview, preparation of merit list, and its approval by the competent authority. It was argued on behalf of the department that some of the appointments were made even before advertisement, without specifying the posts against which the appointments were being made and without checking whether the educational qualification of the candidates fulfilled the academic requirements for the posts. It was pointed out that all 440 PSTs appointed on merits and after observance of codal formalities were retained, while the rest appointed 'illegally/irregularly' were terminated as a result of more than one inquiries, recommendation of the Standing Committee, and orders of the Chief Minister as well as Peshawar High Court, D.I.Khan Bench. It was alleged on behalf of the department that the competent authority i.e. EDO D.I.Khan not only endorsed the impugned order of DCO D.I.Khan dated 4.9.2009 but also issued a follow up letter dated 7.5.2010 and corrigendum on 20.5.2010. They further pointed out that none of the appellants was in possession of proper documents showing his eligibility for the post, and also proper appointment order against the post. They concluded that the appointments of the appellants have been found by various legal and constitutional forums as illegal/irregular, besides fake in most of the cases.

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Services Tribunal
Peshawar

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Advocate

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8. From whatever has been narrated above, as well as from perusal of the record, the following points emerge which are critically important for determination of fate of these appeals:-

(a) The services of the appellants, appointed in 2007, were dispensed with vide a general order of the DCO D.I.Khan dated 4.9.2009, against which some of them preferred departmental appeals and then lodged appeals in the Tribunal, which were disposed of vide order dated 10.2.2009, while the rest moved the Peshawar High Court D.I.Khan Bench in writ jurisdiction, but their writ petitions were returned to them for presentation to the proper forum vide judgment/order dated 29.4.2010, against which petitions were moved in the august Supreme Court of Pakistan, which were dismissed as withdrawn with the observation that if the petitioners/appellants approached the appropriate forum for redressal of their grievances, the question of limitation be considered sympathetically if so raised. Not only that the question of limitation has not been raised so vehemently by the department, the appellants have also been vigilantly pursuing their case, albeit in the wrong forum, therefore, the appeals lodged in the Tribunal after disposal of their petitions by the august Supreme Court of Pakistan cannot be held as time-barred, especially when the august Supreme Court of Pakistan directed for sympathetic consideration of the question of limitation, together with certain facts of the case warranting interference by the Tribunal. Besides, the impugned order has been issued by the DCO D.I.Khan who was not appointing authority of civil servants in BPS-1 to BPS-10, and, as

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such, the impugned order would be deemed to be an order by an authority not competent to issue the order, and, as such, void; and no limitation would run against such order (2007 SCMR 262 (g) and PLJ 2005 SC 709 (Appellate Jurisdiction)).

- (b) The posts of Junior Clerks, Lab.Assistants and Assistant Store Keeper (M) were never advertised, and, as such, no codal formalities were observed for appointment of 14 Junior Clerks, 03 Lab.Assistants and one Assistant Store Keeper. Their appointments were, therefore, aptly termed as illegal/irregular, and, consequently, their services have rightly been terminated, as appointments secured through illegal/irregular orders would be void ab-initio and would not confer any right on the holders of such appointment orders. Their appeals also deserve to be dismissed on this score.

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After painstaking exercise in pursuance of the order dated 20.01.2011 in one of the implementation/execution petitions, for which the then Secretary Education: Mr.Muhammad Arifeen Khan, and his team genuinely deserve commendation, the Scrutiny Committee prepared a detailed report, stretching over hundreds of pages, wherein they held only the appointment of PST Shahana Niazi D/o Ghulam Sadiq (Service Appeal No.2177/10) according to the prescribed procedure, as her name also appeared in the merit list, and recommended her reinstatement into service. The respondent-department also did not contest her appeal in the manner they contested appeals of other appellants. Therefore, her appeal deserves to be accepted.

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(d) Regarding the remaining cases, the respondents have resisted the appeals on the grounds that neither the posts on which appointments of the appellants were made were sanctioned before advertisement, nor the appellants qualified or were eligible for the posts, and codal formalities like test and interview, preparation of merit list and approval of competent authority were not observed; but these assertions of the respondents are belied by the available record as well as some documents produced by the appellants/ counsel for the appellants alongwith a joint affidavit by Muhammad Ayub Khan, SET GHS Panyala and Abdullah TF GHS Panyala who performed duty during test and interview of the appellants on 24th, 25th and 26th April 2007, during the course of arguments, showing constitution of committees for conducting test and interview, preparation of merit list after test and interview, besides revealing some cases in which the candidates other than those claimed by the respondents to have been appointed on merit secured more marks than the latter. So far sanction prior to advertisement/publication is concerned, it was duty of the authority to secure the requisite sanction prior to advertising/publicizing the posts for inviting applications, and the appellants can, by no stretch of imagination, be held responsible for any fault/lapse in this respect on the part of the authority i.e. EDO D.I.Khan. Notwithstanding the fact that appellants have placed on file verification of the certificates/testimonials of some of the appellants by the respondent-department, even if some irregularity was found in the appointments, the appellants/appointees should

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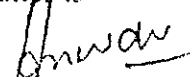
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not be made to suffer for such lapses on the part of the appointing authority (1996 SCMR 411 (Supreme Court of Pakistan), 2004 SCMR 303 (Supreme Court of Pakistan), 2006 SCMR 678 (Supreme Court of Pakistan), PLJ 2006 SC 81 (Appellate Jurisdiction), PLJ 2011 Lahore 736 (Multan Bench Multan), and last but not the least 2011 SCMR 1581 (Supreme Court of Pakistan)).

- (e) It is a matter of record that not in a single inquiry out of so many inquiries by the department, the then EDO D.I.Khan has been confronted with his signatures on appointment letters, so conveniently termed by the respondent-department as bogus and fake. When the 'authority' has never and no-where disowned his signatures on such appointment letters, how the same can be held as bogus and fake. No-doubt, the record shows departmental proceedings against the then EDO, and major penalty of compulsory retirement has been imposed upon him, but only after causing colossal loss to the national exchequer, for which he must be made accountable and also made to make good the loss so caused to the public money, and also landing hundreds of jobless persons in deep trouble by forcing them to engage in protracted litigation, during which they have not only been robbed of whatever money was left with them after securing the jobs; while he himself enjoying post retirement life with all perks and privileges. In view of implications/consequences of the acts on the part of the then EDO D.I.Khan, the penalty imposed on him does not appear commensurate with the gravity of his guilt, but since that matter is

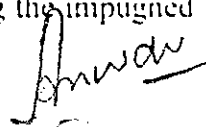
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not before us, we would stop short of making any order with respect to the departmental proceedings against him, but would, indeed, direct the respondent-department to recover the pay/salary paid to the illegally/irregularly appointed persons from the pension etc. of the then EDO instead of burdening the public exchequer for illegal/irregular acts on the part of the then EDO D.I.Khan.

- (f) No-doubt, an illegal/irregular and an order void ab-initio would not confer a right on the holder of such order, but an order passed by a competent authority in the discharge of his duty after observance of codal formalities does confer right on the holder of such order to be heard in support of order in his favour and his case decided on merit instead of a general order on the direction of some outside authority. If authorities are needed, one can readily refer to a number of cases including cases reported as 1995 PL.C(C.S) 419 (Lahore High Court), 2005 SCMR 1814 (Supreme Court of Pakistan), 2006 PLC (C.S) 1140(Northern Areas Chief Court), 2005 SCMR 85 (Supreme Court of Pakistan), 1987 PL.C (C.S) 868 (b), 2007 SCMR 330 (Supreme Court of Pakistan), 2008 PLC (C.S) 582 (Northern Areas Chief Court), and 2007 MLD 703 (Lahore). Undoubtedly, notices were not issued to the appellants prior to the impugned order by the DCO D.I.Khan, and they were never provided opportunity of hearing either by the 'authority' prior to passing of the impugned order or during inquiry/ scrutiny proceedings by several committees during the pre and post period of impugned order. As such, the principle of audi-alteram partem was violated at all levels and at all stages, rendering the impugned


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 Advocate

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order void and invalid, in respect of those who were found eligible for the posts after observance of codal formalities.

(g) There is no dispute that in the case of appointments, in BPS-1 to BPS-10, the appointing authority, in view of notification of the Provincial Government dated 7th October 2005, was EDO and thus also competent authority for disciplinary matters; whereas the District Coordination Officer was appointing authority for officials in BPS-11 to 15; therefore, the impugned order in respect of the appellants issued by the DCO D.I.Khan was an order by an incompetent authority and not sustainable in law as held in cases reported as 1983 PLC (C.S) 354 (Service Tribunal Punjab), 2001 PLC (C.S) 1097, 2008 PLC (C.S) 949 (Lahore High Court) and 1985 PLC (C.S) 1002. The contention of the respondents was that the competent authority i.e. EDO D.I.Khan not only endorsed the impugned order issued by the DCO D.I.Khan and issued a letter for implementation of termination order but also issued corrigendum thereby terminating the services of the appellants. Apart from the fact that endorsement of the order of an incompetent authority by the competent authority and follow up letter by him would not validate a void order issued by an incompetent authority, the corrigendum issued after more than 8 months of the impugned order would also not serve any useful purpose in view of PLD 2000 SC 104, as after issuance of termination order the department had become functus-officio.

(h) It was urged on behalf of the respondents that recommendations of the Standing Committee of the Provincial Assembly assumed legal

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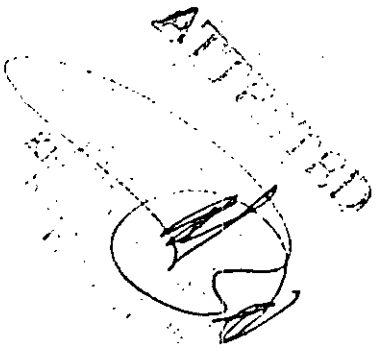
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M. ANWAR AWAN
Advocate

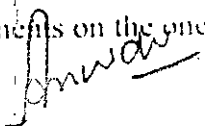
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status following judgment/order dated 11.6.2009 of the Peshawar High Court, D.I.Khan Bench, whereby a clear direction was issued to act upon the inquiry report, but they lost sight of the fact that no direction of any authority could absolve the departmental authority from following the law/rules on the subject and fulfill necessary legal requirements before passing the impugned order.

9. As a sequel to the foregoing-discussion, we would make the following orders:-

- (i) All the appeals of Junior Clerks, Lab. Assistants and Assistant Store Keeper(M) are dismissed with costs, being devoid of merit.
- (ii) The appeal of Ms.Shahana Hazi (Service Appeal No. 2177/10) is accepted, and by setting aside the impugned order, she is reinstated in service with consequential/back benefits.
- (iii) The appeals of the rest of the appellants including PSTs(M&F), CTs(M&F), PETs(M&F), DMs(M&F), ATs(M&F), TFs(M&F) and Qaris (M&F) are also accepted and impugned termination order in their cases set aside, but instead of their outright reinstatement, their cases are remanded/sent back to the Secretary, Elementary & Secondary Education Department, Peshawar (Respondent No.1) for reconsideration of the cases in the light of above observations for reinstatement of the qualified appellants and a speaking order in respect of those who are not found qualified, by the competent authority, after affording opportunity of hearing to the said appellants through an efficient and fair mechanism to be evolved for the purpose by him so as to ensure compliance with the mandatory legal requirements on the one hand

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Advocate

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and integrity of the proceedings on the other. Since the matter has already been delayed inordinately, it is expected that the proposed exercise should not take more than three months, whereafter a progress report be submitted to the Registrar of the Tribunal.

- (iv) The respondent-department should also look into claim of those appellants who have alleged performance of duty for considerable time after their appointments, and if they are found to have actually performed duty for certain period, and, as such, entitled to pay/salary for the period of the duty, legal procedure should be adopted for recovery of their claims from the then EDO D.I.Khan who has already been held responsible for appointments in question as a consequence of departmental proceedings against him.

ANNOUNCED
27.10.2011 (S)

sd/- Dalandaz Ali Khan
Chairman
sd/- Syed Manzoor Ali Shah
Member

Certified to be true copy

[Signature]
Secretary
Service Tribunal
Peshawar

Date of Presentation of Application 15.1.2014
 Number of Petitions 60000
 Completed 32
 Pending 2
 Total 34
 Date of Completion 15.1.2014
 Date of filing of Copy 15.1.2014

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M. ANWAR AWAN
Advocate

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Registration

MOST IMMEDIATE / COURT CASE.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

NO.SO (Lit) E&SED/1-3/2011
Dated Peshawar, the 26-01-2012.

To

The Executive District Officer,
Elementary & Secondary Education
D. I. Khan.

Subject: -

INQUIRY REPORT REGARDING THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL JUDGMENT DATED 27-
10-2011 ON SERVICE APPEAL NO. 1407/ 2010 AND OTHER
CONNECTED APPEALS ON ILLEGAL/ IRREGULAR
APPOINTMENTS IN DISTRICT D.I.KHAN.

I am directed to refer to the subject noted above and to enclose herewith a copy of the Inquiry report regarding the judgment dated: 27-10-2011 in Service Appeal No. 1407/ 2010 and other connected appeals on illegal/ irregular appointments in District D.I.Khan for necessary action and strict compliance in letter and spirit under intimation to this Department and all other concerned.

Enclosure: (As above)

Endst: of even No. & date.

Copy is forwarded for information to:-

1. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. D.C.O. D.I.Khan.
4. P.S to Secretary E&SE Department.

SECTION OFFICER (LITIGATION)

SECTION OFFICER (LITIGATION)

M. ANWAR AWAN
Advocate



ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

REPORT/FINDINGS/RECOMMENDATIONS/
OF THE COMMITTEE WITH REFERENCE TO SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY AND
SECONDARY EDUCATION DEPARTMENT NOTIFICATION NO SO
LITIGATION/E&SE/1-3/2011 /D.I.KHAN DATED 29.11.2011 IN
PURSUANCE OF KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
ORDER DATED 27.10.2011 ON SERVICE APPEAL NO 1407/2010
AND OTHER CONNECTED APPEALS.

INTRODUCTION:

In pursuance of the judgment of Khyber Pakhtunkhwa Services Tribunal dated 27.10.2011 in Service Appeal No 1407/2010 Abdul Salam versus Province of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education and the others connected Service appeals, (Annexure-A) , and judgment dated 16.12.2011 2011 in Service Appeal No 3052/2010 Lubna Sadia versus Province of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education , Secretary Elementary and Secondary Education Department Khyber Pakhtunkhwa constituted a Committee vide Notification No SO Litigation/E&SE/1-3/2011 /D.I.Khan dated 29.11.2011 comprising of the following for reconsideration of the cases in light of the judgment of the Honourable Services Tribunal vide (Annexure-B)

- | | |
|---|-------------|
| 1. Secretary) E&SE Department | (Chairman). |
| 2. Director (E&SE) Khyber Pakhtunkhwa, Peshawar | (Member). |
| 3. Abdul Wali Khan Dy Director (E&SE) | (Member). |
| 4. Ghulam Qasim EDO (E&SE) Tank. | (Member). |
| 5. Feroz Hussain Shah EDO (E&SE) DI Khan | (Member). |
| 6. Mushraf Ali AD (F&A) E&SE | (Member). |

TOR:

- > To examine the appeals of the rest of the appellants including PST(M&F), CT(M&F), PET(M&F), DM(M&F), AT(M&F), TI(M&F) and Qaris (M&F) in the light of the judgment of Khyber Pakhtunkhwa Services Tribunal dated 27.10.2011 in Service Appeal No 1407/2010 and the others connected Service appeals.
- > To examine, scrutinize the record of local office D.I.Khan regarding the appointments in the year 2007-08.

M. Anwar
M. ANWAR AWAN
Associate

- To frame efficient and fair mechanism and procedure to find out the qualified appellants according to the observations in the aforesaid judgment and implement.
- To ensure compliance with the mandatory legal requirements on the one hand and integrity of the proceedings on the other.
- To consider the claim of those appellants who have alleged performance of duty for considerable time after their appointment as directed by the Honourable Services Tribunal.
- To provide an opportunity of hearing to the appellants.
- To provide an opportunity to all concerned to produce record, documents etc in support of their claims and possible remedy.
- To act in accordance with rules, Law and Policy prevailing in 2007-08 regarding the recruitment of the above said posts.
- To fulfill the given task within the period as expected and proposed by the Honourable Service Tribunal in his judgment dated 27.10.2011.
- To consign the record in the safe custody of the competent authority.
- To pass on evidence, both documentary and verble, record and analysis conclude findings and make recommendations as way forward so as to ensure equity and justice.

BRIEF HISTORY OF THE CASE:

In District DI Khan reportedly illegal and irregular appointments were made in Elementary and Secondary department at a large-scale during the period from 01.01.2007 to 30.06.2008. The matter was highlighted by one Honourable member of Provincial Assembly through Assembly Question No.31. The Provincial Assembly declared the same appointments as illegal and irregular and politically motivated which was debated in the house on 19.08.2008 and was referred to Standing Committee No.26 for scrutiny. The Committee finalized its report/recommendations and presented to the Assembly on 12.01.2009, which was adopted on the same day. In order to implement the decision of the Standing Committee, duly adopted by the Provincial Assembly the Elementary and Secondary Education Department constituted the following three Committees to check the appointments record of the period from 01.01.2007 to 30.06.2008 in pursuance of the Minutes of the meeting held on 13.01.2009 of the Standing Committee No. 26 of Provincial Assembly vide Notification No. SO (AB) E&SE/D/4-4/Enq/DIK/2009 dated 01-01-2009.

Committee No.1 for scrutiny of Illegal/Irregular appointments of KPOs /PSTs /Lab Assistants /Junior Clerks/ Assistant Store Keepers and Class-IV Male and Female.

Committee No.2 for scrutiny of Illegal/Irregular appointments of CT, DM, PET Male and Female.

Committee No.3 for scrutiny of Illegal/Irregular appointments of Arabic Teacher, Theology Teacher and Qari Male and Female.

The enquiry Reports were submitted to the Standing Committee on 08.04.2009. The Standing Committee recommended to the department to terminate the

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 Advocate

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233	2661/10	Sohail Qadoos	Abdul Qadoos	GPS No.10 D I Khan	20391-479	01.09.2007	30.04.2010	20.06.2006	Trained
234	1450/10	Manzoor Ahmad	Rashid Ahmad	GPS Mohallah Hussain Zai/No.2 Hathala	20120-24	01.09.2007	30.04.2010	05.05.2003	Trained
235	2387/10	Muhammad Sajid	Imam Bakhsh	GPS Kala Gorh / No.1 Paharpur	16200-05	01.09.2007	30.04.2010	31.12.1996	Trained
236	2369/10	Bakir Hussain	Ghulam Ali	GPS Wanda Nadar Shah	16080-82	01.09.2007	30.04.2010	31.07.2002	Trained
237	1424/10	Haji Muhammad	Khuda Bakhsh	GPS Kurar	16203-98	01.09.2007	30.04.2010	21.02.2005	Trained
238	14/11	Tariq Javed	Falik Sher	GPS Rasheed Awan/GPS Wanda Manjhi	20780-86	01.09.2007	30.04.2010	20.10.1998	Trained
239	2289/10	Ghulam Yaseen	Mamdu	GPS Gharib Abad/Band Kurai	16076-79	01.09.2007	30.04.2010	19.01.2002	Trained
240	56/11	Allah Ditta	Haq Nawaz	GPS Shah Dau	20330-34	01.09.2007	Pay not activated	20.10.1998	Trained
241	1506/09	Muhammad Hanif Khan	Haji Muhammad Ramzan	GPS Bagi Qamar	20080-84	01.09.2007	Pay not activated	20.10.1998	Trained
242	1502/09	Iftihar Ahmed	Sher Muhammad	GPS Chah Malwana /GPS Bage Qammar	20057-79	01.09.2007	Pay not activated	2005	Trained
243	23/11	Kifayat Ullah	Ghulam Sadiq	GPS Lar	16072-75	01.09.2007	Pay not activated	2000	Trained
244	NE	Qadir Bakhsh	Malik Kuru	GPS Gara Ghous Shah/Chah Pathar	20679-83	01.09.2007	Pay not activated	13.05.1997	Trained
245	1520/10	Inayatullah	Kabal Khan	GPS Hassa/Kambo h Sharif	16069-71	01.09.2007	30.04.2010	27.05.1996	Trained
246	1526/10	Naeemullah	Azizullah	GPS Rora	18226-30	20.09.2007	30.04.2010	31.12.1996	Trained
247	1793/10	Muhammad Javid	Muhammad Nawaz	GPS Lodhra	12655-973	02.07.2007	30.04.2010	13.05.1997	Trained
248	1792/10	Muhammad Saleem	Malik Muhammad Abdullah	GPS Gandhi Ashiq/Chah Pai Wala	12655-973	02.07.2007	30.04.2010	20.10.1998	Trained
249	1795/10	Muhammad Asif Khan	Muhammad Tariq	GPS Kamal Khel/Wanda Hisam	12655-973	02.07.2007	30.04.2010	25.04.2000	Trained
250	1794/10	Rafiqullah	Sherifullah	GPS No.1 Jhoke Traili/Wanda Ramzan	12655-973	02.07.2007	30.04.2010	05.05.1996	Trained
251	1795/10	Agha Hussain Shah	Muhammad Hussain Shah	GPS Ratta Kulachi	12655-973	02.07.2007	30.04.2010	05.05.1996	Trained
252	1796/10	Irfan Ali Abbas	Ghazanfer Ali	GPS Kiri Baz Muhammad	12655-973	02.07.2007	30.04.2010	20.10.1998	Trained
253	1796/10	Ghulam Farid	Fateh Khan	GPS Khru Wali	16069-71	01.09.2007	30.04.2010	27.09.2004	Trained
254	1794/10	Muhammad Tariq	Muhammad Ramzan	GPS Basti Maheer	12655-973	02.07.2007	30.04.2010	25.04.2000	Trained
255	1793/10	Najam Ali Shah	Ashaq Hussain Shah	GPS Gara Ramzi	12655-973	02.07.2007	30.04.2010	19.01.2002	Trained
256	2191/10	Gul Nawaz	Imam Bakhsh	GPS Faqir Abad	12655-973	02.07.2007	30.04.2010	02.02.2002	Trained
257	1793/10	Muhammad Nadeem Qureshi	Muhammad Salim Qureshi	GPS Lachra	12655-973	02.07.2007	30.04.2010	20.03.1995	Trained
258	1795/10	Akhtar Zaman	Alamgir	GPS Wazir Abad	12655-973	02.07.2007	30.04.2010	28.04.2000	Trained
259	2189/10	Muqarab Khan	Sarfuraz Khan	GPS No.1 Abdul Khel	16076-79	01.09.2007	30.04.2010	15.02.1999	Trained
260	2152/10	Muhammad Shahid	Niaz Muhammad	GPS Chishtia Rizwia	12655-973	02.07.2007	30.04.2010	30.10.1998	Trained

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 Advocate

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departmental Selection Committee after the vacancies have been advertised in the newspapers"

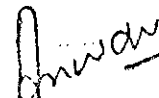
6. In case of appointment of the applicants the vacancies were not advertised and Departmental Selection Committee has not recommended the applicants for the appointment.
7. Appeals being merit less deserve to be dismissed on the analogy of the decision of the Khyber Pakhtunkhwa Services Tribunal decision under Para-9(i) read with Para-8(b).

RECOMMENDATIONS:

The Committee heard personally and scrutinized the record and appeals of terminated PST (M&F), CT (M&F), DM (M&F), PET (M&F), AT (M&F), TT (M&F), Qari (M&F) teachers/officials lying in the office of the Executive District Officer (E&SE) D. I. Khan on case to case basis in accordance with Khyber Pakhtunkhwa Services Tribunal order dated 27.10.2011, and segregated /check/scrutinize their cases on the basis of different categories of Teachers/officials from 19.12.2011 to 24.12.2011,

All the appointments of the appellants against the posts of PST (M&F), CT (M&F), DM (M&F), PET (M&F), AT (M&F), TT (M&F), Qari (M&F) appended under various categories from S.No 1 to 41 have been made without observing code formalities/procedure, Government Policy and Merit and in violation of Rule 10(2) of the NWFP (now Khyber Pakhtunkhwa) Civil Servants (Appointment, Promotion and Transfer Rules 1989). The appointments of the appellants are declared illegal and irregular. Cases being merit less deserves to be terminated. The following steps are recommended to be taken.

- a. Executive District Officer Elementary and Secondary Education D I Khan is required to issue proper termination orders of the above appellants and similar cases listed above under various categories PST (M&F), CT (M&F), DM (M&F), PET (M&F), AT (M&F), TT (M&F), Qari (M&F) teachers in the findings from S.No.1-41 excepts those who were working on lower posts and were appointed on higher posts in other categories, they may be reversed to their original posts.
- b. Executive District Officer Elementary and Secondary Education D I Khan is further required to release/activate the pay of those PST Male who were appointed on merit included in the joint appointment order of 309 candidates dated 02.07.2007 and PST Female who were appointed on merit included in the joint appointment order of 131 candidates dated 02.07.2007. (Annexure- E-1),
- c. Executive District Officer Elementary and Secondary Education D I Khan is required to advertise the vacant posts immediately and complete the recruitment process before 15 March, 2012 and the terminated teachers may be provide opportunity to compete if otherwise they have the qualification required for the post and further they may be awarded extra 2 marks per year of span of service rendered if they actually performed duty after appointment.
- d. District Coordination Officer D I Khan is required to recover the claim of appellants who have alleged performance of duty for the considerable


M.A.N. Advocate

time after their appointment and they have actually performed duty for certain period to be calculated by Executive District Officer Elementary and Secondary Education D I Khan through legal procedure in accordance with Khyber Pakhtunkhwa Services Tribunal order dated 27.10.2011.

[Signature]

1. Syed Feroz Hussain Shah
Executive District Officer
E & SE D I Khan (Member)

2. Ghulam Qasim
Executive District Officer
E & SE Tank (Member)

[Signature]

3. A-Wali Khan
Dy Director E&SE
Khyber Pakhtunkhwa.
(Member)

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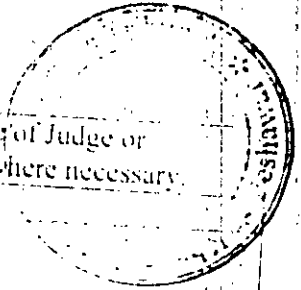
4. (Muhammad Rafiq Khattak)
Director,
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar.
(Member)

[Signature]

5. Muhammad Mushtaq Jadoon)
Secretary
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar.
(Chairman)

[Signature]

MANWAR AWAN
Advocate



S.No.of Order or proceedings	Date of Order or proceeding	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
	14.03.2012	<p style="text-align: center;"><u>Execution Petition No. 54/12</u></p> <p><u>Muhammad Hassan Khan etc.</u> (Petitioners) <u>Versus</u> <u>Secretary, E&SE Department, KPK, etc.</u> (Respondents).</p> <p>Counsel for the petitioners, Mr. Muhammad Rafique Khattak, Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and Syed Feroz Hussain Shah, EDO(E&SE) D.I.Khan in person alongwith Mashal Khan, L.O and Muhammad Nawaz, ADO on behalf of the respondents with AAG present. The respondents have already provided implementation report, which has been perused in the light of judgment of the Tribunal. The implementation report would show that after providing opportunity of hearing to the petitioners and appellants in the connected appeals, and scrutinizing record on case to case basis, the Committee made certain recommendations including issuance of termination/removal orders of those found illegally appointed and reversion to lower posts of those who were appointed on higher posts in other categories, and also releasing/activating pay of those PSTs (Male) and (Female) who were found validly appointed on merit. The Director (E&SE) KPK and EDO (E&SE) D.I.Khan stated at the Bar that they have already implemented recommendations of the Committee and issued the orders/letters accordingly, in accordance with the recommendations and letter and spirit of the judgment of the Tribunal dated 27.10.2011 in Service Appeal No. 1407/2010 titled 'Abdul Salam-vs-Province of KPK through Secretary, Elementary & Secondary Education, Peshawar etc.'. Be that as it may, the fact remains that in accordance with the afore-</p>

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M. ANWAR AWAN
Advocate

5/11/2012

mentioned judgment of the Tribunal, the respondent-department not only widely publicized hearing of cases of the petitioners and other appellants through publication in the newspapers but have also prepared list of those who appeared before the Committee in response to the publication and obtained their signatures on the list. The learned counsel for the petitioners also confirmed holding of meeting by the Committee at D.I.Khan and participation of the petitioners and other connected persons in the proceedings of the Committee. The implementation report also shows that each and every case has been examined by the Committee after providing opportunity of hearing to the petitioners/appellants, and in pursuance of such proceedings, recommendations have been made by the Committee which are being implemented by the respondent-department. In short, in accordance with the judgment dated 27.10.2011 of the Tribunal, the Secretary, E&SE, KPK, Peshawar (Respondent No.1) constituted a Committee, headed by him, and comprising five other officers of the Education Department including Director, E&SE, KPK, Peshawar and EDO(E&SE) D.I.Khan, conducted proceedings at D.I.Khan after widely publicizing the same through newspapers and thereby ensuring participation of the petitioners and other appellants and providing opportunity of hearing to them and also scrutinizing cases of the petitioners and other appellants on case to case basis and thereafter making certain recommendations which are being implemented through issuance of appropriate orders. As such, the judgment of the Tribunal stands implemented in its letter and spirit.

The learned counsel for the petitioners, however, raised

M. Anwar
M. ANWAR AWAN
 Advocate

objections regarding the proceedings conducted by the Committee; but he was unable to augment his contentions in this regard with support of law, as fresh orders in pursuance of the proceedings and recommendations of the Committee would accrue a fresh cause of action for appeal or any other remedy prescribed by the law, which is, certainly, beyond the scope of the implementation/execution proceedings. The misgivings, probably, emanate from lack of knowledge about proceedings of the Committee, which have been provided to the Tribunal in the shape of a book, but not available either with the counsel for the petitioners or petitioners and other appellants. Therefore, the respondents are directed to place the report on the website of the department so that the petitioners, appellants and all concerned should get knowledge of the proceedings and recommendations and chalk out future course of action in accordance with law. The respondents are further directed to ensure compliance with the recommendations of the Committee forthwith, without further wastage of time, so that the aggrieved persons can seek remedy available to them under the law.

In view of the above, the implementation/execution petition is disposed of as having served the purpose. File be consigned to the record.

ANNOUNCED

14.03.2012

Date of Presentation of Petition

Number of Petitioners

Category of Petition

Upper

Total

Name of Officer

Date of Completion

Date of Delivery

MEMBER

CHAIRMAN

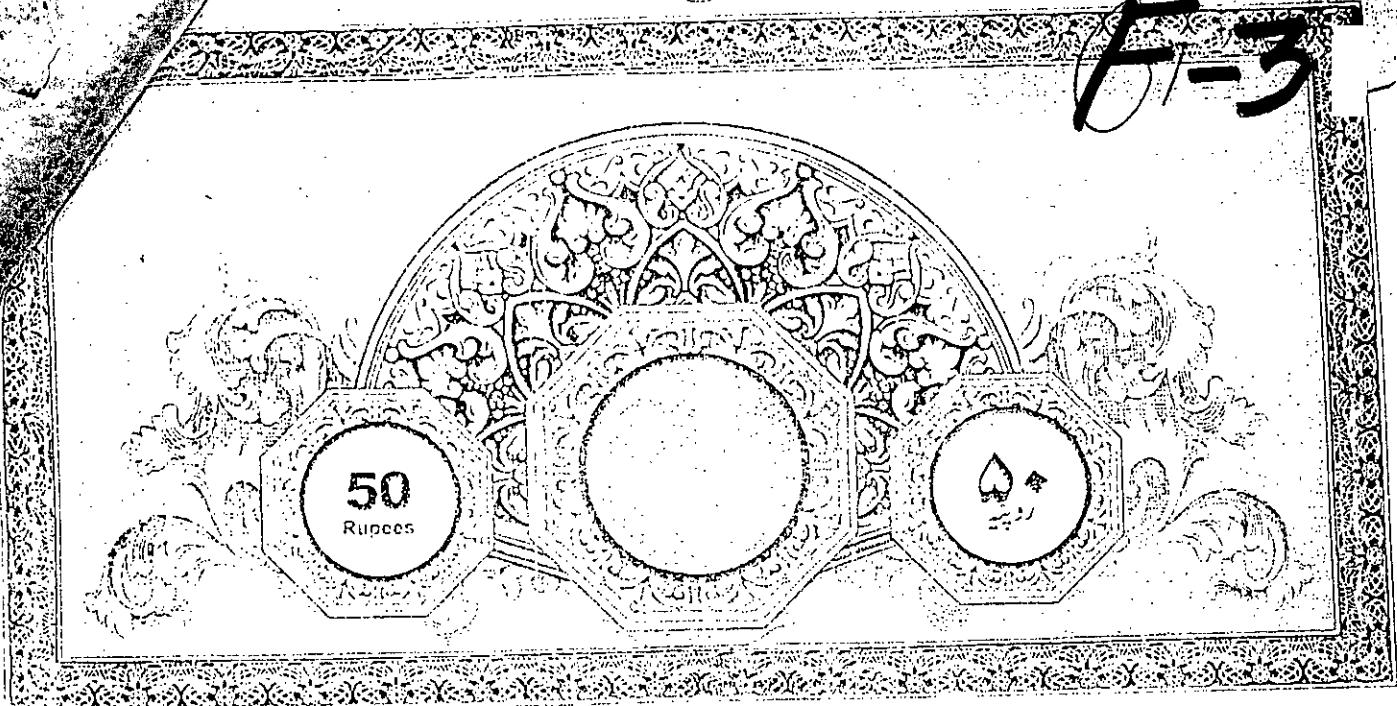
19-3-12
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Certified to be true copy

Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

M. ANWAR AWAN
 A. S. 16

F-3



PAKISTAN COURT FEE

BEFORE THE HONORABLE PESHAWAR HIGH COURT BENCH DERA ISMAIL KHAN.

Writ Petition No. 630 2014.
C.M No. 2014.

- i. Hafeez Ullah Amin.
S/O Malik Malkoo, Caste Ghabol, R/C Mubarik Shah, Tehsil Pahar Pur, District Dera Ismail Khan.
- ii. Muhammad Ramzan.
S/O Khuda Baksh, Caste Ghazar, R/O Thalla Baloocha, Tehsil Pahar Pur, District DIKhan.
- iii. Mushtaq Hussain.
S/O Ghulam Rasool, Caste vail, R/O Thatta Baloocha, Tehsil Pahar Pur, District DIKhan.
- iv. Javid Iqbal Saddiqi.
S/O Haji Aurangzeb, Caste Ghabol, R/O Mubarik Shah, Tehsil Pahar Pur, District Dera Ismail Khan.
- v. Muhammad Suleman.
S/O Muhammad Ramzan, Caste Ghabol, R/O Mubarik Shah, Tehsil Pahar Pur, District DIKhan.
- vi. Muhammad Khalid.
S/O Ghulam Akbar, Caste Balooch, R/O Garah Bakhsha, Tehsil & District Dera Ismail Khan.
- vii. Nabeela Ambreen.
D/O Ghulam Baqir Jaffri, Caste Durrani, R/O Sardaraywala, P/O Mandhra Kalan, Tehsil & District Dera Ismail Khan.
- viii. Haji Abdul Majeed.
S/O Haji Nawab Khan, Caste Awan, R/O Awan Abad, Tehsil Pahar Pur, District Dera Ismail Khan.
- ix. Niaz Din.



Mushtaq

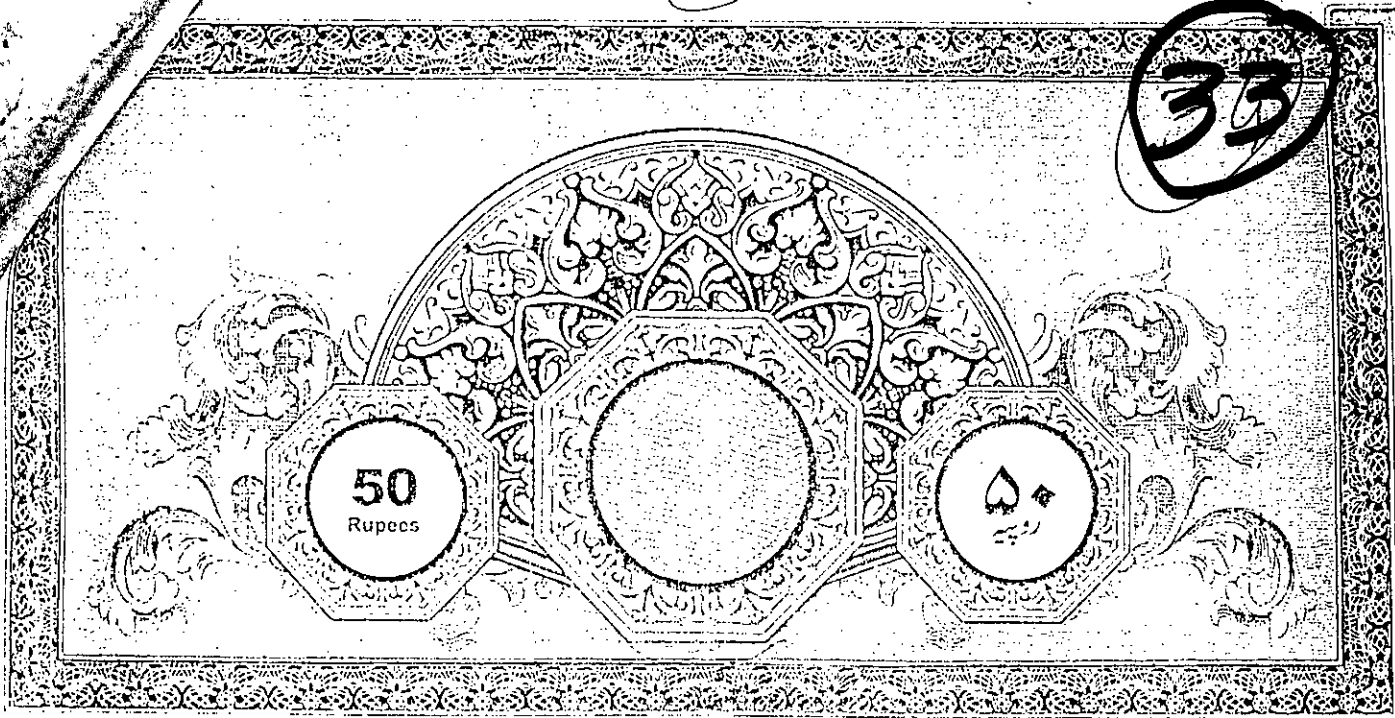
Filed today 24/11
Add: Registrar.
07/11/14

Anwar
M. ANWAR AWAN
Advocate

RECEIVED

EXAMINER
PESHAWAR HIGH COURT
Dera Ismail Khan

33



PAKISTAN COURT FEE

Most respectfully the petitioner above named submits as under:-

- 1) That the petitioners above named are peaceful, respectable, law abiding and bonafide citizen of District Dera Ismail Khan, Islamic republic of Pakistan. That the petitioners have completed their Academic qualification and was appointed against the vacant posts of Primary. School Teacher (PST) in BPS 7. Later on the basis of political victimization the ANP Government in the year 2010 and an enquiry was conducted against the petitioner, which resultantly, the dismissal of the 'hundreds of' the appointed teachers. Aggrieved from the same the petitioner preferred an appeal before the service tribunal, which was decided vide its order dated 27-10-2011. Copy of the judgment dated 27-10-2011 is annexed as Annexure "A".
- 2) That on the basis of the judgment dated 27-10-2011 Government of Khyber Pukhtoonkhwa vide later No. SO(Lit) E & SED/1-3/2011 Dated Peshawar, the 26-01-2012 communicated report/finding/recommendations of the committee which is annexed as Annexure "B".
- 3) That it is to be noted that the committee vide its report dated 26-01-2012 also framed certain recommendation which beside the others also include a proper termination orders of all the

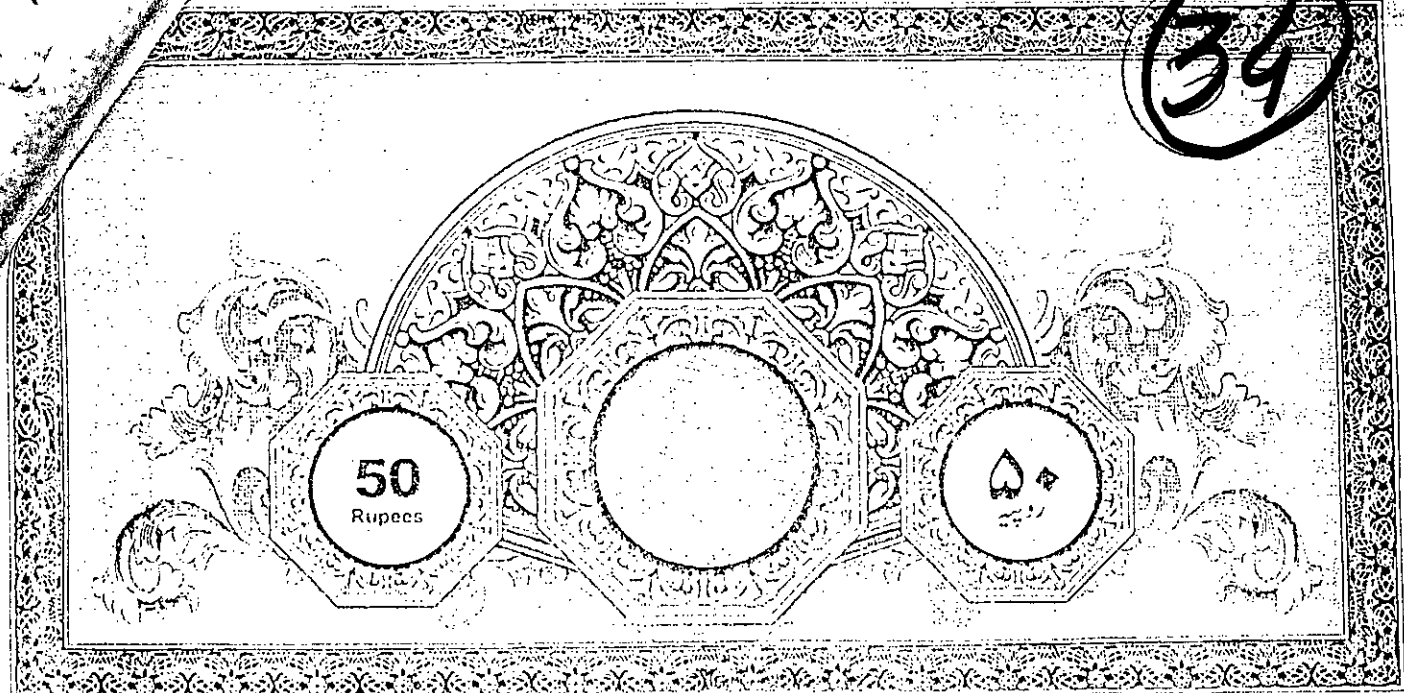
M. Anwar Awan

Filed today 24/11
At: Registrar
07/11/14

ATTESTED

EXAMINER
District High Court
Dera Ismail Khan Bench. 1815/15

Anwar
M. ANWAR AWAN
Advocate



PAKISTAN COURT FEE

effectives by the then decision of service tribunal report 26-01-2012 and inquiry report dated 27-10-2011.

- 4) That service of the effectives opted to execute the judgment dated 27-10-2011 before the Honorable service tribunal Khyber pukhtoonkhwa, which was decided vide its judgment dated 14-03-2012. Copy of the same is annexed as Annexure "C".
- 5) That the order dated 14-03-2012 was challenged before the August Supreme Court which was decided on 27-06-2012. Copy of the same is annexed as Annexure "D".
- 6) That as the judgment 27-10-2011 and the recommendation so based upon this judgment were finalized and that attain finality in the view of the August Supreme Court, judgment dated 27-06-2012 the petitioners time and again approached to the respondents for the implementation of all the orders along with recommendation but up till now no proper order for termination has yet been issued/communicated to the petitioners.
- 7) That the petitioner even try to challenge the findings of the committee dated 26-01-2012 before the Provincial Service Tribunal, but the same was rejected with the objection of non availability of the final termination order and

M. Anwar Awan

Filed today 24/11

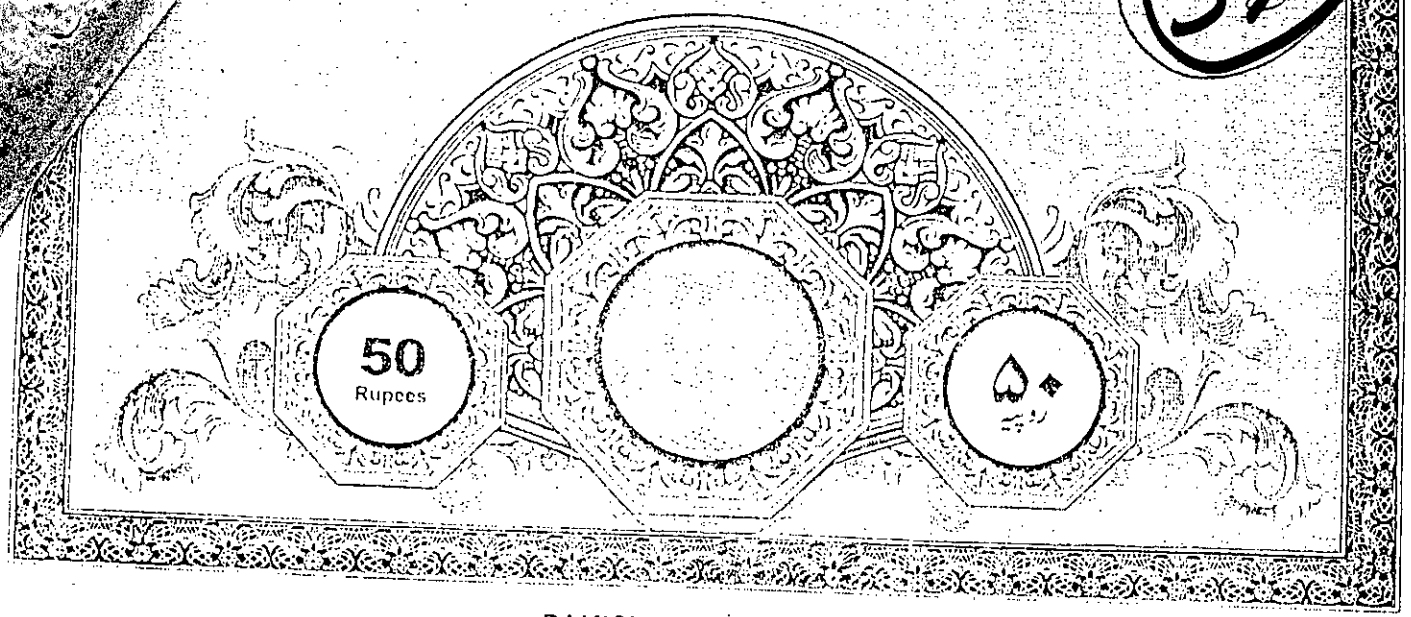
Add: Registrar
07/11/14.

ATTESTED

EXAMINOR
M. Anwar Awan
18/11/15

M. Anwar Awan
M. ANWAR AWAN
Advocate

37



50
Rupees

PAKISTAN COURT FEE

proper in view of the circumstances
of the case.

Dated: 21/07/2014 Yours Humble Petitioner

Filed today 2411
At the Registrar
07/07/14

Ullah
Hafeez Ullah Amin & Others
Through Counsel

Mohammad Yousaf Khan
Mohammad Yousaf Khan
Advocate High Court.

Nauman Akbar Khan
Nauman Akbar Khan
Advocate High Court.

Certificate

It is to certify that there is no other writ petition pending
before any court of law, nor earlier instituted such kind
of petition.

ATTESTED

EXAMINOR

Mansoor High Court
@ I Khan Bench 18/5/15

M. Anwar Awan
Deponent:

M. ANWAR AWAN
Advocate

BEFORE THE HONOURABLE PESHAWAR HIGH COURT D I KHAN BENCH

Writ Petition No 630-D/14

Hafeezullah Amin

VS

Government of KPK

COMMENTS ON BEHALF OF RESPONDENTS NO 3 &

Preliminary objections

- 1 The petitioner is one of the 1613 terminated teachers by the orders of Provincial Government.
 - 2 The writ petition is not maintainable due to RESJUDICATA Section 11 of CPC.
 - 3 That the petitioner has got no cause of action/ locus standi.
 - 4 The petitioner has not come to Honorable Court with clean hands.
 - 5 The petitioner has filed the petition on malafied objectives.
 - 6 The instant petition is against the prevailing law and rule.
 - 7 The instant petition is illegal and against the fact and grounds circumstances.
 - 8 The Honorable Court has no jurisdiction to entertain such petition
- The writ petition is liable to be dismissed because the petition is not maintainable due to the terms and conditions of civil servant.

Filed today 14/7/15
Addl: Registrar.

Objection on Fact:

- 1 Para is concern with the termination of petitioners along with 1613 terminated teachers. The petitioners are terminated teachers so they cannot challenge the previous decision of the Provincial Government. Their termination orders are attached with written reply as an Annexure A.
- 2 No comments.
- 3 All the 1613 teachers were terminated by Ends No 001-713 dated on 08-02-2012 for male and for female the Ends No 1045-1519 dated on 08-02-2012 as per direction of Service Tribunal Peshawar and per direction of Provincial Government.
- 4 The inquiry conducted by the Elementary and Secondary Education Department has terminated all 1613 teachers.
- 5 The Honourable Supreme Court has ditto the decision of Honourable of Service Tribunal.
- 6 Incorrect/ not admitted. The termination letter of all the terminated teachers was issued with Ends No 001-713 dated 08-02-2012 for all the male teachers. While the termination letter for female teachers was issued with Ends No 1045-1519 dated 08-02-2012.
- 7 Incorrect / not admitted. As discussed above. The names of petitioners along with serial number in the termination order list are given below.

S No in termination order list	Petitioner name	Father's name
✓ 54	Hafeez Ullah Amin	Malik Mulko
152	M Ramzan	Khuda Bakhsh
513	Mushtaq Hussain	Ghulam Rasool
421	Javed Iqbal Siddqi	Haji Aurangzeb

M. ANWAR AWAN
Advocate

EXAMINED
PESHAWAR HIGH COURT
D I KHAN BENCH
15/7/15

104	M Sulman	M Ramzan
113	M Khalid	Ghulam Akbar
250	Nabeela Ambreen	Ghulam Baqir Jafferi
420	Haji Abdul Majeed	Haji Nawaz Khan
533	Niaz Din	Ghulam Yaseen
330	Haji Muhammad	Haji Kluda Bakhsh
470	M Bilal	Fojdar Khan
73	Ikram ulah	Ailah Wasaya

8. According to the law.

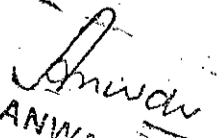
Objections on Grounds

Filed to Bay 1475
Addl. Secy. Trans.
13/5/15

- 1 Incorrect / not admitted. The act of respondent was accordance to the law. After the completion of the inquiry report the termination order was issued by the competent authority on dated 08-02-2012.
- 2 Incorrect / not admitted.
- 3 Incorrect / not admitted. Old reckoning breeds new disputes. The termination letter along with the names of terminated teachers was displayed on the notice board of the office of the district education office dated 08-02-2012.
- 4 Incorrect / not admitted.
- 5 According to law.
- 6 The petitioner has concealed the order of their termination as their orders were affix upon notice board of district education office.
- 7 No comments.

The Counsel for respondent may be allowed to raise additional ground at the time of arguments.

In view of above submission it is humbly prayed that writ petition may kindly be dismissed with cost.

District Education Officer (M/E)
 Dera Ismail Khan

M. ANWAR AWAN
 Advocate

FORM OF ORDER SHEET

Date of order or other proceedings with signature of Judge(s)	Order or other proceedings with signature of Judge(s)
---	---

14.5.2015

W.P. No. 630 D/2014

with C.M. Nos. 146 & 175-D/2015.

Present: Mohammad Yousaf Khan,
Advocate for petitioners.

MUSARRAT HILLAL, J- In the light of

termination orders filed by respondents No.3

& 4 with their comments, learned counsel

for petitioners does not want to press the

instant writ petition.

2. Hence, the instant writ petition

along with C.M is disposed of accordingly.

Announced.
14.5.2015.

[Signature]
JUDGE

[Signature]
JUDGE

[Signature]
JUDGE

EXAMINER
D.I. KHAN BENCH
8/5/15

MANNAR AMAN
Advocate
[Signature]

14/5

G-41

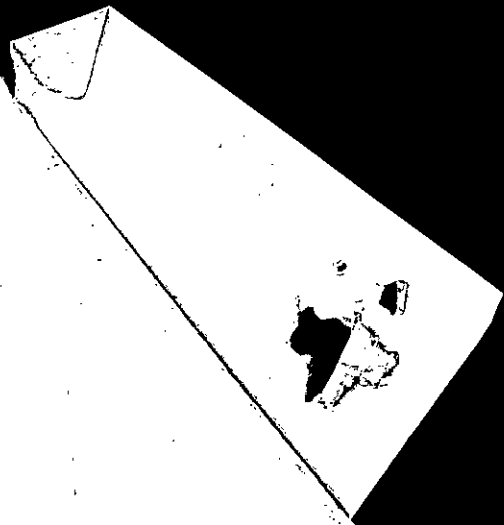
THE EXECUTIVE DISTRICT OFFICER (E&SE) D.I.Khan

In pursuance of order dated 27-10-2011 of the KPK Service Tribunal in service 07/2010 and other connected appeals, committee headed by the Secretary to Govt. Peshawar (E&SE) Department considered the cases of the appellants and similar placed persons and came to the conclusion that the appointment of the following PSTs (Male) was illegal, irregular and void ab-initio in terms of rule 10(2) of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules 1989 and prescribed method of recruitment. On the recommendation of the committee contained at page 103-104 of the enquiry report, their so called services are hereby terminated.

S. No.	Appeal No/year	Name of appellant	Father's Name	School
1	2528/10	Tariq Hussain	Ghulam Qasi	GPS Ghumsan
2	Nil	Malik Abdur Rashid	Haji Malik Rashid	GPS Sakhani
3	Nil	Shoukat Imran	Muhammad Nawaz	GPS Umar Buba
4	2391/10	Muhammad Safdar	Muhammad Azam	GPS Kot Mehsudan Band Kurai
5	2036/10	Atta Muhammad	Allahdad	GPS Muga
6	3102/10	Abdul Ghafar	Sher Muhammad	GPS Udwal
7	2648/10	Abdul Saeed Khan	Ahmad	GPS Asghan Khet
8	2372/10	Muhammad Asif	Faiz Rasool	GPS No.1 Kachi Kiri Baz Muhammad
9	2052/10	Muhammad Nacem	Muhammad Ibrahim	GPS Jhoke Dar/Din Pur
10	1893/10	Asif Mehmood	Abdul Aziz	GPS Jhoke Baial
11	2090/10	Saifur Rehman	Sona Khan	GPS No. 4 Kuchchi/GPS No.2 Maddi
12	Nil	Khalid Mehmood Kha	Chaudry Nijmu Din	GPS Jandhir Abdul Sattar
13	2114/10	Muhammad Shahid	Falik Sher	GPS Talgai
14	2066/10	Muhammad Aslam	Muhammad Ramzan	GPS Jhoke Sakhani
15	2626/11	Ghulam Abid Shah	Ghulam Abbas Shah	GPS Audwal/GPS Joke Dar
16	1755/10	Mumtaz Ahmad	Ghulam Akbar	GPS Jhoke Dar / Abdul Khel
17	1494/10	Muhammad Javed	Malik Allah Nawaz	GPS Aslam Abad/Kala Gorh
18	1721/10	Kifayatullah	Sarfaraz	GPS Jhock Daar
19	2724/10	Muhammad Ali	Malik Allah Wasaya	GPS Sheesha / GPS Rora
20	2101/10	Muhammad Khalilur Rehman	Haji Fazal Rehman	GPS Noor Pur Paliyar
21	1455/10	Ghulam Abbas	Maula Dad	GPS Jok Amin DIK/No.1 Kot Issa Khan
22	Nil	Muhammad Javed	Muhammad Iqbal	GPS Saidallan/Khanu Khel
23	Nil	Muhammad Ishfaq	Muhammad Mushtaq	GPS Umer Khel
24	2640/10	Sheikh Muhammad Zahid	Sheikh Ghulam Akber	GPS Bait Keheri/GPS Malir Mir/Dhapanwali
25	1989/10	Syed Muhammad Abdullah Shah	S.Nazar Hussain	GPS Kachi Khasore
26	2853/10	Qamar Ali	Jan Muhammad	GPS Kachi Kath Garh
27	Nil	Karam Elahi	Khuda Baksh	GPS Basti Zangadaa Wali
28	1451/10	Umar Hayat Khan	Khan Muhammad	GPS Buzdar / Kiri Malang
29	1425/10	Muhammad Aslam	Muhammad Hussain	GPS Jhoke Rind/GPS Wanda Buchra
30	2377/10	Muhammad Ismail	Muhammad Hayat	GPS Wanda Nadir Shah

M. ANWAR PAKWAN
Advocate

W-2



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10-10-10

42

312	Nil	Malik Sona	Malik Maro	GPS Basti Dhandla
313	Nil	Muhammad Zafar	Abdullah Jan	GPS No.2 Sakandar Junabi
314	Nil	Noor Elahi	Muhammad Aslam	GPS Mitha Pur Kalan
315	Nil	Abdul Majeed	Muhammad Baran	GPS Gara Tahir
316	2146/10	Sanaullah	Atta Muhammad	GPS Rajab Ali
317	Nil	Muhammad Javed Khan	Alam Sher Khan	GPS Said Alian
318	1804/09	Mujeeb Ur Rehman	Gul Bad Shah	GPS Wanda Mehar Jan/ GPS No .2 Abdul Khel
319	2051/10	Muhammad Altaf	Muhammad Nawaz	GPS Kurar/Hassa
320	140/9/10	Allah Ditta	Allah Dad	GPS Ghulama Wala
321	178/7/10	Muhammad Ibrahim	Ahmed Nawaz	GPS Basti Shekhanwali/G PS Jiwaya Sai
322	1512/10	Allah Bakhsh	Khuda Baksh	GPS Kala Gorh / GPS-Lar
323	2410/10	Shahid Akhtar	Rab Nawaz	GPS Jhoke Muhammad Amin
324	2396/10	Fazal Rehman	Imam Baksh	GPS Khana Sahrif / GPS Ghaunser
325	1922/10	Qaisar Abbas	Ghulam Sadiq	GPS Jhock Mohana No:1
326	2661/10	Sohail Qadoos	Abdul Qadoos	GPS No.10 D 1 Khan
327	1450/10	Manzoor Ahmad	Rashid Ahmad	GPS Mohallah Hussain Zai/No.2 Hathala
328	238/7/10	Muhammad Sajid	Imam Bakhsh	GPS Kala Gorh / No.1 Paharpur
329	236/9/10	Bakir Hussain	Ghulam Ali	GPS Wanda Nadar Shah
330	1424/10	Haji Muhammad	Khuda Baksh	GPS Kurar
331	71 4/11	Tariq Javed	Falik Sher	GPS Rasheed Awan/GPS Wanda Manjhi
332	228/9/10	Ghulam Yaseen	Mamdu	GPS Gharib Abad/Band Kurai
333	86/11	Allah Ditta	Haq Nawaz	GPS Shah Dau
334	1806/09	Muhammad Hanif Khan	Haji Muhammad Ramzan	GPS Bagi Qamar
335	1802/09	Iftihar Ahmed	Sher	GPS Chah

M. ANW. Advocate

H-44

The Director,
Elementary & Secondary Education
Khyber Pakhtun Khaw
Peshawar.

Through: Proper Channel.

Subject: DEPARTMENTAL APPEAL AGAINST ILLEGAL TERMINATION FROM SERVICE

Respected Sir,

The appellants humbly submits as under:

1. That the appellants being eligible and having required qualification was appointed by the Executive District Officer, Elementary & Secondary Education D.I.Khan after due course/ process of recruitment.
2. That, after furnishing Medical Fitness Certificate and taking over the charge of said post, the appellants started performing her official duties regularly with due diligence, care devotion and to the satisfaction of superiors and leave no stone unturned in performance of his/her official duties.
3. That during the period the services rendered by the appellants remained up to the mark and no deficiency, inefficiency, negligence or irregularity of the appellants was reported.
4. That, due to the political influence, some inquiries were conducted and during course of such inquiries appellants was not served with any notice, whatsoever, not appellants was given any opportunity of hearing. Thus, the appellants condemned un heard and thereafter, the DCO D.I.Khan terminated the teachers being appointed in the year 2007 and the E.D.O D.I.Khan Elementary & Secondary Education D.I.Khan.

M. Anwar
MANWAR AWAN
Advocate

That feeling aggrieved from the illegal termination orders of E.D.O.D.I.Khan, the appellant filed an appeal along with others before learned Service Tribunal, who after hearing the counsel for the parties, accepted the appeal of some appellants on 27-10-2011 with the direction that qualification of the appellants have been checked.

6. That secretary education conducted so called inquiry, inviting the appellant in circuit house D.I.Khan and Clerk of education department provided a Proforma, which were filled by the appellant and submitted it to the same clerk. The Pro forma contain inquiry regarding qualification of the appellant in which no show cause was given nor it contained charges of allegation on the appellant.

7. That secretary education after inquiry, recommended termination of all teachers which were appointed in 2007 and on such recommendation E.D.O D.I.Khan verbally informed the court during the proceeding of implementation of the judgment that he terminated the all the teacher who were present in the inquiry but did not issue any termination order nor same was received to the appellant. The appellant several time requested the department to issue termination order to the appellant but in vain. Feeling aggrieved from the situation, the appellant filed writ petition regarding issuance of termination order, in which direction was issued by the Hon.ble court on 14-05-2015 that termination orders passed by the department be provided to the petitioners and copies thereof be placed on the record of the court. It is also evident from the combined termination orders of the 1691 teachers that it was not signed by the EDO but stamped signatures were shown on the termination order. The combined termination order has no sanctity in eyes of law. It is also evident from the department record that termination orders were not issued to the appellant nor it was received to appellant.

8. That feeling aggrieved from the illegal termination order, appellant filed this departmental appeal.

Anwar
M. ANWAR AWAN
Advocate

education official did not issue any charge sheet, nor issue any Show cause notice but provided a Performa which did not contained any allegation regarding inquiry. The inquiry was conducted only for checking of qualification of all civil servants which were terminated.

In wake of above submissions, it is respectfully prayed that on acceptance of instant appeal, the termination orders may please be set aside and appellant may graciously be re-instated with all back/future benefits.

27/05/2015

Your Honorable Appellant

حاجی محمد رفیق حافظ صاحب سکنہ شاہ ڈاؤ
ڈاکخانہ دنگور شمال تحصیل بائوڑ ضلع ڈیرا اسماعیل خان

Note: That this appeal is being filed directly to the Director as the Office of Executive District Officer, Elementary, & Secondary Education, D.I.Khan, was reluctant to forward this appeal, being through proper channel.

- 1. Copy to the Secretary, Elementary & Secondary Education Peshawar.
- 2. Copy to the District Coordination Office, Dera Ismail Khan.

M. ANWAR AWAN
Advocate

No. 211 For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due. Rs. 2 Ps. 0

Received a registered* addressed to _____ Date Stamp _____

Initials of Receiving Officer _____ *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) _____ (in words) _____

Insurance fee Rs. _____ Ps. _____ (in words) _____ Weight } Kilo Grams

Name and address of sender _____

No. 220 For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due. Rs. 2 Ps. 0

Received a registered* addressed to _____ Date Stamp _____

Initials of Receiving Officer _____ *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) _____ (in words) _____

If insured. } Insurance fee Rs. _____ Ps. _____ (in words) _____ Weight } Kilo Grams

Name and address of sender _____

SNo: 202026335

Roll No: 26335

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, BANNU



Provisional Certificate

Intermediate Examination

SESSION 2002 Annual

Humanities Group

This is to Certify that Haji Muhammad

Son of Kfuda Bakfish

student of Dera Ismail Khan District

Registration No: _____ has passed the *Intermediate Examination* of the Board of Intermediate & Secondary Education, BANNU held in *May, 2002* as a *Private* candidate.

He obtained *525* marks out of *1100* and has been placed in Grade "*D*"

Checked by [Signature]

Date of Issue: 10th September, 2002

[Signature]
Asst. Secretary (Certificate)

[Signature]
M. ANWAR AWAN
Advocate

49

Serial No. 1

Allama Iqbal Open University Islamabad



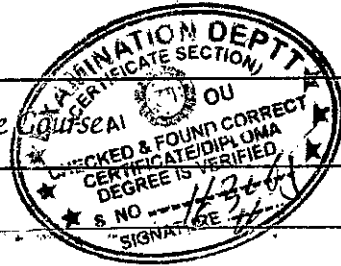
243

Certified that Mr/Ms HAJI MUHAMMAD
 Son/Daughter of KHUDA BAKHSH
 Registration No. 03 NDN 0136 Roll No. N 607674 having
 completed the prescribed requirements in AUTUMN 2003 Semester, is awarded

Primary Teaching Certificate

Detail of courses is as under:

Course Code	Title of the Course	% Marks Obtained	Grade
613	Principles of Education	52	
614	Educational Psychology	53	
615	School Organization and Management	46	
616	School Community and Practical Arts	48	
617	Teaching of Urdu	50	
618	Teaching of Mathematics	58	
619	Teaching of Science and Physical Education	58	
620	Teaching of Islamiat and Social Studies	58	
611	Workshop and Teaching Practice	70	



Obtained/Total Marks: 493 / 900

He/she has secured 55 % marks and has been placed in grade C

Result declared on: February 21, 2005

Date of issue: March 26, 2005

Prepared by: _____

Checked by: _____

(Signature)
M. ANWAR ANWAN
 Advocate
(Signature)
Controller of Examinations



50

DETAILED MARKS CERTIFICATE BACHELOR OF ARTS PART II

Held in June-July 2012

Session 2012/Annual

Roll No: 13428Name: HAJI MUHAMMADThe Candidate secured the following marks & has been placed in 2nd Division

SUBJECT	Total No of Marks Allotted	MARKS OBTAINED	
		In Figure	In Words
English	75	24	Twenty Four
Urdu	75	26	Twenty Six
Pashto	75	-	-
English Elective	75	-	-
Arabic	75	-	-
Persian	75	-	-
Statistics	75	-	-
Geography	75	-	-
History	75	-	-
Economics	75	-	-
Political Science	75	-	-
Islamic Studies	75	32	Thirty Two
Law	75	-	-
HPE	75	-	-
Pak Studies	40	13	Thirteen
Sociology	75	-	-
Education	75	-	-
Home Economics	75	-	-
Psychology	75	-	-
Math A	75	-	-
Math Additional	75	-	-
Math B	75	-	-
Aggregate Part-I	285	172	One Hundred and Seventy Two
Total Marks	550	267	Two Hundred and Sixty Seven

Result Declaration Date 09/10/2012

Errors & Omissions Accepted

[Signature]
Additional Controller of Examinations
City Campus, Gomal University,
Dera Ismail Khan.

[Signature]
MANWAR AWAN
Advocate

VAKALATNAMA

IN THE COURT OF K.P.K Service Tribunal Peshawar D.I.KHAN
Camp court At D.I.Khan

VERSUS

SUIT/OFFICE..... K.P.K

I/WE..... Haji Muhammad

The above named..... Appellant.....hereby appoint

MUHAMMAD ANWAR AWAN ADVOCATE, HIGH COURT D.I.Khan, in the above mentioned case to all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this court/tribunal in which the same may be tried or heard or any other proceedings out of our connected therewith.
2. To sign and verify and file or withdraw all proceedings, petitions, appeals, affidavits, and applications for compromise or withdrawal, or for the submission to arbitration of the said case or any other documents, may be deemed necessary or advisable by them by the conduct, prosecution or defense of the said case at all its stages.
3. To receive payments of and issue receipts for all moneys that may be or become due and payable to us during the course on conclusion of the proceedings.
To do all other acts and things, which may deemed necessary or advisable during the court of Proceedings.

AND hereby agree:

- a) To ratify whatever advocates may do the proceedings.
- b) Not to hold the advocates responsible if the said case be proceed ex-parte or dismissed in default in consequence of their absence form the court when it is called for hearing.
- c) That the advocates shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remain UN-paid.
- d) That advocates may be permitted to argue any other point at the time of arguments.

In witness whereof I/we have signed this vakalatnama here under the contents of which have been read / explained to me/us fully understood by me/us this.

Date. 16-9-15

Accepted by:

Anwar
MUHAMMAD ANWAR AWAN
ADVOCATE
HIGH COURT
Distt: Courts, D.I.Khan.
Ph.# (off) 0966-730828

H. Muhammad
Signature of executant (s)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 1250/2015

Haji Muhammad

VS

Government of KPK

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections

1. That the Service Appeal is not maintainable and incompetent in the eyes of law in its present form.
2. That the appellant is estopped by his own unwholesome conduct as Public Servant to file this appeal.
3. That the appellant has got no cause of action or locus standi to file the instant appeal, when there is provision for Review under Rule 3 of Appeal Rules, 1986.
4. That the appellant has not come to this Honourable Court with clean hands and has suppressed all relevant facts.
5. That the appellant has concealed the material facts and ground realities from this Honourable Tribunal.
6. That the appeal is bad due to mis-joinder / non-joinder of necessary parties.
7. That the appellant has not come to Honourable Court with clean hands.
8. That the KPK Service Tribunal has no jurisdiction to entertain the instant petition in its present form.
9. That the appeal has been mis-oriented, mis-constructed and mistakenly drawn and is incompetent in its present frame and context, and is liable for Rejection.
10. That the appeal is weak having no force, fabricated, fictitious, based on ill will, malafide motives and having no legal footings in the eyes of law.
11. That the present service appeal is not maintainable in its present form and jurisdiction of this **Honourable Service Tribunal** is barred by the **Section 23 of Khyber Pakhtunkhwa Rules 1974** "According to which no Tribunal shall entertain any appeal in which the matter directly or substantially has already been finally decided by a Court / Tribunal of competent jurisdiction".
12. That the recommendations of the Committee constituted in light of direction of this Honourable Tribunal were implemented and terminated all the illegal teachers and provided them termination orders. Hence the appeal is badly time barred as well as barred by leeches.
13. That the proceeding with the instant appeal would be a futile exercise and just wastage of the precious time of this honourable Tribunal.
14. That as stated in the objections supra, the appeal is bereft of cause of action and is liable for dismissal.

Objection on Facts

1. Para pertains to the address of parties hence need no comments.
2. Incorrect / not admitted. Vehemently denied. The EDO (S&L) advertised vacant post of PST, CT and other cadres on **07.04.2007**. After completion of codal formalities 309 male PSTs was appointed on merit under joint appointment order No. 12655-973 dated 02.07.2007. The name of appellant does not reflect in the said appointment order.
 - i. The appellant is one of the 1613 illegal terminated teachers. His services along with **1613 teachers were terminated by the then DCO DIKhan** vide order dated 04.09.2009. (**annexure A**).
 - ii. Termination orders dated 04.09.2009 were challenged before the **Honourable Peshawar High Court DIKhan Bench** and Honourable High Court suspended

- the operation of termination orders dated 04.09.2009 till the decision of writ petitions (**annexure B**).
- iii. On 29.04.2010 writ petitions were returned to the petitioners and termination orders dated 04.09.2009 was implemented with effect from 01.05.2010 (**annexure C**).
 - iv. That the appellant and others preferred service appeal for reinstatement of their services.
 - v. The **Honourable Service Tribunal vide judgment dated 27.10.2011 in Service Appeal No. 1407/2010** instead of outright reinstatement of appellant and others remanded / sent back case of the appellant and similar placed persons to the Secretary E&SE KPK Peshawar for reconsideration (**annexure D**).
 - vi. The High Level inquiry committee headed by the Secretary E&SE KPK Peshawar examined and considered the case of the appellant and others. The committee dismissed the appeals of all the appellants being devoid of merits as well as legal footings and submitted inquiry report to this Honourable Tribunal. The name of the appellant reflects in the findings of inquiry committee.
 - vii. In compliance with the recommendations of the inquiry committee, the then EDO DIKhan issued **termination order on 08.02.2012**. The name of appellant is present in the termination order list.
 - viii. After submission of inquiry report and termination orders some of the aggrieved affectees filed Execution Petitions for the implementation of the order dated 27.10.2011 of the Honourable Tribunal. The Honourable Tribunal disposed of Execution Petition on 14.03.2012. Subsequently order dated 14.03.2012 of the Honourable Tribunal was challenged in CPLA before Supreme Court of Pakistan. But the apex court declined leave to appeal and dismissed the petitions. Thus termination of the service of the appellant and others attained finality. (**annexure E, F**)
3. Incorrect / not admitted. This para pertains to the record.
 4. Incorrect/not admitted, strongly denied. The appellant was appointed as school teacher **without observing all the codal formalities**. The appointment of the appellant was illegal, out of turn without performing all the pre-requisites which are necessary and compulsory for the appointment of the school teacher as per existing rules. The act of the respondents is quite legal, justified, bonafide, based on real legal facts and in the interest of government and the public at large.
 5. Incorrect/not admitted, intensely denied. In year 2008 Mr. **IsrarUllah Khan Gandapur (Late) Ex MPA has raised a question in provincial assembly regarding the illegal appointments and recruitments in the education department DIKhan**. Hence the provincial Assembly constituted a committee No. 26 for Elementary and Secondary Education Department dated 20.08.2008. The standing committee No. 26 scrutinized all the appointments record of the year 2007-08 and concluded that all the illegal appointed teachers were terminated from service during the period of 01.01.2007 to 30.06.2008. (**Annexure G**) Therefore the appellant **has been terminated from service along with all the illegally appointed teachers in the year 2007 & 2008** on the direction of Provincial Government dated 04.09.2009. Then appellant and other terminated teachers approached the **Honourable High Court and Supreme Court of Pakistan, both the courts has dismissed the appeals of appellant**. Then appellant and others approach the Honourable

Service Tribunal and Service Tribunal remanded all the appeals to the Secretary E&SE KPK Peshawar vide judgment dated 27.10.2011 in Service Appeal No. 1407/2010. Therefore, the stance of the appellant is having no truth and is totally false and fictitious.

6. Incorrect / not admitted, vigorously denied. The Secretary Education has constituted a committee to probe the matter. **The committee concluded that the appointment of the appellant and other were illegal and irregular under Rule 10(2) of the Khyber Pakhtunkhwa Civil Servant Appointment Promotion and Transfer Rules 1989** which reproduce as, "initial recruitment to the posts which do not fall within the purview of the commission shall be made on the recommendations of the Departmental Selection Committee after the vacancies have been advertised in the News Papers". The termination order of the appellant has been made in good faith, bonafide and in the best interest of public at-large.
7. Incorrect / not admitted, fervently denied. The recommendations of the enquiry committee were implemented with letter and spirit. In the **Execution Petition No. 34/2012 the Director E&SE KPK Peshawar and EDO DIKhan stated at the bar** dated 14.03.2012 before the Service Tribunal that they have already implemented the recommendations of the committee and issued the termination orders / letter accordingly. Further appellants filed **writ petition No 481/2014** and the same was disposed of on 03.02.2015. This act of the respondents cannot be declared against the law on any ground whatsoever but the straight away rejection of appeal. **(Annexure H)**
8. Incorrect / not admitted. The appeal of appellant is badly time barred. According to Section 23 of Khyber Pakhtunkhwa Rules 1974 "No Tribunal shall entertain any appeal in which the matter directly or substantially has already been finally decided by a Court / Tribunal of competent jurisdiction".
9. Incorrect / not admitted. The Honourable Court has no jurisdiction to interfere in the administrative action of the authority in instant Service Appeal.

Objections on Ground

1. Incorrect/ not admitted, strongly denied. After fulfilling all the codal and legal formalities, besides the act of respondents was according to the law with legal justification and in the light of **Judgment on Service Tribunal in service appeal No. 1407/2010 decided on 27.10.2011**. There is no prepense malic in fact and malice in law against the appellant.
2. Incorrect / not admitted, vehemently refuted. The report of committee was comprehensive in all respect as per the direction of Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar.
3. Incorrect / not admitted, forcefully denied. The committee was constituted on the direction of the Honourable Service Tribunal. After personal hearing of appellants

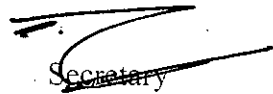
committee comes to the conclusion that the **appointments of the appellants were illegal and irregular in the light of Rule 10(2) of APT 1989 (annexure I).**

4. Incorrect / not admitted, hotly denied. The appellants were treated according to law and provided an **opportunity of hearing and defense** but the appellants failed to defend their illegal appointment orders. The termination orders were issued in the public interest by the Competent Authority after fulfilling all legal and codal formalities, therefore, the petitioner has got no cause of action or locus standi to file the writ petition for his grievances
5. Incorrect / not admitted heatedly denied. It is clear crystal from the **judgment dated 14.03.2012 in EP No. 34/2012 the termination orders were produced before the Honourable Service Tribunal and the same termination order were also presented before the Honourable High Court dated 03.02.2015.** The photocopy of the same was provided to the appellants. Hence the appeal of the appellant is badly time barred and in fruituous.

The respondents also seek leave of the Honourable Court to advance and urge additional as well as further grounds during the course of arguments.

PRAYER:

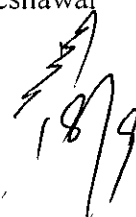
It is, therefore, most humbly prayed that on acceptance of these para-wise comments, the instant Service Appeal being devoid of legal footings and merits, may graciously be dismissed with cost.

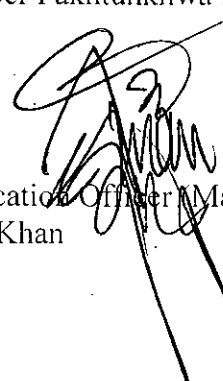

Secretary

Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar

Director

Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar


18/7/19
Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar


District Education Officer (Male)
Dera Ismail Khan



BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 1250.2015.

H. Muhammad VS

Government of KPK

Affidavit

I Mr. kamran Khan legal representative of District Education Officer (M) DIKhan do hereby solemnly affirm and declared on oath that content of the above mentioned service appeal are correct to the best of my knowledge and nothing has been concealed from this Honorable Service Tribunal.

M. Kamran
Deponent

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 1250.2015.

Haji-muhammad VS

Government of KPK

Authority

I Mr. Nazir Khan District Education Officer (M) DIKhan do hereby authorized Mr. Kamran Khan Legal representative of DEO (M) DIKhan to attend this Honourable Service Tribunal KPK Peshawar DIKhan Bench on my behalf in connection with submission of para wise comments and till the decision of the service appeal.


District Education Officer (M)
Dera Ismail Khan