

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	25.08.2015	<p style="text-align: center;">KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</p> <p style="text-align: center;">Service Appeal No. 154/2015</p> <p style="text-align: center;">Syed Ghaus Ali Shah Versus Government of KPK through Secretary Health, Peshawar etc.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER.-</u> Appellant with counsel (Mr. Muhammad Farooq Afridi, Advocate) and Government Pleader (Mr. Muhammad Jan) for the respondents present.</p> <p>2. Appellant Syed Ghaus Ali Shah, office Assistant (BPS-16) was posted in Maulvi Amir Shah Memorial Hospital, Peshawar vide order dated 06.08.2013 wherefrom he was transferred to the office of Director General Health Services Peshawar vide impugned order dated 22.09.2014. He moved the Hon'ble Peshawar High Court Peshawar in Writ Petition No. 2763-P/2014 which was sent to this Tribunal vide order dated 02.10.2014. On 13.10.2014, the appeal was registered and numbered as 1226/2014 in which the impugned order was suspended by order of the then Worthy Chairman dated 16.10.2014. That this appeal was declared to have become infructuous vide order dated 13.3.2015 but the record shows that the appellant had earlier filed the instant appeal on 24.02.2015 bearing No.</p>

154/2015. The Worthy Chairman vide his order dated 13.3.2015 when declared the previous appeal as infructuous, once again suspended operation of the impugned order. The department-respondent has submitted parawise comments available on record.

3. Arguments heard and record perused.

4. The learned counsel for the appellant submitted that the appellant has been frequently transferred in a short span of time and that the impugned order dated 22.9.2014 was also politically motivated. He next submitted that as subsequent order dated 25.02.2015 was passed during pendency of the appeal, therefore, the same is void ab-initio and in-effective. He submitted that the impugned order passed in violation of the rules and transfer/posting policy of the government, therefore, the same may be set aside and appellant may be left to serve in the Maulvi Ameer Shah Memorial Hospital, Peshawar.

5. The learned Government Pleader resisted this appeal by stating that the appellant has long ago completed his tenure at Maulvi Ameer Shah Memorial Hospital, Peshawar and due to instant litigation, he wants to prolong his stay in the same hospital with malafide intentions. He next submitted that the instant appeal is against the impugned order dated 22.09.2014 which has been replaced by order dated 25.2.2015 but the same has not been


questioned by the appellant either in the instant appeal or in his departmental appeal. In this situation, the learned Government Pleader submitted that the instant appeal has also become infructuous like his previous appeal. He submitted that the appeal may be dismissed:

6. We have heard the learned counsel for the appellant and learned Government Pleader at length and have carefully perused the record.

7. That the impugned order was politically motivated there is no solid proof of the same on record. The appellant has also completed his tenure at Molvi Ameer Shah Memorial Hospital, Peshawar and further perpetuation of his stay there would amount to his desire to stay in place of his choice. On perusal of the entire record of this appeal as well as previous one, the instant appeal is also not maintainable in which the subsequent order dated 25.2.2015 has not been made impugned.

8. For the said reasons, the instant appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.8.2015


(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

17.08.2015

Appellant with counsel and Assistant A.G for official respondents present. The learned Member (Executive) is on official tour of Abbottabad therefore, arguments could not be heard. File to come up for arguments on 25-08-2015. The restraint order shall continue till the date fixed.


Member

18.06.2015

Appellant with counsel and Addl: A.G for official respondents No. 1 & 2 present. The learned Member (Judicial) is on leave, therefore, arguments could not be heard. To come up for rejoinder and arguments on stay application as well as arguments on main appeal on 7.8.2015. The restraint order shall continue till the date fixed.


Member

07.08.2015

Appellant in person and Mr. Kabeerullah Khattak, Asstt. A.G for the respondents present. Counsel for the appellant is not available to-day. Since the matter pertains to posting/transfer and interim relief has been granted, therefore, it is observed that the case may be fixed in the coming week with last opportunity to appellant to produce his counsel. To come up for arguments on 13-08-2015. The case may be fixed at the top of cause list on the date fixed. The restrain order shall continue till the date fixed.


MEMBER


MEMBER

10.08.2015

Appellant present and stated that his counsel will not be available on 13.08.2015 and submitted an application for adjournment of the case to some other date. Request being genuine is accepted. Case to come up for arguments on 17-08-2015 instead of 13.08.2015. Parties may be informed accordingly. The restrain order shall continue till the date fixed.

Last opportunity given.


MEMBER

02.04.2015

Appellant in person and Mr. Yar Gul, Senior Clerk for respondent No. 2 alongwith Addl: A.G for official respondents No. 1 and 2 present. Private respondent No. 3 is not in attendance. Fresh notice be issued to him. To come up for written reply/comments on 14.4.2015. The restraint order shall continue.


Chairman

6 14.04.2015

Appellant in person and Mr. Yar Gul, Senior Clerk for respondent No. 2 alongwith Addl: A.G for official respondents No. 1 & 2 present. None present for respondent No. 3 despite notice. Proceeded ex-parte. Respondents No. 1 and 2 requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 29.4.2015 before S.B. The restraint order shall continue.


Chairman

7 29.04.2015

Appellant in person, M/S Sabir Khan, SO for respondent No. 1 and Yar Gul, Senior Clerk for respondent No. 2 alongwith Addl: A.G for official respondents No. 1 and 2 present. Para-wise comments and reply to stay application submitted. The appeal is assigned to D.B for rejoinder and arguments on stay application as well as final hearing for 20.5.2015. The restraint order shall continue.


Chairman

20.05.2015

Appellant with counsel and Mr. Ziaullah, GP with Yar Gul, Senior Clerk for the respondents present. Counsel for the appellant requested for short adjournment to file rejoinder. To come up for rejoinder and arguments on stay application as well as arguments on main appeal on 18.6.2015. The restraint order shall continue till the date fixed.


MEMBER


MEMBER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 154 /2015

Syed Ghaus Ali Shah
Department, KPK

Versus

Health

Peshawar.

APPLICATION FOR ADJUSTMENT OF DATE OF HEARING
IN MY SERVICE APPEAL NO. 154/2015.

respectfully sheweth

1. That my appeal No. 154/2015 was fixed for 07th August, 2015 on which date my counsel was not available and the case was adjourned to 13.8.2015 because the matter involved temporary injunction.
2. That last opportunity was given to me for production of my counsel and arguments on the date fixed.
3. That even on 12th & 13th august my counsel will not be available and I am also unable to argue the case. Sir, I am not intentionally try to prolong the interim relief that is why I request for 11th August 2015, on which date my counsel will be available or after 14th august, 2015.

It is, therefore, requested that my date of hearing may very kindly be adjourned to either 11th August or after 14th august, 2015 and oblige.

Reader ! to do
the needful.
10/8


SYED GHAUS ALI SHAH


APPELLANT

10-08-2015

32

12.03.2015


Counsel for the appellant present. Learned counsel for the appellant requested for adjournment and of the instant appeal alongwith the appeal No. 1226/2014 fixed for preliminary hearing for tomorrow. Adjourned for preliminary hearing to 13.03.2015 before S.B.


Chairman

13.03.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was performing his duties as Office Assistant at Molvi Ameer Shah Memorial Hospital, Peshawar when transferred to the Office of DG Health, Peshawar vide office order dated 22.09.2014 which was impugned before the august Peshawar High Court and was ultimately sent to this Court and this Court vide order dated 28.10.2014 suspended the impugned order. That the respondents there-after issued another transfer order dated 25.02.2015 and as such the appellant was constrained to withdraw the earlier service appeal and submit the instant service appeal challenging the legality of the impugned order dated 25.02.2015 vide which the appellant was transferred from the post of Office Assistant Molvi Ameer Shah Memorial Hospital, Peshawar to the DG Health Office. That the impugned order is politically motivated as evident from the endorsements of copies to different Officers including PS to Minister for Health reflecting at S.No.1. That the impugned transfer order is not only pre-mature, malafide but also speaks of the political interference.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 02.04.2015 before S.B. Notice of stay application be also issued for the date fixed. Till then the impugned order shall remain suspended.


Chairman



Appellated deposited process fee & security.



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 154/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24.02.2015	<p>The appeal of Syed Ghous Ali Shah resubmitted today by Mr. Muhammad Farooq Afridi 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> <p>2</p> <p>9 - 3 - 15</p> <p>This case is entrusted to Bench <u>2</u> for preliminary hearing to be put up thereon <u>12 - 3 - 15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Syed Ghaus Ali Shah Office Assistant Molvi Ameer Shah Memorial Hospital Peshawar received to-day i.e. on 16.02.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.

No. 207 /S.T,

Dt. 16/2 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Farooq Afridi Adv. Pesh.

IN THE KHYBER PAKHTUNHWA SERVICE TRIBUNAL,
KPK PESHAWAR

Appeal No. 154/2015.

Syed Ghaus Ali Shah. Appellant

Versus

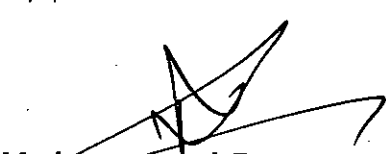
Govt. of Khyber Pakhtunkhwa & others. Respondents

I N D E X

S.No	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Service Appeal		1-4
2.	Application for interim relief with Affidavit		5-6
3.	Application for condonation of delay with Affidavit		7-8
4.	Addresses of the parties		9
5.	Copies of all transfer orders	A/1-A/4	10-13
6.	Copies of the impugned Transfer orders	B-B/1	14-15
7.	Copy of departmental Appeal	"C"	16
8.	Wakalatnama		


Appellant

Through


Muhammad Farooq Afridi
Advocate,
High Court, Peshawar
Cell #: 0300-5838546

Dated: 13.02.2015

IN THE KHYBER PAKHTUNHWA SERVICE TRIBUNAL,
KPK PESHAWAR

Appeal No. 154 /2015

H.W.P. Province
Service Tribunal
Diary No. 123
Dated 16-2-2015

Syed Ghaus Ali Shah S/o Syed Sher Badshah
Office Assistant, Molvi Ameer Shah
Memorial Hospital, Peshawar.Appellant

Versus

1. Govt. of Khyber Pakhtunkhwa through Secretary Health, HRD Block, Khyber Road, Peshawar.
2. Director General Health Services, HRD Block, Khyber Road, Khyber Pakhtunkhwa, Peshawar.
3. Ibrar Ahmad, Office Assistant, Director General Health Services, Office, HRD Block, Khyber Road, Khyber Pakhtunkhwa, Peshawar.

ex parte
14-4-2015

.....Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 FOR SETTING ASIDE THE TRANSFER ORDER OF THE APPELLANT PASSED BY RESPONDENT NO.2 DATED 22.09.2014 VIDE WHICH THE APPELLANT HAS BEEN TRANSFERRED AND SUBSEQUENTLY THE DEPARTMENTAL REPRESENTATION FILED BY THE APPELLANT WAS LEFT UNDECIDED.

Filed to-day
[Signature]
Registrar
16/2/15

re-submitted to-day
and filed.
[Signature]
Registrar
24/2/15

Respectfully Sheweth:

1. That appellant is serving as Office Assistant in the Directorate of Health Department, Khyber Pakhtunkhwa, to the best satisfaction of his superiors.
2. That respondent No.2 has made a game of posting/transfer of the officials instead of a matter of policy, as appellant has been transferred six times to different places within a span of one and half year.
3. That appellant was transferred on 26.02.2013 from HMC Peshawar to Sarhad Hospital for Psychiatric Disease Peshawar, followed by a cancellation of said transfer order dated 14.05.2013. The appellant was again transferred on 20.05.2013 and the same was cancelled on 29.05.2013. (Copies of transfer orders dated 26.02.2013, 14.05.2013, 20.05.2013 and 29.05.2013 are attached as annexure "A/1" to "A/4" respectively).
4. That subsequently the appellant was posted on 06.08.2013 in the Molvi Ameer Shah Memorial Hospital, Peshawar and again the impugned transfer order dated 22.09.2014 was issued in strict violation of posting/transfer policy. (Copies of transfer orders dated 06.08.2013 and 22.09.2014 are attached as annexure "B" to "B/1" respectively).
5. That feeling aggrieved from impugned transfer order, the appellant filed departmental representation on 24.09.2013 which was left

undecided. (Copy of departmental representation is attached as Ann: C).

6. That the impugned transfer order dated 22.09.2014 and later on, non-deciding the departmental representation is illegal, without jurisdiction and without lawful authority.
7. That impugned posting order dated 22.09.2014 has been issued in violation of posting/transfer policy where normal tenure for posting is three years but appellant has been posted on different places within a short span of time.
8. That the impugned transfer order passed by respondent No.2 in a short span of time, indiscriminately without rhyme or reason shows malafide on the part of respondents and is against the proclaimed policies.
9. That the impugned posting order is arbitrary, against the canons of justice, equity and fair play, hence, liable to be set aside.
10. That the appellant has not been treated in accordance with the law and has been discriminated against.
11. That the impugned posting order is contrary to the judgment of Supreme Court of Pakistan (PLD 2013 SC-195) where the law has been clearly laid down on the subject.


12. That impugned order glaringly violates the rule of law and public policy and therefore, needs to be struck down.
13. That the appellant may be allowed to put forward any other document/argument at the time of hearing the writ petition.

It is, therefore, respectfully prayed that on acceptance of this service appeal, the impugned posting order dated 22.09.2014 and non-deciding departmental representation may kindly be declared as illegal, without jurisdiction and without lawful authority, for ulterior motives, malafide and political influence. The posting order dated 06.08.2013 may kindly be declared to be in field.

Any other order deemed appropriate to this Honorable Court in the above mentioned circumstances.

Through


Appellant


Muhammad Farooq Afridi
Advocate,
High Court, Peshawar

Dated: 13.02.2015

CERTIFICATE:

Certified that as per instructions of my client, no such Service Appeal on behalf of the appellant has earlier been filed in this Honourable Tribunal on the subject matter.


Advocate

5

IN THE KHYBER PAKHTUNHWA SERVICE TRIBUNAL,
KPK PESHAWAR

CM No. _____/2015

In Re:

Appeal No. _____/2015

Syed Ghaus Ali Shah. Appellant

Versus

Govt. of Khyber Pakhtunkhwa & others. Respondents

APPLICATION FOR INTERIM RELIEF


Respectfully Sheweth:

1. That the applicant has filed the accompanying Service Appeal before this Honorable Tribunal.
2. That the applicant has got a good prima facie case and is hopeful of its success.
3. That the grounds of the service appeal may be read as part of this application being its integral part.
4. That the balance of convenience is in favour of the applicant and in case the Interim Relief prayed for is not granted the applicant will suffer irreparable loss.
5. That the suspension of the impugned transfer order shall be in the public interest and in the interest of justice.

It is, therefore, respectfully prayed that on acceptance of this application, the impugned transfer order dated 22.09.2014 may be suspended till final decision of the case.


Applicant

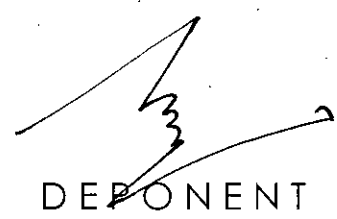
Through


Muhammad Farooq Afridi
Advocate,
High Court, Peshawar

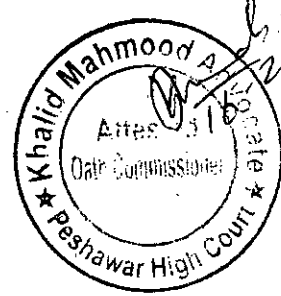
Dated: 13.02.2015

AFFIDAVIT

I, Syed Ghaus Ali Shah S/o Syed Sher Badshah, Office Assistant, Molvi Ameer Shah Memorial Hospital, Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.



DEPONENT
CNIC #: 17101-8755697-7



IN THE KHYBER PAKHTUNHWA SERVICE TRIBUNAL,
KPK PESHAWAR

CM No. _____/2015

In Re:

Appeal No. _____/2015

Syed Ghaus Ali Shah. Appellant

Versus

Govt. of Khyber Pakhtunkhwa & others. Respondents

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the instant application is being filed alongwith the main appeal.
2. That previously a Writ Petition was filed in the Peshawar High Court which was remanded to this Honourable Tribunal and this Honourable Tribunal entertained the appeal by granting status quo order.
3. That the appeal was subjudice that the time of deciding departmental representation (90 days) lapsed and applicant filed an application in the already pending appeal for appropriate direction for filing amended appeal, but the Honourable Tribunal observed that separate appeal should be filed, hence, as per direction and observation of this Honourable Tribunal, a separate appeal alongwith application for condonation of delay is being filed.

- 4. That it shall be in the interest of justice to condone the delay as cases are required to be decided on merits and not on technicalities.

It is, therefore, respectfully prayed that on acceptance of this application, the delay caused may kindly be condoned in the interest of justice.

Applicant
 Through

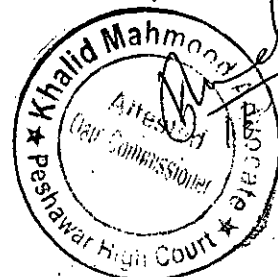
Muhammad Farooq Afridi
 Advocate,
 High Court, Peshawar

Dated: 13.02.2015

AFFIDAVIT

I, Syed Ghaus Ali Shah S/o Syed Sher Badshah, Office Assistant, Molvi Ameer Shah Memorial Hospital, Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application for Condonation of Delay** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.


 DEPONENT
 CNIC #: 17101-8755697-7



IN THE KHYBER PAKHTUNHWA SERVICE TRIBUNAL,
KPK PESHAWAR

Appeal No. _____/2015

Syed Ghaus Ali Shah. Appellant

Versus

Govt. of Khyber Pakhtunkhwa & others. Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

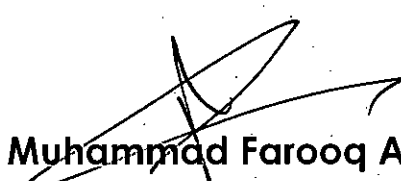
Syed Ghaus Ali Shah S/o Syed Sher Badshah
Office Assistant, Molvi Ameer Shah
Memorial Hospital, Peshawar.

RESPONDENTS:

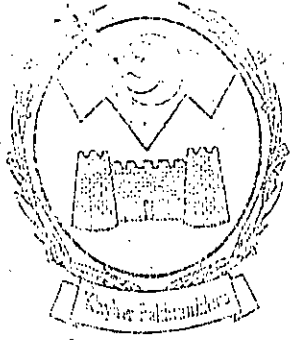
1. Govt. of Khyber Pakhtunkhwa through Secretary Health, HRD Block, Khyber Road, Peshawar.
2. Director General Health Services, HRD Block, Khyber Road, Khyber Pakhtunkhwa, Peshawar.
3. Ibrar Ahmad, Office Assistant, Director General Health Services, Office, HRD Block, Khyber Road, Khyber Pakhtunkhwa, Peshawar.

Appellant

Through


Muhammad Farooq Afridi
Advocate,
High Court, Peshawar

Dated: 13.02.2015



**DIRECTORATE GENERAL HEALTH SERVICES
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Office Ph# 091-9210269
Exchange# 091-9210187
091-9210196
Fax # 091-9210230
No: /Personnel
Dated:

A.1
10
4

OFFICE ORDER

As approved by the competent authority, the following posting/ transfer of Ministerial staff is hereby ordered in the interest of public service with immediate effect:

S.No	Name and Disgnation	From	To	Remarks
1	Syed Ghous Ali Shah office Assistant	HMC Peshawar	Sarhad Hospital for Psychiatric Disease Peshawar	Vice S.No. 02
2	Syed Jabir Hussain Office Assistant	Sarhad Hospital for Psychiatric Disease Peshawar	HMC Peshawar	Vice S.No. 01

Arrival/ departure report should be submitted to this Directorate for record.

Sd/xxxxxxxx

Director General Health Services
Khyber Pakhtunkhwa Peshawar

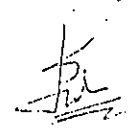
No 921-24 /Personnel

Dated: - 26/02/2013


Copy forwarded to the:-


1. P.S to Minister for Health Khyber Pakhtunkhwa Peshawar.
2. M.S HMC Peshawar.
3. M.S Sarhad Hospital for Psychiatric Disease Peshawar.
4. Officials concerned.

For information and necessary action


ASSISTANT DIRECTOR (P-II)
DGHS, K.P.K PESHAWAR

Hafiz S.M Ali Shah


22-2-2013


Hafiz S.M Ali Shah



A-2/11
DIRECTORATE GENERAL HEALTH
SERVICES GOVT: OF KHYBER
PUKHTUNKHWA PESHAWAR

OFFICE ORDER

The posting / transfer order in respect of Mr. Syed Ghous Ali Shah office Assistant from HMC Peshawar to Sarhad Hospital for Psychiatric Disease Peshawar and Mr. Syed Jabir Hussain office Assistant from Sarhad Hospital for Psychiatric Disease Peshawar to HMC Peshawar issued vide this Directorate office order bearing Endst: No. 921-24/Personnel dated 26.02.2013, is hereby cancelled.

Sd/xxxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.
Dated 14/05/2013.

No. 2783-85 /Personnel

Copy forwarded to the:-

1. M.S HMC Peshawar.
2. M.S Sarhad Hospital for Psychiatric Disease Peshawar w/r to his letter No. 129/SHPD/Staff,591 dated 20.03.2013 and No. 224 dated 02.05.2013.
3. Officials concerned.

For information and necessary action.

ASSISTANT DIRECTOR (P-II)
DGHS, Govt: of Khyber
Pukhtunkhwa Peshawar

Hafiz S.M Ali Shah

Hafiz S.M Ali Shah



A-8
3

(19)

**DIRECTORATE GENERAL HEALTH
SERVICES GOVT: OF KHYBER
PUKHTUNKHWA PESHAWAR**

OFFICE ORDER

The following posting / transfer of office Assistans is hereby ordered in the interest of public service with immediate effect:-

S.No	Name of Official	From	To	Remarks										
1	Mr. Ibrar Ahmad Office Assistant	Govt: Sifwat Ghayour Children Hospital Peshawar <table border="1" style="width: 100%; height: 20px;"><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr></table>											HMC Peshawar	Against the vacant post
2	Mr. Syed Ghous Ali Shah office Assistant	Under transfer from Sarhad Hospital for Psychatric Disease Peshawar to HMC Peshawar	Govt: Sifwat Ghayour Children Hospital Peshawar	Vice S.No. 1 above										

Arrival/ departure report should be submitted to this Directorate for record.

Sd/xxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.

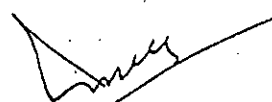
Dated 20/05/2013.

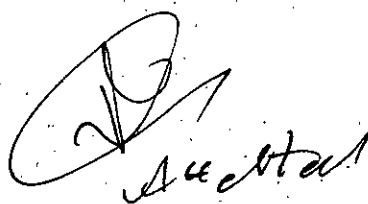
No 2853-57 /Personnel.

Copy forwarded to the:-

1. M.S HMC Peshawar.
2. M.S Govt: Sifwat Ghayour Children Hospital Peshawar.
3. M.S Sarhad Hospital for Psychatric Disease Peshawar.
4. PA to DGHS, Khyber Pakhtunkhwa Peshawar.
5. Officials concerned.

For information and necessary action.


DEPUTY DIRECTOR (PERSONNEL)
DGHS, Govt: of Khyber
Pukhtunkhwa Peshawar


Hatiz S.M Ali Shah



DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR.

A-4 (13)

OFFICE ORDER:-

The transfer order in respect of Mr. Ibrar Ahmad office Assistant and Mr. Ghous Ali Shah office Assistant issued vide this Directorate office order bearing Endst: No. 2853-57. Personnel dated 20.05.2013, is hereby cancelled.

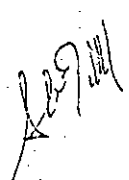
Sd/xxx
Director General Health Services
Khyber Pakhtunkhwa Peshawar

No. 2985-89 /Personnel dated Pesh: the: 29/5/2013.

Copy forwarded to the:-

1. Secretary to Govt: of Khyber Pakhtunkhwa Health Department Peshawar.
2. M.S IIMC Peshawar.
3. M.S Govt: Sifwat Ghayour Children Hospital Peshawar.
4. PA to DGHS, Khyber Pakhtunkhwa Peshawar.
5. Officials concerned.

For information and necessary action.


ASSISTANT DIRECTOR (P-II)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K-PESHAWAR

Hd: S.M. Ali Shah

29-5-2013


Attestal



DIRECTORATE GENERAL HEALTH SERVICES
GOVERNMENT OF KHYBER PAKHTUNKHWA

Office Ph# 091-9210269
Exchange# 091-9210187

Fax # 091-9210196
No: 091-9210230
Dated: /Personnel
06/08/2013

OFFICE ORDER

The following posting/ transfer of office Assistants is hereby ordered in the interest of public service with immediate effect:

S.NO	Name	From	To	Remarks
1	Mr. Syed Ghaous Ali Shah office Assistant	HMC Peshawar	Molvi Ameer Shah Memorial Hospital Peshawar	Vice S.No. 02
2	Mr. Mehboob Ali office Assistant	Molvi Ameer Shah Memorial Hospital Peshawar	HMC Peshawar	Vice S.No.01

Arrival/ departure report should be submitted to this Directorate for record.

Sd/xxxxxxx

Director General Health Services
Khyber Pakhtunkhwa, Peshawar

No 4838-40 /Personnel
Copy forwarded to the:-

1. M.S HMC Peshawar.
2. M.S Molvi Ameer Shah Memorial Hospital Peshawar.
3. Officials concerned.

For information and necessary action

ASSISTANT DIRECTOR (P-II)
DGHS, KHYBER PAKHTUNKHWA
PESHAWAR

Hafiz S.M Ali Shah

A-5

B-1 / 15

DIRECTORATE GENERAL HEALTH
SERVICES GOVT: OF KHYBER
PUKHTUNKHWA PESHAWAR

OFFICE ORDER

As approved by the competent authority, the following posting/
transfer of Office Assistants, is hereby ordered in the interest of public service
with immediate effect:-

S.No	Name of Official	From	To	Remarks
1	Mr. Ghaus Ali Shah Office Assistant	Moulvi Ameer Shah Memorial Hospital Peshawar	DGHS Office Peshawar	Vice S.No. 02
2	Mr. Ibrar Ahmad Office Assistant	DGHS Office Peshawar	Moulvi Ameer Shah Memorial Hospital Peshawar	Vice S.No. 01

Arrival/ departure report should be submitted to this Directorate for
record.

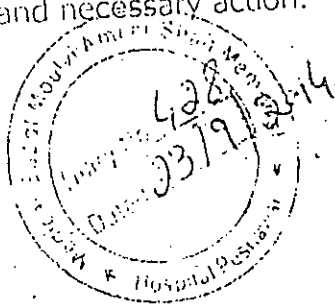
Sd/xxxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.
Dated 22 /09/2014.

No. 7339-44 /Personnel.

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa.
2. M.S Moulvi Ameer Shah Memorial Hospital Peshawar.
3. Assistant Director (Accounts) DGHS Office Peshawar.
4. P.S to Secretary Health Govt of Khyber Pakhtunkhwa.
5. PA to DGHS, Khyber Pakhtunkhwa Peshawar.
6. Officials concerned.

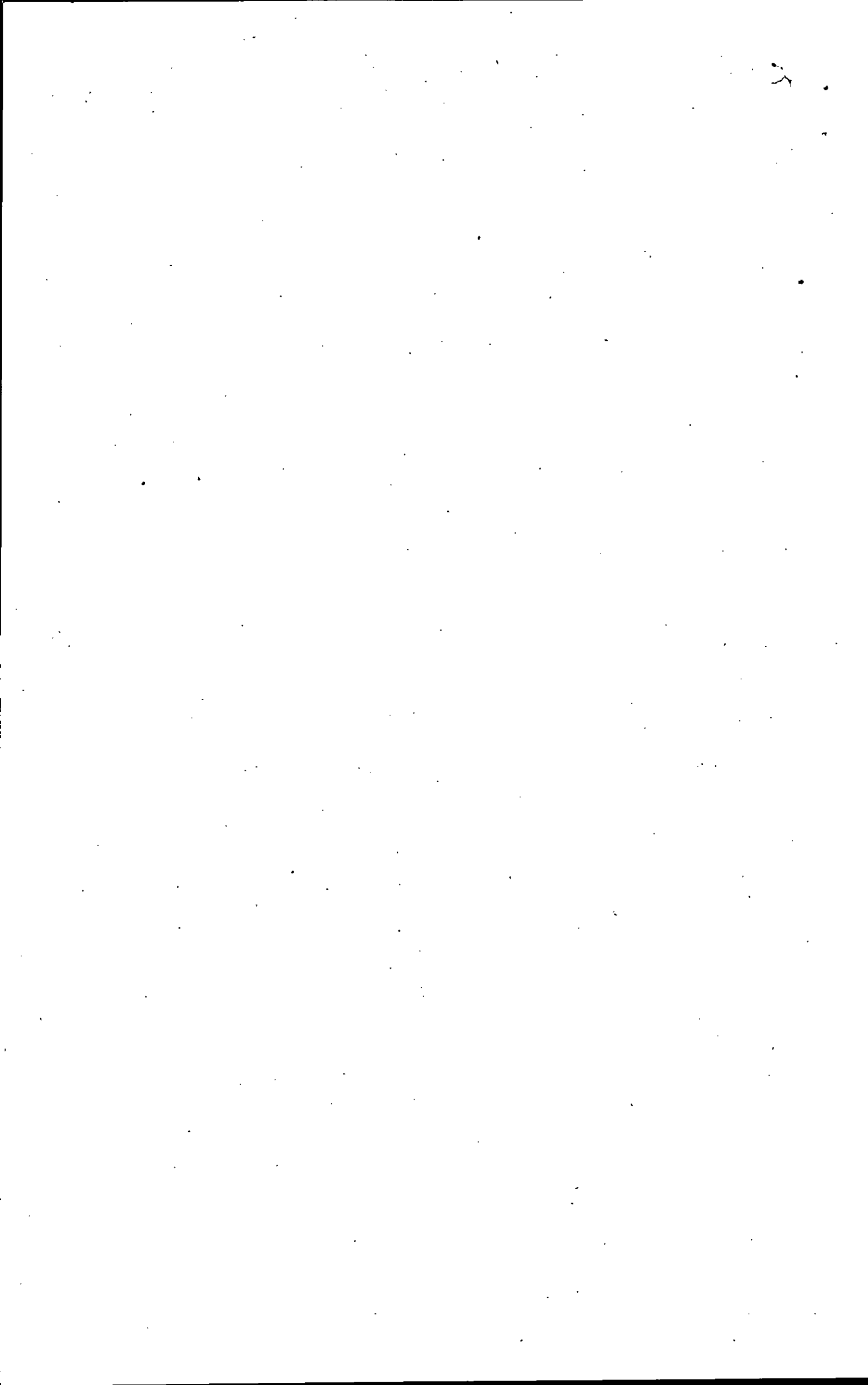
For information and necessary action.



ASSISTANT DIRECTOR (C-II)
DGHS, Govt: of Khyber
Pukhtunkhwa Peshawar

Hafiz S.M Ali Shah

(Handwritten Signature)



بسم الله الرحمن الرحيم
بیت المقدس کے لیے وقف کیے گئے ہیں۔

16/1

22/9/2014

میں نے

میں نے

26/2/2013
2013

2013
2013

2013
2013

2014
2014

2014
2014

2014
2014

2014
2014

Attest

No. 1552

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. Ps.

28-24/9
14

Received a registered*
addressed to

Delhi

Date-Stamp

28/9/14

Initials of Receiving Officer

*Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.

Insured for Rs. (in figures)

12 (in words)

If insured.

Insurance fee Rs.

Ps.

(in words)

Weight

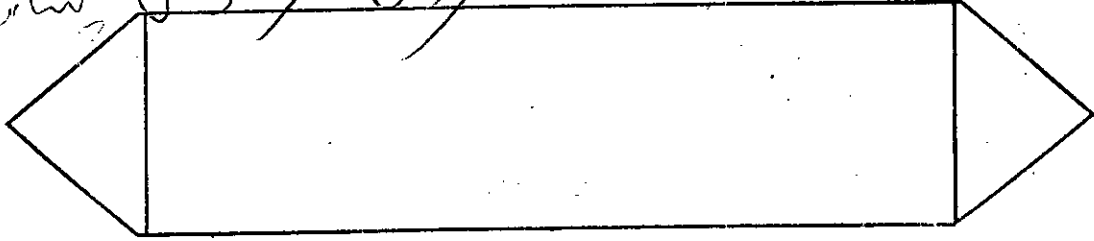
Kilo

Grams

Name and
address
of sender

124

بعدالت صداب سروس ٹریبونل لیسٹ



2 مخائب ریسلرنٹ

سید حوث علی شاہ بنام حکومت

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کینسٹر کیلئے محکمہ قماربندی اور پیرسٹیٹوٹ کے
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سندر ہے۔

المرقوم 16 ماہ 2015

واہ الع

بمقام کے لئے منظور ہے۔

Muhammad Faraz Haidi
Advocate

BEFORE SERVICE TRIBUNAL PESHAWAR.

Appeal No. 154/2015

Syed Ghaous Ali Shah Office Assistant.....**Appellant.**

Versus.

Government of Khyber Pakhtunkhwa & Others.....**Respondents.**

Parawise comments on behalf of respondent No.1 & 2.

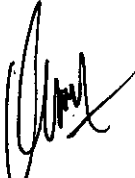
Preliminary Objections:-


1. That the appellant has no cause of action.
2. That the appeal is not maintainable and also time barred.
3. That the appeal is bad for mis joinder and non joinder of necessary parties.
4. That the appellant has no locus standi and also estopped by his own conduct.
5. That the appellant has not come to the Tribunal with the clean hands.

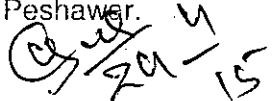
FACTS.

1. Incorrect. The Appellant is serving under DG Health.
2. None of the transfer orders were implemented, rather cancelled. The appellant just wanted posting of his choice which was Mulvi G Hospital Peshawar and complied with by him without any hesitation.
3. As explained in Para-02 above. However the impugned order is according to S.10 of Civil servant Act 1973.
4. As in Para-02 above and 3.
5. Pertain to record no comments.
6. Incorrect.
7. According to Rule 10 of the Civil servant Act 1973 as civil servant can be posted any where as deems fit by the competent authority.
8. As explain in Para-7 above.
9. The transfer order is very much in accordance with the civil servant Act.
10. As explain in Para-9 above.
11. As in Para-9 above.
12. As in Para-9 above.
13. No comments.

It is requested that the Appeal may kindly be dismissed.


Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 2)


Secretary to
Government of Khyber Pakhtunkhwa
Health Department, Peshawar.
(Respondent No.1).


29/04/15

BEFORE SERVICE TRIBUNAL PESHAWAR.

Appeal No. 154/2015

Syed Ghaous Ali Shah Office Assistant.....**Appellant.**

Versus.

Government of Khyber Pakhtunkhwa & Others.....**Respondents.**

APPLICATION FOR INTERIM RELIEF.

Preliminary Objections:-

1. That the appellant has no cause of action.
2. That the appeal is not maintainable and also time barred.
3. That the appeal is bad for mis joinder and non joinder of necessary parties.
4. That the appellant has no locus standi and also estopped by his own conduct.
5. That the appellant has not come to the Tribunal with the clean hands.

PARA-WISE COMMENTS.

1. Pertains to record No comments.
2. The appellant has been treated in accordance with the law/ rules.
3. Pertains to record No comments.
4. Incorrect. There is no irreparable loss to the appellant as he is not displaced even from Peshawar City thus the irreparable loss is not correct. Just wants posting of his choice ie. Moulvi Ameer Shah Memorial Hospital Peshawar Which is not covered under the Civil servants Act and rules framed there under.
5. As explain at para 4 above, adding that lawful order may not be suspended.

It is therefore requested that the appeal in hand may kindly be set a side with cost.



Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 2)

Guar
24/15



Secretary to
Government of Khyber Pakhtunkhwa
Health Department, Peshawar.
(Respondent No.1).

بعدالت سرس (سینل ریٹ) ۱۹

Appeal No 154/2015

۲۰۱۵ء منجانب
سر سوشل سروسز بنام حکومت سندھ

موزعہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کاروائی متعلقہ ۱
آن مقام ~~سر سوشل سروسز~~ کیلئے ~~سر سوشل سروسز~~ کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار دگا۔ نیز
دکیل صاحب کو رضی نامہ کرنے و تفریق حالت فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
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پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا اوکالت نامہ لکھدیا کہ سند ہے۔

المرقوم ۱۵ ماہ مارچ ۲۰۱۵ء

واہ الب

کے لئے منظور ہے۔

بمقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

In Re:

C.M.No. _____/2015

In

S.A.No.154/2015

Syed Ghaus Ali Shah. Applicant/Appellant

Versus

Govt. of Khyber Pakhtunkhwa & others. Respondents

I N D E X

S.No	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Application for Interim Relief		1-4
2.	Affidavit		5
3.	Copy of order dated 02.10.2014 of Hon'ble Peshawar High Court	"A"	6-11
4.	Copy of order dated 28.10.2014 of this Honourable Tribunal	"B"	12-19
5.	Copy of impugned transfer order dated 25.02.2015	"C"	20
6.	Copy of letter dated 28.02.2015	"D"	21
7.	Wakalatnama		

Through


Applicant/Appellant

Muhammad Farooq Afridi
Advocate
High Court, Peshawar

Dated: 10.03.2015

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,

PESHAWAR

In Re:

C.M.No. _____/2015.

In

S.A.No.154/2015

A.W.F PROVINCE
Service Tribunal
Diary No. 154
dated 10-3-15

Syed Ghaus Ali Shah..... Applicant/Appellant

Versus

Govt. of Khyber Pakhtunkhwa & others..... Respondents

**APPLICATION FOR INTERIM RELIEF BY
WAY OF SUSPENDING THE TRANSFER
ORDER DATED 25.02.2015.**

Respectfully Sheweth:

1. That the above mentioned appeal is pending adjudication before this Honourable Tribunal, which is fixed for 12.03.2015.
2. That applicant is the employee of Health Department and serving to the best satisfaction of his superiors but is facing tough situation without any fault on his part and without any complaint as he has been transferred seven times within a span of about two years, as very clear from pending appeal.

3. That applicant was serving in the Maulvi Amar Shah Hospital Peshawar through office order dated 26.08.2013 when ironically his transfer order was issued on 22.09.2014 within a span of one year. The applicant filed a constitutional petition against the said illegal transfer order, which was entertained by Honourable High Court, and remanded the case to this Honourable Tribunal, where interim relief was granted and impugned order remained suspended by the order of this Honourable Tribunal. (Copies of PHC order dated 02.10.2014 and this Honourable Tribunal order dated 28.10.2014 are attached as annexure "A" & "B" respectively).
4. That during pendency of above mentioned appeal, the respondent D.G Health in violation of law, rules and posting/ transfers policy, again issued transfer order of the applicant vide order dated 25.02.2015. (Copy of impugned transfer order dated 25.02.2015 is attached as annexure "C").
5. That the order dated 25.02.2015 is illegal, without jurisdiction and without lawful authority, in violation of law, rules and policy.
6. That the Medical Superintendent of Maulvi Ameer Shah Memorial Hospital through a letter dated

28.02.2015, requested the respondent D.G Health for cancellation of impugned transfer order dated 25.02.2015 of the applicant from his subordination, being a honest, punctual, hard working and dedicated official. (Copy of letter dated 28.02.2015 is attached as annexure "D").

7. That the order dated 25.02.2015 is based on malafide and ulterior motives as it has been issued during pendency of above mentioned appeal and inspite of status quo order.
8. That the impugned order dated 25.02.2015 is solely on political influence and for making happy the political boss as the copy of same has been made to him.
9. That the DG Health by himself wrote to the Secretary Health through a letter that the applicant cannot be transferred as he has not completed his statutory period in the said Maulvi Ameer shah Memorial Hospital, but then being influenced by the Minister for Health the posting order dated 25.02.2015 has been issued.
10. That the applicant has a good prima facie case and is hopeful of its success.

11. That the balance of convenience also lies in favour of the applicant and if the interim relief as prayed is not granted the applicant will suffer an irreparable loss.
12. That the impugned order has been issued in violation of superior courts judgments.

It is, therefore, humbly prayed that on acceptance of this application, the transfer order dated 25.02.2015 may kindly be suspended till final disposal of appeal in the interest of justice.

Through

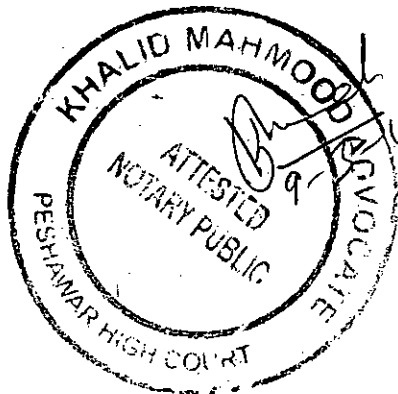
Applicant/Appellant

Muhammad Farooq Afridi

Advocate

High Court, Peshawar

Dated: 10.03.2015



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

In Re:

C.M.No. _____/2015

In

S.A.No.154/2015

Syed Ghaus Ali Shah. Applicant/Appellant

Versus

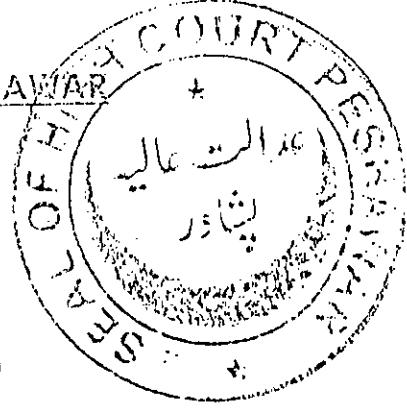
Govt. of Khyber Pakhtunkhwa & others. Respondents

AFFIDAVIT

I, Syed Ghaus Ali Shah S/o Syed Sher Badshah, Office Assistant, Molvi Ameer Shah Memorial Hospital, Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.


DEPONENT
CNIC #: 17101-8755697-7

IN THE PESHAWAR HIGH COURT, PESHAWAR



Writ Petition No. 2763 / 2014

Syed Ghaus Ali Shah S/o Syed Sher Badshah
Office Assistant, Molvi Ameer Shah
Memorial Hospital, Peshawar.Petitioner

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Health, HRD Block, Khyber Road, Peshawar.
3. Director General Health Services, HRD Block, Khyber Road, Khyber Pakhtunkhwa, Peshawar.
4. Ibrar Anmad, Office Assistant, Director General Health Services, Office, HRD Block, Khyber Road, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth:

1. That petitioner is serving as Office Assistant in the Directorate of Health Department, Khyber Pakhtunkhwa, to the best satisfaction of his superiors.

FILED TODAY
Deputy Registrar
25 SEP 2014

ATTESTED
KAMINER
Peshawar High Court
03 OCT 2014

2. That respondent No.3 has made a game of posting transfer of the officials, instead of a matter of policy, as petitioner has been transferred six times to different places within a span of one and half year.
3. That petitioner was posted on 26.02.2013 from HMC, Peshawar to Sarhad Hospital for Psychiatric Disease, Peshawar, followed by a cancellation of said transfer order dated 14.05.2013. The petitioner was again transferred on 20.05.2013 and the same was cancelled on 29.05.2013, similarly, the petitioner was posted on 06.08.2013 in the Molvi Ameer Shah Memorial Hospital, Peshawar and he was again transferred on 22.09.2014. (Copies of all transfer orders are attached as annexure "A" to "A/5" respectively).
4. That the impugned posting order dated 22.09.2014 is illegal, without jurisdiction and without lawful authority.
5. That impugned posting order dated 22.09.2014 has been issued in violation of posting/ transfer policy where normal tenure for posting is three years but petitioner has been posted on different places within a short span of time.
6. That the impugned transfer order passed by respondent No.3 in a shot span of time and time and again indiscriminately without rhyme or reason shows malafide on the part of respondents and is against the proclaimed policies.

FILED TODAY

Deputy Registrar

25 SEP 2014

ACCEPTED

EXAMINER

Peshawar High Court

01 OCT 2014



7. That the impugned posting order is arbitrary, against the canons of justice, equity and fair play, hence, liable to be set aside.
8. That the petitioner has not been treated in accordance with the law and has been discriminated against.
9. That the impugned posting order is contrary to the judgment of Supreme Court of Pakistan (PLD 2013 SC-195) where the law has been clearly laid down on the subject.
10. That impugned order glaringly violates the rule of law and public policy and therefore, needs to be struck down.
11. That in similar circumstances this Hon'able Court has interfered and has set aside the premature posting/transfer orders. (Copies of order and judgment are attached as annexure "B" & "C" respectively).
12. That the petitioner has left with no other remedy except to approach this Hon'able Court through the instant writ petition as the Service Tribunal is not functioning. (Copies of the order sheets are attached as annexure "D").
13. That the petitioner may be allowed to put forward any other document/argument at the time of hearing the writ petition.

RECEIVED
25 SEP 2015

RECEIVED
25 SEP 2015

Attest

It is, therefore, respectfully prayed that on acceptance of this writ petition, the impugned posting order dated 22.09.2014 may kindly be declared as illegal, without jurisdiction and without lawful authority, for ulterior motives, malafide and political influence. The posting order dated 06.08.2013 may kindly be declared to be in field.

Any other order deemed appropriate to this Honorable Court in the above mentioned circumstances.

INTERIM RELIEF

By way of interim relief, it is respectfully prayed that the impugned order dated 22.09.2014 may kindly be suspended till final disposal of the writ petition as the petitioner has got a good prima facie case.

Through

Petitioner

Muhammad Farooq Afridi
Advocate,
High Court, Peshawar

Dated: 24.09.2014

CERTIFICATE:

As per instructions of my client, certified that no such like **Writ Petition** has earlier been filed by the petitioner before this Honourable Court.

ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Case Law According to Need.

FILED TODAY

Deputy Registrar

25 SEP 2014

ATTESTED

EXAMINER
Peshawar High Court

03 OCT 2014

ADVOCATE

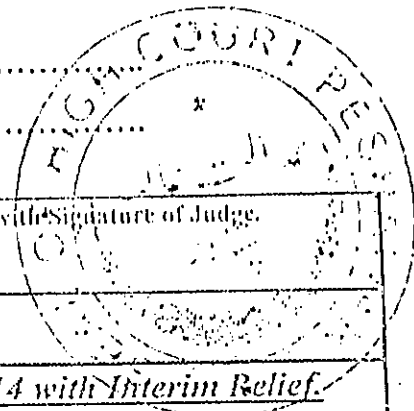
Attested

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of.....

Case No.....of.....

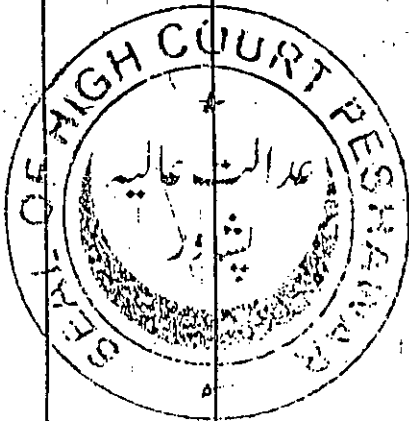


Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
	<p>ORDER 02.10.2014</p>	<p><u>Writ Petition No.2763-P/2014 with Interim Relief.</u></p> <p>Present: Mr. Muhammad Farooq Afridi, Adv: for Syed Ghaus Ali Shah, petitioner.</p> <p>*****</p> <p><u>MAZHAR ALAM KHAN MIANKHEL, C.I.-</u></p> <p>Syed Ghaus Ali Shah, petitioner herein, through the instant constitutional petition, has asked for the issuance of an appropriate writ declaring that the order dated 22.09.2014 respondent No.3, whereby, he has been transferred from Maulvi Ameer Shah Memorial Hospital, Peshawar to DGHS office, Peshawar being nullity in the eye of law, is of no effect whatsoever.</p> <p>2. We have gone through the available record carefully and considered the subraissions made by the learned counsel for the petitioner.</p> <p>3. We, in the light of our judgment / order of even</p>

m

EXAMINED
PESHAWAR HIGH COURT

date, passed in the identical Writ Petition No.2980-P/2014, titled Dr. Muhammad Ali Chohan vs. Government of KPK, in the instant case, too, without dilating upon the merits of the case and without preempting the jurisdiction of the Service Tribunal, only by confining ourselves upto the interim relief, send the matter of the petitioner to the KPK Service Tribunal / Chairman for decision strictly in accordance with law and for considering the competency / maintainability of the appeal and also direct the petitioner to appear there on 16th instant for the purpose. Only till then, the impugned order dated 22.09.2014 shall remain suspended and not thereafter. This writ petition is disposed of accordingly.



Announced.
02. 10. 2014

CHIEF JUSTICE

J Maghez Aham
J Malik Mangooob Hussain

No. 4561
Date of Presentation of Application 02-10-14
No of Pages 6P
Copy 1
Urgent Fee
Total 12-00
Date of Receipt 03-10-14
Da (Fayaz) 03-10-14
Date of Delivery of Copy 03-10-14
Received By [Signature]

CERTIFIED TO BE TRUE COPY

Secretary, High Court, Peshawar
Article 87 of
Constitution of 1973
Writ Petition No. 2980-P/2014

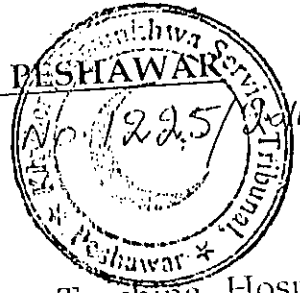
03 OCT 2014

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Attested

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BEFORE PESHAWAR HIGH COURT PESHAWAR

W.P No. 2970 / 2014 *service Appeal*



Doctor Muhammad Ali Chohan M.S Khyber Teaching Hospital,
Peshawar , S/O Ghulam Ahmed, R/O House#244 Phase-III Sector
K-2 Hayatabad Peshawar.....Petitioner

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar.
2. The Secretary Health, Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
3. Dr. Captain Habib Khattak, Management Cadre, District Health
Officer, Kohat.....Respondents

**WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN, 1973.**

Respectfully Sheweth

1. That the petitioner belongs to Health Management Cadre, he is in BS-20, earlier he was posted as M.S Molvi Amir Shah Memorial Hospital Hashtnagri Peshawar City. He was transferred and made OSD in the office of Director General Health Services Khyber Pakhtunkhwa, Peshawar vide notification dated 27.03.2014. (Copy of notification is Annexure-A at page 8-9)

2. That the petitioner was awaiting posting in Health Department when in the meanwhile vide Notification No. SO(E-1)E&AD/9-133/2014 dated Peshawar the, July 16, 2014, Government of Khyber Pakhtunkhwa posted him as Medical Superintendent

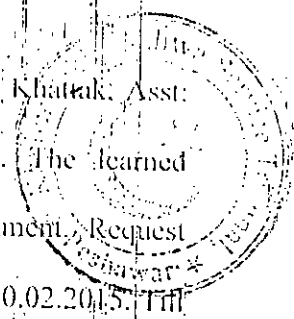
ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Tribunal,
Peshawar

Deputy
6-1-2014

At the end

09.02.2015

Appellant with counsel and Mr. Kabirullah Khattak, Asst. Advocate General for the respondents present. The learned counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 10.02.2015. Till then status-quo be maintained. *MS*



Sd/- Member

10.02.2015

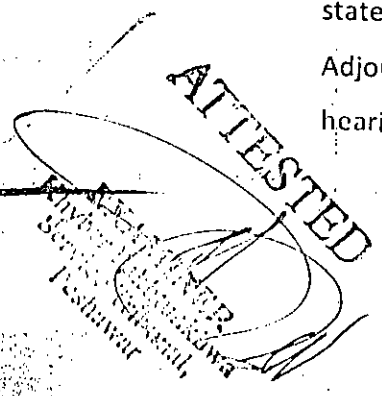
Appellant in person present. Counsel for the appellant is not in attendance due to strike of the Bar. Adjourned for preliminary hearing before S.B to 24.02.2015. Till then status-quo be maintained. *MS*

Sd/- Chairman

24.02.2015

Malik Faheem, Advocate for learned counsel for the appellant present. Informed the Court that the learned counsel for the appellant is stated busy before the august Supreme Court of Pakistan. Application for Adjournment submitted alongwith cause list. Adjourned for preliminary hearing before S.B to 13.03.2015. Till then status-quo be maintained.

Sd/- Chairman



MS
Attested

10.11.2014

Appellant in person and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for preliminary hearing on 09.12.2014.

Sd/-
Reader

09.12.2014

Appellant in person and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for preliminary hearing on 30.01.2015.

Sd/-
Reader

30.01.2015

Appellant with counsel, learned Addl. AG for official respondents No. 1 and 2 and private respondent No. 3 with counsel present.

It was brought to the notice of this Tribunal that Dr. Muhammad Ali Chohan has instituted a fresh appeal which is being assigned to learned Bench-III for preliminary hearing. It would be thus appropriate that the instant appeal as well as the said appeal be heard by one and the same Bench. This appeal is, therefore, entrusted to the said learned Bench for 9.02.2015 with the directions that the freshly instituted appeal be also heard by the said learned Bench on the afore-stated date alongwith the instant appeal. Till then status quo be maintained.

Sd/-
Chairman

ATTESTED
[Signature]

[Signature]
Att. Sta

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28 10 2014

Appellant with counsel, Mr. Muhammad Adeel Butt, AAG for respondent-department and private respondent No.3/petitioner with Mr. Zia-ur-Rehman, Advocate present. Arguments could not be heard on the issues raised in the order sheet dated 16.10.2014, as learned AAG informed that appellate authority in the case of appellant is the Chief Minister with whom he could not establish contact in order to know about the present status/stage of the departmental appeal preferred by the appellant. The learned AAG, therefore, requested for a short adjournment in order to inform the Court/Tribunal about the above fact. Private respondent No.3/petitioner moved application for issuance directions to Dr. Muhammad Iqbal not to pressurize the applicant for handing over charge to him. Dr. Muhammad Iqbal has been transferred from DHQ Hospital Bannu to Kohat as DHO vice the private respondent No.3/petitioner vide impugned notification dated 29.09.2014 whereby the appellant has been transferred from the post of M.S Khyber Teaching Hospital, Peshawar and private respondent No.3/petitioner has been transferred from the post of DHO Kohat and posted as M.S KTH, Peshawar vice the appellant. Notwithstanding the fact that no notice, as such, has been issued so far to private respondent No. 3/petitioner and he has appeared on his own with aforesaid grievance, together with the fact that Dr. Muhammad Iqbal is not a party in the instant appeal, nevertheless, the application of private respondent No.3/petitioner, in essence, involves the question of application of order of status-quo issued vide order dated 16.10.2014. There can be no two opinions that the august High Court suspended the impugned notification dated 29.09.2014, obviously as a whole, which order was further extended and ordered to continue to remain operative in the meantime. Therefore, there should be no doubt that with the suspension of transfer and posting order of the appellant and private respondent No.3/petitioner, the transfer/posting order of Dr. Muhammad Iqbal, made vide the same notification dated 29.09.2014, already suspended by the august High Court vide order dated 02.10.2014 and extended vide order of the Tribunal dated 16.10.2014, is equally applicable to the transfer/posting of Dr. Muhammad Iqbal, as each and every transfer/posting stands suspended with the suspension of the impugned notification dated 29.09.2014. With this clarification, the application is disposed of. To come up for further proceedings/arguments, in view of issues raised in the order sheet dated 16.10.2014, on 29.10.2014.

ATTESTED
 M. BAKHT AWAN
 Secretary
 Peshawar Tribunal

Sd/-
 Zia-ur-Rehman

Sd/-
 Adeel Butt

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5 10 2014

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Appellant in person, Mr Muhammad Azeem Butt, AAG and private respondent No 3 in person present. The learned AAG stated that the departmental appeal is in process and that he would confirm outcome of the departmental appeal as soon as he receives any information with regard to that from the Chief Minister's Secretariat. Arguments could not be heard due to non-availability of learned counsel for the appellant owing to strike of the Bar. The appellant stated that his counsel is proceeding to Islamabad to appear in the august Supreme Court of Pakistan on 30th and 31st October. The appellant, therefore, requested for adjournment of the case and its fixation after Moharram holidays. The learned AAG proposed that since the appellant is mainly relying on the order of the august High Court dated 16.9.2014, the Tribunal may also refer the case to the respondent-department with the same directions while disposing of the appeal. The appellant, on the other hand, stated that without consultation and advice of his counsel, he is not in a position to respond to the proposal made by the learned AAG. A last chance is given for arguments, on the issues raised in the order sheet dated 16.10.2014, before Primary Bench on 5.11.2014.

Signature
Chairman

05.11.2014

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Appellant alongwith his counsel and Mr. Kabirullah Kattak, Asst. AG for the respondents present. The learned counsel for the appellant submitted before the Court that the instant appeal has been partly heard by worthy Chairman and requested that it may be transferred to the same Bench for further arguments. This case be put up to the Chairman for further proceedings/order. Parties are directed to appear before the Chairman on 10.11.2014.

Signature
Chairman

ATTESTED
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

16.10.2014

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Appellant with counsel present. The instant appeal, alongwith service appeals No.1226/2014,1231/2014 and 1232/2014 have been received from the Hon'ble High Court with orders dated 2.10.2014 and 9.10.14, respectively. for 'decision strictly in accordance with law and for considering the competency/maintainability of the appeal during pendency of the representation of the petitioner'. The Hon'ble High Court, in the said orders, directed that the impugned notifications/orders in the respective appeals 'shall remain suspended (till today) and not thereafter'.

At the outset, the learned counsel for the appellant (Mr. Ghulam Mohy-ud-Din Malik, Advocate, Supreme Court of Pakistan) (whose arguments were also adopted by the learned counsel in the aforementioned appeals, also received from the Hon'ble High Court alongwith the instant appeal), contended that after an order by the Hon'ble High Court and receipt of the appeals by the Tribunal from the Hon'ble High Court with the aforementioned orders, this Tribunal is now bound to examine whether the Tribunal is validly constituted in the light of existing law on the subject, as the question of constitution of the Tribunal precedes the matter of constitution of Benches, to which the appeals are then referred for adjudication/order either at the preliminary or final stage. The learned counsel further contended that undoubtedly the law allows only the Chairman or a sole Member to hear and pass order at the preliminary stage but the question would nevertheless be that whether the Tribunal is validly constituted and whether in case of non-constitution of the Tribunal, the Benches i.e Primary or Final Benches could lawfully hear appeals and pass orders, because the NWFP (Khyber Pakhtunkhwa) Service Tribunal Act, 1974, amended through Khyber Pakhtunkhwa Service Tribunal (Amendment) Act, 2013, provides that the Tribunal shall consist of a Chairman and two Members, one of whom is a District and Sessions Judge and the other is a Civil Servant in BPS-20 and above.

The objection to the constitution of the Tribunal has arisen in the backdrop of down-gradation/reversion of the learned Member (Judicial) of the Tribunal who has been rendered non-functional as he is no longer a District and Sessions Judge to qualify for the position of Member of the Tribunal.

It was also pointed out, during the course of arguments, that though one of the Member has been rendered non-functional by virtue of the subsequent development, as at the time of his appointment as Member of the Tribunal he was a District and Sessions Judge; but the Tribunal is still validly

ATTESTED
 Khyber Pakhtunkhwa
 Service Tribunal
 Chairman

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one from the executive and other from the judiciary, notwithstanding the current status of the learned Member (Judicial). Moreover, the Tribunal is also assumed to continue as a validly constituted Tribunal on the analogy of Article 192 of the Constitution of the Islamic Republic of Pakistan, 1973 where-under 'a High Court shall consist of a Chief Justice and so many other Judges as may be determined by law or, until so determined, as may be fixed by the President'; and that the High Court is never presumed as not validly constituted owing to shortage of Hon'ble Judges as determined/fixed under the said provision of the Constitution as long as the Hon'ble Chief Justice and even a single Hon'ble Judge of the High Court are there to perform their functions.

The learned counsel for the appellant pointed out that number of Hon'ble Judges of the High Court is not determined/fixed in the Constitution, whereas the number of Members of the Tribunal is clearly and unequivocally fixed in the law and that owing to change in the status/position of a learned Member, the Tribunal will, lawfully, not be validly constituted. The learned counsel maintained that in a similar situation, the Hon'ble Peshawar High Court has, while taking cognizance of the situation prevailing in the Tribunal, assumed jurisdiction and directed the respondents not to pass any adverse order affecting the service career of petitioner till the date Service Tribunal Khyber Pakhtunkhwa is legally constituted, vide order dated 16.9.2014 in writ petition No. 2726-P/2014 with I.R., on which reliance has also been placed by the Hon'ble Peshawar High Court in the aforementioned orders while referring the writ petitions to the Tribunal for further order in accordance with law. In order to further augment his arguments, the learned counsel also referred to PLD 2014 Supreme Court 232(b).

Since very important legal questions have been raised with respect to the very constitution of the Tribunal, it would be appropriate to deal with the questions raised at the Bar at the first instance before proceeding further with the appeals, and for the purpose, a pre-admission notice be issued to the learned AAG as well as to the Chief Secretary, Govt. of Khyber Pakhtunkhwa (respondent No. 1) to report about the present status/stage of the departmental appeal preferred by the appellant. In order to ward off the possibility of further legal/administrative complications, the interim relief already granted to the appellant by the Hon'ble High Court shall continue to remain operative in the meantime. To come up for arguments, as above, on 28.10.2014.

- Sd/-
Chairman

[Signature]
Attorney

Certified to be true copy
MEMBER FOR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(19)

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 Date of ... 09-3-2015



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**DIRECTORATE GENERAL HEALTH
SERVICES GOVT: OF KHYBER
PUKHTUNKHWA PESHAWAR**

OFFICE ORDER

As approved by the competent authority, the following posting/ transfer of Office Assistants are hereby ordered in the interest of public service with immediate effect:

S.No	Name of Class-IV	From	To	Remarks
1.	Mr. Ibrar Ahamd Office Assistant	DGHS Office Khyber Pakhtunkhwa Peshawar	Moulvi Ameer Shah Memorial Hospital Peshawar	Vice S.No. 02
2.	Syed Ghous Ali Shah Office Assistant	Moulvi Ameer Shah Memorial Hospital Peshawar	DGHS Office Khyber Pakhtunkhwa Peshawar	Vice S.No. 01

Note: Arrival/ Departure report should be submitted to this Directorate for record.

Sd/xxxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.
Dated 25 /02/2015.

No 2231-38 /Personnel

Copy forwarded to the:-

1. P.S to Minister for Health Khyber Pakhtunkhwa.
2. Accountant General Khyber Pakhtunkhwa.
3. M.S Moulvi Ameer Shah Memorial Hospital Peshawar.
4. Assistant Director (Accounts) DGHS, KPK Peshawar.
5. PA to DGHS, Khyber Pakhtunkhwa Peshawar.
6. PA to Director (Admn) DGHS, KPK Peshawar.
7. DHIS Cell DGHS KPK Peshawar.
8. Officials concerned.

For information and necessary action.

91
27/2/2015

ASSISTANT DIRECTOR (P-II)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K PESHAWAR

24.2.15

Attest



No. 1003 /MS/MASM HOSPITAL

Dated Peshawar the 28/09/2015

OFFICE OF THE MEDICAL SUPERINTENDENT
MOULVI AMEER SHAH QADRI MEMORIAL
HOSPITAL G.T. ROAD PESHAWAR
Exchange# 091-9210746
091-9211030
Fax# 091-9214245

To

The Director General Health Services,
Khyber Pakhtunkhwa,
Peshawar.

Subject: - TRANSFER

Sir,

I have the honour to inform you that Syed Ghous Ali Shah, Office Assistant was transferred from this office.


It is further added that the above mentioned office assistant is an honest, hard working, completed all tasks well in time and I am satisfied from his work.

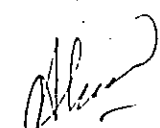
So, it is humbly requested that the transfer order of Syed Ghous Ali Shah, Office Assistant may be cancelled accordingly under intimation to this office.

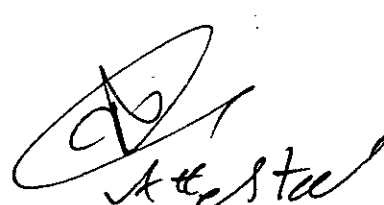
No. 1001-05 /MS/MASM Hospital

Copy forwarded for information to:-

1. PS to Secretary to Government of Khyber Pakhtunkhwa, Health Department, Peshawar
2. PS to Minister for Health, KPK Peshawar


MEDICAL SUPERINTENDENT
MOULVI AMEER SHAH MEMORIAL
HOSPITAL PESHAWAR


MEDICAL SUPERINTENDENT
MOULVI AMEER SHAH MEMORIAL
HOSPITAL PESHAWAR


Director General Health Services

BEFORE SERVICE TRIBUNAL PESHAWAR.

Appeal No. 154/2015

Syed Ghaous Ali Shah Office Assistant.....Appellant.

Versus.

Government of Khyber Pakhtunkhwa & Others.....Respondents.

APPLICATION FOR INTERIM RELIEF.

Preliminary Objections:-

1. That the appellant has no cause of action.
2. That the appeal is not maintainable and also time barred.
3. That the appeal is bad for mis joinder and non joinder of necessary parties.
4. That the appellant has no locus standi and also estopped by his own conduct.
5. That the appellant has not come to the Tribunal with the clean hands.

PARA-WISE COMMENTS.

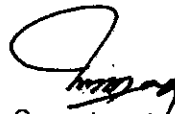
1. Pertains to record No comments.
2. The appellant has been treated in accordance with the law/ rules.
3. Pertains to record No comments.
4. Incorrect. There is no irreparable loss to the appellant as he is not displaced even from Peshawar City thus the irreparable loss is not correct. Just wants posting of his choice ie. Moulvi Ameer Shah Memorial Hospital Peshawar Which is not covered under the Civil servants Act and rules framed there under.
5. As explain at para 4 above, adding that lawful order may not be suspended.

It is therefore requested that the appeal in hand may kindly be set a side with cost.



Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 2)

Gyal
24/4/15



Secretary to
Government of Khyber Pakhtunkhwa
Health Department, Peshawar.
(Respondent No.1).

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1318 /ST

Dated 31 / 8 /2015

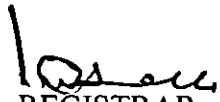
To

Director General,
Health Services KPK Peshawar.

Subject: - JUDGEMENT.

I am directed to forward herewith certified copy of Judgement dated 25.8.2015 passed by this Tribunal on subject Judgment for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.