

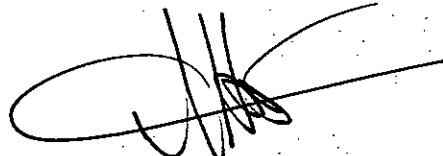
Order


31.10.2019

Counsel for the appellant present. Addl: AG alongwith Mr. M. Sharif, ADEO for respondents . Arguments heard and record perused.

This appeal is also remitted as per detailed judgment of today placed on file in service appeal No. 1259/2014 titled "Musharraf Khan-vs-The Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar and two others." Parties are left to bear their own cost. File be consigned to the record room.

Announced:
31.10.2019


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kunid)
Member

24.04.2019

Counsel for the appellant and Addl. AG alongwith
Naseem Mehmood, AAEO for the respondents present.

Learned counsel for the appellant requests for
adjournment due to over work before the honourable High Court
today.

Adjourned to 08.07.2019 before the D.B.


Member


Chairman

08.07.2019

Counsel for the appellant and Addl:AG for respondents
present. Counsel for the appellant seeks adjournment.
Adjourned. Case to come up for arguments on 23.09.2019
before D.B.

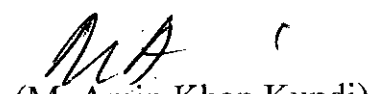

Member


Member

23.09.2019


Due to general strike on the call of Khyber
Pakhtunkhwa Bar Council learned counsel for the appellant
is not in attendance. Mr. Kabirullah Khattak learned
Additional Advocate General for the respondents present
Adjourned. To come up for arguments on 31.10.2019
before D.B.



(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

26.09.2018

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Learned Addl: AG seeks adjournment. Granted. Case to come up for arguments on 08.11.2018 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

08.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 31.12.2018


READER

31.12.2018

Junior to counsel for the appellant and Mr. Kabirullah khattak learned Additional Advocate General alongwith Naseem Mehmood AAEO present. Junior to counsel for the appellant seeks adjournment as senior counsel for appellant is indisposed. Adjourn. To come up for arguments on 06.02.2019 before D.B.


Member


Member

06.02.2019

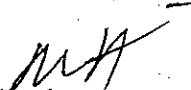
Clerk to counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Nasim Mehmood, ADEO for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the Bar. To come up for arguments on 24.04.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

29.03.2018


Counsel for the appellant and Addl. AG alongwith Daud Jan, Supdt. for the respondents present. Learned AAG seeks adjournment. Adjourned. To come up for record and arguments on 01.06.2018 before D.B.


Member


Chairman

01.06.2018

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Naseem Mehmood, AEO for respondents present. Representative of the respondent-department seeks adjournment to produce complete record as mentioned in previous order sheet dated 20.12.2017. Last opportunity is granted. Adjourned. To come up for record and arguments on 02.08.2018 before D.B.


(M. Amin Khan Kundi)
Member


(M. Hamid Mughal)
Member

202.08.2018

Junior to counsel for the appellant and Mr. Kabir Ullah Khattak alongwith Mr. Naseem Mehmood AAEO for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 26.09.2018 before D.B.

(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

25.09.2017

Since 07.09.2017 has been declared as a public holiday on account of first Muharram. Therefore cases adjourned to 20.12.2017.


READER

20.12.2017


Counsel for the appellant and Mr. Muhammad Jan DDA for the respondents present. Arguments partly heard. During the arguments, this Tribunal reaches the conclusion that for proper appreciation of the facts of the present appeal the record of selection process is must. The department is directed to produce all the record of selection process including the advertisement, minutes of the DPC and record whether the posts were project posts or regular posts. To come up for further arguments on 07.02.2018 before this D.B.



Member


Chairman

7.2.2018

Counsel for the appellant and Addl. AG for the respondents present. Due to shortage of time, arguments could not be heard. To come up for record and further arguments on 29.03.2018 before the D.B already heard the case on 20.12.2017.


Member


Chairman

29.09.2016

Clerk to counsel for the appellant and Mr. Murtaza Khan, Stenographer alongwith Addl. AG for respondents present. Written reply submitted. Cost of Rs. 300/- also paid and receipt thereof obtained from the learned counsel for the appellants. The appeal is assigned to D.B for rejoinder and final hearing on 9.01.2017.


Chairman

09.01.2017

Clerk to counsel for the appellant and Mr. Haj Muhammad AAO alongwith Addl. AG for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 30.05.2017.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

30.05.2017

Clerk of the counsel for appellant present. Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Due to strike of the bar learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 22.09.2017 before D.B.


(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

24.02.2016

Agent of counsel for the appellant and Mr. Kifayatullah, Junior Clerk alongwith Addl: A.G for respondents present. Written reply not submitted despite extension of last opportunity and cost of Rs. 200/-. Requested for further adjournment. Another last opportunity is extended subject to payment of further cost of Rs. 100/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost of Rs. 300/- on ~~28.4~~ 2016 before S.B.


Member


28.4.2016

Agent of counsel for the appellant and Mr. Shahabud Din, AAEO for the respondents present. Cost of Rs. 300/- paid and receipt whereof obtained from the agent of counsel for the appellant. Written reply not submitted despite extension of last opportunity and cost of Rs. 300/-. Requested for further adjournment. Another last opportunity is extended subject to payment of further cost of Rs. 300/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost of Rs. 300/- on 04.08.2016 before S.B.


Chairman

04.08.2016

No one is present on behalf of the appellant and Addl. AG for respondents present. Notice be issued to the parties. To come up for reply on 29-9-16


Member

4

13.05.2015

Counsel for the appellant, M/S Daud Jan, Supdt. and Akhtar Nawaz, Assistant Agency Education Officer alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply on 10.8.2015 before S.B.


Chairman

5

10.08.2015

Counsel for the appellant, M/S Daud Jan, Supdt. and Akhtar Nawaz, Assistant Agency Education Officer alongwith Assistant A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 29.10.2015 before S.B.


Chairman

6

29.10.2015

Counsel for the appellant and Mr. Daud Jan, Supdt. alongwith Addl: A.G for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended subject to payment of cost of Rs. 200/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 24.02.2016 before S.B.


Chairman

3.

Reader Note:

02.12.2014

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 12.02.2015 for the same.


Reader

3

12.02.2015

Counsel for the appellant present. Argued that the appellant was appointed on the strength of judgment of the Hon'ble Peshawar High Court, Peshawar dated 24.02.2011. That vide impugned order dated 20.5.2014 the said appointment order was withdrawn on the plea of non-availability of PTC posts. That the appellant preferred departmental appeal against the said impugned order on 4.6.2014 which remained un-responded and after lapse of statutory period of 90 days, the appellant preferred the present appeal on 15.9.2014.

That since the appellant was appointed on the strength of the judgment of the Peshawar High Court, referred above, as such the impugned order is malafide and illegal and the issue of non-availability of PTC posts was the result of malice.

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 for 13.05.2015 before S.B.




Chairman

*Appellant appointed
Peshawar High Court
24.02.2011*

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1172 /2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/09/2014	<p>The appeal of Mst. Sanjeeda resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	1-10-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 2-12-2014</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mst. Sanjeeda PST, GGPS, Gul Khawaws Kot, NWA received to-day i.e on 15.9.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission with in 15 days:-

Copies of appointment order dated 4.3.2014 and charge report dated 5.3.2014 in respect of appellannt mentioned in para-4 of the memo of appeal are not attached with the appeal which may be placed on it.

No. 1366 /S.T,


Dt. 17/9 /2014.


Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar.

Mr.Noor Muhammad Khattak Adv. Pesh.

Note:

Sir,
Kindly the date of appointment and date of charge report may kindly be read as 26.2.2014 respectively instead of 4.3.2014 and 5.3.2014.


22.9.2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1172 /2014

Mst **SANJEEDA**

VS

EDUCATION DERTT:

INDEX

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5.	Scrutiny Committee report	D	13- 15.
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9.	Letters	H	20- 24.
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Sanjeeda
APPELLANT

THROUGH:
[Signature]
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 1172 /2014

MSt: Sanjeeda, PST,
GGPS Gul Khawas Kot, North Waziristan Agency..... **Appellant**

1177
15/9/2014

VERSUS

- 1- Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director of Education FATA, FATA Secretariat, Warsak Road, Peshawar.
- 3- The Agency Education Officer, North Waziristan Agency at Miran Shah.

..... **Respondents**

APPEAL UNDER SECTION-4 OF KHYBER
PAKHTUNKHWASERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED 20-05-2014
WHEREBY THE APPOINTMENT ORDER OF THE
APPELLANT HAS BEEN WITH DRAWN/CANCELLED IN
VOILATION OF LAW AND RULES AND AGAINST NO
ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF
THE APPELLANT WITHIN THE STATUTORY PERIOD
OF NINETY DAYS

PRAYERS:

That on acceptance of this appeal the impugned order dated 20-05-2014 may vary kindly be set aside and respondents may be directed to re-instate the appellant with all back benefits. Any other remedy which this august Court deems fit may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

re-submitted to the
and filed.

[Signature]
15/9/14

2-
23/9/14

1- That the appellant is the local resident of Miran Shah North Waziristan Agency and have the requisite qualifications for the post of P.S.T.

2- That appellant filed a writ petition No.46/2011 in the Hon'ble Peshawar High Court Dera Ismail Khan Bench for appointment on the post of PST. That the Hon'ble Peshawar High Court Dera Ismail Khan Bench while disposing the writ petition of appellant directed the respondents for disposed of the representation/application of appellant with in a month time strictly on merit and in accordance with

rules and policy of the Government on the subject vide judgment dated 24-02-2011. Copies of the memo of writ petition and judgment are attached as annexure **A and B.**

- 3-** That on the direction of Hon'ble Peshawar High Court Dera Ismail Khan Bench, respondent No.3 (Agency Education Officer) constituted a committee to check/Scrutinized the documents and determines the merit/rights of the appellant. That the committee has strongly recommended the appellant for appointment on the post of PST vide dated 26.3.2014. Copies of the application and scrutiny committee report are attached as annexure **C & D.**
- 4-** That on the directions of Hon'ble Peshawar High Court Dera Ismail Khan Bench, and recommendation of the respondent No.2, the respondent No.3 issued appointment order of the appellant as PST vide order dated ~~26-02~~-2014. That accordingly the appellant took over the charge of his post vide dated ~~25.02~~.2014 and started performing his duty quite efficiently and up to the entire satisfaction of superiors. Copies of the appointment order and charge report are attached as annexure **E and F.**
- 5-** That astonishingly respondent No.3 vide order dated 20.5.2014 withdrawn the appointment order of the appellant with out any reasons/justification. That it is very pertinent to mention here that the Directorate of Education FATA Peshawar already directed the respondent No.3 to re-appoint the community School Teachers as per policy vide dated 19-02-2014. That it is further stated the respondent No.3 vide letter dated 06-06-2014 addressed to respondent No.2 refused to comply with the verdicts of Hon'ble Peshawar High Court Dera Ismail Khan Bench judgment dated 24-02-2011. Copies of the withdrawal order and letters are attached as annexure **G & H.**
- 6-** That feeling aggrieved from the impugned order dated 20-05-2014 the appellant filed Departmental appeal to respondent No.2 but no reply has been received so far. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure **I.**

GROUND:

- A- That the impugned order dated 20-05-2014 is against the law, facts, norms of natural justice and materials on record hence not tenable and liable to set aside.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such respondents violated article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That no show cause notice has been served on the appellant by the respondent Department before issuing the impugned order 20.5.2014 against the appellant.
- D- That no chance of personal hearing/ personal defense has been given to appellant before issuing the impugned order dated 20.5.2014 against the appellant.
- E- That the impugned order dated 20.5.2014 has been issued by the respondents in violation of the principle of Locus Poenitentiae.
- F- That the respondent Department acted in arbitrary and malafide manner while issuing the impugned order dated 20.5.2014 against the appellant.
- G- That appellant seeks permission to advance other grounds and proofs at the time hearing.

It is therefore humbly prayed that the appeal of the appellant may be accepted as prayed for.

Sanjeeda
APPELLANT

SANJEEDA

THROUGH:
[Signature]
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

A-17
A-4

Writ Petition No. 46 /2010

1. Mr. Zabihullah S/O Mir Daray Jan, Presently Paradise Hostel, Warsak Road, Peshawar.
2. Mr. Muhammad Shalil S/O Sher Ali Khan, Presently Paradise Hostel, Warsak Road, Peshawar.
3. Mr. Hakimullah S/O Akbar Nawaz Khan, Toron Darmangi, Warsak Road, Peshawar.
4. Mr. Niaz Muhammad S/O Sher Ali Khan, Khushal Bagh, Street No.2, Warsak Road, Peshawar.
5. Mst. Nazreen D/O Ghafoor Khan, House No.4, Garden Town, Dalazak Road, Peshawar.
6. Mst Najma D/O Zahid Khan, House-25, Street No 4, Phase-6, Hayatabad, Peshawar.
7. Mst. Sher Baño D/O Muhammad Akbar, House No.28, Street No.13, Phase-I, Hayatabad, Peshawar.
8. Mst. Nasreen D/O Hazrat Gul, Kabapyan Kanal, Warsak Road, Peshawar.
9. Mr. Ahmad Qadir S/O Miari Khan, Village Khadar Khel, Tehsil Mir Ali, NWA.
10. Mr. Naseerud-Din S/O Ahmad-di-Din, Village Eidak, Tehsil Mir Ali, NWA.
11. Mr. Noor Lias S/O Mir Nawaz Khan, Village Palangzai, Tehsil MRN, NWA.
12. Mst. Khatim Zareena D/O Mohammad Akbar, village DPK, Tehsil MNR NWA.
13. Mst. Saeeda Akbar D/O Mohammad Akbar, Village Shahzada Kot, Tehsil MRN, NWA.
14. Mr. Khalid Rehman, S/O Bakht Jan, Village DPK, NWA.
15. Mr. Matiullah S/O Bahadar Khan, Village DPK, Tehsil MRN, NWA.
16. Mr. Asmatullah S/O Bahadar Khan, Village Danday Darpa Khel, Tehsil MRN, NWA.
17. Mr. Khitabullah S/O Akbar Jan, Village Miranshah, NWA.
18. Mr. Anwar Shamim S/O Qadar Jan, Village Gurbaza, Tehsil MRN, NWA.

ATTESTED
Sanjida

(5)

- 19. Mr. Salimullah Khan S/O Pir Ghulam, Village Alizai, Tehsil MRN, NWA.
- 20. Mr. Javed Khann S/O Akbar Din, Village DPK, Tehsil MRN, NWA.
- 21. Mr. Qamarullah S/O Akbar Nawar, Village Miranshah, NWA.
- 22. Mr. Umar Khiyam, S/O Gul Mohammad, Village DPK, NWA.
- 23. Mr. Wasim Khan, S/O Haroon Khan, Village Miranshah, NWA.
- 24. Mr. Shabir Khan S/O Dir Muhammad, Village Miranshah, NWA.
- 25. Mst. Rozeena Bibi D/O Muhammad Iqbal, Village Miranshah, NWA.
- 26. Mst. Noor Alida D/O Ahmadud Din, Village Eidak, Tehsil Mir Ali, NWA.
- 27. Mr. Riazullah S/O Hasan Khan, Village Miranshah, NWA.
- 28. Mst. Nooreen Ayaz d/o Muhammad Ayaz, Village Miranshah, NWA.
- 29. Mst. Ambareen Ayaz D/O Muhammad Ayaz, Village Miranshah, NWA.
- 30. Mst. Sanjeea D/O Shahzad Gul, Village Land, Tehsil Datta Khel, NWA.
- 31. Mst. Minhaz Bibi D/O Saadullah, Village Land, Tehsil Datta Khel, NWA.
- 32. Mr. Yaseenullah S/O M.Iqbal, Village Darpakhel, NWA.
- 33. Mr. Hamayun Khan S/O Mir Daray Khan, Village Miranshah, NWA.
- 34. Mr. Kaleem Khan S/O Mir Daray Khan, Village Miranshah, NWA.

PETITIONER

VERSUS

- 1. The Director of Education, FATA, NWFP, Peshawar
- 2. The Dy: Director of Education, FATA, Peshawar
- 3. The Agency Education Officer, Miranshah NWA.

ATTESTED

Sangida

RESPONDENTS

A-9
⑥

WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF PAKISTAN
1973 AS AMENDED UP TO DATE

RESPECTFULLY SHEWETH:

Brief facts giving rise to the present petition are as under:

1. That the petitioner are the residents of Miranshah, N.W.A. and have the qualifications necessary for PST/PTC posts laying vacant in N.W.A. under Communal Schools Project.
2. That a project for the Communal Schools was initiated in the N.W. A. in which the local residents who are qualified are appointed as PTC/PST teachers directly on the recommendations of the respondent No.1. (Director Education, FATA, Peshawar).
3. That the petitioners being qualified also applied to the respondent No.1 (Director Education FATA) for directing the respondent No.3 for appointing the petitioners as PTC/PST teachers in the Communal Schools and on that application the respondent No.1 directed the respondent No.3 (Agency Education Officer) on 11.11.2005 to appoint the petitioners under intimation to the respondent No.1. Copy of the Order is attached as Annexure-A.
4. That as the respondent No.3 was not willing to appoint the petitioners and to obey the directions of the respondent No.1 (Superior Officer), therefore, the petitioners again approached to the respondent No.1 for implementation of his previous order and the respondent No.1 was kind enough to direct the respondent No.3 again for appointing the petitioners in Communal Schools on 2.2.2006 on the same letter dated 11.11.2005. Copy of the Order is already attached as Annexure-A.
5. That as even then the respondent No.3 was not willing at all therefore, the petitioners approached the Addl: Chief Secretary FATA for redressal of their grievances and the Addl: Chief Secretary FATA was also pleased to issue the directions to the respondent No.1 for

ATTESTED
Sarguda

considering the petitioners for appointment in the same letter dated 11.11.2005, the copy of the order is already attached as Annexure-A.

6. That despite of the twice directions of respondent No.1 and ACS FATA, the respondent No.3 was failed to comply with the orders, therefore, the petitioners filed appeal before the Chief Minister of the NWFP and he was also kind enough to direct the Political Agency NWA and the Director Education FATA to appoint the petitioners in the Communal School. The said directives were also endorsed and sent to the ACS FATA and Commissioner Bannu Division Bannu. The Commissioner Bannu Division also directed the PA, NWA for favourable disposal. Copy of the directives of CM is attached as Annexure-B.
7. The Political Agent issued order on 5.11.2009 to Agency Education Officer, Miranshah in light of the Commissioner's directives but no action was taken by the Agency Education Officer, Miranshah. Copy of PA Order is attached as Annexure-B-1.
8. That on the basis of the above directives the SO Estt FATA Secretariat issued letter to respondent No.1 and the respondent No.1 issued the directions on the same letter to AEO (Respondent No.3) "to consider as indicate above" but no action was taken and made the excuse of non availability of posts. Copy of the letter and reply are attached as Annexure-C&D.
9. That in the mean while the respondent No.3 made appointments on various dates which proves that false statement was given by him in response to the directions by making the excuse of non availability of posts. Besides that so many other teachers have been appointed on the similar detection of the respondent No.1 after 11.11.2005. Copies of the order are attached as Annexure-E, F, G and H.
10. That some other teachers have also been recommended for appointment by the Commissioner Bannu Division in his decision which was made by the Commissioner Bannu Division made on their appeals. But the Commissioner Bannu did not follow his previous verdict for the petitioners. Copy of the decision of Commissioner is attached as Annexure-I.

ATTESTED
Sarguda

8

11. That the Hon'able Supreme Court of Pakistan held in many cases that "When a point of a law decided by a Court that the demand of good governness is that the same benefits should also be extended to other similarly placed person who might have not litigated rather to compel than for litigation:
12. That having no other remedy against the discriminatory treatment by the respondent No.3 the petitioners are constrained to file the writ petitioner on the following grounds amongst the others:

GROUND:

- A) That the attitude, action and inaction and treatment of the respondents No.3 is discriminatory, arbitrary and against the norms of justice.
- B) That the such discrimination, made by the respondent No.3 is against the Article 4, 25 and 27 of the constitution of the country in which equal rights have been given to all citizens of the Pakistan.
- C) That the petitioners are eligible and qualified for the appointment and willing to serve at far-flung arrears in FATA, North Waziristan Agency where other teachers usually not willing to perform their duties.
- D) That the respondent No.3 has not been exercising his power judiciously and independently and his treatment towards the petitioners is discriminatory and not based on well founded reasons.
- E) That the petitioners also have similar rights of appointment as made by the respondent No.3, in case of other teachers earlier in the direction of the respondent N.1 and after the decisions of the Commissioner of the Bannu Division.
- F) That the petitioners seek permission to advance other grounds and proofs at the time of hearing.

ATTESTED

Sanjida

It is, therefore, most humbly prayed that on acceptance of this Writ Petition, the respondents' attitude and inaction in making appointments of the petitioners may be declared as illegal, discriminatory and against the norms of justice and principles of equity. The respondents may further please be directed to appoint the petitioners as per directions and directives of the high ups. Any other remedy which this august Court deems proper that may also be awarded.

PETITIONER

Zabiullah
Zabiullah e.tz

THROUGH:

M. Asif Yousafzai
M. ASIF YOUSAFZAI,
ADVOCATE.

VERIFICATION:

It is verified that no other similar Writ Petition has earlier been filed between the same parties.

DEPONENT.

LIST OF BOOKS

1. The Constitution of Pakistan 1973.
2. Any other case law as per need.

ATTESTED

Sanjida

B-10

PESHAWAR HIGH COURT, D.I. KHAN BENCH.

From,

The Additional Registrar,
Peshawar High Court,
Dera Ismail Khan.

To,

1. Director of Education (FATA),
N-W.F.P., Peshawar.
2. Deputy director of education (FATA),
Peshawar.
3. Agency Education Officer,
Miran Shah, N.W.A.

No. 776-78 /Judl:/AR
Dated D.I. Khan the 12-3 /2011.

Subject:

Writ Petition No. 46 of 2011.
Zabihullah ... Versus ... Director Education FATA.

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

Memo:

I am directed to forward herewith a copy of order dated 24.02.2011
subject writ petition passed by Hon'ble Division Bench of this Court along with
writ petition and its annexures. The same be treated as representations
to be decided in accordance with Court order.

ATTESTED



Sajida

ADDITIONAL REGISTRAR

1928

~~11~~
11

PESHAWAR HIGH COURT, D.I.KHAN BENCH
FORM OF ORDER SHEET

S.No.	Date of Proceedings	Order or other Proceedings with signature of Judge
1	2	3
	24/2/2011	<p>WP No.46/2011.</p> <p>Present: Mr.Muhammad Asif Khan Yousufzai advocate for the petitioners.</p> <p>----</p> <p><u>ATTAULLAH KHAN J.-</u> Through this writ petition, the petitioners seeks issuance of directions to the respondents to consider them for appointment on the requisite posts.</p> <p>2. We have heard and considered the arguments of the learned counsel for the petitioners.</p> <p>3. We treat this petition as representation and remit it to the respondents for disposal within a month strictly on merits and in accordance with rules/policy of the government on the subject.</p> <p>4. The writ petition is disposed off accordingly.</p> <p> JUDGE</p> <p> JUDGE</p>

Handwritten notes:
24/2

ISSUE

Addl Registrar
Date. 24/2/2011

ATTESTED

Signature: Sarjide

To
The worthy Director Edu.
PATA Wazirabad road Jhelum.

C-12

Subject: Appeal for implementation of the honourable High Court decision/order dt 24-2-11 in r/p Zabi-khullah and others with petition no 46 of 2011

Res, with great respect it is stated that the High Court has passed order in our favour being appeal no 46 of 2011. The AEO concerned did not take no action uptill and various directions has been passed to AEO by your good self and has not given no attention.

Therefore it is humbly requested in your kind honour that a may kindly be issued a clear order to AEO with no further delay the case.

Thanks in Advance.

Sd/- 20/5/11

Yours obedently,
Zabi-khullah PTC and others
NWS Agency.

Copy to

- 1: The honourable Chief Justice of Peshawar High Court Peshawar KPK for information and your kind notice no action was taken by the AEO concerned.

Put up on file

28/5/11

DA

ATTESTED

Sanyal



FATA SECRETARIAT
DIRECTORATE OF EDUCATION
KHYBER PAKHTUNKHWA, WARSAK ROAD PESHAWAR, PAKISTAN
PHONE: 091-9210166 FAX 091-9210216
No. 7878
Date Pesh: the 2 /6/2011

D-13

To
The Agency Education Officer
North Waziristan Agency

Subject: Appeal/Court Decision
Memo:-

I am directed to enclose herewith an appeal in r/o Zabihullah PTC and others alongwith court decision for implementation and necessary action under intimation to this Directorate.

Endst:No. _____

Deputy Director (Estab)

Copy to:-

P.A to Director Education FATA Local Directorate.

Deputy Director (Estab)

ATTESTED



OFFICE OF THE AGENCY EDUCATION OFFICER
NORTH WAZIRISTAN AGENCY MIRANSHAH

14

OFFICE ORDER

Consequent upon the decision of the honorable Peshawar High Court Peshawar bearing writ petition No. 2768/2011, 568-P/2012 and honorable High Court Peshawar at D.I.Khan bench bearing writ petition No. 46/2011 and Director education FATA order dated 5/12/2013. The following committee is hereby constituted to check /scrutinized the documents and determines the merit / rights of the appellants recorded in the relevant court decision.

1. Umer Niaz Superintended A.E.Office Chairman
2. Taj Muhammad AAEO. Member
3. Sadiq Ali Khan AAEO Member


Agency Education Officer
North Waziristan Agency

Endst: No. 1164-66 /AEOI/NWA dated 26/3/2014.

Copy forwarded to:-

1. The Registrar honourable High Court Peshawar for information.
2. The Registrar honourable High Court Peshawar at D.I. Khan bench.
3. The Director Education FATA Khyber Pakhtunkhwa Peshawar with reference to his order date 5/12/2013.

ATTESTED

Suzide


Agency Education Officer
North Waziristan Agency

From:

The Enquiry Committee
AEO Office Miran Shah.

To:

The Agency Education Officer
North Waziristan Miran Shah.

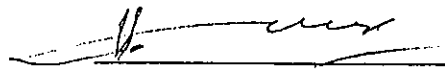
SUBJECT: **ENQUIRY REPORT.**

Memo:

Kindly refer your order dated 26/03/2014 and to state that we the undersigned Scrutinized check the documents and determined the merit of the candidates recorded there in and the applicants in the write petition No. 2768/2011, 568-P/2012 and 46/2011 and found that they deserved appointment as required in the applications. The Court decision may be honoured in favour of the above mentioned write petitioners.

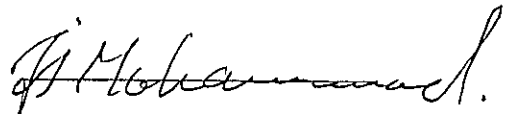
1- Mr. Umer Niaz Khan Supdt

Chairman




2- Taj Muhammad AAEO

Member

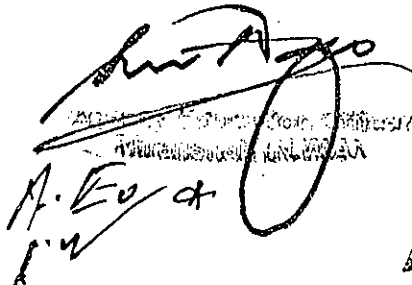


3- Sadiq Ali AAEO

Member



of signed agreed and physically checked.



ATTESTED

Sanjide

OFFICE OF THE AGENCY EDUCATION OFFICER N.W. AGENCY MIRANSHAH

APPOINTMENT ORDER / COURT DECISION

E-16

Consequent upon the implementation of Director Education order No.1216-20 dated 3/2/2014 a large No. of PTC posts are vacated in NWA.

In the light of Peshawar High Court, D.I.Khan Bench decision vide Writ Petition No. 46/2011 dated 24/2/2011 and Director Education FATA K.P.K Peshawar order No.7898 dated 2/6/2011 and direction dated 16/12/2013 and 11/2/2014. The Following candidates are hereby appointed against the vacant post of PTC BPS-7 at Rs: (5800-320-15400) Per Month plus usual allowances as admissible under the rules with effect from 24-2-2011 in the interest of Justice /Public Service.

SN.O	Name	Place of Posting	Remarks
1.	Zabihullah PTC	GPS Jalal Bat Kot	Vacant Post
2.	Hamayun Khan PTC	GPs Badshah Mir khan	Vacant Post
3.	Khalid Rehman	GPS Kharsin	Vacant Post
4.	Matiullah PTC	GPS Chatoon	Vacant Post
5.	Asmatullah PTC	GPS Bahdar Kot	Vacant Post
6.	Khetabullah POTC	GPS Gulab Khel	Vacant Post
7.	Anwar Shamim {PTC	GPS Melowgi	Vacant Post
8.	Salimullah Khan PTC	GPS Noor Khan Kot	Vacant Post
9.	Javid Khan PTC	GPS Anwar Abad	Vacant Post
10.	Umer Hayan PTC	GPS Noor Khan	Vacant Post

Terms condition:-

1. Their appointments are made on Temporary basis and are liable to terminate at any time without any notice. If they wish to resign from their posts they should give One month prior notice or forfeit One month pay in lieu thereof.
2. They should bring their medical certificates from Medical Superintendent AHQ Hospital MRN
3. If they fail to assume their charge within 15 days, their order shall be treated as cancelled.
4. They should be handed over charge if they are not less than 18years and above than 33 years of age.
5. Their original qualification date of Birth and Domicile certificate should be checked and be placed on the record.
6. Their services will be terminated if they found absent for four days continuously from the date of taking over charge.
7. They will be terminated if their certificates found fake/bogus and tempered.

Agency Education Officer
North Waziristan Agency

Ends:- No. 852-57 /Appointment/ PTC/AEO/MRN Dated 4/3 /2014.

Copy To:-

1. The honorable Registrar Peshawar High Court, D.I. Khan Bench w/r to writ petition No.46/2011.
2. The Director of Education (FATA) KPK Peshawar w/r to his letter No. 7898 dated 2/6/2011.
3. The Political Agent NWA Miranshah.
4. The Agency Accounts Officer Miranshah.
5. AAEO Concerned.
5. Candidate concerned.

ATTACHED
Sujid

Agency Education Officer.

OFFICE OF THE AGENCY EDUCATION OFFICER N.W. AGENCY MIRANSHAH
APPOINTMENT ORDER / COURT DECISION

17

Consequent upon the implementation of Director Education order No.1216-20 dated 3/2/2014 a large No. of PTC posts are vacated in NWA.

In the light of Peshawar High Court, D.I.Khan Bench decision vide Writ Petition No. 46/2011 dated 24/2/2011 and Director Education FATA K.P.K Peshawar order No.7898 dated 2/6/2011 and direction dated 16/12/2013 and 11/2/2014. The Following candidates are hereby appointed against the vacant post of PTC BPS-7 at Rs: (5800-320-15400) Per Month plus usual allowances as admissible under the rules with effect from 24-2-011, in the interest of Justice /Public Service.

SN.O	Name	Place of Posting	Remarks
1.	Wasim Khan PTC	GPS Mirsalam jan	Vacant Post
2.	Shabir Khan PTC	GPS Baka Khel Malool Kot	Vacant Post
3.	Rozina Bibi PTC	GGPS Mohd Amir Kot	Vacant Post
4.	Ambreen PTC	GGPS Mohd Amir Kot	Vacant Post
5.	Noor Alida PTC	GGPS bahadar Kot	Vacant Post
6.	Sanjida PTC	GGPS Gul Hawas Kot	Vacant Post
7.	Menhaz Bibi PTC	GGPS Rai Khan Kot	Vacant Post
8.	Riazullah PTC	GPS Khalil Kot	Vacant Post
9.	Yasinullah PTC	GPS Gul Shin Kot	Vacant Post
10.	Nasir ud Din PTC	GPS Dari Wasta	Vacant Post
11.	Kalim Khan PTC	GPS Muzamil Kot	Vacant Post

Terms condition:-

1. Their appointments are made on Temporary basis and are liable to terminate at any time without any notice. If they wish to resign from their posts they should give One month prior notice or forfeit One month pay in lieu thereof.
2. They should bring their medical certificates from Medical Superintendent AHQ Hospital MRN
3. If they fail to assume their charge within 15 days, their order shall be treated as cancelled.
4. They should be handed over charge if they are not less than 18years and above than 33 years of age.
5. Their original qualification date of Birth and Domicile certificate should be checked and be placed on the record.
6. Their services will be terminated if they found absent for four days continuously from the date of taking over charge.
7. They will be terminated if their certificates found fake/bogus and tempered.

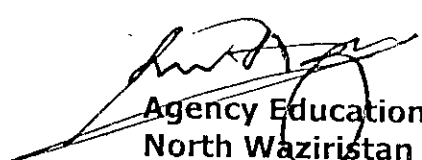
Agency Education Officer
 North Waziristan Agency

Ends:- No. 821-25 /Appointment/ PTC/AEO/MRN Dated 26/2/2014.

Copy To:-

1. The honorable Registrar Peshawar High Court, D.I. Khan Bench w/r to writ petition No.46/2011.
2. The Director of Education (FATA) KPK Peshawar w/r to his letter No. 7898 dated 2/6/2011.
3. The Political Agent NWA Miranshah.
4. The Agency Accounts Officer Miranshah.
5. AAEO Concerned.
5. Candidate concerned.

ATTESTED
 Sajida


 Agency Education Officer
 North Waziristan Agency

OFFICE OF THE AGENCY EDUCATION OFFICER NORTH WAZIRISTAN MIRANSHAH.

.....

TERMINATION ORDER.

In the light of Director of Education FATA Peshawar letter No. 17271-72 dated 19-2/2014. The Appointments orders vide NO.821-25 dated 26.2.2014 and No.852-57 dated 4.3.2014 of the following appointee is hereby withdrawn/cancelled from the date of issue due to Non-Availability of PTC Ex Poste.

S.No.	Name	Place of posting.
1.	Zabikhullah PTC	GPS Jalalbat kot.
2.	Hamayoon Khan PTC	GPS Badshah Mir Khan kot.
3.	Khalid Rehman PTC	GPS Kharsin.
4.	Matiullah PTC	GPS Chatoon.
5.	Aematullah PTC	GPS Bahadur kot.
6.	Khitabullah PTC	GPS Gulab khel.
7.	Anwar shamin PTC	GPS Melogai.
8.	Javed Khan PTC	GPS Anwar bad.
9.	salwullah PTC	GPS Noor Khan kot.
10.	Usar khayson PTC	GPS Noor Khan kot.
11.	Wasim Khan PTC	GPS Mir salam jan.
12.	Ehsabir Khan PTC	GPS Bakka khel Malool kot.
13.	Rozina Bibi PTC	GGPS Mohammed Amir kot.
14.	Amberia PTC	GGPS Mohammed Amir kot.
15.	Noor Alida PTC	GGPS Bahadur kot.
16.	sanjida PTC	GGPS Gul Ewan kot.
17.	Menhaz bibi PTC	GGPS Rai Khan kot.
18.	Rasazullah PTC	GPS Khalil kot.
19.	Yasinullah PTC	GPS Gulshin kot.
20.	Nasirud Din PTC	GPS Dariwasta.
21.	Kalim Khan PTC	GPS Muzamil kot.

Sd

Agency Education officer
North Waziristan Agency.

Enst. No. 1751-55 dated 20/5/2014.

1. The Director of Education FATA Peshawar.
2. The Political Agent NWA.
3. The Agency Accounts officer NWA.
4. Accountant local office.
5. Teacher concerned.

[Signature]
Agency Education officer
North Waziristan Agency.

ATTESTED
Sanjida



OFFICE ORDER

The competent authority (Secretary Social Sector Department) has been pleased to declare all the appointments made in N.W. Agency since 20/6/2013 as null and void being made contrary to the existing recruitment policy and were recruited in the ban period as per result of the enquiry into the case.

(Muhaimmad Islam Bangash)
 Director Education (FATA)

CC 1216-20

Copy to the:-

- 1 Political Agent North Waziristan Agency at Miranshah
- 2 Agency Education Officer N.W. Agency at Miranshah
- 3 Agency Accounts Officer N.W. Agency at Miranshah
- 4 PS to Secretary SSD FATA
- 5 P.A to Director Education FATA

Addl: Director (Estab:)

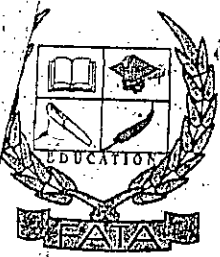
OFFICE OF THE AGENCY EDUCATION OFFICER N.W.AGENCY

Endst: No. 370-415 /AEO/NWA dated 10/02/2014.

The Above cited order is forwarded to the concerned for immediate implementation in letter and spirit. All Heads of concerned schools, AAEO (Male & Female) and AEO Accountant should take necessary action in this regard with proper information to the undersigned within a week positively.

ATTESTED
 Sayida

Agency Education Officer
 North Waziristan Agency



FATA SECRETARIAT
DIRECTORATE OF EDUCATION
KPK WARSAK ROAD PESHAWAR, PAKISTAN
PHONE 091-9210166 FAX 091-9210216

No. 13271 / 1
Date Pesh: the 19 / 02 / 2014

To

The Agency Education Officer
N.W Agency

Subject: RE-APPOINTMENT

Memo:

I am directed to enclose photo copy of DO letter of MNA, N.W. Agency vide No. NA-40-786 NK/N.W Agency dated 17-02-2014 and to state that ban imposed by the Federal Government on fresh recruitment.

Furthermore, re-appointment of community School Teachers are adjustment/regularization as per policy.

You are requested to adjust/regularize community schools teachers as per prescribed policy, please.

Endst, No 13272 / 1

Copy to,

1. PA to Director Education FATA Peshawar.

Asstt: Director (P&D)

Asstt: Director (P&D)

ATTESTED

Saujide

NO 1841 / AEO / Appeal DTC / NWTA

Miranshah dated 6/6/2014

22

From:

The Agency Education Officer
North Waziristan Agency at Miranshah.

To:

The Director Education FATA
Secretariat Peshawar.

Subject:

APPEAL FOR RE-INSTATMENT IN SERVICE.

Memo:

Kindly refer your letter No.7694 dated 12-6-2014 and to state that a large number of vacancies have been vacated due to null and void the appointments made during ban period after 20-6-2013.

In the mean while the Director Education FATA issued a letter vide No. 12.16-20 dated 3-2- 2014, wherein the Community teachers have been regularized may not disturb and restore in their own posts.

In this connection the vacancies were again filed by the Community School teachers.

It is therefore humbly requested that this Office is unable to honour the Court decision due to non availability PST posts.



Agency Education Officer
North Waziristan Agency at Miranshah

ATTESTED



From
The Agency Education officer
North Waziristan Agency.


To
The Director of Education
FATA KPK Peshawar.

Subject:- Vacant Post.

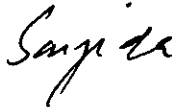
Memo:
Ref: Assistant Director (Mr. Laiq Khan) F&D Directorate
of Education FATA Peshawar Memo: NO. 14408 dated 24.4.2014.

As per report of Assistant Agency Education Officers
regarding vacant Posts of P.S.T(PTC) in N.W. Agency is sent for
further necessary action as demanded by the Community school Teachers.
(List of 14 posts attached).

Agency Education officer
North Waziristan Agency.


ATTESTED

ATTESTED

ATTESTED


OFFICE OF THE AGENCY EDUCATION OFFICER,
NWA, MIRAN SHAH.

From: The Agency Education Officer,
NWA, Miranshah

To: The Director Education FATA,
KPK, Peshawar.

Subject: Implementation of Court Decision Bearing Appeal
No.1516/2011 Ahmad Qadar V/S Agency Education Officer,
NWA Miran Shah

Memo:

Kindly refer to your letter No.20093; dated 11/11/2013 and to state that there is no vacant post to comply with the order/judgment of the Hon'ble Service Tribunal, KPK Peshawar passed in respect of Ahmad Qadar, PTC and others on dated 15.5.2012.

Report is submitted for your kind perusal please.

AGENCY EDUCATION OFFICER
NORTH WAZIRISTAN AGENCY

Endst. No. 10-11 /

Dated 18-12-2013.

Copy to:

Political Agent. NWA, Miran Shah, for information.

Agency Education Officer,
NWA, Miran Shah.

ATTESTED

ATTESTED

Sajida

24

1. Zabirullah PTC SPS Jalat bat Kot.

2. Hamayun Ichan PTC SPS. Bad Shah min 10 km Kot.

3. Ikhair Rehman PTC SPS. Icharbin ✓

21

4. Matiullah PTC SPS. Chalwan ✓

Received

5. Asmabillah PTC SPS. Bahader Kot ✓

To Day

6. Ikhairullah PTC SPS. Gulab Ichel ✓

7. Anwar Shamin PTC SPS. Melogai ✓

8. Javed Ulan PTC SPS. Anwar abad ✓

4/6/2014

9. Salimullah PTC SPS. Noor Ichan Kot ✓

10. Umer Ichan PTC SPS. Noor Ichan Kot ✓

11. Wasim Ichan PTC SPS. Min Salwan Kot ✓

12. Shahin Ichan PTC SPS. Baka Ichel Melool last ✓

13. Rozina btin PTC SPS. Mohd Amin Kot ✓

14. Anwar PTC SPS. Mohd Amin Kot ✓

15. Noor Alida PTC SPS. Bahader Kot ✓

16. Sanjida PTC SPS. Gul Nawan Kot ✓

17. Mehrez bin PTC SPS. Rai Ichan Kot ✓

18. Rasidullah PTC SPS. Icharbin Kot ✓

19. Yasirullah PTC SPS. Gul Shain Kot ✓

20. Rasid - u - din PTC SPS. Dari wasta ✓

21. Ikhair Ulan PTC SPS. Muzamil Kot ✓

ATTACHED

Sayda.

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

OF 2014

SANJEEDA

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Department

(RESPONDENT)
(DEFENDANT)

I/We Sanjeeda

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. _____/_____/2014

Sanjeeda
CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No: 1172/2014

SanjeedaAppellant.

VERSUS

1. The Additional Chief Secretary FATA Secretariat, Warsak Road, Peshawar.
2. The Director Education FATA, FATA Secretariat, Peshawar.
3. The Agency Education Officer, North Waziristan Agency Respondents.

Para-wise comments on behalf of respondent No: 2 & 3.

Respectfully Sheweth:

Preliminary Objection

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant has not come to this Honorable Tribunal with clean hands.
3. That the appellant has concealed material facts from this Honorable Tribunal.
4. That the appellant is estopped by his own conduct to bring the present appeal.
5. That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
6. That the appeal is barred by law and no departmental appeal is made to the competent authority against the impugned order. Hence not maintainable under Section-4 of Service Tribunal Act.

On Facts:

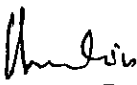
1. Subject to proof.
2. Incorrect. The writ petition earlier filed by the petitioner/appellant clearly showed, that they pray before the honorable court for issuance of writ to direct the respondent i.e. Agency Education Officer for appointment against project communal PST post, so it is incorrect, that they had file the same petition for permanent PST post. (Copy of writ petition already attached as Annexure (A) by appellant.
3. The committee so constituted has wrongly/mistakenly implemented court directions dated 24.02.2011. As the honorable court has directed to dispose of the case of the petitioners as per law/policy, (copy already attached as Annexure-B by appellant). Whereas committee has altogether ignored the fact, that appellant had filed their case for appointment against Project PST posts, which was not advertised, nor applications were called from the appellants, and furthermore, no merit record have been shown by the committee from which it can be inferred that they were entitled for appointment.
4. Incorrect. The appointment orders were issued without due course of law/policy, as direct inductions without any advertisement/merit and policy is liable to be cancelled/withdrawn. Furthermore, the appellant appointment were made without taking into consideration the availability of vacant posts, therefore, respondent department legally interfered and rectified the matter as was required.
5. Incorrect. The cancellation/withdrawn order dated 20.05.2014 is legal, as under the law, the competent authority where can make an order also can rescind an order under the law.
6. The competent authority cancelled/withdrawn the appointment order of the appellant being repugnant to rules/policy.

Grounds:


- A. Incorrect. That the impugned order dated 20.05.2014 is in accordance with law/policy.
- B. Incorrect. Respondents have acted according to law/policy, as the appellant was wrongly appointed, therefore, their appointment was liable to be struck down under the law.
- C. Incorrect. The show cause notice is usually issued in absentees cases, whereas case of the appellant was of serious nature being a loss to national exchequer, because there were no available vacant posts on which appellant were appointed which was a sheer violation of law/policy. Further an illegal act can not create a right.
- D. Incorrect. The appellant were properly informed to submit their initial appointment and service book which they did not so provide, and it is clearly showed on their part that they were quiet known the fact of their illegal appointment.
- E. Incorrect. The rule of locus poenitentiae is not applicable in an illegal rules.
- F. Incorrect. Hence denied.
- G. The respondents also seek permission to advance other grounds and proofs at the time of arguments.

In light of the above facts it is humbly requested to please dismiss the appeal with cost throughout.

Respondent No. 2.


For Director Education FATA.

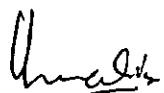
Respondent No. 3.


for Agency Education Officer,
North Wazisistan Agency.


AFFIDAVIT

We the above respondents do hereby declare and affirm that the above comments are true and correct to the best of our Knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Respondent No. 2.


For Director Education FATA.

Respondent No. 3.


for Agency Education Officer,
North Wazisistan Agency.