

BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR

In Service Appeal No.1618/2023

4.01-24

Akbar Ali

.... Petitioner

VS

Government of Khyber Pakhtunkhwa, & Others

.... Respondents

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Deponent

BEFORE THE HON'BLE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1618/2023

AKBAR ALI WAITER

VERSUS

**THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH THE
SECRETARY TOURISM AND OTHERS**

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 10193
Dated 2-1-2024

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENT SUBJECT AS UNDER

Respectfully Sheweth,

Preliminary objections:

- i. That the appellant has no cause of action to file the instant services appeal.
- ii. That the appeal in hand is not maintainable in its present form.
- iii. That the appeal is bad for Mis-joinder/Non-joinder of unnecessary and necessary parties.
- iv. That under section 4(6) of Khyber Pakhtunkhwa Services Tribunal Act 1974, no appeal shall lie in the tribunal against an order or decision of a departmental authority regarding the fitness or otherwise of a person to be appointed to or to hold a particular post or to be promoted a higher post or cadre on this score alone the appeal is not maintainable.
- v. That the appeal is based on misrepresentation of facts, hence the appellant is estopped by his conduct to file the appeal.
- vi. That the appellant has got all his back benefits along with increments and salaries etc.
- vii. That the appellant has already been conditionally regularized vide this department notification dated 21.01.2022 as a waiter in BS-06.
- viii. That the appellant has not come to the court with clean hands.
- ix. That the appeal is barred by law and limitation.

ON FACTS

1. Pertains to the record.
2. Incorrect. The appellant was an employee of Pakistan, Austrian Institute of Tourism and Hotel Management (PAITHOM) which is a corporate body registered under the Societies Act, XXXI of 1860 on 4th June 2003 as a Joint Venture between the Government of Pakistan and the Government of Austria to train manpower in the Hospitality & Tourism Sector. After the promulgation of the 18th Constitutional Amendment, PAITHOM was devolved to the Province of Khyber Pakhtunkhwa in 2011(Annex-A).

As PAITHOM was a corporate body under its respective Board of Directors and its employees were governed under the Companies Act, therefore, the employees of PAITHOM were not government servants within the meaning of the Khyber Pakhtunkhwa Civil Servant Act 1973 and they were not regularized as civil servants. Their status of service as per section 08(iv)(b) of the Khyber Pakhtunkhwa Tourism Act 2019 reproduced below:-

The employees of the corporation and institute shall be examined by a scrutiny committee, to be reconstituted in the prescribed manner and recommend to the board for their retention in the service of the authority or otherwise. Existing employee's performance to be evaluated and better human resource be retained. Those corporation and institute employees whose services are regularized under the Act by the Board shall be governed in accordance with the service regulations to be made under this act.

In CPLA No 556-558-P of 2018," the learned Addl AG further stated that before the High Court Parties have apparently committed fraud and made a misrepresentation and the High Court has wrongly exercised jurisdiction under Article 199 of the constitution and thus the petitioners will avail the remedy by way of an application under section 12/2CPC, to ensure that whatever wrong has been committed through the impugned order is corrected. In view of the submission of the learned AAG, we find nothing to enter into the merits of these cases, all the petitions are, therefore, dismissed. Applications for condonation of delay are also disposed of." (Annex-B) consequently the department filed 12/2CPC in the August Peshawar High court.

3. Incorrect. The department filed CPLA No. 555,556-P of 2018 in the Supreme Court of Pakistan against the regularization order passed by the Peshawar High Court which was dismissed as the same was time-barred by 21 days, however, the Supreme Court took cognizance of the facts and the department was directed to file 12/2 CPC in the August Peshawar High Court as the employees of PAITHOM misrepresented the case in High Court. The department submitted WP No. 507-M/2017 under 12/2 CPC against the wrongful regularization of the employees of PAITHOM in the Peshawar High Court. In the meanwhile the employees of PAITHOM filed CM No. 3-M/2020 which was clubbed with WP No. 507-M/2017 and the subject 12/2 CPC petition was again dismissed and the department was directed to implement the court Judgment of 18.04.2018.
4. Incorrect. As the employees of PAITHOM were corporate employees, therefore, they were not regularized as civil servants. Therefore, another COC No. 90 was filed by the employees of PAITHOM in the Peshawar High Court Mingora Bench in COC No. 54-M/2019 for the implementation of the judgment of the Peshawar High Court issued on 18.04.2018. In the meanwhile, the advice of the Law Department was obtained and the Advocate General also advised this department that judgment dated 18.04.2018 may be conditionally implemented. Therefore the department conditionally regularized the employees on 21st January 2022 (Annex-C). The appellants submitted affidavits and are getting regular salaries on the position on which they were conditionally regularized (Annex-D).

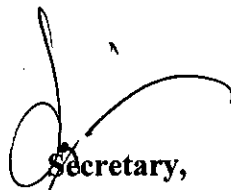
5. Incorrect. The appellant was conditionally regularized on 21st January on the directions of the honorable Peshawar High Court Mingora Bench. The department has neither notified its rules nor regulations, therefore the in-charge PAITHOM was not competent to grant promotion to the appellant.
6. Incorrect. The office order dated 19.02.2020 regarding approval of Promotion was misuse of power/illegal/unlawful and without legal backing and it was held in abeyance by the Department vide letter dated 22.06.2020(Annex-E).
7. Incorrect. The inquiry was a fact-finding inquiry regarding the misuse of powers by the in-charge PAITHOM and the appellant was called for evidence only.
8. Pertains to the record. The application was processed and filed as was not based on facts (Annex-F).
9. Incorrect.


Mr. Hurmat Yab Chief instructor BS-19 PAITHOM had rendered himself liable to be proceeded against within the meaning of rule 03 of the Khyber Pakhtunkhwa government servants efficiency and discipline rules 2011, due to the allegations that he "*Promoted of (07) employees of PAITHOM vide office order 19.02.2020 and 02.03.2020, without prior approval of the competent Authority, since the case of regularization of PAITHOM was adjudicated before the court of law at that time. That he predesignated the post of supervisor (BS-07) to House officer (BS-16) in favor of Mr. Haq Nawaz vide office order dated 20.06.2013, without approval of the competent authority*". The chief secretary Khyber Pakhtunkhwa nominated Mr. Amir Latif member 01 BOR as inquiry officer (Annex-G). The inquiry officer vide his letter dated 06.07.2023 has submitted the inquiry report with the findings that the allegations stand proved against Mr. Hurmat Yab Chief Instructor BS-19(Annex-H).

REPLY ON GROUNDS

- A. Incorrect.
- B. Incorrect. The in-charge PAITHOM has wrongly exercised his powers in contravention of the Provincial Government's laws and acts. The department has neither notified its rules nor its regulations. The appellant was a corporate employee conditionally regularized on the directions of the courts.
- C. Incorrect. The in-charge PAITHOM was not competent under any law of the provincial government to grant promotions. Therefore the department held the same in abeyance as there was no legal base for such promotions.
- D. Incorrect. The appellant was promoted in violation of the rules and it was in the knowledge of the appellant but he remained tight-lipped in taking financial benefits from an illegal promotion in utter violation of the judgments of the honourable courts.
- E. Incorrect. The subject fact-finding inquiry was conducted against Mr. Hurmat Yab by promoting the employees of PAITHOM in the absence of rules and regulations including the appellant. The inquiry committee vide report dated 06.07.2023 has proved the charges against Mr. Hurmat Yab In-charge PAITHOM that he has misused his power/ exceeded his powers and the case may be sent to the establishment department for conducting formal inquiry.

- F. Incorrect. The officers mentioned were not promoted by the department but rather regularized by the order of the court in writ petition No. 546-M/2017 and 655-M/2017.
- G. Incorrect. The mentioned fact-finding inquiry was conducted against Mr. Hurmat Yab in charge of PAITHOM for misuse of power by promoting the employees of PAITHOM in the absence of rules and regulations.
- H. Incorrect. A CP No. 109-P/2021 titled Haq Nawaz and others, CP No. 58-P/2021 titled Naseeb Gul and others, CP No. 110-P/2021 titled Liaqat Raza and others and a CP No. 108-p/2021 titled Waheed Murad and others are pending in the Supreme Court of Pakistan against the regularization of the employees of PAITHOM therefore the instant appeal is not maintainable at this stage.
- I. Incorrect.
- J. The promotion of the appellant was illegal therefore, ignorance of the law is not an excuse, for taking financial benefits from an illegal promotion.
- K. The appellant was promoted in contravention of the law as stated above.
- L. Pertain to the record.


Secretary,
Culture Tourism Archaeology and
Museums Department
Respondent No. 01
MUTAHIR ZEB


Additional Secretary,
Culture Tourism Archaeology and
Museums Department
Respondent no 02.
YASIR ALI KHAN



GOVERNMENT OF, KHYBER PAKHTUNKHWA,
CULTURE & TOURISM DEPARTMENT.

13-A, KHYBER ROAD, PESHAWAR CANTT:



091- 9223448.



091-9212535.



Sportslitigation@gmail.com

NO. SO (LIT)/C&TD/1- 565/2023/ Akbar Ali
Dated Peshawar the, 28 December , 2023.

AUTHORITY LETTER

Mr. Muhammad Javed (BPS-17), Section Officer, is hereby authorized to submit the joint Parawise comments and attend the Service Tribunal, Peshawar in Service Appeal No. 1618/2023 titled "Akbar Ali vs Govt. of Khyber Pakhtunkhwa & others "on behalf of the undersigned till the final decision of the case.

(Handwritten signature and date: 28/12/23)

**Secretary to Govt. of Khyber Pakhtunkhwa,
Culture, Tourism & Museums Department.**

BEFORE THE SERVICE TRIBUNAL, PESHAWAR

(2)

Service Appeal No.1618/2023

Akbar Ali & Others

.... Petitioner

VS

Government of Khyber Pakhtunkhwa & Others

.... Respondents

Affidavit

I, Yasir. Ali Khan, Additional Secretary, Culture & Tourism Department Khyber Pakhtunkhwa, do hereby solemnly affirm and declare an oath that the contents of Parawise Comments in the above Writ Petition are true and correct to the best of my knowledge and belief and nothing has been concealed form this Hon'ble Court. It is further stated on the oath that in this appeal the answering respondents have neither been placed ex-parte nor their defense is struck off */cost.*

Yasir Ali Khan
DEPONENT
CNIC 17201-5344713-7
Cell No. 03W-5959407

Identified By

LD. ADVOCATE GENERAL
KHYBER PAKHTUNKHWA



Annex: A

3

TO BE PUBLISHED IN THE NEXT ISSUE
OF GAZETTE OF PAKISTAN PART-I

No.3 (6)2010 ADMIN
GOVERNMENT OF PAKISTAN
MINISTRY OF TOURISM
TOURISM DIVISION

Islamabad, the 31st March, 2011.

NOTIFICATION

On reorganization of Federal Secretariat in pursuance of Constitution (Eighteenth Amendment) Act, 2010 (Act No. X of 2010) the following Organization (alongwith employees) under the Ministry of Tourism is transferred to the Government of Khyber Pakhtunkhwa: -

1. Pakistan Austrian Institute of Tourism and Hotel Management (PAITHOM) temporarily located at PTDC's Tourist Information Centre, Club Annexe, Jinnah Road, Abbottabad with its building under occupation of Pakistan Army, Gul Bagh, Swat.

(SAMREEN ZAHARA)
Joint Secretary (Admin)

The Manager,
Printing Corporation Pakistan Press,
Karachi.

Copy to: -

1. The Chairman, Implementation Commission on the 18th Amendment, Islamabad.
2. The Chief Secretary, Government of The Khyber Pakhtunkhwa, Peshawar
3. The Secretary, Inter-Provincial Coordination Division, Islamabad.
4. The Secretary, Cabinet Division, Islamabad.
5. The Secretary, Establishment Division, Islamabad.
6. The Secretary, Finance Division, Islamabad.
7. The Secretary, Planning & Development Division, Islamabad.
8. The Addl. Secretary (Mian Muhammad Younas), Finance Division, Islamabad.
9. The AGPR Islamabad / The AGPR Sub Office Peshawar.
10. Mr. Attiq Hussain Khokhar, Director General, Management Services Wing, Establishment Division, 4th Floor, Shaheed-e-Millat Sect., Islamabad, with copy the list of employees of the Institute.
11. The Secretary, Sports, Culture, Tourism, Archaeology, Museums & Youth Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar, with copy the list of employees of the Institute.
12. The Managing Director, PTDC, Rawalpindi.
13. Mr. Hurmat Yab Khan, Chief Instructor/Incharge, Pakistan Austrian Institute of Tourism and Hotel Management (PAITHOM), PTDC's Tourist Information Centre, Club Annexe, Jinnah Road, Abbottabad.

(SAMREEN ZAHARA)
Joint Secretary (Admin)

Advert

Annex: B

B

(4)

(3)

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

(13)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sajjad Ali Shah

C.Ps.No.556-558-P of 2018

(Against the order dated 18.04.2018, passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat in W.P.No.846-M/2017)

**Govt. of KP through Secretary Sports, (in all cases)
Culture, Tourism, Youth Affairs,
Archaeology & Museum Peshawar.**

...Petitioner (s)

Versus

**Waheed Murad & another.
Haq Nawaz & others.
Liaquat Raza & another.**

(in CP No.556-P)
(in CP No.557-P)
(in CP No.558-P)
...Respondent(s)

For the Petitioner (s) : Barrister Qasim Wadood, Addl.A.G.
KP
Nisar Muhammad, S.O. Sports &
Tourism

For the Respondent(s) : N.R.

Date of Hearing : 06.01.2020

ORDER

Gulzar Ahmed, CJ:- These petitions are barred by 21 days. Though the application for condonation of delay has been filed but the learned Additional Advocate General, states that the ground taken in the application for condonation of delay is that of late supply of documents and lengthy correspondence between various tiers of the department. Such ground has never been accepted by this Court to be a sufficient cause for condonation of delay. Learned Addl.A.G. further states that before the High Court, parties have apparently committed fraud and made a

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

Attest



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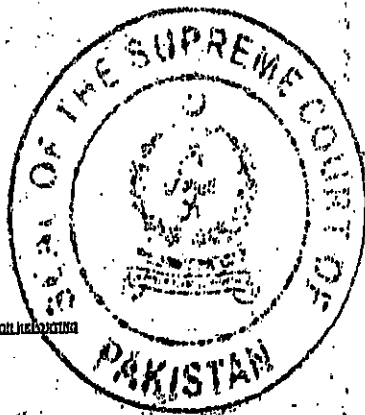
Ps.No.556-558-P of 2018

-2-

misrepresentation and the High Court itself has wrongly exercised jurisdiction under Article 199 of the Constitution and thus, the petitioner will avail remedy by way of an application under Section 12(2) CPC, to ensure that whatever wrong has been done through the impugned order, is corrected.

2. In view of the submission of the learned Addl.A.G., we find nothing to enter into merits of these cases. All the petitions are, therefore, dismissed. Applications for condonation of delay are also disposed of.

Sd/-HCJ
Sd/-J
Sd/-J



Certified to be True

Senior Court Assst
Supreme Court of Pak
Islamabad

Recd-1
ISLAMABAD
02.01.2020
NOT APPROVED FOR JUDGEMENT
KAWAN

11/1/20

Attest

Handwritten signature

GR No: 169/20 Civil/Criminal
Date of Presentation: 16-1-20
No of Words: 6
No of Folios: 6
Requisition Fee Rs: 600
Copy Fee in: 2-25
Court Fee Stamp: 8 11/1/20

EXTRAORDINARY
GOVERNMENTREGISTERED NO. PH
G A Z E T T E**KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, WEDNESDAY, 16th MARCH, 2022.GOVERNMENT OF KHYBER PAKHTUNKHWA, SPORTS, TOURISM, ARCHAEOLOGY,
MUSEUMS & YOUTH AFFAIRS DEPARTMENT**NOTIFICATION**Dated Peshawar, the 21st January, 2022.

No. SO(Tourism)5-81/2020/ 4360-88: Pursuant to the Peshawar High Court Mingora Bench decision in W.P No. 546-M/2017 dated 18.04.2018 read with COC No. 55-M/2019, W.P No. 507-M/2017 dated: 18.04.2018 read with COC No. 54-M/2019, W.P No. 655-M/2017 read with COC No. 55-M/2019 and W.P No. 250-M/2018 and in light of the opinion of Advocate General, Khyber Pakhtunkhwa contained in Letter dated: 25.02.2021 duly endorsed by Law Department, Khyber Pakhtunkhwa vide letter dated 04.03.2021, the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) is pleased to conditionally regularize the services of the following employees of Pakistan Austrian Institute of Tourism and Hotel Management (PAITHOM), Swat as Civil Servants, with effect from the dates mentioned against each, subject to final decision of the CPLAs No. 108-P/2021, No. 109-P/2021, No. 110-P/2021 and No. 58-P/2021 filed by Sports & Tourism Department, Khyber Pakhtunkhwa in the Supreme Court of Pakistan, under the terms and conditions mentioned below.

S#	Name of the Employee	Designation with BPS	Date of Regularization
1	Mr. Hurmat Yab Khan S/o Hammeayat Yab Khan	Chief Instructor (BS-19)	22.10.2007
2	Mr. Liaqat Raza S/o Said Raza	Administrative Officer (BS-17)	17.10.2007
3	Mr. Waheed Murad S/o Murad Ali	Instructor (BS-17)	01.12.2011
4	Mr. Haq Nawaz S/o Aziz ur Rehman	Supervisor (BS-07)	01.07.2008
5	Mr. Ali Shah S/o Habibullah	Waiter (BS-06)	01.07.2008
6	Mr. Akbar Hussain S/o Mohammad Saeed	Waiter (BS-06)	01.07.2008
7	Mr. Akbar Ali Khan S/o Shah Wazir Khan	Waiter (BS-06)	01.07.2008
8	Mr. Nisar Ul Haq S/o Muhammad Rahim	Waiter (BS-06)	01.07.2008
9	Mr. Adil Shah Mian S/o Mian Muazam	Waiter (BS-06)	01.07.2008
10	Mr. Israr Ali S/o Sardar Ali	Waiter (BS-06)	01.07.2008
11	Mr. Abid Shah S/o Mian Muazam	Waiter (BS-06)	01.07.2008

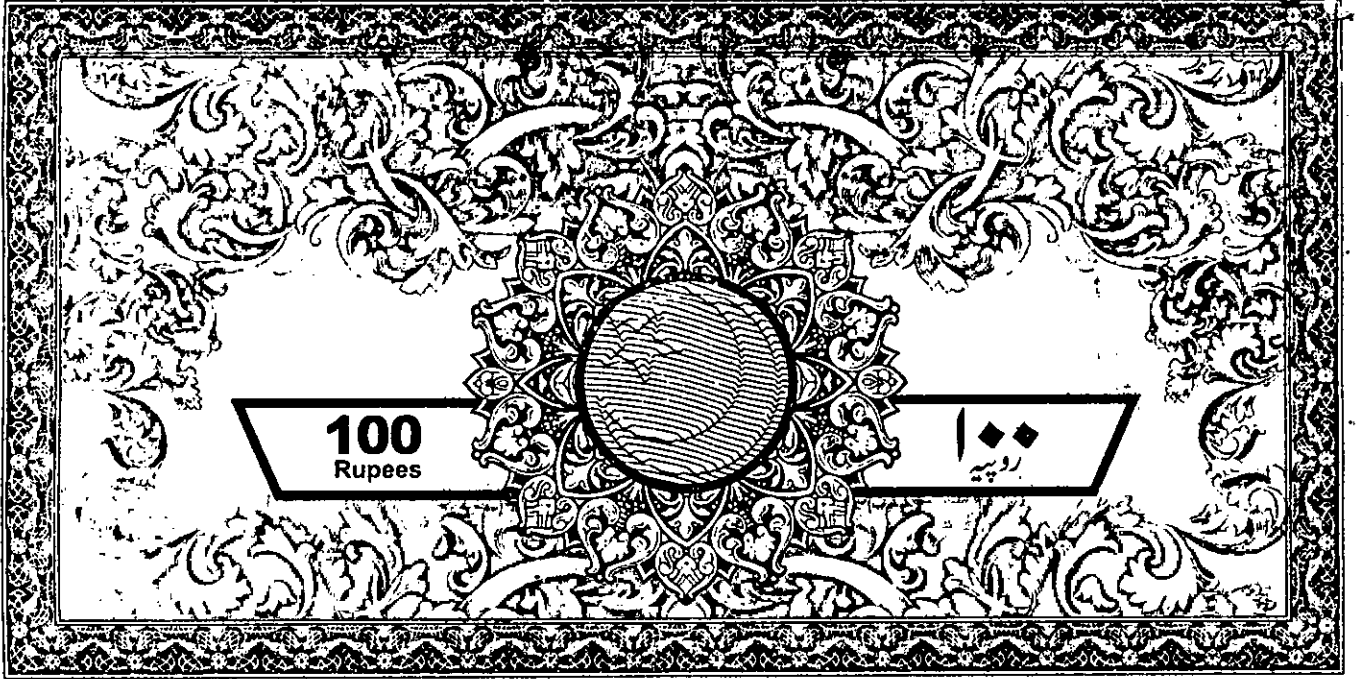
A. F. E. S. J.

12	Mr. Javed Iqbal Khan S/o Majed Ullah Khan	Receptionist (BS-05)	01.07.2008
13	Mr. Nasrullah Khan S/o Shah Rasool	Electrician (BS-05)	01.07.2008
14	Mr. Asghar Shah S/o Farooq Shah	Room (BS-05) Attendant	01.07.2008
15	Mr. Tahir Khan S/o Pir Mohammad Khan	Room (BS-05) Attendant	01.07.2008
16	Mr. Mian Sher Ali S/o Mian Syed Zahir	Washer / Presser (BS-05)	01.07.2008
17	Mr. Arshad S/o Muhammad Zaman	Washer / Presser (BS-05)	01.07.2008
18	Mr. Mehboob-Ur-Rehman S/o Toli Khan	Washer / Presser (BS-05)	01.07.2008
19	Mr. Murad Ali S/o Qubad	Cook (BS-03)	01.07.2008
20	Mr. Mumtaz Ali S/o Gul Rahim	Cook (BS-03)	01.07.2008
21	Mr. Akbar Khan S/o Muhammad Ghani	Cook (BS-03)	01.07.2008
22	Mr. Abdul Khaliq S/o Fazal Muhammad	Office Attendant (BS-03)	01.07.2008
23	Mr. Ghafoor Rehman S/o Fazal-e-Subhan	Helper (BS-03)	01.07.2008
24	Mr. Sher Zaman S/o Muhammad Ghafoor	Gardner (BS-03)	01.07.2008
25	Mr. Naseeb Gul S/o Rozi Gul	Gardner (BS-03)	01.07.2008
26	Mr. Muqarrab Shah S/o Mohammad Qamar	Security Guard (BS-03)	01.07.2008
27	Mr. Mohibullah S/o Muhammad Ismail	Security Guard (BS-03)	01.07.2008

TERMS AND CONDITIONS:

- i. The services of all the employees of Pakistan Austrian Institute of Tourism and Hotel Management (PAITHOM) shall be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and rules framed thereunder.
 - ii. They will be governed by the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 and Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987 and any other instructions which may be issued by the Government from time to time.
 - iii. They will not be entitled to TA / DA on appointment.
2. In case the above terms and conditions are acceptable, an **UNDERTAKING** to this effect on a Judicial Stamp Paper duly attested by the Oath Commissioner should be produced in Sports, Tourism, Youth Affairs, Culture, Archaeology & Museums Department, Khyber Pakhtunkhwa and submit arrival within 15 days on the receipt of this Notification.

**Secretary to Government of Khyber Pakhtunkhwa
Sports, Tourism, Archaeology, Museums & Youth
Affairs Department**



حلف نامہ

محکمہ کھیل اور سیاحت، خیبر پختونخوا کے نوٹیفکیشن نمبر SO(Tourism)/5-81/2020/4350-88 مورخہ 21-01-2022 کے تحت میں اکبر علی خان ولد شاہ وزیر خان ویٹر (BS-06)، پاکستان آسٹریا انسٹی ٹیوٹ آف ٹورازم اینڈ ہوٹل مینجمنٹ (PAITHOM) نوٹیفکیشن میں مذکور شرائط و ضوابط کو قبول کرتا ہے۔

Attest
SP

(Signature)

اکبر علی خان

ویٹر (BS-06)

شناختی کارڈ نمبر 1-15602-0287291



اکبر علی خان 596 11/02/2022

~~Khan Muhammad~~
STAMP VENDOR
District Courts Gultada Swat

District Comptroller of Accounts
Swat
08 FEB 2022
District Courts Swat

Annex: E

E 9

52

Annex



GOVERNMENT OF
GOVERNMENT OF KHYBER PAKHTUNKHWA,
SPORTS, TOURISM, ARCHAEOLOGY, YOUTH AFFAIRS &
MUSEUMS DEPARTMENT.
13-A, KHYBER ROAD, PESHAWAR CANTT.

No: SO (T)5-81/2016 / 7054-56
Dated: Peshawar the 22nd June, 2020

To: The Incharge,
PAITHOM, Swat.


SUBJECT: i) APPROVAL OF PROMOTIONS
ii) ENDORSEMENT OF APPROVAL OF UP-GRADATION OF POSTS
UNDER HIGH COURT DECISION

I am directed to refer to your office letters No. 3(1)/2011/PAITHOM-ADMN/Vol-IV dated: 19.02.2020 and No. 3(1)/2011/PAITHOM-ADMN/Vol-IV dated: 18.02.2020 on the subjects noted above and to state that both the cases may be held in abeyance till final outcome of the court proceedings as per directives of the competent authority.


Section Officer (Tourism)

Copy forwarded for information to:

1. PS to Secretary, Sports & Tourism Department, Khyber Pakhtunkhwa.
2. PA to Additional Secretary-I, Sports & Tourism Department


Section Officer (Tourism)

Handwritten notes:
A...
BT


ATTESTED

حکومت خیبر پختونخواہ، منقار پشاور

SECRETARY
Culture, Tourism,
Archaeology & Museums Department
Dairy No. 27/05/23
Date: 27/05/23

عنوان: درخواست برائے بحال پروموشن
آڈر مورخہ 19-2-2020 (سائیل نمبر 2، نمبر 3)

صالح عالی

گزارش بتاتی ہے کہ سائیلن ہیٹیم زیر نڈرال حکمہ سیاحت
خیبر پختونخواہ گزشتہ 16 سالوں سے ڈیوٹی کے فرائض سرانجام دینے
چلے آ رہے ہیں۔ عدالت عالیہ پشاور پائی کورٹ منٹورہ بیچ دار قضاہ
سوات کے فیصلہ و حکم مورخہ 18/4/2018 کے تحت تمام ہیٹیم ملازمین کو
صنادر کیا نقل حکم و فیصلہ جھڈی الف میں لکھا ہے۔

2- بعد از حکمہ سیاحت سائیلن کے خلاف CPLA میں چلے گئے جو
کہ مورخہ 11/1/2020 کا کو سائیلن کے حق میں فیصلہ دینے پورے
اپیل خارج کر دی نقل حکم و فیصلہ عدالت عظمیٰ جھڈی ب میں لکھا ہے۔

3- فیصلہ پیر ملڈر آدر کے لیے سائیلن نے دوبارہ عدالت عالیہ سے تریج
COC رجوع کیا جو کہ عدالت عالیہ نے مورخہ 15/12/2022 کو فیصلہ سیاحت
پورے 2 ماہ میں مکمل ملڈر آدر کی ہدایت جاری کیا۔ نقل حکم و فیصلہ
COC جھڈی ج لکھا ہے۔

4- حکمہ سیاحت نے مورخہ 21/1/2021 کو سول سرونڈ کا نوٹیفیکیشن جاری
کیا مورخہ 1-8-2018 سے تیلن بد قسمتی حکومت خیبر پختونخواہ کی
جانب سے 2015 میں تمام صوبائی ملازمین کو گریڈ 15 کو
آپ گریڈ کیا ہے تیلن ہیٹیم ملازمین تا حال محروم ہیں۔ نقل
نوٹیفیکیشن آپ گریڈیشن جھڈی ملڈر ج میں لکھا ہے۔

Atk
#2

22/05/23
Add Secy

Dr. (Tahsin)
27/05/2023

5- مورخہ 2-2-2020 کو انچارج ہیڈم نے سائیل فلپ 2 اور فلپ 3 کا کارڈنگی کو مٹھن کن قرار دیتے ہوئے پروموشن کا حکم جاری کیا اور الفارمیشن کے لیے ایک کاپی محکمہ سباحت کو ارسال کیے۔ مذکورہ پروموشن آرڈر پر سائیلین نے چار ماہ کے تنخواہیں بھی وصول کیے۔ نقل آرڈر کاپی پروموشن اور سلیزی شیڈول جنڈری میں لف ہے۔

6- مورخہ 22-6-2020 کو محکمہ سباحت نے پشاور ہائی کورٹ میں کیس زیر سماعت ہونے کا حوالہ دیتے ہوئے مذکورہ بالا پروموشن کو فیصلہ کے آنے تک عارض طور پر روک دیا تھا۔ نقل لیٹر جنڈری سباحت جنڈری ل میں لف ہے۔

7- چونکہ عدالت عالیہ کے تمام فیصلے سائیلین کے حق میں آچکے ہیں۔

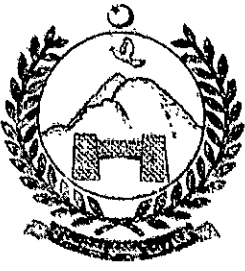
لہذا بذریعہ درخواست لہذا استدعا یہاں ہے کہ حکم پروموشن

مورخہ 2-2-2020 میں سائیل فلپ 2 اور فلپ 3 کو بحال کیا جائے اور جو اب گریڈیشن 2015 میں ہوئے ہیں کو بھی تمام ہیڈم سٹاف گریڈ 15 پر لایا جائے تاکہ حکم صادر فرمائیں تعینت لفازیشن ہوئی

الفاضل
سائیل فلپ 2 - الفارمیشن
سائیل فلپ 3 - قاری لفرمیشن
ہیڈم سباحت
ہیڈم سباحت

کلاسٹک
[Signature]

مورخہ 22/5/2023



Annex: G1 *G1* 12
**GOVERNMENT OF KHYBER PAKHTUNKHWA,
CULTURE, TOURISM, ARCHAEOLOGY & MUSEUMS
DEPARTMENT.**

Dated Peshawar 30th May, 2023

NOTIFICATION:

No. SO(T)/5-81/PAITHOM/2023/3553-59 : The Competent Authority (Chief Secretary, Khyber Pakhtunkhwa) is pleased to appoint Mr. Amer Latif (PCS EG BS-20), Member-I, Board of Revenue, Revenue & Estate Department as Inquiry Officer to conduct inquiry against Mr. Hurmat Yaab Khan, Chief Instructor (BS-19), Pakistan Austrian Institute of Tourism & Hotel Management (PAITHOM) for the charges mentioned in the Charge Sheet and Statement of Allegations.

2. The Inquiry Officer shall submit report alongwith recommendations within 30 days positively.

-Sd-

Secretary to Government of Khyber Pakhtunkhwa
Culture, Tourism, Archaeology & Museums Department

Endst: No. & Date even:

Copy forwarded to:

1. Mr. Amer Latif (PCS EG BS-20), Member-I, Board of Revenue, Revenue & Estate Department, Khyber Pakhtunkhwa alongwith copy of inquiry report, Charge Sheet and Statement of Allegations.
2. Chief Instructor (PAITHOM), Gulibagh Swat alongwith copy of Charge Sheet and Statement of Allegations.
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. PS to Secretary, Establishment Department, Khyber Pakhtunkhwa.
5. PS to Secretary Culture & Tourism Department Khyber Pakhtunkhwa.
6. PS to AS, Culture & Tourism Department.
7. PA to DS (Tourism), Culture & Tourism Department.
8. Master File.

AkhlAQ Ahmad
(AKHLAQ AHMAD)
SECTION OFFICER (TOURISM)

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30/05/2023

Annex: H

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Confidential

**GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE,
REVENUE & ESTATE DEPARTMENT**

091-9210553

No. PS to MBR-I/ Inq/Tourism 15971-76

Dated 06, 07.2023

To



The Section Officer (Tourism)
Culture, Tourism, Archaeology & Museum Department.
Govt: of Khyber Pakhtunkhwa.

Subject:

**INQUIRY AGAINST MR. HURMAT YAAB, CHIEF
INSTRUCTOR (BPS-19), PAKISTAN AUSTRIAN INSTITUTE OF
TOURISM & HOTEL MANAGEMENT**

I am directed to refer to your Notification bearing No. SO (T)/5-81/PAITHOM/2023/3553-59 dated 30th May, 2023 and to enclose herewith inquiry report containing five (05) pages alongwith Annexures 01 to 14 (pages 01 to 164) for further necessary action please.



PS to Member - 1
Board of Revenue

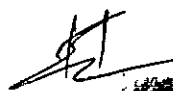
Endst: No. and dated even:

Copy forwarded to the: -

1. PSO to Chief Secretary, Khyber Pakhtunkhwa.
2. PS to Secretary, Establishment Department Khyber Pakhtunkhwa.
3. PS to Secretary Culture & Tourism Department Khyber Pakhtunkhwa.
4. PS to AS, Culture & Tourism Department.
5. PA to DS (Tourism), Culture & Tourism Department.



PS to Member - 1
Board of Revenue





Report of inquiry proceedings against Mr. Hurmat Yab Khan Chief Instructor, Pakistan-Austria Institute of Tourism and Hotel Management

Preliminary

This inquiry report, hereinafter called report is based on inquiry proceedings, hereinafter called inquiry, conducted after Culture, Tourism, Archaeology & Museum Department Khyber Pakhtunkhwa, hereinafter called department, Notification No. SO (T)/5-81/PAITHOM/2023/3553-59 dated 30th May, 2023. This Inquiry has been initiated and completed against Mr. Hurmat Yab Khan, the Accused Officer hereinafter called AO who is posted as Chief Instructor at the Pakistan-Austria Institute of Tourism and Hotel Management, hereinafter called PAITHOM.

Proceedings of inquiry are annexed as **Annexure-1** to this report in the form of inquiry Order Sheet. Letter No.PS to MBR-I/Inq/Tourism/13640-41 dated 05th June, 2023 sent to all concerned to attend inquiry on 26th June 2023 is annexed as **Annexure-2**. This inquiry has been made into three allegation communicated to all concerned vide Statement of Allegations which is annexed as **Annexure-3** to this report. Reply of AO to Statement of Allegations is annexed as **Annexure-4** to this report. Mr. Akhlaq Ahmed Section Officer of department assisted in inquiry as Departmental Representative, hereinafter called DR. Questionnaires framed by undersigned and replies of AO and DR are annexed as **Annexures 5 and 6** respectively to this report.

The term Public Servant used in this report means a person as defined in Section-21 of the Pakistan Penal Code 1860 and is hereinafter called public servant. The term Civil Servant used in this report means a person as defined in the Section 2(b) of the North-West Frontier Province Civil Servants Act, 1973 and is hereinafter called civil servant.

Inquiry

During inquiry each one of the allegations, reply of AO to allegations and annexures, reply of AO in questionnaire, office record presented by DR and relevant notifications issued by Government of Khyber Pakhtunkhwa, hereinafter called government, from time to time were examined in detail following which finding against each allegation has been recorded as follow:

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Allegation No-1.

You promoted 07 employees of PAITHOM vide Office Order dated 19.02.2020 and 02.03.2020, without prior approval of the Administrative Department, since the case of regularization of PAITHOM's employees was adjudicated before the court of law at that time;

1. AO promoted a total of seven (07) employees of PAITHOM in various pay scales through two separate orders (Annexures-7 and 8) as follows:

	Order No	Date	No of employees promoted
1	3(1)/2011/PAITHOM/ADMN/Vol-IV	19-02-2020	5
2	3(1)/2011/PAITHOM/ADMN/Vol-IV	02-03-2020	2

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2. These employees were appointed on contract basis as PAITHOM employees, hereinafter called employees, and were therefore public servants. In April 2011 PAITHOM was transferred to government after 18th Constitutional Amendment and services of employees were devolved accordingly. PAITHOM was taken over by department.
3. As a result of Dar-ul-Qaza Swat order dated 18th April, 2018 in a Writ Petition No 507-M/2017 and after dismissal of departmental appeal by department in the Supreme Court of Pakistan on 11th January, 2020 services of employees were regularized with back benefits vide department's Notification on 21st January, 2022. This regularization meant that employees became civil servants instead of public servants.
4. Immediately after dismissal of departmental appeal in the Supreme Court of Pakistan and almost two years prior to issuance of regularization notification by department, AO issued above promotion orders on 19th February and 2nd March 2020. He did not receive any advice of department in this matter nor did he approach it for consultation prior to issuing promotion orders.
5. Since the services of employees were regularized by Dar-ul-Qaza with back benefits therefore they were civil servants at the time of issuance of their promotion orders by AO regardless of the fact that their regularization notification was issued two years later by department.
6. AO in his reply and answers to questions has argued that he had issued these promotion orders on the basis of 'powers conferred upon' him 'under governing rules & regulations of 'PAITHOM', hereinafter called regulations, (Annexure-9). The subject of PAITHOM rules have been discussed in detail under third allegation. Here, it is sufficient to record that:

- i. Regulations which were framed prior to devolution under Federal Ministry of Tourism, hereinafter called ministry, were no longer applicable to employees once they were regularized as civil

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servants. Terms and Conditions of service and Promotion of civil servants are governed by the North-West Frontier Province Civil Servants Act, 1973 read with Rule 5 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 which have not been applied in these cases.

- ii. Regulation No 12(II) conferred promotion powers upon Principal / Director (**Annexure-10**) whereas AO was and is Chief Instructor PAITHOM. He has been called Incharge PAITHOM in official correspondence but there is nothing on the record that he was entrusted with responsibility of Principal / Director as additional charge or even to look after this post.
- iii. Service regulations under Regulation Serial No. 12 (II) were never approved prior to or after devolution. Therefore even if employees are considered as public servant in February / March 2020 there were no service regulations under which they could be promoted.

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7. Therefore the following irregularities have been noted on the part of AO:

- i. Promotion of seven (07) civil servants employees of PAITHOM vide Office without prior approval of department which resulted in violation of Rule 5 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.
- ii. Exercising of powers of Principal / Director without explicit orders by department to this effect.
- iii. Application of incorrect and unapproved service regulations in promotion process of employees who were civil servants.

Finding

The allegation stands proved against AO.

Allegation No-2.

You re-designated the post of Supervisor (BPS-07) to House Engineer (BPS-16) in favor of Mr. Haq Nawaz vide Officer Order dated 20.06.2013, without approval of the Administrative Department;

- 1. Immediately before devolution of PAITHOM to department Mr. Haq Nawaz was regularized as Supervisor in BPS-7 as public servant as evident from para-4 of Government of Pakistan Ministry of Tourism Memo No. 2(25)/2002-Plug (Pt-III) dated 9th February, 2011 (**Annexure-11**).
- 2. He was later regularized as civil servant along with other employees as a result of litigation noted above. But instead of accepting his regularization as Supervisor in BPS-7 he resorted to further litigation seeking for himself the post of House Engineer in BPS-16 on the grounds

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that Incharge PAITHOM had already promoted him to the post of House Engineer BPS-16 in 2013 through process of redesignation of the post of Supervisor BPS-7 as House Engineer BPS-16 vide letter No.3 (1)/2011/PAITHOM-ADMN on 20th June 2013 when services of employees were not yet regularized as civil servants in government.

3. AO has not denied this fact and has candidly admitted in his reply to allegation and in his reply to question No-3 that he has carried out this redesignation on the analogy of redesignation once carried out by department in 2012. Therefore it is evident that AO has carried out redesignation of the post Supervisor BPS-7 to House Engineer BPS-16. Therefore the following irregularities on the part of AO have been noted in this redesignation process.

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- i. Irregular promotion from BPS-7 to BPS-16 under garb of redesignation. Redesignation is carried out in same BPS. Raising BPS of a same post is called upgradation. He thus carried out both upgradation and redesignation at the same time without due process.
- ii. Lack of authority to carry out such redesignation in absence of approved regulations for public servants as in 2013 PAITHOM employees were working as public servants not civil servants.
- iii. Negligence of duty as incharge PAITHOM to seek guidance and prior approval of department to issue redesignation / upgradation order under question if it was necessary at all though no relief was granted by any court in 2013 to beneficiary Mr. Haq Nawaz.
- iv. Exercising of powers of Principal / Director without explicit orders by department to this effect

Finding

The allegation stands proved against AO.

Allegation No-3.

You failed to perform your functions as assigned to you under the law / rules and did not frame / draft service rules for the employees of PAITHOM till date.

- 1. Prior to devolution, PAITHOM was governed by its regulations which were issued by ministry (Annexure-9). However no supporting service regulations were operational at that time under regulation number 12 (II).
- 2. It has come to fore that in June 2009 the Federal Ministry of Tourism constituted a committee to draft service rules for employees, hereinafter called rules (Annexure-12). On 16th February 2010, Board of Governors of PAITHOM, hereinafter called board, approved rules subject to proper signing of the draft by Convener and Secretary of board so that rules

Attest

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could be communicated to the Finance and Establishment Divisions for their concurrence (Annexure-13). However nothing has been found on the record that rules were either sent to Finance and Establishment Divisions or their concurrence to rules was received in PAITHOM prior to devolution in April 2011.

3. Instead, after devolution, on 24th July, 2011 rules were submitted to one Mr. Sajeed Hameed 'focal person' PAITHOM in Tourism Department Khyber Pakhtunkhwa 'for further perusal in the matter' (Annexure-14). DR in his reply in questionnaire has stated that 'as per available record draft rules of PAITHOM are not approved by competent forum'.
4. After regularization of employees as civil servants in 2020 these draft rules became irrelevant as these were meant for public servants and were to be approved by board. Under changed circumstances it became the mandate of Standing Service Rules Committee, hereinafter called SSRC, of department constituted under Services and General Administration Department Notification No. SOR. VI(E&AD)2-69/2003 dated 29th January, 2005 amended from time to time read with Rule 3(2) of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. Service rules framed by SSRC were required to be approved by government
5. Therefore no irregularity noted on the part of AO as the following facts have come to fore:
 - i. AO had submitted draft service rules inherited from ministry in 2011 to focal person PAITHOM in department for approval of board which remained unapproved till regularization of employees as civil servants
 - ii. Since regularization of employees in 2020, department has yet to convene meeting of SSRC to draft service rules for them

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Finding

The allegation does not stand proved against AO.

Recommendations as requested by department

- i. In short run department should frame service rules for employees through SSRC.
- ii. In long run department may improve over all operational performance including service conditions of PAITHOM by introducing legislation on the analogy of KP TEVTA Act 2012

[Signature]
(AmerLatif)

Inquiry Officer/ Member-1, Board of Revenue