

BEFORE KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1398/2023

Mr. Asif Khan Ex.PST District Mohmand

Versus

Director Elementary and secondary Education Khyber Pakhtunkhwa & others.

INDEX

S.No	Description of the Documents	Annexure	Page
1	Comments	1-2
2	Affidavit	3
3	Authority letter		4
4	Copy of the closerA.....	5


Deponent

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Mr. Asif Khan Ex. PST District Mohmand

.....Appellant

Versus

Director Elementary and secondary Education Khyber Pakhtunkhwa & others.

.....Respondents

10356
4-1-24

Para-wise comments on behalf of respondents No.1 and 2

Respectfully Sheweth.

Preliminary objections.

- i. That the Appellant has no cause of action, locus standi to file the instant Appeal.
- ii. That the matter in the instant appeal has already decided by the Honorable Supreme court of Pakistan in W.P 2498-p/2012 CPLA.299/2020 dated 28-1-2022 (**Copy of the judgment attached as annexure .H of the appeal**)
- iii. That the Appellant has not come to this Honorable Tribunal with clean hands.
- iv. That the appellant has concealed material facts from the Honorable Tribunal.
- v. That the appellant is estopped to file instant appeal.

ON FACT.

1. Correct to the extent that the Appellant was appointed as community school teacher as project based. The project was closed down on dated 31-12-2010; consequently the services of all the community teachers of the project were dispensed. **(Copy of the notification is attached as annexure .A).**
2. No comments.
3. Correct extent to that the Appellant was appointed as community school teacher's project. The project was closed down on dated 31-12-2010, consequently the services of all the community teachers of the project was dispensed. **(See annexure. A)**
4. That the petitioners Nazir Gul and others was filed W.P No.2498-/2012 before the Honorable Peshawar High Court Peshawar with the prayer to direct the respondents to reinstate and regularize their services along with outstanding salaries. The writ petition was allowed and respondents were directed to adjust the petitioners in the community schools by revival of non-functional schools by making the circumstances, So that the Education flourishes in the tribal area. Since the petitioners have not worked against the posts, therefore they were not entitled to the wages for intervening period and their said period be treated as leave without pay. The judgment was announced on 15/06/2016 and the respondent was directed that the exercise be done within one month after the receipt of judgment **(Copy of the judgment is attached Annexure-C of the appeal).**
5. That then the competent authority upon the recommendation of scrutiny committee constituted in compliance of Directorate of Education FATA letter No. 6854-15 dated 27/03/2017 for conditional implementation of Peshawar High Court order Dated 15/06/2016 in COC No. 330-P/2016 and W.P. No. 2498/2012 subject to the final outcome of CPLA No.450-P/2016 filed by the Department in Supreme Court Of Pakistan, Petitioners/ex-community school teachers of Non-Functional community schools were re-appointed with immediate effect in schools mentioned against their names on project basis on the given terms and conditions vide this office No. 30983-89 dated 19/04/2017. **(Copy of the order is attached annex-D of the appeal).**
6. That in compliance with the decision made by the then Director Education FATA vide his office No. 2532 dated 26/02/2018 and notification No. SO (E) /SSD/CSTR-99-108 dated 11/05/2012, community PSTs male teachers/petitioner were regularized with the condition that if Supreme Court of Pakistan under CPLA No.450-P/2016 decided to set

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aside the decision made by the Peshawar High Court, the regularization order issued vide this office No. 2619-28 dated 30.06.2018 stand cancelled (Copy of the order is attached annex -E of the appeal).

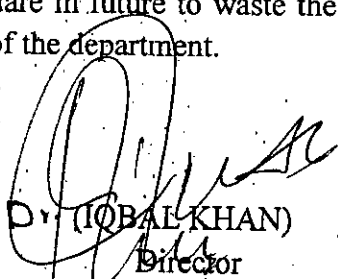
7. That the Supreme Court of Pakistan set aside the impugned judgment of the learned Peshawar High Court writ petition No.2498-P/2012 and the matter was remanded to the learned High Court for decision a fresh of the writ petition filed by the respondents which shall deemed to be pending.
8. Correct to the extent that the petitioner is allowed. However, the Department filed CPLA No. 299/2020 before the Honourable Supreme Court of Pakistan against the judgment of Peshawar High Court, Peshawar in Writ Petition No. 2498/2012 and the August Supreme Court of Pakistan set aside the judgment.
9. Incorrect and denied. That the respondent department filed CPLA No. 299/2020 before the supreme court of Pakistan against the judgment of Honorable peshawar High court writ petition No:2498-P/2012 dated 22.01.2019 and the august supreme court of Pakistan set aside the judgment of learned peshawar High court on its judgment dated 28.1.2022. (Copy of the judgment of Supreme Court is attached annex-H of the appeal).
10. That in compliance of the judgment of Honorable Supreme Court of Pakistan dated 28/01/2022 the conditional order vide No. 2619-28 dated 30.4.2018 was withdrawn by the competent authority. (Copy of notification is attached annex I- of the appeal).
11. No comments.
12. That the appeal is estopped to file instant appeal.

GROUNDS

- A. That the competent authority had withdrawn the conditional order of the appellant in the light of the judgment of the august supreme court of Pakistan dated 28.01.2022.
- B. That the competent authority had withdrawn the conditional order of the appellant in pursuance of the judgment of august Supreme Court of Pakistan and set aside the judgment of the Honorable Peshawar High court.
- C. As elaborated at above in Para .A
- D. As elaborated at above in Para .A
- E. As elaborated at above in Para .A
- F. As elaborated at above in Para .A
- G. That the matter of the appellant has been already decided by the august supreme court of Pakistan as explained in Para 9 of the fact.
- H. As elaborated at above in Para. G
- I. That the appellant seeks permission to advance other ground proof at the time of hearing.

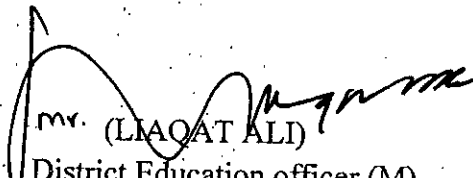
It is therefore most humbly prayed that the appeal of the appellant may kindly be dismissed with heavy cost so that none can dare in future to waste the precious time & resources of the honourable courts as well as of the department.

Respondent No.1


Dr. (IQBAL KHAN)
Director

Elementary and Secondary Department
Government of Khyber Pakhtunkhwa

Respondent No.2


Mr. (LIAQAT ALI)
District Education officer (M)
District Mohmand

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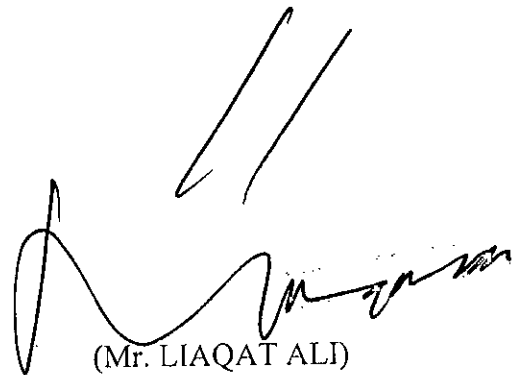
Secretary Elementary and Secondary Education Khyber Pakhtunkhwa & others.

AFFIDAVIT

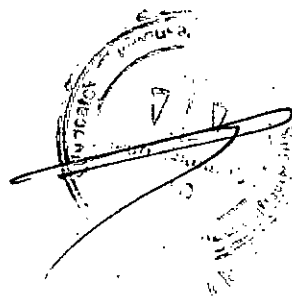
I Mr. Liaqat Ali District Education officer Mohmand do hereby declare and affirm on oath that above comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon, rabble Tribunal.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense is struck off.

Respondent No.2



(Mr. LIAQAT ALI)
District Education officer (M)
District Mohmand



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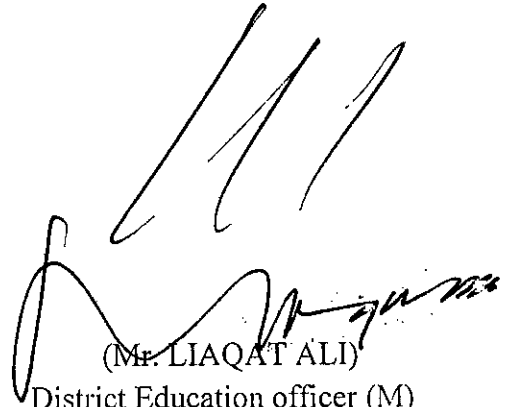
DISTRICT EDUCATION OFFICE (MALE) MOHMAND

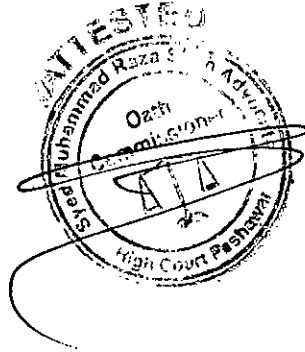
AUTHORITY LETTER

I, District Education officer (Male) District Mohmand do hereby authorize Mr. Noor Badshah Assistant (Litigation) of this district education office Male Mohmand to attend the Khyber Pakhtunkhwa service Tribunal in connection with filling Para wise comments in service appeal No 1398/2023 / Titled Asif Khan VS Government of Khyber Pakhtunkhwa Elementary & secondary Education department

Dated

Respondent No.2


(Mr. LIAQAT ALI)
District Education officer (M)
District Mohmand





OFFICE OF THE AGENCY EDUCATION OFFICER
MOHMAND AGENCY AT GHALLANAI
P.NO.0924290180 FAX:0924290180

NO. _____ DATED Ghallanai / / 2010

To

The Teachers and Class IVs,
of all community schools in Mohmand Agency.

Subject: CLOSING OF SCHOOLS/TERMINATION.

Memo:

Reference Directorate of Education (FATA) vide No.8878-87 dated 13-12-2010, competent authority has decided to close all the community M/F schools in FATA.

Therefore all the teachers/class IVs working in community schools in Mohmand Agency are hereby informed, that their services will be dispensed with on 31-12-2010.

However service marks will be given to them when they apply for regular posts as per policy.

All the community schools teachers and class IVs are directed to hand over complete record of students/furniture etc to the concerned cluster incharges, AAEO,s complete in all respect. Otherwise no payment for the period of service will be made to the defaulters.

Agency Education Officer,
Mohmand Agency at Ghallanai.

Endst: No. 13/3845 /Dated/ 14/12/2010.

Cc:

1. Director of Education (FATA) K.P.K. Peshawar.
2. Political Agent Mohmand Agency at Ghallanai.
3. Agency accounts Officer Mohmands at Ghallanai.
4. All AAEO,s Male & Female to inform all teachers of Community schools.

Agency Education Officer,
Mohmand Agency at Ghallanai.

Aziz ur Rehman/@

Handwritten signature and date: 21.12.2010