

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 322/2019

Date of Institution ... 28.02.2019

Date of Decision ... 21.07.2020

Rawan son of Israr R/O Mohallah Gulshan Abhad Mayar District Mardan.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through its Secretary Education,
Peshawar and two others. ... (Respondents)

Mr. Iftikhar Ahmad Mayar,
Advocate. ... For appellant.

Mr. Ziaullah,
Deputy District Attorney ... For respondents.

MR. HAMID FAROOQ DURRANI, ... Chairman.
Mr. ATIQ-UR-REHMAN, ... Member (Executive)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant is aggrieved of order dated 19.06.2018 passed by respondent No. 2, whereby, he was removed from service on account of willful absence from 01.01.2018 till the date of removal order.

2. The case of appellant, as laid in the memorandum of appeal, is that he was appointed as Naib Qasid on 04.01.2011 at Government College of Commerce Mardan. He was falsely enroped in a criminal case vide FIR No. 180/2018 at P.S Momin Abad Karachi and remained behind the bars till June, 2018. During the said period of his confinement the appellant was unable to attend to his duty due to circumstances beyond his control.

3. We have heard learned counsel for the appellant, learned Deputy District Attorney on behalf of the respondents and have also gone through the available record.

4. Learned counsel for the appellant contended that the circumstances of the case i.e. the absence of appellant not being in his control, was considered by the Honourable Peshawar High Court while disposing of Writ Petition No. 5223-P/2018 on 29.11.2018. He referred to the copy of order available on record and stated that the period of delay in submission of departmental appeal by the appellant was worth consideration on sympathetic basis. His next argument was to the effect that notices for attending the duty were though published against the appellant in daily "Mashriq" and daily "Aaj", both from Peshawar, the appellant being at Karachi at the relevant could not have access to the publications. The notices were, therefore, not in accordance with the rules.

Learned Deputy District Attorney while replying to the arguments from other side stated that although through the order in Writ Petition ibid the appellant was directed to submit a departmental appeal in order to meet the mandatory requirement of rules, the appellant did not prefer to submit the same. No such appeal was available with the respondents and they had duly denied through their reply/comments the claim of appellant in that regard. He further referred to the copy of departmental appeal as annexed with the memorandum of instant appeal and stated that the same was neither signed by the appellant nor bore any date. Similarly, there was no diary number/endorsement on the appeal through which its submission and receipt by the respondents could be established. In the said manner, the appellant had violated Section 4 of the Khyber Pakhtunkhwa Service Tribunal

Act, 1974. He referred to the judgment reported as 2002-SCMR-1004 in that regard. In view of learned DDA the appellant had admitted his absence in the entire period as alleged against him, however, he did not inform the respondents regarding his implication in a criminal case and confinement at Karachi.


5. While considering the entire available record we have also gone through the copy of judgment by learned Assistant Sessions Judge-III Karachi West, handed down in Sessions Case No. 1208/2018. Through the judgment the appellant was acquitted from the charge under u/s 23(1)(a) Sindh Arms Act, 2013, recorded through FIR No. 180/2018.

In para-2 of the judgment it was unambiguously noted that the appellant was arrested by local police of Korangi Town Karachi on 24.05.2018 at 2255 hours. The last para of judgment also provided that the appellant/accused was on bail at the time of conclusion of trial. On the other hand, it is clearly provided in the impugned order dated 19.06.2018 that the appellant was absent from duty w.e.f. 01.01.2018. It is a matter of record that the appellant, on the other hand, could not account for his absence from 01.01.2018 to 24.05.2018 i.e. the date of his arrest.

6. We are in agreement with the arguments advanced by learned DDA in terms that the conduct of appellant was violative of the relevant rules throughout. It also requires to be noted that the appellant never attempted to disprove the contents of para-6 of reply/comments by respondents wherein the submission of his departmental appeal was squarely denied. In the circumstance, the competency of appeal in hand is not free from question.

It is also worth noting that during the departmental proceedings against the appellant the respondents had observed the requirements contained in the relevant rules. In that regard not only notices were issued to the appellant for resumption of his duty but also the same were published in newspapers in accordance with rule 9 of the Government Service (E&D) Rules, 2011. Despite, the appellant could not make good his appearance nor send any intimation for his absence beyond his control.

7. For what has been discussed above, the appeal in hand is dismissed being without merits. Parties are left to bear their respective costs. File be consigned to the record room.





(ATIQ-UR-REHMAN)
Member (Executive)



(HAMID FAROOQ DURRANI)
Chairman

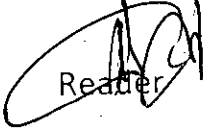
ANNOUNCED
21.07.2020

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	21.07.2020	<p><u>Present.</u></p> <p>Mr. Iftikhar Ahmad Mayar, ... For appellant Advocate</p> <p>Mr. Ziaullah, ... For respondents Deputy District Attorney</p> <p>Vide our detailed judgment, the appeal in hand is dismissed being without merits.</p> <p>Parties are left to bear their respective costs. File be consigned to the record room.</p> <p style="text-align: right;">  (Hamid Farooq Durrani) Chairman </p> <p style="text-align: center;">  (Atiq-ur-Rehman) Member (Executive) </p> <p><u>ANNOUNCED</u> 21.07.2020</p>

5.5 .2020

Due to COVID19, the case is adjourned to

16/7 /2020 for the same as before.


Reader

16.07.2020

Due to COVID-19, the case is adjourned to 21.07.2020
for the same.


Reader

16.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 05.03.2020 for rejoinder and arguments before D.B.



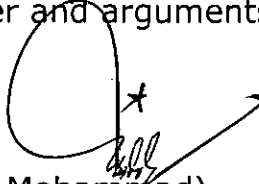
(Ahmad Hassan)
Member



(M. Amin Khan Kundi)
Member

05.03.2020

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Salman, Assistant for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 05.05.2020 for rejoinder and arguments before D.B.



(Mian Mohammad)
Member



(M. Amin Khan Kundi)
Member

23.08.2019

Counsel for the appellant and Addl. AG alongwith Tapir Lecturer and Naeem, AD for the respondents present.

A request is made on behalf of respondents for submission of written reply. Last opportunity is granted to the respondents for submission of requisite reply on 23.09.2019 before S.B.

Chairman 

23.09.2019

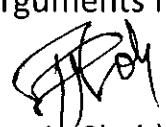
Appellant in person and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Qazi Ayaz, Litigation Officer for the respondents present.

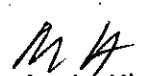
Representative of the respondents submitted written reply on behalf of respondents No. 1 to 3 which is placed on record. The appeal is posted for arguments before D.B to 18.11.2019. The appellant may submit rejoinder within a fortnight, if so advised.

CHAIRMAN 

18.11.2019

None present on behalf of the appellant. Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Notice be issued to appellant and his counsel for attendance and arguments for 16.01.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

27.03.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ex-Naib Qasid) has filed the present service appeal against the order dated 19.06.2018 whereby major penalty of removal from service was imposed upon him on the ground of willful absence duty.

Points urged need consideration. The appeal is admitted for regular hearing subject to all legal objections including the issue of limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 13.05.2019 before S.B

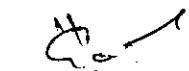
Appellant Deposited
Security & Process Fee



Member

13.05.2019

Appellant in person present. Notices for reply to the respondents for today were not issued. Respondents be put to notice to file written reply/comments. Adjourn. To come up for written reply/comments on 28.06.2019 before S.B.



Member

28.06.2019



Appellant in person and Mr. Kabirullah Khattak, Additional AG alongwith M/S Shah Saeed, Assistant and Tahir Shah, Lecturer for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Adjourned to 23.08.2019 for written reply/comments before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 322/2019

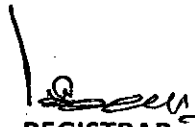
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/03/2019	<p style="text-align: center;">The appeal of Mr. Rawan resubmitted today by Mr. Asim Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	11/03/19.	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/03/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Rawan son of Israr r/o Mohallah Gulshan Abad Mayyar District Mardan received today by i.e. on 28.02.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 2- Necessary party may be made in the memorandum of appeal.

No. 354 /S.T,

Dt. 01/03 /2019


REGISTRAR - 1/3/19
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.


Mr. Asim Khan Adv. Mardan.

Respected Sir:

The appellant has removed from service without issuing any notice, charge sheet, statement of allegation, show cause notice, enquiry report. That's why nothing has attached with the present appeal.

All the necessary parties have made be there is no need of other parties and if required it will made by submitting impleadment application.

So with respect all objections have removed. kindly put up for further proceedings.

Asim Khan
Adv 
4-3-2019

IN THE SERVICE TRIBUNAL ,K.P.K PESHAWAR

Service Appeal No. 322 /2019

Rawan S/o Israr R/o Mohallah Gulshan Abad mayar District Mardan

.....APPELLANT

VERSUS

Government of Khyber Pakhtunkhwa & others

.....RESPONDENTS

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APPELLANT



Through

IFTIKHAR AHMAD MAYAR

&

ASIM KHAN

Advocates

High Court

Office: 619, 6th Floor

Pak Medical Centre

Cell# 0305-9797454

Email:asimkhankhkh@gmail.com

①

IN THE SERVICE TRIBUNAL ,K.P.K PESHAWAR

Service Appeal No. 322 /2019

Khyber Pakhtukhwa
Service Tribunal

Diary No. 295

Dated 28/2/2019

Rawan S/o Israr R/o Mohallah Gulshan Abad mayar District Mardan

.....APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa Through its Secretary Education, Civil Secretariat Peshawar
2. Government College of Commerce No.2 Mardan Through Its Principal
3. D.G Commerce Education & Management Science KP

.....RESPONDENTS

SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER VIDE
NO GCC.2/MRD/PF/2018/5194 DATED 19-06-2018 Of
GOVERNMENT COLLEGE OF COMMERCE NO.2 MARDAN

Prayer in Appeal:

ON ACCEPATNCE OF THIS APPEAL THE ORDER VIDE NO GCC.2/MRD/PF/2018/5194 DATED 19-06-2018 Of GOVERNMENT COLLEGE OF COMMERCE NO.2 MARDAN MAY KINDLY BE SETASIDE AND THE APPELLANT MAY GRICIOUSLY BE REINSTATE ON HIS POST WITH ALL BACK BENIFIT.

Filed to-day

Registrar

28/2/19

Respectfully Sheweth:

1. That the appellant was appointed by respondents as naib qasid on 04-01-2011 at Government College of Commerce Mardan.
2. That the appellant as naib qasid was performing his services with the entire satisfaction of their high-ups.
3. That unfortunately some allegations were leveled against the appellant during his service and charged him in a fabricated case/FIR and he was behind the bar till June, 2018.
4. That after releasing on bail, the appellant astonished when it came to know that he was removed from services during his judicial custody by issuing impugned Vide No Gcc.2/Mrd/Pf/2018/5194 Dated 19-06-2018 without intimating the appellant.
5. That the petitioner had approached the Honourable Peshawar High Court Peshawar but he was directed to approach the proper forum and also condoned the period of limitation.
6. Thereafter appellant had filed departmental representation for his reinstatement with all back benefit but met no response.

That being aggrieved from the said impugn order, Approached this Honourable Tribunal on the following Grounds.

GROUNDS:

- A. That the impugned order is illegal, unlawful and against natural justice.
- B. That the impugn order was passed without conducting any inquiry which is against the norm of justice
- C. That the appellant was behind the bar but this aspect was totally ignored by the respondents.
- D. That the appellant was serving the department since 2011 and his all service tenure shows that no complaint, neither criminal proceedings nor any departmental inquiry has been conducted against him.
- E. That the impugned order is totally unfair, biased and not according to circumstances of the case in hand.
- F. That the impugn order is baseless and without any proof but awarding major punishment which is against the basic principles of service rules.
- G. That the harsh punishment awarded by respondent is not according to the Law and it is nowhere mentioned in service laws.
- H. That the appellant has not been treated in accordance with law as provided and guaranteed under the constitution of 1973.
- I. That any other ground may be forwarded at the time of arguments with the kind permission of this Hon, ble court.

It is therefore humbly prayed that on acceptance of this appeal the order vide no GCC.2/MRD/PF/2018/5194 dated 19-06-2018 of government college of commerce no.2 mardan may kindly be setaside and the appellant may griciously be reinstate on his post with all back benifit.

AND Any other remedy which the court deems fit & proper may also be granted in favour of the petitioner against the respondents with cost.



APPELLANT

Through

IFTIKHAR/AHMAD MAYAR *2/K*

&

ASIM KHAN
ASIM KHAN

Advocates
High Court Peshawar

District Mardan

IN THE SERVICE TRIBUNAL ,K.P.K PESHAWAR

Service Appeal No. _____/2019

Rawan S/o Israr R/o Mohallah Gulshan Abad mayar District Mardan

.....APPELLANT

VERSUS

Government of Khyber Pakhtunkhwa & others

.....RESPONDENTS

Affidavit

I Rawan S/o Israr R/o Mohallah Gulshan Abad mayar District Mardan, do hereby solemnly declare on oath that contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

DEPONENT



28 FEB 2019

ATTESTED



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IN THE SERVICE TRIBUNAL, K.P.K PESHAWAR

Service Appeal No. _____/2019

Rawan S/o Israr R/o Mohallah Gulshan Abad mayar District Mardan

.....APPELLANT

VERSUS

Government of Khyber Pakhtunkhwa & others

.....RESPONDENTS

ADDRESS OF PARTES

APPELLANT

Rawan S/o Israr

R/o Mohallah Gulshan Abad mayar District Mardan

RESPONDENTS:

1. Government of Khyber Pakhtunkhwa Through its Secretary Education,
Civil Secretariat Peshawar
2. Government College of Commerce No.2 Mardan Through Its Principal
Government College of Commerce No.2 Mardan
3. D.G Commerce Education & Management Science KP
Civil Secretariat Peshawar



Appellant

Through

Advocate

[Handwritten signature]

Phone. 091-9213027



**GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE GENERAL TECHNICAL EDUCATION
& MANPOWER TRAINING, PESHAWAR
BENEVOLENT FUND BUILDING PESHAWAR CANTT**

OFFICE ORDER:

No. DGTE&MT/Admn/22-17(V): - Mr. Rawan S/O Israr, resident of Mayar, District Mardan is hereby appointed as Naib Qasid in BPS-01 Plus usual allowances as admissible under the rules and posted at Government College of Commerce, No.2 Mardan against the vacant post with effect from the date of taking over charge and subject to the terms & conditions stated as under:-

TERMS & CONDITIONS:

- 1- His appointment will be in accordance with the contents of sub Section (2) of Section-19 of the Khyber Pakhtunkhwa, Civil Servants Act, 1973 (KPK, Act No. XVIII of 1973) as amended by the K.P.K. Civil servants (Amendment) Act 2005 (KPK, Act No. IX of 2005) and the rules framed there under.
- 2- He will have to join duty at his own expenses.
- 3- He will have to produce Certificate of Medical fitness from the concerned Medical Superintendent / Civil Surgeon within a week time of the resumption of duty.
- 4- His service shall be liable to termination on one month's notice from either side. In case of resignation without proper notice, one month's pay and allowances shall be forfeited.
- 5- His character / antecedents are verified well by the Police authorities
- 6- He will be governed by such rules and regulations as may be issued from time to time by the Government for the category of Government Servants to which he belongs.
- 7- He should report for duty to the Principal concerned within thirty (30) days of the issue of this order otherwise the offer of appointment would be treated as cancelled.

(MUHAMMAD IQBAL SHAD)
DIRECTOR GENERAL.

Endst. No. DGTE&MT/Admn/22-17(V)/0024(1-4) Dated: 04/01/2011.

Copy forwarded to:-

- 1- The District Accounts Officer, Mardan.
- 2- The Principal, Govt. College of Commerce, No.2 Mardan
- 3- Mr. Rawan S/O Israr, resident of Mayar, District Mardan.
- 4- Personal file.

ATTESTED
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7

RELEASE ORDER
IN THE COURT OF DISTRICT & SESSIONS JUDGE KARACHI WEST

Bail Application No: 1176/2018

The state versus. ..Muhammad Rawan S/o Muhammad Israr. ~~Accused~~

FIR NO: - 180/2018 U/S:- 23(i)(a) SAA PS:- Mominabad

To,
The Superintendent,
District Jail Malir
Central Prison Karachi

Whereas accused/applicant ~~Muhammad Rawan S/o Muhammad Israr~~
has / have filed bail application through his counsel this court passed order and
allowed bail against The sum of Rs. 50,000/- with P R bond in the like amount.
The above named accused was remanded by the Judicial Magistrate / trial court
Karachi West.

The accused as per Huliya Form having mark of Identification i.e. Nil.
Whereas The accused above named has / have been furnished surety in this court.

You are hereby directed to ~~release~~ the following accused/applicants above
said forthwith if he/they is/arc no ~~more~~ required in any other custody cases
under ~~allegation~~ to this Court fail, ~~after~~ causing personal bond recognizance of
Rs. 50,000/- ~~the~~ executed by the said accused before the Superintendent above
~~and to certify execution by~~ enforcement on the back of the writ ~~and~~
return The writ duly endorsed together with -recognizance within ~~two~~ days from
the receipt of the release, you are also required to direct the accused to appear
before concerned Court.

Given under my hand and seal of the Court this on 07th day of June 2018.



(Khalid Hussain Shalimi)
District & Sessions Judge Karachi West.

**DISTRICT & SESSIONS JUDGE
KARACHI-WEST**

Note: - the superintendent Jail is hereby
Directed to obtain signature of accused
On the personal bond and return
The same to this Court Immediately along
With copy of release order without any delay

ATTESTED
To Be True Copy

BETTER COPY

6

RELEASE ORDER

IN THIS COURT OF DISTRICT & SESSIONS JUDGE KARACHI WEST

Bail application No. 1176/2018

The State **Versus**

Muhammad Rawan S/o Muhammad Israr

FIR NO. 180/2018

U/S 23(D)(A) SAA P.S MOMINABAD

To,
The Superintendent
District Jail Malir
Central Prison Karachi

Whereas accused/applicant Mr. Rawan S/o Muhammad Israr has/have filed bail application through his counsel this court passed order and allowed bail against the sum of Rs. 50,000/- with P R Bond in the like amount The above named accused was remanded by the judicial magistrate/Trial court Karachi West.

The Accused as per Huliya form having Mark of identification i.e. Nil whereas the accused above named has/have been furnished surety in this court.

You are hereby directed to release. The following accused/applicants above said forthwith if he/they is/are no more required in any other custody cases Rs. 50,000,- the executed by the said accused before the superintendent above and to certify execution by enforcement on the back of the writ and return the writ duly endorsed together with recognizance within Two days from the receipts of the release, you are also required to direct the accused to appear before concerned court.

Given under my hand and seal of the court this on 07th Day of June 2018.

Khalid Hussain Shahani
District & Session Judge Karachi West

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C

(7)

OFFICE OF THE PRINCIPAL
GOVERNMENT COLLEGE OF COMMERCE NO.2,
MARDAN

NOTIFICATION

WHEREAS Mr. Rawan Naib Qasid (BPS-03) of Government College of Commerce No.2 Mardan remained willfully absent from duty w.e.f 01/01/2018.

2. ~~AND WHEREAS absent notice~~ issued to him on his home address as well as published in leading newspapers, directing him to resume his duty within 15 days, failing which ex-prate action under Khyber Pakhtunkhwa Efficiency and disciplinary Rules, 2011 would be taken against him.

3. AND WHEREAS the accused Naib Qasid did not report for duty in response to the afore mentioned notices within due time.

4. Now therefore, the competent authority, in exercise of powers conferred under Rule, 09 of the Khyber Pakhtunkhwa Efficiency and Disciplinary Rules, 2011, is pleased to imposed major penalty of "REMOVAL FROM SERVICE" upon Mr. Rawan Naib Qasid (BPS -03), Government College of Commerce No.2 Mardan with immediate effect. His absence period with effect from 01/01/2018 to 18/06/2018 shall be treated as unauthorized absence from duty.

sd/-
PRINCIPAL

Endst; NO. GCC.2/MRD/PF/2018/ 5194

Dated 19/06/2018

Copy forwarded for information and necessary action to:-

1. The Director General, Commerce Education and Management Sciences, Khyber Pakhtunkhwa.
2. The District Accounts Officer Mardan.
3. The Project Director HEMIS, Higher Education Department Khyber Pakhtunkhwa, Peshawar.
4. The official concerned Mr. Rawan S/O Israr Village Mayer Mohallah Gulshanabad District and Tehsil Mardan.
5. Office Record

[Signature]
PRINCIPAL

GOVERNMENT COLLEGE OF COMMERCE NO.2
MARDAN

ATTESTED
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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P.No. 5223-P /2018

Rawan S/o Israr R/o Mohalla Gulshan Abad Mayar, Mardan



VERSUS

1. Principal Govt Collage Mardan
2. D.G Commerce Education and Management Science KPK.
.....Respondents

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

Respectfully Sheweth:-

The petitioner submits as under:-

1. That the petitioner was posted as Naib Qasid in Education Department in Govt College of Commerce No.2 Mardan. (Copy of service Card is annexed).
2. That the petitioner was duty full person and was performed his duty regularly and punctually.
3. That during duty the petitioner went to Karachi for the Fatiha Prayer of his close relatives but during this period the Karachi Police lodged a false case against the petitioner and was arrested and detained in Lock up. Due to that reason the petitioner remained absent from the college. (Copy of FIR and Bail order are annexed).
4. That the respondents did not give any notice to the petitioner but without fulfilling the legal procedure the respondent removed the petitioner from the post and give no chance for hearing the petitioner for his defense.

1/12/18
ATTESTED
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wp5223 2018 Rawan vs Principle govt commerce college USB 14 pags

ATTESTED
EXAMINER
Peshawar High Court

- 4 DEC 2018

5. That the above order of the respondents is illegal against facts and circumstances and is liable to be set aside and the petitioner is entitled to be reinstated on his post.
6. That when the petitioner known about his dismissal he approach to the respondents, respondent replied that to absence from duty he had been dismissed from his post.
7. That there is no reason to dismiss the petitioner from his service without any reason.
8. That the petitioner have got no other alternate speedy, and efficacious remedy, to invoke the constitutional jurisdiction of this honorable court for the redressal of his grievances on the following amongst other grounds.

Grounds

- A. That the petitioner is a Pakistani citizen, and was posted as Naib Qasid in the Govt College of Commerce No-2 Mardan.
- B. That the petitioner had been removed / dismissed by the respondents without any lawful and just cause.
- C. That the act of the respondents i.e. dismissal from the service of the petitioner is illegal, ex-facie, unconstitutional, unwarranted and without any lawful authority.
- D. That the respondents have got no justified reason for dismissal from service of the petitioner.
- E. That the respondents are illegally exercising their jurisdiction to dismiss the petitioner from his service. Respondents are bound to perform their duties according with law, but they acting with malafide which is against the law.

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F. That any other ground will be taken at the time of arguments with the prior permission of the honorable court.

For the above mentioned reasons, it is therefore humbly prayed that on acceptance of this writ petition the order of the respondents may kindly be set aside and the petitioner may kindly be reinstated on his post.

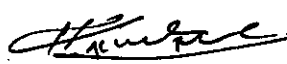
Any other remedy which deems fit by this honorable court in the interest of the justice may also be granted in favour of petitioner.

It is therefore, most humbly prayed that the order of the respondent may kindly be set aside and the petitioner may kindly be reinstated on his post.

Dated :-


Rawan
(Petitioner)

Through Counsel


Iftikhar Ahmed Mayar
Advocate

13

7/12/11
ATTESTED
To Be True Copy

E (11)

PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET

Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge.
<u>29/11/2018.</u>	<p><u>WP No. 5223-P/2018</u></p> <p><u>Present:</u> Mr. Iftikhar Ahmad Mayar, Advocate, for the petitioner.</p> <p style="text-align: center;">---</p> <p><u>WAQAR AHMAD SETH, CJ.-</u> Petitioner, Rawan son of Israr, has filed the instant Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and prayed that the order of respondent be set aside and he be reinstated on his post.</p> <p>2. At the very outset, learned counsel for the petitioner was asked that petitioner has filed any departmental appeal against his dismissal order before competent authority, his reply was in negative. Thus, without touching merits of the case, we direct the petitioner to file departmental appeal against his dismissal order before the competent authority, who shall consider the period of limitation sympathetically keeping in view the facts and circumstances of the case and then to appropriate competent court of law.</p>

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ATTESTED
EXAMINER
Peshawar High Court
04 DEC 2018

3. The Writ Petition stands disposed of accordingly.

Chief Justice

[Handwritten signatures and initials]

Judge

ATTESTED
To Be True Copy

No. 16522

Date of Presentation of Application 6/12/18

No of Pages 3

Copying Fee

Urgent Fee

Total 0

Date of Preparation of Copy 6/12/18

Date of Delivery of Copy 6/12/18

Received By [Signature]

CERTIFIED TO BE TRUE COPY

EXAMINER
High Court, Peshawar
Under Article 87 of
The Constitution of Pakistan

04 DEC 2018

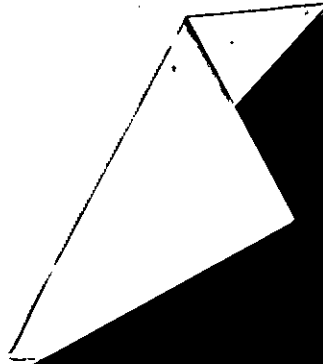
(over)

NOTED TO BE TRUE COPY

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

U.S. DEPT. OF JUSTICE

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13

The Director General
Government Education and Management Sciences
Khyber Pukhtunkhwa

Subject: Representation/Departmental Appeal Against the Notification issued by Principal Government College Commerce No 2 Mardan vide No 55194 dated 19 June 2018 through which the Appellant was removed which is against law and Facts and ineffective upon the Rights of the Appellant and the said order is liable to be set aside

PRAYER IN APPEAL:-

On acceptance of the present appeal, the notification of Principal Government College Commerce No 2 Mardan may please be set aside and the appellant be re-instated on the service.

Respectfully Sheweth:-

GROUND

The appellant humbly submit as under:

- That the appellant namely Rawan was posted as N/Qasid at Government Commerce College Mardan No 2 (Copy attached).
- That the appellant performed his duties to the entire satisfaction of his superiors with zeal & zest .
- That the entire service record of the appellant is spotless and blameless.
- That it was to utter shock and dismay when the appellant received the impugned order dated 19 June 2018 (copy is attached).
- That the impugned order is not maintainable in the eyes of law and liable to be set aside on the following grounds :-
 - a. That the appellant was on Casual Leave wef 01 January 2018 to 10 January 2018 and during the said period the appellant went to Karachi to meet his relative regarding a Fatiha Khwani.
 - b. That during the said period the Karachi Police malafidely charged the appellant in a criminal case and later on dated 7 ~~July~~ 2018 the appellant was released. Release order is attached.
 - c. That the impugned order is liable to be dismissed because the competent authority has not conducted proper inquiry nor gave opportunity of personal hearing.
 - d. That by feeling aggrieved the impugned order the appellant filed writ petition at Peshawar High Court which was disposed of with the direction to prefer appeal before the competent authority and the period of limitation

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was condoned sympathetically. Hence the instant appeal (Copy of Peshawar High Court is attached).

It is, therefore, humbly prayed that on acceptance of this appeal, the removal order against the appellant, may please be set aside and the appellant may graciously be re-instated into service with all back benefits, Please.

Yours Obediently,

Appellant _____

Rawan S/O Israr
R/o Mayar Mardan
Ex-N/Qasid(BPS-1)

Rawan Israr
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To Be True Copy

AFFIDAVIT

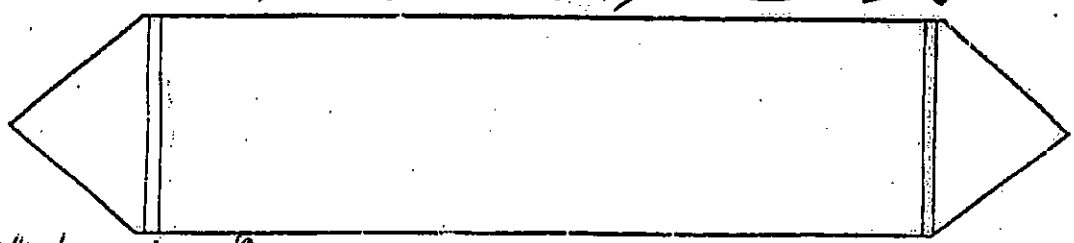
It is stated on oath that all the contents of appeal are true & correct to the best of my knowledge belief.

Date _____

Deponent

Rawan S/O Israr

بعدالت سرسین ٹرانسول خبر بخوشیہ



2019ء منجانب Appellant

دوران بنام حکومت

موزخہ	-----
مقدمہ	-----
دعویٰ	-----
بزم	-----

باعث تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی اوکل کاروائی متعلقہ آن مقام کے لئے اصغر احمد خان راجل احمد سید احمد حسن

مقررہ کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا۔ نیز وکیل اور صاحب کو رضی نامہ کر کے تقریر ثالثتہ فیصلہ برحلف دیے جواب دہی اور اقبال دعویٰ اور ضرورت ڈگری کرنے اجراء اور وصولی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق و راس پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل غمرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ نیا اپنے بجائے تقریر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا سہولت و داخلہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائے التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔



المرقوم 27 ماہ فروری 2019ء

Attested & Accepted By Amal 0305-9797454

By Amal 0305-9797454

By Rabi

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 322/2019

Rawan S/O Israr R/O Mohallah Gulshan Abad Mayar District Mardan.....Appellant.

VERSUS

Government of Khyber Pakhtunkhwa Secretary Higher Education Department and others

.....Respondents

Preliminary Objections:

- 1- That the petitioner has neither cause of action nor locus standi to file this Service Appeal.
- 2- That the appellant have not come to the learned tribunal with clean hands.
- 3- That the appellant has suppressed/concealed material facts from the learned tribunal and hence the appeal is not maintainable on this score alone.
- 4- That the appeal in hand is exaggerated and filed with gross misconceptions and is liable to be dismissed.
- 5- That the appeal is badly time barred.
- 6- That the present appeal is not maintainable under section-4 of the Service Tribunal Act, 1974, because the appellant not filed any departmental appeal against the impugned order.

Facts

- 1- Pertains to record.
- 2- It is incorrect. The appellant was in the habit of intentionally keeping himself absent from duty from time to time during his service period without any kind of information or leave application. Despite repeated warning letters, instructions and persuasion, he did not reform himself. For this purpose an inquiry committee was also constituted on 10-09-2015 comprising of Mr. Muhammad Nadeem, the then Principal GCMS Mardan and Mr. Gohar Ali, the then Associate Professor, GCMS, Peshawar. The appellant appeared before the committee in person and submitted an affidavit (**Annexure-A**) stating that "whatever action is taken against him by the Department due to his absentee, will be fair and justified and I apologize for my mistake and promise that I will be regular and punctual in my duties in future. In case of failure, the Department has the right to take disciplinary action against me and I will have no privilege to claim any right" In spite of this fact, the appellant did not change the habit of intentionally keeping himself absent from duty.
(Biometric attendance list is attached as annexure-B)
- 3- It is incorrect. The appellant never informed his principal as well as Director General office about the FIR and police custody.
- 4- It is incorrect. Neither the police nor jail authorities informed the principal and Director General about his arrest. The appellant was found habitual absent from duty. He remained absent from duty w.e.f 01-01-2018 without any kind of information or leave sanction. He was asked through registered post vide letter No.5110 dated 24-03-2018 to resume his duties but he failed to join his duties. Subsequently his absentee notice was published in the 02 leading newspapers as was required under Rule-09 of E&D Rules 2011 with the direction to resume duty within 15 days but again he failed to do so. After going through the required procedure, the official concerned was awarded major penalty of removal from service.**(Annexure-C)**
- 5- It is correct with further clarification that in spite of the clear directions of the Peshawar High Court Peshawar which are reproduced below, the appellant failed to submit the departmental appeal to the competent authority till date:-

"At the very outset, learned counsel for the petitioner was asked that the petitioner has filed any departmental appeal against his dismissal order before competent authority, his reply was in negative. Thus, without touching merits of the case, we direct the petitioner to file departmental appeal against his dismissal order before the competent authority, who shall consider the period of limitation sympathetically keeping in view the facts and circumstances of the case and then to appropriate competent court of law. The writ petition stands disposed of accordingly"

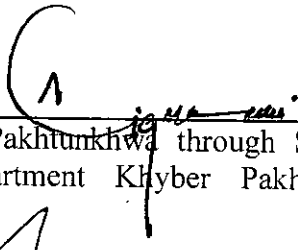
6- It is incorrect. The appellant failed to submit any departmental appeal to the competent authority for his reinstatement till date in spite of the fact that allotted period has already been expired.


FACTS

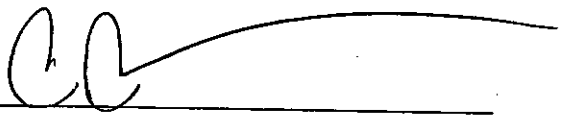
- A- It is incorrect. The impugned order is legal, lawful, with lawful authority and of legal effect.
- B- It is incorrect. The order has been issued by the competent authority after fulfilling all codal formalities.
- C- It is incorrect in view of the reply given in the preceding paras.
- D- It is incorrect. The appellant was in the habit of intentionally remaining absent from his duty for long time. Despite repeated warning letters, instructions and persuasion, he did not reform himself.
- E- It is incorrect. The order has been issued by the competent authority after fulfilling all codal formalities. The plea of the appellant is not based on facts; it is the lame excuse to term such lawful order as unlawful order without any solid proof.
- F- It is incorrect in view of the reply given in the preceding paras.
- G- It is incorrect. The order has been issued by the competent authority after fulfilling all codal formalities.
- H- It is incorrect. The appellant is treated in accordance with law and rules.
- I- The respondents may also assist this honourable court with additional grounds at the time of argument.

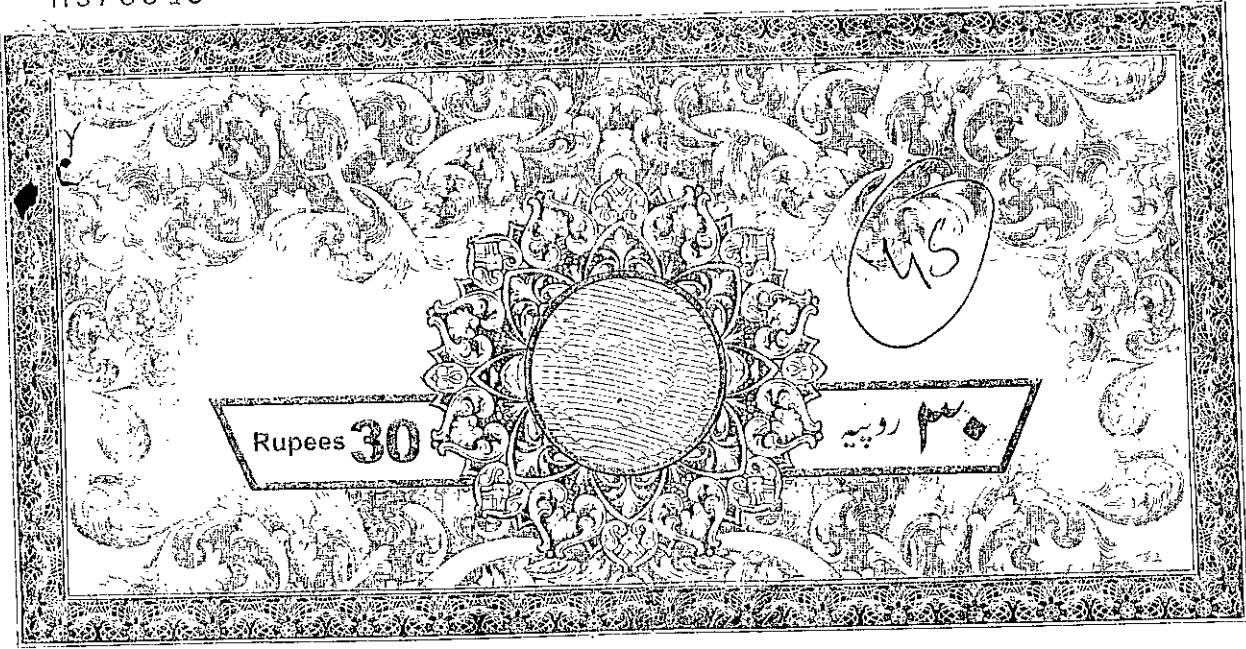
PRAYER:

In view of the above, the instant appeal is not maintainable and without any merit, therefore, the appellant do not deserve any relief as prayed for in this appeal. The instant appeal may be dismissed in the public interest.

Respondent No. 1 
Government of Khyber Pakhtunkhwa through Secretary
Higher Education, Department Khyber Pakhtunkhwa
Peshawar.

Respondent No.2 
Principal Government College of Commerce No.2 Mardan.

Respondent No.3 
Director General Commerce Education & Management
Sciences Khyber Pakhtunkhwa Peshawar.



بیان حلفی

میں دوران دلہہ سرکار محلہ لکھنؤ آباد ماہیہ تحصیل و ضلع سرحدیں نائٹ قائم گورنمنٹ
 لایا کہ منجھٹا ساکنہ آج سرحدیں اس پست کا حکم ہو کرنا سرحدیں سے ہر قدر
 سبب اخلدہ کے قبیح و منہج ظاہر ہوا و دیگر وجوہات کی بنا پر جو ممکنہ کاروائی کی گئی
 میں نے اس سے اپنے اہل تشیعہ مذکوروں کا معاملہ نمائندگی کر کے منہجی کا اظہار کیا اور یہ درجہ
 وفا کی خوش دہی سے یہ حلفیہ عہد و اقرار کیا ہے جس سے آئندہ قواعد و ضوابط اور انگریز
 بارے کے اطلاعات کا پابندی ہوگی۔ اپنی ذمہ داری کی پابندی میں آئے، بلا اجازت قلم نہیں
 لکھوں گا، اچھے اخلاق کا مظاہرہ کریں گا اور ان کی جگہ سے اجتناب کروں گا۔ انگریزوں
 کے احکامات کا پابندی اور عین قانونی و مندرجہ ذیل سہ آڑوں سے دور رہوں گا۔ اگر میں
 قواعد و ضوابط کو کالج لیا یا درجہ بالا حلفیہ عہد و اقرار کی خلاف ورزی کا مرتکب
 ہوں گا تو سزا کے خلاف قانونی کارروائی عمل میں لائی جاسکتی ہے جس پر مجھ
 سے قسم کی دشمنی اور ان کا کوئی حق حاصل نہ ہوگا۔

دوسرا درجہ



دستخط
 شہ قلم کار
 16/01/85 46004-5

دوسرا درجہ

OFFICE OF THE PRINCIPAL
GOVT COLLEGE OF COMMERCE NO.2
MARDAN.

NO.GCCM/PF/2017/ 3058

DATED 29.07.2017

To

The Director General,
Commerce Education & Management Sciences,
Khyber Pakhtunkhwa,
Peshawar.

Subject: INQUIRY AGAINST MR.RAWAN NAIB QASID AND MR.JAVED IQBAL SWEEPER

Reference your letter No.DGCE&MS/Admn/22-17(v)3101 dated 21.07.2017 on the subject noted above. the exact No of days with dates of absent period of the above officials.

S.No	Name of Official	Designation	Absentee dates
01	Mr.Rawan	Naib Qasid	24 & 30.01.2017 1,4,9,10,18,20,23,27 & 28/02/2017 1,2,4,6,7,15,16,17,22,23,25,27 & 31.03/2017 3,4,5,6,7,8,10,11,12,13,14,15,18,19,20,21, 22,24,25,26,&27/04/2017 1,8,9,10,11,12,13,16,22,23,26 & 30/05/2017 2,5,6,7,8,10,14,15,16,17,20,21,22,23,24,26,27,28, 29 & 30/06/2017
02	Javed Iqbal	Sweeper	2,3,5,6,8,10,13,14,16, to 31.01.2017 01.02.2017 to 19.06.2017 & 26.06.2017 to 30.06.2017

Serial No.1 I received his salary from 1st January 2017 to 30 April 2017 from Bank on his account No and Serial No.2 Mr.Javed Iqbal Sweeper received his salary from 1st January 2017 to 30th April 2017 on his Bank Account . From 1st May 2017 the salary of Mr. Rawan Naib Qasid has been stopped and salary of Mr. Javed Iqbal convert from Bank Account to DDO and kept in office.

PRINCIPAL
GOVT COLLEGE OF COMMERCE NO.2
MARDAN.

Admin Lab

WELCOME RAHAT ULLAH, LECTURER

SEARCH EMPLOYEE ATTENDANCE REPORT

District District
 From From Date
 Institute Institute
 To To Date

Employee Employee

Generate Report

Print

DIRECTORATE GENERAL COMMERCE
 EDUCATION AND MANAGEMENT SCIENCES
 Rawan - NAIB QASID
 GOVERNMENT COMMERCE COLLEGE NO 2 MARDAN
 ATTENDANCE REPORT
 From : 01/01/2017 To : 30/06/2017

Rawan || Policy : In Time: 08:30 AM | Out Time 12:00 PM | Relax Time : 09:00 AM - 11:45 PM

EMP NO	DATES	DAY	DAILY TIME IN	DAILY TIME OUT	STATUS
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MR511119	03/01/2017	TUESDAY			ABSENT
MR511119	04/01/2017	WEDNESDAY			ABSENT
MR511119	05/01/2017	THURSDAY			ABSENT
MR511119	06/01/2017	FRIDAY			ABSENT
MR511119	07/01/2017	SATURDAY			ABSENT
MR511119	08/01/2017	MONDAY			ABSENT
MR511119	09/01/2017	TUESDAY			ABSENT
MR511119	10/01/2017	WEDNESDAY			ABSENT
MR511119	11/01/2017	THURSDAY			ABSENT
MR511119	12/01/2017	FRIDAY			ABSENT
MR511119	13/01/2017	SATURDAY			PRESENT
MR511119	14/01/2017	MONDAY	08:48 AM	08:48 AM	ABSENT

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MR511119	28/02/2017	TUESDAY			ABSENT	0 Hr

EMP NO	DATES	DAY	DAILY TIME		STATUS	WORK HOUR
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MR511119	07/04/2017	FRIDAY			ABSENT	0 Hr
MR511119	08/04/2017	SATURDAY			ABSENT	0 Hr
MR511119	10/04/2017	MONDAY			ABSENT	0 Hr
MR511119	11/04/2017	TUESDAY			ABSENT	0 Hr

EMP NO.	DATES	DAY	DAILY TIME		STATUS	WORK HOUR
			DAILY TIME IN	OUT		
MR511119	12/04/2017	WEDNESDAY			ABSENT	0 Hr
MR511119	13/04/2017	THURSDAY			ABSENT	0 Hr
MR511119	14/04/2017	FRIDAY			ABSENT	0 Hr
MR511119	15/04/2017	SATURDAY			ABSENT	0 Hr
MR511119	17/04/2017	MONDAY			ABSENT	0 Hr
MR511119	18/04/2017	TUESDAY			ABSENT	0 Hr
MR511119	19/04/2017	WEDNESDAY			ABSENT	0 Hr
MR511119	20/04/2017	THURSDAY			ABSENT	0 Hr
MR511119	21/04/2017	FRIDAY			ABSENT	0 Hr
MR511119	22/04/2017	SATURDAY			ABSENT	0 Hr
MR511119	24/04/2017	MONDAY			ABSENT	0 Hr
MR511119	25/04/2017	TUESDAY			ABSENT	0 Hr
MR511119	26/04/2017	WEDNESDAY			ABSENT	0 Hr
MR511119	27/04/2017	THURSDAY			ABSENT	0 Hr
MR511119	28/04/2017	FRIDAY	08:40 AM	01:54 PM	PRESENT	5.14 Hr
MR511119	29/04/2017	SATURDAY	08:38 AM	08:38 AM	PRESENT	0 Hr
MR511119	01/05/2017	MONDAY			ABSENT	0 Hr
MR511119	02/05/2017	TUESDAY	08:42 AM	01:17 PM	PRESENT	4.75 Hr
MR511119	03/05/2017	WEDNESDAY	08:36 AM	12:54 PM	PRESENT	4.18 Hr
MR511119	04/05/2017	THURSDAY	07:50 AM	07:50 AM	PRESENT	0 Hr
MR511119	05/05/2017	FRIDAY	08:22 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	06/05/2017	SATURDAY	08:31 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	08/05/2017	MONDAY			ABSENT	0 Hr
MR511119	09/05/2017	TUESDAY			ABSENT	0 Hr
MR511119	10/05/2017	WEDNESDAY			ABSENT	0 Hr
MR511119	11/05/2017	THURSDAY			ABSENT	0 Hr
MR511119	12/05/2017	FRIDAY			ABSENT	0 Hr
MR511119	13/05/2017	SATURDAY			ABSENT	0 Hr
MR511119	15/05/2017	MONDAY	08:31 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	16/05/2017	TUESDAY			ABSENT	0 Hr
MR511119	17/05/2017	WEDNESDAY	07:59 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	18/05/2017	THURSDAY	08:10 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	19/05/2017	FRIDAY	08:38 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	20/05/2017	SATURDAY	08:30 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	22/05/2017	MONDAY	08:28 AM	12:55 PM	PRESENT	4.27 Hr
MR511119	23/05/2017	TUESDAY	08:08 AM	11:09 AM	PRESENT	3.01 Hr



EMP NO	DATES	DAY	DAILY TIME IN	DAILY TIME OUT	STATUS	WORK HOUR
MR511119	24/05/2017	WEDNESDAY	07:50 AM	10:48 AM	PRESENT	2.98 Hr
MR511119	25/05/2017	THURSDAY	08:08 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	26/05/2017	FRIDAY			ABSENT	0 Hr
MR511119	27/05/2017	SATURDAY	08:39 AM	11:35 AM	PRESENT	2.96 Hr
MR511119	29/05/2017	MONDAY	08:18 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	30/05/2017	TUESDAY			ABSENT	0 Hr
MR511119	31/05/2017	WEDNESDAY	08:03 AM	08:03 AM	PRESENT	0 Hr
MR511119	01/06/2017	THURSDAY	08:44 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	02/06/2017	FRIDAY	08:35 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	03/06/2017	SATURDAY			ABSENT	0 Hr
MR511119	05/06/2017	MONDAY			ABSENT	0 Hr
MR511119	06/06/2017	TUESDAY			ABSENT	0 Hr
MR511119	07/06/2017	WEDNESDAY			ABSENT	0 Hr
MR511119	08/06/2017	THURSDAY			ABSENT	0 Hr
MR511119	09/06/2017	FRIDAY	08:21 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	10/06/2017	SATURDAY			ABSENT	0 Hr
MR511119	12/06/2017	MONDAY	08:24 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	13/06/2017	TUESDAY	08:17 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	14/06/2017	WEDNESDAY			ABSENT	0 Hr
MR511119	15/06/2017	THURSDAY			ABSENT	0 Hr
MR511119	16/06/2017	FRIDAY			ABSENT	0 Hr
MR511119	17/06/2017	SATURDAY			ABSENT	0 Hr
MR511119	19/06/2017	MONDAY	08:16 AM		PRESENT (Time Out Missing)	0 Hr
MR511119	20/06/2017	TUESDAY			ABSENT	0 Hr
MR511119	21/06/2017	WEDNESDAY			ABSENT	0 Hr
MR511119	22/06/2017	THURSDAY			ABSENT	0 Hr
MR511119	23/06/2017	FRIDAY			ABSENT	0 Hr
MR511119	24/06/2017	SATURDAY			ABSENT	0 Hr
MR511119	26/06/2017	MONDAY			ABSENT	0 Hr
MR511119	27/06/2017	TUESDAY			ABSENT	0 Hr
MR511119	28/06/2017	WEDNESDAY			ABSENT	0 Hr
MR511119	29/06/2017	THURSDAY			ABSENT	0 Hr
MR511119	30/06/2017	FRIDAY			ABSENT	0 Hr

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پشاور اخبار و جوبہ

آپ کی روانہ شدہ اسرار نامہ کا نمبر 124403/2018 مورخہ 29-01-2018ء سے تامل مسلسل اپنی ذمہ داری سے پشاور اخبار میں دوران پشاور اخبار کے پتہ پر ہونے پر 5110 مورخہ 24/03/2018ء کو پشاور اخبار میں اسرار نامہ کی کاپی پیش کی گئی تھی۔

پشاور اخبار کی کاپی کے بارے میں آپ کی ذمہ داری سے پشاور اخبار کے پتہ پر ہونے پر 5110 مورخہ 24/03/2018ء کو پشاور اخبار میں اسرار نامہ کی کاپی پیش کی گئی تھی۔

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پشاور اخبار اور اسرار نامہ سے بیک وقت شائع ہونے والا کثیر الاشاعت قومی روزنامہ

پشاور

پشاور پاکستان

جلد 29

شمارہ 142

13-2018 رمضان المبارک 1439ھ 15-اپریل-2018ء

پشاور اخبار و جوبہ

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اللہ ہی کیلئے ہیں مشرق و مغرب القرآن

DAILY MASHRIQ PESHAWAR

پشاور پاکستان

جلد 51

شمارہ 180

13-2018 رمضان المبارک 1439ھ 15-اپریل-2018ء

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Keep it in the personal filing

Mr. Rameez

13/06/18

از دفتر پرنسپل گورنمنٹ کالج آف کامرس نمبر ۲۷، صوبائی روڈ مردان

تاریخ: 03/2018

5110/1 ایم آر ڈی ایف ایف ۱۴



پروان ولد اسرار، نائب قاضی جی ای ایم این سیر۔ ۲۷ مردان۔

سرکن مگاشن آباد، موضع مایار، تحصیل ولس پور، مردان۔

اطلاع نامہ برائے غیر حاضری۔

آپ جی ایم آر ڈی ایف ایف ایف ۱۴ کے لئے اطلاع نامہ برائے اجازت پٹا ٹانوی عدالتی کے مورخہ 01/01/2018ء

ذرا کھینچنے سے سلسلہ نمبر ۲۷ ہے۔

مزید برآں سزا میں سے بھی آپ کا یہ عادت ذکر کی گئی ہے اور اس کی وجہ سے آپ کو کئی بار عدالت کا سامنا کرنا پڑا ہے اور اس سے آپ کی غیر قانونی غیر حاضری کو آپ کے ساتھ انسانی طور پر سمجھنے کی توجہ سے عدالت نے اجازت نامہ میں تبدیل کر دیا گیا تھا۔

لہذا اپنا جو مذکورہ بالا حالات کے آپ نے اپنی عادات میں بدلی اور پھر وہی عادت دہرائے ہوئے مورخہ 01/01/2018ء میں عدالت سے حاضری کیلئے اس دوران آپ کو قیام پونڈا ڈاکٹر نے سیر کا ٹی طور پر حاضری دینے کی وضاحت مختلف خطوط کے ذریعے ہوا ہے مگر آپ نے اس سے فائدہ اٹھانے اور بخوبی فہم کر کے رخصتی کے خطوط ارسال کر کے مطالبہ کیا ہے کہ اس دفعہ کے اجراء کے 10 دن کے اندر عدالتی طور پر حاضری نہ کرانی غیر حاضری کی یہ بیان کر کے آپ کے خلاف تادیبی کارروائی میں کیوں نہ لائی جائے۔ بصورت دیگر نمبر ۲۷ کے اطلاع نامہ کے خلاف کارروائی میں لائے گئے کا اختیار کھینچنا تھا۔

پرنسپل

کاپی برائے اطلاع۔

- ۱۔ ڈن جی وی ای اینڈ ایم ایس، خیبر بھٹوان، خواتین، پشاور۔
- ۲۔ ایس ایس ایف۔
- ۳۔ ڈپٹی ریکارڈر۔

پرنسپل

گورنمنٹ کالج آف کامرس نمبر ۲۷، صوبائی روڈ مردان

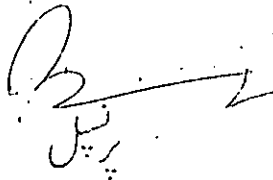
نوٹس اظہار وجوہ

(۶)

(۵۱)

آپ مسکمی روان ولد اسرار، نائب قاضی، گورنمنٹ کالج آف کامرس نمبر ۲، مردان مورخہ 01/01/2018 سے تاحال مسلسل اپنی ڈیوٹی سے غیر حاضر ہیں۔ دوران غیر حاضری بذریعہ متعلقہ کالج آپکو گھر کے پتہ پر برائے نمبر 5110 مورخہ 24/03/2018 باقاعدہ نوٹس غیر حاضری ارسال کیا گیا جس میں آپکو ڈیوٹی پر حاضر ہونے کی ہدایت کی گئی لیکن اسکے باوجود بھی آپ ڈیوٹی پر حاضر نہیں ہوئے۔

لہذا آخری بار آپ کو متنبہ کیا جاتا ہے کہ نوٹس ہذا کے پندرہ (15) دن کے اندر اندر پر زبردستی کے روبرو پیش ہو کر اظہار وجوہ برائے غیر حاضری پیش کریں۔ کہ کیوں نہ آپ کے خلاف تادیبی کارروائی کی جائے۔ عدم تعمیل کی صورت میں آپ کے خلاف حکومت کے مروجہ رولز اور ریگولیشن 2011 کے مطابق یکطرفہ کارروائی عمل میں لائی جائے گی۔ جو کہ آپ کی ملازمت سے برخاستگی پر منتج ہوگی۔



گورنمنٹ کالج آف کامرس نمبر ۲، مردان۔



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Ex. No. *AB*

IN THE COURT OF ASSISTANT SESSIONS JUDGE-III KARACHI WEST
Sessions Case No. 1208/2018.

The State

Versus

Muhammad Rawan son of Muhammad Israr... Accused

FIR No. 180/2018

U/S. 23(1)(a) Sindh Arms Act, 2013

PS: Mominabad, Karachi-West.

Mr. Jehanzaib, Advocate for accused.

Mr. Zulfiqar Ali Arain, ADPP for the State.

J U D G M E N T

1st August, 2019

1. By this judgment, I would like to dispose of the case of accused above named, who was sent up to the concerned court by the investigation officer of Police Station Mominabad Karachi-West to stand his trial u/s 23(1) (a) Sindh Arms Act and the same is received by way of transfer to this Court from Honourable Sessions Judge Karachi West.

2. The case of prosecution case are that on 24.05.2018 at 2255 hours, at the area of Zia Colony, Zia Graveyards, Sector 11/F, Orangi Town Karachi the accused was arrested by the police and recovered one unlicensed 30 bore Pistol along with loaded magazine with 03 alive rounds from his possession in presence of police witnesses. Hence this FIR. Thereafter investigation was entrusted to Investigation Officer, who after completion of usual investigation submitted charge sheet against the accused accordingly.

3. During the course of trial in compliance of Section 265-C Cr. P.C. copies were supplied to accused and such receipt was obtained from him as Ex.1. formal Charge against accused was framed on 07.01.2018 at Ex 2, in which he pleaded not guilty and claimed to be tried. vide his plea at Ex. 2/A.

4. The prosecution examined PW-1 SIP Muhammad Haneef at Ex. 3-A, who produced roznamecha entry, memo of site inspection, FSL Letter and FSL report at Ex.3-A to Ex.3-D respectively. PW-2 HC Muhammad Rafique at Ex.4, who produced memo of arrest and recovery, FIR and entry at Ex. 4-A to Ex.4-C



respectively. PW-3 PC Muhammad Mehboob at Ex.5. Learned ADPP closed the side of prosecution vide statement at Ex-6.

5. Statement of accused was recorded U/S 342 Cr.P.C vide Ex-7 to which accused denied the allegation levelled against him and claimed himself to be innocent. He did not want to examine on oath nor he want to produce any witness in his defence and pray for justice.

6. I have heard learned counsel for the accused and A.D.P.P for the state. I have also perused the R&P with relevant police file.

7. Learned counsel for the accused argued that accused is innocent and has been falsely implicated in this case by the police and prayed for acquittal from this case.

8. On the other hand learned ADPP for the State has argued that accused was arrested at spot and unlicensed weapon was recovered from his possession. The complainant and other material witnesses have identified the accused before this Court. The prosecution has proved its case beyond any shadow of doubt. He has prayed for conviction of accused.

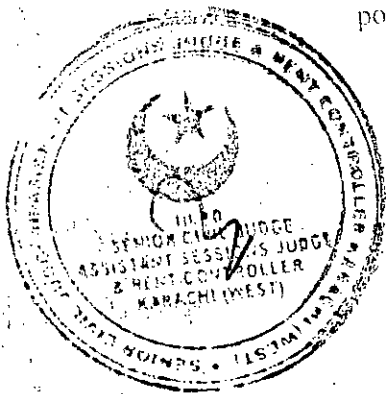
9. I have heard learned counsel for the accused and ADPP for the state and accused and have carefully gone through the material placed so far. In view of the above facts and submissions made by the parties, I formulate the following points for determination:-

POINTS

1. Whether on 24.05.2018 at 2255 hours, at the area of Zia Colony, Zia Graveyards, Sector 11/F, Orangi Town Karachi accused was arrested by the police and recovered one unlicensed Pistol of 30 bore along with loaded magazine with 03 alive rounds from his possession in presence of police witnesses?
2. What offence, if any, the accused has committed?

My replies to the above points are as under with reasons to follow:-

- (i) Doubtful.
- (ii) Accused is extended benefit of doubt and acquitted u/s: 265-F (1), Cr.P.C.



REASONS FOR ABOVE FINDINGS

POINT NO. I.

10. I have given due considerations to the arguments of both sides and have carefully gone through the evidence and the documents produced therewith. To its inception, I would like to address the issue of quality of evidence of two important witnesses: one the complainant who made arrest of the accused and prepared the memo in presence of mashir and the evidence of mashir in whose presence the accused was arrested and allegedly one unlicensed Pistol of 30 bore along with loaded magazine with 03 alive rounds was recovered from his possession. There are material contradictions/admissions in the statements of both the witnesses which have made the prosecution case doubtful. The complainant namely HC Muhammad Rafique, admitted in his cross examination-in-chief that the recovered weapon was without number. He left the PS at 11:00 am and were present at PS. Furthermore, mashir's site inspection was prepared at 08:30 am. No any private witness was associated from the place of incident. 15/20 minutes, which creates material contradictions between the witnesses. Presence of police officials and prepared the memo on the spot had not been justified through departure entry. Reliance placed on 2017 YLR-1097, Muhammad Umair V/S State. On reading of the evidence of both witnesses, it appears that they have not deposed any single words regarding sealing of case property on the spot which create doubt in the prudent mind of law. Such contradiction in two important witnesses viz: the complainant and mashir has further made the entire case doubtful. Both the witnesses are unable to disclose the number of the police mobile on which they were patrolling on the relevant date and time. Allegedly, police party recovered one unlicensed Pistol of 30 bore along with loaded magazine with 03 alive rounds from the possession of accused but the complainant and mashir have not shown even the color of the pistol or description showing symbol in the memo. The investigating officer during cross examination also admitted that he did not associated any private witness from the place of incident at the time of site inspection. Thus, the case property so produced before the court can no way be matched with recovered allegedly took place at the place of incident be noted that according to memo



Ex. 4-A, the accused was arrested from the place of incident mentioned above yet no person from the way was asked to act as witness of the arrest and recovery. The memo Ex-4-A does not show that the police party made any effort to call any person from the public to act his witness. Though, this is not mandatory to call private witnesses to act as mashir of the arrest and recovery by virtue of section 34 of Sindh Arms Act 2013 but that does not mean that the most possible witnesses are not required be associated. Besides, it may not be ignored that neither the mashir nor complainant in their evidence disclosed the entry number under which police party was patrolling. It may be noted that no entry of departure is shown in the memo of arrest and recovery under which the police party was patrolling in area. Admittedly, no person from the public is cited as witness as such accepting evidence of police official under such circumstances amounts to make them the judge of their own cause unless they are able to show that the place of recovery was so deserted that it was impossible for them to secure attendance of any witness from public. I am supported in my view by the case reported as KAMRAN alias GHULAM RASOOL alias KALOO V/S The STATE (P.I.D 1997 Karachi 484). Moreover, it is an iron clad principle of criminal justice that an accused cannot be held for a crime on basis of probabilities and high presumption and no one shall be construed into a criminal without legal proof. Reliance is placed on case law reported in 2005 P.Cr.L.J. 22. It is duty of prosecution to prove its case against the accused beyond any reasonable doubt and for giving accused benefit of doubt, it is not necessary that there should be many circumstances creating doubt, if there is a circumstance which creates reasonable doubt in prudent mind about the guilt of accused, the accused would be entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right, while observing so, I am fortified with the strength from the case of Tariq Pervaiz V/S The State, 1995 S.C.M.R-1345. It has also been held in the reported case Shuhabuddin V/S M. Hashim, 2015 P.Cr.L.J. 81 that the prosecution was bound to prove its case beyond any shadow of doubt, if any reasonable doubt would arise in the prosecution case, the benefit of the same must be extended to accused, not as a grace or concession, but as a matter of right and not so many doubts were needed in the prosecution case, rather any reasonable doubt arising out of the prosecution evidence, pricking the judicial

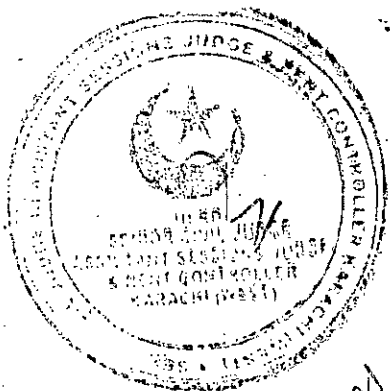


mind, was sufficient for acquittal of accused

11. I have also gone through the evidence of prosecution witnesses so made available on record and found the same is contradictory on material particulars of the case to each other. For instance, in the mashirnama of arrest and recovery at Ex.4/A, it reveals that one 30 bore pistol without number loaded with three live bullets was recovered from the possession of accused in presence of witnesses namely PC Mehboob and PC Saad, whereas, PC Mehboob in his evidence at Ex.4, has not disclosed the proper description of the alleged weapon. Not only this, this fact is also not mentioned in the FSL report at Ex.3/D. Furthermore, it is mentioned in the memo of arrest and recovery at Ex.4/A that the alleged weapon allegedly recovered from the accused was without number, but FSL report available on record at Ex.4/A showing that alleged weapon was rubbed number. Moreover, the pistol and bullets were retained by whom during this intervening period has also not been explained by the prosecution that after recoveries under whose custody, it were lying. For the sake of arguments, if it is assumed that the case property was lying in the Malkhana then no report/entry of the Malkhana has been produced to corroborate the version of prosecution. No official from Forensic Division has been examined in this case. Therefore, under the circumstances, no reliance could safely be placed on FSL report for conviction of the accused on the basis of contradictory evidence.

12. Admittedly, in this case, there are number of infirmities/lacunas, which have created serious doubt in the prosecution case. It is settled principle of law that for extending benefit of doubt, it is not necessary that there should be multiple circumstances creating doubt. If a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession, but as a matter of right, as has been held in the case of *Tariq Pervez v. The State* reported in 1995 SCMR 1345, wherein the Hon'ble Supreme Court has held as under:

"The concept of benefit of doubt to an accused person is deep-rooted in our country for giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused



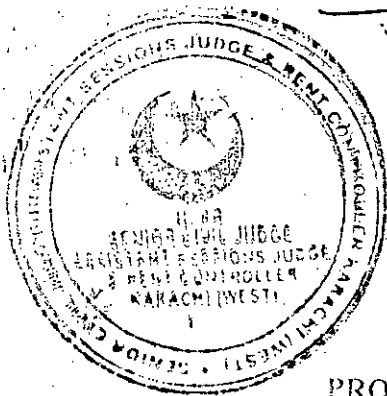
will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

13. More so, Islamic jurisprudence enshrined the rule that it would be better to acquit hundred culprits than convicting one innocent soul; which had been transformed into the form of the principle that "acquitting by error, would be better than convicting by error". Said commandment had evolved into the theory of benefit of doubt, which, invariably, was extended to accused for self-administration of criminal justice. The point is therefore replied as doubtful.

POINT NO.2

14. In view of the above discussion, I am of considered opinion that prosecution has miserably failed to bring home guilt of the accused beyond any reasonable doubt. Accused Muhammad Rawan son of Muhammad Israr is therefore, acquitted of the charge under section 265-II(1), Cr.P.C. He is put on bail, his bail bond stands cancelled and surety discharged.

Pronounced in open Court.
Given under my hand and seal of this Court.
This 01st day of August, 2019.



sd/01-08-19
(GHULAM MAJIDI)
ASSISTANT SESSIONS JUDGE
KARACHI WEST

PROPERTY ORDER

15. The property viz. one Pistol of 30 bore alongwith 1000 magazine and 03 live rounds, being un-claimed by the accused is confiscated in favour of Government and be sent to Sindh Armory for its disposal in accordance with the law, after expiry of appeal period.

sd/01-08-19
(GHULAM MAJIDI)
ASSISTANT SESSIONS JUDGE
KARACHI WEST

Date of Application 08-08-19
Fees Deposited on 19-08-19
Fees Deposited on
Copy to
Stamp
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Copy to

Comparison By
Prepared By
CERTIFIED TO BE TRUE

SENIOR CIVIL JUDGE
& BENCH CONTROLLER
KARACHI WEST