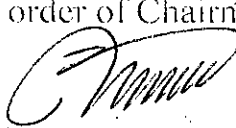


FORM OF ORDER SHEET

Court of _____

Appeal No. 159/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/01/2024	<p>The appeal of Mst. Shaheen resubmitted today by Mr. Muhammad Iqbal Mohmand Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ . Parcha Peshi is given to counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

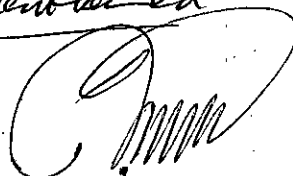
This is an appeal filed by Mst. Shaheen today on 16.11.2023 against the order dated 16.9.2023 against which she made/preferred departmental appeal/representation on 16.10.2023 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiencies.

- 1- Address of appellant is incomplete which may be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Memorandum of appeal is not signed by the appellant.
- 3- Copy of departmental appeal dated 16.10.2023 mentioned in the memo of appeal is not attached with the appeal be placed on it.
- 4- All the annexures of the appeal are illegible which may be replaced by legible/better one.
- 5- Annexures of the appeal are unattested.
- 6- Wakalat nama in favour of appellant be placed on file.
- 7- Chamber/gmail address and contact number of the counsel engaged is not mentioned on the index of the appeal.
- 8- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent may also be submitted with the appeal.

No. 3616 /ST/2023 ~~section of law is not mentioned.~~

Dt. 17-11 /2023.



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. M. Iqbal Mohmand Adv.
ASC.

23.11.2023 Resubmitted after compliance.

28.11.2023 Resubmitted after compliance
Appeal filed Under 37 Services Act 1973 Section 4 ASC
M. Iqbal ASC

**BEFORE THE HONOURABLE
SERVICE TRIBUNAL, KP PESHAWAR**

Service Appeal No. 159/2023

Mrs. Shaheen

_____ (Appellant)

VERSUS

District Education Officer (Female) Nowshera etc.

_____ (Respondents)

INDEX

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2	Status Quo Application a/w Affidavit		7-9
3	Copy of order		10-12
4	Copy of second order by EDO		13
5	Copy of Departmental Appeal		14-15
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7	Wakalat Nama		22


Appellant

Through


M. Iqbal Khan Mohmand
ASC

Dated: 15.11.2023

BEFORE THE HONOURABLE
SERVICE TRIBUNAL, KP PESHAWAR

Service Appeal No. 159 /2023

Mrs. Shaheen W/o Inayat Ullah

PSHT Govt. Girls Primary School Kariri (BPS-15) *Nowshera*

R/o Kariri, Tehsil Pabbi, District Nowshera

_____(Appellant)

V E R S U S

- 1) District Education Officer (Female) Nowshera
 - 2) Director Education, Khyber Pakhtunkhwa, Peshawar
 - 3) Tayyaba Akhtar D/o Khalid Khan R/o Govt. Primary School Kariri Taru Jabba, Pabbi Nowshera
- _____(Respondents)

Service Appeal Under Section 7/4 (KPK)
Service Tribunal Act 1974 against the order of
respondent No. 1 dated 16.09.2023.

Prayer:

On acceptance of the instant appeal, the
impugned order dated 16.09.2023 may kindly

2

be declare illegal, unlawful as respondent No. 1 already passed another order on 28.09.2023 after 12 days and held in abeyance office order dated 16.09.2023.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:

- 1) That petitioner was on duty in BPS-15 as Head Mistress in Govt. Primary School Kariri Taru Jabba, Tehsil Pabbi, District Nowshera while respondent No. 3 was in BPS-14 in the same school.
- 2) That respondent No. 3 approached political person and respondent No. 1 promoted respondent No. 3 while no vacant post was available in school even she was not eligible for the post of BPS-15 in the same school and even not created another new post in same school.
- 3) That the post of Head Mistress in BPS-15 was not vacant and both petitioner and respondent No. 3 was working on the same post of Head Mistress in the same school which is illegal and against norms of justice. *order is Arg² A³*

- 4) That the respondent No. 1 realized that the impugned order is illegal and contrary to law hence she (respondent No. 1) passed another order within a week on 28.09.2023 and held and abeyance the office order Endst No. 55-62 dated 16.09.2023. (Copy of order is attached) *admitted*
- 5) That the petitioner is still working as Head Mistress as BPS-15 in the same school and respondent No. 3 has not taken charge both are in the same school and respondent No. 1 directed petitioner to continue her duty as Head Mistress in the same school. Both the orders are illegal and contrary to law and against norms of justice.
- 6) That there is no single complaint against petitioner and even petitioner husband has donated the land for the said school.
- 7) That petitioner remained in rural area from 2013 to 2019 in Cherat School in BPS-15 and now transferred native village Taru Jabba and nobody has lodged any complaint against petitioner.
- 8) That DPC of respondent No.3 was prepared for promotion in the year 2015 in year 2019 and in the

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year 2021 but she refused to take promotion in BPS-15 and forego right of promotion.

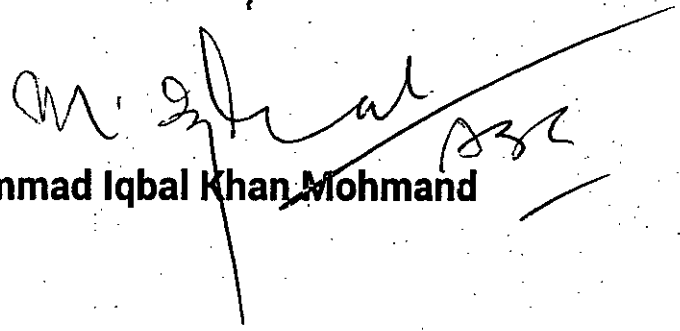
- 9) That the respondent No. 3 was promoted not on vacant post and violated the rules as only promotion are on the basis of vacant post while both petitioner and respondent No. 3 are working on one post as Head Mistress in BPS-15 which is illegal, contrary to law and rules.
- 10) That it is common practice promotions are based on vacant posts in different schools but respondent No. 1 promoted respondent No. 3 on political basis and violated rules and procedure when it was realized to respondent No. 1 passed an order held and abeyance which is liable to be cancelled order dated 16.09.2023 in the light of subsequent order dated 28.09.2023.
- 11) That petitioner has already file application appeal on 16.10.2023 before Director Education KPK. (Copy of letter dated 16.10.2023 is attached which is still pending hence petitioner file the present appeal before this hon'ble tribunal. *Handwritten signature and initials*)
- 12) That the petitioner is in advanced age and

suffering from back bone injury and performing duty in village with the entire satisfaction of whole village and surrounding area parents of students are quite satisfied from petitioner service as Head Mistress in said school which are in the best interest of public.

It is, therefore, humbly prayed that on acceptance of this service appeal, the impugned order dated 16.09.2023 No. 55-62 of respondent No. 2 may kindly be cancelled and order dated 28.09.2203 as held in abeyance may be regularized in field in the interest of justice.


Appellant

Through


Muhammad Iqbal Khan Mohmand
ASC

Dated: 15.11.2023

**BEFORE THE HONOURABLE
SERVICE TRIBUNAL, KP PESHAWAR**

Service Appeal No. _____/2023

Mrs. Shaheen

(Appellant)

VERSUS

District Education Officer (Female) Nowshera etc.

(Respondents)

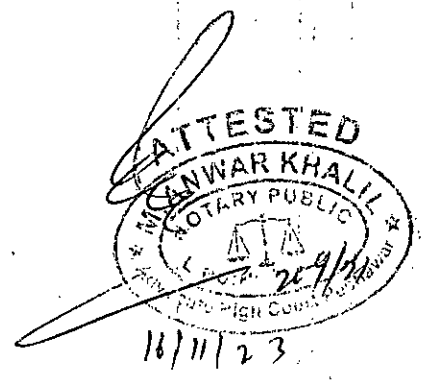
AFFIDAVIT

I, Malik Inayat Ullah Khan S/o Malik Muhammad Yousaf, resident of Malkan, Taru, P.O. Taru Jaba, Tehsil & District Nowshera (Attorney Holder), do hereby solemnly affirm and declare on Oath that the contents of the Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon'ble tribunal.

Deponent



Malik Inayat Ullah Khan
CNIC No. 17201-2227704-9



18/11/23

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**BEFORE THE HONOURABLE
SERVICE TRIBUNAL, KP PESHAWAR**

Service Appeal No. _____/2023

Mrs. Shaheen

_____ (Appellant)

V E R S U S

District Education Officer (Female) Nowshera etc.

_____ (Respondents)


Application for the grant of Status Quo

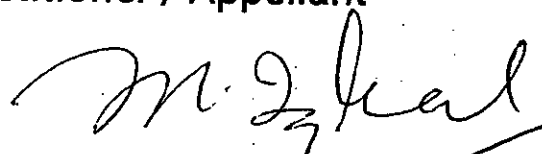
Respectfully Sheweth,

- 1) That the petitioner has filed appeal in tis hon'ble tribunal today in which no date has yet been fixed.
- 2) That the petitioner is still working as Head Mistress in BPS-15 in Govt. Primary School Kariri, Taru Jabba, Pabbi, District Nowshera.
- 3) That respondent No. 1 passed transfer order of petitioner on 16.09.2023 but subsequently passed another order on 28.09.2023 and 1st order held in abeyance inadvertently. (Copies of both the orders are attached)

- 4) That petitioner has got strong case and likely chances for success and balance of conveyance is also in favour of the petitioner.
- 5) That impugned order already suspended and held in abeyance on 28.09.2023 and petitioner is still working on her seat as Head Mistress, if respondent No. 1 remove her from the same seat, there will be irreparable loss to the petitioner and her reputation will be damaged. (Affidavit is attached)

It is, therefore, most humbly requested that grant of status quo order in the above subject matter till the decision of this appeal in the best interest of justice.


 Petitioner / Appellant

Through 

M. Iqbal Mohmand
 ASC ABC

Dated: 15.11.2023

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**BEFORE THE HONOURABLE
SERVICE TRIBUNAL, KP PESHAWAR**

Service Appeal No. _____/2023

Mrs. Shaheen

_____ (Appellant)

VERSUS

District Education Officer (Female) Nowshera etc.

_____ (Respondents)

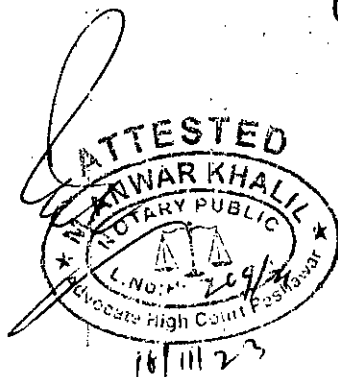
AFFIDAVIT

I, Malik Inayat Ullah Khan S/o Malik Muhammad Yousaf, resident of Malkan, Taru, P.O. Taru Jaba, Tehsil & District Nowshera (Attorney Holder), do hereby solemnly affirm and declare on Oath that the contents of the Status Quo Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon'ble tribunal.

Deponent



Malik Inayat Ullah Khan
CNIC No. 17201-2227704-9



BETTER COPY

10

**OFFICE OF THE
DISTRICT EDUCATION OFFICER
(FEMALE) NOWSHERA**

0923-9220105, 0923-9220105
Deofnowshera@gmail.com

Notification:

Consequent upon recommendation of the Departmental Promotion Committee (DPC), the following Female Senior Primary School Teachers (SPSTs) BPS-14, are hereby promoted to the post Primary School Head Teachers (PSHTs) in BPS-15 (23920-1980-83320) plus usual Provincial Government, in Teaching cadre on the terms and conditions given below with immediate effect and further posted in the schools noted against each:-

S.No	Name of School	Name of Teacher	Father Name	Place of Posting	Remarks
1.	GGPS Baghban Pura	Basmeena	Muhammad Aslam Khan	GGPS Usman Abad	A.V.P
2.	GGPS No. 02 Chowki Drub	Mumtaz Begum	Ghulam Mihdi	GGPS Chowki Drub	In Same School
3.	GGPS Azakhel Payan No. 1	Farhat Jehan	Lal Jahan	GGPS Arif Abad	A.V.P
4.	GGPS Akora No. 1	Sajida Mukhtiar	Mukhtiar Ahmad	GGPS Hassan Dara	A.V.P
5.	GGPS Ali Garh	Saira Noreen	Ali Akbar	Mali Khel Payan	A.V.P
6.	GGPS No. 1 Pabbi	Sarhad Begum	Abdul Wahab	GGPS Noor Abad Jabba	A.V.P
7.	GGPS Mughalbaz Shaidu	Naheed Akhtar	Zarshad Khan	GGPS Jabbi Dheri	A.V.P
8.	GGPS Shaidu Tekadaran	Shahzadi Attiq	Satar Khan	GGPS Charpani	A.V.P
9.	GGPS Ali Garh	Faiza Quraishi	Nazeer Ahmad	GGPS Hawai	Vice S.No. 02
10.	GGPS Pir Pai No. 03	Latif Begum	Fazal Khan	GGPS Lakari	A.V.P
11.	GGPS Aman Garh	Zaibuh Nisa	Muhammad Asghar	GGPS Sheikhi Banda	A.V.P
12.	GGPS Kareri	Tayyaba Akhtar	Khalid Khan	GGPS Kareri	Vice S.No. 01
13.	GGPS Kahi No. 2	Yasmeen Begum	Gulab Sharif	GGPS Aso Khel	A.V.P
14.	GGPS Kahi No. 1	Sajida Jabeen	Ahmad Shah	GGPS Ameer Killy	A.V.P
15.	GGPS No. 1 Pabbi	Shabina Naz	Mir Ahmad	GGPS Kotli Kalan	A.V.P

Attested

[Signature]

BETTER COPY

1

Promotion / SPST To PSHT

16.	GGPS Risalpur Cantt	Musarat Islam	Islam Ud Din	GGPS Shah Nawaz Koroona	A.V.P
17.	GGPS Poshtoon Ghari	Haseena Jabeen	Zarin Khan	GGPS Gul Din Koroona	A.V.P
18.	GGPS Ali Garh	Saira Sumbal	Nisar Hussain	GGPS Aman Pura	A.V.P
19.	GGPS No.2 Mohib Banda	Hina Gul	Muhammad Iqbal	GGPS No. 01 Spin Khak	A.V.P
20.	GGCMS Asc Colony	Zahira Begum	Mazhar Ahmad	GGPS Aba Khel Wallai	A.V.P
21.	GGPS L.C Aman Garh	Shazia Bano	Abdul Rahman	GGPS Palosi Payan	A.V.P
22.	GGPS Dheri Mian Iskhak	Saima	Taimur Khan	GGPS Spin Kani Sharif Abad	A.V.P
23.	GGPS Ali Garh	Rozina	Sher Ghani	GGPS Islam Abad Koroona	A.V.P
24.	GGPS Ksheshgi Bala	Irum Bibi	Shafi Ud Din	GGPS Malik Aman Koroona	A.V.P
25.	GGPS D.I.K	Seemi Khan	Mian Hanzala Khan	GGPS Ouch Nehar	A.V.P
26.	GGPS Rashakai	Zahoor Begum	Sher Muhammad Khan	GGPS Kolinger	A.V.P
27.	GGPS L.C Aman Garh	Nusria Begum	Mustaqeem Khan	GGPS Khalil Ur Rehman Koroona	A.V.P
28.	GGPS No. 2 Pabbi	Salma Gul	Said Shah	GGPS Darwesh Abad	A.V.P
29.	GGPS Ksheshgi Bala	Amna Begum	Muhib Ullah Khan	GGPS Faqir Killy	A.V.P
30.	GGPS Ziarat Kaka Sb No.2	Haseena Bibi	Aman Ullah	GGPS Sharif Abad Wallai	A.V.P
31.	GGPS Baghban Pura	Rukhsana Begum	Dost Muhammad	GGPS Garu	A.V.P
32.	GGPS Baghban Pura	Farzana	Ghulam Muhammad	GGPS Mir Kalan	A.V.P
33.	GGPS Dheri Koti Khel	Fozia Naz	Mohib Ullah Khan	GGPS Feroz Abad	A.V.P
34.	GGPS No.1 Dagi Qadeem	Najma Khatoon	Khalil Ur Rahman	GGPS Palosi Bala	A.V.P
35.	GGPS Gandheri	Yasmeen Gul	Noor Muhammad	GGPS Ali Abad	A.V.P
36.	GGPS Khurabad	Anjum Akhtar	Akhtar Muhammad	GGPS Shpano Killy	A.V.P
37.	GGPS Bara Banda	Nasreen Akhtar	Salah Ud Din	GGPS Bara Banda	In Same School

Attested

[Signature]

BETTER COPY

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Promotion / SPST to PSHT

Consequential Transfer

Consequent upon the above postings the following transfer is hereby ordered within immediate effect.

S.No	Name & Designation	Present School	Transferred to	Remarks
1.	Shaheen PSHT	GGPS Kareri	GGPS Nazar Muhammad Karoona	Vice S.No. 12
2.	Waheeda Hameed PSHT	GGPS Hawai	GGPS Kas Koroona Nowshera	A.V.P
3.	Faseem Gul PST	GGPS Sarangi Bagh	GGPS Shahab Khel	A.V.P

Terms & Conditions:

1. They would be on probation for a period of one year extendable for another one year.
2. They would be governed by such rules and regulation as may be issued from time to time by the government.
3. Charge report should be submitted to all concerned.
4. Their inter Se-seniority an same post will be remain intact.
5. No TA/DA are allowed for joining their duty.
6. They will give and under taking to be recorded in their service book to the effect that if any overpayment is made to them in light of this order will be recovered and if they are wrongly promoted, they will reversed.
7. If any senior official is deprived of promotion by this order, the promotion order of the lowest official will be withdrawn on acceptance of an appeal and promotion order will be reviewed accordingly as per seniority, if necessary.
8. Errors and omissions will be accepted within the specified period.

(DURE SHAWAR)
DISTRICT EDUCATION OFFICER
(FEMALE) NOWSHERA

Endst No. 15-62/DEO(F)/Estab Primary promotion file SPST to PSHT 2023 dated NSR the 16/09/2023.

Copy forwarded for information & necessary action to the:-

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Senior District Accounts Officer Nowshera.
3. Principal / Headmistress Concerned
4. Sub Divisional Education Officer (Female) Nowshera, Pabbi & Jehangira.
5. Superintendent Establishment Local Office.
6. ADEO (F) Establishment Primary / Secondary Local Officer.
7. Officials Concerned (Service Book attached).
8. Office Copy.

DISTRICT EDUCATION OFFICER
(FEMALE) NOWSHERA

ATTESTED & ACCEPTED
M. Iqbal
Advocate Supreme Court of Pakistan

Attested

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13

OFFICE OF THE
DISTRICT EDUCATION OFFICER
(FEMALE) NOWSHERA

0923-9220105, 0923-9220105

OFFICE ORDER:

The Competent Authority is pleased to held & abeyance this office order Endst No. 55-62 Dated 16-09-2023 S.No. 02 PSHT Mst. Shaheen (Consequential Transfer) in the interest of public with immediate effect till further order.

- Note:- 1. Charge report should be submitted to all concerned.
2. No TA/DA etc. is allowed.

(DURE SHAWAR)
DISTRICT EDUCATION OFFICER
(FEMALE) NOWSHERA

Endst No. 820-27 / Transfer PST DEO (F)/NSR Sec (Estab) Dated: 28/09/2023

Copy forwarded for information & necessary action to the:-

1. Senior District Accounts Officer Nowshera.
2. District Monitoring Officer Nowshera.
3. Sub Divisional Education Officer (F) Pabbi.
4. Superintendent Local Office.
5. ADEO (F) Primary Local Officer.
6. Head Mistresses Concerned.
7. Teacher Concerned.
8. Office Copy.

DISTRICT EDUCATION OFFICER
(FEMALE) NOWSHERA

ATTESTED & ACCEPTED
M. Iqbal Khan Mohmand
Advocate Supreme Court of Pakistan

Attested
[Signature]

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR

14

No. 223 / E.No. 310-317/Appeal/Nowshera

Dated Peshawar the 16/10/2023

To

The District Education Officer,
(Female) Nowshera

Subject

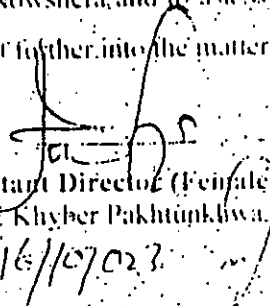
APPEAL

Memo:

I am directed to refer to the subject cited above and to enclose herewith a copy of appeal of Mst. Shaheen, PSITF, GGPS, Kareh Taru (District Nowshera) and to ask you to submit a report views/comments to this Directorate to proceed further into the matter.

Encl:-

Copy of the above is forwarded to the
Director E&SE KPK Peshawar.


Assistant Director (Female)
E&SE Khyber Pakhtunkhwa

16/10/2023

Assistant Director (Female)
E&SE Khyber Pakhtunkhwa

Attested

[Signature]

ATTESTED & ACCEPTED
[Signature]
M. Iqbal Khan Mohmand
Advocate Supreme Court of Pakistan

D. حضور صاحب ڈسٹرکٹ ایجوکیشن آفیسر، زنانہ پبلک سکول نوشہرا

فردیہ علامہ

گزارش فرماتے ہیں کہ سائیکل میں شاہین P.S.H.T گورنمنٹ گریڈ پرائمری سکول

کریٹرئی ٹیچر ہیں جسے تحصیل میں ڈپٹی سسرانام دس رہی ہیں۔ 9 مارچ 2023

نہ سفر ہوئی ہے اور پھر یہ کہ دوسری اسٹانڈنگ ڈپٹی سسرانام دس رہی ہیں جسے ڈپٹی سسرانام دس رہی ہیں۔

سائیکل پر کسی قسم کی عموماً شکایت ہے نہ ہی اس سسرانام دس کا کوئی شکایت ہے سائیکل پر یہ

بیم دور دور علاقہ قولا اوج پراہد جرات کے علاقہ قولا میں ڈپٹی سسرانام دس رہی ہیں۔ 7 سال سے گاؤں سے

سائیکل پر 50 سال سے زیادہ ہے سائیکل پر پڑھو گاؤں میں ہیں تکلیف ہو رہی ہے

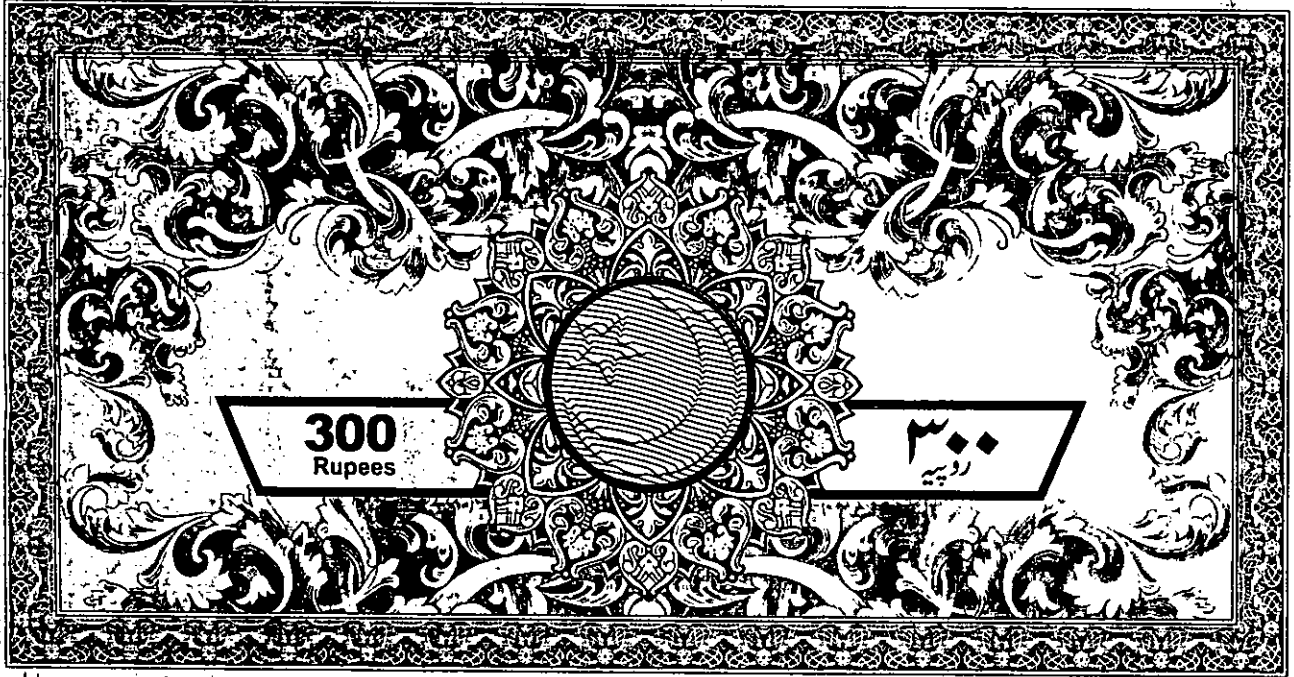
دور دور سے نریم تکلیف پڑھتی ہے۔ اسے صاحبان کی فرمائش اور سسرانام دس کی حالت زور پر اعم و سائر

16/10/23

D.E.O. (F) Nowshera
Diary No 500
Dated 17-10-2023

[Signature]

شاہین شاہین P.S.H.T گورنمنٹ گریڈ پرائمری سکول کریٹرئی ٹیچر، حضور صاحب ڈسٹرکٹ ایجوکیشن آفیسر، زنانہ پبلک سکول نوشہرا



﴿مختیار نامہ برائے بیروی مقدمہ﴾

منکہ مسماة شاہین زوجہ ملک عنایت اللہ خان PSHT BPS-15 ٹیچر گورنمنٹ گرلز پرائمری سکول کریڈی تحصیل ہی ضلع نوشہرہ کی ہوں۔ درینوقت بہ ہوش و حواس غمہ و بلا جبر و اکراہ غیرے مقررہ ہوں۔ کہ من مقررہ سرکاری ملازمہ ہوں۔ اور بوجہ ذاتی و سکول ڈیوٹی و مصروفیات کے بذات خود اپنی عدالتی و سروس ٹرائبیونل میں مقدمہ اپیل کی بذات خود گمانی نہیں کر سکتی۔ یہ کہ من مقررہ ایک عدد اپیل، نام ڈسٹرکٹ ایجوکیشن سنیسر (ٹیمیل) ضلع نوشہرہ وغیرہ کے نام معزز عدالت سروس ٹرائبیونل خیبر پختونخواہ پشاور میں دائر کر رہی ہوں اور بوجہ ذاتی و سرکاری سکول مصروفیات کی وجہ سے من مقررہ اپنے شوہر مسکی ملک عنایت اللہ خان ولد ملک محمد یوسف سکنہ محلہ مکان گاؤں تارو وجہ تحصیل ہی ضلع نوشہرہ کو اپنی جانب بابت مقدمہ بالا مختیار خاص مقرر کر کے یہ اختیارات دیتی ہوں کہ مختار موصوف مذکورہ من مقررہ کی جانب سے بابت مقدمہ بالا عدالت حضور میں پیش ہو کر مقدمہ داخل عدالت سروس ٹرائبیونل کریں۔ بیروی مقدمہ کرے۔ اپنے دستخط یا نشان انگشٹ ثبت کریں۔ بیان، بیان حلفی دیویں۔ وکیل یا بیرسٹر مقرر کریں۔ عرضی دعویٰ، جواب دعویٰ، جواب الجواب، درخواست ہائے اپیل، نگرانی، نظر ثانی وغیرہ داخل عدالت کریں۔ فہرست گواہان، خرچہ گواہان داخل عدالت کریں۔ حتیٰ کہ جملہ درکار روائی بابت مقدمہ بالا تحریری طور پر انجام دیویں۔ نیز بابت مقدمات بالا جملہ درکار روائی از عدالت حضور تا عدالت عالیہ، و عدالت عظمیٰ عمل میں لاویں۔ مختیار خاص مذکورہ کی جملہ کارروائی اصالتاً و کالاتاً من مقررہ کو ساختہ و پرداختہ کو قبول و منظور ہوگی۔ لہذا یہ چند حرف بطور مختیار نامہ برائے بیروی مقدمہ مذکورہ بالا رو برد گواہان ذیل لکھ دیئے تاکہ سند رہے اور بوقت ضرورت کام آویں۔

المرقوم: 22/11/2023

ملک عنایت اللہ خان - اختیار گہندہ

17201-2227704-9

محمد نعمان ولد ملک امان اللہ

17202-0352805-3

سماة شاہین - (اختیار گہندہ)

17201-2104723-0

حفیظ شیر ولد خان شیر

17201-7009895-3



2005 S C M R 890

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan and Mian Shakirullah Jan, JJ

MANAGING DIRECTOR, OIL AND GAS DEVELOPMENT COMPANY LTD.---Appellant

versus

Syed NAJMUL HASSAN NAQVI---Respondent

Civil Appeal No.662 of 2001, decided on 28th February, 2005.

(On appeal from the judgment, dated 23-6-2000 passed by the Federal Service Tribunal, Islamabad in Appeal No.1675(R) of 1999).

(a) Service Tribunals Act (LXX of 1973)---

---S. 4---Civil Procedure Code (V of 1908), S.80 & O.VII, R.11---Premature appeal---Effect---Any suit or cause of action which is premature, does not entail dismissal of that cause but it results into rejection under O.VII, R.11 C.P.C. that does not operate as res judicata---If appeal before Service Tribunal is premature, it should be returned by Registrar so as to be re-submitted after maturity of cause of action.

Abdullah Bhai's case PLD 1964 SC 106; Muhammad Usman's case PLD 1983 SC 436; Syed Aftab Ahmed's case 1999 SCMR 197; Pakistan International Airlines Corporation's case 1999 PLC (C.S.) 1539 and Sui Southern Gas Company Limited's case 2003 PLC (C.S.) 796 ref.

(b) Service Tribunals Act (LXX of 1973)---

---S. 4---Civil Procedure Code (V of 1908), O.VII, R.11---Premature appeal---Filing of appeal before expiry of ninety days---Penalty of compulsory retirement, setting aside of---Civil servant was compulsory retired from service but Service Tribunal allowed appeal and set aside the penalty---Plea raised by the authorities was that civil servant had filed appeal after eighty days from filing of departmental representation, thus the appeal was premature the same merited dismissal by Service Tribunal---Validity---If at the initial stage, by serious omission, the timely return of appeal was avoided and the cause of action was allowed to mature during pendency of appeal and on the fag end of proceedings, the appeal was dismissed on the ground that the initial submission was premature, such volte face if taken by Service Tribunal, could not be endorsed under any canon of justice---Premature matters were not bad but simply premature and must be returned---Failure to return the appeal debarred the Tribunal to subsequently jeopardize rights and bona fide claims of civil servants---Service Tribunal was required to return the appeal at the very first instance, if such course was not adhered to, then the Tribunal subsequently could not damage the civil servant on the grounds of prematurity of appeal when the same had become mature during the pendency allowed by Service Tribunal itself---Service Tribunal had rightly declined to dismiss the appeal on the score of prematurity---Appeal was dismissed.

(c) Service Tribunals Act (LXX of 1973)---

---S. 4---Penalty of compulsory retirement, setting aside of---Discrimination---Departmental inquiry was initiated against eight officers but the respondent civil servant was only condemned who was compulsory retired from service just 4 days prior to his superannuation---Service Tribunal

allowed the appeal and set aside the penalty---Validity---No action was taken against other officers under inquiry on the ground that he was to retire after about four months---If such reason could prevail with the authorities with regard to that other officer, it was equally available for the respondent civil servant who was compulsorily retired 4 days before his superannuation---Service Tribunal had rightly concluded that the penalty awarded to respondent civil servant was clearly discriminatory and his retirement was expedited mala fide despite the fact that after 4 days he was to retire on superannuation---Supreme Court declined to interfere with the judgment passed by Service Tribunal as the same was unexceptionable---Appeal was dismissed.

Shah Abdul Rasheed, Advocate Supreme Court with Syed Amjad Ali, Dy. Admn. Officer (O.G.D.C.) for Appellant.

Hafiz S.A. Rehman, Advocate Supreme Court for Respondent.

Date of hearing: 28th February, 2005.

JUDGMENT

SARDAR MUHAMMAD RAZA KHAN, J.--- Oil and Gas Development Company Limited, Islamabad has challenged, after leave of the Court, the judgment, dated 23-6-2000 of learned Federal Service Tribunal whereby, on acceptance of the appeal of Syed Najamul Hassan Naqvi, his compulsory retirement from service was set aside.

2. The respondent joined the company on 23-9-1982 as Deputy Chief Geologist and in due course became a Manager (B-21) when on 12-12-1998 he was served with a charge-sheet levelling the allegations of misconduct. An inquiry was held and ultimately it was found that the charges of misconduct were proved. Accordingly, vide office memorandum dated 13-8-1999 he was made to retire from service compulsorily. His appeal before the Service Tribunal succeeded and hence this appeal.

3. Learned counsel for the appellant challenged the very maintainability of appeal before the Tribunal on the ground that it was premature and was filed without waiting for a period of 90 days after filing of appeal or representation before the higher departmental authority. The learned counsel drew analogy from section 80 of the Civil Procedure Code where no suit against Government could be filed before the expiry of two months next after notice in writing, as contemplated by the section itself. It was vehemently asserted by the learned counsel that any suit brought in contravention of section 80, C.P.C. was bound to be rejected under Order VII, rule 11 of the C.P.C. and could not be entertained by the Court. That identical was the case of appeals to be filed under section 4 of the Service Tribunal Act.

4. We believe that the one in hand is a matter squarely akin to the civil law and that is why the learned counsel also consciously sought protection under the provisions of section 80, C.P.C. Still, we cannot avoid making expression that the condition of prematurity involved under section 80, C.P.C. as well as under section 4 of the Service Tribunals Act is of hyper-technical nature. Legislature having realized this fact has amended the section in the year 1962 by adding proviso to the effect that if a premature suit is instituted without such notice or in contravention of the provision of section 80, C.P.C. the Court shall allow not less than three months to the Government to submit its written statement. The logic behind the issuance of notice under section 80, C.P.C. of providing time to the Government is covered by allowing it three months time after the institution of suit, to file written statement. This carries an idea that the causes of action if premature can be overlooked if those become mature during pendency of the cause. This Court comprising of Mr. Justice A.R. Cornelius, Mr. Justice B.Z. Kaikaus and Mr. Justice Hamoodur Rahman in Abdullah Bhai's case PLD 1964 SC 106-113 had categorically observed that it was open for the Court to have decreed the suit which was premature when it was filed but where the cause of action matured during the pendency of the suit.

5. The aforesaid verdict though available in field, in principle, this Court comprising of two

Honourable Judges in Muhammad Usman's case PLD 1983 SC 436 did not agree to the hearing of a premature appeal by the Tribunal under section 4 of the Service Tribunals Act. Subsequent development would indicate that this rule was relaxed in Syed Aftab Ahmed's case 1999 SCMR 197 by holding that where no statutory provision or statutory rule providing a right of appeal or representation is available in the relevant laws of the appellant, he is not bound to file the same and then wait for a period of 90 days in order to have resort to the Service Tribunal. Similar view was taken in Pakistan International Airlines Corporation 1999 PLC (C.S.) 15 that if the provision of appeal or representation is available in the statutory rules of a corporation or statutory body, the employee shall have to file such appeal but where the rules are not statutory, the employees can directly resort to the Service Tribunal. In the instant case, the Oil and Gas Development Company is not possessed of any statutory rules and hence the appeal before the Tribunal could be filed directly either with or without filing any appeal or representation before the departmental authority or without waiting for a period of 90 days. The latest view of this Court in this behalf is given in the case of Sui Southern Gas Company Limited 2000 PLC (C.S.) 796.

6. With regard to the stringency of the rule involved, we have another view of the matter as well. Any such cause which is premature, does not entail the dismissal of that cause but it results into rejection under Order VII, rule 11, C.P.C. that does not operate as res judicata. We are, therefore, of the firm view that if an appeal before a Service Tribunal is premature, it should be returned by the Registrar so as to be re-submitted after the maturity of the cause of action. Quite an anomalous situation would it be that on the one hand and at the initial stage, by serious omission, the timely return of appeal is avoided and the cause of action is allowed to mature during pendency and, on the other hand, at the final end of proceedings, it is dismissed on the ground that the initial submission was premature. Such volte face if taken by the Tribunal cannot be endorsed under any canon of justice. The fact remains that premature matters are not bad but simply premature and must be returned. Failure to do so debars the Tribunal to subsequently jeopardize the rights and bona fide claims of the appellants. We, therefore, conclude that a premature appeal before the Tribunal requires to be returned at the very first instance. If this course of action is not adhered to, the Tribunal subsequently, cannot damage the appellant on grounds of prematurity of appeal when the same had become mature during the pendency allowed by the Tribunal itself. The Tribunal, in the instant case, has rightly declined to dismiss the appeal on this score and moreover, this objection was not taken before the Tribunal either, by filing any concise statement.

7. Coming to the factual aspect of the case concerning charges of misconduct and the manner those were tackled with by the Tribunal, we would take up the charge concerning Gas Dehydration Plant. In this charge the officers were under inquiry and the respondent was held liable being member of the Evaluation Committee. The learned Tribunal has rightly concluded that on the one hand, the respondent was not a member of the Evaluation Committee consisting of 5 members namely, Mr. Ain-ud-Din Siddique, Mr. Jaffar Muhammad, Mr. Ghulam Abbas Nakai, Mr. Qamar Saeed Awan and Muhammad Athar. It may be remarked at this stage that Mr. Qamar Saeed Awan was exonerated for not being a member of the committee while he was very much a member thereof, whereas, the respondent was condemned though not a member at all. This was an act of discrimination as well.

8. No action was taken against Mr. Qamar Saeed Awan on the ground that he was to retire on 7-1-1999. On such a reason could prevail with the authorities qua Mr. Qamar Saeed Awan, it was equally available for the respondent as well who also was to retire on 17-8-1999. The height of discrimination is that Mr. Qamar Saeed Awan was accordingly exonerated but the respondent was compulsorily retired only 4 days before his superannuation.

9. Concerning the charge about appointment of a consultant, it is rightly observed by the Tribunal that the same appointment of consultant was dropped on 27-4-1995 by the competent authority and the said committee did not take any final decision. There were many officers senior to him in the committee and the final decision never rested with the respondent.

10. Regarding Gas Transport Pipeline the allegation against the respondent was that he facilitated the procurement of a Pipeline at a very high cost, depriving the corporation of the benefits of a fair and transparent competition. Suffice it to say for negation of charge that the decision to adopt the gallop tender was taken at the level of Chairman, the Minister and the Prime Minister. It was implemented through the decision of Chairman O.G.D.C. and the period of 15 days after gallop tender was determined by the Chairman himself.

11. For all the aforesaid reasons, it was rightly concluded that the penalty awarded to the respondent did not

commensurate with the so-called misconduct on his part. That he was clearly discriminated and his retirement was expedited malafidely despite the fact that after 4 days he was to retire on superannuation. In the circumstances, the judgment of the Tribunal being unexceptionable is maintained and the appeal is hereby dismissed.

M.H./M-233/S

Appeal dismissed.

وکالت نامہ

بعد ازاں صاحب سروسز کوپن پرائیویٹ لمیٹڈ

میری
مقدمہ
دعوی
۱۲

شاہین بیگم زوجہ محمد علی شاہ
تاریخہ کراچی
باعت خیرے آنکھ
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مقدمہ عدالت عالیہ پاکستان میں اپنی طرف سے واسطہ پیروی و جواب دہی وکل کاروائی، متعلقہ
مقام کے لئے کمر اہل خانہ محمد علی شاہ کوپن پرائیویٹ لمیٹڈ کے لئے
مقرر کر کے اقرار کیا جاتا ہے کہ وکیل موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار حاصل ہوگا
یہ وکیل صاحب اور عینی دعویٰ داخل کرنے، جواب دعویٰ، اپیل، نظر ثانی کا بھی اختیار حاصل ہو
گا نیز وکیل صاحب بصورت باگری پر مخالف من اختیار و ہندہ اپیل، نگرانی، نظر ثانی از عدالت ابتداء
تا عدالت انتہائی سے ہم فورٹ آف پاکستان دائر کر سکتا ہے وکیل موصوف بصورت عدم پیروی
کاروائی کی طرف یا کسی اور طرف کی خلاف ورزیوں سے دائر کر سکتا ہے اور وکیل موصوف میری جانب
سے مقدمہ میں بصورت عدالتی ٹیک یا نقد روپیہ کی شکل میں وصولی کر سکتے گا اور مزید یہ کہ وکیل
موصوف مقدمہ متعلقہ عدالت میں یا پیروی کاروائی کیلئے اپنی بجائے دیگر وکیل بھی اپنے ساتھ مقرر کر سکتا
ہے جس کو جس سے مجوز اختیار حاصل ہو سکتے جو کہ وکیل موصوف کو حاصل ہیں جیسے اس صورت میں
تمام شرائط و روایات منظور و قبول ہوگا لہذا میں نے وکالت نامہ ہذا تحریر کر کے اس پر دستخط انشان
نکشتہ ثبت کروا رہا ہے تاکہ سند ہو۔

ATTESTED & ACCEPTED
M. Iqbal Khan Mohmand
Advocate Supreme Court of Pakistan

20

وہ ال
کے لئے منظور ہے
Shah
۱۲/۱۱/۲۰۱۸