20.09.2022 Learned counsel for the appellant present. Mr. Anees Kaleem, Litigation Officer alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Vide previous order sheet, time was granted to respondents for production of any order passed by competent Authority regarding recalling/cancellation of appointment order of the appellant as well as other concerned record, however representative of the respondents again sought time for production of the same. Last opportunity given. To come up for production of said record as well as remaining arguments before the concerned D.B on 12.10.2022.

(Mian Muhammad)
Member (E)

(Salah-Ud-Din)
Member (J)

12th Oct, 2022 Learned counsel for the appellant. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Anees Kaleem, SDO for respondents present.

Arguments could not be heard due to paucity of time. To come up for arguments on 22.11.2022 before D.B.

(Farecha Paul)
Member(Executive)

(Kalim Arshad Khan)
Chairman

25th July 2022 Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Learned counsel for the appellant seeks adjournment in order to prepare the brief of the instant appeal. Adjourned. To come up for arguments on 27.07.2022 before the D.B.

(Salah-Ud-Din)
Member (J)

(Kalim Arshad Khan)
Chairman

27th July 2022 Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Ms. Maham, SDO and Muhammad Owais, Superintendent for respondent present.

Arguments heard to a great extent. During the arguments, question of legality of the appointment order was seriously agitated and argued. The Tribunal put a query whether the appointment order issued to the appellant was cancelled/recalled, on which the representatives of the respondents and learned Additional Advocate General sought some time to dig out the record regarding the above fact because the office of SE C&W was shifted twice in the meantime. Let, in the interest of justice, time be given to them to produce any document showing that the orders of appointment of the appellants were recalled/cancelled and also to produce the copies of the other relevant record. To come up for production of record as well as remaining arguments on 20.09.2022 before the D.B.

(Salah-Ud-Din)
Member (J)

(Kalim Arshad Khan)
Chairman

31.08.2021 Syed Noman Ali Bukhari, Advocate, for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

To come up for arguments alongwith connected Service Appeal bearing No. 437/2015 before the D.B on 01.11.2021.

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

01.11.2021 Junior to counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 03.12.2021 before D.B.

Chairman

3.12.21 Proper D.B on Tour, therefore case adjourned to 16.2.22 for same.

16-2-22 Due to Retirement of the Hon'ble Chairman the case is adjourned on 10-5-22

28-12 .2020 Due to summer vacation, case is adjourned to 15-3 .2021 for the same as before.

Reader

15.03.2021 Counsel for the appellant and Mr. Muhammad Rashid, DDA for the respondents present.

Former requests for adjournment as he has not prepared the brief.

Adjourned to 29.04.2021before D.B.

(Mian Muhammad)
Member(E)

Chairman

29.4.2021 Due to COVID-19, the case is adjourned to 31.8.2021 for the same.

Reader

27.10.2020 Proper D.B is on Tour, therefore, the case is adjourned for the same on 28.12.2020 before D.B.

Reader

9.4 .2020 Due to COVID19, the case is adjourned to 7/7/2020 for the same as before.

Reader

07.07.2020 Learned counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG for the respondents present.

On 04.10.2019 the appellant was imposed upon cost of Rs. 3000/- which still remains to be deposited. As the appellant is not in attendance today the matter is adjourned to 28.08.2020 before D.B.

Member Chairman

28.08.2020 Due to summer vacation, the case is adjourned to 27.10.2020 for the same as before.

Reader

07.11.2019 Junior to counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Junior to counsel for the appellant seeks adjournment as his senior counsel was busy before the apex court. Adjourn. To come up for arguments on 08.11.2019 before D.B.

Member Member

08.11.2019 Junior to counsel for the appellant present. Mr. Usman Ghani learned District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 27.12.2019 before D.B.

Member Member

27.12.2019 Counsel for the appellant present. Mr. Ziaullah, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 01.01.2020 before D.B.

Member Member

01.01.2020. Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.02.2020 before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

07.02.2020 Counsel for appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 02.03.2020 for arguments before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

02.03.2020 Appellant in person present. Mr. Kabirullah, Addl: AG for respondents present. Appellant seeks adjournment. Adjourned. To come up for arguments on 09.04.2020 before D.B.

Member

Member

18.12.2018 Mr. Taimur Ali Khan, junior counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy in the Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 25.01.2019 before D.B.

(Hussain Shah)
Member

(Muhammad Amin Khan Kundi)
Member

27.03.2019 Mr. Taimur Khan, junior counsel for the appellant and Kabirullah Khattak, Additional AG for the respondents present. Junior counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is busy in the Hon'ble Peshawar High Court and cannot attend the Tribunal today. Adjourned. To come up for arguments on 12.06.2019 before D.B.

(HUSSAIN SHAH)
MEMBER

(M. AMIN KHAN KUNDI)
MEMBER

12-6-2019 Bee Bench is incomplete therefor case is adjurned to 5-8-2019

Reader

05.08.2019 Junior to counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 27.09.2019 before D.B.

Member Member

27.09.2019 Counsel for the appellant present. Learned Asst: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 04.10.2019 before D.B.

Member Member

04.10.2019 Appellant in person present. Addl: AG alongwith Mr. Jawad Hamid, SDO for respondents present. On the previous date of hearing on the request of learned counsel for the appellant, the case was fixed for hearing today. Even previously, the case was previously adjourned on 18.12.2018, 24.01.2019, 27.03.2019 and 05.08.2019 on the explicit request of the learned counsel for the appellant. Today, the appellant informed that his counsel was busy before the august Supreme Court of Pakistan. Last opportunity is granted for arguments but at cost of Rs. 3000/- which to be paid by the appellant to the respondents. To come up for further proceedings on 08.11.2019 before D.B.

Member Member

03.05.2018 Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 19.07.2018 before D.B

Reader

19.07.2018 Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 10.09.2018 before D.B.

(Ahamd Hassan)
Member

(Muhammad Hamid Mughal)
Member

10.09.2018 Junior to counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Junior to counsel for the appellant furnished photocopies of documents which are placed o file. Adjournment requested. Adjourned. To come up for arguments on 31.10.2018 before D.B

(Hussain Shah)
Member

(Muhammad Hamid Mughal)
Member

31.10.2018 Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 18.12.2018.

READER

08.02.2018 Counsel for the appellant and Addl. AG alongwith Muhammad Hamid Zia, SDO for the respondents present. Due to shortage of time, arguments could not be heard. To come up for arguments on 02.3.2018 before the D.B.

Member Chairman

02.03.2018 Counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG for the respondents present. Part arguments heard. To come up for further arguments and order on 30.03.2018 before this D.B alongwith connected appeal No. 437/15

(Ahmad Hassan)
Member Chairman

30.03.2018 Counsel for the appellant and Addl. AG for respondents present. To come up for further arguments alongwith connected appeal No. 1437/2015, 03.05.2018.

Member Chairman

16.11.2017 Counsel for the appellant and Addl. AG alongwith Muhammad Hamid Zia, SDO for the respondents present.

To come up for arguments alongwith connected appeal No.437/2015 on 14.12.2017 before the D.B.

Member Chairman

14.12.2017 Counsel for the appellant and Addl. AG alongwith Muhammad Hamid Zia, SDO for the respondents present. Departmental representative brought the file of disciplinary proceedings but during arguments, the file of meeting of DSC dated 14.1.2013 or any other date mentioned in the appointment order of the appellant should be produced on the next date. To come up for record and arguments on 09.01.2018 before the D.B.

Member Chairman

09.01.2018 None present for the appellant and Mr. Kabir Ullah Khattak, AAG alongwith Mr. Muhammad Hamid Zia, SDO for the respondents present. Departmental representative produced record today. Copy provided to learned counsel for the appellant. Learned AAG seeks to study the record. To come up for arguments on 08.02.2018 before D.B.

Member Chairman

27.04.2017 None present on behalf of the appellant. Mr. Muhammad Hamid Zia, SDO alongwith Additional AG for the respondents present. Record not produced despite last chance. One more chance is granted at the cost of Rs. 100/- which shall be borne by the respondents from their own pockets. To come up for record, cost and final hearing on 06.07.2017 before D.B.

Member Chairman

Note Below
27.04.2017 Representative of the respondents turned up later on and submitted departmental record which is placed on file. To come up for cost and final hearing on 06.07.2017 before D.B.

Member Chairman

12. **06.07.2017** Counsel for the appellant and Mr. Kabir Ullah Khattak, Assistant AG alongwith Mr. Zia Ahmad Khan, SDO for the respondent present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 03.11.2017 before D.B.

(Muhammad Hamid Mughal)
Member

(Gul Zeb Khan)
Member

03.11.2017 Counsel for the appellant and Mr. Kabeerullah Khattak, Addl AG for the respondents present. The learned AAG seeks adjournment. To come up for arguments on 16.11.2017 before the D.B.

Member Chairman

01.08.2016 Counsel for the appellant and Assistant AG for respondents present. Rejoinder not submitted and requested for further time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 20-10-16

MEMBER MEMBER

20.10.2016 Counsel for the appellant and Addl: AG for respondents present. During the course of arguments learned counsel for the appellant submitted that record of summary dated 30.04.2015 in case of Shams-uz-Zaman Director Technical Education who was exonerated may be requisition which is very material for proper decision in these appeals. The respondent-department is directed to produce the same record on the next date. To come up for such record and arguments on 26.01.2017.

(ABDUL LATIF)
MEMBER

(PIR BAKHSH SHAH)
MEMBER.

26.01.2017 Counsel for the appellant and Mr. Lal Pio Khattak, Supdt. alongwith Addl. AG for respondents present. Representative of the respondents failed to produce the record as requisition on previous order sheet and requested for adjournment. Last chance is given to him. Learned counsel for the appellant placed on file the summary vide which the officials were exonerated. 27-9-2016

(MUHAMMAD AAMIR NAZIR)
MEMBER

(AHMAD HASSAN)
MEMBER

Appellant Deposited
Security & Process Fee

26.11.2015 Agent of counsel for the appellant present. Security and process fee not deposited. Last opportunity granted. The same be deposited within 3 days, where-after notices be issued to the respondents for written reply/comments for 28.1.2016 before S.B.

Chairman

28.1.2016 Appellant with counsel and Mr. Lal Paio Khattak, Supdt. alongwith Assistant AG for respondents present. Requested for adjournment. To come up for written reply/comments on 11.4.2016 before S.B.

Chairman

11.04.2016 Counsel for the appellant and M/S Lal Payo Khattak, Supdt. and Muhammad Iqbal, SDO alongwith Sr.GP for the respondents present. Written statement by respondents submitted. The appeal is assigned to DB for rejoinder and final hearing for 01.08.2016.

Chairman

28.05.2015 Counsel for the appellant is not in attendance due to strike of the Bar. Adjourned to 11.06.2015 for preliminary hearing before S.B.

Chairman

4 11.06.2015 Counsel for the appellant and Assistant A.G for respondents present. Learned counsel for the appellant argued that the initial appointment order of the appellant was controverted by the respondents compelling the appellant to finally approach this Tribunal. That vide judgment dated 19.2.2015 this Tribunal directed the respondents to treat the service appeal as departmental appeal and pass order deemed appropriate. That vide impugned order dated 24.3.2015 the appellate authority has rejected the said appeal treated as departmental appeal and hence the instant service appeal.

That the appellant was lawfully appointed and the impugned order is against facts and law and therefore liable to be set-aside.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 21.9.2015. Notice of stay application be also issued for the date fixed.

Appellant Security & Process Fee

Chairman

5 21.09.2015 Agent of counsel for the appellant and Assistant AG for respondents present. Written reply not submitted. Requested for further adjournment. To come up for written reply/comments on 26.11.2015 before S.B.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 453/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.05.2015	The appeal of Mr. Hassan Dad resubmitted today by Mr. Asad Jan Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order. REGISTRAR
2	25-5-15	This case is entrusted to S. Bench for preliminary hearing to be put up thereon 28-5-15. CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.437/2015 and 19-others

VS

Govt. of Khyber Pakhtunkhwa C&W Department Peshawar/ PBMC

Hon'ble Chairman
Khyber Pakhtunkhwa Service Tribunal

Subject: PROVISION OF OFFICIAL RECORD

In pursuance to your kind orders dated 26/01/2017, the relevant official record, pertaining to Ex-Superintending Engineeer of PBMC is annexed as under:-

1- Secretary C&W Departmetn order No. SOE/C&WD/24-60/Association dated 13/07/2015.

2- Secretary C&W Department Notification No. SOE/C&WD/1-10/81 dated 27/11/2015 (Retirement order of officer).

Mohammad Hamid Zia
Sub-Divisional Officer
PBMC C&W Department

GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the July 13, 2015

ORDER:

No.SOE/C&WD/24-60/Association: WHEREAS, the following officers/official of C&W Department were proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the alleged irregularities in the "Appointment in PBMC C&W Peshawar":

i. Engr. Shams-uz-Zaman the then Director PBMC now working as Director (Tech) PERRA Abbottabad

ii. Engr. Ghulam Yazdani the then XEN PBMC now working as XEN C&W Division Karak

iii. Mr. Imtiaz Khan Junior Clerk/Dispatch Clerk O/O SE PBMC C&W Peshawar

2. AND WHEREAS, for the said act of misconduct they were served charge sheets/ statement of allegations.

3. AND WHEREAS, Sardar Muhammad Abbas the then Secretary to Government of Khyber Pakhtunkhwa Transport Department was appointed as inquiry officer, who submitted the inquiry report.

4. NOW THEREFORE, the Competent Authority after having considered the charges, material on record, inquiry report of the inquiry officer, explanation of the officers/official concerned, in exercise of the powers conferred by Section-14 (3) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased **to exonerate the above mentioned officers/official from the charges leveled against them.**

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (Centre) C&W Peshawar
3. Chief Engineer (East) Abbottabad.
4. Superintending Engineer PBMC C&W Peshawar
5. Executive Engineer PBMC C&W Peshawar
6. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
7. PS to Secretary, C&W Peshawar
8. Officers/official concerned.
9. Office order File/Personal File

(USMAN JAN)
SECTION OFFICER (Estab)

GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the November 27, 2015

NOTIFICATION:

No.SOE/C&WD/1-10/81: In terms of Section-13 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, Engr. Shams-uz-Zaman Superintending Engineer (BS-19) C&W Department, presently working as Director (Technical) O/O Chief Engineer (East) Abbottabad, shall stand retire from Government Service with effect from 07.01.2016 (A.N) on attaining the age of superannuation i.e. 60 years, as his date of birth according to the record is 08.01.1956.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer (East) Abbottabad
3. District Accounts Officer Abbottabad/Mansehra
4. Incharge Computer Cell, C&W Department, Peshawar
5. Engr. Shams-uz-Zaman Director (Tech) O/O CE (East) Abbottabad
6. PS to Secretary, C&W Peshawar
7. Office order File/Personal File

(USMAN JAN)
SECTION OFFICER (Estb)

The appeal of Mr. Hassan Dad son of Rahim khan received to-day i.e. on 22.04.2015 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copy of judgment/ order passed by this Tribunal dated 0202.2015 mentioned in para-8 of the memo of appeal is not attached with the appeal which may be placed on it.
2- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
3- Annexures of the appeal may be attested.
4- Page Nos. 23 to 31 of the appeal are illegible which may be replaced by legible/better one.
5- Memorandum of appeal is unsigned which may be got signed.

No. 606 /S.T,

Dt. 24/4/2015

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Asad Jan Adv. Pesh.

1. Place on file.

2. Annexures of the appeal are annexed serial wise as mentioned in the memo of appeal.

3. All the Annexures of the appeal are attested.

4. Memorandum of appeal signed by the appellant.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No. 453/2015

Hassan Dad

VERSUS

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK AND OTHERS.

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3.	**Medical certificate.**	**A**	8
4.	**Copies of the appointment letters, arrival report and service book.**	**B,C & D.**	9-14
5.	**Copy of the writ petition and order dated 27-01-2014**	**E & F.**	15-22
6.	**Copy of the appeal/ representation**	**G.**	23
7.	**Copy of the D.S.C. dated 14-01-2013, D.S.C. 28-06-2013**	**H & I.**	24-28
8.	**Appointment letter of Noor Akber.**	**J.**	29-33
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Through

ASAD JAN (Advocate)

Supreme court of Pakistan)

OFFICE: ROOM NO. 211 AL-MUMTAZ HOTEL HASHTNAGRI PESHAWAR.

Dated: 10/04/2015

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

S.A. NO. 453 /2015

HASAN DAD S/O RAHIM KHAN R/O VILLAGE BANDA DISTRICT, NOWSHERA

.....APPPELLANT

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR, 1V PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTOON KHWA PESHAWAR.
5. SECTION OFFICER (ESTABLISHMENT) SECRETARIAT KPK PESHAWAR.

.....RESPONDENTS

APPEAL U/ S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE ORDER DATED 24/03/2015 WHEREBY THE APPEALS OF APPEALANT SEND BY THIS HON'BLE COURT/TRIBUNAL TO APPELLATE AUTHORITY/RESPONDENT WAS DISMISSED.

Filed to-day
Registrar
23/4/15

Prayer in appeal

ON ACCEPTANCE OF THIS APPEAL, THE OFFICE ORDER DATED 24/03/2015 BE SET ASIDE AND THE WITHHELD SALARIES OF THE APPELLANT SINCE APPOINTMENT AND ARRIVAL REPORT FOR DUTIES BE PAID ALONG WITH ALL BACK BENEFITS.

Re-submitted to-day and filed.
Registrar
15/5/15

Respectfully sheweth.

(2)

1. That the appellant is law abiding citizen of Pakistan.
2. That the appellant was appointed in the respondents on post of skilled Colly (BPS-02) vide order dated Peshawar the 17-01-2013 passed by respondent no-5 fter approval by the D.S.C. in the meeting held on 14-01-2013.
3. That the appellant accordingly carried out his medical from Service Hospital Peshawar.

   (Copy of the medical report is annexed)
4. That the appellant has there after made arrival report on 23-01-2013.
5. That appellant furnished service book with medical certificate along with arrival report which were duly entered and certified by the Superintending Engineer and Executive Engineer.

   (Copies of the appointment letters and arrival report and service book are annexed here with)

6. That the appellant performing his duties with full diligent and devotion since from the date of his arrival, but the respondents were not paying his monthly salaries to the appellant with out any cogent reasons, therefore appellant has instituted a writ petition before Peshawar high court Peshawar, however the respondent due to institution of the writ petition have become biased and even started not allowing appellant and his others colleagues to duties and created problems in this regard due to malafide reasons and at the time of arguments their lord ships were of the view that pay being falls within terms and condition of service therefore to withdraw the writ petition and to move the service tribunal KPK, hence the writ petition was withdrawn with permission to move the proper forum which was not objected by learned A.A.G.

   (Copy of the writ petition and order dated 27-01-2014 are annexed)
7. That the appellant has also approached the then superintendent for the release/payment of his salaries but nothing has been paid, despite the legal rights of the appellant

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 453 /2015

Hassan Dad VS C&W Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1 No comments endorsed by the respondents department which mean that they have admitted Para-1 of the appeal as correct.

2 Incorrect. While Para-2 of the appeal is correct. Moreover, writ petition No. 1301-P/2013 was withdrawn with the permission to move the proper forum which was not objected by the learned A.A.G and hence the writ petition was dismissed being not pressed and said that the petitioners are at liberty to approach the proper forum.

3 Incorrect. While Para-3 of the appeal is correct. Moreover, maintaining of record is duty of department.

4 Incorrect. While Para-4 of the appeal is correct. Moreover, maintaining of record is duty of department.

5 Incorrect. While Para-5 of the appeal is correct. Moreover, all record is submitted according to

Superintending Engineer and Executive Engineer. Documents were already attached with the main appeal.

6 Incorrect. While Para-6 of the appeal is correct. Moreover, writ petition No. 1301-P/2013 was withdrawn with the permission to move the proper forum which was not objected by the learned A.A.G and hence the writ petition was dismissed being not pressed and said that the petitioners are at liberty to approach the proper forum and the service appeal 189/2014 of the appellant was considered as department appeal by the August Tribunal and appeal was remit to the Appellate Authority who is directed to decide the appeal within one month Which was rejected by the department for no good grounds.

7 Incorrect. While Para-7 of the appeal is correct. Moreover, appellant was properly appointed by the Departmental Selection and Promotion Committee and the appellant gave his arrival report and performing his duties with full diligent and devotion.

8 Incorrect. While Para-8 of the appeal is correct. Moreover, the respondents through illegal order 24.3.2015 without following the proper and legal procedure rejected the departmental appeal.

9 Incorrect. While Para-9 of the appeal is correct. Moreover, as explained in above Para-8 not he rejoinder.

10 Not denied which means admitted correct by the respondents.

GROUNDS:

1. Incorrect. While Para-1 of grounds of the appeal is correct. Moreover, non-payment of salaries is against the law and the appellant right is secured and granted under the law because appointment order creates valuable rights in favor of appellant which is not taken away under the principle of locus poenetentiae.

2. Incorrect. While Para-2 of grounds of the appeal is correct as mention in the main appeal, of the appellant.

3. Incorrect. While Para-3 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, appellant was properly appointed by the Departmental Selection and Promotion Committee and the appellant gave his arrival report and performing his duties with full diligent and devotion.

4. Incorrect. While Para-4 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, the names mention in the para-4 and the appellant both were appointed through recommendation of D.S.C. but he appellant was discriminated which is against the law, rules and norms of justice.

5. Incorrect. While Para-5 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, as explained in the Para-7 of the facts and Para-3 and Para-1 of the grounds of the appeal.

6. Incorrect. While Para-6 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, as explained the above Para's of the rejoinder.

7. Incorrect. While Para-7 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, as explained in the Para-8 of the facts of the appeal.

8. Incorrect. While Para-8 of grounds of the appeal is correct as mention in the main appeal, of the appellant

9. Incorrect. While Para-9 of grounds of the appeal is correct as mention in the main appeal, of the appellant.

10. Incorrect. While Para-10 of grounds of the appeal is correct as mention in the main appeal of the appellant.

11. Incorrect. While Para-11 of grounds of the appeal is correct as mention in the main appeal, of the appellant.

12. Incorrect. While Para-12 of grounds of the appeal is correct as mention in the main appeal of the appellant.

13. Incorrect. While Para-13 of grounds of the appeal is correct as mention in the main appeal of the appellant.

14. Incorrect. While Para-14 of grounds of the appeal is correct as mention in the main appeal, of the appellant.

15. Incorrect. While Para-15 of grounds of the appeal is correct as mention in the main appeal, of the appellant.

16. Legal.

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

APPELLANT

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.

ATTESTED
Khalid Mohammad Khattak
Oath Commissioner
District Court Peshawar

DEPONENT

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 483 /2015

Hassan Dad VS C&W Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1 No comments endorsed by the respondents department which mean that they have admitted Para-1 of the appeal as correct.

2 Incorrect. While Para-2 of the appeal is correct. Moreover, writ petition No. 1301-P/2013 was withdrawn with the permission to move the proper forum which was not objected by the learned A.A.G and hence the writ petition was dismissed being not pressed and said that the petitioners are at liberty to approach the proper forum.

3 Incorrect. While Para-3 of the appeal is correct. Moreover, maintaining of record is duty of department.

4 Incorrect. While Para-4 of the appeal is correct. Moreover, maintaining of record is duty of department.

5 Incorrect. While Para-5 of the appeal is correct. Moreover, all record is submitted according to

Superintending Engineer and Executive Engineer. Documents were already attached with the main appeal.

6 Incorrect. While Para-6 of the appeal is correct. Moreover, writ petition No. 1301-P/2013 was withdrawn with the permission to move the proper forum which was not objected by the learned A.A.G and hence the writ petition was dismissed being not pressed and said that the petitioners are at liberty to approach the proper forum and the service appeal 189/2014 of the appellant was considered as department appeal by the August Tribunal and appeal was remit to the Appellate Authority who is directed to decide the appeal within one month Which was rejected by the department for no good grounds.

7 Incorrect. While Para-7 of the appeal is correct. Moreover, appellant was properly appointed by the Departmental Selection and Promotion Committee and the appellant gave his arrival report and performing his duties with full diligent and devotion.

8 Incorrect. While Para-8 of the appeal is correct. Moreover, the respondents through illegal order 24.3.2015 without following the proper and legal procedure rejected the departmental appeal.

9 Incorrect. While Para-9 of the appeal is correct. Moreover, as explained in above Para-8 not he rejoinder.

10 Not denied which means admitted correct by the respondents.

GROUNDS:

1. Incorrect. While Para-1 of grounds of the appeal is correct. Moreover, non-payment of salaries is against the law and the appellant right is secured and granted under the law because appointment order creates valuable rights in favor of appellant which is not taken away under the principle of locus poenetentiae.

2. Incorrect. While Para-2 of grounds of the appeal is correct as mention in the main appeal, of the appellant.

3. Incorrect. While Para-3 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, appellant was properly appointed by the Departmental Selection and Promotion Committee and the appellant gave his arrival report and performing his duties with full diligent and devotion.

4. Incorrect. While Para-4 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, the names mention in the para-4 and the appellant both were appointed through recommendation of D.S.C. but he appellant was discriminated which is against the law, rules and norms of justice.

5. Incorrect. While Para-5 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, as explained in the Para-7 of the facts and Para-3 and Para-1 of the grounds of the appeal.

6. Incorrect. While Para-6 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, as explained the above Para's of the rejoinder.

7. Incorrect. While Para-7 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, as explained in the Para-8 of the facts of the appeal.

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9. Incorrect. While Para-9 of grounds of the appeal is correct as mention in the main appeal, of the appellant.

10. Incorrect. While Para-10 of grounds of the appeal is correct as mention in the main appeal of the appellant.

11. Incorrect. While Para-11 of grounds of the appeal is correct as mention in the main appeal, of the appellant.

12. Incorrect. While Para-12 of grounds of the appeal is correct as mention in the main appeal of the appellant.

13. Incorrect. While Para-13 of grounds of the appeal is correct as mention in the main appeal of the appellant.

14. Incorrect. While Para-14 of grounds of the appeal is correct as mention in the main appeal, of the appellant.

15. Incorrect. While Para-15 of grounds of the appeal is correct as mention in the main appeal, of the appellant.

16. Legal.

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

APPELLANT

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.

ATTESTED
Khalid Mahmood Advocate
Oath Commissioner
Peshawar

DEPONENT

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 483 /2015

Hassan Dad VS C&W Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

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4 Incorrect. While Para-4 of the appeal is correct. Moreover, maintaining of record is duty of department.

5 Incorrect. While Para-5 of the appeal is correct. Moreover, all record is submitted according to procedures and duly certified by the

Superintending Engineer and Executive Engineer. Documents were already attached with the main appeal.

6 Incorrect. While Para-6 of the appeal is correct. Moreover, writ petition No. 1301-P/2013 was withdrawn with the permission to move the proper forum which was not objected by the learned A.A.G and hence the writ petition was dismissed being not pressed and said that the petitioners are at liberty to approach the proper forum and the service appeal 189/2014 of the appellant was considered as department appeal by the August Tribunal and appeal was remit to the Appellate Authority who is directed to decide the appeal within one month Which was rejected by the department for no good grounds.

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9 Incorrect. While Para-9 of the appeal is correct. Moreover, as explained in above Para-8 not he rejoinder.

10 Not denied which means admitted correct by the respondents.

GROUNDS:

1. Incorrect. While Para-1 of grounds of the appeal is correct. Moreover, non-payment of salaries is against the law and the appellant right is secured and granted under the law because appointment order creates valuable rights in favor of appellant which is not taken away under the principle of locus poenetentiae.

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

APPELLANT

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.

ATTESTED
Dist. Court Peshawar

DEPONENT

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 453 /2015

Hassan Dad VS C&W Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

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

APPELLANT

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.

ATTESTED

DEPONENT

(Copy of the appeal/ representation is annexed)

8. That this hon'able court was thereafter approached in this Hon'able Tribunal vide order dated 19/02/2015 treated appellant appeal as a department appeal and Respondent were directed to decides the appeal with one month after its recipts filing which there appeal shall be deemed to have excepted by this Tribunal (Copy of orde is 04/02/2015 annexed).

9. That the Respondent through illegal order dated 24/03/2015 without the following the proper and legal procedure rejected appellants appeal (Copy of office order dated 24/03/2015 annexed).

10 That due to above mentioned appellant prefer this appeal on the following grounds amongst others:-

GROUNDS

1. That due to non payment of the salaries, appellant has not been treated in accordance with law, and his right secured and guaranteed under the law have been violated by not releasing his salaries and issuance of appointment letter have created valuable right in favour of appellant and those rights can not be taken away in the manner respondents are adopting.

2. That the discrimination as observed by the respondents with appellant is highly deplorable and condemnable, being unlawful, unconstitutional, without authority, without jurisdiction, against the norms of natural justice and equity and against the law on subject, hence liable to declared as such.

3. That respondent are not acting in accordance with law and are taking illegal acts with ulterior motive and malafide intention by not releasing appellants salaries which are stopped without any cogent reason since date of appointment / arrival report.

4. That the appellant was recommended for appointment as per DSC held on 14-01-2013 but are not being paid

salaries though to three officials namely (i). Said Rasan (ii). Waqar.Ul.Islam (iii). Riaz Khan mentioned in the same D.S.C. were later on paid and even fresh appointment made of one Noor Akbar S/O Haji Akbar R/O village Akazai Tehkal Bala Peshawar on recommendation of D.S.C. held on 28-06-2013 in the same manner of appointment as of appellant was also made payment of salaries but appellant is treated discriminately which is not permissible under the law. **(Copy of the D.S.C. dated 14-01-2013 and dated 28-06-2013 along with appointment of Noor Akbar are annexed)**

5. That appellant is entitled for the receipt of his salaries and the act of respondent by not paying the same is against the law and rules and as such the respondents are under the legal obligation to pay salaries to appellant as per the appellant appointment order.

6. That the act of respondents by not allowing appellant to his duties due to institution of writ petition for salaries and others legal rights are based on malafide and illegal because demand of salary/ pay is a legal right.

7. That the respondent have not decided the appeal of Appellant within the time frame given by this Hon'able Tribunal and has violated the order of this Hon'able court/tribunal because clear cut direction was passed in the presence of Mr.Usman Ghani Sr. GP with Muhammad Arif SDO for the official respondents, the respondent failed to deicide the departmental appeal within stipulated period.

8. That till date the impugned order was not communicated to the appellant nor the same addressed to the appellant, nor any copy given to the appellant and no opportunity of hearing was given to the appellant.

9. That appellant was condemned inhered.

(5)

10. That impugned order was passed by incompetent authority.

11. That till date appointment order of the appellant has neither been cancelled nor withdrawn.

12. That on the principle of locus poententia, the appellant is entitled to perform duties and to get his salaries.

13. That no proper inquiry, show cause notice, formal charge along with charge sheet was issued to the appellant.

14. That no opportunity of personal hearing given to the appellant.

15. That the impugned order is based on malafide with ulterior motive.

16. That the other grounds will be raised at the time of argument.

It is therefore requested that on acceptance of instant appeal, the impugned order 24/03/2015 be set aside and declare without lawful authority unlawful respondent be directed to pay the withheld salaries since arrival report for duty till date and onward and not to create illegal hurdle in the way of performance of duties as well as to restrain respondents from taking any discriminatory action against appellant with such other relief as may be deemed proper and just in circumstances of the case.

Appellant
Through

ASAD JAN (advocate Supreme court of Pakistan)

Dated: 20/04/2015

AFFIDAVIT

Declared on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed or kept secret from this Hon, able court.

DEPONENT

ATTESTED
Mukhtar Ahmad Ghaznavi
Oath Commissioner
District Court Peshawar

(6)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Hassan Dad

VERSUS

SUPERINTENDENT ENGINEER PBMC C& W AND OTHERS.

PETITION FOR GRANT OF INTERIM RELIEF IN FAVOUR OF THE PETITIONER AGAINST RESPONDENTS TO THE EFFECT THAT THE RESPONDENTS BE RESTRAINED FROM FILLING THE POST IN QUESTION or taking any adverse action against the petitioner TILL FINAL DECISION OF THE APPEAL. ----------

Reply to Preliminary objections.

1. That the above titled service appeal has been filed before this honorable court in which no date of hearing yet been fixed.
2. That the respondents are bent upon to fill the post on which the appointment order of the petitioner has been issued and the respondents are bent upon to adjust their dearer and nearer with malafide reasons.
3. That the petitioner performing his duties with full diligent and devotion since from the date of his arrival but the respondents were not paying his monthly salaries to the petitioner, since from his appointment and till Hence, the petitioner has filed the writ petition before Peshawar high court Peshawar.
4. That the respondents now due to the filing of the above titled writ petition creating hurdle for the petitioner and not allowing him to perform his duty.
5. That the due to appointment order, copies of the appointment letters and medical report as well as arrival report and service book the petitioner is got prima facie case, balance of convenience also lies in favour of the petitioner, more over if the instant petition is not accepted the petitioner will irreparable loss.
6. That there is no legal bar on the acceptance of this petition rather the same is in the interest of justice.

(7)

7. That the act of respondents by not allowing appellant to his duties due to institution of writ petition for salaries and others legal rights are based on malafide and illegal because demand of salary/ pay is a legal right.
8. That others grounds will be raised at the time of arguments.

It is therefore requested that on acceptance of instant petition relief in favour of the petitioner against respondents to the effect that the respondents may kindly be restrained from *filling the post in question or taking any adverse action against the petitioner till final decision of the appeal* in the interest of justice and other relief for which the petitioner entitled may also be granted.

Petitioner

Through

ASAD JAN (Advocate supreme court of Pakistan)

Dated: 28/04/2015

AFFIDAVIT

Declared on oath that the contents of this petition are true and correct to the best of my knowledge and belief and that nothing has been concealed or kept secret from this Hon, able court.

DEPONENT

ATTESTED

Mukhtar Ahmed Ghaznavi
Oath Commissioner
District Court Peshawar

(8)

MEDICAL CERTIFICATE

Annexure "A"

Name of official Mr. Hassan Zada

Caste or race Aurakh

Father's name Rahman Dad Khan

Residence Mohib Banda Teh & Distt Peshawar

Date of birth 17-1-1985

Exact height by measurement 5-2

Personal mark of identification Mole on (R) Side Chin

Signature of the official

Signature of head of office

Seal of office

I do hereby certify that I have examine Mr. Hassan Zada a candidate for employment in the Office of the Prime Crim Deptt and cannot discover that he had any disease communicable or other constitutional affection or bodily infirmity except nil

I do no consider this as disqualification for employment in the office of the

His age according to his own statement 28 year and by appearance about 28 year.

MEDICAL SUPERINTENDENT,
CIVIL HOSPITAL Medical Superintendent Services, Hospital, Peshawar.
13/01/13

Attested

LEFT HAND THUMB AND FINGER IMPRESSIONS

ATTESTED
Advocate High Court

OFFICE OF THE SUPERINTENDING ENGINEER PBMC,
COMMUNICATION & WORKS DEPARTMENT,
KHYBER PUKHTUNKHWA, PESHAWAR.

No. 1794 /41-E, Annexure 'B'
Dated Peshawar the 23 / / /2013

To,

Mr. Hassan Dad S/O Rahim Dad
R/O Village Banda Distt. Nowshera.

Subject: APPOINTMENT AS PIPE FITTER (BPS-04) HOUSEHOLD STAFF IN PBMC, COMMUNICATION & WORKS DEPARTMENT PESHAWAR.

As approved by the DSC in its meeting held on 14-01-2013, you are hereby offered the post of Pipe Fitter (BPS-04) i.e. Rs.(5200-230-12100) under the Rules 10 (4) of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, against the Existing vacancy on the following terms and conditions:-

1. Your services are liable for termination on one month's notice.
2. In case you wish to resign at any time one month's notice will be necessary or in lieu thereof one month pay shall be forfeited.
3. You will have to produce a medical certificate of fitness from the Medical Superintendent / Civil Surgeon Peshawar.
4. You will have to serve as house keeping/non house keeping employee any where in Khyber Pakhtunkhwa and against any post of equivalent status.
5. You will join duty on your own expenses.
6. Your appointment to the above post is subject to the eligibility and production of original certificate of qualification/experience, domicile, NIC and other documents.
7. You are appointed on probation period of one year.

According to Provincial Govt. orders notified vide No. SOR-VI (E&AD) 1-13/2005, dated 10/8/2005 and Section Officer (Accounts)PBMC/AD/BUDGET/3-2/2005/P-VI, dated 26/6/2006, you will not be entitled for pension gratuity but will contribute CP Fund @ 10% from your pay and 10% will be contributed by the Govt. of Khyber Pakhtunkhwa in lieu thereof.

If you accept the offer on the above terms and conditions, you should report for duty in the office of the Executive Engineer PBMC C&W. Department Peshawar.

ENGR: SHAMS UZ ZAMAN,
SUPERINTENDING ENGINEER.

Copy forwarded for information to the:

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Executive Engineer PBMC C&W Department Peshawar.
3. Section Officer (E) C&W Department Peshawar.
4. Case 41-E

ATTESTED
ASAD JAN
(Advocate High Court)

SUPERINTENDING ENGINEER

ایڈیشنل سیشن جج بی بی ایم سی

(1)

(حسن داد مالک)

Annexure: C (10)

میں حسن داد ولد رحیم داد ایس ای نمبر 1794/41E

تاریخ 23/1/2013 کے مطابق آج صورتحال 23/1 کو ڈیوٹی

پر حاضر نہ ہوں

RNo. 269/19-E
dt 23/11/2013

الحارث
Raid

حسین داد ولد رحیم داد

ATTESTED

ASAD
(Advocate High Court)
X-CJJ MIC

Annexure 'D' (11)

SERVICE BOOK

OF

Mr. _____

S/o _____

Designation _____

Department _____

ATTESTED

Price : Rs. 50/-

ATTESTED

ASAD JAN
(Advocate High Court)
X-CJ/JMIC

PRINTED BY:
STATIONERY & PRINTING DEPARTMENT, GOVERNMENT OF KHYBER PAKHTUNKHWA

(For use in Police Department only)

(11) (12)

eirs:

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erification Roll No. dated received back

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Left Thumb Impression 5.

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ua ification	Date	Qualification	Date
nglish		First Arts	
ushto		B.L. Or B.A.	
Jrdu		Pleadership examiantion	
lan-drawing		Training School Final examiantion	
inger Print		Other qualification:—	
Drill Instructing			
Court Duties			
Reserve Duties			

7.

8.

9.

10.

N.B.— *Line to be drawn under the qualification possessed.*

ATTESTED

ASAD TAR
(Advocate High Court)
X-CHIEF MC

(13)

Note: The entries in this page should be renewed or re-attested at least every five years and the signature and 10 should be dated.

1. Name: Hassan Zada Hassan Dad

2. Race: Muslim

3. Residence: Mohib Banda Teh. & Distt Abbottabad

4. Father's name and residence: Rahim Dad

5. Date of birth by Christian era as nearly as can be ascertained: 17-1-1985

6. Exact height by measurement: 5'-7"

7. Personal marks for identification: Nil

8. Left hand thumb and finger impression of (Non-Gazetted) officer:

Little Finger	Ring Finger
Middle Finger	Fore Finger
Thumb	

9. Signature of Government Servant: Hassan

10. Signature and designation of the Head of the Office, or other Attesting Officer.

Assistant Commissioner
Home & T.A. Deptt.
Khyber Pakhtunkhwa Peshawar

ATTESTED
ASAD KHAN
(Advocate High Court)
E-CNIC No.

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "P"	Date of appointment	Signature of Government Servant.

9	10	11	12	13			14	15
Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination or appointment.	Reason of termination such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer.	Leave			Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure or praise of the Government Servant.
				Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government			
					Period	Government to which debitable		
			Appointed vide SE PBMC O/C No. 1794/41-E dt 23/12/2013 & Replaced Arsad on 23/12/2013					
			Executive Engineer PBMC C&W Deptt: Peshawaar					

ATTESTED

ASAD JAN
(Advocate High Court)
X-Civil Judge

IN THE COURT OF PESHAWAR HIGH COURT PESHAWAR

Annexure; E> 15

Writ Petition No. ---------- / 2013

1. MR. ASAD SON OF SANAB GUL RESIDENT OF SHAHEED ABAD KHAISHKI NOWSHERA.
2. MR. NAVID-UR-REHMAN S/O FAIROAZ KHAN RESIDENT OF VILLAGE TEHKAL BALA, PESHAWAR.
3. MR. RUHULLAH SON OF SHAFIQUR REHMAN RESIDENT OF SARBAND BARA ROAD DISTRICT, PESHAWAR.
4. MR. HUSSAIN KHAN SON OF RAJ WALI VILLAGE AMANKOT, DISTRICT NOWSHERA.
5. MR. YASIR MUBARAK SON OF MUBARAK SHAH RESIDENT OF FARAM KORONA DISTRICT NOWSHERA.
6. MR. SHAHABUDDIN SON OF NASRAT GUL RESIDENT OF VILLAGE SURIZAI PESHAWAR.
7. MR. MUZZAFFAR SON OF HIDAYATULLAH RESIDENT OF VILLAGE QAYYUM ABAD PO UMERZAI CHARSADDA.
8. MR. MUFTI ASIF MANSOOR SON OF MUFTI JAN GUL RESIDENT OF MOHALLAH ISLAMABAD BAIROGN LAHOORI PESHAWAR.
9. MR. ALAMGIR KHAN SON OF MUHAMMAD AJMAL RESIDENT OF CANAL COLONY BEHIND SECONDARY BOARD PESHAWAR.
10. MR. TAHIR HUSSAIN SHAH SON OF NOOR HASAN RESIDENT OF VILLAGE DAG, PESHAWAR.
11. MR. AFTAB SON OF ZAHID RASHEED RESIDENT OF SHAH MUHAMMAD GHARI, PESHAWAR.
12. MR. ASFANDYAR SON OF PIR MUHAMMAD RESIDENT OF BARA BANDA RISALPUR.
13. MR. HABIBULLAH SON OF NASRULLAH RESIDENT OF SHAHAB KHEL DISTRICT, PESHAWAR.
14. MR. KHURRUM SON OF MASOOD AHMAD RESIDENT OF FIDA ABAD BERON YAKA TOOT, PESHAWAR.
15. MR. WAREEDULLAH SON OF GUL ZADA RESIDENT OF PASANI BALA MATTANI DISTRICT, PESHAWAR.
16. MR. HASSAN DAD SON OF RAHIM DAD RESIDENT OF VILLAGE BANDA DISTRICT, NOWSHERA.
17. MR. SAJJAD KHAN SON OF AKHTER ZAMAN RESIDENT OF VILLAGE JHANSA PO KALABAGH NATHIAGAI RESIDENT OF ABBOTTABAD.

ATTESTED
ASAD JAN
Advocate High Court

ATTESTED
EXAMINER
Peshawar High Court
31 JAN 2014

(19)

(16)

18. MR. MUHAMMAD TANWEER SON OF SALEEM KHAN RESIDENT OF DHERI ISHAQ DISTRICT NOWSHERA.

19. MR. ASIF ALI SON OF MUSHTAQ HUSSAIN RESIDENT OF GHARI SAIDAN.

20. MR. RAEES KHAN SON OF MUNEER KHAN RESIDENT OF VILLAGE DAG DISTRICT, PESHAWAR.

21. MR. MUHAMMAD ISMAIL SON OF AKBER ALI VILLAGE AMANKOT, DISTRICT NOWSHEHRA.

22. MR. SAID RASSAN RESIDENT OF PBMC OFFICE PESHAWAR BACHA KHAN CHOWK.

23. WAQAR UL ISLAM SON OF AHMAD SAEED RESIDENT OF TEHSIL AND DISTRICT RAWALPENDI KHBER PAKHTUNKHWA HOUSE (KPK) ISLAMABAD.

---------- PETITIONERS.

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK.
3. DIRECTOR PBMC CIVIL SECRETARIAT, PESHAWAR.
4. ASSISTANT DIRECTOR, IV PBMC C & W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
5. SECRETARY C&W KHYBER PAKHTUNKHWA PESHAWAR.

----------RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF CONSITITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973

RESPECTFULLY SHEWETH; -

PETITIONERS SUBMIT AS UNDER:-

1- That the petitioners are law abiding citizen of Pakistan.

2- That the petitioners were appointed in the respondent's establishment on different posts on dated 14/01/2013 and are house hold staff after all the formalities the petitioners have made arrival in the month of Jan/Feb 2013.

ATTESTED
EXAMINER
Peshawar High Court
- 9 JAN 2014

ATTESTED

ASAD JAN
(Advocate High Court)

(Copies of the appointment letters and medical report are annexed as annexure "A" and "B" respectively)

3- That the petitioners are performing their duties with full diligent and devotion since from the date of their appointments but the respondents are not paying their monthly salaries to the petitioners without any cogent reasons, since from their appointments and till date no piney has been given to the petitioners as monthly salary.

4- That the petitioners have also approached the respondent no. 1 for the release/payment of their salaries who directed the respondent no.2 for the redressal of the petitioners grievances. but the respondent no. 2 despite that is not releasing/paying the salaries to the petitioner without any cogent reasons.

5- That due to the above mentioned reasons the petitioners have no option but to knock the door of this honorable court due to violation of their fundamental rights guaranteed under article 11 of the constitution of Islamic republic of Pakistan, 1973. Hence, filling the instant writ petition on the following grounds inter-alia

GROUNDS OF PETITION; -

I- That the petitioners have not been treated in accordance with law, and his right secured and guaranteed under the law and constitution have been violated.

II- That the discrimination as observed by the respondents with petitioners are highly deplorable and condemnable, being unlawful, unconstitutional, without authority, without jurisdiction, against the norms of natural justice and equity and against the law on subject, hence liable to declared as such.

III- That respondents are bent upon to force employees work without salary and such concept is against Islam which envisage payment of wages before sweat of toil is dried up. Performance of duties under such circumstances, were amount to forced labour which is forbidden under article 11 of the constitution, whereby all forms of forced labour are prohibited.

IV-

V- That the petitioners are entitled for the payment of their salaries and this act of the respondents not paying the same is against the law and rules and as such the respondents is under obligation to pay their salaries as per the petitioners appointment orders.

ATTESTED
EXAMINER
Peshawar High Court
31 JAN 2014

ATTESTED
ASA JAN
(Advocate High Court)
X-Civil Line

VI- That the act of respondents not paying the monthly salaries is based on malafide and against the norm of natural justice.

VII- That the action on the part of the Respondents has adversely affecting petitioners financial rights as protected by the constitution and the petitioners be treated as in accordance with the law and rules.

VIII- That the petitioner seek the permission of this Hon, able court to rely on additional grounds at the hearing of this petition

It is therefore, most humbly prayed that on acceptance of the instant writ petition an appropriate writ may please issued and the respondents be directed to released/pay monthly salary to the petitioners since from their appointment.

PETITIONER

THROUGH

ASAD JAN
(ADVOCATE HIGH COURT)

CERTIFICATE

Priorly no such writ petition has been filed on behalf of the petitioners before this Hon, able court.

Advocate Peshawar.

List of books:

1. CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN.
2. CASE LAW AND ANY OTHER LAW BOOK ACCORDING TO NEED.

ATTESTED
ASAD JAN
Advocate High Court
S-CJ/JMIC

ATTESTED
EXAMINER
Peshawar High Court
31 JAN 2014

IN THE COURT OF PESHAWAR HIGH COURT PESHAWAR.

Writ Petition No.---------- / 2013

MR. ASAD AND OTHERS

VERSUS

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR AND OTHERS.

ADDRESSES OF THE PARTIES

PETITIONERS

1. MR. ASAD SON OF SANAB GUL RESIDENT OF SHAHEED ABAD KHAISHKI NOWSHERA.
2. MR. NAVID-UR-REHMAN S/O FAIROAZ KHAN RESIDENT OF VILLAGE TEHKAL BALA, PESHAWAR.
3. MR. RUHULLAH SON OF SHAFIQUR REHMAN RESIDENT OF SARBAND BARA ROAD DISTRICT, PESHAWAR.
4. MR. HUSSAIN KHAN SON OF RAJ WALI VILLAGE AMANKOT, DISTRICT NOWSHERA, HOUSE NO. 133L-2 PHASE III HAYATABAD PESHAWAR.
5. MR. YASIR MUBARAK SON OF MUBARAK SHAH RESIDENT OF FARAM KORONA DISTRICT NOWSHERA.
6. MR. SHAHABUDDIN SON OF NASRAT GUL RESIDENT OF VILLAGE SURIZAI PESHAWAR.
7. MR. MUZZAFFAR SON OF HIDAYATULLAH RESIDENT OF VILLAGE QAYYUM ABAD PO UMERZAI CHARSADDA.
8. MR. MUFTI ASIF MANSOOR SON OF MUFTI JAN GUL RESIDENT OF MOHALLAH ISLAMABAD BAIROON LAHOORI PESHAWAR.
9. MR. ALAMGIR KHAN SON OF MUHAMMAD AJMAL RESIDENT OF CANAL COLONY BEHIND SECONDARY BOARD PESHAWAR.
10. MR. TAHIR HUSSAIN SHAH SON OF NOOR HASAN RESIDENT OF VILLAGE DAG, PESHAWAR.
11. MR. AFTAB SON OF ZAHID RASHEED RESIDENT OF SHAH MUHAMMAD GHARI, PESHAWAR.
12. MR. ASFANDYAR SON OF PIR MUHAMMAD RESIDENT OF BARA BANDA RISALPUR.
13. MR. HABIBULLAH SON OF NASRULLAH RESIDENT OF SHAHAB KHEL DISTRICT, PESHAWAR.
14. MR. KHURRUM SON OF MASOOD AHMAD RESIDENT OF FIDA ABAD BERON YAKA TOOT, PESHAWAR.
15. MR. WAREEDULLAH SON OF GUL ZADA RESIDENT OF PASANI BALA MATTANI DISTRICT, PESHAWAR.
16. MR. HASSAN DAD SON OF RAHIM DAD RESIDENT OF VILLAGE BANDA DISTRICT, NOWSHERA.
17. MR. SAJJAD KHAN SON OF AKHTER ZAMAN RESIDENT OF VILLAGE JHANSA PO KALABAGH NATHIAGAI RESIDENT OF ABBOTTABAD.
18. MR. MUHAMMAD TANWEER SON OF SALEEM KHAN RESIDENT OF DHERI ISHAQ DISTRICT NOWSHERA.
19. MR. ASIF ALI SON OF MUSHTAQ HUSSAIN RESIDENT OF GHARI SAIDAN.
20. MR. RAEES KHAN SON OF MUNEER KHAN RESIDENT OF VILLAGE DAG DISTRICT. PESHAWAR.

ATTESTED

ASAD JAN

(Advocate High Court)

(19)

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21. MR. MUHAMMAD ISMAIL SON OF AKBER ALI VILLAGE AMANKOT, DISTRICT NOWSHEHRA HOUSE NO. 12 PHASE VI HAYATABAD, PESHAWAR.
22. MR. SAID RASSAN.
23. WAQAR UL ISLAM SON OF AHMAD SAEED RESIDENT OF TEHSIL AND DISTRICT RAWALPENDI.

(20)

RESPONDENTS.

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR.
3. DIRECTOR PBMC CIVIL SECRETARIAT, PESHAWAR.
4. ASSISTANT DIRECTOR, IV PBMC C & W DEPARTMENT PESHAWAR.
5. SECRETARY C&W KHYBER PAKHTUNKHWA PESHAWAR.

PETITIONERS

THROUGH

ASAD JAN
(ADVOCATE HIGH COURT)

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-Shahadat Order 1984
31 JAN 2014

ATTESTED
ASAD JAN
(Advocate High Court)

(7)

IN THE COURT OF PESHAWAR HIGH COURT PESHAWAR.

Writ Petition No,----------- / 2013

MR. ASAD AND OTHERS

VERSUS

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR AND OTHERS.

AFFIDAVIT

As per instruction of my clients I, Asad Jan advocate (Peshawar high court) do hereby solemnly affirm and declare on oath that the contents of the writ petition are true and correct to the best of my knowledge and belief and that nothing has been concealed or kept secret from this Hon, able court.

DEPONENT

ATTESTED

ASAD JAN
(Advocate High Court)

Annexure F (22)

PESHAWAR HIGH COURT,
PESHAWAR

FORM OF ORDER SHEET

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge (s)
1	2
	W.P. No.1301-P/2013.
27.01.2014	Present:- Mr. Asad Jan, advocate, for the petitioners. Mr. Waqar Ahmad, AAG for the respondents. ****** ROOH-UL-AMIN KHAN, J.- After arguing the case at some length, learned counsel for the petitioners stated at the bar that he would not press this writ petition provided petitioners are allowed to approach the proper forum for redressal of their grievance. Learned AAG has no objection on request of learned counsel for the petitioners. 2. In view of statement of learned counsel for the petitioners made at the bar, this writ petition stands dismissed being not pressed. However, the petitioners are at liberty to approach the proper forum for redressal of their grievance in accordance with law. Announced: 27.01.2014.

Sd/- Rooh ul Amin Khan - J

Sd/- Waqar Ahmad Shah - J

CERTIFIED TO BE TRUE COPY

Peshawar High Court, Peshawar
Authorised Under Article 87
Qanun-e-Shahadat Order 1984

31 JAN 2014

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ATTESTED

ASAD JAN
(Advocate High Court)

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PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge
1	2
27-01-2014	W.P. No. 1301-P/2013 Present:- Mr. Asad Jan, Advocate, for the petitioners. Mr. Waqar Ahmad, AAG for the respondents. ***** **ROOH-UL-AMIN KHAN, J 1.** After arguing the case at some length, learned counsel for the petitioners stated at the bar that he would not press this writ petition provided petitioners are allowed to approach the proper forum for redressal of their grievance. Learned AAG has no objection on request of learned counsel for the petitioners. 2. In view of statement of learned counsel for he petitioners made at the bar, this writ petition stands dismissed being not pressed. However, the petitioners are at liberty to approach the proper forum for redressal of their grievance in accordance with law. Announced: 27-01-2014

ATTESTED

ASAD JAN
(Advocate High Court)
E-CJ/J MIC

Annexure G

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Advocate High Court

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Advocate High Court

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بحضور جناب سپر ٹنڈنٹ انجینیر C&W(PBMC) ڈیپارٹمنٹ پشاور

ڈیپارٹمنٹ اپیل

جناب عالی!

گزارش یہ ہے کہ آپ صاحبان کے ذیل زمینوں کو مختلف پوسٹوں پر عمل تعیناتی کی گئی اور تمام کے آرڈرز دیانتداری سے ڈیوٹی سرانجام دیتے رہے ایکسن پی بی ایم سی کو رپورٹ کر دیا لیکن تا حال ہمارے نہ تنخوائیں نہیں ملی ہے۔لہذا مودبانہ گزارش ہے کہ ہمارے تنخوائیں منظور کرنے کے لئے ایکسی صاحب کو ہدایت کی جاوے۔

العبد

آپکا تابعدار نوکرز

۱۔ وریداللہ ۲۔ حسن داد ۳۔ محمد تنویر ۴۔ ساجدخان ۵۔ آفتاب

۶۔ حبیب اللہ ۷۔ محمد عمران ۸۔ مظہر ۹۔ محمد طاہر حسن شاہ ۱۰۔ یاسر مبارک

۱۱۔ محمد عالمگیر ۱۲۔ شہاب الدین ۱۳۔روح اللہ ۱۴۔ اسد علی ۱۵۔حسین خان

۱۶۔ اسماعیل ۱۷۔نوید ۱۸۔اسفندیار وغیرہ

ATTESTED

ASAD KHAN

(Advocate High Court)

E-CJ/JMIC

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Annexure "H"

OFFICE OF THE SUPERINTENDING ENGINEER
PBMC C&W DEPARTMENT PESHAWAR

NO. 1796 /24-A Dated 15/1/2013

To

Executive Engineer,
PBMC C&W Department Peshawar.

Subject: MINUTES OF THE DSC MEETING HELD ON 14.01.2013.

The approved Minutes of the DSC meeting held on 14.01.2013 is sent to your office for record and further necessary action.

SUPERINTENDING ENGINEER PBMC
C&W DEPARTMENT PESHAWAR

Copy to the Section Officer (Establishment) for information with a copy of the Minutes of subject cited meeting for record.

SUPERINTENDING ENGINEER PBMC

Attested
Adv

The post of Carpenter BPS-06 shall deem to be downgraded to BPS-04.

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Advocate High Court
B.C.I.L. No.

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(Advocate High Court)
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OFFICE OF THE SUPERINTENDENT ENGINEER PBN C&W DEPARTMENT PESHAWAR

No. 96 124-M Dated: 15/01/2013

To,

Executive Engineer,

PBMC C&W Department Peshawar.

Subject: **MINUTES OF THE DSC MEETING HELD ON 14.01.2013**

The approved Minutes of the DSC Meeting held on 14.01.2013 is sent to your office for record and further access by action.

Superintendent Engineer PBMC
C&W Department Peshawar.

Copy to the Section Officer (Establishment) for information with a copy of the Minutes of subject cited meeting in record.

SPERINTENDENT ENGINEER PBMC

The post of Carpenter BPS-06 shall deem be downgraded to BPS-04

ATTESTED
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(Advocate High Court)
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Minutes of the Departmental Selecti n and Promotion Committee
PBMC, C&W Department

(25)

A meeting of the DSC&PC was held on 14.1.2013 in the office of the Superintending Engineer PBMC C&W De rtment and make decision on the agenda items. The following attended the meeting:-

1. Engr: Shams-uz-Zaman — Superintending Engineer PBMC:
2. Engr: G. Yazdani Khanzada — Executive Engineer PBMC:
3. Mr. Rahim Badshah — Section Officer (Estt:) C&W Deptt:

The Committee was assisted by the relevant staff of PBMC in consideration of the cases as per rules. The Committee was informed that appointments on vacant post of different cadre will be fille up against employee's son quota and against class IV establishment in PBMC C&W Depa ment. To consider the cases of the appointment of applicants against vacant post of House hold staff both for employee's sons and fresh recruitment total 38 applications were received and considered according to merit.

The following applicants were selected against the vacant posts as below:-

1.M.Tahir Hassan Shah S/o Noor Hassan village Dag Peshawar against the post of Work Superintendent in PBS-09 (Diploma in Civil Technology)

2.Alamgir Khan S/o Muhammad Ajmal resident of Canal colony behind secondary board Peshawar against the post of Work Superintendant in BPS 9 .(Diploma Holder in Civil Technology). The required age relaxation granted and approved by the Selection Committee.

3.Mohammad Tanveer S/o Saleem Khan resident of village Dheri Ishaq District Nowshera (Diploma in Civil Technology Employee's son against the post of Work Mistri in BPS- 06.

4.Ruhullah S/o Shafeequr Rehman resident Sadband Bara Road District Peshawar against the post of Work Mistri in BPS- 06 (Bachelor ,Employee's son)

5.Rees Khan S/o Muneer Khan resident of village Dag District Peshawar against the post of Carpenter in BPS- 06 (Retired High court section Employee's son).

6. In light of Supreme Court orders Said Rasul already working as sweeper in BPS-01 is allowed proper scale BPS-04 as Pump Operator and adjusted temporarily on the post of Carpenter in BPS-06 on stop gap arrangement and the post of Carpenter BPS-06 shall deemed to be downgraded.

7.Waqar ul Islam will be adjusted on stop gap arrangement against the post of Carpenter BPS-06 subject to the court decision and his post of Plumber in BPS-04 will be restored. The post of Carpenter BPS-06 shall deemed to be downgraded to BPS-04.

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(Advocate High Court)
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(Advocate High Court)
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Minutes of the Departmental Selection and Promotion Committee PBMC, C&W Department

A meeting of the DSC&PC is held on 14.01.2013 in the office of the Superintendent Engineer PBMC C&W Department and make decision on the agenda items. The following attended the meeting.

1. Engr. Shams uz Zaman Superintending Engineer PBMC
2. Enge. G.Yazdani Khanzada Executive Engineer PBMC
3. Mr. Rahim Badshah Section Officer (Estt) C&W Deptt:

The Committee was assisted by the relevant staff of PBMC in consideration of the cases as per rules. The Committee was informed that appointments on bacant post of different t cadre will be filled up against employees son quota and against class IV establishment in PBMC C&W Department to consider the cases of the appointment of applicants against vacant post of House hold staff both for employees sons and fresh recruitment total 38 applications were received and considered according to merit.

The following applicants were selected against the vacant posts as below.

1. M.Tahir Hussan Shah S/o Noor Hassan R/o village Dag Peshawar against the post of Work Superintendent in BPS-09 (Diploma in Civil Technology).
2. Alamgir Khan S/o Muhammad Ajmal R/o Canal Colony behind secondary board Peshawar against the post of Work Superintendent in BPS-9 (Diploma Holder in Civil Technology). The required age relaxation granted and approved by the Selection Committee.
3. Mohammad Tanveer S/o Saleem Khan R/o village Dheri Ishaq District Nowshera (Diploma in Civil Technology) Employees so against the post of work mistri in BPS-06.
4. Ruhullah S/o Shafeeq ur Rehman resident of Sarband Bara Road District Peshawar against the post of work Mistri in BPS-06 (Bachelor Employee's son).
5. Raees Khan S/o Muneer Khan resident of village Dag District Peshawar against the post of Carpenter in BPS-06 (Retired High Court section Employee's son).
6. In light of Supreme Court orders said Raees already working as sweeper in BPS-01 is allowed proper scale BPS-04 as Pump Operator and adjusted temporally on the post of Carpenter in BPS-06 on stop gap arrangement and the post of Carpenter BPS-06 shall deemed to be downgraded.
7. Waqar ul Islam will be adjusted on stop gap arrangement against the post of Carpenter PBS-06 subject to the court decision and the against at Plumber in BPS-04 will be in stored the post of Carpenter BPS-06 shall deemed downgraded to BPS-04.

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ASAD JAN
Advocate High Court
K-C/J/MIC

8.Hassan Dad S/o Rahim Dad resident of v age Banda District Nowshera against the post of Pipe Fitter in BPS- 04(Matriculation)

9.Wareedullah S/o Gul zada village pasan la Mattani District Peshawar against the post of Pipe Fitter in BPS-04.Employee' son.

10.Muhammad Imran S/o Muhammad Hamz an resident of village Mohib Banda districtNowshera against the post of Pipe fit in BPS 04.

11.Mr. Khurram S/o Maqsood Ahmad(Ex-Em loyee in PSMC) resident of Fida abad Beroon Yaka Toot Peshawar against the pos of Electrician Grade IV in BPS 04(F.A)

12.Asif Ali S/o Mushtaq Hussain resident of ahallah Ghari Saidan Hashtnagri Peshawar against the post ofElectrician Grade IV in BP 02.

13.Mohammad Ismail S/o Akbar Ali H#402 N 2 Phase IV Hayat abad Peshawar against the post of Electrician in BPS-02 (Qualificati n Matric).

14.Sajid Khan S/o Akhtar Zaman village Jhar PO Kala bagh Nathiagali Abbottabad against the post of Electrician Grade II in BPS 05 (Matriculation ;Certificate in air conditioning from technical training school C ahar Peshawar andElectricianCertificate course from NTDC Peshawar).

15.Habibullah S/o Nasrullah village Shahab el District Peshawar against the post of Skilled cooly in BPS- 02(Qualification FA ,Em oyee' son)

16.Asfandyar S/o Pir Muhammad resident of ra Banda Risalpur against the post of Skilled Cooly in BPS-02.

17.Navaid ur Rehman S/o Fairoz Khan Village Tehkal Bala against the post of Khansama in BPS-04

18. Aftab S/o Zahid Rasheed resident of Ghar Muhammad ghari Peshawar for the post Mali in BPS -02.

19.Assad S/o Sanab gul resident of Shaheed bad Khaishki Nowshera against the post of Mali in BPS-02.

20.Hussain S/o Raj Wali resident of H# 133L- hase III Hayat abad against the post of cooly in BPS-01(matric)

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8. Hassari Dad S/o Rahim Dad resident of village Banda District Nowshera agains the post of cipe Fitter in BPS-04 (Matriculation).
9. Wareed Ullah S/o Gul Zada village pasani Mattani District Peshawar agains the post of Pipe Fitter in BPS-04, Employee's son).
10. Muhammad Imran S/o Muhammad Hameed Jan resident of village Mohib Banda District Nowshera against the post of Pipe Fitter in BPS-04.
11. Mr. Khurram S/o Maqsood Ahmad (Ex-Employee in PBMC) resident of Fida Abad Beroon yaka toot Peshawar against the post of Electricain Grade IV in BPS-04 (F.A)
12. Asif Ali S/o Mushtaq Hussain resident of Mohallah Ghari Siadan Hashtnagri Peshawar against the post of Electrician Grade IV in BPS-02.
13. Mohammad Ismail S/o Akbar Ali House No. 402 Street No. 2 Phase IV Hayat Abad Peshawar against the post of Electrician in BPS-02 (Qualification Matric).
14. Sajid Khan S/o Akhtar Zaman village Jhara PC Kata Bagh Nathiagali Abbotabad against the post of Electrician Grade II in BPS-05 (Matriculation Certificate in air conditioning from NTDC Peshawar).
15. Habib Ullah S/o Nasrullah village Shahab Khel district Peshawar against the post of Skilled cooly in BPS-02 (Qulaification F.A Employee son).
16. Astanayar S/o Pir Muhammad resident of Banda Risalpur against the post of Skilled Coolly in BPS-02.
17. Navaid ur Rehman S/o Fairoz Khan village Tehkal Bala against the post of Khansama in BPS-04
18. Aftab S/o Zahid Rasheed resident of Shah Muhammad Ghari Peshawar for the post of Mali in BPS-02.
19. Asad S/o Sanab Gul resident of Shaheedabad Khaishki Nowshera against the post of Mali in BPS-02.
20. Hussain S/o Raj Wali resident of House No. 133 Phase III Hayatabad against the post of Coolly in BPS-01 (Matric).

ATTESTED

ASAD JAN
(Advocate High Court)
B-C3/JMIC

21. Yasir Mubarak S/o Mubarak Shah sident of Faram korona District Nowshera against the post of Cooly in BPS- 01.

22. Shahabuddin S/o Nasrat gul village Umrzai Peshawar against the post of Chowkidar in BPS-01

23. Riaz Khan Carpenter working in BPS 02 allowed proper Scale BPS-06

24. Fazle Ijaz reverted to his own grade S-06 as Work Mistri.

25. Muzzaffar S/o Hidayatullah village Qa qum abad P.O Umerzai charsadda against the post of Muslim Sweeper in BPS- 01.

26. Mufti Asif Mansoor S/o Mufti Jan Gul sident of Mahallah Islam abad Bairoon Lahoori Peshawar as Muslim Sweeper in BPS-0

Meeting ended with the vote of thanks fr the chair.

Engr. G.Yazdani Khanzada
(Member)
Executive Engineer PBMC,
C&W Department Peshawar.

Rahim BadShah
(member)
Section Officer(Estt:)
C&W Department Peshawar

Engineer Shams uz Zaman
(Chairman)
Superintending Engineer,
PBMC, C&W Department Peshawar.

ATTESTED
ABAD JAN
Advocate High Court
Peshawar

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21. Yasir Mubarak S/o Mubarak Shah resident of Faram Korona District Nowshera against the post of Coolly in BPS-01.
22. Shahabuddin S/o Nasrat Gul village Narizan Peshawar against the post of Chowkidar in BPS-01.
23. Riaz Khan Carpenter working in BPS-02 allowed proper Scale BPS-06.
24. Fazle Ijaz reverted to his own grade BPS-06 as Work Mistri.
25. Muzzaffar S/o Hidayat Ullah village Qayyum Abad P.O Umerzai charsadda against the post of Muslim Sweeper in BPS-01.
26. MUFTI Asif Mansoor S/o Mufti Jan Gul resiedent of Mohallah Islam Abad Bairoon Lahori Peshawar as Muslim Sweeper in BPS-01

Meeting ended with the vote of thanks from the chair.

Eng: G.Yazdani Khanzada (Member)
Executive Engineer PBMC
C&W Department Peshawar.

Rahim Badshah (member)
Section Officer (Estt)
C&W Department Peshawar

ATTESTED
ASAD JAN
(Advocate High Court)
K-CJ/JMIC

Engineer Shams ul Zaman
(Chairman)
Superintending Engineer,
PBMC, C&W Department Peshawar.

ANNEXURE-I (28)

(28)

MINUTES OF THE DEPARTMENTAL SELECTION COMMITTEE / DEPARTMENTAL PROMOTION COMMITTEE NO.II, HELD ON 28/06/2013 AT 10-00 AM UNDER THE CHAIRMANSHIP OF SUPERINTENDING ENGINEER PBMC C&W DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR.

Annexure ;i,

Meeting started with recitation from the Holy Quran

A Meeting of the Departmental Selection Committee/Departmental Promotion Committee No.II was held on 28/06/2013 at 10:00 A.M. in the office of the SUPERINTENDING ENGINEER PBMC C&W Deptt: Peshawar under his Chairmanship to recommend the Candidate for appointment as Cooly (BPS-01) in Governor's House Peshawar against the existing vacancy.

The following attended the meeting:-

1. Muhammad Ashraf Khan, Superintending Engineer PBMC C&W Deptt: Peshawar. — Chairman
2. Muhammad Taufeeq Section Officer (Estt:) C&W Deptt: Peshawar — Member
3. ENGR: Muhammad Nawaz Khan Executive Engineer PBMC. C&W Deptt: Peshawar. — Member

The appointment case of the candidate noted below was examined and recommended for appointment as Cooly (BPS-01) in Governor's House Peshawar being House Hold Post.

S/No	Name & Address	Name of Vacancy	Place of post	Remarks
1.	Mr. Noor Akbar S/O Haji Akbar Village Akazi Tehkal Bala Teh: & Distt: Peshawar	Cooly (BPS-01)	Governor's House Peshawar	Recommended for appointment and otherwise eligible for the post of Cooly.

Meeting ended with the vote of thanks from and to the Chair.

1. Muhammad Ashraf Khan, Superintending Engineer PBMC C&W Deptt: Peshawar.
2. Muhammad Taufeeq Section Officer (Estt:) C&W Deptt: Peshawar
3. ENGR: Muhammad Nawaz Khan Executive Engineer PBMC. C&W Deptt: Peshawar.

Attested to be True

ASAD JAN
Advocate High Court
& C/Sec PBMC

ATTESTED

ASAD JAN
Advocate High Court
PBMC

Better Copy 28

MINUTES OF THE DEPARTMENTAL SELECTION COMMITTEE DEPARTMENTAL PROMOTION COMMITTEE NO.11, HELD ON 28/06/2013 AT 10:00 UNDER THE CHAIRMANSHIP OF SUPERINTENDING ENGINEER PBMC C&W DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

Meeting started with recitation from the Holy Quran

A Meeting of the Departmental Selection Committee/Departmental Promotion Committee No. 11 was held on 28/06/2013 at 10:00 A.M in the office of the Superintending Engineer PBMC C&W Deptt: Peshawar under his Chairmanship to recommend the Candidates for appointment as Coolly (BPS-01) in Governor's House Peshawar against the existing vacancy.

The following attended the meetings:-

1. Muhammad Ashraf Khan, Superintending Engineer PBMC C&W Deptt: Peshawar. — Chairman
2. Muhammad Taufeeq Section Officer (Estt) C&W Deptt: Peshawar — Member
3. ENGR: Muhammad Nawaz Khan Executive Engineer PBMC, C&W Deptt: Peshawar. — Member

The appointment case of the candidate noted below was examined and recommended for appointment as Coolly (BPS-01) in Governor's House Peshawar being House Hold Post.

S No	Name & Address	Name of Vacancy	Place of post	Remarks
1	Mr. Noor Akbar S/o Haji Akbar village Akazi Tehkal Bala The & District Peshawar	Coolly (BPS-01)	Governor's House Peshawar	Recommended for appointment and otherwise eligible for the post of Coolly

Meeting ended with the vote of thanks fro m and to the Chair

1. Muhammad Ashraf Khan, Superintending Engineer PBMC C&W Deptt: Peshawar
2. Muhammad Taufeeq Section Officer (Estt) C&W Deptt: Peshawar
3. ENGR: Muhammad Nawaz Khan Executive Engineer PBMC C&W Deptt: Peshawar.

ATTESTED

ASAD JAN
(Advocate High Court)
E-CJ/JMIC

OFFICE OF THE SUPERINTENDING ENGINEER PBMC,
COMMUNICATION & WORKS DEPARTMENT,
KHYBER PUKHTUNKHWA, PESHAWAR.

No. 745 /41-EA

Annexure "J"

Dated Peshawar the, 20 / 9 /2013

To

Mr. Noor Akbar S/O Haji Akbar,
Village Akazi Tehkal Bala,
Teh: & Distt: Peshawar.

Subject: APPOINTMENT AS COOLY (BPS-01) IN (GOVERNOR'S HOUSE SECTION) PBMC COMMUNICATION & WORKS DEPARTMENT PESHAWAR.

As approved by the DSC in its meeting held on 28/06/2013, you are hereby offered the post of Cooly (BPS-01) (House Keeping) after fulfillment of the following terms and conditions:-

1. Your services are liable for termination on one month's notice.
2. In case you wish to resign at any time, one month's notice will be necessary or in lieu thereof one month pay shall be forfeited.
3. You will have to produce a medical certificate of fitness from the Medical Superintendent / Civil Surgeon Peshawar.
4. You will have to serve as house keeping/non house keeping employee any where in Khyber Pakhtunkhwa and against any post of equivalent status.
5. You will join duty on your own expenses.
6. Your appointment to the above post is subject to the eligibility and production of original certificate of qualification/experience, domicile, NIC and other documents.
7. You are appointed on probation period of one year.

According to Provincial Govt. orders notified vide No. SOR-VI(E&AD)1-13/2005, dated 10/8/2005 and Section Officer (Accounts)PBMC/AD/BUDGET/3-2/2005/P-VI, dated 26/6/2006, you will not be entitled for pension gradulty but will contribute CP Fund @ 10% from your pay and 10% will be contributed by the Govt. of Khyber Pakhtunkhwa in lieu thereof.

If you accept the offer on the above terms and conditions, you should report for duty in the office of the Executive Engineer PBMC C&W Department Peshawar within 15 days of the issue of this letter.

Engr: Muhammad Ashraf Khan,
Superintending Engineer (PBMC)

Copy forwarded for information to:

1. The Accountant General Khyber Pakhtunkhwa Peshawar.
2. The Executive Engineer PBMC C&W Department Peshawar.
3. The Sub-Divisional Officer Concerned.

Superintending Engineer (PBMC)

Attested
True Copy
(Advocate High Court)
X-CII/13/MC

ATTESTED
ASAD JAN
(Advocate High Court)
X-CII/13/MC

(39) 30

To,

The Executive Engineer,
PBMC C&W Department,
Peshawar.

Subject: ARRIVAL REPORT.

In compliance with office order No.715/41-E Dated:20-09-2013 I beg to submit my arrival report to day e / dated 23-09-2013 (Fore Noon) for duty please.

Thanks.

Your's obediently,

Noor Akbar
S/O Haji Akbar
Village Akazi Tehkal Bala,
Teh: & Distt: Peshawar

Attested to be
True Copy

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ASAD JAN
(Advocate High Court)
E-C/JMIC

Better Copy 30

To,

The Executive Engineer,
PBMC C&W Department,
Peshawar.

Subject: **ARRIVAL REPORT**

In compliance with office order No. 715/41-E Dated 20/09/2013, I beg to submit my arrival report to day on dated 23/09/2013 (Fere Noon) for duty Please.

Thanks

Your's obediently
Noor Akbar
S/o Haji Akbar
Village Akazi Tehkal Bala,
Tehsil & District Peshawar

ATTESTED
ASAD JAN
Advocate High Court
PBMC

(31)

MEDICAL CERTIFICATE

Name of official Noor Akbar

Caste or race Afghan

Father's name Haji Akbar

Residence Akbar Tehkal Bala Plot No 1400 Distt & Tehs Peshawar

Date of birth 19-03-1982

Exact height by measurement 5'-7"

Personal mark of identification

Signature of the official

Signature of head of office

Seal of office

I do hereby certify that I have examined Mr. Noor Akbar a candida
for employment in the Office of the PBM College of Allied Sci
and cannot discover that he had any disease communicable or other constitutional affection or bodily
infirmity except Nil.

I do no consider this as disqualification for employment in the office of the PBMC

His age according to his own statement 31 (Thirty One) year and by appearance abo
year. 31 (Thirty Five)

Attested to be

Superintendent-II
PBMC
Peshawar

MEDICAL SUPERINTENDENT
CIVIL HOSPITAL
Medical Superintendent
Lady Reading Hospital
Peshawar

LEFT HAND THUMB AND FINGER IMPRESSIONS

29-01-14

The entries in this page should be renewed at the time of attestation or at least every five years and the signature to item 9 and 10 should be dated.

C.N.I.C. No. 17301-1256153-7

(32)

1. Name: Noor Akbar

2. Race: Afghan

3. Residence: Village Abazai Tehsil & Distt. Peshawar

4. Father's name and residence: Haji Akbar

5. Date of birth by Christian era and as nearly as can be ascertained: 1-03-1982

6. Exact height by measurement: 5'-7"

7. Personal marks for identification: Nil

8. Left hand thumb and finger impression of (Non-Gazetted) officer:

Little Finger	Ring Finger
Middle Finger	Fore Finger
Thumb	

9. Signature of Government Servant:

10. Signature and designation of the Head of the Office, or other Attesting Officer.

Sub Divisional Officer-II
Distt. Civil Courts
Tangmar

Addl. Distt. & Sessions Judge
Peshawar
Incharge Civil Court
Peshawar

ATTESTED

ASAD JAN
Advocate High Court
Peshawar

1	2	3	4	5	6	7	8	
Name of post ڈرائبر	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "P"	Date of appointment	Signature of Government Servant	[illegible]
Coachy BPS-01 (4800-150	-9300)	offg.	Rs.	4800/=	PM	23 9 2013		

(33)

Signature and designation of the head of the office or other attesting officer in attestation of Column 1 to 5	Date of commencement of appointment	Nature of tenure of appointment (temporary, quasi-permanent, officiating, etc.)	Name and designation of the appointing authority	Nature of leave taken	Leave: Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government — Period	Leave: Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government — Government to which debitable	Signature of the head of the office or other attesting officer	Reference to intimation sent to the Government or person of the Government Servant

Appointed As Sub BPE-01
in The Hon: Scale (9300-150-9300)
vide P.E. P&MC Peshawar. O/O
No. 715/41-E dt 20/9/2013
Reported arrival for duty on
23/9/2013

Sub Divisional Officer-II
PE&MC C&W Deptt:
Peshawar

Attested to be
True Copy

ATTESTED

ASAD JAN
(Advocate High Court)
Peshawar

GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. No. SOE/C&WD/24-60/Association
Dated Peshawar, the March 24, 2015

TO

The Superintending Engineer
PBMC C&W Peshawar

Subject: **COC/2014 in Service Appeal No.183/2014 & 19 others – Muhammad Alamgir Khan VS SE PBMC and others (regarding illegal appointment in PBMC)**

I am directed to refer your office letter No.1919/52-C dated 06.03.2015, whereby you have forwarded copy of Service Tribunal Khyber Pakhtunkhwa judgment dated 19.02.2015 for appropriate action. In the judgment, the court has directed to treat the appeals of the appellant as departmental appeals and decide it within one month of its receipt, failing which these appeals shall be deemed to have been accepted by the Tribunal.

2. In compliance of aforementioned Service Tribunal judgment, the appeals were examined and placed before the Appellate Authority. The Appellate Authority has rejected their appeals, as proper procedure was not followed in their appointments.

(USMAN JAN)
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded for information to the:

1. The Registrar Service Tribunal Khyber Pakhtunkhwa with reference to Tribunal judgment dated 19.02.2015
2. PS to Secretary C&W Department, Peshawar

SECTION OFFICER (Estb)

ATTESTED
ASAD JAN
(Advocate High Court)

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 183/2014,
Muhammad Alamgir Khan Versus Superintending Engineer,
PBMC, C&W Department, Peshawar & 4 others.

19.02.2015

PIR BAKHSH SHAH, MEMBER.- Appellant with his counsel (Mr. Asad Jan, Advocate), Mr. Usman Ghani, Sr.GP with Muhammad Arif, SDO for the official respondents and private respondent No. 5 with his counsel (Mr. Muhammad Asif Yousafzai, Advocate) present.

2. Summarizing facts of the case are that on the recommendations dated 14.01.2013 of the Departmental Selection Committee, appointment letters were issued to the appellants, by respondent No. 5, Shams-uz-Zaman, Ex-Superintending Engineer, PBMC, C&W Department, Peshawar, presently posted as Director (Tech) EQAA, Abbottabad, The appellants - as following - with their separate appeals, are 20 in numbers and as common issue of payment of salary is involved, therefore, all these appeals are proposed to be disposed off jointly by this single judgment:-

Sr. No	Appeal No.	Name	Designation	BPS	Date of appointment
1.	183/2014	M. Alamgir Khan	W.Supdt.	09	16.01.2013
2.	184/2014	Hussain Khan	Cooly	01	14.01.2013
3.	185/2014	Khurram Shehzad	Electrician	04	18.01.2013
4.	186/2014	Wareedullah	Pipe Fitter	04	23.01.2013
5.	187/2014	Habibullah	Cooly	02	18.01.2013

6.	188/2014	Muhammad Ismail	Electrician	02	28.01.2013
7.	189/2014	Sajid Khan	Electrician	05	23.01.2013
8.	190/2014	M.Tahir Hussain Shah	Suptdt.	09	16.01.2013
9.	217/2014	Yasir Mubarak	Cooly	01	14.01.2013
10.	218/2014	Hasan Dad	Pipe Fitter	04	23.01.2013
11.	219/2014	Muzzaffar	M.Sweeper	01	15.01.2013
12	220/2014	Muhammad Imran	Pipe Fitter	04	18.01.2013
13.	221/2014	Muhammad Tanveer	Mistri	06	14.01.2013
14.	222/2014	Ruhullah	Work Mistri	06	24.01.2013
15.	223/2014	Raees Khan	Carpenter	06	28.01.2013
16	249/2014	Asfandyar	Skilled Cooli	02	17.01.2013
17.	250/2014	Aftab	Mali	02	17.01.2013
18.	251/2014	Shahabuddin	Chowkidar	01	15.01.2013
19.	759/2014	Asad Ali	Mali	02	17.01.2013
20	760/2014	Naveed ur Rahman	Khansama	04	28.01.2013

Appellants claim per their appeal that they submitted arrival reports, after formality of being medically examined and so much so that necessary entries in their service books have also been made. They further claim that they were performing their duties from the date of their arrival but the respondent-department has denied to them their salary on which they knocked at the door of the Hon'ble Peshawar High Court in Writ Petition No. 1301-P/2013. The Hon'ble Peshawar High Court vide its order dated 27.01.2014, dismissed the Writ Petition being not pressed but observed that the petitioners are at liberty to approach the proper forum for redressal of their grievances in accordance with the law. Hence these separate service appeals have been filed before this Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of instant appeal, the respondent be directed to pay the withheld salaries since arrival report for duty till date and onward

and not to create illegal hurdle in the way of performance of duties as well as to restrain respondents from taking any discriminatory action against the appellant. . The record further reveals that this Bench, then presided by our learned predecessors passed order dated 16.04.2014 under which the respondent department was directed to allow the appellants to perform duties and to start paying them their monthly salary provisionally. Feeling aggrieved from this order, the respondent department filed Civil Petitions No. 517-P to 534-P/2014 before the august Supreme Court of Pakistan. The august Apex Court was pleased to pass the following order on 16.10.2014:-

> "From the nature of the lis and also from the order, under question, we are not inclined to interfere in the interim order, passed by the learned Service Tribunal. However, we direct the Registrar of the learned Service Tribunal to fix these cases, if not yet fixed, in the week commencing 3rd November, 2014 and the learned Tribunal is directed to decide all these cases within a week thereof. Disposed of accordingly."

On 16.02.2015, we the undersigned became seized of the appeals for the first time.

The record shows that respondent No. 5 has been transferred from his erstwhile post long ago and he has been made respondent in his private capacity. He however, owns that appointment orders to have been issued by him. On the other hand the respondent department per their written reply have termed these appointments illegal, to be shorn of the required criteria of domicile and reserved quota, that those were made in violation of the rules and void ab-initio.

ATTESTED

4. We have heard the learned counsel for the appellant, Mr. Usman Ghani, Sr.GP for the official respondents and private counsel for respondent No. 5 at length, and perused the record with their assistance.

5. The learned counsel for the appellant contended that the appellants are civil servants, duly appointed by the appointing authority (respondent No.5) after fulfilment of all the codal formalities. The appellants have also submitted their arrival reports after their medical examination but due to change of the incumbents in the office of respondent No. 5, the department-respondent is neither letting the appellants to perform their duties nor paying them their salary. The arguments of the learned counsel for the appellant were further augmented by the learned counsel for private respondent No. 5 that for filing an appeal before this Tribunal, the impugned order in writing was not essential. Reliance placed on PLD 1991 (SC)226.

6. The learned Addl. Advocate General and Senior Government Pleader vehemently resisted these appeals. Their contention is that this Tribunal under Section 4 r/w Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 lacks jurisdiction because there is neither any original order nor any final order against which the appeals should have been filed. On merits, it was submitted that the appointment orders are totally illegal, void ab-initio, do not fulfil the required criteria and qualifications. In this respect it was submitted that some of the appointment orders were made under

Rule 10 (4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 but it has been found in enquiry conducted by Engr. Shahid Hussain that the appointees were not sons of the deceased employees; that some of the appointment orders have been shown issued in hurry on the very date on which the Departmental Selection Committee took its meeting; that some of the appointees as prescribed in Rule 12 (3) of the rules ibid have not been appointed from the respective districts. It was also submitted that the relevant record like arrival report etc. were also not found in the office and further that notice thereof was also taken by the Audit Party. They also contended that the appeal is time barred and finally prayed that all the appeals may be dismissed.

7. We have considered submissions of the parties and have thoroughly gone through the record. This is not disputed by the respondent department that at the relevant time respondent No. 5 was the competent appointing authority for the disputed appointments. Respondent No. 5 has openly conceded that he had made the appointments and has further taken plea that after fulfilment of all the codal formalities the appointments were made. In defence of appointments, he referred to corrigendum dated 08.02.2013 issued to rectify mistakes in the original appointment orders pertaining to quoting rule 10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in the appointment orders. This is also very important aspect of the matter that so far these appointment orders have not been cancelled by the

respondent-department. The issue pertains to the payment/non-payment of salary to the appellants, therefore, in the light of the above factual position on record, we are led to prima-facie opine that the appellants qualify to attract jurisdiction of this Tribunal. Hence jurisdiction is assumed.

8. On record, there is enquiry report conducted by Engr. Shahid Hussain and being important we are also inclined to reproduce its final conclusion at para-5 which is follows:-

> "In the light of the findings/Conclusion, detailed above, it is found that not only the prevailing rule 10 & 12 of Appointment, Promotion & Transfer Rules-1989 as well as merit list of employee sons were not followed but also numerous lapses mentioned above are observed in whole process, hence the aforesaid appointment can not be termed as legal."

This being so, this is also noticeable that the appellants have not made the present incumbent/competent authority as respondent. On the other hand the department-respondent has its objection on making Mr. Shamsuz Zaman, then appointing authority as respondent No. 5 in which respect it was also submitted that departmental proceedings on the basis of these disputed appointments had also been initiated against him. It is our considered opinion that the factual position of arrival report, charge assumption reports and performance of duty really pertains to the office of the respondent department and a person cannot be held to be entitled to salary merely on the basis of the appointment orders and that which is also disputed by the department to be legal. Unfortunately, the said appointing/competent authority has not been

made respondent who would have assisted the Tribunal on these factual position because the facts mentioned above has a very close connection with the payment/non-payment of salaries to the appellants. For the above said reasons, the Tribunal feels itself in vacuum and perceive a disconnect between the disputed appointment orders and payment of salary on its basis. On record, it was also not shown that departmental appeal had been moved by the appellant before the competent appellate authority next above the appointing authority as contemplated in Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, much less that the outcome of such appeal would have come before the Tribunal. Hence, while concluding this discussion, it is the considered opinion of the Tribunal to treat these appeals as departmental appeals and to remit the cases to the appellate authority who is directed to decide the appeals within one month of its receipt failing which these appeals shall be deemed to have been accepted by this Tribunal. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
19.02.2015

Sd/- Pir Bakhsh Shah, Member
Sd/- Abdul Latif, Member

Certified to be true copy
Khyber Pakhtunkhwa Service Tribunal, Peshawar

Date of Application 3-3-2015
2800
16
16
Date of Delivery of Copy 4-3-2015
Date of Delivery of Copy 4-3-2015

بعدالت جناب سروس ٹربیونل جج صاحب پشاور

مورخہ 2 منجانب اپیلانٹ

مقدمہ حسن دار بنام سیکرٹری ایجوکیشن

دعویٰ سروس اپیل

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے ... مقصود احمد خان ایڈووکیٹ مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اوراس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہٰذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 24 ماہ اپریل 2020ء

العبد گواہ العبد

مقام پشاور

Accepted

کے لئے منظور ہے۔

6

جناب عالی جناب ایس ای صاحب = P.M.B.C پشاور

جناب عالی گذارش ہے کہ میں ایک غریب گھرانے کا فرد ہوں اور میں نے دسویں تک تعلیم حاصل کی ہے مزید تعلیم جاری نہیں رکھ سکتا ہوں مجھے موجودہ 26 نومبر 2012ء بذریعہ نوشن بورڈ اخلاع ملی کہ چند اسامیوں پر بھرتی شروع ہے براہ مہربانی مجھے کلاس چہارم پر بھرتی کیا جائے گا۔ میرا شناختی کارڈ نمبر 17201-7264905-9 ہے۔

28-11-2012

حسن داد ولد رحیم داد سکنہ بنڈہ خیلو نوشہرہ

DAO / Support

21/12/2012

Superintending Engineer
P.M.B.C Peshawar

16

محکمہ صحت عامہ انجینئرنگ صاحب پی ایم سی

اپیل برائے ماہانہ تنخواہ

گذارش ہے کہ میرا تقرر ڈیوٹی 1794/41 E
مورخہ 23-1-2013 جاری ہوا تھا میں نے
اپنا ڈیوٹی باقاعدگی کے ساتھ مورخہ 23-1-2013 کو
شروع کر دیا لیکن ابھی تک مجھکو تنخواہ نہیں مل
رہا ہے۔ لہذا ہر ماہ تنخواہ والے کی اور اکاؤنٹ صاحب کو میری
تنخواہ جاری کرنے کا حکم دیں۔ والسلام۔

XEn.

Release salary without
any official
delay.

حسن داد پلمبر فٹر
3-4-2013

Sub Divisional Engineer
PBMC C&W Deptt: Peshawar

(17)

بخدمت جناب ایلیس صاحب بی بی ایم سی

جناب عالی

میں حسن داد ولد رحیم داد ایس ای نمبر 1794/41E
تاریخ 23/1/2013 کے مطابق آج صبح 9 بجے 23/1/2013 کو ڈیوٹی
پر حاضر ہوا ہوں۔

DNo. 269/9-E
dt 23/1/2013

الحارث
Rad

حسین داد ولد رحیم داد

18

2/12

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No.453/2015

Mr. Hassan Dad S/O Rahim Dad Khan,
Versus
Govt of Khyber Pakhtunkhwa C&W Department.

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BEFORE THE KHYBER PAKTHUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 453/2015.

Mr. Hassan Dad S/O Rahim Dad Khan,
Resident of Village Banda District Nowshehra.....Appellant

VERSUS

1. Superintending Engineer PBMC C&W Department Peshawar
2. Executive Engineer PBMC C&W Department Peshawar.
3. Assistant Director/SDO-IV PBMC C&W Department Peshawar.
4. Secretary to Govt of Khyber Pakhtunkhwa C&W Department Peshawar.
5. Section Officer (Establishment) C&W Department Peshawar.

..... Respondents.

COMMENTS ON BEHALF OF RESPONDENT NO.1 TO 5.

PRELIMINARY OBJECTIONS.

1. Appellant's father was neither a government servant nor died official. Appointment of appellant is not covered under Rules 10 (4) of Khyber Pakhtunkhwa Civil Servant A.P.T Rules 1989, hence illegal, void abinitio and not warranted by any law. Rules-10(4) gives a rise to appointment to Son/Daughter/Widow/Wife whose father/husband dies/died or invalidated on medical grounds during Service and not others.
2. The alleged offer of appointment to the Appellant is illegal and void abinitio, having no cause of action to invoke the jurisdiction of this Honourable Tribunal. The principal of locus poenitentiae is not being attracted in the cases of illegal appointments.
3. The Appellant has deliberately concealed the material facts from this Honourable Tribunal in the appeal in hand.
4. The appellant has not come to the Tribunal with clean hands.
5. The appeal is bad for misjoinder and non joinder of necessary and proper parties i.e. the then Executive Engineer, Mr. Ghulam Yazdani who signed the Service Books and other documents and not released the salaries if appointment was regular and not Illegal/Malicious then.

FACTS.

1. Not need to comments.

2. Incorrect no orders have been passed by Responent-5 as he had not an Authority of appointments in the PBMC. No official record exists to show that any such appointments were made through DSC on 14/01/2013 and what to say about the offer of appointment. Of Course when a Writ Petition No. 1301-P/2013 was filed by the appellant and others and the High Court issued notice for reply, then it was become to know that some persons were claiming their appointment in PBMC, which were issued by the then outgoing Superintending Engineer PBMC in the month of April, 2013 maliciously. The offers of appointments dated 23-1-2013 (for 3 Nos) 24-01-2013 (2 Nos) and 28-1-2013 (3 Nos) are issued during the imposed Ban Period conveyed by the Election Commission of Pakistan vide Notification dated 22-01-2013 (**Annex-I**).

3. Incorrect, as stated in above para of comments no record was/is existing with the department.

4. Incorrect, No record of appellants is available with respondent department.

5. Incorrect. The alleged documents has never been furnished, not submitted to concern quarter according to prescribed procedure.

6. Incorrect. Neither the appellant nor others assumed charge physically for duty and accordingly. The plea and claim of appellant and his other colleagues regard their performance of duty and non-payment of salaries is against the facts and circumstances. One cannot become entitled for duty and salary on void, illegal offers of appointment. The appellant is bound under the law to prove his appointment order as legal one, which has not been proved by them in earlier Writ Petition 1301-P/2013 and Service Appeal 189/2014. Rest of the para pertains to record.

7. Incorrect. The appellant has neither approached nor entitled for salary as his offer of appointment is bogus and illegal one.

8. The Appellate Authority rejected the Departmental Appeal (Service Appeal terming into Departmental Appeal) on 24-3-2015 within time of ONE month as given by the Tribunal.

9. Incorrect. As stated in para 8-Supra.

GROUNDS

1. Incorrect. No valuable right of the appellant has been taken away. He is not entitled for salary being an illegal appointee even not performed the duties. Mere possessing of illegal offer of appointment, by itself does not constitute a valuable right for payment of salaries.

2. Incorrect. No discriminations, illegality, unlawful and unconstitutional act has been done by the replying respondents. The appellant has got no locus standia and cause of action.

3. Incorrect. The Appellant as stated in the preceding paras, not performed the duties/job to govt, salaries to appellant cannot be released. The offer of appointment being illegal, void abinitio and in violation of adopting proper procedure The offers of a post by itself does not constitute it a proper appointment orders by any means.

4. Incorrect, the appellant is not entitled for salary. The case of appellant has distinguishable features and facts from that of two namely (i) Said Rasan, (ii) Waqarul Islam were already employed as govt servants and were panalized departmentally. They sued their cases in the August High Court and this Tribunal, and the (iii) Riaz Khan whose pay scale was disputed and he was given a proper and corresponding Pay Scale-5. The same position was narrated in the earlier replies since filed in the previous Service Appeals No. 218/2014 of Appellants. Their cases cannot be taken into account of same nature. The inclusion of their cases in the DSC was not necessary being different in circumstances and had to be ordered administratively each by the Ex-Superintending Engineer, their inclusion being made intentionally for quotation in the malicious act of appointments to make ground for the case of Appellant and others by this way. Whereas the case of Noor Akbar S/O Haji Akbar is totally different and it cannot be taken into a same nature and manner. His appointment was made after DSC meeting and against a vacancy as Fresh Appointment and not under sub rule-4 of Rule-10 of the APT Rules, 1989.

5. Incorrect, as stated/described in the above para-2 and 6 above of facts. A person not delivering Services/job, cannot be or to be paid from the Govt Ex-Cheuqe meaning thereby violative and not permitable under any ethic.

6. Incorrect/False. The appellant is not entitled for salary. He has not been appointed in accordance with prescribed manner and rules. The offer of appointment is void ibinitio.

7. Incorrect. As stated in Para-8 of the facts, the Appellate Authority has decided appeals well within time of ONE Month as given by this Hon'able Tribunal.

8. Incorrect. During the proceeding on his Execution Petition orders passed on 08-06-2015, appellant was fully aware of the facts of the Appeal decided by the Appellate Authority (Respondt-4). The plea taken, that the impugned orders was not communicated, then how the Appellant and others filed present Appeal(s) against the Respondent-4's order dated 24-03-2015. The appellant should have to applied for the decision of Appellate Authority at the appropriate time rather agitated in this Tribunal.

9. Incorrect as described in Para-8 of the grounds.

10. Incorrect. The orders stated as impugned, have been passed by the Respondent-4, being Competent and Appellate Authority because the appeals were sent to Secretary C&W on 04-03-2015 by this Honourable Tribunal for disposal within a period of one month.

11. Misconceiving, the malicious Offers for Appointment (not proper Appointment Orders) were made under sub rule-4 of Rule-10 of the A.P.T Rules, 1989, while the ibid rules, gives a rise to appoint Son/Daughter/Widow/Wife of those Govt Servants who died/ dies or invalidated on medical grounds, thus the malicious offer of appointment by itself is void and illegal.

12. Incorrect. The principle of Locus Poententia is not applicable to the appellant as no lawful and constitutional right of the appellant has been infringed. Illegal and void offers of appointment cannot confer any lawful right to anyone.

13. Mis-conceiving. The Appellant and others (Similarly placed appointed under sub-rule-4 of Rules-10 of the APT Rules, 1989) cannot be termed as Govt Servant. The desired actions i.e Show Cause Notice, formal

Charge Sheet are principally required to be taken against a Govt Servant, whereas the Appellant (and others) does not come within the definitions of Govt Servants.

14. Incorrect. As Above.

15. Incorrect hence denied. The orders of rejections passed by the Appellate Authority are not malafide and not issued with ulterior motive.

16. The replying Respondents/State Counsel(s) will also rely on other grounds/stance to be taken during the proceeding, arguments in the case. The replies of replying Respondents since filed in the earlier Service Appeals may also be taken into account.

In the wake of above submission the instant appeals, having devoid of merit and the Statute of Appellants, may graciously be dismissed with cost alogwith other same nature connected appeals. Any other relief may also not please be granted and treat these appeals as of same and analogous in natures, as per the orders passed on 27-10-2011 by this Tribunal in a Service Appeal No. 1407/2010, and the Apex Supreme Court of Pakistan orders dated 15-01-2014 held in Civil Petition No. 2026 and 2029/2012 "that as one wrong or any numbers of wrong cannot be made basis to justify an illegal action under the garb of Aritcle-25 of the Constitutions".

Superintending Engineer PBMC
Respondent No. 1

Executive Engineer PBMC
Respondent No. 2/3

Secretary to Govt of Khyber Pakhtunkhwa
Communication & Works Department
Respondent No.-4

Section Officer (Establishment)
Communication & Works Department
Respondent No.-5

AFFIDAVIT

I, Engr. Farmanullah, Executive Engineer PBMC do hereby solemnly affirm that the reply/comments filed thereto are correct to the best of my knowledge and nothing has been concealed from this Honourable Court.

Executive Engineer,
PBMC C&W Department.

K.P.K Srv Tribunal Memo No. 265/ST Dated 02-03-2015
Diary No. 4786 dt. 04-03-2015 (Secy/Law Office)

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 183/2014,
Muhammad Alamgir Khan Versus Superintending Engineer, PBMC, C&W Department, Peshawar & 4 others.

19.02.2015

PIR BAKHSH SHAH, MEMBER.- Appellant with his counsel (Mr. Asad Jan, Advocate), Mr. Usman Ghani, Sr.GP with Muhammad Arif, SDO for the official respondents and private respondent No. 5 with his counsel (Mr. Muhammad Asif Yousafzai, Advocate) present.

2. Summarizing facts of the case are that on the recommendations dated 14.01.2013 of the Departmental Selection Committee, appointment letters were issued to the appellants by respondent No. 5, Shams-uz-Zaman, Ex-Superintending Engineer, PBMC, C&W Department, Peshawar, presently posted as Director (Tech) EQAA, Abbottabad. The appellants - as following - with their separate appeals, are 20 in numbers and as common issue of payment of salary is involved, therefore, all these appeals are proposed to be disposed off jointly by this single judgment:-

Sr. No	Appeal No.	Name	Designation	BPS	Date of appointment
1.	183/2014	M. Alamgir Khan	W.Supdt.	09	16.01.2013
439/2015 2.	184/2014	Hussain Khan	Cooly	01	14.01.2013
449/2015 3.	185/2014	Khurram Shehzad	Electrician	04	18.01.2013
4.	186/2014	Wareedullah	Pipe Fitter	04	23.01.2013
441/2015 5.	187/2014	Habibullah	Cooly	02	18.01.2013

447/2015	6.	188/2014	Muhammad Ismail	Electrician	02	28.01.2013
437/2015	7.	189/2014	Sajid Khan	Electrician	05	23.01.2013
	8.	190/2014	M.Tahir Hussain Shah	Supdt.	09	16.01.2013
	9.	217/2014	Yasir Mubarak	Cooly	01	14.01.2013
	10.	218/2014	Hasan Dad	Pipe Fitter	04	23.01.2013
	11.	219/2014	Muzzaffar	M.Sweeper	01	15.01.2013
445/2015	12	220/2014	Muhammad Imran	Pipe Fitter	04	18.01.2013
454/2015	13.	221/2014	Muhammad Tanveer	Mistri	06	14.01.2013
450/2015	14.	222/2014	Ruhullah	Work Mistri	06	24.01.2013
	15.	223/2014	Raees Khan	Carpenter	06	28.01.2013
	16	249/2014	Asfandyar	Skilled Cooli	02	17.01.2013
	17.	250/2014	Aftab	Mali	02	17.01.2013
455/2015	18.	251/2014	Shahabuddin	Chowkidar	01	15.01.2013
	19.	759/2014	Asad Ali	Mali	02	17.01.2013
446/2015	20	760/2014	Naveed ur Rahman	Khansama	04	28.01.2013

24/01/2013

Appellants claim per their appeal that they submitted arrival reports, after formality of being medically examined and so much so that necessary entries in their service books have also been made. They further claim that they were performing their duties from the date of their arrival but the respondent-department has denied to them their salary on which they knocked at the door of the Hon'ble Peshawar High Court in Writ Petition No. 1301-P/2013. The Hon'ble Peshawar High Court vide its order dated 27.01.2014, dismissed the Writ Petition being not pressed but observed that the petitioners are at liberty to approach the proper forum for redressal of their grievances in accordance with the law. Hence these separate service appeals have been filed before this Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of instant appeal, the respondent be directed to pay the withheld salaries since arrival report for duty till date and onward

and not to create illegal hurdle in the way of performance of duties as well as to restrain respondents from taking any discriminatory action against the appellant. The record further reveals that this Bench, then presided by our learned predecessors passed order dated 16.04.2014 under which the respondent department was directed to allow the appellants to perform duties and to start paying them their monthly salary provisionally. Feeling aggrieved from this order, the respondent department filed Civil Petitions No. 517-P to 534-P/2014 before the august Supreme Court of Pakistan. The august Apex Court was pleased to pass the following order on 16.10.2014:-

> "From the nature of the lis and also from the order, under question, we are not inclined to interfere in the interim order passed by the learned Service Tribunal. However, we direct the Registrar of the learned Service Tribunal to fix these cases, if not yet fixed, in the week commencing 3rd November, 2014 and the learned Tribunal is directed to decide all these cases within a week thereof. Disposed of accordingly."

On 16.02.2015, we the undersigned became seized of the appeals for the first time.

3. The record shows that respondent No. 5 has been transferred from his erstwhile post long ago and he has been made respondent in his private capacity. He however, owns that appointment orders to have been issued by him. On the other hand the respondent department per their written reply have termed these appointments illegal, to be shorn of the required criteria of domicile and reserved quota, that those were made in violation of the rules and void ab-initio.

4. We have heard the learned counsel for the appellant, Mr. Usman Ghani, Sr.GP for the official respondents and private counsel for respondent No. 5 at length, and perused the record with their assistance.

5. The learned counsel for the appellant contended that the appellants are civil servants, duly appointed by the appointing authority (respondent No.5) after fulfilment of all the codal formalities. The appellants have also submitted their arrival reports after their medical examination but due to change of the incumbents in the office of respondent No. 5, the department-respondent is neither letting the appellants to perform their duties nor paying them their salary. The arguments of the learned counsel for the appellant were further augmented by the learned counsel for private respondent No. 5 that for filing an appeal before this Tribunal, the impugned order in writing was not essential. Reliance placed on PLD 1991 (SC)226.

6. The learned Addl. Advocate General and Senior Government Pleader vehemently resisted these appeals. Their contention is that this Tribunal under Section 4 r/w Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 lacks jurisdiction because there is neither any original order nor any final order against which the appeals should have been filed. On merits, it was submitted that the appointment orders are totally illegal, void ab-initio, do not fulfil the required criteria and qualifications. In this respect it was submitted that some of the appointment orders were made under

all

Rule 10 (4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 but it has been found in enquiry conducted by Engr. Shahid Hussain that the appointees were not sons of the deceased employees; that some of the appointment orders have been shown issued in hurry on the very date on which the Departmental Selection Committee took its meeting; that some of the appointees as prescribed in Rule 12 (3) of the rules ibid have not been appointed from the respective districts. It was also submitted that the relevant record like arrival report etc. were also not found in the office and further that notice thereof was also taken by the Audit Party. They also contended that the appeal is time barred and finally prayed that all the appeals may be dismissed.

7. We have considered submissions of the parties and have thoroughly gone through the record. This is not disputed by the respondent department that at the relevant time respondent No. 5 was the competent appointing authority for the disputed appointments. Respondent No. 5 has openly conceded that he had made the appointments and has further taken plea that after fulfilment of all the codal formalities the appointments were made. In defence of appointments, he referred to corrigendum dated 08.02.2013 issued to rectify mistakes in the original appointment orders pertaining to quoting rule 10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in the appointment orders. This is also very important aspect of the matter that so far these appointment orders have not been cancelled by the

respondent-department. The issue pertains to the payment/non-payment of salary to the appellants, therefore, in the light of the above factual position on record, we are led to prima-facie opine that the appellants qualify to attract jurisdiction of this Tribunal. Hence jurisdiction is assumed.

8. On record, there is enquiry report conducted by Engr. Shahid Hussain and being important we are also inclined to reproduce its final conclusion at para-5 which is follows:-

> "In the light of the findings/Conclusion, detailed above it is found that not only the prevailing rule 10 & 12 of Appointment, Promotion & Transfer Rules-1989 as well as merit list of employee sons were not followed but also numerous lapses mentioned above are observed in whole process, hence the aforesaid appointment can not be termed as legal."

This being so, this is also noticeable that the appellants have not made the present incumbent/competent authority as respondent. On the other hand the department-respondent has its objection on making Mr. Shamsuz Zaman, then appointing authority as respondent No. 5 in which respect it was also submitted that departmental proceedings on the basis of these disputed appointments had also been initiated against him. It is our considered opinion that the factual position of arrival report, charge assumption reports and performance of duty really pertains to the office of the respondent department and a person cannot be held to be entitled to salary merely on the basis of the appointment orders and that which is also disputed by the department to be legal. Unfortunately, the said appointing/competent authority has not been

made respondent who would have assisted the Tribunal on these factual position because the facts mentioned above has a very close connection with the payment/non-payment of salaries to the appellants. For the above said reasons, the Tribunal feels itself in vacuum and perceive a disconnect between the disputed appointment orders and payment of salary on its basis. On record, it was also not shown that departmental appeal had been moved by the appellant before the competent appellate authority next above the appointing authority as contemplated in Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, much less that the outcome of such appeal would have come before the Tribunal. Hence, while concluding this discussion, it is the considered opinion of the Tribunal to treat these appeals as departmental appeals and to remit the cases to the appellate authority who is directed to decide the appeals within one month of its receipt failing which these appeals shall be deemed to have been accepted by this Tribunal. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
19.02.2015

Sd/- Pir Bakhsh Shah, Member
Sd/- Abdul Latif, Member

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Application 20-2-2015
2800
16
16
2-3-2015
2-3-2015

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Execution Petition no. 10/2015

Muhammad Alamgir Khan S/O Muhammad Ajmal R/O Kanal Colony Behind Secondary Board, Peshawar.

---------- **Petitioner**

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR, 1V PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTOON KHWA PESHAWAR
5. SHAMS .UZ. ZAMAN EX- SUPERINTENDENT ENGINEER.PBMC C&W PESHAWAR PRESENTLY POSTED AS DIRECTOR (TECH).EQAA ABBOTTABAD.

.....**RESPONDENTS**

5. 08.06.2015 Counsel for the petitioner and Mr. Muhammad Arif, SDO alongwith M/S Kabirullah Khattak, Assistant A.G and Usman Ghani, Sr. GP for respondents present. Arguments heard and record perused.

According to the judgment of this Tribunal dated 19.2.2015 service appeal of the petitioner was treated as departmental appeal with the direction to the appellate authority to decide the same within a period of one month. According to notification dated 24.3.2015 the appellate authority has rejected the said service appeal treated as departmental appeal regarding which the petitioner has already preferred another service appeal before this Tribunal.

In view of the above, the petition has become infructuous and disposed of accordingly. File be consigned to the record.

ANNOUNCED
08.06.2015

Date of Presentation of Application 15-06-2015
No. of Words 1329
No. of Folios 5-C
Copying Fee
Urgent
Total
Name of Copyist
Date of Completion of Copy 15-06-2015
Date of Delivery of Copy

Sdl/
Chairman

ELECTION COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad, the 22nd January, 2013

No.F.8(12)/2012-Cord.- WHEREAS, the Election Commission of Pakistan is charged with the constitutional duty to organize and conduct elections in terms of Article 218 of the Constitution of the Islamic Republic of Pakistan and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with the law and that corrupt practices are guarded against;

AND WHEREAS, it is grave concern of all people in different segments of society that some government departments are in the process of inducting thousands of people on various positions which amounts to pre-poll rigging as political bribe.

AND WHEREAS, for tangible reasons, the Election Commission is of the considered view that such mass recruitments at this point of time when the general elections of the National Assembly and Provincial Assemblies are going to take place shortly, will substantially influence the results of elections, therefore, it is imperative on all standards of legal, moral and democratic ethics that all kinds of recruitments except the recruitments which are made by the Federal and Provincial Public Service Commission be banned forthwith.

AND WHEREAS, the Commission has considered the repeated concern of the people as expressed and voiced in the national press that money allocated to various important development projects in the country is being diverted to the discretionary fund of the Prime Minister of Pakistan for its utilization in the development of his constituency, is nothing short of yet another facet of pre-poll-rigging which if not checked and brought to an immediate end is likely to influence the electoral process adversely and thus sending an extremely wrong message to the public at large, making the election tainted and falling short of the constitutional provisions contained in Article 218 (3) of the Constitution.

AND WHEREAS, it has become imperative that the Commission takes all necessary steps under the law to prevent any action on the part of the federal, provincial and local governments that amounts to influencing the results of upcoming general elections by depriving candidates from having a level playing field.

NOW THEREFORE, in exercise of the powers conferred upon it under Articles 218(3) and 220 of the Constitution, Article 6 of the Election Commission Order 2002, section 103 (c) and 104 of the Representation of the People Act, 1976 and all other powers enabling it in that behalf, the Election Commission of Pakistan is pleased to direct as under:

a. That all kinds of recruitments in any Ministry, Division, Department or Institution of the Federal Government or any Department or Institution of any Provincial and Local governments is banned forthwith except recruitments by the Federal or a Provincial Public Service Commission.

b. That diversion of funds already allocated to various development projects in the country is banned forthwith and the spending of funds so diverted shall stand frozen forthwith.

By order of the Election Commission of Pakistan.

(Ishtiak Ahmad Khan)
Secretary

22/01/2013

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 1407/2010

Date of institution ... 21.07.2010
Date of judgment ... 27.10.2011

Abdul Salam S/o Shah Suliman,
D.I.Khan, Ex. P.T.C GPS, Kamal Khel .. (Appellant)

VERSUS

1. Province of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar.
2. Director of Education (E&S) Khyber Pakhtunkhwa, Peshawar.
3. Executive District Officer (E&S) Dera Ismail Khan.
4. District Coordination Officer, Dera Ismail Khan. ...(Respondents)

APPEAL U/S 4 OF NWFP (KHYBER PAKHTUNKHWA) SERVICE TRIBUNALS ACT, 1974 AGAINST IMPUGNED ORDER DATED 04.9.2009, WHEREBY THE APPELLANT HAS BEEN TERMINATED FROM SERVICE, BY THE INCOMPETENT AUTHORITY, DISREGARD OF THE RULES, AND WITHOUT OBSERVING THE LEGAL REQUIREMENTS, AND HIS DEPARTMETNAL APPEAL ELICITED NO RESPONSE WITHIN STATUTORY PERIOD.

1. Shahzada Irfan Zia, Advocate for the appellant
2. Ashraf Ali Khattak
3. Ghulam Nabi
4. Saadullah Khan Marwat
5. Muhammad Arif Baloch
6. Muhammad Anwar Awan
7. Shaukat Ali Jan
8. Matiullah Rand
9. Abdul Qayyum Qureshi
10. Muhammad Ismail Alizai
11. Abdul Hamid Khan
12. Muhammad Waqar Alam
13. Muhammad Saeed Bhutta
14. Muhammad Saeed Khan & M.Asghar Khan
15. Rustam Khan Kundi
16. Gul Tiaz Khan
17. Zahid Muhibullah
18. Khalil-ur-Rehman Hissam
19. Fazal-ur-Rehman Baloch
20. Javed Iqbal
21. Yasir Zakria Baloch
22. Allah Nawaz, Advocates

Advocates from S.No.2 to 22 for the remaining appellants.
Mr.Sher Afgan Khattak, AAG. .. For respondents

status following judgment/order dated 11.6.2009 of the Peshawar High Court, D.I.Khan Bench, whereby a clear direction was issued to act upon the inquiry report, but they lost sight of the fact that no direction of any authority could absolve the departmental authority from following the law/rules on the subject and fulfill necessary legal requirements before passing the impugned order.

9. As a sequel to the foregoing discussion, we would make the following orders:-

(i) All the appeals of Junior Clerks, Lab. Assistants and Assistant Store Keeper(M) are dismissed with costs, being devoid of merit.

(ii) The appeal of Ms.Shahana Niazi (Service Appeal No. 2177/10) is accepted, and by setting aside the impugned order, she is reinstated in service with consequential/back benefits.

(iii) The appeals of the rest of the appellants including PSTs(M&F), CTs(M&F), PETs(M&F), DMs(M&F), ATs(M&F), TTs(M&F) and Qaris (M&F) are also accepted and impugned termination order in their cases set aside, but instead of their outright reinstatement, their cases are remanded/sent back to the Secretary, Elementary & Secondary Education Department, Peshawar (Respondent No.1) for reconsideration of the cases in the light of above observations for reinstatement of the qualified appellants and a speaking order in respect of those who are not found qualified, by the competent authority, after affording opportunity of hearing to the said appellants through an efficient and fair mechanism to be evolved for the purpose by him so as to ensure compliance with the mandatory legal requirements on the one hand

and integrity of the proceedings on the other. Since the matter has already been delayed inordinately, it is expected that the proposed exercise should not take more than three months, where-after a progress report be submitted to the Registrar of the Tribunal.

(iv) The respondent-department should also look into claim of those appellants who have alleged performance of duty for considerable time after their appointments, and if they are found to have actually performed duty for certain period, and, as such, entitled to pay/salary for the period of the duty, legal procedure should be adopted for recovery of their claims from the then EDO D.I.Khan who has already been held responsible for appointments in-question as a consequence of departmental proceedings against him.

ANNOUNCED
27.10.2011

(SYED MANZOOR ALI SHAH)
MEMBER

(QALANDAR ALI KHA
CHAIRMAN

REGISTERED
Nos. C.P. 2026 & 2029 of 2013 - SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 16/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

The Registrar,
Peshawar High Court,
Peshawar.

Subject: **CIVIL PETITION NOs. 2026 & 2029 OF 2013.**

Mushtaq Ahmed & another ...in C.P. 2026/2013
Muhammad Nasir Ali & others ...in C.P. 2029/2013
VERSUS
Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar & others ...in both cases

On appeal from the Judgment/Order of the Peshawar High Court, Peshawar dated 02.10.2013 in W.P. 271-P & 663-P/2013

Dear Sir.

I am directed to enclose herewith a certified copy of the Order of this Court dated 15.01.2014 **dismissing** the above cited civil petitions **with directions** for information and further necessary action.

I am also to invite your attention to the directions of this Court contained in the enclosed Order.

Please acknowledge receipt of this letter along with its enclosure immediately.

Yours faithfully,

(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Encl: Order

Copy with a certified copy of the Order of this Court dated 15.01.2014 is forwarded to Mr. Sikandar Khan, Chief Engineer, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar for immediate necessary action and report compliance.

Encl: Order

ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE ANWAR ZAHEER JAMALI.
MR. JUSTICE EJAZ AFZAL KHAN.

C. Ps. No. 2026 and 2029 of 2013.
(On appeal against the judgment dt. 2.10.2013 passed by the Peshawar High Court, Peshawar in W. Ps. No. 271-P and 663-P of 2013).

Mushtaq Ahmed and another. (in CP. 2026/13)
Muhammad Nasir Ali and others. (in CP. 2029/13)
...Petitioners

Versus

Government of KPK through Chief Secretary, Peshawar and others. (in both cases)
...Respondents

For the petitioners: Mr. Ghulam Nabi Khan, ASC.
Syed Safdar Hussain, AOR.

For the respondents: (on court notice) Sikandar Khan, Chief Engineer, PHEK, KPK.

Date of hearing: 15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments of the learned ASC for the petitioners and careful perusal of the case record particularly the reasons assigned in the impugned judgment, we are satisfied that no case for grant of leave to appeal is made out, including the plea of discrimination raised by the petitioners, as one wrong or any number of wrongs, cannot be made basis to justify an illegal action under the garb of Article 25 of the Constitution. Both these petitions are, therefore, dismissed. Leave is refused.

2. So far as some other illegalities in the appointments brought to our notice is concerned, in response to our earlier order dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health Engineering, Department, KPK is present in Court, he states that

ATTESTED
Superintendent
Supreme Court of Pakistan
Islamabad

although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/ Anwar Zaheer Jamali
Sd/ Ejaz Afzal Khan

Certified to be True Copy

16-1-14

Superintendent
Supreme Court of Pakistan
Islamabad

SUPREME COURT OF PAKISTAN
Islamabad
15.01.2014

BEFORE THE KHYBER PAKTHUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 453/2015.

Mr. Hassan Dad S/O Rahim Dad Khan,
Resident of Village Banda District Nowshehra.....Appellant

VERSUS

Govt of Khyber Pakhtunkhwa C&W Department
..... Respondents.

REPLY/COMMENTS OF RESPONDENT(S) 1 TO 5 IN THE PETITION AS SOUGHT FOR INTERIM RELEIF

PRELIMINARY OBJECTIONS.

1. Appellant's father was neither government servant nor died official. Appointment of appellant is not covered under Rules 10 (4) of Khyber Pakhtunkhwa Civil Servant A.P.T Rules 1989, hence illegal, void abinitio and not warranted by any law. Rules-10(4) gives a rise to appointment to Son/Daughter/Widow/Wife whose father/husband dies/died or invalidated on medical grounds during Service and not others.

2. The offer of appointment to the Appellant is illegal and void abinitio, has got no cause of action to invoke the jurisdiction of this Honourable Tribunal and the principal of locus poenitentiae, proper orders of appointment had never been issued nor produced with the appela(s).

3. The Appellant has deliberately concealed the material facts from this Honourable Tribunal in the appeal in hand.

4. The appellant has not come to the Tribunal with clean hands.

5. The appeal is bad for misjoinder and non joinder of the then Executive Engineer, Mr. Ghulam Yazdani who signed the Service Books and other documents and not released the salaries if appointment was regular and not illegal/Malicious then.

Respectfully Sheweth:

1. The reply/comments in the Main Service Appeals No. 437/2015 has since been admitted/filed in this Honourable Trinbual.
2. Incorrect/Mis-conceiving. The Respondent(s) Department is not going to induct the favoritees with any reason hence wrong perception.

3. Incorrect. The detail position and statute of the Appellant and others have been narrated in very detail in the replies to main Appeal. Not performed

nor performing the duties, cannot be paid salaries at any cost under the Policy of the Govt to put extra burden on the Govt Ex-Chequer.

4. Incorrect. By stating that on filling of above title Petition / Service Appeals, Respondent(s) are not allowing him and others to perform duties, is irrelevant perception.

5. Incorrect, appellant (and others) does not come under the ambit of Govt Servants on the mere stand that offers have seen issued while proper and valid orders of appointment had never been issued. The balance of convenience tilts in favour of respondents. The respondents will suffer irreparable loss if the petition / appeal accepted.

6. Incorrect. The petition is badly barred by law.

7. Incorrect. The appellant is not entitled for salary.

8. As prayed in the reply to main appeal(s).

The Replying Respondents earnestly pray please not to pass any controversy orders for the release of salaries and directions to allow the Appellants for duties then by now.

The interim relief sought for may graciously be dismissed in limine having no merit in the appeal(s)

Superintending Engineer PBMC
Respondent No. 1

Executive Engineer PBMC
Respondent No. 2/3

Secretary to Govt of Khyber Pakhtunkhwa
Communication & Works Department
Respondent No.-4

Section Officer (Establishment)
Communication & Works Department
Respondent No.-5

COUNTER AFFIDAVIT

I, Engr. Farmanullah, Executive Engineer PBMC do hereby solemnly affirm that the reply/comments filed thereto are correct to the best of my knowledge and nothing has been concealed from this Honourable Court.

Executive Engineer
PBMC C&W Department
Respondent No.-2