

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Appeal No.7430/2023

Shahid Khan..... Appellant.

Versus

District education officer (M) district Khyber & Others... Respondents.

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Dated 15/10/2023

(Muhammad Uzair Ali)
District Education Officer (M)
Khyber at Jamrud

M.

15-10-24

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Appeal No.7430/2021

Shahid Khan..... Appellant.

Versus

**DISTRICT EDUCATION OFFICER (M) DISTRICT KHYBER & OTHERS...
RESPONDENTS.**

Khyber Pakhtunkhwa
Service Tribunal

Comments on behalf of Respondents No.1, 2 & 3.

Diary No. 11161

Preliminary objections.

Dated 15-02-24

- The appellant was initially appointed as project community school teacher for project period.
- That the project continued till 2011 under the revised PC-1 therefor their services were kept continued for a specific period. Furthermore, the policy for the project teachers was approved by the Governor Khyber Pakhtunkhwa accordingly.
- That the appellant has got no cause of action locus standi to file the instant appeal.
- That the appellant has not come to this honorable tribunal with clean hands.
- That appellant concealed material facts from this honorable tribunal.
- That the appellant is estopped by his own to bring the present appeal.
- That the appeal is bad due to mis-joinder and non- joinder of necessary parties
- That the appeal is barred by law.

Respectfully submitted as;

ON FACTS.

01. Pertain to record.

02. subject to record.

03. Incorrect. Hence denied. Appellant is responsible to provide his attendance record of concerned school where he claims to have performed duty.

04. The respondent department took all measures to carry out schooling activities in alternative places where-ever the same was possible even in times when Law & Order situation was hostile. The respondent department continued the educational activities in the district (Agency) with all possible efforts and resources. It is however to be noted that many teachers took shelter under the pretext of Law & Order situation, received salaries from National Exchequer without performing duties and continued enjoying

the comforts of home. Such practice was discouraged by the respondent department and, therefore, proceeded as per rules against all those who were involved in in such practices.

05. Incorrect, hence denied. The appellant did not perform duties therefore his services were terminated along with other project teachers who also did not perform their duties. On personal verification many project teachers were re-appointed in line the governor's Khyber Pakhtunkhwa notification. As he remained unverified therefore, the same benefit could not be extended to him.

Annexure-A

06. Incorrect denied. The appellant did not submit his departmental appeal.

07. Incorrect, hence denied. The benefit of governor's notification was equally available for all but he did not avail the same as he never filed his appeal before the Appellant Authority. Proper opportunity was given to all.

Grounds.

- A. Incorrect. Hence denied. The respondent department has treated the appellant in accordance with laws and rules and elucidated in para 5
- B. Incorrect hence denied. As elucidated in para 5 above facts.
- C. Incorrect. Hence denied. All the teachers who were not physically verified and who indulged in willful absence from the duty were not re-appointed by the Department nor by the Hon'ble Peshawar High Court as mentioned in **Writ Petition No.2223/2201** filed by Naheed Akhtar **vide judgment** dated 10/02/2022 para 3 " her case is hit by the doctrine of latches as for no valid reason she kept mum for long of 09 years and now at this belated stage it would not be

proper to direct the respondents to re-appoint her” judgment attached as annexure-B. by the same analogy another case was dismissed Peshawar High Court in writ petition No. 2823-p/2020 Nafees Ahmad vide judgment dated 13/11/ 2023 in para 6 that “Petitioner has been indolent in pursuing his remedy and approached this court with extraordinary delay for which he has not been able to give any explanation, therefore instant writ petition was found barred by doctrine of laches and resultantly non-maintainable, which is hereby dismissed”. It is therefore submitted that the appellant may also be treated as a similar person in the light of the said judgment, copy

(Annexure-C)

- D. Incorrect. Hence denied. The appellant neither filed the department appeal nor performed his duty.
- E. Subject to record. As already elucidated in para 3 and 4 the facts.
- F. Incorrect, hence denied. The appellant neither filed the department appeal nor performed his duty. As elucidated in above Ground Para-C.
- G. Incorrect, hence denied. As elucidated in para 6 above facts.
- H. Incorrect, hence denied. As elucidated in above ground para C.
- I. Incorrect, hence denied. All the teacher who were not physically verified and who indulged in willful absence from the duty were not re-appointed/re-instated by the department nor by the Honorable Peshawar High Court(annexed “B,”C”)
- J. Subject to record
- K. Respondents department also seeks permission of this Honorable Tribunal to advance other grounds at the time of hearing the case.

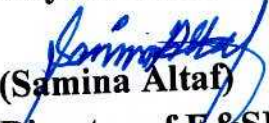
Pray:

In light of the above stated facts it is submitted, that the case of the appellant may be ordered as dismissed with cost.


Respondent No. 1

(Masood Ahmad)
Secretary of E&SE
Khyber Pakhtunkhwa

Respondent No.2


(Samina Altaf)
Director of E&SE
Khyber Pakhtunkhwa


Respondent No. 3


(Muhammad Uzair Ali)
District Education Officer (M)
Khyber at Jamrud

Affidavit

I, Muhammad Uzair Ali District Education Officer Khyber do hereby solemnly affirm and declare that the contents of the accompanying better para-wise comments submitted by the respondents is correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.

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


(Muhammad Uzair Ali)
District Education Officer (M)
Khyber at Jamrud



BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Appeal No.7430/2021

Shahid Khan..... Appellant.

Versus

District education officer (M) district Khyber & Others... Respondents.

Authority Letter

Mr. Munawar Khan /focal Person of (Litigation) District education Officer Khyber is hereby authorized to submit para-wise comments in the court on the behalf of respondent.



(Muhammad Uzair Ali)
District Education Officer (M)
Khyber at Jamrud

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FATA SECRETARIAT
Social Sectors Department
Warsak Road Peshawar

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Notification

No. SODE/SSD/CSTR/99-108/ The Governor Khyber Pakhtunkhwa in his capacity as the Competent Authority has been pleased to approve the re-appointment of Community School Teachers who qualify to be posted against the regular posts of PST (BS-7) in phased manner at the respective Agencies & FRs, purely on merit basis in accordance with the existing recruitment criteria but in relaxation of upper age limit with immediate effect as specified below.

1. The available regular vacant PST (BS-7) posts in the Primary/Middle Schools in FATA will be filled up from amongst the Community School Teachers and no fresh candidate considered for recruitment till all the eligible Community School Teachers are absorbed against regular posts in their respective Agencies/FRs.
2. The non-local eligible Community School Teachers shall be considered for re-appointment against the regular vacant posts of PST (BS-7) after adjustment of local qualified teachers.
3. The services of the un-qualified teachers shall be dispensed with.
4. The Community Schools whose teachers are appointed and shifted to other schools against regular posts, would be closed down.
5. The respective Community Schools students would be shifted to nearby regular schools and no further recruitment of Community School teachers will be made.

Secretary
Social Sectors Department,
FATA Secretariat, Peshawar

Encl: No. Even Dated Peshawar the 11/05/2012

- Copy forwarded to the:-
1. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
 2. Addl. Accountant General (PR) Sub Office Peshawar.
 3. Director Education FATA, Peshawar.
 4. All Political Agents in FATA.
 5. DCO Peshawar, Kohat, Bannu, Lakki, Dil Khan & Tank.
 6. Agency/ District Accounts Officers concerned.
 7. All the Agency Education Officer in FATA.
 8. PS to Additional Chief Secretary FATA, Peshawar.
 9. PS to Secretary Social Sectors Department, FATA Secretariat, Peshawar.
 10. PS to Secretary P&D, FATA Secretariat, Peshawar.

Attested
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Section Officer (Ed) SSD
FATA Secretariat, Peshawar

PESHAWAR HIGH COURT PESHAWAR
ORDER SHEET

Date of Order or Proceedings 1	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary 2
10.02.2022.	<p><u>Writ Petition No. 2223-P/2021.</u></p> <p>Present: Mr. Noor Muhammad Khattak, advocate for the petitioner.</p> <p>Mr. Rab Nawaz Khan, Addl. AG for respondents.</p> <p style="text-align: center;">*****</p> <p><u>LAL JAN KHATTAK, J.-</u> Through the petition in hand filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner has prayed to this Court for issuance of an appropriate writ directing the respondents to adjust / re-appoint her as Primary School Teacher (BPS12) with effect from the date of issuance of notification dated 11.05.2012.</p> <p>2. Arguments heard and available record gone through.</p> <p>3. It reflects from the record that the petitioner was appointed as PTC teacher in the Community School on 25.06.2007 but in the year 2010 for the poor law and order situation in the erstwhile FATA, the community schools were closed. Though a notification later on was issued on 11.05.2012 whereby the Governor Khyber Pakhtunkhwa approved re-appointment of community school teachers subject to certain terms and conditions pursuant to which a good number of the community school teachers were re-appointed but so far the petitioner's case is concerned, she at the right time</p>

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did not apply to the department for her re-appointment in light of the notification *ibid* and filed the instant petition on 24.05.2021 i.e. after a period of about 09 years. Her case is hit by the doctrine of *laches* as for no valid reason she kept mum for long 09 years and now at this belated stage it would not be proper to direct the respondents to re-appoint her. Besides, as per the parawise comments, no post by now as per notification dated 11.05.2012 is available with the department to accommodate the petitioner.

4. For what has been discussed above, this petition, being bereft of any merit, is hereby dismissed in limine.

[Signature]
JUDGE

[Signature]
JUDGE

Attested
[Signature]

Judgment Sheet Anx—

**IN THE PESHAWAR HIGH COURT,
PESHAWAR.
JUDICIAL DEPARTMENT.****JUDGMENT**

Writ Petition No.2823-P/2020.

Date of hearing 13.11.2023.

Nafees Ahmad

Vs

District Education Officer, Khyber at
Jamrud sub-division Khyber, etc.

Petitioner (s) by: Mr. Zia ud Din Khan Advocate.

Respondent(s) by: Mr. Javed Akhtar AAG.

WIOAR AHMAD, J:- Through instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, petitioner has prayed for following relief;

“on acceptance of this writ petition in hand:

- i. *An appropriate writ may very kindly be issued that the impugned action/ order of respondents whereby the present petitioner was terminated from service be declared illegal, unlawful, void ab initio and the petitioner shall be re-instated with all back benefits for all intents and purposes without any further delaying tactics.*
- ii. *The petitioner shall also be regularized and be treated at Par with other similar employees of the*

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same institution/ department keeping in view the judgment passed by this Hon'ble Court as well as the Hon'ble Supreme Court of Pakistan.

iii. Any other remedy deems appropriate in the circumstances may also be granted in favour of petitioner."

2. As per instant petition, petitioner was appointed as Community School Teacher (BPS-07) in the year 2004 in Boys Community School (BCS) Botton Sharif, Khyber Agency. Due to insurgency as well as law & order situation in the erstwhile FATA, in the year 2007, Management of Community Schools had statedly closed all the institutions/schools for safety of concerned staff and students. After rehabilitation, the then FATA Secretariat now merged Secretariat, Khyber Pakhtunkhwa as well as return of Internal Displaced Peoples (IDPs) to their own dwellings at Khyber, respondent No.1 (District Education Officer Khyber) had statedly recalled the staff of above mentioned community schools for physical verification. Those teachers who were qualified/trained and whose schools were functional, had been reinstated/regularized by respondent department while teachers

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of non functional were not reinstated. Services of petitioner were also dispensed with effect from 31.12.2010 vide office order of respondent department dated 22.12.2010 on account of non functioning of school of his posting as well as lack of required qualification/training. As per averment of petitioner, he approached the official respondents several times but was not considered. Aggrieved from non redressal of his grievance by respondents, he has filed instant Constitutional petition.

3. Respondents were summoned, who submitted their parawise comments denying stance of petitioner by raising various legal and factual objections.

4. Arguments heard and available record perused.

5. Perusal of record reveals that petitioner was serving as Community School Teacher (CTS) in Boys Community School Botan Sharif, Khyber Agency. Said school alongwith other institutions/schools were closed due to insurgency and war against terror in erstwhile FATA. After return of IDPs to their homes as well as restoration of law &

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order situation in the area, teachers having requisite qualification and training and whose schools were also functional, had been appointed but services of petitioner alongwith other teachers were dispensed with in the year 2010, on account of being not qualified and untrained and also their schools were not functional. This fact has also been affirmed by official respondents in their comments by stating that only teachers of functional schools having requisite qualification and training were appointed. Petitioner has failed to point out any illegality or irregularity in reinstatement orders of other teachers whose school were functional. Besides, services of petitioner were terminated in the year 2010 while he has filed instant Constitution petition in the year 2020, after delay of 10 years, for which no plausible explanation was put forward by petitioner, and same has not been explained by petitioner. It is held that where a person despite having knowledge chooses to remain silent for a long period, he thereby give rise to a reasonable belief that he is not interested in claiming that relief, in other words it induces a belief that the right is forgone. Besides, issuance of writ jurisdiction is an



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equitable relief and it is accepted principle that unreasonable and unexplainable delay defeats equity. Hon'ble Supreme Court of Pakistan while giving its judgment in the case of "Civil Aviation Authority through Director General & 03 others v/s Mir Zulfiqar Ali & another" reported as 2016 SCMR 183 has held that respondent therein had filed constitutional petition for regularization of his service with a delay of 10 years and said petition was found suffering from laches. It was held in the appeal that the petition should have been dismissed for having been filed after a lapse of about 10 years, and that too without any justification or explanation for such a delay. Relevant findings of the Hon'ble Supreme Court given in said judgment are reproduced hereunder for ready reference;



"The respondent No.1, who was on 28-6-1995 appointed on contingency continued to serve as such, for more than 5 years, however, on 31-7-2001 he was admitted in a hospital due to Urinary Retraction Numbness of lower limbs, and was on account of his illness, "de-hired" with effect from 31-12-2001. Unfortunately it took the respondent No.1 about 10 years in approaching the High Court,

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as the petition decided through the impugned order was so filed in the year 2011 only, and as rightly submitted by the Additional Attorney-General the same suffered from laches and ought to have been dismissed for having been filed after a lapse of about 10 years.

The respondent No.1, who appeared in person, despite opportunity failed to explain or justify the delay. Since the petition was filed after a lapse of almost 10 years and that too without any justification or explanation for such delay, the same ought to have been dismissed as such. However through the impugned order the petition was instead allowed, which order, on account of the above noted delay in filing of the petition, is not sustainable. The appeal is, therefore, allowed and the impugned order is accordingly set aside."

Further reliance in this respect may also be placed on judgments of Hon'ble Supreme Court of Pakistan given in the case of "Bahadur Khan & others v/s Federation of Pakistan through Finance & others" reported as 2017 SCMR 2066 and the case "Asif Hassan & others v/s Sabir Hussain & others" reported as 2019 SCMR 1720.

6. Petitioner has been indolent in pursuing his remedy and approached this Court with

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extraordinary delay for which he has not been able to give any explanation, therefore instant writ petition was found barred by doctrine of laches and resultantly non-maintainable, which is hereby dismissed.


JUDGE


JUDGE

Date of hearing & announcement
of judgment.....13.11.2023.
Date of preparation and
signing of judgment 22.11.2023.

"A.Qayum PS" (DB) Hon'ble Mr. Justice Shakeel Ahmad & Mr. Justice Wiqar Ahmad.

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