

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 02/2024

Dr. Jamshed Saeed (Appellant)

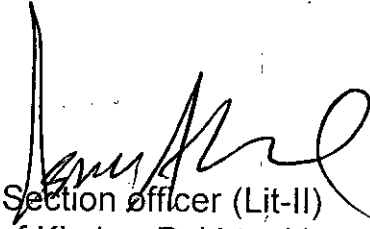
Versus

Government of Khyber Pakhtunkhwa through Secretary Health

..... (Respondent)

INDEX.

| S.No. | Description of documents | Annexure | Page |
|-------|--------------------------|----------|-------|
| 01 | Parawise Comments | | 01-03 |
| 02 | Affidavit | | 04 |
| 03 | Authority Letter | | 05 |


Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department

*one copy handed over
to appellant*

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 02/2024

Dr. Jamshed Saeed.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa through Secretary HealthRespondent

PARAWISE COMMENTS ON BEHALF OF RESPONDENT

Respectfully Sheweth ;

PRELIMINARY OBJECTIONS:-

1. That the Appellant has got no cause of action or locus standi to file the instant Appeal.
2. That the Appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in its present form.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appeal is badly time barred.
7. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
8. The impugned transfer Notification dated 21.09.2023 has been issued in accordance with Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973

FACTS

1. Pertains to record.
2. Pertains to record.
3. Incorrect. No such document has been annexed by the appellant in support of his claim hence denied.
4. Incorrect. Several complaints against the appellant was received therefore, on the approval of the competent authority (Chief Minister Khyber Pakhtunkhwa) vide Notification dated 21.09.2023 whereby the appellant was transferred with the direction to report to Director General Health Services Khyber Pakhtunkhwa on administrative grounds in the public interest. The appellant is a civil servant whereas transfer/ posting of a civil servant comes within the preview of terms and conditions of services. A Civil Servant is to serve where he is posted by the competent authority. The competent authority has

been empowered by Section 10 of Civil Servant Act 1973 to transfer and post a civil servant in exigency of service therefore, the competent authority in exercise of the authority under Section 10 of Civil Servant Act 1973 bonafidely issued the impugned Notification dated 21.09.2023 in the public interest.

5. Pertains to record. However, being MS of the Hospital he was legally bound to ensure attendance of the Doctors and other staff of the hospital and was responsible for administration of the facility.
6. Subject to proof. However, detail reply has been given in para 05 above.
7. Pertains to record. However, the decision was taken by the replying respondent vide Notification No. PA(DS-A)HD/1-1/17 which is evident from annexure-F of the appeal.
8. As per para 05 above.
9. As per para 05 above.
10. As per para 05 above.
11. Already replied in para 04 & 05 above.
12. Incorrect. Already replied in para 04 & 05 above.
13. Already replied in para 05 above.
14. Incorrect. Already replied in para 04 above. It is worth to mention that the replying respondent issue the transfer Notification dated 21.09.2023 in the public interest hence. The impugned Notification has been issued in accordance with Law and Rules. The Apex Court has laid down the following principles in a reported judgment 2017 SCMR 798:
 - i. *It is within the competence of the authorities to transfer a civil servant from one place or post to another to meet the exigencies of service or administration; provided his terms and conditions of service are not adversely affected.*
 - ii. *A Civil servant has no vested rights to claim posting or transfer to any particular place of his choice nor has any right to continue to hold a particular post at a particular place.*
 - iii. *His transfer and posting is limited to the given tenure, or at the pleasure of the competent authorities.*
 - iv. *Normally, he is not required to acquire any specialized skill or professional training in order to serve the new post or place.*
 - v. *His seniority and progression of career in terms of promotion and other benefits of the services are not affected by the transfer and he remains pegged to his batch or group to which he was initially appointed after completing the required common and specialized trainings and after passing the required departmental examinations conducted by the FPSC.*
 - vi. *He is posted and transferred routinely in the same grade or scale that he possesses in his service or group; unless the rule requires so or allows so.*

The appellant has been treated in accordance with the above dictum of the apex court. This Honourable tribunal also dismissed service appeal No. 7035/2021 titled "Dr. Ejaz Ahmad vs Govt of KPK" dated 24-05-2022 on the basis of the above mentioned judgment.

15. Pertains to record.

16. Pertains to record. However, the appellant is not an aggrieved person as no vested right of the appellant has been violated by the replying respondent.

GROUND:

- A. Incorrect the impugned Notification dated 21.09.2023 is in accordance with law rules and principal of natural justice. Detail reply has been given in para 14 of the facts.
- B. As per proceeding paras.
- C. Incorrect. The impugned Notification dated 21.09.2023 has been issued in accordance with Section-10 of Civil Servant Act 1973.
- D. Incorrect. Already replied in para 14 of the facts.
- E. Incorrect. Already explained in preceding paras.
- F. Incorrect. Already explained in para 14 of the facts.
- G. Incorrect. As per para A above.
- H. Incorrect. As per para A above.
- I. Incorrect. As per para A above

It is therefore requested that the appeal of the appellant may kindly be dismissed with cost.

Secretary to Govt. Khyber Pakhtunkhwa
Health Department

Mahmood Aslam

checked
D. Ahmad
13/2/2024

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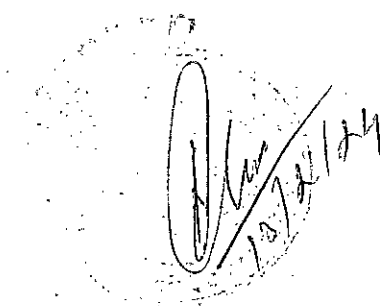
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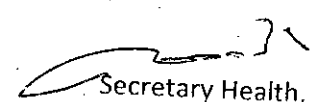
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..... (Respondent)

AFFIDAVIT

I Mehmood Aslam, Secretary Health Govt. of Khyber do hereby solemnly affirm and declare on oath that the contents of the joint parawise comments are true and correct to the best of my knowledge, belief and that nothing has been concealed from this Hon'ble Court.




Secretary Health,
Govt. of Khyber Pakhtunkhwa,
Peshawar.



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

AUTHORITY LETTER

Mr. Safi Ullah, Focal Person (Litigation-II), Health Department, Civil Secretariat is hereby authorized to attend/defend the Court Cases and file comments on behalf of Secretary Health Government of Khyber Pakhtunkhwa before the Service Tribunal and lower Courts.

(MAHMOOD ASLAM)

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
Secretary to Govt. of
Khyber Pakhtunkhwa
Health Department

Attested
[Signature]

9/15/23