

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No...1389/2019

SHAH HUSSAINAppellant

Versus

The Director E&SE Department Khyber Pakhtunkhwa and other... Respondents

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Comments on behalf of Respondents No.1 & 3

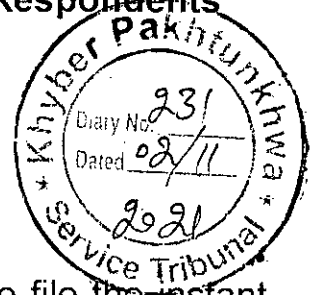
Respectfully Sheweth;

Preliminary objections

- That the Petitioner has got no cause of action, Locus Standi to file the instant Petition
- That the matter in the instant petition is a close transaction as has already been dismissed by the Honorable Peshawar High Court in W.P 4597-P/2018 decided on 30-10-2019.
- That the petitioner has not added the necessary party in the instant petition
- That the Petitioner has not come to this Court with clean hands
- That the petitioner has concealed material facts from the Honorable court

ON FACTS

1. No comments.
2. Incorrect and baseless hence denied. The Appellant was initially appointed against project post of PTC on temporary basis just for three years only.
3. That initially the petitioner was appointed as PST Community School Teacher on temporary basis under a project namely Community School Teacher project for three years only. Later on, on the recommendation of Departmental Selection Committee the petitioner was regularly appointed on the post of PTC but that was to be considered as a Fresh appointment as mentioned in his appointment order (**Copy of the appointment order attached as annex A**).
4. The departmental appeal of the appellant was properly examined and regretted on basis that the petitioner was appointed on the post of PTC on regular basis but that his appointment was to be considered as fresh appointment as mentioned in his appointment order. Therefore, he is not entitled for pay fixation. Hence para No.4 is also denied.



On Grounds

- A.** Incorrect. Hence denied. As elucidated in para-3.
- B.** Incorrect. Hence denied. The respondent being bound by law, acts in accordance with law and while doing so no provision ^{of} any law has been violated.
- C.** Incorrect and baseless. Hence denied. As elucidated in above para-3.
- D.** Incorrect. Hence denied. The matter in the instant appeal is a closed transaction as has already been dismissed by the Honorable Peshawar High Court in W.P 4597-P/2018 decided on 30-10-2019. So, the appellant is not entitled for the pay fixation as prayed for. **(Copy Of The Judgment is Attached As C)**
- E.** Legal, needs no comments. However the respondent does not violate any law and provision of constitution.
- F.** Incorrect. The case of the appellant is totally different from the one referred in the subject para. The petitioner was regular on the post of PTC but that was to be considered as a Fresh appointment as mentioned in his appointment order, Therefore he is not entitled for pay fixation, as prayed for.
- G.** Incorrect. Hence denied. As elucidated in above para-3.
- H.** Incorrect. Hence denied. As elucidated in above para-3.
- I.** That with the kind permission of the Honorable Court, The respondents may be allowed to take any other grounds at the time of arguments of the instant petition.

Pray

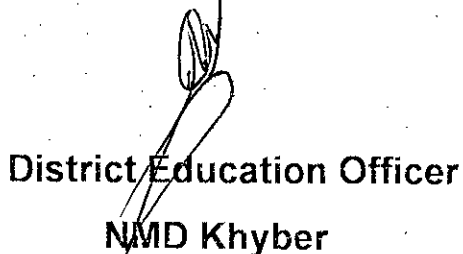
In light of the above stated facts and legal position, it is humbly requested that the case of the petitioners may kindly be dismissed.

Respondent 1:


Director Education

Khyber Pakhtunkhwa

Respondent 3:


District Education Officer
NMD Khyber

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Affidavit

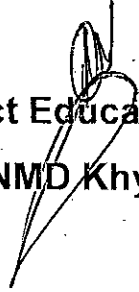
We the respondents do hereby solemnly affirm and declare that the contents of the accompanying para wise comments submitted by the respondent are correct to the best of their knowledge and belief and nothing has been concealed from this honorable court.

Respondent. 1:

**Director Education
Khyber Pakhtunkhwa**

Respondent. 3 :

**District Education Officer
NMD Khyber**



Authority Letter

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


District education Officer
NMD Khyber

AGENCY EDUCATION OFFICER KHYBER AGENCY AT JAMRUD. APPOINTMENT.

P-6 Annex A

Consequent upon the selection of Departmental Selection Committee the following PTC Fresh (Male) local candidates of Tehsil Bara Khyber Agency are hereby appointed against the PTC posts on regular basis (Non pension-able) at the school noted against their name in BPS No (07) of the National Pay Scale@ Rs.(3530-190-9230) PM plus usual allowances as admissible under the Rules in the interest of public service.

S.No	Name/Father Name	Posted at	Remarks
01	Hafeezullah Amin S/o Zari Jan BCS Said Rasan Kili Khapur Teerah.	GPS AllaDhand Bara Khyber Agency.	Against vacant PTC post
02	Muhammad Ashfaq s/o Haji Sikandar Khan	GPS Kaga Ghara Bra Khyber Agency.	--do--
03	Najeebullah S/o Shahbaz Khan	GPS Zafar Kili Tirah Khyber Agency.	--do--
04	Shamsudin S/o Sultan Muhammad	GPS Choor Lakka Bara Khyber Agency.	--do--
05	Khan Sher S/o Sabz Ali Khan	GPS Tandi Bughdad Khel Bara Khyber Agency.	--do--
06	Musafar Shah S/o Khial Noor	GPS Sarkai Kamar Bara Khyber Agency.	--do--
07	Mukharif Shah S/o Abdul Wahab	GPS Ghari Kamar Khel Bara Khyber Agency.	--do--
08	Shah Hussain S/o Gulat Khan BCS Habib Shah Killi	GPS Mothray Dada Nika Aka Khel Teerah Khyber Agency.	--do--
09	Jalalud Din S/o Shamsu Din BCS Shakirullah Killi Sepah	GPS Hukam Khan Kili Bara Khyber Agency.	--do--
10	Shah Muhammad S/o Shah Muhammad BCS Haji Muhammad Killi Teerah	GPS Benay Arbab Kili Bara Khyber Agency.	--do--
11	Arif Khan S/o Alam Khan	GPS Benay Arbab Kili Sara Khyber Agency.	--do--
12	Rehman Gul S/o Abdul Amin BCS Haji Rasool Din Killi Teerah	GPS Stori Khel Almas Kili Bara Khyber Agency.	--do--
13	Rahim Shah S/o Khial Badshah	GPS Stori Khel Almas Kili Bara Khyber Agency.	--do--
14	Misal Khan S/o Fazali Rahim	GPS Mothray Dada Nika Aka Khel Teerah Khyber Agency.	--do--
15	Javed Iqbal S/o Hazrat Gul BCS Koki Khel zioddin Mustak	GPS Sarkai Kamar Bara Khyber Agency.	--do--
16	Amanullah S/o Asmatullah	GPS Ghari Kamar Khel Bara Khyber Agency.	--do--
17	Muhammad Akber s/o Hanif Gul	GPS Khurmatang Bara Khyber Agency.	--do--

TERMS AND CONDITIONS.

1. The Appointee will take over charge on 1/9/2009 (after the reopening of schools after summer vacations) at their respective schools. Charge report should be submitted to all concerned.
2. The appointment of the candidates is made purely on temporary basis and is liable to terminate without assigning any notice.
3. If the candidate wishes to resign his post he will be give one month prior notice or his pay for one month will be forfeited in lieu thereof.
4. Their documents, Date of birth, NIC and Domicile certificate should be checked before handed over charge of the post and attested copies thereof may be kept on record of the school/office.
5. They should produce their Health and Age certificate from the Agency Surgeon concerned.

- 21.1 97/79.38

11-07-2009

6. They may not be handed over charge if he is below 18 years and above 36-years.
7. If they fails to report their arrival within 15-days of the issue of this appointment order then it will be treated as cancelled.
8. No salary may be drawn before the verifications of all the testimonials from the quarter concerned.
9. If any technical legal flaw is pointed out, the appointment will stand as cancelled.
10. They will not be entitled for pension/commutation and G.P. Fund emoluments as per Govt. policy. However they are entitled for C P Fund.

(HASHIM KHAN)
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD.

Endst: No 3360-3324/Estab/C-1/Vol-III/Khy.
Copy of the above is forwarded to the:-

Dated Jamrud the 11/7/2009

1. Director of Education FATA (NWFP) Peshawar.
2. Political Agent Khyber Agency at Peshawar.
3. Agency Accounts Officer Khyber at Jamrud.
4. Agency Surgeon Khyber Agency at Landi Kotal
5. Principal/Headmasters concerned.
6. EMIS Computer cell local office.
7. Candidates concerned.



AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD

11-7-2009
کریکٹنگ آفیسر

PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

W.P No. 4397-P/2018 alongwith
CM No. 2293-P/2019

JUDGMENT

Date of hearing: 30.10.2019

Petitioner: (Anzar Gul & others) by
Mr. Saadullah Marwat, Advocate.

Respondents (Director Education FATA &
others) by: Mr. Rab Nawaz Khan, AAG.

MOHAMMAD IBRAHIM KHAN, J.- The

Department of Education FATA, in order to
raise literacy level, launched a project of
Community Schools under FATA Annual
Development Program in the year 1998 till
20.10.2010 wherein, 956 schools were opened
and total 1912 (02 per school) were appointed
as PST since 2003 including the petitioners
after fulfilment of all condal formalities. Due to
law and order situation in FATA, many
schools were destroyed and being non-

11.02

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functional schools, it was decided to close the same as the teachers were getting salaries without performing their duties. In meeting of Standing Committee of SAFRAN held on 21.12.2011, it was decided that the FATA Secretariat should regularize the services of Community School teachers from their initial recruitment vide letters dated 16.01.2012 and 26.04.2012. After approval of Summary by the Government of Khyber Pakhtunkhwa, the Community School teachers were adjusted against regular posts of PST BPS-07 and in this respect, the Secretary Social Sectors Department FATA issued notification on 11.05.2012 and they were subsequently regularized however, the services rendered by the petitioners on contract basis for more than 10 years were not extended to them for pensionary benefits, against which the

petitioners filed representation but the same was regretted on 29.08.2018, hence, this writ petition preferred by them under Article 199 of the Constitution of the Islamic Republic of Pakistan with the following perspective prayers:-

"It is, therefore, most humbly prayed that on acceptance of this Writ Petition, in exercise of the extraordinary constitutional jurisdiction, this Hon'ble Court may graciously be pleased to:

- a. Declare notification dated 29.8.2018 of the R No. 01 to be illegal, improper, unjust, discriminatory, mala fide, without lawful authority and of no legal effect.*
- b. Direct the authority to regularize the initial service of the petitioners rendered in the Community Schools to the regular service for pensionary and other benefits.*
- c. Any other writ/order/ direction deemed proper and just in the circumstances of the case be also issued/ordered/ given."*

the

2. Having heard arguments of learned counsel for the petitioners and learned AAG on behalf of the official respondents,

record with their valuable assistance gone through.

3. The respondents were on high alert to submit their comments accordingly, the respondents No. 1, 2 and 5 jointly submitted their para-wise comments. True, that the petitioners were initially appointed in the project of Community Schools under the FATA Annual Development Program in the year 1998 wherein, 1912 teachers (02 per school) were appointed including the petitioners on PST Posts in the year 2003 but due to the law and order situation in FATA, some schools were non-functional but even then the petitioners were regularized after fulfilling all the codal formalities by the respondents. Now there arises factual controversy that the community schools were functional or non-functional in FATA; thus, it

HO

leads to factual controversy to utter declare that the schools were functional or non-functional. The writ petition in view of factual controversy is not at all maintainable. The constitutional jurisdiction of this court would seriously be barred as such like controversy can be agitated before the Civil Court. In support of the matter being of factual controversy wisdom is derived from 2005 PLD 347 Supreme Court titled *Mst. Irshad Begum and 2 others vs Muhammad Arshad*, 2005 PLC 366 Supreme Court titled *Pervez Alam vs Pakistan Dairy Products (Pvt) Ltd, Karachi*, 2005 SCMR 1650 Supreme Court titled *Muhammad Ayub vs Ghulam Muhammad*, 2005 SCMR 1542 Supreme Court titled *Muhammad Ramzan vs Additional District Judge, Multan*, 2004 PLC 2013 Supreme Court titled *Riaz*

o — (he)

Ahmed Malik vs Administrator, Municipal

Corporation Bahawalpur, 2004 SCMR 1602

*Supreme Court titled *Muhammad Safdar**

Abbasl vs Amir Yar Malik, 2004 SCMR

*1521 Supreme Court titled *Mst. Hanifa Bibi**

vs Munawar Ahmad, 2004 SCMR 979

*Supreme Court titled *Mirza Abdul Rehman**

vs Deputy Commissioner/ Returning Officer,

Attock and 2003 SCMR 225 Supreme Court

*titled *Commanding Officer, Frontier Works**

Organization, Karachi vs Haji Abdul

Waheed.

4. In view of the above, this petition

has no force, which is hereby dismissed.

Announced.

Dr: 30.10.2019

[Signature]
JUDGE

[Signature]
JUDGE