

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 599/2015

Date of Institution ... 03.06.2015

Date of Decision ... 02.08.2017

Riaz Ali S/o Shahi Zaman, R/o Mohallah Tawas Khel,
Ghari Ismailzai, Garhi Kapura, Tehsil & District Mardan. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary
Elementary & Secondary Education, Peshawar and
4 others. ... (Respondents)

MR. ASLAM KHAN KHATTAK,
Advocate --- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASSAN ... MEMBER

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the
learned counsel for the parties heard and record perused.

FACTS

2. The appellant was appointed as Chowkidar in the Education Department on 06.11.2008. Then his appointment order was cancelled alongwith other persons on 16.03.2009 on the ground of being made in violation of recruitment policy and prescribed procedure i.e. without Departmental Selection Committee, test and interview etc. These irregular appointments were made during the incumbency of Mr. Ahmad Hussain,

District Education Officer (E&SE) Mardan. The appellant for the first time challenged stoppage of his salary before the Worthy Peshawar High Court in Writ Petition No. 2023-P/2014 after about 5 years. The said Writ was withdrawn by the appellant on 02.03.2015 on the ground that the appellant had come to know about his termination when the written comments of the Education Department were submitted in the said Writ Petition. The appellant on the same day i.e. on 02.03.2015 filed a departmental appeal which was not responded to and hence the present appeal on 03.06.2015.

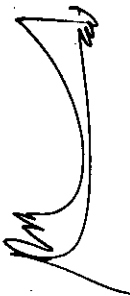
ARGUMENTS

3. The learned counsel for the appellant argued that the very order of termination of the appellant is void, hence no limitation runs against the appellant in such case. He further argued that the limitation shall run from the date of knowledge which the appellant got from the date when the comments were filed by the respondents in the Worthy Peshawar High Court. In this respect the learned counsel for the appellant relied upon certain judgments reported as 2004-SCMR-1077, 2006-SCMR-678, 1996-SCMR-413, NLR1991-T.D-74, PLJ 2004 S.C 435.

4. On the other hand, the learned Deputy District Attorney argued that the present appeal is clearly time barred. That some of the judgments relied upon by the learned counsel for the appellant do not apply to the circumstances of the present case as in the reported cases it was held that the proceedings should have been taken against the persons at fault and in this respect he pressed into service enquiry report and other documents against the delinquent officer and finally he was terminated from service.

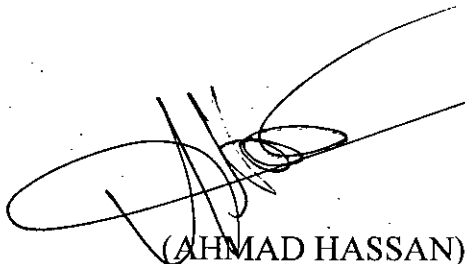
CONCLUSION.


5. This Tribunal has reached the conclusion that it cannot be believed that the appellant was not in the knowledge of the impugned order till the reply filed by the respondents before the Worthy High Court because admittedly he never received salary after the impugned order till 2015. The judgment reported as 2004-SCMR-1077 has differentiating features as no action was taken against the delinquent officer and only menials were removed. But in the present case the delinquent officer has also been removed from service. In another case reported as 2006-SCMR-678 the ratio is that appointment of an employee, if made illegally, could not be cancelled under the E&D Rules and it was held that action must be taken against the appointment authority for committing a misconduct by making illegal appointment. In the present case appellant is not removed under E&D Rules and delinquent officer has been terminated. In another case reported as 1996-SCMR-413, the civil servant was appointed on temporary basis in violation of rules by the appointing authority and the appointing authority himself terminated the services of the civil servant and not by his successor or higher authority as is the present case and in this case it was held that the appointing authority who himself terminated the services of a civil servant could not be allowed to take benefits of his own lapses in order to terminate the service of the respondent merely because he had himself committed irregularity and violated the procedure governing the appointments. But in the present case the cancellation has not been made by the appointing authority himself but by another authority. NLR 1991-TD-74 goes against the appellant as the ratio held in this case is that any assumption that limitation did not run against a void order is totally a fallacy. Limitation starts running against an aggrieved person from date he gets knowledge of order which is void ab initio. The learned counsel has also not been able to convince this Tribunal that what is the different between illegal and void order



in this context. And whether the impugned order is illegal or void. In case of PLJ-2004-SC-435, the limitation was condoned for the reason that another similar case of one Alam Hussain was decided and the case of the appellant was identical and at par with that of Alam Hussain; When this Tribunal asked the question from the learned counsel for the appellant that whether there was any decision of other class-IV employees removed with the appellant, he replied that they were not in the knowledge of any decision of Tribunal or court. So the benefit of this reported judgment cannot be extended to the appellant.

6. As a result the appeal being time barred is dismissed. Parties are left to bear their own costs. File be consigned to the record room.


(AHMAD HASSAN)
MEMBER


(NIAZ MUHAMMAD KHAN)
CHAIRMAN

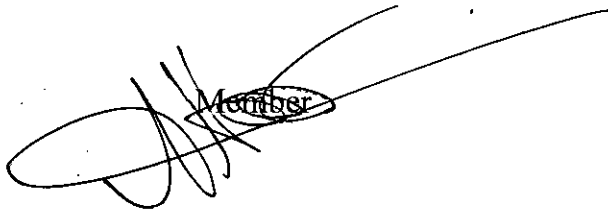
ANNOUNCED

02.08.2017

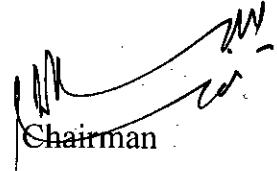
02.08.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Hameedur Rahman, A.D for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of to-day, this appeal is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.



Member



Chairman

ANNOUNCED
02.08.2017

16.08.2016

Counsel for the appellant and Addl: AG for respondents present. Rejoinder submitted, copy of which is placed on file. To come up for arguments on 23.12.2016.

Member

Member

23.12.2016

Counsel for the appellant and Mr. Hameed ur Rehman, AD (Litigation) alongwith Assistant AG for respondents present. At the very outset it was pointed out that the inquiry as mentioned in para-9 of written reply is not before the Tribunal, hence; the same be requisitioned. To come up for such record and arguments on 18.04.2017.

(ASHFAQUE TAJ)
MEMBER

(MUHAMMAD AAMIR NAZIR)
MEMBER

18.04.2017


Appellant alongwith his counsel present. Mr. Hameed-ur-Rehman, AD (Litigation) with Mr. Ziaullah, Government Pleader for the respondents also present. Record of the inquiry report mentioned in the previous order sheet dated 23.12.2016 not brought by the respondents. The respondents are directed to produce the same on or before the next date of hearing. To come up for record and arguments on 2.8.2017.

(Ahmad Hassan)
Member

(Muhammad Amin Khan Kundi)
Member

02.12.2015

Appellant with counsel, M/S Khurshid Khan, SO and Hameed-ur-Rehman, AD (lit.) alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 28.3.2016 before S.B.


Chairman

28.03.2016

Appellant with counsel, M/S Khurshid Khan, SO and Hameed-ur-Rehman, AD (lit.) alongwith Assistant AG for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended subject to payment of cost of Rs. 1000/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 28.4.2016 before S.B.


Chairman

28.4.2016

Appellant in person and Mr. Fazle Wahid, Senior Clerk alongwith Addl: A.G for respondents present. Written statement by respondent No. 3 submitted. Learned Addl AG relies on the same on behalf of remaining respondents. Cost of Rs. 1000/- paid and receipt obtained from appellant. The appeal is assigned to D.B for rejoinder and final hearing for 16.08.2016.


Chairman

4

25.06.2015

Appellant Deposited
Security & Process Fee

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was appointed as Chowkidar at GGDC Mardan in the year 2008. That after assumption of the charge he was performing his duties and drawing salary when the same was stopped constraining the appellant to prefer Writ Petition No. 2023-P/2014 wherein respondents disclosed in the comments submitted on 19.2.2015 that the appellant was removed from service vide order dated 18.3.2009 which came into the notice of the appellant after perusing the comments. That the Writ Petition was disposed of vide order dated 2.3.2015 with the directions to the appellant to seek is remedy before the proper forum where-after the appellant preferred departmental appeal on 2.3.2015 followed by service appeal on 3.6.2015.

That the impugned order of termination of service of the appellant is against facts and law and no opportunity of hearing was extended to the appellant.

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 30.9.2015 before S.B.


Chairman

5

30.09.2015

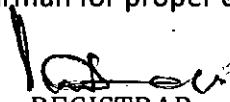


Appellant with counsel, M/S Khurshid Khan, SO and Saeedullah, Junior Clerk alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 2.12.2015 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 599/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	03.06.2015	<p>The appeal of Mr. Riaz Ali presented today by Mr. Aslam Khan Khattak Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	5-6-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>9-6-2015</u></p> <p style="text-align: right;"> CHAIRMAN</p>
3	09.06.2015	<p>Appellant in person present. Counsel for the appellant is stated busy before the august High Court. Requested for adjournment. Adjourned to 25.6.2015 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. 599 of 2015

Riaz Ali Appellant

VERSUS

The Govt of KPK through Secretary Elementary &
Secondary Education, Peshawar & others

..... Respondents

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4.	Impugned Order dated 16/03/2009	"B"	11
5.	Appointment order of appellant	"C"	12
6.	Writ petition No.2023-P/2014	"D"	13-19
7.	Comments of respondents	"E"	20-23
8.	Representation dated 02/02/2015	"F"	24
9.	Order dated 02/03/2105 passed by Peshawar High Court, Peshawar ^{on} Writ petition No.2023-P/2014	"G"	25-26
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11.	Vakalat Nama	In original	

Dated 3 /06/2015

ریاض علی

Appellant

Through

Aslam

(Aslam Khan Khattak)

Advocate, Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. 599 of 2015

Riaz Ali S/o Shahi Zaman
R/o Mohallah Tawas Khele, Ghari Ismailzai, Garhi
Kapura, Tehsil & District Mardan

K.P. Province
Service Tribunal
Dary No. 632
dated 03-6-2015

..... Appellant

VERSUS

- 1- Govt of KPK through Secretary Elementary & Secondary Education, Peshawar.
- 2- Director Elementary & Secondary Education, Peshawar.
- 3- Executive District Officer (Female) Elementary & Secondary Education, Mardan.
- 4- District Coordination Officer Mardan.
- 5- Principal Govt Girls High School Garhi Daulatzai, Tehsil & District Mardan

..... Respondents

Filed to-day
03/6/2015
Registrar

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 06/01/2009 VIDE ANNEXURE "A" AND ALSO AGAINST THE IMPUGNED ORDER DATED 16/03/2009 VIDE ANNEXURE "B" UPTO THE EXTENT OF APPELLANT WHEREBY HIS APPOINTMENT ORDER HAS BEEN CANCELLED WITH EFFECT FROM 16/03/2009 COMMUNICATED TO THE APPELLANT ON 02/03/2015.

Prayer!

On acceptance of appeal, the above referred two impugned orders vide Annexure "A&B" may be set aside upto the extent of appellant and he may be reinstated in service with all back benefits.

Respectfully Sheweth:

Brief facts leading to the instant appeal are as under:

- 1- That the appellant had applied for the post of Chowkidar and after due legal proceeding he was appointed as Chowkidar vide Annexure "C" and was posted at Govt Girls High School Garhi Kapura Daulatzai Tehsil & District Mardan.*
- 2- That the appellant throughout his whole service has performed his duty with utmost of his capabilities and to the entire satisfaction of his superiors.*
- 3- That the appellant has filed writ petition No.2023-P/2014 before the Hon'ble Peshawar High Court, Peshawar vide Annexure "D" for payment of salary.*
- 4- That the appellant came to know on 02/03/2015 that his appointment order has been cancelled vide order dated 16/03/2009 from the comments of respondents vide Annexure "E".*

- 5- That the appellant thereafter has filed his representation dated 02/03/2015 vide Annexure "F" and also has withdrawn his writ petition and the Hon'ble Peshawar High Court Peshawar has directed him to seek his remedy before the proper forum vide order dated 02/03/2015 at Annexure "G").
- 6- That the appellant has so far not received any response and 90 days have been elapsed on his representation and hence this appeal inter-alia on the following grounds:

GROUND:

- A) That the appellant's appointment order has been cancelled being irregular to which he cannot be blamed because primarily the respondents who have wrongfully exercised their power were bound to be held responsible for the same instead of penalizing the appellant being Chowkidar who had to earn livelihood to support his family and such action of the respondents would not promote the cause of action. Instead of cancelling the appointment order of a appellant, a ction s hould b e taken against the authority who has wrongfully cancelled his appointment order.
- B) That no show cause notice has been served upon the appellant before cancelling his appointment order and so both the impugned orders at

Annexure "A&B" are liable to be set aside to the extent of appellant and he may be reinstated in service with all back benefits.

- C) That no regular enquiry in the matter has been conducted and the respondents have violated the rules and regulations. Thus lacking such procedure, both the impugned orders at Annexure "A&B" upto to the extent of appellant may be set aside.*
- D) That no chance of personal hearing was given to the appellant and he was condemned unheard which is against Quran^{ic} command and sunnah of the Holy Prophet peace be upon him. So to this effect both the impugned orders are liable to be set aside and the appellant may be reinstated in service with all back benefits.*
- E) That the appellant has not committed any misconduct and is a poor person as well as a devoted civil servant which fact is revealed that he retained weapon during duty hours vide Annexure "H". On this score the appellant deserves reinstatement in service with all back benefits.*
- F) That the two impugned orders at Annexure "A&B" upto the extent of appellant are illegal, malafide, without jurisdiction and without lawful authority and are liable to be set aside.*


G) That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of appeal, the two impugned orders at Annexure "A&B" may be set aside upto the extent of a ppellant and h e m ay b e r einstated i n service with all back benefits.

Dated 3 /06/2015

(باقر علی)
Appellant

Through


(Aslam Khan Khattak)
Advocate, Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. _____ of 2015

Riaz Ali Appellant

VERSUS

The Govt of KPK through Secretary Elementary &
Secondary Education, Peshawar & others
..... Respondents

AFFIDAVIT

I, Riaz Ali, Ex-Chowkidar of Govt Girls High School Garhi Kapura, Daulatzai Tehsil & District Mardan do hereby solemnly affirm and state on oath that both the impugned orders dated 06/01/2009 and 16/03/2009 have been communicated to me on 02/03/2015. My above statement is true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.



ریاض علی
DEPONENT

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Riaz Ali

..... Petitioner

VERSUS

*The Govt of KPK through Secretary Elementary &
Secondary Education, Peshawar & others*

..... Respondents

**APPLICATION FOR CONDONATION OF
DELAY IF ANY**

Respectfully Sheweth:

*The petitioner prays for condonation of
delay if any on the following grounds!*

GROUND:

- A) That the grounds mentioned in appeal may
be treated as the integral part of this
application.*
- B) That it is the settled law of the august
Supreme Court of Pakistan that the cases be
decided on merits and not on technicalities
such as limitation.*
- C) That the petitioner has not committed any
misconduct and his appointment order has
been cancelled due to the fault of*

respondents and as per law no one should be punished for the fault of others.

It is, therefore, prayed that on acceptance of this application, the delay if any may be condoned in the interest of justice.

Dated 03/06/2015

ریاض علی

Petitioner

Through

Aslam

(Aslam Khan Khattak)
Advocate, Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. _____ of 2015

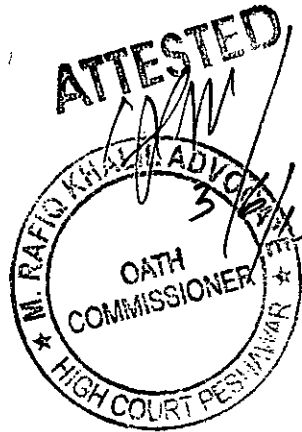
Riaz Ali Appellant

VERSUS

The Govt of KPK through Secretary Elementary &
Secondary Education, Peshawar & others
..... Respondents

AFFIDAVIT

I, Riaz Ali, Ex-Chowkidar of Govt Girls High School Garhi Kapura, Daulatzai Tehsil & District Mardan do hereby solemnly affirm and state on oath that all contents of application for condonation of delay if any are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.



(Riaz Ali)
DEPONENT

Annex. "A"

Better copy

10

33

(BETTER COPY)

DISTRICT GOVERNMENT
OFFICE OF THE DISTRICT COORDINATION OFFICER MARDAN

No _____ /DCO(M)/P.S

Mardan the 01-01-2009

OFFICE ORDER

In the wake of complaints pouring in this office about the anomalies/irregularities in the process of selection/appointments, all the appointments of P.S.T teachers, Elementary teachers and Class-IV employees made in the Education Department, Mardan since 13-09-2008 shall stand held-in-abeyance till further orders.

District Coordination Officer
Mardan

No 01-08/DCO(M)/EA.

Copy forwarded to:-

1. Principal Sectary, to Hon'ble Chief Minister, NWFP
2. Secretary Education, NWFP
3. Commissioner to Hon'ble Chief Minister, NWFP
4. Personal Staff Officer to Hon'ble Chief Minister, NWFP
5. Director, Elementary and Secondary Education, Peshawar
6. PS to Minister for Education, NWFP
7. Executive District Officer (E & SE), Mardan
8. District Account Officer, Mardan

District Coordination Officer
Mardan

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (ELEMENTARY & SECONDARY) MARDAN

Endst No 401-5 /EDO (E&S)

Dated Mardan, the 06-01-2009

Copy of the above is forwarded to the:-

1. All Principals GHS/GGHS, in Mardan District for necessary action please.
- 2-5: Dy District Officer(M&F) in Mardan District for necessary action please.
6. P.A to D.C.O Mardan District for information please.

attested
ash

Attested
Mansoor

EXECUTIVE DISTRICT OFFICER
(ELEMENTARY & SECONDARY)
MARDAN


Annex "B"

OFFICE OF THE
DISTRICT COORDINATION OFFICER
MARDAN

Dated Mardan The 16/3/2009

OFFICE ORDER

Consequent upon the direction of the Competent Authority vide Govt of NWFP Elementary and Secondary Education Department Peshawar No. SO(S) 17/03/ Ahmad Hussain dated 27-2-2009 the undersigned is pleased to cancel all the irregular appointments made in violation of recruitments policy and prescribed procedure i.e. without DSC Test, Interview merit, District/Union Quota etc. during the incumbency of Mr. Ahmad Hussain EDO (E&SE) Mardan with effect from the date of issue of above mentioned order.


District Coordination Officer
Mardan

Endost No. 454-68 DCO(M)/EA-07

Copy for information and necessary action to:

- 1- Registrar Peshawar High Court Peshawar
- 2- PS to Chief Secretary Govt of NWFP Peshawar
- 3- PS To Minister for Elementary/Secy. Edu. NWFP Peshawar
- 4- PS To Secretary to Govt of NWFP Elementary and Secy. Edu. Deptt. Peshawar
- 5- Commissioner Mardan Division Mardan
- 6- District Nazim Mardan
- 7- Executive District Officer (E&SE), Mardan
- 8- Comptroller District Accounts Mardan
- 9- District Officer (Male/Female) (E&SE) Mardan
- 10- All Deputy District Officer (Male/Female) Mardan/Takht Bhai



District Coordination Officer
Mardan

C/O THE EXECUTIVE DISTRICT OFFICER ELEMENTARY/SECY MARDAN

Endst. No. 27/3/9 Dated Mardan, the 18/3/2009

Copy of the above is forwarded for information and strict compliance to the:-

1. All the Principals/Head masters of GHSS/GHS./GMS. (Male/Female) in Mardan District.
2. All Deputy District Officers (M/F), Mardan/Takht Bhai
3. District Accounts Officer Mardan.
4. P/S to Secretary to Govt. of NWFP Elementary/Secy. Edu. Peshawar
5. P.A. to Director Elementary/Secy. Edu. NWFP Peshawar
6. P.A. to District Office.


Executive District Officer
Elementary/Secy. Edu. Mardan

Better Copy

OFFICE OF THE
DISTRICT COORDINATION OFFICER
MARDAN

Dated Mardan the 16/3/2009

OFFICE ORDER

Consequent upon the direction of the competent authority vide Govt of NWFP Elementary & Secondary Education Department Peshawar No. SO (S)4-17/08/Ahmad Hussain dated 27-02-2009, the undersigned is please to cancel all the irregular appointments made in violation of recruitments policy and prescribed procedure i.e. without DSC, Test, Interview, merit, District/Union Quota etc, during the incumbency of M. Ahmad Hussain DEO (E&SE) Mardan with effect from the date of issue of above mentioned order

Endsot: No. 2454-68 DCO (M)/EA-01

Copy for information necessary action to:-

1. Registrar Peshawar High Court Peshawar.
2. PS to Chief Secretary Govt of NWFP Peshawar
3. PS to Minister for Elementary/Secy.Edu. NWFP Peshawar
4. PS to Secretary to Govt of NWFP Elementary & Secy Edu Deptt Peshawar
5. Commissioner Mardan Division Mardan
6. District Nazim Mardan
7. Executive District Officer (E&SE) Mardan
8. Comptroller District Accounts Mardan
9. District Officer (Male/Female) (E&SE) Mardan.
10. All Deputy District Officer (Male/Female) Mardan/Takht Bhai

SD/-
District Coordination Officer
Mardan

Attested.
25/3/09
[Signature]

C/O THE EXECUTIVE DISTR OFFICER ELEMENTARY/SECY MARDAN

Endost No.. 22/2/9

dated 18/3/2009

Copy of the above is forwarded for information and strict compliance to the:-

1. All the Principle Head Masters of GHSS/GHS/GMS. (Male/Femal) in Mardan.
2. All Deputy District Officer (M/F) Mardan/Takht Bahi
3. District Accounts Officer Mardan.
4. P/S to Secretary to Govt. of NWFP Elementary/Secy.Edu. Peshawar
5. P.A to Director Elementary/Secy. Edu: NWFP. Peshawar.
6. All Dealing Asstt Local Office.

SD/-
Executive District Officer
Elementary/Secy. Edu: Mardan

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY & SECY:EDU:MARDAN

APPOINTMENT ORDER

Mr. Raiz Ali S/O Shahi Zaman

R/O G. Kapura

is hereby appointed as Class -IV in BPS-1(Rs.2970-90-5670) plus usual allowances as admissible to him in the light of appointment policy 2005 P.M. against the post of Chowkidar at GCHS G.D.Z. 1. in the in the interest of public service with

following terms & conditions:-

TERMS AND CONDITIONS

- 1-His appointment is made purely contemporary basis in the light of appointment policy 2005 and liable to termination any time without any notice or reasons.
- 2-He is required to produce health and age certificate from the concerned Medical Syptdt: before taking overcharge.
- 3-He is not allowed to take over charge if his age is less than 18 years and not above 45 years.
- 4-No TA/DA is allowed.
- 5-He will take over charge of the post within 15 days.
- 6.If the post is not converted the appointment will be automatically stand cancelled.
- 7.He is not entitled for pension & gratuity.

(Ahmad Hussain Khan)
EXECUTIVE DISTRICT OFFICER
ELEMENTARY & SECY:EDU:MARDAN.

Endst. No 13906/4 / file AE IV dated 6/11 /2008

Copy forwarded for information and necessary action to the:

- 1-Principal/HM concerned.
2. Dy: D.O.(M/F)Mardan & Takht Bhai.
- 3-District Accounts Officer, Mardan.
4. Candidate concerned.
- 5.Gen:file.

AH Khan
6.11.2008
Executive District Officer
ELEMENTARY & SECY:EDU:MARDAN

Attested
AS

IN THE PESHAWAR HIGH COURT PESHAWARW.P. No. 2023/2014

Riyaz Ali.....(Petitioner)

VERSUSSecretary Education Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar and others.....(Respondents)**I N D E X**

S.No.	Description of Documents	Annex	Pages
1.	Writ Petition		1-4
2.	Affidavit		5
3.	Addresses of Parties		6
4.	Copy of order dated 06/11/2008	A	7-11
5.	Copy of permission letter of retaining weapon as Chowkidar	B	12
6.	Court Fee		13-14
7.	Wakalat Nama		15

Petitioner

Through

Dated: 14/06/2014

Naseem Ullah Khan
Naseem Ullah Khan
 Advocate Supreme Court
 Of Pakistan.
 Cell No. 0314-9951103

Attested
15/6

IN THE PESHAWAR HIGH COURT PESHAWAR

W.P. No. _____/2014

Riyaz Ali S/o Shahi Zaman

R/o Mohallah Tawus Khele, Ghari Ismailzai Ghari Kapura,
Tehsil and District Mardan.....(Petitioner)

VERSUS

1. Secretary Education Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. District Education Officer, Mardan.
3. District Executive Education Officer, Elementary and Secondary Education, Mardan.
4. Principal Government Girls High School, Ghari Daulatzai, Tehsil and District Mardan.(Respondents)

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973. FOR DECLARATION TO THE EFFECT THAT PETITIONER, LEGALLY APPOINTED AS CHOWKIDAR VIDE ORDER DATED 06/11/2008 ENDST: NO. 13906 AND IS ENTITLED FOR THE BENEFITS/ SALARY SINCE HIS APPOINTMENT AND RESPONDENT NO. 3 BE DIRECTED MANDATORY TO PLEASE ISSUE SPECIAL ORDER FOR THE ISSUANCE OF SALARY, PENDING SINCE APPOINTMENT.

*Attested
25/5*

Respectfully Sheweth:

Facts of the present petition are as under:

FACTS:

1. That petitioner applied for the post of Chowkidar and after due legal proceeding petitioner appointed as Chowkidar. (Copy of order dated 06/11/2008 is annexed as annexure "A").
2. That petitioner was posted at Government Girls High School Garhikapura, Daulatzai Tehsil and District, Mardan. (Copy of permission letter of retaining weapon as Chowkidar is annexed as annexure "B").
3. That inspite of serving since as Chowkidar, no pay has been released without any reason.
4. That the petitioner was time and again applied to the high-up's for issuance of salary but the official, with one pretext or other delaying the matter and hence lastly submitted application with special notice of taking legal action filed on 13/12/2013, but no response hence the petitioner invoked the door of this August Court on the following grounds, inter-alia:

GROUND:

- A. That the petitioner is law abiding citizen and belonging to poor respectable family, being properly appointed,

Attested
esb

serving as Chowkidar, entitled for remuneration, as per rules.

- B. That petitioner service is still intact and perform duty in according to rules and no compliant from higher officer, even then salary of petitioner is stopped for no reason at all.
- C. That all the other appointees appointed along with the petitioner have been paid their salary and the petitioner is treated discriminately and deprived of his fundamental rights with out any reason.
- D. That the act of respondent is clear violation of Constitution of Islamic Republic of Pakistan, 1973, hence petitioner knock the door of this august Court to invoke its jurisdiction.
- E. That petitioner has regularly appointed, never charged or blamed for any offence, hence stoppage of salary is against the rules and law, therefore, through this petition petitioner case ask for the direction for payment of salary.

It is, therefore, most humbly prayed that on acceptance of this Writ Petition, the respondents be directed to issue order for the payment of the salary and any other remedy deems proper and appropriate may also be awarded.

Attested
ab

INTERIM RELIEF:

It is, further prayed that direction be issued to the respondent No. 3 to please sign the pay bills and payment of salary pending may please be made good.

Petitioner

Through

Naseem Ullah
Asst

Dated: 14/06/2014

Naseem Ullah Khan
Advocate Supreme Court
Of Pakistan.

CERTIFICATE:

Certified on instructions of my client that petitioner has ~~6~~ not previously moved this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter.

Naseem Ullah
Asst

ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other law books according to need.

Attested
AS

Naseem Ullah
Asst

ADVOCATE

IN THE PESHAWAR HIGH COURT PESHAWAR

W.P. No. _____/2014

Riyaz Ali.....(Petitioner)

VERSUS

Secretary Education Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar and others.....(Respondents)

AFFIDAVIT

I, **Naseem Ullah Khan** Advocate Peshawar, as per instructions of my client, 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 nothing has been concealed from this Hon'ble Court.

Naseem Ullah Khan
ADVOCATE

Attested
AS

IN THE PESHAWAR HIGH COURT PESHAWAR

W.P. No. _____/2014

Riyaz Ali.....(Petitioner)

VERSUS

Secretary Education Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar and others.....(Respondents)

ADDRESSES OF PARTIES

PETITIONER:

Riyaz Ali S/o Shahi Zaman
R/o Mohallah Tawus Khele, Ghari Ismailzai Ghari Kapura,
Tehsil and District Mardan.

RESPONDENTS:

1. Secretary Education Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. District Education Officer, Mardan.
3. District Executive Education Officer, Elementary and Secondary Education, Mardan.
4. Principal Government Girls High School, Ghari Daulatzai, Tehsil and District Mardan.

Petitioner

*Attested
all*

Through

Naseem Ullah Khan
Asst

Dated: 14/06/2014

Naseem Ullah Khan
Advocate Supreme Court
Of Pakistan.

27

BEFORE THE PESHAWAR HIGH COURT, PESHAWARWrit Petition No. 2023-P/2014

Riaz Ali -----Petitioner

VERSUS

The Secretary Elementary & Secondary Education and others

-----Respondents

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S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES	
1.	Para wise comments along with Affidavit		1	4
2.	Office Order dated 01-01-2009	"A"	5	5
3.	Office Order dated 16-03-2009	"B"	6	6
4.	Copy of report by Respondent No.4	"C"	7	7

Respondents

attested
and

S. Shabir
District Education Officer
(Female) Mardan

Dated: 19/2 /2015

FILED TODAY

Deputy Registrar

19 FEB 2015

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. 2023- P /2014

Riaz Ali -----Petitioner

VERSUS

The Secretary Elementary & Secondary Education and others
-----Respondents

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS

RESPECTFULLY SHEWETH,

PRELIMINARY OBJECTIONS:-

1. That the petitioner has got no cause of action and locus standi to file the instant writ petition.
2. That the instant writ petition is bad in its present form and hence incompetent and liable to be dismissed.
3. That the instant writ petition is hopelessly time barred.
4. That the instant writ petition is not maintainable in the eye of law.
5. That the petitioner has not come to this Honourable Court with clean hands.
6. That the instant writ petition is based on malafide and keep the court in dark, hence liable to be dismissed.
7. That the instant petition is not maintainable due to lack of mis-joinder & non-joinder of necessary parties.
8. That the petitioner was appointed during the tenure of one Ahmad Hussain Ex-EDO Ele.&Sec. Mardan on 06-11-2008 and in this respect worthy DCO Mardan received complaints about the irregularities in the process of selection/appointments & resultantly the DCO Mardan issued office order dated 01-01-2009 with the direction "All the appointment of P.S.T

Attested
as/

FILED TODAY

Deputy Registrar

19 FEB 2015

teachers, Elementary teachers & Class 4 employees made in Education Department Mardan since 13-09-2008 shall stand held in abeyance till further order. (Copy of office order is attached as Annexure A

- 9. That later on after completion of inquiry, the DCO Mardan cancelled all the irregular appointments of the cadres including Class-IV, made during the tenure of Ahmad Hussain vide Office order Dated 16-03-2009. (Copy of office order dated 16-03-2009 is attached as Annexure B)
- 10. That the petitioner received his salaries upto February 2009 and then he was dismissed in the light of office order issued by worthy DCO Mardan dated 16-03-2009 on account of irregularities made in appointment.

ON FACTS

- 1. Para 1 is incorrect, the petitioner was not appointed after due legal proceeding, hence was terminated alongwith so many others candidates later on, hence denied & said Para is thoroughly explained in preliminary objections No. 8 & 9.
- 2. Reply of Para No. 2 is that the petitioner was irregularly appointed as Chowkidar at GGHS Garhi Daulatzai & later on he was terminated from service by office order dated 16-03-2009 & the answering respondents have no concern with the letter which is attached as Annexure B of the instant writ petition, hence denied.
- 3. Para 3 is incorrect, baseless against law & facts, the petitioner received his monthly salaries upto February 2009 as per report of respondent No.4 hence denied. (Copy of Report is attached as Annexure C)
- 4. Para 4 is incorrect, baseless, against law & facts because the petitioner was terminated from service on 16-03-2009 & since then, he neither attend

*attested
ast*

~~FILED TODAY~~
Mardan
District Registrar
Mardan

nor performed his duties as Chowkidar, & not entitled for any sort of benefits including financial benefits, hence denied.

GROUDS:-

- A. Para A is incorrect, the petitioner is not employee of the answering respondent, since 16-03-2009, hence denied.
- B. Para B is incorrect, baseless, against law & facts and thoroughly explained in Para 4 on facts, hence denied.
- C. Para C is incorrect, all the appointments issued during the tenure of Ex-EDO Mardan namely Ahmad Husain since 13-09-2008 & were cancelled by the DCO Mardan due to in violation of recruitment policy & prescribed, merit, District/Union Quota etc including the petitioner, hence denied.
- D. Para D is incorrect, the answering respondents are responsible government officials & haven't violated constitution of Islamic Republic of Pakistan 1973 as amended upto date & acted according to law in good faith & in Public interest, hence denied.
- E. Para E is incorrect, baseless, against law & facts & thoroughly explained supra, hence denied.

Therefore it is humbly prayed that keeping in view the above mentioned facts & record, the instant writ petition may kindly be dismissed with cost.

Respondents

*Attested
ROB*

Through

Sabirah
District Education Officer
(Female) Mardan

~~FILED TODAY~~
Deputy Registrar
19 FEB 2015

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دفعہ 143(1) کے تحت "Representation"

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Attested
not

21/3/15
دیپن علی بقلم خود

PESHAWAR HIGH COURT PESHAWAR

ORDER SHEET

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2	3
	02.03.2015	<p><u>WP. No. 2023-P/2014.</u></p> <p>Present: Mr. Naseemullah Khan, Advocate, for the petitioner.</p> <p>Raham Taj, Assistant Director on behalf of respondents.</p> <p>*****</p> <p><u>ABDUL LATIF KHAN, J.-</u> Through the instant petition, petitioner has invoked the constitutional jurisdiction of this Court with the following prayer;</p> <p>“that on acceptance of this writ petition, the respondents be directed to issue order for the payment of the salary of petitioner.”</p> <p>The former submits that in the light of the comments submitted, wherein it is find mentioned that the petitioner has been terminated wants to withdraw the petition in order to question the order which has been passed on his way and file an appropriate petition before the proper forum.</p>

ATTESTED

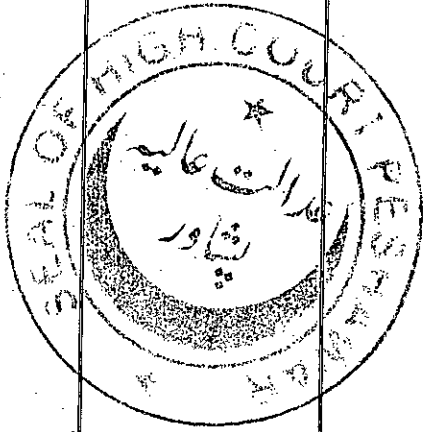
EXAMINER
Peshawar High Court

18 MAR 2015

In wake of the above, the instant petition is disposed of accordingly with the direction to the petitioner to seek his remedy before the proper forum if so advised.

Announced:
02.03.2015.

Sd/ Abdul Hetif Khan - J
Sd/ Mel Jan Khattak - J

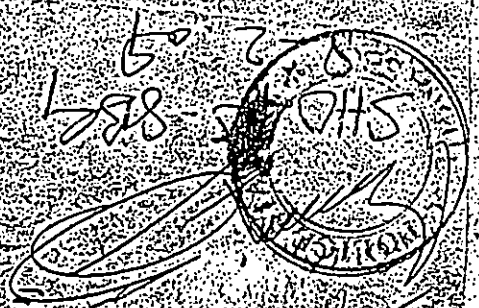
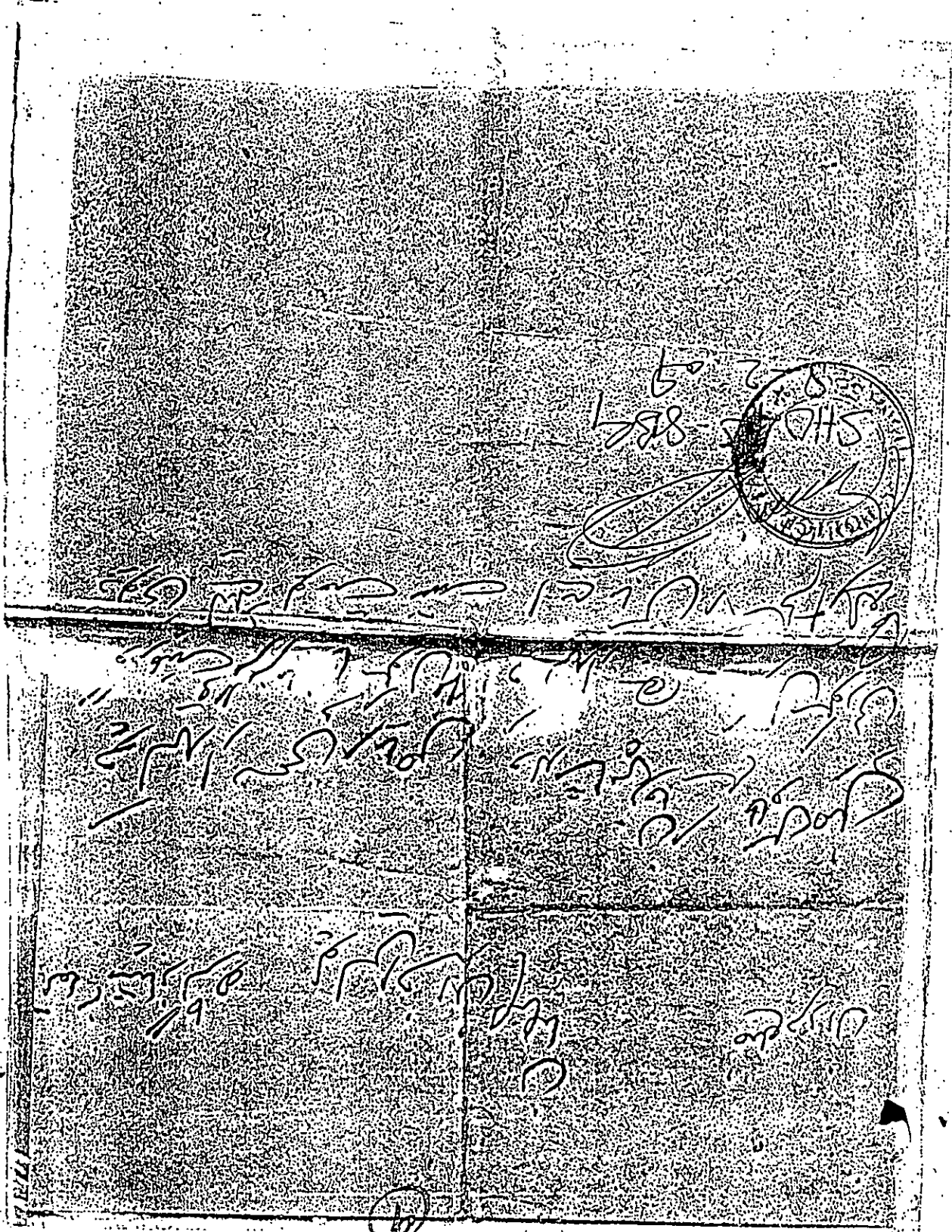


[Signature]
CERTIFIED TO BE TRUE COPY
18/3/15
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Constitution of the Islamic Republic of Pakistan Order 1984

18 MAR 2015

16524
Presentation of Application 14/3/15
No of Pages 87
Copying fee 16-
Urgent Fee
Total 16-
Date of Preparation of Copy 18/3/15
Date Given For Delivery 18/3/15
Date of Delivery of Copy 18/3/15
Received By *[Signature]*

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BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Appeal No. 599/2015

Riaz Ali -----Appellant

VERSUS

Secretary Education & Others ----- Respondents

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS No.1,2,3 & 5

Respectfully Sheweth,

Preliminary Objections:-

1. The appellant has got no cause of action & locus standi to file the instant appeal.
2. The instant appeal is bad in its present form, hence incompetent and liable to be dismissed.
3. The instant appeal is badly time barred.
4. The appellant has not come to this Honourable Tribunal with clean hands.
5. The instant appeal is liable to be dismissed due to non-joinder & mis-joinder of unnecessary parties.
6. That the instant appeal is not maintainable in the eye of law.
7. That the instant appeal is based on malafide and kept this Honourable Tribunal in dark, hence liable to be dismissed.
8. That the appellant was appointed during the tenure of one Ahmad Hussain Ex-EDO Ele. & Sec. Mardan on dated 06-11-2008 and in this respect worthy DCO received complaints about the irregularities in the process of selection/appointments and resultantly the DCO Mardan issued office order dated 01-01-2009 with the directions. "All the appointments of PST teachers and elementary teachers and class-IV employees made in Education Department Mardan since 13-09-2008 shall stand held in abeyance till-further order". (Copy of office order dated 01-01-2009 is already attached with instant as appeal Annexure A)
9. That later-on after completion of inquiry, the DCO Mardan cancelled all the irregulars appointments of all cadres including class-IV made during the tenure of Ahmad Hussain vide office order dated 16-03-2009. (Copy of office order dated 16-03-2009 is already attached with instant appeal as Annexure B)

10. That the appellant received his salaries upto February 2009 and then he was dismissed in the light of office order issued by worthy DCO Mardan dated 16-03-2009 on account of irregularities made in appointments.

ON FACTS

1. Para 1 is incorrect, the appellant's order was illegal and void.
2. Para 2 pertains to record, hence no comments.
3. Para 3 pertains to record, hence no comments.
4. Para 4 is incorrect, baseless, against law & facts, hence denied.
5. Para 5 pertains to record, hence no comments.
6. Para 6 is incorrect, baseless against law & facts , hence denied

GROUNDS

- A. Para A is incorrect, baseless, against law & facts and thoroughly explained in preliminary objections, hence denied.
- B. Para B is incorrect and the instant appeal is hopelessly time barred and from 2009 till date, it is not possible that the appellant was unaware of his withdrawal order, hence denied.
- C. Para C is incorrect, baseless, against law & facts, hence denied.
- D. Para D is incorrect and thoroughly explained above, hence denied.
- E. Para E is incorrect, baseless, against law & facts, hence denied.
- F. Para F is incorrect, baseless, against law & facts, hence denied.
- G. Para G is incorrect, baseless, the appeal in hand is liable to be dismissed, hence denied.

Therefore, it is humbly prayed that keeping in view the above mentioned facts, the instant appeal may kindly be dismissed with cost.

Dated 27/4/16.

Respondents No.1,2,3,4 & 5

Through


District Education Officer (F)
Mardan

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Appeal No. 1359/2013

Riaz Ali -----Appellant

VERSUS

Secretary Education & Others ----- Respondents

Reply to Application for condonation of delay

Respectfully Sheweth,

1. Para 1 is thoroughly explained in reply of the instant appeal by the respondents, hence denied.
2. Para 2 is revealed to the verdict of the August Court, hence no comments.
3. Para 3 is incorrect, baseless, against law & facts and the instant appeal is hopelessly time barred and the so called impugned orders are according to law & policy in vogue.

Therefore it is humbly prayed that keeping in view the above mentioned facts, the application of for condonation of delay may kindly be dismissed with cost.

Dated 27/4/16.

Respondents

Through


District Education Officer (F)
Mardan

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No.599/2015

Riaz Ali, Ex-Chowkidar
Appellant

VERSUS

Secretary Elementary &
Secondary Edu: Peshawar and others
Respondents

APPELLANT'S REJOINDER

Respectfully Sheweth:

Preliminary objections:

The 10 preliminary objections raised by the respondents in their reply are illegal, wrong, incorrect and are denied in every detail. The appellant has genuine cause of action and his appeal does not suffer from any formal defect whatsoever.

FACTS:

1 to 6 Incorrect. Paras No.1 to 6 of appeal are incorrect and replies of the same grounds are incorrect.

GROUND:

A- Incorrect. Ground A of appeal is correct and its reply is incorrect.

B- Incorrect. Ground B of appeal is correct and its reply is incorrect. That the appellant was unaware from both the impugned orders and the same were communicated to him on 02/03/2015.

C TO G- Incorrect Grounds C to G of appeal are correct and its replies are incorrect.

It is, therefore, prayed that on acceptance of appeal and rejoinder, the two impugned orders at annexure "A&B" upto the extent of appellant may be set aside and he may be reinstated in service with all back benefits.

Dated 15/08/2016

ریاض علی

Appellant

Through

Aslam

Aslam Khan Khattak
Advocate, Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No.599/2015

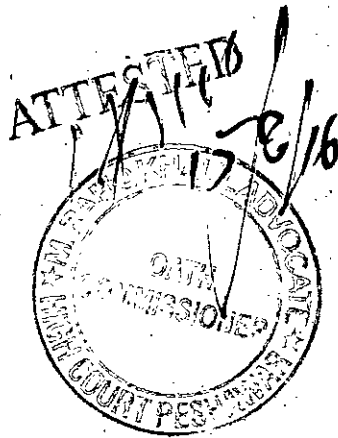
Riaz Ali, Ex-Chowkidar
Appellant

VERSUS

Secretary Elementary &
Secondary Edu: Peshawar and others
Respondents

AFFIDAVIT

I, Riaz Ali, Ex-Chowkidar Government Girls High School Ghari Kapura Tehsil & District Mardan do hereby solemnly affirm and state on oath that all contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.



(ریاض علی)

DEPONENT

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No.599/2015

Riaz Ali, Ex-Chowkidar
Appellant

VERSUS

Secretary Elementary &
Secondary Edu: Peshawar and others
Respondents

APPELLANT'S REJOINDER IN RESPONSE
TO REPLY TO APPLICATION FOR
CONDONATION OF DELAY IF ANY.

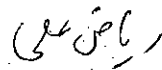
Respectfully Sheweth:

Grounds:

A to C- Incorrect. Paras A to C of appeal are correct and
its replies are incorrect.

It is, therefore, prayed that the relief as
prayed for may be granted to the appellant to meet
the ends of justice.

Dated 15/08/2016



Appellant

Through



Aslam Khan Khattak
Advocate, Peshawar