

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No.2434/2023

Hamid ullah.....Appellant.

V/S

Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa,
Peshawar and others.....Respondents

(Para wise reply on behalf of Respondent No.3)

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Deponent

Next date
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(Para wise reply on behalf of Respondent No.3)

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 11662
Dated 7/3/24

Preliminary Objections:-

- 1) That the Appellant has no cause of action.
- 2) That the Appellant has no locus standi.
- 3) That the Appellant has not come to this Court with clean hands.
- 4) That the Re instatement order No.811-15 dated.17.09.2018 issued by Respondent No.2 of the appellant is not according to leave rules and contradictory to the judgment dated.05.07.2018 in Appeal No.261/2016 issued by the Honorable Service Tribunal (Annex-A & B

Respectfully Sheweth:-

- 1) Relates to record however liable to be proved by the appellant..
- 2) Relates to Respondents No. 1 & 2 hence, No comments.
- 3) Correct to the extent that the last Para of the Judgment dated.05.07.2018 is very much clear (Annex-C).
- 4) In light of true spirit of court judgment in Appeal No.261/2016, the intervening period was consider to be treated as " Leave of kind due". The administrative department notify the court decision vide order No.84-15 dated. 17.09.2018 by re-instating the appellant with all back benefits may issue appropriate notification in light of court decision so that the benefit of leave of a kind due be allowed to the

appellant. The appellant is not entitled for any other benefit contradictory to the court decision.

- 5) Recovery was started after the observations raised by the Audit Team. The justification for recovery is stated as in Para-4 of this reply.
- 6) Incorrect. No application was received to Respondent No.3, However, justification is given in Para-4.
- 7) The appellant is not entitled for benefits as allowed in court decision in light of re-instatement order the appellant's contradictory to the court decision availed all full Pay & Allowances for the intervening period. The period as leave of kind i.e leave on full pay, leave on half pay or without pay. The point was raised by the Audit party constituted by the Accountant General Khyber Pakhtunkhwa. The Audit Party pointed out that the appellant is entitled for pay & allowance for the leave of kind sanctioned by the administrative department in light of court decision and the benefits availed over and above be recovered.

Grounds:-

- A. The Respondent No.3 is bound to follow the instructions issued by the Provincial Government of Khyber Pakhtunkhwa from time to time. Hence, under the audit observations deductions /recovery of illegal pay & allowances is correct and under the rules.
- B. As mentioned in Para-4 above
- C. As mentioned in Para-4 above.
- D. As mentioned in Para-A above
- E. As mentioned in Para-A above
- F. No comments.

Keeping in view of the above mentioned facts, it is therefore, humbly prayed that the appellant is required to approach to his administrative department concerned to modify the re-instatement orders according to the decision of the court dated. 05.07.2018 in appeal no.261/2016 and appeal in hand having no merit may be dismissed with cost.

**DISTRICT ACCOUNTS OFFICER
BAJAUR AT KHAR**

(29/9/2018)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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Hamid UllahAppellant

VS

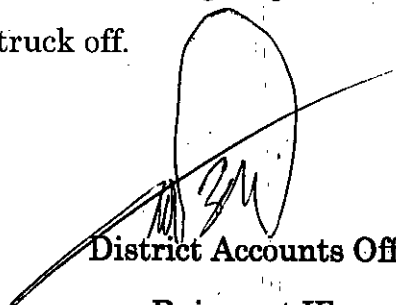
Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa,
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(Para wise reply on behalf of Respondent No.3)

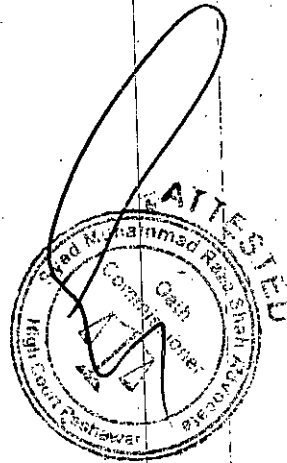
AFFIDAVIT

I, Zakiullah DAO Bajaur do hereby solemnly affirm & declare that the reply submitted on behalf of Respondents No.3 true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

It is further stated on oath that in this appeal the answering respondent has neither been place Ex-part nor his defense has been struck off.


District Accounts Office

Bajaur at Khar



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