

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1366/2015

Date of institution ... 07.12.2015

Date of judgment ... 10.05.2016

Sanaullah S/o Ghulam Mohammad,
Kot Azam, Tehsil and District Tank.

... (Appellant)

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, C&W Department Khyber Pakhtunkhwa Peshawar.
3. The Chief Engineer, C&W Department Khyber Pakhtunkhwa Peshawar.
4. The Superintending Engineer, C&W Department D.I. Khan.
5. The Executive Engineer, C&W Department Tehsil and District D.I. Khan.
6. The District Co-Ordination Officer Tank.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO.SOE-I/W&SD/2-6/2008 DATED 29.09.2008 PASSED BY THE RESPONDENT NO.1 WHEREBY THE APPOINTMENT ORDER OF THE APPELLANT AS "ROAD INSPECTOR" WAS CANCELLED AGAINST WHICH A DEPARTMENTAL APPEAL WAS FILED BUT THE SAME WAS DISMISSED ON 17.11.2015.

Mr. Rizwanullah, Advocate.

.. For appellant.

Mr. Muhammad Jan, Government Pleader

.. For respondents.

MR. MUHAMMAD AAMIR NAZIR

.. MEMBER (JUDICIAL)

MR. PIR BAKHSH SHAH

.. MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: The appellant, Sanaullah resident of Kot Azam, Tehsil and District Tank, through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 has impugned the order dated 29.09.2008 passed by respondent No. 1 vide which the appointment order of the appellant as Road Inspector was cancelled. Against the impugned order the appellant filed departmental appeal but the same

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was also dismissed vide order dated 17.11.2015. Feeling aggrieved from the impugned orders referred above, the appellant filed the instant appeal.

2. Brief facts of the case giving rise to the instant appeal are that on 02.04.2008 the appellant was appointed as Road Inspector (BPS-06) after observing all legal and codal formalities. After appointment, the appellant assumed the charge of the post and starting performing his duties, however vide impugned order dated 29.09.2008 the respondent No.1 cancelled the appointment order of the appellant alongwith two others. Feeling aggrieved from the impugned order the appellant initially filed a Civil Suit No. 74/01 of 2011. The Civil Suit was proceeded and after recording pro & contra evidence, the case of the appellant was decreed in his favour. The learned Trial Court held that since plaintiff was appointed on contract and purely on temporary basis therefore, as per Section-2 of the Civil servants Act, 1973, he was not a civil servant, therefore, the Civil Court has got jurisdiction to entertain the matter. It was further held by the learned Trial court that District Co-Ordination Officer being a competent authority under Rule-6 (b) of NWFP Local Government Ordinance, 2001 and was authorized to make appointments of the appellant. The respondent-department feeling aggrieved from the judgment/decree of the learned Trial Court, filed an appeal before the learned District Judge, Tank. The learned appellate court set aside the impugned judgment and decree of the Trial Court by holding that after promulgation of Khyber Pakhtunkhwa Civil Servant (Amendment) Act, 2005 followed by the rules and regulations for the administration of recruitment of regular posts, now all appointments on regular posts are made on contract basis but status of Civil Servant has been given except for the purpose of pension. Hence, the Civil Court has got no jurisdiction to adjudicate on the matter. A Civil Revision was subsequently filed before the Hon'able Peshawar High Court, D.I.Khan Bench by the appellant but the same was also dismissed on the ground that the appellant is a civil servant, hence the Civil Court has got no jurisdiction in the service matter. There-after the appellant filed a departmental appeal but of no avail, hence the appellant filed Appeal No. 1616/2013 before this Tribunal and Tribunal while deciding the appeal of the appellant vide order dated 14.05.2015 held that since the departmental appeal of the appellant has not been decided so the case was referred to the

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appellate authority to look into the matter strictly in accordance with law and rules and to decide the same. After remand of the case, the appellate authority vide order dated 13.11.2016 rejected the appeal of the appellant. Feeling aggrieved, appellant filed the instant appeal.

3. We have heard arguments of learned counsel for the appellant and learned Government Pleader for the respondents and have gone through the record available on file


4. Perusal of the case file reveals that admittedly the appellant was appointed as Road Inspector in BPS-06 on contract basis vide order dated 02.04.2008 by District Co-Ordination Officer, Tank. The appellant joined the service and after a few months, his appointment was cancelled with immediate effect vide order dated 29.09.2008 without following the codal formalities. Feeling aggrieved from the impugned order the appellant initially approach Civil Court and filed a Civil Suit which was contested by the respondents and after recording pro & contra evidence the case of the appellant was decreed in his favour, wherein inter-alia it was held that since the appointment of the appellant was on contract and temporary basis, therefore, as per Secion-2 of the Civil Servant Act, 1973 the appellant was not a civil servant, hence, the Civil Court has got the jurisdiction to adjudicate the matter. The learned Trial Court further held that the appointment of the appellant was rightly made by the District Co-Ordination Officer, Tank as per Rule-6(b) of the NWFP Local Government Ordinance,2001 which empowers the District Co-Ordination Officer to make appointments in BPS-11 to BPS-15. Feeling aggrieved, the respondents filed appeal before the Learned District Judge Tank who after hearing both the parties at length, set aside the impugned judgment and decree of the learned Trial Court by declaring that after promulgation of Khyber Pakhtunkhwa Civil Servant (Amendment) Act, 2005 all the appointments on the regular post are made on contract basis, yet, employees are given the status of a civil servant with the exception that such the appointees shall not be entitled to the benefit of pension. The august Peshawar High Court, D.I Khan Bench dismissed the Civil Revision filed against the judgment of learned District Judge, Tank. The august Peshawar High Court, D.I Khan Bench vide judgment dated 19.08.2013 clarified that the appointment order of the petitioner was made on regular basis after adopting all the formalities by the Departmental Selection Committee and on the recommendation of the

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committee, the Competent Authority appointed the appellant. It was further held that on the promulgation of the Khyber Pakhtunkhwa (Amendment) Act, 2005 and Rules framed there under, all the appointments on regular posts are made on contract basis but status of civil servant has been given except for the purpose of pension.

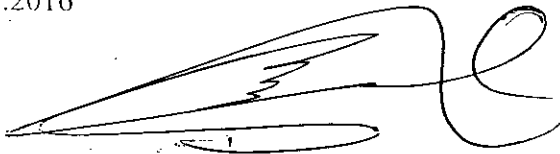
5. After exhausting mammoth round of litigation, the appellant filed the departmental appeal to the appellate authority but of not avail, therefore, appellant filed service appeal No. 1616/2013 before this Tribunal, however, vide order dated 14.05.2015 the appeal was remanded back to the appellate authority to decide the departmental appeal of the appellant by considering the case of the appellant strictly in accordance with law and rules. The departmental appeal of the appellant was considered by the appellate authority who vide order dated 13.11.2015 held that the appointment of the appellant was irregular, hence, his departmental appeal stand rejected. The appellant once again approached to this Tribunal for redressal of his grievances.

6. Admittedly, appellant was appointed as Road Inspector (BPS-06) vide order dated 02.04.2008, however, his appointment order was cancelled vide order dated 29.09.2008 without adopting the prescribed procedure as laid down under the law. The record available on file transpires that the appointment of the appellant was made by a Competent Authority/District Co-Ordination Officer under Rule-6(b) of NWFP Local Government Ordinance, 2001 which authorize the District Co-Ordination Officer to make appointments of the official in Basic Scale 11 to 15 in respect of devolving departments. A Departmental Selection Committee was constituted and on the recommendation of the committee the Competent Authority had made the appointment of the appellant on contract basis. Similarly, as per Khyber Pakhtunkhwa Civil Servant (Amendment) Act, 2005 and Rules frame there under all the appointments for regular post should be made on contract basis, however, the employees so appointed have been given the status of civil servant except for the purpose of pension. Hence, the appellant was appointed against the vacant post on the recommendation of the Departmental Selection Committee. After appointment, the appellant assumed the charge

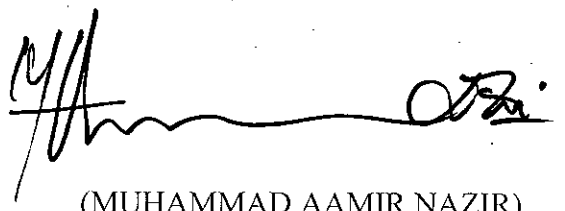

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and started performing his duties. So far as the contention of the respondents that appointment of the appellant was irregular, therefore he was terminated is concerned, the authority having itself appointed a civil servant on temporary basis could not be allowed to take benefit of its lapses in order to terminate services of civil servant merely because it had itself committed irregularity in violating procedure governing appointment. Reliance in this respect was placed 1996 SCMR 1350. Similarly, the appellant was qualified and his appointment was made by the competent authority after observance of due process of law. Likewise no proper inquiry, such as issuing of charge sheet, statement of allegation and show cause notice had been issued to the appellant while terminating his services. Any irregularity whatsoever, if committed by the appointing department itself, the appointee could not be harmed, damaged or condemned subsequently when it occurred to the department that it had itself committed some irregularities qua any appointment. Reliance in this respect was placed on 2009 SCMR 663. Hence in the above said circumstances, we are inclined to accept the instant appeal and set aside the impugned order dated 29.09.2008 and 17.11.2015 with the direction to reinstate the appellant in service with all back benefits. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
10.05.2016



(PIR BAKHSH SHAH)
MEMBER




(MUHAMMAD AAMIR NAZIR)
MEMBER

10.05.2016

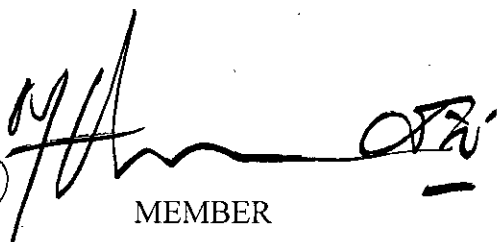
Counsel for the appellant and Mr. Shoaib, Assistant
alongwith Mr. Muhammad Jan, GP for respondents present.

Vide our detailed judgment of to-day consists of five pages
placed on file, we are inclined to accept the instant appeal and set
aside the impugned order dated 29.09.2008 and 17.11.2015 with
the direction to reinstate the appellant in service with all back
benefits. Parties are left to bear their own costs. File be consigned
to the record.

Announced
10.05.2016



MEMBER




MEMBER

11.12.2015

Appellant Deposited
Security & Process Fee

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Road Inspector (BPS-6) and during service terminated from service by cancelling his appointment order vide order dated 29.9.2008 leaving the appellant with no option but to knock the doors of the Court and finally, after a long chain of litigations, approached this forum and vide order dated 14.5.2015 this Court directed that the departmental appeal of the appellant be decided which was not decided constraining the appellant to again approach this Tribunal through service appeal on 7.12.2015.

In view of the above, the appeal is admitted to regular hearing. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 23.2.2016 before S.B.


Chairman

23.02.2016

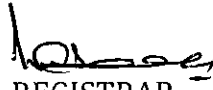

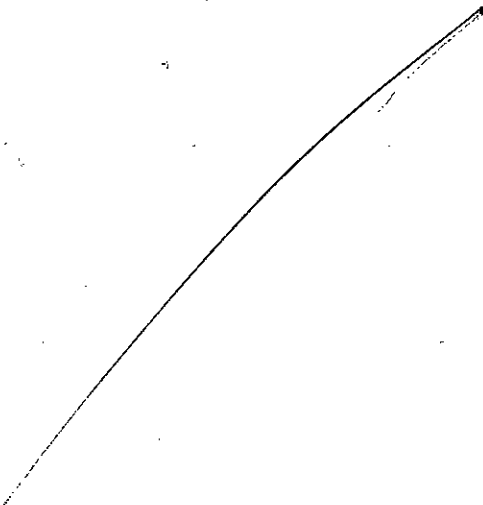
Appellant with counsel and Mr. Shoaib Khan, Assistant alongwith Addl: A.G for respondents present. Written reply by respondents No. 1 to 5 submitted. The learned Addl: AG informed the Tribunal that the post of DCO i.e respondent No. 6 has been abolished. Learned counsel for the appellant does not want to file rejoinder. The appeal is assigned to D.B for final hearing for 10.5.2016.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1366/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	07.12.2015	<p style="text-align: center;">The appeal of Mr. Sannaullah Khan presented today by Mr. Rizwanullah Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: center;"> REGISTRAR</p>
2	11-12-11	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>11-12-2011</u></p> <p style="text-align: center;"> CHAIRMAN</p> 

BEFORE THE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1366 /2015

1. Sanaullah S/O Ghulam Mohammad R/O Kot Azam, Tehsil and District Tank.

APPELLANT

VERSUS

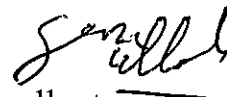
1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others.

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Service Appeal	—	1-9
2	Affidavit	—	10
3	Copy of appointment order dated 2-4-2008	“A”	11
4	Copy of impugned order dated 29-9-2008.	“B”	12
5	Copy of order of learned civil judge dated 7-1-2012.	“C”	13-22
6	Copy of judgment of District judge dated 23-2-2013.	“D”	23-28
7	Copy of judgment of Hon’ble Peshawar High Court, Circuit Bench D.I.Khan dated 19-8-2013	“E”	29-34
8	Copy of departmental appeal its receipt dated 16-9-2013	“F & G”	35-37
9	Copy of judgment of this Hon’ble Tribunal dated 14-5-2015	“H”	38-40
10	Copy of execution petition	“I”	41-45

11	Copy of rejection order dated 17-11-2015	"J"	46-47
12	Copy of Judgment/order of this Hon'ble Tribunal dated 27-11-2015.	"K"	48-49
13	Copy of appointment order of Javed Ahmad dated 13-6-2005	"L"	50
14	Copy of appointment order of Gohar Zaman dated 24-5-2005	"M"	51
15	Vakalatnama	—	—


Appellant

Through


Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar.

Dated:- 7-12-2015

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 1366 /2015

**N.W.F. Province
Service Tribunal
Diary No. 1426
Dated 07-12-2015**

1. Sanaullah S/O Ghulam Mohammad R/O Kot Azam, Tehsil and District Tank.

APPELLANT

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, C&W Department Khyber Pakhtunkhwa Peshawar.
3. The Chief Engineer, C & W Department Khyber Pakhtunkhwa Peshawar.
4. The Superintending Engineer, C & W Department D.I.Khan
5. The Executive Engineer, C & W Department Tehsil and District D.I.Khan.
6. The District Co-ordination Officer Tank.

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER No. SOE-I/W&SD/
2-6/2008 DATED 29-9-2008 PASSED BY THE
RESPONDENT NO.1 WHEREBY THE
APPOINTMENT ORDER OF THE
APPELLANT AS "ROAD INSPECTOR" WAS
CANCELLED AGAINST WHICH A
DEPARTMENTAL APPEAL WAS FILED
BUT THE SAME WAS DISMISSED ON
17-11-2015.**

Handwritten signature and date
7/12/15

Prayer in Appeal

By accepting this appeal, the impugned orders dated 29-9-2008 and 17-11-2015 may graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Any other relief deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.

Respectfully Sheweth,

Short facts giving rise to the present appeal are as under:-

1. That the appellant was appointed as Road Inspector (BPS-6) on 2-4-2008 after observing all legal and codal formalities. He assumed the charge of post accordingly.

(Copy of appointment order is appended as Annex-A).

2. That the appellant was performing his duty with great zeal, zest and devotion but strangely, his appointment order was cancelled by "**Incompetent Authority**" i.e.(Chief Secretary Khyber Pakhtunkhwa) in utter violation of law as neither a charge sheet alongwith statement of allegations was served on him nor a regular inquiry was conducted to substantiate his guilt if any against him. Similarly, neither any show cause notice was served on the appellant nor he was provided any opportunity of personal hearing before passing the impugned order.

(Copy of impugned order is appended as Annex-B).

3. That the appellant felt aggrieved by the said order, filed a civil suit praying therein for setting aside the impugned order. The learned civil judge –III Tank was pleased to decree the said suit in favour of appellant against the respondents vide order dated 7-1-2012.

(Copy of order of learned civil judge is appended as Annex-C).

4. That the respondents department preferred appeal before the learned District Judge, Tank raising therein a preliminary objection with regard to maintainability of civil suit and stated that as the appellant employee was a civil servant, therefore, the civil court had got no jurisdiction to entertain and adjudicate the instant matter. The learned District Judge was pleased to accept the appeal of Government and set aside the impugned decree and held the employee as civil servant vide judgment dated 23-2-2013.

(Copy of judgment of District Judge is appended as Annex-D).

5. That the present appellant dissatisfied by the said order, approached the Hon'ble Peshawar High Court, Circuit Bench D.I.Khan by filing as Civil Revision No.31-D of 2013 requesting therein to reverse the order of appellate court and maintain the decision of trial court. But the Hon'ble High Court vide judgment dated 19-8-2013 dismissed the revision petition and upheld the decision passed by the learned appellate court.

(Copy of judgment of High Court is appended as Annex-E).

6. That the appellant after exhausting departmental remedy invoked the jurisdiction of this Hon'ble Tribunal by way of filing service appeal No. 1616/2013 which was disposed of with the following observations vide judgment dated 14-5-2015:-

“It is crystal clear from the above situation that on one hand the appellant has been ejected from service not in accordance with the prescribed procedure. While on the other hand that the appointment was made on recommendation of the Selection Committee. Since departmental appeal of the appellant has not yet been decided so it's the considered opinion of this Tribunal to refer the matter to the appellate authority to look into the matter strictly in accordance with law and rules and to decide the same. The appeal is dispose of accordingly. File be consigned to the record”.

(Copy of departmental appeal its receipt and judgment of this tribunal is appended as Annex-F to H).

7. That the Appellant Authority was under statutory obligation to have honoured the order/judgment of this Hon'ble Tribunal in letter and spirit by deciding the departmental appeal with reasons within reasonable time. But he paid no heed to the lawful order/judgment of this Hon'ble Tribunal. Therefore, the appellant was constrained to file execution petition No.98/2015 requesting therein that appropriate proceedings may graciously be initiated against the Appellate Authority for disobedience of the order/judgment of this Hon'ble Tribunal and he may also be awarded exemplary punishment in accordance with law.

(Copy of execution petition is appended as Annex-I)

8. That during the course of said litigation, the Appellate Authority rejected the departmental appeal on 17-11-2015 and copy thereof was produced before this Hon'ble Tribunal. Consequently, the execution petition was disposed of vide order dated 27-11-2015.

(Copies of rejection order of departmental appeal and order of this tribunal is appended as Annex-J & K).

9. That the appellant is jobless since the impugned order.
10. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds:-

GROUND OF APPEAL

- A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, impugned order is not sustainable in the eye of law.
- B. That the post of appellant was duly advertised and thereafter, he was selected by a legally constituted Committee and then his appointment order was issued by the District Co-ordination Officer Tank. He duly assumed the charge of post and was performing his duty with great zeal and devotion but strangely, his appointment order was cancelled by **"Incompetent Authority"** i.e (Chief Secretary Khyber Pakhtunkhwa). This Authority had no power under the law to pass the impugned order as neither he was **"Appointing Authority"** nor **"Appellate Authority"** of appellant and as such acted in utter violation of **Section 21 of the General Clauses Act (X of 1897)** as well as law laid down by superior courts in various judgments. Therefore, the impugned order is against the spirit of administration of justice.
- C. That neither a charge sheet alongwith statement of allegation was served on the appellant nor a regular inquiry was conducted to substantiate his guilt if any against him. Similarly, he was also not served with a show cause notice and as such the respondent No.1 has blatantly violated the law laid down by august Supreme Court of

Pakistan reported in 2009-SCMR-663. The relevant citation of the said judgment is reproduced herein for facility of reference:-

Constitution of Pakistan (1973)---

Art.212(3)Termination/withdrawal of appointment of civil servant--- Civil servants, in the present case, were qualified and their appointments were made by the competent authority after observance of due process of law--- No proper inquiry, such as issuing of charge-sheet/statement of allegations, show-cause notice, had been issued to the civil servants while terminating/withdrawing their services---Judgment of the Service Tribunal was based on valid and sound reasons and was entirely in consonance with the settled law--- Neither there was misreading, nor misconstruction of facts and law was found in the said judgment of Service Tribunal---Any irregularity, whatsoever, if committed by the appointing department itself, the appointee could not be harmed, damaged or condemned subsequently when it occurred to the department that it had itself committed some irregularities qua any appointment---Petition for leave to appeal by the department was dismissed by the Supreme Court, in circumstances.

Thus, the impugned order is liable to be set aside on this score alone.

- D. That the appellant was also not provided any opportunity of personal hearing before passing the impugned order being the mandatory requirement of law as laid down by august Supreme Court of Pakistan reported in 2008 PLD-SC-412 and 2009-PLC-CS-161. The relevant citations of the judgments are as under:-

(a) Administration of justice---

---Natural justice, principles of---
Opportunity of hearing---Scope---
Order adverse to interest of a
person cannot be passed without
providing him an opportunity of
hearing---Departure from such
rule may render such order illegal.

(b) Maxim---

---Audi alteram partem---
Applicability---Limitations---Right
of personal hearing to a person
against whom an adverse order is to
be made is to be equated with
fundamental right and an adverse
order made without affording him
an opportunity of personal hearing
is to be treated as a void order.

Therefore, the impugned order is bad in law.

- E. That Javed Ahmad Shah and Gohar Zaman were also appointed as Road Inspector in Works and Service office, Tank by District Co-ordination Officer vide order No. 2333-36 dated 13-6-2005 and order No. 6201 dated 24-2-2005 respectively. Thus, the appellant has been discriminated and treated unfairly qua his above colleagues, similarly placed appointees. This is a disparity and anomaly and is also violation of **Article 25 of the Constitution of Islamic Republic of Pakistan, 1973** which has unequivocally laid down that all citizens placed in similar circumstances are entitled to equal treatment and protection of law. The Hon'ble Supreme Court of Pakistan through various judgments has maintained that equal treatment is the fundamental right of every citizen. Reliance can be placed on the judgments of august Supreme Court of Pakistan reported in **2002-SCMR-82 & 2004-PLC(CS)-82**. The relevant citations are reproduced herein for facility of reference:-

(a) Constitution of Pakistan (1973)---

---Art.25---Equality---before---
law----Employer could not mete out

different treatment to two groups of its employees, as dictates of law, justice and equity required exercise of power by all concerned to advance the cause of justice and not to thwart it.

2004 P L C (C.S.) 82

[Supreme Court of Pakistan]

Citation (c)

---S. 10(2)---Service Tribunals Act (LXX of 1973), S.4---Constitution of Pakistan (1973), Art.25--- Termination of service---Authority terminated respondents from service, but allowed to continue in service other employees, who were similarly appointed---Service Tribunal set aside such order being discriminatory---Validity--Tribunal had rightly interfered with termination order of respondent in view of Art. 25 of the Constitution--- Supreme Court dismissed petition and refused leave to appeal.

It is well settled law that the decision of August Supreme Court of Pakistan is binding on each and every organ of the State by virtue of Article 189 and 190 of the Constitution of Islamic Republic of Pakistan, 1973. Reliance can be placed on the judgment reported in 1996-SCMR-Page-284. The relevant citation is as under:-

(c) Constitution of Pakistan (1973)

Arts. 189 & 190--- Decision of Supreme Court---Binding, effect of--- Extent--- Law declared by Supreme Court would bind all Courts, Tribunals and bureaucratic set-up in Pakistan.

(Copy of appointment orders are appended as Annex-L & M)

- F.** That the Competent Authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice. Therefore, the impugned order is not tenable under the law.
- G.** That the impugned order is based on conjectures and surmises. Hence, the same is against the legal norms of justice
- H.** That the order in question is suffering from legal infirmities and as such it has caused grave injustice to the appellant. Thus, the impugned order has no sanctity under the law.
- I.** That the impugned order is based on conjectures and surmises. Hence, the same is against the legal norms of justice.
- J.** That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned orders dated 29-9-2008 and 17-11-2015 may graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.


Appellant

Through


Rizwanullah

Dated: 7-12-2015

M.A. LL.B
Advocate High Court, Peshawar

**BEFORE THE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2015

1. Sanaullah S/O Ghulam Mohammad R/O Kot Azam, Tehsil and District Tank.

APPELLANT

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others.

RESPONDENTS

AFFIDAVIT

I, Sanaullah S/O Ghulam Mohammad R/O Kot Azam, Tehsil and District Tank do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



Sanaullah
DEPONENT

Annexure D-8

Annex - A



11

OFFICE OF THE,
DISTRICT COORDINATION OFFICER,
TANK.

NO. 1659
DATED 22/04/2008.

65

To,

Mr. SANAULLAH KHAN,
S/O Ghulam Muhammad,
Village Kot Azam Tehsil & District Tank.

EX-PULL
3
S/O
S/O Tank
27-3-10

Subject: - APPOINTMENT AS ROAD INSPECTOR

As recommended by the Department Selection, Promotion, and appointment committee you are hereby offered the Post of Road Inspector BPS-6 (Contract Bases) @ Rs. 2860.145-7210-P11 with Plus usual allowances as admissible under the rules.

If accept the post on the following condition you should report arrival for duty in the office of the Deputy Director Works & Services Tank.

- (i) Your appointment is purely on temporary basis & can be terminated at 14 days (Fourteen Days) notice at any time without assigning any reason irrespective of the that you may be holding a post offer than the one to which you were originally appointed or on the payment of 15 days pay to lien of notice.
- (ii) In case you wish to resign at any time 14 days notice shall be necessary otherwise 15 days pay shall be forfeited.
- (iii) You will join duty at you own expenses.
- (iv) You will have to produce Medical Fitness Certificate on reporting for duty.

District Coordination Officer,
Tank.

Copy to the: -

- 1) Executive District Officer Finance & Planning Tank.
- 2) Deputy Director Works & Services Tank.
- 3) District Accounts Officer Tank for information & necessary action.

District Coordination Officer,
Tank.

ATTESTED

Stamp and signature block at the bottom right, including the text "District of the State of" and "Tandon India, 1992".

Amir B (A)

(87)

GOVERNMENT OF NWFP,
WORKS & SERVICES DEPARTMENT.

No. SOE-I/W&SD/2-6/2008
Dated Peshawar, the September, 29, 2008.

To

The District Coordination Officer,
Tank.

Subject:- ILLEGAL APPOINTMENT OF SUB ENGINEER AND ROAD COOLIES

I am directed to refer to the subject noted above and to state that the Competent Authority (Chief Secretary NWFP) has been pleased to order the cancellation of the illegal appointment orders of the following officials immediately:-

1. Rizwan Khan, Sub Engineer.
2. Rehmatullah, Sub Engineer.
3. Sanaulah, Road Inspector.

2. I am, therefore, directed to cancel the appointment orders of the above mentioned officials under intimation to this department immediately.

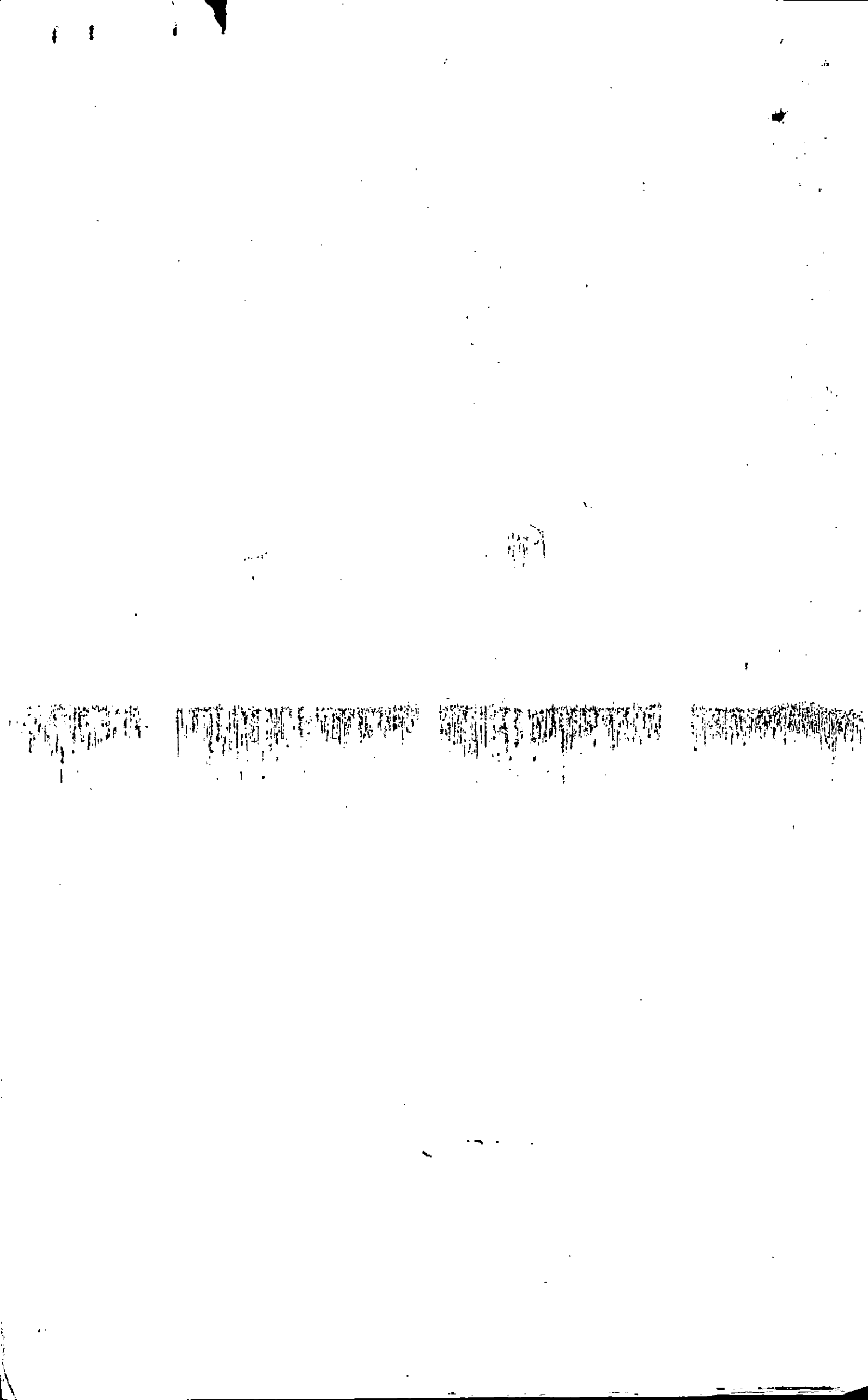
(ANWAR-UL-HAQ.)
SECTION OFFICER (ESTT-I)

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Copy is forwarded for information to the:-

1. PS to Chief Secretary, NWFP, Peshawar.
2. PS to Secretary Establishment Department.
3. Executive District Officer W&S Tank with the direction to intimate the position of Coolies illegally appointed by EDO W&S Tank as pointed out by the Inquiry Officer.
4. Deputy Director W&S Tank.
5. PS to Secretary W&S Department.

~~RECEIVED~~ SECTION OFFICER (ESTT-I)



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**IN THE COURT OF MUHAMMAD ASGHAR ALI
CIVIL JUDGE-III, DISTRICT TANK.**

Civil Suit No.....74/01 of 2011
Original date of Institution:..... 05.11.2008
Date of Transfer to this Court.....22-11-2011
Date of Decision:.....07.01.2012

Rehmat Ullah and two others.

.....(Plaintiffs)

Versus

Govt of NWFP through Chief Secretary NWFP and nine others

.....(Defendants)

JUDGMENT
07.01.2012

The Plaintiffs through instant suit seek decree for declaration to the effect that appointment of Plaintiffs No.1 & 2 as Sub-Engineer and that of Plaintiff No. 3 as Road Inspector by the District Co-Ordination Officer (DCO), Tank is valid, proper, after adopting all legal formalities, on merit and by competent authority, and they were entitled for appointment on said posts.

They further seek declaration to the effect that secret inquiry conducted against them and cancellation of their appointment order No.SOE-1/W&SD/2-6/2008 dated 29-09-2008, issued on the basis of said inquiry might be declared as illegal, be

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Muhammad Asghar Ali
Civil Judge III District Tank

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Dist. Tank

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cancelled and the same is ineffective upon the rights of the Plaintiffs.

The Plaintiffs also prayed for grant of perpetual injunction restraining the defendants from cancellation of their appointment and appointment of other candidates on said posts.

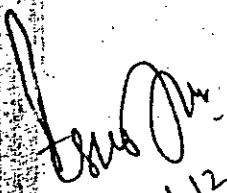
The Defendants on being summoned put appearance and contested the suit by filing Written Statement, raising therein various legal and factual objections. From the divergent pleadings of the parties, following issues were framed by the then learned Senior Civil Judge, Tank.

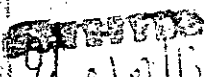
1. Whether the Plaintiffs have got any cause of action?
2. Whether the court has got jurisdiction?
3. Whether the appointments of the Plaintiffs were not made according to law?
4. Whether the inquiry against the Plaintiffs were not conducted according to law?
5. Whether the letter No. SOE-1/W&SD/2-6/2008 dated 29-09-2008, issued by Defendant No. 6 for cancellation of the Plaintiff appointments order is liable to cancellation and ineffective upon the rights of the Plaintiffs?
6. Whether the Plaintiffs are entitled to decree as prayed for?
7. Relief?

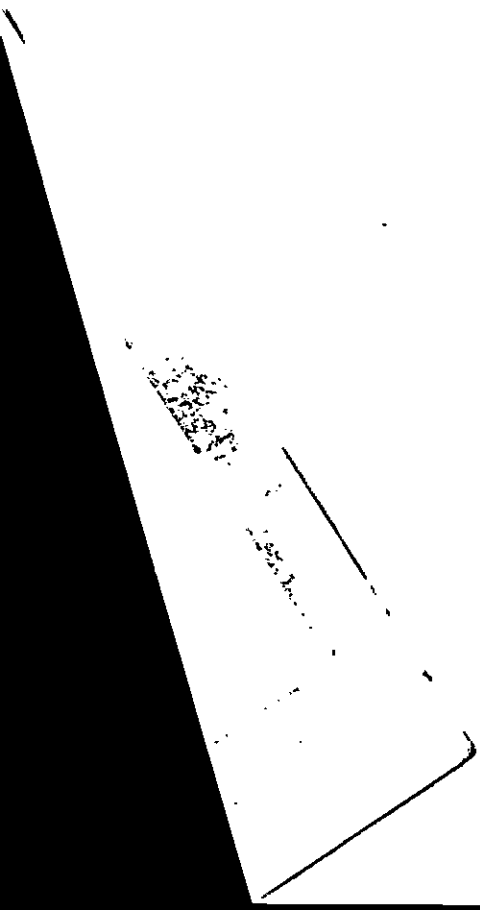
The Plaintiffs in support of their claim produced

six witnesses. A short resume of the Plaintiff's evidence is as under:

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 Civil Judge - III, District Magistrate


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 District Magistrate
 District Tank



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Rehmat Ullah Khan, Reader to DCO Tank appeared as PW-1 and produced record relating to appointments of the Plaintiffs including their appointment orders, advertisement in newspaper regarding test/interview of the candidates, their results, minutes of the meetings etc as Ex PW-1/1 to Ex PW-1/16.

Fateh Ullah, Sub Engineer, C&W Tank appeared as PW-2 and produced letter (Ex PW-2/1) through which the Inquiry Officer requisitioned record of the appointments, arrival reports of the Plaintiffs as Ex PW-2/2 to Ex PW-2/4.

The Plaintiffs appeared as PW-3 to 5 respectively and almost narrated the same facts as are given in the plaint.

Abdul Majeed Khan Ex District Naib Nazim appeared as PW-6 and supported the claim of the Plaintiffs by saying that their appointments were made as per rules while the subsequent orders for cancellation of the appointments were politically motivated.

The Defendants were once placed *ex parte* and the suit decreed *ex parte* on 04.09.2010, however during the course of Appeal, learned District Judge Tank was pleased to set aside the *ex parte* judgment and remanded the case back to the trial court through her judgment dated 10.02.2011. After remand, the proceedings were initiated and the Defendants were asked to produce their evidence, but they failed and their right to produce evidence was struck off on 23.07.2011 by learned Senior Civil Judge, Tank and the suit was decreed. Again appeal was preferred, which was accepted by learned District Judge, Tank through her Judgment dated 16.11.2011 and this court was directed to provide

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Civil Judge - II

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last opportunity to the Defendants for production of evidence and then decide the case on merits. On receipt of case file the proceedings were registered, and on 22.11.2011 the Defendants were provided last opportunity, as per direction of learned Appellate Court, to adduce their evidence, but they failed. On 07.12.2011, in the interest of justice another opportunity was extended to the Defendants for leading evidence along with notice under Order XVII rule 3 of the Code of Civil Procedure, but again they could not avail the opportunity. Resultantly, this court vide order dated 12.12.2011, struck off the right of the the Defendants for production of evidence.

Finally arguments were heard and record gone through. Issue wise findings of this court are as under:

Issue No.2

This issue pertains to jurisdiction of this court. As per appointment orders (Ex PW-1/1 to Ex PW-1/3) of the Plaintiffs, they were appointed on contract and purely on temporary basis, and thus as per section 2 of the Civil Servants Act, 1973, they are not civil servants and since they are not civil servants, therefore, they cannot approach Service Tribunal under section 4 of Service Tribunal Act, for redressal of their grievances. This court in this situation has got jurisdiction in the matter. Issue decided in affirmative.

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Issue No.3

The basic objection of the defendants is that District Co-Ordination Officer (DCO) was not authorized and competent to appoint the Plaintiffs as Sub Engineer and Road inspector, and the vacancies were required to be filled through Public Service Commission. Ex PW-1/6 is a notification dated 02-11-2002, issued by Government of NWFP, Establishment and Administration Department, which is regarding amendments in NWFP Public Service Commission Ordinance, 1978, and clarifies the posts required to be filled through Public Service Commission. According to amendment in rule-3 of the Ordinance, recruitment in BPS-11 to 15 in Services and Works Department and others (specified therein Ex PW-1/16) are to be made through Public Service Commission, except the District Cadre Posts. So, only those posts in PBS-11 to 15 were required to be filled through Public Service Commission which were not District Cadre posts. The posts of Sub Engineer BPS-11 and Road Inspector BS-06 were infact District cadre posts and not the provincial, therefore, not to be filled by Public Service Commission. There is available on main file at page 120, a letter No.1/ Budget-9-A dated 23-09-2006, issued from the office of Chief Engineer, Works and Services Department, NWFP, Peshawar, which contains a reference of notification of Secretary W&S Department bearing No.SO(E) W&S/13-1/77 dated 22-03-2005, wherein all the provincial cadre posts upto BPS-15 were declared as District Cadre Posts and thus it has been established that posts of Sub Engineer and Road

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 Civil Judge - District

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Inspector were District Cadre posts and there existed no question of recruitment upon the posts through Public Service Commission.

It would not be out of place to mention here that there is available on main file at page 118 though not exhibited however not disputed, and helps this court in arriving at a proper conclusion. As per this notification No. SOS.POOL(E&AD)1-10/2002 dated 26.08.2006, it was suggested to Secretary, to Government of NWFP, Works and Services, Department that posts of Sub Engineers (BPS-11) do not come with in the purview of NWFP Public Service Commission, and requisition from Public Service Commission might be withdrawn, which requisition was later on withdrawn through letter No. SOR-V(E&AD)1-368/2005(SE) dated 02.05.2007. (Copy available at page 119 of the main file). These letters further shows that the posts of Sub Engineers were not to be filled through Public Service Commission.

Now comes the question; whether the District Co-Ordination Officer (DCO) was competent and authorized to make appointments on these posts? The answers to this query in the light of notification (Ex PW-1/14) issued by Secretary to Government of NWFP, Local Government, Elections and Rural Development Department, is in affirmative. Vide this notification amendment in Sub rule (b) of rule 6 of NWFP Local Government Ordinance, 2001, was made, and the District Co-Ordination Officer (DCO) was authorized to make appointments in BPS-11 to 15 and the same reads as under:

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Civil Judge - II

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(b) "the District Co-Ordination Officer shall have the powers of the appointing authority in respect of officials in basic scales 11 to 15 in the respective devolved departments and the concerned Offices of the District Co-Ordination Officer and the District Revenue Officer."

The DCO was competent to make appointments of the Plaintiffs but another issue arises, whether he made appointments as per legal procedure? During the course of arguments, learned defense counsel produced copy of disputed inquiry (placed on file), wherein the Inquiry Officer suggested that constitution of Departmental Selection Committee (DSC) was not in accordance with notification No.SOR-VC(E&AD)2-7/2003 dated 17-11-2005, therefore, the appointments of the Plaintiffs were made in violation of the prescribed rules. According to him the DSC should consisted of the following:

- | | | |
|----|---|----------|
| 1. | District Co-Ordination Officer | Chairman |
| 2. | EDO concerned | Member |
| 3. | One member to be nominated by the Administrative Department concerned | Member |
| 4. | one member to be nominated by the the appointing authority. | Member |

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Civil Judge - District - Faisalabad

As against the above Selection Committee, the Committee constituted ^{by me} the District Co-Ordination Officer consisted of following:

- | | | |
|----|---|----------|
| 1. | District Co-Ordination Officer | Chairman |
| 2. | Executive District Officer, Finance, tank | Member |
| 3. | Deputy Director Works & Services Tank | Member |

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Except this objection, no illegality in appointment could be brought on record. The posts were duly advertised in newspaper, tests and interviews were also conducted, marks obtained by the candidates appeared for test/interview are also available on file as Ex PW-1/8 and Ex PW-1/11, so in this scenario, the lacuna in the constitution of the Selection Committee, in view of this court, is a mere irregularity because, there is a difference of only one member to be nominated by the appointing authority, the DCO. In the light of above discussion, it has been established that the DCO was competent to appoint the Plaintiffs, and he did so, though in a bit irregular manner. Issue decided in negative.

Issue No.4 & 5

Both the issues being interlinked are taken jointly for discussion.

The Plaintiffs have impugned herein the present suit, the inquiry conducted against them and notification (Ex PW-1/13) vide which the Chief Secretary NWFP cancelled their appointments.

The DCO had appointed the Plaintiffs through appointment orders Ex PW-1/1 to Ex PW-1/3. As per terms and conditions of the Service, before terminating the services of the Plaintiffs a fourteen days prior notice was necessary, but the record is totally silent about giving any such notice to the Plaintiffs before termination of their services.

The inquiry report is silent about giving any show cause notice to the Plaintiffs. Similarly, there is nothing on record to suggest that the Chief Secretary, before terminating the services of the Plaintiffs, had ever given them the opportunity to

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Civil Judge

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defend them or asked about the allegations against them, which omissions are a total violation of rules and procedure. The appointment of the Plaintiffs was cancelled without serving them the fourteen days mandatory notice and all the proceedings were conducted behind their back and they were condemned unheard. So, the orders issued for cancellation of the appointments of the Plaintiffs were totally illegal and ineffective upon therein rights. Issue No. 4 is decided accordingly while issue No. 5 in affirmative in favour of the Plaintiffs.

Issue No. 1

The services of the Plaintiffs were terminated with out giving them any notice as agreed in their terms and conditions of service, which fact created a genuine cause of action in favour of the Plaintiffs. Issue is decided in affirmative.

Issue No. 6

As per findings of this court on above issues, the Plaintiffs have established their case to the extent of relief of declaration, however, so far as relief of permanent injunction is concerned, in view of this court that cannot be granted because the service of the Plaintiffs is temporary and they cannot be kept in service forever. Issue decided accordingly.

RELIEF

The outcome of the above findings of this court is that the Plaintiffs have successfully proved their case. Hence the suit to the extent of relief of declaration is decreed with costs, while to the extent of relief of perpetual injunction it is dismissed. Impugned

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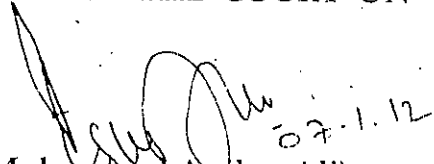
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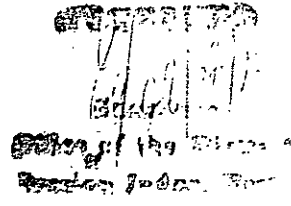
notification No. SOE-1/W&SD/2-6/2008 dated 29-09-2008 is declared as unlawful and ineffective upon the rights of the Plaintiffs. However, this judgment shall not operate as bar for the Defendants to cure their irregularities. File be consigned to record room after completion.

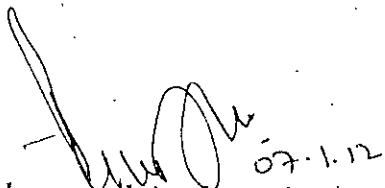
PRONOUNCED AT DISTRICT TANK IN OPEN COURT AND GIVEN UNDER MY HAND AND SEAL OF THE COURT ON THIS 07th DAY OF JANUARY, 2012.


(Muhammad Asghar Ali)
Civil Judge-III, Tank

CERTIFICATE

Certified that this judgment consists of Ten (10) pages. Each page of which has been dictated and signed by me after making necessary correction therein.




(Muhammad Asghar Ali)
Civil Judge-III, Tank

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Amex-D (23)

IN THE COURT OF MOHAMMAD YAQOOB KHATTAK,
DISTRICT JUDGE, TANK

RCA # 16/13 of 2012

Date of Institution: -----23.01.2012

Date of Decision: -----23.02.2013

Executive Engineer, C&W Department Tehsil & District Tank.

(Appellant)

Versus

Rehmat-Ullah son of Missal Khan, Resident of City Tank and Eleven (11) other respondents.

(Respondents)

JUDGMENT

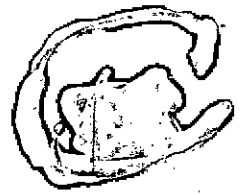
I. This appeal has been preferred by Executive Engineer, C&W Department, District Tank, against, interlocutory order dated 12.12.2011, vide which right of appellant to produce evidence was struck off under order- XVII rule 3 CPC and Judgment, order and decree dated 07.01.2012, vide which suit of respondents No.01 to 03 was accepted with the request that interlocutory order dated 12.12.2011, and judgment, order and decree dated 07.01.2012, be set aside and the suit of respondents No.01 to 03 be dismissed.

II. Facts in brief are that vide orders No.1657, No. 1658 dated 02.04.2008 and order No.1659 dated 02.04.2008, Rehmat-Ullah, Rizwan Khan and Sana-Ullah were appointed by District Co-ordination Officer, Tank on recommendation of District Selection Committee, Tank, in consequence of their recruitment they assume their duty, however, vide Government NWF P Works and

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Services Department, No.SOE-1/W&SD/2-6/2008, dated 29.09.2008, the appointment of the respondents No.01 to 03 were declared illegal and the District Co-ordination Officer, Tank was directed to cancel their appointment orders. This action was questioned by respondent No.01 to 03 in the Civil Court by instituting suit for declaration etc.

III. Vide written statement defendants except defendant No.01 contested the suit of Rehmat-Ullah etc and the pleadings of the parties were summarized under the following issues:-

- a. Whether the plaintiffs have got cause of action?
- b. Whether this Court has got Jurisdiction?
- c. Whether the appointments of the plaintiffs were not made according to Law?
- d. Whether the inquiries against the plaintiffs were not conducted according to Law?
- e. Whether the Letter No.SOE-1/W&SD/2-6/2008 dated 29.09.2008, issued by defendant No.06 for cancellation of the plaintiff appointments orders is liable to cancellation and ineffective upon the rights of the plaintiff?
- f. Whether the plaintiffs are entitled to decree as prayed for?
- g. Relief?

IV. The parties were then put on the track of evidence. Evidence as adduced by Rehmat-Ullah etc were recorded but right of defendants to produce evidence was struck off under XVII rule 3, CPC, the learned lower Court after hearing the arguments then passed the impugned orders, judgment and decree.

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DISTRICT JUDGE
TANK





- V. After admitting the appeal for full hearing, respondents were summoned. Respondent No.01 to 03 attended the court whereas the rest of the respondents despite of proper service did not, therefore, they were proceeded against ex-parte. Arguments twice as advanced at the bar heard and record gone through.
- VI. Before entering into discussion on other merits, in my opinion the material issue in the instant case to be decided first is the question of jurisdiction of Civil Courts regarding subject matter of the suit.
- VII. Issue No.02 has been framed by the lower Court in this regard, the learned lower court while deciding this issue held in the impugned judgment that since as per Section 2 of Civil Servant Act,1973, Plaintiffs/respondents No.01 to 03 are not Civil Servant, therefore, the matter in issue does not fall within the jurisdiction of Services Tribunal and the Civil Court has jurisdiction to adjudicate upon the issue and dispute between the parties having general jurisdiction under Section 9 CPC.
- VIII. Under Section 9 CPC, Civil Courts had general and overall jurisdiction to try all suits of civil nature except its cognizance is expressly or impliedly barred by any special law.
- IX. Section 4 of Services Tribunal Act, expressly oust the jurisdiction of Civil Courts in the matter related to the terms and condition of Civil Servant.
- X. In view of the above referred provision of law, it is to be seen whether respondents No.01 to 03 are Civil Servants or not, if they are Civil Servants then since the matter is related to the terms and conditions of their services as such under section 4 of Services Tribunal Act, Civil Court would have got no jurisdiction.

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DEPUTY DISTRICT JUDGE
TANKE



- XI. In this view of the matter, the foremost question is that whether respondents No.01 to 03 are Civil Servants or not.
- XII. Learned counsel for respondents No.01 to 03 when were asked during course of arguments, they while hesitating stated at the bar that respondents No.01 to 03 are contract employees but his contention on behalf of respondents No.01 to 03 does not appear to be fair and correct. Ex: PW-1/1 to Ex: PW-1/3 are the copies of appointment orders of respondents No.01 to 03. Inconsequence of these appointment orders, the three respondents then submit their arrival reports, assumed their duty/charge and since then up till now they are working on respective posts.
- XIII. Perusal of Ex:PW-1/1 to Ex:PW-1/3 show that no where it has been mentioned that the service of respondents No.01 to 03 were on contract basis as defined in Section 2 of Civil Servant Act, 1973, there is no explanation with regard to the nature of their service except that they were appointed in BPS-11 and BPS-06 on temporary basis subject to condition mentioned in the orders. It will be undisputed that appointments on contract basis is always for specific and definite period, the respective orders as well as the recommendations of District Selection Committee, Tank are completely silent that appointments of respondents No.01 to 03 were on contract basis. It is also settled principle that all initial appointments are either temporary or on probation. The respective appointment orders suggest that the same were on temporary basis. No evidence has been brought by the respondents No.01 to 03 to show even prima facially that their appointment was on contract basis.

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XIV.

Otherwise too, after promulgation of the North-West Frontier Province (now KPK) Civil Servant (Amendment) Act, 2005, followed by rules and regulations for the administration of recruitment of regular posts, now all appointments on regular posts are made on contract basis but status of Civil Servant has been given except for the purpose of pension. In other words, under the present law and rules the appointments are being made on all regular posts on contract basis and they are given the status of Civil Servant with the exception that such appointee shall not be entitled to the benefit of pension, otherwise he is Civil Servant.

XV.

There are two categories of regular posts/vacancies. For one category of regular posts/vacancies Public Service Commission is the competent authority and for the other category of posts/vacancies, District Selection Committee is the competent authority. In the instant case, the appointment of respondents No.01 to 03 have been recommended by District Selection Committee, Tank, the posts on which respondents No.01 to 03 have been appointed are undisputedly regular posts/vacancies. It is the claim of respondents No.01 to 03 that the posts on which they have been appointed fall within the category of District cadre and that the District Selection Committee was the competent forum, this aspect of the case on behalf of respondents No.01 to 03 is undisputed.

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XVI.

It is evident from the record that posts were accordingly advertised, application were invited, respondents were called upon by the respondents for interview etc, and they were then found suitable for the posts and were recommended to be appointed, apparently proper procedure has been followed and adopted. The

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posts are regular in nature, charge has already been assumed by the respondents, since the date of assuming charge till the impugned order rather up till now respondents No.01 to 03 are performing duty. The rules and the policy for the time being is that all regular appointment has to be made on contract basis, however, they got the status of Civil Servant and in view of these facts, I am of the view and hold that respondents No.01 to 03 are Civil Servant, the subject matter of the lis is related to the terms and condition of the service of Civil Servants, therefore, under Section 4 of the Services Tribunal Act, Civil Court has got no jurisdiction.

XVII.

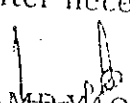
As such I whole holding that Civil Courts has got no jurisdiction, hereby accept the appeal, set aside the impugned judgment, order and decree of the learned lower Court being without jurisdiction. Since to me the matter does not fall within in the jurisdiction of civil Courts, therefore, all other issues are left upon to be decided by the competent forum. Parties shall bear their own costs. Record be returned to the learned lower court with the direction to return the plaint alongwith its enclosure to respondents No.01 to 03 accordingly for presenting the same before proper forum if desire so and consigned the record to record room accordingly. File of this court be consigned to Record Room.

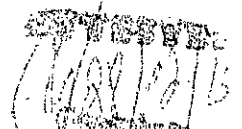
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DATED:
23.02.2013


(MOHAMAMD YAQOOB KHATTAK)
DISTRICT JUDGE, TANK

Certified that my this judgment consists of 06 pages.
Each page has been signed by me after necessary corrections, if required.


(MOHAMAMD YAQOOB KHATTAK)
DISTRICT JUDGE, TANK


23/02/13
District Judge, Tank

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

C.R. No. 31-D of 2013

JUDGMENT

Date of hearing 19-8-2013

Appellant-petitioner Rahmatullah) by Mr. Rustam Khan
& another) Kinnari Advocates

Respondent Secretary Works & Communications (Tank) by
Mr. Sarwar Hafeez Shahwan DAG

ABDUL LATIF KHAN, J.- Through this single judgment, I propose to dispose of C.R.No:31/2013 and C.R.No.39/2013 as both the revisions are the outcome of one and the same judgment dated 23.02.2013 passed by learned District Judge, Tank vide which the appeal filed by Executive Engineer, C&W Department, Tank was accepted, judgment and decree dated 07.01.2012 of learned Civil Judge-III, Tank was set-aside and suit of the petitioners was dismissed.

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2. Facts leading to the instant revision petition are that the petitioners/plaintiffs filed a suit for declaration to the effect that their appointment is valid, proper, after observing legal formalities, on merits and by the competent authority. They sought further declaration to the effect that cancellation of their appointment orders on the basis of secret inquiry being illegal is ineffective upon

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their rights and liable to cancellation. They further sought perpetual injunction restraining the respondents/defendants from canceling their appointment orders.

3. The suit was contested by the respondents/defendants by filing their written statement. The learned trial Court framed issues arising out of the pleadings of the parties. The petitioners/plaintiffs produced their evidence whereas defence of the respondents/defendants was struck off. After hearing the arguments, the learned trial Court partially decreed the suit of the petitioners/plaintiffs vide judgment and decree dated 07.01.2012.

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4. Aggrieved of the judgment and decree dated 07.01.2012, the Executive Engineer, C&W Department, Tank preferred an appeal which was accepted, judgment and decree dated 07.01.2012 of learned Civil Judge-III, Tank was set-aside and suit of the petitioners was dismissed, hence the instant revision petition.

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5. Learned counsel for the petitioners contended that the status of the petitioners is that of contract employees until and unless their services are regulated through an express order by the competent authority. He argued that cancellation of orders amounts to exercise of powers not vested in the respondents. He contended that

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being contract employees, the remedy against the impugned order lies with civil Court and the learned appellate Court has wrongly observed about the jurisdiction of civil Court. He argued that the Executive Engineer was not competent to file the appeal without prior and formal permission from the department. He contended that the findings of appellate Court are without lawful authority and amounts to non-exercise of jurisdiction vested in it.

6. The learned D.A.G argued that being employees of Government department, the petitioners are civil servants and their remedy lies with the Service Tribunal and the civil Court has got no jurisdiction. He supported the judgment of the appellate Court.

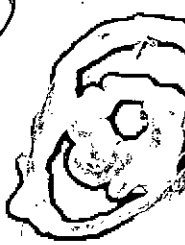
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7. I have given my anxious consideration to the arguments of learned counsel for the parties and perused the record with their valuable assistance.

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8. Perusal of the appointment reveals that petitioners Rehmatullah and Rizwan were appointed as Sub Engineer whereas petitioner Sanaullah was appointed as Road Inspector by the D.C.O, Tank on the recommendation of Departmental Selection Committee in BPS-11 with usual allowances as admissible under the rules on contract basis. The appointment was purely on

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temporary basis, in accordance with the procedure adopted for appointment of civil servants, which was later on cancelled as illegal appointment and after observing all codal formalities, the petitioners were removed from service, against which a civil suit was filed by the petitioners for declaration, questioning the order of their removal from service. The issue with regard to the jurisdiction of civil Court was framed which was decided in affirmative by the learned civil Court and the suit of the petitioners was decreed to the extent of declaration, however, the relief of perpetual injunction was refused. The appellate Court reversed the findings of the trial Court on the ground of lack of jurisdiction and set aside the judgment of trial Court being without jurisdiction. None of the other issues were considered by the appellate Court on the ground of lack of jurisdiction, however, the plaint was returned with the direction to be represented before the proper forum.

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9. Section 9 C.P.C is reproduced below for ready reference:-

"Courts to try all Civil Suits unless barred....The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

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EXAMINOR

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Civil Court has got ample power to try all suits of civil nature unless expressly or impliedly barred.

10. Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 4 of the Service Tribunal Act expressly bar the jurisdiction of any Court including civil Court regarding the matter relating to the terms and conditions of service.

11. Section 2(1)(b) of Civil Servants Act, 1973 has defined the term civil servant which includes a person who is (i) a member of All Pakistan services or (ii) is a civil servant of the Federation or (iii) holds a civil post in connection with the affairs of the Federation including any such post connected with defence but does not include the persons mentioned in sub-clauses (i) and (ii) to the above clause (b) whereas section 5 of Civil Servants Act, 1973 provides that the appointment to the above three categories of the persons shall be made in the prescribed manner by the President or by a person authorized by the President in that behalf. The appointment orders of the petitioners were made on regular basis after adopting all the formalities by the Departmental Selection Committee and on the recommendation of the committee, the competent authority has appointed them. On the promulgation of Khyber Pakhtunkhwa Amendment Act, 2005 and Rules framed thereunder, all the appointments

ATTESTED

ATTESTED

EXAMINOR
High Court

10/9/13



on regular posts are made on contract basis but status of civil servant has been given except for the purpose of pension i.e. those appointments made on regular posts on the basis of contract are given the status of civil servants with the exception of benefit of pension but for all practical purposes, they are civil servants employed in government department against vacant posts, recommended by the Departmental Selection Committee and appointed by the D.C.O, undisputedly against regular posts. The advertisement was made and after interview, they were found suitable for the posts and recommended in regular manner and thereafter they assumed the charge and performed the duties and any subsequent act including the cancellation comes in terms and conditions of civil servants and jurisdiction of civil Court being expressly barred, cannot be invoked in such circumstances. The appellate Court has rightly observed about lack of jurisdiction of civil Court.

ATTESTED

12. For the reasons mentioned above, both the revision petitions being bereft of any merit are hereby dismissed.

Announced.
Dt:19.8.2013.

[Signature]
JUDGE

2
L
9/9/13

[Signature]
10/9/13

5723
Annex-F (35)
Chief Engineer, C & W Department Govt. of Khyber
Pakhtunkhwa Peshawar.

SUBJECT: **DEPARTMENTAL APPEAL.**

Respected Sir,

That the Applicant was appointed on contract basis by the D.C.O against vacant post Road Inspector BPS-06, in the office of works and services, Tank vide office order No. 1659 dated 02/04/2008, after adopting all the legal formalities on merit. That later on D.C.O vide office order No. 6594/Act Tank dated 06/11/2008-R/w office order No. SOE-1/W & SD/2-6/2008 dated 29/09/2008 issued by respondent No. 7, the appointment order of Applicant was allegedly cancelled on the pretext of illegal appointment by conducting one sided secret enquiry which was void, abinitio, fake and unilateral based on the then political influence as neither as enyogue law, show cause notice nor charge sheet was served upon the Applicant nor a requisite defence opportunity was provided to Applicant to defend his position before enquiry officer, nor his statement was recorded. That finally the suit of the Applicant was decreed by the learned trial Court vide Judgment dated 07/01/2012, in favour of petitioner. That the Department challenged the aforesaid Judgment decree in appeal before the learned District Judge Tank, which was accepted vide impugned order decree dated 23/02/2013. The applicant approaches Honourable High Court against J & D through Civil Revision but same was dismissed on the point that applicant is civil servant and jurisdiction of civil court being expressly barred. Now the applicant file this departmental appeal inter alia on following grounds:-

ATTESTED

GROUNDS:-

- 1.** That cancellation of legal appointment order of the Applicant by the respondents is against law, without jurisdiction and in excess of lawful authority, beside the same is based on malafides, is arbitrary, discriminatory and can not be justified for any reason what so ever.

36



2-

That on Javed Ahmad Shah and Gohar Zaman were appointed as Road Inspector in Works and Service Office, Tank by D.C.O vide his order No. 2333-36 dated 13/06/2005 and order No. 6201 dated 24/02/2005, respectively and they are still working in the said Department thus the Applicant is discriminated and it is clear violation of law and constitution of Islamic Republic of Pakistan.

Your Humble Applicant

Sana Ullah

SANA ULLAH

S/o Ghulam Muhammad
R/o Kott Azam Tehsil &
District Tank.

Dated: 16/9/2013

ATTESTED

No. 13

For Insurance Notices see reverse
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

(58)

Received a registered*
addressed to _____ Date-Stamp _____

Initials of Receiving Officer _____
Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.

Insured for Rs. (in figures) _____ (in words) _____

Insurance fee Rs. _____ Ps. _____ (in words) _____
Weight _____ Kilo _____ Grams _____

Name and
address
of sender _____

if insured.

ATTESTED

Annex - F

SERVICE TRIBUNAL KPK PESHAWAR CAMPT AT
DERA ISMAIL KHAN

Appeal No. 1616/2013

Sana Ullah S/O Ghulam Mohammad R/O Kot Azam, Tehsil
and Distt: Tank.

VERSUS

1. Secretary, C & W Department Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer, C & W Department Khyber Pakhtunkhwa Peshawar.
3. Superintending Engineer, C & W Deptt: D.I.Khan.
4. Executive Engineer, C & W Deptt: Tehsil and Distt: D.I.Khan
5. District Co-Ordination Officer Tank

APPEAL AGAINST MALFIDE CANCELLATION ORDER OF
RESPONDENT NO.5 DATED 29/09/2008.

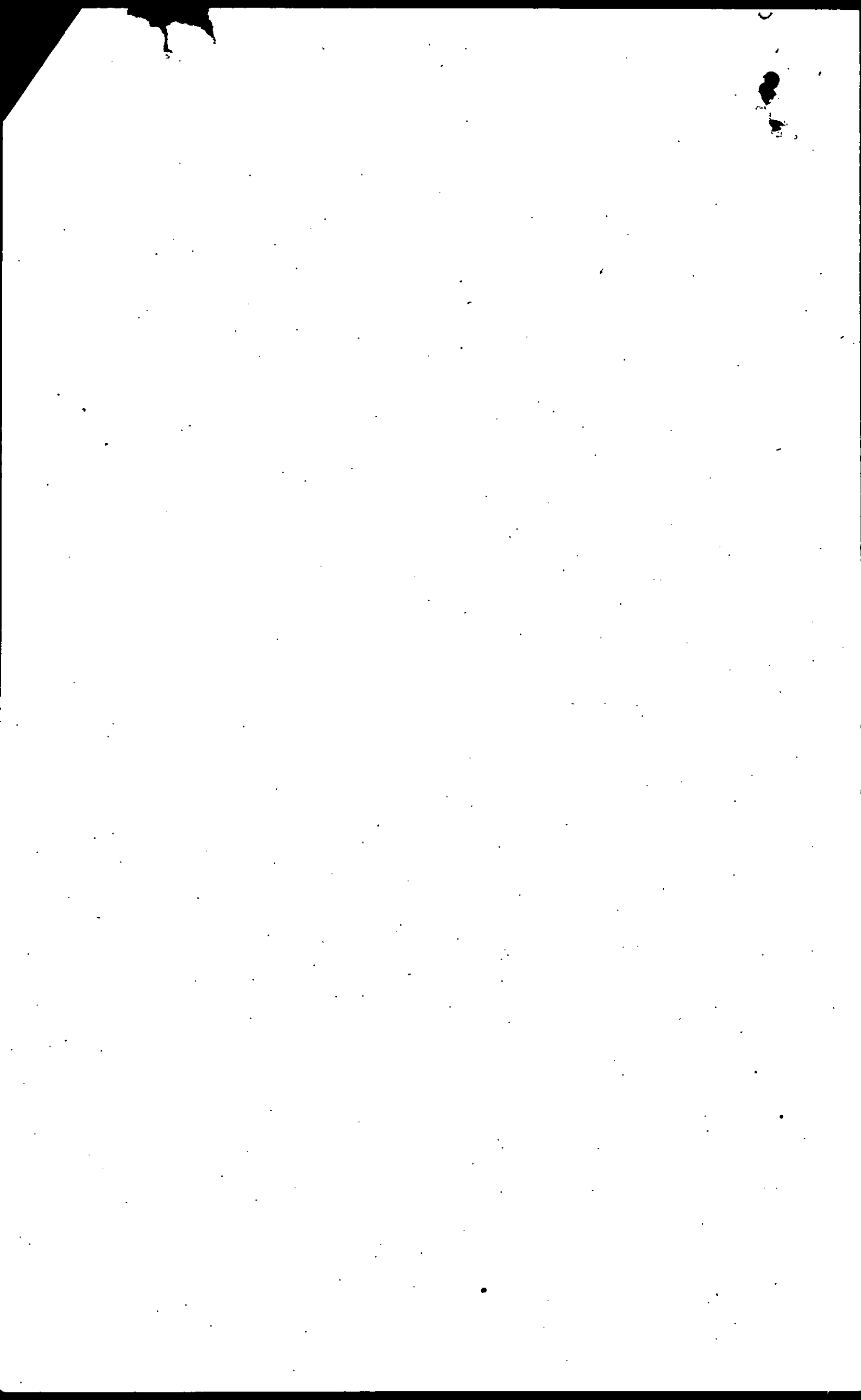
Respected Sir,

- 1) That the applicant was appointed on contract basis by the Respondent No.5 against vacant post of road inspector BPS-6, in the Office of works and Services, Tank vide office order No.1659 dated 02-04-2008, after adopting all the legal formalities on merit. Copy of appointment order is Annexure A.
- 2) That later on Respondent No.5 vide office order No.6594/Act Tank dated 06-11-2008 R/W office order No. SOE-1/W & SD /2-6/2008 dated 29-09-2008 issued by respondent No.7, the appointment order of applicant was allegedly cancelled on the pretext of illegal appointment by conducting one sided secret enquiry was void, ab-initio, and unilateral based on the then political influence as neither as envogue law, show cause notice nor charge sheet was served upon the applicant nor a requisite defense opportunity was provided to applicant to defend his position before enquiry officer, nor his statement was recorded. Copy of order is Annexure B.
- 3) That for redressal of his grievances, the applicant filed suit for declaration and permanent injunction against the Respondents, in the Court of learned Senior Civil Judge Tank along with plant a separate application for temporary injunction was also moved which granted. That finally the

as submitted to
and filed;

ATTESTED

ATTESTED



S.No. Date of
order
proceedings

2

14.05.2015

Order or other proceedings with signature of judge or Magistrate

3

Khyber Pakhtunkhwa Service Tribunal Peshawar

Appeal No. 1616/2013
Sanaullah Khan-vs- Secretary, C&W Department Khyber Pakhtunkhwa,
Peshawar etc.

PIR BAKHSH SHAH, MEMBER:- Counsel for the appellant (Mr. Rizwan Ullah, Advocate) and Mr. Ziaullah, GP for the respondents present.

2. Appellant Sanaullah Khan was appointed as Road Inspector (BPS-6) by DCO Tank (respondent No.6) vide his order dated 02.04.2008. This appointment order was later on cancelled by the same authority, terming it "illegal", on the direction of the competent authority (Chief Secretary NWFP) vide his order dated 29.09.2008. Feeling aggrieved the appellant filed a Civil Suit which was decided in his favor by the Civil Court vide its judgment dated 07.01.2012. This judgment was set aside by learned District Judge Tank vide his judgment dated 23.02.2013 holding therein that being a service matter, the Civil Court lacks jurisdiction. Eventually the matter was put up before the Hon'able Peshawar High Court. D.I Khan Bench in C.R No. 31-D of 2013 decided on 19.08.2013 wherein the Hon'able High Court agreed with the decision of the learned District Judge Tank and revision petition was dismissed. Hence this appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974.

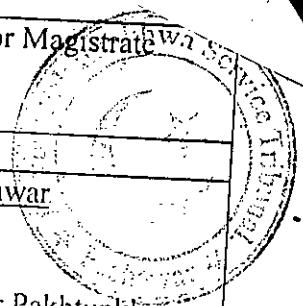
3. Arguments heard and record perused.

4. It was submitted by the learned counsel for the appellant that appointment of the appellant was made by a competent authority according to the prescribed criteria and that the said order was cancelled by incompetent authority without any show cause notice, opportunity of hearing without any charge or enquiry against the appellant. It was further submitted that the appellant in fact is a Civil Servant and that Tribunal alone has jurisdiction to decide the matter. The learned counsel for the appellant relied on 2014 PLC (C.S) 1007, 2009 SCMR 663, PLD 1980 Supreme Court 310, 2005 SCMR 1814, PLD 2008 Supreme Court 412, 2007 PLC (C.S) 85 and Service Appeal No. 832/2008 dated 21.06.2011. He requested that the appellant is over fellow, there he may be reinstated in to service with all back benefits.

5. The learned Government Pleader argued that from the letter of appointment, it is evident that the appellant is a contract employee and

ATTESTED

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



under Section-2 of the Civil Servant Act, the appellant dose not qualify to be called a civil servant, hence this Tribunal lacks jurisdiction .

6. We heard learned counsel for the parties and perused the record.

7. From perusal of the record its transpired that no charge sheet or show cause notice was issued to the appellant, no enquiry was conducted and the impugned order also does not show the reason on the basis of which the appointment order of the appellant was canceled. It is thus evident that opportunity of defense and personal hearing was not provided to the appellant. This being so, the Tribunal would also like to refer to para-1 of the para-wise comments of the respondent-department which is very much important for just decision of the matter. "It is submitted that the then DCO Tank advertised some posts of Sub-Engineer BPS-11 and Road Inspectors BPS-6 in the C&W Division Tank. As per Govt. of Khyber Pakhtunkhwa Notification dated 01.02.1993, recruitment against the post of Sub-Engineer falls with in the purview of Public Service Commission while the post of Road Inspector is dying cadre post and according to Finance Department circular letter No. B1/1-07/2003-04/FD dated 12.04.2004, the post of Road Inspector as and when falls vacant, due to retirement or death of incumbent, would stand abolished. Therefore, the DCO has got no authority to advertise. The said act is void ab-initio against Law and without jurisdiction; hence, the appointments were illegal. It is further added that even the Department Selection Committee, on whose recommendation, the appointments have been made was not in accordance with the Notification No. SOR-V (E&AD) 2-7-2013 dated 17.11.2005. That neither the administrative department i.e C&W Department was approached for their representative nor departmental at representative participated in the appointment procedure."

8. It is crystal clear from the above situation that on one hand the appellant has been ejected from service not in accordance with the prescribed procedure. While on the other hand that the appointment was made on recommendation of the Selection Committee. Since departmental appeal of the appellant has not yet been decided so its the considered opinion of this Tribunal to refer the matter to the appellate authority to look into the matter strictly in accordance with law and rules and to decide the same. The appeal is disposed of accordingly. File be consigned to the record.

ANNOUNCED
14.05.2015

Signature
(ABDUL LATIF)
MEMBER

Signature
(PIR BAKHSH SHAH)
MEMBER

ATTACHED

COPIES OF THE DECISION
FOR THE RECORD
14.05.2015

19.5.2015

1800

8

8

~~22.5.2015~~

~~22.5.2015~~

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Execution Petition No. _____/2015

1. Sanaullah S/O Ghulam Mohammad R/O Kot Azam, Tehsil and District Tank.

PETITIONER

VERSUS

1. Secretary, C & W Department Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer, C & W Department Khyber Pakhtunkhwa Peshawar.
3. Superintending Engineer, C & W Department D.I.Khan.
4. Executive Engineer, C & W Department Tehsil and District D.I.Khan.
5. District Co-ordination Officer Tank.

RESPONDENTS

**APPLICATION UNDER SECTION
7 (2) (D) OF THE KHYBER
PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 FOR
EXECUTION OF ORDER DATED
14-5-2014 PASSED BY THIS
HON'BLE TRIBUNAL IN
SERVICE APPEAL NO. 1616/2013.**

ATTESTED

RESPECTFULLY SHEWETH,

Short facts giving rise to the present execution application are as under:-

1. That the petitioner was appointed as Road Inspector (BPS-6) after observing all legal and codal formalities. He assumed the charge of post accordingly.

42


2. That the petitioner was performing his duty with great zeal, zest and devotion but strangely, his appointment order was cancelled by "Incompetent Authority" in utter violation of law as neither a charge sheet alongwith statement of allegations was served on him nor a regular inquiry was conducted to substantiate his guilt if any against him. Similarly, neither any show cause notice was served on the petitioner nor he was provided any opportunity of personal hearing before awarding the major penalty.
3. That the petitioner felt aggrieved, filed a departmental appeal against the impugned order but the same was not responded within the statutory period of law. Therefore, he invoked the jurisdiction of this Hon'ble Tribunal by way of filing service appeal No.1616/2013 praying therein that the impugned order may graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.
4. That this Hon'ble Tribunal was pleased to dispose of the said appeal with the following observations vide judgment dated 14-5-2015.

It is crystal clear from the above situation that on one hand the appellant has been ejected from service not in accordance with the prescribed procedure. While on the other hand that the appointment was made on recommendation of the Selection Committee. Since departmental appeal of the appellant has not yet been

ATTESTED

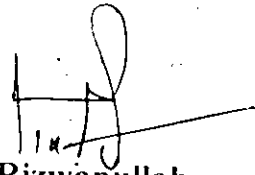
44

In view of the above narrated facts , it is, therefore, humbly prayed that appropriate proceedings may graciously be initiated against the Appellate Authority (respondent No.2) for disobedience of the orders/judgment of this Hon'ble Tribunal and he may also be awarded exemplary punishment in accordance with law.


Petitioner

Through

Dated:- 31-8-2015


Rizwanullah
M.A. LL.B
Advocate High Court,
Peshawar

ATTESTED

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Execution Petition No. _____/2015

- 1. Sanaullah S/O Ghulam Mohammad R/O Kot Azam, Tehsil and District Tank.

PETITIONER

VERSUS

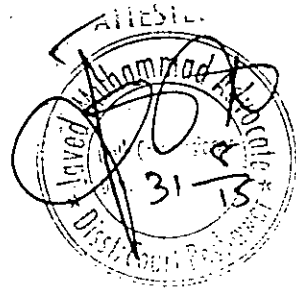
- 1. Secretary, C & W Department Khyber Pakhtunkhwa Peshawar etc.

RESPONDENTS

AFFIDAVIT

I, Sanaullah S/O Ghulam Mohammad R/O Kot Azam, Tehsil and District Tank, do hereby solemnly affirm and declare that the contents of the accompanied Execution Petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

ATTESTED



Sanaullah
DEPONENT

Amex-J

46

OFFICE OF THE
SUPERINTENDING ENGINEER
C&W CIRCLE, DIKHAN.

No: 381 /1-M
Dated DIKhan the 17/11/2015

REGISTERED

✓
Mr. Sanaullah,
S/O Ghulam Muhammad,
R/O Kot Azam,
Tehsil and District Tank.

SUBJECT SERVICE APPEAL NO. 1616/2013 - SANA ULLAH S/O GHULAM MUHAMMAD R/O KOT AZAM TEHSIL & DISTRICT TANK AND EXECUTION PETITION NO. 98/2015.
Reference Khyber Pakhtunkhwa Service Tribunal order dated 14-05-2015 read with order dated 29-10-2015.

The undersigned being **Appellate Authority** has gone through contents of Appeal and order of the Honorable KPK Service Tribunal , your appeal is **disposed of and rejected.**

The fate of said action as taken by the undersigned has since been communicated to Registrar, KPK Service Tribunal Peshawar vide this office memo No.758/1-M, dated 13-11-2015 (Copy attached).

DA/As above

J. Julle
SUPERINTENDING ENGINEER
C&W CIRCLE, DIKHAN.

Copy to the :-

- 1- Chief Engineer (Centre) C&W Department, Peshawar.
- 2- Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar
- 3- The Section Officer (Estab) C&W Department, Peshawar
- 4- The Section Officer (Litigation) C&W Department, Peshawar.
- 5- The Executive Engineer C&W Division, Tank.

ATTESTED

✓
SUPERINTENDING ENGINEER

OFFICE OF THE
SUPERINTENDING ENGINEER
C&W CIRCLE, DIKHAN

No. 758 J-17
Dated DIKhan the 13 /11/2015

To

The Chief Engineer (Centre),
C&W Department,
Peshawar.

SUBJECT

SERVICE APPEAL NO.1616 OF 2013 - SANAULLAH S/O
GHULAM MUHAMMAD R/O KOT AZAM TEHSIL & DISTT. TANK
AND EXECUTION PETITION NO.98/2015

With reference to your letter No.372-E/ 621/ CEC/ C&WD Dated 12-11-2015, whereby, you have forwarded copy of Judgment of Service Tribunal Khyber Pakhtunkhwa dated 14-05-2015 where the Service Tribunal directed that the Appellate Authority to look into the matter strictly in accordance with law, rules and to decide the same".

2- Now in pursuance of the advice tendered by the Establishment Department (Regulation Wing) vide memo No.SOR-V (E&AD)/Gen/C&W/14 dated 05-11-2015, the undersigned, stated Appellate Authority, has examined the matter/appeal and found that the appointment of the said incumbent (Mr.Sanaullah) against the post of Road Inspector being personal to incumbent, meaning thereby "Dying Cadre" from 1998, made by DCO Tank on 02-04-2008 was irregular, void abinitio and contrary of the instructions of Finance Department memo No.BOI/1-70/2003-04/FD, dated 12-04-2004, which was also transmitted to all DCOs, well in advance i.e in April 2004 by the Govt. of KPK in Finance Department.

3- In compliance of the judgment dated 14-05-2015 of the Service Tribunal, the undersigned as APPELLATE AUTHORITY hereby reject the Appeal of Appellant, as the relevant rules/regulation and other ancillary instructions, orders of the Govt. were not applied in this appointment.

ATTESTED

[Signature]
SUPERINTENDING ENGINEER
C&W CIRCLE, D.I.KHAN

Copy forwarded to the:-

- 1- The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to the Tribunal Judgment dated 14-05-2015 and dated 29-10-2015 in the subject Appeals.
- 2- The Section Officer (Establishment) C&W Department, Peshawar.
- 3- The Executive Engineer C&W Division, Tank.

[Signature]
SUPERINTENDING ENGINEER
C&W CIRCLE, D.I.KHAN

C&W Dept. (Centre)
Dairy No. 2528
Date 16/11/15
Case No.
C.E. Day
S.E. (H.O)
D.E. (S.O)
TO
NO.
NO.
NO.

Amey-K



BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 98 /2015

W.P. Proceedings
Service Tribunal

Slary No. 283
Date 31-8-15

1. Sanaullah S/O Ghulam Mohammad R/O Kot Azam. Tehsil and District Tank.

PETITIONER

VERSUS

1. Secretary, C & W Department Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer, C & W Department Khyber Pakhtunkhwa Peshawar.
3. Superintending Engineer, C & W Department D.I.Khan.
4. Executive Engineer, C & W Department Tehsil and District D.I.Khan.
5. District Co-ordination Officer Tank.

RESPONDENTS

ATTESTED

Chairman
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

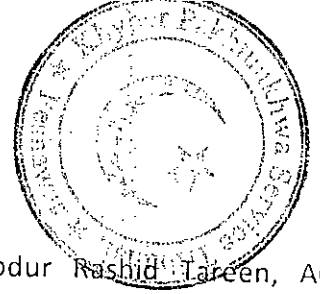
APPLICATION UNDER SECTION 7 (2) (D) OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR EXECUTION OF ORDER DATED 14-5-2014 PASSED BY THIS HON'BLE TRIBUNAL IN SERVICE APPEAL NO. 1616/2013.

RESPECTFULLY SHEWETH,

Short facts giving rise to the present execution application are as under:-

1. That the petitioner was appointed as Road Inspector (BPS-6) after observing all legal and codal formalities. He assumed the charge of post accordingly.

49



27.11.2015

Petitioner with counsel and Mr. Abdur Rashid Tareen, AO alongwith Addl. A.G for respondents present. Arguments heard and record perused.

According to judgment of this Tribunal dated 14.5.2015 it was directed that the appellate authority shall decide the departmental appeal of the petitioner strictly in accordance with law and rules. Vide letter dated 16.11.2015 and copies annexed thereto the appellate authority has rejected the departmental appeal of the petitioner and as such the directions contained in the judgment stood complied with.

Learned counsel for the petitioner, while referring to the agonies of the petitioner and case law reported as PLD 2013 SC 501, argued that the petitioner is entitled to compensatory costs. This Court is neither in a position to assess the agonies of the petitioner nor can calculate the compensation including liability of the respondents as such the prayer of the petitioner to this effect is rejected. The petitioner may, however, claim any such compensation in the prescribed manners before the competent forum, if so advised. File be consigned to the record room.

Certified to be true copy
Kyber Pakhtunkhwa
Service Tribunal,
Peshawar
ANNOUNCED
27.11.2015

sd/-
Chairman
27.11.15

Date of Petition 27-11-15

Number of Words 800

Copying Fee 600

Urgent no

Total 600

Name of Copyist [Signature]

Date of Completion 2-12-15

Date of Delivery 2-12-15

OFFICE OF
THE DISTRICT COORDINATION OFFICER,
TANK.
NO. 2533-36,
DATED 12.06.2005.

To: Mr. Javed Ahmad Shah
S/o Pir Alam Shah,
Village Mulazai Tehsil &
District Tank.


Subject: APPOINTMENT AS ROAD INSPECTOR

As recommended by the Departmental Selection, Promotion and appointment committee, you are hereby offered the Post of Road Inspector BPS-6 (Contract Bases) @ Rs. 2160-110-5450-PM with Plus usual allowances as admissible under the rules.

If you accept the post on the following condition you should report arrival for duty in the Office of the Deputy Director, Works & Services, Tank.

- (i) Your appointment is purely on temporary basis & can be terminated at 14 days (Fourteen Days) notice at any time without assigning any reason irrespective of the fact that you may be holding a post other than the one to which you were originally appointed or on the payment of 15 days pay in lieu of notice.
- (ii) In case you wish to resign at any time 14 days notice shall be necessary otherwise 15 days pay shall be forfeited.
- (iii) You will join duty at you own expenses.
- (iv) You will have to produce Medical Fitness Certificate on reporting for duty.

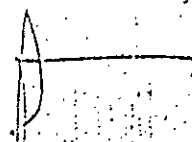
*Attested
Shankar*


District Coordination Officer,
Tank.

Copy to the:-

- 4. Executive District Officer, Finance & Planning Tank.
- 5. Deputy Director Works & Services, Tank.
- 5. District Accounts Officer, Tank for information & necessary action.

ATTESTED


District Coordination Officer,
Tank.

To:-

Mr. Javed Ahmad Shah
S/o Pir Alam Shah,
Village Mulazai Tehsil &
District Tank.

Subject:- APPOINTMENT AS ROAD INSPECTOR.

As recommended by the Departmental Selection Promotion and appointment committee, you are hereby offered the Post of Road Inspector BPS-6 (Contract Bases) @ Rs. 2160-110-5150-PM with Pluse usual allowances as admissible under the rules.

If you accept the post on the following condition you should report arrival for duty in the Office of the Deputy Director Works & Services, Tank.

- (i). Your appointment is purely on temporary basis & can be terminated at 14 days (Fourteen Days) notice at any time without assigning any reason irrespective of the fact that you may be holding a post other than the once to which you were originally appointed or on the payment of 15 days pay in lieu of notice.
- (ii). In case you wish to resign any time 14 days notice shall be necessary otherwise 15 days pay shall be forfeited.
- (iii). You will join duty at you own expenses.
- (iv). You will have to produce Medical Fitness Certificate on reporting for duty.

Director Coordination Officer,
Tank

Copy to the:-

1. Executive District Officer, Finance & Planning Tank.
2. Deputy Director Work & Services, Tank.
3. District Accounts Officer, Tank for information & necessary action.

ATTESTED

Director Coordination Officer,
Tank

OFFICE OF
THE DISTRICT COORDINATION OFFICER,
TANK.

NO. 620/1
DATED 24/12/2005

To,
Mr. Gohar Zaman,
S/o Gul Zaman,
Village Kot Kat, District Tank.

Subject: APPOINTMENT AS ROAD INSPECTOR

As recommended by the Departmental Selection, Promotion and appointment committee, you are hereby offered the Post of Road Inspector against the existing vacancy caused due to retirement of Gul Khan S/o Qadir Khan @ Rs. 2160/- Pm. Plus usual allowances as admissible under the rules in BPS-6 i.e 2160-110-5460.

If you accept the post on the following condition you should report arrival for duty in the Office of the Deputy Director, Works & Services, Tank,

- (i) Your appointment is purely on temporary basis & can be terminated at 14 days (Fourteen Days) notice at any time without assigning any reason irrespective, of the fact that you may be holding a post other than the one to which you were originally appointed or on the payment of 15 days pay in lieu of notice.
- (ii) In case you wish to resign at any time 14 days notice shall be necessary otherwise 15 days pay shall be forfeited.
- (iii) You will join duty at your own expenses.
- (iv) You will have to produce Medical Fitness Certificate on reporting for duty.

District Coordination Officer,
Tank

Copy to the:-

Executive District Officer, Finance & Planning Tank.

Deputy Director Works & Services, Tank.

District Accounts Officer, Tank for information & necessary action.

District Coordination Officer,
Tank

ATTESTED

VAKALATNAMA

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1366 /2015

Date of Judgment = 10-05-2016

Sanaullah s/o Ghulam Mohammad R/o Kot
Azam, Tehsil & District Tank. APPELLANT / PETITIONER

VERSUS

Chief Secretary, Govt of KPK, & others.

RESPONDENTS

I Sanaullah, do hereby appoint **Rizwanullah, Advocate** Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration for me as my Counsel / Advocate in the above noted matter, without any liability for his default and with the authority to engage / appoint any other Advocate/Counsel on my costs. Roeda
Khan
Adv

I authorize the said Advocate to deposit, withdraw and receive on my behalf all sums and amounts payable or deposited on my account in the above noted matter. The Advocate/Counsel is also at liberty to leave my case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me.

Dated: 1-12/2015

Sanaullah

CLIENT

Roeda Khan
ROEEDA KHAN
Advocate High
Court

Approved & Accepted

MR. RIZWANULLAH

MR. RIZWANULLAH
Advocate High Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 1366/2015

Mr. Sanaullah S/O Ghulam Muhammad
R/O Kot Azam Tehsil & Distt. Tank.....Appellant

VERSUS

1. Chief Secretary Govt of Khyber Pakhtunkhwa Peshawar
2. Secretary, C & W Department Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer C&W Department Khyber Pakhtunkhwa Peshawar.
4. Superintending Engineer, C&W Department, DIKhan.
5. Executive Engineer C & W Department, Tehsil & District Tank.
6. District Coordination Officer Tank.....Respondents

COMMENTS ON BEHALF OF RESPONDENTS NO.1 TO 5

RESPECTFULLY SHEWETH

PRELIMINARY OBJECTIONS

- 1- The instant appeal before this Honorable Tribunal is not entertainable and incompetent due to the facts that the appellant on his own conduct badly failed to seek remedies from the proper forum when he was aggrieved of the orders dated 29-09-2008, and went in Civil Courts which lasted till January 2012, hence appeal is badly time barred.
- 2- The contents of appeal are misconceiving and the real material and facts had been kept concealed from this Hon'ble Tribunal.
- 3- The appellant is estopped by his own conduct to prefer the instant appeal before this Tribunal.
- 4- The Appellant has got no locus standi and cause of action.
- 5- The Appellant has not come to the Tribunal with clean hand.
- 6- That the instant appeal is not maintainable under section 4 of the Service Tribunal Act.

COMMENTS AGAINST THE PRAYER IN APPEAL.

As stated in the preliminary objections at-1, the impugned order of dated 29-09-2008 read with order dated 17-11-2015 is opposed as the appeal being badly time barred. Even any departmental appeal filed in the past prior to entering in Civil Court if not decided within the 90-days of statutory period, have failed to seek remedy from the Tribunal under Section-4 of the KPK Service Tribunal Act, 1974.

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FURTHER COMMENTS ON :

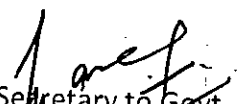
FACTS

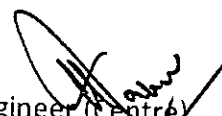
- 1- It is correct to the extent that the appellant was appointed by the DCO District Tank on 02-04-2008, but the post of Road Inspector was already declared Dying Cadre Vide Finance Department Memo No.B-1/1-70/2003-04/FD dated 12-04-2004 with copies to all DCOs, the DCO thus illegally made the appointment of appellant as Road Inspector, which is void abinitio.
- 2- Incorrect. The illegalities of DCO on account of appointment in C&W Department were reported to the Govt., the competent Authority (Chief Secretary/Chief Minister) ordered for the probe with formal approval of the termination of appellant. The Charge Sheet & Statement of Allegation, Show Cause Notice of illegalities is not warranted or to point the guilt on the part of Appellant, so it not warranted to personal hearing of the appellant then.
- 3- It was a futile attempt of appellant who sued his case before Civil Judge-III Tank thus the orders were set aside as impugned decree by the District Judge, Tank.
- 4- Pertains to Court record.
- 5- Correct as stated/described by the appellant, the August High Court Peshawar dismissed the Writ of appellant on 19-08-2013.
- 6- Incorrect.
 - i) The appellant neither submitted departmental appeal before the competent/relevant authority nor narrated at any Stage in the litigations carried in Civil Court viz Civil Judge/ District Session Judge or August High Court.
 - ii) So far the orders dated 14-05-2015 relating to observance of orders of this Tribunal have been complied with in its true spirit, despite that his departmental appeal dated 16-01-2013, when the Writ of appellant was adjudicated in the High Court was time bared of the original order as issued on 29-09-2008.
- 7- Incorrect. The contention of appellant that paid no head to the lawful order/judgment of this Honorable Tribunal order dated 14-05-2015 and then filing execution petition before the Tribunal was irrelevant and unrealistic.
- 8- Correct to the extent that in compliance of the directions of this Honorable Tribunal, the Appellate authority decided the case on 13-11-2015 and rejected, the appellant was accordingly informed vide Respondent -4 order dated 17-11-2015. (Already annexed-J at page 46 of the Appeal).
- 9- Not comments, so far replying Respondents are concerning.
- 10- As explained in above paras the comments to Grounds are as under.

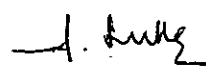
GROUND


- A. Incorrect. The replying Respondents are bound to follow with the rules/Regulations of the Govt. which are applied in the appellant's case.
- B. Incorrect. The matter of illegal appointments was reported to the high-ups against the DCO who was coming under the Administrative Control of Govt. (Chief Minister/Chief Secretary) passed orders and approval for initiating case against the culprits with the direction to cancel the illegal orders made by the DCO of Sub Engineers and Road Inspector. The orders were then cancelled by the DCO Tank vide No. 6595-03/Acctt dated 06-11-2008 and not by the Chief Secretary, hence falls and wrong interpretation.
- C. Misconceiving. In the appellant case, it was not the matter of disciplinary nature on the part of appellant, so there was not necessary to issue charge Sheet/Statement of allegation or Show Cause Notice to the appellant, therefore is misconception.
- D. In the current changed scenario, the Apex Supreme Court of Pakistan orders was passed on 15-01-2014 in Civil Petition(s) No.2026 and 2029 of 2013 attracts i.e
"that one wrong or any number of wrongs cannot be made basis to justify an illegal action under the grab of Article 25 of the Constitution"
(Annexure-I).
- E. As per Para "D".
- F. Incorrect. The rejection order had been passed on the remand of previous Service appeal to the appellate authority.
- G. Incorrect and misconception.
- H. Incorrect. The impugned order is in accordance with Law.
- I. Incorrect, as per Paras mentioned above.
- J. The replying Respondents seek permission to advance further grounds at the time of arguments.

In the light of above submissions, it is prayed that the appeal being badly time bared, may please be dismissed with cost.


Secretary to Govt. of
Khyber Pakhtunkhwa
C&W Department Peshawar
(Respondent-1 & 2)


Chief Engineer (Centre)
C&W Department
Khyber Pakhtunkhwa Peshawar
(Respondent-3)


Superintending Engineer
C&W Circle D.I.Khan
(Respondent-4)


Executive Engineer
C&W Division Tank.
(Respondent-5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 1366/2015

Mr. Sanullah S/O Ghulam Muhammad
R/O Kot Azam Tehsil & Distt. Tank.....Appellant


VERSUS

1. Chief Secretary Govt of Khyber Pakhtunkhwa Peshawar
2. Secretary, C & W Department Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer C&W Department Khyber Pakhtunkhwa Peshawar.
4. Superintending Engineer, C&W Department, DIKhan.
5. Executive Engineer C & W Department, Tehsil & District Tank.
6. District Coordination Officer Tank

.....Respondents

AFFIDAVIT

I, Abdur Rashid Tareen Administrative Officer, Office of the Chief Engineer Centre C&W Department, Peshawar, do hereby solemnly affirm and declare on oath that the content of accompanying Parawise comments on behalf of Respondents No.1 to 5 are true and correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Court.


DEPONENT
Administrative Officer (Centre)
Communication & Works Deptt.
Khyber Pakhtunkhwa Peshawar.

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI
MR. JUSTICE EJAZ AFZAL KHAN

C. Ps. No. 2026 and 2029 of 2013.
(On appeal against the judgment
dt. 2.10.2013 passed by the
Peshawar High Court, Peshawar in
W. Ps. No. 271-P and 663-P of 2013).

Mushtaq Ahmed and another,
Muhammadi Nasir Ali and others.

(in CP. 2026/13)
(in CP. 2029/13)
...Petitioners.

Versus:
Government of KPK through Chief Secretary,
Peshawar and others.

(in both cases)
...Respondents.

For the petitioners:

Mr. Ghulam Nabi Khan, ASC,
Syed Safdar Hussain, AOR.

For the respondents:
(on court notice)

Sikandar Khan, Chief Engineer, PHEK, KPK.

Date of hearing:

15.01.2014.

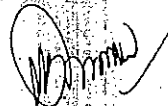
ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments

of the learned ASC for the petitioners and careful perusal of the case
record particularly the reasons assigned in the impugned judgment,
we are satisfied that no case for grant of leave to appeal is made out,
including the plea of discrimination raised by the petitioners, as one
wrong or any number of wrongs, cannot be made basis to justify an
illegal action under the garb of Article 25 of the Constitution. Both
these petitions are, therefore, dismissed. Leave is refused.

2. So far as some other illegalities in the appointments
brought to our notice is concerned, in response to our earlier order
dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health
Engineering, Department, KPK is present in Court, he states that

ATTESTED



Sworn in Court
Supreme Court of Pakistan

2009/73

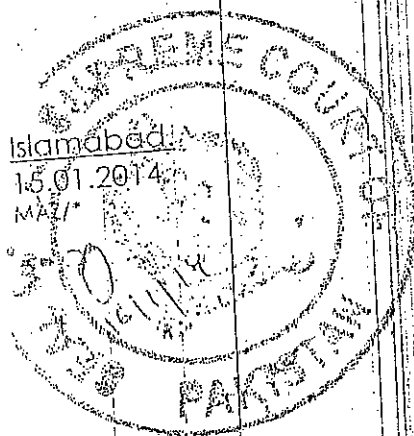
although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/- Ammar Zabeer Jawali &
Sd/- Ejaz Afzal Khan &

Certified to be True Copy

[Signature] 16-1-14
Superintendent
Supreme Court of Pakistan
Islamabad



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 860 /ST Dated 24/5/2016


To

The Secretary C&W,
Peshawar

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 10.5.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.