

Appeal No. 357/2016
S. M. Ahsan Shah vs Govt

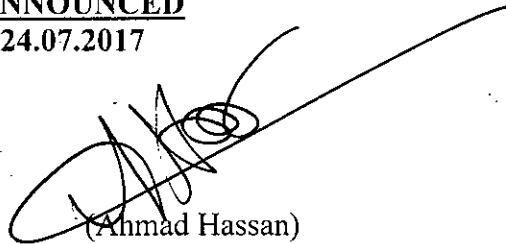
12. 24.07.2017

Learned counsel for the appellant present.

Learned Deputy District attorney on behalf of respondents present. Vide our separate judgment of today placed on file bearing appeal No. 289/2016 titled Amir Muqtada Qureshi Ex-Sub Engineer Versus The Secretary, Public Health Engineering Department Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar, the present appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

24.07.2017



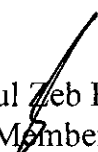
(Ahmad Hassan)
Member




(Muhammad Hamid Mughal)
Member

24.05.2017


Clerk of the counsel for appellant and Mr. Muhammad Adeel Butt, Additional AG AG for respondent present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 12.07.2017 before D.B.

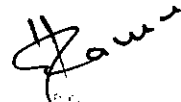

(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

12.07.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Muhammad Saddique, Administrative Officer for present. Arguments heard. To come up for order on 24.07.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

11.04.2017

Counsel for the appellant present. Mr. Muhammad Yasin, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents also present. The present appeal was partially heard by D.B comprising of Chairman and Mr. Muhammad Amin Khan Kundi Learned Member (Judicial) but today the said D.B is not available. The office is directed to put up the instant appeal before a D.B in which both the above mentioned officers are sitting. To come up for arguments on 08.05.2017 before D.B.



(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

8.05.2017

Clerk of counsel for the appellant and Addl. AG for the respondents present. Due to strike of the bar counsel for the appellant is not available. To come up for final hearing for 24.05.2017 before D.B.


Member


Chairman

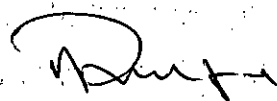
27.09.2016

Counsel for the appellant and Mr. Muhammad Yasin, Superintendent alongwith Mr. Farhaj Sikander, Government Pleader for the respondents present. Learned counsel for the appellant stated that he does not want to file rejoinder and requested that the appeal may be fixed for arguments. To come up for arguments on 26.12.2016 before D.B at Camp Court D.I.Khan


Member
Camp Court D.I.Khan

26.12.2016

Mr. Tehsin Alamdar, Advocate for appellant and Mr. Muhammad Yasin, Superintendent alongwith Mr. Farhaj Sikandar, Government Pleader for the respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 27.03.2017 before D.B at Camp Court D.I.Khan.


ASHFAQUE TAJ
MEMBER
Camp Court D.I.Khan

31.03.2017

Counsel for the appellant submitted application for hearing of the appeal alongwith connected appeals on 11.4.2017 at Principal Seat at Peshawar instead of 24.07.2017 at camp court D.I.Khan. Application accepted. To come up for final hearing before the D.B alongwith connected appeals on 11.4.2017 at Peshawar instead of 24.07.2017 at camp court, D.I.Khan. Notices be issued to the respondents.


Chairman

26.04.2016

Mr. Rustam Khan Kundi, Advocate, for the appellant present and submitted that without giving any opportunity of defense and personal hearing to the appellant, he has been sacked. He further submitted that this service appeal is maintainable for the reason that departmental appeal of the appellant has been decided against him. He also asserted that the respondent-department fulfilled codal formalities and thus the impugned order is not lawful and in violation of law of natural justice. He also argued that the appeal is within time.

Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 30.08.2016 before S.B. *at camp court D.I Khan*

Appellant Deposited
Security & Process Fee


Member
Camp court D.I Khan

30.08.2016

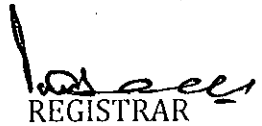

Appellant in person and Mr. Muhammad Yaseen, Supdt alongwith Mr. Farhaj Sikandar, GP for respondents present. Written reply/comments submitted, copy of which is placed on file. To come up for rejoinder on 27.09.2016 before S.B at camp court D.I Khan.


Member
Camp court D.I Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 357/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.04.2016	<p>The appeal of Syed Muhammad Ahsan Shah presented today by Mr. Rustam Khan Kundi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	11-04-2016	<p>This case is entrusted to Touring S. Bench at D.I.Khan for preliminary hearing to be put up thereon <u>26.4.16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE HONOURABLE SERVICE TRIBUNAL K.P.K
PESHAWAR

S.T.A No. 357 2016.

Syed Muhammad Ahsan Shah Appellant

VERSUS

Government of KPK etc..... Respondents

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4	Copy of termination order No.37/E-4/PHE Dated 14.02.2014	III	7
5	Copy of Reply Dated 18.02.2014	IV	8-9
6	Copy of Departmental Appeal Dated 25.02.2014	V	10-15
7	Copy of Decision/order Dated 30.12.2015	VI	16-23
8	Copy of Impugned Order No. SO(Estt)/PHED/1-90/2013-14.VOI-II Dated Peshawar the, 03.03.2016	VII	24
9	Vakalat Nama		25

Dated 01.04.2016

Yours Humble Appellant



Syed Muhammad Ahsan Shah
Through Counsel



Rustam Khan Kundi
Advocate High Court

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBR PAKHTUNKHWA PROVINCE
PESHAWAR.

S.T.A No. 357 2016

Syed Muhmmad Ahsan Shah,
S/o Syed Muhammad Hassan Shah,
R/O, Village Katgarah Tehsil Paharpur,
D.I.Khan.....

G.W.F. Province
Service Tribunal
Diary No 330
Dated 04-04-2016

APPELLANT.

VERSUS

1. The Govt of Khyber Pakhtunkhwar through:-
The Secretary, Public Health Engineering Deptt:
Peshawar.
2. The Chief Engineer (South) Khyber Pakhtunkhwa
Public Health Engineering Deptt:
Peshawar.**RESPONDENTS.**

Further Representation (Appeal) under S-4 of Khyber Pakhtunkhwa Service Tribunal (Act-I) 1974 against order dated 03.03.2016 (Passed at Peshawar in the Absence of Appellant at Peshawar on 03.03.2016) whereby Appeal No. 723/2014 dated 25.02.2014 (remitted by the Honorable Tribunal on 30.12.2015) against the impugned order No. 37/E-4/ PHE dated 14.02.2014 by the respondent No.2 has been dismissed, concurring on variant or dissimilar grounds (vide para 5 of the impugned order dated 03.03.2016) with the original, Impugned order dated 14..02.2014 of the Respondent No.2.

PRAYER.

On acceptance of the instant Appeal, to set aside the two impugned orders dated. 03.03.2016 and 14.02.2014 passed by the respondent No.1 & 2 respectively and to re-instate the Appellant in his incumbency of BPS-11 (Sub Engineer) with all Back benefits since 14.02.2014.

Date of communication impugned order dated 01.03.2016 at Dera Ismail Khan

12.03.2016.

Russ
Advocate
1/4/16

4/4/16

The Appellant, amongst other grounds, respectfully submits as follows.

1. The Appellant was appointed on the recommendation of the Departmental Selection Committee (Constituted by the Respondent No.2 without any objection or exception from the respondent No.1)
2. The Appellant was allowed all fringe benefits and perks of a regular employee since 20.12.2008 and the appointing authority (now substituted by C.E (S) PHED) did not indicate any cause of complaint before the issuance of Show Cause notice (Copy enclosed as Annexure-II) dated 21.01.2014.
3. The Appellant submitted reply on 18.02.2014, but before 18.02.2014, the services of the Appellant were terminated vide order No. 37-E/4/PHE dated 14.02.2014 (Copy enclosed as Annexure -III) and copy of reply dated 18.02.2014 is enclosed as Annexure -IV.
4. The Appellant was relieved off on 14.02.2014 (Copy is enclosed as Annexure-V)
5. The Respondent No.1, declined to pass order within the prescribed bout of period of limitation.
6. The Appellant was obliged to prefer S.T.A No.723 on 22.05.2014 copy is enclosed as Annexure-VI.
7. The Honourable Tribunal on 30.12.2015 passed its appellate order and remitted the S.T.A No.723 of 2014 and the Departmental appeal dated 25.02.2014 to the Respondent No.1
8. The Respondent No.1 afforded opportunity of personal hearing on 08.02.2016 in the absence of prosecution agent (thence after Defence agent before him) and did not give opportunity of oral cross-examination of the agent of the Respondent No.2 and did not hear the parties under article 161 of the Q.S.O 1984 and passed the impugned order on 03.03.2016. Copy enclosed as Annexure-VII.
9. There is no other adequate remedy under Civil Servant Act (XVIII) 1973. Hence the instant Appeal which is well within time under S-22 of the Act Ibid r/w Appeal Rules, 1986.

Handwritten signature
 11/4/16

GROUND OF THE APPEAL.

- i). The grounds narrated in S.T.A No.723 of 2014 vide its Para No.i to iv , vii are reiterated and further grounds are urged as under:-
- ii). The devolution of power to the Distt: Co-Ordination officer of the Distt: Govt and the exclusion of incumbencies of BPS 11 to 15 from the jurisdiction of the Public Services Commission had caused confounded situation and due to such imbroglio, the selection through Public Service Commission could not be made and there was thus no reference to P.S.C by 31.12.2009.
- iii). In case of some anomaly or irregularity in the appointments, that is curable under the rule of locus paeonitentiae & the remedial provisions of S-21 of the Contract act (IX) 1872 when employment of a qualified candidate is not unlawful fiat.(Reference is made to PLJ-2012-P/64-NLR2005CC-P31-NLR 2005 CC SC-44)
- iv). There is no adverse consequences of selection for initial recruitment without advertisement and there are incumbencies of BPS 20 and above under Govt which are filled up without press advertisement and the sacked employees under the promulgations of Re-instatement of Sacked Employees Act 2010 and 2012 were re-instated which provide sufficient anchor for sustention of appointment order dated 20.12.2008. ;moreso; when Termination simpliciter after expiry of probation period is not valid fiat.
- v). The Appellant's Counsel may be permitted to urge further grounds in the contexts of various Acts of Regularization of Contract and Adhoc employees.

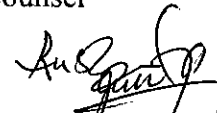
It is therefore PRAYED that the instant Appeal may graciously be Accepted.

Yours Humble Applicant,



Syed Muhammad Ahsan Shah

Through Counsel


Advocate 1/4/16

Dated 01.04.2016.

VERIFICATION.

It is solemnly affirmed that the contents of the appeal are true and correct to the best of my knowledge and belief.



APPELLANT.

4

Annexure

OFFICE OF THE CHIEF ENGINEER
PUBLIC HEALTH ENGG: DEPARTMENT

No. 01 / E-4 / PHE

Dated Pesh: the 20 / 12 / 2008

OFFICE ORDER.

On the recommendation of the Department Selection Committee as per its meeting held on 13/08/2008, the competent authority is pleased to offer a post of Sub Engineer (BPS-11) to Mr. Syed Muhammad Ahsan Shah S/O Syed Muhammad Hassan Shah R/O Village Kathgarh Tehsil & District D.I.Khan on the following terms and conditions:-

- 1) He will get pay at the minimum of BPS-11 (Rs.4115 - 275 - 12365) including usual allowances as admissible under the rule. He will also be entitled to annual increment as per existing policy.
- 2) He shall be governed by the NWFP Civil Servants Act 1973 and all the laws applicable to the Civil Servants and Rules made there under.
- 3) He shall, for all intents and purposes, be Civil Servant except for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount contributed by him towards Contributory Provident Funds (C.P.F) alongwith the contributions made by Government to his account in the said fund, in the prescribed manner.
- 4) His employment in the PHHE Department is purely temporary and his services are liable to be terminated without assigning any reason at fourteen (14) days notice or on the payment of 14 days salary in lieu of the notice. In case he wishes to resign at any time, 14 days notice will be necessary or in lieu thereof 14 days pay will be forfeited.
- 5) He shall, initially, be on probation for a period of two years extendable upto 3 years.
- 6) He shall produce a medical certificate of fitness from Medical Superintendent, District HQ Hospital Haripur before reporting himself for duty to the Deputy District Officer WS&S Haripur, as required under the rules.
- 7) He has to join duty at his own expenses.
- 8) If he accepts the post of these conditions, he should report for duty to the Deputy District Officer WS&S Haripur within 14 days of the receipt of this offer and produce original certificates in connection with his qualifications, domicile and age.

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Duty
Probation
↑

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Letter

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Ahsan

CHIEF ENGINEER

Copy to the :-

- 1) ✓ Deputy District Officer WS&S Haripur.
- 2) District Accounts Officer Haripur.
- 3) * Mr. Syed Muhammad Ahsan Shah S/O Syed Muhammad Hassan Shah R/O Village Kathgarh Tehsil & District D.I.Khan

HC/DAO
For necessary action.
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DAO

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Ahsan Shah
CHIEF ENGINEER



5

Annexure D

OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

No. 32 / E-4/PHE

Dated Peshawar, the 21 / 01 / 2014

To

- | | |
|-------------------------------|----------------------------|
| 1. Mr. Tariq Nawaz | Sub Engineer, |
| 2. Mr. Sajjad Khan | Sub Engineer, |
| 3. Mr. S. Mohammad Ihsan Shah | Sub Engineer, |
| 4. Mr. S. Muhammad Ali Sajjad | Sub Engineer, |
| 5. Mr. Abdul Samad | Sub Engineer, |
| 6. Mr. Shaukat Ali | Sub Engineer, |
| 7. Mr. M. Ali Noor | Sub Engineer, |
| 8. Mr. Irshad Elahi | Sub Engineer, |
| 9. Mr. Hussain Zaman | Sub Engineer, |
| 10. Mr. Salim Nawaz | Sub Engineer, |
| 11. Mr. S. Ashfaq Ahmad | Sub Engineer, |
| 12. Mr. Murtaza Ali | Sub Engineer, |
| 13. Mr. Sahar Gul | Sub Engineer, |
| 14. Mr. Ishfaq | Sub Engineer, |
| 15. Mr. Abdul Shahid | Sub Engineer, |
| 16. Mr. Kashif Raza | Sub Engineer, |
| 17. Mr. Waqar Ali | Sub Engineer, |
| 18. Mr. Muslim Shah | Sub Engineer, |
| 19. Mr. Ishtiaq Ahmad | Sub Engineer, |
| 20. Mr. Zuhib Khan | Sub Engineer, |
| 21. Mr. S. Hassan Ali | Sub Engineer, |
| 22. Mr. Mohsin Ali | Sub Engineer, |
| 23. Mr. Muqtada Qureshi | Sub Engineer, |
| 24. Mr. Ishfaq Ahmad | Sub Engineer, |
| 25. Mr. M. Qaiser Khen | Sub Engineer, |
| 26. Mr. Nomanullah | Sub Engineer, |
| 27. Mr. M. Imran | Senior Scale Stenographer, |
| 28. Mr. M. Jamil | Steno Typist, |
| 29. Mr. Iftikhar | Steno Typist, |
| 30. Mr. Shah Khalid | Steno Typist, |
| 31. Mr. Aziz Ullah | Steno Typist, |
| 32. Mr. Farhan Ullah | Steno Typist, |
| 33. Mr. Farman Ali | Steno Typist, |
| 34. Mr. Murtaza Qureshi | Data E/Operator, |
| | Data E/Operator, |

Subject: SHOW CAUSE NOTICE

In compliance of Supreme Court of Pakistan decision dated 15.1.2014 action against all illegal appointee's are being taken immediately. As such you are hereby served with this show cause notice regarding your appointment as under:

- In light of S&GD letter No.SOR-I(S&GAD)/1-117/91(C) dated 12.10.1993 the appointment of Sub Engineer, Steno Typist/Stenographer and Data E/Operator continued to be made through recommendation of Public Service Commission. Whereas you have been appointed without the recommendation of Public Service Commission which is contrary to the prevailing rules. Therefore you are directed to provide recommendation of Public Service Commission, if any.
- Your appointment orders have been made in contravention of Govt led down policy vide circulated notification No. SOR-VI/EXAD/1-10/2005/Vol-VI dated 15.11.2007.

not legal

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Ahsan Shah

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Page -2

3. The content of your appointment orders reveal that you have been appointed without recommendation of the Public Service Commission, of Khyber Pakhtunkhwa. No NOC obtained from the Public Service Commission for recruitment, no requisition submitted to Secretary Works & Services Department, no sanction/approval was obtained from Administrative Secretary, no Departmental Promotion Selection Committee constituted by the Secretary Works & Services Department, not advertised and nor the appointment are modified in terms of para-13 and 14 of N.W.F.P Civil servant (appointment, promotion and transfer rules 1989). Codal formalities have not been fulfilled in your appointments.

2/2/14

4. Necessary sanction to condonation of the violation of codal formalities have not been accorded by the competent Authority.

Keeping in view the above, you are directed to furnish reply to the show cause notice within 15-days positively; otherwise it will be presumed that you have nothing in your defense. As such ex-party action will be taken against you under the E&D rules which will entail your termination from service.

Chief Engineer (South)

Copy forwarded to:

1. The Secretary to Govt of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
2. The Chief Engineer (North) Public Health Engg: Department Peshawar. *PATA 095*
3. All Superintending Engineers/Executive Engineers in South/North Public Health Engg: Department. They are directed to serve the show cause noticed to the above named officials working in your office.

Chief Engineer (South)

~~Ahsan Shah~~

21.1.14
Up Jee

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Annexure II

OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

No. 37 / E-4 / PHE,

Dated Peshawar, the 14 / 02 / 2014

To

Mr. Syed Muhammad Ihsan Shah
s/o Syed Muhammad Hassan Shah
Sub Engineer PHE Division Haripur

108
2

Subject: TERMINATION FROM SERVICE

Your recruitment in PHED made vide this office letter No.01/E-4 /PHE dated 20.12.2008 was illegal and unlawful due to non-fulfillment of codal formalities.

2. Your appointment as a Sub Engineer has been reviewed on the direction of Supreme Court of Pakistan Order dated 15.01.2014 in the civil petition No.2026 and 2029 of 2013, Mushtaq Ahmad and Muhammad Nasir Ali and others. The Supreme Court of Pakistan directed the undersigned to finalize action against all illegal appointees within one month. In this regard direction of Establishment & Administration Department vide his No.SOR-V(E&AD)/15-3/2009 dated 30.1.2013 received through Secretary PHE Department Khyber Pakhtunkhwa Peshawar No.SO(Estt)/PHED/1-90/2012-13 dated 3.2.2014 record of the recruitment of Sub Engineer and other staff has been checked and found the following irregularities committed by the appointing authority in your appointment.

1. Vacancies/posts of Sub Engineers were not advertized through news paper.
2. Initial recruitment of Sub Engineers will continue to be made through recommendation of the Public Service Commission in light of S&GAD letter No.SOR-I (S&GAD)1-117 /91(c) dated 12.10.1993. in this case NOC was not obtained from Public Service Commission before issuance of your appointment order. A requisition for filling up these posts were not placed with Khyber Pakhtunkhwa Public Service Commission and you have not qualified test and interview conducted by the Public Service Commission during this period. As such your appointment without recommendation of the Public Service Commission is invalid and unlawful.
3. Approval from Administrative Secretary was not obtained by the appointing authority before making your appointment.
4. Departmental selection committee was not constituted by the Administrative Secretary.
5. You have also failed to reply to the show cause notice issued vide this office No. 32/E-4 /PHE dated 21.01.2014 in your defense with in stipulated period.
6. The above mentioned irregularities committed by the appointing authority in your appointment process prove that you were illegally appointed and there is no justification to retain you in the service of PHED. You are therefore terminated from the Post of Sub Engineer with immediate effect.

Copy forwarded to:

1. The Secretary to Govt of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
2. PS to Minister for Public Health Engg: Department Khyber Pakhtunkhwa Peshawar.
3. The Accountant General Khyber Pakhtunkhwa Peshawar.
4. The Chief Engineer (North) Public Health Engg: Department Peshawar.
5. The Chief Engineer (FATA) Works & Services Department Peshawar.
6. All Superintending Engineers/Executive Engineers in South/North P.H.Engg: Department.
7. All District Accounts Officer in Khyber Pakhtunkhwa.

Chief Engineer (South)

Abas-shah

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To

8
Annexure IV
The Chief Engineer (South),
Public Health Engineering Department,
Peshawar.

Subject: - SHOW CAUSE NOTICE.

Reference: - Your No.32/E-4/PHE dated 21-01-2014 received by me on 6/02/2014 which shows that the same has un-lawfully and malafidely been issued by you in the back date.

Para wise explanation is submitted as under:-

1. In this connection your attention is invited to E.A.D letter No.SOS-Pool(E&AD)/1-10/2002 dated 08/4/2006 declaring the posts in B-I to B-15 in W&S Department (i.e. C&W and PHE) as District Cadre Posts and outside the purview of P.S.C. Therefore, W & S Department was directed neither to place any such requisition before the P.S.C. nor the P.S.C. was required to advertise such posts (Annexure-I). The E&A Department, vide letter No.SOR-V(E&AD)/1-368/2005(SE) dated 02/5/2007 addressed to P.S.C. and copy thereof endorsed to Secretary W&S Department, further stated that the requisition made by the W&S Department, for filling in the vacant posts may be considered as withdrawn (Annexure-II). In the circumstances, the recommendation of P.S.C. for appointment against such posts, were uncalled for.
2. My appointment against the post was made by the Competent Authority as I having the prescribed qualifications for the same. Hence there involve no contravention to Govt. Policy.
3. As explained in the above paras, it was not the purview of P.S.C. to make recommendation against these Posts, therefore there was no need of N.O.C etc. from them. From the above letters it reveals that requisition for the vacant posts was made, but the same was withdrawn by the E&A Department. Therefore, the Secretary W&S Department, vide his Notification No. E&A/W&S/11-23/2007 dated 30-4-08 assigned all the Establishment matters of officials from BPS-1 to BPS-15 to the respective Chief Engineers of the C&W and PHE Wings of W&S Department (Annexure-III). Therefore, his approval/sanction for appointment against such posts was not required. Moreover, my appointment was made by the competent authority through the DSC.
4. As a candidate and junior employee of the Department, I do not know about any violation of codal formalities in the process of appointment. However, if there is some lapse in procedure, that is supposed to be tackled by the concerned hands with the competent forum for rectification/regularization, rather to proceed against me without any fault of mine at this belated stage/time where I have spent the useful part of my life of about 6 Year 2 Month years and have since crossed/near to cross the upper age limit of 30 years and have been overaged.

It is added that I am not party in the case of Mushtaq Ahmad & others C.P No.2026/13 & Muhammad Nasir Ali & others CP No.2029/13, therefore, the decision of the Honourable Supreme Court of Pakistan dated 15.01.2014 is not applicable upon me.

In view of above explanation, it is very humbly prayed that the charges may be dropped.

Thanking you.

Yours Obediently,

SYED Muhammad Ahsan Shah.

Dated 18/02/2014.

Ahsan Shah

PHE Department Haripur.

Copy to the:-

- 1. Registrar, Supreme Court of Pakistan, Islamabad with reference to C.Ps N.2026 & 2029 of 2013.
- 2. Registrar, Peshwar High Court, Peshawar w/r to W.Ps No,271-P & 663-P of 2013 w/r to above.

They are requested to direct the Chief Engineer (South) PHE Peshawar to avoid from taking such drastic & one sided action i.e without proper enquiry & opportunity of hearing etc; as required under the law/ natural justice.

- 3. PS to Secretary PHE Department Peshawar.

Syed Muhammad Ahsan Shah

Dated: 18 /02/2014

Haripur.
PHE Department Peshawar.

~~Ahsan Shah~~

24/6/14
in
conf

To

10

Annexure ✓

The Secretary,
Government of Khyber Pakhtunkhwa,
Public Health Engineering Department,
Peshawar.

Subject: Departmental appeal under Section 22 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 3 of the KP Civil Servants (Appeal) Rules, 1986 against the impugned order dated 14.02.2014 whereby the services of appellant was terminated with immediate effect by the Chief Engineer (South) of the Public Health Engineering Department, Peshawar.

Respected Sir,

1. That appellant being qualified for the post of Sub Engineer so he applied for the existed vacancies of Sub Engineers in the Public Health Engineering Department Khyber Pakhtunkhwa Peshawar. After observing the codal formalities, on the recommendation of Departmental Selection Committee he was appointed as Sub Engineer (BPS-11) on regular basis from his respective date of appointment issued by the Chief Engineer.
2. That after completing the requisite formalities including medical fitness certificate, the appellant joined duties at his respective place of posting. The respondent department also maintained the service book of the appellant and necessary entries have been made therein from time to time.
3. That the appellant is regular employee of the respondent department working against the permanent post since his respective appointment having more than five years service at his credit with excellent service record.
4. That some other employees whose appointments were made on adhoc basis so they agitated. their regularisation under the Khyber

Ahsan shah

Pakhtunkhwa Employees (Regularization of Services) Act, 2009 before this Hon'ble Court through two separate writ petition NOs.271-P/2013 and 663-P/2013 which were dismissed by common judgment passed on 02.10.2013.

5. That the impugned judgment was challenged by the same employees before Hon'ble Supreme Court of Pakistan through C.P. No.2026 and 2029 of 2013 but same were also dismissed on 15.01.2014. However during the proceedings, Mr. Sikandar Khan Chief Engineer, Public Health Engineering Department, Khyber Pakhtunkhwa orally brought into the notice of Hon'ble Supreme Court of Pakistan about the existence of illegal appointees in the department and accordingly he was directed to finalize the action against such illegal appointees within one month.
6. That a joint show cause notice was issued to appellant alongwith others vide letter No.32/E-4/PHE dated 21.01.2014 by Chief Engineer (South) therein he has unlawfully and malafidely shown the appointments of appellant and others as illegal. Since the copy of show cause notice was not received within stipulated time therefore he submitted an application before the Chief Engineer (South) requesting for extension in period of reply but before submitting the requisite reply, now which had been submitted, the Chief Engineer (South) had issued the impugned order dated 14.02.2014 thereby his services were terminated with immediate effect.

Grounds:

- A. That the appointment of appellant was made by competent authority on regular basis on the recommendation of Departmental Selection Committee. He was within age limit, having prescribe qualifications thus in such circumstances the Chief Engineer (South) was unjustified to treat the valid appointment of appellant as illegal.

Ahsan Shah

- B. That it is pertinent to mention that by notification vide No.SO(O&N)E&AD/8-16/2000 dated 01.08.2001 the three departments namely Public Health Engineering, Physical Planning & Housing and Communication and Works Department were merged into Works and Services Department as mentioned in order dated 05.11.2001 and meanwhile the Khyber Pakhtunkhwa Local Government Ordinance, 2001 was also promulgated (now repealed) and under section 14 thereof the administrative and financial authority for management of the offices of the government specified in Part-A of the first schedule was decentralized to district government. Similarly the posts in BPS-01 to 15 in the Works and Services Department were also declared as district cadre posts vide notification No.SO(Estt:)W&S/13-1/77 dated 22.03.2005 as referred in letter dated 08.04.2006 by the Establishment Department to W&S Department.
- C. That when the posts in BPS-01 to 15 in W&S Department were declared **District Cadre Posts including the post of appellant** then a letter was written to Secretary Khyber Pakhtunkhwa Public Service Commission, Peshawar on 02.05.2007 therein requested for withdrawal the requisition for filling in the vacant posts of Sub Engineers (B-11) in the W&S Department and done accordingly. In such circumstances the plea of Chief Engineer (South) regarding non fulfilling the requirements of recommendation of **Public Service Commission, Khyber Pakhtunkhwa** in the cases of appellant is unjustified, unreasonable, malafide and without lawful authority and not sustainable under the law and rules.
- D. That in view of clause 5 of the appointment order of each appellant, his service was placed on probation for a period of two years extendable upto three years which the appellant has completed satisfactory becoming a confirmed employee of the office Chief Engineer. At the time of passing of impugned order the appellant has rendered more

Ahsan Shah

than five years service to the department efficiently, satisfactory and without any complaint. Therefore the Chief Engineer has not acted in accordance with law and rules and unlawfully passed the impugned order without observing codal formalities as required in the case of a confirmed employee. Therefore the impugned order thereby appellant was terminated has no legal sanctity being without lawful authority.

- E. That clause 2 of appointment orders of appellant provides that he will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made thereunder and similarly in the impugned show cause notice mentioned that action would be taken under the Efficiency and Disciplinary Rules, 2011 but the Chief Engineer has not followed any law in passing the impugned order which is arbitrary, unjust and unfair and not warranted, liable to be set aside.
- F. That in the impugned order, Chief Engineer used the word of "termination" which neither applicable in the case of appellant being confirmed employees of the department nor prescribed in the E&D Rules, 2011 therefore the impugned order is ambiguous, vague and illegal not sustainable under the law and rules.
- G. That Chief Engineer has mala fide brought in the notice of the Hon'ble Supreme Court of Pakistan during the hearing of an other case. Neither he supplied any list of illegal appointments to Hon'ble Supreme Court of Pakistan at that very moment nor specified such illegal appointments but in general way he mentioned the existence of illegal appointments in the department which now he has exploited the situation and purposely held the appointments of appellant and others as illegal and issued the impugned order of termination without legal justification.

Ahsan Shah

- H. That the impugned order has been passed at the back of appellant. Neither any regular enquiry has been conducted nor a fair opportunity was provided to them to defend their cases therefore the impugned order is illegal, without lawful authority being violative of principle of natural justice.
- I. That the appellant was continuously serving the department having more than five years service at their credit without any complaint which accrued vested rights in his favour which could not be taken away or withdrawn by the authority under the principle of locus poenitentiae.
- J. That in case of any defect in the appointment of appellant is existed for which only the departmental authority is responsible and not the appellant therefore the action of the Chief Engineer is not warranted under the law and rules and the impugned order is illegal and of no legal effect.
- K. That the appellant is a permanent and confirmed employee of the department and performing his respective duty efficiently since the date of his appointment during which he was provided all the benefits and privileges attached with his post including annual increments. Now the appellant has crossed the upper age limit, supporting a family with his children who are getting education in various schools and colleges thus in such circumstances, the Chief Engineer has no legal and moral justification to hold the appointment of appellant as illegal. Therefore the act and action of the Chief Engineer is tainted with mala fide intention, unlawful and not operative against the vested rights of appellant.

It is, therefore, humbly prayed that on acceptance of this departmental appeal, the impugned order dated 14.02.2014 thereby the services of appellant

Alasan shah

Was terminated with immediate effect, may kindly be set aside and applicant may graciously be reinstated with all back benefits.

Yours sincerely,
Syed Muhammad Ihsan Shah
S/O Syed Mohammad Hassan Shah

Office Address:- PHE Division haripur

~~Ahsan Shah~~

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

1. 665/2014, Farhanullah (Khalid Rahman, Adv)
2. 723/2014, S. M. Ahsan Shah (Rustam Khan-Kundi)
3. 724/2014, Saleem Nawaz. -do-
4. 725/2014, Mohsin Ai, -do-
5. 726/2014, Kashif Raza. -do-
6. 727/2014, Syed Muhammad Ali Sajjad. -do-
7. 728/2014, Muhammad Ali Noor, -do-
8. 729/2014, Irshad Elahi, -do-
9. 750/2014, Murtaza Qureshi, (Isaac Ali Qazi, Adv)
10. 783/2014, Syed Ishfaq Ahmad, (M. Asif Yousafzai)
11. 784/2014, Ishfaq Ahmad, -do-
12. 785/2014, Murtaza Ali. -do-
13. 786/2014, Amir Muqtada Qureshi, -do-
14. 787/2014, Abdus Samad, -do-
15. 788/2014, Hussain Zaman. -do-
16. 789/2014, Abdul Shahid. -do-
17. 790/2014, Waqas Ali. -do-
18. 791/2014, Muhammad Ihtikhar. (Isaac Ali Qazi, Adv.)
19. 792/2014, Ishtiaq Ahmad, -do-
20. 793/2014, Shaukat Ali. ✓ -do-
21. 794/2014, Muhammad Sajjad. -do-
22. 795/2014, Tariq Nawaz. -do-
23. 796/2014, Ishfaq Ahmad. -do-
24. 797/2014, Noonan Ullah. -do-
25. 803/2014, Aziz Ullah. (Aslam Khan Adv.)
26. 810/2014, Muslim Shah. (M. Asif Yousafzai, Adv)
27. 811/2014, Syed Hassan Ali -do-
28. 812/2014, Zohaib Khan, -do-
29. 829/2014, Qaiser Khan. -do-
30. 867/2014, Farman Ali. -do-
31. 868/2014, Shah Khalid, (Isaac Ali Qazi, Adv)

Versus

Govt. of KPK Province through Secretary, Public Health
Engineering Department, Peshawar & Others.

30.12.2015

JUDGMENT

PIR BAKHSH SHAH, MEMBER:- Counsels for

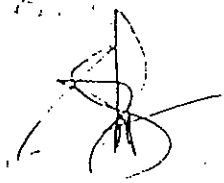
the appellants and Sr. Government Pleader (Mr. Usman

Ghani) with Muhammad Siddique Admn. Officer for the

respondents present.

2. The above appellants, employees of the PHE Department, were terminated from service by way of impugned order dated 14.02.2014 and their departmental appeal was not decided, hence this appeal under Section 4 of the KPK Service Tribunal Act, 1974. In view of the common question of facts and law, we propose to dispose of all the above appeals by this single judgment.

3. Relevant facts, in brief, as revealed from record are that the Hon'ble Peshawar High Court Peshawar vide its judgment dated 02.10.2013 dismissed Writ Petitions No. 271-P and 363-P both of 2013 of some of the appellants which judgment came up before the august Supreme Court of Pakistan in Civil Petitions No. 2026/13 and 2029/13. The august Supreme Court of Pakistan vide its order dated 15.01.2014 was pleased to direct as follow:-

AC


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 although many other illegal appointees in his department have been removed from service, but against many others such action is in process of 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 to-day 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."

In the wake of the said order of the august Supreme Court of Pakistan, a joint show cause notice was prepared and issued to the appellants followed by the impugned termination order.

4. The charges against these appellants are reproduced as follow from the show cause notice issued to them:-

1. In light of S&GAD letter No.SOR-I(S&GAD)I-117/91C dated 12.10.1993 the appointment of Sub Engineer, Steno Typist/Stenographer and DATA E/Operator continued to be made through recommendation of Public Service Commission. Whereas you have been appointed without the recommendation of Public Service Commission which is contrary to the prevailing rules. Therefore, you are directed to provide recommendation of Public Service Commission, if any.

2. Your appointment orders have been made in contravention of Govt. laid down policy vide circulated notification No.SOR-VO/EXAD/I-10/2005 Vol-VI dated 15.11.2007.

3. The content of your appointment orders reveal that you have been appointed, without recommendation of the Public Service Commission of Khyber Pakhtunkhwa. No NOC obtained from the Public Service Commission for

recruitment, no requisition submitted to Secretary Works & Services Department, no sanction/approval was obtained from Administrative Secretary, no Departmental Promotion Selection Committee constituted by the Secretary Works & Services Department, not advertised and nor the appointment are modified in terms of para-13 and 14 of N.W.F.P Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Codal formalities have not been fulfilled in your appointment.

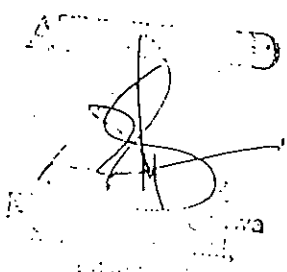
- 4. Necessary sanction to condonation of the violation of codal formalities have not been accorded by the competent authority."

The appellants replied to the show cause notice and after their termination, filed their departmental appeals, copies of which are available on file.

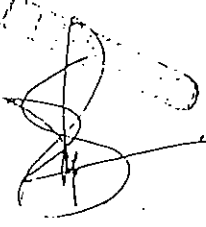
- 5. Arguments heard ad record perused.

6. The record revealed that on receipt of a list comprising of the appellants from the office of the then Chief Minister, to appoint appellants in the department of PHE, they were accordingly appointed.

7. In support of the appellants, it was submitted that the appellants were terminated from service without observing codal formalities of the charge sheet, enquiry; that no opportunity of defence and personal hearing was provided to them. It was further submitted that the



appellants were duly qualified, and they were duly recommended for appointment by DSC where after they were appointed by the competent authority. It was further submitted that being the district cadre posts, its recruitment did not fall in the purview of Public Service Commission. It was also submitted that the appellants had rendered sufficient service and with the passage of time, their rights were protected under the principle of locus poenitentiae. It was also argued that the respondent-department have mis-conceived and misapplied order of the august Supreme Court of Pakistan dated 15.01.2014. That this Tribunal is competent and has jurisdiction to decide these appeals. Finally it was submitted that the appeals may be allowed and appellants may be reinstated in service with all back benefits.

ATTESTED


8. These appeals were resisted by the learned Sr. Govt. Pleader on the grounds that the Public Service Commission was the competent forum for the process of recruitment of the posts of the appellants. That no formalities of advertisement, constitution of DSC, conduct of test/interview, preparation of merit list etc. had been observed in those appointments, therefore, the appointments were illegal. That the appointments were the result of political pressure and interference, hence the appellants were rightly terminated. That the respondent department in compliance...

Supreme Court of Pakistan dated 15.01.2014 terminated the appellants therefore, this Tribunal has no jurisdiction to reinstate the appellants. Finally it was submitted that these appeals may be dismissed.

9. Order dated 15.1.2014 of the august Supreme Court of Pakistan is explicit according to which the respondent department was directed to take action against the illegal appointees. Contention advanced by the learned counsel for the appellants during the course of arguments was that appointments of the appellants were in accordance with the prescribed procedure as the posts did not fall in the purview of the Public Service Commission. Further that the appellants were not given opportunity of defence as evident from the facts that even prior to the lapse of the terminal date for reply to the show cause notice, the appellants were terminated. It was also contended for appellant Farhanullah (Data Entry Operator BPS-12), that prior to this post he was a valve-man in the department, therefore, instead of termination, he should have been reverted to his previous position.

9. On the point as to whether the Tribunal would be competent to adjudicate on these appeals, the learned counsel for the appellants submitted copy of a subsequent order dated 28.04.2014 in CP NO. 551 of 2014 according to which the Service Tribunal shall decide the appeals as

mandated in law. Evidently no charge sheet has been issued to the appellants nor opportunity of personal hearing has been provided to them and instead show cause notice was served on them. It is apparent from record that the impugned order has been passed quite in haste. After the impugned order, the respondent department vide letter No. 03/G-4-A/HC/PHE, dated 17.2.2014 intimated to the Registrar Supreme Court of Pakistan that in pursuance of order dated 15.1.2014, a total of 24 Sub Engineers, 6 stenotypist/Stenographers and 2 Data Entry Operators had been terminated. This being so, we are afraid that due care and caution had not been exercised by sorting out individual case of each of the appellants. In the above scenario, while not interfering with the ^{impugned} order dated 14.2.2014 at this stage, the Tribunal in the interest of justice would remit cases of the appellants to the appellate authority of the department with direction to decide the departmental appeals of the appellants strictly in accordance with law/rules considering each of the appeal on its merits and fulfilling the requirements of opportunity of personal hearing. This process of disposal of departmental appeals of the appellants be completed within a period of 2 months after receipt of this judgment. In case the appellate authority finds that any of the appellant had been unlawfully terminated or terminated by mis-conceiving order of the august Supreme Court of Pakistan dated 15.1.2014 and

facts of a particular case and it leads the authority to accept such an appeal, the said decision would require to be taken with full justification and shall have to be intimated to the Registrar of the august Supreme Court of Pakistan in continuation of respondent department letter dated 17.2.2014. All the appeals are disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.12.2015

Self - Pir Bakhsh Shah,
Member

Self - Abdul Latif,
Member

Certified
Secretary General,
Peshawar

Date of
No.

01-01-2016

3702

18

01-01-2016

01-01-2016

Date



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

No.SO(Estt)/PHED/1-90/2013-14.VOI-II
Dated Peshawar the, March 03, 2016

To,

Mr. Syed Muhammad Ahsan Shah
S/o Syed Muhammad Hassan Shah,
Caste Syed R/o Katgarh Tehsil Paharpur
D.I.Khan

Subject: **DEPARTMENTAL APPEAL AGAINST CHIEF ENGINEER (SOUTH) PHE
ORDER No.37/E-4/PHE DATED 14-02-2014.**

WHEREAS, you managed to get yourself appointed as Sub Engineer (BPS-11) in PHED vide Chief Engineer PHE Office Order No.01/E-4/PHE dated 20-12-2008.

2. AND WHEREAS, you were served with a Show Cause Notice by the Chief Engineer (South) PHE vide No.32/E-4/PHE dated 02-01-2014, and subsequently your services were dispensed with by the said authority vide his Office Order No.21/E-4/PHE dated 14-02-2014 as a sequel to the apex Court Order dated 15-01-2014 in C.P No.2026 and 2029/2013 and the same was also intimated/confirmed to the said august Court vide letter dated 17-02-2014.

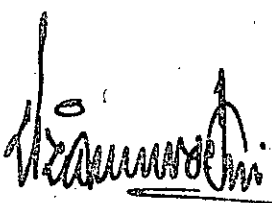
3. AND WHEREAS, you filed a Writ Petition bearing No.615-P/2014 before the Peshawar High Court Peshawar against your termination order which was dismissed by the Hon'ble Court vide its judgment dated 26-02-2014, being not entertainable. Subsequently, you challenged the said judgment before the Supreme Court of Pakistan vide C.P No.551 of 2014 and the apex court vide Order dated 28-04-2014 disposed off the said Civil Petition in terms that in the event of filing the appeal, the Service Tribunal shall decide the appeal as mandated in law.

4. AND WHEREAS, you also filed Service Appeal No. 723/2014 before the Khyber Pakhtunkhwa Service Tribunal Peshawar which was also disposed off vide its judgment dated 30-12-2015, with the direction to decide the departmental appeals of the appellants strictly in accordance with law/rules considering each of the appeal on its merits and fulfilling the requirements of opportunity of personal hearing.

5. AND WHEREAS, you were given the opportunity of being heard on 08-02-2016 and material on record perused. It revealed that your appointment as Sub Engineer was effected as a consequence of production of a politically motivated list by the then Political Secretary to Chief Minister and that too, in sheer violation of the provisions contained in the K.P Civil Servants Act, 1973 and the rules made there-under.

The then Chief Engineer (South) PHE abused his powers while grabbing the authority vested in the K.P Public Service Commission. Even C.E (South) PHE was not competent to make your appointment on adhoc basis for want of NOC from the K.P Public Service Commission, advertising the post as per prescribed procedure, observing merit, zonal allocation and mandatory recommendations of the Departmental Selection Committee. As such, your appointment as Sub Engineer PHE stands void ab-initio and ultra-vires of the provisions contained in the law/rules/policy ibid. Hence, your termination order dated 14-02-2014 by the competent authority is quite legal, lawful, valid and does not require any review, modification or setting aside whatsoever by the appellate authority.

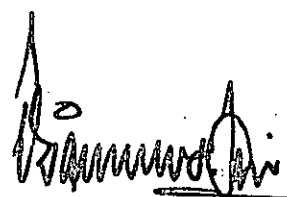
6. NOW THEREFORE, after having considered the material on record & your explanation during personal hearing held on 08-02-2016, your facts appealed against the C.E (South) PHE Office Order dated 14-02-2014 have not been established and in exercise of the powers as Appellate Authority, conferred under the K.P Civil Servants (Appeal) Rules, 1986 and all other such powers in this behalf, your departmental appeal is hereby dismissed for the reasons mentioned in Para-5.supra.


(NIZAM-UD-DIN) 03/03
SECRETARY TO
GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)

ENDST: NO & DATE AS ABOVE:

Copy forwarded to the:-

1. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to his No.29/ST, dated 05.01.2016 for information.
2. Senior Govt Pleader, Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to his No.(SR.GP)E&AD/1-5/Lit/Appeal/2013/492-95, dated 06.01.2016.
3. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar.


SECRETARY TO 03/03
GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)

وکالت نامہ

قیامی ایک روپیہ		کورٹ فیس
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Before the Honble Service Tribunal 44 - *Peshawar*

مخائب *سید محمد احسن شاہ*
 سید محمد احسن شاہ نام
 دعویٰ یا جرم
 تفصیل دعویٰ یا جرم

STA - 2016

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے پیروی و جواب دہی برائے پیشی یا تفریق مقدمہ بنام *محمد اسحاق خان* کے لئے
 کو حسب ذیل شرائط پر اپیل مقرر کیا ہے کہ میں پیشی پر خود یا ہذا بذریعہ برو عدالت حاضر ہوتا رہوں گا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب
 موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر منظر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب
 موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل
 پیروی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر پکھری کے علاوہ اور جگہ ساعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے یا پیچھے پیش ہونے
 پر منظر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا محنت نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ
 کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ یا درخواست اجراء اسمائے ذمیری
 نظر ثانی اپیل نگرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر ثالثی یا راضی نامہ و فیصلہ برطرف کرنے اقبال دعویٰ کا بھی اختیار ہو گا اور بصورت مقرر ہونے
 تاریخ پیشی مقدمہ مذکور بیرون از پکھری صدر پیروی مقدمہ مذکور نظر ثانی اپیل و نگرانی و برآمدگی مقدمہ یا منسوفی ذمیری یک طرفہ یا درخواست حکم امتناعی یا قرقی
 یا گرفتاری قبل از فیصلہ اجراء ذمیری بھی صاحب موصوف کو بشرط ادا جیگی علیحدہ مختام پیروی کا اختیار ہو گا اور تمام ساختہ پر داخستہ صاحب موصوف مثل کردہ
 از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو گا کہ مقدمہ مذکورہ یا اس کے کسی جزو کی کارروائی یا بصورت درخواست نظر ثانی
 اپیل نگرانی یا دیگر معاملہ و قدمہ مذکورہ کسی دوسرے وکیل یا بیرسٹر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور دیئے
 اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانب التواء پڑے گا وہ صاحب موصوف کا حق ہو گا مگر
 صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت
 میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے
 مورخہ *۲۵/۱۶* ماہ *۱۱/۱۶* جمعہ *۱۱/۱۶*
 مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

سید محمد احسن شاہ

Ahmed

Accepted

Adm. Secy
 01/11/16



**BEFORE THE HON.BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR.**

Service Appeal No

357/2016

Syed Muhammad Ahsan Shah
S/O Syed Muhammad Hassan Shah
Ex-Sub Engineer, PHED

..... (Appellant)

Versus

1. Secretary to Govt: of Khyber Pakhtunkhwa
Public Health Engg: Department Peshawar.

2. Chief Engineer Khyber Pakhtunkhwa
Public Health Engg: Department Peshawar.

...Respondents

WRITTEN REPLY ON BEHALF OF RESPONDENTS NO 1 TO 2

Respectfully stated

Para-wise comments of the Respondent 1 to 3 are as under:-

PRELIMINARY OBJECTIONS.

- 1). That the appellant has got no cause of action.
- 2). That the appellant is estopped by his own conduct to bring the instant appeal.
- 3). That the present appeal is not maintainable in its present form and shap.
- 4). That the appellant has got no locus standi.
- 6). That the appellant has not come to the Tribunal with clean hands.
- 7). That the appeal is bad for non-joinder and misjoinder of unnecessary parties.
- 8). That the appeal is barred by Law & limitation
- 9). That this Honourable Service Tribunal has no jurisdiction to entertain the present appeal.

BRIEF HISTORY

A writ petition bearing No W.P 271-P/2013 was filed by Mr. Mushtaq Ahmad, etc, for extending benefits of regularization, before the Peshawar High Court order, Peshawar and the same was declined by the Peshawar High Court, (Copy of the judgment dated 2.10.2013 is annexed as **Annexure-I**). The said petitioners then moved a Civil Petition No 2026 and 2029 of 2013 before the August Supreme Court of Pakistan. Though the August Supreme Court of Pakistan dismissed the same and directed the department to finalize the action against the illegal appointees within one month, vide judgment dated 15.1.2014 (**Annexure-II**) and subsequent reminder dated 07.02.2014 (**Annexure-III**). The appellant was appointed from a list submitted by Political Secretary to then Chief Minister Khyber Pakhtunkhwa (**Annexure-IV**). Upon completion of the legal formalities i.e. issuance of Show Cause Notice etc, the action was taken against the appellant.

ON THE FACTS.

- 1). Incorrect. Departmental Selection Committee (DSC) is not authorized to make recommendation for the appointment of Sub Engineer BPS-11 on regular basis. The unauthorized DSC without advertizing the Vacancies of Sub Engineers BPS-11, without conducting test and interview and without obtaining NOC from Public Service Commission appointed the appellant on the unlawful order of the Chief Minister Khyber Pakhtunkhwa. Similar case of Sub Engineer vide Service Appeal No.1331/2013 was dismissed by honourable court vide judgment dated 30/05/2016 (**ANNEXURE-V**).

According to ESTA Code (**Annexure-VI**) and Public Service Commission ordinance, (**Annexure-VII**), recruitment policy (**Annexure-VIII**) recruitment to posts of Sub Engineers BPS-11 falls within the purview of Public Service Commission. The appellant has not availed the opportunity to appear in the test and interview conducted by Public Service Commission advertized on 07.4.2011 (**Annexure-IX**). The appellant has come through back door and his appointment is against the norms of merit. Necessary sanction to condonation of the violation of codal formalities has not been accorded by the competent authority.

- 2). Incorrect. The Chief Engineer Public Health Engineering Department Khyber Pakhtunkhwa had actually wrongfully exercised powers by appointing the appellant on regular basis without the recommendation of Public Service Commission which is prerequisite for any appointment in BPS-11 and above according to ESTA Code and Public Service Commission Ordinance. On the report of Chief Engineer (South) Public Health Engineering Department Khyber Pakhtunkhwa , Secretary to Govt: of Khyber Pakhtunkhwa PHED forwarded the illegal appointment case of the appellant and other 23 Sub Engineers BPS-11 to establishment Department for advice on 12.11.2011 and 24.12.2013 (**Annexure-X**). The establishment department vide letter No SOR(E&AD)/15-3/09 dated 30.1.2014 and letter No SOR-V(E&AD)/15-3/2009 dated 17.3.2014 (**Annexure-XI**) declared the appointment as illegal.

District Account Officer Tank has also raised observation on illegal appointment of one of the Sub Engineer in his batch. Letters of District Accounts Officer Tank and Accountant General in this connection are presented for further clarification of the matter (**Annexure-XII**). The issue of illegal appointment of the appellant and 23 other Sub Engineers was raised in the Supreme Court of Pakistan on 15.1.2014 by some other terminated Sub Engineers in civil petition No 2026 and 2029 of 2013. The Supreme Court after hearing both the parties decided to finalize action against all illegal appointees within one Month.

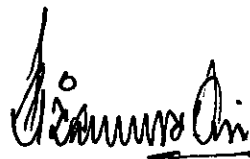
- 3) The appellant failed to submit reply of show cause notice well in time. The appellant had no legal proof regarding his appointment being appointed without advertisement, test/interview and recommendation of the Public Service Commission, illegally. After fulfillment of codal formalities, the appellant was correctly terminated, as illegally appointees has no rights to retain in service.
- 4) Being illegally appointed correctly terminated/relieved in light of direction of apex court judgment dated 15.1.2014 and subsequent reminder dated 07.2.2014.
- 5) Incorrect. The appellant failed to submit departmental appeal in stipulated period. There was also no weight-age/merit in reply of the appellant hence not considered. The appellant was appointed contrary to all prevailing rules without test interview advertisement on the post come within purview of Public Service Commission by wrong authority.
- 6) Pertain to record hence no comments.
- 7) Correct to the extent that service tribunal has remitted the case to department for giving opportunity of departmental appeal and personal hearing to the appellant.
- 8) Incorrect. The appellant authority given opportunity of departmental appeal and heard in person the appellant in light of orders of honourable court dated 30.12.2015. The appellant authority rejected the departmental appeal on merit as the appellant was appointed contrary to all prevailing rules i.e. without test interview advertisement and recommendation of Public Service Commission, as per Public Service Commission ordinance, ESTA Code, recruitment policy and advice of Establishment Department. The appellant was appointed from the list received from Political Secretary to the then Chief Minister Khyber Pakhtunkhwa on violation of rules, wherein fundamental rights of deserved persons damaged as well as zonal quota allocation not followed.
- 9) Incorrect. The appellant did not come in the category of civil servant being illegally appointed contrary to prevailing rules/procedures by wrong authority on the post come within the purview of Public Service Commission. Show cause notice was served upon the appellant in which sufficient time was given to him to clarify his position. The appellant does not come under category of civil servant being illegally appointee. Therefore E&D rules 2011 and the appeal rules 1986 are not applicable in his case.

GROUNDS

- i). Reply of the department in service appeal No.724/2014 of the appellant for Para I to IV are reiterated as under while Para VII not exist in the above appeal of the appellant reproduced as under (a,b,c & d)
 - a) Incorrect. Chief Engineer Public Health Engg: Department is not the competent authority to make recruitment of Sub Engineers BPS-11 on regular basis against regular vacancy. According to ESTA Code and Public Service Commission Ordinance. The appointment of Sub Engineer will be made through the recommendation of Public Service Commission. The appellant was appointed on the unlawful order of the Chief Minister's Khyber Pakhtunkhwa which is against the norms of merit and contrary to the prevailing rules and Public Service Commission Ordinance.
 - b) Incorrect. The appellant failed to submit reply in more than Two Weeks after issuance of show cause notice. The case of illegal appointment of Sub Engineer was sent to Establishment Department for advice. The Supreme Court of Pakistan in a civil petition had given one Month deadline to finalize action against all such illegal appointee. So on receiving decision from Establishment Department, Services of the appellant and others were terminated. As the appellant was appointed through back door, therefore E&D Rules 2011 and 1973 are not an applicable in case of appellant.
 - c) Incorrect. The appellant was given sufficient time in show cause notice. The appellant was illegally appointed. He does not come under category of civil servant. As such E&D rules 2011 and check list of 1985 under #&D rules 2011 are not applicable in this case.
 - d) Sub Engineers are appointed through the recommendation of Public Service Commission. There are no chances of nepotism and political interference in selection process of Public Service Commission. Protection to those who come through back door cannot be given. The previous Government has distributed the posts among their favorites including the appellant. The appellant should have applied to Public Service Commission on 07.4.2011 for regularization of his service. The appellant has missed this golden opportunity.
- ii) Incorrect. The Public Service Commission Ordinance, ESTA Code, recruitment policy as well as advice of Public Service Commission is clear that appointment of Sub Engineer come within the purview of Public Service Commission. In case the appointment of Sub Engineer was within the purview of DCO, the Chief Engineer was also not authorized to appoint Sub Engineer being Provincial Head of the Department. The appellant failed to avail the opportunity to appear in the test/interview conducted by Public Service Commission in 2011 and later on time and again.
- iii) The referred Judgment of Supreme Court of Pakistan pertains to petty employees like Chowkidar, Naib Qasid and Junior Clerks non commissioned posts recruited illegally in Semi Government Department i.e. Punjab Text Book Board. This Judgment is not applicable on the posts fill through Public Service Commission in the government Departments. The appellant was terminated on the basis of decision of Supreme Court of Pakistan dated 15.1.2014. The termination Order of the appellant is consistent with the Judgment of Supreme Court of Pakistan dated 17.3.2014 in constitution petition No 6 of 2011 CMA 5216 of 2012 Syed Mubashir Raza Jaffari verses EOBI.

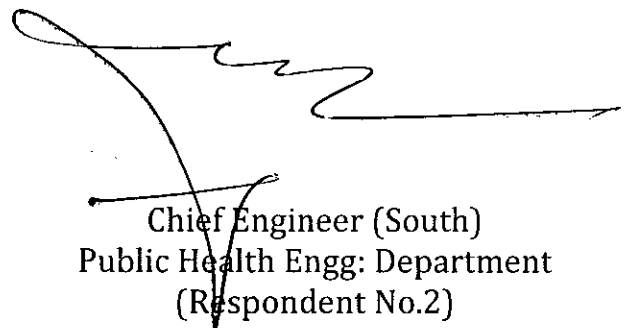
The prescribed procedure in ESTA Code was never followed. The principal of natural justice has been violated. Applications were not invited through advertisement No interview and written test was got conducted.

- iv) Incorrect. Advertisement, test/interview is must for appointment under the rules. Appointment of Sub Engineers is within the purview of Public Service Commission as per Public Service Commission Ordinance, ESTA code, recruitment policy and advice of Establishment Department. The appellant was appointed through back door from the list received from Political Secretary to the then Chief Minister Khyber Pakhtunkhwa. The promulgation of reinstatement of sack employees Act 2010 not applicable to the illegal appointees like the appellant. Illegally appointee has no rights to retain in service and terminated in light of the judgment of the Apex court dated 15.1.2014 and subsequent reminder dated 7.2.2014.
- v) In this case article 25 of the constitution has been violated by not giving equal right of opportunity to the citizen of the Khyber Pakhtunkhwa and FATA having the requisite Qualification Zonal allocation formula has been violated. Appointment of the appellant is without lawful authority and of no legal effect. It is therefore humbly prayed that in view of the above written reply, the appeal of the appellant may kindly be dismissed with cost.



Secretary

to Govt of Khyber Pakhtunkhwa
Public Health Engg: Department
(Respondent No.1)



Chief Engineer (South)
Public Health Engg: Department
(Respondent No.2)

**BEFORE THE HON.BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR.**

Service Appeal No

357/2016

Syed Muhammad Ahsan Shah
S/O Syed Muhammad Hassan Shah
Ex-Sub Engineer, PHED

..... (Appellant)

Versus

1. Secretary to Govt: of Khyber Pakhtunkhwa
Public Health Engg: Department Peshawar.

2. Chief Engineer Khyber Pakhtunkhwa
Public Health Engg: Department Peshawar.

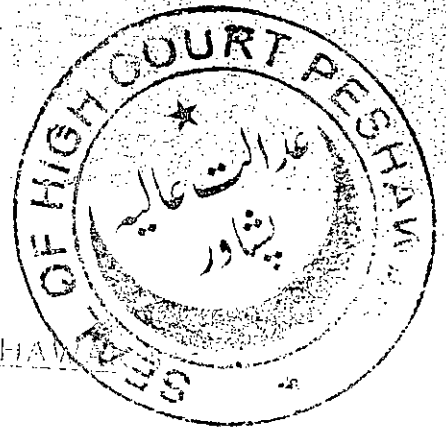
..... (Respondents)

AFFIDAVIT

I, Sanobar Khan, Chief Engineer (South) Public Health Engg: Department Khyber Pakhtunkhwa Peshawar, do hereby solemnly affirm that the contents of the accompanying written statements are true and correct to the best of my knowledge and nothing has been concealed from this honourable tribunal.


DEPONENT

Amese I



OFFICE OF THE PESHAWAR HIGH COURT, PESHAWAR

Case No. 271-P/2013

Applicant: [Faint text]

Respondent: [Faint text]

Department of Engineers, in Public Health Engineering department
Peshawar, Peshawar Division, Peshawar

Government of Khyber Pakhtunkhwa
Secretary, Civil Secretariat Peshawar

Department of Engineering, Secretary
Government of Khyber Pakhtunkhwa, Peshawar

Department of Public Health Engineering
Government of Khyber Pakhtunkhwa, Peshawar

Department of Health Engineering
Government of Khyber Pakhtunkhwa, Peshawar

ATTEST
EXAMINER
Peshawar High Court
20 FEB 2013

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT

W.P. 271 P of 2013 with interim relief (N).

JUDGMENT

Date of hearing: 2.10.2013.

Petitioner/Mushtaq Ahmad etc. by Mr. Shah Nawaz
Khan, advocate.

Respondent/*Muzaffar Ahmad Khan*

MUSARRAT ULLAH, J.- This judgment shall also decide
W.P. 663-P of 2013 entitled "Muhammad Nisar Khan Vs.
Govt." as common question of law and fact is involved in
both these petitions.

1. According to the petitioners, they obtained Diploma
of Associate Engineer in the year, 1995 in different
technologies and since then are working in various
Government Organizations/Projects. However, on 2.1.2011
they were appointed as Sub-Engineers in the
respondent/department on ad-hoc basis after due process.
They were still in service when the respondents re appointed
them vide office order dated 8.1.2012. Prior to the
appointment of petitioners, the Provincial Government
promulgated Act No. XVI of 2009 vide which services of all

ATTEST

EXAMINE
Peshawar High

20 FEB 20

the adhoc/contract employees of the Province were regularized, however, the same benefit was not extended to the petitioners. Moreover, services of some six Sub-Engineers have been regularized after appointment of the petitioners. The petitioners preferred an application/appeal to the competent authority as well as to the Human Rights Cell of this court. In this respect, a letter dated 21.12.2013 was addressed to Human Rights Cell by the respondents, wherein, it was stated that Sub-Engineers, namely, Sher Hayat and Musatib Ahmad, who were 38 and 39 years old, respectively and were debarred from future employment in any institution of the Provincial/Federal Government for the reasons beyond their control. Nevertheless, handsome share of posts of Sub-Engineers were lying in the department and as a gesture of good will, the petitioners can be accommodated on regular basis. According to the petitioners, they waited for some time but did not receive any fruitful result from the respondents whereas their tenure is going to expire, hence necessitated the filing of instant constitutional petitions.

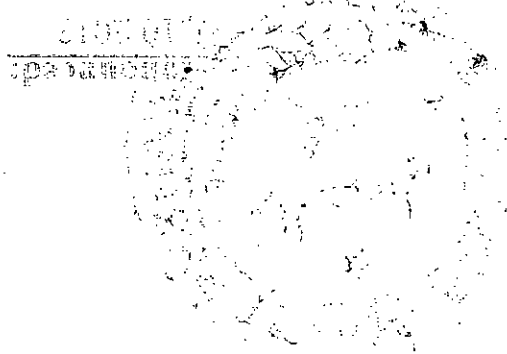
3. Learned counsel for petitioners contends that the respondents have acted mala fide by regularizing the services of other employees similarly placed, who were appointed after the petitioners but the same benefit has been

[Handwritten signature]
~~APPROPRIATE~~

...of the view that as the period of one year has elapsed,
the Public Service Commission or whichever is earlier. He
basis for one year or till the arrival of the recommendees of
mentioned that the term of appointment would be on ad hoc
appointed as Sub-Engineer, wherein it was clearly
dated 23 April 2010 against which two petitioners were
side and straight away referred to the advertisement
4. Learned AAG controverted the arguments from other
other similarly placed employees.

...be directed to regularize the services of the petitioners like
violation of Article 25 (2) of the Constitution, therefore, they
learned counsel, the impugned act of respondents is in
the petitioners can be accommodated. According to the
contended that there are vacant posts available against which
control and if not regularized will spoil their future. Also
Provincial/Federal Government, which fact is beyond their
coverage for appointment in any institution of the
cases. Further contended that the petitioners have become
violation of judgments of superior courts rendered in various
regularized. He maintained that the act of respondents is in
in long line of jobless people and would face hardship, if not
of the view that the petitioners and their families will stand
them is discriminatory, which is not tenable in law. He was
denied of the petitioners, thus, the treatment meted out to

20-02
20 FEB 2014
Examiners
Rashwari High Court
Authorized and Valid
The Gunnah-Bhandari



SRI. Nisar Hussain Khan
SRI. Mrs. Masarat H. Khatun

substance is hereby dismissed.
of the court, hence this petition being without any legal
and a case for interference in the constitutional jurisdiction
considered opinion that the petitioners have failed to make
keeping in view the above discussion, we are of the
arrival of candidates from Public Service Commission.
respondent/department have also been terminated after the
these employees, who were retained by the
a copy of the letter dated 17/2/2013 showing that
of no help to them. Moreover, the learned AAO produced
which is not the case in hand, therefore, the plea taken is
1st December, 2008 or till the commencement of the Act,
of those adhoc employees, who were holding the posts on
Act No XVI of 2009 and can be pressed into service in case
6. The petitioners are taking the shelter behind
Sub-Engineers as a stop-gap arrangement.
18.12.2012, the petitioners were re-appointed as
process, they were appointed on 2nd January, 2010. On
participated in the test/interview. However, after due
whichever is earlier. The petitioners amongst others also

PL: 9082235
Fax: 9220406

REGISTERED
Nos. C.P. 2026 & 2029 of 2013 - SC
SUPREME COURT OF PAKISTAN.

Islamabad, dated 15/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

The Registrar,
Peshawar High Court,
Peshawar.

Subject: CIVIL PETITION NOS. 2026 & 2029 OF 2013.
Mushtaq Ahmed & another ...in C.P. 2026/2013
Muhammad Nasir Ali & others ...in C.P. 2029/2013
VERSUS
Government of Khyber Pakhtunkhwa through Chief Secretary,
Peshawar & others ...in both cases.

On appeal from the Judgment/Order of the
Peshawar High Court, Peshawar dated
02.10.2013 in W.P. 271-P & 663-P/2013

Dear Sir,

I am directed to enclose herewith a certified copy of the Order of
this Court dated 15.01.2014 dismissing the above cited civil petitions with
directions for information and further necessary action.

I am also to invite your attention to the directions of this Court
contained in the enclosed Order.

Please acknowledge receipt of this letter along with its enclosure
immediately.

Encl: Order

Yours faithfully,



(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Copy with a certified copy of the Order of this Court dated 15.01.2014 is
forwarded to Mr. Sikandar Khan, Chief Engineer, Public Health Engineering
Department, Khyber Pakhtunkhwa, Peshawar for immediate necessary action
and report compliance.

Encl: Order


ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

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).

Mushiq Ahmed and another.
Muhammad 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

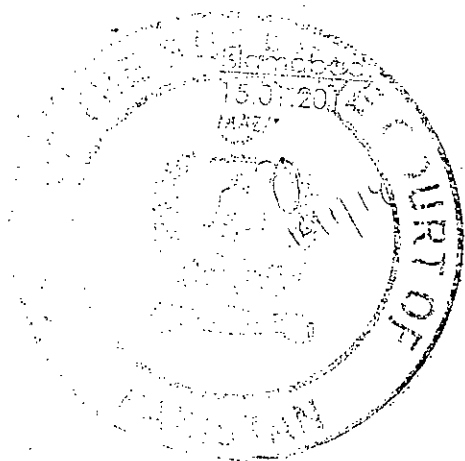
ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

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/- Anwar Zaheer Jamali, J
Sd/- Ejaz Afzal Khan, J



Certified to be True Copy

Supintendent
Supreme Court of Pakistan
Islamabad

GR No: 640/14 Civil/Criminal

Date of Presentation: 15-1-14

No. of Words: 600

No. of Pages: 6

Registration Fee Rs: 5000

Copy Fee Rs: 3000

Court Fee Stamp: 8000

Date of Submission of Copy: 18-1-14

Date of Receipt of Copy: 18-1-14

Compared by: [Signature]

Received by: [Signature]

Fax:9220406

REGISTERED Annex III
Nos. C.P. 2026 & 2029 of 2013 - SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 7/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Chief Engineer,
Public Health Engineering Department,
Khyber Pakhtunkhwa,
Peshawar.

~~Subject:~~ **CIVIL PETITION Nos. 2026 & 2029 OF 2013.**
Mushtaq Ahmed & another ...in C.P. 2026/2013
Muhammad Nasir Ali & others ...in C.P. 2029/2013
VERSUS
Government of Khyber Pakhtunkhwa through Chief Secretary,
Peshawar & others ...in both cases

On appeal from the Judgment/Order of the
Peshawar High Court, Peshawar dated
02.10.2013 in W.P. 271-P & 663-P/2013

Dear Sir,

In continuation of this Court's letter of even number dated
16.01.2014, I am directed to say that while dismissing as time barred the above
cited civil petition on 15.01.2014, this Hon'ble Court was pleased to direct as
under:-

"...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, Peshawar,
he states that although many other illegal appointees
in his department have been removed from service,
but against many other 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.

Accordingly, a certified copy of the Order was sent to you vide letter
referred above for immediate necessary action and report compliance but no
compliance report in this regard has been received so far from your end.

Contd: P/2

Kaami/***

149

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You are, therefore, required to submit requisite compliance report enabling this office to place the same before Hon'ble Court.

Yours faithfully,

dt. 16.01.2014

↓
Referring to earlier
letter

(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

de

Fax:9220406

145
131

REGISTERED

Nos. C.P. 2026 & 2029 of 2013 - SCJ
SUPREME COURT OF PAKISTAN.

Amree-11

Islamabad, dated 7/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Chief Engineer,
Public Health Engineering Department,
Khyber Pakhtunkhwa,
Peshawar.

~~Subject:~~ Subject:

CIVIL PETITION NOS. 2026 & 2029 OF 2013.
Mushtaq Ahmed & another ...in C.P. 2026/2013
Muhammad Nasir Ali & others ...in C.P. 2029/2013
VERSUS
Government of Khyber Pakhtunkhwa through Chief Secretary,
Peshawar & others ...in both cases

On appeal from the Judgment/Order of the
Peshawar High Court, Peshawar dated
02.10.2013 in W.P. 271-P & 663-P/2013

Dear Sir,

In continuation of this Court's letter of even number dated
16.01.2014, I am directed to say that while dismissing as time barred the above
cited civil petition on 15.01.2014, this Hon'ble Court was pleased to direct as
under:-

"...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
he states that although many other illegal appointees
in his department have been removed from service,
but against many other 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.

Accordingly, a certified copy of the Order was sent to you vide letter
referred above for immediate necessary action and report compliance but no
compliance report in this regard has been received so far from your end.

Contd: P/2

Kaami/***

147

132


60

You are, therefore, required to submit requisite compliance report enabling this office to place the same before Hon'ble Court.

Yours faithfully,

dt. 16.01.2014

↓
Referring to earlier
letter


(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

de.



23

OFFICE OF THE CHIEF ENGINEER (SOUT
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

No. 03 K-4-A/H/PHE

Dated Peshawar, the 17 /02/2014

To

The Registrar,
Supreme Court of Pakistan,
Islamabad

Subject: Civil Petition Nos. 2026 & 2029 of 2013.

Mushtaq Ahmed & another in C.P. 2026/2013
Muhammad Nasir Ali & Others in C.P. 2029/2013
Versus

Govt of Khyber Pakhtunkhwa through Chief Secretary Peshawar & others

Reference: No. C.P. 2026 & 2029 of 2013 - SCJ dated 16.1.2014

In light of direction of honourable Supreme Court of Pakistan order da
15.1.2014 action against illegally appointees in Public Health Engg: Department Khy
Pakhtunkhwa has been finalized. Services of the 24-Nos Sub Engineers, 6-Nos Sc
typist/Stenographer and 2-Nos Data Entry Operator who were appointed with
advertisement and recommendation of Public Service Commission have been terminat
List attached for your good self perusal please.

DA/As above

ok

Chief Engineer (Sout

LIST OF ILLEGAL APPOINTEES IN PUBLIC HEALTH ENGG:
DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

A. 24-Nos SUB ENGINEERS


1. Mr. Tariq Nawaz	Sub Engineer,
2. Mr. Sajjad Khan	Sub Engineer,
3. Mr. S. Muhammad Ihsan Shah	Sub Engineer,
4. Mr. S. Muhammad Ali Sajjad	Sub Engineer,
5. Mr. Abdul Samad	Sub Engineer,
6. Mr. Shaukat Ali	Sub Engineer,
7. Mr. M. Ali Noor	Sub Engineer,
8. Mr. Irshad Elahi	Sub Engineer,
9. Mr. Hussain Zaman	Sub Engineer,
10. Mr. Salim Nawaz	Sub Engineer,
11. Mr. S. Ashfaq Ahmad	Sub Engineer,
12. Mr. Murtaza Ali	Sub Engineer,
13. Mr. Ishfaq	Sub Engineer,
14. Mr. Abdul Shahid	Sub Engineer,
15. Mr. Kashif Raza	Sub Engineer,
16. Mr. Waqas Ali	Sub Engineer,
17. Mr. Muslim Shah	Sub Engineer,
18. Mr. Ishtiaq Ahmad	Sub Engineer,
19. Mr. Zuhib Khan	Sub Engineer,
20. Mr. S. Hassan Ali	Sub Engineer,
21. Mr. Mohsin Ali	Sub Engineer,
22. Mr. Muqtada Qureshi	Sub Engineer,
23. Mr. Ishfaq Ahmad	Sub Engineer,
24. Mr. M. Qaiser Khan	Sub Engineer,

B. 6-Nos STENO TYPIST/STENOGRAPHERS

1. Mr. Nomanullah	Senior Scale Stenographer,
2. Mr. M. Jamil	Steno Typist,
3. Mr. Iftikhar	Steno Typist,
4. Mr. Shah Khalid	Steno Typist,
5. Mr. Aziz Ullah	Steno Typist,
6. Mr. Farhan Ullah	Steno Typist,

C. 2-Nos DATA ENTRY OPERATOR

1. Mr. Farman Ali	Data E/Operator,
2. Mr. Murtaza Qureshi	Data E/Operator,


Chief Engineer (South)

Annex-11
11/11/11

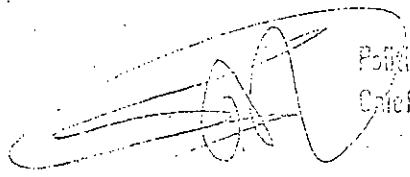
APPOINTMENTS AGAINST THE VACANT POSTS OF SUB ENGINEER / STENOGRAPHER / DEC.

It has come in to the notice of Honourable Chief Minister, NWFP, that a number of posts of Sub Engineer / Stenographers & DEC are lying vacant in PHE. While discussing the matter of appointments against these posts with Chief Engineer PHE, on more than one occasions, it was told that the posts of BFS-10 and above are to be filled through PSC. Where on the other hand due to implementation of Devolution Plan, the Commission is not clear as to whether appointments against these posts, is the prerogative of the respective District or Provincial Governments.

In view of above, the Honourable Chief Minister NWFP, has been pleased to direct to consider the application of the following persons for their appointments against the vacant posts by the Departmental Authority to bridge the gap of the staff & to ensure smooth working of the newly separated / established PHE Department. Necessary sanction to the condonation of the requisite codal formalities if any will be accorded by the competent authority at due course of time separately.

<u>S.No</u>	<u>Name of Applicant</u>	<u>Name of Post</u>
1.	Mr. Tariq Nawaz Khan S/O Amir Nawaz Khan District Bannu.	Sub Engineer
2.	Mr. Muhammad Sajjad S/O Banat Khan District D.I.Khan.	-do-
3.	Mr. S.M. Ihsan Shah S/O S.M. Hassan Shah District D.I.Khan.	-do-
4.	Mr. S.M. Ali Sajjad S/O S. Abid Hussain Shah District D.I.Khan.	-do-
5.	Mr. Abdul Samad S/O Abdul Mueed District Malakand.	-do-
6.	Mr. Sheukat Ali S/O Ghulam Qadir District Karak.	-do-
7.	Mr. Muhammad Ali Noor S/O Noor Muhammad District D.I.Khan.	-do-
8.	Mr. Irshad Elahi S/O Shah Nawaz District D.I.Khan.	-do-
9.	Mr. Hussain Zaman S/O Syed Zaman District Malakand.	-do-
10.	Mr. Saleem Nawaz S/O Karim Nawaz District D.I.Khan.	-do-
11.	Mr. S. Ashfaq Ahmad S/O S. Jamil ud Din District Malakand.	-do-
12.	Mr. Murtaz Ali S/O Abdul Haq District Malakand.	-do-
13.	Mr. Sahar Gul S/O Abdul Jalil District Lakki Marwat.	-do-
14.	Mr. Samiullah S/O Khuda Baksh District D.I.Khan.	-do-
15.	Mr. Abdul Shahid Sadiqui S/O Abdul Azim District Dir Upper.	-do-
16.	Mr. Asfaq Ahmad S/O Muhammad Shuiab District Malakand.	-do-
17.	Mr. Kashif Raza S/O S. Abid Hussain District D.I.Khan.	-do-
18.	Mr. Waqas Ali S/O Farzad Ali District Nowshera.	-do-
19.	Mr. Muslim Shah S/O Mehmood Shah District Mardan.	-do-
20.	Mr. Ishtiaq Ahmad S/O Tahmeed Ullah District Charsadda.	-do-
21.	Mr. Zohaib Khan S/O Jehanzeb Khan District Mardan.	-do-
22.	Mr. S. Hassan Ali S/O S. Ajmal Shah District Charsadda.	-do-
23.	Mr. Mohsin Ali S/O Muhammad Pervez District D.I.Khan.	-do-
24.	Mr. Muqtada S/O Afsar Ali District Peshawar.	-do-
25.	Mr. Iftikhar S/O Chainar Gul District Mardan.	-do-
26.	Mr. Noor Muhammad / O Jamroz Khan District Peshawar.	Stenotypist
27.	Mr. Aziz Ullah S/O Abid Ullah District Bannu.	-do-
28.	Mr. Farhan Ullah S/O Aziz Ullah District Bannu.	-do-
29.	Mr. Murtaz S/O Afsar Ali District Peshawar.	-do-

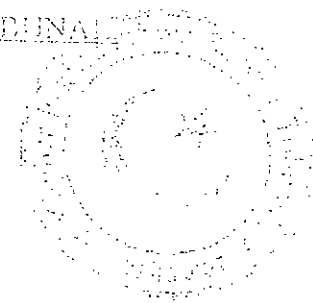
D.E.O


Political Secretary to
Chief Minister NWFP

Ameer V

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEALS NO. 1331/2013
Date of institution 11.09.2013
Date of judgment ... 30.05.2016



Amir Ullah S/O Aman Ullah.
Sub Engineer office of Executive Engineer PHE Division Shangla presently Junior Clerk
office of Executive Engineer PHE Division Shangla.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary, Public Health Engineering Department, Govt. of Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer (South), Public Health Engineering Department, Govt. of Khyber Pakhtunkhwa Peshawar.

(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST ORDER DATED 05.03.2013 OF CHIEF ENGINEER BEING VOID, ILLEGAL AND WITHOUT LAWFUL AUTHORITY.

Mr. Yousaf Khan, Advocate.

Mr. Muhammad Jan, Government Pleader

For appellant.

For respondents.

MR. PIR BAKHISH SHAH

MR. ABDUL LATIF

MEMBER (JUDICIAL)

MEMBER (EXECUTIVE)

JUDGMENT

MR. PIR BAKHISH SHAH, MEMBER: Appointed as Junior Clerk (BPS-05) in the respondent-department (Public Health Engineering) the appellant was promoted to the post of the Sub-Engineer (BPS-11) vide order dated 30.03.2011. This promotion order was withdrawn by the competent authority vide impugned order dated 5.03.2013, hence this service appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

[Handwritten signature]

Arguments heard and record perused.

[Handwritten signature]
Member (Judicial)
Khyber Pakhtunkhwa Service Tribunal

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After a careful perusal of the record and having pro & contra arguments for the post of a Sub-Engineer, it was observed that appointment for the post of a Sub-Engineer falls in the purview of the Public Service Commission and the appellant has failed to prove by showing the relevant rules that he was lawfully promoted from the post of a junior clerk to the post of a Sub-Engineer. We have carefully perused the record and unable to reach on definite conclusion as to whether the appellant was freshly appointed on the post of Sub-Engineer or promoted from the post of Junior Clerk. In the first eventually, the appellant was required to have been recommended either by Public Service Commission or by the Compete Experimental Promotion/Selection Committee which is not the case of the appellant. In t



dismissed

by the competent authority. He submitted that the appeal being devoid of merits may be in favour of the appellant, therefore, the same was rightly cancelled through impugned order that the promotion order dated 30.03.2011 is fake and unlawful which cannot create any right the appellant failed in the process of selection for the post of Sub-Engineer. He submitted that the Sub-Engineer was advertised by the department but it was for Adhoc appointment and posted to the said post as was done in the case of the appellant. He submitted that the post Engineer can be filled through Public Service Commission and no junior clerk can be this appeal was resisted by learned GP who submitted that the post of a Sub-

111

order may be set aside and the appellant may be restored to the post of Sub-Engineer(BPS- post of Sub-Engineer. He submitted that on acceptance of the instant appeal the impugned order was also duly recommended by the committee, therefore he was entitled to the post of Sub-Engineer was duly advertised and the appellant appeared in its test and diploma holder in Engineering and being qualified he was deserving for the post. He argued Engineer to his regular post of Junior Clerk. He further submitted that the appellant was an Engineer that was trained but the appellant was unlawfully reverted from the post of Sub-Engineer. He submitted that no regular equality was considered.

...second eventuality of promotion, it was not shown from the rules that a Junior Clerk can be promoted to the post of Sub-Engineer. Prima-facie, the order of promotion dated 30.03.2011 was unlawful, therefore, the same was rightly withdrawn/cancelled through my good order dated 05.03.2013. Consequently, there is no merit in this appeal to merit for the presence of the Tribunal, hence the appeal is dismissed. File be consigned to the record room.

ANNOUNCED
05.05.2016

Sd/- Pk Bakht Shah, Member
Sd/- Abdul Latif, Member



Date of Decision: 12-07-16
 Date of Writing: 12-07-16
 Copying Fee: 8
 No. of Pages: 2
 No. of Copies: 10
 Name of Applicant: Muhammad
 Name of Officer: 12-07-16

ANNEXURE-~~XII~~
5 201/6

OFFICE OF THE DISTRICT ACCOUNTS OFFICER TANK

NO.DAO/ TANK/APPOINTMENT/2010-11/ 805-11

Dated: 23/05/2011

To
The Accounts General,
Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: APPOINTMENT OF SUB ENGINEER BY DEPARTMENTAL AUTHORITY

MEMO:

P-179/e
11

Kindly refer to your letter No: H-24(110)/TANK/VOL-II/2010-11 dated 30.07.2010 on the subject noted above (copy enclosed)

It is again submitted that the department of the incumbent sub engineer has been failed to produce the requisite NOC by the Public Service Commission Khyber Pakhtunkhwa.

It is further stated that department of public health engineering is reluctant to decide/regularize the case of appointment of sub engineer in light of Para 13 & 14 of Khyber Pakhtunkhwa civil servants appointment/promotion transfer rule 1989

The original appointment order has been made in contravention of Government laid down policy vide circulated notification No: SOR-VI/EXAD/1-10/2005/VOL-VI dated 15.11.2007

The contents of appointment order reveal that incumbent of sub engineer has been appointed on regular basis without recommendation of Public Service Commission Khyber Pakhtunkhwa (copy enclosed), NOC in-case obtained is not being furnished by the department nor the appointment is modified in terms of Para 13 & 14 of appointment promotion and transfer rule 1989.

This office is of the view that the appointment of the sub engineer is invalid abinitio until reviewed as per your office clarification dated 30.07.2010. The presumption of this office if correct may be confirmed.

Copy file please

WAD

DISTRICT ACCOUNTS OFFICER
TANK

[Signature]
26/5

Copy forwarded to all concerned for information and further necessary action please

- (1) Secretary to the Government of PHE, Khyber Pakhtunkhwa, Peshawar
- (2) Chief engineer, PHE Department, Peshawar
- (3) District Coordination Officer, Tank
- (4) District Comptroller of Accounts, D.I.Khan
- (5) XEN, PHE, Tank
- (6) XEN, PHE, D.I.Khan

344

[Signature]
DISTRICT ACCOUNTS OFFICER
TANK

5071

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Office of the
Accountant General
Khyber Pakhtunkhwa Peshawar
Phone: 091 9211250-54

No:H-24(110)/Tank/Vol-III/2010-11 /1985

Dated. 06.2011

To
✓ The Chief Engineer,
Public Health Engineering Deptt.
Khyber Pakhtunkhwa, Peshawar.

Subject: Appointment as Sub Engineer by Departmental Authority.

Kindly find enclosed herewith copy (along with its enclosures) of DAO Tank Memo No. DAO/Tank/Apptt:/2010-11/805-11 dated.26.05.2011 and letter dated. 23.07.2010 on the above subject.

In light of S&GAD letter No.SOR-I(S&GAD)1-117/91(C) dated. 12.10.1993, the appointment of Sub Engineer will continue to be made through the recommendation of Public Service Commission, where as Mr. Kashif Raza has been appointed without the recommendation of Public Service Commission vide office order No.11/E-4/PHE dated. 13.01.2010 which is contrary to the prevailing rules. The said officer was allowed salaries for the services recorded in light of Para-13 & 14 of NWFP Civil Servant (Appointment, Promotion and Transfer) Rules 1989, which provide that appointment can be made on adhoc basis for the period of six months.

It is therefore, requested to provide the recommendations of Public Service Commission or regularize the appointments from Establishment Deptt. in relaxation of rules or reconsider the appointment order for future course of action.

Any appropriate action taken in this regard may kindly be intimated, otherwise the salary of the official being irregular appointed will be discontinued.

M. Mahamud
ACCOUNTS OFFICER(HAD)

Sl. No.	763
Date	2/1/11
Case No.	
REMARKS	
Director (C)	
Director	
Director	
AS	
SAO	

D:\C & M DESKTOP\Desktop\C & M HAD\HAD Section\sub engineer.doc

AO
in light of para 13 & 14 of NWFP Civil Servant Rules 1989
SB State of Khyber Pakhtunkhwa
according to provisions of Rules 1989
for irregular appointment

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Copy to:

1. Establishment Department Khyber Pakhtunkhwa, Peshawar
2. Deputy District Officer WS&S Tank
3. Mr. Kashif Raza, Sub Engineer office of Deputy District Officer Works & Services Tank(WS&S)
4. DAO Tank with reference to your letter referred above and intimate that why the Pay beyond 06 months was allowed without any consultation with high ups.

sd/-

ACCOUNTS OFFICER(HAD)



Office of the
Accountant General
Khyber Pakhtunkhwa Peshawar
Phone: 091 9211250-54

3 2007/6

No. 24(110)/Tank/Vol-II/2010-11/
To

Dated: 30.07.2010

The District Accounts Officer,
Tank.

Subject: APPOINTMENT OF SUB—ENGINEER BY DEPARTMENTAL
AUTHORITY

Kindly refer to your office letter No: DAO/TK/Appointment/2010-11/742-
44 dated: 23-07-2010 on the above subject.

In the case if the necessary NOC has been obtained by the Public Service
Commission, then the case may be decided in the light of Para -13 & 14 of NWFP Civil
Servant (Appointment, Promotion, & Transfer) Rules 1989.

Quidam
ACCOUNTS OFFICER (HAD)
KHYBER PAKHTUNKHWA PESHAWAR.

Copy to:

1. Chief Engineer,
Public Health Engineering Deptt: Khyber Pakhtunkhwa Peshawar.

ACCOUNTS OFFICER (HAD)
KHYBER PAKHTUNKHWA PESHAWAR.