

Service Appeal No. 1056/2016

Date of Institution: 17.10.2016

Date of Decision: 27.03.2018

Syed Kamal Shah

Vs

**Secretary Education Khyber Pakhtunkhwa
Peshawar & 3 Others.**

Judgment/Order:

27.03.2018


MUHAMMAD HAMID MUGHAL, MEMBER (J) Learned counsel for the appellant and learned Additional Advocate General present.

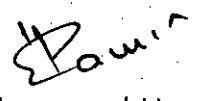
Arguments heard. File perused.

Learned counsel for the appellant stated that the appellant was appointed as Chowkidar on fixed pay basis/contract basis vide order dated 16.04.1995. That the appellant was retired from service on 30.06.2016 but without any pensionary benefits hence the appellant approached this Tribunal for the grant of pensionary benefits.

Learned counsel for the appellant has taken the plea that in the identical nature cases this Tribunal has already granted relief of pensionary benefits and in this respect referred to the common judgment dated 12.10.2017 of this Tribunal in service appeal bearing No.1055/2014. Learned counsel for the appellant stressed that the appellant being similarly placed person is also entitled to the same relief.

Judgment dated 12.10.2017 passed in service appeal No.1055/2014 also perused and found the plea of the learned counsel for the appellant as genuine. Consequently the present service appeal is also accepted in terms of judgment dated 12.10.2017 passed in service appeal No.1055/2014 titled Jamroz Khan Versus Senor District Accounts Officer Nowshera and 7 others. Parties are left to bear their own costs. File be consigned to the record room.


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

11.1.2018


Clerk of counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Counsel for the appellant is not in attendance. Seeks adjournment. To come up for arguments on 14.03.2018 before the D.B.



Member


Chairman

14.03.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Fazle Khaliq, ADO (Litigation) for the respondents present. Arguments heard. To come up for order on 27.03.2018.


(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

1056/2016

13.03.2017

Counsel for appellant and Mr. Muhammad Adeel Butt, Additional AG for respondents present. Rejoinder not submitted. Learned counsel for appellant requested for time for filing rejoinder. Request is accepted. To come up for filing of rejoinder and arguments on 14.07.2017 before D.B.



(AHMAD HASSAN)
MEMBER


(ASHFAQUE TAJ)
MEMBER

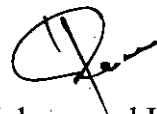
14.07.2017

Counsel for the appellant and Asstt. AG for alongwith Jamshed khan, ADO for the respondents present. Rejoinder submitted. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 15.11.2017 before the D.b.

15.11.2017



No one is present on behalf of the appellant. Addl. AG alongwith Mr. Jashaid Khan, ADO and Mr. Fazal Khaliq, ADO for respondents present. Notices be issued to the appellant and his counsel. To come up for arguments on 10.01.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

10.01.2018

Appellant with counsel for the appellant and Asst: AG along with Jamshid Khan ADO for respondents present. Learned counsel for the appellant requested that similar nature of appeal has been fixed before D.B, therefore, the same may also be clubbed with the said appeal. To come up for arguments along with connected appeal on 11.01.2018 before D.B.


(Ahmad Hassan)
Member(E)

(M. Hamid Mughal)
Member (J)

07.11.2016

None for the appellant present. Notices be issued to the appellant and his counsel. To come up for preliminary hearing on 22.11.2016 before S.B.


(PIR BAKISH SHAH)
MEMBER

22.11.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was appointed as Chowkidar on 16.04.1995 on fixed pay/contract basis and has since rendered 21 years service. His services were regularized on 24.10.2009 and he stands retired from service on superannuation on 30.06.2016 but he was refused pensionary benefits on the plea that service of the appellant did not qualify for pension under the rules. The learned counsel argued that identical cases filed by him were already admitted by this Service Tribunal in which next date of hearing is fixed on 13.12.2016 and requested for admission of the case for regular hearing.

Points urged needs consideration. The appeal is admitted for regular hearing subject to legal objections at a later stage and subject to deposit of security and process fee within 10 days where-after notices be issued to the respondents for written reply/comments for 13.12.2016. The case may be clubbed with the other cases fixed for 13.12.2016.


(ABDUL LATIF)
MEMBER

Appellant Deposited
Security & Process Fee




13.12.2016

Appellant in person and Mr. Raham Taj, ADO alongwith Addl. AG for respondents present. Written reply submitted by respondent No. 3. Learned Addl. AG rely on the same on behalf of remaining respondents. The appeal is assigned to D.B for rejoinder and final hearing on 13-3-2017.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 1056/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17/10/2016	<p>The appeal of Syed Kamal Shah presented today by Mr. Sohrab Khan Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	20-10-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26-10-2016</u></p> <p style="text-align: right;"> MEMBER</p>
	26.10.2016	<p>Clerk to counsel for the appellant present. Preliminary arguments could not be heard due to general strike of the bar. To come up for preliminary hearing on 07.11.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE PROVINCIAL SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Appeal No. 1056 /2016

Syed Kamal Shah S/o Ajab Shah

R/o Imransah Qadray, Teh. & Distt. Swabi..... Appellant.

Versus

1. Secretary Education, Khyber Pakhtunkhwa Peshawar.
2. Director General, Khyber Pakhtunkhwa Peshawar
3. B.D.O Education Swabi.
4. S.D.B.O (Female) Education Topi. Respondents.

I N D E X

S.No.	Description of Documents	Annexure	Page No.
1.	Appeal		(1) to (3)
2.	Affidavit		(4)
3.	Copy of Service Book/ appointment order	A & B	(5) to (7)
4.	Copy of Mutation	C	(8)
5.	Copy of impugned order	D	(9)
6.	Copy of Departmental Appeal	E	(10) (11)
7.	Wakalat Nama		(12)

Dated 17.10.2016

Appellant



Through Counsel

Sohrab Khan
Advocate High Court
at Judicial Complex Swabi.

①

BEFORE THE PROVINCIAL SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 1056/2016

Diary No. 1089

Syed Kamal Shah S/o Ajab Shah

Dated 17-10-2016

R/o Imranzal Qadray, Teh. & Distt. Swabi.... Appellant.

Versus

1. Secretary Education, Khyber Pakhtunkhwa
Peshawar.
2. Director ^{Edi: ESB} General, Khyber Pakhtunkhwa Peshawar
3. B.D.O Education Swabi.
4. S.D.B.O (Female) Education Topi..... Respondents.

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL

ACT 1974 DATED 30.6.2016 WHEREBY AN APPELLANT WAS
RETIRED FROM SERVICE WITH NO PENSIONARY BENEFITS.

APPELLANT FILED A DEPARTMENTAL APPEAL BEFORE RESPONDENT No.1
DATED ON 15.7.2016 WHICH REMAINED UNRESPONDED DESPITE OF
STATUTORY PERIOD OF 90 DAYS, HENCE THUS APPEAL INTER ALIA
ON THE FOLLOWING FACTS AND GROUNDS.

Respectfully Sheweth.

1. That the appellant was appointed as Chowkidar on contract
basis dated on 16.4.1995.

Filed to day

Registrar

(Copy of service book and appointed order are attached
as Annexure "A" & "B").

2. That, the father of the Appellant gifted his land to the
Education Department in consideration for the appointment
of his son. (Copy of gift mutation is attached as Annexure
"C").

Contd '..... P/2.

- ②
3. That, the appellant became permanent after passing the NWFP employees (Regulation of service Act 2009 by the Provincial Government dated on 24th October 2009.
 4. That, the appellant qualifying his services for about 21 years 02 months and 14 days. But inspite of qualifying his service he was retired from service dated on 30.6.2016 with no pensionary benefits which is illegal against the law and facts. Hence liable to be set aside.
 5. That, the appellant filed a departmental appeal against the illegal order of respondent No.3 before the respondent v No.1 dated 15.7.2016 but no remedy was granted untill now. (Copy of impugned Order No.2484-85 and Departmental Appeal are annexure "D" & "E".)
 6. That feeling aggrieved of an illegal order he made a departmental appeal which was not decided uptil now and mandatory stipulated period of 90 days for waiting the decision of the authority has since been elapsed. Since the respondent authorities are not prepared to listen the genuine grievance to the appellant regarding the illegal order hence this appeal inter alia on the following grounds.

GROUNDS

- A. That the impugned order is illegal unconditional and void as initios and is liable to be set aside it is further averred that abuse of discretion by a public functionary violates Art 4 of constitution, Appellant rights to be dealt with in accordance with law was violated which is granted in Art 4 of the constitution of Pakistan 1973.

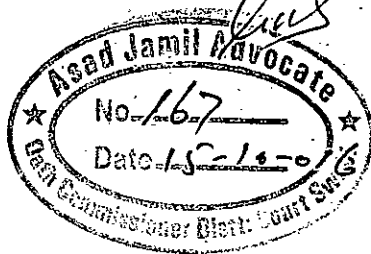
- B. That, the respondents have also violated Art 25 and 27 of the constitution of the Islamic Republic of Pakistan 1973 which guarantees equality of all citizen and safeguard against discrimination in services.
- C. That great injustice has been done in the appellant by the respondents.
- D. That after no consideration was given by the respondents to the departmental representation. Appellant has come to the Honourable Tribunal to get justice.
- E. That appellant shall urge any other points at the time of arguments with the permission of this Honourable Tribunal.

It is premise it is respectfully prayed that upon acceptance of this appeal pensionery benefits granted to the appellant.

Dated 17.10.2017.

Appellant

Syed Kamal Shah



Through Counsel

Sohrab Khan,

Advocate High Court

at Judicial Complex Swabi.

BEFORE THE PROVINCIAL SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
P E S H A W A R

Appeal No. _____/2016

Syed Kamal Shah S/o Ajab Khan

R/o Imranzai Qadray, District Swabi..... Appellant.

Versus

1. Secretary Education, Khyber Pakhtunkhwa Peshawar.
2. Director General Khyber Pakhtunkhwa, Peshawar.
3. E.D.O Education Swabi.
4. S.D.E.O (Female) Education Topi..... Respondents.

AFFIDAVIT

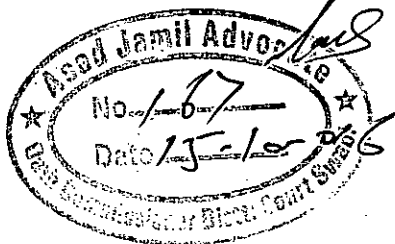
I, SOHRAB KHAN Advocate at Judicial Complex Swabi do hereby solemnly affirm and declare on oath that as per instructions of my client the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Dated 17.10.2016

Deponent.

Sohrab Khan
Advocate.



(A)

(5)

Note: The entries on this page should be renewed or re-attested at least every five years and the Signature to lines 9 and 10 should be dated.

Name: Syed Kamal Shah

Race: Muslim / Afghan

Residence: Palang Tehsil Topi District Swabi

Father's name and residence: Ajab Shah residence As above

Date of birth by Christian era as nearly as can be ascertained: 1956

(Nineteen Fifty Six)

Exact height by measurement:

5' 6"

Personal marks for identification:

8. Left hand thumb and Finger impression of (Non-Gazetted) officer:

Little Finger:



Ring Finger:



Middle Finger:



Fore Finger:













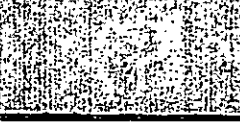
Thumb:



9. Signature of Government Servant:



10. Signature and designation of the Head of the office, or other Attesting Officer.

1	2	3	4	5	6	7	8
Name of Post:	Whether substantive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term 'pay'	Date of Appointment	Signature of Government servant
Chowkidar G.P.S., Palang (Qadria)	Contract			Rs. 1200/ Fixed Pm		16 ⁰⁴ / ₉₆	
Revised Entry Due to Award of BPS-01							
BPS-01 Rs. 1245-35-1770							
-do-	-do-		Rs. 1245/Pm			16 ⁰⁴ / ₉₆	
-do-	-do-		Rs. 1280/Pm			01 ¹² / ₉₆	
-do-	-do-		Rs. 1315/Pm			01 ¹² / ₉₇	
-do-	-do-		Rs. 1350/Pm			01 ¹² / ₉₈	
-do-	-do-		Rs. 1385/Pm			01 ¹² / ₉₉	
-do-	-do-		Rs. 1420/Pm			01 ¹² / ₂₀₀₀	
-do-	-do-		Rs. 1455/Pm			01 ¹² / ₂₀₀₁	
-do-	-do-	BPS-01 Rs. 1870-55-3520				01 ¹² / ₂₀₀₁	
-do-	-do-		Rs. 2200/Pm			01 ¹² / ₂₀₀₁	
-do-	-do-		Rs. 2255/Pm			01 ¹² / ₂₀₀₂	
-do-	-do-		Rs. 2310/Pm			01 ¹² / ₂₀₀₃	

Signature and
head
her att
in attes
column

1	2	3	4	5	6	7	
Name of Post	Whether substantive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term "pay"	Date of Appointment	Signature of Government servant
Chowkidar G.P.S, Palang (Gadwa)	contract		Rs. 2365/PM			01/12/2004	
-do-	-do-	BPS-01	Rs. 2150-65-4100				
-do-	-do-		Rs. 2735/PM			01/07/2005	
-do-	-do-		Rs. 2800/PM			01/12/2005	
-do-	-do-		Rs. 2865/PM			01/12/2006	
-do-	-do-	BPS-01	Rs. 2475-75-4725				
-do-	-do-		Rs. 3300/PM			01/07/2007	
-do-	-do-		Rs. 3375/PM			01/12/2007	
-do-	-do-	BPS-01	Rs. 2970-90-5670				
-do-	-do-		Rs. 4050/PM			01/07/2008	
-do-	-do-		Rs. 4140/PM			01/12/2008	

Whore

2008
 OFFICE OF THE ACCOUNTS GENERAL
 N.W.F.P. SHAWAR
 PAY FIXED II
 REVISED BASIC
 OF RS
 ATR S
 07-2008
 12-2008

Name of Servant	9 Name and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8	10 Date of termination or appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer	13 Leave		14 Signature of the head of the office or other attesting officer.	15 Reference to any recorded punishment or censure, or reward or praise of the Government Servant
					Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debtable to another Government		
		16/4/96	Awarded BPS-01.			Appointed against Chowkidar post at the Rate Rs:1200/- PM Fixed on Contract basis vide Sub-Divisional Officer Education, Swabi No.1265-71 dt:16/4/96.		
		30/11/96	A/Incr.					
		30/11/97	A/Incr.			Service verified w.e.f. 16-4-96 to 30-6-2008 from the acquittance Roll and other Record of this office.		
		30/11/98	A/Incr.					
		30/11/99	A/Incr.			Awarded BPS:01 from the date of 1st appointment i.e. 16/4/96 vide Govt of NWFP, Finance department Notification No.		
		30/11/2000	A/Incr.					
		30/11/2001	A/Incr.					
		01/12/2001	Pay Scale					

Handwritten notes and signatures at the bottom of the page, including a large signature and some illegible text.

(B) (7)

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER (FEMALE) SWABI.

APPOINTMENT.

OFFICE ORDER.

Mr. Syed Kamal Shah SON of Mr. Ajab Shah of Village Palang (Badgh) is hereby appointed against the chowkidar post at the Rate of Rs.1200/-PM fixed on CONTRACT BASIS at Govt: Girls Primary School Palang (Badgh) from the date of taking over charge in the interest of public service.

TERMS AND CONDITIONS.

- 1:- His appointment has been made on contract basis for one year.
- 2:- Agreement for the appointment prescribed by the department is attached.
- 3:- He will govern with the term and conditions mentioned in the agreement as under.
 - I. His appointment is temporary and liable to termination at any time without assigning any reason and notice.
 - II. In case of resignation he will give to submit one month prior notice to the department & forfeit one month pay in lieu thereof the Govt.
- III. He is required to produce Health and age certificate from the D.H.O. Swabi before taking over charge.
- 4:- He should not be allowed to take over charge if his age is less than 18 years or not more than 45 years at the time of appointment.
- 5:- He should produce National identity card for verification.
- 6:- He should also produce Domicile Certificate before taking over charge.
- 7:- He should be directed to take over charge within 15 days of the issue of this order, otherwise the appointment shall be stand cancelled.
- 8:- Charge reports should be sent to all concerned in duplicate.

(MISS. TAJ BIBI)
SUB DIVISIONAL EDUCATION OFFICER
(FEMALE) S W A B I.

Endst: No. 1265-71 / F.No. E/B-28/Class-IV Apptt: / Dated 16/04 / 1995.

Copy of the above is forwarded for information and necessary action to the:-

1. Director Primary Education NWFP, Peshawar.
2. District Education Officer (Female) Primary Swabi.
3. District Accounts Officer, Swabi.
4. Allaqe ASDEO (Female) Local Office.
5. Accountant Local Office.
6. Candidate Concerned.
7. **Headmistress Concerned School.**

SUB DIVISIONAL EDUCATION OFFICER
(FEMALE) S W A B I.
Palang Swabi.

A. Ghayas, K.K.
Said Rehman, Zaida.
24.04.1995.

(C)

شماره حساب و تاریخ و محل

ردیف	تاریخ	شرح	مبلغ	تاریخ	شرح	مبلغ
۱	۱۳۹۱	توجهات	۱۳۹۱			
۲	۱۳۹۱	توجهات	۱۳۹۱			
۳	۱۳۹۱	توجهات	۱۳۹۱			
۴	۱۳۹۱	توجهات	۱۳۹۱			
۵	۱۳۹۱	توجهات	۱۳۹۱			
۶	۱۳۹۱	توجهات	۱۳۹۱			
۷	۱۳۹۱	توجهات	۱۳۹۱			
۸	۱۳۹۱	توجهات	۱۳۹۱			
۹	۱۳۹۱	توجهات	۱۳۹۱			
۱۰	۱۳۹۱	توجهات	۱۳۹۱			
۱۱	۱۳۹۱	توجهات	۱۳۹۱			
۱۲	۱۳۹۱	توجهات	۱۳۹۱			
۱۳	۱۳۹۱	توجهات	۱۳۹۱			
۱۴	۱۳۹۱	توجهات	۱۳۹۱			
۱۵	۱۳۹۱	توجهات	۱۳۹۱			
۱۶	۱۳۹۱	توجهات	۱۳۹۱			
۱۷	۱۳۹۱	توجهات	۱۳۹۱			
۱۸	۱۳۹۱	توجهات	۱۳۹۱			
۱۹	۱۳۹۱	توجهات	۱۳۹۱			
۲۰	۱۳۹۱	توجهات	۱۳۹۱			

توجهات

توجهات

توجهات

توجهات

توجهات

توجهات

توجهات

توجهات

توجهات

Account (Goverment)

توجهات

توجهات

توجهات



D

9

DISTRICT EDUCATION OFFICE (FEMALE) SWABI
(Office phone Fax No 0938280339, emisfswabi@yahoo.com)

Office Order.

The following Govt: servants (Class-IV) are hereby retired from Govt: service from the date noted against each on attaining 60 years age without pensionary benefits due to less qualifying service and only for the drawl of Benevolent fund & E.E.Fund.

S#	Name/Designation	School/Office	Date of Birth	D/O Retirement
1	Kitab Shah Chowkidar	GGPS Nara Banda (G)	1956	30/06/2016
2	Gul Farin Khan Chowkidar	GGPS Pkrari (Gadon)	1956	30/06/2016
3	Syed Kamal Shah Chowkidar	GGPS Palang Qadra	1956	30/06/2016

Note:-

1. Necessary entry to this effect should be made in their service books.
2. - The order of retirement is final and shall not be revoked at any stage.

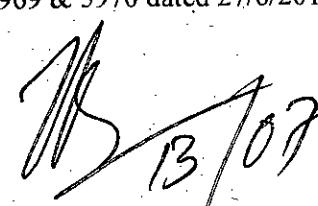
(Naghmana Sardar)
DISTRICT EDUCATION OFFICER
(FEAMEL) SWABI

Endst: No. 2484-85

Dated Swabi the 13/7 /2016

Copy of the above is forwarded to the:-

1. District Accounts Officer, Swabi.
2. SDEO(F) Topi w/r to her letter No. 5957 dated 18/6/2016, No. 5969 & 5970 dated 27/6/2016 alongwith service books.


DISTRICT EDUCATION OFFICER
(FEAMEL) SWABI

15-27

ریشون ہو گیا۔ خدمت جناب سیکرٹری ایجوکیشن ریٹائر

محمد مسعود

15/7/2016

مغورہ سے تعلق نہیں ہے۔ ڈسٹرکٹ ایجوکیشن آفیسر میں 15/7/2016

جناب عالی: تعلق نہیں ہے۔ (میں عرض ہے)

① N.A. ایڈمنٹ فیم ایجوکیشن میں جنیت ڈولڈر سال 14/06/1996 برقی آیا تھا۔ ادارہ ایجوکیشن باقاعدہ سے سرانجام دیا

② یہ فیم نے ایڈمنٹ کو مورخ 16/06/2016 کو سروس سے Retired کر دیا تھا۔ Pension Settlement کے بعد ایڈمنٹ کو کسی قسم کا Benefit نہیں دیا گیا۔ انشاء میں مندر قدرت قانون مندر دلائل ہے۔ ایچ آر ڈی قابل یگانہ ہے۔ Back Benefit Medication قابل ہے

③ N.A. ایڈمنٹ کے والدین کی حیثیت سے ملازمتی سے تعلق نہیں ہے۔ ایجوکیشن کو ملازمت سے رٹائر ہوئے ہیں۔ 0-2 فرم نمبر 919 داتا۔ (نرس اسٹاپ نمبر 339 داشت نمبر 1391 معزز 11/03/1983 سے ہے)

④
 North West Frontier Province Pension (Modification) Bill
 Pension کے بارے میں اور اس کے بارے میں
 صرف قانون ہے۔ اسے اردو و Modify کرنے کی اجازت
 دیا گیا ہے۔

⑤
 North West Frontier Province Employees (Regulation of Service) Act
 Section 3 میں

Permanent کے بارے میں 3 دے دیے
 Regulation of Services of certain employees
 All employees including recommendees
 of High Court appointed on contract or adhoc
 & holding that post on 31st December, 1958 or
 till the commencement of this Act shall be
 deemed to have been validly appointed on
 regular basis having the same qualification &
 experience for a regular post

و اس کے بارے میں

North West Frontier Province Pension (Modification) Bill
 Pension کے بارے میں اور اس کے بارے میں

15/7/18
 (15/7/18)

وکالت نامہ

بعدالت
 سرس ٹریبونل سٹارٹ
 بنام
 منجانب
 سرس ٹریبونل
 دعویٰ یا جرم

تھانہ
 باعث تحریر آنکہ مف آئی آر
 مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام
 سید خان احمد علی

کو بدیں شرط وکیل مقرر کیا ہے میں ہر پیشگی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا اور بروقت
 پکارے جانے مقدمہ جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا، اگر پیشگی پر من
 مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس
 کے کسی طرح ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف صدر مقام پکھری سے کسی اور جگہ یا پکھری کے
 مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے، اگر مقدمہ علاوہ صدر پکھری
 کے کسی اور جگہ سماعت ہونے یا بروز تعطیل سے پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی
 نقصان پہنچے تو اس کی ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی
 صاحب موصوف ذمہ دار ہوں گے، مجھ کو کل ساختہ پرواختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا
 اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی
 درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کا روپیہ
 وصول کرنے اور رسید دینے اور داخل اور ہر قسم کے بیان دینے اور سپرد دہاشی و راضی نامہ کو فیصلہ پر خلاف
 کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت اپیل برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ
 درخواست حکم انتہائی یا قرتی یا گرفتاری قبل اجراء ڈگری بھی موصوف کو بشرط ادا ہنگی علیحدہ مختار نامہ پیروی کا
 اختیار ہوگا اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا، یا مقدمہ مذکورہ یا اس کے کسی جزو کی
 کارروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرنٹر کو بجائے اپنے یا پانے ہمراہ
 مقرر کریں اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے جیسے کہ صاحب
 موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا وہ صاحب موصوف کو پورا اختیار ہوگا
 کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ بھی صاحب موصوف کے برخلاف نہیں ہوگا،
 لہذا یہ مختار نامہ لکھ دیا تاکہ سند رہے۔

مورخہ... 16/10/17... مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

گواہ شد

Handwritten signatures and stamps.

بار ایسوسی ایشن نمبر

بار کونسل نمبر

دستخط وکیل

Rely on 906/16 and may be clubbed.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No.1056/2016

Syed Kamal Shah Chowkidar, GGPS Palang Qadra(G) Swabi.....Appellant

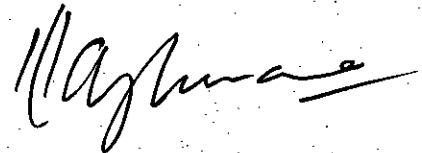
VERSUS

- 13/5
1. Govt:of KPK through Secretary E&SE Khyber Pakhtunkhwa Peshawar
 2. Director E&SE Khyber Pakhtunkhwa Peshawar
 3. District Education Officer (E&SE) Female Swabi
 4. SDEO (Female) Topi.

.....Respondents

INDEX

S#	Description of Documents	Annexure	Page
1	Para wise Comments with affidavit	-	01-03
2	Reply to Application for Condonation of delay	-	04-05
3	Govt:of NWFP Finance Notification	A	06-10
4	Govt:of NWFP Finance Notification	B	11-12



DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No.1056/2016

Syed Kamal Shah Chowkidar, GGPS Palang Qadra(G) Swabi.....**Appellant**

VERSUS

1. Govt:of KPK through Secretary E&SE Khyber Pakhtunkhwa Peshawar
2. Director E&SE Khyber Pakhtunkhwa Peshawar
3. District Education Officer (E&SE) Female Swabi
4. SDEO (Female) Topi.

.....**Respondents**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS 01 TO 04

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. That the instant Appeal is badly time barred and not maintainable.
2. That the service appeal draft is neither signed by the Council for the appellant nor by the appellant. The Appeal is not maintainable in the present form and also in the present circumstances of the issue.
3. That the Appellant has no locus standi or cause of action to file the instant Appeal
4. That the Appellant has not come to the Tribunal with clean hands.
5. That the Appellant concealed the material facts from the Honourable Tribunal.
6. That the Appellant has filed the instant Appeal just to pressurize the respondents.
7. That the Appellant is estopped by his own conduct to file the instant appeal.
8. That the instant Appeal is against the prevailing laws and rules.

ON FACTS.

1. That, the appellant himself admits he was appointed as Chowkidar on contract basis dated 16.04.1995. Government of NWFP Finance Department No.BI/2-1/92-93/FD dated Peshawar, the 04.11.1992 which states, " in future the non education cadre posts in the Education Department such as Chowkidars, Naib Qasids, Malis, Water Carriers, Sweepers etc; be filled on contract basis, in order to rid the Provincial Exchequer of the extra burden on account of future pensionary liabilities." These posts be filled in on fixed salaries basis. (Annexure-A attached).
2. That the appellant was appointed in Education Department and the appellant accepted all the terms and conditions without any agitation before taking over charge till retirement.
3. Incorrect, hence denied, the appellant became Civil Servant w.e.f 01.07.2008 vide Government of NWFP Finance Department No.B-O-I/1- 22/2007-08/FD, dated 29.01.2008. In this regard all the previous policies/instructions shall be treated as cancelled w.e.f. 01.07.2008 (Annex-B attached).

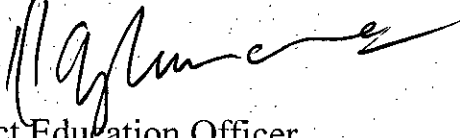
4. Incorrect, hence denied, the qualifying service of the appellant is only 08 years only " Law does not recognize any contract employee as Civil Servant." Reliance is placed on **2013 PLC (CS)1463**. "Pension has to be determined on the basis of qualifying service and not on the basis of total length of service". The same is reported in **NLR 1991 CLJ 706**. "Grievance of Civil Servant was that, his period of service on contract basis had not been counted toward his service when converted on regular basis. Contractual appointment was not a regular appointment and the period of service rendered on contract basis could not be equaled to that of regular service. Contract service of the Civil Servant was not counted towards regular service due to the then prevalent policy". Reliance is placed on **2004 PLC (CS) 758**.
The qualifying service of the appellant is much less than the ten years (10 years), hence he is not entitled for the grant of pensionary benefits.
5. The appellant was retired from service on 15.09.2015 and filled a departmental appeal to the DG Education Khyber Pakhtunkhwa Peshawar. This post is not held in the Education Department. The departmental appeal was presented on 10.05.2016, which is badly time-barred and not maintainable " Service Tribunal should have taken note of the fact that appeal before departmental authority being time-barred, appeal by civil servant before Service Tribunal was also incompetent". Reliance is placed on **2006 SCMR 453 & 535**:
" Time-barred departmental representation, Service Tribunal dismissed the appeal filed by the Civil Servant as the same was barred by the limitation. Departmental appeal filed by Civil Servant was barred by time, therefore, even if appeal filed by Service Tribunal was in time, no relief could be granted to him. Judgment passed by Service Tribunal was reasonable and proceeded on cogent ground. Civil Servant was unable to advert to jurisdictional error or legal infirmity which could justify interference. Appeal was dismissed". The same is reported in **2012 SCMR 195**.
6. Incorrect, hence denied, the retirement order made by the respondent No.3 is legal, with law and rules. The respondent No.3 has not violated any law or rule while made the retirement order of the appellant. That the appellant has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed on the following grounds.

GROUNDS.

- A. Incorrect, hence denied, that the appellant has been treated in accordance to the law, rules and policy presently prevailing.
- B. Incorrect, hence denied, the department has not bulldozed any vested right of the appellant.
- C. Incorrect, hence denied, the department has followed law, rule and policy and justice has been done to the appellant by the respondents.
- D. Incorrect, hence denied, the departmental appeal was badly time-barred and not addressed to the appellant authority. There is no post of DG Education Khyber Pakhtunkhwa in the province of Khyber Pakhtunkhwa. The departmental appeal made by the appellant to the unknown forum, which is illegal, without law, rules and policy. The appellant was appointed on the basis of previous policy contract based Class IV servant, who were not entitled for the right of pension/gratuity.

E. That the respondents also seek the permission of Honourable Tribunal to advance further grounds points at the time of arguments.

In wake of the above submissions, it is requested that this Honourable Tribunal may graciously be pleased to dismiss the instant appeal with cost in favour of the respondents.



District Education Officer
(Female) Swabi

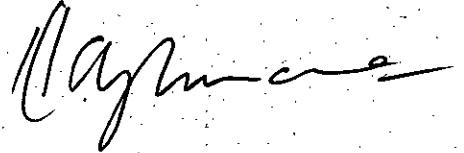
Sub-Divisional Education
Officer (Female) Topi

Director E&SE Khyber Pakhtunkhwa
Peshawar

Secretary Elementary & Secondary Education
Department Govt:of KPK

AFFIDAVIT

We do hereby solemnly affirm and declare on oath that the contents of the comments are true and correct to the best of our knowledge and belief, nothing has been concealed from this Honourable Tribunal.



DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No.1056/2016

Syed Kamal Shah Chowkidar, GGPS Palang Qadra(G) Swabi.....Appellant

VERSUS

1. Govt:of KPK through Secretary E&SE Khyber Pakhtunkhwa Peshawar
2. Director E&SE Khyber Pakhtunkhwa Peshawar
3. District Education Officer (E&SE) Female Swabi
4. SDEO (Female) Topi.

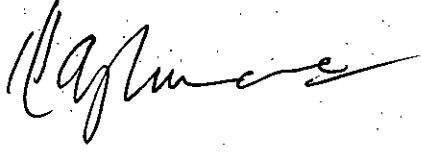
.....Respondents

REPLY TO APPLICATION FOR CONDONATION OF DELAY.

Respectfully Sheweth,

1. That , the respondents have filed the accompanied reply before this Honourable Service Tribunal in which next date of hearing is 13.12.2016.
2. Incorrect, hence denied, belonging to poor family can not make any right in condonation of delay." Time-barred departmental representation, Service Tribunal dismissed the appeal filed by the Civil Servant as the same was barred by the limitation. Departmental appeal filed by Civil Servant was barred by time, therefore, even if appeal filed by Service Tribunal was in time, no relief could be granted to him. Judgment passed by Service Tribunal was reasonable and proceeded on cogent ground. Civil Servant was unable to advert to jurisdictional error or legal infirmity which could justify interference. Appeal was dismissed". The same is reported in **2012 SCMR 195.**
3. Incorrect, hence denied, illiteracy can not provide any ground in condonation of delay. "Service Tribunal should have taken note of the fact that appeal before departmental authority being time-barred, appeal by civil servant before Service Tribunal was also incompetent". Reliance is placed on **2006 SCMR 453 & 535:.**
4. Incorrect, hence denied, The appellant did not approach to respondent No.3 for solution of his problem regarding his pension, gratuity etc; all these are just lame excuses of the appellant.
5. Incorrect, hence denied, the appellant is not entitled for the grant of pension. Therefore, no any valuable right of the appellant is attached to the present case, it requires day to day justification. Hence the time may not be condoned.

In wake of the above submissions, it is requested that this Honourable Service Tribunal may graciously be pleased to dismiss the instant application of condonation in favour of the respondent department.



District Education Officer
(Female) Swabi

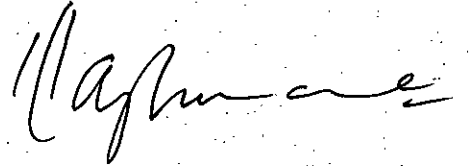
Sub-Divisional Education
Officer (Female) Topi

Director E&SE Khyber Pakhtunkhwa
Peshawar

Secretary Elementary & Secondary Education
Department Govt:of KPK

AFFIDAVIT

We do hereby solemnly affirm and declare on oath that the contents of the above noted reply as well as accompanied reply of application for condonation of delay are true and correct to the best of our knowledge and belief, nothing has been concealed from this Honourable Tribunal.



DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No 1056

SAID KAMAL SHAH -----Appellant

Versus

Secretary Education K.P.K Peshawar etc-----Respondent

=====

**REJOINDER ON BEHALF OF THE APPELLANT
IN RESPONSE OF THE RESPONDENTS REPLY**

Sir,

Respectfully Sheweth ;

PRELIMINARY OBJECTION:-

All the preliminary objection raised by the respondents are illegal and incorrect .No reason in support of the same is ever given as why the appellant has no cause of action , stopped by his own conduct to file the present appeal, time barred and appellant has not come to honourable tribunal with clean hands and cancelled material facts.

FACTS

1. Admitted correct accordingly need no comments.
2. Admitted correct accordingly, need no comments.
3. Incorrect hence denied.
4. Para No 4 of the reply is incorrect ,hence denied.

5. Incorrect , that the respondent imposed penalty without affording opportunity of personal hearing .

6. Admitted correct need no comments.

GROUNDS

All grounds A to E taken in the memo of appeal are legal and will be substantiated at the time of hearing of the appeal however all replies submitted the grounds are incorrect false and misleading one the appellant has wrongly been terminated from service and has not treated in accordance with law/ rules and procedure hence his right are badly violated the order of his termination is illegal and not tenable in the eye of law.

It is therefore humbly prayed that the appeal of the appellant may kindly be accepted as prayed for .

Dated 14.07.2017

Appellant

Through Counsel :



SOHRAB KHAN Advocate

High Court

At Judicial Complex Swabi