

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Appeal No. 1339/2013

Date of Institution ... 13.09.2013

Date of Decision ... 20.02.2019

Mst. Zeenat D/O Sher Zada, Ex-LHV attached to BHU Dagai Swabi R/O Hamza Khel, Dagai, Tehsildar Razar District Swabi. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health Services, Peshawar and two others. ... (Respondents)

Present.

Mr. Aslam Khan Khattak,  
Advocate. ... For appellant

Mr. Ziaullah,  
Deputy District Attorney, ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN  
MR. MUHAMMAD HAMID MUGHAL, ... MEMBER

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant was appointed as Lady Health Worker on contract basis by the District Health Officer Swabi and was posted at Dagai District Swabi on 01.04.2007. Her service was terminated on 11.04.2013 on the ground that she declined to carry out her responsibilities and was an unwilling worker, therefore, was considered guilty of misconduct and

gross negligence. The appellant submitted a departmental appeal on 28.05.2013 which remained un-responded, hence the appeal in hand.

2. At the outset, learned Deputy District Attorney appearing on behalf of the respondents objected to the maintainability of appeal in hand on the ground that the appellant, all along her service, remained on fixed pay and she was never regularized. As such, the appellant was not a civil servant, therefore, her appeal before this Tribunal was not competent.

On the other hand, learned counsel for the appellant argued that the order of termination of appellant itself spoke about the fact that the proceedings against her were taken under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 which were followed by imposition of major penalty of removal from service. It was also contended that by dint of Provincial Government Policy dated 29.01.2008 all class-IV employees working against fixed pay were regularized w.e.f 01.07.2008 and the appellant was duly in service at the relevant time, therefore, her service was also to be considered as regular.

3. We have considered the available record in the light of arguments by the learned counsel for the parties.

The appointment order of appellant contained as many as 21 conditions wherein at S.No. 1 it was noted that appointment was purely on contract basis, while at S.No. 19, it was categorically provided that service of appellant was not under the Civil Servant Act 1973 and was to be regulated under the terms and conditions of appointment contract..

Similarly, the departmental appeal submitted by the appellant contained that she was working against fixed pay till April, 2013.

4. We have also considered the arguments of learned counsel for the appellant regarding regularization of service of appellant under the policy of Provincial Government and are in disagreement with his view. For regularization of service of Lady Health Workers Act No. XXIV of 2014 was promulgated on 02.07.2014. Section 4 of the Act was given effect from 01.07.2012 which provided for regularization of all the programme employees including Lady Health Workers ~~who~~ from 01.07.2012. However, a proviso was added in the said provision which required that the services of such programme employees shall be deemed to have been regularized under the Act only when their names were published in the official gazette.

Seen in the above prospective, admittedly, the appellant was not in service on the date the Act 2014 came into field. For the said reason and also the fact that the appellant could not provide any order requiring regularization of her service otherwise nor it was the case that her name was published in the official gazette under provisions of Section 4 of the Act *ibid*, it is not unsafe to hold that the appellant remained a contract employee throughout.

5. For what has been discussed above we are constrained to observe that the appeal in hand is not competent. Needless to note that mere noting of an incorrect provision of law in the impugned order could not

create any right, including the regularization of service of the appellant.

Instant appeal is, therefore, dismissed as such.

Parties are left to bear their respective costs. File be consigned to the record room.





(MUHAMMAD HAMID MUGHAL)  
MEMBER



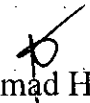
(HAMID FAROOQ DURRANI)  
CHAIRMAN

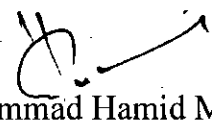
ANNOUNCED  
20.02.2019

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	20.2.2019	<p><u>Present.</u></p> <p>Mr. Aslam Khan Khattak, .. For appellant  Advocate  Mr. Ziaullah, ... For respondents  Deputy District Attorney.</p> <p>Vide our detailed judgment of today, the appeal in hand is dismissed.</p> <p>Parties are left to bear their respective costs. File be consigned to the record room.</p> <p>  Member</p> <p>  Chairman</p> <p><u>ANNOUNCED</u>  20.2.2019</p>

01.08.2018

Appellant absent. Learned counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 24.09.2018 before D.B.


  
(Ahmad Hassan)  
Member (E)

  
(Muhammad Hamid Mughal)  
Member (J)

24.09.2018

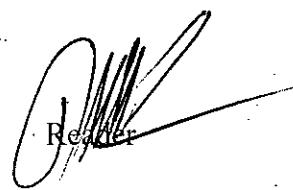
Learned counsel for appellant and Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.11.2018 before D.B

  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

06.11.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 27.12.2018 before D.B.

  
Reader


27-12-2018

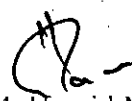
The Bench is incomplete therefore  
case is adjourned to 20-2-2019

  
Reader

02.03.2018

Learned counsel for the appellant present. Mr. Muhammad Jan, DDA present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for further arguments on 18.4-18 before D.B.

  
(Gul Zeb Khan)  
Member

  
(M. Hamid Mughal)  
Member

18.04.2018


Counsel for the appellant and Addl: AG alongwith Mr. Hazrat Shah, Supdt for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 12.06.2018 before D.B.


  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

12.06.2018

Learned counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 01.08.2018 before D.B.




  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

## FORM OF ORDER SHEET

Court of \_\_\_\_\_

Appeal's Restoration Application No. 223/2017

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	30.11.2017	<p>The application for restoration of appeal No. 1339/2013 submitted by Mr. Aslam Khan Khattak Advocate, may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 30/11/17</p>
2	11/12/17.	<p>This restoration application is entrusted to S. Bench to be put up there on <u>29/12/17.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	29.12.2017	<p>Counsel for the appellant present and Addl: AG for the respondents present.</p> <p>Arguments on restoration application heard and record perused. This is an application for restoration of service appeal dismissed in default on 30.10.2017. Since the application has been filed on 30.11.2017 which is within time and the reason given in application is genuine, as such the Service Appeal is restored with its previous number. To come up for arguments on 02.03.2018 before D.B.</p> <p style="text-align: right;"> (Gul Zeb Khan) Member (E)</p>



Appeal No 1339/2013  
Mst. Zeenaf vs Health Dept.

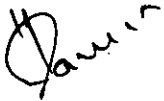
30.10.2017

Appellant- absent. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Case called for several times but no one appeared on behalf of the appellant. Consequently the present appeal is dismissed in default. Parties are left to bear their own costs. File be consigned to be record room.

ANNOUNCED

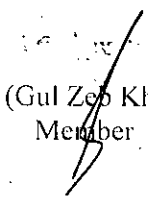
30.10.2017


  
(Gul Zeb Khan)  
Member (E)

  
(Muhammad Hamid Mughal)  
Member (J)

02.06.2017


Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondent present. No one present for official respondent on previous date representative of the respondent department once again was directed to produce detail all relevant record on the next date of hearing. To come up for arguments on 11.09.2017 before D.B.

  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member


11.09.2017

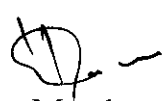
Counsel for the appellant and Asstt. AG alongwith Sajid, Junior Clerk for the respondents present. The Learned Chairman is on leave, therefore, arguments could not be heard. To come up for arguments on 18.10.2017 before the D.B.

  
(Gul Zeb Khan)  
Member (Executive)

18.10.2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Noor Zaman, Supdt for respondents present. Representative of the respondents is directed to produce complete record on the next date. Adjourned. To come up for such record and arguments on 30.11.2017 before D.B.

  
Member  
(Executive)

  
Member  
(Judicial)

27.01.2017

Counsel for the appellant and Mr. Yar Gul, Senior Clerk

along with the GP for respondents present. At the very outset learned GP prays the objection that the appellant has not a

MEMORANDUM AS per appointment order available on file of page-6.

However, learned counsel for the appellant submitted that as per notification dated 29.01.2008 all the fix pay <sup>employees were</sup> given status of Civil

Servants separate ~~AWWER Book~~ Servant Act, 1973, hence, ~~representative of the respondents at directed to produce detailed~~

status of the appellant in light of the notification referred above. To

(/ No Page be left blank between the two pages

consider

(PALE)

(MUHAMMAD AAMIR NAZIR)  
MEMBER

(AHMAD HASSAN)  
MEMBER

...in avoiding international security ...

...OW ...

...how would you define treaty, its major features ...


...determination in context ...

...TWO of the faith ...

02.06.2017


Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondent present. No one present for official respondent on previous date representative of the respondent department once again was directed to produce detail all relevant record on the next date of hearing. To come up for arguments on 11.09.2017 before D.B.

  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member


11.09.2017

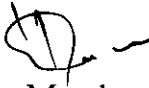
Counsel for the appellant and Asstt. AG alongwith Sajid, Junior Clerk for the respondents present. The Learned Chairman is on leave, therefore, arguments could not be heard. To come up for arguments on 18.10.2017 before the D.B.

  
(Gul Zeb Khan)  
Member (Executive)

18.10.2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Noor Zaman, Supdt for respondents present. Representative of the respondents is directed to produce complete record on the next date. Adjourned. To come up for such record and arguments on 30.11.2017 before D.B.

  
Member  
(Executive)

  
Member  
(Judicial)

27.01.2017

Counsel for the appellant and Mr. Yar Gul, Senior Clerk

along with the GP for respondents present. At the very

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Service on the separate ~~AWVP Book~~ <sup>AWVP Book</sup> Servant Act, 1973, hence,

representation of the respondents is directed to produce detailed

status of the appellant in light of the notification referred above. To

be left blank between the ~~two~~ <sup>two</sup> ~~lines~~ <sup>lines</sup>

of the attempted question

consist

~~PAGE~~

(MUHAMMAD AAMIR NAZIR)  
MEMBER

(AHMAD HASSAN)  
MEMBER

~~Q.1. What is the meaning of 'treaty' in international law?~~

~~Q.2. What is the difference between 'treaty' and 'agreement'?~~

~~Q.3. What are the essential elements of a treaty?~~

~~Q.4. What is the difference between 'treaty' and 'contract'?~~

~~Q.5. What is the difference between 'treaty' and 'convention'?~~

~~Q.6. What is the difference between 'treaty' and 'protocol'?~~

~~Q.7. What is the difference between 'treaty' and 'exchange of notes'?~~

~~Q.8. What is the difference between 'treaty' and 'arrangement'?~~

~~Q.9. What is the difference between 'treaty' and 'understanding'?~~

~~Q.10. What is the difference between 'treaty' and 'modus vivendi'?~~

~~Q.11. What is the difference between 'treaty' and 'gentlemen's agreement'?~~

~~Q.12. What is the difference between 'treaty' and 'memorandum of understanding'?~~

~~Q.13. What is the difference between 'treaty' and 'declaration of intent'?~~

~~Q.14. What is the difference between 'treaty' and 'promise'?~~

~~Q.15. What is the difference between 'treaty' and 'compact'?~~

~~Q.16. What is the difference between 'treaty' and 'covenant'?~~

~~Q.17. What is the difference between 'treaty' and 'compact'?~~

~~Q.18. What is the difference between 'treaty' and 'compact'?~~

~~Q.19. What is the difference between 'treaty' and 'compact'?~~

~~Q.20. What is the difference between 'treaty' and 'compact'?~~

13.08.2015

Counsel for the appellant and Muhammad Jan, GP for respondents present. Rejoinder on behalf of the appellant submitted. To come up for arguments on 07-01-2016.



Member



Member

07.01.2016

Counsel for the appellant and Mr. Usman Ghani, Sr.GP for respondents present. Counsel for the appellant requested for adjournment. To come up for final hearing on 10.5.2016 before D.B.



Member



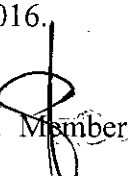
Chairman

10.05.2016

Counsel for the appellant and Assistant AG for respondents present. Learned counsel for the appellant requested for adjournment. To come up for arguments on 23.9.2016.



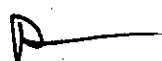
Member



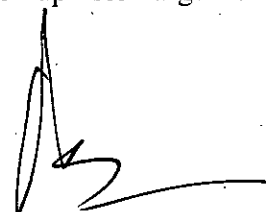
Member

23.09.2016

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Arguments could not be heard due to general strike of the Bar. To come up for arguments on 27.01.2017.



Member



Member

11.7.2014 : Counsel for the appellant and Mr. Sheharyar, Assistant for respondent No. 1 with Mr. Usman Ghani, Sr. GP for the respondents present. Written reply has not been received. To come up for written reply/comments, positively, on 21.11.2014.

  
Chairman

Note below  
11.7.2014

Mr. Yar Gul, Senior Clerk, appeared on behalf of respondents No. 2 and submitted joint written reply on behalf of the respondents, copy whereof be handed over to the learned counsel for the appellant for rejoinder on the date already fixed i.e 21.11.2014.

  
Chairman

21.11.2014

Counsel for the appellant and Mr. Yar Gul, Senior Clerk on behalf of respondent No. 2 with Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for rejoinder on 12.02.2015.

  
Reader

12.02.2015

Counsel for the appellant and Addl: A.G for respondents present. Rejoinder not submitted. The case is assigned to D.B for rejoinder as well as final hearing for 13.08.2015.

  
Chairman

3.

20.11.2013

No one is present on behalf of the appellant. Notice be issued to the appellant/counsel for the appellant for preliminary hearing on 07.01.2014.

  
Member

4.

07.01.2014

Counsel for the appellant present and submitted an application for adjournment. Application is allowed. To come up for preliminary hearing on 22.01.2014.

  
Member

5.

22.01.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 11.04.2013, which was received on 02.05.2013, the appellant filed departmental appeal on 28.05.2013, which has not been responded within the statutory period of 90 days, hence the instant appeal on 13.09.2013. 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 on 09.04.2014.

Appellant Deposited  
Security & Process Fee  
Rs. 1800/- Bank  
Receipt is Attached with File.

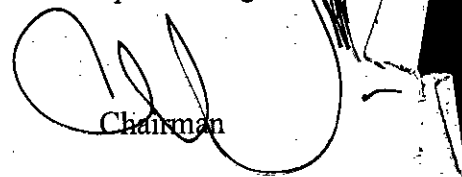


  
Member

6.

22.01.2014

This case be put before the Final Bench I for further proceedings.

  
Chairman

9-4-14

The Honorable Member as  
Down, Resting case is closed

Do 11-7-14



  
Recd



Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1339/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	13/09/2013	<p>The appeal of Mst. Zeenat presented today by <del>Mr.</del> Mr. Aslam Khan Khattak Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>20-11-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2	<u>23-9-2013</u>	

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

Appeal No. 1339 of 2013

Mst: Zeenat ..... Appellant

**VERSUS**


Govt of KPK through Secretary Health Services Peshawar  
& others ..... Respondents

**Index**

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2.	Affidavit		4
3.	Impugned order dated 11/04/2013	"A"	5
4.	Appointment order dated 14/03/2007	"B"	6
5.	Representation dated 28/05/2013	"C"	7
6.	Vakalat Nama		In original

Dated 13/09/2013

زینت  
Appellant  
Through

  
Aslam Khan Khattak  
Advocate, Peshawar.

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

Appeal No. 1339 of 2013

Mst: Zeenat D/o Sher Zada, Ex-LHW attached to BHU  
Dagai Swabi  
R/o Hamza Khel Dagai, Tehsil Razar District Swabi.  
..... Appellant

**VERSUS**

A.W.J. Peshawar  
1347  
13-9-13

- 1) Govt of KPK through Secretary Health Services Peshawar.
- 2) Director General Health Services KPK Peshawar.
- 3) District Health Officer, Swabi.

..... Respondents

**UP-IV of K.P.K Service Tribunal Act 1974,**  
**APPEAL/AGAINST THE IMPUGNED ORDER**  
**DATED 11/04/2013 VIDE ANNEXURE "A"**  
**WHEREBY THE APPELLANT HAS BEEN**  
**REMOVED FROM SERVICE WITH**  
**IMMEDIATE EFFECT.**

Filed to-217  
13/9/13

**Prayer in Appeal:**

**On acceptance of appeal, the above referred impugned order may be set aside and the appellant may be reinstated in service with all back benefits.**

Respectfully Sheweth:

The appellant respectfully submits as under:

- 1) That the appellant having been inducted in service as Lady Health Worker vide order No.475-76 dated 14/03/2007 at Annexure "B".

- 2) *That the appellant throughout her whole services has performed her duties with utmost of her capabilities and to the entire satisfaction of her superiors.*
  
- 3) *That the appellant has been removed from service vide impugned order at Annexure "A" and the appellant has filed representation dated 28/05/2013 vide Annexure "C" and 90 days have been elapsed and no reply has been received so far and hence this appeal inter-alia on the following grounds:*

**Grounds:**

- A) *That no Show Cause Notice has been served upon the appellant which is necessary under the law and so her removal from service is illegal and is liable to be set aside.*
  
- B) *That no regular enquiry has been conducted before her removal from service and so the appellant's removal from service is not sustainable under the law and may be set aside.*
  
- C) *That the last opportunity of personal hearing has not been given to the appellant and she has been condemned unheard and so her removal order on this score alone may be declared as illegal as no one shall be condemned unheard.*

D) *That the impugned order dated 11/04/2013 is illegal, malafide, without jurisdiction and without lawful authority and is liable to be set aside.*

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

*It is, therefore, prayed that on acceptance of this appeal, the impugned order dated 11/04/2013 vide Annexure "A" may be set aside and the appellant may be reinstated in service with all back benefits.*

*Dated 13/09/2013*

*زینت*

*Appellant*

*Through*

*Aslam*

*Aslam Khan Khattak  
Advocate, Peshawar.*

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

Appeal No. \_\_\_\_\_ of 2013

Mst: Zeenat ..... Appellant

**VERSUS**

Govt of KPK through Secretary Health Services Peshawar  
& others ..... Respondents

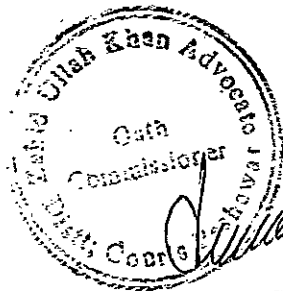
**AFFIDAVIT**

I, Mst: Zeenat D/o Sher Zada, Ex-LHW attached to BHU  
Dagai Swabi R/o Hamza Khel Dagai, Tehsil Razar District  
Swabi do hereby solemnly affirm and state on oath that the  
impugned order dated 11/04/2013 was communicated to  
me on 02/05/2013. My above statement is true and correct  
to the best of my knowledge and belief and nothing wrong  
has been stated by me in the matter.

**ATTESTED**

زینت

**DEPONENT**



13-9-13

**TERMINATION ORDER.**

Whereas, on account of refusal in carrying out Polio duty during all NID (National Immunization Days)/SNID (Special Immunization Days) held during the period between 2007 to April 2013 except SNID January 2013, a show cause was served to **Mst. Zeenat D/O Sher Zada LHW attached to BHU Dagai Swabi**. She has not established a health house since her appointment, which indeed is a part of her job description. She never participated in any activity with regard to Polio campaigns, which is a national cause.

And whereas, she always refused to take part in all polio campaigns since her appointment (year 2007) except SNID January 2013 as reported by of Lady Health Supervisor (LHS/Area incharge) & MO incharge /UPAC chairman.

And whereas, a final show cause bearing No 735-39/N-2/Est/D/show cause dated 13-3-2013 was served upon her with the direction to show cause as to why penalty of removal from service should not be imposed upon her.

And whereas, she has not replied in written in response to show cause notice & she did not turn up for personal hearing after lapse of 28 days despite the fact she was asked to be heard in person. Thus she is liable for major penalty of removal from service under Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011.

Now, therefore, after completion of codal formalities and ascertaining the facts that the official concerned has refused to carry out her responsibilities & demonstrated as unwilling worker and is guilty of misconduct & gross negligence, I, Dr. Zafeer Hussain, District Health Officer Swabi being the competent authority in exercise of the powers under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, hereby impose the major penalty of Removal from Service upon **Mst. Zeenat D/O Sher Zada LHW attached to BHU Dagai Swabi** with immediate effect.

Sd/...

District Health Officer Swabi

No. 376-82/Estab/440

Dated Swabi th:

11 / 04 / 2013.

CC:

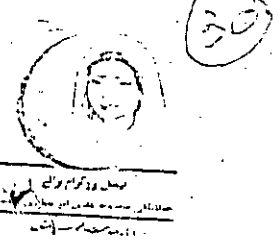
- Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- Deputy Commissioner, Swabi
- Provincial Coordinator, National Program for FP & PHC Khyber Pakhtunkhwa, Peshawar.
- District Coordinator NP DHO Office Swabi.
- Accounts Section undersigned office.
- MO, BHU Dagai Swabi
- Mst. Zeenat D/O Sher Zada LHW, Mohallah Allahdad Khel, Village & P.O Dagai Tehsil Razar / District Swabi

*[Signature]*  
11/4/13

District Health Officer Swabi

AT...  
*[Signature]*

*[Signature]*  
25.13



نیشنل پروگرام برائے خاندانی منصوبہ بندی و بنیادی صحت سوسہ سرجری

ڈسٹرکٹ پروگرام ایگزیکٹو یونٹ ضلع

تاریخ: 17/11/73

ہمیشہ کش برائے تقرری لیڈی ہیلتھ ورکر

مقامی سطح کی تلاش پر آپ کی سرپرستی کے تحت... (Handwritten notes and signatures)

آپ کی تقرری خاندانی صحت سہاہت کی بنیاد پر ہوگی۔... (Official notice text regarding recruitment)

آپ کو ملازمت سے فارغ کر دیا جائیگا۔... (Notice regarding termination of service)

آپ کی ملازمت ختم ہوئی ہے۔... (Final notice regarding the end of employment)

ایگزیکٹو ڈسٹرکٹ آفیسر ہیلتھ

ضلع

ATTESTED

(Handwritten signature)

ایگزیکٹو ڈسٹرکٹ آفیسر ہیلتھ

ضلع

(Handwritten signature)

ایگزیکٹو ڈسٹرکٹ آفیسر ہیلتھ

ضلع



S.H. No. 4811  
1-7-2013

بخدمت جناب سیکرٹری ہیلتھ سروسز صوبہ خیبر پختونخوا ایشاور  
بخدمت جناب ڈائریکٹر جنرل ہیلتھ سروسز صوبہ خیبر پختونخوا ایشاور

-1

-2

حکمانہ اپیل برخلاف ٹرمنیشن آرڈر نمبر 82-376 مورخہ 11/04/2013

عنوان:

مودبانہ گزارش ہے کہ:-

- 1 سانکہ مسماة زینت دختر شیرزادہ حمزہ خیل ڈاگئی صوابی ضلع اور تحصیل رزڑ بڈریجہ حکمانہ نمبر 76-475 مورخہ 14 مارچ 2007 کو بحیثیت لیڈی ہیلتھ ورکر تقرر نامہ جاری کیا۔
- 2 یہ کہ اسی تاریخ کو یعنی 14 مارچ 2007 ہی سے سانکہ اپنی فرائض منصبی خدمات پوری ایمانداری سے ادا کرتی رہی ہے۔ اور سانکہ کو اپنی خدمات اور ملازمت کے عوض باقاعدہ اپریل 2013 تک مبلغ 7,000 روپے تنخواہ ملتی رہی۔
- 3 یہ کہ اپریل 2013 مبلغ 7,000 روپے تنخواہ نہ ملنے کے بعد پر جب سانکہ نے دفاتروں کے چکر لگانا شروع کر دیئے تو اتنے میں جناب دفتر DHO صحت ضلع صوابی سے Termination Order نمبر 82-376 مورخہ 11/04/2013 ملا۔
- 4 جناب عالی سانکہ نے ناہی ڈیوٹی کرنے سے انکار کیا ہے اور نا کرے گی جہاں تک گھر پر بورڈ آویزان نا کرنے کا معاملہ ہے تو اسکے متعلق عرض خدمت ہے۔ کہ سائن بورڈ سیکورٹی معاملہ کی وجہ سے چند ایک دن کیلئے اتار دیا گیا تھا۔ لیکن چند دنوں کے بعد پھر اپنی جگہ پر لگا دیا گیا ہے، لہذا التجا ہے کہ مذکورہ مراسلہ کا عدم قرار دے کر سانکہ کو خدمات سرانجام دینے کا موقع عطا فرمائیں۔

عین نوازش ہوگی

زینت

مسماة زینت دختر شیرزادہ حمزہ خیل ڈاگئی صوابی ضلع اور تحصیل رزڑ

آپ کی تابع فرمان:

مورخہ 28/05/2013

14342  
03/7/13

ATTESTED

asr

Before the KPK Service Tribunal Peshawar

Mst Zeenat -- versus -- Secretary Health Deptt  
Peshawar & others

Application for adjournment

Respectfully sheweth!

1. That the above title appeal is fixed for hearing today on 7-1-2014 before this Hon'ble Tribunal.
2. That I have severe pain in one of my tooth and also suffering from fever. Therefore, the above title appeal may be adjourned to some near convenient date for hearing.

It is, therefore, prayed that on acceptance of application, the above title appeal may be adjourned to some near convenient date.

Date 7-1-2014

Aslam  
(Aslam Khan Khattak)  
Advocate

**BEFORE THE NWFP SERVICE TRIBUNAL**

**APPEAL NO. 1339/2013**

MISS ZEENT

D/O SHER ZADA

EX-LHW ATTACHED TO BHU DAGAI SWABI

R/O MOHALLAH HAMZA KHEL DAGAI TEHSIL RAZAR

DISTRICT SWABI.....(Appellant)

**VERSUS**

1. The Secretary, Govt: of Khyber Pakhtunkhwa, Health Department, Civil Secretariat, Peshawar.
2. The Director General Health Services Khyber Pakhtunkhwa, Peshawar.
3. The District Health Officer, District Swabi..... (Respondent)

WRTTEN STATEMENT ON BEHALF OF THE RESPONDENTS

**PRELIMINARY OBJECTIONS**

*Respectfully Sheweth:*

1. That the petitioners have no cause of action/locus stand.
2. That the petitioners have deliberately concealed the material facts from this honorable court, hence liable to be dismissed.
3. That the petitioners have not come to this honorable tribunal with clean hands.
4. That the petitioners have filed the instant appeal just to pressurize the respondents.
5. That the petitioners have not filed the instant appeal on malafide motives.
6. That the instant petition is against the prevailing Law and Rules.
7. That the petition is not maintainable in the present form and also in the present circumstances of the issue.
8. That the appeal is time barred.
9. That this honourable tribunal has got no jurisdiction to entertain this appeal as the appellant is not a civil servant.

**FACTS**

1. Correct to the extent that she was not appointed as LHW under Civil Service Act 1973, but according to certain rules and regulations purely on temporary basis. mentioned in the appointment letter (ANNEXURE-A). It is clearly mentioned in Para No.19 of the appointment letter that further rules will be ordered/added from time to time. In this respect an order was issued from the Government of Pakistan PPIU NP of FP & Primary Health Care stating these LHWs/LHSs will be 100% involved in NIDs and SNIDs vide letter No.287/PC/LHWP Dated 12/02/2011(ANNEXURE-B).

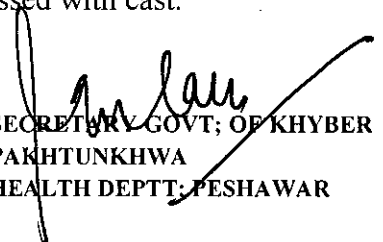
2. Incorrect. She was not performing her duties properly. She failed to establish her health house; no community visits paid was not doing EPI/ Polio duty, did bogus entries and did not allow any supervisor to visit her health house. Several explanations from DHO and NP Coordinator were called from her from time to time but she neither bothered to reply, nor she appeared for personal hearing vide letter No. 2052/EDO Health dated 27.07.2010, 86/EDO Health dated 24.01.2011, 26/DHO dated 30.01.2013 and 129/DHO dated 27.02.2013(Annexure-C, D, E and F respectively). LHS of her area reported on 14.01.13 that she has not established her health house and not taking part in Polio. She also reported on 27.03.13 and on 03.04.13 that she is not taking part in Polio campaign. She repeatedly directed her on phone to give reply to the show cause and attend a meeting regarding Polio but she flatly refused to comply (Annexure-G, H,I).
3. Incorrect. An application on behalf of applicant dated 28/05/2013 which has been shown in the appeal of the applicant, if actually submitted, is addressed to Secretary Health and Director General Health Peshawar and not to District Health Officer Swabi. Moreover, copy of this application has neither been sent to, nor received by DHO Office Swabi (Annexure-K).

**OBJECTION TO GROUNDS:**

- A. Incorrect. She has been served Show Cause Notice vide letter No735-39/Estab /DHO dated 11.04.2013(Annexure-J).
- B. Incorrect. As she was not performing her duties, not replying to explanations not appearing for personnel hearing, the Coordinator and ADC in an official note recommended that strict action may be taken against her (Annexure-L).
- C. Incorrect. She was given opportunity of personnel hearing with each of her explanation but she failed to comply. She did not meet LHS of her area, ACD, Coordinator NP & DHO.
- D. Incorrect. Due to the above mentioned reasons DHO being competent authority issued her termination order vide this office letter No.376-82/Estab/DHO Dated Swabi11/04/2013 (Annexure-M).
- E. No comments.

It is therefore, requested that the appeal may kindly be dismissed with cast.

  
DIRECTOR GENERAL HEALTH SERVICES  
KHYBER PAKHTUNKHWA, PESHAWAR

  
SECRETARY GOVT; OF KHYBER  
PAKHTUNKHWA  
HEALTH DEPTT: PESHAWAR

  
DISTRICT HEALTH OFFICER,  
SWABI

**BEFORE THE KHYBER PAKHTUNKHWA TRIBUNAL**  
**PESHAWAR**

Appeal No.1339 / 2013

Miss: Zeenat, Ex-LHW

**VERSUS**

Secretary Health & others

**APPELLANT'S REJOINDER**

Respectfully Sheweth: 5

**Preliminary Objections:**

All preliminary objections except No.5 are incorrect, illegal and are denied in every detail. The appellant's appeal has been admitted as genuine as revealed from their preliminary objection at S.No.5. So it is liable to be accepted on this solitary score alone.

**Facts:**

- 1- That the appellant's service has now been regularized as revealed from the notification dated 28/01/2008 attached at Annexure "A". Rest of the contents of the same para is now not applicable in her appeal.
- 2- Incorrect. Para 2 of appeal is correct and reply of the same para is incorrect.
- 3- Incorrect. That the appellant has correctly submitted her appeal to the respondents.

ON GROUNDS:

- A) *Incorrect. That no show cause notice has served on the appellant.*
- B) *Incorrect. That no regular inquiry in the matter has been conducted and so that charges levelled against her have not been proved and so the impugned order dated 11/04/2013 is liable to be set aside on this score alone.*
- C) *Incorrect. That the appellant has been condemned unheard because no opportunity of personal hearing has been given to her which was necessary under the law.*
- D) *Incorrect. Ground D of appeal is correct and its reply is incorrect.*
- E) *Needs no comments.*

*It is, therefore, prayed that on acceptance of appeal and rejoinder, the impugned order dated 11/04/2013 may be set aside and the appellant may be reinstated in service with all back benefits.*

Dated 13/08 /2015

*(سید)*  
Appellant  
Through

*Aslam*  
Aslam Khan Khattak  
Advocate, Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA TRIBUNAL**  
**PESHAWAR**

Appeal No.1339 / 2013

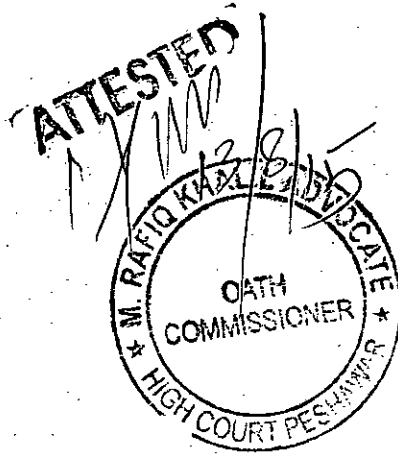
Miss: Zeenat, Ex-LHW

**VERSUS**

Secretary Health & others

**Affidavit**

I, Miss Zeenat Ex-LHW do hereby solemnly affirm and state on oath that all contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.



زینت  
DEPONENT

حکومت صوبہ سرحد  
محکمہ خزانہ

مراسلہ نمبر: پی۔ او۔ ۱۱۔ ۱۲۲/۰۸۔ ۲۰۰۷/ایف۔ ڈی  
مورخہ ۲۹ جنوری، ۲۰۰۸ء

بخدمت:

- ۱۔ تمام انتظامی معتمدین حکومت صوبہ سرحد۔
- ۲۔ معتمد برائے گورنر صوبہ سرحد، پشاور۔
- ۳۔ پرنسپل سٹاف آفیسر برائے وزیر اعلیٰ صوبہ سرحد۔
- ۴۔ تمام سربراہان ماتحت محکمہ جات صوبہ سرحد۔
- ۵۔ تمام ضلعی رابطہ افسران صوبہ سرحد۔
- ۶۔ رجسٹرار پشاور ہائی کورٹ، پشاور۔
- ۷۔ رجسٹرار، سروس ٹریبونل، صوبہ سرحد، پشاور۔
- ۸۔ سیکرٹری، صوبائی بنک سروس کمیشن، صوبہ سرحد، پشاور۔
- ۹۔ سیکرٹری بورڈ آف ریونیو، صوبہ سرحد۔

عنوان:- بجٹ تقریر ۰۸-۲۰۰۷ میں درجہ چہارم کے مقررہ تنخواہ پانے والے (Fixed pay) ملازمین کے لیے سی۔ پی۔ فنڈ کا اعلان۔

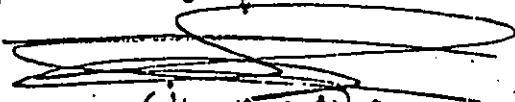
جناب عالی!

مجھے ہدایت کی گئی ہے کہ عنوان بالا کا حوالہ دیتے ہوئے عرض کروں کہ صوبائی حکومت نے تمام درجہ چہارم (مقررہ تنخواہ Fixed pay) پانے والے ملازمین کو یکم جولائی ۲۰۰۸ء سے این۔ ڈبلیو۔ ایف۔ پی سول ملازمین ایکٹ ۱۹۷۳ء کے تحت سول ملازمین کا درجہ دیکر بنیادی سکیل ۱۔ (BPS-1) دینے کی منظوری دی ہے۔

۲۔ مذکورہ ملازمین کی تنخواہوں کا تعین (Fixation of pay) ان کی بھرتی کے تاریخ (Date of Appointment) سے کیا جائے گا۔ تاہم یہ ملازمین تنخواہوں اور الاؤنسز وغیرہ کی مد میں کسی قسم کی بقایا جات (arrears) کے حقدار نہیں ہوں گے۔

۳۔ اس سلسلے میں پہلے سے جاری شدہ تمام پالیسی ہدایات یکم جولائی ۲۰۰۸ء سے منسوخ تصور ہوں گے۔

آپ کا مخلص



مس (شرافت خان رہانی)

نائب معتمد (میزانیہ-۲)

(ہارڈ کاپ)



تعمیر نمبر و تاریخ النفا:

نقل برائے اطلاع:

- (۱) اکاؤنٹس جنرل، صوبہ سرحد بمعدہ گزارش، کہ مندرجہ بالا اقدامات کی نافذ العمل کو یقینی بنایا جائے۔
- (۲) جملہ ایگزیکٹو ڈسٹرکٹ آفیسرز، فنانس اینڈ پلاننگ، صوبہ سرحد۔
- (۳) جملہ ضلعی آفیسران حساب داری، صوبہ سرحد۔

فرد محمد لعل  
میزانیہ افسر (۱) محکمہ خزانہ

تعمیر نمبر و تاریخ النفا:

نقل برائے اطلاع:

- (۱) سنی معتد برائے چیف سیکرٹری صوبہ سرحد۔
- (۲) جملہ اضافی معتدین و نائب معتدین محکمہ خزانہ، صوبہ سرحد۔
- (۳) جملہ بجٹ آفیسرز سیکشن آفیسرز محکمہ خزانہ، صوبہ سرحد۔
- (۴) ڈائریکٹر، FMIU محکمہ خزانہ صوبہ سرحد۔
- (۵) سنی معتد برائے فنانس سیکرٹری صوبہ سرحد۔

فرد محمد لعل  
میزانیہ افسر (۱) محکمہ خزانہ

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Restoration Application no. 223/2017

Appeal No 1339/2013

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1016

Dated 30/11/2017

Mst Zeenat .....Appellant

VERSUS

Secretary Health & Others .....Defendants/Respondents

APPLICATION FOR RESTORATION  
OF ABOVE TITLED APPEAL

Respectfully Sheweth:-

That I being the counsel of the appellant respectfully submits as under:-

- 1) That the above titled appeal was fixed for arguments on 18-10-2017 and the argument were partially heard and was adjourned to 30-11-2017.
- 2) That the instant appeal has been dismissed in default due to some clerical mistake on 30-10-2017.
- 3) That the valuable rights of Appellant involved in the instant case and if the abovementioned appeal has not been restored, the appellant would suffer extreme irreparable loss; and would be forever deprived of her legal valuable rights.
- 4) That there is no legal bar on acceptance of the instant application.

It is therefore, most humbly prayed that on acceptance of this Application, the above titled appeal may kindly restored in larger interest of justice.

Appellant

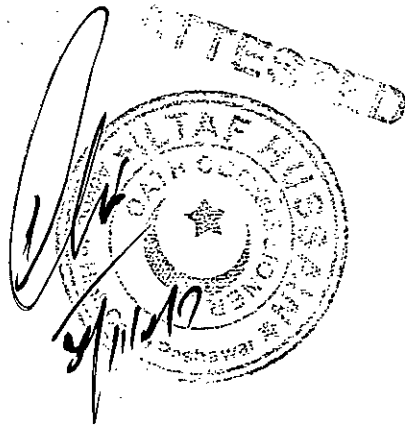
Through:

*ash*  
(Aslam Khan Khattak)  
Advocate, Peshawar

Dated: -30-11-2017

AFFIDAVIT:-

It is, solemnly affirm on Oath that all the contents of this Application are correct and true to the best of my knowledge and belief and nothing has been concealed or withheld from this Honourable Court.



*ash*  
DEPONENT