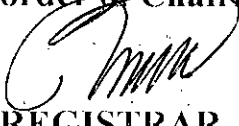


FORM OF ORDER SHEET

Court of _____

Appeal No. 441/2024


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	25/03/2024	<p>The appeal of Mr. Arshad Mahmood resubmitted today by Naila Jan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 26.03.2024. Parcha Peshi given to the counsel for the appellant.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Arshed Mehmood received today i.e on 18 .03.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no. 1 is un-necessary/improper party, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent.
- 2- Index of the appeal is not according to the documents attached with the appeal.
- 3- Annexures of the appeal are unattested.
- 4- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent may also be submitted with the appeal.

No. 633 /S.T.

Dt. 21/3 /2024.


21/3/24
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Naila Jan Adv.
High Court Peshawar.

*Remained all the objections
and resubmitted by counsel
of the appellant.*

*Naila Jan
Adv
25/03/2024*

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 441 /2024

Mr. Arshad Mehmood

Versus

Govt: of KP & Others

INDEX

S#	Description of Documents	Annex	Pages
1.	Grounds of Appeal with Affidavit		1-5
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3.	Copy of Employment Exchange Certificate	"A"	7
4.	Copy of Appointment Order dated 30.06.2022	"B"	8
5	Copy of vide office order NO. 1931-33 DHO NSR dated 10.08.2022 and Arrival Report dated 12/08/2022	"C & D"	9-10
6	Copy of and attendance certificate	"E"	11
7	Copy of application dated 04.08.2023	"F"	12-13
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9.	Wakalat Nama		15

Dated: __/__/2024

A. S. Sid
Petitioner
Through
Naila Jan
Naila Jan
Advocate Supreme Court of
Pakistan

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No. 441 /2024

Mr. Arsahd Mehmood S/O Hazrat Ali (Ward Attendant (BPS-04)
DHO Nowshera.

(Appellant)

VERSUS

1. Director General, Health Department Warsak
Road Peshawar.
2. District Health Officer District Nowshera

(Respondents)

Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against non-releasing/non-granting the salary of the appellant w.e.f 10 August 2023 till date and onwards by Respondent No 03, and inaction on the part of Respondent No 02 on the departmental appeal of the appellant dated 04/12/2023, despite lapse of the statutory period of 90 days hence the action and omission of the respondents is in violation of law, rules and principles of natural which is not sustainable in the eyes of law.

Respectfully Submitted:

1. That the appellant is the law abiding citizen, and his rights are secured and granted under the constitution of Islamic republic of Pakistan 1973.

8. That feeling aggrieved from the actions and omissions of the respondent No 03, the appellant filed a departmental appeal before the respondent No 02 (Appellate Authority) on 04/12/2023, however despite expiry of the statutory period of 90 days the same has not been responded yet. (Copy of the Departmental appeal dated 04/12/2023 is Annexure-G).

9. That feeling aggrieved, having no other adequate remedy before any other forum the appellant filing the instant appeal on the following grounds inter alia.

GROUND OF SERVICE APPEAL

A. That the appellant has not been treated in accordance with law, rules and principles of Natural Justice by the respondents, which is not sustainable in the eyes of law.

B. That the appellant has not been treated in accordance with Article 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973.

C. That the appellant is has been appointed in accordance with Law and in accordance with the provision of Khyber Pakhtunkhwa (appointment, promotion & Transfer) Rules 1989 and since his appointment regularly/continuously performing his duties therefore entitled for salary however the respondents without any reason withheld salaries of the appellant which not only amount to violation of the fundamental rights of the appellant but also amount to misconduct on the part of the respondents.

D. That the appellant has been appointed in accordance with law and rules therefore under the principle of Locus Poenitentia the appellant is entitled for the salary from the date of first appointment till date.

E. That Article 11 of the Constitution of Islamic Republic of Pakistan 1973 provides safeguard against all forms of forced labour which is reproduced as under

Slavery, forced labour, etc., prohibited

(1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.

(2) **All forms of forced labour and traffic in human beings are prohibited.**

(3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

Though the above referred Article protect the appellant against forced labour however despite performance of services not payment/non-releasing salaries on the part of respondents is clear cut violation of Art 11 of the Constitution of Islamic Republic of Pakistan 1973.

F. That as per judgment of superior courts the authority given to any official shall be exercised as a public trust and in accordance with law and rules however the action/inaction of the respondents is an example of colorful exercise of powers in violation of law and Rules.

G. That the superior court has held that Salary and pension is not a bounty but one of the fundamental rights of an employee which has been violated by the respondents. Reliance is placed on 2020 PLC CS Peshawar 692

H. That the appellant belongs to a poor family and has a large family dependent upon the appellant, moreover the appellant has no other source of income, due to the withholding of his salary his whole family is thus suffering starvation.

I. That it is a settled Principle laid down by the Apex Court that "when there is work there is salary when there is no work there is no salary" however despite performance of

duties regularly the respondents have violated the principles of the apex Court.

J. That the appellant seeks permission of this Honorable Tribunal to adduce others grounds during final hearing of the Appeal.

Prayer

On acceptance of the instant appeal the action and omission of the respondents may kindly be declared against the law, rules and the fundamental rights secured & guaranteed under the constitution of Islamic Republic of Pakistan 1973 and they may graciously be directed for release of the outstanding salaries of the appellant w.e.f 10-08-2022 till date and onward with all other consequential back benefits, with any other relief not specifically mentioned but deemed appropriate by the Honorable Tribunal may also be awarded in favor of the appellant.

Dated: 15/03/2024

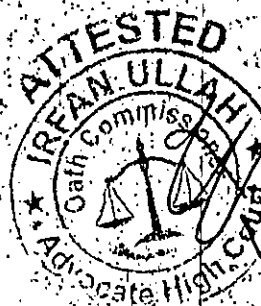
Arshad
Appellant

Through

Naila Jan
Naila Jan
Advocate Supreme Court of
Pakistan

AFFIDAVIT

I, Mr. Arshad Mehmood S/o Hazrat Ali, Ward Attendant BPS-04 MCH Center Abbakhel Nowshera, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.



Arshad
Deponent

6

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2024

Mr. Arshad Mehmood

Versus

Govt: of KP & Others

ADDRESSES OF PARTIES

APPELLANT

Mr. Arshad Mehmood S/O Hazrat Ali (Ward Attendant
(BPS-04) DHO Nowshera

RESPONDENTS

1. Director General, Health Department Warsak
Road Peshawar.
2. District Health Officer District Nowshera

Dated: 15/3/2024

Through

Appellant

Naila Jan

Advocate Supreme Court of
Pakistan

U.F.S.S.

7

SERVICE UNPAID

Number A

ایمپلائمنٹ رجسٹریشن کارڈ

ضروری

جن امیدواروں کے پاس تعارضی کارڈ (X-3) موجود نہ ہو ان کو دفتر روزگار کا نامزد کردہ تصور نہ کیا جائے۔

رجسٹریشن نمبر / اکویشن کوڈ نمبر 1445 / 2947
نام المرشدہ محمد ولدیت ازوجیت حضرت
دفتر روزگار پاکستان

تنجی کارڈ نمبر 15-88-73398-72cc1

تاریخ 10/11/2020
دستخط منیر
تاریخ ہائے تجدید
15-11-2020

ضروری اطلاع برائے امیدوار

جب آپ کو ملازمت مل جائے تو فوراً منسلک جوابی کارڈ پر دفتر روزگار کو اطلاع کریں۔ اس کارڈ پر ڈاک ٹرانک لگانے کی ضرورت نہیں۔

خدمت جناب منیر صاحب

دفتر روزگار لاہور

13

OFFICE ORDER

B

Arshad

8

Consequent upon approval / recommendation accorded by the Departmental
Appointment Committee constituted for the purpose, MR. ARSHAD MEHMOOD
HAZRAT ALI is hereby appointed as Ward Attendant BPS-04 against the vacant post of
Attendant at DHO Office Nowshera with immediate effect, with the following term &
conditions.

The appointment shall be subject to the Medical Fitness and initially on probation for
a period of 02-years.

The service can be dispensed with during the probation period on un-satisfactory
performance.

You will not entitle to any TA/DA for Medical Examination and joining the first
appointment.

In case of any of the documents submitted by you with your application is found
forged / fake, your service shall be liable to terminate without any notice and will also
be liable to further legal proceeding.

The appointment will be governed by such rules and order issued by the Govt. from
time to time.

If you wish to resign from service, you will have to submit resignation in writing one
month in advance OR deposit one month pay in the Govt. treasury.

The above terms & conditions are acceptable to you then you should report to DHO
Office Nowshera within 07-days after the receipt of this appointment order.

Sd _____
District Health Officer
Nowshera

Date: 30/06/2022

10/DHO NSR

Added to the:

- Director General Health Services, Khyber Pakhtunkhwa Peshawar.
- Project Accounts Officer Nowshera.
- Accounts Section DHO Office Nowshera.
- Arshad Mehmood S/O Hazrat Ali Resident of Mohallah Jhanda Khel, Post Office
Chigi Payan, Tehsil & District Nowshera.
- Record.

District Health Officer
Nowshera

OFFICE ORDER

9

Auth

On arrival to this office, Mr. *Arshad Mahmood* (Ward Attendant) BPS-04 is hereby directed to report to Incharge MCH Center Abba Khel Nowshera for official duty in the public interest with immediate effect.

Sd _____
District Health Officer
Nowshera

Dated 10/08 /2022

31-33 /DHO NSR

forwarded to the:

- 1 Incharge MCH Abba Khel, Nowshera.
- 2 Incharge Accounts Section DHO Office Nowshera.
- 3 Official concerned.

[Signature]
District Health Officer
Nowshera

[Handwritten mark]

1 | 195
Arrival Report

Number D

In Compliance with Office Order No 1931-33/DHO-NSR dated 10-8-2022, I Arshad Mahmood Ward attendant (BS-4) hereby report for duties at MCH Centre Abakhel Nowshera today on 12-08-2022.

Arshad
Arshad Mahmood
Ward Attendant (BS-4)
MCH Centre Abakhel Nowshera

Copies for information to :

(1) DHO Nowshera w.r.t his Office Order ~~is~~ mentioned above. *

(2) DAO Nowshera

Arshad
Arshad Mahmood
Ward Attendant (BS-4)
MCH Centre Abakhel
Nowshera

10 ATTENDANCE CERTIFICATE

Arshad
"E"

This is to certify that
Mr. Arshad Mahmood, Ward Attendant (BS-4)
has been regularly attending duties
in MCH Centre Abakhel Nowshera
since 12-08-2022 till date. He
has not received salary since
then.

~~Signature~~
MCH Centre
Abakhel Nowshera

Incharge MCH Centre
Abakhel Nowshera

Ar

Subject:

Release

12

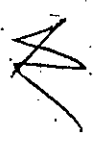
Author F

It is stated profoundly that the undersigned was appointed as Ward Attendant" BS-04 at DHO office NSR (Copy enclosed) Later on 30/06/2022 was posted at MCH Centre Abba Khel NSR vide office order NO 1931-33/DHO NSR dated 10-08-2022. Consequently, I assumed the charge on

Ever since then I have been regularly attending office with the best satisfaction of the in-charge MCH Centre Abba Khel, NSR. I have also performed duties in 03 polio campaigns.

Unfortunately, I have not received salary since joining the job. Your good self I have submitted my source I to DAO NSR, but they return it unprocessed on one pretext or other. My other colleagues who were appointed along with me are regularly receiving salary.

As you know, I belong to a very poor family. My entire family



is depending upon me and without Salary it is very difficult for me to meet ~~both ends~~ meet expenditures in this ultra inflation times. Receiving Salary is my fundamental right which is being violated for the last one year.

Keeping in view the above it is very humbly requested ~~that~~ to take practical steps in opening my Salary at the earliest by enabling me to draw salary as per rules.

Yours faithfully

Arshad Nadeem

872

Ward Attendant CBS-47

MCH Centre Aba Khul

NSR

Dated 09/08/2023

14

Ambar
"9"

38411
04/12/22

10

The Director General Health Services,
Khyber Pakhtunkhwa.

Subject: APPEAL FOR RELEASE OF SALARY.

Dear sir,

It is stated profoundly that I was appointed against the post of Ward Attendant (BS-04) in the office of DHO, Nowshera vide office order No. 4836-40/DHO NSR dated 30-06-2022 (Flag-A) and was later on posted at MCH Center Abakhel Nowshera vide office order No. 1931-33 DHO NSR dated 10-08-2022 (Flag-B). Consequently, I reported for duties in the center on 12-08-2022 and have been performing my duties since then regularly as per satisfaction of the incharge of the center. (Flag-C)

As per section 17 of the Civil Servant Act, 1973 every Civil Servant is entitled to pay and other remunerations sanctioned for such post. However, I have not received salary even after the lapse of more than one year. I personally submitted all the requisite documents in the office of DHO Nowshera for opening of salary. Later on, I requested (both verbally and in writing) the DHO Nowshera for the purpose but so far, no concrete actions have been taken for resolution of the issue. (Flag-D)

I belong to a very poor family and am the sole bread winner. I spend more than Rs. 300/- on daily basis on conveyance and other expenditures. This has not only put me and my entire family in worst economic difficulties but also has caused mental stress for all of us.

Keeping the view the above, it is very humbly requested through this appeal to kindly intervene in the matter and direct the DHO Nowshera to immediately release my salary by enabling me to get my legal rights and also to reduce my financial difficulties.




I shall be grateful.

DHO Nowshera
For Compliance
Per Law
4.12.22

Yours faithfully,

ARSHAD MEHMOOD
Ward Attendant (BS-04)
MCH Center Abakhel,
Nowshera.

15

قیمت 50 روپے	34515	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈوکیٹ: <u>Naila Jan</u>	بار کونسل ایسوسی ایشن نمبر: <u>BC-13-472</u>	  
رابطہ نمبر: <u>03129215471</u>		

بعدالت جناب: کے پی ایس ایس جیو نیل لیاقت

مخانب: <u>ایڈوائس</u>	دعویٰ: <u>Service Appeal</u>
ارٹھم محدود	علت نمبر: _____
بنام	مورخہ: _____
صحت	جرم: _____
	تھانہ: _____

باعت تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام سید محمد اسلم کے لیے سید محمد اسلم اور سید محمد اسلم کو رٹ آف گورنمنٹ کیلئے کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگہبانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساتھ پر داختر منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوا ہے مقدمہ کے سبب سے ہوگا وکالی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب یا بندہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

PESHAWAR BAR ASSOCIATION
KHYBER PAKHTOONKHW

المرقوم: 15/03/2024

العبد شاہد العابد

مقام پشاور کے لیے منظور ہے۔

Accepted

Accepted

Naila Jan
Asc