


FORM OF ORDER SHEET

Court of _____

Appeal No. 660/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/05/2024	<p>The appeal of Mr. Ziaullah resubmitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 16.05.2024. Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

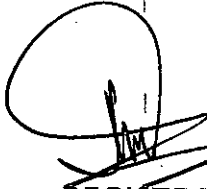
This is an appeal filed by Mr. Ziaullah today on 13.05.2024 against the statement of allegations/enquiry order against which he preferred/made a departmental appeal on 16.04.2024 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/counsel. The appellant would be at liberty to file fresh appeal after maturity of cause of action and removing the following deficiencies.

- 1- According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no. 5 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 Copy of impugned enquiry order dated 15.04.2024 mentioned in the heading of appeal is not attached with the appeal be placed on it.
- ③ Memorandum of appeal is not signed by the counsel.

No. 21 /Inst.24/KPST,

DL 13/05 /2024


REGISTRAR
13/5/24
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Noor Muhammad Khattak Adv.
High Court Peshawar.

REPLY TO THE REMOVING OF OBJECTIONS / DEFICIENCIES, RAISED IN THE APEAL OF MR. ZIA ULLAH FILED ON 13-05-2024.

As Mr. Zia Ullah (**appellant**) has filed an appeal through learned Counsel Mr. Noor Muhammad Khattak (**ASC**), which was returned to the appellant/Counsel in original on the basis of its premature nature. It is pertinent to mention here that the appellant has filed an appeal before the appellate authority i.e Chief Minister through Principal Secretary vide dated 16-04-2024 (**Annexure "E" of the instant appeal**), regarding the directing Competent Authority to appoint "**departmental representative by designation**", so as to provide a legal

coverage to the unlawful inquiry order dated 15-04-2024 (**Annexure "B" of the instant appeal**), which has been issued in utter violation of rule 10 (1) (c) of Efficiency & Discipline Rules, 2011. The matter under reference has been also communicated by the inquiry committee at the very outset which is evident from the letter dated 15-04-2024. (**Annexure "C" of the instant appeal**).

That in response to the above appeal i.e dated 16-04-2024, the departmental authority i.e Secretary Health (**Incompetent Authority**) instead of the Competent Authority issued an impugned notification vide dated 25-04-2024 (**Annexure "F" of the instant appeal**). in sheer violation of rule 10 (1) (c) of Efficiency & Discipline Rules, 2011, by nominating the "**departmental representative by designation**" to provide legal coverage to the unlawful inquiry order. As an appellate order (cause of action) in the form of impugned notification dated 25-04-2024, has arrived in response to the appeal dated 16-04-2024 R/W letter 15-04-2024 of the inquiry committee and the appellant reserves the legal right under Section "**4**" of Service Tribunal Act, 1974, to file the instant Service appeal.

In addition to above, the deficiencies in the form of deleting respondent No.5, signing of the memorandum of appeal etc, have been already removed please.

Resubmitted for kind perusal and proper order please.

Appellant/Counsel,

14/05/24
Zia Ullah/ Noor Muhammad Khattak ASC.

*Reply is satisfactory be fixed
before court. R
14/5/24.*

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

SERVICE APPEAL No. 660 /2024

ZIA ULLAH VS HEALTH DEPARTMENT

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THROUGH:
APPELLANT
NOOR MOHAMMAD KHATTAK
Advocate Supreme Court.

-/-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.
SERVICE APPEAL No. 660 /2024

ZIA ULLAH DRUG INSPECTOR (BS-17) C/O DIRECTORATE GENERAL DRUG CONTROL & PHARMACY SERVICES, OLD FATA SECRETARIATE WARSAK ROAD, KHYBER PAKHTUNKHWA PESHAWAR.

.....**APPELLANT**

VERSUS

- 1- The Chief Minister through Principal Secretary, Chief Minister Secretariate Khyber Pakhtunkhwa Peshawar.
- 2- The Chief Secretary, Khyber Pakhtunkhwa Peshawar.
- 3- The Secretary Establishment Khyber Pakhtunkhwa Peshawar.
- 4- The Secretary to Government of Khyber Pakhtunkhwa, Health Department, Khyber Pakhtunkhwa Peshawar.

.....**RESPONDENTS**

APPEAL UNDER SECTION -4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED NOTIFICATION DATED "25TH APRIL 2024" [APPELLATE ORDER] REGARDING COVERING THE UNLAWFUL COMPOSITION OF INQUIRY COMMITTEE TO THE EXTENT OF APPOINTMENT OF DEPARTMENTAL REPRESENTATIVE BY DESIGNATION, WHICH HAS BEEN ISSUED IN RESPONSE TO THE APPEAL DATED "16-04-2024" R/W LETTER DATED "15-04-2024", IN THE UTTER DISREGARD OF RULE "10" "(1)" "(c)" OF THE "EFFICIENCY & DISCIPLINE RULES, 2011", AND THE SAME ALSO HAS BEEN ISSUED IN SHEER VIOLATION OF THE APEX COURT'S JUDGMENT REPORTED IN "2022 S C M R 439" READ WITH LETTER DATED "14-02-2022".

PRAYERS:

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED NOTIFICATION DATED "25TH APRIL 2024" [APPELLATE ORDER] REGARDING COVERING THE UNLAWFUL COMPOSITION OF INQUIRY COMMITTEE TO THE EXTENT OF APPOINTMENT OF DEPARTMENTAL REPRESENTATIVE BY DESIGNATION ISSUED IN UTTER DISREGARD OF RULE "10" "(1)" "(c)" OF THE "EFFICIENCY & DISCIPLINE RULES, 2011", MAY VERY KINDLY BE SET ASIDE AT ITS VERY INCEPTION, AS THE SAME IS CONSIDERABLY SERIOUS BECAUSE IT REFERS TO A SUPERSTRUCTURE WHICH THROUGH & THROUGH IS IN VIOLATION OF RULES ["10" "1" "C"], "11 (4)", "13", ["14" "4" "d"] & "15" OF THE "EFFICIENCY & DISCIPLINE RULES, 2011" AND THE SAME ALSO HAS BEEN ISSUED IN UTTER VIOLATION OF

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

SERVICE APPEAL No. _____ /2024

ZIA ULLAH DRUG INSPECTOR (BS-17) C/O DIRECTORATE GENERAL DRUG CONTROL & PHARMACY SERVICES, OLD FATA SECRETARIATE WARSAK ROAD, KHYBER PAKHTUNKHWA PESHAWAR.

.....APPELLANT

VERSUS

- 1- The Chief Minister through Principal Secretary, Chief Minister Secretariate Khyber Pakhtunkhwa Peshawar.
- 2- The Chief Secretary, Khyber Pakhtunkhwa Peshawar.
- 3- The Secretary Establishment Khyber Pakhtunkhwa Peshawar.
- 4- The Secretary to Government of Khyber Pakhtunkhwa, Health Department, Khyber Pakhtunkhwa Peshawar.
- 5- The Director General Drug Control & Pharmacy Services Khyber Pakhtunkhwa.

.....RESPONDENTS

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2

THE APEX COURT'S JUDGMENT REPORTED IN "2022 S C M R 439" READ WITH LETTER DATED "14-02-2022", ON ACCOUNT OF USING THE ILLUSIVE & ELUSIVE (ILLEGAL & UTTERLY MEANINGLESS) TERM "COMPETENT AUTHORITY".

THAT THE UNLAWFUL INQUIRY ORDER COMMUNICATED/ SERVED VIDE "15-04-2024", IN THE FORM OF STATEMENT OF ALLEGATIONS PASSED BY THE COMPETENT AUTHORITY IN RESPECT OF THE APPELLANT MAY ALSO KINDLY BE SET ASIDE ON ACCOUNT OF VIOLATION OF RULE "10" "(1)" "(c)" OF THE "EFFICIENCY & DISCIPLINE RULES, 2011".

THAT FURTHERMORE, THE RESPONDENTS MAY FURTHER PLEASE BE DIRECTED TO ACT UPON/IMPLEMENT PROPERLY THE JUDGMENT IN REM OF THE APEX COURT REPORTED IN "2022 S C M R 439" READ WITH LETTER DATED "14-02-2022" REGARDING THE IMPUGNED NOTIFICATION DATED "25-04-2024" [APPELLATE ORDER] AT PRESENT OR ANY OTHER NOTIFICATION RELEVANT TO THE TERMS & CONDITIONS OF SERVICE OF THE APPELLANT IN FUTURE TO THE EXTENT OF AN "ILLEGAL & UTTERLY MEANINGLESS" TERM OF "COMPETENT AUTHORITY".

ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

R/SHEWETH:

ON FACTS:

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

- 1- That, the Civil Servant Act, 1973 (hereinafter to be called "CSA, 1973") is an act to regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of the Khyber Pakhtunkhwa and there are twenty seven (27) various Sections contained in it.
- 2- That, the Section "26" of the "CSA, 1973" provides as that, the Governor or any person authorized by the Governor in this behalf, may make such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act.
- 3- That, the respondents No.1 2 & 3, have framed the Efficiency & Discipline Rules, 2011 (hereinafter to be called "E & D Rules") while exercising the powers to make Rules under Section "26" of the "CSA, 1973".
- 4- That, the respondent No.2 i.e Chief Secretary (hereinafter to be called "Competent Authority") under rule "10" of the "E & D

Rules", is the only Statutory Authority to pass an order of inquiry in writing in the instant case.

5- That, rule "10" of the "E & D Rules", holds the Title of "Procedure to be followed by Competent Authority where inquiry is necessary". According to rule "10" of the "E & D Rules", the "Competent Authority" shall pass an order of inquiry in writing which shall include;

- (a) Appointment of an inquiry officer or inquiry committee, provided that the inquiry officer or inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused.
- (b) The grounds for proceedings, clearly specifying the charges along with apportionment of responsibility;
- (c) Appointment of departmental representative by designation; and
- (d) Direction to the accused to submit his written defense to the inquiry officer or inquiry committee, as the case may be, within reasonable time which shall not be less than ten and more than fourteen days from the date of receipt of orders under clause (b) or within such an extended period as the competent authority may allow.

(Copy of the ibid rule attached as Annexure....."A").

6- That, the "Competent Authority" while exercising the statutory powers so vested under rule "10" of the "E & D Rules" communicated the appellant with statement of allegations (hereinafter to be called "unlawful inquiry order") vide dated 15-04-2024, through inquiry committee.

(Copies of the "unlawful inquiry order", is attached as annexure....."B").

7- That, on giving a bird view to the "unlawful inquiry order" at the time of its service during the course of the proceedings, it was revealed to the appellant as well as to the inquiry committee that the composition of aforesaid committee is defective/incompetent to the extent of appointment of the "Departmental Representative by designation" within the contemplation of rule "10" (1) (c) of the "E & D Rules".

8- That, feeling the severity & gravity of the legal complications/consequences, the inquiry committee applied their

judicious mind while communicating at the very outset the matter under reference with the quarter concerned vide summon/letter dated 15-04-2024, at last Para of the aforesaid communication which is reproduced for ready reference as under,

It is further requested that a Departmental Representative, nominated as per rule 10 (c) of the Khyber Pakhtunkhwa Government Servant Efficiency & Discipline Rule, 2011, may be deputed to attend the proceedings along with all relevant record as per date time venue mentioned above, please.

(Copy of the letter dated 15-04-2024 attached as Annexure....."C").

9- That, this very lacuna may be better understood by reading in juxtaposition the "unlawful inquiry order" with the proposed model of inquiry order.

(Copy of the proposed model of inquiry order, is attached as annexure....."D").

10- That, in pursuance to the letter of the inquiry committee dated 15-04-2024, as well as feeling aggrieved from the biased, unilateral, partial, unlawful, illegal, punitive, fanciful, tainted with malafide intentions, malicious, whimsical & Coram non judice mode & manner of the "Competent Authority", as well as from the defective/incompetent composition of the inquiry committee, the appellant also filed an appeal vide dated 16-04-2024, against the "unlawful inquiry order" before the respondent No.1 i.e appellate authority regarding directing the "Competent Authority" to provide legal coverage to inquiry committee by appointing a "Departmental Representative by designation" as mandated under rule "10" (1) (c) of the "E & D Rules" amongst the other submissions.

(Copy of the appeal dated 16-04-2024 attached as Annexure....."E").

11- That, in response to the above appeal, the appellant was communicated/provided with a "notification dated 25th April 2024" in the form of "Appellate Order", issued by departmental authority i.e respondent No.4 (Secretary Health) instead of "Competent Authority" which is crystal clear in its incompetency and is in sheer violation of rule "10" (1) (c) of the "E & D Rules" & judgment of the Apex Court rendered in "2022 S C M R 439", therefore the very vires & incompetency of the aforementioned notification is being impugned (hereinafter to be called "Impugned notification dated 25-04-2024") through the instant service appeal, hence the appellant is before this August Tribunal.

(Copy of the impugned notification dated 25-04-2024 attached as Annexure....."F").

GROUNDS:

- 5-
- A- That, the "impugned notification dated 25.04.2024", issued by the respondents No.4, i.e departmental authority, while donning the cloak via using the illusive & elusive term "Competent Authority" is against the law, facts, norms of natural justice, materials on the record and unconstitutional, hence not tenable and liable to be set aside.
- B- That, the "impugned notification dated 25.04.2024", issued by the respondent No.4, i.e departmental authority, while donning the cloak via using the illusive & elusive term "Competent Authority" is in violation of rule "10" (1) (c) of the "E & D Rules", and is in arbitrary & malafide manner, hence not tenable and liable to be set aside to the extent of the appellants.
- C- That, the "impugned notification dated 25.04.2024", issued by the respondent No.4, i.e departmental authority while donning the cloak via using the illusive & elusive term "Competent Authority" is in violation of rule "10" (1) (c) of the "E & D Rules", and is totally based on discrimination, favoritism and nepotism, hence not tenable in the eye of law.
- D- That, the "impugned notification dated 25.04.2024", issued by the respondent No.4, i.e departmental authority while donning the cloak via using the illusive & elusive term "Competent Authority" is in violation of rule "10" (1) (c) of the "E & D Rules" has neither been in the interest of public nor in the exigency of service, hence not tenable and liable to be set aside.
- E- That, the "impugned notification dated 25.04.2024", issued by the respondent No.4, i.e departmental authority while donning the cloak via using the illusive & elusive term "Competent Authority" is nothing but just to harass the appellants and to pressurize for not sustaining against the wrong doing.
- F- That, the "impugned notification dated 25.04.2024", issued by the respondent No.4, i.e departmental authority while donning the cloak via using the illusive & elusive term "Competent Authority" is basically in utter violation of the cited Judgment "2022 S C M R 439" of the Apex Court, by shielding himself in anonymous cloak of Competent Authority while the Apex Court has held vide citation (b) in its judgment as that,

"Using the term 'competent authority' but without disclosing such person's designation & name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. It is an individual who holds a particular position and by virtue of such position exercises

the power. Merely mentioning the competent authority without disclosing the designation & name of the person who is supposed to be the competent authority is utterly meaningless. The use of vague and imprecise language, such as, the 'competent authority', in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people; position of trust cannot be misused to appoint one's own or to illegally exercise power. There is a need to put a stop to the use of illusive & elusive term i.e the Competent Authority without the disclosure of the Competent Authority's name & designation while issuing the notifications, orders, office memorandum, instructions, letters and other communications.
 (Copy of the cited judgment attached as Annexure.....G).

G- That, the "impugned notification dated 25.04.2024", issued by the respondent No.4, i.e departmental authority while donning the cloak via using illusive & elusive term "Competent Authority" is also in defiance of the instructions circulated by Judicial Wing of the Establishment Department which has been communicated vide dated 14.02.2022, in compliance to the orders of the above cited judgment of the Apex Court.
 (Copy of the letter dated 14.02.2022 attached as Annexure.....H).

H- That, the appellant has not been treated by the respondents in accordance with law, rules and cited judgment of the Apex Court on the matter concerned and as such the respondents violated the Articles 4, 10A, 25, 189 & 190 of the Constitution of the Islamic Republic of Pakistan, 1973

I- That, the committing excess of an authority by the respondent No.4, i.e departmental authority while donning the cloak via using the illusive & elusive term "Competent Authority" regarding issuing "impugned notification dated 25.04.2024", so as to order an incompetent/ defective appointment of "Departmental Representative by designation" in violation of rule "10" (1) (c) of the "E & D Rules" is against the law, facts and norms of natural justice, materials on the record unconstitutional and without lawful authority.

J- That, due to committing excess of an authority by respondent No.4, i.e departmental authority while donning the cloak via using the illusive & elusive term "Competent Authority" regarding issuing impugned Notification dated 25.04.2024, so as to order an incompetent/ defective appointment of "Departmental

Representative by designation", hence the inquiry committee would not be capable to adopt the statutory procedure by recording the statements of the witnesses in the presence of the accused and "Departmental Representative" as envisaged by rule "11" (4) of the "E & D Rules".
(Copy of the referred rule are attached as annexure....."I").

K- That, due to committing excess of an authority by respondent No.4, i.e departmental authority while donning the cloak via using the illusive & elusive term "Competent Authority" regarding issuing "impugned notification dated 25.04.2024", so as to order an incompetent/ defective appointment of "Departmental Representative by designation" hence the Departmental Representative would not be able to perform his statutory duties within the contemplation of rule "13" of the "E & D Rules".
(Copy of the referred rule are attached as annexure....."J").

L- That, due to committing excess of an authority by respondent No.4, i.e departmental authority while donning the cloak via using illusive & elusive term "Competent Authority" regarding issuing "impugned notification dated 25.04.2024", so as to order an incompetent/ defective appointment of "Departmental Authority" hence the "Competent Authority" itself would not be in the position to issue a show cause notice to the accused, in order to adhere to rule "14" "(4)" "(d)" of the "E & D Rules" by giving direction to the "Departmental Representative" to appear, with all the relevant record, on the date of personal hearing.
(Copy of the referred rule are attached as annexure....."K").

M- That, due to committing excess of an authority by respondent No.4, i.e departmental authority while donning the cloak via using illusive & elusive term "Competent Authority" regarding issuing "impugned notification dated 25.04.2024", so as to order an incompetent/ defective appointment of "Departmental Representative by designation" hence the "Competent Authority" itself would not be in the position to issue an order in writing, to call the accused and the "Departmental Representative" along with all relevant record of the case, to appear before him, or a hearing officer, for personal hearing, on the fixed date and time, as mandated under "15" of the "E & D Rules".
(Copy of the referred rule are attached as annexure....."L").

N- That, in this regard, the Honorable Peshawar High Court has already laid down the principle regarding committing excess of an authority while constituting of an incompetent inquiry committee and has declared the same without **"jurisdiction"** in light of reported judgment rendered in **"2004 PLC (C.S) 604"** vide citation (c) and has a persuasive/binding value in term of rule **"23"** of Khyber Pakhtunkhwa Service Tribunal Rules, 1974. It has been further held in the aforementioned titled judgment vide citation (d) that,

"High Court, besides being a Court of law, was a Court of equity also and where it would see excess being committed by an Authority, it must rescue the victim from it. Excess of an authority could not go unnoticed without a proper relief to a victim of it."

(Copy of the cited judgment attached as Annexure...
....."M").

O- That, the Honorable Lahore High Court has also held regarding excess /lapses of an authority in a reported judgment cited as **"2017 PLC (C.S) 569"** vide citation (d) as that,

"No one should suffer due to the acts (faults) of the Government or its departments".

(Copy of the cited judgment attached as Annexure...
....."N").

P- That, as per dictum laid down by the Honorable Supreme Court of Pakistan in the case cited as **"FLD 2011 SC 927"**, the Honorable Supreme Court of Pakistan has dilated upon the principle of administration of justice in the following words,

"When a procedure has been provided for doing a thing in a particular manner that thing should be done in that manner and in no other way or it should not be done at all; indeed it impliedly prohibits doing Of thing in any other manner; the compliance of such thing in no way could be either ignored or dispensed with. If the act complained of is without jurisdiction or is in excess of authority conferred by statute or there is abuse or misuse of power, court can interfere."

Q- That, the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Zia Ullah
Appellant

ZIA ULLAH

THROUGH:

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT.**

-9-

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

C.M NO. _____/2024

IN

SERVICE APPEAL No. _____/2024
ZIA ULLAH VS HEALTH DEPARTMENT

APPLICATION FOR SUSPENSION OF OPERATION OF THE IMPUGNED NOTIFICATION DATED 25TH APRIL 2024, ISSUED IN UTTER VIOLATION OF PREVAILING LAWS & RULES I.E RULE "10 (1) (c)" OF "E & D RULES, 2011", AS WELL AS OF THE JUDGMENTS CITED AS "2022 SCMR 439", R/W LETTER DATED "14-02-2022", AND ALSO THE SUSPENSION OF UNLAWFUL INQUIRY ORDER, TILL THE FINAL DISPOSAL OF THE ABOVE TITLED APPEAL.

R/SHEWETH:

- 1- That, the above mentioned appeal along with this application has been filed by the appellant before this august Service Tribunal in which no date has been fixed so far.
- 2- That, the appellant filed the above mentioned appeal against the "impugned notification dated 25.04.2024", under the garb of which an attempt has been made to give a legal coverage/shelter to the unlawful inquiry order which has been issued in utter violation of the rule "10 (1) (c)" of the "E & D RULES, 2011".
- 3- That, all the three ingredients necessary for the stay is in the favor of the appellant.
- 4- That, the "impugned notification dated 25.04.2024", issued to strengthen the stance of unlawful, defective & incompetent inquiry order, but the same is tainted with malafide intention of harassment and is in utter disregard of the various Courts judgments cited as "2022 SCMR 439" R/W LETTER DATED "14-02-2022" "2004 PLC (C.S) 604", "2017 PLC (C.S) 569" & "PLD 2011 SC 927" respectively.

It is therefore, most humbly prayed that on acceptance of this application, the operation of the "impugned notification dated 25.04.2024", and the unlawful, defective & incompetent inquiry order in respect of appellant may very kindly be suspended till the final disposal of the above titled service appeal.

Applicant

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE

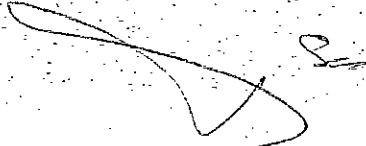
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL No. _____ /2024

ZIA ULLAH VS HEALTH DEPARTMENT

AFFIDAVIT.

I, ZIA ULLAH PROVINCIAL DRUG INSPECTOR (BS-17) C/O
Directorate General Drug Control & Pharmacy, Old Fata Secretariat
Services Warsak Road, Khyber Pakhtunkhwa Peshawar Health
Department, do hereby solemnly affirm that the contents of this
Appeal are true and correct to the best of my knowledge and
belief and nothing has been concealed from this Honorable
Court/Tribunal.



DEPONENT

"A" -11-

Provided that dismissal in these cases shall be with ²[.....] effect from the date of conviction by a court of law; and

- (b) proceed against the Government servant under rule 5, where he has been convicted of charges other than corruption or moral turpitude.

9. **Procedure in case of wilful absence.**—Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

10. **Procedure to be followed by competent authority where inquiry is necessary.**—

(1) If the competent authority decides that it is necessary to hold an inquiry against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include—

- (a) appointment of an inquiry officer or an inquiry committee, provided that the inquiry officer or the inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded against jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused;
- (b) the grounds for proceeding, clearly specifying the charges along with apportionment of responsibility;
- (c) appointment of the departmental representative by designation; and
- (d) direction to the accused to submit written defense to the inquiry officer or the inquiry committee, as the case may be, within reasonable time which shall not be less than seven days and more than fifteen days of the date of receipt of orders.

(2) The record of the case and the list of witnesses, if any, shall be communicated to the inquiry officer or the inquiry committee, as the case may be, along with the orders of inquiry.

(3) In a case where preliminary or fact finding inquiry was conducted, and the competent authority decides to hold formal inquiry, the inquiry officer or the inquiry committee for the purpose of conducting formal inquiry shall be different from the inquiry officer or the inquiry committee which conducted the preliminary.

11. **Procedure to be followed by inquiry officer or inquiry committee.**—(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry *ex-parte*.

(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

(4) Statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of accused and vice versa.

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be

² Deleted by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.

"B"
-12- (4)

DISCIPLINARY ACTION

I, Nadeem Aslam Chaudhary, Chief Secretary, Khyber Pakhtunkhwa, as the Competent Authority, am of the opinion that Zia Ullah, Drug Inspector (BPS-17), currently posted as Drug Inspector at District Bannu, has rendered himself liable to be proceeded against, as he has committed the following acts/omissions when he was posted as Drug Inspector (BPS-17) at Distt Bannu, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

1. Zia Ullah, Drug Inspector was not member of the inspection team, meant for inspection of KP based firms for MCC tender but he carried out unauthorized inspection under the guise of member MCC inspection team that led to the disqualification of the complainant firm.
 2. Despite carrying unauthorized inspection of the firm, Zia Ullah, Drug Inspector involved / invited a number of unauthorized personnel for the said purpose to play a leading role in the inspection of M/s FDL.
 3. The inspection was conducted on 30-08-2023 and Zia Ullah, Drug Inspector called Mr. Khalid Iqbal Plant Manager on 02-09-2023 and narrated a false story that the firm M/S FDL has been disqualified and M/S Unisa has been recommended in MCC meeting but on contrary no meeting of the MCC was held between 30-08-2023 to 02-09-2023.
 4. Zia Ullah, Drug Inspector conveyed a false report of disqualification of M/S FDL to Mr. Khalid Iqbal Plant Manager of the said firm to invite his attention and have further deliberation on the matter for modification of the said report as per his wish.
 5. Zia Ullah, Drug Inspector demanded for percentage share per product from Mr. Khalid Iqbal that amounts in millions of rupees, for the submission of report of his choice.
 6. Zia Ullah, Drug Inspector called Mr. Khalid Iqbal and invited him to Peshawar and later on to his home town, Sher Garh, District Mardan on 04-09-2023 for disclosing the report of M/s FDL and was compelling him to talk to the company for illicit demand.
- Nadeem Aslam*

- 7. Zia Ullah, Drug Inspector submitted a false report of M/s FDL, containing adverse findings for signature by those members who did not inspect the firm, against the original report submitted by a notified member, Mr. Salim Khan Drug Inspector, Dir. lower.
- 8. The unauthorized report signed by Zia Ullah, Drug Inspector, has neither fulfilled the provisions as mandated in Section V(10)(A) of the Bid Solicitation documents framed for MCC (FY 2023-24) nor any checklist has been maintained to substantiate his report.
- 9. Zia Ullah, Drug Inspector made a call from the Cell Phone of Mr. Khulid Iqbal, Plant Manager FDL to Mr. Akhtar Saeed, GM, M/s FDL, posing himself as the sole authority to settle issues for the recommendation of the said firm against speed money in the shape of product wise percentage share, besides other modalities as conveyed in the audio call as reported in the inquiry.
- 10. Zia Ullah, Drug Inspector maligned the prestigious office of DGHS and attempted to drag it for illicit agenda in the shape of deal for product wise percentage share.
- 11. Zia Ullah, Drug Inspector conducted unauthorized inspection of M/S FDL for making illicit deal which led to disqualification of the firm and huge financial loss to the government exchequer.
- 12. The loss to the govt against unauthorized inspection, demand for speed money and subsequent disqualification of M/S FDL by Zia Ullah, Drug Inspector is alarming/in millions, if the quoted prices of the complainant firm are compared with the approved prices of the competitor firm.

2. For the purpose of inquiry against the said accused with reference to the above allegations an Inquiry Officer/ Inquiry Committee, consisting of the following is constituted under Rule 10(1) (a) of the ibid rules.

- a. Mr. Javed Iqbal (PNS-15) Add. Secy. H.E.O.....
- b. Dr. Sherry Gajjwal (BS-20) Director (ESN) Gen H. Deptt. Govt

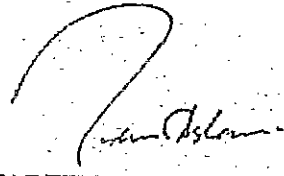
3. The Inquiry Officer/ Inquiry Committee shall, in accordance with the provision of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within 60-days of the receipt of this order,

-14-


(4/5)

Recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/Committee.



(NADEEM ASLAM CHAUDHARY),
Chief Secretary,
Khyber Pakhtunkhwa.





GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES
& LIBRARIES DEPARTMENT

-15- "C"

No. PA (AS)/HED/2023/Inquiry
Dated Peshawar, the 15/04/2024

To

The Secretary to Govt; of Khyber Pakhtunkhwa,
Health Department.

Subject:-

DISCIPLINARY ACTION AGAINST MR. ZIA ULLAH, DRUG INSPECTOR (BS-17) BANNU, MR. HAMID ULLAH, DRUG INSPECTOR (BS-17) KARAK AND DR. SAFI ULLAH, MEDICAL OFFICER (BS-17) ATTACHED TO DHO MARDAN.

Dear Sir,

I am directed to refer to this department letter No. PA(AS)/HED/2023/Inquiry 5242-48, Dated 04/04/2023 on the subject noted above whereby it was requested to inform the accused officers to present themselves before the inquiry committee on 03/04/2024 besides nominating a Departmental Representative to assist the inquiry proceedings.

It is intimated that the next hearing date in the subject inquiry has been scheduled for 26th April, 2024 at 10:00 AM in the office of the Additional Secretary, Higher Education Archives and Libraries Department.

It is therefore requested to direct the accused to present themselves before the inquiry committee on the date time and venue as mentioned. Besides, Mr. Khalid Iqbal, Plant Manager MS FDL may also be informed to appear before the committee and present evidence (if any) in connection with the inquiry.

It is further requested that a Departmental Representative, nominated as per rule 10(c) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, may be deputed to attend the proceedings along with all relevant records as per date time and venue mentioned above, please.

PA to Addl: Secretary
Higher Education Archive and
Libraries Department.

Encls: No. & Date even.

Copy forwarded to the:-

1. Dr. Shiraz Qayyum (BS-20) Director (E&A) Health Department with the request to attend the proceedings on above mentioned date, time and venue, Peshawar.
2. Director General Drug control & pharmacy Services Khyber Pakhtunkhwa.
3. Section Officer-III, Government of Khyber Pakhtunkhwa, Health Department.
4. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
5. PS to Special Secretary (E&A), Health Department.

PA to Addl: Secretary
Higher Education Archive and
Libraries Department.

"D"
-16-

**PROPOSED MODEL/ STATUTORY COMPONENTS OF INQUIRY
ORDER.**

I Mr. "A" Chief Secretary, Khyber Pakhtunkhwa, as the Competent Authority, am of the opinion that Mr. "B" (BS-17) rendered himself liable to be proceeded against, as he has committed the following acts/ omissions within the meaning of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline), Rules, 2011.

STATEMENT OF ALLEGATIONS

Various charges framed against accused are as under,

Statement of allegation/Charge. 1

Statement of allegation/Charge. 2

Statement of allegation/Charge. 3

2. For the purpose of inquiry against the said accused with reference to above allegations an Inquiry Officer/ Inquiry Committee, consisting of the following is constituted under Rule 10(1)(a) of the *ibid* rules.

a.....Mr. AB.....

b.....Mr. BA.....

3. The Inquiry Officer/ Inquiry Committee shall, in accordance with the provision of the *ibid* rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within 60-days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. For the assistance of Inquiry Officer/ Inquiry Committee, the following Officer is appointed as Departmental Representative by designation under Rule 10 (1) (c) of the *ibid* rules.

Mr. So & So Assistant Director (BS-17) etc Health Department.

(The appointment of Departmental Representative by designation in the instant is missing; hence the very inquiry order issued under rule 10 of the *ibid* rules is impugned).

5. The accused and above appointed representative of the Department shall join the proceedings on date, time and place fixed by the Inquiry Officer/ Inquiry Committee.

Mr. "A"
Chief Secretary,
Khyber Pakhtunkhwa.

Offices of the PSCM
Diary No. 255
Dated.....16-04-2024

"E"

To,

Dated; 16/04/2024.

The Chief Minister,
through Principal Secretary,
Chief Minister Secretariat, Khyber Pakhtunkhwa Peshawar.

-17-

Subject: APPEAL FOR JUSTICE AGAINST THE IMPUNGED INQUIRY ORDER COMMUNICATED/SERVED VIDE DATED 15-04-2024.

R/Sir:

ON FACTS:

1- That, the undersigned was communicated with a letter vide dated 29-11-2023, which was self-explanatory, hence the same was subsequently impugned by the undersigned for the two reasons. The first reason was about the legal status/validity of the fact finding inquiry while the second one was about the provision of the prescribed "**MODUS OPERANDI**" & "**JURISDICTION**" of the "**Competent Authority**" to proceed & take action against an accused Civil Servant in case of alleged corruption & its subsequent conviction.

(Copy of the referred letter attached as Annexure....."A").

2- That, the first reason which was regarding the legal status/validity of the fact finding inquiry, has been already clarified at the very outset by the "**Competent Authority**" through regulation wing of the Establishment Department & was endorsed thereof to the quarter concerned vide letter dated 11-12-2023.

(Copy of the referred letter attached as Annexure....."B").

3- That, the second reason in the above referred letter was regarding the provision of clarification on the prescribed "**MODUS OPERANDI**" & "**JURISDICTION**" to be assumed by the "**Competent Authority**" in case of conviction of an accused on corruption charges by Court of law, which is still awaited and might have been inadvertently over sighted/ overlooked.

4- That, in this context the undersigned also filed an appeal vide dated 24-01-2024, to the "Competent Authority" (Chief Secretary) regarding the provision of prescribed "MODUS OPERANDI" & "JURISDICTION" to the extent of proceeding in case of corruption charges under Efficiency & Discipline Rules, 2011 (hereinafter to be called "E & D Rules") which is still awaited and has not been replied so far till date.

(Copy of the referred letter attached as Annexure....."C").

5- That, instead of deciding the above referred appeal on merit, the "Competent Authority" communicated/served an impugned statement of allegations enclosed to Charge Sheet vide dated 15-04-2024 (hereinafter to be called "impugned inquiry order dated 15-04-2024") upon the appellant, while assuming the whimsical jurisdiction of probing the corruption charges among the other which have not proved from any Court of law on the account of conviction as required under the prevailing rules.

(Copies of the referred impugned documents attached as Annexure....."D").

6- That, it is pertinent to mention here with the respect, that under "clause (ii)" of proviso appended to rule "5(1) (a)" R/W rule "8 (a)" and its appended proviso of the "E & D Rules", the "Competent Authority" shall dismiss directly the accused in case of conviction on the corruption charges by the court of law with the sentence of fine or imprisonment which shall be with effect from the date of conviction by a court of law and no chance of personal hearing or showing cause notice will be provided.

(Copy of the referred rules attached as Annexure....."E").

7- That, the Honorable Peshawar High Court has also held in a reported judgment cited as "2014-PLC (C.S) 590" vide citation (a) as that, "Corruption charge could not be leveled unless proved by cogent and sufficient evidence". It has been further held in the aforementioned titled judgment vide citation (c) that,

"Charge must be proved on firm evidence"

(Copy of the referred judgment attached as Annexure... "F").

8- That, the "**impugned inquiry order dated 15-04-2024**" also includes the whimsical charge of misuse of authority which has no legal coverage/force under the rule "**3**" of "**E & D Rules**" and the rule ibid is alien to the aforementioned whimsical penalty.

(Copy of the referred rule attached as Annexure..... "G").

9- That, the charge of misconduct framed in the impugned charge sheet enclosed with the statement of allegations also does not fall in the ambit of Khyber Pakhtunkhwa Government Servant (Conduct) Rules, 1987, thus this very charge also cannot be termed as the legal one.

(Copy of the referred rules attached as Annexure..... "H").

10- That, under rule "**10**" of the "**E & D Rules**" which holds the Title of "**Procedure to be followed by the competent authority where inquiry is necessary**", the "**Competent Authority**" is required to pass an inquiry order in this regard, if he desires so. The "**Competent Authority**" shall appoint the inquiry Officer or inquiry committee as the case may be, in the inquiry order under rule 10(1) (a) of the "**E & D Rules**". In the Inquiry order, the "**Competent Authority**" is also required under rule 10(1)(c) of the "**E & D Rules**" to appoint a departmental representative by designation when it is necessary to hold an inquiry while in the instant case the latter rule has been utterly violated and the impugned charge sheet enclosed with statement of allegations is bereft of this merit, as this very issue has been already raised vide letter dated 15-04-2024.

(Copy of the referred rule & letter dated 15-04-2024 attached as Annexure..... "I").

11- That, pertinent to mention here that it has been also observed that a person (**Mr. Inam Ul Haq**) representing himself as departmental representative vide dated 15-04-2023, during the inquiry proceedings who has never even been appointed as departmental representative by designation under 10 (1)(c) of the "**E**

& D Rules". In addition to this, the aforementioned person has also been the inquiry officer in the impugned fact finding inquiry of the undersigned which has been already declared unlawful by the Establishment department vide dated 11-12-2023 (already enclosed as Annexure "B"). This phenomenon makes the profile of the proceeding highly doubtful and is against the golden principle of natural justice & legal maxim that a "Judge cannot sit on his own judgment."

So keeping in view of the above, the appellant being aggrieved by the unauthorized, unlawful, unilateral, illegal, partial, punitive, fanciful, tainted with malafide intentions, malicious, whimsical, void ab initio, Coram non judice, ex-parte and biased proceedings/actions of the "Competent Authority" having no other alternate, adequate, speedy and efficacious remedy other than to file the instant appeal on the basis of following grounds interalia by impugning the very vires of the subject charge sheet enclosed with statement of allegations.

GROUND:

- A- That, the "impugned inquiry order dated 15-04-2024", issued by the "Competent Authority" is against the law, facts, norms of natural justice, materials on the record and unconstitutional, hence not tenable and liable to be set aside.
- B- That, the "impugned inquiry order dated 15-04-2024", issued by the "Competent Authority" under the garb of probing of such kind of charges for which the constituted committee is not entitled/ competent is in arbitrary, malafide manner and is violative of the prevailing law & rules, hence not tenable and liable to be set aside.
- C- That, the "impugned inquiry order dated 15-04-2024", issued by the "Competent Authority", is totally based on discrimination, favoritism and nepotism, hence not tenable in the eye of law.
- D- That, the "impugned inquiry order dated 15-04-2024", issued by the "Competent Authority", has neither been in the

interest of public nor in the exigency of service, hence non-viable and liable to be set aside.

E- That, according the golden principle of consistency when one of the charge is declined, the other charge also loose it efficacy & maintainability as mandated under Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

F- That, the Honorable Supreme Court of Pakistan has held in the judgment cited as "PLD 2008 SC 663" regarding the basic order being void,

"When the basic orders is without lawful/statutory authority and void ab initio, then the entire superstructure raised thereon falls on the ground automatically.

G- That, as per dictum laid down by the Honorable Supreme Court of Pakistan in the case cited as "PLD 2011 SC 927", the Honorable Supreme Court of Pakistan has dilated upon the principle of administration of justice as under,

"when a procedure has been provided for doing a thing in a particular manner that thing should be done in that manner and in no other way or it should not be done at all;

H- That, the appellant has not been treated by the "Competent Authority" in accordance with law, rules and cited judgment of the Apex Court on the subject matter and as such has utterly violated the Articles 4,10A & 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

Keeping in view entire of the above, it is humbly prayed to kindly direct the "Competent Authority" as follow that either,

- 1) To kindly produce to the appellant, (a) the latest amendments made in "E & D Rules" to the extent of rule "3", which provide legal coverage to the penalty of Misuse of Authority by specifying it in the rule ibid, (b) the latest amendments made in "E & D Rules" to the extent of "clause (ii)" of proviso appended to rule "5(1)(a)" R/W rule "8(a)" and its appended proviso, prescribing the "MODUS OPERANDI" & "JURISDICTION" of the "Competent Authority" which empower the concerned

authority to initiate disciplinary proceedings and consequently to take legal action while mandating the chance of personal hearing or serving charge sheet/statement of allegations/ show cause notice as the case may, to the accused without conviction from Court of law, (c) the latest amendments made in the Khyber Pakhtunkhwa Government Servant (Conduct) Rules, 1987, to take cognizance of the instant case as misconduct and (d) the latest amendments made in "E & D Rules" to the extent of rule 10(1)(c) while nominating anonymously any person from the health as departmental representative without disclosing his name & designation or to issue a competent order regarding appointment of departmental representative by designation through proper channel under the rule ibid by providing legal coverage to the defective composition of inquiry committee.

OR

- 2) In case of otherwise, it is humbly requested to kindly accept the instant appeal by directing the Chief Secretary [**Competent Authority**] to kindly withdraw the "impugned inquiry order dated 15-04-2024" while passing a speaking appellate order through establishment department to the extent of whimsical charges framed under the garb of Corruption, Misuse of authority, misconduct and also dispensing with appointment of the departmental representative by designation as "ineffective upon the rights of appellant", "without mandate of law", "Coram Non Judice", "illegal", "unlawful", "unconstitutional", "impracticable", "invalid" and "void ab intio" in light of the existing facts, grounds, prevailing laws & rules and cited judgment of the Apex Court, so as to avoid further unnecessary rounds of litigation and oblige please.


ZIA ULLAH,

Provincial Drug Inspector (BS-17),
District Bannu.
0333-2586980.



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No. SOH-III/7-262/2024
Dated the Peshawar 25th April, 2024

To

The Director General,
Drug Control & Pharmacy Services,
Khyber Pakhtunkhwa, Peshawar.

SUBJECT: DISCIPLINARY ACTION AGAINST MR. ZIA ULLAH, DRUG INSPECTOR (BS-17) BANNU, MR. HAMID ULLAH, DRUG INSPECTOR (BS-17) KARAK AND DR. SAFI ULLAH, MEDICAL OFFICER (BS-17) ATTACHED TO DHO MARDAN.

I am directed to refer to the letter No. PA(AS)/HED/2023/Inquiry, dated 15-04-2024, received from PA to Additional Secretary, Higher Education, Archives & Libraries Department on the subject noted above.

I am further directed to convey that the Competent Authority has been pleased to nominate Deputy Director (Pharmacy) at Directorate General Drugs Control & Pharmacy Services, Khyber Pakhtunkhwa as a Departmental Representative, under Rule 10(c) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 to attend the Inquiry Proceedings along with all relevant records as and when required by the Inquiry Committee, please.

(Naseer Ahmed)
Section Officer-III

Endst: of even No & Date.

Copy forwarded to,

1. PA to Additional Secretary (Universities), Higher Education, Archives & Libraries Department with reference to his letter referred above, please.
2. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
3. PS to Special Secretary (E&A), Health Department.

Section Officer-III

2022 S C M R 439

[Supreme Court of Pakistan]

Present: Qazi Faez Isa and Amin-ud-Din Khan, JJ

PROVINCE OF SINDH and others---Petitioners

Versus

SHAHZAD HUSSAIN TALPUR---Respondent

Civil Petition No. 407-K of 2019, decided on 30th December, 2021.

(Against the judgment dated 15.03.2019 passed by the Sindh Service Tribunal at Karachi in Service Appeal No. 815/2017)

(a) Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974---

---R. 4(1)---Sindh Public Service Commission (Functions) Rules, 1990, R. 3(1)(i)---Special Auditor, Cooperative Societies---Appointment, legality of---Special Auditor was required to be selected by the Provincial Public Service Commission ('the Commission')---Special Auditor was a grade 17 post and the Secretary, Cooperative Societies was not authorized to either select or appoint a person in Grade 17.

Perusal of the original file and documents pertaining to the appointment of the respondent as Special Auditor, Cooperative Societies showed only the relevant notification appointing the respondent; there is nothing therein regarding the number of persons who had applied for the position of Special Auditor, how many had participated in the test and interview, the results of such test and interview, and culminating in a seriatim listing of the applicants in the order of merit - the merit list. The respondent was pre-selected and appointed by the Secretary, Cooperative Societies and this was done without making him take any test and/or interview.

The Secretary issued the notification appointing the respondent by using the ubiquitous term competent authority, without disclosing the designation and name of the competent authority. Secretary also did not disclose that he himself was the competent authority in respect of appointments to a Grade 16 position. To enable himself to appoint the respondent, the Secretary illegally downgraded the position of Special Auditor from Grade 17 to Grade 16, and, to ensure that the nexus between him and the respondent went unnoticed the Secretary did not mention the full name of the respondent in the notification and left out the names shared between them - 'Mir' and 'Talpur'.

Special Auditor was required to be selected by the Provincial Public Service Commission ('the Commission'). Special Auditor was a Grade 17 post and the Secretary was not authorized to either select or appoint a person in Grade 17. In selecting and appointing the respondent as Special Auditor the Secretary had acted illegally. Respondent was not selected by the Commission yet he was appointed as Special Auditor, and, it would not make a difference even if it be accepted that the post of Special Auditor was in Grade 16 because selection to Grade 16 posts was also to be done by the Commission. Appointment of respondent as Special Auditor was patently illegal.

(b) Civil service---

---Appointment---Use of the term "competent authority" in notifications, orders, office memorandums, instructions, letters and other communications---Deprecated---Using the term 'competent authority' but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them.

It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed.

"9" -24-

The use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term ~~the~~ competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

There is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, all the Provincial Governments, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable.

Saulat Rizvi, Additional Advocate-General, Sindh, Ghulam Rasool Mangi, Advocate-on-Record, Ali Gul Sanjrani, Deputy Secretary and Abdul Latif Qazi, Deputy Registrar for Petitioners.

Mukesh Kumar G. Karara, Advocate Supreme Court along with Respondent and M. Iqbal Ch., Advocate-on-Record (absent) for Respondent.

Date of hearing: 30th December, 2021.

JUDGMENT

Qazi Faez Isa, J. This petition has been filed challenging the judgment of the Sindh Service Tribunal at Karachi (the Tribunal'), which allowed the respondent's appeal and set aside the order dismissing him from the position of Special Auditor in the 'Cooperation Department'. The learned Additional Advocate-General, Sindh ('AAG') says that the 'Cooperation Department' is another name for the Cooperative Department. However, he states that the Sindh Government Rules of Business, 1986 refers to the department as the Cooperative Department. The petitioners are well advised to refer to departments by the names mentioned in the said Rules, and not to cause needless confusion.

2. The learned AAG states that the respondent was terminated from service because he was illegally selected and appointed to the post of Special Auditor by the Secretary of the department. This post could only be filled-in by inviting applicants through advertisements which set out the eligibility criteria and testing their abilities/competence by the Sindh Public Service Commission ('the Commission'). The Commission would then recommend the candidate who had attained the highest marks for appointment. Referring to the Sindh Public Service Commission (Functions) Rules, 1990¹ ('the Commission's Rules') he states that the position of Special Auditor is a grade 17 position and as per the Commission's Rules the selection to a grade 17 position can only be done by the Commission. To support his contention that the position of Special Auditor is a grade 17 position the learned AAG has referred to the Budget Books of the two years preceding the respondent's appointment which show that Special Auditor is a grade 17 position. The learned AAG states that the respondent was appointed by Mr. Ijaz-ul-Haq Talpur ('the Secretary'). However, before appointing the respondent the Secretary downgraded the position of Special Auditor to a grade 16, which he did because a Secretary is authorised to make grade 16 appointments, as provided in the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974² ('the Appointment Rules'). The learned AAG submits that, even if it be conceded that the position of Special Auditor was a grade 16 position then too selection to this post had to be made by the Commission in terms of Rule 3(1)(i) of the Commission's Rules.

3. The petitioners initially contended that the Secretary was the respondent's brother but in the absence of such proof the learned AAG withdrew this allegation. However, the learned AAG points out that the Secretary and the respondent resided together at the same address which was E-92, Block-II, Pakistan Employees Cooperative Housing Society, Karachi (as confirmed by their identity cards) and there was a close nexus between them. Therefore, the Secretary had a conflict of interest and should

MOST IMMEDIATE
COURT MATTER



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(JUDICIAL WING)

"H"

-26-

No. SO(Lit-I)E&AD/1-1/2020
Dated: Peshawar, the 14.02.2022

To

1. The Senior Member Board of Revenue.
2. The Additional Chief Secretary, P&D Department.
3. All Secretaries to the Government of Khyber Pakhtunkhwa.
4. All the Commissioners, Khyber Pakhtunkhwa.
5. The Secretary, KP Public Service Commission, Peshawar.
6. All Heads of Attached Departments/ Autonomous Bodies in KP.
7. All the Deputy Commissioners, Khyber Pakhtunkhwa.

Subject: - **JUDGMENT AS TO DISCLOSURE OF DESIGNATION & NAME OF THE "COMPETENT AUTHORITY" WHILE ISSUING NOTIFICATIONS, ORDERS, OFFICE MEMORANDUMS, INSTRUCTIONS, LETTERS AND OTHER COMMUNICATIONS ETC.**

I am directed to refer to the subject cited above and to state that the Hon'ble Supreme Court of Pakistan in its Judgment dated 30.12.2021 passed in the C.A No. 62-K of 2021 arising out of C.P No. 407-K of 2019 has passed certain orders/ given directions, the operative part whereof is reproduced as under:-

"For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 01) Baluchistan, Khyber Pakhtunkhwa, Punjab, the Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Court's all District and Sessions Courts, are required to issue requisite orders/ directions that they and their respective functionaries, semi-governments and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure

that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this Judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the Provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to publish the same in their respective gazettes or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022."


You are therefore, requested to comply with the orders/ directions contained in the said Judgment in letter & spirit in future.

*Chief Secretary, Govt. of
Khyber Pakhtunkhwa*

Endst: of even No. & Date.

Copy forwarded for information to the:-

1. Registrar, Supreme Court of Pakistan at Islamabad.
2. Deputy Registrar, Supreme Court of Pakistan M.R. Kayani Road, Karachi with reference to his letter No. C.A62-K of 2021 arising out of No. C.P 407-K of 2019 dated 26.01.2022.
3. Manager, Printing Press Peshawar for issuing it in the official gazette of Khyber Pakhtunkhwa.
4. All Additional Secretaries/ Deputy Secretaries in Establishment & Administration Department.
5. PS to Chief Secretary, Khyber Pakhtunkhwa.
6. All Section Officers/ Estate Officers in Establishment & Administration Department.
7. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
8. PS to Special Secretary (Estt), Establishment Department, Khyber Pakhtunkhwa.
9. PA to Additional Secretary (Judicial), Establishment Department.
10. PA to Deputy Secretary (Judicial), Establishment Department.
11. Master File.


(Mukaram Khan)
Section Officer (Litigation-I)

Government Servants (Efficiency and Discipline) Rules, 2011

authority may appoint another inquiry officer or the inquiry committee, as the case may be.]

11. Procedure to be followed by inquiry officer or inquiry committee.—(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry ex-parte.

(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

¹[(4) Statements of witnesses shall be recorded in the presence of accused and departmental representative.]

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

²[(7) The inquiry officer or the inquiry committee, as the case may be, shall complete the inquiry within sixty days or within such an extended period, which the competent authority may allow on the request of the inquiry officer or inquiry committee, as the case may be, for reasons to be recorded and shall submit his or its report to the competent authority within seven days of the date of completion of inquiry. The inquiry report must contain clear findings as to whether the charge or charges have been proved or not proved and specific recommendations regarding exoneration or imposition of minor or major penalty or penalties upon the accused.]

12. Powers of the inquiry officer or inquiry committee.—(1) For the purpose of an inquiry under these rules, the inquiry officer or the inquiry committee, as the case may be, shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents, and receiving evidence on affidavits; and
- (c) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these rules shall be deemed to be the judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

1. Subs. by Notification No. SO(Policies)E&AD/2-6/2021 dated 31-12-2021
2. Subs. by Notification No. SO(Policies)E&AD/2-6/2021 dated 31-12-2021

" J "

-29-

deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

(7) The inquiry officer or the inquiry committee, as the case may be. Shall submit his or its report, to the competent authority within thirty days of the initiation of inquiry:

Provided that the inquiry shall not be vitiated merely on the grounds of non-observance of the time schedule for completion of the inquiry.

12. Powers of the inquiry officer or inquiry committee.—(1) For the purpose of an inquiry under these rules, the inquiry officer or the inquiry committee, as the case may be. shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents, and receiving evidence on affidavits; and
- (c) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these rules shall be deemed to be the judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

13. Duties of the departmental representative.—The departmental representative shall perform the following duties, namely:

- (a) render full assistance to the inquiry officer or the inquiry committee, as the case may be, during the proceedings where he shall be personally present and fully prepared with all the relevant record relating to the case, on each date of hearing;
- (b) cross-examine the witnesses produced by the accused, and with the permission of the inquiry officer or inquiry committee, as the case may be, may also cross-examine the prosecution witnesses; and
- (c) rebut the grounds of defense offered by the accused before the inquiry officer or the inquiry committee, as the case may be.

14. Order to be passed on receipt of report from the inquiry officer or inquiry committee.—(1) On receipt of report from the inquiry officer or inquiry committee, as the case may be, the competent authority, shall examine the report and the relevant case material and determine whether the inquiry has been conducted in accordance with the provisions of these rules.

(2) If the competent authority is satisfied that the inquiry has been conducted in accordance with the provisions of these rules, it shall further determine whether the charge or charges have been proved against the accused or not.

(3) Where the charge or charges have not been proved, the competent authority shall exonerate the accused by an order in writing, or it shall follow the procedure as given in sub-rule (6) of this rule.

(4) Where the charge or charges have been proved against the accused, the competent authority shall issue a show cause notice to the accused by which it shall-

- (a) inform him of the charges proved against him and the penalty or penalties proposed to be imposed upon him;
- (b) give him reasonable opportunity of showing cause against the penalty or penalties proposed to be imposed upon him and to submit as to why one or more of the penalties as provided in rule 4 may not be imposed upon him and to submit additional defense in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him; provided that the accused shall, in his reply to show cause notice, indicate as to whether he

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deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

(7) The inquiry officer or the inquiry committee, as the case may be. Shall submit his or its report, to the competent authority within thirty days of the initiation of inquiry:

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- (b) cross-examine the witnesses produced by the accused, and with the permission of the inquiry officer or inquiry committee, as the case may be, may also cross-examine the prosecution witnesses; and
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- (b) give him reasonable opportunity of showing cause against the penalty or penalties proposed to be imposed upon him and to submit as to why one or more of the penalties as provided in rule 4 may not be imposed upon him and to submit additional defense in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him: provided that the accused shall, in his reply to show cause notice, indicate as to whether he

- wants to be heard in person or not;
- (c) provide a copy of the inquiry report to the accused; and
 - (d) direct the departmental representative to appear, with all the relevant record, on the date of hearing.

(5) After affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defense offered by the accused³ during personal hearing, by an order in writing-

- (i) exonerate the accused if charges had not been proved; or
- (ii) impose any one or more of the penalties specified in rule 4 if charges have been proved.

(6) Where the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provisions of these rules or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the inquiry to the inquiry officer or the inquiry committee, as the case may be, with such directions as the competent authority may like to give, or may order a de novo inquiry through different inquiry officer or inquiry committee³ [subject of sub-rule (7) of rule 11].

(7) After receipt of reply to the show cause notice and affording opportunity of personal hearing, the competent authority shall decide the case within a period of fifteen days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons.

(8) If the case is not decided by the competent authority within the prescribed period of fifteen days, the accused may submit an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period.

15. Personal hearing.—The competent authority may, by an order in writing, call the accused and the departmental representative, alongwith relevant record of the case, to appear before him, for personal hearing on the fixed date and time.

16. Procedure of inquiry against Government servant lent to other governments or organizations etc.—(1) Where the services of Government servant to whom these rules apply are transferred or lent to any other government department, corporation, corporate body, autonomous body, authority, statutory body or any other organization or institution, hereinafter referred to as the borrowing organization, the competent authority for the post against which such Government servant is posted in the borrowing organization may-

- (a) suspend him under rule 6; and
- (b) initiate proceedings against him/her under these rules:

Provided that the borrowing organization shall forthwith inform the authority which has lent his services, (hereinafter referred to as the lending organization) of the circumstances leading to the order of his suspension or the initiation of the proceedings, as the case may be:

Provided further that the borrowing organization shall obtain prior approval of the competent authority in the lending organization before taking any action under these rules against a Government servant holding a post in basic pay scale 17 or above.

(2) If, in the light of findings of the proceedings taken against the accused in terms of sub rule (1), the borrowing organization is of the opinion that a penalty may have to be imposed on him, it shall transmit the record of the proceedings to the lending organization, and the competent authority in the lending organization shall thereupon take action against the accused under rule 14.

(3) Notwithstanding anything to the contrary contained in sub-rules (1) and (2), the Chief Minister may, in respect of certain Government servant or class of Government servants to whom these rules apply, authorize any officer or authority in the borrowing organization to exercise all the powers of the competent authority under these rules.

³ Added by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.

wants to be heard in person or not;

- (c) provide a copy of the inquiry report to the accused; and
- (d) direct the departmental representative to appear, with all the relevant record, on the date of hearing.

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- (i) exonerate the accused if charges had not been proved; or
- (ii) impose any one or more of the penalties specified in rule 4 if charges have been proved.

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(8) If the case is not decided by the competent authority within the prescribed period of fifteen days, the accused may submit an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period.

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Provided that the borrowing organization shall forthwith inform the authority which has lent his services, (hereinafter referred to as the lending organization) of the circumstances leading to the order of his suspension or the initiation of the proceedings, as the case may be:

Provided further that the borrowing organization shall obtain prior approval of the competent authority in the lending organization before taking any action under these rules against a Government servant holding a post in basic pay scale 17 or above.

(2) If, in the light of findings of the proceedings taken against the accused in terms of sub rule (1), the borrowing organization is of the opinion that a penalty may have to be imposed on him, it shall transmit the record of the proceedings to the lending organization, and the competent authority in the lending organization shall thereupon take action against the accused under rule 14.

(3) Notwithstanding anything to the contrary contained in sub-rules (1) and (2), the Chief Minister may, in respect of certain Government servant or class of Government servants to whom these rules apply, authorize any officer or authority in the borrowing organization to exercise all the powers of the competent authority under these rules.

³ Added by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.

2004 PLC (C.S) 604

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[Peshawar High Court]

Before Talaat Qayum Qureshi and Ijaz-ul-Hassan Khan, JJ

Mian Syed ASHGAR SHAH

versus

UNIVERSITY OF PESHAWAR through Registrar and 4 others

Writ Petition No.973 of 2002, decided on 11th November, 2003.

(a) University of Peshawar Employees. (Efficiency and Discipline) Statutes, 1977---

---Statutes 6, 15, 16, 17, 18 & 19---Constitution of Pakistan (1973), Art. 199---Constitutional petition---Compulsory retirement---Inquiry proceedings---Penalty of compulsory retirement was imposed upon the petitioner after charge-sheeting him and holding inquiry against him on certain allegations mainly on the ground that he being teacher had published an article in Press about school affairs---Office order whereby penalty of compulsory retirement was imposed upon the petitioner, was outcome of finding of unauthorisedly constituted Enquiry Committee which was not competent to do so---Authorities had taken adverse action against the petitioner besides incompetency of Enquiry Committee and its findings were based on unfounded allegations and charges and there could be no infrastructure on such a shaking foundation---Petitioner was victimized on allegation that he remained vocal about affairs of school concerned and its management and that he approached the Press in order to malign the image and reputation of the institution---Nothing was in evidence to substantiate charges against the petitioner---No legal evidence of publication of alleged article/news by petitioner was forthcoming---No action could be initiated against employee of University on basis of Press reports as Press reports without

formal proof were not, admissible in evidence and no reliance could be placed on the same as Press reports were treated as hearsay evidence without formal proof--University employees against whom allegations were alleged, were entitled to controvert the truth of news item by filing an affidavit when called upon to explain--Petition was lingering on since 1977 without any substantial progress and petitioner was made to suffer without any fault on his part which delay spoke of mala fides and inimical attitude towards petitioner--Such conduct/proceedings thus could not be approved by law and rules on the subject--Petitioner had not been fully associated with enquiry proceeding, which even was held by Enquiry Committee, which, had no jurisdiction to hold the same--Petitioner was condemned unheard and no material was available on record to prove complicity of petitioner in guilt--. Order imposing penalty of compulsory retirement on petitioner, was declared illegal by High Court in exercise of its Constitutional jurisdiction with order of -reinstatement of the petitioner with all back-benefits.

Alimuddin v. The State PLD 1982 Lah. 141 ref.

(b) Constitution of Pakistan (1973)---

---Art.19q---Constitutional jurisdiction of High Court---Scope---High Court, besides being a Court of law, was a Court of equity also and where it would see excess being committed by an Authority, it must rescue the victim from it---Excess of an authority could not go unnoticed without a proper relief to a victim of it.

Muhammad Jamil Khan for Petitioner.

Aziz Akhtar Chughtai for Respondents:

Date of hearing: 24th September, 2003.

JUDGMENT

2017 P L C (C.S.) 569

[Lahore High Court]

Before Jawad Hassan, J /

Dr. KUMAIL ABBAS RIZVI

Versus

UNIVERSITY OF PUNJAB and others

Writ Petition No.34140 of 2015, decided on 20th December, 2016.

(a) Constitution of Pakistan---

---Arts. 9 & 14(1)---Inviolability of right to life and dignity of man---Scope---Civil service--- Termination from service without reasons---Infringement of dignity of a person---Every termination order must carry reasons and this was equally applicable to a case of termination of service simpliciter---To withhold reasons for termination of a civil servant generated a host of adverse assumptions against his character which had a bearing on his reputation and goodwill and failure of disclosing or intentional withholding of reasons was, therefore, below the dignity of any white collared officer and offended Art.14 of the Constitution.

Petitioner, who was appointed as a lecturer, applied for two-years ex-Pakistan study leave (without pay) to resume his duties on a Government scholarship for Masters leading to PHD studies. Said application of the Petitioner was approved. Subsequently, the petitioner came back to Pakistan and tendered his resignation to the Vice-Chancellor which was forwarded to the Additional Registrar, but instead of accepting his resignation he received a termination letter on account of absence from duty and was removed from service.

Petitioner moved his resignation on 01-08-2011. Resignation application was officially received on 19-08-2011 and then forwarded to the concerned Registrar. Said application was not decided and was kept aside, without any reason. University authorities without any legal justification, and for no fault on part of petitioner declared him as absent from duty since 06-08-2011 and terminated his lien from the post of the lecturer from the said date. University authorities were at fault for not accepting the resignation on time. Petitioner was a qualified person, and admittedly his performance was exceptionally good, but his future has been stigmatized for no fault on his part. Termination letter consisted of only two lines and had been passed without giving detailed reasons for terminating petitioner's services. Petitioner had a right to be treated with dignity by the University authorities under Article 14 of the Constitution, and his termination from service lowered his dignity in the public life.

Every termination order must carry reasons and such principle was equally applicable to the case of termination simpliciter. There was no plausible explanation for why a public authority must shy away from giving reasons for termination. To withhold reasons for

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termination of a civil servant generated a host of adverse assumptions against the character of a civil servant which had a bearing on his reputation and goodwill and failure of disclosing or intentional withholding of reasons was, therefore, below the dignity of any white collared officer and offended Article 14 of the Constitution.

Act of the University authorities not only stigmatized the honour and prestige of the petitioner, but had also defamed him in the estimation of society. Dignity of the petitioner guaranteed under Article 14 of Constitution, had been reduced to a farce by terminating his services on account of absence, when he already had submitted his resignation, which was not accepted without any fault on behalf of the petitioner. Once the petitioner had tendered his resignation, the University authorities were bound to decide his application without delay and with reasons, within reasonable time.

Actions of University authorities were blatant violation of Fundamental Rights of the petitioner, as enshrined in Articles 9 and 14 of the Constitution, to enjoy the inviolability of right to life and dignity of man.

High Court directed University authorities to accept resignation of the petitioner in accordance with relevant laws and rules, and his termination order was set-aside. Constitutional petition was allowed accordingly.

(b) Constitution of Pakistan---

---Art. 14---Inviolability of dignity of man---Scope---Right to dignity was one of the cardinal principles of law and most valuable right, which had to be observed in every civilized society and more particularly in an Islamic country because human values were to be guarded and protected---Dignity of man was not only provided by Constitution, but under Islam, great value had been attached to dignity of man---Human dignity, honour and respect was more important than physical comforts and necessities.

Liaqat Ali Chughtai v. Federation of Pakistan through Secretary Railways and 6 others PLD 2013 Lah. 413; University of Pretoria v. Tommie Meyer Films (Edms) Bpk (1979) 1 SA 441(A), Jean Frédéric Ponoó v. Attorney-General [2010] SCCC 4 and Bashir Ahmad and another v. Maqsood Ahmad and another 2010 PCr.LJ 1824 ref.

(c) Constitution of Pakistan---

---Arts. 9 & 14---Inviolability of right to life and dignity of man---Scope---Right to live was not confined to mere living but it meant meaningful life, which could be enjoyed with dignity and without defamation---No attempt on the part of any person individually, jointly or collectively to detract, defame or disgrace another person, thereby diminishing, decreasing and degrading the dignity, respect, reputation and value of life should be allowed to go with the impunity

(d) Civil service---

---No one should suffer due to the acts (faults) of the Government or its departments.

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(e) Constitution of Pakistan---

---Arts. 9 & 14---Inviolability of right to life and dignity of man---Scope---Under Arts.9 & 14 of the Constitution, the courts had to safeguard and preserve the life and dignity of the citizens and protect them from serious and hazardous risks so that they could live a happy and meaningful life.

Mrs. Rabbiya Bajwa for Petitioner.

Ch. Aamir Mahmood, Legal Advisor University of Punjab.

Ashfaq Ahmad Kharal, Assistant Advocate General.

ORDER

JAWAD HASSAN, J.--- Through this constitutional petition, the Petitioner has assailed Notification dated 1.10.2014 whereby Respondent No.4 intimated the Petitioner about fate of meeting of Syndicate held on 29.08.2015, whereby it did not accept the resignation of the Petitioner w.e.f. 01.08.2011, and terminated the Petitioner from the Punjab University service w.e.f. 06.08.2011 through the impugned order dated 01.10.2015.

2. Brief facts for the disposal, of this constitutional petition are that the Petitioner was appointed as Lecturer at Hailey College of Commerce and he applied for two-years Ex-Pakistan Study Leave (without pay) to resume his duties on HEC overseas scholarship for Masters leading to PHD Studies at the University of Paris. The said application of the Petitioner was approved as requested by the Respondent No.3. Subsequently, the Petitioner came back to Pakistan in 2011 and tendered his resignation to Respondent No.2. He was offered promotion to the post of Assistant Professor, but the Petitioner refused to accept the same with thanks and ultimately name of Petitioner was removed from the faculty list on the college website. Eventually vide letter dated 23.09.2014 issued by the Respondent No.4, the Petitioner was removed from service and his lien from the post of lecturer was terminated on account of alleged absence from duty. The Petitioner approached Respondent No.2 through written application dated 2.10.2014 for acceptance of previously tendered resignation in lieu of termination from service, which was declined vide impugned office order dated 1.10.2015. Hence this constitutional petition.

3. The learned counsel for the Petitioner argued that the Petitioner came back to Pakistan from France and tendered his resignation on 1st August, 2011 to the Vice-Chancellor which was forwarded to the concerned authorities and reached the Additional Registrar but instead of accepting his resignation he received the termination letter dated 23rd, September, 2014. The counsel further stated that Petitioner immediately approached the Respondent No.2 to clarify his position and requested to rectify the mistake of not accepting his resignation on time but the Respondents declined his request and terminated him with a non speaking order without hearing him, hence, violated Article 4 of the Constitution of Pakistan, 1973 (the "Constitution") under which it is Petitioner's inalienable right to be treated with law and to enjoy the protection of law and the Respondents cannot take any action detrimental to the reputation of the Petitioner except under the law. Lastly, the counsel argued that that the impugned order is also not a speaking

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No 12024

Zia ullah

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

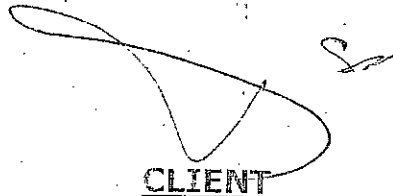
Govt of KPK

(RESPONDENT)
(DEFENDANT)

I/We Zia ullah

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.


Dated. / /202


CLIENT

ACCEPTED


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT


WALEED ADNAN


UMAR FAROOQ MOHMAND

&


MEHMOOD JAN
ADVOCATES

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