

Petition No.350/2023 U/S 12(2) CPC 1908 titled "Additional Chief Secretary P&D
Department Peshawar and another Vs. Syed Qamar Abbas,
(Appellant of Main Appeal No.1006/2019), and three other official
respondents"

ORDER

14th June. 2024

Kalim Arshad Khan, Chairman: Mr. Muhammad Jan,
District Attorney for the petitioners present. Learned
counsel for the private respondent No.1 present.

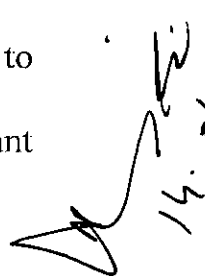
2. This application under Section 12(2) of the CPC,
1908 has been filed by the Additional Chief Secretary,
Planning & Development Department and Secretary to
Government of Khyber Pakhtunkhwa, Planning &
Development Department, Peshawar, for setting aside the
judgment dated 19.01.2022. The application is mainly on
the ground that the petitioners were not made party in the
main appeal.

3. We have heard learned District Attorney for the
petitioners and learned counsel for private respondent
No.1.

4. It is to be observed at the very outset that
Government of Khyber Pakhtunkhwa is a juristic person,
and as such, it can sue and be sued, whereas, the
Secretaries individually or not in that strict sense
legal/juristic persons to sue or be sued without resorting to
the Rules of Business. True that the Secretaries are at
times, arrayed as party but that does not mean every
Secretary could make application, rather it is only the

Authority whose order is challenged to be arrayed as party as required by Rule-6 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. In the main appeal, the Chief Secretary Khyber Pakhtunkhwa as well as Secretary Establishment, Government of Khyber Pakhtunkhwa were parties. Therefore, it cannot be said that Government does not include all the departments of the Government, and when the Chief Secretary was party, being and administrative head of the Provincial Administration, it was sufficient for adjudication of appeal. It is to be observed that persons claiming under authority by assignment etc. are bound by the decree. Similarly, the question whether any person is or is not a representative of a party is to be determined by the court executing the decree and for the purpose, an application U/S 47 could, at the most, be filed on objection petition. Even otherwise, as aforesaid, Rule-6 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 requires that only the authority, whose order is under challenge, has to be arrayed as party.


5. There was an application, for impleadment of the P&D Department as party, moved by the appellant in the main appeal, which was later on withdrawn. The Law Officers and the representatives of the Government were very much present all the times and they were supposed to be vigilant, if at all, that was withdrawn by the appellant


14.06.2024

for the sole purpose of getting a judgment in his favor, nobody had tied the hands of the respondents/official respondents and even the District Attorney for moving such an application on behalf of the petitioners at the relevant point of time, especially, when no for non-joinder of party was taken by the official respondents in their reply. Last but not the least, the official respondents of the main appeal have statedly filed a CPLA before the Supreme Court of Pakistan.

6. For the reasons above stated, this petition fails and is dismissed with costs. Consign.

7. *Pronounced in open Court at Peshawar given under our hands and seal of the Tribunal on this 14th day of June, 2024.*


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah