

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 109/2024

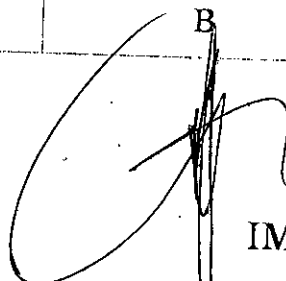
Sher Nawab S/O Alam Khan R/O Shakray Baba Katlang District
.....Petitioner

Versus

The Secretary Elementary & Secondary Education Deptt, KPK
Peshawar & Others.....Respondents

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IMTIAZ KHAN

District Education Officer
(Male) Mardan

22-8-24
Peshawar
S-B.

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Joint Para Wise Comments on Behalf of Respondents No 3 & 4

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12729

Dated 13-05-2024

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is badly time barred, by and limitation.
3. That the appellant has not come to this Honorable Tribunal with clean hands, hence the appeal is liable to be dismissed.
4. That the appellant is estopped by his own conduct.
5. That the appellant has concealed the material facts from this Honorable Tribunal, hence the appeal is liable to be dismissed.
6. That the appellant is willful absent / absconder from duty w.e.f 08-09-2016 and after fulfillment of all codal formalities the appellant has been removed from service vide order Endst No 2411-15/ Dated 11-03-2017. *(Copy of Removal order is as Annexure "A").*

FACTS:

1. Para No 1 related his residence, need no comments.
2. Para No 2 related his qualification, need no comments.
3. Para No 3 related his appointment as PET, need no comments.
4. Para No 4 related his adjustment order, need no comments.
5. Para No 5 is correct.
6. Para No 6 is correct.
7. Para No 7 is correct.
8. Para No 8 is correct.

9. Para No 9 is **Incorrect & not admitted**. As the appellant has been charged in FIR No 564 date 08/09/2016 under section 302/324/34 PPC. The appellant filed Bail Petition No 305/BBA dated 08/08/2023; which is too late because the appellant is absconder from the date of FIR i-e 08/09/2016. The respondent issued the removal order on 11/03/2017 due to the absentee/ absconder of the appellant, hence denied.
10. Para No 10 is correct.
11. Para No 11 is correct.
12. Para No 12 is correct, however the appellant was absconder from the date of FIR i-e 08/09/2016 and the departmental appeal has filed on 16/3/2023 which is too late. The departmental appeal is badly **Time Barred**, need no comments.
13. Para No 13 is correct and detail reply is given in para No 12, hence need no repetition.
14. Para No 14 is **Incorrect & not admitted**. As the respondent issued the removal order on 11/03/2017 due to the absentee/ absconder of the appellant, hence denied.

GROUND :-

- A. Para A is **Incorrect & not admitted**. As the order dated 11/03/2017 is valid, legal and is not against law, hence denied
- B. Para B is **Incorrect & not admitted**. As the order is not void order, and is not nullity in the eye of law and the order is maintainable, hence denied.
- C. Para C is **Incorrect & not admitted**. As the order passed by the competent authority because the appellant was a CT teacher BPS-15 and the respondent No 4 (DEO) is competent authority of him, hence denied.
- D. Para D is **Incorrect & not admitted**. As the removal order is valid, and legal, hence denied.
- E. Para E is **Incorrect & not admitted**. As the respondents have not been ignored the procedure and after fulfillment of all codal formalities the appellant has been **removed from service** vide order Endst No 2411-15/ Dated 11-03-2017, hence denied.
- F. Para F is **Incorrect & not admitted**. As the appellant was absconder from the date of FIR i-e 08/09/2016. The respondent issued the removal

order on 11/03/2017 due to the absentee/ absconder of the appellant. Therefore the order is not nullity in the eye of law, legal and is not without lawful authority, hence denied.

- G. Para G is Incorrect & not admitted. As the appellant was absconder and absent from duty on 08/09/2016. Therefore the appellant has not been afforded personal hearing, hence denied.
- H. Para H is Incorrect & not admitted. As the appellant was absconder and absent from duty on 08/09/2016, hence denied.
- I. Para I is Incorrect & not admitted. As the appellant was absconder and absent from duty on 08/09/2016, due to which the appellant was not examined, hence denied.
- J. Para J is Incorrect & not admitted. As the Show cause notice has served upon the appellant, denied.
- K. Para K is Incorrect & not admitted. As the absentee notice has published in the daily Mashriq, hence denied.
- L. Para L is Incorrect & not admitted. As the absentee notice has published in the daily Mashriq and the ex-parte decision has not been violated because the appellant was absconder as well as absent from duty, hence denied.
- M. Para M is Incorrect & not admitted. As the absentee notice has published in the daily Mashriq, hence denied.
- N. Para N is correct, need no comments.
- O. Para M is Incorrect & not admitted. As the removal issued on 11/03/2017 which is legal, hence denied.
- P. Para M is Incorrect & not admitted. As the appellant was not falsely implicated in a murder case because the appellant is acquitted on the basis of compromise, it means that the appellant is not falsely charged in the said offence, hence denied.
- Q. Para Q is Incorrect & not admitted. As the appellant was absent from duty, and it is admitted fact that the appellant was absconder, hence denied.
- R. Para Q is legal, need no comments.
- S. Para S is Incorrect & not admitted. As the respondents have fulfilled of all codal formalities and after that the appellant has been removed from service vide order Endst No 2411-15/ Dated 11-03-2017, hence denied.

T. Para T is Incorrect & not admitted. As the action has been taken against the appellant due to his absence from duty and the appellant was absconder, hence denied.

U. Para U is Incorrect & not admitted. As the appellant has been charged in FIR No 564 date 08/09/2016 under section 302/324/34 PPC and the action has been taken against the appellant due to his misconduct and absence from duty, furthermore the application submitted on 10/09/2016 and the appellant was absence from duty on 08/09/2016, hence denied.

V. Para V is Incorrect & not admitted. As the duty of the appellant was not satisfactory, therefore the appellant has removed from service, hence denied.

W. Para W is Incorrect & not admitted. As per NWFP Civil Servants Pension Rules and Orders 2006, **section 2.11, Forfeiture of Past Service**. A Government servant forfeits his past service in the following cases sub section (C) Absence from duty without leave, hence denied.

(Copy of Rule is as Annexure B)

X. Para X is Incorrect & not admitted. As the penalty is not harsh and the appellant is responsible of his own conduct, hence denied.

Y. Para Y is Incorrect & not admitted. As the appellant is not innocent because the appellant is acquitted on the basis of compromise, it means that the appellant is not falsely charged in the said offence, hence denied.

Z. Para Z is Incorrect & not admitted. As each and every case has his own merits and circumstances, hence denied.

AA. Para AA is related to Rules, need no comments.

BB. Para BB is related to Rules, need no comments.

CC. Para CC is related to Rules, need no comments.

DD. Para DD is related to Rules, need no comments.

EE. Para EE is Incorrect & not admitted. As the removal order of the appellant is legal, and the removal order has issued due to his absence from duty as well as absconder, hence denied.

FF. Para FF is Incorrect & not admitted. As publication in the newspaper has been complied with, hence denied.

GG. Para GG is related to Rules, need no comments.

HH. Para HH is Incorrect & not admitted. As each and every case has his own merits and circumstances, and the case of Mustafa has own merits and circumstances, hence denied.

II. Para HH is Incorrect & not admitted. As the respondent is being a

responsible government officer acted accordance with law, hence denied.


JJ. Para JJ reply in the above para GG, need no comments.

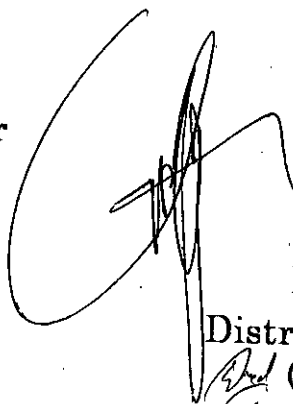
KK. Para KK is Incorrect & not admitted. As the appellant has been dealt in accordance with law and is not infringing Article 4 of the Constitution of Pakistan 1973, hence denied.

LL. Para LL is Incorrect & not admitted. As the appellant is not discriminated and is not infringing Article 25 & 27 of the Constitution of Pakistan 1973, hence denied.

MM. Para MM is Incorrect & not admitted. As the appellant is not entitled for back benefits and the appellant is responsible of his own conduct, hence denied.

Therefore, in view of the above made submissions, it is most humbly prayed that on the acceptance of this reply/ comments, the appeal in hand may kindly be dismissed in favor of the Respondents Department in the interest of justice.


SAMINA ILTAF
DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 3)


IMTIAZ KHAN
District Education officer
(Male) Mardan
(Respondent No: 4)

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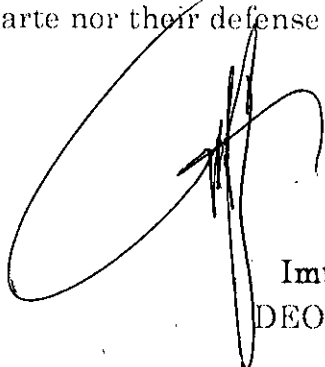
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.....**Petitioner**

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AFFIDAVIT

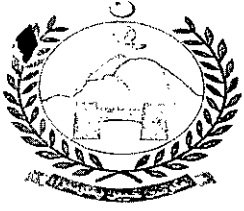
I, **Mr. Imtiaz Khan DEO (Male) Mardan** do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted on behalf of respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.



Deponent

Imtiaz Khan
DEO (Male) Mardan





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**DISTRICT EDUCATION OFFICER
(Female) MARDAN**

AUTHORITY LETTER

I, IMTIAZ KHAN District Education Officer (Male) Mardan do hereby authorized Mr. Sajid khan, Legal Representative on behalf of District Education Office (Male) Mardan, to deal with the issues regarding litigation, represent, submit comments/ Reply of the Service Appeals and attend the KPK Honorable Service Tribunal, Peshawar.

IMTIAZ KHAN
District Education Officer
(Male) Mardan

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDANREMOVAL FROM SERVICE.

Where as Mr. Sher Nawab CT (B-15) Government High School Alo (Mardan) was in Involved in a murder case and was willful absent from his duty with effect from 08.09.2016.

And whereas a Show Cause Notice was Served vide this office No.9164 dated 18.11.2016, in this regard.

And whereas an absentee Notice published in the Daily Mashriq dated 14.02.2017 with the direction to resume his duty within 14 days after the publication of the Absentee Notice and to justify his absence failing which Ex-parte action will be taken against him, Where as he failed to resume his duty with in stipulated time.

Now, the undersigned being competent authority is pleased to impose Major Penalty of Removal from Service upon Mr. Sher Nawab CT (B-15) Government High School Alo (Mardan), from the date of his absence i.e. 08.09.2016.

Note:- Necessary entry to this should be made in his service Book.

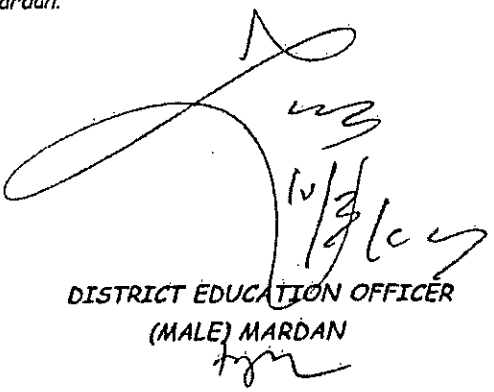
(ZIA UD DIN)
DISTRICT EDUCATION OFFICER
(MALE) MARDAN

Endst:No. 2411-15 /Removal from Service file.

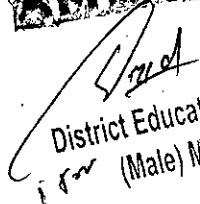
Dated 11/03 /2017.

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

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. District Police Officer Mardan.
3. District Monitoring Officer IMU District Mardan.
4. Principal GHS ALO Mardan.
5. District Accounts Officer Mardan.
6. Mr. Sher Nawab Ex-CT GHS Alo (Mardan).


DISTRICT EDUCATION OFFICER
(MALE) MARDAN

ATTESTED


District Education Officer
(Male) Mardan

CHAPTER - II

SERVICE QUALIFYING FOR PENSION

2.1 **Conditions of Qualifications** - The service of a Government Servant does not qualify for pension unless it conforms to the following three conditions -

First - The Service must be under Government.

Second - the service must not be Non-pensionable.

Third - the service must be paid by Government from the Provincial Consolidated Fund

* Note - (1) For the previous service of displaced Government servants which qualifies for pension see Chapter VII.

* Note - (2) Service rendered after retirement on superannuation pension retiring pension shall not count for pension or gratuity.

2.2 **Beginning of service** - Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.

2.3 **Temporary and officiating service** - Temporary and officiating service shall count for pension as indicated below: -

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

2.4 **Service in a temporary post on abolition of a permanent post** - If a permanent post, on which a Government servant holds a lien, is abolished under circumstances entitling him to get a compensation pension or gratuity, his service thereon as a temporary post under Government qualifies for pension

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Note (1) and (2) Substituted vide notification No. SCMSR) V-915/65 Dated 6th May, 1965

ATTESTED

David
District Education Officer
(Male) Mardan

allowances for the period of suspension. In other words, the mere act of reinstatement should be deemed to have rendered the period of suspension as qualifying for pension

Para-1 (j) of F.D. N. W.F.P. Letter
No. SO (SR-III) FD-4-36 76
Dated 4th June, 1977 (Appendix-III)

2.11. **Forfeiture of Past Service** - A Government servant forfeits his past service in the following cases:-

- (a) Resignation of a post unless it is to take up another post service in which counts for pension.
- (b) Removal or dismissal from service.
- (c) Absence from duty without leave.

Note - The authority which sanctions the pension may commute retrospectively periods of absence without leave into extraordinary leave.

Note - In case of a civil servant, who, with the proper concurrence of the competent authority leaves service under the Government of NWFP and seeks absorption/employment under an autonomous, semi-autonomous local body, where service is pensionable, the Government, if it is so requested, will be liable to share pensionary liability for the period of service rendered by such civil servant under the Government in accordance with the Government rules.

GOVERNMENT INSTRUCTIONS.

¹⁰Service in an Autonomous or Semi-Autonomous Body. For the purpose of grant of pension under these orders, the pay drawn and the effective service rendered by a Government servant in an autonomous or semi-autonomous body, the authorized capital of which is wholly subscribed by the Central and/or a Provincial Government, in a post, appointment to which is, by law, required to be made and the salary of which is required to be fixed by the Central or a Provincial Government shall be treated as pay drawn and effective service rendered in a post in Government service.

2.12 **Condonation of Interruptions and deficiencies.** - (1) The Administrative Department may for purposes of pension condone all gaps between "[Periods of qualifying service] of a Government Servant.

(2) The Administrative Department may condone deficiency in qualifying service for pension upto six months provided the service is meritorious and the condonation, if allowed will bring the service upto 25 completed years of qualifying service

Inserted vide notification No. F.D. SR - III-4-112-80, dated 22-11-1980

* Para-9 of the Government of West Pakistan Finance Department letter No. SO (SR) V. 251/67 dated 27 April 1967 (Appendix D)

[] Substituted by Finance Department Notification No. SO (SR) V. 171/68, dated 21st May 1968

ATTESTED

[Signature]
District Education Officer
For (Male) Mardan