

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.1276/2023**

Inam Ullah

Appellants

**VERSUS**

1. Secretary, Public Health Engineering Department.
2. Chief Engineer Public Health Engineering North Khyber Pakhtunkhwa Peshawar.
3. XEN Engineer Public Health Engineering Division Kohat.
4. Chief Engineer, Works and Services merged areas, Civil Secretariat, Peshawar.
5. Accountant General Office KPK Peshawar.

Respondent

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*all copies  
handed over  
to Mr. W. S. T  
Sum  
11/6/24*

*17/06/2023 Anjum*  
DEPONENT

*CNIC No. 17301-1478147-9*

*Cell No. 0353-9064196*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.1276/2023**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 13436

Dated 11-06-2024

Inam Ullah s/o Hayta Ullah Khan

Appellant

**VERSUS**

1. Secretary Public Health Engineering Department Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (South) Public Health Engineering Department Khyber Pakhtunkhwa, Peshawar
3. Executive Engineer PHE Division Bannu
4. Chief Engineer Works & Services Merged Areas, Civil Secretariat, Peshawar
5. Accountant General Khyber Pakhtunkhwa

Respondents

**JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 to 3**

**Respectfully Sheweth**

**Preliminary Objections**

1. That the appellant has got no cause of action / locus standi to file instant appeal
2. That appellant has not come to this Hon'able Court with clean hands.
3. That this Honorable tribunal has got no jurisdiction to adjudicate upon the matter.
4. That the appellant has deliberately concealed material facts from this Honorable tribunal.
5. That the instant appeal is barred by law and time.
6. That the instant appeal is bad in its present form. Hence not maintainable and liable to be dismissed with special cost throughout.

**ON FACTS**

1. Incorrect against facts and law, hence, denied. Appellant has not been appointed by the Competent Authority and his appointment is irregular and fake.
2. Incorrect against facts and law, hence, denied. Appellant never performed his duties to the satisfaction of superior officers and he has caused a huge loss to the Government Exchequer.
3. Incorrect against facts and law, hence denied, Since the appointment of appellant is irregular and fake, therefore, the Competent Authority stopped his salary. Similarly appellant also did not perform duties and has not been associated with affairs of the department in any sense. On the principle of "No Work No Pay" he is not entitled for any relief. Answering respondents are not legally bound to fulfill unlawful demands of the appellant.
4. Correct to the extent that the appellant filed time barred appeal. Limitation is not always a mixed question of law and fact. Superior Courts hold where cases are patently time barred and clearly depict the starting point of limitation and causes

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of action then in such cases there is no need for evidence. In the instant case salaries were stopped years back which facts pleaded himself by the appellant, hence, limitation starts from the day when the salary stopped.

5. Incorrect against facts and law, hence denied, The appellant is not legally competent to file a baseless and time barred appeal against the answering respondents

### **ON GROUNDS**


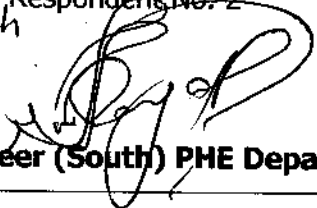
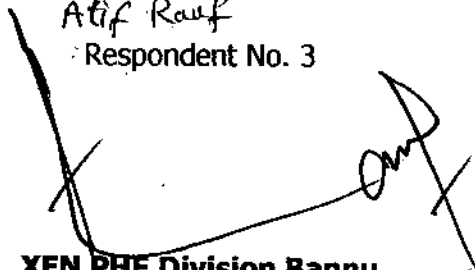
- A. InCorrect against facts and law, hence denied, The appointment of appellant is irregular and fake, therefore, the Competent Authority stopped his salary. Similarly appellant also did not perform duties and has not been associated with affairs of the department in any sense. On the principle of "No Work No Pay" he is not entitled for any relief.
- B. Incorrect, against facts & law, hence, denied. Answering Respondents have not violated any provision of the Constitution of the Islamic Republic of Pakistan, 1973. There are also other Judgments of the superior Courts to that effect that the employees are not entitled for the salaries for the duration they remained absent.
- C. Incorrect, against facts & law, hence, denied. Each case has its own features and is required to be decided on its own merits independently. The case of the Appellant is totally different and has also got no relevancy with the referred cases so the benefit of Judgment rendered in other cases cannot be extended to him.
- D. Incorrect against facts & law, hence, denied. There also Judgments of the superior Courts that he who seeks equity must do equity and come with clean hands. The Appointment of Appellant is against law and without observing codal formalities therefore, he is not entitled for salary. Moreover, it is submitted that limitation is not always a mixed question of law and fact. Superior courts hold where cases are patently time barred and clearly depict the starting point of limitation and cause of action then in such cases there is no need for evidence. In the instant case salaries were stopped years back which facts pleaded himself by the Appellant, hence, limitation from the day when the salary was stopped.
- E. Incorrect against facts & law, hence, denied.
- F. Answering Respondents will also raise more grounds at the time of arguments with the permission of this Hon'able Tribunal.

### **PRAYERS**

**IT is, therefore, most humbly prayed that the Appeal NO.1276 of 2023 filed by the Appellant being incorrect, time barred, baseless, frivolous, illegal,**

without any substance and against the record, may graciously be dismissed with heavy cost.

Any other remedy which this Hon'able court deem proper in the circumstances may also graciously be awarded in favour of the Answering Respondents.

<p>Respondent No. 1 Khayam Hasan Khan  Secretary PHE Department</p>	<p>Respondent No. 2 Wilayat ullah  Chief Engineer (South) PHE Department</p>
<p>Atif Rauf Respondent No. 3  XEN PHE Division Bannu</p>	

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**GOVT. OF KHYBER PAKHTUNKHWA**  
**PUBLIC HEALTH ENGINEERING DEPARTMENT**

**AUTHORITY LETTER**

**No.SO(LIT)PHED/ST/40-103:** Muhammad Irfan Anjum, (Superintendent), PHE Department is hereby authorized to attend and submit joint parawise comments in S.A No.1276/2023 titled "Inam Ullah Versus Secretary PHE Department and others" on behalf of respondents 1 to 3.



**SECRETARY GOVT. OF KPK**  
**PHE DEPARTMENT**

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

**Service Appeal No.1276/2023**

Inam Ullah s/o Hayat Ulla

Appellant

**VERSUS**

The Secretary, Public Health Engineering Department & others

Respondents

**AFFIDAVIT**

I, Mr. Khayam Hasan Khan, Secretary, Government of Khyber Pakhtunkhwa Public Health Engineering Department Peshawar do hereby affirm and declare on oath that the contents of the instant application are true and correct to the best of my knowledge and belief and nothing has been concealed from the Honorable Service Tribunal Peshawar.

It is further stated on oath that in this appeal the answering respondents neither been placed ex-parte nor their defense has been struck off / cost



DEPONENT  
CNIC No. 17301-1500534-1  
Cell # 0333-6661969



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Annexure A

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**OFFICE OF THE  
EXECUTIVE ENGINEER  
P.H.ENGG: (FATA) DIVISION KOHAT**  
HOUSE #: 29, SECTOR #: 5, PHASE #: 1, KDA KOHAT

No. 4612-1B-5

Dated Kohat the 19/11/2014

**OFFICE ORDER**

As recommended the Assistant Political Agent-FR Bannu Mr. Inam Ullah Khan S/o Hayat Ullah Khan R/o Labour Colony Ghouri FR Bannu is hereby appointed as Valve Man on Contract Basis on DWSS FR Bannu in BPS-01 (4800-150-9300) plus usual allowance as admissible under the rules subject to the following terms & conditions.

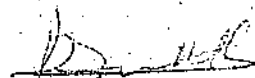
1. The appointment is made purely on contract basis and is liable to termination at any time without any notice of reason. If he wishes to resign from the post, he shall give one month notice prior to resignation or one month pay will be deposited in lieu thereof.
2. He shall produce his health and age certificate from the Medical Superintendent District Head Quarter Hospital Bannu.
3. He will contribute to GPF.
4. If he accepts the appointment on the terms and condition specified above, he shall report for duty to the Sub Divisional Officer PHE FATA Sub Division FR Bannu/Lakki within 14-days of order, failing which the order shall be stood cancelled automatically.

EXECUTIVE ENGINEER  
PHE FATA DIVISION KOHAT

Copy to the:

1. Medical Superintendent District Head Quarter Hospital Bannu.
2. District Accounts Officer Kohat
3. The Sub Divisional Officer PHE FATA Sub Division FR Bannu/Lakki.
4. DAO Local.
5. The Official Concerned.

For information & necessary action please.

  
EXECUTIVE ENGINEER  
PHE FATA DIVISION KOHAT

*Attended*  
Section Officer (Lit)  
PHE Department  
Peshawar

Amirul B

Arrival & MEDICAL CERTIFICATE

Name of official Hamullah Khan  
 Caste or race \_\_\_\_\_  
 Father's name Hayatullah Khan  
 Residence FR. BAZAR  
 Date of birth 4-4-1978 (1101-0589410-5)  
 Exact height by measurement 5' 7"  
 Personal mark of identification \_\_\_\_\_  
 Signature of the official \_\_\_\_\_  
 Signature of head of office \_\_\_\_\_

Seal of office \_\_\_\_\_  
 Public Health Inspector  
 Kohat

I do hereby certify that I have examined Mr. Hamullah Khan a candidate  
 for employment in the Office of the Executive Engineer PHE (FATA) Div  
Kohat CB Valve man  
 and cannot discover that he had any disease communicable or other constitutional affection or bodily  
 infirmity except NIL

I do not consider this as disqualification for employment in the office of the Executive Engineer PHE (FATA) Div  
Kohat

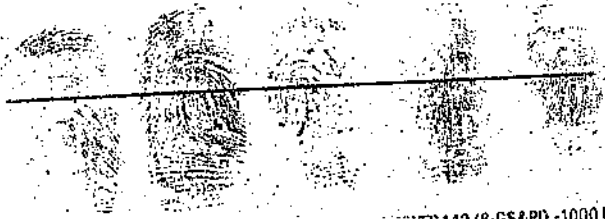
year Thirty six yrs

A. H. Aslam  
 Section Officer (Lit)  
 PHE Department  
 Peshawar

[Signature]  
 MEDICAL SUPERINTENDENT,  
 CIVIL HOSPITAL  
 MEDICAL SUPERINTENDENT  
 D.H.Q. HOSPITAL  
 KOHAT

20/11/2014

LEFT HAND THUMB AND FINGER IMPRESSIONS









To

The Secretary Public Health Engineering Department,  
Khyber Pakhtunkhwa, civil secretariat Peshawar.

DEPARTMENTAL APPEAL

Respected Sir,

With due respect the undersigned submits as under.

1. That the applicant was appointed as valve man BPS-01 vide order No.4610/E-5 dated. 19/11/2014 issued by office of Executive Engineer Public Health Engineering FATA Division Kohat.
2. That the undersigned was regularly performing his duties to the entire satisfaction of his immediate superiors and in this regard the appellant was regularly drawing his salaries since 2014, till ~~January~~ <sup>Oct</sup> 2017. (copy of appointment order is attached).
3. That all of a sudden the department, meanwhile stopped the salaries of the undersigned without any reason or cause and till date the appellant is deprived from his legal right which is against the law.
4. That the applicant belongs to a poor family and his financial position is unsound therefore releasing the salaries of the undersigned is his legal right, the same may kindly be released as a whole.

It is therefore humbly prayed that on acceptance of this departmental appeal the salaries of the appellant may kindly be released since December 2017 till date.

Dated. / 05 / 20<sup>18</sup>

*Inam*

Yours Sincerely

Inam Ullah

Valve man, BPS. 01

*Attended*  
Section Officer (Lit)  
PHE Department  
Peshawar.

11  
Identical Appeal

(13)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL, PESHAWAR

15577  
S.A.No. \_\_\_\_\_/2020

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 16060

Dated 03/12/2020

Zuhran Ullah son of Akhtar Zaman  
R/o Phase-II, Hayatabad, Peshawar.  
Currently working as Naib Qasid  
FATA Division, Public Health Engineering Division Kohat..Appellant

Versus

- 1) Secretary Public Health Engineering Department Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
- 2) Chief Engineer Public Health Engineering North Khyber Pakhtunkhwa, Peshawar.
- 3) XEN, Public Health Engineering Division, Kohat
- 4) Chief Engineer, Works and Services Merged Areas, Civil Secretariat, Peshawar..... Respondents

Deleted  
vide order  
dated 18.5.2021

SERVICE APPEAL UNDER SECTION 4 OF  
THE SERVICES TRIBUNAL ACT, 1974  
FOR RELEASE OF PAY OF THE  
APPELLANT.

Filed to-day  
Prayer:

Registrar  
3/12/2020

It is, therefore, humbly prayed that on acceptance of this Service Appeal;

Firstly, to direct respondents No.1 to 4 to forthwith release the salaries of the appellant along with arrears of pay w.e.f. 1<sup>st</sup> January, 2018 till onwards;

Secondly, to declare the act of respondents regarding stoppage of salaries of the appellant as null and void, without lawful authority, and ineffective upon the accrued rights of appellant;

Accepted  
Section Officer (Lit)  
PHE Department  
Peshawar.



*Thirdly*, to take action against the concerned officer for stopping the salary of the appellant in the light of reported judgment in 1997 PLC (CS) 666.

Any other relief which this Hon'ble Tribunal deems appropriate in the circumstances of case and to whom the appellant found entitled may kindly also be granted.

*Respectfully Sheweth;*

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

- 1) That the appellant was appointed as Naib Qasid vide order No.839/5-E dated 29.03.2013 issued by office of Executive Engineer Public Health Engineering FATA Division Kohat.

It is pertinent to mention that the appellant submitted his arrival report for resumption of his duty on 30.03.2013 on the post of Naib Qasid in view of the appointment order as referred to in the above paras.

*(Copies of appointment order dated 29.03.2013 and arrival report are attached as Annex: "A & B")*

- 2) That the appellant also submitted his medical certificate and accordingly service book was also issued showing his entry and arrival report in service.

*(Copies of medical certificate along with extract from service books are Annex: "C and D")*

- 3) That the appellant was regularly performing his duties to the entire satisfaction of his immediate superiors and in this regard he was regularly drawing his salaries since 2013 till December 2017.

*(Copies of salary slips are Annex: "E to E/8")*

- 4) That all of a sudden the respondents without assigning any reason or cause stopped the salaries of the appellant till date and in this regard various applications were filed before respondent No.1 with copies to the remaining respondents

*Attested*  
Section Officer (Lit)  
PHE Department  
Peshawar.

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seeking reasons for stopping his salaries for a period of almost two years i.e. for the year 2018 and 2019 but since then no response has been provided to him.

*(Copies of applications along with postal receipts are Annex: "F, F/1, F/2 and F/3")*

- 5) That appellant also filed Departmental Appeal dated 31.08.2020 in continuation of the applications mentioned in para-4 for release of pay, but since then no response has been provided.

*(Copy of departmental appeal is Annex: "G")*

- 6) That since no written orders with regard to stopping salaries of the appellant has been passed by the respondents, therefore, the appellant being aggrieved filed Writ Petition No.5426-P/ 2019 before the Hon'ble Peshawar High Court, Peshawar, which was decided/ dismissed on 19.11.2020 on the point of maintainability by invoking the provision of Article 212 of the Constitution.

*(Copy of W.P.No.5426-P/2019 and order dated 19.11.2020 are Annex: "H and I")*

- 7) That having no alternate and efficacious remedy, the appellant constrained to approach this Hon'ble Service Tribunal for redressal of his grievance on the following amongst other grounds:

GROUNDS

- a) That the act of respondents to stop the salary of the appellant is against the law, facts and material available on record.
- b) That the act of respondents is violative of Article 4, 9, 11, 25 and various other Articles of the Constitution of Pakistan as well as judgments rendered by the august Supreme Court of

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 Section Officer (Lit)  
 PHE Department  
 Peshawar

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Pakistan that departmental authorities under law having no power to stop the salaries of their employees and that too without adhering/ adopting due process of law, which amounts to force labour, hence violative of Article 11 of the Constitution of Pakistan.

- c) That the Hon'ble High Court categorically held in a reported judgment 1997 PLC (CS) 666

"that strict action be taken against an officer who stopped the salary of an employee".

Even otherwise it is also settled law that:

Pendency of departmental inquiry, if any, is no ground to stop the salary of the appellant as right to livelihood is a fundamental right which is part of right to life as embodied in Article 9 of the Constitution of Pakistan"

- d) That the Hon'ble Peshawar High Court, Peshawar categorically held in 2017 PLC (CS) note 14 p.14 that salary on pretext of irregular appointment order was declared to be held illegal. Department was directed to release the pay of appellant from the date of its stoppage.

It is pertinent to mention that no limitation runs in matters relating to pay and pension. (1991 SCMR 1041, 2005 PLC (CS) 1439, 2006 PLC (CS) 489, 2002 PLC (CS) 1388, 1990 PLC (CS) 95).

If case has merit limitation may not be a hurdle in the way of appellant. (PLD 2002 (SC) 84, 2004 SCMR 527, PLJ 2004 (SC) 306, PLD 2013 SC 724 (k)

- e) That the act of respondents has exposed not only the appellant but his ailing parents to risk of not getting proper care and treatment as the appellant was the only source of

Attested  
Section Officer (Lit)  
PHE Department  
Peshawar

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income of his family, hence suffering since the month of December, 2017 till date by illegally stopping his salaries without assigning any reason or cause.

- f) That it is settled law that salary of an employee is no more a State bounty.

Keeping in view, what has been stated above it is, therefore, humbly prayed that on acceptance of this Service Appeal

*Firstly*, to direct respondents No.1 to 4 to forthwith release the salaries of the appellant along with arrears of pay w.e.f. 1<sup>st</sup> January, 2018 till onwards;


*Secondly*, to declare the act of respondents regarding stoppage of salaries of the appellant as null and void, without lawful authority, and ineffective upon the accrued rights of appellant;

*Thirdly*, to take action against the concerned officer for stopping the salary of the appellant in the light of reported judgment in 1997 PLC (CS) 666.

Any other relief which this Hon'ble Tribunal deems appropriate in the circumstances of case and to whom the appellant found entitled may kindly also be granted.

  
Appellant

Through

  
Inayat Ullah Khan  
Advocate High Court  
LL. M (U.K)

&  
Muhammad Haris Sher  
Advocate, Peshawar.

Dated: 02.12.2020

  
Accepted  
Section Officer (Lit)  
PHE Department  
Peshawar



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**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 15577/2020

BEFORE: MR. KALIM ARSHAD KHAN ..... CHAIRMAN  
MISS. FAREEHA PAUL ..... MEMBER(E)

Zuhran Ullah S/O Akhtar Zaman R/O Phase-II, Hayatabad,  
Peshawar. Currently working as Naib Qasid FATA Division, Public  
Health Engineering Division Kohat.

..... (Appellant)

Versus

1. Secretary Public Health Engineering Department, Khyber  
Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Chief Engineer Public Health Engineering North, Khyber  
Pakhtunkhwa, Peshawar.
3. XEN, Public Health Engineering Division, Kohat.

..... (Respondents)

Mr. Inayat Ullah Khan  
Advocate

For appellant

Mr. Muhammad Adeel Butt  
Addl. Advocate General

For respondents

Date of Institution.....03.12.2020  
Date of Hearing.....05.10.2022  
Date of Decision.....05.10.2022

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E)**: The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, with the prayer that on acceptance of the instant service appeal, firstly to direct the respondents to release the salaries of the appellant alongwith arrears of pay w.e.f 1<sup>st</sup> January, 2018 till onwards; secondly, to declare the act of the respondents regarding stoppage of salaries of the appellant as null and void, without lawful




*Attested*  
Section Officer (Lit)  
PHE Department  
Peshawar

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authority, and ineffective upon the accrued rights of the appellant; thirdly, to take action against the concerned officer for stopping the salary of the appellant in the light of the reported judgment in 1997 PLC(CS)666, and any other relief which this Hon'able Tribunal deems appropriate in the circumstances of the case and to whom the appellant was found entitled.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Naib Qasid vide order dated 29.03.2013, issued by the office of Executive Engineer, Public Health Engineering, FATA Division, Kohat. He submitted his arrival report on 30.03.2013. While regularly performing his duties, the respondents, without issuing reason or cause, stopped the salaries of the appellant. He submitted various applications to Respondent No. 1, with copies to other respondents seeking reason for stopping his salary for a period of almost two years i.e 2018 and 2019 but they were not responded. He also filed departmental appeal dated 31.08.2020 in continuation of those applications, but it was also not responded. Feeling aggrieved the appellant filed writ petition No. 5426-P/2019 before the Hon'ble Peshawar High Court, which was decided/dismissed on 19.11.2020 on the point of maintainability by invoking the provision of Article 212 of the Constitution; hence this service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General and perused the case file with connected documents in detail.

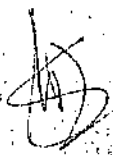
4. Learned counsel for the appellant presented the case in detail and contended that stoppage of salary was against the law and Constitution of Pakistan. He referred to a reported judgment 1997 PLC(CS)666, which clearly stated that strict action be taken against an officer who stopped the salary of an employee. He

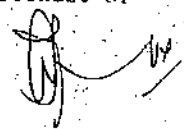
Section Officer (Lit)  
PHE Department  
Peshawar.

further referred to a settled law according to which pendency of departmental inquiry, if any, was no good ground to stop the salary of the appellant as right to livelihood was a fundamental right which was part of right to life as embodied in Article 9 of the Constitution of Pakistan. He prayed for the release of salary alongwith arrears of pay w.e.f 1<sup>st</sup> January, 2018 onwards.

5. The learned Additional Advocate General, on the other hand, invited the attention to the appointment order of the appellant and contended that it was declared irregular and fake and that there was a clear difference between the signatures on office order and service book. He further contended that the appellant did not submit his arrival report to his immediate officer, that was the Sub-Divisional Officer concerned, which was then to be reported to the Executive Engineer. He further informed that the department conducted an inquiry regarding fake appointments of Class-IV employees made during period from August 2012 to December 2014, according to which the said recruitments were declared irregular and fake as they were made without observing codal formalities. He further informed that the salary of the appellant had been stopped on source inactive form duly signed by Executive Engineer and Divisional Accounts Officer.

6. In view of the arguments and record presented before us, it transpires that the appellant was appointed as Naib Qasid in the Public Health Engineering, FATA Division Kohat in the year 2013. He started performing his duties and getting salaries. In an inquiry conducted against Mr. Baharullah Khan, Ex-XEN FATA Division, Kohat, it was found that certain irregular appointments of Class-IV employees were made without observing codal formalities. Report of that inquiry has been provided with the reply in view of which salary of the appellant was stopped. It was strange to note that the source form available with the reply indicated stoppage of salary of the appellant from 1<sup>st</sup> January 2018 because of

  
Section Officer (Lit)  
PHE Department  
Peshawar




absence from duty. As there is a controversy in the reply given by the department followed by the statement of Additional Advocate General and in the source form, we think that the matter needs to be looked into in detail. It is further evident from the record that the appointment order of the appellant is still in place. Neither the appointment order has been withdrawn, nor the appellant has been dismissed from service. Salary slips provided with the appeal indicate that the appellant was an employee in the office of the Executive Engineer PHE, FATA and indicated in the Ministry of Education. Moreover, deduction of G.P Fund, as indicated in his pay slips, was against the terms and conditions of his appointment as indicated in his appointment order dated 29.03.2013 which indicates that he will not contribute to G.P Fund and will not be entitled to pension, gratuity benefits etc.

7. In view of the above discussion, the appeal in hand is allowed with the direction to the department to proceed against the appellant, if they think that the appointment order was fake/bogus, in a way as provided under the law. In the light of the outcome of those proceedings, the department may further look into the extent of salary payable to the appellant. Costs shall follow the events. Consign.

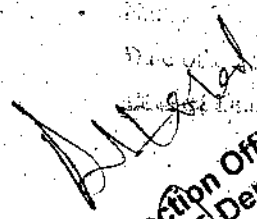
8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 5<sup>th</sup> day of October, 2022.*

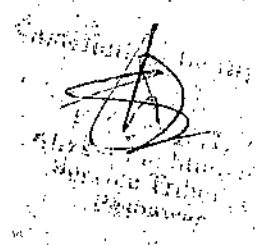
  
 (KALIM ARSHAD KHAN)  
 Chairman

  
 (FAREEHA PAUL)  
 Member (E)

Page 9  
 45/-  
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 Section Officer (Lit)  
 PHE Department  
 Peshawar.

  
 Tribunal  
 Peshawar