

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

CM No. /2024

IN

Service Appeal .No.980/2024

Mr. Muhammad Zareef, VERSUS Govt. of KPK and Others

.....Respondents

**APPLICATION FOR PLACING OF DOCUMENTS WITH
REFERNCE OF THE HON'BLE COURT VIDE ORDER SHEET
DATED 19.07.2024.**

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Yours Humble Appellant


Muhammad Zareef

Through Counsel

Dated 22/07/2024


KHALID MAHMOOD

Advocate High Court

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

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CM No. /2024

IN

Service Appeal .No.980/2024

Mr. Muhammad Zareef VERSUS Govt. of KPK and Others

Khyber Pakhtukhwa
Service Tribunal

Diary No. 14471

Dated 24-07-24

.....Respondents

**APPLICATION FOR PLACING OF DOCUMENTS WITH
REFERNCE OF THE HON'BLE COURT VIDE ORDER SHEET
DATED 19.07.2024.**


Respectfully Sheweth,

Appellant through Counsel submits as under:-

1. That, above titled service appeal is pending before the Hon'ble Court which is fixed for 02.08.2024 for proceeding.
2. That, appellant submits judgement dated 04.07.2024 in writ petition No.273-D/2024 titled Muhammd Zareef versus Govt of KP and others with reference to Court Order Sheet dated 19.07.2024.


It is therefore, requested that CM for placing of documents may be accepted.

Yours Humble Appellant


Muhammad Zareef

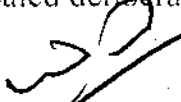
Through Counsel

Dated: 22/07/2024


Khalid Mahmood,
Advocate High Court
Stationed at D I Khan
0336-4330001

AFFIDAVIT

I, Mr. Muhammad Zareef s/o Nawaz Ali, MC (BPS-17) OSD Education department do hereby solemnly affirm and declare on oath that all the Para-wise contents of this CM are true and correct to the best of my knowledge and nothing has been concealed deliberately from this Honorable Court.


Identified by Counsel:
Khalid Mahmood
Advocate High Court
Stationed at D.I.Khan




Deponent
12103-1502382-3

Annex (X) (2)

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

W.P.No.273-D/2024

Muhammad Zareef

Versus

Govt. Of K.P.K and others



JUDGMENT

For petitioner: Mr. Khalid Mehmood, Advocate.

For respondents: Mr. Ghulam Muhammad Sappal, Addl. A.G. for respondents No.1 to 6 alongwith Dr. Khalid Saeed Akbar, Litigation Officer.

Mr. Saleemullah Khan Ranazai, Advocate for respondent No.7.

Date of hearing: 04.7.2024.

Dr. Khurshid Iqbal, J.-

1. The petitioner Muhammad Zareef is SDEO (M) Paharpur, District D.I.Khan (Management Cadre BS-17). The respondent No.7 Inamullah Khan is a teacher at GMS Toorey Baz Korona (Teaching Cadre BPS-16). Through a Notification No. SO (MC) E&SED/ 4-16/ 2024/ PT/ SDEO/ DIK, dated 25.6.2024 (impugned), the petitioner has been transferred and directed to report to the Directorate of E&SE, and the respondent No.7 has been posted as SDEO (Male) Paharpur, D.I.Khan in OPS. Aggrieved from the aforesaid Notification, the petitioner instituted the instant constitutional petition under Article 199 of the Constitution with the following prayers:

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Dera Ismail Khan 191224

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It is, therefore, humbly prayed that on acceptance of instant writ petition, this Hon'ble Court may be pleased to:

A. Declare that impugned Notification dated 25.6.2024 is illegal, without lawful authority, having been issued in absolute disregard of law, Judgments/Orders passed by this Hon'ble Court in WP No.2937/2009 dated 18.11.2009, WP No. 3663/2012 dated 08.5.2013, WP No.1775-P/2019 dated 22.10.2019 and Notification dated 08.02.2019 and thus liable to be stuck down/quashed.

B. Further declare that transfer/posting of respondent No.7 teaching cadre to the management cadre/administration cadre post is illegal, unlawful in absolute disregard of law, judgments/orders passed by this Hon'ble Court and Notification dated 08.02.2019 and thus merits to be set aside/quashed.

C. Direct the respondents to follow and comply with the judgment of this Hon'ble Court passed in WP No.2937/2009 dated 18.11.2009, WP No.3663/2012 dated 08.5.2013, WP No.1775-P/2019 dated 22.10.2019 and Notification dated 08.02.2019 issued in pursuance thereof.

D. Restrain the respondents from taking any action in violation of law as well as Government Policy duly notified vide Notification dated 08.02.2019.

E. Any other relief appropriate in law but not specifically asked for, may also granted.

Amended

2. Heard. Record perused.

3. The learned counsel for the petitioner appended with the instant petition, the copies of the aforementioned judgments of this Court wherein it was held that all those teachers belonging to teaching cadre shall be posted in the Educational Institution to teach the students according to their qualifications, while those belonging to administrative cadre, shall only hold the posts relating to administration. In the instant case, vide the impugned Notification, the petitioner has been transferred from Management Cadre and his services placed on the disposal of the

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Director E&SE K.P, Peshawar. Thus, he has not been posted in the teaching cadre. Section 10 of the Civil Servant Act, 1973, relates to the posting and transfer of a civil servant. It provides that every civil servant shall be liable to serve anywhere within or outside Pakistan, in any equivalent or higher post under the Federal Government, or any Provincial Government, or local authority, or a corporation or body set up or established by any such Government. In such view of the matter, the petitioner cannot claim to be posted at the place of his choice.

4. The petitioner has also challenged the transfer and posting of the respondent No.7. Through the impugned Notification, the respondent No.7 has substituted the post of the petitioner. The respondent No.7 himself has not called into question the impugned notification to the extent of his posting. Therefore, on the whims and wishes of the petitioner, the same cannot be cancelled/set aside. Moreover, the petitioner is also the beneficiary of the subject post. Therefore, mala fide and malice on his part may not be ruled out. In somewhat similar circumstances, the Supreme Court of Pakistan in Ghulam Shabbir

Munir

vs. Muhammad Munir Abbasi and others (PLD 2011 Supreme Court 516), held:

Insofar as maintainability of the Petition is concerned it would be seen that per settled law a writ of quo warranto is not issued as a matter of course. The Court can and will enquire into the conduct and motive of the petitioner. However, no precise rules can be laid down for the exercise of discretion by the Court in granting or refusing the same and each aspect of the case is to be considered. There is also no cavil with the argument that in such cases it is not necessary that the petitioner be an aggrieved person and further that if it is established that the petitioner has approached the Court with ulterior motive, mala fide intention etc relief can be declined.

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5. In light of the afore-noted facts and circumstances and the ratio decidendi of the judgment (supra), this petition merits no acceptance and is, therefore, dismissed.

Announced.

Dt: 04.7.2024.

Imran*

office
13/07/2024

Fazal

JUDGE

JUDGE

(D.B)

Hon'ble Mr. Justice Fazal Subhan
Hon'ble Mr. Justice Dr. Khurshid Iqbal

EXAMINER

[Signature]

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19/7/24

G.R.No. 2477
Application received on 05/7/24
Copying Fee deposited Rs. _____
No of Papers 150 pgs.
Copying Fee Rs. 41
Urgent Fee _____
Total Fee Rs. 61
Copy ready for delivery on 19/7/24
Copy delivered on 20-7-2024
Signature of Examiner [Signature]

Certified to be true and correct.

[Signature]
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Authorized Under Section 87
Qancon-a-Shahadat-4