BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 838/2024

Mr. Wahid Zaman CT (BPS-15).....Appellant

Versus

Director E & SE, Khyber Pakhtunkhwa Peshawar & others.....Respondents

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District Education Officer (M)
Kurram

(1)

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 838/2024

Khyber Pakhtukhwa Service Tribunal
Diary No. 15730
Dated 12-09-24

Mr. Wahid Zaman CT (BPS-15).....Appellant

Versus

Director E & SE, Khyber Pakhtunkhwa Peshawar & others.....Respondents

Parawise comments on behalf of Respondent No.1 and 2

Preliminary objections:

- That the appellant has got no cause of action, locus standi to file the instant appeal.
- That the subject matter of the instants appeal has already been decided by the Hon'ble Service Tribunal vide its judgment dated 22/1/2024, hence the instant appeal being infructuous and is liable to be dismissed in limine. **(Copy of the judgment is attached as annexure A)**
- That the appellant has concealed material facts from this Honorable Service Tribunal.
- That the appellant has not come to this Tribunal with clean hands.
- That the appeal is not maintainable in its present form.
- That the appellant is estopped by his own conduct to bring the instant appeal.
- That the appeal in hand is hit by laches and badly time barred as brought after lapse of 6 years.
- That the reinstatement order dated 22-11-2018 is in accordance with law and the appellant has accepted its terms and conditions.

ON FACTS.

1. That para-1 is correct to the extent that although the appellant was initially appointed in 2012, however, it is noteworthy that the appellant along with 4 others were terminated vides order dated 11-12-2015, after the Oversight Committee report. **(Copy of the oversight committee report and termination order is attached as annexure B and C).**
2. That para-2 pertains to the service records, hence need no comments.
3. That para-3 is correct to the extent that the service book of the appellant was prepared by the respondents, however, with respect to the rest of the para, it is to submit that the respondents after receiving complaints on the recruitment

process, duly constituted an Oversight Committee. The Oversight Committee after following the codal formalities and going through the official records, and considering the facts and circumstances, submitted its report. The respondents in pursuance of the Oversight Committee report issued the termination order of the appointees including the appellant. **(See annexure B and C)**

4. That the first part of the para-4 is correct to the extent that the Appellant were terminated vides order dated 11-12-2015, however, it is noteworthy that the said termination order was issued after the Oversight Committee report. With respect to the second part of the para-4, it is to submit that the respondents in compliance of the judgment dated 31-5-2018 of the Hon'ble Service tribunal in Service Appeal No. 298/2016 and other connected appeals reinstated the appellant vide order dated 22-11-2018. Furthermore, it is pertinent to mention over here that it was held by the Hon'ble Service Tribunal in the said Judgment vides para 8 which are reproduced as "*...this tribunal is constrained to issue direction to the respondents department to adjust/reinstate the appellant at the post of C.T with immediate effect without back benefits*". Therefore, in compliance of the judgment of the Hon'ble Service Tribunal, the respondents issued the appointment order dated: 22-11-2018 and which was accepted by the appellant. **(Copy of the judgment dated 31-5-2018 attached and reinstatement order is attached as annexure D and E)**
5. Correct, however, it noteworthy that the appellant accepted the appointment order and has not objected any terms and condition of the reinstatement order.
6. The first part of the para-6 is correct to the extent that the respondents being aggrieved from the judgment of the Hon'ble Service Tribunal filed a CPLA No. 689-P to 693-P of 2018, before the Supreme Court of Pakistan. Meanwhile, in compliance of the judgment of the Hon'ble Service Tribunal the respondents issued conditional reinstatement order dated 22-11-2018. Furthermore, it is to submit that the CPLA No. 689-P to 693-P of 2018 was dismissed by the Hon'ble Supreme Court vide its judgment dated 6-10-2020. Consequently, the respondents issued the substituted regular reinstatement order dated 23-6-2023 whereby the appellant was reinstated with immediate effect.
7. Incorrect, hence denied. The appellant had accept the terms and condition of the reinstatement order dated 22-11-2018, and has not objected. Now, after lapse of about 6 years the appellant brought the instant appeal which badly time barred and is not liable to be considered at this belated stage. Moreover, the same

nature of appeal has already been dismissed by the Hon'ble Service Tribunal vide its order dated 02-11-2023, wherein the appellant was warned by the Hon'ble Service Tribunal which is reproduced as *"..to avoid making fruitless and useless as well as frivolous applications and if made again for the same matter, that would be dismissed with heavy cost upon him"*. Therefore bringing the instant appeal is itself contempt and amount to violation of the Judgment of the Hon'ble Service Tribunal. **(See annexure A)**

GROUNDS.

A. Incorrect, hence denied. The respondents being bound by law acted in accordance with law and while doing so no illegality has ever been committed.

B. Incorrect, hence denied. The respondents being bound by law treated the appellant in accordance with law and while doing so no provision of the Constitution of Pakistan has ever been violated.

C. Incorrect, hence denied. The detailed reply has already been submitted in the above Para's.

D. Incorrect, hence denied. As elucidated in para 7 of facts above, the same nature of case has already been dismissed by the Hon'ble Tribunal, hence, being presents of the court the same may need to be maintained.

E. Incorrect, hence denied. The detailed reply has already been submitted in the above Para's.

F. Incorrect, hence denied. The detailed reply has already been submitted in the above Para's.

G. That the Respondents also seek permission of Honorable Tribunal to produce additional grounds at the time of hearing of the instant appeal.

Prayer:

In the light of the above stated facts, it is humbly submitted that the appeal in hand may kindly be dismissed in favor of the respondents with cost.

(4)

SAMINA ALTAF
DIRECTOR

AUTHORIZED OFFICER ABDUS SAMAD
DEPUTY DIRECTOR

Elementary and secondary Education
Khyber Pakhtunkhwa
Respondents No. 1

District Education Officer
District Kurram
Respondents No. 2

Sultan Muhammad

Director

Elementary and secondary Education

Kerala Pareekshabhavan

Respondents No. 1

District Education Officer

District Kannur

Respondents No. 2

(5)

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 838/2024

Mr. Wahid Zaman CT (BPS-15).....Appellant

Versus

Director E & SE, Khyber Pakhtunkhwa Peshawar & others.....Respondents

AFFIDAVIT

I, Mr. Sultan Muhammad District Education Officer (M), District Kurram, do hereby solemnly affirm and declare that the contents of accompanying para wise comments submitted by respondents are correct to the best of my knowledge and nothing has been concealed from this Honorable Tribunal. It is further stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor their defence has been struck off/cost.

ATTESTED
Zahoor Khan Advocate
Notary Public
Peshawar Border & Sessions Courts, Peshawar

Deponent

Sultan Muhammad
CNIC# 17102-1142032-5
Mobile# 0303-0555017

(6)

AUTHORITY LETTER

Mr. Tooti Marjan, Focal Person (Ligtigation), District Education Officer (M), District Kurram is hereby authorized to submit comments in Service Appeal No. 838/2024 titled Mr. Wahid Zaman CT (BPS)-15 VS Director E & SE, Khyber Pakhtunkhwa & Others.

District Education Officer (M),

District Kurram

(A) 117)

Wahid Zaman

22nd Jan. 2024

01. Petitioner alongwith his counsel present. Mr. Habib Anwar, Additional Advocate General alongwith Toti Marjan, Focal Person and Amjad Ali, S.O (Litigation) for the respondents present.

02. Representative of the respondents produced order dated 19.01.2024 in pursuance of which the petitioner has been reinstated into service w.e.f. 22.11.2018. Placed on file and a copy whereof handed over to the petitioner who was satisfied. The petition is consigned accordingly.

03. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal on this 22nd day of January, 2024.*

(Farkeena Paul)
Member(E)

Fazle subhan P.S

(B) (8) (9)

Subject: OVERSIGHT REPORT ON RECRUITMENT OF 70 NUMBER TEACHING/NON-TEACHING STAFF IN LOWER & CENTRAL KURRAM IN 2012-13

BRIEFHISTORY

1. Seventy No. of posts of various categories (Teaching/Non-teaching) cadres were lying vacant in Central & Lower Kurram Agency in the year 2012-13. The same was widely advertised and published in daily newspapers by the then Additional Agency Education Officer (F/A). Lists of the applicants (Candidates) were prepared of various categories of teaching & non-teaching staff. The candidates were called and interviewed. Consequently, 70 x teachers and officials were recruited in various categories against the vacant posts in Lower & Central Kurram Agency. The office orders were issued accordingly.

2. Many complaints were received to the administration objecting the credibility of recruitment process. In light of such complaints received from local elders and Political Administration, a committee comprising the following officers was constituted by Director Education FATA vide letter No.5191-99 dated 9.4.2013. The committee was directed to probe into the issue and submit their recommendations (F/B).

(1).Mr.Asmat Khan Principal GHS SamaBadaBera FR Peshawar

(2). Mr.Shahzar Khan Dy. Director (M&E) Directorate of Education FATA

The above mentioned enquiry committee submitted its report wit recommendations accordingly (F/C).

3. The Political Agent Kurram Agency vide his office letter No.1396-99 dated 18.5.20 (F/D) objected upon the enquiry conducted by the above officers, termed at vague and contradictory. In response to the objection raised by Political Agent, t Secretary Social Sectors Department vide his office letter No.FS/E/96/(Vol-III)54 dated 3.10.2014 (F/E) addressed to Director Education FATA and copy ther endorsed to Political Agent Kurram, directed that the Political Agent r reconsidered the orders issued by the then Addl: Agency Education Office capacity of appointing/appellate authority. In compliance of Secretary SSD orc the Political Agent thoroughly examined the procedure of recruitment and che the credential of recruited candidates and furnished his detail report (F/F). recommendations of the Political Agent are as under:-

(i). 31 out of 70 candidates should be excluded/terminated as they had selected out of reserved quota (Agency/sub-division wise).

(B) (9)

(ii). as it is serious nature case it should be decided by the Directorate o Education FATA.

4. In the month of August 2015 the affected/ teachers staged a protest in front o FATA Secretariat demanding for their restoration of appointment orders and release of salaries. In this connection Secretary SSD constituted the following over-sigh committee vide his Office letter No.SO (Edu)/Oversight Committee 1572-75 datec 19.8.2015 (F/G) with direction to look into the matter and resolve the issue of 7(No. appointments in Central & Lower Kurram Agency on merit under the following ToRs.

ToRs

1. To go through the whole recruitment process
2. To find out the short comings in the recruitment process
3. Identify eligible/in-eligible candidates
4. To identify the competent appointing and appellate authorities
5. To make recommendations
6. To verify the documents
7. To re-examine the previous inquiries

8. FINDINGS

ToR No.1. The Additional Education Officer Lower/Central Kurram Agency at Sadda has issued appointment order of 70 teachers of various cadres in violation of recruitment policy i.e. (F/H).

a. Selection committee was not notified.
b. Merit lists of candidates were not prepared.
c. The un-notified Selection committee has not signed the merit list on each page.
d. 25% agency quota was not chalked out in the category of CT, PET, DM, JET/AWI, TT, Qari, AT rather he has made appointment against the agency 25% quota.
e. In-eligible candidates were recruited and their appointment orders were issued without verification of their credentials.
f. Merit in some posts like J/C has not been followed.
g. Documents of most of the candidates were fake and bogus
h. Signatures on the merit list by the officers were illegal as the committee was not notified.

ToR No.2. As above.

"D"

...of the document of all candidates and verification made by Political Agent and Addl. AEO Lower & Central Kurram Agency, the candidates shown in proforma/format No.4 (F/I) were found eligible and candidates shown in proforma/format No.5(F/J)were found in-eligible.

ToR No.4. As per Notification the following are the competent authority/appellate authority in various category/Basic Pay Scale (F/K).

Identification of Authorities

S.No	Name of Category	Appointing Authority	Appellate Authority	Remarks
1	1 – 10	Agency Education Officers	Political Agent	
2	11 – 15	Political Agent	Secretary SSD FATA	

9. RECOMMENDATION

1. The then Additional Agency Education Officer Mr. Moeen Gul has committed gross irregularities in the recruitment process of teachers/officialsalready explained in finding No.1 reportedly in the list of in-eligible candidates of Central Kurram at S.No10 & 11are the real sisters of the officer under report (F/I).
2. The eligible candidates shall not be penalized for the irregularities committed by the then Addl: Agency Education Officer and they may be retained (recruited/appointed in the service).
3. In-eligible candidates appointed/recruited against the Agency quota 25% may be terminated.
4. In-eligible candidates who were recruited appointed on their fake documents may be terminated and criminal case may be registered against them and the salaries already paid to them may be recovered and deposited in proper head of account.
5. Mr.MoeenGul the then Addl: Agency Education officer may be charged sheeted under Govt servants (E&D) rules for irregularities, nepotism as stated in finding No.1.

OVERSIGHT COMMITTEE MEMBERS

Secretary FIFA

Director Education FATA

Deputy Secretary (Law & Order)

Deputy Director (F&A)
Directorate of Education FATA

1C, (11)

Additional Agency Education Officer
Lower & Central Kurram Agency.
NO 2987-93 /Edu
Dated 11/ 12/ /2015

TERMINATION ORDER.

Consequent upon the direction by the competent authority, Director of Education FATA Peshawar vide his No 12228 dated 07.12.2015,on the decesion of oversight committee the following in-eligible teaching/Non teaching appointees (M/F) BPS (7-9) appointed during January 2013 in Lower & Central Kurram are hereby terminated with effect from the date of their appointments. If salaries paid to them will be recovered from them accordingly .

S #	Name	Father Name	Desg:	BPS	Name of Institution	Remarks
1	Aqib Zaman	Said Amir Shah	CT	9	GHS Bagan	Terminated due to excess in sub divisional quota.
2	Muhammad Asif	Syal Khan	CT	9	GHS Makhizai	Terminated due to excess in sub divisional quota & advance appointment against on fill post.
3	Sara Bibi	Sakhi Mar Jan	DM	9	GGMS Bagan	DM diploma found fake & bogus .
4	Shahid Mehmood	Haji Sher Shah	PET	9	GMS Sraghurga	Diploma of JDPE found fake & bogus.
5	Muhammad Usman	Haji Shah Wazir	PET	9	GMS Arawali	Having no professional qualification.
6	Muhammad Alam Khan	Salam Khan	J/C	7	GHS Makhizai	Failed in typing test & rejected by enquiry officers.
7	Zubair Khan	Ghafoor Khan	J/C	7	GDC Bagan	Rejected by PA enquiry.
8	Muhammad Sadiq	Gul Mar Jan	J/C	7	GGDC Alizai	Failed in typing test as per advertisement & rejected by enquiry officers.
9	Sakhi Akbar	Sadiq Akbar	J/C	7	GHS Kochi	Failed in typing test as per advertisement & rejected by enquiry officers.
10	Sadia Batool	Abid Alam Jan	Lab/A-cstt	7	GGDC Alizai	Documents not provided for verification.
11	Muhammad Saeed	Zar Bat Khan	CT	9	GHS Baza	Terminated due to excess in sub divisional quota.
12	Muhammad Sadiq	Abdul Rasheed	CT	9	GMS Ossai	Terminated due to excess in sub divisional quota.
13	Latif Hussain	Inam Hussain	CT	9	GHS Angori	Domicile holder of upper kurram .
14	Wahid Zaman	Zawta Khan	CT	9	GHS Dogar	Terminated due to excess in sub divisional quota
15	Farooq Muhammad	Arab Gul	CT	9	GMS Taudy Oby	Out of merit (M.Ed has wrongly been considered in place of MA)
16	Ajmal Akbar	Akbar Khan	CT	9	GGMS Dogar No -2	Terminated due to excess in sub divisional quota.

(12) (d)

17	Bibi Sakina	Haji Gul Akbar	CT	9	GGMS Tabi Khonikhel	Terminated due to excess in sub divisional quota.
18	Samreen Sadaf	Haji Amin Khan	DM	9	GGMS Tarali	Documents not provided for verification.
19	Shamim Bibi	Spin Gul	DM	9	GGMS Dogar NO -2	Having no DM certificate & has not provide BA degree for verification.
20	Parveen Bibi	Spin Gul	DM	9	GGMS Ossai	Having no DM certificate & has not provide BA degree for verification.
21	Bibi Jamila	Niaz Bahadar Khan	DM	9	GGMS Tabi khonikhel	Having no DM certificate/diploma
22	Sajid Rehman	Haji Haider Khan	PET	9	GMS Dappa	JDPE diploma found fake & bogus.
23	Zia ul Alam	Noor Alam	PET	9	GMS Khazeena	JDPE diploma found fake & bogus.
24	Gul Hassan	Khan Bahadar	PET	9	GMS Jilamai	JDPE diploma found fake & bogus.
25	Kifayatullah	Mir Jehan	PET	9	GMS Kimal Baza	Having no professional documents.
26	Zar Taj Bibi	Haji Ajmir Khan	PET	9	GGMS Ossai	Having no professional documents & Lower Kurram domicile holder while she was appointed in Central Kurram, also appeared in CT(LK) while appointed as PET (CK).
27	Sajid Rehman	Said Aslam Khan	J/C	7	GHS Paloseen	Has been excluded by PA enquiry.
28	Siraj U Din	Walayat Khan	J/C	7	GHS Manatoo	Failed in typing test as per advertisement & rejected by enquiry officers.

Addl: Agency Education Officer
Lower & Central Kurram Sadda.

No 2987-93 /Edu:. Dated 11 / 12 /2015

Copy for information to the:-

1. Director of Education FATA Peshawar.
2. Political Agent Kurram Agency.
3. Additional Political Agent Kurram Agency.
4. Agency Account Officer Kurram Agency.
5. Assistant Political Agent Lower Kurram.
6. Assistant Political Agent Central Kurram.
7. Principals/Headmasters concerned for similar action.

Addl: Agency Education Officer
Lower & Central Kurram Sadda.

(D)

13

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 298/2016

Date of Institution ... 28.03.2016
Date of Decision ... 31.05.2018

Mr. Wahid Zaman Ex: CT, Kurram Agency.

Appellant

Versus

1. The Additional Chief Secretary FATA, FATA Secretariat Warsak Road Peshawar.
2. The Director of Education FATA, FATA Secretariat Warsak Road Peshawar.
3. The Additional Agency Education Officer, Lower and Central Kurram Agency at Sadda.
4. The Agency Account Officer, Kurram Agency.

Respondents

JUDGMENT

31.05.2018

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned counsel for the appellants and Mr. Kabir Ullah Khattak, Additional Advocate General for the respondents present.

2. This single/common judgment shall dispose of the above captioned Appeal filed by (1) Wahid Zaman (Ex. CT) as well as (2) Service appeal No.294/2016 filed by Muhammad Siddique (Ex. CT), (3) Service appeal bearing No.299/2016 filed by Muhammad Saeed (Ex. CT), (4) Service appeal bearing No. 300/2016 filed by Aqib Zaman (Ex. CT), (5) Service appeal bearing No.302/2016 filed by Lateef Hussain (Ex.CT), being identical in nature.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

3. The appellants (Ex-CTs), have filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 11.12.2015 whereby the appellants were terminated w.e.f the date of their appointments.

4. Learned counsel for the appellants argued that the respondent No.3 through advertisement published in the newspaper advertised various posts in Education Department Kurram Agency including the posts of CT and the appellant having the requisite qualification for the posts of CT applied for the same; that after participation in the test and interview the appellants were declared successful in the selection process and consequently the appellants were offered the said post through issuance of appointment order. Further argued that in response to the appointment of the appellants they started performing their duties at the stations/schools concerned. Further argued that astonishingly the respondent No. 3 issued the impugned order dated 11.12.2015 whereby the services of the appellants were terminated with retrospective effect. Further argued that the appellants have not been treated in accordance with law. Further argued that the appellants were appointed in the light of Appointment, Promotion & Transfer Rules. Further argued that the appellants were terminated without any regular inquiry and issuance of show cause notice. Further argued that no chance of personal hearing was given to the appellants before the issuance of impugned order. Learned counsel for the appellants strenuously argued that the impugned order is against the law, facts and norms of natural justice

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

hence liable to be set aside.

5. As against that learned Additional Advocate General while opposing the present appeal argued that the respondent department inquired the anomalies carried out in the recruitment process in Kurram Agency and for that purpose constituted oversight committee to trace out illegal appointees; that the committee submitted its report and thereby clearly picked out those candidates who had applied through fake and bogus degrees and were appointed illegally.

6. Arguments heard. File perused.

7. It is not disputed that the posts of C.T were advertised through advertisement in the newspaper and that the appellants having been fully qualified and eligible to apply for the same, participated in the recruitment process. Perusal of the impugned order dated 11.12.2015 would show that the appellants were terminated not for the reason that they were not eligible or duly qualified for posts of C.T rather their services were terminated simply on the ground that appointments of appellants Wahid Zaman (Ex. CT), Muhammad Siddique (Ex. CT), Muhammad Saeed (Ex. CT) and Aqib Zaman (Ex. CT) were found in excess to Sub Divisional quota and appellant Lateef Hussain (Ex. CT) is domicile holder of upper Kurram. In the written reply submitted by the respondent department is has not been explained that indeed for the posts of C.T there was a Sub Divisional quota, similarly in the written reply there is no mention of number of vacant posts of C.T

in each Sub Division neither the total number of candidates posted against the posts of C.T in each Sub Division was given. It may also be mentioned that in the advertisement available on file it was simply mentioned that the candidate should be the permanent resident of Kurram Agency hence no distinction of upper Kurram or lower Kurram was there in the advertisement. Similarly the respondent department has not furnished any report of the committee declaring the appointments of the appellants as illegal. During the course of arguments learned Additional Advocate General failed to bring to the notice of this Tribunal any record/report justifying the issuance of the impugned order.

8. In the light of above discussion this Tribunal is constrained to issue direction to the respondent department to adjust/reinstate the appellants at the posts C.T with immediate effect without back benefits. The present service appeals bearing No.298/2016, 294/2016, 299/2016, 300/2016 and 302/2016 are accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room after its completion.

Sd/-
Ahmed Hassan
Member

Sd/-
Muhammad Hamid Mughal
Member

Date of Presentation of Application 7-6-18
Number of Words 2400
Copying Fee 14
Urgent 2
Total 16
Name of Copyist Hamid
Date of Completion of Copy 7-6-18
Date of Delivery of Copy 7-6-18

"D" (17)

31.05.2018 Learned counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Vide separate common judgment of today placed on file of service appeal bearing No.298/2016, this Tribunal is constrained to issue direction to the respondent department to adjust/reinstate the appellant at the post C.T with immediate effect without back benefits. The present service appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
31.05.2018

Ahmad Hassan
Member

Muhammad Hamid Mughal
Member

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

"E"

18

01.01.2024

1. Learned counsel for the petitioner present. Mr. Habib Anwar, Additional Advocate General alongwith Mr. Tooti Khan, Focal Person for the respondents present.

2. Representative of the respondent submitted copy of reinstatement order dated 30.12.2023 whereby the petitioner has been reinstated into service against the post of CT (BPS-15) with immediate effect. Petitioner is not satisfied with the order and contested that he may be treated at par with the co-accused appellant namely Aqib Zaman who has been reinstated into service w.e.f 22.11.2018. The respondents are, therefore, directed to re-examine and reconsider the case and revise the order accordingly. To come up for implementation report on 22.01.2024 before S.B. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)