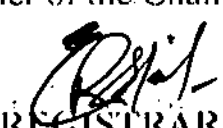


FORM OF ORDER SHEET

Court of _____

Appeal No. 1955/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/10/2024	<p>The appeal of Mr. Muhammad Asghar presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before t Single Bench at Peshawar on 22.10.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO 1955 / 2024

MR. MUHAMMAD ASGHAR V/S GOVT: OF KP & OTHERS

INDEX

S. NO.	DOCUMENTS	ANNEX	PAGE
1)	Memo of appeal with affidavit	1-4
2)	Copy of appointment dated 04/03/1996	A	5-6
3)	Copy of letter dated 06/01/1997	B	7
4)	Copy of writ petition	C	8-16
5)	Copy of judgments	D&E	17-25
6)	Copy of appointment order dated 11/07/2007 & arrival report	F&G	26-27
7)	Copy of order dated 09/10/2018	H	28-29
8)	Copy of NOC	I	30
9)	Copy of order	J	31
10)-	Copy of departmental appeal duly forwarded to DEO(Male) Mardan	K	32-33
11)	Vakalat Nama		34

Dated: 9-10-2024

APPELLANT
THROUGH:
NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

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

Service Appeal No. 1955 /2024

Mr. Muhammad Asghar, PST (BPS-12),
GPS Saadudin Gumbat, Mardan

.....Appellant

V E R S U S

- 1) The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
- 2) The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 3) The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- 4) The District Education Officer (M), Mardan
- 5) The District Health Officer, Mardan

.....RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT COUNTING THE PREVIOUS SERVICE OF THE APPELLANT FOR THE PURPOSE OF PAY FIXATION I.E. W.E.F 11/07/2007 TO 09/10/2018 IN LIGHT OF FR 22 AND FR 26 OF THE FUNDAMENTAL RULES AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NANTY DAYS.

PRAYER:

That on acceptance of the instant service appeal the respondents may kindly be directed to count the previous service of the appellant rendered in the Health Department towards E&SE Department for the purpose of pay fixation w.e.f 11/07/2007 till 09/10/2018 with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

Respectfully Sheweth:-

Facts arising for the institution of instant service appeal are as under.

- 1) That the appellant is a law abiding citizen of Islamic Republic of Pakistan and bonafide resident of District Mardan.

- 2) That the appellant was appointed as PTC (now PST) BPS-12 in the Elementary & Secondary Education department who was terminated from service in 1997. Copy of appointment order dated 04/03/1996 is attached as annexure.....**A**
- 3) That vide a letter the Elementary & Secondary Education department the DEO (Male) Mardan has withdrawn the appointment order of the appellant. Copy of letter dated 06/01/1997 is attached as annexure.....**B**
- 6) That the sacked employees including the appellant filed writ petition in the Honorable Peshawar High court wherein name of the appellant is mentioned as S No.23 of the writ petition. Copy of writ petition is attached as annexure.....**C**
- 7) That the aforesaid writ petition was allowed and directions were issued to the D.E.O, Mardan to appoint the appellant, however, the department filed CPLA which was dismissed. Copy of judgments are attached as annexure.....**D&E**
- 8) That prior to 11/07/2007, appellant was appointed as Ward Orderly in Health Department on regular basis the appellant has submitted arrival report for duty. Copy of appointment order dated 11/07/2007 & arrival report are attached as annexure.....**F&G**
- 9) That vide office order dated 09/10/2018 the appellant was appointed as PST in light of the judgment of apex court and judgment of Peshawar High Court delivered in WP No 2438-P/2026. Copy of judgment are already attached as annexure D&E while order dated 09/10/2018 is attached as annexure.....**H**
- 10) That prior to appointment in the Elementary & Secondary Education department the appellant got NOC from the Health department and accordingly was issued to him on 09/11/2018. Copy of NOC is attached as annexure.....**I**
- 11) That upon appointment in the Elementary & Secondary Education department the appellant was properly relieved by the Health department as such the appellant started performing his duties in the Elementary & Secondary Education department with zeal and zest and upto the entire satisfaction of the superiors. Copy of order is attached as annexure.....**J**

- 12) That in the meanwhile the appellant filed departmental appeal for counting of his previous service rendered in Health department but of no avail. Copy of departmental appeal is attached as annexure.....K
- 13) That being aggrieved from the inaction of the respondent department having no other alternate except to file the instant appeal on the on the grounds inter-alia as under-

GROUND S:

- A) That the impugned in action of the respondents is contrary to law and rules and in utter violation of the rules and NOC tendered by the Health department prior to appointment in Elementary & Secondary Education Department, hence not tenable in the eye of Law and needs interference of this Honorable Court to be set aside.
- B) That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C) That as per FR 22 and FR 26, the appellant is entitled for the counting of his previous service i.e. 11/07/2007 to 09/10/2018 for the purpose of pay fixation.
- D) That the treatment meted out to the appellant is highly discriminatory.
- E) That it is too astonishing to note here that once the superior courts have passed judgments for reinstatement in service of the sacked employees including the appellant and the appellant joined the Education department and still performing duties efficiently, even then the respondents department is doing delaying tactics for fixation of pay.
- F) That the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellant as enshrined in the Constitution of Pakistan 1973.
- G) That as per Article 25, 27 and 38 e of the constitution of Pakistan 1973, the appellant is entitled for the grant of pay fixation.

H) That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal may kindly be accepted as prayed for.

Dated: 9-10-2024

[Signature]
APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

UMAR FAROOQ MOHMAND

[Signature]
WALEED ADNAN

[Signature]
KHANZAD GUL
ADVOCATES HIGH COURT

CERTIFICATE:

No such like appeal is pending or filed between the parties on the subject matter before this Honorable Tribunal.

[Signature]
Advocate

AFFIDAVIT

I, Mr. Muhammad Asghar S/o Gulab Din PTC (now PST) BPS-12, resident of Mehmood Abad Mardan, (appellant), do hereby solemnly affirm and declare on oath that the contents of this appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal.

[Signature]
DEPONENT

'B' 7/10

OFFICE OF THE SUB-DIVISIONAL EDUCATION OFFICER (MALE) PRIMARY, M.R.D.D.A. N. NO. 45-9 IRREGULAR APPT. DT. 1/15

Muhammad Asghar

GPS GAPS (35)

Hospital Korona

Sub; WITHDRAWAL OF SERVICES OF IRREGULAR P.T.C. TEACHERS WITH EFFECT FROM 1.7.1995.
Memo;

Consequent upon the order District Education Officer (Male) Primary, Mardan issued vide his order Dist. NO. 2707 dated 14.12.1995 all irregular appointments of P.T.C. teachers have been withdrawn w.e.f. 1.7.1995. The District Education Officer (Male) Primary, Mardan Directs vide his No: 12-13, dated 2-1-1997 to inform all the irregular P.T.C. teachers accordingly.

In the light of the instructions issued under reference above you are hereby informed that your Appointment Order NO: 255-56/1996 dated 4-3-1996 has already been withdrawn.

SUB-DIVISIONAL EDUCATION OFFICER (MALE) MARDAN.

Dist. NO

Dated: /1997

- 1. District Education Officer (Male) Primary, Mardan w.r to his order endst: 2 letters Nos. referred above.
- 2. All ASDEO(I) strict compliance.
- 3. ASDEO(A) for necessary action.

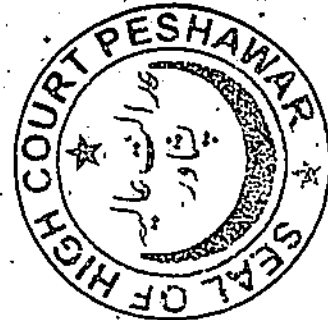
SUB-DIVISIONAL EDUCATION OFFICER (MALE) MARDAN.

IN THE PESHAWAR HIGH COURT, PESHAWAR

WRIT PETITION No. 2440 P /2016

03028366405

1. Abdul Ahad
S/o Shokh Dil,
R/o Mohallah Alladad Khel, Hoti, Mardan.
2. Liaqat S/o Shah Pur Khan,
R/o Mohallah Alladad Khel, Hoti, Mardan.
3. Shah Hussain S/o Zenur Shah,
R/o Kot Dolatzai, Mardan.
4. Shakirullah Khan S/O Saif-ur-Rehman
R/o Saif-ur-Rehman Koroona, Kanda Ghar,
Takht Bhai, Mardan.
5. Taj Alam S/o Yousaf Khan,
R/o Kuz Kandi, Jalala, Takht Bhai, Mardan.
6. Khurshid Ali S/o Muhammad Yousaf,
R/o Habib Koroona, Gunjay, Takht Bhai, Mardan.
7. Taj Muhammad S/o Muhammad Anwar Khan
R/o Charagh Din Kaley, Takht Bhai, Mardan.
8. Zubair Ali S/o Karimullah,
R/o Mohallah Alladad Khel, Hoti, Mardan.
9. Ibn-e-Amin S/o Tor Jan,
R/o Kazim Kaley, Takht Bhai, Mardan.
10. Imran Khah S/o Shah Jehan,
R/o Sardar Kaely, Saro Shah, Takht Bhai, Mardan.
11. Ahad Khan S/o Mir Dad,
R/o Nurman Khel, Par Hoti, Mardan.
12. Tahir Muhammad S/o Noor Muhammad,
R/o Mohallah Sher Dil Khan, Hoti, Mardan.
13. Irshad Ahmad S/o Gul Muhammad,
R/o Lund Khuwar, Tehsil Takht Bhai, District Mardan.
14. Umar Khitab S/o Darey Khan,
R/o Roriya Jadeed, Mardan.
15. Fida Muhammad S/o Akhtar Gul,
R/o Village Qasmi, Takht Bhai, Mardan.
16. Morood Khan S/o Faqeer-ur-Rehman,
R/o Garhi Kapoora, Ismailzai, Mardan.
17. Shah Hussain S/o Hazrat Hussain,
R/o Anar Bag, Mardan.
18. Ahad Khan S/o Farrukh Saer,
R/o Gulbahar, Kas Koroona, Mardan.



ATTESTED
EXAMINER
Peshawar High Court
13 APR 2018

FILED TODAY
Deputy Registrar
16 MAY 2016

- 9-
19. Syed Roohullah Shah S/o Syed Muhibullah Shah,
R/o Par Hoti, Mardan.
20. Ikram-ul-Haq S/o Haji Muhammad Sadiq,
R/o Fazal Abad, Takht Bhai, Mardan.
21. Amjid Ali S/o Muhammad Nabi,
R/o Mohallah Bamo Khel, Mardan.
22. Muhammad Farooq S/o Gul Manaf,
R/o Village Mehmood Abad, Mardan.
23. Muhammad Asghar S/o Gulab Din,
R/o Mehmood Abad, Garhi Kapoora, Mardan.
24. Bahadar Khan S/o Muslim Shah,
R/o Gumbat, Mardan.
25. Abdul Ahad S/o Tils Muhammad,
R/o Qaim Khel, Mayar, Mardan.
26. Shakeel Ahmad S/o Musharaf Khan,
R/o Aio, Takht Bhai, Mardan.
27. Fazal Mehmood S/o Musharaf Shah,
R/o Mohallah Beri Cham, Takht Bhai, Mardan.
28. Fayaz Muhammad S/o Wali Muhammad,
R/o Mohallah Anar Bag, Gumbat, Mardan.
-
29. Ijaz Ahmad S/o Shamas Gul,
Lab: Assistant,
R/o Lalazar near THQ Hospital, Takht Bhai, Mardan.
30. Shams-ur-Rehman S/o Taj Malook,
Junior Clerk,
R/o Mohallah Sherai, Bari Chum, Mardan.
31. Abidullah S/o Ikramullah,
R/o Mohallah Ghulaman, Toru, Mardan.
-
32. Safdar Khan S/o Muhammad Ameen,
R/o Karghan Hassanzai, Takar, Takht Bhai, Mardan.
33. Khalid Khan S/o Haji Aslam Khan,
R/o Habib Gul Koroona, Takht Bhai, Mardan.
34. Khalid Usman S/o Malik Aman,
R/o Chamrank, Mardan.
35. Shams-ur-Rehman S/o Fazl-ur-Rehman,
R/o Muhammad Ali Khan Akbar Road, Hoti, Mardan.
36. Muhammad Ayaz S/o Muhammad Jameel,
R/o Mohallah Rustam Khel, Mardan.
37. Saeed Muhammad S/o Awal Din,
R/o Shahi Bagh, Hoti, Mardan.
38. Sabz Ali S/o Gul Said,
R/o Roghani, Sawal Dher, Mardan.
39. Murad Ali S/o Alam Zeb,
R/o Center Colony, Baghdada, Mardan.

ATTESTED
EXAMINER
Peshawar High Court
13 APR 2016

FILED TODAY
Deputy Registrar
16 MAY 2016

- 40. Muhammad Mushtaq Ahmad S/o Muhammad Musa Khan,
R/o Islam Bagh, Karwan Road, Mardan.
- 41. Raheem Khan S/o Allah Dad,
R/o Sadaat Baba, Takht Bhai, Mardan.
- 42. Amanullah S/o Hazratullah,
R/o Akbar Road, Mohallah Sher Dil Khan, Mardan.
- 43. Tariq Hussain S/o Abdul Hassan,
R/o Babu Mohallah Bari Cham, Mardan.
- 44. Zulfiqar Ali S/o Nek Muhammad,
R/o Kass Koroona, Mardan.
- 45. Ayaz Muhammad S/o Khan Muhammad,
R/o Street No.3, Saced Abad, Kas Koroona, Mardan.
- 46. Kabaley Khan S/o Safiullah,
Mohallah Sadi Khel, Mayar, Mardan.
- 47. Nisar Muhammad S/o Amanullah,
R/o Toheed Abad, Charsadda Road, Mardan.
- 48. Ijaz Hussain S/o Ghulam Nabi,
R/o Bakhshali, Mardan.
- 49. Muhammad Suhail s/o Faqeer Muhammad
R/o Zayed Khel, Toru, Mardan.
- 50. Atta-ur-Rehman s/o Muhammad Ismail,
R/o Mohallah Khan Khel, Toru, Mardan.
- 51. Siraj Muhammad S/o Baz Muhammad
R/o Toru, Mardan.

ATTESTED
 EXAMINED
 Peshawar High Court
 43 APR 2018

Versus

- 1. The Secretary
Govt. of Khyber Pakhtunkhwa,
Elementary & Secondary Education
Department, Civil Secretariat, Peshawar.
- 2. The Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.
- 3. The District Education Officer (P&S) Mard
District Mardan.

*No necessary
 corrections have been
 made in the
 copy of original
 of 40/15/16
 dt 30-8-16*

**WRIT PETITION UNDER ARTICLE, 199 OF THE CONSTITUTION
 OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.**

Respectfully Sheweth,
 Facts giving rise to the present writ petition are as under:-

~~FILED TODAY~~
 Deputy Registrar
 16 MAY 2016

1. That petitioners are the permanent and bonafide residents of District Mardan.
 They were appointed as PST, C.T, T.T, Lab Assistant, Junior Clerk, P.E.T. and

on different dates after observing all the codal formalities vide orders dated 14.01.1996, 26.05.1996, 23.01.1996, 04.09.1996, 10.07.1996, 30.05.1995, 02.08.1995, 19.05.1994, 03.07.1996, 07.11.1995, 31.10.1994, 25.02.1996, 26.11.1996, 26.10.1995, 06.11.1995, 04.10.1995, 30.06.1995, 23.10.1995, 02.10.1995, 04.02.1995, 06.10.1996, 12.12.1994, 28.08.1996, 08.10.1996, 07.05.1995, 08.11.1995, 21.10.1995, 23.07.1996, 28.03.1996, 02.01.1995, 06.10.1996, 24.03.1996, 25.03.1996 and 31.10.1995. At the moment more of the petitioners are qualified for the posts against which they were appointed.

2. That after their appointments petitioners were satisfactorily and devotedly performing their duties for years to the entire satisfaction of the high-ups but with the change of Government, the successor Government out of sheer reprisal and to settle scores with the previous Government terminated the services of petitioners vide orders dated 06.01.1997, 12.02.1997, 13.02.1997, 23.06.1997, 13.03.1997, 07.01.1997 and 30.05.1997. (Appointment Orders/Credentials/Termination Orders of Petitioners Annex:-A).
3. That after their termination, petitioners left no stone unturned and made inexorable and untiring efforts for restoration of their services. They have been agitating their genuine grievances before every forum, higher authority for the last more than 1 1/2 decade but could not succeed with exception of some of their colleagues who within prescribed period of limitation approached the Hon'ble Khyber Pakhtunkhwa Service Tribunal and were reinstated with all back benefits by the Provincial Service Tribunal on 11.08.2003 and 02.05.2002 which were upheld by the Apex Court on 18.11.2004, and the Judgments then were implemented by the Department vide orders dated 20.04.2006, 19.12.2004 (Annex:-B). Previously a decision in this respect was taken by the Cabinet of the Provincial Government but the same was not implemented.
4. That in the years 2010 the Federal Government, while realizing the miseries of politically victimized sacked employees of the 1996-99 in view of their longstanding grievances/complaints, passed "the Sacked Employees (Re-Instatement) Act, 2010" (to be referred hereinafter as the Act of 2010) whereby all the employees appointed by the Government and then terminated by the next Government on political grounds/ considerations were reinstated into service.
5. That since the employees in the Provincial Government were also terminated during the same period of time on the same political grounds also needed similar

ATTESTE
 EXAMINER
 Peshawar High C

13 APR 2018

FILED TODAY

15 MAY 2018

treatment therefore the Provincial Government of Khyber Pakhtunkhwa also decided to reinstate similarly terminated employees, therefore, "The Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012" (to be referred hereinafter as "the Act of 2012") was passed by the Provincial Assembly of Khyber Pakhtunkhwa and assented to by the Governor on 17.09.2012 and notified on 20.09.2012 (Annex:-C).

- 6. That since the promulgation of the Act of 2012 the same was not properly implemented in letter and spirit and by one way or the other its provisions were defeated by one reason or the other by the interested quarters so as to deprive the deserving candidates including the petitioners although they properly applied to the competent authority for their appointment within 30% quota mandated by the Act but without any success.
- 7. That similarly other colleagues approached this Hon'ble Court in W.P.No.1662-P/2013 decided on 24.12.2014 (Annex:-D) which was recently implemented vide orders dated 14.04.2016 (Annex:-E) which was followed by another judgment dated 18.09.2015 (Annex:-F) passed in W.P.No.3592-P/2014. Since the case of petitioners is identical, therefore, they are also entitled to the same relief under the principle of consistency and equality before law.
- 8. That petitioners time and again approached the Respondents for extending the benefit of the Act of 2012 but they have unlawfully refused, therefore, having no other adequate and efficacious remedy, petitioners now file this constitutional petition inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated petitioners in accordance with law, rules and policy on subject and acted in violation of Articles 4 and 10A of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully refused to extend the benefit of the Act of 2012, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That petitioners are entitled to be re-appointed under the Act of 2012 inas much as they are covered by the definition of the Sacked Employees as well as other beneficial provisions of the Act but the Respondents are denying the rights of petitioners without any justification muchless lawful which has resulted in

ATTESTED
EXAMINER
Peshawar High Court

13 APR 2018

FILED TODAY
Deputy Registrar
16 MAY 2016

miscarriage of justice.

C. That this Hon'ble Court has interpreted the Provisions of the Act of 2012 in favour of other similarly placed colleagues of the petitioners and granted them relief vide Judgments *ibid* which were then implemented by the Respondents. Petitioners are also entitled to the same relief being similarly placed under the principle of consistency and equality as per the judgments laid down by Hon'ble Supreme Court of Pakistan in the cases of "*Hameed Akhtar Niazi ...Vs...The Secretary Establishment Division, Government of Pakistan and others*" reported in 1996 SCMR 1185 and in the case of "*Tara Chand and others...Vs... Karachi Water and Sewerage Board, Karachi and others*" reported in 2005 SCMR 499 and another Judgment reported in 2009 SCMR 1 wherein it has been laid down that "when a Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covered not only the case of the civil servants who litigated, but also of other civil servants, who might have not taken any legal proceedings, the dictates of justice and rules of good governance demand that the benefits of the decision be extended to the other civil servants, who might not be parties to the litigation instead of compelling them to approach the Tribunal or any other forum."

D. That it will not be out of place to mention here that the policy of appointment of untrained teachers by the Education Department of the Government was fully in vogue at the time of appointment of petitioners and even till 2011 and financial benefits were allowed to teachers for the untrained period of their service in 2009. Now more of the Petitioners have subsequently acquired the relevant qualifications of the posts against which they were initially appointed and at the moment they are qualified for the posts nay over and above the prescribed qualification for the posts.

E. That after their appointments in the Education Department and serving for years, Petitioners had acquired rich teaching experience which has also not been taken into account by the Respondents. Since the promulgation of the Act of 2012, 04 selection process have been done wherein as many as 964 vacancies have been filled out of which 30% quota of the Sacked employees comes out 288 in total which are outstanding as per the Act of 2012.

F. That the very object of the Act of 2012 was to redress the grievances of Petitioners and to provide them justice for which Petitioners and other similarly

ATTESTE

EXAMINER
Peshawar High Co

13 APR 2018

FILED TODAY

Dr. ...

16 MAY 2016

sacked employees have been craving for more than one and half decade and therefore, it was a beneficial legislation but because of the denial on the part of the Respondents to obey the law, the object of the Act was frustrated, therefore, the refusal of the Respondents to extend the benefit of the Act of 2012 to petitioners is not sustainable in the eye of law.


For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the refusal of the Respondents to extend the benefit of Act of 2012 to petitioners by appointing them against the requisite posts in 30% quota reserved for the sacked employees, as without lawful and hence of no legal effect and this august Court may further be pleased to direct the Respondents to act in the matter in accordance with law and to appoint petitioners against their requisite posts w.e.f. the due date with all consequential back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioners.

Interim Relief

By way of interim relief, the Respondents may graciously be restrained for making fresh appointments till the final disposal of the instant writ petition.

Through

Retitioners

Khalid Rahman
Advocate,
Supreme Court of Pakistan

Dated: 16 /05/2016


ATTESTED
EXAMINER
Peshawar High Court
13 APR 2018

FILED TODAY
Deputy Registrar
15 MAY 2016

-15-

CERTIFICATE

Certified on instruction that petitioners have not previously moved this Hon'ble Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 regarding present matter.



Khaled Rahman
Advocate, Peshawar

List of Books

- 1. The Constitution of the Islamic Republic of Pakistan, 1973.
- 2. Services Law.

NOTE

- 1. Three spare copies of the Writ Petition are enclosed in a separate file cover.
- 2. Memo of addresses is also attached.


Khaled Rahman
Advocate, Peshawar

ATTESTED
EXAMINER
Peshawar High Court
13 APR 2018

FILED TODAY
DEPT. REGISTRAR
16 MAY 2018

IN THE PESHAWAR HIGH COURT PESHAWAR

W.P. No. _____/2016

Abdul'Ahad and others Petitioners

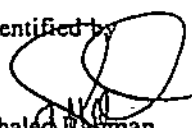
Versus

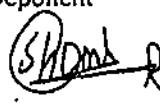
The Secretary and others Respondents

Affidavit

I, Shams-ur-Rehman-S/o Taj Malook, Junior Clerk, R/o M. Allah Sherai, Bari Chum, Mardan., do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

Petitioner No 30

Identified by

Khalid Rehman
Advocate, Peshawar

Deponent


16101-3408062-5

No. *BB50*
Certified that the deponent was verified on solemnly
affirmation on the day of this *16th*
day of *May* *2016* at *Shams-ur-Rehman*
s/o *Taj Malook* *Mardan*
who was identified by *Khalid Rehman*
Who is personally known to me:

Oath Commissioner
Peshawar High Court, Peshawar *16/5*

TESTED
EXAMINER
Peshawar High Court
13 APR 2018

FILED TODAY
Deputy Commissioner
16 MAY 2016

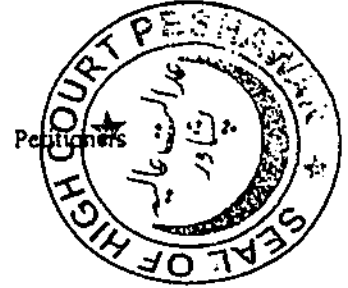
-17-

"D"

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
Judicial Department.

Writ Petition No.2438-P/2016

Mst. Samina Qazi and 42 others.



VERSUS

The Secretary,
Govt of Khyber Pakhtunkhwa,
Elementary & Secondary Education
Department, Civil Secretariat Peshawar,
And others.

Respondents

For Petitioners :- Mr. Khalid Rehman, Advocate.
For Respondents :- Mr. Waqar Ahmad, AAG.

Date of hearing: 12.04.2018

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this common judgment, we shall decide the instant and connected Writ Petitions No.2439-P and 2240-P of 2016, filed by Iftikhar Ali and 33 others and Abdul Ahad and 50 others (*to be referred hereinafter as petitioners*), as identical question of law and facts are involved therein.

Handwritten signature/initials

2. In essence, grievance of the petitioners is that during the period since 1993 to 1996, the respondents after observing all legal and codal formalities, appointed them against various positions i.e. CT, PET, DM, OT, T.T., Lab. Assistant and Junior Clerk on different dates, mentioned in their appointment orders, annexed with the respective writ petitions, in Education Department, but with the change of

ATTESTED
EXAMINER
Peshawar High Court
13 APR 2018

Government, their services were terminated on the pretext of irregularities committed in their appointment. The petitioners rise their voice before various forum, but proved futile. In the year 2010, the Federal Government enacted 'the Sacked Employees (Re-Instatement) Act, 2010' (the Act of 2010) to provide relief to persons in corporation service or autonomous or semi autonomous bodies or in the Government service who were dismissed, removed or terminated from service. The Provincial Government of Khyber Pakhtunkhwa while following the Act of 2010, enacted 'the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012' (the Act of 2012) so as to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and were dismissed, removed or terminated from service during the period from 1st day of November, 1996 to 31st day of December, 1998 on various grounds.

3. Respondents have filed their Para-wise comments, wherein it is averred that under the Act of 2012, sacked employee is a person who was appointed on regular basis to a civil post in the province and who possessed the prescribed qualification and experience for the said post at

ATTESTED
EXAMINER
Peshawar High Court
13 APR 2018

looked

that time during a period from 1st day of November, 1993 to 30th day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November, 1996 to 31st day of December, 1998 on the ground of irregular appointments. Some of the petitioner petitioners being lacking the prescribed academic qualification and criteria laid down by the Act of 2012, and some being untrained, cannot be extended benefit of the Act of 2012.

4. Having heard the arguments of learned counsel for the parties, it appears from the record the controversy of re-instatement of sacked employees cropped up before this Court in "Writ Petition No.1662-P/2013, titled, 'Hamrat Hussain etc Vs the Govt of Khyber Pakhtunkhwa and others" which was decided on 24.12.2014, as follow:-

It is worth to note that persons similarly placed with the petitioners have been re-instated by the department while giving effect to the judgments given by the Khyber Pakhtunkhwa Service Tribunal. Moreso, one Mst. Gul Rukh whose services were terminated by the respondents along with the petitioners, has been appointed under the Act vide order dated 09.05.2013. It is cardinal principle of law that similarly placed persons should be treated alike and no different yard stick should be used while redressing their grievances. It is the hall mark and grundnorm of our constitution that every person is entitled to equal protection of law. Not only similarly placed colleagues of the petitioners have been appointed by the respondents but the petitioners are also entitled to the relief given to the sacked employees under the Act.

For what has been discussed above, we admit and accept both the writ petitions and direct the respondents to consider the petitioner for their appointment in accordance with the provision of the Act."

ATTESTED

EXAMINER
Peshawar High Court

13 APR 2018

Subsequently, W.P. No.516-A/2013, titled, "Iftikhar Khan etc Vs Govt of Khyber Pakhtunkhwa etc" and so many other writ petitions, were filed by the sacked employees with regard to relief of reinstatement, before Abbottabad Bench of this Court, which were disposed of through a common judgment dated 24.05.2016, placed in W.P. No.516-A/2013, in the following terms:-

- i. That the petitioners though eligible for appointment but not equipped with training certificate, shall be considered for re-instatement against their respective posts under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 immediately;
 - ii. The concerned District Education Officer shall scrutinize the case of each individual petitioner independently;
 - iii. Thereafter the department shall arrange and manage the requisite training course for them and the petitioners shall be provided opportunity to acquire the requisite training certificate;
 - iv. In case the petitioner failed to acquire the requisite training certificate within the stipulated period, specified by the department, their services shall stand terminated automatically.
- Needless to remark that the respective EDOs of each district shall complete the process of re-instatement of the petitioners within one month, positively.

The aforesaid judgment of this Court was impugned before the Hon'ble apex Court in C.P. No.401-P/2016 by the Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar, and the Hon'ble Supreme Court while maintaining the judgment of this Court vide judgment dated 24.05.2017 held as under:-

"We have been apprised by learned counsel for the respondents that according to the advertisement and appointment letters issued to the respondents, two kinds of candidates could be appointed (i)

ATTESTED

EXAMINER
Peshawar High Court

13 APR 2018

those who have the requisite academic qualifications and training (ii) those who have the requisite academic qualification but do not possess the necessary training. As regards the second category, such persons would be provided with an opportunity to complete the training within a specific period. This is exactly what the learned High Court as allowed in the relief granting portion of the impugned judgment. Undoubtedly, this is in consonance with the Department's own advertisement and the terms and conditions of service, therefore, the learned High Court did not fall into any error by requiring the Department to allow the respondents to complete training within a specific period of time and to take action against them in case of failure to do so. No exception can be taken to the impugned judgment, which is upheld. Resultantly, Civil Petition No.401-P/2016 is dismissed on merit. The connected petitions are also dismissed on the above score and for being time-barred as no sufficient cause has been shown for condonation of delay."

5. In section 2 (g) of the Act of 2012, sacked employee has been defined as under:-

"Sacked employee" means a person who was appointed on regular basis to a civil post in the province and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments."

Look at

The petitioners having been appointed during the period since 1993-1996, do fall within the meaning of section 2 (g) of the Act of 2012. Section 3 of the Act (ibid), provides mechanism for appointment of the sacked employees,

ATTESTED

SECRETARY
Punjab High Court

13 APR 2015

according to which on commencement of the Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service. Proviso attached to section 3 provides that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department and according to second proviso attached to section 3 provides further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority. The case of the present petitioners is not on different footing from the other sacked employees who have already been granted the relief of re-instatement in their service in light of decision of the Service Tribunal as well as the judgments of this Court and the Hon'ble Supreme Court (supra). The respondents have not specifically mentioned as to what kind of the academic qualification the petitioners are lacking. So far as the objection of the respondents that some of the petitioners are untrained is concerned, suffice to say that objection has exhaustively been dealt with by the Hon'ble apex Court in the judgment (supra) that according to the advertisement and appointment letters issued to the petitioners, two kinds of candidates could be appointed (i) those who have the requisite academic

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13 APR 2018

qualifications and training (ii) those who have the requisite academic qualification but do not possess the necessary training. As regards the second category, such persons would be provided with an opportunity to complete the training within a specific period.

6. It is golden principle of law that alike shall be treated alike which has further been elaborated by the apex Court in the case of "Hameed Akhtar Niazi Vs the Secretary Establishment Division, Government of Pakistan and others" reported as (1996 SCMR 1185) and again in the case of "Government of Punjab through Secretary Education and others Vs Sameena Parveen & others" reported as (2009 SCMR 01), in the following words:-

"If a Tribunal or this Court, decides a point of law relating to the terms and conditions of a civil servant, who litigated and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the same decision be extended to other civil servants also, who may not be parties to that litigation instead of compelling them to approach the Tribunal or any other legal forum"

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7. Accordingly, this and the connected writ petitions are allowed and the respondents are directed to consider the petitioners strictly in accordance with the mode and manner set out by this Court in its judgment dated

ATTESTED

24.05.2016 in W.P. No.516-A/2013, and upheld by the
august apex Court in its judgment dated 24.05.2017.

Announced
12.04.2018

BY APPOINT

[Signature]
JUDGE

[Signature]
JUDGE

48025
Date of Presentation of Application 01/9/2022
No of Pages 13
Copying for 72
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Date of Preparation of Copy 01/9/2022
Date of Delivery of Copy 01/9/2022
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EXAMINER
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SUPPLY AND DISTRIBUTION
GOVERNMENT PRINTING PRESS, CHENNAI

01 SEP 2022

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"E"

**IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)**

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITIONS NO.481-P AND 482-P OF 2018
(Against the judgment dated 12.4.2018 of the Peshawar High Court,
Peshawar passed in WP Nos.2439-P of 2016 & 2440-P of 2016)

Government of KPK through Secretary Elementary & Secondary
Education Peshawar & others

...Petitioner(s)
(In both cases)

VERSUS

Iftikhar Ali & others
Abdul Ahad & others

In C.P.481-P/2018
In C.P.482-P/2018
...Respondent(s)

For the petitioner(s): Mr. Zahid Yousaf Qureshi, Addl. A.G.

For the respondent(s): Not represented

Date of hearing: 5.9.2018

ORDER

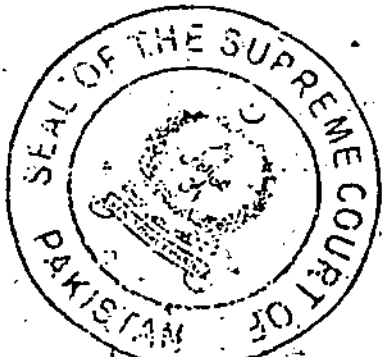
MIAN SAQIB NISAR, CJ. The only point raised is that the respondents who sought restoration on the basis of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 (*the Act*) were not working on a regular basis but against leave vacancies. Learned counsel could not satisfy us as to how that rendered the respondents disentitled to relief under the Act. We do not find any legal or factual error in the impugned judgment calling for interference by this Court. These petitions being without merit are, therefore, dismissed.

Sd/-HCJ
Sd/-J

Certified to be True Copy

AC

Senior Court Associate
Supreme Court of Pakistan
Islamabad 22/24/18



Islamabad, the
5th of September, 2018
Not Approved For Reporting
M. Asghar Memon

Case No: _____
Date of Presentation: 11/11/18
No of Words: _____
No of Folios: 3
Registration Fee Rs: _____
Copy Fee in: _____
Court Fee Stamps: 626
Date of Completion of _____ 11-11-2018
Date of delivery of Copy: 11-11-18
Compared by P. _____
Received by: M. S. Raza

12-9-18

94"
-26-

OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH MARDAN.

APPOINTMENT ORDER.

As a result of interview held on 30/4/2007 & on the recommendation of the Departmental Selection Committee, Mr. Asghar S/O Gulab-Din Vill: Gumbat Mardan is hereby appointed as Ward Orderly (BPS-2) on regular basis plus usual allowances as admissible him under the rule. He will be allowed C.P fund instead of Pension fund which will be paid by both i.e. Servant & Govt; at the ratio of 10:9% according to the Civil Servant Act 1973 and according to the 2002 contract policy & Amendment Act 2005 rules No.19 vide his S&GAD Notification No. SO-6 (E&AD) 1-13 dated 10/8/2005 and also according to the Finance Notification No.801/5-8/2006-07 /FD dated 13/12/2006 and also according to the Govt : of NWFP Establishment Department Peshawar vide his letter No, 6 (E&A/D 1-3 2007 dated 22/3/2007 received through DCO Mardan vide his letter No.4136-42 dated 9/4/2007 and posted at RHC Gumbat Mardan on the following terms and conditions:-

TERMS & CONDITION

- 1 His appointment is purely on contract basis for a probation period of one year and is liable to termination at any time without assigning any notice or reason
- 2 He will not be entitled to any TA/DA for his medical examination.
- 3 He is declared medically fit for Govt; Service.
- 4 He is liable to serve any where in the District as well as in NWFP.
- 5 He will be governed by such Service rules and order as framed by the Government from time to time for the category of government servants to which he belongs
- 6 If he intends to resign his services, he will give two months notice in advance or Deposit one-month salary in lieu thereof to Government
- 7 His probation period can be regularized after one year according to the Govt Policy if his performance is found satisfactory
- 8 If he wishes to resign his service, he should give two months notice in advance or forfeit one-month pay in lieu thereof to government.

If he accepts the above-mentioned terms and conditions, he should report to the SMO./C RHC Gumbat for duty on his own expenses within seven days after the receipts of this letter otherwise his appointment order will be considered as cancelled.

Executive District Officer
Health Mardan.
10/7/2007.

No. 9679-81 /EDO(H) Mardan Dated The
A copy is forwarded to the:-

1. District Coordination Officer Mardan
2. District Account Officer Mardan
3. Senior Medical Officer Incharge RHC Gumbat
4. Accountant EDO(H) Office Mardan
5. Mr. Asghar S/O Gulab-Din Vill: Gumbat Mardan
for information and n/action


Executive District Officer
Health Mardan

To

The HC.
RHC Gumbal,
Mardau.

-27-

Subject: Arrival report

Respectfully it is stated that I have been posted in RHC Gumbal as a ward orderly vide order No. 9679-84 / E.D.O(H) / Dated 11/7/07. Therefore kindly accept my arrival report here at RHC Gumbal, (Mardau) (Fore noon).
With thanks ..

Yours obediently,
Muhammad Asghar S/O
Gulab Din,
ward orderly
RHC Gumbal
Mardau.

Dated: 14/07/07.

Arrival report accepted
and Forwarded to EDO(H)
Mardau for n/action please.

Copy: No. 12
Dated: 14.7.2007.

Fao

Muhammad Khayra
M.T
RHC Gumbal.

"H" - 28-

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN

OFFICE ORDER

In Compliance with Peshawar High Court Peshawar Coc No.503-P/2018 in Writ petition No.2439-P/2016, coc No.510-P/2018 in W.P.No.2440-P/2016, Coc No.511 in WP No.2438-p/2016, COC No.538-P/2018 in WP No.2440-P/2016, COC No.564/2018 in W.P.No.2440-P/2016., and in the light of recommendations of Litigation Branch local office & Committee, the appointment order of the following candidate is hereby ordered against the vacant post of PST in BPS -12 (Basic plus usual allowances) as admissible under the rules under the existing policy of Provincial government in teaching cadre in Sacked employee quota on the terms and conditions given below with effect from the date of their taking overcharge.

S.No.	Name	Father Name	D.O.B	School where appointed
1	Syed Ul Akbar	Said Afzal	20-01-61	GPS NO.2 MOHIB BANDA
2	Malak Aman	Abdul Ghaffar	09-01-63	GPS NO.2 SHAMSHAD ABAD
3	Ibn Ameen	Toor Jan	14-03-65	GPS AKBAR ABAD
4	Sabz Ali Khan	Gul Shald	18-06-65	GPS JANGI DHER NO.2
5	Sher Zamin Khan	Amir Khan	07-02-66	GPS MUSLIM ABAD
6	Nasir Ahmad	Ghulam Nabi	14-04-67	GPS NO.2 BICKET GUNJ
7	Wisal Muhammad	Anwar Ullah	13-05-68	GPS DAKKI GUMBAT
8	Syed Muhammad Tufail	Syed Zakir Rahman	15-01-69	GPS MIRWAS
9	Fazal Mehmood	Muzarab Shah	03-02-69	GPS CHAMAN ABAD
10	Saeed Ur Rahman	Hafeez Ur Rahman	19-03-69	GPS BILAND KHEL
11	Muhammad Mujahid	Mumtaz Khan	12-04-69	GPS BHATI KORONA MAYAR
12	Tariq Hassan	Abdul Hasan	03-04-70	GPS SOWARYAN
13	Safdar Khan	Muhammad Amin	18-04-71	GPS NO.1 FAZAL ABAD
14	Hameed Khan	Haji Firdos Khan	20-04-71	GPS NASEER KILLI
15	Azam Khan	Muhammad Shah	04-09-71	GPS MAHO NARI
16	Muhammad Farooq	Gul Munaf	06-01-72	GPS NO.1 BALA GARHI
17	Sultan Ali	Said Sharif	06-01-72	GPS SALAK
18	Ijaz Hussain	Ghulam Nabi	01-04-72	GPS AZIZ ABAD
19	Muhammad Asghar	Gulab Din	01-05-72	GPS ZOOR MANDI
20	Amjad Ali Shah	Muhammad Nabi	05-09-72	GPS HAJI MUHAMMAD KILLI
21	Aman Ullah	Hazrat Ullah	01-10-72	GPS LANDAKI
22	Fazli Wahid	Abdur Rahman	01-02-73	GPS NO 2 TAKHT BHAI
23	Muhammad Ayaz	Muhammad Janil	09-03-74	GPS ADINA DHER
24	Shah Hussain	Zainoon Shah	01-04-74	GPS NO.1 ZAI
25	Murad Ali	Alam Zeb	10-04-74	GPS MARGHANO KILLI
26	Ahad Khan	Farukh Sak	10-05-74	GPS SHANKAR MARDAN
27	Shakir Ullah	Saif Ur Rahman	01-01-75	GPS NO.2 TAKHT BHAI
28	Shams Ur Rehman	Fazie Rehman	02-08-75	GPS NO.2 BICKET GUNJ
29	Saeed Muhammad	Awal Din	01-01-76	GPS ITEHAD COLONY
30	Siraj Muhammad	Noor Muhammad	02-02-76	GPS NO.2 GULI BAGH Sawaf Dh
31	Imran Khan	Shah Jehan	03-02-76	GPS NO.1 TAKHT BHAI
32	Bahadur Khan	Muslim Shah	14-03-76	GPS NO.2 BAGH CHAI


Signature and Stamp of District Education Officer (Male) Mardan

-29-

Shamshad	Anwar Khan	01-04-76	GPS NO.1 AFZAL ABAD
Jul Ahad	Tila Muhammad	01-01-77	GPS NO.1 MAYAR
Sohail Ahmad	Sahib Badshah	07-02-77	GPS DILAPAM KILLI
Fayz Muhammad	Wali Muhammad	13-02-77	GPS NO.1 BUT SERI
Khurshid Ali	Muhammad Yousaf	01-04-78	GPS GUNJAI
Tahir Muhammad	Noor Muhammad	04-04-78	GPS HOTI


Terms & Condition:


- 1 The appointment will be subject to the condition of decision of Supreme Court of Pakistan in the light of CPLA already pending, if the decision of the Honorable Supreme Court of Pakistan come against them, their appointment shall stand cancelled w.e.f the date of issuance.
- 2 No TA/DA etc is allowed
- 3 Charge report should be submitted to all concerned.
- 4 Their appointment is subject to the conditions that their certificates/ documents and domicile should be verified from the concerned Authority before release of their Salary in the light of Section 3 of the said Act.
- 5 They will be governed by such rules and regulations as may be issued from time to time by the Govt.
- 6 Their appointment has been made in pursuance of Khyberpaktunkhwa, Sacked employees (appointment) Act 2012, hence under section 5 of the said act, he shall not be entitled to claim any kind of seniority, promotion and other back benefits.
- 7 They will produce Health and Age Certificate from the M/S of D.H.Q Mardan.
- 8 Their appointment has been made in pursuance of Khyberpaktunkhwa, Sacked Employee Act 2012, hence under section 4 of the said Act the period during which they remained dismissed, removed or terminated from service till the date of his appointment shall have been automatically relaxed.
- 9 They should join their post within 15 days of the issuance of this Notification, in case of failure to join the post within 15 days of the issuance of this notification, his appointment will be consider as cancelled automatically and no subsequent appeal etc shall be entertained.
- 10 Their pay will be released after the verification of his documents by the SDEO/H.M/Principal concerned.
- 11 In case their/his documents are found fake/bogus on verification from issuing authority, the service of the official will be terminated and legal action be taken against him under the law.
- 12 The SDEO/Principal/H.M concerned could furnish a certificate to the effect that the candidate has joined the post or otherwise after 15 days of the issue of his posting/appointment order.
- 13 Their services can be terminated at any time in case of his performance is found unsatisfactory, in case of misconduct he will be proceeded under the rules framed from time to time by the Govt.
- 14 In case of resignation they/he will submit his one month prior notice to the Department, otherwise he will forfeit one month pay/allowances to Government Treasury.
- 15 In case of having no prescribed qualification, the same may be obtained within 03 years after issuing of this order otherwise appointment will be automatically stand cancelled.
- 16 The competent authority resumes the right to rectify the errors/omission if any noted/observed at any stage in instant order issued erroneously.


JAZ ALI KHAN
 District Education Officer
 (Male) Mardan

Enclsr.No. 7602/9 Prg:Branch Dated 09-10-2018

- Copy forwarded for information and necessary action to the:-
- 1 Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
 - 2 District Account Officer Mardan.
 - 3 Principal/H.M/SDEO(M) concerned.
 - 4 Official Concerned.


 District Education Officer
 (Male) Mardan
 9/10/18


 Sub Divil: Education
 Officer Mardan



حکومت خیبر پختونخوا

**DISTRICT HEALTH OFFICER
MARDAN (Khyber Pakhtunkhwa)**

Ph: # (09371) 9230030 Fax: # (09371) 9230283
Email: mardandho@gmail.com

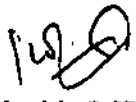
I "J"
-30-
All communications should be addressed to the District Health Officer Mardan and not to any official by name

No. 19360 /DHO Dated: 09/11/2018

NO OBJECTION CERTIFICATE

This is to certify that Mr. Muhammad Asghar s/o Gulab Din, appointed as Ward Orderly (BPS-2) vide this office order No. 9679-84/EDO(H) dated 11/07/2007 and worked till 09/10/2018 under the control of the undersigned at RHC Gumbat.

This office will have no objection of his selection/appointment for the post of PST (BPS-12) in Education Department, District Mardan.


District Health Officer
Mardan



**DISTRICT HEALTH OFFICER
MARDAN (Khyber Pakhtunkhwa)**

Ph: # (0937) 9230030 Fax: # (0937) 9230283

Email: mardandho@gmail.com


No. 1873-74 /DHO

Dated: 28/01/2019

All communications should be
addressed to the District
Health Officer Mardan and not
to any official by name

OFFICE ORDER.

The competent authority is pleased to grant lien to Mr. Muhammad Asghar S/O Gulab Din, Ward Orderly whose services in Health Department were regular on joining Education Department as PSI, Teacher as provided under fundamental rules. The lien will stand enactive until lien on the new post has not been created.


District Health Officer
Mardan.

CC

1. District Education Officer (M) Mardan.
2. The above named Official.

**District Health Officer
Mardan**

4K"

-32-

To

The Director
The Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.

Subject:- DEPARTMENTAL APPEAL

Respected Sir

- 1) That the appellant is a law abiding citizen of Islamic Republic of Pakistan and bonafide resident of District Mardan, was appointed as PTC (now PST) BPS-12 in the Elementary & Secondary Education department who was terminated from service in 1997.
- 2) That vide a letter the Elementary & Scenery Education department the DEO (Male) Mardan has withdrawn the appointment order of the appellant.
- 3) That the sacked employees including the appellant filed writ petition in the Honorable Peshawar High court wherein name of the appellant is mentioned as S No.23 of the writ petition and the aforesaid writ petition was allowed and directions were issued to the D.E.O, Mardan to appoint the appellant, however, the department filed CPLA which was dismissed.
- 4) That prior to 11/07/2007 appellant was appointed as Ward Orderly in Health Department on regular basis, the appellant has submitted arrival report for duty.
- 5) That vide office order dated 09/10/2018 the appellant was appointed as PST in light of the judgment of Apex Court and judgment of Peshawar High Court delivered in WP No 2438-P/2026.
- 6) That prior to appointment in the Elementary & Secondary Education department the appellant got NOC from the Health department and accordingly was issued to him on 09/11/2018.
- 7) That upon appointment in the Elementary & Secondary Education department the appellant was properly relieved by the Health department as such the appellant started performing his duties in the Elementary & Secondary Education department with zeal and zest and upto the entire satisfaction of the superiors.
- 8) That appellant is aggrieved from the act and action of the department, preferred the instant departmental appeal before your honor inter alia on the following grounds:-


GROUND S:

- A) That the impugned in action of the department is contrary to law and rules and in utter violation of the rules and NOC tendered by the Health department prior to appointment in Elementary & Secondary Education Department

- B) That appellant has not been treated by the department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C) That as per FR 22 and FR 26, the appellant is entitled for the counting of his previous service i.e. 11/07/2007 to 09/10/2018 for the purpose of pay fixation.
- D) That it is too astonishing to note here that once the superior courts have passed judgments for reinstatement in service of the sacked employees including the appellant and the appellant joined the Education department and still performing duties efficiently, even then the department is doing delaying tactics for fixation of pay.
- E) That the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellant as enshrined in the Constitution of Pakistan 1973.
- F) That as per Article 25, 27 and 38 e of the constitution of Pakistan 1973, the appellant is entitled for the grant of pay fixation.

It is therefore, most humbly prayed on acceptance of the instant departmental appeal, the concerned authorities/department may kindly be directed to count the previous service of the appellant rendered in the Health Department towards E&SE Department for the purpose of pay fixation w.e.f 11/07/2007 till 09/10/2018 with all back benefits.

Dated 25.06.2024

Yours Sincerely 

Muhammad Asghar,
PST (BPS-12),
GPS Saadudin Gumbat, Mardan

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal NO: _____ OF 2024

M. Asghar

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Gout

(RESPONDENT)
(DEFENDANT)

I/We M. Asghar

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. _____/_____/202



CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT
(BC-10-0853)
(15401-0705985-5)

UMAR FAROOQ MOHMAND

WALEED ADNAN

KHANZAD GUL

&

MUJEEB UR REHMAN
ADVOCATES

OFFICE:
Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)