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BEFORE THE HON'BLE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL

SERVICE APPEAL NO.1133/2024


Mastan Shah,(Appellant)

VERSUS

1. Chief Secretary, Khyber Pakhtunkhwa,
2. Secretary, Establishment & Administration Department.
3. Secretary, Finance Department.....(Respondents)

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1. Chief Secretary, Khyber Pakhtunkhwa,
2. Secretary, Establishment & Administration Department.
3. Secretary, Finance Department.....(Respondents)

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS**RESPECTFULLY SHEWETH,****PRELIMINARY OBJECTIONS:**Khyber Pakhtunkhwa
Service TribunalDistry No. 16978

Dated _____

1. That the appeal of the appellant is time barred.
2. That the appellant has got no locus standi to file the instant appeal.
3. That the Appellant has not come to this Hon'ble Court with clean hands.
4. That the Appeal is not maintainable in the present form.
5. That the appellant is estopped by his own conduct to file the instant Appeal.
6. That the Appeal has been filed with mala fide intention.
7. That the answering respondents had challenged the Judgment of the Hon'ble Tribunal in Service Appeal No. 1227/2020 before the Supreme Court of Pakistan, in which the apex Court vide order dated 25-09-2024 issued the orders that "*till the next date of hearing, execution proceedings are stayed as are the said orders which appeared directly to affect the said government officers by way of salary stoppage, etc.*" (Annex-I).

FACTS:

1. Pertains to record of the FATA Secretariat.
2. Correct to the extent that they were only placed in the Surplus Pool of Establishment & Administration Department for further adjustment in other attached departments and not in E&A Department. Rest of the para is incorrect.
3. Pertains to record.
4. Incorrect, the Judgment of the Hon'ble Service Tribunal has no relevancy with the present appeal.
5. Correct to the extent that the appellant approached the Establishment and Administration Department and the representation / request / departmental appeal of the appellant was thoroughly examined. Keeping in view all facts / findings, the Competent Authority regretted the request of the appellant on the basis of the Surplus Pool Policy, 2001 (Annex-II). Besides, his departmental appeal is time barred. Rest of the para is incorrect.
6. Incorrect, as every case has its own merits/ grounds and the appellant was not a party in the Service Appeal No.1227/2020, therefore, he cannot claim the benefit of the Order/Judgement of the Hon'ble Service Tribunal, Khyber Pakhtunkhwa, without having legal deliberations on the matter. Moreover, as the instant appellant was not a party in the

Service Appeal No.1227/2020, which had its own merits/grounds therefore, he cannot claim the execution of the order/judgment in the said Service Appeal as it is not applicable on the appellant. Reliance is placed on the judgment of apex court in 2010 PLC (C.S) 924(b) which held that “every case is to be decided on its own peculiar circumstances and fact”. Besides, it is not the right of the appellant to ask for absorption in Establishment Department. The Establishment Department has its own employees and the appellant is trying backdoor entry in Establishment Department which may violate rights of employees of Establishment Department and can lead to litigation against the department by its own employees and can also open a Pandora box for Establishment Department by paving the way for illegal absorption of 4800 project employees of Departments of ex-FATA Secretariat on the strength of Establishment Department and would also increase the burden of unnecessary litigation on the Hon’ble Service Tribunal.

7. That the appellant is not an aggrieved person, hence, has no right to file the instant appeal.

GROUNDS:

- A) That the notification / order dated 25.06.2019 is according to provincial surplus pool policy, 2001 and is not against the law, hence may not be set aside.
- B) **Incorrect.** The appellant has been treated in accordance with Article-4 & 25 of Islamic Republic of Pakistan, 1973.
- C) That the appellant wants the service of his own choice/whims which is not covered under the law. Therefore, his request is illegal and untenable.
- D) **Correct,** however, as every case has its own merits/ grounds and the appellant was not a party in the Service Appeal No.1227/2020, therefore, he cannot claim the benefit of the Order/Judgement of the Hon’ble Service Tribunal, Khyber Pakhtunkhwa, without having legal deliberations on the matter. Moreover, as the instant appellant was not a party in the Service Appeal No.1227/2020, which had its own merits/grounds therefore, he cannot claim the execution of the order/judgment in the said service as it is not applicable on the appellant. Reliance is placed on the judgment of apex court in 2010 PLC (C.S) 924(b) which held that “every case is to be decided on its own peculiar circumstances and fact”. Besides, it is not the right of the appellant to ask for absorption in Establishment Department. The Establishment Department has its own employees and the appellant is trying backdoor entry in Establishment Department which may violate rights of employees of Establishment Department and can lead to litigation against the department by its own employees and can also open a Pandora box for Establishment Department by paving the way for illegal absorption of 4000 project employees of Departments of ex-FATA Secretariat on the strength of Establishment Department and would also increase the burden of unnecessary litigation on the Hon’ble Service Tribunal.
- E) **No Comments.**

Prayer:

In view of the above submissions, it is humbly prayed that the instant service appeal is not maintainable and devoid of any merit, therefore, may graciously be either dismissed in limine with cost or adjourned sine-die.



(NADEEM JALEEM CHAUDHARY)
Chief Secretary,
KHYBER PAKHTUNKHWA.
Through,
(Ahmad Zeb)
Special Secretary, Establishment
(Respondent No. 01)



(ZULFIQAR ALI SHAH)
SECRETARY,
ESTABLISHMENT DEPARTMENT,
Through
(Ahmad Zeb)
Special Secretary, Establishment
(Respondent No. 02)



(IKRAM ULLAH KHAN)
SECRETARY,
FINANCE DEPARTMENT
(Respondent No. 03)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL

SERVICE APPEAL NO.1133/2024

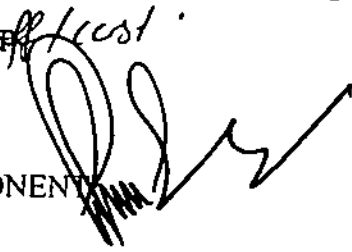
Mastan Shah,(Appellant)

VERSUS

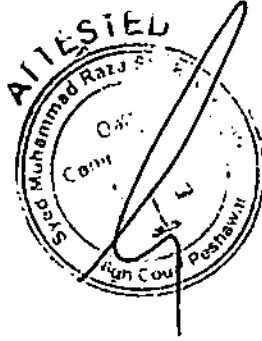
- 1. Chief Secretary, Khyber Pakhtunkhwa,
- 2. Secretary, Establishment & Administration Department.
- 3. Secretary, Finance Department.....(Respondents)

AFFIDAVIT

I, Zulfiqar Ali Shah, Secretary Establishment Department (PAS BS-21), respondent, do hereby solemnly declare that contents of the Implementation Report are correct to the best of my knowledge and record and nothing has been concealed from this Hon'ble Tribunal. It is further stated on oath that in this Implementation Report, the answering Respondent has neither been placed ex-parte nor their defense/struck off.

DEPONENT 

22 OCT 2024



CNIC No. 17201-0367995-1
Contact No. 0345 6661111



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

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AUTHORITY LETTER

Mr. Khaliq Ur Rehman, Superintendent (BPS-17), Litigation-II Section, Judicial Wing, Establishment Department, is hereby authorized to submit Joint Para-wise Comments, in the Hon'ble Services Tribunal, in Service Appeal No. 1133/2024 Titled "Mastan Shah VS Govt. of Khyber Pakhtunkhwa & Others" on behalf of the undersigned.

(NADEEM ASLAM KHUDHARY)
Chief Secretary,
KHYBER PAKHTUNKHWA.
Through,
(Ahmad Zeb)
Special Secretary, Establishment
(Respondent No. 01)

(ZULFIQAR ALI SHAH)
SECRETARY,
ESTABLISHMENT DEPARTMENT,
Through
(Ahmad Zeb)
Special Secretary, Establishment
(Respondent No. 02)

(AMER SULTAN TAREEN)
SECRETARY,
FINANCE DEPARTMENT
(Respondent No. 03)

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-III

Mr. Justice Munib Akhtar
Mr. Justice Athar Minallah

Civil Petitions No.358-P to 368-P of 2022
and
Civil Petitions No.653-P to 655-P of 2023

Government of Khyber Pakhtunkhwa
through its Chief Secretary,
Peshawar and others

...Petitioners in all cases

Versus

Hanif ur Rehman
Zubair Shah
Farooq Khan
Muhammad Amjid Ayaz
Qaiser Khan
Ashiq Hussain
Shoukat Khan
Haseeb Zeb
Muhammad Zahir Shah
Zahid Khan
Tauseef Iqbal
Altaf Hussain
Waseem Khan
Shahid Ali Shah

...Respondents

For the petitioners: Mr. Faisal Ilyas, Additional Advocate General,
Khyber Pakhtunkhwa


For the respondents: Mr. Afnan Karim Kundi, ASC
Mr. Salim Shah, ASC (Peshawar via video-link)
Mr. Ali Gohar Durrani, ASC

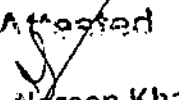
Date of hearing: 25.09.2024

ORDER

We have been briefly assisted by learned Additional Advocate General, Khyber Pakhtunkhwa as also learned counsel for the respondents and have seen the impugned judgment of the learned Service Tribunal, and in particular the operative part which is contained in para 13. Learned AAG has, in response to the reliance placed by the learned Service Tribunal, on a Finance Department's notification dated 11.06.2020 drawn our attention and places reliance on an earlier notification of the Establishment & Administration Department of the Provincial Government dated 25.06.2019 which deals specifically with the cases of the respondents and in this regard further places reliance

AM


Section Officer (Litigation)
Government of KP
Establishment Department

Attested

N.S. Noreen Khalid
Sr. Court Associate
Supreme Court of Pakistan

on a longstanding regularization and absorption policy of the provincial government.

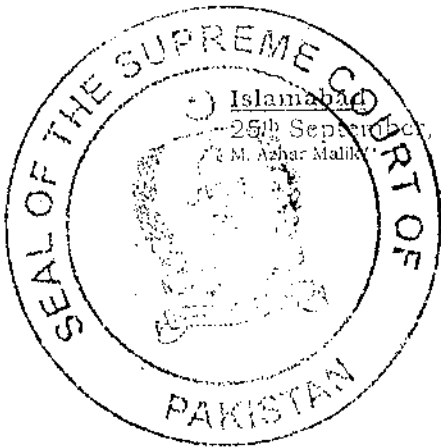
2. On the other hand, learned counsel for the respondents while submitting that the correct conclusion has been reached by the learned Service Tribunal, seeks also to place reliance on Section 11-B of the KPK Civil Servants Act, 1973 and Rule 17(3) of the KPK Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Let this matter be placed before a three-Member Bench. To come up within three weeks.

4. Learned AAG draws attention to the fact that execution proceedings are pending before the learned Service Tribunal in which it appears that some orders adverse to certain officers of the provincial government have been made. Till the next date of hearing, execution proceedings are stayed as are the said orders which appeared directly to affect the said government officers by way of salary stoppage, etc.

Sd/-J
Sd/-J

Certified to be true copy
[Signature]
Ms. Noreen Khalid
Sr. Court Associate
Supreme Court of Pakistan



CR No	12774/24	Civil/Criminal
Date of Presentation	25-09-24	
No of Words	690	
No of Pages	6	
Registration Fee	5.00	
Copy Fee	3.72	
Court Fee	8.24	
Date of Copy	25/9/24	30/9/24
Date of Stamp	2/10/24	
Compared by	<i>[Signature]</i>	
Received by	Ashar Malik	

[Signature]
Section Officer (Litigation)
Government of KP
Establishment Department

Surplus Pool Policy**Policy for declaring government servants as surplus and their subsequent absorption/ adjustment.**

I am directed to refer to the subject noted above and to say that the Provincial Government has been pleased to make the following policy for absorption/adjustment of Government Servants declared as surplus in view of the transition of District System and resultant re-structuring of the Government Organizations/Departments etc.

1. POWER WITH REGARD TO THE DECLARATION OF POSTS AS SURPLUS.

The Finance Department in consultation with Department concerned and with the approval of competent authority would decide with regard to the declaration of a particular organization, set up or individual post as redundant or inessential.

2. CREATION OF SURPLUS POOL

There will be a surplus pools cell in the E&AD. After abolition of such posts in the concerned department, duly notified by the Finance Department, equal number of posts in the corresponding basic pay scales would be created in the E&AD for the purpose of drawl of pay and allowances etc by the employees declared surplus as such.

3. IMPLEMENTATION/MONITORING CELL

For the purpose of coordination and to ensure proper and expeditious adjustment/ absorption of surplus staff, the Government of NWFP has been pleased to constitute the following committee:-

- a. Additional Secretary(Establishment) E&AD.....Chairman.
- b. Deputy Secretary LG&RD Department.....Member
- c. Deputy Secretary Finance Department.....Member
- d. Deputy Secretary(Establishment) E&AD.....Secretary


4. CRITERIA FOR DECLARING A GOVERNMENT SERVANT AS SURPLUS AS A RESULT OF ABOLITION OF POST.

Consequent upon the abolition of a post in a particular cadre of a department, the junior most employee in that cadre would be declared as surplus. Such posts should be abolished in the respective departments and created in the surplus pool as indicated in para 2 above for the purpose of drawl of pay and allowances and also for consideration for subsequent adjustment.

5. PROCEDURE FOR ADJUSTMENT OF SURPLUS EMPLOYEES

Notwithstanding anything contained in any other law, rules or regulation to the contrary, for the time being in force, the following procedure for the adjustment of surplus staff would be followed:-

- (a) Before transferring an employee to the surplus pool, he should be given option by the concerned department.


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Government of KP
Establishment Department

- (i) to proceed on retirement with normal retiring benefits under the existing rules;
- OR
- (ii) to opt for readjustment/absorption against a future vacancy of his status/BPS which may not necessarily be in his original cadre/department.

(b) Those who opt for retirement would be entitled for usual pension and gratuity according to the existing Government Servants Pension and Gratuity Rules of the Provincial Government. Those who opt for absorption/re-adjustment, a category-wise seniority list will be caused in the surplus pool for their gradual adjustment against the future vacancies as and when occurred in any of the Government Departments. These adjustments shall be on seniority-cum-fitness basis. For this purpose, the seniority list will be caused category-wise with reference to their respective dates of appointment in the cadre. In case where dates of appointment of two or more persons are the same, the person older in age shall rank senior and shall be adjusted first.

(c) Adjustment shall be made on vacant post pertaining to initial recruitment quota from those in the surplus pool in the following manner:-

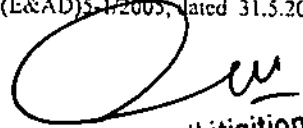
- (i) In case of occurrence of vacancies in their corresponding posts in any Government Department/ Organization, the senior most employee in the surplus pool should be adjusted first.
- (ii) In case of cross cadre adjustment, the persons with such minimum qualification as prescribed in the relevant Service Rules for the post in question shall be adjusted keeping in view their seniority position.
- (iii) If an employee possesses the basic academic qualification but lacks the professional/technical qualification, he may be adjusted against such post subject to imparting the requisite training.
- (iv) (a) The surplus employees holding such posts which fall to promotion quota in about all the Departments, he shall remain in the surplus pool till the availability of a post in the parent department.

OR

- (b) Where no equivalent post is available the civil servant may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and where such civil servant is appointed to a lower post the pay being drawn by him in the post immediately preceding his appointment to a lower post shall remain protected.
- (v) ⁸⁴In case an employee already adjusted against a lower post is declared surplus again, he shall regain his original pay scale.
- (vi) ⁸⁵ Surplus employees, who voluntarily opt, may be allowed adjustment in Autonomous/Semi-autonomous bodies with the concurrence of these bodies, where the job is pensionable. The Government will pay pension contribution for the period they rendered regular service under the Government.

⁸⁴ Sub para c (v) added to para 5 vide circular letter No.SORVI(E&AD)5-1/2005, dated 15.2.2006.

⁸⁵ Sub para c (vi) added to para 5 vide circular letter No.SORVI(E&AD)5-1/2005, dated 31.5.2006.


 Section Officer (Litigation)
 Government of KP
 Establishment Department

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- 11 16
- (d) If no suitable person is available in the surplus pool to be adjusted against the vacant/revised post, such a post would be filled up by initial recruitment manner after getting clearance from the E&AD.
- (e) ⁸⁶Surplus Staff in BPS-01 to 15 shall not be adjusted in the district other than their district of domicile.
- (f) To facilitate the adjustment of surplus staff, it will be incumbent upon the Administrative Department to take up the case with Finance Department for revival of the essential posts so retrenched as a result of general directive issued by Finance Department from time to time, giving cogent reasons/justification. Against the resultant revival/restoration of the post, the concerned Department will place a requisition on the E&AD for transferring of suitable surplus employee against the said post.
- (g) Unless the surplus employees in Class-IV are fully adjusted/ absorbed against their respective graded posts in various Government Departments/ Organizations, the general policy of the Finance Department regarding conversion of BPS-1 & 2 posts to posts in fixed salary @ Rs.2000/- per month for contractual appointed should be restricted to the above extent.


6. FIXATION OF SENIORITY

The inter-se seniority of the surplus employees after their adjustment in various Departments will be determined according to the following principles:-

- (a) In case a surplus employee could be adjusted in the respective cadre of his parent Department he shall regain his original seniority in that cadre.
- (b) In case, however, he is adjusted in his respective cadre but in a Department other than his parent Department, he shall be placed at the bottom of seniority list of that cadre.
- (c) In case of his adjustment against a post in a corresponding basic pay scale with different designation/nomenclature of the post, either in his parent Department or in any other department, he will be placed at the bottom of seniority list.
- (d) ⁸⁷In case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of that cadre, so as to save him from being rendered surplus again & becoming junior to his juniors.

⁸⁶ (3) Sub para (c) added to para 5 vide circular letter No.SORVI/E&AD/5-1/2005, dated 19.1.2007.

⁸⁷ Sub para d added to para 6 vide circular letter No. SORVI(E&AD)5-1/2005, dated 15.2.2006


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Government of KP
Establishment Department

~~Annex C~~
12 17

NOTE:-

In case the officer/official declines to be adjusted/absorbed in the above manner in accordance with the priority fixed as per his seniority in the integrated list, he shall lose the facility/right of adjustment/absorption and would be required to opt for pre-mature retirement from Government service

Provided that if he does not fulfill the requisite qualifying service for premature retirement he may be compulsorily retired from service by the competent authority.

7. COMPETENT AUTHORITY TO NOTIFY/ORDER ADJUSTMENT/ABSORPTION.

After the transfer of services of surplus employee to a Department for adjustment/absorption against a vacant/revived post, the Competent Authority to notify/order his absorption/adjustment, shall be the respective appointing authority under the relevant rules for the post.


Provided that the decision of adjustment/absorption of surplus employees by the E&AD shall be binding upon the respective appointing authorities.

(Authority: letter NO.SOR-I(E&AD)1-200/98, Dated 8th June, 2001)

Decision of the meeting of chief secretary with district coordination officers, on the issue of surplus pool.

I am directed to refer to the subject noted above and to say that a meeting was held on 4.8.2001 in the Cabinet Room Civil Secretariat under the Chairman of Chief Secretary, NWFP to discuss the issues relating to adjustment of employees rendered surplus due to restructuring of the Government Departments and Devolution of Power Plan, 2000. The following decisions were taken in the said meeting:-

- i) Administrative Departments may reconsider adjustments already made against the available posts at District level. The guiding principle for reviewing the adjustment would be aimed at avoiding dislocation of the employees to the possible extent.
- ii) The DCOs will maintain the surplus pool of the employees, declared surplus in the District cadres and their subsequent adjustment against the vacant posts (District Cadres). It must be ensured that only the junior most employees in the scale in the cadre be declared surplus. At the stage of adjustment of Class-IV posts, the senior most be adjusted first. However, for the other posts besides seniority, the background of the individual and requisite experience of the posts shall be kept in view. The surplus pool of Divisional cadres be maintained by the DCOs posted at divisional headquarters.
- iii) The surplus pool of the employees of the Head Offices be maintained by the Head of the concerned Attached Department. Declaring employees surplus and their subsequent adjustment be made strictly according to the spirit of the policy of the Provincial Government issued vide circular letter No.SORI (S&GAD)1-200/98, dated 8.6.2001.


Section Officer (Litigation)
Government of KP
Establishment Department

- iv) The surplus pool of the Secretariat be maintained by the Establishment Department in consultation with the Department concerned.
- v) The salaries of the surplus employees be disbursed through their relevant offices for the time being.
- vi) It was also felt that the sanctioned staff for the office of DCO and other offices is not sufficient. The ministerial staff has no appropriate tiers for the purpose of control and promotion i.e. Senior Clerk and Superintendent etc. The post of Chowkidar/ Sweeper does not exist in the office of DCOs and other offices. Even the other required staff does not meet the bare minimum. The DCOs will, therefore, forward the required proposal for consideration of Finance Department. The budget for the same can be arranged from the available savings due to phasing away of magistracy etc.
- vii) The LR&RD Department may reconsider the adjustment of the employees of the Local Council Board, so as to find out whether any such employees have been adjusted against the regular Government posts funded from the Provincial Consolidated Fund.
- viii) For adjustment of regular Class-IV (BS 1- 4) Government Servant in surplus pool, Finance Department may consider conversion of fixed pay/ contract posts into regular.

2. It is requested that decisions taken during the meeting held on 4.8.2001 may kindly be implemented by all concerned in letter and spirit and compliance report be furnished accordingly.

(Authority; letter NO.SOR-I(S&GAD)I-200/98 (Vol.I), Dated 13th August, 2001)

**Section Officer (Litigation)
Government of KP
Establishment Department**

14
**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**



AUTHORITY LETTER

The undersigned hereby authorized Special Secretary (Establishment), Establishment Department to sign parawise comments in Service Appeals, reply in Execution Petitions, Implementation reports, objection Petitions, Restoration Appeals, application under section 12(2) CPC and other documents necessary for submission before the Hon'ble Khyber Pakhtunkhwa Service Tribunal on my behalf.

**CHIEF SECRETARY,
KHYBER PAKHTUNKHWA.**

**CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa**

15

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**



AUTHORITY LETTER

The undersigned hereby authorized Special Secretary (Establishment), Establishment Department to sign parawise comments in Service Appeals, reply in Execution Petitions, Implementation reports, objection Petitions, Restoration Appeals, application under section 12(2) CPC and other documents necessary for submission before the Hon'ble Khyber Pakhtunkhwa Service Tribunal on my behalf.

SECRETARY

**Establishment Department
Khyber Pakhtunkhwa
ESTABLISHMENT
Establishment & Administration
Department.**