FORM OF ORDER SHEET

Court of _____

Appeal No. 2116/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/10/2024	The appeal of Mr. Zeb ul Haq resubmitted today by Mr. Muhammad Arif Jan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 31.10.2024. Parcha Peshi given to counsel for the appellant. By order of the Chairman REGISTRAR

This is an appeal filed by Mr. Zebul Haq today on 30.08.2024 against the order dated 24.08.2022 against which he filed Writ Petition before the Hon'ble Peshawar High Court Peshawar and the Hon'ble High Court vide its order dated 27.6.2024 treated the Writ Petition as departmental appeal/ representation for decision. The period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiencies.

1- Address of appellant is incomplete be completed according to rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974.
2- Appeal has not been flagged/marked with annexures marks.
3- Annexures of the appeal are unattested.
4- Copy of impugned termination order dated 24.08.2022 in r/o appellant mentioned in para-6 of the memo of appeal is not attached with the appeal be placed on it.
5- Copy of W.P in respect of appellant is not attached with the appeal be placed on it.

No. 705 /Inst./2024/KPST

Dt. 12/9/2024.

OFFICE ASSISTANT
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Muhammad Arif Jan Adv.
High Court Peshawar.

R/Sir,
Resubmitted after
removal of objection.
24.10.24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 2416 **/2024**

ZebUlHaq..... Appellant

VERSUS

Secretary Education and Others.....Respondents

I N D E X

S#	Description of documents.	Annexure	Pages
1.	Check list		A
2.	Memo of Appeal.		1-7
3.	Affidavit.		8
4.	Addresses of the parties		9
5.	Copy of judgment dated 28.01.2022	A	10-18
6.	Copy of minutes meeting dated 12.08.2022	B	19
7.	Copies of terminations order along with other necessary documents	C	20-23
8.	Copy of order/judgment dated 27.06.2024	D	24-26
9.	Wakalatnama		27

Appellant

Through

Muhammad Arif Jan

Advocate High Court

Office No-212, New Qatar Hotel, Sikandar Town, G.T Road, Peshawar

Cell: 0333-2212213

BEFORE THEKHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 2116 /2024

ZebUlHaqEx-PST R/o Mingora District Swat.

..... Appellant

VERSUS

1. **Secretary Education** (Elementary and Secondary Education), Govt. of Khyber Pakhtunkhwa at Peshawar.

2. **Director Education** (Elementary and Secondary Education), Khyber Pakhtunkhwa at Peshawar.

3. **District Education Officer(M)** District, Swat.

..... Respondents

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

Respectfully Sheweth;

Appellant very humbly pleads to invoke the jurisdiction of this Honorable Tribunal, as follow;

Facts leading to this appeal:

1. That initially the Appellant was appointed after observing all legal and codle formalities as PST in Education Department, Khyber Pakhtunkhwa and was posted against hisrespective post.

2. That after submitting of arrival report, the Appellant was satisfactorily and devotedly performing his duties for years to the entire satisfaction of his superiors, but with the change of political government, the successor government out of sheer reprisal and to settle scores with the previous

government, terminated the services of the Appellant.

3. That in the year, 2010 and 2012, the Sacked Employees (Reinstatement Act) of Federal Government and Provincial Government of Khyber Pakhtunkhwa were enacted and in pursuant to the said legislation, a number of employees were reinstated, however the Appellant along with others approached to the Hon'ble High Court Peshawar and some were before Khyber Pakhtunkhwa Service Tribunal by filing different writ petitions/Appeals for their reinstatement which were allowed accordingly.

4. That the respondents department impugned the orders/judgments of the Hon'ble High Court Peshawar and Khyber Pakhtunkhwa Service Tribunal before the august Supreme Court of Pakistan and resultantly the appeals of respondents were allowed vide judgment dated 28-01-2022, where after subsequent Review petition was also dismissed. It is pertinent to mentioned here that the case of **"Muhammad Afzal vs Secretary Establishment"** reported in **2021 SCMR page-1569** was reviewed in the case of **"HidayatUllah and others vs Federation of Pakistan" reported in 2022 SCMR page-1691** though the same review petition was dismissed by the august Supreme Court of Pakistan however certain relief was granted to the beneficiary employees which is reproduced as under;

The beneficiary employees who were holding posts for which noaptitude, scholastic or skill test was required at the time ofinitial termination (01-11-1996 to 12-10-1999) shall be restoredto the same posts they were holding when they were terminatedby the judgment under review;

***(i)* All other beneficiary employees who were holding posts on theirinitial termination (01-11-1996 to 12-10-1999) which requiredthe passing of**

(3)

an aptitude, scholastic or skill test shall berestored to the posts, on the same terms and conditions, theywere occupying on the date of their initial termination.

However, to remain appointed on these posts and to uphold theprinciples of merit, non-discrimination, transparency andfairness expected in the process of appointment to publicinstitutions these beneficiary employees shall have to undergothe relevant test, applicable to their posts, conducted by theFederal Public Service Commission within 3 months from thedate of receipt of this judgment

(Copy of Judgment dated 28.01.2022 is attached as ANNEX-A)

5. That in light of the judgment of the august Supreme Court of Pakistan a meeting regarding the appointments of sacked employees of E & SE Department Khyber Pakhtunkhwa Peshawar was held on 12.08.2022 wherein the following decisions were made;

"a). The appointment order already issue by the DEO's concerned wherein, the condition of acquiring the prescribed qualification/training within next three years from the date of their respective appointments against various teaching cadres posts in the department was mentioned if not fulfilled by the employees within the prescribed stipulated period of three years then, their appointment order/notification are liable to be withdrawn with immediate effect.

b). All the Districts Education Officers (M/F) are directed to implement immediately the judgment dated 28.01.2022 rendered in civil appeal No-759/2022 and others".

(11)

(Copy of minutes meeting dated 12.08.2022 is attached as ANNEX-B)

6. That in pursuance of the Judgment of the Hon'ble Supreme Court of Pakistan, respondents terminated the Appellant along with others from their services on 24-08-2022, however later on the competent authority concerned kept held in abeyance the termination orders mostly of their employees and allowed them to keep and continue their respective duties, but the Appellant having prescribed qualifications/trainings against the respective post have been deprived from service and discriminated too by way of withdrawing the re-instatement order.

   (Copies of termination order along with other necessary documents are attached as ANNEX-C).

7. That the Appellantalong with others invoked the Constitutional jurisdiction of Peshawar High Court Peshawar in W.P No- 2080-P/2024 which was disposed of vide order/judgment dated 27.06.2024 with the direction;

   "Accordingly, we treat this petition as an appeal/representation of the petitioners and; direct the office to send it to the worthy Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education, Peshawar (Respondent No-2) by retaining a copy thereof for record for its decision in accordance with law through a speaking order within 30 working days positively, after receipt of certified copy of this order by affording due opportunity of hearing to the petitioners in the larger interest of justice".

   (Copy of order/judgment dated 27.06.2024 is attached as ANNEX-D).

8. That the appellant himself provided the attested copy of the judgment ibid to respondent No-1 and

also visited the office but neither, the appellant have been heard not decided the representation in accordance with law till date, thus the appellantfeeling gravely aggrieved and dis-satisfied of the illegal and unlawful discriminated acts, commission and omission of respondents while having no other alternate or efficacious remedy, approach to this Honorable Tribunal on following grounds and reasons amongst others:

Grounds warranting this Service appeal:

Impugned acts and omissions of the respondents in respect of termination of the appellant (hereinafter impugned on basis of discrimination) are liable to be declared discriminatory, illegal,unlawful, without lawful authority and of no legal effect:

A. Because the respondents have not treated the appellant in accordance with law, rules and policy on subject and acted in violation of Articles 4 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully terminated theappellantwhich is unjust and unfair, hence not sustainable in the eyes of law.

B. Because the appellant is fulfilling the condition of acquiring the prescribed qualification/training against his respective posts/cadre in light of minutes of the meeting dated 12-08-2022 but even then the appellant has been terminated by way of implementing the condition-b wrongly of the minutes of the meeting ibid.

C. Because the other colleagues of the appellant on the same pedestal are serving and performing their duties regularly with all perks and privileges, however the appellant has not only been discriminated but also deprived of his service and service benefits/emoluments.

D. Because this conduct of the Respondents have not only enhanced the agonies of the appellant, but it is also an example of misconduct and mismanagement

on the part of the Respondents which needs to be judicially handled and curbed, in order to save the poor appellant and provide him an opportunity of service and with the enjoyment of all service benefits with all fundamental rights, which are provided in the Constitution of Islamic Republic of Pakistan 1973.

E. Because the appellant belongs to poor families, having minor children and are the only person to earn livelihood for their families, so the illegal and unlawful act of the respondents has fallen the appellant as well as his family in a great financial crises, so needs interferences of this Hon'ble Court on humanitarian grounds too.

F. Because unless an order of the setting aside of the termination of the appellant is not issued and the appellant is not reinstated, serious miscarriage of justice would be cause to the appellant and would be suffer by the orders of the respondents which are fanciful, suffering from patent perversity and material irregularity, needs correction from this Hon'ble Tribunal.

G. Because the appellant had been made victim of discrimination without any just and reasonable cause thereby offending the fundamental right of the appellant as provided by the Constitution of, 1973.

H. Because the appellant in order to seek justice has been running from pillar to post but of no avail and therefore, finally had been decided to approach this Hon'ble Tribunal for seeking justice as no other adequate and efficacious remedy available to him.

I. That any other relief, not specifically prayed, may also graciously be granted if appears just, necessary and appropriate.

IT IS THEREFORE VERY HUMBLY PRAYED that on acceptance of this appeal, this Hon'ble

Tribunal may very magnanimously hold declare and order that;

i. **Appellant isentitle for reinstatement into service with all other service emoluments in light of condition (a) of minutes of the meeting dated 12.08.2022 as the appellant has been discriminated.**

ii. **Declare the impugned termination order of the appellant is illegal and unlawful and is to be set aside being based on discrimination as similarly placed employees/colleagues of the appellant were allowed to continue their services in the same department.**

iii. **Extend the relief granted in case titled "HidayatUllah and others vs Federation of Pakistan" reported in 2022 SCMR page-1691 to the appellant.**

iv. **Cost throughout.**

v. **Any other relief not specifically asked for, may also be grant to the appellant if appear just, necessary and appropriate.**

APPELLANT

Through

Muhammad Arif Jan

Advocate Peshawar

(8)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____/2024

ZebUl Haq..... Appellant

VERSUS

Secretary Education and Others.....Respondents

AFFIDAVIT

I, **ZebUlHaq**Ex-PST R/o Mingora District Swatdo hereby affirm and declare on oath that the contents of accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

ATTSTED

ATTESTED

(9)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____/2024

ZebUlHaq..... Appellant

VERSUS

Secretary Education and Others.....Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

ZebUlHaqEx-PST R/o Mingora District Swat

RESPONDENTS:

1. **Secretary Education**
   (Elementary and Secondary Education), Govt. of Khyber Pakhtunkhwa at Peshawar.
2. **Director Education**
   (Elementary and Secondary Education), Khyber Pakhtunkhwa at Peshawar.
3. **District Education Officer(M)** District, Swat.

Appellant

Through

Muhammad Arif Jan

Advocate High Court

(10)

Annex-'A'

2022 S C M R 472

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, C.J., Mazhar Alam Khan Miankhel and Sayyed Mazahar Ali Akbar Naqvi, JJ

GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary, Peshawar and others---Appellants

Versus

INTIZAR ALI and others---Respondents

Civil Appeals Nos. 759/2020, 1448/2016, 1483/2019, 760/2020, 761/2020, 1213/2020 to 1230/2020, decided on 28th January, 2022.

(On appeal from the judgments/orders dated 20.06.2017, 18.09.2015, 27.10.2016, 27.03.2018, 14.03.2016, 07.04.2016, 11.09.2017, 19.09.2017, 16.10.2017, 18.04.2018, 03.05.2018, 17.05.2018, 24.05.2018, 18.10.2018, 11.10.2018, 04.07.2017, 20.11.2018, 15.05.2019 and 07.03.2019 of the Peshawar High Court, Peshawar; Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat; KPK Service Tribunal, Peshawar; and Peshawar High Court, D.I. Khan Bench passed in Writ Petitions Nos. 1714-P/2015, 3592-P/2014, 3909-P/2015, 602-P/2015 and 4814-P/2017; Civil Revision No. 493-P/2015; Writ Petitions Nos. 1851-P/2014, 3245-P/2015, 429-M/2014 and 3449-P/2014; Appeals Nos. 62/2020, 63/2020 and 326/2015; and Writ Petitions Nos. 778-M/2017, 1678-P/2016, 3452-P/2017, 4675-P/2017, 2446-P/2016, 3315-P/2018, 667-D/2016, 2096-P/2016, 2389-P/2018 and 965-P/2014)

(a) Khyber Pakhtunkhwa Sacked Employees (Appointment) Act (XVII of 2012)---

---S. 7 & Preamble--- Sacked employees--- Pre-requisites for reinstatement under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 ('the 2012 Act')---To become eligible to get the relief of reinstatement, one has to fulfill (all) three conditions; first, the aggrieved person should be a regular employee; second, he must have the requisite qualification and experience for the post during the period from 01-11-1993 to 30-11-1996 and not later, and, third, he was dismissed, removed or terminated from service during the period from 01-11-1996 to 31-12-1998---Temporary/ad-hoc/contract employees have no vested right to claim reinstatement under the 2012 Act.

(b) Civil service---

---Temporary/contract/project employees---Such employees had no vested right to claim regularization.

PTCL v. Muhammad Samiullah 2021 SCMR 998 ref.

(c) Interpretation of statutes---

---Natural and ordinary meaning of words---When meaning of a statute is clear and plain language of statute requires no other interpretation then intention of Legislature conveyed through such language has to be given full effect---Plain words must be expounded in their natural and ordinary sense---Intention of the Legislature is primarily to be gathered from language used and attention has to be paid to what has been said and not to that what has not been said.

Government of Khyber Pakhtunkhwa v. Abdul Manan 2021 SCMR 1871 ref.

(d) Words and phrases---

---'Ultra vires' and 'illegal'---Distinction---Term 'ultra vires' literally means "beyond powers" or "lack of power"; it signifies a concept distinct from "illegality"---In the loose or the widest sense, everything that is not warranted by law is illegal but in its proper or strict connotation "illegal" refers to that quality which makes the act itself contrary to law.

(e) Constitution of Pakistan---

---Arts. 185 & 199---Factual controversies---Superior Courts can not engage in factual controversies---Matters pertaining to factual controversy can only be resolved after thorough inquiry and recording of evidence in a civil court. [p. 485] G

Fateh Yam Pvt. Ltd. v. Commissioner Inland Revenue 2021 SCMR 1133 ref.

(f) Constitution of Pakistan---

---Arts. 4 & 9---Civil service---Government departments---Practice of not formulating statutory rules of service---Such practice was deprecated by the Supreme Court.

ATTESTED

In a number of cases the statutory departments, due to one reason or the other, do not formulate statutory rules of service, which in other words is defiance of service structure, which invariably affects the sanctity of the service. Framing of statutory rules of service is warranted and necessary as per law. It is invariably true that an employee unless given a peace of mind cannot perform his/her functions effectively and properly. The premise behind formulation of statutory rules of service is gauged from Articles 4 and 9 of the Constitution. An employee who derives his/her employment by virtue of an act or statute must know the contours of his employment and those niceties of the said employment must be backed by statutory formation. Unless rules are not framed statutorily it is against the very fundamental/structured employment as it must be guaranteed appropriately as per notions of the law and equity derived from the Constitution.

Shumail Butt, Advocate General, Khyber Pakhtunkhwa, Barrister Qasim Wadood, Additional A.G., Khyber Pakhtunkhwa, Atif Ali Khan, Additional A.G., Khyber Pakhtunkhwa, Zahid Yousaf Qureshi, Additional A.G., Khyber Pakhtunkhwa, Iftikhar Ghani, DEO (Male) Bunir, Muhammad Aslam, S. O. (Litigation), Fazle Khaliq, Litigation Officer/DEO (Male) Swat, Fazal Rehman, Principle/DEO Swat Ms. Roheen Naz, ADO (Legal)/DEO(F) Nowshera, Malik Muhammad Ali, S. O. C&W Department, Khyber Pakhtunkhwa and Jehanzeb Khan, SDO/XEN C&W for Appellants (in all cases).

Sh. Riaz-ul-Haque, Advocate Supreme Court for Respondents (in C.As.759/2020, 1483/2019, 760, 1214, 1215, 1217, 1218, 1220 and 1223/2020).

Fazal Shah, Advocate Supreme Court for Respondents Nos.1 and 2 (in C.A. 1448/2016), Respondents Nos.2 to 4, 8, 9, 11 and 12 (in C.A.1213/2020) and Respondents (in C.A.1229/2020).

Abdul Munim Khan, Advocate Supreme Court for Respondents (in C.A.761/2020).

Barrister Umer Aslam Khan, Advocate Supreme Court for Respondent No.1 (in C.A. 1213/2020).

Taufiq Asif, Advocate Supreme Court for Respondents (in C.A.1221/2020).

Misbah Ullah Khan, Advocate Supreme Court for Respondents (in C.A.1222/2020).

Hafiz S. A. Rehman, Senior Advocate Supreme Court for Respondents Nos.1, 3 to 8 (in C.A.1225/2020).

Saleem Ullah Ranazai, Advocate Supreme Court for Respondents (in C.A.1227/2020).

Chaudhry Muhammad Shuaib, Advocate Supreme Court for Respondent No.2 (in C.A.1228/2020).

Fida Gul, Advocate Supreme Court for Respondents (in C.A.1230/2020).

Nemo for Respondents Nos. 5 to 7 and 10 (in C.A.1213/2020), Respondents in C.As.1216/2020, 1219/2020, 1224/2020 and 1226/2020), Respondent No.2 (in C.A.1225/2020 and Respondents Nos.1 and 3 (in C.A.1228/2020).

Date of hearing: 3rd June, 2021.

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.---Through these appeals by leave of the Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have called in question the judgments of the learned Peshawar High Court and KPK Service Tribunal whereby the Writ Petitions, Service Appeals and Civil Revision filed by the respondents were allowed and they were re-instated in service under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.

2. Briefly stated the facts of the matter are that the respondents were appointed on different posts in various departments of Government of KPK on various dates in the years 1995 and 1996 on temporary/ fixed/ad-hoc basis. Later on their services were terminated by the appellants vide different orders passed in the years 1996 and 1997 on the ground that they lack requisite qualification and experience. In the year 2010, the Federal Government enacted the Sacked Employees (Re-instatement) Act, 2010 for the purpose of providing relief to persons who were appointed in a corporation/autonomous/semi-autonomous bodies or in Government service during the period from 01.11.1993 to 30.11.1996 and were dismissed, removed or terminated from service during the period from 01.11.1996 to 12.10.1999. Following the Federal Government, the provincial Government of KPK also promulgated the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 for reinstatement of sacked employees, who were dismissed, removed or terminated from service during the period from 1st day of November, 1996 to 31st day of December, 1998. Pursuant to the said legislation, a number of employees were reinstated but the respondents were not given the said relief, which led to their filing of writ petitions, service appeals and Civil Revision arising out of a suit before the Peshawar High Court and KPK Service Tribunal, which have been allowed vide impugned judgments mainly on the ground that as the similarly placed employees have been reinstated, the respondents are also entitled for the same relief. Hence, these appeals by leave of the Court.

3. Learned Advocate General, KPK, contended that the respondents were temporary employees and the relief sought for under Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was only meant for those employees who were appointed on regular basis having the prescribed qualification and experience for the respective post during the period from 01.11.1993 to 30.11.1996 and were dismissed, removed or terminated from service during the period from 01.11.1996 to 31.12.1998. Contends that even the respondents did not have the requisite qualification and experience at the time of their first appointment and they obtained the same after their termination from service. Contends that the learned High Court and the Tribunal in the impugned judgments has acknowledged this fact that the respondents did not have the requisite qualification yet they were ordered to be reinstated. Contends that under section 7 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, to avail the benefit of reinstatement an employee had to file an application within thirty days of the commencement of the Act i.e. 20.09.2012 but none of the respondents have fulfilled that condition. Contends that this Court has held that the requirement of section 7 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 is mandatory in nature and if an employee has not complied with the spirit of said provision, no relief can be given to him. Lastly contends that in such circumstances, the impugned judgments are liable to be set aside.

4. Hafiz S.A. Rehman, learned Sr. ASC for respondents Nos. 1, 3 to 8 in C.A. 1225/2020 contended that minutes of meeting of the department held on 02.09.2015 show that all the respondents had applied within the stipulated period of time. Contends that factual controversy is involved in the present appeals as the disputed questions whether the respondents applied within the 30 days cutoff period after the commencement of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 and whether they had the requisite qualification/experience having assailed in the present appeals, therefore, the present appeals are not maintainable. Contends that no question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan is involved in the present appeals, therefore, they are liable to be dismissed. Contends that the learned High Court has not passed any injunctive order and has only remanded the cases back to the department for reconsideration on the basis of factual controversy. Contends that the respondents were regular employees and the term 'temporary' only refers to those employees who are on probation.

5. Sh. Riaz-ul-Haque, learned ASC for the respondents in C.As. Nos. 759/2020, 1483/2019, 760, 1214, 1215, 1217, 1218, 1220 and 1223/2020 contended that the onus to prove that whether the respondents applied within 30 days cut-off period after the commencement of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 and whether they had the requisite qualification/experience is burdened with the appellant (Government) and they never raised this very issue before the High Court. On our specific query, he admitted that he does not know the date as to when the respondents had applied for re-employment in pursuance of section 7 of the said Act.

6. In response to our query as to whether the respondents were regular employees having requisite qualification/experience and had applied within 30 days, Mr. Fazal Shah, learned ASC for respondents Nos.1 and 2 in C.A. 1448/2016, respondents Nos.2 to 4, 8, 9, 11 and 12 in C.A.1213/2020 and respondents in C.A.1229/2020 admitted that the respondents were appointed on temporary/ad hoc basis. However, he kept on insisting that the respondents were duly qualified and possessed requisite qualification, therefore, the impugned judgments may be upheld.

7. Barrister Umer Aslam Khan, learned ASC for respondent No. 1 in C.A. 1213/2019 stated that the respondent had equivalent to intermediate qualification but did not have the sanad/certificate at the time of appointment, which was procured later on in the year 2011. He supported the impugned judgments by stating that the respondent possesses all the requisite qualification/experience, therefore, he deserves to be reinstated.

ATTESTED

8. Mr. Saleemullah Ranazai, learned ASC for the respondent in Civil Appeal No. 1227/2019 contended that the respondent was a regular employee and was wrongly terminated from service. Contends that after the promulgation of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, the respondent had filed the application within the prescribed period of 30 days. He further contends that he was holding the degree of Bachelor of Arts at that time whereas the required qualification was matriculation.

9. Mr. Fida Gul, learned counsel for the respondent in Civil Appeal No. 1230/2019 argued that both the respondents were appointed in Khyber Agency at the relevant time. Contends they had filed the application for statutory benefit/relief well within time and they had the requisite qualification/experience.

10. Messrs Abdul Munim Khan, Taufiq Asif, Misbahullah Khan, Ch. Muhammad Shoaib learned ASCs have adopted the arguments of Hafiz S.A. Rehman, learned Sr. ASC.

11. Having heard the learned counsel for the parties at extensive length, the questions which crop up for our consideration are (i) whether the respondents were regular employees of the Government of KPK, (ii) whether they had the requisite qualification/experience at the time of appointment, (iii) whether they had applied for reinstatement within the cutoff period of 30 days as stipulated in section 7 of the Act and (iv) what is the effect of our judgment passed in Muhammad Afzal v. Secretary Establishment (2021 SCMR 1569) whereby the Sacked Employees (Re-instatement) Act, 2010 enacted by Federal Government for similarly placed employees of Federal Government was held ultra vires the Constitution.

12. Firstly, we will take up the issue as to whether the respondents were 'regular employees' and had the requisite qualification/experience at the time of appointment. Before proceeding with this issue, it would be advantageous to reproduce the very Preamble of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, which reads as under: -

> "Whereas it is expedient 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."

13. The intent behind the promulgation of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 clearly reflects that it was a legislation promulgated to benefit those regular employees sacked without any plausible justification enabling them to avail the same so that they may be accommodated within the parameters of legal attire. A bare reading of the Preamble of the Act shows that it was enacted to give relief to those sacked employees, who were appointed on 'regular basis' to a civil post in the Province of Khyber Pakhtunkhwa while possessing the prescribed qualification and experience 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. Therefore, keeping in view the intent of the Legislature, it can safely be said that to become eligible to get the relief of reinstatement, one has to fulfill three conditions i.e. (i) the aggrieved person should be a regular employee, (ii) he must have the requisite qualification and experience for the post during the period from 01.11.1993 to 30.11.1996 and not later, and (iii) he was dismissed, removed or terminated from service during the period from 01.11.1996 to 31.12.1998. At the time of hearing of these appeals, we had directed the learned Advocate General so also the respondents to provide us a chart

containing dates of appointments of the respondents, whether they were regular employees or not, their qualifications/experience at the time of appointment, dates of termination, dismissal or removal from service and the dates on which they had filed applications to avail the benefit under section 7 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. The requisite data was provided to us through various C.M.As. We have minutely looked at the credentials of each of the respondent and found that except (respondent Asmatullah in Civil Appeal No. 1227/2020) none of the respondents was appointed on regular basis. Although a very few, like a drop in a bucket, had the requisite qualification/experience, had applied within thirty days, the cutoff period as mandated but one thing is common in all of them, that they all were daily wagers/temporary/fixed employees. The foremost and mandatory condition to become eligible to get the relief under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was that the aggrieved person should be a regular employee stricto sensu whereas all the respondents do not meet the said statutory requirement. If an employee does not meet the mandatory condition to become eligible for reinstatement that he should be a regular employee then even if he was dismissed/removed/terminated from service, he cannot get the relief of reinstatement because he has not fulfilled the basic requirement of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. Admittedly, the respondents were temporary/fixed/adhoc/contract employees. The temporary employees have no vested right to claim reinstatement/ regularization. This Court in a number of cases has held that temporary/contract/project employees have no vested right to claim regularization. The direction for regularization, absorption or permanent continuance cannot be issued unless the employee claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules and against the sanctioned vacant posts, which admittedly is not the case before us. This Court in the case of PTCL v. Muhammad Samiullah (2021 SCMR 998) has categorically held that ad-hoc, temporary or contract employee has no vested right of regularization and this type of appointment does not create any vested right of regularization in favour of the appointee. In an unreported judgment dated 11.10.2018 passed in Civil Petitions Nos. 210 and 300 of 2017, this Court has candidly held that the sacked employee, as defined in the Act, required to be regular employee to avail the benefit of reinstatement and if an employee is not a regular employee his case does not fall within the ambit of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. So far as the argument of learned counsel for the respondents Hafiz S.A. Rehman that the respondents were regular employees and the term 'temporary' refers to those employees who are on probation is concerned, the same is misconceived. Permanent or regular employment is one where there is no defined employment date except date of superannuation whereas temporary position is one that has a defined/limited duration of employment with specified date unless it is extended. If a person is employed against a permanent vacancy, there is specifically mentioned in his appointment letter that he will be kept on probation for a specific period of time but in the case of a temporary employee it is mentioned that he is employed on temporary basis either for a cutoff period of time or for the completion of a certain period either related to a project or assignment. The appointment letters of the respondents clearly show that they were appointed on temporary/fixed basis and not on regular basis.

14. Now we would advert to the second question as to whether the respondents had the requisite qualification/experience at the time of appointment. Although, when none of the respondents was a regular employee, the question whether they had the requisite qualification/ experience at the time of appointment or not looses its significance but despite that we have carefully perused the particulars of each of the respondents and found that except 2/3 respondents none had the requisite qualification and experience at the time of appointment. Even otherwise, as discussed above, if an employee had the requisite qualification/ experience but he was employed on adhoc/temporary/daily wages, he could not claim reinstatement under the Khyber Pakhtunkhwa Sacked Employees

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(Appointment) Act, 2012.

15. The third question is whether the respondents had applied for reinstatement within the cutoff period of 30 days as stipulated in section 7 after the commencement of the Act, 2012. Under section 7(1) of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, to avail the benefit of reinstatement/ re-appointment, an employee had to file an application within thirty days of the commencement of the Act i.e. 20.09.2012. Before discussing this aspect of the matter, it would be advantageous to reproduce the said Section for ready reference. It reads as under:-

> "7. Procedure for appointment.—(1) A sacked employee, may file an application, to the concerned Department within a period of thirty days from the date of commencement of this Act, for his appointment in the said Department:—
>
> Provided that no application for appointment received after the due date shall be entertained."

16. In an unreported judgment dated 23.02.2021 passed in Civil Appeal No. 967/2020, the respondent was appointed as C.T. Teacher on 25.02.1996 and was terminated from service on 13.02.1997. After the promulgation of KPK Sacked Employees (Appointment) Act, 2012, the respondent submitted an application for his reinstatement, which did not find favour with the department and ultimately the matter came to this Court wherein it has been found that neither the respondent was a regular employee nor he had applied for reinstatement within thirty days within the purview of Section 7 of the Act. It would be in fitness of things to reproduce the relevant paragraphs of the judgment of this Court, which read as under:-

> "Section 7 of the Act of 2012, requires an employee to make an application to the concerned department within a period of thirty days from the date of commencement of the Act of 2012. The respondent did not apply under the Act of 2012 for his reinstatement rather on the basis that some of the employees were granted benefits of the Act of 2012, he also filed a writ petition taking chance of his reinstatement. The very question that whether the respondent applied under the Act of 2012 for reinstatement being disputed question, the High Court in the first place was not justified in exercising its writ jurisdiction, for that, the very fact that the respondent has applied under the Act of 2012 for reinstatement into service, was not established on the record.
>
> 7. The learned Additional Advocate General further contends that the respondent was a temporary employee and thus, was also not entitled to be reinstated into service under the Act of 2012. Such aspect of the matter has not been considered by the High Court in the impugned judgment. We, therefore, do not consider it appropriate to examine the same and give our finding on it. The very fact that the respondent has not applied under the Act of 2012 for being reinstated into service, Section 7 of the Act of 2012 was not complied with and thus, the High Court was not justified in passing of the impugned judgment, allowing the writ petition filed by the respondent."
>
> (Underlined to lay emphasis)

17. Similarly, in Civil Petition No. 639-P/2014, this Court has held that in order to avail the benefit of reinstatement under the KPK Sacked Employees (Appointment) Act, 2012, it is necessary for an employee to approach the concerned department in terms of Section 7 within thirty days and in case of failure, as per its proviso, he would not be entitled for appointment in terms thereof. We have noticed that except for a very few respondents none of them have fulfilled the mandatory condition of applying/approaching the department within 30 days after the commencement of the Act i.e. 20.09.2012, therefore, they are not entitled to seek the relief sought for. The respondents who had

ATTESTED

applied within time were not regular employees, therefore, even though they had applied within time but it would not make any difference as they do not fulfill the very basic requirement for reinstatement i.e. that to avail the benefit of reinstatement, an employee should be a regular employee. In a number of judgments, the superior courts of the country have held that when meaning of a statute is clear and plain language of statute requires no other interpretation then intention of Legislature conveyed through such language has to be given full affect. Plain words must be expounded in their natural and ordinary sense. Intention of the Legislature is primarily to be gathered from language used and attention has to be paid to what has been said and not to that what has not been said. This Court in Government of KPK v. Abdul Manan (2021 SCMR 1871) has held that when the intent of the legislature is manifestly clear from the wording of the statute, the rules of interpretation required that such law be interpreted as it is by assigning the ordinary English language and usage to the words used, unless it causes grave injustice which may be irremediable or leads to absurd situations, which could not have been intended by the legislature. In JS Bank Limited v. Province of Punjab through Secretary Food, Lahore (2021 SCMR 1617), it has been held by this Court that for the interpretation of statutes purposive rather than a literal approach is to be adopted and any interpretation which advances the purpose of the Act is to be preferred rather than an interpretation, which defeats its objects. We are of the view that the very object of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, as is apparent from its very Preamble, was to give relief to only those persons, who were regularly appointed having possessed the prescribed qualification/experience during the period from 01.11.1993 to 30.12.1996 and were thereafter dismissed, removed or terminated from service during the period from 01.11.1996 to 31.12.1998. The learned High Court and the Service Tribunal did not take into consideration the above aspects of the matter and passed the impugned orders, which are against the very intent of the law.

18. On the same analogy on which the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was enacted, earlier Legislature had enacted Sacked Employees (Reinstatement) Act, 2010 for the sacked employees of Federal Government. However, this Court in the recent judgment reported at Muhammad Afzal v. Secretary Establishment (2021 SCMR 1569) has declared the Sacked Employees (Re-instatement) Act, 2010 to be ultra vires the Constitution by holding as under:-

> "Legislature had, through the operation of the Act of 2010, attempted to extend undue benefit to a limited class of employees---In terms of the Act of 2010 upon the 'reinstatement' of the 'sacked employees', the 'status' of the employees currently in service was violated as the reinstated employees were granted seniority over them---Legislature had, through legal fiction, deemed that employees from a certain time period were reinstated and regularized without due consideration of how the fundamental rights of the people currently serving would be affected---Rights of the employees who had completed codal formalities through which civil servants were inducted into service and complied with the mandatory requirements laid down by the regulatory framework could not be allowed to be placed at a disadvantageous position through no fault of their own---Act of 2010 was also in violation of the right enshrined under Art. 4 of the Constitution, that provided citizens equal protection before law, as backdated seniority was granted to the 'sacked employees' who, out of their own volition, did not challenge their termination or removal under their respective regulatory frameworks---Given that none of the 'sacked employees' opted for the remedy available under law upon termination during the limitation period, the transaction had essentially become one that was past and closed; they had foregone their right to challenge their orders of termination or removal---Sacked Employees (Reinstatement) Act, 2010 had extended undue advantage to a certain class of citizens thereby violating the fundamental rights (Articles 4, 9, and 25 of the Constitution) of the employees in the Service of Pakistan and was thus void and

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ultra vires the Constitution."

19. This judgment in Muhammad Afzal supra case was challenged before this Court in its review jurisdiction and this Court by dismissing Civil Review Petitions Nos. 292 to 302/2021 etc upheld the judgment by holding that "the Sacked Employees (Re-instatement) Act, 2010 is held to be violative of inter alia Articles 25, 18, 9 and 4 of the Constitution of Islamic Republic of Pakistan, 1973 and therefore void under the provisions of Article 8 of the Constitution." The bare perusal of the Preamble of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 shows that since the Federal Government had passed a similar Act namely Sacked Employees (Re-instatement) Act, 2010, the Government of KPK following the footprints of Federal Government also passed the Act of 2012. It would be in order to reproduce the relevant portion of the Preamble, which reads as under:-

> "Whereas the Federal Government has also given relief to the sacked employees by enactment;
>
> And Whereas the Government of the Khyber Pakhtunkhwa has also decided to appoint these sacked employees on regular basis in the public interest"

20. The term 'ultra vires' literally means "beyond powers" or "lack of power". It signifies a concept distinct from "illegality". In the loose or the widest sense, everything that is not warranted by law is illegal but in its proper or strict connotation "illegal" refers to that quality which makes the act itself contrary to law. Constitution is the supreme law of a country. All other statutes derive power from the constitution and are deemed subordinate to it. If any legislation over-stretches itself beyond the powers conferred upon it by the constitution, or contravenes any constitutional provision, then such laws are considered unconstitutional or ultra vires the constitution. When two laws are enacted for the same purpose though in different jurisdictions and one of the same has been declared ultra vires the Constitution by the Apex Court of the country, then according to the dictates of justice, the other enacted on the same analogy also looses its sanctity and ethically becomes null and void. However, at this stage, we do not want to comment on this aspect of the matter in detail. Even if we keep aside this aspect of the matter, as discussed in the preceding paragraphs, there is nothing available on the record, which could favour the respondents.

21. So far as the argument of Hafiz S.A. Rehman, learned Sr. ASC that as factual controversy is involved, these appeals are liable to be dismissed is concerned, even on this point alone the impugned judgments are liable to be set aside because it is settled law that superior courts could not engage in factual controversies as the matters pertaining to factual controversy can only be resolved after thorough inquiry and recording of evidence in a civil court. Reliance is placed on Fateh Yarn Pvt Ltd. v. Commissioner Inland Revenue (2021 SCMR 1133). Admittedly, the learned High Court while passing the impugned judgments had went into the domain of factual controversy, which was not permissible under the law. We have noticed that in Civil Appeal No.1213/2020 although the respondents had filed the civil suit but they were not appointed on regular basis and most of them do not have the required qualification/experience at the time of their appointment. Learned counsel had stated that no question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, is involved in these appeals. However, this argument of the learned counsel is misconceived. The question of applicability of Article 212(3) of the Constitution arises only when any party has approached this Court against the judgment passed by the Federal Service Tribunal but except Civil Appeals Nos. 1218 to 1220/2020 same is not the case here, therefore, this has no relevance in the present proceedings. Even in the aforesaid Civil Appeals, the respondents were neither regular employees nor they had the requisite qualification/experience at the time of their appointment nor had they filed the application within thirty days within the purview of Section. 7 of the Khyber

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Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, therefore, as discussed in the preceding paragraphs, the learned Service Tribunal could not have directed for their reinstatement.

22. Mr. Fida Gul, learned counsel for the respondents in Civil Appeal No. 1230/2019 had contended that both the respondents were appointed on regular basis in Khyber Agency at the relevant time, had filed the application within time and had the requisite qualification, therefore, they deserve to be reinstated in service. However, we have noticed that they were Agency Cadre (FATA) employees. The Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was applicable to the Provincial Employees of KPK as explained in para 2(b) and (e) of the Act and has never been extended to FATA. According to Article 247 of the Constitution of Islamic Republic of Pakistan, 1973, the Provincial Assembly of Khyber Pakhtunkhwa could not legislate for FATA. We have noted that only the residents of Khyber Agency were eligible to be appointed but it is a fact that both the respondents were residents of Charsadda/KPK. Even otherwise, we have found that respondent Sajjad Ahmad was initially appointed as Mate (BS-02) in the office of Chief Engineer (FATA) and was subsequently promoted to the post of Worker Superintendent (BPS-09) but according to the method of recruitment, the post of Worker Superintendent was required to be filled in by initial appointment and not by promotion amongst the Mate, therefore, his promotion was irregular. As far as respondent Amir Ilyas is concerned, he was appointed as Store Munshi in FATA but we have been informed that the Stores were closed in FATA on 26.11.1992, therefore, his subsequent appointment as Store Munshi on 26.12.1995 was irregular.

23. We have found that so far as the case of the respondent Asmatullah in Civil Appeal No. 1227/2020 is concerned, the same is different. Although, he was initially appointed as Security Sergeant in BPS-05 for a period of six months by the then Agricultural Engineer, DI Khan but subsequently, he was regularized against the post of Crank Shaft Grinder (BPS-05) vide order dated 02.04.1996. He had the requisite qualification/experience and had also applied for reinstatement on 09.10.2012 i.e. within thirty days of the commencement of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, therefore, to his extent the impugned judgment is liable to be maintained.

24. For what has been discussed above, all the appeals except Civil Appeal No. 1227/2020 are allowed and the impugned judgments are set aside. As far as Civil Appeal No. 1227/2020 is concerned, the same is dismissed.

25. Before parting with the judgment, we observe with concern that in a number of cases the statutory departments, due to one reason or the other, do not formulate statutory rules of service, which in other words is defiance of service structure, which invariably affects the sanctity of the service. It is often stressed by the superior courts that framing of statutory rules of service is warranted and necessary as per law. It is invariably true that an employee unless given a peace of mind cannot perform its functions effectively and properly. The premise behind formulation of statutory rules of service is gauged from Articles 4 and 9 of the Constitution of Islamic Republic of Pakistan, 1973. An employee who derives its employment by virtue of an act or statute must know the contours of his employment and those niceties of the said employment must be backed by statutory formation. Unless rules are not framed statutorily it is against the very fundamental/ structured employment as it must be guaranteed appropriately as per notions of the law and equity derived from the Constitution being the supreme law.

MWA/G-5/SC Order accordingly.

ATTESTED

Annex-'B' (19)

MINUTES OF THE MEETING REGARDING APPOINTMENTS OF THE SACKED EMPLOYEES DATED 12-08-2022

A meeting regarding the appointments of Sacked Employees of E&SE Department Khyber Pakhtunkhwa Peshawar was held on 12-08-2022 at 10:00 am in the Committee Room of the Directorate of E&SE Khyber Pakhtunkhwa Peshawar under the chairmanship of Worthy Additional Director, Establishment (Male).

The following attended the meeting:

1. Additional Director (Female)
2. Deputy Director (Estab Male-I)
3. Deputy Director (Litigation)
4. Deputy Director (Estab Female-I)
5. Deputy Director (Estab Female-II)
6. Legal representative (Local Directorate)
7. District Education Officer (Male) Mardan
8. District Education Officer (Male) Swat
9. District Education Officer (Male) Shangla
10. District Education Officer (Male) Charsadda
11. Deputy District Education Officer (Male) (Nowshera)

The meeting started with the recitation of a few verses from the Holy Quran. The chair brief the participants about the agenda of the meeting. After a thread bare discussion, the following decisions were made:

a) The appointment orders already issued by the DEOs concerned wherein, the condition of acquiring the prescribed qualification/ training within next 3 years from the date of their respective appointments against various teaching cadre posts in the Department was mentioned if not fulfilled by the employees within the prescribed stipulated period of 3 years, then, their appointment orders/ Notifications are liable to be withdrawn with immediate effect.

b) All the District Education Officers (Male/ Female) are directed to implement immediately the Judgment dated 28-01-2022 rendered in civil appeal No. 759/2020 and others.

The meeting was concluded with Thanks from and to the Chair.

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DISTRICT EDUCATION OFFICER
(MALE) SWAT

Annex-C

NOTIFICATION

1. Whereas One Mr. Zaibul Haq S/o Ahmad Khan was initially appointed as PTC/Post vide Endst. No.1588-92/AE-12/T &A dated 30.04.1995 at GPS Sero Sar.
2. Whereas the appointment order of the said Mr. Zaibul Haq S/o Ahmad Khan was found illegal ab-initio, void and against the prescribed rules, was dispensed with immediate effect vide order issued under Endst. No.581-607 dated 13.02.1997.
3. Whereas the Government of Khyber Pakhtunkhwa passed Sacked Employees Act, 2012 on 30.09.2012 for appointment of sacked employees.
4. Whereas the said Mr. Zaibul Haq S/o Ahmad Khan did not fulfil the required criteria mentioned in the Act for appointment, therefore he was not appointed under the provisions of the sacked employee Act, 2012.
5. Whereas he filed a writ petition in Peshawar High Court Mingora Bench/Darul Qaza Swat bearing No.778-M/2017 for the appointment under the provisions of sacked employees Act, 2012.
6. Whereas the Hon'ble Peshawar High Court Mingora Bench/Darul Qaza Swat disposed of the instant writ petition vide order dated 18.04.2018 and directed the respondent to consider the case of the petitioner for re-instatement under the umbrella of the sacked employees Act, 2012 within one month.
7. Whereas the respondent department filed CFLA in the apex Court against the judgment on 18.04.2018.
8. Whereas the said Mr. Zaibul Haq S/o Ahmad Khan was conditionally appointed at GPS No.1 Mingora vide this office order Endst. No.14336-40 dated 19.06.2018.
9. Whereas the Hon'ble Supreme Court of Pakistan vide order accounted 28.01.2022 allowed the appeals filed by the respondent Department.

Now, therefore keeping in view the facts mentioned above his appointment order issued vide this office Endst. No.14336-40 dated 19.06.2018 is hereby withdrawn with effect from the date of his issue.

(MUHAMMAD RIAZ)
DISTRICT EDUCATION OFFICER (M)
SWAT

Endst. No. 4014-20/ P.F/Abdur Rahman/PST/DEO/M Dated 18/02/2022

Copy of the forwarded

1- The Director Elementary & Secondary Education KPK Peshawar
2- The District comptrollers of Account Swat Saidu Sharif.
3- The District Monitoring Officer Swat
4- The Sub Divisional Education Officer (M) Bahrain Swat with the direction to serve the order on the accused teacher
5- P.A to District Education Officer (M) Swat the local office,
6- Mr. Zaibul S/o Ahmad kHan PST GPS No.1 Mingora Swat (Registered).

Sd/-
District Education Officer (M)

ATTESTED

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OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHARSADDA.

OFFICE ORDER

In continuation of this office order vide Endst; No-14300-15 dated 09.12.2023, the office order issued vide this office Endst; No-13885-933 dated 30.11.2023 is hereby held in abeyance with immediate effect till uniformity and further orders of the high ups throughout the province.

(Dr. Abdul Malik)
DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA.

Endst; No-14356-61 Dated 12.12.2023

Copy for information,

1. SO (Litg) Secretary E &DSE Khyber Pakhtunkhwa.
2. Director E &SE Khyber Pakhtunkhwa.
3. DMO (EMA) Charsadda.
4. All the DDOs/SDEOs concerned.
5. DAO Charsadda.

DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA.

ATTESTED

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OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHARSADDA

OFFICE ORDER:

In pursuance of the judgement of the Hon'ble Supreme Court delivered in CA. No.759/2020,1448/2016 ETC (SACKED EMPLOYEES) announced on dated 28/01/2022 and the follow up meeting minutes issued vide No.SO(LIT-I)-E&SED-759/22-(22-47)/22-Decided, on dated 13/11/2023 about sacked employees held under the Chairmanship of worthy Deputy Secretary E & SED and the Provisions/Conditions laid down in the Sacked Employees Act, 2012 specifically section 2(g) of the said Act and while not fulfilling the provisions of the Sacked Act the appointment orders issued in different writ petitions, service appeals and civil suits of the sacked employees are hereby terminated / withdrawn with immediate effect in the best interest of public.

S.NO	NAME	FATHERS NAME	CNIC	DESIG:	SCHOOL NAME
1	SHAH ZAMAN	SAMANDAR KHAN	1710103932125	TT	GMS FAQIR ABAD MAJOKI
2	MUHAMMAD MUBARAK JAN	ABDUL HALEEM	1710287237903	STT	GHS RUSTAM KHAN KILLI ZIAM
3	MUHAMMAD NAEEM	ABDUR RAHIM	1710189598401	TT	GMS SAADAT ABAD
4	MUHAMMAD ARSHID	ABDUL QADEER	1710126835731	TT	GMS JAMROZ KHAN KILLI
5	NAUSHAD KHAN	SHER BAHADAR	1710243469215	TT	GHS GHAZGI
6	INAYAT KHAN	ASLAM KHAN	1710235585845	TT	GHS GANDHERI
7	FARHAD ALI	GUL SHARAF	1710103071249	PST	GPS AMIR ABAD RAJJAR
8	NAUROZ KHAN	TORSAM KHAN	1710103167433	PST	GPS PARAO NISATTA NO. 2
9	MASOOD JAN	FAREED GUL	1710112769983	PST	GPS HAJI ABAD UMARZAI
10	MUHAMMAD ISRAR	FAZAL GHANI	1710119304751	PST	GPS SADAT ABAD
11	MUHAMMAD ZAHID KHAN	NISAR MUHAMMAD	1710103183763	PET	GMS DHAB BANDA
12	MUHAMMAD HAYAT	SAID GHULAM	1710211568385	PET	GHS HARICHAND
13	NAVEED ULLAH	ABDULLAH	1710102658251	DM	GMS GUL ABAD
14	INAM UL HAQ	AZIZ UL HAQ	1710211552639	DM	GHS TANGI
15	AKHTAR ALI	SHER MUHAMMAD	1710103024485	DM	GMS SHABARA
16	MUHAMMAD TAHIR	MALAK NIAZ	1710103993119	DM	GHS ZARIN ABAD
17	MUHAMMAD SHAH	SAID JAN	1710211643243	CT	GHS SHODAG
18	ASLAM KHAN	ANWAR KHAN	1710103754123	CT	GHS KHARAKAI
19	FARHAD ALI	UMARA KHAN	1710202474321	CT	GHS HARICHAND
20	SHAH FAISAL	NOOR RAHMAN	1710225971029	CT	GHS GANDHERI
21	BEHRMAND	ABDUL MANAN	1710103814745	CT	GHS GUL KHITAB
22	KIFAYAT ULLAH	MUHIB ULLAH	1710253877431	CT	GHS MARDHAND

ATTESTED

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23	SAJJAD HUSSAIN	MUHAMMAD AKBAR	1710102851097	CT	GHS MUFTI ABAD
24	SHAH HUSSAIN	HUSSAIN ZADA	1710268675369	CT	GMS JAMROZ KHAN KILLI
25	SALEEM UD DIN	FAZAL MUHAMMAD	1710298045135	CT	GHS ZUHRAB GUL KILLI
26	BABAR ZAMAN	ASHRAF KHAN	1710274449589	CT	GHS BEHLOLA
27	MUHAMMAD JABIR KHAN	ZAFAR KHAN	1710102571823	CT	GMS AJOON KILLI
28	YAHYA JAN	SARDAR KHAN	1710102788631	CT	GMS OCHA WALA
29	MUHAMMAD ISRAR	ABDUL KHALIQ	1710283535895	CT	GMS CHANCHANO KHAT
30	FARMAN ULLAH	MOEEN ULLAH	1710256248653	CT	GHS GUL KHITAB
31	MIAN QAMBAR ALI SHAH	MIAN SANGEEN ALI SHAH	1710103193697	CT	GHSS SHERPAO CHARSADDA
32	SHERAZ BAD SHAH	FAZAL MABOOD	1710102783353	CT	GMS UMARZAI
33	AFSAR ALI	SABZ ALI	1710103925613	CT	GHSMS IJARA KILLI, CHARSADDA
34	NAVEED JAN	AHMAD JAN	1710146973527	CT	GMS OCHA WALA
35	NASEER UDDIN	IHSAN UDDIN	1710176076473	CT	GHS KULA DHAND
36	HANIF ULLAH	HABIB ULLAH	1710103681193	SCT	GHS KULA DHAND
37	ANWAR SADAT	SAID GUL BADSHAH	1710103509861	SST	GHS SHODAG
38	AMIN ULLAH	ABDUL MATEEN	1710266707433	AT	GMS CHANCHANO KHAT
39	ABDUR RAHMAN	FIRDOUS KHAN	1710103139537	AT	GHS WARDAGA
40	ROOH ULLAH	MURTAZA KHAN	1710185754109	AT	GHS DILDAR GARHI
41	ZAHID ALI	MUSLIM KHAN	1710102910429	AT	GHS TURLANDI
42	SHAFIQ AHMAD	MUHAMMAD FAQIR	1710163030361	JC	GHS MATTA MUGHAL KHEL NO. 1.
43	NOOR UL BASAR	MUHAMMAD ANWAR	1710273122837	JC	GHS ZIARAT KILLI

(DR ABDUL MALIK)
DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA

Endstt: No 13885-933 / Date 30/11 /2023

Copy for information to the:

1. SO (Lit-I) Secretary E&SED
2. Director E&SE Khyber Pakhtunkhwa Peshawar
3. All the D.D.Os / SDEOs concerned are directed to further process the cases of every individual with the District Accounts Office.
4. District Accounts Officer Charsadda.
5. Office file

DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA

ATTESTED

(24) Annex "D"

IN THE HON'BLE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. -P of 2024.

1. **Muhammad Faridoon Khan**
   Ex-CT R/o Pashtunghari District Nowshera.
2. **Muhammad Farooq**
   Ex-CT R/o Pashtunghari Nowshera.
3. **Aftab Khan**
   Ex-PST R/o KheshgiPayan District Nowshera.
4. **Muhammad Hanif**
   Ex-CT BadrashiDistrict Nowshera
5. **Zahoor Ahmad**
   Ex-CT Nowshera Kalan District Nowshera.
6. **Afsar Muhammad**
   Ex- PST r/o Bahadar Baba District Nowshera.
7. **Atta Ullah**
   EX-CT Nowshera KalanDistrict Nowshera.
8. **Noor Wali**
   EX-PST Khatkeli District Nowshera.
9. **Karim Ullah**
   EX-PST Kaka Saib District Nowshera.
10. **Shah Azam**
    EX-CT r/o Bahadar Baba District Nowshera.
11. **Mst. Safia Begum**
    EX-PET R/o Chamkani Peshawar.
12. **Kiramatullah**
    Ex-AT R/o Mandori Afzal Abad Tehsil Takhtbhai, District Mardan.
13. **Kamal Ahmad**
    EX-PST R/o Takhtbhai District Mardan.
14. **Shah Muhammad Ibrar**
    EX-CT Takhtbhai District Mardan.
15. **Jehangir Ali**

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EX-PST Bakhtshali District Mardan.

16. **Laiq Khan**
Ex-PST R/o GhariKapora District Mardan.

17. **Abbas Ali**
EX-PST Bakhtshali District Mardan.

18. **Zubair Shah**
Ex-PST Takhtbhai District Mardan.

19. **FaqirZaman**
EX-PST Narshak District Mardan.

20. **Qayyum Khan**
EX-CT Tahkhtbhai District Mardan.

21. **Javed Khan**
EX-PST R/o Takhtbhai District Mardan.

22. **AbdurRehman**
Ex-PST Mangalor District Swat.

23. **Amin Muhammad**
Ex-PST R/o Barikot District Swat.

24. **DirNawab**
Ex-CT R/o Matta District Swat.

25. **GulZada**
Ex-PST R/o Ghabraal District Swat.

26. **ZebUlHaq**
Ex-PST R/o Mingora District Swat.

27. **ShujaUllah**
Ex-PST District Shangla.

28. **SherAlam.**
Ex-AT R/o District Bunner.

29. **Syed Ghafoor Khan**
Ex-CT Karpa District Bunner

30. **Adul Salam**
Ex-AT R/o District Bunner.

31. **MehrBakht Shah**
Ex-CT R/o Ghagra District Bunner.

.....Petitioners

ATTSTED

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(3)

VERSUS

1. **Govt. of Khyber Pakhtunkhwa,**
   Through Chief Secretary, Govt. of KPK, Peshawar.

2. **Secretary Education**
   (Elementary and Secondary Education), Govt. of Khyber Pakhtunkhwa at Peshawar.

3. **Director Education**
   (Elementary and Secondary Education), Khyber Pakhtunkhwa at Peshawar.

4. **District Education Officer(M)** District, Nowshera.
5. **District Education Officer(F)** District, Peshawar.
6. **District Education Officer(M)** District, Mardan.
7. **District Education Officer(M)** District, Swat.
8. **District Education Officer(M)** District, Shangla.
9. **District Education Officer(M)** District Bunner.
10. **District Education Officer(M)** District, Charsadda.

.....Respondents

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

Respectfully Sheweth;

Petitioners very humbly pleads to invoke constitutional jurisdiction of this Honorable Court, as follow;

Facts leading to this Writ Petition:

1. That the petitioners are law abiding citizen of Pakistan and are permanent residents of the Districts mentioned aboveof Khyber Pakhtunkhwa.

ATTSTED

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(4)

2. That initially the petitioners were appointed after observing all legal and coddle formalities on different posts in Education Department,Khyber Pakhtunkhwa on various dates in the years, 1995 and 1996 and were posted against their respective posts.

3. That after their appointments, petitioners were satisfactorily and devotedly performing their duties for years to the entire satisfaction of their superiors but with the change of political government, the successor government out of sheer reprisal and to settle scores with the previous government, terminated the services of the petitioners vide different orders.

4. That in the year, 2010 and 2012, the Sacked Employees (Reinstatement Act) of Federal Government and Provincial Government of Khyber Pakhtunkhwa were enacted andin pursuant to the said legislation, a number of employees were reinstated, however the petitioners along with others approached to the Hon'ble High Court Peshawarand Khyber Pakhtunkhwa Service Tribunal by filing different writ petitions/Appeals for their reinstatement which were allowed accordingly.

5. That therespondents department impugned the orders/judgments of the Hon'ble High Court Peshawar and Khyber Pakhtunkhwa Service Tribunal before the august Supreme Court of Pakistan and resultantly the appeals of respondents were allowed vide judgment dated 28-01-2022, where after subsequent Review petition was also dismissed.It is pertinent to mentioned here that the case of **"Muhammad Afzal vs Secretary Establishment"** reported in **2021 SCMR page-1569** was reviewed in the case of **"HidayatUllah and others vs Federation of Pakistan" reported in 2022 SCMR page-1691**though the same review petition was dismissed by the august Supreme Court of Pakistan however certain relief was granted

ATTSTED

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(5)

to the beneficiary employees which is reproduced as under;

The beneficiary employees who were holding posts for which noaptitude, scholastic or skill test was required at the time ofinitial termination (01-11-1996 to 12-10-1999) shall be restoredto the same posts they were holding when they were terminatedby the judgment under review;

(i) All other beneficiary employees who were holding posts on theirinitial termination (01-11-1996 to 12-10-1999) which requiredthe passing of an aptitude, scholastic or skill test shall berestored to the posts, on the same terms and conditions, theywere occupying on the date of their initial termination.

However, to remain appointed on these posts and to uphold theprinciples of merit, non-discrimination, transparency andfairness expected in the process of appointment to publicinstitutions these beneficiary employees shall have to undergothe relevant test, applicable to their posts, conducted by theFederal Public Service Commission within 3 months from thedate of receipt of this judgment

(Copy of Judgment dated 28.01.2022 is attached as ANNEX-A)

6. That in light of the judgment of the august Supreme Court of Pakistan a meeting regarding the appointments of sacked employees of E & SE Department Khyber Pakhtunkhwa Peshawar was held on 12.08.2022 wherein the following decisions were made;

"a). The appointment order already issue by the DEO's concerned wherein, the condition of acquiring the prescribed qualification/training within next three years from the date of their respective appointments against various teaching cadres posts in the department was

ATTESTED

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(6)

mentioned if not fulfilled by the employees within the prescribed stipulated period of three years then, their appointment order/notification are liable to be withdrawn with immediate effect.

b). All the Districts Education Officers (M/F) are directed to implement immediately the judgment dated 28.01.2022 rendered in civil appeal No-759/2022 and others".

(Copy of minutes meeting dated 12.08.2022 is attached as ANNEX-B)

7. Thatin pursuance of the judgment of the Hon'ble Supreme Court of Pakistan, respondents terminated the petitioners along with others from their services, however later on the competent authority concerned kept held in abeyance the termination orders mostly of their employees and allowed them to keep and continue their respective duties, but the petitioners having prescribed qualifications/trainings against their respective post have been deprived from service and discriminated too.

(Copies of terminations order along with other necessary documents are attached as ANNEX-C).

8. That the petitioners approached to the respondents concerned for their reinstatement into their respective service but of no avail, hence the petitioners feeling gravely aggrieved and dissatisfied of the illegal and unlawful discriminated acts, commission and omission of respondents while having no other alternate or efficacious remedy, the petitioners are constrained to invoke constitutional writ jurisdiction of this Honorable Courton following grounds and reasons amongst others:

Grounds warranting this Writ Petition:

ATTESTED

(7)

Impugned acts and omissions of the respondents in respect of termination of the petitioners (hereinafter impugned) are liable to be declared discriminatory, illegal,unlawful, without lawful authority and of no legal effect:

A. Because the respondents have not treated the petitioners in accordance with law, rules and policy on subject and acted in violation of Articles 4 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully terminated the petitioners which is unjust and unfair, hence not sustainable in the eyes of law.

B. Because the petitioners are fulfilling the condition of acquiring the prescribed qualification/training against their respective posts/cadre in light of minutes of the meeting dated 12-08-2022 but even then the petitioners have been terminated by way of implementing the condition-bwrongly of the minutes of the meeting ibid.

C. Because the other colleagues of the petitioners on the same pedestal are serving and performing their duties regularly, however the petitioners have not only been discriminated but also deprived of their service and service benefits/emoluments.

D. Because this conduct of the Respondents have not only enhanced the agonies of the Petitioners, but it is also an example of misconduct and mismanagement on the part of the Respondents which needs to be judicially handled and curbed, in order to save the poor petitioners and provide them an opportunity ofservice and with the enjoyment of all service benefits with allfundamental rights, which are provided in the Constitution of Islamic Republic of Pakistan 1973.

E. Because the petitioners belongs to poor families, having minor children and are the only person to earn livelihood for their families, so the illegal and unlawful act of the respondents has fallen the petitioners as well as their families in a great

ATTSTED

financial crises, so needs interferences of this Hon'ble Court on humanitarian grounds too.

F. Because unless an order of the setting aside of the termination of the petitioners is not issued and the petitioners are not reinstated, serious miscarriage of justice would be cause to the petitioners and would be suffer by the orders of the respondents which are fanciful, suffering from patent perversity and material irregularity, needs correction from this Hon'ble Court.

G. Because the petitioner had been made victim of discrimination without any just and reasonable cause thereby offending the fundamental right of the petitioner as provided by the Constitution of, 1973.

H. Because the petitioner in order to seek justice has been running from pillar to post but of no avail and therefore, finally had been decided to approach this Hon'ble Court for seeking justice as no other adequate and efficacious remedy available to him.

I. That any other relief, not specifically prayed, may also graciously be granted if appears just, necessary and appropriate.

IT IS THEREFORE VERY HUMBLY PRAYED that on acceptance of this writ petition, this Hon'ble Court may very magnanimously hold declare and order that;

i. **Petitioners areentitle for reinstatement into service with all other service emoluments in light of condition (a) of minutes of the meeting dated 12.08.2022 as the petitioners were discriminated.**

ii. **Declare the termination orders of petitioners illegal and unlawful and are to**

ATTSTED

(9)

2.4.24

be set aside being based on discrimination as similarly placed employees were allowed to continue their services in department of the respondents.

iii. Extend the relief granted in case titled "HidayatUllah and others vs Federation of Pakistan" reported in 2022 SCMR page-1691 to the petitioners.

iv. Cost throughout.

v. Any other relief not specifically asked for, may also be grant to the petitioner if appear just, necessary and appropriate.

INTERIM RELIEF:

By way of interim relief, during the pendency of this Writ Petition, Respondents may kindly be retrain from filling up the subject posts till the final adjudication of this Writ Petition.

PETITIONERS

Through

Muhammad ~~Arif~~ Jan,
Advocate, High Court,
Peshawar

Dated: 03-04-2024

CERTIFICATE.

ATTSTED

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PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET

Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
1.	2.
27.06.2024	WP No.2080-P/2024 with IR.
	Present: Mr. Muhammad Arif Jan, Advocate for the petitioners.
	*******
	S. M. ATTIQUE SHAH, J.- Learned counsel, upon his second thought, stated at the bar that the petitioners would be satisfied and; would not press the instant petition, provided it is treated as their appeal / representation and; sent it to respondent # 2 for its decision.
	2. Accordingly, we treat this petition as an appeal / representation of the petitioners and; direct the office to send it to the worthy Secretary to Government of Khyber Pakhtunkhwa, Elementary and; Secondary Education, Peshawar (respondent # 2) by retaining a copy thereof for record for its decision in accordance with law through a speaking order within 30 working days positively, after receipt of certified copy of this order by affording due opportunity of hearing to

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court

(26)

the petitioners in the larger interest of justice.

3. This petition stands disposed of in the above terms.

Announced.
Dated: 27.06.2024.

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Qanoon-e-Shahadat Act, 1984

29 JUN 2024

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ATTESTED

(27)

WAKALATNAMA

IN THE COURT OF K.P Service Tribunal Peshawar

Zeb ul haq — Plaintiff(s)a / Petitioner(s) / Complainant(s)

VERSUS

Secretary Edu and oth — Defendant(s) / Respondent(s) / Accused(s)

By this, power-of-attorney I/we the said Applt in the above case, do hereby constitute and appoint **MUHAMMAD ARIF JAN** Advocate as my attorney for me/us in my/our name and on my/our behalf to appear, plead, give statement, verify, administer oath and do all lawful act and things in connection with the said case on my/our behalf or with the execution of any decree or order passed in the case in my/our favour/ against which I/we shall be entitled or permitted to do myself/ourselves, and, in particular, shall be entitled to withdraw or compromise the case or refer it to arbitration or to agree to abide by the special oath of any person and to withdraw and receive documents and money from the Court or the opposite party and to sign proper receipts and discharges for the same and to engage and appoint any other pleader or pay him as his fee irrespective of my/our success or failure in case, provided that, if the case is heard at anyplace other than the usual place of sitting of the Court the pleader shall not bound to attend except on my agreeing to pay him a special fee to be settled between us.

Signature of Client

Zaibullah

زیب اللہ

Accepted.

Muhammad Arif Jan
Advocate High Court
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Peshawar.