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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No. 618/2022

Sher Bahadur S/O Samundar Shah R/O Village Kandoonah. PO Kheroch, Village Sirikot Tehsil and District Haripur.....

Versus


Govt: of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar & Others.....

(Respondents)

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(Respondent)


District Education Officer (M)
Haripur

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No. 618/2022

Sher Bahadur S/O Samundar Shah R/O Village Kandoonah. PO Kheroch, Village Sirikot Tehsil and District Haripur.....

(Appellant)

Versus

Govt: of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar & Others.....

(Respondents)

Respectfully Sheweth:

Para wise reply/Comments for and on behalf of respondent No.1 to 3.

Preliminary Objections:

- 1 That the appellant has got no cause of action to file the instant appeal.
- 2 That the appellant has not come to this Honorable Tribunal with clean hands.
- 3 That the Appellant has got no locus standi to file the instant appeal.
- 4 That the appellant has concealed the material facts from this Honorable Tribunal. Hence the appeal in hand is liable to be dismissed.
- 5 That the appellant has filed the instant appeal on malafide motives.
- 6 The appellant has filed the instant appeal just to pressurize the respondents.
- 7 That the appellant is estopped by his own conduct to file the present appeal.
- 8 That the appellant has filed the instant appeal just to get the illegal and undue benefits/amounts from the Government Department.
- 9 That the appeal of the appellant is time barred and he has no plausible reason for the condonation of delay.
- 10 That the departmental appeal of the appellant is badly time barred.
- 11 That the matter in hand has already been decided by the Honorable Peshawar High Court Abbottabad Bench through judgment dated 23-06-2021 in WP No. 746-A/2021. Thus the appeal cannot be tried by the Honorable Tribunal under Section 11 of the Code of Civil Procedure 1908 as the case is Res-judicata. **(Copies of writ petition and judgment are attached as Annexure A&B)**
- 12 That the appellant has withdrawn his writ petition No. 746-A/2021 from Honorable Peshawar High Court Abbottabad Bench without to file a fresh suit/appeal. Hence he is precluded under Order 23 Rule 1 (3) from file the instant appeal.
- 13 That the appellant is not entitled for pensionary benefits under Article 404 of The Civil Service Regulations (CSR) revised addition 2014 because his service is less then qualifying service for pension i.e. 10 years.
- 14 That the appellant has been appointed purely on temporary basis in year 1995-96 due to which he was not entitled for fresh appointment under The Khyber Pakhtunkhwa Sacked Employees Appointment Act, 2012 as the act was promulgated to provide relief to those sacked employees who were appointment on regular basis. Hence he was not appointed under the said act but his appointment was made in compliance of the judgment of Honorable Peshawar High Court Abbottabad Bench. **(Copy of Sacked Employees Act, 2012 is attached as Annexure C)**
- 15 That the appellant is also not entitled to claim back benefits under Section 5 of The Khyber Pakhtunkhwa Sacked Employees Appointment Act, 2012.
- 16 That the appeal of the appellant is liable to rejected under Order 7 Rule 11 of the Code of Civil Procedure, 1908.



REPLY/COMMENTS ON FACTS ARE AS UNDER:

1. Para "1" is incorrect. The appellant has been appointed purely on temporary basis being untrained in year 1995.
2. Para "2" is incorrect. That the appellant was terminated from his service 1996-97 because he was untrained and appointed purely on temporary based.
3. Para "3" is incorrect. The appellant was not entitled for appointment under The Khyber Pakhtunkhwa Sacked Employees Appointment Act, 2012 as the act was promulgated to provide relief to those sacked employees who were appointment on regular basis while the appellant was appointed on temporary basis.
4. Para "4" is correct to the extent of the appointment the appellant in compliance of the judgment passed by Honorable Peshawar High Court. However rest of the Para is not accepted which is denied.
5. Para "5" is correct to the extent of retirement of the petitioner at the age of superannuation but his service period does not amount to qualify for pension which is 10 years.
6. Para "6" is incorrect. The detail reply has been given in Paras 9 to 15 of the preliminary objections.
7. Para "7" is incorrect. The departmental appeal of the appellant is badly time barred as the departmental appeal shall be made within 30 days of the date of order passed by the authority from which the appellant is aggrieved but the present appellant has filed his departmental appeal after the lapse of more than 03 months. Furthermore instant service appeal is also time barred and there is no plausible reason for condonation of delay.

REPLY ON GROUNDS:

- A. Ground "A" is incorrect. The appellant was not eligible to be appointed for fresh appointment under The Khyber Pakhtunkhwa Sacked Employees Appointment Act, 2012 as the act was promulgated to provide relief to those sacked employees who were appointment on regular basis.
- B. Ground "B" is incorrect. Section 3 of The Khyber Pakhtunkhwa Sacked Employees Appointment Act, 2012 provides that the appointment of all Sacked Employees is subject to Section 7 of the said act while the appellant has not applied for appointment under the said act within period of six months after promulgation of the act because he was not entitled for appointment being irregular and temporary based employee.
- C. Ground "C" is incorrect. The detail reply has been given in Para 15 of the preliminary objections.
- D. Ground "D" is incorrect. Section 5 of the The Khyber Pakhtunkhwa Sacked Employees Appointment Act, 2012 is very much clear that sacked employees are not entitled for back benefits and the pension etc, for intervening period of the appellant falls under the definition of the back benefits.
- E. Ground "E" is incorrect. The appellant has been appointed in compliance of judgment of Honorable Peshawar High Court because he was not entitled for appointment under The Khyber Pakhtunkhwa Sacked Employees Appointment Act, 2012 being temporary based employee.
- F. Ground "F" is incorrect. The appellant has been appointed on the basis of fresh appointment in compliance with the judgment of Honorable Peshawar High Court to widen the scope of The Khyber Pakhtunkhwa Sacked Employees Appointment Act, 2012 as Section 4 reveals the appointment under the said act would be considered on fresh basis in term of age relaxation of the appointee. Moreover the termination of the appellant during 1996-97 was on the ground of irregular appointments because the appellant has been appointed on temporary basis being untrained employee.

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- G. Ground "G" is incorrect. The Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 do not deal with the matter of the pension while the matter of pension is dealt by the Pension Rules. Moreover the back benefits also include pensionary benefits in accordance with Section 5 of The Khyber Pakhtunkhwa Sacked Employees Appointment Act, 2012 which is very much clear in this context. Furthermore the referred judgment is related to counting of the protected period of the service of government employee while the service of the appellant has not been protected by the rules and regulations on the subject. Hence the said judgment is not relevant to the instant appeal.
- H. Ground "H" is incorrect. The referred cases are not relevant to the instant case/appeal.
- I. Ground "I" is incorrect. The detail reply is given in Paras/Grounds above and all the referred judgments passed by the August Supreme Court is subject to the rules prescribed for pension.
- J. Ground "J" is incorrect. The impugned order passed by the answering respondent is in accordance with law, rules and policy. Hence liable to be maintained.
- K. Ground "k" is incorrect. The appeal of the appellant is time barred and no plausible ground for the condonation of delay as the epidemic period of COVID-19 has been elapsed before the issuance of office order dated 11-08-2021 in respect of the case regarding the pension of the appellant.
- L. Ground "L" is incorrect. The matter in hand is already decided by the Honorable Peshawar High Court Abbottabad Bench vide judgment dated 23-06-2021 which cannot be tried by the Honorable Tribunal being Res-Judicata.
- M. That the other points shall be agitated at time of arguments with the leave of this Honorable Tribunal.

PRAYER

In view of the above made humble submissions, it is most respectfully prayed that on acceptance of foregoing factual position/ Comments, the instant appeal may very graciously be dismissed being meritless.

RESPONDENTS

Secretary E&SE Khyber Pakhtunkhwa, Peshawar

Director E&SE Khyber Pakhtunkhwa, Peshawar

District Education Officer (M) Haripur.

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

REPLY ON THE APPLICATION UNDER RULE-8 R/W RULES 27 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL RULES, 1974 FOR CONDONATION OF DELAY IN FILING OF SUBJECT SERVICE APPEAL.

Respectfully shewith:

Detail reply of application on behalf of respondent No. 1 to 3 is given as follow.

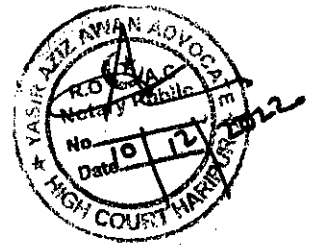
1. Para 1 is correct to the extent of filing of above titled appeal before the Honorable Tribunal. However the appeal of the applicant is time barred and liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure, 1908.
2. Para 2 is incorrect. The instant appeal and also the departmental appeal of the applicant are badly time barred and no suitable reason for such delay.
3. Para 3 is incorrect. The delay in filing the appeal is intentional as the applicant is well aware of the case and no plausible reason has been given in the instant application and the applicant is also not entitled to be argued the additional causes which are not mentioned in the instant application and the initial stage of the suit.

It is therefore most respectfully prayed that the application of the applicant alongwith service appeal may very kindly be dismissed being time barred, please.

Defendant

District Education Officer (M)
Haripur.

ATTESTED



Affidavit:

Solemnly affirmed and declared that the contents of the application are true and correct to the best of my knowledge.

Defendant

[Signature]
District Education Officer (M)
[Signature] Haripur.

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal No. 618/2022

Sher Bahadur S/O Samundar Shah R/O Village Kandoonah. PO Kheroch, Village Sirikot Tehsil and District Haripur.....

(Appellant)

Versus

Govt: of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar & Others.....

(Respondents)

AFFIDAVIT

I Mr. Shakeel Ahmad ADEO Litigation o/o DEO (M) Haripur do hereby solemnly affirmed and declare that the contents of accompanying Para wise comments are true and correct to the best of my knowledge and belief and nothing has been suppressed/concealed from this Honorable Tribunal.

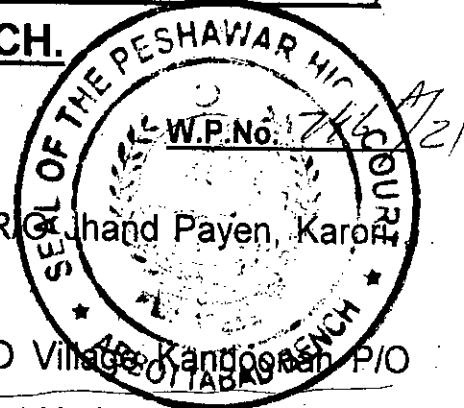
Deponent



Shakeel Ahmad
ADEO Litigation o/o DEO (M)
Haripur.



**BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.**



1. Muhammad Rasheed s/o Abdul Khaliq R/O Jhand Payen, Karori Tehsil oghi, District Mansehra.
2. Sher Bahadur S/O Samundar Shah R/O Village Kangooan P/O Kheroach, village sirikot, Tehsil And District Haripur.
3. Nisar Ahmed S/O Ghulam Gilani R/O Village Shadi Hattar Tehsil And District Haripur.

...PETITIONERS

VERSUS

1. Government of KPK through secretary Elementary and secondary Education KPK Peshawar.
2. Director (E & SE) KPK Peshawar
3. District Education Officer (Male) Haripur.
4. District Education Officer (Male) Manshera.

WRIT PETITION UNDER ARTICLE 199 OF
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN 1973 AS AMENDED UP TODATE.

No. 3805
17-06-21

FILED TODAY:
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
17/6/21

Certified to be True Copy
EXAMINER
2 [Signature] 2021
Peshawar High Court Atd. Bench
Authorized Under Sec. 75 Evid Ordns.

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Respectfully Sheweth,

1. That, the petitioners were appointed by the respondent according to the prescribed method of recruitment in the year 1995 (Copies of the appointment order are annexed as Annexure "A")
2. That, the services of the petitioner were illegally terminated in the year 1996-97 by the respondents. (Copies of the termination orders are annexed as Annexure "B")
3. That in the year 2012, sacked employees (Appointment) Act 2012 KPK was promulgated. Respondents were bound to reinstate/ reappoint the petitioner as per criteria mention in the said act but respondent did not appoint the petitioners under the said act.

Certified to be True Copy
EXAMINER
25 JUN 2021
Peshawar High Court Atd. Bench
Authorized Under Sec 75 Evid Ordns

That later on, in compliance with the judgment passed by this Honourable Court dated 24/05/2016 which was up held by the August Supreme Court of Pakistan vide order dated

EX-100
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
7/6/21

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Annexure - B

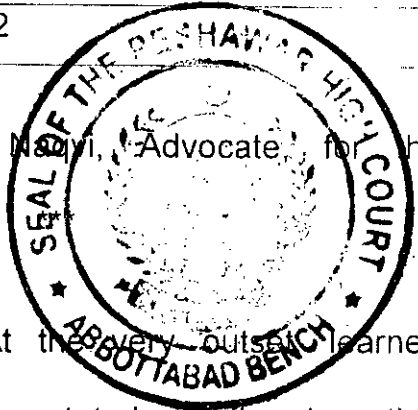
08

**PESHAWAR HIGH COURT, ABBOTTABAD BENCH.
FORM OF ORDER SHEET**

Court of.....

Case No.....of.....

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge (s)
1	2
23.06.2021	<p><u>WP No. 746-A/2021</u></p> <p>Present: Syed Waqas Noori, Advocate for the petitioners.</p> <p><u>SHAKEEL AHMAD, J.</u>- At the bar, learned counsel for the petitioners stated at the bar that petitioners would not press this writ petition anymore, if the case of the petitioners is sent to the concerned departments / respondents for redressal of their grievances.</p> <p>In view of the above, this petition is dismissed being not pressed. However, the competent authority is directed to decide the fate of the appeal already submitted by the petitioners within a period of one (01) month from the date of receipt of this order, positively, strictly in accordance with law.</p> <p style="text-align: right;">  JUDGE </p> <p style="text-align: right;">  JUDGE </p>



Certified to be True Copy
EXAMINER

23.06.2021

Peshawar High Court Atd. Bench
 Authorized Under Sec: 75 Evid Ordns.

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Annexure - C

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**THE KHYBER PAKHTUNKHWA
SACKED EMPLOYEES (APPOINTMENT) ACT, 2012.
(KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)**

CONTENTS

PREAMBLE

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Appointment of sacked employees.
4. Age relaxation.
5. Sacked employees shall not be entitled to claim seniority and other back benefits.
6. Preference on the basis of age.
7. Procedure for appointment.
8. Removal of difficulties.
9. Act to override other laws.
10. Power to make rules.

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**THE KHYBER PAKHTUNKHWA
SACKED EMPLOYEES (APPOINTMENT) ACT, 2012.**

(KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)

[first published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa (Extraordinary), dated the 20th September, 2012].

AN
ACT

to provide relief to those sacked employees in the Government service, who were dismissed, removed or terminated from service, by appointing them into the Government service.

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;

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;

It is hereby enacted as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.

(2) It shall apply to all those sacked employees, who were holding various civil posts during the period from 1st day of November, 1993 to 30th day of November, 1996 (both days inclusive).

(3) It shall come into force at once.

2. Definitions.--- In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say,-

(a) "civil post" means a post created by the Finance Department of Government for the members of civil service of the Province;

- (68)
- (11)
- (b) "Department" means the Department and the Attached Department as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985, including the Divisional and District Offices working thereunder;
 - (c) "Government" means the Government of the Khyber Pakhtunkhwa;
 - (d) "Prescribed" means prescribed by rules;
 - (e) "Province" means the Province of the Khyber Pakhtunkhwa;
 - (f) "rules" means the rules made under this Act; and
 - (g) "Sacked employee" means a person who was appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments;

3. **Appointment of sacked employees.**--- Notwithstanding anything contained in any law or rule for the time being in force, on the commencement of this Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service:

Provided that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department:

Provided further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority.

4. **Age relaxation.**--- The period during which a sacked employee remained dismissed, removed or terminated from service, till the date of their appointment shall be deemed to have been automatically relaxed and there shall be no further relaxation under any rules for the time being in force.

5. **Sacked employees shall not be entitled to claim seniority and other back benefits.**--- A sacked employee appointed under section 3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.

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6. **Preference on the basis of age.**--- On the occurrence of a vacancy in the respective cadre of the concerned Department of the sacked employee against the thirty percent available share, preference shall be given to the sacked employee who is older in age.

7. **Procedure for appointment.**---(1) A sacked employee, may file an application, to the concerned Department within a period of six months 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.

(2) The concerned Department shall maintain a list of all such sacked employees whose applications are received under sub-section (1) in the respective cadres in chronological order.

(3) If any vacancy occurs against the thirty percent available share of the sacked employee in any Department, the senior in age from such sacked employee shall be considered by the concerned Departmental Selection Committee or the District Selection Committee, as the case may be, to be constituted in the prescribed manner, for appointment:

Provided that no willingness or response is received within a period of thirty days, the next senior sacked employee shall be considered for appointment.

(4) The Concerned Departmental Selection Committee or District Selection Committee, as the case may be, will determine the suitability or eligibility of the sacked employee.

(5) If no sacked employee is available against thirty percent vacancy reserved in respective cadre in a Department, then the post shall be filled through initial recruitment.

8. **Removal of difficulties.**--- If any difficulty arises in giving effect to any of the provisions of this Act, the Chief Minister Khyber Pakhtunkhwa may issue such order not inconsistent with the provision of this Act as may appear to him to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from coming into force of this Act.

9. **Act to override other laws.**---Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have overriding effect and the provisions of any other law or rules to the extent of inconsistency to this Act, shall cease to have effect.

10. **Power to make rules.**--- Government may make rules for carrying out the purposes of this Act.



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OFFICE OF THE DISTRICT EDUCATION OFFICER (M)
HARIPUR

Ph. No. 0995-920150,
Email: deomalehrp@gmail.com

AUTHORITY LETTER

Mr. Shakeel Ahmad ADEO Litigation office of the undersigned is hereby authorized to submit comments/reply in Honorable Service Tribunal in c/w Appeal No 619/2022, titled Nisar Ahmad VS Government etc for **affidavit** and onward submission to Honorable Tribunal on behalf of all official respondents.

District Education Officer (M)
Haripur.