

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

S.A.No.466/2022.

MST. FOZIA MALIKAppellant

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH
SECRETARY ELEMENTARY AND SECONDARY EDUCATION &
Others.....Respondents

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APPELLANT

THROUGH


ABDUR RAHMAN MOHMAND
ADVOCATE HIGH COURT PESHAWAR.

①

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

S.A.No.466/2022.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 17780

Dated 7/11/24

MST. FOZIA MALIKAppellant

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH
SECRETARY ELEMENTARY AND SECONDARY EDUCATION &

Others.....Respondents

**REJOINDER BY THE APPELLANT
TO PARA WISE COMMENTS OF THE
RESPONDENT NO.3.**

Respectfully Sheweth:

As to preliminary objections:

1. Para (1) &(2), of the preliminary objections is incorrect, hence denied. There is no question of Doctrine of laches or resjudicata as doctrine of laches has two main elements: (1) Unreasonable delay: The party asserting the claim or right must have delayed unreasonably in enforcing it. (2) Prejudice: The delay must have caused prejudice or harm to the other party. The doctrine of laches is often applied in situations where:- (i) A party has slept on their rights and allowed the other party to rely on their inaction and (ii) where a party has delayed in asserting their claim, allowing the other party to change their position or incur expenses. But here in this appeal the appellant was terminated verbally who challenged that oral termination order vide service appeal No.1963/2010 which appeal was accepted along with

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connected appeal No.1407/2010 titled "Abdul Salam Vs province of KP through Secretary E & SE Peshawar but the respondents did not consider her reinstatement order dated 27.10.2011 of this Hon'able Tribunal, hence appellant was condemn unheard.

2. Para (3) &(4), of the preliminary objections is incorrect, hence denied. The appellant was verbally terminated and there is no record of the written termination order back dated 08.02.2012 present in the office of the respondents. It is pertinent to mention here that through letter No.8301-11/EDO (Male Section) dated D.I. Khan 07.05.2010 (annexure "I" page 22 of the appeal) the Executive District Officer, E&SED, District D.I. Khan mentioned that " the termination orders already issued by the District Coordination Officer, D.I. Khan vide No.8021/DCO (Edu), dated 04.09.2009 duly endorsed by the undersigned vide No.10239, dated 04.09.2009 should be implemented in letter and spirit in the light of above referred judgment which clarifies that the termination order back dated 08.02.2012 is fake, frivolous and concocted one and have no existence as per respondents record.
3. Para (5), of the preliminary objections is incorrect, hence denied. In service Appeal No.1963 of 2010 judgment dated 27.10.20211, the appeal of the appellant was accepted but despite considering her reinstatement order, the respondents department constituted an inquiry committee for giving a report who neither sent any letter to the appellant for personal appearance nor contacted her through any other means to appear before the committee and she was only communicated verbal order of termination which have no legal value as discussed in reported Judgments 2001 PLC(C.S) page 109 & 2006 PLC (C.S) page 200 , hence a fresh cause of action was accrued to

- appellant and she filed another appeal No.932 of 2012 against that verbal termination order of the inquiry committee which was decided on dated 14.03.2018, but here again no written Termination order was provided to appellant.
4. Para (6) to (12), of the preliminary objections is incorrect, hence denied. The appellant got a fresh cause of action when her other colleagues petitioners filed a writ petition No.151-D/2015, titled "Mst. Rozina Shaheen & Others Vs Govt. of KP. & Others" and the same writ petition was disposed off on dated 16.05.2018 with the directions to respondents to provide the copy of termination order of the petitioner along with the termination orders of other effectees and in compliance, the Respondents issued a joint back dated impugned order dated 08.02.2012 vide letter No.1520-1602 in which the petitioner was placed at serial No.42. (Copy of W.P. No. 151-D/2015 along with order dated 16.05.2018 is annexure A/1).
 5. Para (13), (14) & (15), of the preliminary objections is incorrect, hence denied. This Hon'able Service Tribunal whiling setting aside the impugned oral termination order remanded back the case to the Secretary Elementary & Secondary Education Department, Peshawar for reconsideration of the case in the light of observation made in the judgment, for reinstatement of the qualified appellants and a speaking order in respect of those who are not found qualified, by the competent authority, after affording opportunity of hearing to the appellant through an efficient and fair mechanism to be evolved for the purpose by him so as to ensure compliance with the mandatory legal requirements on the one hand and integrity of the proceedings on the other hand, hence there was no word for constituting a committee nor any letter was issued to appellant for appearance before any committee.

6. Para (16) , (17) & (18), of the preliminary objections is incorrect, hence denied. The Appellant was appointed as regular CT on dated 01.10.2007 by Respondents No.1 to 3 after fulfilling the initial recruitment process by giving advertisement on dated 07.04.2007, after which the appellant submitted her application for CT (Female) post on dated 10.04.2007 and roll number was issued to her for screening test to be conducted on dated 24.04.2007 at GGHS, Dinpur, D.I.Khan, hence the advertisement of vacant posts of PST mentioned in this para is wrong and self made. The advertisement is already Annexure "B" at page 13 of the appeal while the Screening test and interview was schedule through letter Endst.No.7833-39 dated DIK The 23.04.2007 already Annexure "D" at page 15 of the appeal, hence appellant selection process was legal and she was rightly appointed on the said post.

Reply to Objections on Facts:

Para 1 to 12 needs no reply, the detail is already available in the Facts of the appeals.

AS TO OBJECTIONS ON GROUNDS:

7. Para I to VIII needs no reply the detail is already available in the grounds of the appeals.
 hence, the termination order is based on discrimination, violation of fundamental rights and against civil seryants (appointment, promotion and transfer rules).

It is therefore most humbly prayed that on acceptance of the appeal as well as this Rejoinder:

(A) An appropriate direction may please be issued for bringing the record of a fake, illegal impugned termination letter No.1520-1602 dated 08.02.2012, being having no record in the office of the respondents

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and the same be declared as void and ineffective over the rights of the appellant.

(B) The appellant may kindly be re-instated in service from the date of her illegal termination dated 08.02.2012.

(C) That appellant may kindly be compensated with all back benefits from the date of her termination till the disposal of this Service Appeal.

(D) And any other relief not specifically prayed and to which the Appellant is found entitled may also be granted.



APPELLANT

THROUGH



ABDUR RAHMAN MOHMAND
ADVOCATE HIGH COURT PESHAWAR.

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

S.A.No.466/2022.


MST. FOZIA MALIKAppellant

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GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH
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Others.....Respondents

AFFIDAVIT

I, **ABDUR RAHMAN MOHMAND ADVOCATE HIGH COURT PESHAWAR** Counsel of appellant do hereby solemnly affirm and declare on oath that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


Advocate



ATTESTED

ATTESTED
EXAMINER
D.I. KHAN BENCH

Filed today 7/3/15
Addl. Registrar



1. Rozina Shaheen D/O M. Rashid GPS Tikar D.I.Khan.
2. Rashid Saleem S/O Abdur Raheem GPS Zambeer Abad D.I.Khan.
3. Allah Baksh S/O Khuda Baksh GPS Kala Gera D.I.Khan.
4. M. Khalid S/O Abdul Sattar GPS Wanda Roorwali D.I.Khan.
5. M. Jamal S/O M. Azam GPS Bakti Zangi Wali D.I.Khan.
6. Hayat Ullah S/O Kabal Khan GPS Hussain D.I.Khan.
7. M. Aftab S/O Ghulam Qasim GPS Shah Duv D.I.Khan.
8. Kitayat Ullah S/O Ghul Zameen GPS Kisi Fajwana D.I.Khan.
9. M. Aslam S/O M. Husnain GPS Jhoke Hindi D.I.Khan.
10. Shabiba Zahra D/O Syed Ghulam Nageer Shah GPS Mirza Purokhar D.I.Khan.
11. Kalsoom Akhter D/O M. Aslam GPS Wandi Bechna D.I.Khan.
12. Sijjad Hussain Shah S/O Khizer Hussain Shah GPS Matwale D.I.Khan.
13. Nemat Ullah S/O Khuda Baksh GPS Jhok Utra D.I.Khan.
14. Gayum Nawaz S/O Khadim Hussain GPS Shahid D.I.Khan.
15. Malik Javed S/O Allah Nawaz GPS Aslam Abad D.I.Khan.
16. Sumaira Rani D/O Mubtazim Hussain GPS Ikhter Khel D.I.Khan.
17. Abdul-Rasheed S/O Abdul-Hameed GPS Zavar Shuniali D.I.Khan.
18. Akhter Rehman S/O Abdul Rehman GPS Gare Ren D.I.Khan.
19. M. Shakir S/O Abdur Rashid GPS Shor Kot Wazir Abad D.I.Khan.
20. Kalsoom Bibi D/O Allah Baksh GPS Jhok Muso D.I.Khan.
21. M. Tariq S/O Noor Baksh GPS Jangir - Abad Wali D.I.Khan.
22. Nafees Bibi D/O Ghulam Qadir GPS Adli Chowrah D.I.Khan.
23. Musarat Batool D/O Haleem Laghari GPS Jhok Maedi D.I.Khan.
24. M. Mansoor S/O Qudrat Ullah GPS Mirza D.I.Khan.
25. M. Husnain S/O Ghulam Shabbir GPS Kuchhi Wali D.I.Khan.
26. Shoukat Ali S/O Fouq Ali GPS Jhoke Hindi D.I.Khan.
27. Ghafar Khan S/O Haji Mangal Khan GPS Wanda Post Ali D.I.Khan.
28. Anila Rikhan D/O Manzoor Hussain Shah GPS Kachhi Kath Garhi D.I.Khan.
29. M. Zubair Kundi S/O M. Khuram Kundi GPS No. 1 Baharpur D.I.Khan.
30. Atta Ullah S/O Inayat Ullah GPS No. 1 D.I.Khan.
31. M. Saleem S/O Allah Ditta GPS Daraban Kalan D.I.Khan.
32. M. Sadig S/O M. Ramzan GPS Baharpur D.I.Khan.
33. Kalsoom Bibi D/O M. Bakht GPS Bhagwan Shumail D.I.Khan.

In The PESHAWAR HIGH COURT, D.I. KHAN BENCH
Petitioner No. 151 of 2015

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34. Inuri Abdul Sattar S/O Ghulam Yasin G.H. Dabri D.I.Khan.
35. M. Atlas Khan S/O Pajinda Khan GMS Jhok Dabri D.I.Khan.
36. Sakhawat Ullah S/O Sana Ullah GMS Wanda Lali D.I.Khan.
37. Abdul Rauf S/O Abdul Aleem GMS Chah Malawana D.I.Khan.
38. M. Qaisra S/O Ghulam Qadir GMS Jhok Mozam D.I.Khan.
39. M. Jamal S/O Gul Bahar Khan GMS Chah Malana D.I.Khan.
40. Mukhtiar Khan S/O Gulzar Khan GHSS Dhakki D.I.Khan.
41. M. Husnain Khan S/O Khadim Hussain Khan GMS No. 2 Paharpur D.I.Khan.
42. Munir Ahmad S/O Malik Hakim GMSS Dhakki D.I.Khan.
43. Abdul Rauf S/O M. Amin GMS Rajen Pur D.I.Khan.
44. Abdul Hafeez S/O Abdul Hammed GMS Mandhran Seidan D.I.Khan.
45. M. Ismail S/O Ghulam Hussain GMS Wanda Dost Ali D.I.Khan.
46. M. Husnain S/O Mehram Ali GMS Jhok Dabari D.I.Khan.
47. Humaira Mumtaz D/O Ghulam Ahmad GGMS Saidu Wali D.I.Khan.
48. M. Saeed S/O Ghulam Yasin GMS Wanda Nadir Shuh D.I.Khan.
49. Qari Ihsan Ullah S/O GMS Rajen Pur Shumali D.I.Khan.
50. Latif Ullah S/O Hameed Ullah GMS Wanda Dost Ali D.I.Khan.
51. Shafiqat Ullah S/O Khuda Bakhsh GHS Laar D.I.Khan.
52. M. Imran S/O Bashir Ahmad GHS Rangpur Shumali D.I.Khan.
53. Asma Gul D/O Hazrat Ullah GGHS Ratta Kulachi D.I.Khan.
54. Mazhar Abbas S/O Ghulam Shabbir GHSS Muryali D.I.Khan.
55. M. Amin S/O M. Hashim GMS Bhagwani Janubi D.I.Khan.

Filed today 7/3/15

By Registrar

10/3/15

VERSUS

1. Government of Khyber Pukhtunkhwa through Secretary Elementary & Secondary Education Department K.P.K Peshawar.
2. Director of Education (E&S) Khyber Pukhtunkhwa Peshawar.
3. District Education Officer (Male) D.I.Khan.
4. District Education Officer (Female) D.I.Khan.
5. District Account Officer D.I.Khan.

ATTESTED
23-3-15
EXAMINOR
Peshawar High Court
D.I.Khan Bench

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

ATTESTED

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

W.P.No. 151-D/2015

Mst. Rozina Shaheen and 54 others

Vs

Government of KPK through Secretary (E & S),
Education Department and four others



JUDGMENT

Date of hearing 16.5.2018

Appellant-petitioner by: Muhammad Anwar Awan, Advocate.

Respondents by: Mr. Kamran Hayat Miankhel, Additional
Advocate General

SHAKEEL AHMAD, J.- Through the instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have sought the following relief:-

It is, therefore, humbly prayed that by accepting the present writ petition, respondents may graciously be directed to issue the termination orders of the petitioners with all back benefits up till now or any other appropriate relief, which this Hon'ble court may deem best in the interest of justice be granted to the petitioners.

ATTESTED

ATTESTED
23-5-18
EXAMINOR
Peshawar High Court
D.I. Khan Bench

2. In essence, the grievances of the petitioners is that they were appointed as P.S.T teachers after observing all the codal formalities but terminated from service on political victimization, therefore, they are entitled to be reinstated in service with all back benefits.

3. In pursuance of the order of this Court, the respondents submitted their para-wise comments, raising therein many legal and factual objections.

4. Perusal of the record reveals that the petitioners were appointed as P.S.T teachers; however, the services of 1613 teachers, including the petitioners terminated, whereagainst, after exhausting departmental appeal, many teachers filed appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar and in pursuance of the judgment dated 27.10.2011 passed by the Khyber Pakhtunkhwa Service Tribunal, an inquiry committee was constituted and the committee found their appointments as illegal, against the prescribed procedure and void *ab initio*, consequently, they were terminated from services vide order dated 08.2.2012.

5. When the learned counsel for the petitioners was confronted with this, he stated that he would not press the instant writ petition, provided that respondents are directed to provide the copy of petitioners' termination order enabling him to impugn the same before proper forum.

ATTESTED

ATTESTED
EXAMINOR
Peshawar High Court
D. I. Khan

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6. Learned Additional Advocate General representing the respondents cordially agreed to provide the copy of the termination order to the petitioners.

7. For what has been discussed above, this writ petition is dismissed being not maintainable, however, the respondents are directed to provide the copy of termination order of the petitioners, and the petitioners shall be at liberty to approach the appropriate forum for redressal of their grievances, if so desired.

Announced
Dt. 16.5.2018
Hasnain*

[Signature]

JUDGE

G.R.No. 7610
Application filed on 21-05-18
Copying Fee Rs. 200/-
No of Papers 04 Pgs
Copying Fee 200/-
Urgent Fee 200/-
Total Fee 400/-
Copy ready for delivery 23-05-18
Copy delivered on 23-05-18
Signature of Examiner [Signature]

[Signature]

JUDGE

[Handwritten signature]

Certified to be true Cop.
23-05-18
EXAMINOR
Peshawar High Court Bench D I Khan
Authorized Under Section 87 of
Qanoon-e-Shahadat Act

(D.8)

Hon'ble Mr. Justice Ijaz Anwar
Hon'ble Mr. Justice Shakeel Ahmad

[Signature]
ATTESTED