BEFORE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.2308/2023

Dilawar Khan

Versus

District Education Officer and others

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DISTRICT EDUCATION OFFICER
(M)LAKKI MARWAT.
Respondent No. 1

BEFORE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.2308/2024

Dilawar Khan

Versus

District Education Officer and others

Written Reply on behalf of Respondent No-1,2&3.

Respectfully Sheweth:

Preliminary Objections:

A. The appeal is wholly incompetent and untenable.

B. The appellant has not come to the Hon'ble tribunal with clean hands.

C. The appeal is filed by the appellant with mala-fide intent.

D. The appeal suffer from exaggeration and mis-statement.

E. The appellant has no locus standi and cause of action.

F. That the appeal is barred from preferring instant appeal, because he is guilty of concealment of actual facts.

G. That in light of court decisions up-to August Supreme Court and direction of execution court the appellant's appointment order was withdrawn in accordance with law.

H. That the appointment of appellant was declared unlawful, void ab initio by the learned trial court and the same findings were maintained up-to High Court, therefore in the light of judgments and decrees of courts and directions of learned execution court, the competent authority has withdrawn the appointment order of appellant. It is pertinent to mention that as per status on the website of August

Supreme Court, the appeal of the appellant was also dismissed vide judgment dated: 10-10-2023. (Copy of screen short of status of appellant's appeal is Annexure-A)

I. That instant appeal is not maintainable as the direction of execution court was challenged in revisional court and against which no further relief was sought, hence the order / direction of learned execution court as well as revisional court attained finality. It is pertinent to mention that this Hon'ble Tribunal has no jurisdiction to set-aside the judgments and decrees of Civil Court as well as High Court, hence this appeal is liable to be dismissed.

J. That the appellant has not come to the Hon'ble Tribunal with clean hands. The appeal also suffers from mis-statement and concealment of facts and as such the appellant is not entitled to any relief.

REPLY ON FACTS:

1. That Para No.1 is correct. Moreover the one Asad Ullah also challenged any sort of appointment in the said suit in Juz Bay.

2. That Para No. 2. It is submitted that during the trial the appellant was appointed as Chowkidar and one other Riaz Muhammad was appointed as lab attendant. It is pertinent to mention that the appointment order was later-on declared unlawful, void ab initio by the trial court and maintained up-to the Supreme Court of Pakistan as proper procedure was not adopted and the appointing authority was incompetent.

3. That Para No.3 is correct. The appellant's service was regularized during trial.

4. That Para No.4 is correct. The one Asad Ullah Khan through amendment petition challenged the appointment order of appellant and one Riaz Muhammad.

5. That Para No. 5 is correct. The then concern officials denied the allegation of one Asad Ullah Khan.

6. That Para No. 6 is correct. The appellant filed application under order 7 rule 11.

7. That Para No.7 is correct. The appellant's application for rejection of plaint was accepted and the suit of one Asad Ullah was dismissed.

8. That Para No. 8 is also correct. The appeal of one Asad Ullah was also dismissed.

9. That Para No.9 is correct. The revision petition of One Asad Ullah was accepted by the Hon'ble High Court and remanded the matter to trial court for decision on merit after recording pro and contra evidence. It is pertinent to mention that the appellant didn't file appeal against the decision of Hon'ble High Court, wherein the plaint was declared to be maintainable for challenging the appointment of appellant and other, hence the appellant is barred from agitating the matter in the Hon'ble Tribunal.

10. That Para No.10 is also correct. The plea of Asad Ullah to be appointed being land-donor was dismissed but on the other hand the appoint of appellant and one other Riaz Muhammad was declared unlawful, void ab initio.

11. That Para No.11. It is submitted that the judgment and decree of learned trial court for declaring the appointment of appellant was maintained by the appellate court and the appeal of the appellant was dismissed.

12. That Para No.12. It is submitted that the revision petition of one Riaz Muhammad, wherein the appellant was mentioned as proforma respondent was dismissed by the Hon'ble High Court vide judgment and decree dated: 29-09-2021.

13. That Para No.13 is incorrect as the execution petition was filed on 25-05-2022 but the date on execution petition was mentioned wrong, moreover the learned execution court ordered / directed the competent authority to declare the appointment of appellant and one other Riaz Muhammad as illegal, in this respect record is clear (order sheet No 18 and minutes of meeting are annexed as "B" and "C").

14. That Para No.14 is correct, the appellant filed revision petition against order / direction of learned execution court.

15. That Para No.15 is correct. The competent authority has withdrawn the appointment order of appellant in the light of judgment and decree dated: 29-09-2021 of Hon'ble High court and order of execution court.

16. That Para No.16. It is submitted that the representation / departmental appeal is maintainable only when the competent authority acted on his own, but in the instant matter the competent authority followed the direction of Hon'ble High Court as well order of execution court, hence the departmental appeal has nor force.

17. That Para NO.17. It is submitted that the order of execution court was challenged before revisional court on the point of non-maintainability of execution petition, which was dismissed by the worthy revisional court, therefore the only remedy for appellant was agitating the matter before High Court, which he fails, hence this petition is not maintainable.

18. That Para No.18 is incorrect. No such reminder was filed. The appellant is alleging the false reminder just to cover the limitation. The withdrawal of appellant's appointment order was issued in accordance with law. The instant appeal is illegal and filed to pressurize department, therefore is liable to be dismissed.

REPLY ON GROUNDS:

a) That Para-A is incorrect. The appointment of appellant was declared unlawful up-to the High Court and now the August Supreme Court has also dismissed the appeal. It is pertinent to mention that this Hon'ble Tribunal is not competent to review / revise the findings of civil court, high court as well as supreme court. Moreover the record and the judgments and decrees clearly described that the appointment of appellant was unlawful and void ab initio. Furthermore the points agitated by the appellant was already decided by the Hon'ble High Court in Judgment dated: 29-09-2021 in Revision Petition No.45-B/2014, hence the instant petition is without any merits and liable to be dismissed.

b) That Para No. B is incorrect. The appellant is lying before this Hon'ble Tribunal on oath, as the one Asad Ullah Khan has challenged the appointment of appellant through amended plaint as the appointment order of appellant was issued during pendency of suit, hence could not be challenged in initial plaint. The appellant may please be penalized for the false statement on oath before this worthy tribunal.

c) That Para No.C is incorrect. No subsequent suit was filed but the appointment of appellant was challenged through amended plaint in same suit. Moreover, the appellant's appointment was declared unlawful and illegal throughout to August Supreme Court, which findings could not be reversed, being finalized.

d) That Para No.D is incorrect. Firstly the whole evidence speaks about the illegal process adopted by the than EDO for the appointment of appellant and one other Riaz Muhammad and the courts have decided the issue. Secondly the appellant could not challenge the judgments and decrees of the courts before this Hon'ble Tribunal as this Hon'ble Tribunal has no authority or jurisdiction to revisit or review the credibility of the judgments and decrees of the civil court, appellant court, high court as well as Supreme Court.

e) That Para No. E is incorrect. The appointment order of appellant was declared unlawful and void ab initio by the court of law and the appointment order of appellant was declared to be unlawful from its very first day, hence the competent authority has no jurisdiction or authority to give the prospective effect to the judgments and decrees of courts of law. The appellant's is trying to convert his appointment's withdrawal order, just to avail pension benefits, which is not permissible in law, as the appointment order of appellant was declared illegal vide judgment and decree dated: 14-03-2013. Furthermore, the Hon'ble High Court vide judgment dated: 29-09-2021 given proper reasons on plea of appellant and other in respect of service and locus poenitentiae. The appellant is estopped from seeking re-agitation of the matter already decided.

f) That Para No.F. It is submitted that the appellant's appointment was declared unlawful and void ab initio by the court of law and there is no malafide on the part of respondents, hence the instant appeal is liable to be dismissed.

g) That Para No.G. The learned trial court issued direction to fill the posts after adopting proper procedure, hence the appellant could not be re-instated or re-appointed on the said post.

h) The counsel of the respondents may please be allowed to raise further points at the time of arguments.

It is, therefore, most respectfully prayed that the appeal of the appellant may kindly be dismissed with special compensatory costs coupled with expenses of litigation.

Samina Altaf
Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.
(Respondent.No.2)

Zahoor Khan
District Education Officer
(M) Lakki Marwat
(Respondent No.1)

(7)

Annexure "A"

Online Case Status

Case Title:

Riaz Muhammad and another v. Asad Ullah Khan and others

Case No:

C.P.L.A.6435/2021

Case Status:

Disposed

Case Institution Date:

28-12-2021

Case Disposal Date:

10-10-2023

AOR/ASC:

Ahmad Ali (ASC)

Anis Muhammad Shahzad (AOR)

History:

Fixation Date	Details	Action
10-10-2023	Bench: REGULAR BENCH - VI Hon'able Judges: MR. JUSTICE JAMAL KHAN MANDOKHAIL MR. JUSTICE SYED HASAN AZHAR RIZVI List: Final Cuase List No. 40 Serial#: 4 Location: Islamabad	Dismissed

(12) Annexure "E"

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-9223587)

No.SO (Primary-M)/E&SED/2-1/Posting-Transfer/2023
Dated Peshawar the, April 27th, 2023

Subject: **MINUTES OF THE MEETING ON COURT CASE TITLED ASAD ULLAH VERSUS MUHAMMAD RIYAZ AND ONE OTHER ETC.**

A meeting to discuss the subject matter was held on 27-04-2023 at 10:00 a.m. under Chairmanship of Additional Secretary (General) Elementary & Secondary Education Department in his office. The following participants attended the meeting:-

i. Abdul Akram Additional Secretary General (Chairman)
ii. Tariq Ullah Additional Deputy Commissioner (General) Lakki Marwat
iii. Muhammad Ilyas DEO (M) Lakki Marwat
iv. Muhammad Idress Litigation Assistant DC Office Lakki Marwat
v. Kashif Munir Librarian DEO (M) Office Lakki Marwat
vi. Behramand Khan Assistant Director (Directorate E&SE)

2. The chair welcomed the participants and asked the DEO (Male) Lakki Marwat to brief the forum on the subject case. The DEO (M) stated that execution petition in the titled Suit has been disposed of by learned Senior Civil Judge Lakki Marwat through order sheet No 18 dated 30-03-2023 disposed of the execution petition with the remarks:-

"In compliance of the said section this court deems it fit to refer the matter of executing the decree in the instant execution petition of the Secretary Education Peshawar, Deputy Commissioner (The then DCO), District Education Officer Lakki Marwat. They are directed to declare the orders of the private respondent No 5 and 6 illegal and unlawful and issue office notification and submit the same before the court within 30 days of the receipt of this order"

3. The forum thread barely discussed the court orders including the judgment of the High Court and Civil Courts in the matter. The forum noted that private respondent No 5 and 6 are regular civil servants whose terms and conditions of service falls in the jurisdiction of Service Tribunal. However, since Civil Court have issued degree in the subject matter and clearly held in the execution order that the appointment of respondent No 5 and 6 is illegal and unlawful therefore, the Court has asked to issue notification in this regard and submit this within 30 days in Court. Therefore, the forum agreed to implement the Court order regarding the respondent No 5 and 6 and DEO (M) shall issue the requisite order/notification in compliance of Court order.

(ABDUL HAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the following for compliance:

1. Deputy Commissioner Office Lakki Marwat
2. Director E&SE Department Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Lakki Marwat.
4. PA to Additional Secretary (G) E&SE Department Khyber Pakhtunkhwa.
5. PS to Secretary, E&SE Department Khyber Pakhtunkhwa, Peshawar

SECTION OFFICER (PRIMARY MALE)

(13)

OFFICE OF THE
DISTRICT EDUCATION OFFICER (M) LAKKI MARWAT
Phone & Fax: (0969)538291, Email: cmislakki@yahoo.com
www.facebook.com/deomalelakki, www.twitter.com/deo_m_lakki

AFFIDAVIT

I, Zahoor Khan District Education officer (Male) Lakki Marwat, do hereby solemnly affirm and declare upon oath that the contents of the accompanied written reply are true and correct to the best of my knowledge and belief and nothing has been intentionally concealed from this Hon'ble Tribunal. It is further stated that on oath that in this Appeal, the Answering Respondents have neither been placed Ex-Parte nor their defence has been struck off.

Deponent

Zahoor Khan
District Education Officer
(Male) Lakki Marwat
(RNo-1)

ATTESTED
ZAHID KHAN ADVOCATE
Oath Commissioner
Session Peshawar

7-2-22

(14)

OFFICE OF THE DISTRICT EDUCATION OFFICER (M)
LAKKI MARWAT
Phone & Fax: (0969)538291, Email: emislakki@yahoo.com
www.facebook.com/deomalelakki, www.twitter.com/deo_m_lakki

AUTHORITY

Mr. Kashif Munir , O/O the District Education Officer (Male) Lakki Marwat is hereby authorized to attend the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in S.A **2308/2023** Titled as Dilawar Khan Versus Government of Khyber Pakhtunkhwa on behalf of the undersigned.

Zahoor Khan
District Education Officer (M)
Lakki Marwat
(RNo. 1)