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

Service Appeal No. 821/2024

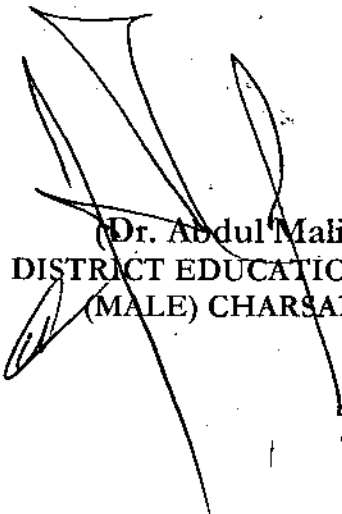
Ishfaq Hussain

Vs

District Education Officer (Male) Charsadda

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

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 821/2024

Ishfaq Hussain

Vs

District Education Officer (Male) Charsadda

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 14660

Dated 05-08-24

Para wise comments on behalf of Respondent

Preliminary Objections:

Respectfully Sheweth:

- A. That the Appellant has no locus standi and cause of action.
- B. That the present Appeal is wrong, baseless and not maintainable, it shows no cause to be taken for adjudication, therefore, the Appeal is liable to be dismissed.
- C. That the Appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory costs in favour of Respondents.
- D. That no legal right of the appellant has been violated, therefore, the appellant has no right to file the instant appeal.
- E. That the Appellant is completely estopped/precluded by his own conduct to file this Appeal.
- G. That the Appellant has not come to this Hon' able Tribunal with clean hands. The Appeal also suffers from mis-statements and concealment of facts and as such the Appellant is not entitled to equitable relief.
- H. That the Appellant has no right to file the instant Appeal and the Hon' able Services Tribunal has got no jurisdiction to adjudicate upon and the Appeal is liable to be dismissed.
- I. That the instant appeal is barred by law and limitation.

PARA WISE REPLY ON FACTS:

1. That the appellant was appointed on adhoc basis for one year contract on school-based policy.
2. That the para needs no comments.
3. That as the earlier appointment of the appellant was on adhoc, contract and school based non-transferable, therefore, the appellant resigned of his earlier post of (PST) for the purpose to be posted in the nearby school.
4. Further, the appellant approached the Hon` able Peshawar High Court, Peshawar and filed a writ petition for the same relief which was dismissed on merit (**Copy of judgment is attached as annexure A**)
5. That the question whether the resignation of the appellant is to be considered from the date of his first appointment i-e from 01/12/2014 or from the date of his subsequent appointment i-e 26/03/2016 has been resolved in writ petition No.5181/2020 filed by the appellant. The Hon` able Peshawar High Court, Peshawar in its judgment in para-No.6. which is reproduced for the kind assistance of this Hon` able Tribunal as under.

“Now the precise question for determination before this Court in the instant case is that whether the regularization of the petitioners is to be considered from the date of their first appointment i-e 2015 or from the date of their subsequent appointment i-e 2017. Indeed, upon the subsequent advertisement and; appointment there under, the petitioners left their earlier service and opted for their fresh appointment and; therefore, the question of first appointment had lost its significance for having become a past and closed transaction. Thus, the petitioners cannot take any benefit out of the same qua their regularization under the Act, 2018, as the subsequent appointment of the petitioners was a fresh appointment for all practical and material purposes and; the same cannot be considered as continuation of their earlier service. Therefore, the respondents had rightly not so considered the same for the regularization of the services of the petitioners”.

6. That according to the judgment delivered in writ petition No. 5181/2020 the appellant was declared as not entitled for any kind of relief being appointed afresh after resigning his previous post of pst.

7. That the appellant is not an aggrieved party, hence, can't file the instant appeal before this Hon` able Tribunal on the following grounds amongst other.

GROUND

- A. That as the appellant resigned his previous adhoc appointment/post, therefore, is not entitled for any kind of benefits.
- B. Denied, the answering respondent acted in accordance with law and judgment delivered in writ petition filed by the appellant.
- C. Incorrect, the answering respondent is law obeying official and always honor the judgments of the superior Courts.
- D. That the para has been elaborately replied in the above paras on grounds.
- E. That the appellant filed a writ petition No. 5181/2020 for the same relief which was dismissed by the Hon` able Peshawar High Court, Peshawar, therefore, the appellant has no right to file an appeal for the same cause of action before this Hon` able Tribunal, therefore, this Hon` able Tribunal may kindly be pleased to dismiss the appeal on the same analogy.
- F. & G. That the para has been replied with detail in the above paras.
- H. That the refer regulations i-e CSR-418 in its title page clearly states that these regulations are applicable only to the civil servants of the Federal govt.
- I. That the Answering Respondent seeks permission to advance other grounds and proofs at the time of hearing.

It is requested that the appeal may be dismissed with cost.


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

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
 TRIBUNAL PESHAWAR

Service Appeal No. 821/2024

Ishfaq Hussain

Vs

District Education Officer (Male) Charsadda

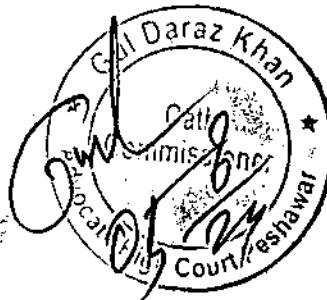
AFFIDAVIT

I Dr. Abdul Malik (M) Charsadda do hereby solemnly affirms that the information provided by the DEO (M) and the contents of the Para-wise comments submitted by the respondent are true and correct and nothing has been concealed intentionally from this Hon' able tribunal.

*It is stated on oath
 that the answering
 respondent have
 neither been placed
 ex-parte nor have
 they been of cost.*

Deponent

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



BEFORE THE HON'BLE PESHAWAR HIGH COURT,
PESHAWAR

Writ Petition No. 5181P/2020

1. Muhammad Naseer, C.T,
GHSS Ayub Khan Killi, Swabi.
2. Shah Khalid, C.T,
GHSS Jalala, Mardan.
3. Shaukat Hayat, C.T,
GHS Bazargi, Swabi.
4. Asad Ali, C.T,
GHSS Bamkhel, Swabi.
5. Shabir Ahmad, C.T,
GHS Gari Hameed Gul, Charsadda.
6. Muhammad Awais, C.T,
GHS Katozai SKF, Charsadda.
7. Sammam Pasha, C.T,
GHSS Mian Kalay, Dir Lower.
8. Shafiq Ahmad, C.T,
GHS Dapoor Bolo Khan, Dir Lower.
9. Faizan ul Haq C.T,
GHS Damtal, Dir Lower.
10. Muhammad Shraz, C.T,
GMS Mula Yousaf, Buner.
11. Nageena Begum, C.T,
GGMS Bagh Dushkhel, Dir Lower.
12. Jalal ud Din, C.T,
GMS Tekni Bala, Dir Lower.
13. Abdur Rahim Khan, C.T,
GHS No.1, Abbottabad.
14. Gul Muhammad, C.T,
GHS Karkabanj Dir, Upper.
15. Asad Ali, S.S.T,
GHS Dildar Garhi, Charsadda.
16. Ahmad Ali, S.S.T,
GHSS Mandani, Charsadda.
17. Ijaz Ullah, S.S.T,
GHS Qillagai Siar, Dir Lower.
18. Qaisar Khan, S.S.T,
GHSS Khair Abad, Dir Lower.
19. Inam Ullah, S.S.T,

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Deputy Registrar
08 NOV 2020

- (6)
20. Huma Zaman, S.S.T,
GGHS Shalkandi, Dir Lower.
 21. Hamid Ullah, S.S.T,
GHS Pato Talash, Dir Lower.
 22. Shahid Ullah, S.S.T,
GHS Utala, Dir Lower.
 23. Asmat Ullah, S.S.T,
GHSS Bagh Dushkhel, Dir Lower.
 24. Bahrawar Said, S.S.T,
GHSS Zaimdara, Dir Lower.
 25. Gul Rasool Khan, S.S.T,
GHSS Mian Kalay, Dir Lower.
 26. Muhammad Israr Mian, S.S.T,
GHS Chanchary, Swat.
 27. Asghar Khan, S.S.T,
Labat, Swat.
 28. Hidayat Ullah, S.S.T,
GHS Kidam, Swat.
 29. Sajjad, S.S.T,
GHS Nawakalay, Buner.
 30. Malik Shahid Hussain Awan, S.S.T,
GMHS Havelian, Abbottabad.
 31. Muhammad Bilal, S.S.T,
GHSS Rich Ben, Abbottabad.
 32. Zeeshan Khan, S.S.T,
GHS Jhangi, Abbottabad.
 33. Shafique Hussain Shah, S.S.T,
GHSS Bandi Dhundan, Abbottabad.
 34. Muhammad Umer Javed, S.S.T,
GHSS No.4, Abbottabad.
 35. Sajjad Akbar, S.S.T,
GHS Spin Kani, Swabi.
 36. Waqar Anwar, S.S.T,
GHS No.1 Havelian, Abbottabad.
 37. Majid Ali Khan, S.S.T,
GHS Takia Sheikhan, Abbottabad.
 38. Qamar Zia, S.S.T,
GHS Takia Sheikhan, Abbottabad.
 39. Khalid Khan, S.S.T,
GHS Takia Sheikhan, Abbottabad.
 40. Raja Sajjad Akbar, S.S.T,
GHSS Nawashehr, Abbottabad.
 41. Mukhtiar Ahmad Awan, S.S.T,
GHS Bodla, Abbottabad.

Attested
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FILED TODAY

(Signature)
Deputy Registrar

09 NOV 2020

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- 64. Liaquat Ali, Qari,
GHS Dherai Talash, Dir Lower.
- 65. Riaz Ali, T.T,
GMS Adam Abad, Swabi.
- 66. Ikram ul Haq, T.T,
GMS Khall Barkaly, Dir Lower.
- 67. Ishfaq Hussain, P.S.T,
GPS No.1 Rajjar, Charsadda.
- 68. Riaz Ahmad, P.S.T,
GPS Qila Asbanr, Dir Lower.
- 69. Rahat Ullah, P.S.T,
GPS Umar Rahman Koroona, Dir Lower.
- 70. Farman Ullah, P.S.T,
GPS No.2 Sangolai Payeen, Dir Lower.
- 71. Shahab Ullah, P.S.T,
GPS Landy Khawar, Dir Upper.
- 72. Irshad Ullah, P.S.T,
GPS Sadbar Kalay, Dir Lower.

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.....PETITIONERS

VERSUS

- 1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
- 2. The Secretary, Elementary & Secondary Education to Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 3. The Director, Elementary & Secondary Education, Govt. of Khyber Pakhtunkhwa, Peshawar.
- 4. The District Education Officer (Male), Swabi.
- 5. The District Education Officer (Male), Mardan.
- 6. The District Education Officer (Male), Charsadda.
- 7. The District Education Officer (Male), Dir Lower.
- 8. The District Education Officer (Male), Abbottabad.
- 9. The District Education Officer (Male), Dir Upper.
- 10. The District Education Officer (Male), Swat.
- 11. The District Education Officer (Male), Buner.

.....RESPONDENTS

FILED TODAY

 Deputy Registrar
 09 NOV 2020

**PETITION UNDER ARTICLE 199 OF THE
 CONSTITUTION OF ISLAMIC REPUBLIC OF
 PAKISTAN, 1973 FOR A "DECLARATION/**

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Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
 Judicial Department

WP No.5181-P/2020 with I.R.

"Muhammad Naseer and 71 others

Versus

Government of Khyber Pakhtunkhwa through Chief
 Secretary, Civil Secretariat, Peshawar, and others."

JUDGMENT

Date of hearing 10.06.2021

Petitioner by: Mr. Muhammad Ijaz Khan Sabi
 Advocate.

Respondents by: Mr. Arshad Ahmed Khan, AAG.

S M ATTIQUE SHAH, J: - The petitioners have invoked the Constitutional jurisdiction of this Court under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking the following prayer;

"It is, therefore, prayed that by accepting this petition;

- a. *a writ of certiorari may please be issued to declare the impugned regularization order respectively attached as annex "G" to "G/34", whereby petitioners initial/first date of entry in service has wrongly been mentioned, be declared as illegal unlawful, against the mandate of section-3 of the Khyber Pakhtunkhwa Employees of Elementary & Secondary Education Department (Appointment &*

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Regularization of Services) Act, 2017 and thus ineffective upon the rights of petitioners;

b. *a writ of mandamus may be issued by directing the respondents to issue a formal regularization order of petitioners from the date/day of their first entry in service as shown in column No.5 of annexure "A".*

or

Any other relief deems fit and appropriate in the circumstances of the case may be granted in favour of the petitioners."

2. In essence, grievance of the petitioners is that, respondents advertised the posts of SST, CT, PST, AT, TT Qari, PET, DM etc in the newspaper in the year 2014-15; that the petitioners applied for the said posts respectively and; succeeded in written test, interview and; were appointed against the ibid posts respectively. Subsequently, the respondents advertised some other posts of SST, CT, AT, PST, PET etc, for which the petitioners also applied, wherein, they succeeded and; were accordingly appointed; that the petitioners relieved from the earlier posts and assumed their duties at the newly appointment places on the same date without gap of a single day and were in continuous service; that the Government of Khyber Pakhtunkhwa enacted an Act i.e

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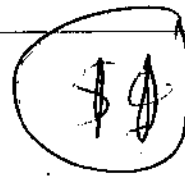
The Khyber Pakhtunkhwa Employees of E&SE Department (Appointment & Regularization of Services) Act, 2017, whereby under section-3 of the Act, the services of all the contract employees were regularized from the day of their initial appointment; that the respondents issued the impugned regularization orders of petitioners, however, their date of initial appointment was wrongly shown in the impugned orders as their second date of appointment, the date of appointment was shown instead of their first date of appointment; that being aggrieved some of the petitioners approached the respondents for correction of date of first entry in regularization, however, their appeals were neither considered nor decided till date, hence, the petitioners have approached this Court for redressal of their grievance by filing the instant writ petition.

3. The respondents were put on notice with direction to file the requisite para-wise comments to the writ petition, which were submitted accordingly; whereby they strongly resisted the claim of the petitioners.

4. Arguments of learned counsel for the parties heard and available record gone through with their able assistance.

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5. Perusal of record reveals that the petitioners were appointed in the year 2015 for a period of one year on adhoc temporary and; contract basis. During the period of their service, the respondents advertised some other posts and; the petitioners also applied alongwith others for the said posts and, were accordingly appointed against the said posts after their selection. Meanwhile, during the currency of their service, the Government of Khyber Pakhtunkhwa passed regularization Act, 2018, whereby the services of the petitioners were regularized pursuant to the ibid regularization Act. Now, the petitioners seek their regularization from the date of their first appointment i.e from the year 2015.

6. Now the precise question for determination before this Court in the instant case is that whether the regularization of the petitioners is to be considered from the date of their first appointment i.e 2015 or from the date of their subsequent appointment i.e 2017. Indeed, upon the subsequent advertisement and; appointment thereunder, the petitioners left their earlier service and opted for their fresh appointment and; therefore, the question of first appointment had lost its significance for having become a past and closed transaction. Thus, the

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petitioners cannot take any benefit out of the same qua their regularization under the Act, 2018, as the subsequent appointment of the petitioners was a fresh appointment for all practical and material purposes and; the same cannot be considered as continuation of their earlier service. Therefore, the respondents had rightly not so considered the same for the regularization of the services of the petitioners.

In view of the above, the instant writ petition is dismissed being meritless.

Announced.
Dated. 10.06.2021.

Roohul Amin
SENIOR PUISNE JUDGE

Mumtaz
JUDGE

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(D.R of)
Hon'ble Mr. Justice Rooh-ul-Amin Khan,
Hon'ble Mr. Justice S.M Attique Shah.
(Kausar Ali QS)

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GOVERNMENT OF PAKISTAN

FINANCE DIVISION



THE CIVIL SERVICE REGULATIONS (C.S.R.)

**APPLICABLE TO THE FEDERAL CIVIL SERVANTS IN
PAKISTAN**

**UPDATED EDITION
2018**

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**OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA**



091-9220481



deom.ca@kpese.gov.pk



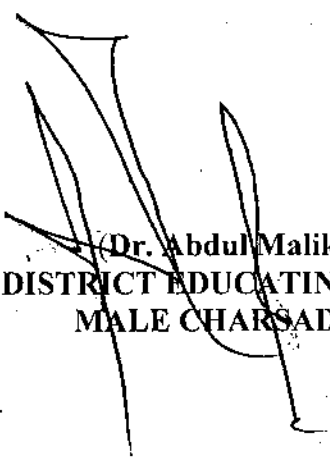
facebook.com/Deomcharsadda



KPESGO
Khyber Pakhtunkhwa
Education Service Organization

AUTHORITY LETTER

I. Dr. Abdul Malik District Education Officer (Male) Charsadda do hereby authorized Mr. Wisal Muhammad Khan Legal Representative on behalf of District Education Officer (Male) Charsadda, to deal with the issues regarding litigation, represent, submit Comments/Reply of the Service Appeals and attend the KPK Honorable Service Tribunal Peshawar.


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