

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /  
DARULQAZA SWAT

W.P. 1261 -M/2023

Dr. Waqar Ahmad and others ..... Petitioners

VERSUS

The Chief Secretary Govt of Khyber Pakhtunkhwa & others  
..... Respondents

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Petitioners through Counsel

FILED TODAY

16 OCT 2023

Additional Registrar

SYED ABDUL HAQ, ASC  
HIGH COURT DARULQAZA  
BAR ROOM SWAT  
Cell No 0311-0950959

Received  
Noted for  
JAG  
Sign. \_\_\_\_\_  
Date. 16-10-2023

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**BEFORE THE PESHAWAR HIGH COURT MINGORA  
BENCH DARULQAZA SWAT**

W.P. 1241 -M/2023

1. Dr. Waqar Ahmad Son of Aziz ur Rehman Resident of Mohalla Chalis Palaw Charbagh Tehsil and District Swat.
2. Dr. Aqsa Ashraf Daughter of Muhammad Ashraf Resident of Chalis Palaw Charbagh Tehsil and District Swat.
3. Dr. Mehran Khan Son of Sher Bahadar Khan Resident of Mohalla Malak Nagar Koza Bandai Tehsil Kabal District Swat.....**Petitioners**

**VERSUS**

1. Chief Secretary Govt of Khyber Pakhtunkhwa Peshawar.
2. Secretary Health Govt of Khyber Pakhtunkhwa Peshawar
3. Director General Health Services Khyber Pakhtunkhwa at Peshawar.....**Respondents**

**WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN**

**1973**

Respectfully Sheweth;

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The facts of the instant are as under.

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1. That the petitioner No.1 and 2 have Secured their degrees of MBBS (from China, in "Hunan university of Chinese Medicine") while the petitioner No.3 i.e. Dr. Mehran completed his MBBS from China, in Taishan Medical University duly recognized by WHO (World Health Organization).
  
2. That after getting the permission letter to sit in the "National Examination Board of The PM&DC" and after appearing in succussing the said exam the PM&DC issued registration certificate to the petitioners.
  
3. That after completing all the codal formalities and passing through a series of examinations the petitioners No.1 appeared in interview for PPHI (people Primary Health Care initiative) and was appointed as Medical Officer at BHU (Basic Health Unit) Kishawra District Swat, vide order/notification dated 01.05.2014, likewise, petitioner No.3 was also

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appointed as Medical Officer at BHU Rahat Kot District Swat, both on contract basis.

4. That after the Govt of Khyber Pakhtunkhwa advertised posts of Medical Officers on adhoc Basis and all the petitioners duly applied and were appointed, as Medical Officers furthermore the petitioners' adhoc status was later on regularized under the KPK Act, 7 of 2017, vide Notifications No. SO (E) H-11/3/18/2016 (for the **Petitioner No.1 & 3**) and Notification No. "(E) H-11/3/18/2017(2)" (for the **Petitioner No.2**).

5. That in spite of serving the department, their salaries were stopped, hence, the petitioners knocked the door of this honourable Court by filing a Writ petition bearing No. 553-M/2018 to redress their grievances qua stoppage of their salaries, it is worth mentioning that they and also claimed therein, restraint of respondents from taking any sort of adverse action, so after hearing, this honourable Court vide order dated 15.5.2018 directed the respondents No.2 and 3 to release the salaries of practitioners from withheld period and this honourable Court vide order dated 02.02.2021, transmitted the writ petition mentioned

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*ibid* to the Tribunal and directed to treat the same under section 8 of the Act, (Copy of Judgment dated 02.02.2021 is attached as annexure-A).

6. That in pursuance of the judgment mentioned *ibid* the petitioners appeared before the Medical Tribunal and after hearing the worthy medical Tribunal vide judgment dated 04.07.2023 the appellants/petitioners were required to approach the Pakistan Medical & Dental Council for obtaining permanent RMP which is yet to be issued by the Pakistan Medical & Dental Council. (copy of order dated 04.07.2023 is attached as annexure-B).

7. It is to be mentioned here that the petitioners also filed a writ petition bearing No. 70-M/2021, for issuance the provisional registration as per section 20 Sub-2 of the PMC act 2020, which was disposed of by this honourable Court and the matter was entrusted to the Pakistan Medical Commission to consider the grievances of the petitioners in accordance section 20 and 21 of the Act, (Copy of the Judgment is attached).

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8. That recently the petitioners are served upon an undated show case notice under Rule-3 of the Khyber Pakhtunkhwa Servants (Efficiency and Discipline) rules, 2011, by one Dr. Kazim Niaz, wherein it is stated that " I, as competent authority, have tentatively decided to impose upon you the following penalty/penalties under Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rule, 2011".

9. That, the petitioner No.1 after due process of law on 06.08.2023, appeared in examination as scheduled by the PMDC for obtaining the RMP, and got 121 score but, due to fluctuation in criteria the petitioner was below the prescribed score i.e. 140 hence he is intended to reappear in next examination , similarly the petitioner No.2 and 3 are waiting for their PRMP to appear in upcoming examination.

10. That the petitioners are still in service and performing their duties with Zeal and zest, however, the received the alleged showcause notice which is lack backing of

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law and be declared as illegal, against the spirit of law interalia on the following grounds.

### GROUNDS

A. That the allege show cause notice being in violation of *Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rule, 2011*.  
ReadWith section 24-A of the General Clauses Act, hence, be declared lack baking of law, and be set aside.

B. That the petitioners working against the posts of Medical Officers BPS-17, as they were appointed after adbpting due process of law, furthermore, this honourable Court directed the official respondents to redress the grievances of the petitioners, in accordance with section 20 and 21 of the Act, and the worthy Medical tribunal too, directed the PMDC, for allowing them in examination for obtaining Permanent RMP, but official respondents despite doing so, issued a show cause notice, which has no legal sanctity, and

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is against the mandate of the relevant rules , hence liable to be set at naught.

C. That notice, issued under *Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rule, 2011* have no nexus with the case of petitioners, furthermore, the allege showcause notice seems to be signed by the ex-Chief Secretary , so on this score such show cause notice have no force of law, hence liable to be rejected.

D. That as per rules the official respondents were legally bound, to show grounds for proceeding u/s 3 of the Rules, but it is very astonishing that he case of the petitioners does not fall in the ambit of misconduct, so the same is nullity in the eyes of law.

E. That issue raised in so called notice , already been addressed by this honourable Court so such act of official respondents is against the 10-A of the constitution so , under writ of mandamus this honourable Court having the power to issue

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directions to the official respondent to exercise their power vested to them under the law.

- F. That the petitioners seek leave of this honourable court to raise/argue any additional point at the time of arguments.

*It is, therefore, humbly prayed that on acceptance of this writ petition in the light of aforementioned submissions, the allege show cause notice be declared as illegal, against the principle of natural justice and ineffective upon the rights of the petitioners, be cancelled, hence be set aside.*

*That any other relief which this honourable Court deems fit proper in the circumstances may also be ordered.*

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INTERIM RELIEF

It is further prayed that the operation of impugned show cause notice be suspended, the respondents be

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restrained to take any sort of adverse action against the petitioners including creation of obstacles in their duties, till the final disposal of the instant Writ Petition.

Petitioners  
Through  
Counsel

  
Syed Abdul Haq,  
Advocate, Supreme Court  
0311-0950959

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**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /  
DARULQAZA SWAT**

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Dr. Waqar Ahmad and others ..... **Petitioners**

**VERSUS**

The Chief Secretary Govt of Khyber Pakhtunkhwa & others  
..... **Respondents**

**CERTIFICATE**

As per instruction of my clients no such like writ  
petition, earlier has been filed by the petitioners on the subject  
matter before this Hon'able Court.

  
**ADVOCATE**

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**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /  
DARULQAZA SWAT**

W.P. 1241 -M/2023

Dr. Waqar Ahmad and others ..... **Petitioners**

**VERSUS**

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..... **Respondents**

**ADDRESSES OF THE PARTIES**

**PETITIONERS**

1. Dr. Waqar Ahmad Son of Aziz ur Rehman Resident of Mohalla Chalis Palaw Charbagh Tehsil and District Swat.
2. Dr. Aqsa Ashraf Daughter of Muhammad Ashraf Resident of Chalis Palaw Charbagh Tehsil and District Swat.
3. Dr. Mehran Khan Son of Sher Bahadar Khan Resident of Mohalla Malak Nagar Koza Bandai Tehsil Kabal District Swat

CNIC 156020757640/MOB: 0347-983

**RESPONDENTS**

1. Chief Secretary Govt of Khyber Pakhtunkhwa Peshawar.
2. Secretary Health Govt of Khyber Pakhtunkhwa Peshawar
3. Director General Health Services Khyber Pakhtunkhwa at Peshawar.

**Petitioners, through Counsel**

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**SYED ABDUL HAQ, ASC  
HIGH COURT DARULQAZA  
BAR ROOM SWAT  
Cell No 0311-0950959**

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**BEFORE THE PESHAWAR HIGH COURT MINGORA**  
**BENCH SWAT**

Dr. Waqar Ahmad and others ..... **Petitioners**

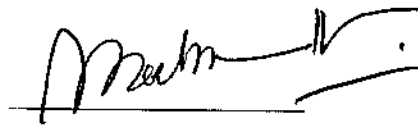
**VERSUS**

The Chief Secretary Govt of Khyber Pakhtunkhwa & others  
..... **Respondents**

**AFFIDAVIT**

I, Mehran Khan Son of Sher Bahadar Khan Resident of Mohalla Malak Nagar Koza Bandai Tehsil Kabal District Swat, (petitioner no.3), do hereby the solemnly affirm and declares that, the contents of this writ petition are true and correct to the best of my knowledge and belief and nothing has been kept concealed or withheld from this august court.

DEPONENT



MEHRAN KHAN

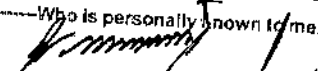
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16 OCT 2023

Additional Registrar

S No. 4257  
Certified that the above was verified on Solemn affirmation before me on this 16 day of oct 2023  
by Mehran Khan  
S/o Sher Bahadar Khan Wing Swat  
who was identified by me

Who is personally known to me.

  
Oath Commissioner  
Peshawar High Court  
Mingora Bench/Dar-ul-Qazz, Swat.