

**IN THE COURT OF JAMAL SHAH MAHSOOD,  
ADDITIONAL DISTRICT JUDGE-I, ORAKZAI**

**Civil Appeal No. 19/20 of 2020**

Date of institution: 06-03-2020

Date of Decision: 14-09-2020

**Walayat Khan** s/o Gul Rehman; caste Malla Khel, tapa Char Khel; r/o district Orakzai

**(Appellant)**

**Vs**

- (1) **Provincial Government; Khyber Pakhtunkhwa**, through Secretary Education, Peshawar
- (2) **Principal**, Government Primary School, District Orakzai
- (3) **In-charge BHU**, Daboori Bridge, through District Health Officer/MS Orakzai
- (4) **Muhammad Wur Khan** s/o Sarwar Khan; caste Malla Khel, tapa Char Khel; r/o district Orakzai

**(Respondents)**

- Khalid Mehmood Advocate for Appellant
- Jabir Hussain Advocate for Respondent no. 4

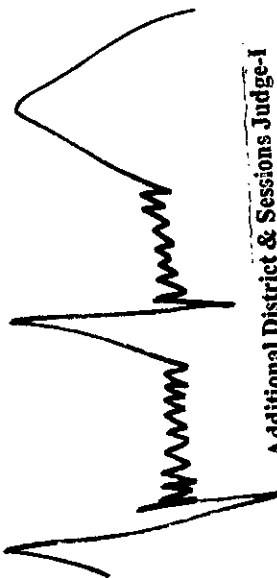
**APPEAL** against order/judgment and decree of learned CJ-I, Orakzai, dated 19-10-2019, passed in civil suit No 51/1 of 2019. (**Impugned Judgment**)

**Judgment in Appeal:**

1. Through the impugned judgment the plaint of the present appellant was rejected, on the ground of non-maintainability; it was held that the plaint did not disclose any cause of action and that the same was barred by law.
2. The present controversy was initiated by the appellant, Walayat Khan, when he submitted an application to the Assistant Political Agent of Upper Orakzai on 01-01-2018. The appellant claimed

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entitlement to Class-IV jobs in Government Primary School, Koal and BHU (Civil Dispensary), Koal. Several further applications were filed by the appellant and contesting respondent Muhammad Wur Khan (respondent no. 4), before the APA/AC of Upper Orakzai. Jirgas were conducted in the matter and finally, vide decree dated 30-10-2018, the claim of the present appellant was rejected by AC/ADM of Upper Orakzai. This decree of AC/ADM was set aside by the worthy District Judge, Orakzai vide judgment dated 25-06-2019, passed in civil appeal no. 2/19 of 2019. The worthy District Judge, Orakzai held that the order passed by AC/ADM was coram non judice, having been passed when the AC/ADM had no jurisdiction to decided civil or criminal cases, after merger of FATA into KP Province. The suit of the appellant was re-opened and remanded to learned CJ-I, Orakzai. Better statement, in the shape of plaint, was obtained from the plaintiff; where after the learned lower court raised the question of maintainability of the suit. After hearing the counsel for appellant/plaintiff, the plaint was rejected through the impugned judgment.

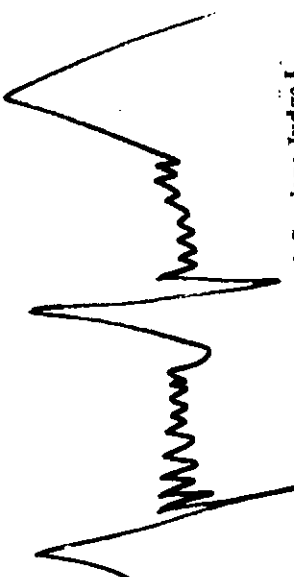
  
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3. Through the rejected plaint, the present appellant (plaintiff) prayed for a decree for declaration to the effect that he, and his siblings, were entitled to Class-IV jobs in GGPS and BHU of village Koal, Upper Orakzai. He further prayed for specific performance of contract in respect of the available jobs, in the said School and BHU – and, in alternative, possession of land underneath, through demolition of the said School and BHU. He further prayed, in alternative, for perpetual injunction and for

directing the respondents (defendants) for inducting the plaintiff on available post and also that the defendants may be restrained from filling up the vacancies with any other person.

4. The claim of the appellant, according to his plaint, is that the land on which the School and BHU have been constructed was the ownership of Haji Muhammad Wur Khan (present respondent no. 4); that at the time of construction of the School and BHU this land was purchased by respondent no. 4 from one Ghani Shah, for a sale consideration of Rs. 2000. That respondent no. 4 had, on sympathetic grounds and due to relationship, given one Class-IV job to Gul Rehman (father of appellant/plaintiff); that the said Gul Rehman was of advance age and mentally challenged at that time, and that his children (appellant/plaintiff and his siblings) were minors. He claims that the children of Gul Rehman (appellant/plaintiff and his siblings) are major and able for job now and that they are entitled for the Class-IV jobs in the said School and BHU. The learned lower court dismissed the claim of appellant by rejecting his plaint, through the impugned judgment.

5. Being aggrieved, the plaintiff filed an appeal, initially before the Honorable Peshawar High Court; however, after changes in CPC, the appellant was directed to file fresh appeal before District Judge, Orakzai. Hence, the instant appeal has been preferred. The main grounds taken in appeal are that the impugned judgment has been passed against the law and facts of the case. Some further and new facts have also been introduced by the counsel for appellant in memorandum of appeal. The appellant has prayed in

  
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appeal that his suit may be decreed and that the impugned judgment may be set aside.

6. Notices were issued to the respondents. Respondent no. 1 & 2 (Education Department) made appearance through a representative on one date of hearing and similarly respondent no. 3 appeared through a representative on one date. However, respondent no. 4, through special attorney, contested the appeal and engaged counsel. Arguments of counsels for the contesting parties were heard, and the record of the case has been perused.

As mentioned earlier the main prayer of the present appellant in the rejected plaint is for declaration to the effect that only he and his siblings are entitled to Class-IV jobs in the above mention Government School and BHU (Dispensary). He further prayed for specific performance of contract; however, no agreement to which the appellant or his predecessor-in-interest was a party has been specified in the plaint.

8. The plaint was rejected by the learned lower court, under Order 7 Rule 11 (a) & (d) of CPC. The counsel for appellant, during arguments, stressed that the learned lower court should have called for written statement before giving opinion on maintainability of the plaint. However, this argument is without any force, as for the purpose of Order 7 Rule 11 CPC only the plaint is to be considered.

9. In his plaint the appellant has claimed entitlement to Government jobs for himself and his family members in perpetuity; he further prayed for specific performance of an un-specified agreement, in respect of the said jobs.

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10. As far as agreement for entitlement to Government jobs, on the basis of some agreement, is concerned, the same is against public policy. Moreover, the said agreement is without any consideration, as, according to plaintiff, the property on which the School and BHU in question were constructed was property of respondent no. 4. Thus, the appellant could not disclose any cause of action accruing to him. The object of this agreement, if supposed to exist, would also be unlawful. Such agreements are void and cannot be enforced by court of law. Thus, from the statement in plaint, the suit is clearly barred by The Contract Act, 1872.

11. Similarly, as evident from the plaint, it does not disclose any cause of action in favour of the appellant/plaintiff. The cause for which the appellant claims entitlement is Government job and the appellant has failed to establish as to how any cause of action could accrue to him in this respect. The material facts given in the plaint do not disclose any cause of action. The appellant/plaintiff cannot be legally allowed to prove his entitlement to Government job and the basis of an agreement with a private individual. A cause of action pre-supposes the existence of a right in favour of plaintiff; which in the present case is missing. No factual investigation is required in respect of the plaint filed in the instant case, as the facts narrated therein clearly bars the court from entertaining such claim.

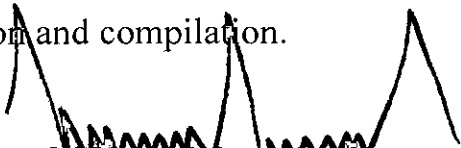
12. No legal infirmity could be pointed out, by the counsel for appellant, in the impugned judgment. The learned lower court has rightly rejected the plaint in the present case as the same did not

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disclose any cause of action and also because that the same was barred by law. Resultantly, the instant appeal is **dismissed** being without any merit.

- 13. The parties shall bear their own costs. Let a copy of this judgment in appeal be placed on the record of the case and the same be returned to the quarter concerned, while this file be consigned to record room after its necessary completion and compilation.

**Announced**  
**14-09-2020**

  
**Jamal Siran Mansoor**  
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**CERTIFICATE**

Certified this judgment consists of 06 pages. Each page has been signed by me, and corrected wherever necessary.

  
 ADJ-I, Orakzai