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IN THE COURT OF BAKHT ZADA, SENIOR CIVIL JUDGE, ORAKZAI

Case # = 33/1 of 2022.
Date of Institution = 27.05.2022.
Date of Decision = 25.07.2023.

Subaidar Kashmir S/O Major Ali Baz, Qaum Ali Khel, Tehsil Upper,
District Orakzai.

.....(Plaintiff)

Versus

1. Deputy Commissioner, Orakzai,
2. Accountant, Deputy Commissioner Office, Orakzai,
3. Provincial Government, Khyber Pakhtun Khwa through Secretary Home.

.....(Defendants)

**SUIT FOR RECOVERY OF AMOUNT RS. 672,840/- ALONG WITH
PROFIT AT BANK RATE**

JUDGEMENT

25.07.2023

Plaintiff Kashmir Khan S/O Major Ali Baz Khan R/O Ali Khel, Tehsil Upper Orakzai, presently residing at Al Zuhra Town, Raisan, District Hangu, has brought the instant suit against defendants Deputy Commissioner, Orakzai and two others, for recovery of an amount of Rs. 672,840/- along with profit at Bank rate.

- (1). According to plaintiff, he was employee of Levi Force, Orakzai and retired as Subaidar Major in February 2018. That in the year 2017 he was posted as incharge Levi, Orakzai headquarter at Baber Mela. That the then Political Agent, Orakzai issued oral orders for providing food and breakfast to the prisoners at Sub-Jail, Orakzai, because at that time due to non-availability of funds, the contractor had refused to provide food to the prisoners. That at the order of then Political Agent,

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the plaintiff provided food to the prisoners from July 2017 to November 2017 at the rate of Rs. 140/- per day per head. That the plaintiff regularly submitted his bills to accountant of Deputy Commissioner (defendant No. 02). That plaintiff submitted bill for the month of July 2017 amounting to Rs. 110,380/-, August 2017 amounting to Rs. 139,860/-, October 2017 amounting to Rs. 128,940/-, October 2017 amounting to Rs. 141,400/- and bill for the month of November 2017 amounting to Rs. 151,760/-. The total outstanding amount against the defendants is Rs.672,840/- and the defendants have illegally stopped the payment of the same. That several applications were submitted to the defendants but in vain. That plaintiff submitted an application dated 21.10.2021 to the Commissioner, Kohat Division, where upon Commissioner, Kohat Division issued letter No. 3211, dated 26.10.2021 to defendant No. 01 but the same also did not prove fruitful. That government of Khyber Pakhtun Khwa, Finance department also issued directions for payment of food charges to the defendant. That the defendants were asked time and again for payment of the outstanding amount along with profit at the bank rate, but they refused and hence, the present suit.

- (2). Defendants were summoned who appeared through District Attorney and submitted their written statement, wherein it is alleged that neither the plaintiff is a contractor, nor there is any record with the defendants regarding providing of food to the prisoners by the plaintiff.

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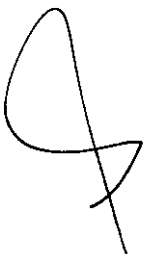
(3.) The divergent pleadings of the parties were reduced into the following issues by my learned predecessor in the court on 11.01.2023.

ISSUES

1. Whether the plaintiff has got cause of action? OPP
2. Whether the plaintiff is estopped to sue? OPD
3. Whether the plaintiff is entitled to the recovery of an amount of Rs. 672,840/- as expenditure of food, from July 2017 till November 2017, provided by him to the prisoners in Judicial Lock-up, Orakzai at Baber Mela? OPP
4. Whether the plaintiff is entitled to decree as prayed for? OPP
5. Relief?

(4.) Both the parties were provided opportunity for adducing evidence in support of their respective claims. The plaintiff produced and recorded the statements of as many as six PWs, the brief of their statements is as under;

1. **PW-01:** *Gul Mand Khan S/O Rehman, Cast Ali Khel, Security Incharge Sub-Jail, Orakzai at Baber Mela.* He was posted as security incharge at Sub-Jail, Orakzai at Baber Mela in the relevant time. He stated that the plaintiff was directed by the then Political Agent, Orakzai for providing food to the prisoners. He further stated that in the Political Administration, Political Agent used to issue oral orders and prior to the plaintiff, several officials were given such


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oral orders for providing food to the prisoners which were acted upon by them. He referred to incharge Subaidar Mir Kalam Khan who also provided food to the prisoners at the order of Political Agent and later on, he was paid the amount at the order of the court. Copy of his service card is Ex. PW-1/1. He was cross examined by the District Attorney.

2. PW-02: *Serab Hussain S/O Khalal Hussain, R/O Star Saam, Orakzai.*

He was posted as Sepoy at Sub-Jail, Orakzai at Baber Mela. During his statement, he affirmed the stance of the plaintiff and stated that the food was provided by the plaintiff to the prisoners during the relevant period and his bills have not been cleared by the defendants till date. He was also cross examined by the District Attorney.

3. PW-03: *Raman Khan S/O Ghulam Muhammad Khan.* He was

posted as cook at the kitchen of Police Line, Orakzai. He stated that in the relevant period, the clerk of the plaintiff namely Sahib Zameer used to bring the food items and he after cooking used to serve the same to the prisoners. His statement was also cross examined.

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4. PW-04: *Sahib Zameer S/O Olas Mir.* He was posted as Police


Constable, he also affirmed the stance of the plaintiff as

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alleged in the plaint and stated that on the behalf of the plaintiff, he used to provide food items for preparation of meal and breakfast for the prisoners of Sub-Jail, Orakzai at Baber Mela. He further stated that monthly bills of food were being deposited by him with accountant Rafi Ullah, who disclosed that the same will be cleared after receiving funds from the Government. He was also thoroughly cross examined by the District Attorney.

5. PW-05: *Rafi Ullah, Accountant, Deputy Commissioner Office,*

Orakzai. He brought record of contract for year 2016-17 in respect of the food for the prisoners of Sub-Jail, Orakzai at Baber Mela. He submitted the office order in respect of the contract allotted to Qasim Gul contractor for the year 2016-17 which is Ex. PW-5/1, copy of the advertisement in the newspaper is Ex. PW-5/2, tender form is Ex. PW-5/3, bills from July 2016 to June 2017 are Ex. PW-5/4. He also brought record of contract for the year 2017-18, according to which the contract was given to Contractor Liaqat Ali. Office order is Ex. PW-5/5, tender and advertisement in newspaper consisted of two pages is Ex. PW-5/6, tender form/rate list is Ex. PW-5/7, bills of Contractor Liaqat Ali is Ex. PW-5/8. He admitted that according to their record, contract from


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July 2017 to November 2017 for provision of food to the prisoners was not allotted by them to any contractor. He also brought the bills of the plaintiff in respect of the expenditures incurred by him due to providing food to the prisoners for the month of July 2017 till November 2017 which are Ex. PW-5/9 consisted of 11 sheets and the total amount is Rs. 672,840/-. The application submitted by the plaintiff consisted of 02 sheets is Ex. PW-5/10. At the application submitted by plaintiff to Commissioner, Kohat Division letter No. 3211/AG-II/Comr-KT/Orakzai, was issued to Deputy Commissioner, Orakzai which is Ex. PW-5/11. Letters issued by the Finance Department to Deputy Commissioner, Orakzai bearing No. BO(PFC-11)/FD/1-5/2020-21-N and letter No. SO(B-8A)/FD/NMAS/6-59-2019 dated 30.07.2020 are Ex. PW-5/12 consisted of 02 sheets. He also produced the record of Subaidar Mir Kalam Khan in respect of payment on account of providing food to the prisoners consisted of 05 sheets which is Ex. PW-5/13.

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6. PW-06: *Kashmir S/O Ali Baz Khan, Plaintiff.* He reproduced the contents of his plaint during his statement. His pension role data sheet is Ex. PW-6/1, his service card is Ex. PW-

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6/2. He stated that bills in respect of the expenditures incurred on account of food provided by him to the prisoners are already exhibited as Ex. PW-5/9 which were duly signed and verified by Tehsildar and Assistant Political Agent, Upper Orakzai. He also submitted attested copy of the judgement and decree passed in favour of Subaidar, Mir Kalam Khan. He prayed for decree in his favour.


(5). After closing of evidence of the plaintiff, the defendants produced and recorded the statement of solitary witness **Muhammad Fareed S/O Samandar Shah, Assistant Accountant, Deputy Commissioner Orakzai as DW-01**. He stated that the plaintiff is a government servant and he has got no such rights. He alleged that the suit has been filed to tease the defendants.

(6). After closing of the evidence of the parties, arguments of the learned counsel for the parties were heard and available record perused.

My issue wise findings are as under: -

Issue No. 2: Whether the plaintiff is estopped to sue? OPP

(7). The defendants have alleged in their written statement that the plaintiff is estopped to sue. The burden of proving this issue lies at the shoulders of defendants but, neither any evidence is produced

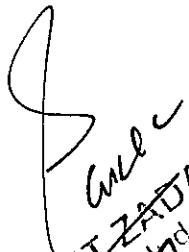

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to discharge their burden, nor the same is pressed during the course of arguments, hence, issue is decided in negative.

Issue No.03. Whether the plaintiff is entitled to the recovery of an amount of Rs. 672,840/- as expenditure of food, from July 2017 till November 2017, provided by him to the prisoners in Judicial Lock-up, Orakzai at Baber Mela? OPP

(8). It is the case of the plaintiff that he was posted as Subaidar Major in the year 2017 at District Headquarter, Orakzai at Baber Mela and the then Political Agent, Orakzai issued him oral orders for providing food and breakfast to the prisoners at Sub-Jail, Orakzai, because at that time due to non-availability of funds, the contractor had refused to provide food to the prisoners. That the plaintiff provided food to the inmates of the Sub-Jail, Orakzai at the rate of Rs. 140/- per head per day from July 2017 to November 2017 and this regard bills amounting to Rs. 110,380/-, 139,860/-, 128,940/-, 141,400/- and 151,760/- are due from July 2017 to November 2017 respectively. The total amount due against the defendants is Rs. 672,840/-. The plaintiff prayed that despite of several applications, the defendants have stopped payment of the above-mentioned bills in his favour without any legal justification.


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(9). In order to prove his stance, the plaintiff recorded the statements of as many as six PWs. PW-01 Gul Mand Khan who was posted as Security Incharge at Sub-Jail, Orakzai at Baber Mela in the relevant period, confirmed that the plaintiff was orally directed by

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 the then Political Agent, Orakzai for providing food to the inmates of jail and subsequently the plaintiff provided the same. He also confirmed that prior to the plaintiff, such like oral orders were also issued to other officials at different times. His statement remained un-shattered during cross-examination. PW-02 Serab Hussain is the person who was also posted at Sub-Jail, Orakzai at Baber Mela. He is the eye-witness of the fact that clerk of the plaintiff used to bring the food items to the kitchen for preparation of meal etc for the prisoners. Statement of PW-02 is further confirmed by the cook of kitchen of Police Lines, Orakzai. He stated that clerk of the plaintiff Sahib Zameer used to provide food items and he prepare meal and breakfast for the prisoners being cook. PW-04 Sahib Zameer also recorded his statement in line with the stance of the plaintiff and evidence recorded by other PWs. He also categorically stated that he used to submit monthly bills to accountant Rafi Ullah which are still due against the defendants. The most important statement of the case is the statement of PW-05, Rafi Ullah, Accountant, Deputy Commissioner, Orakzai who brought the record in respect of the contracts for different periods from 2016-17 to 2017-18. The record is Ex. PW-5/1 to Ex. PW-5/8. He admitted that according to their official record, contract from July 2017 to November 2017 for providing food to the prisoners was not allotted to any contractor. He has also brought and exhibited bills submitted by the plaintiff in their office from July 2017 to November 2017 which are Ex. PW-

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5/9 consisted of eleven sheets and according to the same, an amount of Rs. 672,840/- is outstanding against the defendants. The stance of the plaintiff and PW-04 is confirmed by PW-05 by producing the bills of the plaintiff from his official custody. As far as the question of non-availability of any written order of the then Political Agent for providing food is concerned, the same is ruled out on the ground that previously another employee namely Mir Kalam Khan Subaidar had also provided food to the prisoners on the oral order of the Political Agent and later on, he brought suit, for recovery of outstanding amount, bearing No. 58/1 of 2019, dated 16.07.2019, against the defendants which was decreed by my learned predecessor in office on 10.06.2020, the copy of which is Ex. PW-6/3 and pursuance to the same, the payment has been made by the defendants. All the oral and documentary evidence are fully supporting the version of the plaintiff and the same has remained unshattered, therefore, issue No. 03 is decided in positive.

Issue No. 1 & 4.

- (10). As per my detailed discussion over issue No. 03, the plaintiff proved his case through cogent, oral and documentary evidence, therefore, he has got cause of action and is entitled to the decree as prayed for.

Relief?

- (11). As sequel to my above issue wise discussion, the plaintiff proved his case through confidence inspiring oral and documentary


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evidence, therefore, his suit for recovery of Rs. 672,840/- along with profit at bank rate, is hereby decreed against the defendants as prayed for. No order as to cost.

(12). File be consigned to record room after the necessary completion and compilation.

ANNOUNCED

25.07.2023

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CERTIFICATE

It is certified that this judgment consists of *11* pages. Each page has been dictated, read, corrected and signed by me.

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25.7.23

Bakht Zada

Senior Civil Judge, Orakzai