

82

**IN THE COURT OF BAKHT ZADA,**  
**SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA**

Civil Suit No. 24/1 of 2023.  
Date of Institution: 19.04.2023.  
Date of Decision: 28.11.2023.

**Shahid Ullah S/O Akram Khan, R/O Qoum Mishti, Tappa Darwi  
Khel, Village Shalzara, Tehsil Upper, District Orakzai.**  
**(Plaintiff)**

**VERSUS**

1. *Chairman BISE, Kohat.*
  2. *Controller of Examination BISE, Kohat.*
  3. *Syed Sajjad Hussain Sherazi SST, Superintendent Examination  
Hall GHS Mishti Bazar.*
- (Defendants)**

**SUIT FOR DECLARATION-CUM-PERPETUAL AND  
MANDATORY INJUNCTION**

**JUDGEMENT:**

28.11.2023

1. Plaintiff Shahid Ullah S/O Akram Khan has brought the instant suit against defendants Chairman Board of Intermediate and Secondary Education, Kohat and 02 others for declaration-cum-perpetual and mandatory injunction to the effect that he is a student of class 10<sup>th</sup> in Frontier Children Academy (FCA), Mishti Bazar. That he has passed class 9<sup>th</sup> by obtaining 454/550 marks under Roll No. 33367 and got distinction in the school.

That feeling unsatisfied from the obtained marks, the plaintiff appeared in the next examination in order to improve his marks under Roll No. 10038. That during examination, the defendants shifted the examination center from GHS Mishti Bazar to Governor Model School Mishti Bazar. That the plaintiff along

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**BAKHT ZADA**  
Senior Civil Judge  
Orakzai at Baber Mela

with students raised voice against such illegal and unjustified act of the defendants. That Tehsildar Central Orakzai reached at the spot and he informed the Deputy Commissioner by writing letter to him. That the defendants being aggrieved from the said agitation made case of using unfair means against the plaintiff in the examination. That later on the plaintiff was called by the Board of Intermediate and Secondary Education Kohat for appearing before the committee who imposed penalty of disqualification for 06 examinations against the plaintiff. That the plaintiff preferred appeal before the chairman against the said decision of the committee and the disqualification was reduced from 06 years to 03 years. That the case of using unfair means is based on malafide and personal revenge against the plaintiff by defendant No. 03. That defendant No. 03 has damaged reputation of the plaintiff and his future carrier is at stake. That the defendants were requested time and again for setting aside the penalty, but they turned deaf ears and hence the instant suit;

2. Defendants were summoned, who appeared before the court through their representative and legal advisor, who contested the suit by filing their authority letter and written statement.

3. The defendants alleged that the plaintiff has been penalized by the jury on the charges of passing examination by using unfair means which is illegal and the jury has defended

BAKHT ZARAR  
 Senior Civil Judge, I  
 Orakzai

the rights of other students by giving decision against the plaintiff. That the plaintiff was caught while making cheating. That inspector and principal Abdul Manan, Government High School Mishti Bazar sent their report to the Controller BISE Kohat wherein they have declared the character of the plaintiff Roll No. 10038 on 02.11.2022 as dubious. They prayed for dismissal of the suit.

4. The divergent pleadings of the parties were reduced into the following issues;

**Issues:**

1. *Whether the plaintiff has got cause of action?*
2. *Whether this court has got jurisdiction?*
3. *Whether the case of using unfair means against the plaintiff is based on malafide and personal revenge of defendant No. 03?*
4. *Whether the plaintiff was caught by the defendants while using unfair means during the examination and the decision of jury and committee regarding disqualification of the plaintiff is justified?*
5. *Whether plaintiff is entitled to the decree as prayed for?*
6. *Relief?*

The parties were given opportunity to produce evidence in support of their respective claims. The plaintiff produced and recorded the statements of following PWs;

**PW-01**, Saeed Anwar s/o of Khan Saeed aged about 30 years,

Tappa Haider Khel, District Orakzai. He is special attorney of next friend/guardian/mother of the plaintiff. His power of attorney is Ex.PW-1/1. He stated that plaintiff got 454 marks out of total 550 marks in the examination of 9<sup>th</sup> class from Frontier Children Academy Orakzai and secured top position in the school. That in order to further improve his

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**BAKHIT ZADA**  
 Senior Civil Judge  
 Orakzai at Bazar Mishti

marks he applied for improvement in the next supplementary examination and he was allotted the examination hall of GHS Mishti Bazar Orakzai, but during examination defendant No. 03 shifted the examination hall to the under construction building of Governor Model School Mishti Bazar. He repeated the contents of the plaint during his statement and was cross-examined by the counsel for the defendants at length.

**PW-02** is the statement of Syed Iqbal clerk/record keeper of Naib Tehsildar, Central Orakzai. His authority letter is Ex.PW-2/1. He produced letter no. 1635/AC/L, dated: 09.11.2022 which is Ex.PW-2/2. Similarly, information report/letter no. 1617/AC/L, dated: 07.11.2022 is Ex.PW-2/3. Through the said letters information regarding agitation of the students has been conveyed to the Deputy Commissioner.

**PW-03** is the statement of Navid Ullah s/o Janat Mir aged about 26 years. He is teacher of the plaintiff at FCA Mishti Mela Bazar. He stated that plaintiff was topper of the school and the allegation regarding use of unfair means is baseless. He also repeated the whole story as alleged in the plaint.

On the other hand, the defendants produced and recorded the statements of 02 DWs, the brief of which is as follows;

**DW-01: Zeeshan Shah**, record keeper BISE Kohat recorded his statement during which he produced his authority letter which is Ex. DW-1/1. He also stated that the plaintiff appeared as candidate in supplementary examination for improvement of his marks. He alleged that some other person was taking examination in the place of the

*Zeeshan Shah*  
**BAKHT ZADA**  
 Senior Officer  
 Orakzai at Baber Mela

plaintiff which came into the notice of the defendant and the superintendent made case of impersonation against him.

**DW-02: Syed Sajjad Hussain Sherazi s/o Malak Syed Zamin Akbar**, ADEO establishment, the then Superintendent of examination at GHS Mishti Bazar. He stated that plaintiff was found guilty of impersonation as some other person was sitting in the examination at his place. He stated that at his recommendation Chairman BISE Kohat disqualified him for six examinations. He was cross examined by the counsel for the plaintiff at length.

After closing of 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. 02:**

The plaintiff has brought the instant suit for declaration-cum-perpetual and mandatory injunctions. The suit is of civil nature and this court being civil court has got jurisdiction to entertain the instant suit. Issue is decided in positive.

**Issue No. 03 & 04:**

Both these issues are linked with each other, therefore, taken together for discussion.

It is the case of the plaintiff that he is student of FCA Mishti Bazar Orakzai and he secured 454/550 marks in the 9<sup>th</sup> class annual examination for the year 2022 but feeling unsatisfied he applied for improvement of his marks in annual-

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**BAKHT ZADA**  
 Senior Civil Judge/JM  
 Orakzai at Babar Mela

II examination under Roll No. 10038. That examination center of GHS Mishti Bazar was allotted to him for the said examination, but the defendants without any reason shifted the examination center to Governor Model School Mishti Bazar against which the plaintiff along with other students of FCA protested. The defendants being aggrieved from such act of the plaintiff made case of using unfair means during the examination against him. After reporting by the defendants, the plaintiff was initially disqualified for 06 examinations and later on the jury committee vide notification no. 01 dated: 13.02.2023 reduced the said disqualification from 06 to 03 years. It is alleged that the allegations of the defendants being based on malafide and personal revenge are liable to be set aside.

In order to prove his case, the plaintiff produced as many as 3 PWs but the most important witness of the plaintiff is PW-02 Syed Iqbal, record keeper Naib Tehsildar, Central Orakzai, who exhibited information report/letter No. 1635/AC/L dated 09.11.2022 and information report/letter No. 1617/AC/L dated 07.11.2022. Neither the exhibition of the said letters were objected by the counsel for the defendant, nor the same were shattered during the cross examination, furthermore, no documentary evidence is produced by the defendants during their term of evidence to rebut the said documents. The oral evidence in shape of the statement of PW-01 and PW-03 are

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BAHHT ZADA  
Senior PW 02  
Orakzai at Baber Mela

fully in line with the plaint and documentary evidence produced by the plaintiff in shape of Ex. PW-2/2 & Ex. PW-2/3. The stance of the plaintiff regarding malafide and personal revenge of defendant No. 03 and unjustified disqualification by the jury and Chairman BISE, Kohat carries weight on the basis of the following:

*Firstly*, it is proved on record that plaintiff has obtained 454/550 marks in the annual examination of class 9<sup>th</sup> and has secured distinction in the school, meaning thereby that the plaintiff is an intelligent student and he was still unsatisfied from his obtained marks and has applied for improvement of his marks during annual-II (supplementary) examination. It is not appealing to prudent mind that one can get position in the school by using unfair means because mere passing of examination is not an issue for such an intelligent student who has already secured top position in his school.

*Secondly*, it is obvious from information of Tehsildar and information letters of Assistant Commissioner, Lower Orakzai, which are Ex. PW-2/2 and Ex. PW-2/3, that superintendent (defendant No. 03) has shifted examination center from Government High School, Mishti Bazar to the under construction building of adjacent Governor Model School, Mishti Bazar. It is also mentioned in Ex. PW-2/3 that the students of Government High School, Mishti Bazar and Al-Hadi Public School are treated favorably while students of FCA are

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**BAKHT ZADA**  
Senior Advocate  
Orakzai at Baber Misra

treated differently. The students demanded that the superintendent (defendant No. 03) may be transferred and an inquiry may be held against him for his partial behavior. As stated above, the letters/information reports having these allegations have been exhibited without any objection and the same have remained unrebutted and unshattered against the opposite party. Treating differently the candidates in the same examination center shows malafide of defendant No. 03. The information report Ex. PW-2/2 clearly shows that Assistant Commissioner, Lower Orakzai has observed during his visit of the examination center on 09.11.2022 that the examination center was shifted from GHS, Mishti Bazar to the adjacent Governor Model School, Mishti Bazar, having no windows, no doors and no building electrification and was therefore not feasible. He also observed that students of FCA demanded for transfer of the superintendent (defendant No. 03). Assistant Commissioner, Lower Orakzai in the same letter dated

*J. S. Sadi*  
**BAWATI SADA**  
 Senior Judge  
 Orakzai at Bab-e-Mela

09.11.2022 has recommended to the Deputy Commissioner that Chairman Kohat Board may be approached in this regard. The agitation of the students of FCA and demand for transfer of the superintendent on the above grounds. Furthermore, as mentioned in Ex. PW-2/3 treating the students of FCA, Mishti Bazar from students of other schools are clear instances of malafide on the part of defendant No. 03. Similarly, making of case of using unfair means against only one candidate in the



90

examination center i.e., plaintiff who is student of FCA is result of personal revenge.

*Thirdly*, the plea of defendants in the written statement is inconsistent with the evidence produced by them. The evidence produced by the defendants is that the plaintiff has committed impersonation by allowing another person to sit in his place in the examination center but this fact is nowhere mentioned in the written statement, rather the defendants have mentioned at para-No. 02 of factual objections that the plaintiff was caught by defendant No. 03 while cheating. The defendants were duty bound to produce evidence in line with their pleadings, but they took the plaintiff by surprise by producing evidence regarding alleged impersonation instead of cheating, which is not tenable in the eyes of law.

*Fourthly*, even the evidence produced by the defendants regarding allegation of impersonation against the plaintiff is not enough to prove impersonation against him due to the following reasons.

- a) The alleged person involved in impersonation is neither handed over to the police despite statement of defendant No. 03 as DW-02 that he caught the impersonator red handed, nor his identity is disclosed during the evidence.
- b) No written criminal complaint is made by defendant No. 03 to the concerned authority against him and

  
BAKHT ZADA  
Senior Civil Judge  
Orakzai at Baber Mela

(90)

mere bringing picture of some unidentified person on record is no evidence of impersonation at all.

In view of above, the evidence produced by plaintiff is fully in line with his pleadings and malafide and personal revenge of defendant No. 03 is clear from the contents of Ex. PW-2/2 and Ex. PW-2/3 as mentioned above in detail which clearly suggest that the case of using unfair means against the plaintiff is based on revenge of defendant No. 03 and the disqualification awarded to the plaintiff by the discipline committee and subsequent in appeal by the jury committee (Ex. DW-1/2) of appeal is unjustified. Issue No. 03 is decided in positive while issue No. 04 is decided in negative.

**Issue No. 01 & 05:**

Both these issues are inter-linked, hence, taken together for discussion.

As per my detailed discussion on issues no. 03 & 04, the plaintiff proved his case through documentary and oral evidence, therefore, issues no. 01 & 05 are decided in positive.

**RELIEF:**

As sequel to my issue-wise findings on issues no. 03 & 04, the plaintiff proved on record that he is neither involved in impersonation nor in cheating and the proceedings of defendant No. 03 against him are based on revenge, therefore, decree in favour of the plaintiff is hereby granted as prayed for. No order as to costs.

(92)

File be consigned to the Record Room after its completion and compilation.

**Announced**  
28.11.2023

*Bakht Zada*  
28.11.23  
**(Bakht Zada)**  
Senior Civil Judge,  
Orakzai (at Baber Mela)

**CERTIFICATE**

Certified that this judgment of mine consists of eleven (11) pages, each has been checked, corrected where necessary and signed by me.

*Bakht Zada*  
28.11.23  
**(Bakht Zada)**  
Senior Civil Judge,  
Orakzai at (Baber Mela)