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In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI

Civil Appeal No. CA-6/13 of 2022

Date of institution: 14.02.2022

Date of decision: 27.04.2022

Raza Ali son of Ahmad Ali resident of Qaum Bar Muhammad Khel,
Tappa Khwaidad Khel Tehsil lower and District Orakzai.

..... (Appellant)

...Versus...

1. District Education Officer, Orakzai.
2. Shabib Ali son of Ajab Ali resident of Stara Pkha District Orakzai.

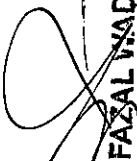
..... (Respondents)

**Appeal against Judgement, Decree and Order dated 25-01-2022 in
Civil Suit No. 75/1 of 2021.**

JUDGMENT

Instant Civil Appeal has been preferred by the appellant against the Judgment/Decree & Order dated 25.01.2022, passed by learned Civil Judge, Orakzai in Civil Suit bearing No.75/1 of 2021; whereby, the suit of appellant has been rejected under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

2. The brief facts of the case are such that the plaintiff Raza Ali (appellant herein) has filed suit against the defendants (respondents herein) for declaration-cum-mandatory injunction to the effect that plaintiff has provided land for construction of Government Girls Primary School at Stara Pkha some two and half decades earlier. The land was provided against the consideration of employment of menial establishment to be given to plaintiff or his nominee which was agreed and acted upon. The mother of plaintiff was appointed on the single available post at the school. The school was later on upgraded and by now is upper middle standard with the name

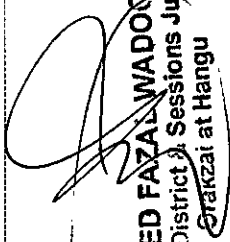

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of Government Girls Middle School Stara Pkha. The post of water carrier was promised to be given to the plaintiff but was not given so far. Meanwhile, respondent No.2 was seen in the school when biometric attendance has been introduced by the Provincial Government. On query, he responded to be employee of the School as Water Carrier appointed in the year 2000. The plaintiff being owner of the land has got the exclusive right of employment in the School and that the appointment of respondent No. 2 in the year 2000 (concealed till biometric attendance) is illegal.

3. Defendants (respondents) on appearance objected the suit on various legal as well as factual grounds in the written statements submitted by 02 different sets of defendants. Learned the Trial Court has rejected the plaint by invoking the provisions of Order-7 Rule-11 of the Code of Civil Procedure, 1908 that necessitated plaintiff to present instant appeal, which is under consideration.

4. This Court has considered the rival contentions of the learned counsel representing parties, learned District Attorney and has determined the following on perusal of the record and applying thereon the relevant law.

5. It is the main contention of the appellant/plaintiff that unwritten contract has been concluded between the parties. Accordingly, landed property had been delivered for construction of Government Girls Middle School Stara Pkha and all posts of menial Establishment have been committed to be given to plaintiff. Consequent thereto, the mother of the plaintiff has been appointed and is still working in the School. The appointment of plaintiff was unexecuted part of the contract; whereas, the appointment of defendant No.2 as Water Carrier is an absolute violation of the terms of the contract. It was added by learned counsel representing


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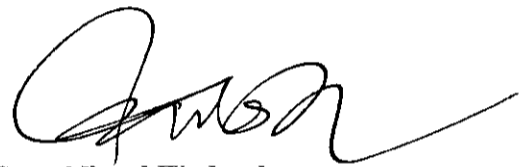
plaintiff that plaintiff is disclosing cause of action and thus trial was necessary for final determination of the matter in issue. He referred Haji Mitha Khan vs Muhammad Younis case reported as 1991 SCMR 2030 where it was held by august the Supreme Court of Pakistan that test of cause of action was that if what plaintiff had stated was taken to be correct, was he entitled to relief or not? But to the comprehension of this Court, if what has been stated in the plaint has been taken as correct; even then, the unwritten contract between the land provider and Provincial Government being the sole base of the suit, is void ab initio. According to Section-23 of the Contract Act 1872, every agreement of which the object or consideration is unlawful is void. The recruitment against the Public Policy of merits is considered against the Policy of the Law with the same magnitude because it applies to the spirit as well as letter of the Law. Hon'ble, the Peshawar High Court, Peshawar in a case, titled "Zia ul Haq and others vs Abdul Ghafoor" reported as PLD, 2019 Peshawar 176, clearly adjudges that no person could be allowed to own such like community based projects merely on the ground that it was constructed or located on his personally owned property. Moreso, recruitment to Civil Service, Government Service and other State regulated bodies are being carried out in accordance with the Law, Rules and Public Policy for the time being enforced and entering into contract between two parties cannot be given overriding effects; that too, when the very agreement is void ab initio. As far as the absence of the respondent from School and duty for long 20 years is concerned, that is by now open secret that ghost school and employees are existing; particularly, in Newly Merged Districts and the Authority concerned is under legal obligation to probe and proceed; however, it is no ground of favour for appellant in pending matter.

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6. For what has been discussed above, this Court holds the view that learned the Trial Court has properly and correctly appreciated the pleadings of the parties and has passed a speaking order which could reflect the judicial mind of the Court and the plaintiff has been correctly non-suited. Consequently, it is held that the same impugned order/judgment of the Trial Court needs no interference of this Court; hence, maintained and instant appeal being devoid of any merits stand dismissed. Costs shall follow the events.

7. Requisitioned record be returned back while file of this Court be consigned to District Record Room, Orakzai after completion and compilation within the span allowed for.

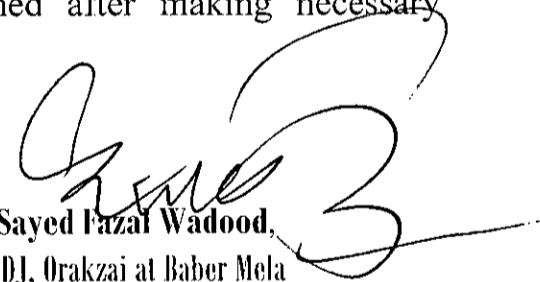
Announced in the open Court
27.04.2022



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment consists of four (04) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela