

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory Jurisdiction)

PRESENT:

Justice Ali Baqar Najafi
Justice Syed Arshad Hussain Shah

CPLA No. 1560 of 2025 & 1971 of 2025

[against the impugned judgment dated 13.02.2025 passed by Peshawar High Court, Bannu Bench in W.P.No.152-B/2024 & W.P.No.162-B of 2024]

Bakhtullah Shah and others. In CPLA No. 1560/2025
Mrs. Syeda Anjum, Ex-DEO (Female) Bannu In CPLA No. 1971/2025
DEO Office Bannu

Versus

Govt. of Khyber Pakhtunkhwa through Chief Secretary and others In both petitions

For the Petitioner (s) : Mr. Arif Ullah Khan, ASC
(in CPLA No.1560/2025)
Syed Iqbal Hussain Shah Gillani, ASC
(in CPLA No.1971/2025)

For the Respondent(s) : Mr. Shah Faisal Ilyas, Addl. AG KPK
a/w Raza Ullah AD Anti-Corruption
Bannu.

Date of Hearing : 24.03.2026

JUDGMENT

ALI BAQAR NAJAFI, J. Through these petitions under Article 185(3), now under 175 (F)(2) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have challenged the impugned judgment dated 13.02.2025 whereby the writ petitions filed by the petitioners challenging the letter dated 17.01.2024 were dismissed.

2. After hearing the learned counsel for the parties and perusing the record, it is straightaway observed that the petitioners

were proceeded under E&D Rules 2011 on the following allegations:-

- * *That petitioners have not implemented the CP No.2022 dated 07.03.2018 in its true spirit while appointing/re-instating AT/TT female candidates liner on since 2010.*
- * *That before appointment/re-instatement, petitioners were provided with two sets of opinion from Law deptt: according to one opinion (a) Documents submitted for appointment after cut of date of advertisement are not acceptable (b) Qualification improved during service cannot be ignored. The allegation that why the second opinion was preferred in the minutes of the meeting.*
- * *That petitioners had issued appointment orders in excess as were given in the advertisement.*
- * *That opportunity was provided to failed candidates in the written test.”*

3. Accordingly, the petitioners were issued the show cause notice whereupon they filed the reply and were also personally heard. They raised the objections on impartiality of the Inquiry Panel and, therefore, the petitioner No.3/Ikram Ullah Khan also filed W.P.No.128-B/2021 in which, despite passing status quo order, the disciplinary proceedings continued and although they were exonerated on 07.03.2022 yet were imposed the penalty on 17.01.2024 by the competent authority.

4. On factual premise it is important to mention that consequent to the advertisement dated 24.03.2010, for the appointment of Theology Teacher (TT) and Arabic Teacher (AT) in the offices of District Education Officer (Female) Bannu, the candidates had applied and appointments were made on 14.11.2011 as teacher. However, a W.P.No.16-B/2011 (Rehan Begum Vs. EDO) was filed challenging the said appointments which were decided on 10.09.2015 whereby a committee was ordered to be constituted by a Division Bench to probe into the veracity of appointments whether or not made against law, on fake

documents, or against merit policy of the Provincial Government.

The committee was comprised of:-

1. Additional Registrar P.H.C. Bannu Bench, Bannu (Chairman)
2. Mr. Qudratullah Khan Gandapur, Assistant Advocate General (A.A.G) Bannu (Member)
3. Zafar Iqbal Khan, President High Court Bar Association Bannu Bench, Bannu (Member)
4. Mr. Ghulam Farid, Inspector, Circle Officer (C.O.) Anti-Corruption Establishment (A.C.E.) Bannu (Member)

The Divisional Bench directed the committee:-

“To probe into the matter, scrutinize all the documents as well as the merit list and thereafter report be submitted before this Court that whether the appointments are against law, and on fake documents and against the merit policy of the Provincial Government. The Anti Corruption Department has already concluded the investigation, the report of investigation office be also made part of the report. The learned Additional Registrar is directed to club all the cases of the same nature, issue notices to all concern and all the parties as well as those who are either respondents or those who were appointed on various years on such fake or genuine documents.”

5. Consequent to the said order the inquiry committee vide report dated 14.12.2015 exposed the illegalities and irregularities at the gross-root level whereafter the writ petition was disposed of vide judgment dated 09.05.2017 and the High Court declared the appointments of the candidates as illegal, void and ineffective and a direction was issued to initiate the process by constituting a selection committee comprising of honest officers and all the posts of AT & TT filled on the basis of advertisement dated 24.04.2010 were to become vacant while providing protection to those candidates who applied in accordance with the said advertisement. It was further observed that in order to create an example the responsible officials who had participated in the process of illegal selection should be taken to task. Meanwhile, on 01.04.2021 a two members committee conducted an inquiry under E&D Rules, 2011

against the petitioners in which they were found guilty and imposed the following penalties:-

S.#	Name of accused officer	Findings	Recommendations
1	Mr. Bakhtullah Shah, (TC BS-19), Ex-EDO E&SE Bannu	Mr. Bakhtullah Shah was EDO (EXSE) Bannu at the time of appointment of 8 Ats and 16 TTs in 2010 whose certificates were later on declared fake by the judicial committee constituted by the Peshawar High Court Bannu Bench vide order dated 10.09.2015 and reports submitted by the committee on 29.12.2015 (Annex-11, 12, 13). EDO (E&SE) Office was initiating office for these appointments and he was also member of the DSC. Therefore, he was among others, responsible for these appointments. However, he attained the age of 60 years on 01.06.2020 and he could not be proceeded against under the E&D Rules after that date. The instant enquiry against him has been initiated vide order dated 07.12.2020 i.e. after his superannuation.	Disciplinary proceedings against him under E&D Rules may not be processed further, being not covered under the rules.
2	Mr. Muhammad Anwar (PMS BS.17), SO (Lit-I) E&SED	Out of 09 charges, the 06 charges No.i,ii,iv,vi,viii & ix stand proved. 02 charges i.e. charge No.iii & v stand partially proved whereas the remaining one charge i.e. charge No.vii could not be proved.	Major penalty of “reduction to lower pay scale” may be imposed on him.
3	Mr. Ikram Ullah (TC BS.18) Ex-DEO(F) Bannu now DDEO Bannu	Out of 03 charges against the accused officer, charge No.i sands proved whereas charge No.ii & iii could not be proved.	Major penalty of “reduction to a lower pay scale” may be imposed on him.
4	Mst. Fanoos Jamal (MC BS-18), the then DEO(F) Bannu now DDEO (F) Bannu	Out of 03 charges against the accused officer, charge No.i stands proved whereas charge No.ii & iii could not be proved.	Major penalty of “reduction to a lower stage in time scale for a period of three years” may be imposed on her.
5	Syeda Anjum (MC BS.19) Ex-DEO Bannu, now DEO (F) D.I.Khan	Out of 03 charges against the accused officer, charge No.i & ii could not be proved whereas charge No.iii is partially proved.	Minor penalty of “withholding of annual increment for two years” may be imposed on her.
6	Mst. Neelofar Kamran (TC BS.19) Ex-DEO Bannu now Principal Qamar Zaman Mandev, Bannu	Although part of the charge that she took the Dispatch Register in her custody on 04.095.2019 has been admitted by the accused officer, yet to say that it was an act unbecoming of a civil servant hardly constitutes a charge to form basis for initiating disciplinary proceedings against her.	She may be exonerated from this charge.
7	Mr. Barkat Ali, Senior Subject Specialist (BS.18) working as Litigation Officer in the office of DEO(F) Bannu	Out of 03 charges against the accused officer, charge No.i stand partially proved. Charge No.ii cannot be considered as a separate charge but part of the 1 st charge against the accused officer, whereas charge No.iii could not be proved.	Minor penalty of “withholding of annual increment for two years” may be imposed on him.
8	Mr. Raham Riaz Khan, Superintendent (BS.17) office of SDEO (Male), Bannu	Charge against the accused officer is proved.	Minor penalty of “withholding of annual increment for two years” may be imposed on him.

Later the Circle Officer recommended the FIR on 05.12.2022 upon which the authority issued the order dated 17.01.2024 to register a criminal case under AEC which was challenged in

6. However, order dated 09.05.2017 was challenged in the Supreme Court of Pakistan in C.P.No.2022, 2023, 2024, 2383,

2384, 2491, 2844 & 2845 of 2017 which were decided on 07.03.2018 by holding that the process of the recruitment should start afresh and those who qualified the test and have genuine certificates be appointed and the services they already rendered in the past be counted. The petition was converted into appeal and disposed of by further observing that those who become overage be given required relaxation.

7. A meeting was, therefore, conducted by the Departmental Selection Committee on 08.11.2018 in which the candidates were called and the test/interviews were conducted afresh and then the appointments were made. Surprisingly, those who were appointed on bogus certificates and also failed to pass the test were statedly appointed. In this background the said appointments were again questioned in W.P.No.820-B/2018 and W.P.No.838-B/2018 which were decided by a Division Bench of Peshawar High Court, Bannu Bench on 16.12.2019 by holding that the matter required detailed inquiry as warranted in the earlier round of litigation and the writ petitions were therefore disposed of directing the petitioners (therein) to approach the Civil Court to determine the validity of certificates and if they were found fake, the appointees were to be terminated and salaries be recovered. It was further directed that if the Civil Court had declared the documents as fake, the officials who had appointed the candidates on its basis should be proceeded both administratively and criminal cases should be registered against them. However, W.P.No.1039-B/2019 and W.P.No.379-B/2020 were filed exposing that Departmental Selection Committee in its meeting on 08.11.2018 had already

made appointments vide order dated 04.05.2019 but again appointment order was made on 19.07.2019 which were challenged therein. Likewise, W.P.No.527-B/2020 was filed on the ground that the petitioner (therein) was denied the payment of salaries. In W.P.No.586-B/2020 the notices issued by the Anti-Corruption Establishment and NAB authorities and stoppage of salaries were challenged. In COC.No.681-B/2023 the contempt proceedings were sought to be initiated for stopping salaries.

7. In W.P.No.152-B/2024 and W.P.No.162-B/2024 the petitioners (therein) had occupied the key positions during the entire process of recruitment during which the illegalities and irregularities were committed for initial appointments. The Government of KPK sent a letter dated 17.01.2024 to the Director ACE conveying the permission of the competent authority under Rule 4(2)(b) and 4(4)(b) read with Rule 9 of KPK Anti-Corruption Establishment Rules, 1999 for the registration of FIR and the arrest of the petitioners which was challenged in the said writ petition.

8. We have also noticed that the petitioners of the W.P.No.838-B/2018 Abida Bibi and others had approached the Civil Court in which the petitioners in both W.P.Nos.152-B/2024 and 162-B/2024 were arrayed as the respondents. Vide order dated 16.12.2019 the matter was left for the Civil Court to decide the question of validity of the certificates within 06 months and meanwhile no adverse action should be taken against the appointees unless the fate of the lis before the Civil Court is finally decided. With the above said observations, the W.P.No.1039-

B/2019, 379-B/2020, 527-B/2020, 586-B/2020 with CPC No.131-B/2020, 681-B/2023, 152-B/2024 and 162-B/2024 were disposed of.

9. In the W.P.No.152-B/2024 & W.P.No.162-B/2024 it is worth mentioning that vide order dated 09.05.2017 the illegalities and irregularities in initial appointments were declared null and void and the departmental inquiry was initiated against those who were found responsible for such recommendations. Besides, Anti-Corruption Establishment was also directed to initiate inquiry before recommending criminal prosecution. On 17.01.2024 a letter was sent to Anti-Corruption Establishment, the permission of the competent authority for registration of FIR which has been challenged in the said writ petitions. It is the case of the petitioners that the proposed prosecution is based on mala fide as the petitioners have not committed any misconduct and that if such proceedings are warranted, it should be initiated after the decision of the Civil Court which is the essence of the judgment earlier passed by the Division Bench in W.P.No.838-B/2018 and W.P.No.820-B/2018 decided on 16.12.2019. However, in paragraph 25 of the impugned judgment it has been mentioned that the proposed FIR could only be registered if the Civil Court came to a conclusion that the appointments were made on the basis of bogus degrees or in violation of the law and merits and it was concluded that both the administrative department as well as the Anti-Corruption Establishment shall be at liberty to initiate such proceedings against all those involved in the second

transaction as warranted in the law after the decision of the lis before the Civil Court.

10. With this background before us, we have failed to understand as to why two writ petitions were dismissed whereas it should be disposed of in terms of the referred observations. Needless to observe that the genuineness or otherwise of the certificates presented for the appointments are the hallmark for any possible criminal or disciplinary proceedings and since the Civil Court is already seized with the matter which would adjudicate on the genuineness of the said certificates, therefore, after such decision the proceedings could be initiated against the petitioners. Normally criminal proceedings should not be postponed pending the disposal of civil litigation connected with the same subject matter but where it is clear that the criminal liability is dependent upon the result of the civil litigation or is so intimately connected with it that there is a danger of grave injustice to either party due to conflicting judgment between the civil court and criminal court, the criminal court should stay its hands until the civil litigation is disposed of. Similarly, when a title of property is in dispute, criminal court should not give its findings on the same question. In such like situation, the High Court had inherent powers under section 561-A Cr.P.C. to order stay of the criminal proceedings. However, the matter is one of discretion it should be exercised keeping in view the situation whether the accused was likely to be prejudiced if the criminal proceedings were not stayed. This principle was given more than five decades

by the Supreme Court in 04 Members Bench.¹ In similar fashion a three members Bench of the Supreme Court in Muhammad Moosa's case² allowed the request of the stay of the criminal proceedings pending the decision of a Civil Court which proceedings could be revived if the decision of the Civil Court so warranted. On the same line if the dispute was pending regarding the agricultural land the criminal proceedings were stayed in Abdul Haleem's case.³ The view taken in Muhammad Akbar's case (supra) was reiterated in Akhlaq Hussain Kayani's⁴ case in which some supporting case laws were also discussed. Besides, during the pendency of the rival civil suits inter se regarding alienation of property, allowing criminal court to proceed before decision of the civil litigation is tantamount to putting the cart before the horse.⁵ Obviously, the object of a civil proceedings is to enforce civil rights and obligations while that of a criminal proceedings is to punish the offender for the commission of the offence. Although, there is no bar in instituting both simultaneously but where it is difficult to draw a line between a bona fide claim and the alleged criminal act or where the subject matter of both are same and closely connected or the civil litigation is instituted with mala fide to cause a delay the criminal proceedings should be stayed.⁶ There is no universal application of this principle as it will depend on the identical nature of the two subject matters in two different types of proceedings⁷ where the dispute squarely fall within the domain of

¹ *Muhammad Akbar Vs. The State and Maulvi Muhammad Yasin Khan* (PLD 1968 SC 281)

² *Muhammad Moosa and another Vs. The State and another* (1987 SCMR 601)

³ *Abdul Haleem Vs. The State and others* (1982 SCMR 988)

⁴ *Akhlaq Hussain Kayani Vs. Zafar Iqbal Kiyani and others* (2010 SCMR 1835)

⁵ *Ayaz Ahmad Khan Vs. The State* (PLD 2011 SC 171)

⁶ *Salman Ashraf Vs. Additional District Judge, Lahore* (2023 SCMR 1292)

⁷ *Muhammad Aslam Vs. The State* (2017 SCMR 390)

civil court, the criminal court ought to have waited until the decision is taken by the Civil Court.⁸ It is also trite law that while stopping the criminal proceedings, one should not be influenced by any extraneous material which is not germane to the issue and the court must be satisfied from the material available on record that the prosecution was launched for improper motives or that its continuance would be an abuse of the process of the court or would defeat the ends of justice.⁹

11. We therefore, convert Civil Petitions for Leave to Appeal into Appeal and dispose it of by observing that proceedings against the petitioners, either criminal or administrative side, can only be initiated after the decision of the Civil Court on the veracity of the disputed documents that too in accordance with law.

12. With the above observations, these petitions are **disposed of.**

JUDGE

Islamabad

24.03.2026

APPROVED FOR REPORTING

A.Qadoos*

JUDGE

⁸ *Sajjad Hussain Mukhi Vs. The State* (2014 SCMR 1741)

⁹ *Mirza Naseem Baig Vs. Muhammad Iqbal and another* (1981 SCMR 315)

