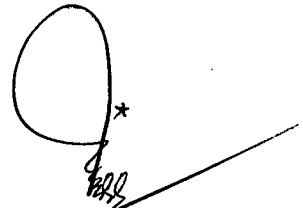


15.07.2022

Junior of learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Implementation report not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of implementation report. Adjourned. To come up for implementation report on 07.09.202 before S.B.

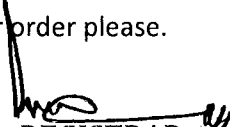

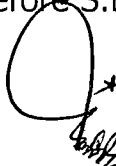
A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical stroke and a horizontal line extending to the right. A small asterisk is placed above the vertical stroke.

(MIAN MUHAMMAD)
MEMBER(E)

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 119/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.02.2022	<p>The execution petition of Mr. Sher Alam Khan submitted today by Syed Noman Ali Bukhari Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<p><i>Noted by CA S.D 7/4/22</i></p>	<p>This execution petition be put up before to Single Bench at Peshawar on <u>17-05-2022</u>. Original file be requisite. Notices to the appellant and his counsel be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	17.05.2022	<p>Learned counsel for the petitioner present.</p> <p>Notice of the present execution petition be issued to the respondents for submission of implementation report on 15.07.2022 before S.B.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (E)</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Execution Petition No. 119 /2022

In Service Appeal: 87/2016

Mr. Sher Alam Khan

VS

Higher Education Deptt

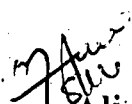
INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-03
2.	Copy of Judgment	- A -	04-09
3.	Copy of application		10
4.	Vakalat Nama	-----	11


PETITIONER

Sher Alam Khan

Through:


Syed Nomah Ali Bukhari
Advocate, High Court

Cell No: 0306-5109438

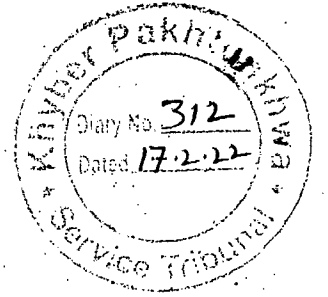
Date: 17/02/2022

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 119 /2022

In Service Appeal: 87/2016



Mr. Sher Alam Khan Assistant Professor (English)
Higher Education Deptt, KP, Peshawar.

PETITIONER

VERSUS

1. The Govt of KP through Chief Secretary, KP, Civil Secretariat Peshawar.
2. The Secretary Higher Education, KP, Civil Secretariat Peshawar.
3. The Director Higher Education Deptt, Directorate of Higher Education, KP Peshawar.

RESPONDENTS

.....

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 12.11.2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.

.....

Respectfully Sheweth:

1. That the applicant/Petitioner filed Service Appeal No.87/2016 against the illegal acceptance of resignation.
2. That the said appeal was finally heard by the Honorable Tribunal on 12.11.2021. The Honorable Tribunal was kind enough to accept the appeal. The impugned orders were set-aside and resignation stood withdrawn. The service of the appellant as Assistant Professor (BS-18) was restored without back benefits with observation that during the period in which appellant remained as registrar at AWKUM would be treated on duty against leave accrued, if any, or leave without pay for the purpose of length of service and future benefits. **(Copy of judgment is attached as Annexure-A).**
3. That the petitioner also filed an application for implementation of the judgment of this Hon'ble Tribunal in the office of Sectary Higher Education Deptt: KP but the respondents totally failed in taking any action regarding the implementation of the judgment of Hon'able Tribunal dated 12.11.2021. **(Copy of application is attached as Annexure-B)**
4. That in-action and not fulfilling formal requirements by the respondents after passing the judgment by this august Tribunal, is totally illegal, tantamount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan. Therefore, the respondents are legally bound to pass formal appropriate order to comply with the judgment in letter and spirit.


6. That the- petitioner has having no other remedy except to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 12.11.2021 of this august Tribunal in letter and spirit. The respondent may also be directed to allow the petitioner to resume his duties in his parent department as per judgment of this august Tribunal from the date of judgment for the purpose of monetary/other benefits. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.


Petitioner

Sher Alam


Through:


Syed Noman Ali Bukhari
Advocate High Court.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.




DEPONENT

A

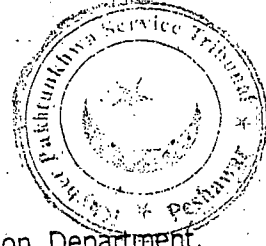
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 87/2016

Date of Institution ... 23.12.2015

Date of Decision ... 12.11.2021



Sher Alam Khan Ex-Assistant Professor (English), Higher Education Department,
presently Registrar Abdul Wali Khan University Mardan.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa
Civil Secretariat Peshawar and three others. ... (Respondents)

Khush Dil Khan & Syed Noman Ali Bukhari,
Advocates

... For Appellant

Noor Zaman Khattak,
District Attorney

... For Respondents

SALAH-UD-DIN ...
ATIQ-UR-REHMAN WAZIR ...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that upon the recommendations of Public Service Commission, the appellant was initially appointed as Lecturer (BPS-17) vide order dated 15-10-1992, who later on was promoted as Assistant Professor (BPS 18) vide order dated 01-01-2010. During the course of his career, the appellant applied through proper channel to the post of Registrar (BPS-20) in Abdul Wali Khan University Mardan (AWKUM) and the appellant was selected and appointed as registrar for a period of three years vide order dated 19-08-2014. The appellant submitted request to the respondents to relieve him of his post to join his new assignment,

ATTESTED

SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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which however was regretted, instead the appellant was asked to submit resignation from the post of assistant professor. The appellant again requested for retention of his lien or counting his service under section-418 of the Civil Service Regulations (CSR), which too was not acceded to, hence the appellant tendered his resignation on 10-10-2014, but when the appellant came to know that the post of registrar is a tenure based post, hence he requested again on 27-05-2015 for conversion of his resignation into a request to relieve him from service in order to join new assignment, but in the meanwhile his resignation was accepted vide order dated 08-06-2015, against which the appellant filed departmental appeal dated 30-06-2015 for withdrawal of his resignation or confirmation of his pension for the services he rendered in the respondents department, but his appeal was rejected vide order dated 01-12-2015, hence the instant service appeal with prayers that the impugned orders dated 08-06-2015 and 01-12-2015 may be set aside and resignation so tendered may be allowed to be withdrawn or in alternative, the appellant having rendered more than 20 years of service be allowed pension for the service rendered.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law and his rights secured under the law has been violated; that before acceptance of resignation, the appellant has virtually withdrawn his resignation, but was not considered by the respondents, which is against law and norms of natural justice; that the appellant has at his credit more than 20 years of service, however the respondents rejected departmental appeal of the appellant, hence his long and spotless service has been washed out, inspite of the fact that under the law he is entitled either to have count his service for the purpose of pay and pension or at least he should have been allowed pension for the service he rendered in the Higher Education Department; that the respondents illegally insisted for resignation, despite the fact that the appellant

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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was entitled to retain his lien over his post or to have been allowed deputation; that case of the appellant is covered under section-418 of CSR.

03. Learned District Attorney for the respondents has contended that upon his selection as Registrar, the appellant was required either to submit resignation from the post of Assistant Professor or to quit the job of registrar and continue with his job; that the appellant opted to submit his resignation and quit the job of Assistant Professor, now he cannot opt to withdraw his resignation; that university is an autonomous body and any civil servant who wants to join the autonomous body, will have to resign from his previous job, hence request of the appellant for relieving was regretted and his resignation was accepted by the competent authority; that it is prerogative of the government to accept or reject the resignation.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant was properly granted NOC for applying to the post of Registrar and upon his selection as Registrar in Abdul Wali Khan University Mardan (AWKUM) vide order dated 19-08-2014, the appellant placed a request dated 25-10-2014 to the respondents to relieve him either on deputation or retaining his lien in his parent department in order to join his new assignment, but the appellant was compelled to tender resignation from the post of Assistant Professor. The appellant though was hesitant but finally tendered his resignation on 10-10-2014. The appellant assumed the charge as registrar on 17-11-2014 and after taking over charge, it transpired that the post of registrar is a tenure based post only for the period of three years, hence he submitted an application to consider his resignation as withdrawn, but his request was declined vide order dated 17-06-2015, but in the meanwhile his resignation was accepted vide order

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

dated 08-06-2015, against which the appellant filed departmental appeal dated 30-06-2015, which was rejected vide order dated 01-12-2015.

06. Placed on record is a letter of Administration Department dated 03-10-1989 containing instructions that resignation tendered by a Government Servant shall either be accepted or rejected by the competent authority within the stipulated period of not more than 30 days of its submission and acceptance/rejection thereof be communicated to the Government Servant concerned accordingly, but in case of the appellant, his resignation was accepted after lapse of almost eight months, which is contrary to the instructions circulated by the provincial government. Placed on record is another letter dated 24-12-1959 of Administration Department containing instructions regarding resignation that where a government servant who has tendered resignation, withdraws it before it is accepted by the competent authority, or where after the acceptance but before the acceptance is communicated to him, he is allowed to withdraw the resignation. It was noted that the appellant requested for withdrawal of his resignation on 27-05-2015 well before acceptance of his resignation dated 08-06-2015 and as per instructions circulated by administration department vide order dated 24-12-1959, the appellant was entitled to withdraw his resignation before its acceptance, but the respondents illegally accepted his resignation in haste without taking into consideration his pending request for withdrawal of his resignation. In the judgment reported as 2003 PLC (CS) 1535 it has been held that ESTA CODE, Edition (1989) clearly mentioned that in case Civil Servant makes withdrawal of his resignation before the same was accepted by the competent authority, resignation would be deemed to have been withdrawn. In other judgments reported as 2015 PLC (CS) 337 and 1984 PLC (CS) 435, it has been held that resignation could be withdrawn or recalled before its acceptance by the competent authority, whereas the appellant had also requested for withdrawal of his resignation, but such request of the appellant was not

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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considered positively by respondents, which however was not warranted and on this score alone, the Impugned orders are liable to be set at naught.

07. We have also noted that the appellant in his departmental appeal alleged his resignation not to be voluntary, but he was forced to do so and to this effect, august Supreme Court of Pakistan in its judgment reported as 2005 SCMR 1194 has declared such action of the respondents as illegal. Last but not the least, section-418(b) states that resignation of an appointment to take up another appointment, service that counts, is not a resignation of the public service, so in view of section-418(b) of CSR, the resignation so tendered cannot be termed a resignation in real terms and depriving the appellant from benefits of his long service would not be in accordance with the canons of law.

08. We are of the considered opinion that the appellant having more than 20 years service at his credit cannot be ousted for technical reasons, as the appellant submitted his application for withdrawal of his resignation well before its acceptance, but his request was illegally rejected. Most importantly, the appellant was properly granted NOC by the respondents for joining his new assignment and in view of granting such NOC, the respondents were required to grant him either deputation or retaining his lien against his original post, which however was not done by the respondents. The appellant was denied fundamental right of due process as guaranteed under Article-10-A of the constitution.

09. In view of the foregoing discussion, the instant appeal is accepted. Impugned orders dated 08-06-2015 and 01-12-2015 are set aside and resignation of the appellant stands withdrawn and service of the appellant as Assistant Professor (BPS-18) is restored without back benefit with observations that period during which he remained as Registrar would be treated on duty against leave accrued, if any, or leave without pay for the purpose of his length of service and

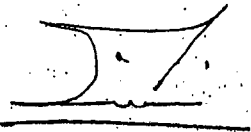
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

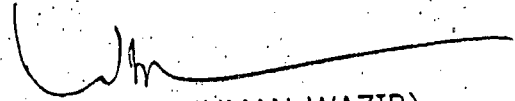
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future benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
12.11.2021

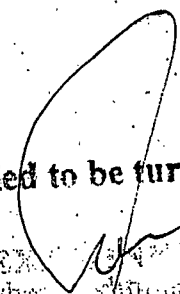


(SALAH-UD-DIN)
MEMBER (J)



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 17-12-21
 No. 2800
 Co. 30
 UR 4
 To 34
 No. 17-12-21
 Date of Delivery of Copy 17-12-21

To,

B 10

The Secretary,
Higher Education Dept.,
Govt of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

Decision of the Khyber Pakhtunkhwa
Service Tribunal Peshawar Appointed 8/2016

Respected Sir,

I have the honor to enclose herewith
an attached copy of the decision of the honorable
Tribunal in the aforementioned appeal for your
kind consideration and further process please.

Thanks,

Kinsh Segreels,

① Identity

Sher Khan Khan

Assistant Professor

of English

Dated 17/2/2021

Copy: Personal File/Record

VAKALATNAMA

NO. _____ /20

IN THE COURT OF K.P. Service Tribunal Peshawar

Sheer Alam Khan

Appellant
Petitioner
Plaintiff

VERSUS

Education

Respondent (s)
Defendants (s)

I/WE Sheer Alam Khan

do hereby appoint and constitute the *SYED NOMAN ALI BUKHARI Advocate High Court* for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____ /20

Sheer Alam Khan

(CLIENT)

ACCEPTED

Sheer Alam Khan

SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT

“A”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

Recd

APPEAL No.....

EP No. 119

of 20

30
22

Sher Alam Khan

Appellant/Petitioner

Versus

Through Chief Secy KPK Peshawar

RESPONDENT(S)

Respondent (3)

Notice to Appellant/Petitioner

*Director Higher Education
Department, Directorate of Higher Education
Peshawar*

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *12/10/2022* at *9:00am*

(Copy of EP is attached)

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

(For Implementation Report)

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

Regd

8B

EP No. *119*

APPEAL No. of 20 *22*

Sher Alam Khan

Appellant/Petitioner

Versus

Through Chief Secy KPE Peshawar

RESPONDENT(S)

Respondent (3)

Director Higher Education

Notice to Appellant/Petitioner

*Department, Directorate of Higher Education
Peshawar*

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *15/07/2022* at *9:00 AM*

(Copy of EP is attached)

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

(For Impl-ment-ion Report)

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.