14.07.2022

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 08.09.2022 before S.B.

(MIAN MUHAMMAD) MEMBER (E)

Form- A FORM OF ORDER SHEET

Court of	
Execution Petition No.	169/2022
execution Petition No.	107//0//

Exe	cution Petition No. 169/2022
Date of order proceedings	Order or other proceedings with signature of judge
2	3
31.03.2022	The execution petition of Mr. Ihsan Ullah submitted today by Mr. SaadUllah Khan Marwat Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
Strated Strate S	This execution petition be put up before to Single Bench at Peshawar on 20-05-2022. Original file be requisite. Notices to the appellant and his counsel be also issued for the date fixed. CHAIRMAN
20.05.20	22 Learned counsel for the appellant present. Notice of the present execution petition be issued to the respondents for submission of implementation report. To come up for implementation report on 14.07.2022 before S.B. (Mian Muhammad) Member (E)
	Date of order proceedings 2 31.03.2022

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

E.P. No.169/2022

Misc Pett: No._____ /2022

IN

S.A. No. 1078/2018

Ihsan Ulalh

Dated: 31-03-2022

versus

Assistant Director & Others

INDEX

S.#	Description of Documents	Annex	Page
1.	Memo of Misc Petition		1-3
2.	Copy of Appeal dated 03-09-2018	"A"	4-7
3.	Copy of Judgment dated 27-01-2022	"B"	8-16

Applicant

Through

(Saadullah Khan Marwat)

Advocate

21-A Nasir Mension,

Shoba Bazar, Peshawar.

Ph: 0300-5872676

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Misc	Pett	: No		_/2022
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٠.		N ₀	1070	/2010

VERSUS

- Assistant Director, Local Government
 & Rural Development Department,
 Lakki Marwat.
- Director General, Local Government
 & Rural Development
 Department, Peshawar.

APPLICATION FOR IMPLEMENTATION OF THE

JUDGMENT DATED 27-01-2022 OF THE HON'BLE

TRIBUNAL, PESHAWAR:

Respectfully Sheweth:

- 1. That on 03-09-2018, applicant filed Service Appeal before this hon'ble Tribunal for reinstatement in service. (Copy as annex "A")
- 2. That the said appeal came up for hearing on 27-01-2022 and then the hon'ble Tribunal was pleased to hold that:-

"The instant appeal as well as all other connected appeals are accepted, the impugned orders of their termination from service are set aside and they are reinstated into service against their respective positions with all back benefits with further direction that private respondents also shall not suffer for lapses of the respondents". (Copy as annex "B")

- 3. That applicant as well as Registrar of the hon'ble Service Tribunal remitted the judgment to respondents for compliance but so for no favorable action was taken there and then and the judgment of the hon'ble Tribunal was put in a waste box.
- 4. That the respondents are not complying with the judgment of the hon'ble Tribunal in letter and spirit and flouts the same with disregard, so are liable to be proceeded against the Contempt of Court Law for punishment.

It is, therefore, most humbly requested that the judgment dated 27-01-2022 of the hon'ble Tribunal be complied with hence forthwith.

OR

In the alternate, respondents be proceeded for contempt of court and they be punished in accordance with Law.

Applicant

Through

Saadullah Khan Marwat

Arbab Saif-ul-Kamal

Amjad Nawaz

Advocates

Dated: 31-03-2022

AFFIDAVIT

I, Ihsan Ullah S/O Faiz Ullah Khan R/O Mela Shahab Khel, Lakki Marwat, Naib Qasid, Village Council, Abba Khel-IV, Lakki Marwat (Applicant), do hereby solemnly affirm and declare that contents of **Implementation Petition** are true and correct to the best of my knowledge and belief.

DEPONENT

CERTIFICATE:

As per instructions of my client, no such like Implementation Petition has earlier been filed by the appellant before this Hon'ble Tribunal.

ADVOCATE

7. That on 11-05-2018, appellant submitted representation before R. No. 02 for reinstatement in service which met dead response till date. (Copy as annex "H")

Hence this appeal, inter alia, on the following grounds:-

GROUNDS:

- a. That appellant has in his credit the educational qualification of Matric.
- b. That appellant applied to the said post of his own Village Council and it was incumbent upon the department to appoint him as such in his own Village Council and not in any other. He could not be held responsible for the lapses of the respondents, if any.
- c. That when the matter taken to the court, the department was legally bound to transfer appellant even other incumbents to their own Village Council to save their skins.
- d. That as and when Show Cause Notice was issued to appellant regarding appointment in other Village Council, then he should rectify the mistake, if any, because the lapses were on the part of the authority and not of the appellant and in such situation, he could not be made responsible for the same.
- e. That appellant was appointed as per prescribed manner after observing the due codal formalities.
- That as per law and rules, appellant is liable to serve anywhere in District, outside District / Province even outside Country, then he can be appointed anywhere for the purpose, being citizen of the country.

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- g. That it is to be ascertained as to whether R. No. 04 has applied to the said post or otherwise. In such a situation the department was legally bound to advertise the said post.
- h. That R. No. 04 was never gone through the process of selection, so at such a belated stage when his name was not recommended by the Departmental Selection / Recruitment Committee, he could not be appointed straight away as such.
- That in the aforesaid circumstances, order of appointment of R. No. 04 was not only illegal but was ab-initio void. The same was based on favoritism.
- j. That service law is alien to the word "Termination", so on this score alone, order of termination of appellant is / was illegal.
- k. That order of appointment of appellant was acted upon, effected and got finality, the same was made by the competent authority and cannot be rescinded in the manner taken.
- That appellant was paid Monthly Salaries for about 02 Years and
 Months which gave vested right to him.
- m. That order of termination of appellant from service is based on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 18-04-2018 of R. No. 01, and appointing R. No. 04 as Village Council be set aside and appellant be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Appellant

Through

Dated.29.08.2018

Saadullah Khan Marwat

Amiad Nav

Amjad Nawaz Advocates.

Service Tribunal.

Reslawer

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27.01.2022

Learned counsel for the appellant present. Mr. Wuhammad

Adeel Butt, Additional Advocate General for official respondent No. 1 to 3 present. Counsel for private respondent No. 4 present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in service appeal bearing No. 1225/2019 "titled Momin Khan Versus Assistant Director, Local Government & Rural Development, Lakki Marwat and three others" is accepted, the impugned order of his termination from service is set aside and appellant is reinstated into service against his respective position with all back benefits with further direction that private respondent also shall not suffer for lapses of the respondents, hence he also be accommodated. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED 27.01.2022

(AHMAD SULTAN TAREEN) CHAIRMAN

-REHMAN WAZIR)

MEMBER (E)

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Appilention. Copyley For_

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWA

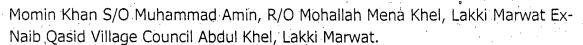
Service Appeal No. 1225/2019

Date of Institution

19.09.2019

Date of Decision

27.01.2022



(Appellant)

VERSUS

Assistant Director, Local Government & Rural Development, Lakki Marwat and three others. (Respondents)

Arbab Saiful Kamal,

Advocate

For Appellant

Muhammad Adeel Butt,

Additional Advocate General

For official respondents

Mr. Taimur Ali Khan,

Advocate.

For private respondent No. 4.

AHMAD SULTAN TAREEN ATIQ-UR-REHMAN WAZIR

CHAIRMAN MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This judgment shall dispose of the instant service appeal as well as the following connected service appeals as common question of law and facts are involved therein:-

- 1. 1078/2018 titled Ihsan Ullah
- 2. 1079/2018 titled Tahir Khan
- 3. 1080/2018 titled Farooq Khan
- 4. 1081/2018 titled Mumtaz Khan
- 5. 1082/2018 titled Imtiaz Ahmad

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- 6. 1083/2018 titled Haroon Khan
- 7. 1084/2018 titled Sabz Ali Khan
- 8. 1085/2018 titled Dil Jan
- 9. 1086/2018 titled Altaf-ur-Rehman
- 10.1087/2018 titled Yousaf Jamal Shah
- 11.1088/2018 titled Tanveer Khan
- 12.1089/2018 titled Hamid Usman
- 13.1090/2018 titled Muhammad Ismail
- 14.1147/2018 titled Farman Ullah

02. Brief facts of the case are that on 04-07-2015, respondents advertised some posts of Class-IV servants for Village Councils. After going through the prescribed procedure of selection and upon recommendation of Selection & Recruitment Committee, the appellant was appointed as Naib Qasid on regular basis vide order dated 15-03-2016. The appellant assumed charge of the post and started performing duty against the said post. Private respondent No. 4 filed Writ Petition before the Hon'ble High Court, Bannu Bench to declare the order of appointment of the appellant as illegal and prayed for his appointment against the said post. The said Petition alongwith other connected Writ Petitions on the same point came up for hearing which were disposed of on 28.02.2018 and the case was remanded to respondent No. 1 to re-examine the issue. After receipt of the judgment, respondent No. 1, summoned the appellant on 07.11.2018 alongwith documents and the appellant duly attended his office, but respondent No. 1 vide impugned order dated 16.01.2019, terminated services of the appellant with immediate effect and respondent No. 4 was appointed in his place vide order dated 19.04.2018. Feeling aggrieved, the appellant submitted representation before respondent No. 02, which elicited no response within the stipulated time, hence the present appeal with



prayers that the impugned orders may be set aside and the appellant may be reinstated in service with all consequential benefits.

Learned counsel for the appellant has contended that the appellant had applied for the post of Naib Qasid against his own Village Council and it was incumbent upon the competent authority to appoint him in his own Village Council, but the appellant was posted against another Village Council, which was not illegal, as the appellant was selected against his own village counsel on merit; that the respondents selected the appellant after due process of advertisement, recommendation of Selection Committee headed by deputy commissioner Lakki Marwat; that upon recommendation the committee, the appellant was appointed vide order dated 15.03.2016; that the appellant had gone through the process of medical fitness, proper arrival and construction of his service book and served against the post for almost three years and valuable rights have been accrued to him, which cannot be taken back from him. In support of his arguments learned counsel relied upon judgment reported as 2013-PLC (C.S) 712; that the appellant having no nexus with the mode of selection process and he could not be blamed or punished for the laxities on part of the respondents; that numerous other candidates having been appointed in similar situation have been left untouched while the appellant has been discriminated; that the appellant was terminated from service and the word "termination" nowhere exists in the service laws.

On the other hand, learned counsel appearing on behalf of private respondent No. 4 argued that the post in question was lying vacant in Village Council Abba Khel-IV while the appellant belongs to Village Council Mela Shahab Khel Lakki Marwat; that respondent No. 4 was rightly appointed in place of the appellant as respondent No. 4 was resident of that particular Village Council and not the appellant; that respondent No. 4

ATTESTED

AND PARTIES

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was appointed according to law and spirit of the judgment of Hon'ble Peshawar High Court, Bannu Bench referred to above; that private respondents has also developed vested rights over their respective post, which cannot be taken back as per verdict of the apex court.

D5. Learned Addl. Advocate General mainly relied on the arguments of learned counsel for private respondent No. 4 with addition that no malafide could be pointed out by the appellant on part of official respondents rather the termination was in compliance with the Judgment of Hon'ble Peshawar High Court, Bannu Bench.

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

Record reveals that the Local Government Department had advertised certain Class-IV vacancies vide advertisement dated 04-07-2015. Such Class-IV vacancies were meant for village/neighborhood councils. It had been specifically mentioned in the advertisement that preference will be given to the candidates belonging to the same Village Council, which means that candidates from adjoining villages can also be considered but preference will be given to candidate of the same Village Council. The appellant was also one of the candidates, who had applied for his own Village Council. After due process of selection, the appellant was appointed as Naib Qasid vide order dated 15-03-2016, but was posted against another Village Council. In a similar manner, rest of the appellants in the connected cases were also selected but were appointed against Village Councils other than their own. One of the un-successful candidates filed a writ petition No 432-B/2018 with the contention that candidate of other Village Council had been appointed against his Village Council. The Honorable Peshawar High Court, Bannu Bench remanded the case to respondent No. 1 vide judgment dated 18-09-2018. Operative part of the judgment is reproduced as under:

EXAMINER Khyber rachtrikhwa Service Pristrungt

"....this case is send back to the Assistant Director, Local Government and Rural Development Lakki Marwat to re-examine the appointments of the private respondents (present appellants), merit position of the petitioners (present respondents) and pass an appropriate order keeping in mind the rules, policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees, after providing the parties an opportunity of hearing...."

In pursuance of the judgment, respondents No. 1 terminated all those including the appellant, who were appointed against villages other than their own. The appellant was terminated vide order dated 16-01-2019 under the pretext that he had provided wrong information regarding his Village Council, but in the meantime, the appellant had served against the post for almost three years and developed a vest right over such post. It however was the statutory duty of the appointing authority to check their documents in a specified time period which however was not done by the respondents well in time and to this effect, the Supreme Court of Pakistan in its judgment reported as 1996 SCMR 1350 has held that authority having itself appointed civil servant could not be allowed to take benefit of its lapses in order to terminate service of civil servant merely because it had itself committed an irregularity in violating procedure governing appointment. Appointment of the appellant was made by competent authority by following the prescribed procedure, petitioners were having no nexus with the mode of selection process and they could not be blamed or punished for the laxities on part of the respondents. The order affecting the rights of a person had to be made in accordance with the principle of natural justice; order taking away the rights of a person without complying with the principles of natural justice had been held to be illegal. Government was not vested with the authority to withdraw or rescind an order if the same had taken legal effect and created certain legal rights in



favor of the appellant. Reliance is place on 2017 PLC (CS) 585. It was also astonishing to note that the same office, which had issued appointment order of the appellant, had declared such order as illegal. It would be beneficial to refer to the judgment reported as 2006 SCMR 678, which have held "that it has been noted in a number of cases that departmental authorities do show haste at the time of making such appointments when directives are issued to them by the persons who are in helm of the affairs without daring to point out to them that the directions are not implementable being contrary to law as well as prevalent rules and regulations. In fact such obedience is demonstrated by the concerned officers of the department to please the authorities governing the country just to earn their time being pleasure but on the change of regime and due to their such illegal acts the employees who were appointed suffer badly without any fault on their part and then even nobody bothers for their further career and in such a scenario, the appointing authority is required to be taken to task and not the civil servant. The instant case is a classical example of the case referred by the apex court in the above mentioned judgment. Not only this, we have noted that the candidates selected in place of the appellants are not 100% residents of their respective Village Councils, but there are cases available on record, which would suggest that the appellants have been discriminated, so much so that son of the then incumbent Assistant Director Local Government (respondent No. 1) was also one of the successful candidate in subsequent appointments, who might be a deserving candidate, but it certainly raises suspicion about the credibility of the subsequent appointments. It was also observed that subsequent appointments were not conducted upon recommendations of recruitment committee, but since we have referred to the judgment of Supreme Court reported as 2017 PLC (CS) 585 and the private respondents

have also developed vested rights over their posts, hence it would not be

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appropriate to open another Pandora box, hence we are constrained not to touch the private respondents

In pursuance of the judgment of the Honorable High Court, the respondent No. 1 accommodated the appellants but did not afford appropriate opportunity to respondents (the present appellants), as by every definition, they were civil servants and they were not supposed to be terminated by a single stroke of pen, as proper procedure is available for dealing with such cases, where the authority was required to conduct a detailed inquiry against respondent No. 1 for the lapses and action if any was required against the appellants, was supposed to be under the disciplinary rules, where proper opportunity was required to be afforded to them, as they are also of the same domicile and having valid reasons to show that their appointments were legal, which however was not done by the respondents. Respondent No. 1 in his comments have clarified that domicile holder of the said Tehsil were eligible for the said vacant posts and all the appellants belong to the same Tehsil, hence there were enough grounds for the appellants to defend their case in their favor.

- O8. The Tribunal observed that appointment of an employee, if made illegally, could not be withdrawn or rescinded instead action must be taken against the appointing authority for committing a misconduct by making illegal appointments as per his own admission. In the instant case, the appointments so made were not illegal, hence the appellants has made out a good case for indulgence of the Tribunal.
- 09. We are of the considered opinion that the appellants have not been treated in accordance with law and they were illegally removed from service. In view of the foregoing discussion, the instant appeal as well as all other connected appeals are accepted, the impugned orders of their termination from service are set aside and they are reinstated into service



against their respective positions with all back benefits with further direction that private respondents also shall not suffer for lapses of the respondents, hence they also be accommodated. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED 27.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

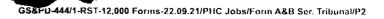
(ATIQ-UR-REHMAN WAZIR) MEMBER (E)

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Service Tribunal.

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

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

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Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal commendation, in appeal appeal petition is fixed for hearing before the Tribunal appeal and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fall to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

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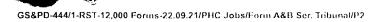
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Registrar, Khyber Pakhtunkhwa Service Tribunal 7 Peshawar.

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2. Always quote Case No. While making any correspondence.



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

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1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.

Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

2. Always quote Case No. While making any correspondance.

Note:

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

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