

01.07.2022

Counsel for the petitioner present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Munawar Khan, ADEO (Litigation) for respondents present.

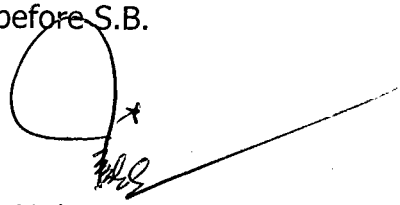
Representative of the respondent department submitted reinstatement order Endst: No. 3060-65 dated 27.06.2022 through which the petitioner has been reinstated in service and judgment of Service Tribunal is partially implemented. Representative of the department is therefore directed to issue a corrigendum in this order in respect of back benefits. To come up for proper implementation report on 19.08.2022 before S.B.


(Fareeha Paul)
Member (E)

19.08.2022

Clerk of learned counsel for the petitioner present. Mr. Naseer-Ud-Din Shah, Assistant Advocate General alongwith Mr. Faheem Ullah, Assistant for the respondents present.




As per previous order sheet, representative of the respondent department submitted reinstatement order/Endst: No. 3060-65 dated 27.06.2022 through which the petitioner has been reinstated in service and the judgement of Service Tribunal stood partially implemented. Furthermore, respondents were therefore directed to issue corrigendum in respect of back benefits. Today learned Assistant Advocate General seeks time to submit the same on the next date. Adjourned by way of last chance. To come up for proper implementation report on 08.09.2022 before S.B.


(Mian Muhammad)
Member (E)

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 225 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	14.04.2022	<p>The execution petition of Mst. Humaira Gul submitted today by Mr. Taimur Ali Khan 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>Admitted</i> <i>18/4/22</i></p> <p style="text-align: center;">27th May, 2022</p>	<p>This execution petition be put up before to Single Bench at Peshawar on <u>29-05-2022</u>. Original file be requisitioned. Notices to the appellant and his counsel be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Clerk of counsel for the appellant present. Mr. Kabir Ullah Khattak, AAG for respondents present.</p> <p>Due to general strike of the bar. Case is adjourned. To come up for the same on 01.07.2022 before S.B.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>



District Education Office (female) District Khyber at Jamrud

RE-INSTATEMENT ORDER:

In compliance with the decision made by the worthy Service Tribunal Peshawar, dated 15.12.2021 vide service appeal No. 375/2019, Execution Petition No 225/2022, Mst; Humaira Gul is hereby reinstated and posted at GGPS Akhtar Shah. The teacher is reinstated with the condition that she will submit affidavit worth Rs.100 duly attested by head of the institution/concerned SDEO where she had drawn her last salary and the same should be countersigned by the undersigned. It should be clearly stated in the affidavit that if the supreme court of Pakistan under CPLA NO 157/P/2022 decides to set aside the decision made by the honorable service tribunal, this reinstatement order will stand cancelled and the teacher will not file a departmental appeal in any court of Pakistan against the appointing authority.

TERMS & CONDITIONS:

1. Charge report should be submitted to all concerned.
2. If she fails to assume her duties within 15 days of the issuance of this re-instatement order, it will be automatically considered as cancelled.
3. If any technical legal flaw is pointed out, the re-instatement order will stand cancelled.

(Dr. Farooq Jamal)
DISTRICT EDUCATION OFFICER (FEMALE)
DISTRICT KHYBER AT JAMRUD

Endst: No. 3060-65

Dated: 27/06 /2022

Copy to the:

1. Director E & SE Khyber Pakhtunkhwa at Peshawar.
2. Deputy Commissioner Khyber at Peshawar.
3. Medical Superintendent Landi Kotal District Khyber.
4. Principals/Head Mistresses/Head Teachers concerned.
5. District Accounts Officer Khyber at Jamrud.
6. SDEOs/ASDEOs and Pay Clerk concerned.
7. ADEO Litigation
8. Deputy Director Litigation Directorate Of E&SED
9. Individuals Concerned.
10. Master File.

DISTRICT EDUCATION OFFICER (FEMALE)
DISTRICT KHYBER AT JAMRUD

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 225 /2022
In Service Appeal No.375/2019



Mst. Humaira Gul, Ex-PST,
GGPS, Noor Salam, Bara District Khyber.

PETITIONER

VERSUS

1. Secretary Elementary and Secondary Education Civil Secretariat,
Peshawar.
2. Director Elementary and Secondary Education G.T Road, Peshawar.
3. District Education Officer, Bara, District Khyber.

RESPONDENTS

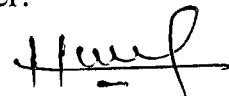
.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 11.01.2022 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No.375/2019 in the Honourable Tribunal against the order dated 16.11.2017 communicated to the petitioner on 27.12.2018 , whereby the petitioner was removed from service and against the order dated 18.02.2019 whereby the departmental appeal of the petitioner was rejected.
2. The said appeal was heard by this Honourable Service Tribunal on 11.01.2022. The Honourable Service Tribunal accepted the appeal. The impugned order dated 16.11.2017 was set aside and the petitioner was reinstated in service with all back benefits. **(Copy of judgment dated 11.01.2022 is attached as Annexure-A)**

3. That the Honourable Tribunal in its judgment dated 11.01.2022 reinstated the petitioner, but after the lapse of about two months the petitioner was not reinstated by the respondents by implementing the judgment dated 11.01.2022 of this Honourable Tribunal.
4. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this Honourable Service Tribunal, is totally illegal amount 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 department is legally bound to obey the judgment dated 11.01.2022 of this Honourable Service Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 11.01.2022 of this Honourable Tribunal.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment dated 11.01.2022 of this Honourable Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.



PETITIONER
Humaira Gul

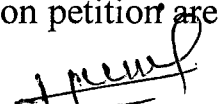
THROUGH:



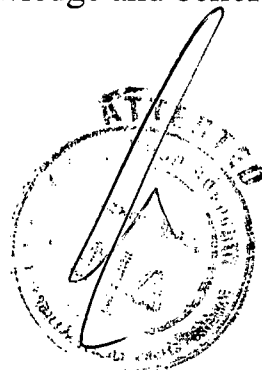
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.



DEPONENT



6/11/2022



BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 375 /2019

Diary No. 345

Dated 18/3/2019

Mst Humaira Gul Ex-PST, GGPS, Noor Salam, Bara District
Khyber.

(Appellant)

VERSUS

1. Secretary Elementary and Secondary Education Civil Secretariat
Peshawar.
2. Director Elementary and Secondary Education G.T Road
Peshawar.
- ✓ 3. District Education Officer, Bara, District Khyber.

(Respondents)

Appeal under Section 4 of the Khyber
Pakhtunkhwa Service Tribunal Act,
1974, against the order dated
16.11.2017, verbally communicated to
the appellant on 27.12.2018 whereby
the appellant was removed from
service, against which her
departmental Appeal dated 01.01.2019
has been rejected/ not honoured vide
office order dated 18.02.2019.

Filed to-day

Registrar

18/3/19

Prayer in appeal:

On acceptance of this appeal the
Order dated 16.11.2017,
communicated on 27.12.2018 may
please be set-aside and the appellant
may kindly be re-instated into the
service with all back benefits.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 375/2019

Date of Institution ... 18.03.2019

Date of Decision ... 11.01.2022



Mst Humaira Gul Ex-PST, GGPS, Noor Salam, Bara District Khyber.

... (Appellant)

VERSUS

Secretary Elementary and Secondary Education Civil Secretariat Peshawar and two others. ... (Respondents)

Zartaj Anwar,
Advocate

... For Appellant

Javed Ullah,
Assistant Advocate General

... For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the

case are that the appellant was appointed as PTC teachers vide order dated 13-09-2006 in Khyber Agency, now Tribal District Khyber, During the course of her service, the appellant was proceeded against on the charges of absence from duty and was ultimately removed from service vide order dated 16-11-2017. Thereafter, a committee considered all such cases including the case of the appellant and it was recommended to proceed the appellant under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Charge sheet/statement of allegation was served upon the appellant, to which she responded, but the appellant was removed from service vide order dated 16-11-2017 without conducting any inquiry and such order was communicated to the

ATTESTED


Member (Executive)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

appellant on 27-12-2018. The appellant filed departmental appeal dated 01-01-2019, which was rejected vide order dated 18-02-2019. The appellants filed the instant service appeals on 18-03-2019 with prayers that the impugned orders dated 16-11-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, as services of the appellants were terminated without observing the codal formalities, hence the whole process is void ab initio in the eye of law; that stance of the appellant in her departmental appeal was not taken into consideration inspite of the fact that cogent reasons were submitted for the absence on account of terrorism, where no government official could dare to attend to their duty. In a situation, the respondents were under legal obligation to have conduct a regular inquiry within the stipulated time, but the respondents failed to conduct any inquiry or to afford opportunity of defense to the appellant, hence the appellant was condemned unheard.

03. Learned Assistant Advocate General for the respondents has contended that appellant after her appointment against the post of PTC, continuously absented herself from lawful duty and could not prove her attendance in her respective school; that on the charges of absence, the appellant was proceeded against under the relevant law; that charge sheet/statement of allegations was served upon the appellant, to which she responded, but her reply was not found convincing, hence she was removed from service vide order dated 16-11-2017; that a committee was constituted for disposal of departmental appeals of the appellant, wherein it was decided to conduct de-novo proceedings, but since the appellants had already admitted their absence from duty, hence there was no need to conduct any further inquiry; that the appellant has been treated in accordance with law having no ground to file the instant service appeal.

ATTESTED


 THE ASSISTANT ADVOCATE GENERAL
 STATE OF JHARKHAND
 JHARKHAND HIGH COURT
 PATNA

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

05. Record reveals that the appellant was appointed as PTC back in 2006, who served until 16-11-2017 with all perks and privileges. It was in 2017, when the appellant was asked to prove her presence in her respective school for a certain time period. Record reveals that the appellant had attempted to prove her presence in her respective school, however as the service book and attendance registers are supposed to be in the custody of the school administration, but the same were also not available with the school administration as well due to the reason that such schools had been destroyed during war on terror, hence no record whatsoever was available either with appellant or with respondents. This Tribunal repeatedly asked the respondents to provide all such record, which pertains to her removal from service, but they failed to provide such record. In such a situation, it would be unjust to penalize the appellant for reasons beyond her control, as the respondents also were unable to prove her absence from duty with any proof. We have noted that pre-requisites for imposition of major penalty provided under the law have not been followed. The appellant was removed from service on a simple charge sheet without conducting a regular inquiry and adopting proper procedure. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. While proceeding the appellant, the respondents were required to adhere to the method prescribed in law by affording appropriate opportunity of defense to the appellant, which

ATTESTED

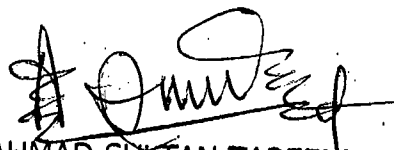
EXAMINER
Hyderabad
Service Tribunal
2023/11/17/10:07

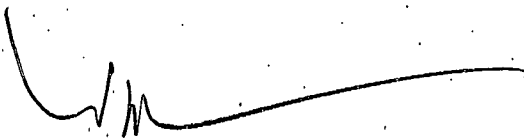
however was not afforded to the appellant. The principle of natural justice demands that no one should be condemned unheard during departmental proceedings, but the appellant was condemned unheard, hence the impugned order is not sustainable in circumstances. Reliance is placed on 2018 PLC (CS) 67. Departmental appeal of the appellant was not taken into consideration inspite of the fact that respondents were well aware of the fact that the respective area was under control of terrorists for a considerable time period and government infrastructure including the schools were destroyed during the wave of terrorism. It was quite impossible for government employees to attend to their duty in such circumstances. We have observed that the appellant was non-local for the post of PTC in the said jurisdiction with obvious reason that no local female opted for such recruitment due to peculiar circumstances during the period in question, hence the respondents were supposed to take a sympathetic view, instead the appellant was removed from service without adopting legal procedure, which was not warranted.

06. In view of the fore-going discussion, the instant appeal is accepted. The impugned order dated 16-11-2017 is set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

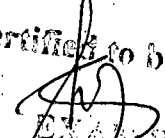
ANNOUNCED

11.01.2022


 (AHMAD SULTAN TAREEN)
 CHAIRMAN


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

Date of Presentation of Application 13/4/22
 Number of Words 2000
 Copying Fee 22/-
 Urgent 4/-
 Total 26/-
 Name of Copy list _____
 Date of Completion of Copy 13/4/22
 Date of Delivery of Copy 13/4/22

Certified to be true copy

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Humaira Gul

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education Deptt

(Respondent)
(Defendant)

I/We, Humaira Gul

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2021

Humaira Gul
(CLIENT)

ACCEPTED

Taimur Ali Khan
TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:

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Bilour Plaza, Peshawar,
Cantt: Peshawar