

12.05.2022

Petitioner present through counsel.

Notice of the instant execution petition be issued to respondents for implementation report. To come up for implementation report on 15.06.2022 before S.B.


(Rozina Rehman)
Member (J)

15th June 2022

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl. AG present.


Learned AAG seeks some time to implement the judgment. Granted. The respondents shall implement the judgment and submit implementation report positively on 03.08.2022 before S.B. Original file be requisitioned.


(Kalim Arshad Khan)
Chairman

03.08.2022

Petitioner present in person. Mr. Kabir Ullah Khattak, Additional Advocate General for respondents present.

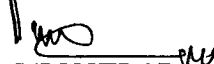

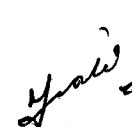
Implementation report not submitted. Learned Addl. AG seeks further time for submission of implementation report. To come up for implementation report on 14.09.2022 before S.B.


(Kalim Arshad Khan)
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 66/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.01.2022	<p>The execution petition of Mr. Shaheen Shah submitted today by Mr. Asad Mahmood Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench at Peshawar on <u>25/02/22</u>.</p> <p> CHAIRMAN</p>
	25.02.2022	<p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 12.05.2022 for the same as before.</p> <p> Reader.</p>

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

Execution Petition No. 66 /2022

In Service Appeal No. ~~1385~~ 20

Shahin Shah

VS

Edu Deptt

I N D E X

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment	- A -	03-08
3.	Vakalat Nama	-----	09

PETITIONER

S. Shahin Shah
Shahin Shah

Through:

Syed Noman Ali Bukhari

SYED NOMAN ALI BUKHARI

Advocate, High Court

Date: 20/01/2022

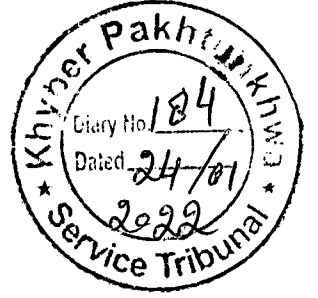
Cell No: 0306-5109438

(1)

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

Execution Petition No. 66 /2022

In Service Appeal No.1385/2020



Mr. Syed Shahin Shah Ex-PST
R/o Gulbahar N0.4 House No, D-17,
Near Police Chowki Gulbahar Peshawar..

PETITIONER

VERSUS

1. The Secretary E&SE Deptt., KP, Civil Secretariat Peshawar.
2. The Director E&SE KPK Peshawar.
3. The District Education Officer Male peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 11.11.2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

Respectfully Sheweth:

1. That the applicant/Petitioner filed Service Appeal No.1385/2020 against the dismissal order.
2. That the said appeal was finally heard by the Honorable Tribunal on 11.11.2021. The Honorable Tribunal is kind enough to accept the appeal and the appellant is held entitled to pensionary benefits. **(Copy of judgment is attached as Annexure-A).**
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 11.11.2021.

- 4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august 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 respondents are legally bound to pass formal appropriate order.
- 6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 11.11.2021 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.

S. Shahin Shah

Petitioner

Shahin Shah

Through:



(Signature)
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.

S. Shahin Shah

DEPONENT

A

①
③

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1385 /2020

Khyber Pakhtunkhwa
Service Tribunal

Entry No. 1326

Dated 25/2/2020

Mr. Syed Shahin Shah Ex. PST.
R/o Gulbhar No.4 House No, D-17,
Near Police Chowki Gulbahar, Peshawar

(Appellant)

VERSUS

1. The Secretary E&SE Deptt: KPK, civil secretariat Peshawar.
2. The Director E&SE KPK Peshawar.
3. The District Education officer Male, Peshawar.

.....

APPEAL UNDER SECTION-4 OF THE KP SERVICE TRIBUNAL ACT 1974, AGAINST THE ORDER DATED 30.03.2017, WHEREBY THE PREVIOUS REMOVAL ORDER DATED 17.01.2013 IS KEEP INTACT. AND AGAINST THE DEPARTMENTAL APPEAL WHICH WAS NOT RESPONDED WITHIN STATUTORY PERIOD OF 90 DAYS.

Filed to-day

Registrar

25/2/2020

PRAYER:

ON ACCEPTANCE OF THIS SERVICE APPEAL THE ORDER DATED 30.3.2017, MAY PLEASE BE SET-ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.

Not submitted to-day

Registrar

09/3/2020

EXAMINED BY
Registrar
KPK Service Tribunal
Peshawar

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1385/2020

Date of Institution ... 25.02.2020

Date of Decision ... 11.11.2021



Syed Shahin Shah Ex-PST, R/o Gulbahar No. 4 House No. D-17, Near Police Chowki
Gulbahar, Peshawar.

... (Appellant)

VERSUS

The Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa,
Civil Secretariat Peshawar and two others.

... (Respondents)

SYED NOMAN ALI BUKHARI,
Advocate

... For Appellant

MR. RIAZ KHAN PAINDAKHEIL,
Assistant Advocate General

... For Respondents

SALAH-UD-DIN
ATIQU-UR-REHMAN WAZIR

...
...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the case are

that the appellant was initially appointed as Primary School Teacher (PST) in the
Commissionerate of Afghan Refugees vide order dated 22-04-1982, who continued
such service until 2010. During the course, some posts of PST were advertized by
Education Department, wherein the appellant also applied and was appointed as
PST vide order dated 10-05-2010, but the appellant was terminated from service
vide order dated 17-01-2013 being overage. After exhausting departmental
remedies, the appellant filed service appeal No. 928/2013, which was decided vide
judgment dated 04-07-2016 and the appellant was re-instated in service with

6

was appointed as PST by respondents vide order dated 10-05-2010; that the appellant was illegally terminated from service vide order dated 17-01-2013 without adopting legal formalities, hence he was re-instated vide judgment dated 04-07-2016 of this Tribunal in Service Appeal No. 928/2013; that the inquiry officer thrice recommended his case for re-instatement but the respondents did not agree with recommendations of the inquiry officers and illegally constituted a committee, upon whose recommendations, the appellant was again terminated from service vide order dated 30-03-2017; that the appellant has now reached his age of superannuation and has served continuously for almost 35 years, hence he may be granted pensionary benefits under regulation No. 371-A of the CSR by counting his portion of service borne on temporary establishment towards pensionary benefits; that similar benefit has already been granted by Supreme Court of Pakistan vide judgment reported as 1997 SCMR 1477.

03. Learned Assistant Advocate General for the respondents has contended that the appellant had served as PST in Afghan Commissionarate from 1982 until 1995 and again served as PST in an NGO working under the supervision of Afghan Commissionarate until 2010; that the appellant was again appointed as PST in respondents department in 2010, but such order was rescind vide order dated 17-01-2013 as the appellant was overage; that upon judgment of this Tribunal, the appellant was re-instated and de-novo proceedings were also conducted, but in the meanwhile, the respondents filed CPLA in the Supreme Court of Pakistan and the Supreme Court of Pakistan vide judgment dated 16-09-2019, set aside the order sheet dated 29-03-2018 of this Tribunal, against which the appellant again filed departmental appeal, which was not acceded to; that the appellant has no cause of action to file this service appeal.

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



05. Record reveals that the appellant fought a long legal battle for continuance of his job as PST, but in the meanwhile, he reached his age of superannuation on 11-10-2017. Admittedly, the appellant joined as PST in 1982 in Afghan Commissionarate and served there until 1995 and again until 2010 but after 1995, Afghan Commissionarate handed over such activities to an NGO, but the said NGO was working under supervision of Afghan Commissionarate. Vide order dated 10-05-2010, the appellant was regularly appointed as PST in respondents department after observing codal formalities, but upon objection of Accountant General Office, his appointment order was rescind vide order 17-01-2013. Again he was re-instated in light of judgment dated 04-07-2016 of this tribunal, but the supreme court of Pakistan vide judgment dated 16-09-2018 set aside the order sheet dated 29-03-2018 of this tribunal and the appellant once again filed a departmental appeal to the respondents, which was not responded, hence the appellant again filed the instant service appeal.

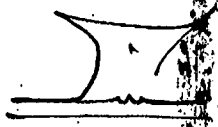
06. We have observed that the appellant served as PST for almost 35 years and the appellant deserve to avail the benefits of such long service. The question before us is as to whether the appellant is entitled to any pensionary benefits under Regulation 371-A of Civil Service Regulations. The supreme court of Pakistan in its judgment reported as 1997 SCMR 1477, while referring to a judgment of the Federal Service Tribunal in appeal No 123(R) 1991 have declared employees of Afghan Refugees Organization as civil servants within the meaning of Civil Servant Act, 1973, hence the appellant is entitled to pensionary benefits and is covered by Regulation No 371-A of CSR.

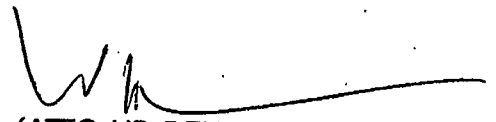
07. Admittedly, the appellant put in almost 35 years of service both in Afghan Commissionarate as well as with respondents department, therefore, entitled to pensionary benefits under Regulation No 371-A of CSR. In view of the situation, the impugned order dated 30-03-2017 is set aside and the appellant is held

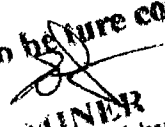
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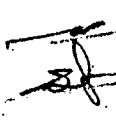
entitled to pensionary benefits. Parties are left to bear their own costs. File be
consigned to record room.

ANNOUNCED
11.11.2021


(SALAH-UD-DIN)
MEMBER (J)


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

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of presentation of Application 30-11-21
No. of Petitions 2400
Cost 28-00
Litigation 4-00
Total 32-00

Date of Copy 30-11-2021
Date of Copy 30-11-2021

VAKALATNAMA

NO. _____ /20

IN THE COURT OF KP SERVICE TRIBUNAL PESHAWAR

Syed Shahin Shah

Appellant
Petitioner
Plaintiff

VERSUS

Education

Respondent (s)
Defendants (s)

I/WE Syed Shahin Shah

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 al 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

S. Shahin Shah

(CLIENT)

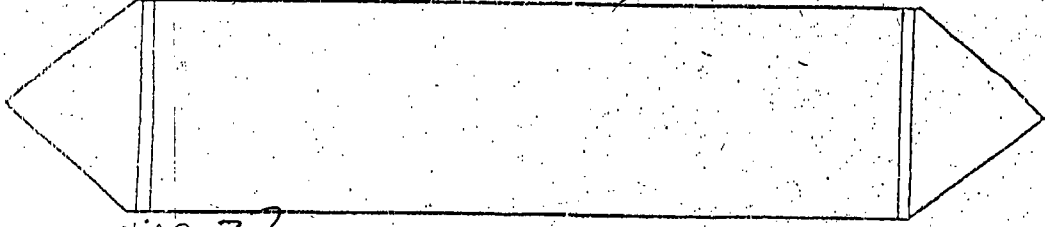
ACCEPTED

S. Noman Ali Bukhari

SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT

CELL NO: 0306-5109438

بعد التمسک مسروقی دستریونل کے لیے



2022ء منجانب

عبد الوہاب بنام فریضہ

شورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیردی جواب دہی دکن کارروائی متعلقہ اسٹار علی عزیز اور اسٹار علی عزیز کے

آن مقام اسٹار علی عزیز کیلئے اسٹار علی عزیز کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو رائی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء درصولی چیک دروپیہا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائس پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری کیلئے یا اپیل کی برادگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیردی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو کسی دہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سب سے وہ ہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے کہ پیردی مذکورہ نہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Attested & signed by
Asst. Magistrate
1046-08

المترجم

بمقام Asst. Magistrate کے لئے منظور ہے۔

“B”

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

No.

Appeal No. F.P. No. 66 of 20 22

Syed Shakin Shah Appellant/Petitioner

Versus

The Secy. ERSE Dept. KP Respondent

Respondent No. 1

Notice to: — the Secretary ERSE Dept. KP Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa 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 *on 5/6/22 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard 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 fail 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.

Copy of F.P. appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 31 th

Day of May 20 22

(For Implementation Report)

[Signature]
 Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

"B"

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

No.

— F.P No. 66 22
Appellant No. Syed Shahin Shah of 20

The Secy: ERSE Dept. KPN Appellant/Petitioner
Versus

The Director ERSE KPN Peshawar. Respondent No. 2

Notice to: —

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa 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 *on..... at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No..... dated..... 31st

Given under my hand and the seal of this Court, at Peshawar this..... May 22

Day of..... 20

(for Implementation)
Report

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

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“B”

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

No.

E.P. No. 66 22

Appeal No. Syed Shahin Shah of 20

Appellant/Petitioner

The Secy: ERSE Deptt: KPK

Respondent

Respondent No.

The Distt. Education Officer Male
Peshawar.

Notice to:

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa 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 *on.....at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated..... 31 16

Given under my hand and the seal of this Court, at Peshawar this.....

Day of.....20

(for Implementation Report)
09/06/22

Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.