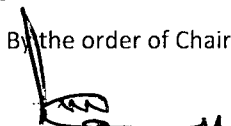


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 517/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	02.09.2022	<p style="text-align: center;">The execution petition of Syed Murad Ali Shah submitted today by Mr.Yaqoob Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Syed Murad Ali Shah **Versus** *Director of E & SE & others*
 Appellant Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: <u>Advocate</u> <u>Court</u>	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Yaqub Khan Advocate

Signature:- Yaqub

Dated:- 24/8/22

4

Before The Hon'able Service Tribunal of KPK at Peshawar

Execution petition no. 517/2022

Misc; Petition NO. _____/2022

**Syed Mura dAli Shah son of Ali Gohar R/o Charsadda
Amankot, Tehsil & District SwabiAppellant
VERSUS**

**Director of E & SE , KPK Peshawar & othersRespondents
APPEAL**

INDEX

S.No	Descriptions	Pages	
		From	to
1	Grounds of appeal	1	3
2	Copy of order of service Tribunal	"A" 4	9
3	Copy of application dated 16/03/2022	"B" 10	11
4	Wakalat Nama	-	12

Dated 10/08/2022

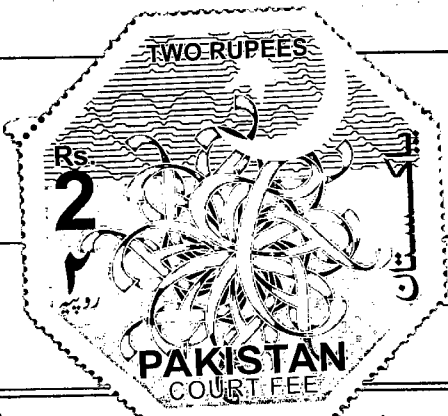
6/10/22
Appellant, _____
Syed Murad ali

Trough counsel _____
Yaqoob Khan advocate High
Court at Distt: courts Mardan.

Email: *muhammadazamKhan323@gmail.com*

①

کورٹ فیس



مقبنی

بعدالت جناب

میں ڈگری دار ڈگری مندرجہ ذیل کی اجراء کے واسطے درخواست حسب آرڈر نمبر ۲۱ قاعدہ نمبر اضابطہ دیوانی ۱۹۱۸ء کرتا ہوں

۱	موصول ۱۱/۱۱/۲۰۲۲ فیصلہ ۱۲/۱۳/۱۶	نمبر مقدمہ ۳۰/۱۱/۱۱/۱۶
۲	نام فریقین	S. Musad Ali Shah... D/H VS Director of GSE & SE Pension & others... J/D
۳	تاریخ ڈگری	۱۱/۱۱/۲۰۲۲
۴	آیا اپیل ہوا ہے یا نہیں؟	نہیں
۵	کیا کوئی ادا ہوئی یا تصفیہ ہوا ہے یا نہیں؟	نہیں
۶	درخواست ماہ قبل معائنہ نتیجہ	Nil
۷	اصل ڈگری یا سود یا دیگر دائری جو عطا کی گئی ہو۔ مع حالات ڈگری	Absent of pay or allowance w.e.f 5/11/2008 to 8/5/12 & Pensionary benefit.
۸	خرچہ جو دالا گیا۔	نہیں
۹	کس شخص پر اجراءے مطلوب ہے۔	J/D No 2 (DEO) (MS) (PS) Swabi
۱۰	بر طریق جس طرح پر اجراءے مطلوب ہے۔	Payment through court.

جناب عالی

تصدیق عرضے

میں تصدیق کرتا ہوں کہ یہاں جو کچھ بیان کیا گیا ہے۔ میرے بہترین علم و اختیار سے صحیح ہے۔

Counsel for D/H
Jagat

۲۲/۱۱/۲۲

صدر عدلیہ شاہ ۸ D/H
مہر عدلیہ شاہ ۶

Before The Hon'able Service Tribunal of KPK at Peshawar

Execution petition no. 517/2022

(2)

Misc; Petition NO. _____/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1133

Dated 02/09/2022

Syed Murad Ali Shah son of Ali Gohar R/o Charsadda
Amankot, Tehsil & District SwabiAppellant

VERSUS

1. Director of E & SE , KPK Peshawar
2. DEO (M) (p) Swabi
3. Secretary Education KPK Peshawar Respondents

*Petition for implementation of order/ judgment of
Hon'able Service Tribunal in true letter and spirit passed
on 11/01/2022 in favour of applicant/ petitioner.*

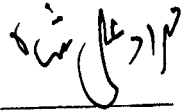
Respectfully Sheweth;

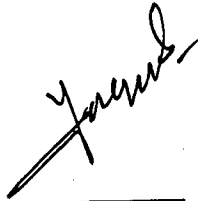
Appellant humbly submits as under

1. That the applicant was appointed a Class-iv in GPS Gohar Abad, Aman kot Swabi vide order dated 01/02/196.
2. That applicant was charged under section 302 QDO vide FIR dated 25/01/2008 due to which, applicant was arrested, Trial was conducted and applicant was acquitted vide order/ judgment date d24/04/2012.
3. That, after acquittal of applicant, approached to DEO (M) Swabi for taking over charge so, applicant got knowledge that he is dismissed from service vide order dated 26/04/2011.
4. That, applicant filed an appeal before service Tribunal, which was accepted and case was remanded back to Director of (E & SE) Peshawar, who converted order of dismissal in to compulsory retirement from service on supernation of 60 x years age vide order dated 03/03/2016.
5. That, applicant filed an application for pensionary benefit as well as arrear of pay of application through Departmental appeal but in vain.

- 3
6. That, finally applicant approached before Hon'able Service Tribunal through service appeal which was accepted and impugned order is modified to the extent of that period w-e-f 05/01/2008 to 08/05/2012 is treated on duty with pay as appellant was exonerated from criminal charges, allowed his back benefit vide order/ judgment dated 11/01/2022. (Copy of order of Service Tribunal is attached).
 7. That, petitioner approached before respondent NO.2 for implementation of order/ judgment dated 11/01/2022 passed by Hon'able Service tribunal but in vain hence, the petitioner approached before this Hon'able Tribunal for implementation of order/ judgment through this petition. (Copy of application is hereby attached).

It is, therefore, humbly prayed that on acceptance of this petition, respondent NO.2 may please be directed to implement order/ judgment of this Hon'able Tribunal dated 11/01/2022 in true letter and spirit and petitioner may please be granted arrear as well as pensionary benefit on the basis of order/ judgment dated 11/01/2022. Any other remedy deemed fit may also be granted.
Dated 10/08/2022

Appellant, 
Syed Murad ali

Trough counsel 
Yaqoob Khan Advocate High
Court at Distt: courts Mardan.

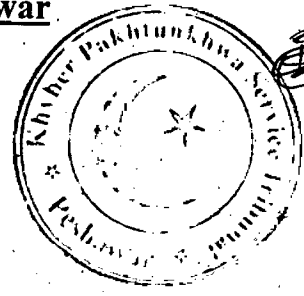
AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that all the contents of the appeal mentioned above are true and correct to the best of my knowledge and belief and noting has been concealed from this Hon'able court.



Advocate 

Before the Service Tribunal KPK Peshawar



Service Appeal No. 12/13/2016

Khuzdar Pakhtunkhwa
Service Tribunal

Dialy No. 1230

Date: 30-11-2016

Syed Murad Ali Shah son of Ali Gohar resident of village Gohar Abad
Aman Kot Tehsil & District Swabi, Ex-Class-iv GPS Gohar Abad, Aman
Kot SwabiAppellant

v/s

1. Director of E & SE, KPK Peshawar
2. D.E.O (M) (P) Swabi
3. Secretary Education KPK, Peshawar.Respondent

Appeal U/S-4 of KPK Service Tribunal Act 1974 , against order
of respondent No.1 dated 03/03/2016 , whereby, appellant is
retired from service without pensionary benefits for which
appellant filed a department appeal / representation for
granting of pensionary benefit on the completion of his service
i-e 17 years and 4 months with respondent department till super
nation of age i-e 60 years on his retirement vide order dated
03/03/2016, while appellant is entitle for pensionary benefits.

Respected Sir,

Appellant Humbly submits as under

1. That appellant was appointed as class-iv in GPS Ali Gohar Aman
Kote vide order dated 01/02/1996. (Copy of order dated 01/02/1996 ^{src Book} is
attached herewith as Annex: "A").

2. That appellant taken over the charge of his service and performed
his duty with the entire satisfaction of his superiors. (Copy of charge
report is hereby attached as Annex: "B").

submitted to -day
1 filed.

Registrar

30/11/14
6/12/16

15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1213/2016

Date of Institution ... 30.11.2016

Date of Decision ... 11.01.2022

Syed Murad Ali Shah son of Ali Gohar resident of Village Gohar Abad Aman Kot Tehsil & District Swabi, EX-Class-iv GPS Gohar Abad Aman Kot Swabi.

... (Appellant)

VERSUS

Director of Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Yaqoob Khan
Advocate

... For Appellant

Muhammad Riaz Khan Paindakheil,
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 Class-IV vide order dated 01-02-1996. During the course of his service, the appellant was charged in FIR U/Ss 302/324 PPC Dated 25-01-2008 and was arrested. During the course of trial, the appellant was exonerated of the criminal charges vide judgment dated 24-04-2012. After acquittal the appellant came to know that he has been dismissed from service vide order dated 26-04-2011, against which the appellant filed departmental appeal followed by service appeal No. 1636/2014, which was decided vide judgment dated 13-10-2015 and his case was remanded to the departmental appellate authority with direction to decide his appeal strictly on merit and in accordance

with law. The appellate authority considered his appeal and penalty of dismissal was converted into compulsory retirement and his absence period with effect from 25-01-2008 to 08-05-2012 was treated as extra ordinary leave without pay vide order dated 03-03-2016. The appellant filed appeal for his arrears and pensionary benefits vide application dated 29-09-2016, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 03-03-2016 may be modified to the extent that his service may be considered as 17 years and 4 months as qualified service on attaining the age of superannuation on 31-05-2013.

02. Learned counsel for the appellant has contended that the appellant is entitled for his pensionary benefits on the basis of completion of his 17 years and 4 months, whereas the respondents refused pensionary benefits under the plea that the appellant was appointed on fixed pay, hence such period does not qualify for the benefits of pension; that the appellant was dismissed from service on account of his involvement in criminal case, but the appellant was exonerated of the charges by the competent court of law, hence there remains no ground to penalize the appellant anymore; that penalty of dismissal of the appellant was converted into compulsory retirement by the appellate authority, which was subsequently refused; that as per CSR 371-A coupled with the judgment of apex court reported as 1997 SCMR 1477 and 1996 SCMR 1185, once a benefit granted to the civil servant by a tribunal or Court, such benefits shall also be extended to other civil servants, who might not be litigant in that case, therefore the appellant is entitled for pensionary benefits on the analogy of relief already granted by this tribunal as well as the apex court; that the appellant was initially appointed on contract basis on fixed pay but his services were regularized, hence as per Rule 2.2 of west Pakistan pension rules, 1963, the services of the government servant begin to qualify for pension, when he takes over charge of the post to which he is first appointed; that according to rule 2.3 of the rules *ibid*, temporary and

officiating service shall count for pension if he has rendered more than five years continuous temporary and officiating service followed by confirmation shall also count for pension or gratuity; that since the appellant is unable to get any job due to the reason that he is now overage, hence keeping in view his long un-blemished service, he may be granted relief of pensionary benefits.

03. Learned Assistant Advocate General for the respondents has contended that the appellant was appointed on contract basis and on fixed salary and as per Finance Department notification dated 04-11-1992; that the appellant was appointed on the condition of non-pensionable service and the appellant accepted all the conditions during his appointment; that the appellant was charged in an FIR, thus he went in hiding for a longer period, due to which the appellant was proceeded against as per law and rule and was dismissed from service vide order dated 26-04-2011; that as per judgment of the service tribunal, the appeal of the appellant was considered and major penalty of dismissal was converted into major penalty of compulsory retirement but later on it was found that the appellant is not entitled for pensionary benefits as per terms and conditions of his service.

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

05. Record reveals that the appellant was appointed as Chowkidar vide order dated 01-02-1996 but his appointment order does not contain any provision debaring him from pensionary benefits. The appellant has served against the post for longer time until his age of superannuation, which shows that appointment of the appellant was not on contract, rather the appellant continuously served until his dismissal. His service book is placed on record, which shows that the appellant has been granted annual increments periodically until his dismissal. Moreover, Section 19 of Civil Servant Act, 1973 was amended by the Khyber Pakhtunkwa Civil Servant (Amendment) Act, 2013 and the person selected for appointment on

contract basis was declared to be deemed as regular employee and subsequently were held entitled for pensionary benefits. (8)

06. Regarding the question of entitlement of the appellant to the pension, we would like to reproduce the relevant rules of the pension rules, 1963 as under:

2.2. Subject to any special rules, the services of the government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.

2.3. Temporary and officiating service shall count for pension as indicated below:-

(i) government servant borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and

(ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

The rules ibid reveals that service of the government servant begins to qualify for pension from the very first day of his/her taking over charge, irrespective of the fact whether his/her appointment and entry into service was temporary or regular. It is also clear from sub-rule-(i) that continuous temporary service of a civil servant shall also be counted for the purpose of pension or gratuity and by virtue of sub rule-(ii) temporary and officiating service followed by confirmation shall be counted for pension or gratuity.

07. The august Supreme Court of Pakistan in its judgment reported as PLD 1973 SC 514 have held that "it must now be taken as well settled that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well settled that pension like salary of a civil servant is no longer a bounty but a right acquired after putting in satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Service Tribunal


refused arbitrarily except to the extent and in the manner provided in the relevant rules."

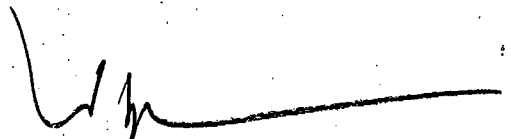
08. In the instant case, the appellant served continuously for almost 17 years, initially on contract and followed by regular service and as per pension rules, 1963 the appellant has qualified the prescribed service for pensionary benefits, therefore the objection raised by the respondents is not tenable. This tribunal vide judgment dated 12-10-2017 in Service Appeal No 1055/2014 had granted relief in similar case. To this effect the judgments 2015 PLC (CS) 296, PLD 1973 SC 514, PLD 2016 SC 534 also refers. Moreover the respondents already converted his penalty of dismissal into compulsory retirement, which cannot be taken back so easily, rather the appellants has otherwise developed vested right over his pensionary benefits.

09. In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 03-03-2016 is modified to the extent that the period with effect from 05-01-2008 to 08-05-2012 is treated as on duty with pay, as the appellant was exonerated of the charges and under FR-54, the absence period is considered as on duty. Respondents are directed to finalize the pension case of the appellant for the entire period of service of the appellant with all ancillary 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)

09/03/22

2400
26/-
26/-

14/03/22
14/03/22

10

To:-

The DEO (M)
Swabi

Subject: Application for implementation of order/judgment of Hon'ble Service Tribunal in true letter and spirit passed on 11/1/2022 in favour of applicant.

Respectfully sheweth:-

1. That applicant was appointed as a class ~~II~~ in GPs Goharabad Amankot Swabi vide order dated 01²/₁₉₉₆.
2. That applicant was charged u/s 302 QDO vide order/FIR dated 25/1/2008. Due to which applicant was arrested, trial was conducted and applicant was acquitted vide order/judgment dated 24/4/2012.
3. That after acquittal of applicant approached to DEO (M) Swabi for taking over charge, applicant got knowledge that he is dismissed from service vide order dated 26/4/2011.
4. That applicant filed an appeal before service Tribunal, which was accepted and case was remanded back to Director of (EE & SE) Peshawar, who converted order of dismissal into compulsory retired from service on superannuation of 60 years age vide order dated 3/3/2016.

(2)

10 (A)

5. That applicant filed an application for Pensionary benefit as well as Arrear of Pay of applicant through D/Appeal but in vain.
6. That applicant approached before Hon'ble service Tribunal through service appeal which is accepted and impugned order is modified to the extent that period w.e.f 5/1/2008 to 8/5/2012 is treated on duty with Pay as appellant was exonerated from criminal charges, allowed his back benefit and applicant is declared entitled for Pensionary benefit vide order/Judgement dated 11/1/2022. (copy attached)

It is therefore, humbly requested that applicant may please be granted arrears of his service from 5/1/2008 to 8/5/2012 and Pensionary benefit and order/Judgment of service Tribunal may please be implemented in true letter and spirit passed on 11/1/2022.

M. S. Ali

جس ۲۱

yours faithfully

S. Murad Ali Shah s/o
Ali Ghaos 13- class 10 Rawalpindi

Dated 16/3/2022

50 روپے

11257



ایڈوکیٹ: یعقوب خان ایڈووکیٹ
 بار کونسل / ایسوسی ایشن نمبر: B-669
 رابطہ نمبر: 0321-9309427

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سر جسٹس بیرون پشاور

دعویٰ: <u>اجراء</u>	منجانب: <u>مدرس</u>
علت نمبر: _____	
مورخہ: _____	
جرم: _____	
تھانہ: _____	
باعث تحریر آنکہ	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے یعقوب خان ایڈووکیٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل انگریزی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ساتھ لائے جانے کے لئے اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور ان کا استعمال پر داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو ترقی چاہے ہر جائزہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: _____

العبد _____

مقام پشاور کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Attested
Accepted

سید صرا علی شاہ

سید صرا علی شاہ