


29.06.2022

Petitioner present in person. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Sajid Khan, ADEO for respondents present.

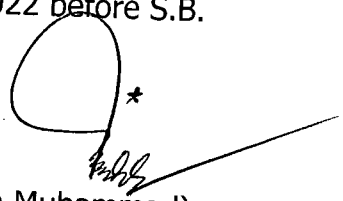
Representative of the respondent department submitted partial implementation report which is placed on file. Representative of respondent department strictly directed to submit complete implementation report on or before the date fixed. To come up for implementation report on 18.08.2022 before S.B.


(Fareeha Paul)
Member (E)

18.08.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Faheem Ullah, Assistant, for the respondents present.

It is an old case decided by the Service Tribunal on 27.12.2019, the department/respondents are directed to submit final and conclusive implementation report on the next date. Last opportunity is granted to submit implementation report whereafter coercive measures shall invariably be initiated against the respondents at fault. Adjourned. To come up for final and conclusive implementation report on 07.09.2022 before S.B.


(Mian Muhammad)
Member (E)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO.FD(SOSR-1)12-4/2020(M. Ismail, Principal)
Dated Peshawar the: 28-06-2022

To:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Elementary & Secondary Education Deptt:
Peshawar.

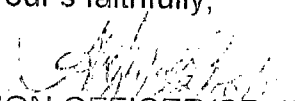
Subject: - SERVICE APPEAL NO.980/2016 AND EP NO.78/2020
SEINEDRY ADJOURNED ON 10-02-2021 DUE TO THE CIVIL
APPEAL NO.39/2021 AFTER THE DISMISSAL ON DATED 27-
04-2021 BY THE SUPREME COURT OF PAKISTAN.

Dear Sir,

I am directed to refer to your Department's letter No.SO(B&A)1-16/2022/M.Ismail dated 09-06-2022 on the subject noted above and to state that in pursuance of Khyber Pakhtunkhwa Service Tribunal judgement in Service Appeal No.980/2016 dated 27-12-2019 and Supreme Court of Pakistan judgement in Civil Appeal No.39 of 2021 dated 27-04-2021, Finance Department agrees to accord sanction to pay protection @ Rs.9,280/- in respect of Mr. Muhammad Ismail, Master in Pak Studies (BS-17), Cadet College, Razmak on his appointment as Subject Specialist (BS-17) in Elementary & Secondary Education Department w.e.f 19-09-2006.

2. As far as, sanction of investigation of arrears claim in r/o the above named applicant is concerned, the same will also be processed in consultation with the relevant section in due course of time after observing all codal formalities, please.

Your's faithfully,


SECTION OFFICER(SR-1)

Ends. No. & Date Even.

Copy of the above is forwarded for information to the:-

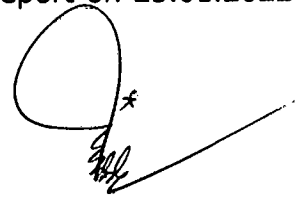
1. Registrar, Service Tribunal, Khyber Pakhtunkhwa.
2. Accountant General, Khyber Pakhtunkhwa for information & further necessary action.
3. Section Officer (Lit-II) Finance Department.
4. Budget Officer-V, Finance Department.
5. PS to Special Secretary, Finance Department.
6. PS to Addl: Secretary (Reg) Finance Department.
7. PA to Deputy Secretary (Reg-I) Finance Department.
8. Master File.

SECTION OFFICER (SR-1)

02.12.2021

Petitioner alongwith his counsel present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Naseeb Khan, SO and Mr. Naseer Ud Din Shah, Assistant for respondents present.

Implementation report not submitted. Representative of the respondents stated at the bar that the implementation under execution is under process and will be submitted soon. Adjourned. To come up for implementation report on 25.01.2022 before S.B.

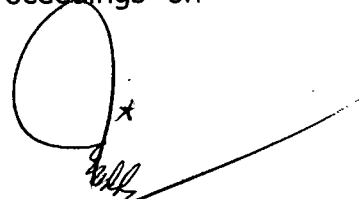


(MIAN MUHAMMAD)
MEMBER (E)

25.01.2022

Clerk of counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: Advocate General for respondents present.

Former requests for adjournment due to general strike of the bar. Adjourned. To come up for further proceedings on 14.03.2022 before S.B.



(Mian Muhammad)
Member (E)

14.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 08.06.2022 for the same as before.



Reader.

08.06.2022

Petitioner in person present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.


Learned AAG informed the Tribunal that a high level meeting was convened with regard to the problems of the petitioner and that implementation report under execution is under process and the report will be submitted before the next date. Last chance is given. To come up for 29.06.2022 before S.B.



(Rozina Rehman)
Member (J)

07.10.2021

Petitioner alongwith his counsel present. Mr. Naseeb Khan, Section Officer and Mr. Muhammad Saleem, Section Officer alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present and stated at the bar that summery has already been moved to the Chief Minister in the matter. In this respect, they produced copy of the summery, which is placed on file. Adjourned. To come up for implementation report on 10.11.2021 before the S.B. 11.11.2021.



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

11.11.2021

Counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG alongwith Naseeb Khan, SO for the respondents present.

Learned AAG seeks time to take the respondents on board for implementation of the judgment. Request is accorded. To come up for implementation report on 02.12.2021 before the S.B.



Chairman

18.06.2021

Petitioner in person present.

Today the copy of judgment of August Supreme Court of Pakistan in C.A No. 39/2021 has been produced by the petitioner, which is placed on file. According to the said order, appeal of the government against the judgment of this Tribunal, at credit of the petitioner, has been dismissed. The order dated 10.02.2021 passed in Execution Petition No. 78/2020 as to adjournment of proceedings sine-die is recalled and the said Execution Petition is restored.

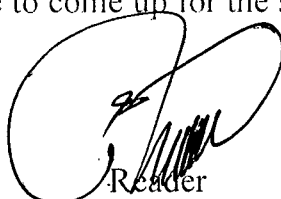
According to operative part of the judgment in Service Appeal No. 980/2016 passed on 27.12.2019, the appeal was accepted, impugned order dated 20.04.2016 was set aside and respondents were directed to allow pay protection to the appellant as prayed for. The prayer of the appellant was thrashed out in Para-4 of the conclusion part of the judgment.

The respondents are directed to implement the judgment of this Tribunal with combined reading of Para-4 and 6 of the judgment. To come up for compliance report on 10.08.2021 before S.B.


Chairman

10.08.2021

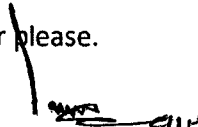

Since 10.08.2021 has been declared public holiday on account of Ist Muharram, therefore, case to come up for the same on 07.10.2021 before S.B.


Reader

FORM OF ORDER SHEET

Court of _____

Restoration Application No. 107 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	27.05.2021	<p>The Restoration Application submitted by Mr. Muhammad Ismail through Mr. Hammad Hussain 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> <p>2- This Restoration Application be put up before S. Bench on <u>18/06/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>

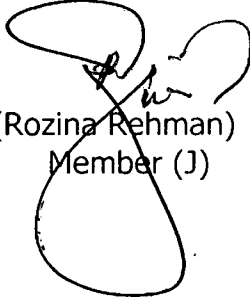
10.02.2021

Petitioner present through counsel.

Mr. Kabirullah Khattak learned Additional Advocate General for respondents present.

Order of the Apex Court was produced today vide which leave to appeal was granted and status-quo was order to be maintained by the parties.

In view of the above instant proceedings stand adjourned sine-die till the decision by the Apex Court.


(Rozina Rehman)
Member (J)

18.11.2020

Counsel for petitioner and Addl; AG alongwith M/S Muhammad Shakoor, Senior Clerk and Fazal Wadood for the respondents present.

Representative of respondents states that CPLA has been preferred before the Apex Court against the judgment under execution, therefore, the same has not been implemented, He also states that an application for early hearing of the CPLA will be shortly submitted. ✓

The respondents shall submit implementation report on next date in case the judgment under execution is not set aside or suspended till the next date. ✓

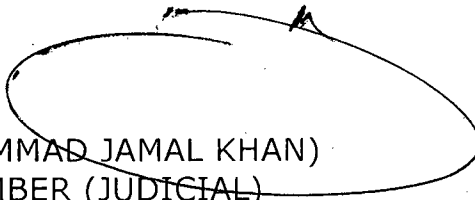
Adjourned to 06.01.2021 before S.B.


Chairman

06.01.2021

Petitioner in person alongwith Mr. Hamad Hussain, Advocate, are present. Mr. Noor Zaman Khattak, District Attorney alongwith representatives of the department Mr. Fazal Wadood, Section Officer and Mr. Muhammad Shakoor, Senior Clerk, are also present.

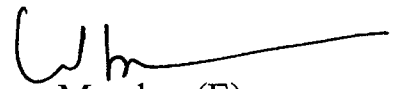
The judgment passed by this Tribunal holds grounds as neither it has been set-aside or suspended till date but even then respondents failed to submit implementation report, according to respondents they have submitted application for earlier hearing of CPLA in the Hon'ble Supreme Court of Pakistan. Respondents seems not serious in giving effect to the judgment of this Tribunal, therefore, coercive measures are initiated against them and accordingly, notice of attachment of salaries of respondents have to be issued directing the executing official to submit compliance report on 18.02.2021. Respondents are again directed to give effect to the judgment of this Tribunal by submitting implementation report positively on the date fixed.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

31.08.2020

Counsel for the petitioner present. Mr. Kabirullah Khattak learned Addl. AG alongwith Mr. Abdul Wahid Litigation Officer for the respondents present.

Implementation report not submitted. Representative of the respondent department seeks time to furnish implementation report on the next date of hearing. Adjourned. To come up for implementation report on 29.09.2020 before S.B.


Member (E)

29.09.2020

Petitioner with counsel and Addl. AG alongwith Abdul Wahid, A.D (Litigation), Sajid Superintendent and Fazle Subhan, S.O for the respondents present.




The representative of Education Department has submitted written reply with regard to implementation petition. Placed on file. To come up for arguments on 18.11.23020 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 78 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.03.2020	<p>The execution petition of Mr. Muhammad Ismail submitted today by Mr. Hamad Hussain 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-	19/03/20.	<p>This execution petition be put up before S. Bench on <u>10/04/2020</u>.</p>
10.04.2020		<p>Due to public holiday on account of MEMBER COVID-19, the case is adjourned to 07.07.2020 for the same. To come up for the same as before S.B.</p> <p style="text-align: right;"> Reader</p>
*	07.07.2020	<p>Counsel for the petitioner present and requested for implementation of orders of this Tribunal. Learned AAG present in the court in some other cases. Admitted the service of notice. To come up for implementation report on 31.08.2020 before S.B.</p> <p style="text-align: right;"> Member (J)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

R.A. No 107/21
C.M

IN

Execution Petition 78/2020

Muhammad Ismail, Principal Govt. High School Mashogagar Peshawar
...Petitioner



Versus

1. The Secretary to Govt of Khyber Pakhtunkhwa Elementary and Secondary Education Department Peshawar.
2. The Secretary to Govt of Khyber Pakhtunkhwa Finance Department Peshawar
3. The Accountant General, Khyber Pakhtunkhwa Peshawar.

..... Respondents

**Subject: APPLICATION FOR RESTORATION OF EXECUTION PETTION
EXECUTION PETITION 78/2020 MUHAMMAD ISMAIL VERSUS
THE SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
PESHAWAR AND OTHERS.**

Respectfully Sheweth:

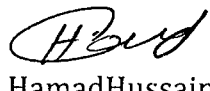
1. That the subject Execution Petition was pending before this Honourable Tribunal for implementation of the judgment dated 27/12/2019 in Service Appeal No. 980/2016.
2. That on 10/02/2021 this Honourable Tribunal sinadie adjourned the subject execution petition due to stay from the august Supreme Court against the judgment of this Honourable Tribunal dated 27/12/2019..
3. That on 27/04/2021 Civil Appeal No. 39/2021 Government of KPK through Chief Secretary and others vs Muhammad Ismail was dismissed by the august Supreme Court and uphold the judgment of this Honourable Tribunal dated 27/12/2019 in S.A 980/16 [copy of the judgment of august Supreme Court dated 27/04/2121 in C.A 39/21 is attached for reference].

4. That the respondent departments have no option except to be implemented judgment of this Honourable Tribunal although the respondent department Civil Appeal No. 39/2021 Government of KPK through Chief Secretary and others vs Muhammad Ismail already dismissed by the august Supreme Court of Pakistan on 27/04/2021.
5. That this Honourable Tribunal is requested to restored the subject execution petition and be fixed a date & may issue notice / directions to the respondent departments for implementation of judgment dated 27/12/2019 of this Honourable Tribunal.

It is therefore, most humbly prayed that the subjection execution petition may kindly be restored and a dated be fixed for issuance a notice and directions to the respondents for implementation of the judgment dated 27/12/2019 in letter and spirit and may be extended benefit of pay protection to the petitioner the appellat in service.


Petitioner

Through

 27/05/2021
Hamad Hussain
Advocate High Court Peshawar
03120952763

CIVIL APPEAL NO. 39 OF 2021

(On appeal against the judgment dated 27.12.2019 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 980/2016)

Government of KPK through Chief Secretary, KPK and others
...Appellant(s)

VERSUS

Muhammad Ismail and another
...Respondent(s)

For the Appellant(s): Mr. Atif Ali Khan, Addl. A.G.

For the Respondent: Mr. Muhammad Asif Yousafzai, ASC

Date of Hearing: 27.04.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J. Through this appeal by leave of the Court under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have assailed the judgment dated 27.12.2019 passed by the Khyber Pakhtunkhwa Service Tribunal whereby the Service Appeal filed by the respondent No. 1 was accepted and he was allowed pay protection.

2. Succinctly stated the facts of the matter are that on 25.03.2002, the respondent No. 1 was appointed as Master in Pak Studies/Lecturer (BPS-17) in Cadet College Razmak, North Waziristan. Later on, pursuant to the advertisement issued by the Khyber Pakhtunkhwa Public Service Commission for the posts of Subject Specialist (BPS-17), he applied through proper channel for the said post. The appellant passed through the selection criterion as such he was selected vide notification dated 19.09.2006, hence, posted at Government Higher Secondary School, Sheikhan, Peshawar. On 04.06.2011, the Finance Department, Government of KPK, issued a notification whereby it allowed pay protection to the employees of the autonomous bodies who had adopted pay scales of the Provincial Government. To get the benefit, the respondent filed departmental

ATTESTE

appeal but it was rejected vide order dated 20.04.2016. Being aggrieved, he filed Service Appeal before the KPK Service Tribunal, which has been allowed vide impugned judgment. Hence, this appeal by leave of the Court.

3. Learned Additional Advocate General, KPK, inter alia contended that the respondent was appointed as Subject Specialist (BPS-17) on 19.09.2006 whereas the notification on the basis of which the respondent claimed pay protection came on 04.06.2011 which was prospective in nature, therefore, the respondent was not entitled for the relief in question; that for the first time, the respondent claimed the relief of pay protection on 05.11.2015 through departmental appeal after more than four years of issuance of notification dated 04.06.2011 and the same was barred by laches; that the learned Tribunal did not take into consideration this aspect of the matter and passed the impugned judgment, which may be set aside.

4. On the other hand, learned counsel for the respondent No. 1 has supported the impugned judgment. He mainly contended that the respondent applied through proper channel after proper departmental permission, therefore, under the law and rules, he is legally entitled to pay protection because the Cadet College Razmak had also adopted the Basic Pay Scale and that if the respondent is deprived of the benefit in question, it would be against the principles of justice and fair play.

5. We have heard learned Law Officer as well as learned counsel for the respondent No. 1 and have perused the record.

6. On our specific query, learned Additional Advocate General conceded that the Cadet College Razmak where the respondent was earlier working as Master in Pak Studies/Lecturer (BPS-17) had adopted the Basic Pay Scales and the respondent had applied through proper channel after getting permission from the department for the post of Subject Specialist. The only point on which he emphasized is that the notification dated 04.06.2011 on the basis of which the respondent claimed pay protection is prospective in nature and it does not allow retrospective claims. However, we do not tend to agree with the learned Law Officer. While passing the impugned judgment, the learned Service Tribunal has relied upon a judgment of this Court dated 27.1.2019 passed in Civil Appeal No. 1308/2019. In that case the respondent was appointed as Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. Later on he applied for the post of Inspector in

the Mines Department through proper channel and was got selected vide order dated 21.06.1989. On the basis of the notification dated 04.06.2011 referred above, he claimed pay protection which was ultimately granted by the Service Tribunal and appeal against the order of the Tribunal was dismissed by this Court. It would be advantageous to refer to the relevant portion of the order dated 27.11.2019 passed by this Court, which reads as under:-

2. Learned Additional Advocate General has stated that the respondent was appointed as a Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. The respondent applied for being appointed as Inspector Mines through proper channel in the Mines Department and ultimately, succeeded in the same and was appointed as an Inspector Mines vide order dated 21.06.1989. Learned Addl. AG further contends that by virtue of the letter dated 04.06.2011, as reproduced above, the respondent was not entitled to pay protection. This letter has been considered by the Service Tribunal in its impugned judgment and even on our own reading, we are unable to agree with the learned Addl. AG that this has affected the case of the respondent, for that, the very letter used the word "henceforth" and provides to discontinue the benefit of pay protection of the employees of autonomous bodies. However in the last line it gives such benefit of pay protection to the employees of such autonomous organizations who have adopted the Scheme of Basic Pay Scale in toto on their appointment in Government Offices. In the first place, the very letter shows that it will apply from 04.06.2011 and will not affect the employees who have already been employed in Government service from the autonomous organizations and the case of the respondent being that of appointed on 21.06.1989, the same is not affected. Further, it is also an admitted fact that the University, in which the respondent was working, has adopted the Scheme of Basic Pay Scale in toto in the Government service. Besides, the respondent has applied for the post through proper channel, therefore, the condition of applying through proper channel has been satisfied."

7. In the above referred case, almost in similar circumstances as in the present case, the benefit of pay protection was given retrospectively, therefore, the respondent being standing on the same pedestal also deserves the same treatment to be meted out in the spirit of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. So far as the issue of laches is concerned, this point was specifically taken by the appellants before the learned Service Tribunal and the same was rightly discarded by the Tribunal in paragraph No. 5 of the impugned judgment by holding that being a financial matter, limitation will not have any adverse implication on respondent's claim.

8. For what has been discussed above, we are of the candid view that the learned Service Tribunal has passed a well reasoned

judgment to which no exception can be taken. This appeal having no merit is accordingly dismissed.

Sd/CJ

Sd/J

Sd/J



Certified to be True Copy

Senior Counsel Associate
Supreme Court of Pakistan
Islamabad

GR no: 7790/21 Civil/Criminal

Date of Presentation: 27.04.21

No of Words: 1200

No of Pages: 12

Requisition: 5-00

Copy Fee: 7.44

Court: 12.64

Date of: 7/5/21

Date of Del: 17-5-21

Compared by: [Signature]

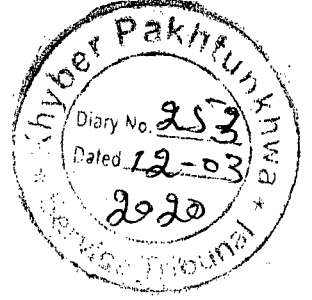
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition 78 /2020

In

Service Appeal No 980/2016

Decided on 27/12/2019



Muhammad Ismail, Principal Govt. High School Mashogagar Peshawar
...Petitioner

Versus



1. The Secretary to Govt of Khyber Pakhtunkhwa Elementary and Secondary Education Department Peshawar.
2. The Secretary to Govt of Khyber Pakhtunkhwa Finance Department Peshawar
3. The Accountant General, Khyber Pakhtunkhwa Peshawar.

..... Respondents

EXECUTION PETITION FOR IMPLEMENTATION OF JUDGMENT DATED 27/12/2019 OF THIS HONOURABLE TRIBUNAL IN THE ABOVE MENTIONED APPEAL.

10.02.2021

Petitioner present through counsel.

Mr. Kabirullah Khattak learned Additional Advocate General for respondents present.

Order of the Apex Court was produced today vide which leave to appeal was granted and status-quo was order to be maintained by the parties.

In view of the above instant proceedings stand adjourned sine-die till the decision by the Apex Court.

Date of Presentation of Application 01-06-2021
Number of Words 450
Copying Fee 6.00
Urgent ✓
Total 6.00
Name of Copyist _____
Date of Completion of Copy 02-06-2021
Date of Delivery of Copy 02-06-2021

Certified to be true copy

CLERK
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(Rozina Rehman)
Member (J)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M

IN

Execution Petition 78/2020

Muhammad Ismail, Principal Govt. High School Mashogagar Peshawar
...Petitioner

Versus

1. The Secretary to Govt of Khyber Pakhtunkhwa Elementary and Secondary Education Department Peshawar.
2. The Secretary to Govt of Khyber Pakhtunkhwa Finance Department Peshawar
3. The Accountant General, Khyber Pakhtunkhwa Peshawar.

..... Respondents

**Subject: APPLICATION FOR RESTORATION OF EXECUTION PETITION
EXECUTION PETITION 78/2020 MUHAMMAD ISMAIL VERSUS
THE SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
PESHAWAR AND OTHERS.**

Respectfully Sheweth:

1. That the subject Execution Petition was pending before this Honourable Tribunal for implementation of the judgment dated 27/12/2019 in Service Appeal No. 980/2016.
2. That on 10/02/2021 this Honourable Tribunal seinedy adjourned the subject execution petition due to stay from the august Supreme Court against the judgment of this Honourable Tribunal.
3. That on 27/04/2021 Civil Appeal No. 39/2021 Government of KPK through Chief Secretary and others vs Muhammad Ismail was dismissed by the august Supreme Court and upholds the judgment of this Honourable

Tribunal dated 27/12/2019 in S.A 980/16 [copy of the judgment of august Supreme Court dated 27/04/2121 in C.A 39/21 is attached for reference].

4. That the respondent departments have no option except to be implemented judgment of this Honourable Tribunal although the respondent department Civil Appeal No. 39/2021 Government of KPK through Chief Secretary and others vs Muhammad Ismail already dismissed by the august Supreme Court of Pakistan on 27/04/2021.
5. That this Honourable Tribunal is requested to restored the subject execution petition and be fixed a date & may issue notice / directions to the respondent departments for implementation of judgment dated 27/12/2019 of this Honourable Tribunal.

It is therefore, most humbly prayed that the subjection execution petition may kindly be restored and a dated be fixed for issuance a notice and directions to the respondents for implementation of the judgment dated 27/12/2019 in letter and spirit and may be extended benefit of pay protection to the petitioner the appellant in service.

Petitioner

Through

HamadHussain
Advocate High Court Peshawar
03120952763

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition _____/2020

In

Service Appeal No 980/2016

Decided on 27/12/2019

Muhammad Ismail, Principal Govt. High School Mashogagar Peshawar
...Petitioner

Versus

The Secretary to Govt of Khyber Pakhtunkhwa Elementary and
Secondary Education Department and others Peshawar.
Respondents

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3.	Application for implementation submitted to respondents dated 06/01/2020	"B"	9
4.	Power of Attorney		7
5.			
6.			

Petitioner

Through

Hamad Hussain
Advocate Peshawar
03120952763

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR C.M

IN

Execution Petition 78/2020

Muhammad Ismail, Principal Govt. High School Mashogagar Peshawar
...Petitioner

Versus

The Secretary to Govt of Khyber Pakhtunkhwa Elementary and others
..... Respondents

**Subject: Rebuttal and arguments on reply submitted by
Elementary and Secondary Education in subject execution
petition.**

Respectfully Sheweth:

FACTS.

1. That the respondent department is intentionally violate the judgment dated 27/12/2019 of this Honourable Tribunal and not implement in letter spirit as to submit written reply because when a judgment passed by Court [s] of law or Tribunal and especially in the present case the respondent is legally bound to implement the said judgment in letter and spirit.
2. That in reply all the paras the respondent department relied upon filling CPLA already filed before the Honourable Supreme Court of Pakistan but the respondent department has not yet produced stay from the august Supreme Court of Pakistan against the judgment of this Honourable Tribunal dated 27/12/2019 and as per order 21 of the CPC the respondent department is legally bound to implement the judgment dated 27/12/2019 because the judgment of this Honourable Tribunal is in field while the august Supreme Court in similarly pay protection case uphold judgment of this Honourable Tribunal dated 07//03/2017 passed in S.A No. 476/2014 wherein benefits of Pay Protection were allowed to MianFarfooq Iqbal and Government appeal against the

judgment of Service Tribunal was dismissed while Finance Department already implemented the judgment of this Honourable Tribunal as the Government CPLA dismissed by the august Supreme Court on 27/11/2019.

GROUNDS

- A. That the respondents are wilfully reluctant not to implement judgment dated 27/12/2019 of this Honourable Tribunal and the respondents are wilfully delaying the matters for ulterior motives, which amount to abuse of authority.
- B. That the respondents have floated judgment of this Honourable and no appropriate action has been taken in spite of directions of this Honourable Tribunal, which amounts to contempt of this Honourable Tribunal. The respondent department relied upon filing CPLA already filed before the Honourable Supreme Court of Pakistan but the respondent department has not produced any stay from the august Supreme Court of Pakistan against the judgment of this Honourable Tribunal dated 27/12/2019 and as per order 21 of the CPC the respondent department is legally bound to implement the judgment dated 27/12/2019 because the judgment of this Honourable Tribunal is in field.
- C. That this point of Pay Protection has been adequately elaborated / addressed by the august Supreme Court of Pakistan through judgment/ order dated 27/11/2019 passed in Civil Appeal 1308/2019 and uphold judgment of this Honourable Tribunal dated 07//03/2017 passed in S.A No. 476/2014 where benefits of Pay Protection were allowed to Mian Farfooq Iqbal and the Finance Department already implemented the judgment of this Honourable Tribunal as the Government CPLA dismissed by the august Supreme Court on 27/11/2019.
- D. That act of the respondents department for not extension benefit of pay protection to the petitioner is against the law and judgments of supra court relied upon the relevant para of judgment of the Supreme Court of Pakistan 1996 SCMR 1185 titled Hameed Akhtar Niazi vs The Secretary Establishment Division, Government of Pakistan "If the

Service Tribunal or Supreme Court decides a point of law relating to the terms of Service of a Civil Servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/ Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum”.

- E. That the respondents are clearly violate the judgments of supra Court in another case reported as PLD 2013 SC 195 titled as Syed Mahmood Akhtar Naqvi and others vs Federation of Pakistan and others hold that “if Decision given by the Supreme Court on a point of law would be binding on concerned departmental functionaries who would be obliged to apply such level principle in other similar cases regardless of whether or not a civil servant had litigated the matter in his own case..... In view of Art. 189 and 190 of the Constitution, a civil servant would be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by the Supreme Court Failure of a state functionary to apply a legal principle which was clearly and unambiguously attracted to a case might expose him to proceedings under Art. 204 (2) (a) of the Constitution”. But in the instant execution petition the said point of views i.e. benefits of pay protection already decided by this Tribunal as well the august Supreme Court as explained in the above para C.
- F. That the respondents / contemnors are duty bound to implement the judgment of this Honourable Tribunal dated 27/12/2019 and if the respondents not implement judgment of this Honourable Tribunal, and contempt of Court proceeding under Art. 204 (2) (a) section 3 and 4 of the contempt act of the contempt of court for proceeding of the Constitution may kindly be initiated against the respondents.
- G. It is therefore, most humbly prayed that the respondents may very kindly be directed to implement the judgment dated 27/12/2019 in letter and spirit and may be extended benefit of pay protection to the petitioner the appellant in service.

Petitioner

Through

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition _____/2020

In

Service Appeal No 980/2016

Decided on 27/12/2019

Muhammad Ismail, Principal Govt. High School Mashogagar Peshawar
...Petitioner

Versus

1. The Secretary to Govt of Khyber Pakhtunkhwa Elementary and Secondary Education Department Peshawar.
2. The Secretary to Govt of Khyber Pakhtunkhwa Finance Department Peshawar
3. The Accountant General, Khyber Pakhtunkhwa Peshawar.

..... Respondents

**EXECUTION PETITION FOR IMPLEMENTATION OF JUDGMENT
DATED 27/12/2019 OF THIS HONOURABLE TRIBUNAL IN
THE ABOVE MENTIONED APPEAL.**

RESPECTFULLY SHEWETH:-

1. That the petitioner was appointed as Subject Specialist (BPS-17) in Elementary and Secondary Education vide notification dated 19/09/2006 and was relieved by the Principal Cadet College Razmak on 25/05/2006 as the petitioner was Lecturer Pak Study in Cadet College Razmak and had applied through proper channel for the post of Subject Specialist (BPS-17).

2. That the petitioner filed departmental appeal on 05/11/2015 for extension of benefits of pay protection but the same was rejected vide order dated 20/04/2016.
3. That the petitioner had filed Service Appeal No 980/2016 for extension of benefits of Pay Protection which was allowed vide judgment dated 27/12/2019 by this Honourable Tribunal [**copy of judgment dated 27/12/2019 is attached as Annexure – A**].
4. That the petitioner submitted judgment of this Honourable Tribunal dated 27/12/2019 to the respondents No. 1 and 2 i.e. Secretary, Elementary and Secondary Education and Secretary Finance Department Govt of Khyber Pakhtunkhwa on 06/01/2020 for implementation but no implementation has been taken and still pending (**copy of application for implementation as Annexure-B**).
5. That the petitioner visited to the offices of respondents No. 1 and 2 time and again for implementation for the purpose of extension of benefits of Pay Protection to the petitioner but no steps has been taken by the respondents for implementation of the judgment of this Honourable Tribunal.
6. That now the petitioner has got no other adequate remedy except to file this execution petition for immediate proceedings in accordance with law, equity and justice on with following grounds:-

Grounds:-

- A. That the respondents are wilfully reluctant not to implement judgment dated 27/12/2019 of this Honourable Tribunal and the respondents are wilfully delaying the matters for ulterior motives, which amount to abuse of authority.

- B. That the respondents have floated judgment of this Honourable and no appropriate action has been taken in spite of directions of this Honourable Tribunal, which amounts to contempt of this Honourable Tribunal.
- C. That this point of Pay Protection has been adequately elaborated / addressed by the august Supreme Court of Pakistan through judgment/ order dated 27/11/2019 passed in Civil Appeal 1308/2019 and uphold judgment of this Honourable Tribunal dated 07//03/2017 passed in S.A No. 476/2014 where benefits of Pay Protection were allowed to Mian Farfooq Iqbal.
- D. That act of the respondents department for not extension benefit of pay protection to the petitioner is against the law and judgments of supra court relied upon the relevant para of judgment of the Supreme Court of Pakistan 1996 SCMR 1185 titled Hameed Akhtar Niazivs The Secretary Establishment Division, Government of Pakistan "If the Service Tribunal or Supreme Court decides a point of law relating to the terms of Service of a Civil Servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/ Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum".
- E. That the respondents are clearly violate the judgments of supra Court in another case reported as PLD 2013 SC 195 titled as Syed Mahmood Akhtar Naqvi and others vs Federation of Pakistan and others hold that "if Decision given by the Supreme Court on a point of law would be binding on concerned departmental functionaries who would be obliged to apply such level principle in other similar cases regardless of whether or not a civil servant

had litigated the matter in his own case..... In view of Art. 189 and 190 of the Constitution, a civil servant would be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by the Supreme Court Failure of a state functionary to apply a legal principle which was clearly and unambiguously attracted to a case might expose him to proceedings under Art. 204 (2) (a) of the Constitution". But in the instant execution petition the said point of views i.e. benefits of pay protection already decided by this Tribunal as well the august Supreme Court as explained in the above para C.

F. That the respondents / contemnors are duty bound to implement the judgment of this Honourable Tribunal dated 27/12/2019 and if the respondents not implement judgment of this Honourable Tribunal, and contempt of Court proceeding under Art. 204 (2) (a) section 3 and 4 of the contempt act of the contempt of court for proceeding of the Constitution may kindly be initiated against the respondents.

G. Any others will be taken at the time of arguments.

It is therefore, most humbly prayed that the respondents may very kindly be directed to implement the judgment dated 27/12/2019 in letter and spirit and may be extended benefit of pay protection to the petitioner the appellant in service.

Petitioner

Through

Hamad Hussain
Advocate Peshawar
03120952763

AFFIDAVIT

I, Muhammad Ismail, Principal GHS Mashogagar Peshawar, hereby solemnly affirm and declare that all the contents of the instant Execution Petition are true and correct to the best and belief of my knowledge and nothing has been concealed from this Honourable Tribunal.

Deponent

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 39 OF 2021

(On appeal against the judgment dated 27.12.2019 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 980/2016)

Government of KPK through Chief Secretary, KPK and others
...Appellant(s)

VERSUS

Muhammad Ismail and another
...Respondent(s)

For the Appellant(s): Mr. Atif Ali Khan, Addl. A.G.

For the Respondent: Mr. Muhammad Asif Yousafzai, ASC

Date of Hearing: 27.04.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J. Through this appeal by leave of the Court under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have assailed the judgment dated 27.12.2019 passed by the Khyber Pakhtunkhwa Service Tribunal whereby the Service Appeal filed by the respondent No. 1 was accepted and he was allowed pay protection.

2. Succinctly stated the facts of the matter are that on 25.03.2002, the respondent No. 1 was appointed as Master in Pak Studies/Lecturer (BPS-17) in Cadet College Razmak, North Waziristan. Later on, pursuant to the advertisement issued by the Khyber Pakhtunkhwa Public Service Commission for the posts of Subject Specialist (BPS-17), he applied through proper channel for the said post. The appellant passed through the selection criterion as such he was selected vide notification dated 19.09.2006, hence, posted at Government Higher Secondary School, Sheikhan, Peshawar. On 04.06.2011, the Finance Department, Government of KPK, issued a notification whereby it allowed pay protection to the employees of the autonomous bodies who had adopted pay scales of the Provincial Government. To get the benefit, the respondent filed departmental

ATTESTE

appeal but it was rejected vide order dated 20.04.2016. Being aggrieved, he filed Service Appeal before the KPK Service Tribunal, which has been allowed vide impugned judgment. Hence, this appeal by leave of the Court.

3. Learned Additional Advocate General, KPK, *inter alia* contended that the respondent was appointed as Subject Specialist (BPS-17) on 19.09.2006 whereas the notification on the basis of which the respondent claimed pay protection came on 04.06.2011 which was prospective in nature, therefore, the respondent was not entitled for the relief in question; that for the first time, the respondent claimed the relief of pay protection on 05.11.2015 through departmental appeal after more than four years of issuance of notification dated 04.06.2011 and the same was barred by laches; that the learned Tribunal did not take into consideration this aspect of the matter and passed the impugned judgment, which may be set aside.

4. On the other hand, learned counsel for the respondent No. 1 has supported the impugned judgment. He mainly contended that the respondent applied through proper channel after proper departmental permission, therefore, under the law and rules, he is legally entitled to pay protection because the Cadet College Razmak had also adopted the Basic Pay Scale and that if the respondent is deprived of the benefit in question, it would be against the principles of justice and fair play.

5. We have heard learned Law Officer as well as learned counsel for the respondent No. 1 and have perused the record.

6. On our specific query, learned Additional Advocate General conceded that the Cadet College Razmak where the respondent was earlier working as Master in Pak Studies/Lecturer (BPS-17) had adopted the Basic Pay Scales and the respondent had applied through proper channel after getting permission from the department for the post of Subject Specialist. The only point on which he emphasized is that the notification dated 04.06.2011 on the basis of which the respondent claimed pay protection is prospective in nature and it does not allow retrospective claims. However, we do not tend to agree with the learned Law Officer. While passing the impugned judgment, the learned Service Tribunal has relied upon a judgment of this Court dated 27.1.2019 passed in Civil Appeal No. 1308/2019. In that case the respondent was appointed as Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. Later on he applied for the post of Inspector in

the Mines Department through proper channel and was got selected vide order dated 21.06.1989. On the basis of the notification dated 04.06.2011 referred above, he claimed pay protection which was ultimately granted by the Service Tribunal and appeal against the order of the Tribunal was dismissed by this Court. It would be advantageous to refer to the relevant portion of the order dated 27.11.2019 passed by this Court, which reads as under:-

2. Learned Additional Advocate General has stated that the respondent was appointed as a Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. The respondent applied for being appointed as Inspector Mines through proper channel in the Mines Department and ultimately, succeeded in the same and was appointed as an Inspector Mines vide order dated 21.06.1989. Learned Addl. AG further contends that by virtue of the letter dated 04.06.2011, as reproduced above, the respondent was not entitled to pay protection. This letter has been considered by the Service Tribunal in its impugned judgment and even on our own reading, we are unable to agree with the learned Addl. AG that this has affected the case of the respondent, for that, the very letter used the word "henceforth" and provides to discontinue the benefit of pay protection of the employees of autonomous bodies. However in the last line it gives such benefit of pay protection to the employees of such autonomous organizations who have adopted the Scheme of Basic Pay Scale in toto on their appointment in Government Offices. In the first place, the very letter shows that it will apply from 04.06.2011 and will not affect the employees who have already been employed in Government service from the autonomous organizations and the case of the respondent being that of appointed on 21.06.1989, the same is not affected. Further, it is also an admitted fact that the University, in which the respondent was working, has adopted the Scheme of Basic Pay Scale in toto in the Government service. Besides, the respondent has applied for the post through proper channel, therefore, the condition of applying through proper channel has been satisfied."

7. In the above referred case, almost in similar circumstances as in the present case, the benefit of pay protection was given retrospectively, therefore, the respondent being standing on the same pedestal also deserves the same treatment to be meted out in the spirit of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. So far as the issue of laches is concerned, this point was specifically taken by the appellants before the learned Service Tribunal and the same was rightly discarded by the Tribunal in paragraph No. 5 of the impugned judgment by holding that being a financial matter, limitation will not have any adverse implication on respondent's claim.

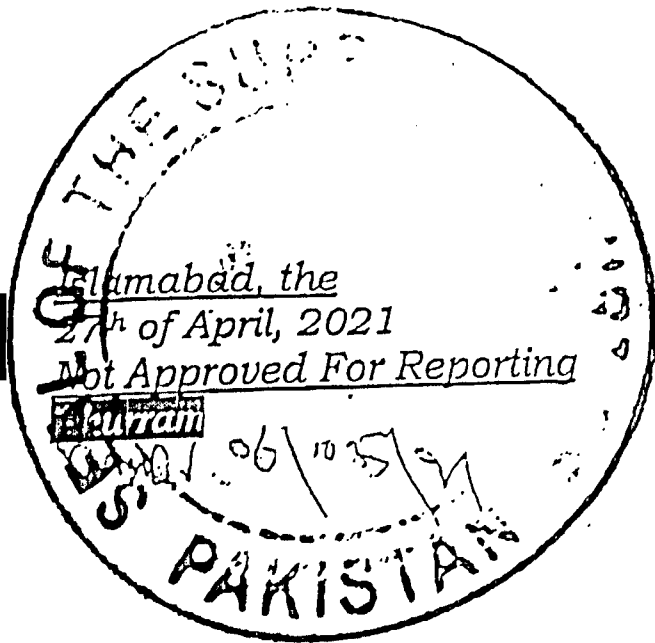
8. For what has been discussed above, we are of the candid view that the learned Service Tribunal has passed a well reasoned

judgment to which no exception can be taken. This appeal having no merit is accordingly dismissed.

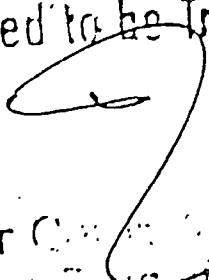
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 Senior Counselor Associate
 Supreme Court of Pakistan
 Islamabad

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