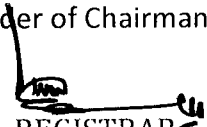


FORM OF ORDER SHEET

Court of _____

C.O.C application No. 512 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	30/08/2022	<p>The C.O.C application of Mr. Aziz Ullah Khan submitted today by Mr. Muhammad Tariq Advocate. Original file be requisitioned. It is fixed for hearing before Single Bench at Peshawar on _____.</p> <p>Notices be issued to appellant and her counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

**BEFORE THE PROVINCIAL SERVICE TRIBUNAL KHYBER
PAKHTUNKHUWA PESHAWAR**

C.O.C No. 512 /2022

In

Service Appeal No.318/2017

Aziz Ullah Khan

Versus

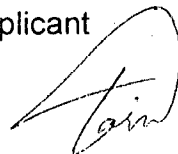
Zahid Muhammad, D.E.O (Male) Bannu

INDEX

S.No	Description	Annexure	Page No
1.	Contempt of Court along with affidavit	-	01-04
2.	Copy of the Judgment dated 15/12/2021	<u>"A"</u>	05-09
3.	Wakalat Nama (in original)	-	10

Applicant

Through


(MUHAMMAD TARIQ)
Advocate,
Supreme Court of Pakistan

Office Address: 2nd Floor Al-Mansoor Hotel Opp: Gulbahar Police Station G.T.
Road Peshawar
Cell#0333-9385283

**BEFORE THE PROVINCIAL SERVICE TRIBUNAL KHYBER
PAKHTUNKHUWA PESHAWAR**

C.O.C No. _____/2022

In

Service Appeal No.318/2017

Aziz Ullah Khan S/O Abdul Jalil Khan R/O Yaqoob Abad Khujari, Tehsil and
District Bannu

(Applicant)

VERSUS

Zahid Muhammad, District Education Officer (Male) Bannu

(Respondent)

Application for the initiation of Contempt
proceedings under Section 3,4 of Contempt
Ordinance 2004 against
Respondents/Contemners for violating the
Judgment Dated 15/12/2021 passed by this
Honorable Tribunal in Service Appeal
No.318/2017

Respectfully Sheweach:

1. That the Applicant/Appellant has filed the caption Service Appeal in
hand against Respondent and others before this Honorable
Tribunal which was accepted vide Judgment Dated 15/12/2021 with
the directions were given to Respondents in following terms

**"In view of foregoing discussion, the instant
appeal is accepted. The impugned Order dated 19-05-
2016 is set aside and the Appellant is re-instated in**

service with all back benefits. (Copy of the Judgment

Dated 15/12/2021 are Annexure "A")

2. That Applicant has submitted applications dated 30/12/2021 and 12/05/2022 with the Respondent for the implementation of Judgment of this Honorable Tribunal which was duly acknowledge by Respondent on 12/05/2022 through diary No.958. Thereafter, Applicant has time and again approached Respondent but he willfully, intentionally and deliberately not complying the Judgment of this honorable Tribunal as per clear cut order and made Applicant a rolling stone.
3. That Respondents have willfully and intentionally committed the Contempt of the Order of this Honorable Tribunal. Hence, the present Application inter alia on the following

GROUNDS:

- A. That Applicant is suffering great financial crises as well as facing mental torture due to the illegal acts and deeds of Respondent.
- B. That Respondents in spite of crystal clear directions not comply with the Judgment of this honorable Tribunal which is worst example of contempt of Court.
- C. That the acts and deeds of Respondent are in violation of the fundamental rights of Applicant as well as disobedience of the mandate of this Honorable Tribunal.
- D. That Applicant has submitted the Judgment Dated 15/12/2021 of this honorable Tribunal with Respondents within time. But Respondent has willfully and intentionally

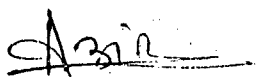

not re-instate the Applicant in the service with all back benefits.

- E. That Respondents wilfully and intentionally not obeying the clear cut Judgment of this honorable Tribunal which amounts to the contempt of Court. As such, Respondent is liable for the proceedings of contempt of court and to be punished strictly in accordance with law.
- F. That there is not legal bar for the initiating of contempt of Court proceedings against Respondent rather it would be in the interest of justice.

It is, therefore, respectfully prayed that on acceptance of instant application in hand,

- i) Respondents may very graciously be punished for the contempt of Court in accordance with law.
- ii) Respondents may very graciously be further directed to re-instate the Applicant with all back benefits.
- iii) And any other order deemed proper in the matter may also be passed in favour of Applicants against Respondent.

Through

Applicant 

(MUHAMMAD TARIQ)
Advocate,
Supreme Court of Pakistan

(4)

BEFORE THE PROVINCIAL SERVICE TRIBUNAL KHYBER
PAKHTUNKHUWA PESHAWAR

C.O.C No. _____/2022

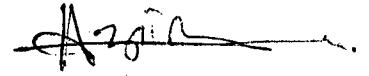
In

Service Appeal No.318/2017

Aziz Ullah Khan Versus Zahid Muhammad, D.E.O (Male) Bannu

AFFIDAVIT

It is hereby solemnly affirm and declare on oath that contents of **Application for Contempt** are true and correct to the best of my knowledge and belief and nothing has been kept from this honorable Court.



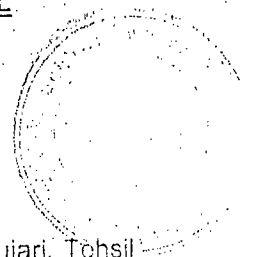
Deponent

(S)

BEFORE THE PROVINCIAL SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Annex
7

Service Appeal No. 318 /2017



Aziz Ullah Khan S/O Abdul Jalil Khan F/O Yaqoob Abad Khujari, Tehsil
and District Bannu (Appellant)

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 282

Dated 24-3-17

1. Director of Elementary & Secondary Education Government of Khyber Pakhtunkhwa Peshawar
 2. District Education Officer (Male) Tehsil & District Bannu
 3. Deputy Commissioner Bannu.
 4. District Account Officer Bannu.
 5. Deputy District Education Officer, Bannu.
 6. Sub Divisional Education Male Primary Officer Bannu.
- (Respondents)

[Handwritten signature]
NIGR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

24/3/17

[Handwritten signature]
24/3/17

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE TERMINATION ORDER BEARING NO.4603-9-13 ADEO (M) BANNU DATED 19/05/2016 WHICH WAS RECEIVED TO THE PETITIONER ON 26/09/2016 VIDE WHICH THE APPELLANT HAS BEEN TERMINATED FROM PRIMARY SCHOOL TEACHER SERVICE AND APPELLANT FILED DEPARTMENTAL APPEAL TO THE RESPONDENT NO.1 ON 27/09/2016 BUT TILL DATE THE ORDER IS NOT COMMUNICATED TO THE APPELLANT INSPITE OF SEVERAL REQUEST.

[Handwritten signature]
Attested

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 318/2017

Date of Institution: ... 24.03.2017

Date of Decision: ... 15.12.2021

Aziz Ullah Khan S/O Abdul Jalil Khan R/O Yaacob Abad Khujari, Tehsil and District Bannu.

(Appellant)

VERSUS

Director of Elementary & Secondary Education Government of Khyber Pakhtunkhwa Peshawar and five others.

(Respondents)

Muhammad Tariq,
Advocate

For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

For Respondents

SALAH-UD-DIN
ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the case are that the appellant, while serving as Primary School Teacher, was proceeded against on the charges of absence and was ultimately terminated from service vide order dated 19-05-2016. Feeling aggrieved, the appellant filed departmental appeal, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned termination order dated 19-05-2016 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 impugned termination order is against law and equity, hence not tenable in the eye of law; that

inf
Attended

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the impugned order is illegal and without any substance, in utter disregard of the well settled principal of law, as such the impugned order is liable to be set aside; that there is no evidence on record to show that the appellant was absent from duty, rather the appellant regularly performed his duty, which is evident from record; that neither any inquiry was conducted nor the appellant was afforded any opportunity to defend his cause, thus the respondents violated article-10-A of the constitution; that the appellant has not been treated in accordance with law and acted in violation of article-4 of the constitution and unlawfully issued termination order, which is unjust, unfair hence not sustainable in the eye of law; that the charges of absence from duty were ill founded and not based on facts, as the appellant has not been served with any charge sheet/statement of allegations regarding absence from duty and the appellant is not aware of any disciplinary proceedings, hence the charges of absence are baseless and accordingly the impugned order is not legally sustainable under the law and is liable to be set aside; that the word termination is alien to the disciplinary rules, hence such order is void ab initio; that the termination order was issued with retrospective effect which too is void and not tenable in the eye of law; that it is a well settled legal proposition that regular inquiry is must before imposition of major penalty, which however was not done in case of the appellant.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was proceeded against on the charges of absence from duty; that several notices were served upon the appellant, but the appellant did not respond; that such notices were published in newspaper on 16-03-2016; that an inquiry was also conducted against the appellant and the appellant was called for personal hearing but the appellant did not attend proceedings of the inquiry; that the inquiry committee recommended, that the appellant may be terminated from service with immediate effect; that in light of recommendation of the inquiry the appellant was terminated from service vide order dated 19-05-2016


Attested

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

05. Record reveals that the appellant was initially appointed as Primary School Teacher vide order dated 29-08-2006 and was lastly posted in a primary school in FR Bannu, when a monitoring team during its visit to his school, found the appellant absent from duty on 01-01-2015 and as per one day absence, three notices dated 31-12-2015, 14-01-2016 and 25-02-2016 were served upon the appellant, but such notices are not addressed to the appellant nor it was ascertained as to whether such notices were actually served upon the appellant or not. Nothing is available on record to show as to whether any inquiry was conducted against the appellant. placed on record is a letter dated 13-05-2016 wherein a committee had been constituted for disposing cases of disciplinary proceedings including the appellant, according to which the appellant was recommended for termination from service, but neither the appellant is shown as associated with such proceedings nor the appellant had been associated with such proceedings. There is no charge sheet/statement of allegations served upon the appellant and the whole proceedings had been conducted in a haphazard manner. As per dictates of law, respondents were required to initiate disciplinary proceeding against the appellant, but the respondents failed to frame proper charge and its communication to the civil servant alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken in to consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was mandatory prerequisite, which was to be followed. Reliance is placed on 2000 SCMR 1743. It otherwise is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, which however was not done in case of the appellant and the appellant was condemned unheard. Reliance is placed on 2009 PLC (CS) 650. The Supreme Court of Pakistan in another judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty,

Attested



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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 would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. We have noted that respondents neither conducted any inquiry nor afforded any opportunity to the appellant to defend his cause, rather a committee was constituted and the committee unilaterally and without associating the appellant decided his fate and the impugned order of his termination was issued in sheer violation of law and rule and on this score alone, the impugned order is liable to be set at naught. The impugned order provided for penalty to the appellant in terms of termination from service, which as rightly argued by the learned counsel for the appellant is not included in the list of penalties provided in the rules applied on the appellant. The order, therefore, having been passed in blatant disregard of law can only be termed as void. We are of the considered opinion that the appellant has not been treated in accordance with law and he was kept deprived of his lawful duty in an illegal and mechanical manner.

06. In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 19-05-2016 is set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File is consigned to record room.

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Attested

ANNOUNCED
15.12.2021

20/12/21
26 - 2400
30⁴ -

(SALAH-UD-DIN)
MEMBER (J)

20/12/21
20/12/21
(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)