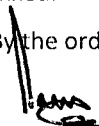



Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Execution Petition No. 526/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.09.2022	<p>The execution petition of Mr. Kaleem Ullah submitted today by Mr. Saadullah Khan Marwat 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>By the order of Chairman  REGISTRAR </p>

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

Misc Pett: No. 526 /2022

**IN**

**S.A. No. 1161/2014**

Kaleem Ullah

versus

D.E.O & Others

**I N D E X**

<b>S.#</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Page</b>
1.	Memo of Misc Petition		1-3
2.	Copy of Appeal dated 22-09-2014	"A"	4-6
3.	Copy of Judgment dated 14-07-2022	"B"	7-13
4.	Compliance letter dated 28-07-2022	"C"	14

Applicant

Through



(Saadullah Khan Marwat)

Advocate

21-A Nasir Mension,  
Shoba Bazar, Peshawar.

Ph: 0300-5872676

Dated: 05-09-2022

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

Misc Pett: No. 526 /2022

IN

S.A. No. 1161/2014



Kaleem Ullah S/O Ahmed Jan,

R/O Kotka Shah Sallem,

Gandi Khan Khel,

PST, GMPS; Kotka Khali Khel,

Lakki Marwat . . . . . Appellant

**VERSUS**

1. District Education Officer (M), Elementary & Secondary Education, Lakki Marwat.
2. Director of Education, Directorate of Elementary & Secondary Education, KP, Peshawar.
3. Secretary, Government of KP, Elementary & Secondary Education Department, Peshawar. . . . . Respondents

**APPLICATION FOR IMPLEMENTATION OF THE  
JUDGMENT DATED 14-07-2022 OF THE HON'BLE  
TRIBUNAL, PESHAWAR:**

**Respectfully Sheweth:**

1. That on 22-09-2014, applicant filed Service Appeal before this hon'ble Tribunal for reinstatement in service with all back benefits. (Copy as annex "A")
2. That the said appeal came up for hearing on 14-07-2022 and then the hon'ble Tribunal was pleased to hold that:-

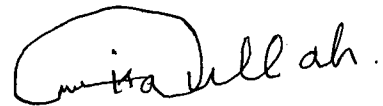
"Therefore we allow this appeal, set aside the impugned order dated 14-02-2014 and reinstate the appellant in service. The intervening period shall be treated as leave of the kind due". (Copy as annex "B")

3. That on 28-07-2022, applicant as well as Registrar of the hon'ble Service Tribunal remitted the judgment to respondents for compliance but so far no favorable action was taken there and then and the judgment of the hon'ble Tribunal was put in a waste box. (Copy as annex "C")
4. That the respondents are not complying with the judgment of the hon'ble Tribunal in letter and spirit and flouts the same with disregard, so are liable to be proceeded against the Contempt of Court Law for punishment.

It is, therefore, most humbly requested that the judgment dated 14-07-2022 of the hon'ble Tribunal be complied with hence forthwith.

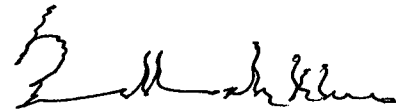
**OR**

In the alternate, respondents be proceeded for contempt of court and they be punished in accordance with Law.



Applicant

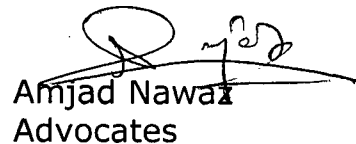
Through



Saadullah Khan Marwat



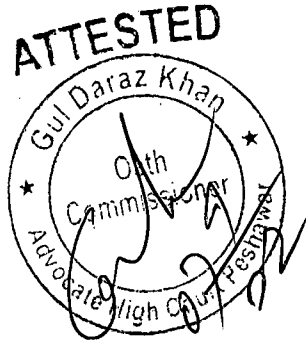
Arbab Saif-ul-Kamal

  
Amjad Nawaz  
Advocates

Dated: 05-09-~~07~~-2022

## AFFIDAVIT

I, Kaleem Ullah S/O Ahmed Jan, PST, GMPS, Kotka Khali Khel, Lakki Marwat, (Applicant), do hereby solemnly affirm and declare that contents of **Implementation Petition** are true and correct to the best of my knowledge and belief.



*Kaleem Ullah*

DEPONENT

## CERTIFICATE:

As per instructions of my client, no such like Implementation Petition has earlier been filed by the appellant before this Hon'ble Tribunal.

*[Signature]*

ADVOCATE

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. \_\_\_\_\_/2014

Kaleem Ullah S/o Ahmed Jan, R/o Kotka  
Shah Sallem, Gandi, Khan Khel PST,  
GMPS, Kotka Khali Khel . . . . . Appellant

Versus

1. District Education Officer (Male),  
Elementary & Secondary Education,  
Lakki Marwat.
2. Director of Education, Directorate of  
Elementary & Secondary Education, KP,  
Peshawar.
3. Secretary, Government of KP, Elementary &  
Secondary Education Department, Peshawar. . . . . Respondents

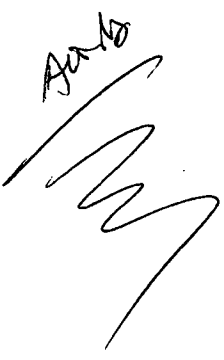
⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL  
ACT, 1974 AGAINST OFFICE ORDER NO. 713-  
17, DATED 14.02.2014 OF R. NO. 1,  
WHEREBY ORDER OF APPOINTMENT DATED  
24.10.2012 WAS WITHDRAWN FOR NO  
LEGAL REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**Respectfully Sheweth:**

1. That appellant was appointed as PST, BPS-05 as per prescribed procedure having the requisite qualifications vide order dated 24.10.2012. (Copy as annex "A")
2. That on 25.10.2012, appellant assumed the charge of the said appointment. (Copy as annex "B")

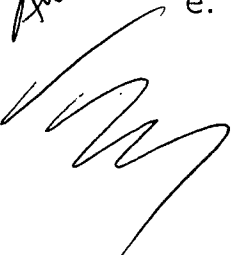


3. That since the date of appointment, appellant is performing his official duties in the school with devotion till date but his monthly salaries were withheld by the department, so he filed appeal No. 294/2014 before the Hon'ble Tribunal for release of his monthly salaries which is pending disposal till date. (Copy as annex "C")
4. That on 14.02.2014, order of appointment of appellant was withdrawn from the date of issuance by R. No. 1, yet the said order was never dispatched to appellant. (Copy as annex "D")
5. That the aforesaid order was got from the office by appellant on 30.05.2014, so on 03.06.2014, he submitted representation before R. No. 2 which met dead response till date. (Copy as annex "E")

Hence this appeal, inter alia, on the following grounds:-

**G R O U N D S :**

- a. That since the date of appointment, appellant is performing his official duties in the school without any complaint.
- b. That no copy of the impugned order was dispatched to appellant as is evident from the same.
- c. That appellant was appointed through prescribed manner by the authority.
- d. That no notice was ever served upon the appellant nor any inquiry was conducted in this respect...
- e. That since the date of appointment, till 07.03.2014 appellant performed his official duties for more than sixteen months but he was not paid monthly salaries.

*As per*  


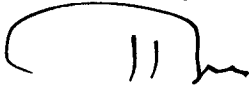
- f. That the impugned order is ab-initio void, without legal procedure, so is based on malafide. Infact, the said order is backdated to defect the case of appellant.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 14.02.2014 of R. No. 1 be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

  
Appellant

Through   
Saadullah Khan Marwat

Dated: 22.09.2014

  
Arbab Saif-ul-Kamal

&   
Miss Robina Naz,  
Advocates.





Service Appeal No. 1161/2014 titled "Kaleemullah vs District Education Officer (Male), Elementary & Secondary Education, Lakki Marwat and others", decided on 14.07.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**



BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN  
FAREEHA PAUL --- MEMBER(E)

Service Appeal No.1161/2014

Kaleem Ullah S/O Amed Jan, R/O Kotka Shah Saltem, Gandi, Khan Khel, PST, GMPS, Kotka Khali Khel.

(Appellant)

Versus

1. District Education Officer (Male), Elementary & Secondary Education, Lakki Marwat.
2. Director of Education, Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. Secretary, Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Peshawar.

(Respondents)

Present:

Arbab Saif Ul Kamal,  
Advocate..... For appellant.

Mr. Muhammad Adeel Butt,  
Additional Advocate General ..... For respondent.

Date of Institution..... 22.09.2014.  
Date of Hearing..... 14.07.2022  
Date of Decision..... 14.07.2022.

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE ORDER NO.713-17, DATED 14.02.2014 OF RESPONDENT NO.1, WHEREBY ORDER OF APPOINTMENT DATED 24.10.2012 WAS WITHDRAWN FOR NO LEGAL REASON.

*Arbab Saif Ul Kamal*

*Muhammad Adeel Butt*

ATTESTED  
*[Signature]*  
CLERK  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

### JUDGMENT

**KALIM ARSHAD KHAN CHAIRMAN:** According to the averments made in the memo and grounds of appeal, the appellant was appointed as PST (BPS-05) as prescribed procedure having the requisite qualification vide order dated 24.10.2012; that the appellant assumed the charge of the said post on 25.10.2012; that since the date of appointment, appellant was performing his official duties in the school with devotion till date but his monthly salaries were withheld by the department, so he filed appeal No. 294/2014 before this Tribunal for release of his monthly salaries which was pending adjudication when on 14.02.2014 order of appointment of appellant was withdrawn from the date of issuance by respondent No.1; that the appellant preferred departmental appeal on 03.06.2014, which was not responded within the statutory period compelling him to file this service appeal on 22.09.2014.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard the learned counsel for the appellant and learned Additional Advocate General for the respondents.

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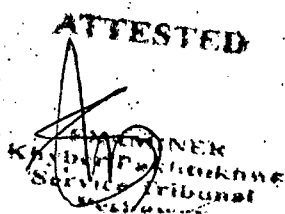
CHAIRMAN  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

14/7/22

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned AAG controverted the same by supporting the impugned order(s).

5. The appointment of the appellant has not been disputed by the respondents. It is contended in the reply by the respondents that the appellant had tempered the date of death of his father during his service. It is also contended that basic minimum qualification for PST post was F.A with PST certificate while the appellant was simply matric with PST certificate, therefore, his appointment was totally illegal and against the government policy. It was further contended that after verification of the documents of the appellant, those were found tempered, therefore, appointment order of the appellant was withdrawn after enquiry report. It is in this respect observed that we do not find any document on this file regarding verification of the documents of the appellant. Yes there is an enquiry report annexed with the reply. In the enquiry report it was found that the father of the appellant had not died during service rather he died after his retirement. In paragraph-5 of the enquiry report it is stated that the Ex-EDO appointed the appellant against the post of PST in GMPS Khali Khel U/C Gandi Khan Khel. It was further stated that he had assumed the charge on 25.10.2012 and was performing his duties since then. His attendance was marked in the attendance register and performance

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ATTESTED  
  
 KHYBER PAKHTUNKHWA  
 SERVICE TRIBUNAL  
 PESHAWAR

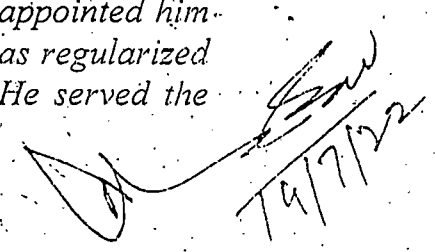
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 14/7/22

was also recorded and countersigned by the Head Teacher of the school concerned. It is astonishing to note that in each department a merit list of the children of the deceased employees, who die during service, is maintained for the aspirants of seeking job against the deceased's son quota but the contention of the respondents that the appellant had tempered the documents by showing that his father (employee of the department) had died during service, is totally incomprehensible and not acceptable because it is the department which has to maintain the list of the children of the deceased employees for the purpose of appointment from the deceased employee son quota and when the department had itself retired the father of the appellant then this fact must be in their knowledge whereas despite such a situation appointment order was once issued and after appointment of the appellant, he performed duties for about two years, therefore, under the doctrine *locus-poenitentiae* too the authority did not have the power to rescind its early order for the reason that after appointment order not only that had been acted upon but benefits were also gotten by the appellant. The august Supreme Court of Pakistan reported as 2006 SCMR 678 Titled "Province of Punjab through Secretary, Agriculture, Government of Punjab and others-vs- Zulfiqar Ali", the august Supreme Court of Pakistan was pleased to hold as under in paragraphs No. 7,8 and 9:

7. We are afraid that the contention so raised by him is not correct as the Director Agriculture appointed him on 10.11.1990 and thereafter his service was regularized w.e.f the same date in the year of 1993. He served the

ATTESTED

CHAIRMAN  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



department for about 11 years as a regular employee and during course whereof, there was not complaint of whatsoever nature against him, calling for action under the Punjab Civil Servants (Efficiency and Discipline) Rules, 1975. It may be noted that these rules contemplate an action against an employee who is guilty for the breach of good service order, indiscipline, misconduct etc. but it does not, contain any provision on the basis of which appointment of an employee can be cancelled on the ground that it has been made illegally. In other words in such-like situation instead of taking action against an appointee it is appropriate if an action is taken against the Appointing Authority who apparently committed a misconduct by making such appointment, as it has been observed by this Court in the case of Abdul Hafeez Abbasi and other v. Managing Director, Pakistan International Airlines Corporation, Karachi and others 2002 SCMR 1034. Relevant para. therefrom is reproduced herein below for convenience:-

"(15) We have noted in number of cases that Departmental Authorities do show haste at the time of making such appointments when directives are issued to them by the persons who are in the helm of affairs without daring to point out to them that the directions are not implementable being contrary to law as well prevalent Rules and Regulations. In fact such obedience is demonstrated by the concerned officers of the Department to please the Authorities governing the country just to earn their time being pleasures but on the change of regime they do show speed in undoing illegal actions which they themselves have accomplished in the previous regime and due to their such illegal actions the employees who were appointed suffer badly without any fault on their part and then even nobody bothers for their future career. Therefore, we are of the opinion that in such situation besides proceedings against the beneficiaries of so-called illegal appointments the officers who were responsible for implementing illegal directives should also be held equally responsible and severe action should be taken against them so in future it may serve as a deterrent for other likeminded persons. This Court in an identical case declined to grant leave to appeal in the case of Secretary to Government of N.W.F.P(1996 SCMR 413) and observed that it is disturbing to note that in this case petitioner No.2 had himself been guilty of making irregular appointment on which has been described "purely temporary basis". The petitioners have now turned around and terminated his

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KALIM ARSHAD KHAN  
CHAIRMAN  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR

14/7/22

Service Appeal No. 1161/2014 titled "Khalidullah-vs-District Education Officer(Male), Elementary & Secondary Education; Lakki Marwat and others", decided on 14.07.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal Peshawar.

service due to irregularity and violation of rule 10(2) (ibid). The premise, to say the least, is utterly untenable. The case of the petitioners was not that the respondent lacked requisite qualification. The petitioners themselves appointed him on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to take benefit of their lapses in order to terminate the services of the respondent merely because they have themselves committed irregularity in violating the procedure governing the appointments".

8. Keeping in view the observation made in the above judgment which has been authored by one of us (Justice Iftikhar Muhammad Chaudhry) qua the facts and circumstances of the case in hand, we are constrained to note with concern that it was Bashir Ahmed Sabir, Director Agriculture who appointed respondent as Junior Clerk as back on 10<sup>th</sup> November, 1990 and because he was the Senior officer holding the post of Director, therefore, presumably the rules and regulations should have been on his sleeves at the time of appointment of respondent if he was of the opinion after 11 years that he had committed violations of rules and regulation in making respondents appointment as Junior Clerk then instead of terminating his service, he should have blamed himself and should have decided whether he is capable to remain in service or otherwise morally and legally instead of claiming premium of his own wrongs. Thus, the competent Authority of Provincial Government i.e Chief Secretary had a legal burden upon his shoulders to take action against Director of Agriculture (Bashir Ahmed Sabir) not only for making alleged illegal appointment as per his own admission, without prejudice to the case of respondent but also engaging the Provincial Government in litigation upto this Court at the cost of Public exchequer.

9. A perusal of record so made available before us indicates that Director of Agriculture i.e Bashir Ahmed Sabir had contemplated action of termination of service against respondent perhaps for some differences with the uncle of respondent who is also serving in the same department. If it is so, it is unfair on his part as well as against the principles of good governance, justice, equity and law.

6. Similarly in 2005 SCMR 85 titled "Muhammad Shoab and 2 others-vs- Government of N.W.F.P through the Collector, D.I.Khan

ATTESTED

KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR

14/7/22

and others" the impugned action was declared void as well as violation of the principle of natural justice when no show cause notice was issued. Similarly is the case in hand in which too admittedly no show cause notice was issued before passage of impugned order nor was the appellant heard before cancellation/withdrawal of his appointment order. Therefore, we allow this appeal, set aside the impugned order dated 14.02.2014 and reinstate the appellant in service. The intervening period shall be treated as leave of the kind due. Costs shall follow the event. Consign.

7. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 14<sup>th</sup> day of July, 2022.



*(Signature)*  
(KALIM ARSHAD KHAN)  
Chairman

Certified to be true copy  
*(Signature)*  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*(Signature)*  
(FAREEHA PAUL)  
Member Executive

Date of Presentation of Application 27-7-22  
Number of Words 2800  
Copying Fee 30/-  
Stamp 5/-  
Total 35/-  
Name of Applicant \_\_\_\_\_  
Date of Completion of Copy 27-7-22  
Date of Delivery of Copy 27-7-22

*(Signature)*

C

14.

- (1) District Education Officer (M),  
hazki Marwat.
- (2) Director of Education,  
E & SE, KP, Peshawar.
- (3) Secretary, Govt. of  
KP, E & SE, Peshawar.

Subject: Application for Compliance of  
order/Judgment dated 14-07-2022  
Passed in S.A. No. 1161/2014 by  
the honorable Service Tribunal.

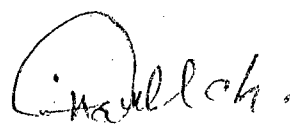
R/S

Please Comply with the order dated 14-7-22  
Passed in S.A. No. 1161/2014 titled  
"Kaleem Ullah vs DEO & others" of  
the honorable Service Tribunal in letter  
and spirit and obliged.

More so, may this application be treated  
as my annual report.



Dated 28-07-22.

Appellant   
Kaleem Ullah, s/o Ahmed Jan,  
R/o Kotka Shah Sallan,  
Gandi Khan Khel,  
PSA, GMPS, Kotka Khati Khel  
Cell. No. 0315-9797782



یعدالت چٹا سسرٹس ٹریڈ پرائیویٹ لمیٹڈ لاہور

مستجاب اسلام آباد  
کامرس  
دعویٰ

handsome9946@gmail.com

پاکستان سسرٹس

بیتن ریٹرنڈ جی جنرل بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آل مقام لاہور کیسٹم سٹیشن آفیسر خان سرور نے ایڈوکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی وکل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے یا دہنی نار و آفیسر ٹالسٹا و فیصلہ برتلاف لینے جواب دہی اور جوابی دعویٰ اور لٹیشن ڈگری کرنے اجراء اور وصولی جیک، دروپہ اور بریڈی دعویٰ اور درخواست ہر قسم کی تعلیم لین اور اس پر دستخط کرنے کا اختیار ہوگا نیز بھارت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برائگی اور سسرٹس پائیز دائر کرنے اپیل نگران رٹنڈ تالی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ برقرار رکھنے کا یا پھرنے کا وکل کاروائی کے واسطے اور وکیل یا مشاور قانونی کو اپنے ہمراہ یا اپنی بجائے مقرر کا اختیار ہوگا اور اس پر مقرر شدہ کرہیں وہی عملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پروا ختم متلاوز قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی متخام دورہ پر ہو یا عدست باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

المزوم 22-09-5

العقد العقد العقد

لاہور ایڈوکیٹ

سنیٹڈ انڈسٹریل ڈیولپمنٹ اتھارٹی

Rubina

لاہور

Attallah