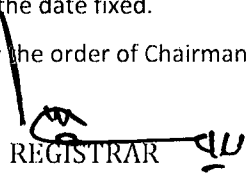


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 546/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.09.2022	<p>The execution petition of Mr. Shakeel Akhtar submitted today by Mr. Muhammad Arshad Khan Tanoli Advocate. It is fixed for implementation report before touring Single Bench at A.Abad 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>

AAG

BEFORE THE CHAIRMAN SERVICE TRIBUNAL,
PESHAWAR

E.P. no. 516/2022

C.M No. _____ -A/2022
IN
Service Appeal No. 994/2019

Shakeel Akhtar Bailiff (BPS-04), resident of Village Badadi P.O Undra
Doga, Tehsil & District, Haripur.

...APPELLANT/ APPLICANT

VERSUS

Secretary Industry Labour KPK, Peshawar & others.

....RESPONDENTS

APPLICATION

INDEX

S. #	Description	Page Nos.	Annexures
1.	Application alongwith affidavit	1 to 3	
2.	Copy of appointment order of appellant/ applicant	4-5	"A"
3.	Copy of termination order dated 16/4/19	6	"B"
4.	Copies of service appeal and judgment dated 26.01.2022	7-28	"C" & "D"

Shakeel Akhtar
...APPLICANT/ APPELLANT

Through;

Dated: _____/2022

(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan

BEFORE THE CHAIRMAN SERVICE TRIBUNAL,
PESHAWAR

C.M No. _____-A/2022
IN
Service Appeal No. 994/2019

Shakeel Akhtar Bailiff (BPS-04), resident of Village Badadi P.O Undra Doga,
Tehsil & District, Haripur.

...APPELLANT/ APPLICANT

VERSUS

Secretary Industry Labour KPK, Peshawar & others.

....RESPONDENTS

SERVICE APPEAL

APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED 26/01/2022, OF THIS
HONOURABLE SERVICE TRIBUNAL PESHAWAR
IN SERVICE APPEAL NO. 994/2019, WHEREIN, THE
HONOURABLE TRIBUNAL SET-ASIDE IMPUGNED
ORDER DATED 24/1/22 AND RE-INSTATED THE
PETITIONER INTO SERVICE WITH ALL BACK
BENEFITS.

Respectfully Shewth;

1. That the appellant was appointed as bailiff in the Labour Court on 31/01/19. Copy of appointment order is annexed as Annexure "A".
2. That on the mere conjecture, surmises and on the basis of hypothesis respondent No. 3 removed/terminated services of the appellant vide order dated 16/4/19. Copy of termination order dated 16/4/18 is annexed as Annexure "B".
3. That the appellant filed service appeal No. 994/2019 before this Honourable Tribunal which was allowed with all back benefits vide judgment of this Honourable Tribunal dated 26.01.2022. Copies of service appeal and judgment dated 26.01.2022 are annexed as Annexure "C" & "D".
4. That inspite of elapsing of near about 07 months, respondents department did not reinstate the appellant in service so far.
5. That non-implementation of judgment of this Honourable Tribunal amounts to contempt of court, hence the respondents if still adamant they are to be punished as per law.

In view of the above, it is prayed that respondents may graciously be directed to reinstate the appellant in service with all back benefits forthwith, failing which contempt of court proceedings may graciously be initiated to punish them.

Shakeel Akhtar

...APPLICANT/ APPELLANT

Through;

Dated: _____/2022

Muhammad Arshad Khan Tanoli
(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan

AFFIDAVIT;

I, *Shakeel Akhtar Bailiff (BPS-04), resident of Village Badadi P.O Undra Doga, Tehsil & District, Haripur*, do hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Shakeel Akhtar
DEPONENT

Annex - A

OFFICE OF THE PRESIDING OFFICER LABOUR COURT, HARIPUR

No. 46-49/LC

Date. 31/01/2019

ORDER

On the recommendation of the Departmental Selection Committee, the competent authority is pleased to order the appointment of the following candidate as Bailiff in BPS-04 in Labour Court Haripur w.e.f the date of assumption of charge of the post, subject to medical fitness and antecedents verification;

P-04

S.#	Name of Candidate	Father's Name	CNIC No
1	Mr. Shakeel Akhtar	Akhtar Zaman	42000-6001742-3

2. His Appointment to the service will be subject to the following terms and conditions;
- He will be governed by the KPK Civil Servants Act, 1973 and KPK Civil Servant (Appointment, Promotion & Transfer) Rules, 1989.
 - He will be allowed the minimum pay of BPS-04 plus other allowances as admissible under the rules.
 - He will be governed by such rules and instructions relating to leave, T.A and medical attendance as may be prescribed from time to time.
 - He will be on probation initially for a period of one year extendable up-to two years.
 - He will be eligible for continuance and eventual confirmation in the post on satisfactory completion of his probationary period.
 - His service will be liable to be dispensed with at any time without notice and assigning any reason before the expiry of the period of his probation/extended period of probation, if, his work or conduct during that period is not found satisfactory. In the event of termination from service, fourteen days notice or in lieu thereof fourteen days pay will be paid by the Government. In case of resignation, he will give one month notice to the competent authority or in lieu thereof one month

Attest

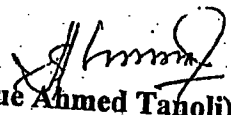
Muhammad Ashad Khan Tanoli
Advocate High Court
Office No 33 Adjacent to
Bar Abbottabad

Attest

Muhammad Ashad Khan Tanoli
Advocate Supreme Court of Pakistan
Office # 33 Miran Plaza Adjacent to
Distt: Bar Abbottabad

P-05

- pay will be forfeited to the Government. The resignation shall, however, be subject to the acceptance by the competent authority.
- He will be governed by the KPK Government Servants (Efficiency and Discipline) Rules, 2011 and the KPK Government Servants Conduct Rules, 1987 and any other instruction which may be issued by the competent authority from time to time.
 - 3. If the above terms and conditions of appointment are acceptable to him, he should report for duty to the undersigned immediately. The offer of appointment shall be deemed to have been cancelled if he fails to report for duty to the undersigned within one week from the date of issuance of this order.
 - 4. He will join duty at his own expenses.


 (Shafique Ahmed Tanoli)

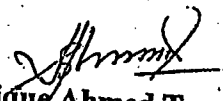
District & Sessions Judge/Presiding Officer
 Labour Court, Haripur

No. 46-49/LC

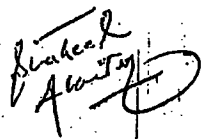
Date. 31/01/2019

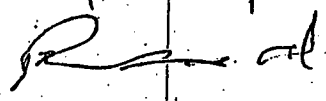
Copy forwarded to:-

1. The District Accounts Officer, Haripur.
2. Official concerned.
3. Office record.


 (Shafique Ahmed Tanoli)

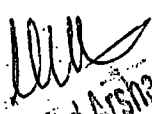
District & Sessions Judge/Presiding Officer
 Labour Court, Haripur

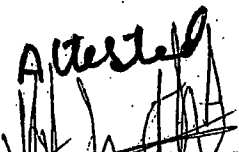




31/01/2019

Attested


 Muhammad Arshad Khan Tanoli
 Advocate Supreme Court of Pakistan
 Office # 33 Jinnah Plaza-Adjacent to
 Distt. Bar Abbottabad

Attested

 Muhammad Arshad Khan Tanoli
 Advocate High Court
 Office No 33 Adjacent to
 Distt. Bar Abbottabad

Annex B

P-18

P-6

OFFICE OF THE PRESIDING OFFICER LABOUR COURT, HARIPUR

No. 199-203/LC

Date. 16-04-2019

ORDER

Mr. Shakeel Akhtar Bailiff (BPS-04) present in person. He has already submitted his reply to show cause notice dated 04-04-2019 & has also been heard in person. He is stuck to his reply to show cause notice and stated that he has committed no fault in selection nor during the service and resisted the notice on the grounds mentioned in the reply.

Though the official was appointed/selected by the DSC on merits after due course but the Competent Authority of the Peshawar High Court, Peshawar vide letter: no.6587/Admin dated 27-03-2019 has directed the under sign to remove him from service on the ground mentioned therein, therefore, in compliance of the said order he is removed from service with immediate effect.

(Shafique Ahmed Tanoli)
District & Sessions Judge/Presiding Officer
Labour Court, Haripur

No. 199-203/LC

Date. 16-04-2019

Copy forwarded to:-

1. The Registrar Peshawar High Court, Peshawar
2. The Secretary Labour Department, Peshawar
3. The District Accounts Officer, Haripur.
4. Official concerned.
5. Office record.

Attested

(Shafique Ahmed Tanoli)
District & Sessions Judge/Presiding Officer
Labour Court, Haripur

Attested

Advocate General
Peshawar High Court
Office No 33 Adjacent to
District Court

Received

16-04-2019

Mr. Shakeel Akhtar

Annex-C**BEFORE THE CHAIRMAN SERVICE TRIBUNAL,**
PESHAWAR**P-7**

Service Appeal No. _____/2019

Shakeel Akhtar Bailiff (BPS-04), resident of Village Badadi P.O Undra
Doga, Tehsil & District, Haripur.**...APPELLANT****VERSUS**

1. Secretary Industry Labour KPK, Peshawar.
2. Section Officer, Labour Department, KP Peshawar.
3. Presiding Officer/ Session Judge Labour Court, Hazara Region,
Haripur.

...RESPONDENTS*Alleshool*

Muzammil Akhtar
Advocate Supreme Court
Office # 23 Daman Pura, Peshawar
Distt. Haripur, FATA

**SERVICE APPEAL UNDER SECTION 4 OF
KPK SERVICE TRIBUNAL ACT, 1974, FOR
DECLARATION TO THE EFFECT THAT
APPELLANT APPLIED FOR THE POST OF
BAILIFF IN PURSUANCE OF
ADVERTISEMENT APPEARED IN DAILY
THE MASHRIQ DATED 20/12/2018 ISSUED
BY RESPONDENT NO. 3. THEREFORE, THE
APPELLANT WAS APPOINTED AS BAILIFF
IN BPS-04 IN LABOUR COURT, HARIPUR ON**

P-8

31/01/2019 BUT RESPONDENT NO. 3 WITHOUT CONDUCTING ANY INQUIRY REMOVED THE APPELLANT FROM SERVICE ON 16/04/2019 WHICH IS PERVERSE, DISCRIMINATORY, AGAINST THE LAW AND WITHOUT LAWFUL JUSTIFICATION, HENCE IMPUGNED REMOVAL FROM SERVICE ORDER NO. 199-2013/LC DATED 16/04/2019 IS LIABLE TO BE SET-ASIDE.

PRAYER: ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, IMPUGNED REMOVAL FROM SERVICE ORDER DATED 16/04/2019 MAY GRACIOUSLY BE DECLARED VOID AND THE SAME BE SET-ASIDE AND RESPONDENTS' DEPARTMENT MAY BE DIRECTED TO RE-INSTA TE THE APPELLANT WITH ALL SERVICE BACK BENEFITS. ANY OTHER RELIEF WHICH IS HONOURABLE SERVICE TRIBUNAL DEEM APPROPRIATE IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

Advised

MM
 Muhammad Asghar Khan
 Advocate Supreme Court of Pakistan
 Office # 23 Jinnah Plaza Adjacent to
 Dist. Govt. Ashrafabad

Respectfully Sheweth: -

That the facts forming the background of the instant service appeal are as follows:-

1. That respondent No. 3 announced the post of bailiff vide advertisement appeared in daily News Paper "The Mashriq" dated 20/12/2018. Copy of advertisement dated 20/12/2018 is annexed as Annexure "A".
2. That the petitioner is FSc. and applied for the post of bailiff and was placed at the top of merit list. Copy of merit list is annexed as Annexure "B".
3. That consequent upon the merit position and on the recommendation of the departmental committee, respondent No. 3 issued department selection order of the appellant as bailiff BPS-04 in Labour Court, Haripur, vide order No. 46-49/LC dated 31/01/2019. Copy of appointment order of the appellant is annexed as Annexure "C".

Attested

Muhammad Arshad Khan Tanoli
Advocate Supreme Court of Pakistan
Office # 33 Jinnah Plaza Adjacent to
Distt. Eng. Association

4. That the appellant served this department with Zeal and Zest to the entire satisfaction of his superiors but all of a sudden the appellant received show cause notice on 04/04/2019 issued by respondent No. 3 stating therein "The competent authority of Honourable Peshawar High Court, Haripur vide order letter No. 6587/admin, dated 27/03/2019, has directed the undersigned to remove you from service on account of your being related to me after show cause notice. Copy of show cause notice is annexed as Annexure "D".

Attested

Mil

Muhammad Arshad Khan Tahir
Advocate Supreme Court of Pakistan
Office # 33 Jinnah Plaza Adjacent to
Distt. East Abbotabad

5. That, Therefore, the appellant replied show cause notice on 10/04/2019 which is self explanatory. The appellant is FSc. and passed written as well as typing test with distinction and got appointment order on merit and there is no law which debar the appellant from getting appointment on merit in the department, where the competent authority was relative of the appellant

6. That without proper inquiry, respondent No. 3 removed the appellant from service vide impugned removal from order No. 199-203-LC dated 16/04/2019. Copy of impugned removal from service order dated 16/04/2019 is annexed as Annexure "E".
7. That the appellant feeling aggrieved filed departmental appeal regarding setting aside of removal from service order dated 16/04/2019 vide departmental appeal dated 02/05/2019 and rejection letter dated 05/07/2019. Copies of departmental appeal and rejection letter dated 05/07/2019 are annexed as Annexure "F". Hence, the instant appeal is filed inter-alia on the following grounds:-

GROUND:-

- (a) That impugned removal from service order dated 16/04/2019 is illegal, against the law, perverse, without any lawful justification. The appellant is FSc. and qualified written as well as

Attested

Muhammad Arshad Khan Tanzeel

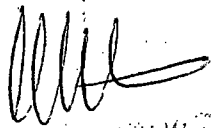
Muhammad Arshad Khan Tanzeel
Advocate Supreme Court of Pakistan
Office # 33 Jinnah Plaza Adjacent to
Distt. Govt. Laboratories

typing test and was placed at the top of merit list. Therefore, respondent No. 3 appointed the appellant on the recommendation of Departmental Selection Committee.

(b) That this fact may not be let to fade in oblivion that the prior to remove from service, proper inquiry under E&D Rules 2011 is mandatory and sine quo non for taking any adverse action against the appellant. Hence, no inquiry as per law has been conducted as to whether the appointment of the appellant was on merit or otherwise. Hence, without observing the codal formalities the impugned remove from service order is liable to be set-aside.

(c) That respondents' department used sledge/ hammer to crack the nut which destroyed savory of the nut when a nut cracker was available to crake the nut. The appellant is duly

Attested



Muhammad Arshad Khan Ismail
Advocate Supreme Court of Pakistan
Office # 33 Jinnah Plaza Adjacent to
Distt. East Abotkhana

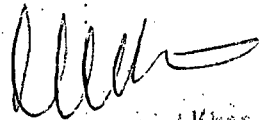
qualified and a fit candidate who got appointment on merit.

(d) That no stretch of the imagination disentitled the petitioner for appointment on merit due to relations with respondent No. 3. Besides, if the petitioner got appointment purely on merit then his relation with the competent authority makes no difference.

(e) That service appeal of the appellant is well within the period of limitation and the matter relates to terms and conditions of service, therefore this Honourable Tribunal has jurisdiction to entertain the appeal under Article 212 of the constitution of Islamic Republic of Pakistan 1973.

(f) That other grounds shall be urged at the time of arguments.

Attested



Muhammad Arshad Khan Tandon
Advocate Supreme Court of Pakistan
Office # 33 Jinnah Plaza Adjacent to
Distt. Bar Association

It is, therefore, humbly prayed that, on acceptance of the instant service appeal, impugned removal from service order dated 16/04/2019 may graciously be declared void and the same be set-aside and respondents' department may be directed to re-instate the appellant with all service back benefits. Any other relief which this Honourable Service Tribunal deem appropriate in the circumstances of the case may also be granted to the appellant.

Dated: _____/2019

Through


Swatkeel
Arshad
 ...APPELLANT

 (Muhammad Arshad Khan Tanoli)
 Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

Swatkeel
Arshad
 ...APPELLANT


Attested

 Muhammad Arshad Khan Tanoli
 Advocate Supreme Court of Pakistan
 Office # 33 Jinnah Plaza Adjacent to
 Distt: East Abbottabad

BEFORE THE CHAIRMAN SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2019

Shakeel Akhtar Bailiff (BPS-04), resident of Village Badadi P.O Undra Doga, Tehsil & District, Haripur.

...APPELLANT

VERSUS

Secretary Labour Department, Peshawar & Others.

...RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, Shakeel Akhtar Bailiff (BPS-04), resident of Village Baddadi Dakhan Donga Gali, Tehsil & District, Haripur, Mansehra, do hereby solemnly affirm and declare that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Tribunal.

Attested

Shakeel Akhtar
DEPONENT

Muhammad Arshad Khan Tanoli
Advocate Supreme Court of Pakistan
Office # 33 Jinnah Plaza Adjacent to
Distt: Bar Abotabad

P-16

**BEFORE THE CHAIRMAN SERVICE TRIBUNAL,
PESHAWAR**



Service Appeal No. 994/2019

Shakeel Akhtar Bailiff (BPS-04), resident of Village Badadi P.O Undra Doga, Tehsil & District, Haripur.

...APPELLANT

*Khyber Pakhtunkhwa
Service Tribunal*

Duty No. 1113

Dated 31/7/2019

VERSUS

*Defence of reply
31/7/19*

1. Secretary Industry Labour KPK, Peshawar.
2. Section Officer, Labour Department, KP Peshawar.
3. Presiding Officer/ Session Judge Labour Court, Hazara Region, Haripur.

...RESPONDENTS

Filed to-day
[Signature]
Registrar
31/7/19

SERVICE APPEAL UNDER SECTION 4 OF
KPK SERVICE TRIBUNAL ACT, 1974, FOR
DECLARATION TO THE EFFECT THAT
APPELLANT APPLIED FOR THE POST OF
BAILIFF IN PURSUANCE OF
ADVERTISEMENT APPEARED IN DAILY
THE MASHRIQ DATED 20/12/2018 ISSUED
BY RESPONDENT NO. 3. THEREFORE, THE
APPELLANT WAS APPOINTED AS BAILIFF
IN BPS-04 IN LABOUR COURT, HARIFUR ON

ATTESTED

[Signature]
[Signature]
[Signature]
Secretary, Peshawar

Attested

Muhammad Arshad Khan Talonji
Supreme Court of Pakistan
33 Jinnah Plaza Adjacent to
Distt: Bar Abbottabad

Annex - D P-17

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 994/2019

Date of Institution ... 31/07/2019

Date of Decision ... 26/01/2022



Shakeel Akhtar Bailiff (BPS-04) R/O Village Badadi Post office Undra
Doga Tehsil and District Haripur.

... (Appellant)

VERSUS

The Secretary Industries, Labour Government of Khyber
Pakhtunkhwa Peshawar and others. ... (Respondents)

Present.

Mr. Muhammad Arshad Tanoli,
Advocate

... For appellant.

Mr. Muhammad Adeel Butt,
Addl. Advocate General,

... For respondents.

MR. AHMAD SULTAN TAREEN
MR. ATIQ-UR-REHMAN WAZIR,

... CHAIRMAN
... MEMBER(E)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:- The appellant named
above has invoked the jurisdiction of this Tribunal through above
titled appeal with the prayer as copied below:-

**"On acceptance of the instant Service Appeal,
impugned removal from service order dated**

Attested

Muhammad Arshad Khan Tanoli
Advocate Supreme Court of Pakistan
Office # 52 Jinnah Plaza Adjacent to
Distt. Barakzai

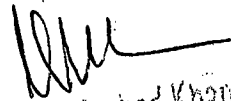
ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

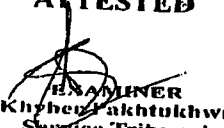
16.04.2019 may graciously be declared void and the same be set aside and respondent department may be directed to reinstate the appellant with all service back benefits. Any other relief which this Tribunal deems appropriate in the circumstances of the case may also be granted to the appellant."

2. Brief facts of the case as enumerated in the Memorandum of appeal are that respondent No. 3 advertised the post of Bailiff in daily "Mashriq" dated 20.12.2018. The appellant having the qualification of F.Sc. applied for appointment against the said post and was placed at the top of merit list. Consequently, on the recommendation of the Departmental Selection Committee, respondent No. 3 vide order dated 31.01.2019, issued appointment order of the appellant as Bailiff (BPS-04) in Labour Court, Haripur. The appellant served the department to the entire satisfaction of his superiors but all of a sudden he received show cause notice dated 04.04.2019 issued by respondent No. 3 which was duly replied by the appellant with clarification of his position. The appellant was removed from service vide order dated 16.04.2019. Feeling aggrieved, he filed departmental appeal which was rejected on



Attested


Muhammad Arshad Khan Jarofi
Advocate Supreme Court of Pakistan
Office # 33 Jinnah Plaza Adjacent to
Distt: Bar Abbottabad

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

05.07.2021. Hence the present appeal on 31.07.2019 which is well within time.

3. The appeal was admitted for regular hearing on 20.12.2019. Respondents have submitted written reply/comments, refuting the claim of the appellant with several factual and legal objections and asserted for dismissal of appeal with cost.

4. We have heard the arguments and perused the record.

5. Learned counsel for the appellant argued that the appellant being fully qualified was appointed as Bailiff (BPS-04) by the competent authority on 31.01.2019 on the recommendations of Departmental Selection Committee (DSC). After appointment, the appellant had assumed the charge and was performing his duty regularly without any complaint against him and valuable rights have been accrued in his favour. He further argued that Labour Court comes under the administrative control of Government of Khyber Pakhtunkhwa Labour Department and the Hon'ble Chief Justice, Peshawar High Court is neither the competent authority nor appellate authority, therefore, the appellant could not be removed from service on the directives of Peshawar High Court. Even no departmental enquiry has been conducted which was mandatory

Amir

Attested

REGISTERED
[Signature]
PESHAWAR HIGH COURT
PESHAWAR

[Signature]
Muhammad Arshad Khan Tanoli
Advocate Supreme Court of Pakistan
Office # 53 Jinnah Plaza Adjacent to
Distt. Bar Abbottabad

under the law. He further argued that it was the fundamental right of appellant to apply for appointment against the post being eligible and qualified for the same. He prayed that on acceptance of the appeal, the appellant may be reinstated into service with all back benefits.

6. Learned Addl. Advocate General while rebutting the arguments of learned counsel for the appellant contended that on a complaint discreet enquiry was conducted and it was found that newly appointed Bailiff (appellant) happened to be nephew of the appointing authority, therefore, the latter was rightly directed that after serving show cause notice to the appellant, he may be removed from service. He further argued that according to the direction of Hon'ble Peshawar High Court, the post was re-advertised and filled after adopting codal formalities by appointment of one Muhammad Afraz Khan as Bailiff (BPS-04). He requested that the appeal may be dismissed with costs.

Sumit

7. It is an undisputed fact that the appellant was removed from service simply for the reason that he was related to the appointing authority. According to show cause notice annexed with memorandum of appeal, it is there in it that on completion of due

Attested

Muhammad Khan Janjani

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

process appellant was appointed as Bailliff in the Labour Court Haripur vide order No. 46-49/LC dated 31.01.2019; and that the competent authority of Hon'ble Peshawar High Court had directed the signatory of the show cause notice (Presiding Officer Labour Court, Haripur) to remove the appellant from service on account of his being related to the signatory, after show cause notice. The reply of the show cause notice is available on record. The appellant among the causes shown in his reply mentioned that he was short listed after a written test and typing test among four candidates with his position on the top and was called for interview. He stated that the interview panel included two other officers besides the appointing authority and they all interviewed him. He replied to their questions according to his ability. Consequently, his appointment order was issued after his having stood at the top of the merit and test and interview. He claimed that his selection was on merit. He explained his relationship with the Appointing Authority with submission that such relationship makes no ground for his removal from service and if an officer happened to be there in an Institution whether he should not apply for service in such Institution or even if he is selected on merit whether his relative officer should not make his appointment. He questioned that

[Handwritten signature]

Attested

ATTESTED

[Handwritten signature]
 Secretary, District Court
 Peshawar

Muhammad Farhan Tanoli
 Advocate Supreme Court of Pakistan
 Office # 33 Jinnah Plaza Adjacent to
 Distt: Bar Abbottabad

whether this thing is there in law and if any, the same may be pointed out. He concluded that his appointment was on merit and it is not a justice anywhere to make him scapegoat on account of relationship with the appointing authority. He also questioned the authority of Hon'ble High Court in relation to order of his removal with submission that he was not an employee of the High Court but was of Labour Court. The impugned order on its face discloses that the appellant's appointment was regarded on merit after due course but direction of competent authority of Honourable High Court vide letter dated 27.03.2019 was complied by respondent No. 3 to remove the appellant from service.

8. Article 4 of the Constitution of Islamic Republic of Pakistan enshrines that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. It particularly provides that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. It is also particularly provided in Article 4 ibid that no person shall be prevented from or be hindered in doing that which is not prohibited by law. Needless to mention that there are number of pronouncements of the august Supreme Court of Pakistan in the subject that the protection of the employment or

[Handwritten signature]

Attested

[Handwritten signature]
 Muhammad Arshad Khan Tanoli
 Advocate Supreme Court of Pakistan
 Office # 33 Jinnah Plaza Adjacent to
 Distt. Govt. Abbottabad

ATTESTED
[Handwritten signature]
 EXAMINER
 Khilafat-un-Nabuwat
 Service Tribunal
 Peshawar

service is covered for the purpose of fundamental right enshrined by Article 9 of the Constitution of Pakistan relating to security of person. Article- 10-A of the Constitution of Pakistan provides right to fair trial and due process. In view of the aforementioned scheme of fundamental rights enshrined by Constitution of Pakistan, the impugned order does not stand to the test of scheme of fundamental rights. The advertisement made for the post on which the appellant was appointed does not contain any reason with reference to any law which could have prevented the appellant for becoming candidate of the post of Bailiff. The copy of working paper for appointment of Bailiff as annexed with the appeal is also available before us. The said working paper includes two other signatories besides the appointing authority who are Muhammad Faisal Khan, Senior Civil Judge Haripur as Member of DSC being nominee of the Appointing Authority and Mr. Muinud Din Section Officer (General) Labour Department Peshawar as Member being nominee of the Labour Department. According to the breakup of the marks given in the working paper, the appellant secured 16 marks in written test while in interview he got $12+11+18 = 41$ marks. The next candidate namely Syed Usman Ali secured 14 marks in written test while in interview he was given $9+8+10+27$

[Handwritten signature]

Attested

ATTESTED

[Handwritten signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Muhammad Arshad Khan Tanoli
Adv. Supreme Court of Pakistan
Office: 3rd Floor, Sunan Plaza Adjacent to
Distt: Bar, Abbottabad

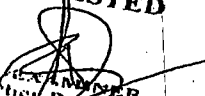
marks. Although the appellant was given higher marks in interview than the next candidate but if his marks in interview are presumed equal to next candidate, he even then would have stood first because of his two more marks in written test. The appointment order of the appellant also discloses that his appointment was made on recommendations of DSC. With the said factual position as to candidacy of the appellant and his selection, there appears no legal justification to throw him out of the selection process simply for the reason that he was nephew of the appointing authority, unless it was proved that his appointment was made on some extraneous consideration. We have not been convinced through parawise comments of respondent No. 3 that appointment of the appellant was made otherwise than due course. It is an admitted fact in reply of respondent No. 3 that the appellant had passed the written and typing test.



9. It is there in reply of respondent No. 3 that according to the direction of Hon'ble Peshawar High Court Peshawar vide letter dated 14.05.2019, the posts were re-advertised and filled after adopting codal formalities and Mr. Afraz Khan was appointed as Bailiff (BPS-04) vide order dated 29.10.2019. We are not able to understand the logic of advertisement for the reason that the

Attested

ATTESTED



Attester
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Muhammad Ashad Khan Tanoli
Advocate General
Supreme Court of Pakistan
Office # 33 Jinnah Plaza Adjacent to
Distt. Chak Abbottabad

matter in dispute was the appointment of the appellant due to his relationship with appointing authority and the process of the appointment was not disputed. Even after removal of the appellant from service, right of appointment had accrued to the next candidate in waiting namely Usman Ali Shah; if the discreet enquiry was conducted in the High Court on complaint of afore-named Usman Ali Shah. If no complaint was filed by him or any other candidate included in working paper, the process having taken place through DSC was not supposed to be reversed for advertisement of the post afresh. Anyhow, the respondent No. 3 reversed the process and advertised the post and appointment of Muhammad Afraz Khan has taken place on the post which had fallen vacant due to removal of the appellant. The reinstatement of the appellant is likely to cause anomaly, however, this anomaly shall be dealt with subsequently herein after.

[Handwritten signature]

10. As far as removal of the appellant from service in particular manner is concerned, the same is not justifiable by any law. The appointment of the appellant is an admitted fact which was implemented because the appellant stated in his appeal that he served the department with zeal and zest to the entire satisfaction of his superiors but all of a sudden, he received the show cause

Attested

ATTESTED

[Signature]
 Khatun-e-Munir
 Khatun-e-Munir
 Surfer Tribunal
 Peshawar

Muhammad Arshad Khan Tanoli
 Advocate, Supreme Court of Pakistan
 Office: 22 Jinnah Plaza Adjacent to
 Distt. Bd. Abbottabad

notice. After his appointment as Bailiff in the respondent department he had got the status of civil servant and he could not be treated in the matter of his terms and conditions of his service otherwise than the Service Laws of the subject i.e. Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules namely Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. Section 15 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 provides that a civil servant shall be liable to disciplinary action and penalty in accordance with the prescribed procedure. The "penalty" and "the prescribed procedure" in this respect have been provided in Government Servants (E&D) Rules, 2011. The grounds for the disciplinary action has been provided by Rule 3 of the ibid rules while the penalties have been provided in Rule 4 of the same rules including the penalty of removal from service. Rule 5 deals with initiation of the proceedings by the competent authority after making the opinion that there are sufficient grounds for initiating proceedings against a government servant under said rules. It is an undeniable fact that the show cause notice issued to the appellant or the impugned order of his removal from service have been issued without reference to any provision of the law as discussed before. The appellant after having got the status of a government

Sumit

Attested

ATTESTED

[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Muhammad Arshad Khan Tanoli
 Advocate
 Office: 13/14 Main Plaza Adjacent to
 Distt: Bari Abbottabad

servant was not liable to disciplinary action otherwise than the law discussed before which has been ignored in case of the appellant. Therefore, we have no hesitation to hold that removal of the appellant from service is otherwise than due course of law and in turn, it was made without having regard to the constitutional rights of the appellant as provided under Article 4, 9 and 10-A of the Constitution of Islamic Republic of Pakistan.

11. Before parting with the judgment, it is deemed appropriate to deal with the anomaly having been created due to appointment of Muhammad Afraz Khan on the post which stood vacated due to removal of the appellant from service. Needless to say that reinstatement of the appellant in service gives him the right to hold the same post from which he was removed and also the back benefits of the same post. However, the salary and other benefits of the post after removal of the appellant were given to the newly appointed person on the said post who having served on the said post is not liable to refund the salary and other benefits. Therefore, back benefits of the appellant are payable to him on notional basis by creation of supernumerary post till his reinstatement on actual post. If there is no post available for reinstatement of the appellant, the post occupied by the newly appointed person is to be vacated

[Handwritten signature]

Attested

ATTESTED

[Signature]
EXCISE
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Signature]
Muhammad Asghar Khan Tanoli
Advocate Supreme Court of Pakistan
Office # 33 Jinnah Plaza Adjacent to
Distt: Bar Abbottabad

P-28

by an appropriate order. We find it appropriate to direct that the respondent department should adjust the newly appointed person namely Muhammad Afraz Khan on any other vacant post of equal grade or may move a case for creation of a post to accommodate him for removal of the anomaly as discussed herein above.

8. For what has gone above, this appeal is accepted. Consequently, the impugned order is set aside and the appellant is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

[Handwritten Signature]

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

[Handwritten Signature]
(AHMAD SULTAN TAREEN)
Chairman

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

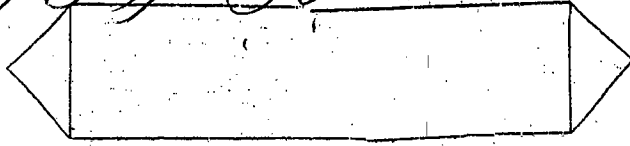
ANNOUNCED
26.01.2022

Date of Presentation of Application 10/02/22
 Number of Words 5200
 Copying Fee 54/-
 Urgent —
 Total 54/-
 Name of Copyist —
 Date of Completion of Copy 28/04/22
 Date of Delivery of Copy 28/04/22

Attested

Muhammad Arshad Khan Tanoli
Advocate General, Government of Pakistan
Office # 33 Jinnah Plaza Adjacent to
Distt. Barakzai

بعدالت منان سروس ٹریڈنگ سٹیٹو



مقدمہ 13/9/2022
مقدمہ
دعویٰ
جرم
Implementation
بنام
22/9/2022

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے جیڑی صاحب ہی کا کاروانہ اختلاقی

آن مقام سٹور کیلئے ایسٹیم ہاؤس

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 تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی اپیک دروپہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Shakeel Ahmad
مقدمہ

المرقوم 13 ماہ 09 2022ء

واہ العیہ

کے لئے منظور ہے۔

M. Aslam
Tanel Ave 52