24.08.2022 Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Previous date was changed on the strength of Reader's Note, therefore, notices be issued to the respondents for submission of implementation report. Adjourned. To come up for implementation report on 21.09.2022 before S.B.

(Mian Muhammad) Member (E)

Form- A

FORM OF ORDER SHEET

Court of		 	-
Execution Petition No.	368/2022		

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BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL, PESHAWAR

INDEX

S.No.	Description of Documents	Annex	Pages
1.	Application for Implementation of Order/ Judgment dated 16.01.2018 along with Affidavit		1-2
2.	Copy of the Order/Judgment	Α ·	
3.	Copy of the Order of Apex Court dated 09.05.2022	В	12

Through

Dated: 24.06.2022

Mehtab Sikandar Advocate High Court

BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appli In	cation No	/2022				
Servi	ce Appeal No	o.411/2017				
Nigha	at Shaheen	P.S.T Govt. G	iirls 1	Primary School	ol Tehsil and	District
Swab	i			· · · · · · · · · · · · · · · · · · ·		pplicant
	·		VER:	SUS	i	
1.	Governme	nt of Khyber I	Pakht	tunkhwa thro	ugh Secretar	y (E&SE)
	Education,	Civil Secretaria	at Pe	shawar.		
2.	Director,	Elementary	&	Secondary	Education	Khyber
	Pakhtunkh	wa, Dabgari Ga	arder	, Peshawar.		
3.	District Edu	ucation Officer	(F) S	wabi.		•
4.	Sub Divisio	nal Education	Office	er (F) Swabi.	· '	

APPLICATION FOR THE IMPLEMENTATION OF THE ORDER/JUDGMENT DATED 16.01.2018 AND GRANT OF PENSION AND PENSIONERY BENEFITS TO THE APPLICANT.

Principal Govt. Girls Primary School No.3 Zaida Tehsil and District

....Respondents

Respectfully Sheweth:

5.

- 1. That the captioned appeal was decided by this Hon'ble Tribunal, converting the dismissal into compulsory retirement vide judgment dated 16.01.2018. (Copy of the order/judgment is annexed as annexure A).
- 2. That thereafter applicant moved two applications for the implementation of order/judgment dated 16.01.2018 passed by this Hon'ble Tribunal, which were not materialized, while on the other hand Govt. of Khyber Pakhtunkhwa went into C.P No.354-

P/2018 to the august Supreme Court of Pakistan, which was dismissed vide order dated 09.05.2022. (Copy of the order of apex court is annexed as **annexure B**).

3. That the applicant has rendered about 24 years of service in the department and after conversion of her dismissal into compulsory retirement she has not yet been awarded pension and pensionery benefits by the department.

It is therefore most humbly prayed that on acceptance of this application the respondents, respondent No.3 in particular be directed to implement the order/judgment dated 16.01.2018 passed by this Hon'ble Tribunal in letter and spirit, award pension and all pensionery benefits in the interest of justice expeditiously.

Neght Shaher
Applicant

Bits Kandar

Through

Mehtab Sikandar

Advocate High Court

AFFIDAVIT

Dated: 24.06.2022

I, do hereby solemnly affirm and declare that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

AT 1: STED

Daraz

Laghell Shed DEPONENT

BEFORE THE KP SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 411 /2017

Khyber Pakhtukhwa Service Tribunal

Blar No. 429

Nighat Shaheen

Ducia 09-5-20/7

P.S.T Govt, Girls Primary School Zaida, Tehsil and District Swabi........Appellant

Versus

- 1. Government of KPK through Secretary S & Education Civil Secretariat,
- ✓2. Director Secondary and Elementary Education, KPK, Dabgari Garden, Peshawar
- ✓3. District Education Officer (F) Swabi
 - 4. Sub Divisional Education Officer (F) Swabi

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED NOTIFICATION DATED 21-12-2016 AND NON-RESPONDING TO DEPARTMENTAL APPEAL DATED 03-01-2017 WHEREBY WHILE IMPOSING MAJOR PENALTY UPON THE APPELLANT BY REMOVING HER FROM SERVICE WITH IMMEDIATE EFFECT.

PRAYER

On acceptance of this appeal the impugned notification of removal dated 21-12-2016 may graciously be set aside and the appellant having rendered services for more than 28 years be re-instated or she be granted pension along-with back benefits.

Respectfully Sheweth,

- 1. That, the appellant was appointed as P.S.T in the respondent department on Filedian 22.09.1986 and she put-in meritorious service to the satisfaction of her superiors at various schools within the district. (Copy of a portion of service book, profile of the employee, applications, GP Fund Statement, pay roll and selection grade showing active service of the appellant are annexed as Annexure "A" to "F").
 - 2. That while posting at Government Girls Primary School Shahmansoor, she made a request to the competent authority for one month leave which was not only

accepted rather the appellant was directed to proceed on two years leave one with pay while the other as without pay although the appellant refused but it being in her favour the appellant offered to proceed on leave and went to Kamra Airbase with her husband and kids availing leave with the permission of the competent authority as well on her own will. (Copy of leave sanction order is annexed as Annexure"G").

- 3. That one month prior to the expiry of the said leave she approached the competent authority for joining her duties at the school wherefrom she had proceeded on leave w.e.f 15-12-2009 to 14-12-2011 but the appellant came to know that awarding her leave with pay was intentional by the than DEO female because she was interested in adjustment of daughter of one of the sub divisional education officer namely Ali Haider and as such she was ordered to wait for some time. (Copy of the application for Joining of duty dated 20,11,2011 and 14.02.2012 are annexed as Annexure "H" and "I").
- 4. That the appellant waited as was asked for regardless of the fact that it was against her choice but even than she was not adjusted against her original post rather she was kept on waiting and her resumption of charge was delayed on one pretext or the other with no payment of salary in spite of attending GGPS Shahmansoor No.1.
- 5. That the appellant moved a written application before the than DEO female Swabi but with no response rather she was not allowed to join her duties in order to facilitate and prolong the stay of the daughter of the than Sub Divisional Educational Officer against the said post, who was basically inducted after the appellant went on leave with the permission of her department.
- 6. That the appellant was asked to wait nonetheless for six months and as such no reply whatsoever was given to her regardless of the fact that she made a representation but yet she was asked to wait and was extended an opportunity of availing leave for an year, which itself speak volumes of the mala fide on the part of the respondents.

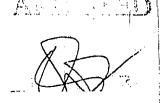
8. That during the on-going course she was asked to join her duties, which offer was taken by the appellant as a sigh of relief but after serving for about two months and astonishingly without pay and allowances, yet no charge resumption order was issued by the than DEO female Swabi. The said period of teaching in the school was taken an opportunity by the department as a stress test, which was 'used to agonize the appellant against her will. (Copy of the application dated 06.10.2012 is annexed as Annexure "J").

respondent was politically motivated as such she as kept on waiting.

- 9. That ultimately she moved an application in the month of December 2014 before the DEO Female, which was responded thereto with a notice/letter dated 13.01.2015 for irnmediate joining of service otherwise disciplinary action will be taken against your person "the appellant". (Copy of the notice/letter dated 13.01.2012 is annexed as Annexure "K").
- 10. That in response to the said letter by Sub Divisional Officer Female Swabi; the appellant not only rushed to join her duties but also submitted a written reply thanking the Sub Divisional Educational Officer Female as well as appeared in person and asked for resumption order. (Copy of the reply dated 23.01.2015 is annexed as Annexure "L").
- 11. That instead of giving the said order; the appellant was asked and directed in black and white, verbally conveying to join at Government Girls Primary School No.3 Zaida.
- 12. That the appellant joined happily with thanks to all and sundry and started her duties with effect from 02.02.2015 at Government Girls Primary School Zaida.
- 13. That the appellant was regularly attending her duties, marking attendance in the attendance sheets/register and during the on-going process an inquiry committee was also constituted by the than DEO Female swabi in order to

examine the whole matter and to redress the grievances of the appellant. (Copy of the attendance register is annexed as Annexure "M").

- 14. That the inquiry officer Miss Fatima Batool Headmistress Government Higher Secondary School Bhamkhel visited the Government Girls Primary School Zaida and conducted inquiry in the presence of another lady, with her at GPS No.3 Zaida.
- 15. That a long questionnaire was given which was duly replied too and each and every answer was given as was asked for by the said enquiry officer. (Copy of the detail given to the enquiry officer is annexed as Annexure "N").
- 16. That she was also asked to continue with her services and in the meanwhile the inquiry officer will submit her report and the appellant will duly be informed as to the grievances sprouted to her beforehand.
- order whatsoever was passed by the competent authority regarding the grievances of the appellant but to utter disregard she was kept on waiting and as such disappointed therefrom the appellant moved departmental appeal dated 16.03.2015 to redress her grievances once and for all and to pay salary of the appellant along with allowances, back benefits otherwise she will opt for pension. (Copy of the departmental appeal is annexed as Annexure "O").
- 18. That during the course of inquiry; the appellant was informed time and again by the than DEO female swabi that another inquiry officer has been appointed for conducting inquiry and will submit report of the same but to no avail as such no response is given till date besides the applications submitted before the DEO proved to be a futile exercise.
- 19. That following the issue at hand, the appellant has put in 28 years plus service in the respondent department; during the entire course her service Appeal No. 720/2015 was also pending adjudication before the Hon'ble Services Tribunal when she received a show cause notice published in Daily Aaj dated 06-05-2016 and as such the same was also brought on record before this Hon'ble Tribunal

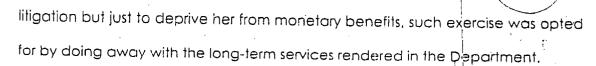


through a C.M which was thereafter noticed but even than she was not allowed to restart her duties. Ultimately vide order dated 03-11-2016 the respondents were directed to give charge of duties to the appellant which remained unheeded to rather she was straight away refused joining of duty. While on the other hand a notification dated 21-12-2016 was issued for doing away with the services of the appellant, which was served via home address. [Copy of the order-passed by this Court and impugned notification are annexed as Annexure P and P-1).

20. That departmental appeal against the impugned notification was preferred on 03-01-2017 before the Director Elementary and Secondary Education but with no response till date. Hence this service Appeal inter alia on the following grounds:-

GROUNDS

- A) That the impugned notification of removal from service and imposition of major penalty upon the appellant is totally uncalled for, against the natural justice and against the law governing the subject matter.
- B) That neither inquiry whatsoever has been conducted nor it has been brought as to why the appellant was made absent nor even the subsequent order passed by the Hon'ble Tribunal was complied with rather the impugned notification was 'issued in utter violation of the law/rules and norms of justice.
- C) That even otherwise, the appellant after rendering 28 years 5 months of service in the respondent Department is entitled for pension and pensionary benefits but that aspect was totally ignored rather prover of the Appellant in the earlier Appeal for pension in alternative was frustrated and worded off for the reason to avoid the award of pension and just to culminate the whole matter by issuing a notification of removal from services impugned before this Hon'ble Tribunal.
- D) That the inaction on the part of respondent Department, which is also obvious from the grounds taken in the service appeal, speaks malafide and Ill-will of the respondents otherwise she could have been compensated in the first round of



E) That in the present scenario, while keeping in view her 28 and half years of service, instead of removal without any inquiry, application of mind and justification; she could have been compulsorily retired but the very contours of notification speak volumes of malice, ill-will, personal grudge and illegality of the respondent Department which requires interference of this Hon'ble Tribunal either for doing away with the notification or its modification to the extent of retirement of the appellant thereof.

It is therefore humbly prayed that on acceptance of this Service Appeal the impugned notification of removal of Appeal serving for a period of 28 and half years in the respondent Department may graciously be done away with or in alternative the respondents be directed to retire the appellant with pensionary/back benefits in the interest of justice.

Any other order deemed appropriate in the circumstances of the case may also be passed for securing the ends of justice.

Appellant

Through

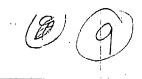
Muzammil Khan

Advocate

Supreme Court

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	·	BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL				
		Appeal No. 411/2017				
		Date of Institution 02.05.2017				
		Date of Decision 16.01.2018				
		Nighat Shaheen P.S.T Girls Primary School Zaidda, Tehsil and				
		District Swabi				
	•					
		Versus				
		1. Government of Khyber Pakhtunkhwa through Secretary S &				
		Education Civil Secretariat, Peshawar.				
		2. Director Secondary and Elementary Education, Khyber				
10		Pakhtunkhwa Dabgari Garden, Peshawar.				
100	16017019	3. District Education Officer (F) Swabi.				
Q E	16.01.2018	4. Sub Divisional Education Officer (F) Swabi.				
7		5. Principal Government Girls Primary School No.3 Zaida, Tehsil				
		and District Swabi				
	}	JUDGMENT				
		MUHAMMAD HAMID MUGHAL, MEMBER: Learned counsel				
		for the appellant and Mr. Kabir Ullah Khattak, learned Additional				
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LAG:		Advocate General for the respondents present.				
AI		La de la companya de				
	1	The appellant has filed the present service appeal u/s 4 of the				
1 6						
12		Khyber Pakhtunkhwa Service Tribunal Act 1974 against the				
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٠	il Conception	respondents and made impugned the order dated 21.12.2016.				
•		whereby she was awarded major punishment of removal from				
1						
}		service on the ground of absence from duty.				
}		2. Learned counsel for the appellant frankly stated that he would				
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Tribunal for conversion of penalty of removal from service into compulsory retirement from service on the ground that the appellant has put in more than twenty (20) years in service. Learned counsel for the appellant in support of his submission for lesser punishment of compulsory retirement relied upon the judgments of the august Supreme Court reported in 2007 PLC (C.S) 118, 2007 PLC (C.S) 678 and judgment of the Punjab Service Tribunal reported in 2007 PLC (C.S) 685.

- 3. As against that learned AAG while opposing the present appeal argued that the appellant was on leave w.e.f 15.12.2009 to 03.11.2010 with half pay and from 04.11.2010 to 15.12.2011 without pay. Further argued that after the expiry of the sanctioned leave the appellant remained absent from duty w.e.f 16.12.2011 and hence was rightly awarded punishment of removal from service.
 - 4. Arguments heard. File perused.
 - 5. It is not disputed that the appellant has rendered more than twenty years service, thus lesser punishment of compulsory retirement could have been imposed on her. While keeping in view the length of service of the appellant and the nature of her misconduct the impugned punishment of removal of appellant from service found harsh Consequently in the given circumstances the impugned punishment of removal from service awarded to the appellant is modified and converted into compulsory retirement from service. The intervening period including all the unauthorized

Jours of



absence period after the expiry of sanctioned leave shall be treated as leave without pay. The present appeal is disposed off in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

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IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)



Present:

Mr. Justice Sardar Tariq Masood Mr. Justice Muhammad Ali Mazhar

CIVIL PETITION NO.354-P OF 2018

(On appeal against the judgment dated 16.01.2018 passed by KPK Service Tribunal, Peshawar, in Appeal No.411 of 2017)

Govt. of KP thr. Secy. Elementary & Secondary Education, Peshawar etc

Petitioners

Versus

Nighat Shaheen .

Respondents

For the petitioners

Mr. Atif Ali Khan, Addl. AG KP.

For the respondent

Mr. Muzammil Khan, ASC (via video link from Peshawar)

, ...

Date of hearing

09.05.2022

ORDER

SARDAR TARIO MASOOD, J.- Instant petition is harred by 12 days and the reason set out in the application for condonation of delay that due to lengthy correspondence between various tiers of department and the process of the decision taken by Constituted Law Committee for fitness of the case for filing of CPLA, is not a valid ground to condone the delay. Consequently, Civil Misc. Application No.695-P/2018 is dismissed, as a result thereof Civil Petition No.354-P/2018, is also dismissed being barred by time.

Sd/-J Sd/-J

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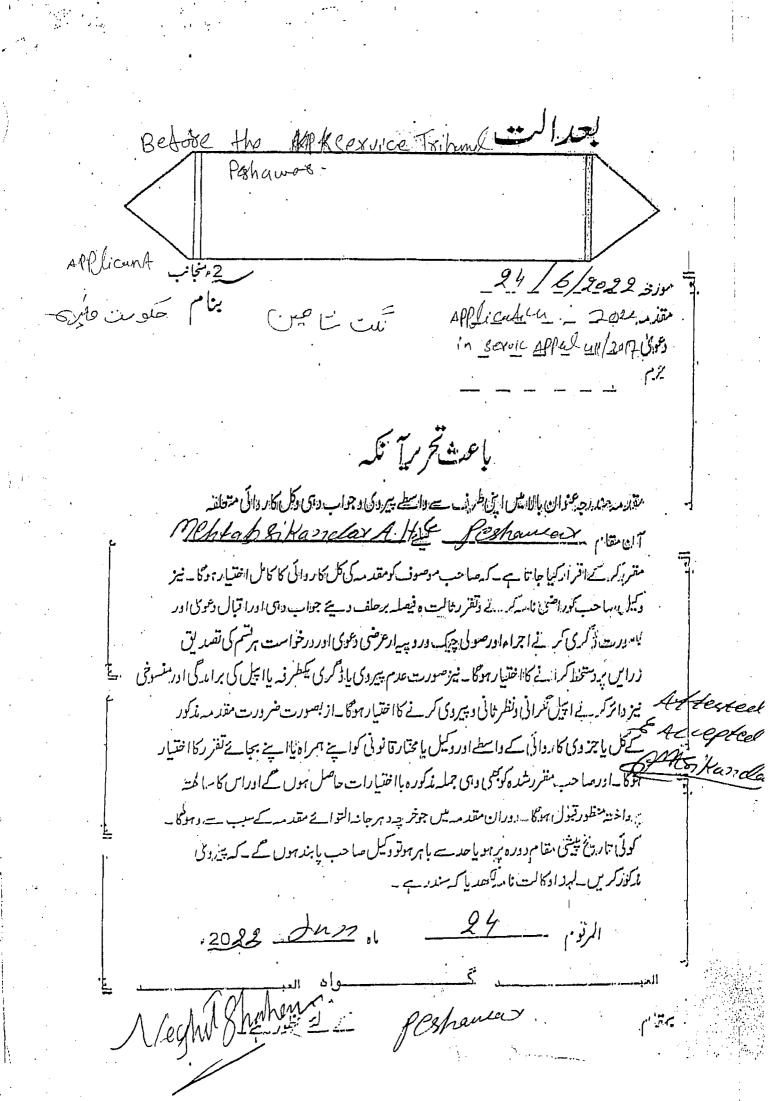
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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

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•	the Tribunal on the said date and at the said vocate for presentation of your case, failing missed in default. Registrar,
Report	Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

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You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failin which your appeal shall be liable to be dismissed in default.

Notice to Appellant/Petitioner.....

Registrar, Khyber Pakhtunkhwa Service Tribuna Peshawar.

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.
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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

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