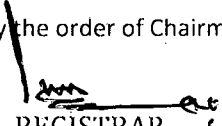


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 552/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.09.2022	<p>The execution petition of Kausar Parveen submitted today by Malik Hashim Ali 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 SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

Petition for implementation No. 552 /2022
IN
Service Appeal No:- 14044-P/2020
Decided on 27-01-2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1321

Dated 16/9/2022

*Kausar Parveen D/o samar Gul W/o Farooq Ahmad
R/o Muhallah Miagan Village & P.O Chamdheri, Tehsil
& District Mardan*

..... Applicant/Appellant

Versus

1. *District Education Officer (Female), Mardan
Near PRC District Mardan.*
2. *The Director Elementary & Secondary
Education khyber Pakhtunkhwa Near to Post
Office Civil Secretariat, Peshawar.*
3. *Secretary Finance, Khyber pakhtunkhwa,
Civil secretariat Peshawar.*
4. *Principal Government High School Bogra,
Karak.*
5. *Government of Khyber Pakhtunkhwa through
secretary education civil secretariat,
Peshawar.*

.....Respondents



**APPLICATION FOR THE IMPLEMENTATION OF THE
JUDGMENT DATED 27.01.2022 IN SERVICE APPEAL
No. 14044/2020, OF THIS HONORABLE TRIBUNAL IN
THE ABOVE TITLE SERVICE APPEAL.**

Respectfully Sheweth:-

1. That the above titled service appeal was decided in favour of the applicant/Appellant vide order/Judgment dated 27-01-2022.
2. That this honourable tribunal accepted the appeal vide judgment dated 27-01-2022 and give direction to respondents, the relevant para and observation of the judgment is re-produce for ready reference.

“in view of the above dissuasion, the impugned order is modified to the extent that appellant shall stand re-instated in service from the date of her removal from service i.e 10-03-2015. the period with effect from 01-01-2013 till 31-12-2014 shall be treated as extra-ordinary leave without pay, while intervening period may be treated as on duty and the appellant is held entitled to all consequential benefits. Parties are left to bear their own costs.


3. That applicant/appellant again and again visited the concerned offices, but respondents did not take any action neither accepted the judgment of this tribunal till date, due to the above circumstances applicant/appellant submitted the instant application against the respondents for implementation of the above judgment dated 27-01-2022.

It is therefore, humbly prayed that on acceptance of this application the respondents may kindly be direct to implement the order/judgment dated 27-01-2022 of this honorable tribunal in letter spirit.

Dated:-15.09.2022

Through:-


Petitioner


Malik Hashim Ali
Advocate High Court,
Peshawar

(4)

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Kausar Parveen

Versus

DEO (Female) Mardan & Others

AFFIDAVIT

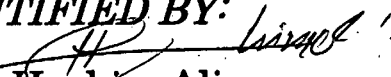
I, Mst. Kausar Parveen D/o Samar Gul W/o Farooq Ahmad R/o Mohallah Miagan Village & P.O Chamdheri Tehsil & District Mardan, do hereby solemnly affirm and declare on Oath that the contents of the Instant Implementation Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Service Tribunal KP.


DEPONENT

CNIC# 16101-6208442-8

Cell No: 0315-4187005

IDENTIFIED BY:


Malik Hashim Ali
Advocate High Court
Peshawar.


ATTESTED
Oath Commissioner
Syed Majeed Shah Advocate
High Court Peshawar

16/09/22

①

5

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR**



Service Appeal No:- 14044 -P/2020

*Kausar Parveen D/o Samar Gul W/o Farooq Ahmad
Resident of Mohallah Miagan Village & P.O
Chamdheri, Tehsil & District Mardan*

..... Appellant
Khyber Pakhtunkhwa
Service Tribunal

Versus

Diary No. 14370
Dated 10/11/2020

1. District Education Officer (Female), Mardan
Near PRC District Mardan.
2. The Director Elementary & Secondary
Education Khyber pakhtunkhwa, Near to Post
office Civil Secretariat, Peshawar
3. Secretary Finance, Khyber Pakhtunkhwa,
Civil Secretariat Peshawar
4. Principal Government High School Bogra,
Karak.
5. Government of Khyber Pakhtunkhwa through
Secretary Education, Civil Secretariat,
Peshawar

Filed on 10/11/2020
Registrar

..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL ACT, AGAINST THE IMPUGNED ORDER
DATED 10/10/2018, WHEREBY THE RESPONDENTS NO. 2
REFUSED FROM BACK BENEFITS.

ATTESTED

**EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar**

6

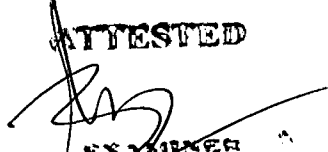
(2)

Prayer in Appeal:-


On acceptance of this appeal, the impugned order dated 10/10/2018 passed by respondent No 2 to the extent of refusal of back benefits may kindly be set aside and all back benefits alongwith seniority, allowance, salary, increment etc with such other relief as may deemed fit in the circumstances of the case may also be granted.

Respectfully Sheweth:-

1. *That brief facts are that the appellant was appointed as PST teacher in the year of 13/09/1993 in District Mardan.*
2. *That the appellant was a permanent government servant having 20 years meritorious services since dated 13/09/1993, and no compliant against the appellant from superior officer since 1993 to last day of her duty.*
3. *That family of the appellant shifted to Islamabad it is very difficult that being a female living alone in a house, the appellant continue her duty till date 31-12-2012 and after that the appellant applied for leave from January 2013 for a period of three years.*
4. *That after expiry of leave period the appellant submitted another leave application for extension of one year from January 2016 to 31, December 2016.*

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

5. That after expiry of leave period appellant join her duty but when appellant come to her office, appellant came to know that due to absence from duty the appellant had remove from service on 10/03/2015. **(Copy of Removal order dated 10/03/2015 is attached as annexure A)**
6. That after removal from service appellant submitted an appeal to respondent No. 2 through such appeal an independent and impartial department inquiry was conducted.
7. That in conclusion of inquiry report the inquiry officer stated that in the light of all facts and circumstances and findings of the inquiry reveals that the appellant PST GGPS Bala Ghari Mardan, her removal from service is illegal and without justification and without adopted the proper procedure, moreover appellant served the department from 13/09/1993 to 31/12/2012 i.e. 19 years continue service without any kind of break or leave appellant was entitle for such leave to be granted, therefore, decided departmental appeal in favour of appellant and inquiry officer recommended that the appellant be reinstated with back benefits and the period which she spent in running between the offices may be

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

declared as duty period, therefore it is clearly recommended in the inquiry report that the appellant is reinstated with all back benefit and respondent No. 2 accepted the appeal, and major penalty of removal from service issued by District Education officer (Female) Mardan respondent No. 1 dated 10/03/2015 is hereby withdrawn and appellant is hereby reinstated in service with immediate effect, while the absent/intervening period is hereby treated leave without pay. **(Copy of findings of inquiry, departmental Appeal for reinstatement of service dated 30/12/2016 alongwith copy of reinstated order dated 10/10/2018 are attached as annexure B, C & D)**

8. That after reinstated of the appellant, appellant take charged and started her duty. **(Copy of charged report is attached as annexure E)**

9. That after reinstated of the appellant in service while absence/intervening period during which the appellant was remain terminated was declared as leave without pay and refused all back benefits appellant submitted another appeal dated 09/12/2018 from all back benefits after reinstated in service which still pending and it was still not decided, the appellant visited the office so many time

ATTESTED

[Signature]
EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar


(9)

but officer intentionally want to delay the matter and turn deaf ear, **(Copy of department appeal dated 09/12/2018 for back benefits after reinstatement is attached as annexure F)**

10. That the appellant submitted a writ petition No. 3710-P/2020 in Peshawar High court which was disposed off dated 13/10/2020 with direction to appellant to seek his remedy before the proper forum, now the appellant submitted the instant appeal, with the following grounds inter alia; **(Copy of judgment of Peshawar High court dated 13/10/2020 is attached as annexure G)**

GROUNDS:-

- A. That appellant continuously and honestly perform her duty during service period, therefore appellant entitle for all back benefits but the impugned order leave without pay and refusal of back benefit the order untenable, against the law and facts and fundamental right of the appellant.
- B. That appellant suddenly, quickly and hurry remove from service, while no proper procedure adopted and the whole file roughly and carelessly maintain but when after inquiry the inquiry officer give findings that appellant remove from service with out any justification and without adopting the proper

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

procedure according to KP government servant Rules, 2011, therefore appellant entitle for leave request when appellant entitle for leave request, thus appellant also entitle for all back benefits but the order of respondent No. 3 deliberate and sheer ignore the overwhelming result and findings of inquiry and violated the constitution right of the appellant, therefore the respondents No. 3 may kindly be directed to give all back benefits to appellant.

- C. That the inquiry officer had differed with the order of removal and hence had recommended the award of back benefit and re-instated but despite that the competent authority with held back benefits which in sheer violation of law.
- D. That the appellant unblemished service carrier require that she should have been dealt with leniently and refusal of benefits for the lave period when she was entitled for leave the same is illegal, coram-non-judice and ab-inito, void and reflecting malafide of the authority hence the same is liable to be set at naught.
- E. That appellant was re-instated in service while did not awarded back benefit appellant submitted

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(7)

(11)

departmental appeal for back benefit which was not decided till date and appellant no knowledge of its fate which shown malafidy on the part of competent authority, however appellant is entitle for back benefits.

- F. That illegal and unjustified order by the competent authority by with held back benefit create, incur, anguish, acrimony in the official and the same will defiantly reflect on her duty and future, because of the bias attitude of the competent authority, hence the indulgence of this hon'ble court has become inevitable to rectify the order of the authority.
- G. That the respondents have committed misconduct as they had failed to perform their obligations in accordance with law.
- H. That other grounds will be raised at the time of arguments with the permission of this Honourable Court.

It is therefore, humbly prayed that on acceptance of instant appeal, the impugned order dated 10/10/2018 be modified and the back benefits i.e. seniority, salary, allowance, increments

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

etc from 01/01/2013 till 31/10/2018 for which the appellant entitle may kindly be granted and the order of respondent No. 2 to the extent of refusal of back benefits may kindly be set aside.

Any other remedy which deems fit by this Hon'ble tribunal may also be granted in favour of appellant.

Dated:-20-Oct-20

[Signature]
Appellant

Through:-

[Signature]
Malik Hashim Ali
Advocate High Court,
Peshawar

Certified to be true copy
[Signature]
K. KAMRAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 14/9/22

Number of Words 3250

Copying Fee 36/-

Agent _____

Total 36/-

Name of Copyist _____

Date of Completion of Copy 15/8/22

Date of Delivery of Copy 15/9/22

13

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 14044/2020

Date of Institution ... 10.11.2020

Date of Decision ... 27.01.2022



Kausar Parveen D/O Samar Gul W/O Farooq Ahmad Resident of Mohallah Miagan Village & P.O Chamdheri, Tehsil & District Mardan.

... (Appellant)

VERSUS

District Education Officer (Female), Mardan Near PRC District Mardan and four others. ... (Respondents)

MALIK HASHIM ALI,
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN


--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts forming the background of the instant service appeal are that vide the impugned order dated 10.03.2015, the appellant was removed from service on account of her willful absence from duty. The appellant challenged her removal from service through filing of departmental appeal and the appellate Authority nominated inquiry officer for conducting of inquiry in the matter. On receipt of inquiry report, the appeal of the appellant was accepted vide order dated 10.10.2018 and she was reinstated in service with immediate effect by treating the intervening period as well as period of her absence from duty as leave without pay. The appellant being partially aggrieved of the

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

order dated 10.10.2018 to the extent of reinstating her with immediate effect and treating the intervening/absence period as leave without pay, sought its modification through filing of departmental representation, which remained not responded, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in her appeal.

3. Learned counsel for the appellant has contended that the inquiry officer has categorically held in his report that the appellant was not guilty of the charge of willful absence and that she was entitled to be reinstated with all back benefits. He next contended that the appellant was appointed as PST in the year 1993 and performed her duty regularly till 31.12.2012, hence sufficient leave with pay was present in her leave account, therefore, no justification existed for treating the intervening period as well as the period of her alleged absence from duty as leave without pay. He next contended that when the charge of willful absence from duty was not at all proved against the appellant, then the appellant was entitled to have been reinstated with all back benefits.

4. On the other hand, learned Additional Advocate General for the respondents has contended that the period during which the appellant did not perform any duty has rightly been treated as leave without pay on the principle of no work no pay. He next contended that as the appellant had alleged in her departmental appeal that she had requested for extra-ordinary leave, therefore, the absence of the appellant cannot be treated as leave of kind due. He next contended that the impugned order passed by the appellate Authority is in accordance with law, therefore, the same may be kept intact and the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the appellant as well as learned Additional Advocate General for the respondents and have perused the record.


ATTESTED

EXAMINER
Kashmir Pakhtukhwa
Service Tribunal

6. A perusal of the record would show that the appellant was removed from service vide order dated 10.03.2015 on the ground of her willful absence from duty. The appellate Authority, however issued order for conducting of inquiry in the matter. The inquiry officer conducted an elaborate inquiry in the matter and submitted his report to the appellate Authority vide endorsement bearing No. 1171-72 dated 24.09.2018, copy of which is available on the record. A perusal of the inquiry report would show that it is an undeniable fact that the appellant was found innocent during the inquiry. The inquiry officer has affirmed in his report that the appellant had applied for leave with effect from 01.01.2013 to 31.12.2014 and that on expiry of the said period, the appellant had reported for joining of her duty, however instead of allowing her to join her duty, the competent Authority removed her from service vide order dated 10.03.2015. The inquiry officer has also opined that as the appellant had regularly performed her duty with effect from 13.09.1993 to 31.12.2012 without any kind of break or leave, therefore, the competent Authority was required to have sanctioned the requested leave, however the leave application was kept pending and even no departmental action at that time was initiated against the appellant. The inquiry officer has categorically opined in the inquiry report that the appellant was removed from service without any justification and adopting of proper legal procedure, therefore, she was entitled for reinstatement alongwith all back benefits.

7. On careful perusal of the inquiry report, we are of the opinion that the appellant should have been granted extraordinary leave without pay as requested by her with effect from 01.01.2013 till 31.12.2014. Furthermore, the appellant did not perform any duty during the intervening period on account of her wrongful removal from service, therefore, she is entitled to all back benefits of the intervening period particularly when nothing is available on the record that she remained gainfully employed during the said period.

8. In view of the above discussion, the impugned order is modified to the extent that the appellant shall stand reinstated in

ATTESTED

EXAMINER
Khayal Pakhtkhwa
Service Tribunal
Peshawar

service from the date of her removal from service i.e 10.03.2015. The period with effect from 01.01.2013 till 31.12.2014 shall be treated as extra-ordinary leave without pay, while intervening period may be treated as on duty and the appellant is held entitled to all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
27.01.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(ROZINA REHMAN)
MEMBER (JUDICIAL)

Certified to be true copy

EMERSON
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

~~Date of Presentation of Application _____
Number of Words _____
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Date of Delivery of Copy _____~~

Date of Presentation of Application 14-9-22
Number of Words 1600
Copying Fee 18/-
Urgent _____
Total 18/-
Name of Copyist _____
Date of Completion of Copy 15/9/22
Date of Delivery of Copy 15/9/22

قیمت 50 روپے	38918			
ایڈوکیٹ: <u>صدر مسلم علی اور وکیل اعلیٰ کورٹ</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: <u>B.C 11-1899</u>				
رابطہ نمبر: <u>0300-9008117</u>				

بعدالت جناب: محترم سر ایس ایچ خان

مخاطب: <u>ایڈوانس / صاحب</u>	دعویٰ: <u>Application for</u>
کوآرڈینیٹر <u>ایڈوانس</u>	علت نمبر: <u>Implementation</u>
	مورخہ: <u>/</u>
	جرم: <u>/</u>
	تھانہ: <u>/</u>

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
 آن مقام کے لئے صدر مسلم علی اور وکیل اعلیٰ کورٹ
 کر کے تیار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از سر قلم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور سبھی، نیز
 دائر کرنے اپیل گرانے و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو کوئی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ پر داخلہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جہانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب یا بندہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے



Attested and Accepted

by AP Limal.

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

کوآرڈینیٹر ایڈوانس
 دستخط ایڈوانس
 دفتر ایڈوانس