


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 569/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.09.2022	<p style="text-align: center;">The execution petition of Mr. Islam-ud-Din submitted today by Mr. Yasir Saleem 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 style="text-align: right;">By the order of Chairman  REGISTRAR</p>

A.A.G.

**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

E.P. No. 569/2022

In the matter of
Appeal No. 856/2019.

Islamuddin Ex- Chowkidar Government Primary School Illamgudar
Bara District Khyber..... (Appellant)

VERSUS

Secretary Elementary & Secondary Education (Merged Areas),
Khyber Pakhtunkhwa, Peshawar and others.

(Respondents)

I N D E X

S.No	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Implementation petition with affidavit		1-2
2.	Order and judgment dated 13.01.2022	A	3-8
3.	Application dated 09.05.2022	B.	9
4.	Wakalatnama		10

اسلام ڀٽوڙي
Applicant/ appellant

Through

Yasir Saleem
YASIR SALEEM
Advocate High Court

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 856(P) CS-2019.

Islamuddin Ex- Chowkidar Government Primary School Illamgudar
Bara District Khyber..... (Appellant)

VERSUS

1. Secretary Elementary & Secondary Education (Merged Areas),
Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education (Merged Areas),
Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) District Khyber.

(Respondents)

*Application for the implementation of the
Judgment and Order dated 13.01.2022 of this
Honourable Tribunal.*

Respectfully Submitted:

1. That the above noted service appeal was pending adjudication in this Honourable Tribunal and was decided vide judgment and order dated 13.01.2022.
2. That vide judgment and order dated 27.3.2017 this Honourable Tribunal accepted appeal of the appellant in the following terms:

"8. In view of the foregoing discussion, the instant appeal as well as the connected service appeals are accepted. The impugned orders are set aside and the appellant are re-instated in service with all back benefits. Respondents however are at liberty to conducted inquiry if they so desire. Parties are left to bear their own costs. File be consigned to the record."

(Copy of the Judgment and order dated 13.01.2022 is Attached as annexure B)

3. That the judgment of this Honourable Tribunal was duly communicated to the respondents, however the respondent department has not re-instated nor has his salary been released up till now, which is against the spirit of the judgment and order dated 27.03.2017 of this Honourable Tribunal.

4. That after judgment and order of this Honourable Tribunal, the applicant is continuously approaching the respondents for the implementation of the judgment, however they are reluctant to implement the judgment. **(Copy of application dated 09.05.2022 is attached as Annexure B)**
5. That without re-instating, the respondent department conducted inquiry and the appellant was initially called by the DEO office District Khyber for inquiry when the appellant went to the office of the Respondent No. 3, he was told to go to the office of respondent No. 2. The appellant was under impression that he would be given re-instatement order, when went there he was informed that only the inquiry would be conducted. He appeared before the inquiry officer and cleared his position, however neither the appellant has been re-instated in service nor he was conveyed any outcome of the inquiry.
6. That the respondents are legally bound to implement the judgment of this Honourable Tribunal in its true letter and spirit without any further delay.

It is, therefore, prayed that on acceptance of this application the respondents may please be directed to implement the judgment and order dated 13.01.2022 of this Honourable Tribunal in its true letter and spirit.

Through

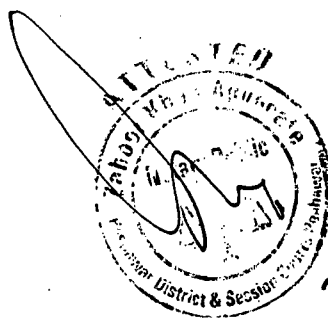
ياسر سليم
Applicant.

YASIR SALEEM
Advocate High Court

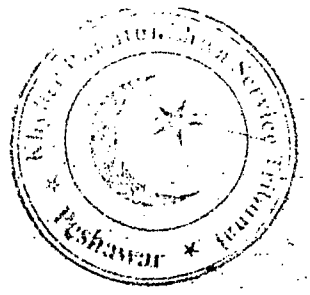
AFFIDAVIT

It is hereby solemnly affirm and declare on oath that the contents of the above implementation petition are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

ياسر سليم
Deponent



(3)



**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 856/2019

Diary No. 876

Dated 20/6/2019

Islam uddin, Ex-Chowkidar Government Primary School
Illamgudar Bara District Khyber

(Appellant)

VERSUS

1. The Secretary Elementary and Secondary Education (Merged Areas) Khyber Pkhtunkhwa Peshawar.
2. The Director Elementary and Secondary Education (Merged Areas) Khyber Pkhtunkhwa Peshawar.
3. District Education Officer, District Khyber.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 25.01.2019, whereby the appellant has been awarded the Major Punishment of dismissal from Service, against which his departmental appeal dated 20.02.2019 has not been respondent within the statutory period of ninety days.

Prayer in Appeal: -

Filed to-day

Registrar
20/6/19

On acceptance of this appeal the impugned order dated 25.01.2019, may kindly be set aside and the appellant may be re-instated into service with all back benefits and wages of service.

Re-submitted to-day
and filed.

Registrar 26/6/19

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 856/2019

Date of Institution ... 20.06.2019
Date of Decision ... 13.01.2022



Islam uddin, Ex-Chowkidar Government Primary School Ilamgudar Bara District
Khyber. ... (Appellant)

VERSUS

The Secretary Elementary and Secondary Education (Merged Areas) Khyber
Pakhtunkhwa Peshawar and others. ... (Respondents)

Yasir Saleem,
Advocate

... For Appellant

Muhammad Adeel But,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

... **CHAIRMAN**
... **MEMBER (EXECUTIVE)**

JUDGMENT

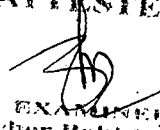
ATIQU-UR-REHMAN WAZIR MEMBER (E):-

This single judgment shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

1. Service Appeal bearing No. 759/2019 titled Jamal uddin
2. Service Appeal bearing No. 760/2019 titled Wajjuddin

02. Brief facts of the case are that the appellant was appointed as Chowkidar in Education Department vide order dated 31-08-1999 after observing all the codal formalities. The appellant performed his duty for almost 20 years. It was in 2017, when salary of the appellant was stopped and later on was dismissed from service vide order dated 25-01-2019. Feeling aggrieved, the appellant filed

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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(5)

departmental appeal dated 20-02-2019, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 25-01-2019 may be set aside and the appellant may be re-instated in service with all back benefits.


03. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the law has badly been violated; that the impugned order is against law, facts and norms of natural justice, therefore, not tenable, hence liable to be set aside; that neither any inquiry was conducted nor the appellant was afforded opportunity of defense; that no charge sheet/statement of allegation or any show cause notice was served upon the appellant and the appellant was condemned unheard; that the appellant has not been afforded opportunity of personal hearing before awarding major punishment of dismissal from service; that valuable rights have been accrued in his favor, which cannot be snatched away through such impugned order; that the inquiry officer suggested penalty of compulsory retirement from service, as is evident from the impugned order, but the appellant was awarded with major punishment of dismissal from service without giving any reason, so the impugned order is defective and liable to be set aside; that the appellant has at his credit a spotless service, who never committed any act of misconduct and was appointed through a legal process and received salaries for almost 19 years and the principle of locus poenitentiae strongly favors the case of the appellant; that it would be un-just and illegal to remove an official from service without observing the formalities as prescribed in law; that the appellant was illegally and un-lawfully dismissed from service, hence needs interference of this tribunal.

04. Respondents were given several opportunities to submit reply, but they

ATTESTED failed to submit reply, failing which, their right of defense was struck off, but the

impugned order alone would suffice resolving the riddle. The impugned order

Would suggest that appointment of the appellant as Chowkidar is not disputed nor

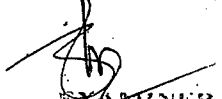

ATTENDING OFFICER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(6)

is declared as fake. It is also not disputed that the appellant served for almost 20 years against the post, receiving perquisites and privileges of the post for the entire period. The issue surfaced during checking of Master Payroll, when the assistant district education officer came to know that the appellant holding personal number 00412704 is drawing pay with effect from 31-08-1999 at Government Primary School Illamgudar Bara, District Khyber, where there is no sanctioned post of chowkidar occupied by the appellant, hence pay of the appellant was stopped and his name alongwith personal number was published in leading news papers dated 27-05-2018. The impugned order further reveals that the competent authority constituted an inquiry committee on 28-09-2018 and the committee recommended compulsory retirement but not agreeing with suggestion of the committee, the competent authority himself conducted inquiry dated 22-01-2019 and dismissed the appellant from service vide order dated 25-01-2019 within three days.

05. We have observed that personal number is issued by the Account Office against a regular sanctioned post. Similarly, pay is also released against a sanctioned post and as rightly argued by counsel for the appellant that as per practice in vogue in Education Department, an employee is appointed against a sanctioned post and is deputed to serve in another station in exigency of service, but is supposed to draw his salary against his original post. It never happens that any of the employees could draw salary without sanctioned post for long 20 years. Same is the case with the appellant that he was appointed against a sanctioned post after observing all the codal formalities and being an illiterate individual, he served, where he was deputed to serve and once he was allotted personal number by Account Office against a sanctioned post, he started performing his duty and started receiving his salary. It was not fault of the appellant, if he was deputed to serve in a school, where sanctioned post of chowkidar was not available, nor was it an act of misconduct, rather it was due to

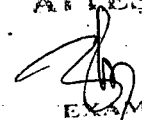
ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

reckless approach of the respondents finding an irregularity after 20 years, for which the appellant shall not suffer. The impugned order would suggest that the appellant was dismissed from service without affording him opportunity of defense, as no charge sheet/statement of allegation or any showcause notice is mentioned to be served upon the appellant, nor any regular inquiry is mentioned in the impugned order. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

06. Record would suggest that the appellant was appointed against a sanctioned post after fulfilling the codal formalities back in 1999, which is not disputed but his dismissal through a summary trial is against law as well as norms of natural justice. Since the appellant served against the post for almost 20 years and developed vested rights over the post, which cannot be taken away with a single stroke of pen for no fault of the appellant. The Supreme Court of Pakistan in its judgment reported as 1996 SCMR 1350 has held that authority having itself appointed civil servant could not be allowed to take benefit of its lapses in order to terminate service of civil servant merely because it had itself committed an irregularity in violating procedure governing appointment and an employee could not be blamed or punished for the laxities on part of the respondents. The order affecting the rights of a person had to be made in accordance with the principle of natural justice, order taking away the rights of a person without complying with the principles of natural justice had been held to be illegal. Government was not vested with the authority to withdraw or rescind an order if the same had taken

ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

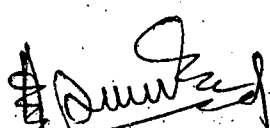
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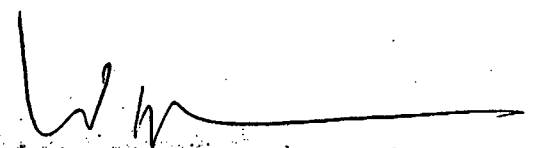
legal effect and created certain legal rights in favor of the appellant. Reliance is place on 2017 PLC (CS) 585.

07. We are of the considered opinion that the appellant has not been treated in accordance with law and was dismissed from service for no fault of him. The appellant served for almost 20 years with the respondents and now is reaching his age of superannuation and at such a belated stage, penalizing him for a fault, which has not been committed by the appellant would result in manifest injustice. The order of dismissal appears to be arbitrary and without lawful authority, which is liable to be set aside. We did not notice any irregularity in appointment of the appellant as chowkidar nor any of the allegations of inefficiency or misconduct were found against him. The appellant was charged only for the fault that he has drawn salary in a school, where no post of chowkidar was available, which was not his fault, rather it was responsibility of the respondents to post him in a station, where regular sanctioned post was available. The correct course in case of the appellant would have been to transfer him back to the school, where he was initially appointed, instead he was dismissed, which however was not warranted.

08. In view of the foregoing discussion, the instant appeal as well as the connected service appeals are accepted. The impugned orders are set aside and the appellant are re-instated in service with all back benefits. Respondents however are at liberty to conducted inquiry if they so desire. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
13.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

CHIEF CLERK
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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To,

The Director,
Elementary & Secondary Education Department,
Government of Khyber Pakhtunkhwa, Peshawar.

Subject: - **REQUEST FOR IMPLEMENTATION OF THE DECISION OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL DATED 13-01-2022 TITLED ISLAM UDDIN, EX-CHOWKIDAR GPS ALAMGUDAR BARA, DISTRICT KHYBER VERSUS THE SECRETARY E&SE (MERGED AREAS) KHYBER PAKHTUNKHWA AND OTHERS**

Dear Sir,

It is humbly submitted that I was working as Chowkidar at GPS Alamgudar, Bara, District Khyber. I was dismissed from service vide order dated 25-01-2019 against which I filed a service appeal at Khyber Pakhtunkhwa Services Tribunal, Peshawar.

2. I was re-instated in service with all back benefits by the Khyber Pakhtunkhwa Services Tribunal, Peshawar in its decision dated 13-01-2022.

3. It is therefore requested to kindly implement the decision of Khyber Pakhtunkhwa Services Tribunal dated 13-01-2022 and re-instate me in service with all back benefits.

Thanking you.

Dated: 09-05-2022

Yours faithfully,



Islam ud din
Ex-Chowkidar
GPS Alamgudar, Bara
District Khyber

POWER OF ATTORNEY

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In the Court of Service Tribunal KP Pesh.

Islam-ud-din

- ; For
- ; Plaintiff
- ; Appellant
- ; Petitioner
- ; Complainant

VERSUS

Sayy Edn & others

- ; Defendant
- ; Respondent
- ; Accused

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/We, the undersigned/ _____ do hereby nominate and appoint

YASIR SALEEM, Advocate Peshawar as my true and lawful attorney, for me in my same and on my behalf to appear at _____ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions, An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc. and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me us

IN WITNESS whereof I/we have hereto signed at _____

the _____ day to _____ the year _____

Executant/Executants _____

Accepted subject to the terms regarding fee _____



YASIR SALEEM
Advocate High Court, Peshawar