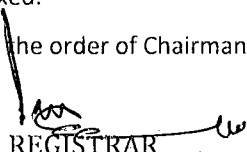


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 572/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23.09.2022	<p>The execution petition of Mr. Ayaz Mehmood submitted today by Mr. Irfan Ali Yousafzai Advocate. It is fixed for implementation report before touring Single Bench at Swat 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>

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

Service Appeal No: 1004/2019 *Execution Petition
No 572/2022*

Ayaz Mehmood.....**PETITIONER**

V E R S U S

DEO Male Buner and others.....**RESPONDENTS**

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Grounds of Execution Petition & affidavit	*	1-4
2.	Copy of the judgment dated 12/05/2022	A	5-12
3.	Wakalat Nama	*	13

Ayaz Mehmood
Petitioner

Through

Irfan Ali Yousafzai

Irfan Ali Yousafzai
Advocate, High Court
Peshawar

Date: 22/09/2022

Cell# 0314-9070658

Email - irfan.yousafzai@gmail.com

1

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

Execution Petition No 572/KP/2022
Service Appeal No: 1004/2019
Date of judgment: 12/05/2022

Diary No. 1623

Dated 23/9/2022

Ayaz Mehmood (TT) S/o Tajar Said R/o Village
Bajkata Tehsil Gagra District Buner.....**PETITIONER**

V E R S U S

1. District Education Officer (Male) Buner.
2. Director (Elementary & Secondary Education)
Khyber Pakhtunkhwa, Peshawar.
3. Govt. of KPK through Secretary (Elementary &
Secondary Education) Khyber Pakhtunkhwa,
Peshawar.
4. District Account Officer, Buner.
5. Fayaz Ahmad (TT) Presently serving in GMS
Totalia, Buner.....**RESPONDENTS**

Filed to-day
Registrar

**EXECUTION PETITION FOR
IMPLEADMENT OF THE
JUDGMENT DATED 12/05/2022
PASSED BY THIS HON'BLE
TRIBUNAL IN LETTER AND SPIRIT.**

Respectfully Sheweth:

1. That the petitioner had presented the service
appeal in this Hon'ble Tribunal and this Hon'ble

Tribunal vide judgment dated 12/05/2022 had accepted the appeal and the petitioner is entitled to decide the appeal/review petition of the petitioner by the respondents. **(Copy of the judgment dated 12/05/2022 is attached as annexure "A")**.

2. That the petitioner provided the copy of the judgment dated 12/05/2022 to the respondents for implementation but they delaying the matter on one pretext to another and depriving the petitioner from the fruits of the judgment dated 12/05/2022.
3. That due to the tactics of the respondents, the petitioner still not receiving the monthly salary.
4. That the petitioner having no other alternate remedy for impalement of judgment dated 12/05/2022 in letter and spirit except to knock the door of this Hon'ble Tribunal.
5. That the petitioner tired to make them see light of reason and implement the judgment passed by this Hon'ble Tribunal in letter in spirit but same proved as cry in the wildness, the said conduct of respondent falls within the mischief of law of COC and disobedience of Court orders;

duly explained by the August Superior Court of Pakistan.


6. That any other grounds will be raised at time of arguments with prior permission of this Hon'ble Court.

It is, therefore most humbly requested that on acceptance of this execution petition the respondents may kindly be directed to implement the judgment dated 12/05/2022.

Any other relief which this Hon'ble Tribunal deems appropriate may also be awarded to the petitioner.


Petitioner

Through


Irfan Ali Yousafzai
Advocate, High Court
Peshawar

Date: 22/09/2022

4

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

Service Appeal No: 1004/2019

Ayaz Mehmood.....**PETITIONER**

V E R S U S

DEO Male Buner and others.....**RESPONDENTS**

AFFIDAVIT

I, **Ayaz Mehmood (TT) S/o Tajar Said R/o Village Bajkata Tehsil Gagra District Buner**, do hereby solemnly affirm and declare that the contents of the accompanying **Execution Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Ayaz Mehmood

DEPONENT

A handwritten signature in black ink is written over a circular official stamp. The stamp contains some text, including the word 'Buner' and 'Tehsil Gagra'. The signature is written in a cursive style.

④ A" ⑤



Before the service tribunal khyberpukhtoonkhwaPeshawar

Service appeal No. 1004.....2019

AyazMehmood TT s/o tajar said r/o village

BajkatatehsileGagra,districtBuner.....appellant

Vs

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1114

Dated 31/7/2019

1. District Education officer(M) Buner .
2. Director E & SE khyberpukhtoonkhwa at Peshawar.
3. Govt of K.P.K through secretary E &SE khyberpukhtoonkhwa at Peshawar.
- ✓ 4. Fayaz Ahmad presently serving in GMS totalai.. Buner.....respondents

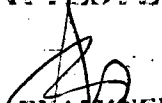
Service appeal under section 4 of service tribunal Act , against the impugned order dated 14.3.2019 whereby the withdrawal order of appointment of the applicant was maintained by the DEO Buner in total derogation of law and rules.

The appellant submits as follows :

1. That the Appellant was appointed as T.Ton 17.5.2014 and after serving for few months on the aforesaid post , his appointment order was withdrawn in violation of law and natural justice.(appointment order of the appellant and his withdrawal orders attached as mark A and B) .
2. That the above mentioned order of withdrawal was challenged by the appellant in writ petition No 477 M/2014 before the honorable Peshawar high court Mingora bench and the honorable court was pleased to declare the appellant as "in service as he was prior to the issuance of the impugned order of withdrawal" vide order/judgment dated 27.3.2018.(write petition No 477/2014 and order/judgment of the high court attached as mark C & C1)
3. That pursuance to the above mentioned judgment of this honorable court an inquiry was conducted by the respondent No 1 which also stated/opined the withdrawal order of the appellant as illegal and recommended the reinstatement of the Appellant in service.(inquiry report attached as mark D).
4. That the Appellant several time visited the respondent No 1 and also submitted application dairy No 17.4.2018 for joining the service and also filled application for release of his salaries but no heed was paid to his requests for a long time.(application dated 17.4.2018 and application dated 19.7.2018 attached as mark E & F)
5. That inactions of the respondent no 1 reached to the extent that they were not providing the dairy numbers of appellant's application hence after

Filed to-day
Registrar
31/7/19

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT SWAT

Service Appeal No. 1004/2019

Date of Institution ... 31.07.2017

Date of Decision ... 12.05.2022



Ayaz Mehmood TT S/O Tajar Said, R/O Village Bajkata Tehsil
 Gagra, District Buner.

... (Appellant)

VERSUS

District Education Officer (Male) Buner and three others.

... (Respondents)

MR. MUSHTAQ AHMAD KHAN,
 Advocate

For appellant.

MR. NOOR ZAMAN KHATTAK,
 District Attorney

For official respondents.

MR. SHAMS-UL-HADI,
 Advocate

For private respondent.

MR. SALAH-UD-DIN
 MR. MIAN MUHAMMAD

MEMBER (JUDICIAL)
 MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant was appointed as Theology Teacher vide appointment order dated 16.05.2014. The appellant assumed the charge of his post and was regularly performing his duty, however vide Notification dated 15.07.2014, the appointment order of the appellant was withdrawn. The appellant challenged the same through filing of Writ Petition in the august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, which was allowed vide judgment dated 27.03.2018 by setting-aside the Notification dated 15.07.2014 passed by District Education Officer (Male) District Buner and it

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ATTESTED

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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

was directed that the appellant shall be given an opportunity of hearing before passing any order on the review application filed by private respondent No. 4. In pursuance of the judgment dated 27.03.2018 passed by august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, an inquiry was conducted and the inquiry committee recommended that the appointment order of the appellant be restored from the date of its withdrawal. The appellant then submitted an application to the District Education Officer (Male) Buner on 17.04.2018 requesting therein for joining his duty. Similarly, another application was also submitted by the appellant for release of his salary but no action was taken upon the applications so submitted by the appellant before the competent Authority. The appellant then submitted application to the competent Authority on 14.08.2018, requesting therein that he may be provided copy of the decisions, if any, passed on the applications filed by the appellant. In response to the aforementioned application, competent Authority endorsed rejection order dated 19.07.2018 on the application so submitted by the appellant for release of his salary. The appellant challenged the same through filing of departmental appeal, which was not responded within the statutory period, therefore, the appellant preferred service appeal before this Tribunal. It was on submission of reply by the respondents in the said service appeal that the appellant came to know about the impugned order dated 14.03.2019 passed by District Education Officer (Male) Buner, whereby the order dated 15.07.2014, regarding the withdrawal of appointment order of the appellant and consequential appointment of private respondent No. 4 namely Fayaz Ahmad was retained. The appellant challenged the order dated 14.03.2019 through filing of departmental appeal, however the same was not responded within the statutory period of 90 days, hence the instant service appeal.

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

3. Learned counsel for the appellant has contended that the appellant was duly appointed on the post of T.T, however his

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

appointment was wrongly and illegally withdrawn by the competent Authority without any justified reason; that in light of judgment dated 27.03.2018 passed by august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, an inquiry committee was constituted, which probed the matter minutely and recommended that the appointment order of the appellant is required to be restored; that it was after submission of reply by the respondents, when the appellant came to know that a so called inquiry was made by the then Deputy District Education Officer (Male) Buner and in consequence of the same, competent Authority had issued impugned Notification dated 14.03.2019; that the appellant was not at all associated during the aforementioned false and fabricated inquiry and he was thus condemned unheard; that there is host of circumstances, showing that the inquiry so conducted by Deputy District Education Officer (Male) Buner has been maneuvered for the purpose of withdrawal of valid appointment order of the appellant; that so many other candidates were also awarded PTC marks as awarded to the appellant but their services are still intact, while appointment order of the appellant was wrongly and illegally withdrawn; that so many other candidates as well as private respondent No. 4 namely Fayaz Ahmad were wrongly and illegal awarded diploma marks and in case the diploma marks so awarded to them are deducted, the appellant would rank senior to them in the merit list; that the appellant was duly appointed upon recommendations of District Selection Committee after fulfilling of all legal and codal formalities and in case, any irregularity was being committed in appointment of the appellant, action should have been taken against the appointing Authority and not against the appellant. Reliance was placed on 2020 PLC (C.S) 1132, 2020 PLC (C.S) 541, 2000 PLC (C.S) 853, 2006 PLC (C.S) 1352, 2005 PLC (C.S) 1165, 2007 PLC (C.S) 1145, 2004 SCMR 1864, 2005 SCMR 85, 2004 SCMR 630, 1996 SCMR 8413, PLD 1969 Supreme Court 407 and judgment dated 13.03.2014 passed by august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, in Writ Petition No. 279-M/2012.

4. On the other hand, learned counsel for private respondent No. 4 has contended that the appellant was inadvertently

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal


awarded PTC marks and upon submission of appeal by private respondent No. 4, before the competent Authority, the appointment order of the appellant was withdrawn and private respondent No. 4 was appointed; that in light of judgment dated 27.03.2018 passed by august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, an inquiry was conducted in the matter by an inquiry committee comprising of Muhammad Ayub Sub-Divisional Education Officer (Male) Dagger District Buner and Amanul Mulk Shah Assistant District Education Officer Estab: (M) Primary District Buner, however competent Authority disagreed with recommendations of the said inquiry committee and ordered another inquiry in the matter by appointing Iftikhar Ul Ghani Deputy DEO (Male) Buner as inquiry officer; that according to the recommendations so submitted by the inquiry officer namely Iftikhar Ul Ghani Deputy DEO (Male) Buner, the appellant had been wrongly awarded PTC marks, which had rightly been deducted, making the appellant ineligible to his appointment as T.T in the concerned school; that in light of recommendations so submitted by the inquiry officer, competent Authority has rightly issued the impugned Notification dated 14.03.2019 in accordance with law, therefore, the same may be kept intact and the appeal in hand may be dismissed with cost.

5. Learned District Attorney for official respondents has relied upon the arguments advanced by learned counsel for private respondent No. 4.

6. Arguments have already been heard and record perused.

7. A perusal of the record would show that vide appointment order dated 16.05.2014, the appellant was appointed as T.T upon recommendations of the District Selection Committee. The appellant assumed the charge of his post and was performing his duty, when private respondent No. 4 namely Fayaz Ahmad submitted an application for review of appointment order of the appellant on the ground that he was higher in merit than the appellant. The review petition was allowed and vide Notification dated 15.07.2014, the appointment order of the appellant was withdrawn and his name was substituted by private respondent No. 4. The appellant being aggrieved of the Notification dated

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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

15.07.2014, challenged the same through filing of Writ Petition No. 477-M/2014 before the august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, which was allowed vide judgment dated 27.03.2018 in the following terms:-

"Hence, we allow this Writ Petition, set-aside the order of respondent No. 1 and direct the respondents that the review petition filed by respondent No. 5 shall be deemed to be pending before the District Education Officer (M), Buner and before passing any order on the said application, the respondents shall give an opportunity to the petitioner. Until decision of the said application, the petitioner shall be deemed to be in service as he was prior the issuance of impugned order".

8. In light of the judgment dated 27.03.2018 passed by august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, an inquiry committee comprising of Muhammad Ayub Sub-Divisional Education Officer (Male) Dagger District Buner and Amanul Mulk Shah Assistant District Education Officer Estab: (M) Primary District Buner was constituted to probe into the matter. The inquiry committee so constituted, recorded statement of the appellant and on completion of the inquiry, recommendations were submitted to the District Education Officer (Male) Buner, wherein it was recommended that the appellant deserved to be restored in service from the date of his initial appointment. It is contention of the respondents that the competent Authority disagreed with the recommendations so submitted by the inquiry committee and appointed Mr. Iftikhar ul Ghani, the then DDEO (Male) Buner for re-inquiry in the matter, who opined in his recommendations that the withdrawal/termination order of the appellant and appointment of respondent No. 4 vide order dated 15.07.2014 was based on merit and justice, hence the same may be retained. On the other hand, it is the contention of the appellant that no re-inquiry was conducted in the matter and the subsequent inquiry report so submitted by the then DDEO (Male) Buner namely Iftikhar ul Ghani has been maneuvered only for the purpose of depriving the appellant of his due right. In order to appreciate the aforementioned rival contentions of the parties, we have minutely sifted the record. Copy of the re-inquiry report so submitted by the inquiry officer namely Iftikhar ul Ghani, the

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Dera Ismail Khan

then DDEO (Male) Buner has been annexed by the respondents alongwith their comments as annexure-F. Mr. Obaid-ur-Rehman, ADEO (Litigation), who is present before us as representative of the respondents, submitted attested copy of the inquiry conducted by the then DDEO (Male) Buner, Iftikhar ul Ghani. While placing both copies of the inquiry reports in juxtaposition, it can safely be concluded that the details in both the copies are not the same. It appears that the attested copy of the inquiry report so submitted by the representative of the respondents today, has been prepared subsequently. Both the copies do not bear any date on which the same were drafted and sent to the competent Authority. The respondents alongwith their comments have also annexed copy of Notification bearing Endst: No. 2728-29 dated 03.07.2018, whereby Mr. Iftikhar Ul Ghani, the then DDEO (Male) Buner was nominated as inquiry officer for re-inquiry in the matter on 03.07.2018. On the other hand, representative of the respondents submitted attested copy of office order bearing Endst: 2011-15 dated 09.05.2018, whereby Mr. Iftikhar Ul Ghani was appointed as inquiry officer in the matter on 09.05.2018. All these facts are depicting a grim picture of the whole scenario.

9. The copy of initial inquiry report submitted by the inquiry committee comprising of Muhammad Ayub Sub-Divisional Education Officer (Male) Dagger District Buner and Amanul Mulk Shah Assistant District Education Officer Estab: (M) Primary District Buner as available on record would show that the District Education Officer (Male) Buner has merely endorsed the word "Disagreed" on the same, without mentioning any reasons for disagreeing. Moreover, the most important aspect as is evident from the record is that the appellant was not at all associated during the re-inquiry proceedings conducted by Iftikhar Ul Ghani. The appellant was thus condemned unheard.

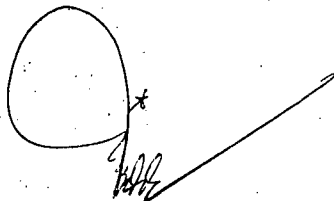
10. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned order dated 14.03.2019 and the matter is remitted to competent Authority to decide the appeal/review petition of respondent No. 4 afresh within a period of 60 days of receipt of copy of this judgment. Needless to mention that opportunity of hearing shall be provided to the

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

appellant as well as private respondent No. 4. Until the decision of the appeal/review petition, the appellant shall be deemed to be in service as he was prior to issuance of the impugned order. The issue of pay and back benefits shall be subject to outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
12.05.2022

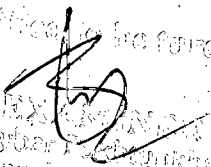


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)
CAMP COURT SWAT



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

Office of the
Executive
Service Officer
Swat



Date of Presentation of Application... 02/06/22
Number of Petition... 3200
Copies of... 33/-
Date... 33/-
Number of...
Date of... 16/6/22
Date of... 16/6/22

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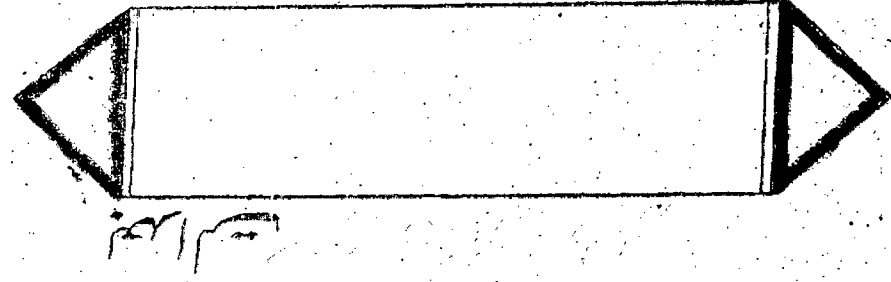
استاد محترم

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ازم

به استحضار می‌رساند که این سند در تاریخ ۲۰۰۰/۰۵/۰۵ در محل ...
مهر و امضاء گردید و اعتبار خود را تا تاریخ ۲۰۰۰/۰۵/۰۵ حفظ می‌کند.
این سند در صورت لزوم برای ...
مهر و امضاء گردید.

در تاریخ ...
مهر و امضاء گردید.



تاریخ ...