

27.06.2022

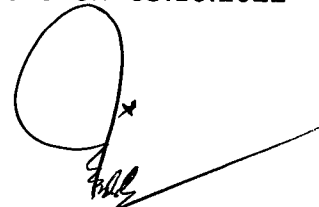
Learned Member (Executive), is on leave.
Therefore, the case is adjourned to 15.08.2022 for
the same as before.


READER

15.08.2022

Learned counsel for the petitioners present. Mr. Kabirullah Khattak,
Additional Advocate General alongwith Mr. Shakeel Ahmad, ADO for the
respondents present.

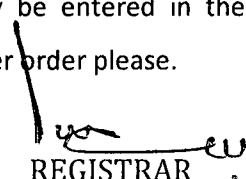

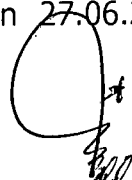
Departmental representative produced a copy of the Notification
dated 25.06.2022 whereby 7 petitioners have been reinstated in service
conditionally subject to the outcome of CPLA. Copy of the Notification is
placed on file and the same also provided to learned counsel for the
petitioners. Learned counsel for the petitioners however, has some
reservations on implementation/Notification which he intends to submit on
the next date. Adjourned. To come up for objections on 03.10.2022
before S.B.


Khan Muhammad
Member (E)

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 198/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.04.2022	<p style="text-align: center;">The execution petition of Mr. Akram Khan submitted today by Syed Noman Ali Bukhari Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<p style="text-align: right;"><i>19/4/22</i></p>	<p style="text-align: center;">This execution petition be put up before to Single Bench at Peshawar on <u>20-05-2022</u>. Original file be requisitioned. Notices to the appellant and his counsel be also issued for the date fixed. <i>Notices be also issued to the Respondents for I/R</i></p> <p style="text-align: right;"> CHAIRMAN</p>
	20.05.2022	<p style="text-align: center;">Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.</p> <p style="text-align: center;">Implementation report not submitted. Learned AAG requested for time to contact the respondents for submission of implementation report. Granted. To come up for implementation report on 27.06.2022 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member (E)</p>

Muhammad Akram & others

(Petitioners)

Versus

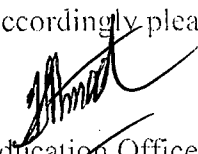
Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar
& Others.....

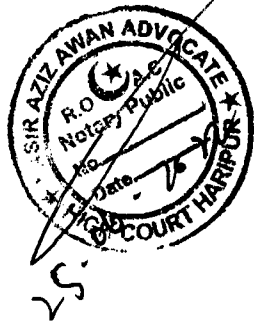
(Respondents)

APPLICATION FOR THE SUBMISSION OF IMPLEMENTATION REPORT

1. That the above titled Execution Petition is pending before the Honorable Service Tribunal.
2. That the answering respondents has filed Appeal/CPLA before the August Supreme Court of Pakistan against the judgment dated 23-12-2021 passed in Service Appeal No. 7762/2021 by Honorable Tribunal in favour of petitioners.
3. That the petitioners have provided their written affidavits attested by the notary public with their own signatures and thumb impressions in which it is clearly mentioned that if the Supreme Court decides the case against them, they will bound to return the benefits/salaries/arrears received during the period w.e.f the date of their removal from their service till the judgment passed by the Honorable Supreme Court of Pakistan.
4. That in pursuance of judgment dated 23-12-2021 passed by the Honorable Tribunal and in accordance with the affidavits provided by the petitioners. they have conditionally reinstated in their services vide order Endst: No. 682-85 dated 25-06-2022.

Therefore it is requested to accept the implementation of the applicant/respondents and the petition of the petitioners/appellants may very kindly be decided accordingly please.


District Education Officer (M)
Haripur.



Affidavit:

Solemnly affirmed and declared that the contents of the application are true and correct to the best of my knowledge.


Applicant/Defendant

District Education Officer (M)
Haripur



Ref

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
HARIPUR



Ph. No. 0995-920150, 920151, 920152
Email: deomalehrp@yahoo.com

NOTIFICATION:

Whereas, the employees mentioned as follow were terminated from their services by the competent authority, the then DEO (Male) Haripur vide order endst: No. 2883-89 dated 13-04-2021 because they could not acquire the requisite qualification/training within stipulated time period granted by the Honorable Peshawar High Court Abbottabad Bench in Writ Petition No. 516-A/2013 dated 24-05-2016 and in accordance with the general and specific conditions mentioned in their appointment order dated 04-10-2017 and 13-10-2017.

S#	Name	Father Name	School	Designation/BPS
01	Arshad Mehmood	Rehmatullah	GPS Kangar Amgah	PST BPS 12
02	Muhammad Hanif	Muhammad Siddique	GPS Kangar Amgah	
03	Akhtar Khan	Munsif Khan	GPS Phula Galli	
04	Muhammad Areen	Khan Muhammad	GPS Talhad	
05	Muhammad Akram Khan	Muhammd Aslam Khan	GPS Kamilpur	
06	Muhammad Naeem ur Rehman	Gohar Zaman	GPS Ahal Hattar	
07	Shujat Ali	Asmat Ali	GPS Bail	

Whereas, they instituted Service Appeal No. 7762/2021 dated 16-11-2021 before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar, which was decided in their favour. The operative part of the judgment is as under.

"For what has gone above, the appeal at hand is accepted as prayed for. Consequently, the appellants are reinstated into service with all back and consequential benefits including the payment of arrears of salary of intervening period from stoppage of their salaries till their reinstatement. Parties are left to bear their own costs."

Whereas, they have also filed Execution Petition 198/2022 for the implementation of the judgment mentioned herein above.

Whereas, the department has filed CPLA/Appeal before the August Supreme Court of Pakistan against the judgment dated 23-12-2021 which is pending before the Honorable Court.

Whereas, everyone of them has provided his written affidavit, attested by the Notary Public with his own signature and thumb impression in which it is clearly mentioned that if the August Supreme Court decides the case against him, he will bound to return the benefits/salaries/arrears received during the period w.e.f the date of his removal from service till the judgment passed by the Honorable Supreme Court of Pakistan.

Now therefore, in light of above, the aforementioned employees are conditionally reinstated in their service till the final outcome of the decision of August Supreme Court of Pakistan to conditionally implement the judgment of the Honorable Tribunal dated 23-12-2021.

Note: The terms and conditions of their initial appointment orders will remain intact.

Mukhtar Ahmad Khan
Mukhtar Ahmad Khan
District Education officer (Male)
Haripur.

Dated Haripur the: 25 /06/2022

No: 68285 /SA 7762/2021/Sacked Employees

Copy to:

1. The Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. The Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. The District Accounts Officer Haripur.
4. The SDEO concerned.
5. Office record file.

Mukhtar Ahmad Khan
District Education Officer (Male)
Haripur

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 198 /2022
In Service Appeal No. 7762/2021


Mr. Ikram Khan & other VERSUS Education Department

INDEX

S. No.	Documents	Annexure	Pages
1.	Memo of Execution	01-02
2.	Copy of Judgment	A	03-23
3.	Vakalat Nama	24

Petitioner

Through


Syed Noman Ali Bukhari

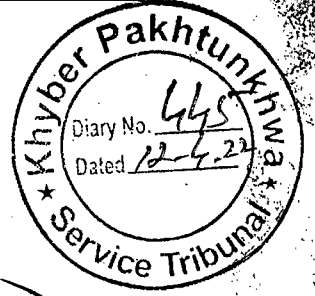

& Uzma Syed

Advocates High Court Peshawar

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 198 /2022
In Service Appeal No. 7762/2021



1. Mr. Akram Khan, PST, Government Primary School Kamalpur, District Haripur.
2. Arshad Mehmood, Primary School Teacher, Government Primary School Kangar Amga, District Haripur.
3. Shujahat Ali, Primary School Teacher, Government Primary School Tech, Tehsil and District Haripur.
4. Muhammad Naeem-Ur-Rehman Primary School Teacher, Government Primary School Ahal Hathan District Haripur.
5. Muhammad Hanif, Primary School Teacher, Government Primary School Galli Andra Doga District Haripur.
6. Muhammad Areen Khan, PST GPS, Talhad District Haripur.
7. Akhtar Khan, PST, GPS Phula Galli, District Haripur.

Petitioners

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Elementary and Secondary Education, Peshawar.
2. Director, Elementary and Secondary Education, Peshawar.
3. District Education Officer, (Male) Haripur.
4. District Education Officer, Haripur.

Respondents

.....

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 23.12.2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.

.....

(9)

RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No. 7762/2021 against the impugned appellate order dated 13/04/2021 where by the services of the appellants were terminated by the respondents.
2. That the said appeal was finally heard by the Honorable Tribunal on 23.12.2021. The Honorable Tribunal is kind enough to accept the appeal and reinstate the appellants with all back and consequential benefits including the payment of arrears of salary of the intervening period from stopped of their salaries till their reinstatement. **(Copy of judgment is attached as Annexure-A).**
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 23.12.2021.
4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
6. That the petitioner has having no other remedy to file this Execution Petition.

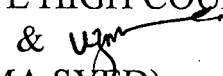
It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 23.12.2021 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.

PETITIONER

(IKRAM KHAN & 6 OTHERS)

THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

& 
(UZMA SYED)
ADVOCATE HIGH COURT.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Appeal No.7762 of 2021



Date of Institution ... 16/11/2021

Date of Decision ... 23/12/2021

Akram Khan, Primary School Teacher, Government Primary School, Kamalpur, District Haripur & 06 others.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Elementary & School Education, Peshawar and others.
... (Respondents)

Present.

Mr. Syed Noman Ali Bukhari,
Advocate

... For appellants.

Mr. Kabir Ullah Khattak,
Addl. Advocate General,

... For respondents.

MR. AHMAD SULTAN TAREEN
MR. ATTIQ-UR-REHMAN WAZIR

... CHAIRMAN
... MEMBER(E)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-The appellants namely Akram Khan, Arshad Mehmood, Shujahat Ali, Muhammad Naeem-ur-Rehman, Muhammad Hanif, Muhammad

ATTESTED

OFFICIAL SEAL AND SIGNATURE OF THE TRIBUNAL

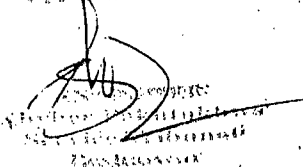
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Areen and Akhtar Khan all Primary School Teachers (PST) have jointly invoked the jurisdiction of this Tribunal through the above titled service appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer as copied herein below:-

"On acceptance of instant appeal, impugned office order bearing Endst. No. 2883-89/F.No. 20-5/EB/SACKED EMPLOYEES dated 13/04/2021 whereby the services of appellants were ~~terminated~~ by the respondents, may please be declared as wrong, illegal against the law and facts, arbitrary, fanciful, perverse, against the fundamental rights of the appellants as well as against the canons of justice hence, being unconstitutional, be struck down and the appellants may graciously be re-instated in service with all back and consequential benefits or any other remedy or relief as this Honourable Tribunal deems fit and appropriate in the circumstances of the case, may also be issued/passed"

2. Facts of the appeal are that the appellants being eligible under the then prevailing rules were appointed during 1996 to 1996 in respondents' establishment in accordance with the rules then prevailing and procedure laid down therein was adopted in letter and spirit; that respondent No. 1 promulgated Act No. XVII of 2012 to provide relief to those sacked employee who were appointed on regular basis to a civil post in the Province of Khyber Pakhtunkhwa during the period from 01/01/1993 to 30/1/1996 to 31/12/1998; that respondents despite promulgation of above Act were reluctant to provide any relief to the appellants which compelled the appellants to seek direction of the Court; that after hearing the parties, the Hon'ble High Court was


ATTESTED


 [Signature]
 [Name]
 [Designation]

S

pleased to accept the Writ petition through judgment dated 25/04/2016 in Writ Petition No. 516-A/2013; that in compliance with order of Hon'ble High Court, the appellants were reinstated in their services and a time period of 03 years was given to them to acquire training certificate under the law vide notification dated 04/10/2017 and 25/11/2017; that it was duty of the respondents to arrange and manage the requisite Training Course for appellants in view of directions, however, they failed to arrange and manage the same despite written applications placed before them; that appellants completed the training at their own expenses and furnished Training Certificates to the respondents and requested to consider the same for reinstatement of the services of appellants; that the respondents despite their own failure to arrange and manage the requisite service training in compliance of directions, the respondent No. 3 issued illegal and unlawful impugned officer order dated 13/04/2021 whereby the services of appellants were terminated. The appellants after their termination, firstly filed a joint departmental appeal on 03-05-2021 before the Respondent No. 2 being the appellate authority. Then they filed writ petition No. 651-A of 2021 before the Hon'ble Peshawar High Court, Abbottabad Bench which was disposed of on 27-10-2021 treating the same as departmental appeal. The appellants in wake of the foregoing facts have now invoked the

ATTESTED



10/10/2021
 10/10/2021
 10/10/2021
 10/10/2021

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jurisdiction of this Tribunal with the present appeal preferred on 16/11/2021. After admission of the appeal for regular hearing, the respondents were given notices. They after attending the proceedings have filed their written reply raising several factual and legal objections, refuting the claim of the appellants and asserted for dismissal of appeal with cost.

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

4. Learned counsel for the appellant argued that the impugned notices dated 18/01/2021 issued by the respondents No. 3 whereby the salaries of the appellants were stopped by the respondents and office order dated 13/04/2021 whereby the services of the appellants were terminated by the respondents are wrong, illegal, against the law and facts, arbitrary, fanciful, perverse, against the fundamental rights of the appellants as well as against the cannons of justice, that the respondents failed to arrange and managed the requisite training which cannot be attributed to the appellants despite that the appellant have done the same at their own expenses, that the appellants cannot be penalized for the acts of the respondents, that notices alongwith impugned order have not been issued to all similarly placed employees while the appellants are meted with discrimination,

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Khyber Pakhtunkhwa
Service Tribunal

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that notices alongwith impugned order have been issued to appellants with malafide, that the appellants have been condemned unheard and have an inalienable fundamental rights to be dealt with accordance with law laid down in the judgment of Hon'ble Peshawar High Court; that it is inalienable rights of the appellants to enjoy the protection of law and to be treated in accordance with law, rules and regulations; that no opportunity of defense has been provided to the appellants before termination order.

5. Learned AAG while exercising the right of rebuttal, argued that the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act were basically enacted for those employees who possessed the requisite qualification and experience whereas the appellants had not possessed the requisite qualification and experience and were not eligible for the appointment under the Act; that the appellants were reinstated in their services in accordance with the judgment of Hon'ble Peshawar High Court vide order dated 04/10/2017 and they were given the time period of 03 years to acquire the requisite training as well as qualification but they failed to acquire requisite qualification; that training courses are conducted by the Provincial Institute of Teachers Education (PITE) with the coordination of respondents but the appellants

ATTESTED

have not made themselves available to register in relevant course; that the impugned notices dated 18/01/2021 and 13/04/2021 are legal, lawful and in accordance with rules, policy and the KP Sacked Employees (Appointment) Act; that the notices were issued only to those employees who have failed to acquire the requisite qualification within stipulated time period; that the appellants were terminated and treated in accordance with law, rules and policy on the subject; and while concluding his arguments, he emphasized that present appeal is not maintainable on merits as well as because of procedural deficiencies pointed out in the preliminary objections in the written reply/comments of respondents.

6. After hearing the arguments of the parties at length and examining the material on record, we are of the view that the entire controversy between the parties revolves around four main questions vis. (a) what was the prescribed qualification for PST post when the appellants were originally appointed before they were sacked of their service? (b) Whether the parties have discharged their respective responsibility with reference to direction of the Hon'ble Peshawar High Court Abbottabad Bench given in the judgment dated 24/05/2016 in Writ Petition No. 516-A of 2013? (c) Whether the training certificates provided by the

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Service Tribunal
Peshawar


a

appellants to the respondent department are workable? (d)
 Whether the judgment dated 24-05-2016 has been suitably and
 fairly discussed in the impugned order to condemn the appellants
 for its non-compliance in the matter of acquiring requisite
 qualification?



7. Before addressing the above main questions involved in this appeal, the preliminary objection raised on behalf of respondents regarding maintainability of this appeal has to be decided. The respondents while taking on, they in their comments/reply of the memorandum of appeal have raised several preliminary objections and the one among them is that the joint appeal is barred by law and is not maintainable. As annexed with the memorandum of appeal, we have before us the copy of order dated 27/10/2021 passed by the Hon'ble Peshawar High, Abbottabad Bench, in Writ petition No. 651-A/2021 alongwith certified copy of the title page of the said petition with names of petitioners including the present appellants among others. By the order dated 27/10/2021, the writ petition was treated as departmental appeal and sent to the competent authority/Director, Elementary & Secondary Education (E&SE), Khyber Pakhtunkhwa, Peshawar for its consideration in accordance with law, by providing fair opportunity of hearing to

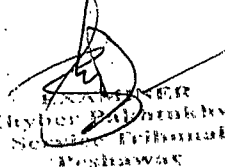
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the petitioners. Thereafter, the appellants have invoked the jurisdiction of this Tribunal through single Service Appeal as described above in the heading after about 20 days of the passing of order dated 27/10/2021 by the Hon'ble Peshawar High Court. The appellants purported vide para-10 of the memorandum of appeal that they feeling aggrieved had filed departmental appeal against the termination order but the same was not decided till date; and it has been submitted vide para-11 of the service appeal that no action was taken on the departmental appeal as converted from the writ petition and sent to respondent No. 2 for its decision. Copy of the basic departmental appeal as annexed with the memorandum of appeal bears the date as 03-05-2021 and signatures of 14 individuals including the present appellants. Thus, the same was joint departmental appeal addressed to the respondent No. 2, whereby they impugned the order dated 13-04-2021 as to termination of their appointment as presently impugned by the Service Appeal. Sub Rule-(2) of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 envisages that every Civil Servant shall prefer the appeal separately. In the present case, the departmental appeal as well as the service appeal have been filed jointly. Before drawing any adverse inference against the appellants on non-compliance of Sub-Rule-

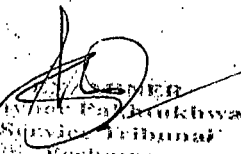
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(2) of Rule-3 in its letter and spirit, the foremost question for determination is, whether the requirement of said rules is mandatory or directory. Obviously, there is no dearth of literature on subject of the interpretation of statutes which provides various tests to determine whether a particular provision of statute is "mandatory" or "directory" in nature. There is an interpretation that the statutory provision if specifying that a certain provision is to be carried out in the prescribed manner and no other manner, would be mandatory, even if no penalty has been provided. However, it is a well settled view that no hard and fast rule can be laid down as a final criterion to know whether provision is "directory" or "mandatory" in nature. Non-compliance with a mandatory provision is fatal while non-compliance of directory provision is not fatal. It is axiomatic that the statutory provisions which do not relate to the essence of the thing to be done, and as to which compliance is a matter of convenience rather than a substance, are directory; while provision which relate to the essence of a thing to be done i.e. matter of substance, are mandatory. When we take the provision of Sub-Rule-(2) of Rule-3 on the touch-stone of its essence, it is not difficult to find that it relates to a form of departmental appeal while the provisions under Sub Rule-(1) of Rule-3 in their essence relate to the Substance of the appeal. In the case of the appellants; their

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 K. V. RAO
 Secretary
 State Tribunal
 Hyderabad

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grievance relates to a single impugned order issued on 13/04/2021, whereby their appointment order was terminated enlisting them collectively. So, they are aggrieved from a single impugned order without any *inter se* clash of interest. The departmental appeal has been signed by every appellant individually which is indicative of its ownership by them jointly as well as individually. It is maintained that by virtue of Sub Rule (2) of Rule-3 of Appeal Rule, 1986 discussed hereinabove, the appellants were supposed to prefer departmental appeals separately but equity demands the decision of cases on merits and avoidance of technicalities. The Tribunal has got inherent powers under Rule-27 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974 to make such orders as may be necessary for the ends of justice or to prevent the abuse of process of the Tribunal. Thus, we hold for the sake of ends of justice that non-compliance with the said rule is not so fatal so as to divest the appellants of their right to appeal before the Tribunal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. As far as filling of single service appeal at hand by the appellants forming a group is concerned, it needs determination in light of provisions of Service Tribunal Act and Rules read with provisions of Civil Procedure Code. Rule-6 of Service Tribunal Act provides procedure for preferring of appeal including the form of the

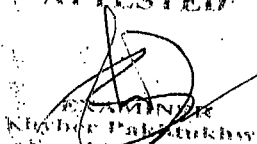


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 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

appeal. Among other requirements in relation to memorandum of appeal provided under Rule 6, it is also required that memorandum of appeal shall be signed by the appellant. The memorandum of appeal in the present case is signed by all the appellants individually. Therefore, the said requirement of the rules has been fulfilled. This Tribunal, within meaning of Sub Section (2) of the Section-7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 is deemed as a civil court with powers as vested in such court under the code of Civil Procedure, 1908. As envisaged by Rule-1 of Order-I of CPC, all persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly or severally or in alternative, where, if such persons brought separate suits, any common question of law or fact would arise. Taking the case of appellants on analogy of said rules, joinder of the appellants in this single appeal is not bad as far as the impugned order is concerned. The impugned order has been used as a single instrument to terminate the appointment order of the appellants with their enlistment in the same on one place. So, if the appellants have brought separate appeals, the order under challenge would be one and the same in all the appeals and they because of common question of law and fact would have been

ATTESTED


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 Service Tribunal
 Peshawar

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clubbed together for hearing and disposal by a single judgment. Fortified by the foregoing reasons, the present appeal is held as validly preferred by the appellants together.

8. Having dealt with the above preliminary objection, we may now revert to merits of the case for determination of main questions formulated herein above. We find that the reply of the respondents itself is helpful for resolution of the present dispute in favor of the appellants. The appellants vide para-2 in factual part of the memo of appeal stated that Act No. XVII of 2012 was promulgated to provide relief to sets of employees who were appointed on regular basis to a civil post in the province of Khyber Pakhtunkhwa during the period from 01/01/1993 to 30/11/1996 and the cases of the appellants were fully covered under the aforesaid Act. When the same was taken on by respondents, they did not admit it as correct and added that the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was basically enacted for those employees who possessed the prescribed education and experience whereas the appellants had not possessed the requisite qualification/ experience and they were not eligible for the appointment under the said Act but the Hon'ble Peshawar High Court, Abbottabad Bench in its judgment dated 24/05/2016 in Writ Petition No. 516/2013

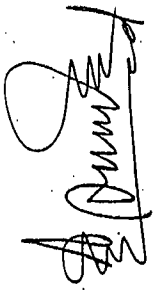
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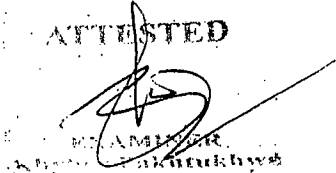
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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal

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provided an extra relief to the appellants that they will acquire the requisite experience certificate within in 03 years and same relaxation has already been given to the appellants for acquisition of requisite qualification by the department in accordance with Section 7 Sub Section (4) of said Act which empowers the Departmental Selection Committee (DSC) to determine the eligibility of Sacked Employee and in accordance with the condition of General Condition of appellants' appointment order dated 04/10/2017. However, they failed to acquire the requisite qualification within stipulated time period and were removed from service by the competent authority. It was stated by the appellants vide para-4 of the memo of appeal that they, in compliance with the order of the Hon'ble Peshawar High Court, Abbottabad Bench, were reinstated in their services and time period of 03 years was given to them to acquire training certificate under the law vide notification dated 04/07/2017 and 25/11/2017. The respondents in their reply to the said Para of appeal did not deny the reinstatement of appellants in service in accordance in compliance with the judgment of Hon'ble Peshawar High Court Abbottabad Bench but they added that the appellants were given a time period of 03 years to acquire the requisite training and qualification but they failed to acquire the requisite qualification. So, the four questions as formulated

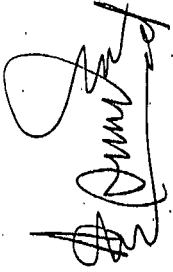


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BY AMIN
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herein above emanate from the said divergent pleadings and arguments of the parties. The first question is what was the prescribed qualification for PST post when the appellants were originally appointed before they were sacked of their service. The respondents asserted vide a preliminary objection among others that according to the notification dated 13/11/2012, the requisite qualification for the PST (BPS-12) is Intermediate alongwith Primary School Certificate/Diploma. It would be in fitness of things to discuss the import of the said notification before further findings on merit of the appellants' case. The notification bearing No. SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre dated 13/11/2012 would reveal that it has been issued in pursuance to the provision contained in Sub Rule(2) of Rule-3 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer), Rule 1989 and in supersession of all notification in this behalf. Accordingly, Elementary & Secondary Education Department in consultation with the Establishment and Finance Department laid down the method of recruitment, qualification and other conditions specified in the Appendix to the notification made applicable to all posts specified in Column-2 of the said Appendix and Schedule therewith. Therein, the similar qualification for PST (BPS-12) has been described as stated by the respondents in their preliminary objection discussed above.



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The said notification in view of its contents discussed hereinbefore has been issued in supersession of all notifications issued in this behalf. The question is, whether the said notification having been issued on 13-11-2012 is applicable retrospectively in case of appellants when they have got the right of appointment by operation of law promulgated on 20-09-2012. It is not disputed that the appellants were appointed during the period in between 1993 and 1996 and were sacked of their job subsequently after 1996. It is a matter of fact that the Khyber Pakhtunkhwa Sacked Employee (Appointment) Act, 2012 was promulgated on 20/09/2012 to provide relief to those sacked employees who were dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998. A Sacked Employee as defined under Section 2(g) of the said Act means a person who were appointed on regular basis to a civil posts in the province of Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 01st day of November 1993 to 30th day of November 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments. By virtue of Section-3 of the said Act, sacked

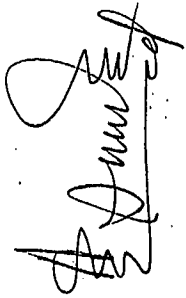
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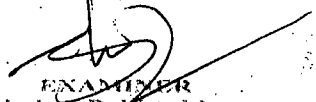
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 Khyber Pakhtunkhwa
 Service Tribunal

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employees were to be appointed in respective cadre of their concerned department, in which they occupied a civil post before their dismissal, removal and termination from service. The notification dated 13-11-2012 on its face does not provide for its retrospective effect. So, the same by no express meanings has got a retrospective effect. The said notification uses the expression "supersession" of earlier notifications. What is required to be considered and answered by us is, to delineate the meaning of "supersession" and its effect. Webster's International Dictionary defines the word "supersession" to mean "the state of being superseded", "removal" and "replacement". As far as its impact on case of the appellants is concerned, they, as has been held above, have got the right of appointment under operation of law promulgated prior to the notification dated 13/11/2012. Thus, they are not subject to treatment in accordance with said notification for the purpose of higher academic qualification for the post of PST provided by it which was not the case at the time of first appointment of appellant and even at the time of promulgation of the Sacked Employees (Appointment) Act, 2012. We have no hesitation to hold that the notification dated 13/11/2012 is prospective and the same cannot be applied retrospectively due to supersession of previous notifications simplicitor. With the given view, the notification



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 Service Tribunal
 Peshawar

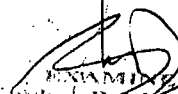
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dated 13/11/2012 will be deemed to have commenced with immediate effect having no bearing on case of the appellants for the purpose of qualification who undisputedly were appointed during the period in between 1993 and 1996 and have got the right of reappointment after their removal/dismissal from service by operation of law promulgated prior to said notification. Thus, objections of the respondents as to lack of academic qualification by the appellants are overruled. Excluding qualification of intermediate due to the foregoing observations, answer to the first question is conveniently possible that basic academic qualification for PST post at the time of original appointment of appellant was Secondary School Certificate besides PTC.

9.

As regards the remaining main points, there remains no need to go into wider details when the respondents admitted in their reply/comments before us that the appellants were reinstated in their service in accordance with the judgment of Peshawar High Court, Abbottabad Bench dated 24/05/2016. The respondents again with reliance on the same judgment have terminated the appointment orders of the appellants through a single order as impugned in the present appeal. Second paragraph of the impugned order dated 13/04/2021 is significant

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for certain observations to follow hereinafter and the same is reproduced below;

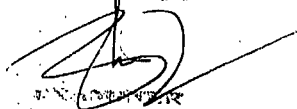
"Whereas an appointment order specific condition No. 4 "in case they/he failed to acquire the requisite training certificate within 03 years specified by the department their service shall stands terminated automatically. In the light of the judgment passed by the Peshawar High Court, Abbottabad Bench dated 24-05-2016 in para-7 "In case of having less qualification, whichever is prescribed is Intermediate/F.A for PST as well as PST Certificate as professional the candidate must be qualified both the academic/professional qualification with 03 years after issue of this appointment order, failing which their appointment order shall stands terminated automatically without any further period".

10. We having before us on file, the copy of the judgment dated 24/05/2016 passed by the Peshawar High Court, Abbottabad Bench, have read the same in its toto. The operative part as captured in para-9 of the said judgment is reproduced below:-

"9. In view of the above, all the petitions are disposed of in the following terms:-

- i. That the petitioners though eligible for their appointment but not equipped with training certificate shall be considered for reinstatement against their respective posts under the Khyber Pakhtunkhwa Sacked Employee (Appointment) Act, 2012 immediately;
- ii. The concerned District Education Officer shall scrutinized the case of each individual independently;
- iii. Thereafter, the department shall arrange and managed the requisite course for them and the petitioner shall be provided opportunity to acquire the requisite training certificate;

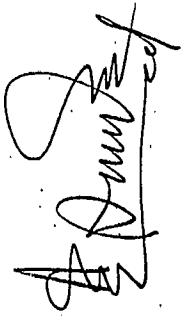
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 District Education Officer
 Peshawar

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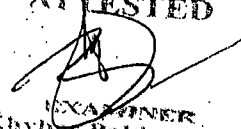
iv. In case the petitioner failed to acquire the requisite training certificate within the stipulated period, specified by the department, their services shall stand terminated automatically. Needless to remark that the respective EDOs, of each district shall complete the process of reinstatement of the petitioner within one month positively”.

11. If taken within the parameter of operative part of the judgment as reproduced above, the para-7 of the judgment reproduced in second paragraph of the impugned order seems to be a misquote. This is because what has been reproduced with reference to para-7 of the judgment in the impugned order is the copy of a relevant para of the reinstatement order/notification of various employees which in fact was reproduced in the judgment dated 24/05/2016 under para-7 with no further findings of the Hon'ble High Court in relation thereto that the same will be taken as a rule of thumb in case of the petitioners (Present Appellants). We, therefore, hold that wittingly or unwittingly, the respondents have maltreated the appellants by misuse of the judgment of the Peshawar High Court, Abbottabad Bench beyond the scope of its operative part as discussed above. For our given view, we are fortified with following reasons:-



- a) The first directions in the operative part of the judgment dated 24/05/2016 held the appellants eligible for appointment with an exception that they were not equipped with training certificate.
- b) By the third directive in the operative part of the judgment, it was the obligation of the department to arrange and manage the requisite training course

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 Service Tribunal
 Peshawar

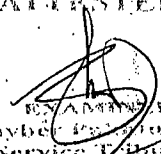
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- for the appellants and to provide them with an opportunity to acquire the requisite training course.
- c) It is a matter of fact that the respondents department did not perform the obligations of arrangement and management of training for the appellants rather they on their own acquired the certificate of training on completion of PTC from different Institutes of teacher training, which they have annexed with the memorandum of appeal.

12. In view of the reasons enumerated above, we hold that the respondents have not discharged their respective responsibility with reference to direction of the Hon'ble Peshawar High Court Abbottabad Bench given in the judgment dated 24/05/2016 in Writ Petition No. 516-A of 2013; while the appellants despite failure of the respondents to afford them with opportunity of training got the same on their own initiative to comply with direction of the Hon'ble High Court. So, the training certificates provided by the appellants to the respondent department are workable and were wrongly kept out of consideration by the respondents. The judgment dated 24-05-2016 has not been suitably and fairly discussed in the impugned order which wittingly or unwittingly has been misquoted to condemn the appellants for its non-compliance in the matter of acquiring requisite qualification. Points (b), (c) and (d) formulated herein above for determination are answered accordingly.

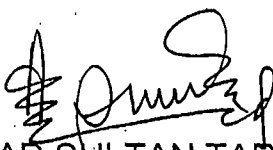


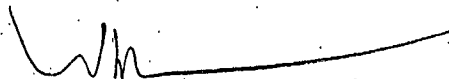
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 Peshawar

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13. For what has gone above, the appeal at hand is accepted as prayed for. Consequently, the appellants are reinstated into service with all back and consequential benefits including the payment of arrears of salary of the intervening period from stoppage of their salaries till their reinstatement. Parties are left to bear their own costs. File be consigned to the record room.


(AHMAD SULTAN TAREEN)
Chairman


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

Certified to be true copy

ANNOUNCED
23.12.2021


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 26-01-2022
Number of Words 8400
Copying Fee 86/-
Urgent 5/-
Total 90/-
Name of Copyist _____
Date of Completion of Copy 26-01-22
Date of Delivery of Copy 26-01-22

VAKALAT NAMA

NO. _____/20

IN THE COURT OF KP Service Tribunal, Peshawar

AKhtar Khan

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Gdu Dept

(Respondent)
(Defendant)

I/We, AKhtar Khan

Do hereby appoint and constitute **SYED NOMAN ALI BUKHARI Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

AKhtar Khan

(CLIENT)

ACCEPTED

Syed Noman Ali Bukhari

SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar.

"B"

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

No.

SB

Appeal No. *E.P No. 198* of 2022.

Akram Khan & 6 Others Appellant/Petitioner

Versus
Through Secy E&SE KPK Peshawar Respondent

Respondent No. *(1)*

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Notice to: — *Govt of KPK through Secy E&SE Peshawar*

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on.....*20/05/2022*.....at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

E.P ✓
Copy of ~~appeal~~ is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this.....*21th*.....

Day of.....*April*.....2022.

(For Impl-ment-ion Report)

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

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

No.

SB

Appeal No. F.P No. 198 of 20 22
Akram Khan & Others Appellant/Petitioner



Versus
 Through Secy ESSE KPK Peshawar Respondent

Respondent No. (2)

Notice to: — Director ESSE Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal on 24/05/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement along with any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal ^{*E.P. ✓*} is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this 21th

Day of April 20 22

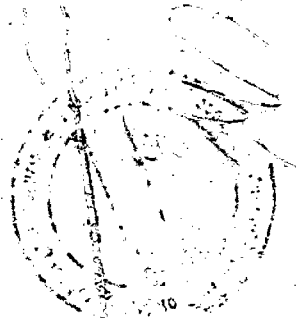
For Draft-mention Report

[Signature]
 Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

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Director of the Bureau
through the
F. I. No. 198
of the



20/02/2005

F. I.

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For Staff-member Report
April

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