24.08.2022 Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Suleman Khan, Senior Instructor for the respondents present.

Respondent department, in pursuance of the judgement of the Service Tribunal dated 08.04.2022, has reinstated the petitioner in service w.e.f. 07.07.2022 vide office order bearing No. 3697-701 dated 07.07.2022 . Copy of the same is placed on file as well as provided to learned counsel for the petitioner. Learned counsel for the petitioner requested that time may be granted to him for submission of objections on Notification dated 07.07.2022 submitted by the respondents. Adjourned. To come up for objection(s)/further proceedings on 05.10.2022 before S.B.

(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of_____

Execution Petition No. 369/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.06.2022	The execution petition of Mir Anbas submitted today by Malik Ashfaq Ahmad Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
2-	5.7.2022 Notices for issued 08/08/22	This execution petition be put up before Single Bench at Peshawar on 08-08-2022. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed. CHAIRMAN
	8.8.2022	Due to The Public Holiday The Case is Adjourned to 24-8-2022 Reader.

BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 369/2022

Application No._____/2022
In
Service Appeal No.4272/2021

Mir Anbas. . . . . **Applicant**

VERSUS

Govt. of Khyber Pakhtunkhwa & others. . . . . **Respondents**

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Application for Implementation of Order/ Judgment dated 08.04.2022 along with Affidavit		1-2
2.	Copy of Order/Judgment dated 08.04.2022	A	3-10

Applicant

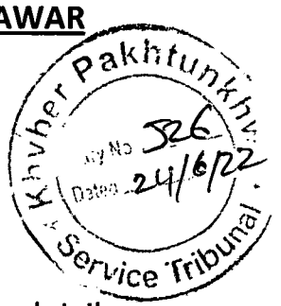
Through

Malik Ashfaq Ahmad
Advocate High Court

Dated: 24.06.2022

BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 369/2022



Application No._____/2022
In
Service Appeal No.4272/2021

Mir Anbas S/o Mir Inayat Masih R/o Residential Colony Central Jail Bannu (Ex-Sweeper Central Jail, Bannu) at present resident of Khyber Road, Judicial Complex, C/o Aslam Khan Sessions Court, Peshawar.

.....**Applicant**

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Prisons, Khyber Pakhtunkhwa, Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent of Central Prison, D.I.Khan.
4. Superintendent of Central Prison, Bannu. . . . . **Respondents**

APPLICATION FOR THE IMPLEMENTATION OF THE ORDER/JUDGMENT DATED 08.04.2022 OF THIS HON'BLE TRIBUNAL.

Respectfully Sheweth:

1. That the captioned appeal was accepted/decided by this Hon'ble Tribunal, vide order/judgment dated 08.04.2022 in terms ***"For what has been discussed above, we accept both these appeals and set aside the impugned order of dismissal as well as the order passed on departmental appeals and convert the same into minor penalties of "censure" under rule 4(1)(a)(i) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011. The appellants are reinstated in service along with consequential benefits. The period of their absence shall be deemed to be leave of the kind due."*** (Copy of the order/judgment is annexed as **annexure A**).

2. That thereafter applicant contacted the respondents for the implementation of order/judgment dated 08.04.2022 passed by this Hon'ble Tribunal, but to no avail, hence the instant implementation application.

It is therefore most humbly prayed that on acceptance of this application, the respondents may be directed to implement the order/judgment dated 08.04.2022 passed by this Hon'ble Tribunal in its letter and spirit.

Applicant

Through

Malik Ashfaq Ahmad
Advocate High Court Peshawar.

Dated: 24.06.2022

AFFIDAVIT

It is stated on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

KHALID MAHMOOD ADVOCATE PESHAWAR HIGH COURT

24-6-22

DEPONENT

(3)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

BEFORE: MR. KALIM ARSHAD KHAN, ... CHAIRMAN
MR. MIAN MUHAMMAD, ... MEMBER(E)

Service Appeal No.4272/2021

Mir Anbas(Ex-Sweeper Central Jail, Bannu) son of Mir Inayat Masih, resident of Residential Colony, Central Jail Bannu at present resident of Khyber Road, Judicial Complex care of Aslam Khan Sessions Court, Bannu..... (***Appellant***)

Versus

1. **Government of Khyber** Pakhtunkhwa, through Secretary Prisons, Khyber Pakhtunkhwa, Peshawar.
2. **The Inspector** General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. **Superintendent** of Central Prison, DIKhan.
4. **Superintendent** of Central Prison, Bannu..... (***Respondents***)

Present:

Mr. Mehboob Ali Khan Dagai, Advocate ...For appellant.

Mr. Muhammad Adeel Butt, Addl. Advocate General...For respondents.

Date of Institution.....26.03.2021
Date of Hearing.....08.04.2022
Date of Decision.....08.04.2022
****

ATTESTED

Service Appeal No.4273/2021

Mst. Aashi Bibi Ex-Sweeper Central Jail, Bannu) wife of Mir Anbas, resident of Residential Colony, Central Jail Bannu at present resident of Khyber Road, Judicial Complex care of Aslam Khan Sessions Court, Bannu..... (***Appellant***)

Versus

5. **Government of Khyber** Pakhtunkhwa, through Secretary Prisons, Khyber Pakhtunkhwa, Peshawar.
6. **The Inspector** General of Prisons, Khyber Pakhtunkhwa, Peshawar.
7. **Superintendent** of Central Prison, DIKhan.
8. **Superintendent** of Central Prison, Bannu.....(***Respondents***)

Present:

Mr. Mehboob Ali Khan Dagai, Advocate ...For appellant.
Mr. Muhammad Adeel Butt, Addl. Advocate General...For respondents.

Date of Institution.....26.03.2021
Date of Hearing.....08.04.2022
Date of Decision..... 08.04.2022

CONSOLIDATED JUDGEMENT

KALIM ARSHAD KHAN CHAIRMAN. Through this single judgment this and the connected service appeal No.4273/2021titled "*Aashi Bibi versus Government and others*", both being similar are decided.

2. This appeal is filed by the appellant Mir Anbas, Sweeper, against the order bearing No.993-96 dated 16.02.2021 issued by Respondent No.4, whereby the Appellant of this appeal, was dismissed from service. It is also against the order No.6581-82 dated 04.03.2021 passed by Respondent No.2/Appellate Authority, on the departmental appeal of the Appellant.

3. The facts gathered from the file of this appeal are that while being in service, Respondent No.4 tried to compel the Appellant for immorality in 2018; that owing to protest of the Christian Community in 2018, Respondent No.4 was transferred but he was again posted to Bannu Jail; that due to the above facts, the Respondents were annoyed/inimical and passed the impugned order; that aggrieved of the same, the appellant filed departmental appeal to Respondent No.2, which was dismissed and the instant appeal was filed.

ATTESTED

4. The connected appeal is of Mst. Aashi Bibi, wife of the appellant of this appeal, who was also Sweeper in Bannu Jail. Her appeal is against the

(5)

order bearing No.998-100 dated 16.02.2021 issued by Respondent No.4, whereby the Appellant of the connected appeal, was dismissed from service. It is also against the order No.6584-85 dated 04.03.2021 passed by Respondent No.2/Appellate Authority, on the departmental appeal of the Appellant.

5. The facts gathered from the connected appeal file are also the same as those of this appeal, therefore, there is no need of reproducing the same.

6. The grounds taken in both the appeals are same. It is urged in both the appeals that the impugned orders were against law, facts, circumstances of the case and thus not tenable rather liable to be set aside; that the impugned orders were passed against the principles of service laws and policy as no charge sheet, statement of allegations, opportunity of replication, hearing, first show cause notice, final show cause notice, in short no formal enquiry was conducted; that the appellants were punctual and on duty, never absented and the alleged proceedings were on the basis of annoyance, malafide, revenge due to the above stated facts.

7. On receipt and admission of the appeals, the respondents were put on notice. On their putting appearance, they filed joint para-wise comments, wherein it was contended that the appellants were not performing their duties efficiently and remained absent from the duty leaving the jail premises on their sweet will without taking permission of the competent authority and the Jail Authority issued various notices for resuming duty but the appellants always turned deaf ear upon all the notices. The absence period of both the appellants was given as under:

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(6)

i. from 04.10.2020 to 11.10.2020

ii. from 16.10.2020 to 21.10.2020

iii. from 07.11.2020 to 16.11.2020

iv. from 23.11.2020 to 28.11.2020

v. from 07.12.2021 to 10.12.2021

That the appellants held unlawful press conference leveling baseless allegations against the Superintendent Jail/Administration without any proof/witness; that the said complaint was totally groundless because a well versed Muslim Officer could not do the immoral act with a Christian Sweeper even amongst 342 employees; that the appellant had brought no solid proof during enquiry proceedings in 2018, hence, the case was rejected and decided in favour of Superintendent Jail/Administration; that suspected guests would meet the appellant at unusual night hours, which was quite undesirable from security and moral point of view; that the appellant held the press conference in 2018 but was not proceeded against under the rules in 2018 because of his belonging to minority community; that the impugned orders were based on rules & regulations and prolonged absence of the appellants on the report of the Deputy Superintendent Jail as well as the complaints of immoral and rude behavior of the appellants; that prior to dismissal the appellants were issued various notices but these notices were responded with cold shoulder; that enquiries were initiated by the Respondents, wherein the appellants were recommended for dismissal from service, hence, dismissed vide the impugned orders; that the appellants failed to defend themselves before the departmental appellate forum; that the orders were based on complaints received against the appellants, absence periods and threats to the Jail Authorities after issuance of various notices

08/4/22

ATTESTED

EXAMINER

and enquiry proceedings purely under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

9. We have heard the learned counsel for the appellants and learned Additional Advocate General for the respondents and have also gone through the file.

10. The learned counsel for the appellants reiterated the grounds urged in the memorandum and grounds of appeals and prayed for acceptance of the appeals while learned Additional Advocate General refuted the arguments of the learned counsel for the appellants and supported the impugned orders with the prayer for dismissal of the appeals.

11. The both impugned orders of dismissal show that these were based on the following two grounds:

a. The alleged threats of the appellants to the Deputy Superintendent Jail for holding press conference against the Jail Administration and second

b. Absence from duty.

12. When confronted with the situation that mere threat of holding press conference, if any, and not doing that would constitute a misconduct within the meaning of rule 2(1)(l) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, to which the learned Additional Advocate General submitted that the act could be a misconduct under rule 2(1)(l)(i) (ii) & (iii) as such a conduct was prejudicial to good order or service discipline as well as contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987 and unbecoming of Government Servant and a gentleman. Be that as it may there is no evidence of holding a press conference or for that matter any such threat is also not

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

8

proved nor the appellants were confronted in true sense about the above provisions of the rules. The reply submitted by the respondents, however, shows that no departmental action was taken on holding of the alleged press conference in 2018 because the appellants belong to minority. There is no record of any other press conference to hold the appellants guilty of any misconduct on such charge.

13. Next ground for dismissal is the alleged absence of the appellants for a few days. Few days' alleged absence of the appellants, even if proved, would not result in major penalty of dismissal from service especially when the procedure, provided in Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, was not followed by the respondents. The punishment of dismissal does not commensurate with the quantum of the period of absence and for which the appellants could have been awarded any of the minor penalties.

14. As to the allegations, detailed in the para-wise comments of the respondents, regarding the alleged involvement of the appellants in the immoral activities, such allegations were neither made part of the statement of allegations bearing No.708 dated 04.02.2021 nor in the final show cause notices or for that matter the impugned orders of dismissal from service, so the reply cannot be considered regarding such allegations.

15. For what has been discussed above, we accept both these appeals and set aside the impugned orders of dismissal as well as the orders passed on the departmental appeals dismissing the departmental appeals and convert the same into minor penalties of "censure" under rule 4(1)(a)(i) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline)

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(9)

Rules, 2011. The appellants are reinstated in service along with consequential benefits. The period of their absence shall be deemed to be leave of the kind due.

16. Copy of this judgment be placed in the connected appeal No.4273/2021 titled "*Aashi Bibi versus Government and others*". Consign.

17. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 08th day of April, 2022.*

Khyber Pakhtunkhwa Service Tribunal Peshawar

SD/-

(KALIM ARSHAD KHAN)
Chairman

SD/-

(MIAN MUHAMMAD)
Member (E)

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 11-04-22
Number of Words 2820
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Date of Completion of Copy 18-04-22
Date of Delivery of Copy 18-04-22

Law Dept.
Solicitor
0333-913 8473

قیمت 50 روپے

26667

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ: ملک مصطفیٰ احمد

بار کونسل/ایسوسی ایشن نمبر: BC-11-1186

رابطہ نمبر: 0345-9065284

بعدالت جناب: خیبر پختونخواہ سروس ٹریبونل پشاور

دعویٰ: Implementation

علت نمبر:

مورخہ

جرم:

تھانہ

منجانب: Petitioner

بنام

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام کیلئے ملک مصطفیٰ احمد ایڈووکیٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تا کہ سند رہے

المرقوم:

PESHAWAR BAR ASSOCIATION KHYBER PAKHTOONKHWA

العبد

مقام: کے لیے منظور ہے

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

11101-1506099-3

GS&PD.KP-1952/3-RST-5,000 Forms-27.10.15/P4(Z)/F/PHC Jos/Form A&B Ser. Tribunal

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. SB

~~APPEAL~~ No. EP No. 369 of 20 22

Mir Anbas

.....

Apellant/Petitioner

Versus

Govt of KPK through Secy Prisons KPK Pesha

.....

RESPONDENT(S)

Notice to ~~Appellant~~/Petitioner Respondent (1) Govt of KPK through Secy Prisons KPK Peshawar.

.....

.....

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 08/08/2022 **at** 9:00 am

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

For Implementation Report

EP attached

4/8/22

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

KHYBER PUKHTUNKHWA
PRISONS

OFFICE OF THE SUPERINTENDENT
CENTRAL PRISON BANNU
No._____Dated 7/7/2022

Telephone & Fax No. 0928-633327

SEEN	
I.G.	
A.I.G	
D.I.	

OFFICE ORDER

In pursuance to the directions contained in the worthy Inspector General of Prisons Khyber Pakhtunkhwa, memo No.21884/WE dated 06.07.2022, Sweepers Mir Anbas and Mst. Ashi Bibi both attached to Central Prison Bannu are reinstated into service w.e.f 07.7.2022, in the light of court orders of Hon'ble Provincial service Tribunal Khyber Pakhtunkhwa, Peshawar, judgment dated 08.04.2022.

SUPERINTENDENT
CENTRAL PRISON BANNU

Endst: No. 3697-701/

Copy of the above is forwarded to:-

1. The Worthy Inspector General of prisons Khyber Pakhtunkhwa Peshawar for information, with reference to above, please.
2. The Registrar Hon'ble Provincial service Tribunal Khyber Pakhtunkhwa, Peshawar, judgment dated 08.04.2022, please.
3. The Superintendent Central Prison, DI Khan for information, please.
4. The Mr. Mir Anbas (Sweeper) S/o Mir Inayat Masih present resident of Khyber Road, Judicial Complex care of Aslam Khan Sessions Court, Bannu with the direction to report arrival for duty at this jail immediately.
5. The Mst: Aashi Bibi (Sweeper) W/O Mir Anbas present resident of Khyber Road, Judicial Complex care of Aslam Khan Sessions Court, Bannu with the direction to report arrival for duty at this jail immediately.

SUPERINTENDENT
CENTRAL PRISON BANNU

Office of The Inspector General of Prisons
13730
14-7-22

15/7/22