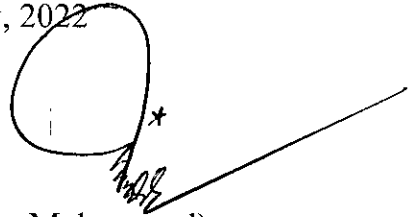


20.07.2022

Counsel for the petitioner present. Mr. Muhammad Adeel,  
Butt, Addl. AG for the respondents present.

02. Learned counsel for the petitioner produced copy of office order bearing No. 5604-5610/DHO, dated 10.06.2022, whereby the petitioner has been reinstated <sup>in service</sup> conditionally/provisionally as FCT Cardiology (BS-12) at Category-C Hospital Shabqadar with all financial benefits subject to the outcome of CPLA. Copy of the same is placed on file. The Service Tribunal judgement delivered on 02.02.2022 in service appeal No. 4281/2020 stands implemented. Consign.



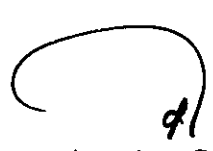
03. Pronounced in open court at Peshawar and given under my hands and seal of the Tribunal this 20<sup>th</sup> of July, 2022

  
(Mian Muhammad)  
Member (E)

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Execution Petition No. 277/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.05.2022	<p>The execution petition of Mst. Mehnaz Begum submitted today by Mr. Mir Zaman Safi 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	25-5-22  10.06.2022	<p>This execution petition be put up before to Single Bench at Peshawar on <u>10-6-22</u>. Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Junior to counsel for the petitioner present.</p> <p>Muhammad Adeel Butt, learned Additional Advocate General present.</p> <p>Despite notice; respondents are not in attendance. Notice be issued to respondent No.2 to attend the Tribunal in person with proper implementation report. To come up for implementation report on 20.07.2022 before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>



OFFICE OF THE  
DISTRICT HEALTH OFFICER  
CHARSADDA

OFFICE ORDER

Reference to the Registrar KPK Service Tribunal Peshawar letter No. 941/ST Dated 25/04/2022 in Service Appeal No. 4281/2020 titled Ms. Mehnaz Begum FICT Cardiology vs Secretary, Health Department Khyber Pakhtunkhwa Peshawar and others. Ms. Mehnaz Begum is reinstated provisionally as FCT Cardiology (BS-12) at Category C Hospital Shabqadar along with financial back benefits subject to the final decision of the case by Supreme Court of Pakistan. She is directed to report MS Category C Hospital Shabqadar for duty.

Consequent upon the above Ms. Nida Saeed FCT Cardiology BS-12, transferred from SGTII Swat to DHO Charsadda vide DGHS Khyber Pakhtunkhwa Peshawar letter No. 6483-535/A.E.VI Dated 18/06/2021 and subsequently posted at Category C Hospital Shabqadar vide this office order No. 6918-22/DHO Charsadda Dated 21/06/2021 is hereby relieved and directed to report Director General Health Services Khyber Pakhtunkhwa Peshawar for further posting.

*Sd/-*  
District Health Officer  
Charsadda

Dated Charsadda the 10/6/2022

No. 5604-5610 / DHO.  
Copy to:

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar
  2. Secretary Health Govt of Khyber Pakhtunkhwa Peshawar
  3. Director General Health Services Khyber Pakhtunkhwa Peshawar
  4. MS Category C Hospital Shabqadar to stop pay of Ms. Nida Saeed FCT Cardiology BS-12 and start pay of Ms. Mehnaz Begum FCT Cardiology.
  5. DAO Charsadda
  6. Ms. Nida Saeed FCT Cardiology
  7. Ms. Mehnaz Begum FCT Cardiology
- For information and compliance.

*Fawad*  
District Health Officer  
Charsadda

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

Implementation Petition No. 277 /2022

In

Appeal No. 4281/2020

**MEHNAZ BEGUM**

**VS**

**HEALTH DEPTT:**

**INDEX**

<b>S.NO.</b>	<b>DOCUMENTS</b>	<b>ANNEXURE</b>	<b>PAGE NO.</b>
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2-	Affidavit	.....	3.
3-	Judgment	<b>A</b>	4- 7.
4-	Vakalat nama	.....	8.

**PETITIONER/APPLICANT**

**THROUGH:**

  
**MIR ZAMAN SAFI**  
**ADVOCATE**

**MOBILE NO.0333-9991564**

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

Implementation Petition No. 277 /2022

In

Appeal No. 4281/2020



Mst: Mehnaz Begum, FJCT Cardiology (BPS-12),  
Category C Hospital Shabqadar, District Charsadda.

..... PETITIONER

**VERSUS**

- 1- The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Health Services Department; Khyber Pakhtunkhwa, Peshawar.
- 3- The District Health Officer, District Charsadda.

.....PETITIONERS

**IMPLEMENTATION PETITION FOR DIRECTING**  
**THE RESPONDENTS TO OBEY THE JUDGMENT**  
**OF THIS AUGUST TRIBUNAL DATED 02.02.2022 IN**  
**LETTER AND SPIRIT**

**R/SHEWETH:**

- 1- That the petitioner filed Service appeal bearing No. 4281/2020 before this august Service Tribunal against the impugned order dated 01.01.2020.
- 2- That appeal of the petitioner was finally heard by this august Tribunal on 02.02.2022 and was decided in favor of the petitioner vide judgment dated 02.02.2022 with the view that *"In view of the forgoing discussion, the instant appeal is accepted. The impugned order dated 01.01.2020 is set aside and appellant is re-instated into service with all back benefits"*. Copy of the judgment is attached as annexure.....A.
- 3- That after obtaining attested copy of the judgment dated 02.02.2022 the petitioner submitted the same before the respondents for implementation but till date the judgment of this august Tribunal has not been implemented by the respondent in letter and spirit.
- 4- That the petitioner has no other remedy but to file this implementation petition before this august Tribunal.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to implement the judgment dated 02.02:2022 in letter and spirit. Any other relief which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

**PETITIONER**



**MEHNAZ BEGUM**

**THROUGH:**



**MIR ZAMAN SAFI  
ADVOCATE**

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

Implementation Petition No. \_\_\_\_\_/2022

In

Appeal No. 4281/2020

**MEHNAZ BEGUM**

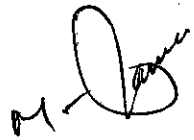
**VS**

**HEALTH DEPTT:**

**AFFIDAVIT**

I **Mir Zaman Safi, Advocate** on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



  
**MIR ZAMAN SAFI**  
**ADVOCATE**

A-4

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 4281/2020

Date of Institution ... 24.04.2020

Date of Decision ... 02.02.2022



Mst: Mehnaz Begum, FJCT Cardiology (BPS-12), Category C Hospital Shabqadar,  
District Charsadda. ... (Appellant)

**VERSUS**

The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar and two  
others. ... (Respondents)

Mir Zaman Safi,  
Advocate

For Appellant

Kabirullah Khattak,  
Additional Advocate General

For respondents

**AHMAD SULTAN TAREEN**  
**ATIQU-UR-REHMAN WAZIR**

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

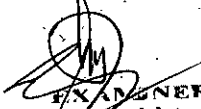
**JUDGMENT**

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

Brief facts of the

case are that upon recommendations of Departmental Selection Committee, the appellant was appointed as Junior Clinical Technician (JCT) BPS-12 vide order dated 04-07-2016. Her appointment order was withdrawn vide order dated 31-08-2016 on the issue of her diploma, against which the appellant filed departmental appeal followed by service appeal No. 1104/2016, which was decided vide judgment dated 24-10-2019 and the appellant was reinstated in service with direction to the respondents to issue fresh show cause by providing her appropriate opportunity of defense. In pursuance of the judgment, the appellant was issued show cause notice and was again removed from service vide order dated 01-01-2020, against which the

**ATTESTED**

  
CHAIRMAN  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



5

appellant filed departmental appeal, which was not responded, hence the instant service appeal with prayers that the impugned order dated 01-01-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned order is against law, facts and norms of natural justice and material on record, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, as such, the respondents violated Article-4 and 25 of the Constitution; that while issuing the impugned order, no chance of personal hearing was afforded to the appellant; that the appellant had not committed any irregularity or illegality at the time of her appointment, therefore the appellant cannot be punished for fault of others; that the appellant has been proceeded under wrong law, hence the impugned order is void ab initio.

03. Learned Additional Advocate General for the respondents has contended that the appellant was appointed after recommendation of departmental selection committee, but later on it was found that certificate of the appellant from medical faculty was for one year under crash program in cardiology technology; that on receipt of guidance from DG Health, the appointment order of the appellant was withdrawn; that as per direction of the service tribunal, the appellant was re-instated in service on 22-11-2019 and show cause notice was served upon her on 26-11-2019, but her reply was found not satisfactory, hence she was removed from service vide order dated 01-01-2020 after observing all codal formalities.

**ATTESTED**

**MINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar


04. We have heard learned counsel for the parties and have perused the

record.

⑥

05. Record reveals that upon recommendation of Departmental Selection Committee in its meeting held on 23-06-2016, the appellant was appointed as JCT Cardiology BPS-12 vide order dated 04-07-2016. The appellant assumed the charge after fulfilling the formalities of medical fitness. On 31-08-2016 her appointment order was withdrawn due to the reason that her appointment on one year certificate is not covered under the rule, but the appellant was not afforded opportunity to defend her cause, hence this tribunal vide judgment dated 24-10-2019 set aside the proceedings and directed the respondents to proceed afresh. We have observed that the respondents advertised such posts under the old rules, where the requisite qualification for the post were secondary school certificate with science alongwith certificate in the relevant field of cardiology and the appellant was equipped with the prescribed qualification, hence was shortlisted and subsequently appointed, but in the meanwhile, during the process of selection and until materialization of her appointment, the respondents introduced new rules vide notification dated 10-05-2016, where qualification for the said post were declared as secondary school certificate with diploma in the relevant field. Respondent No 3 as a precautionary measure, asked for the opinion of respondent No. 2, who in response has referred to the new rules and respondent No. 3 without digging out the factual position, had withdrawn her appointment order, which however was not warranted and which caused damage to her for no fault of her. The appellant was appointed after due process of law and it was the statutory duty of the appointing authority to scrutinize each and every aspect of the case before issuing an order of appointment and once an order is issued and the civil servant assume charge of such post, it will create vested rights for the civil servant concerned. Supreme Court of Pakistan in its judgment reported as 1996 SCMR 1350 have held that authority having itself appointed civil servant could not be allowed to take benefit of its lapses in order to terminate service of civil servant merely because it had itself committed an irregularity in

**ATTESTED**


  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

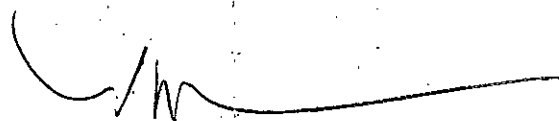
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violating procedure governing appointment. Appointment of the appellant was made by competent authority by following the prescribed procedure, petitioners were having no nexus with the mode of selection process and they could not be blamed or punished for the laxities on part of the respondents. The order affecting the rights of a person had to be made in accordance with the principle of natural justice, order taking away the rights of a person without complying with the principles of natural justice had been held to be illegal. Government was not vested with the authority to withdraw or rescind an order if the same had taken legal effect and created certain legal rights in favor of the appellant. Reliance is place on 2017 PLC (CS) 587 and 2005 TD (services) 78. The Supreme Court of Pakistan in its another judgment reported as 2015 PLC (CS) 1519 have held that appellant had not procured her appointment letter through dubious means and she could not be attributed any wrong on her part nor the respondents could be allowed to take benefit of its own oversight, lapse or ignorance of law.

06. In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 01-01-2020 is set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
02.02.2022

  
(AHMAD SULTAN TAREEM)  
CHAIRMAN

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

Certified to be true copy

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 02/2/22  
Number of Words 1600  
Copies 18/-  
Urgent 18/-  
Total 18/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 22/3/22  
Date of Delivery of Copy 22/3/22

WAKALAT NAMA

BEFORE THE PP Service Tribunal,  
Peshawar

OF 2022

Mehnaz Begum

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

VERSUS

Health Deptt.

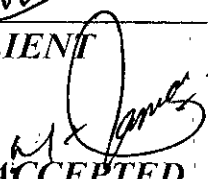
(RESPONDENT)  
(DEFENDANT)

I/We Mehnaz Begum

Do hereby appoint and constitute **MIR ZAMAN SAFI,**  
**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 cost. 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.

Dated. 11 / 05 / 2022

  
CLIENT

  
ACCEPTED  
MIR ZAMAN SAFI  
ADVOCATE

OFFICE:

Room No.6-E, 5<sup>th</sup> Floor,  
Rahim Medical Centre, G.T Road,  
Hashtnagri, Peshawar.

Mobile No.0333-9991564  
0317-9743003