

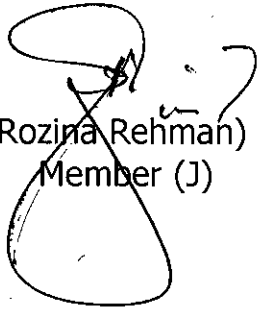
07.06.2022

Petitioner in person present.

Muhammad Adeel Butt, learned Additional Advocate General is absent. Fazal Khaliq ADEO representative of respondents present.

At the very outset, implementation report in respect of compulsory retirement from service of the present petitioner as Chowkidar was produced before the Tribunal. The petitioner requests for withdrawal of the instant execution proceedings in view of order dated 30.05.2022; allowed. Hence, the execution petition stands filed being fully satisfied. No order as to costs.

Announced
07.06.202


(Rozina Rehman)
Member (J)

E.P. No. 148/2021
Abdus Rasheed vs Govt

24.01.2022

Petitioner alongwith his counsel present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Fazal Khaliq, ADEO for respondents present.

Learned AAG requested for a short adjournment on the ground to contact the respondent-department for submission of the implementation report. Learned counsel for the petitioner has no objection. However, it is observed that CPLA has been filed in the august Supreme Court of Pakistan and the respondent-department is obligated either to get the Service Tribunal judgement dated 22.06.2021 suspended from the august Supreme Court of Pakistan or to implement the said judgement provisionally. Request of the learned AAG is acceded to with the directions to consult the respondent-department and come up with the implementation report on the next date of hearing positively. To come up for further proceedings on 10.03.2022 before S.B.


(Mian Muhammad)
Member(E)

10.03.2022

Due to retirement of the Hon'able Chairman, the case is adjourned to 07.06.2022 for the same as before.


Reader

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1434 /2019


Sakhi Ullah

V/S

Health Deptt:

INDEX

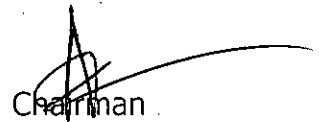
S. No.	Documents	Annexure	P. No.
01	Memo of appeal	-----	01-05
02	Copy of seniority list	A	<u>06-13</u>
03	Copies of notifications	B&C	<u>14-18</u>
04	Copy of order dated 31.05.2010	D	<u>19-21</u>
05	(Copies of departmental appeal, rejection order and judgment	E,F&G	<u>22-26</u>
06	Copies of 15.03.2010 and retirement order dated 30.12.2010	H&I	<u>27-29</u>
07	Copy of order dated 12.12.2013	J	<u>30-31</u>
08	Copies of working paper and letter dated 13.01.2015	K&L	<u>32-34</u>
09	Copies of departmental appeal and judgment dated 27.02.2018	M&N	<u>35-39</u>
10	Copy of order dated 30.09.2019	O	<u>40</u>
11	Vakatlama	-----	<u>41</u>

APPELLANT
THROUGH:

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
&
(ASAD MAHMOOD)
ADVOCATE HIGH COURT

Room No. FR 8, 4th Flour,
Bilour plaza, Peshawar cantt:
Cell# 0333-9390916

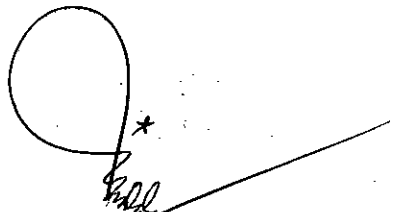
10.11.2021 Counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Learned AAG is required to contact the respondents to submit implementation report on next date. Case to come up on 01.12.2021 before S.B.


Chairman

01.12.2021 Counsel for the petitioner present. Mr. Kabirullah, Addl: AG alongwith Mr. Fazal Khaliq, ADEO for respondents present.

A detailed reply on behalf of respondents submitted which is placed on file. A copy of the same is handed over to the learned counsel for the petitioner for observation/objections, if any. Moreover, as per para-4 of the reply CPLA 414-P/2021 is also submitted in the august Supreme Court of Pakistan on which no current status has been brought before the court. Adjourned. To come up for further proceedings on 24.01.2022 before S.B.

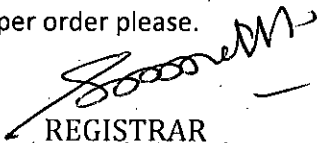
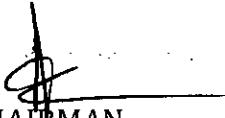


(MIAN MUHAMMAD)
MEMBER (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 148 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.08.2021	<p>The execution petition of Mr. Abdur Rasheed submitted today by Mr. Taimur Ali Khan 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>This execution petition be put up before S. Bench at Peshawar on <u>17/09/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	17.09.2021	<p>Petitioner alongwith counsel present: Notices be issued to the respondents. To come up for implementation report on 10.11.2021 before S.B.</p> <p style="text-align: right;"> Chairman</p>

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

**Khyber Pakhtunkhwa
Service Tribunal**

Execution Petition No. 148 /2021
In Service Appeal No.1194/2019

Diary No. 1087

Dated 11/08/2021

Abdur Rasheed, Ex-Chowkidar, GGPS Ball Banda (Yaqubi),
Tehsil & District Swabi.

PETITIONER

VERSUS

1. The Secretary (E&SE) Khyber Pakhtunkhwa Peshawar.
2. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer (Female), Swabi.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 22.06.2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No.1194/2019 against the order dated 25.06.2019, whereby the departmental appeal of the petitioner has been rejected against the order dated 18.10.2018, wherein major penalty of removal from service has been imposed upon the appellant with effect from 31.01.2017 with the prayer that the order dated 18.10.2018 may be modified into compulsory retirement.
2. The said appeal was finally heard by this Honourable Service Tribunal on 22.06.2021. The Honourable Service Tribunal allowed the appeal and the penalty of dismissal from service awarded to the petitioner was converted into that of compulsory retirement with effect from the date of his dismissal i.e 31.01.2017. The period of un-authorized absence of the petitioner from duty was treated as leave without pay.
(Copy of judgment dated 22.06.2021 is attached as Annexure-A)

3. That the petitioner filed application to respondent No.3 for implementation of judgment dated 22.06.2021 of this Honourable Tribunal. **(Copy of application is attached as Annexure-B)**
4. That the penalty of dismissal from service of the petitioner was converted into compulsory retirement by this Honourable Tribunal in its judgment dated 22.06.2021, however, the respondents did not convert the penalty of dismissal from service of the petitioner into compulsory retirement till date as per judgment dated 22.06.2021 of this Honourable Tribunal.
5. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this Honourable Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 22.06.2021 of this Honourable Service Tribunal in letter and spirit.
7. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 22.06.2021 of this Honourable Tribunal.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment dated 22.06.2021 of this Honourable Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.


PETITIONER
Abdur Rasheed

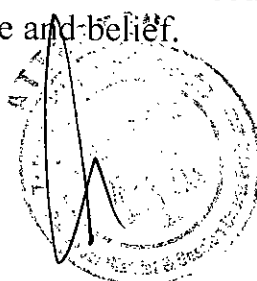
THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.


DEPONENT



A

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 1194/2019

Date of Institution ... 19.09.2019

Date of Decision ... 22.06.2021



Abdur Rasheed Ex-Chowkidar, GGPS Ball Banda (Yaqubi),
Tehsil & District Swabi. ... (Appellant)

VERSUS

The Secretary (E&SE), Khyber Pakhtunkhwa, Peshawar and two
other.

... (Respondents)

Mr. TAIMUR ALI KHAN,
Advocate

--- For appellant.

MR. USMAN GHANI,
District Attorney,

--- For respondents.

SALAH-UD-DIN
ROZINA REHMAN

--- **MEMBER (JUDICIAL)**
--- **MEMBER (JUDICIAL)**

JUDGMENT:

SALAH-UD-DIN, MEMBER:- The appellant has filed the instant Service Appeal, challenging the order dated 25.06.2019, whereby the departmental appeal of the appellant was rejected and the penalty of dismissal from service imposed upon the appellant vide order dated 18.10.2018 was upheld.

2. Precise facts forming the background of the instant Service Appeal are that the appellant was serving as Chowkidar in Education Department and was to be retired on 23.04.2018 on attaining the age of superannuation. The appellant had applied for early retirement with effect from 18.02.2018, however he was dismissed from service with

ATTESTED

effect from 31.01.2017, vide order dated 18.10.2018 passed by the competent Authority. The appellant challenged the order dated 18.10.2018 by way of filing of departmental appeal, however the same was also rejected on 25.06.2019, however the rejection order was received by the appellant on 05.09.2019. The appellant has now filed the instant Service Appeal seeking conversion of the penalty of dismissal from service into compulsory retirement.

3. Respondents have submitted their comments, wherein they have mainly alleged that disciplinary proceedings were taken against the appellant by complying rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and the appellant has rightly been awarded the major penalty of removal from service.

4. Learned counsel for the appellant has argued that the appellant had already submitted an application to the competent Authority, seeking early retirement but he was wrongly and illegally proceeded against Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He next contended that the appellant was at the verge of retirement, having an unblemished record of serving the department for more than 24 years, therefore, the respondents were not justified in awarding him the penalty of dismissal from service. In the last he contended that as the impugned penalty of dismissal from service is so harsh in the given circumstances, therefore, the same requires to be converted in to compulsory retirement from service. Reliance was placed on 2019 PLC (C.S) 111 and 2019 PLC (C.S) 263.

5. Conversely, learned District Attorney for the respondents has contended that the appellant had willfully remained absent from his duty without any leave being granted by the competent Authority, therefore, disciplinary action was initiated against the appellant. He next contended that on account of willful absence of the appellant, proper proceedings as required under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 were taken against the appellant and he was rightly dismissed from service. He further contended that the request of the appellant for conversion of his

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

dismissal from service in to compulsory retirement is not tenable for the reason that the appellant has been dismissed from service after proper compliance of procedure as laid down in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Reliance was placed on 1998 PLC (C.S) 1144 and unreported judgment of Peshawar High Court, Mingora Bench, Dar-ul-Qaza, Swat dated 24.02.2021 rendered in Writ Petition No. 211-M/2016 titled "Akhtar Ali Khan Versus Government of Khyber Pakhtunkhwa and others".

6. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

7. A perusal of record would show that on account of willful absence of the appellant from his duty, disciplinary proceedings were initiated against the appellant and vide order dated 18.10.2018 passed by competent Authority, the appellant was dismissed from service with effect from 31.01.2017 and his period of absence from duty was ordered to be considered as unauthorized absence. The departmental appeal filed by the appellant was also rejected by the appellate Authority vide order dated 25.06.2019. There is no specific denial of the respondents, regarding the fact of appointment of the appellant as Chowkidar in Education Department on 16.04.1992. The appellant has thus served for more than 24 years as Chowkidar in the Education Department. The appellant has alleged in the appeal that he was going to retire on attaining the age of superannuation on 23.04.2018, therefore, he applied for early retirement with effect from 18.02.2018, however despite action on his application, the appellant was dismissed from service on the basis of absence. The aforementioned contention of the appellant has not been specifically denied by the respondents. August Supreme Court of Pakistan of in its judgment reported as 2019 PLC (C.S) 111 has held as below:-

"(5) Yes, the respondent at the relevant time rendered ten years service. He as such could avail leave with full pay upto 387 days and extraordinary leave upto five years. But extension could not be taken

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

for granted. Nor could the unauthorized absence be justified on this ground. The respondent without extension of leave could not stay away from his duty even for a day let alone weeks and months. What are the circumstances justifying grant of extraordinary leave for three years and what were the circumstances justifying the extension of extraordinary leave. We have been told that in the first instance respondent went abroad for higher education and then his mother fell ill which called for extension in his extraordinary leave. But the questions whether his mother was suffering from a disease which was incapable of being treated in the country and that if at all it was so, was he alone in the family to attend his mother and bear the scourge have not been answered. It has become routine with the high ranking officers to go abroad on such pretexts and stay there for good without knowing that this country which has spent a great deal on them while holding examination for Civil Superior Services and providing training in the Academy needs their undivided and whole hearted service more than any other entity. Such a casual and even callous attitude towards the civil service tending to worsen it cannot be ignored so lightly. Respondent in the circumstances cannot go unpunished. But at the same time his unblemished service of more than 21 years cannot be allowed to go unrequited. We, therefore, convert this petition into appeal, allow it, set aside the impugned judgment and orders of the authority and convert his removal from service into compulsory retirement. Needless to say the service he rendered even after his reinstatement shall be counted towards his pensionary benefits. (emphasis provided).

8. Similarly, the august Supreme Court of Pakistan in its judgment reported as 2019 PLC (C.S) 263 has held as below:-

“(5) Keeping in view the facts and circumstances of the case, we consider that punishment of dismissal from service imposed upon the petitioner is quite disproportionate in the face of misconduct of remaining absent more so when the petitioner has 35 years of service with the respondents and the reason for his remaining absent is not disputed by the respondents themselves. We have proposed that the

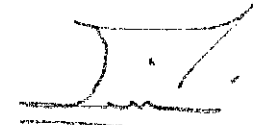
ATTESTED

penalty of dismissal from service be converted into that of compulsory retirement, which was conceded by the counsel for the petitioner."

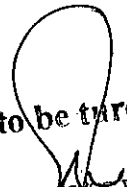
9. In view of the above discussion, the appeal in hand is allowed and the penalty of dismissal from service awarded to the appellant is converted into that of compulsory retirement with effect from the date of his dismissal i.e 31.01.2017. The period of un-authorized absence of the appellant from duty shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
22.06.2021


(ROZINA REHMAN)
MEMBER (JUDICIAL)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 7/7/2021
Number of Words 2400
Copying Fee 26
Urgent 4
Total 30
Name of Copy J
Date of Completion of Copy 7/7/2021
Date of Delivery of Copy 7/7/2021

بخدمت محترمہ ڈسٹرکٹ ایجوکیشن آفیسر صاحبہ (زنانہ) صوابی۔

(بوساطت SDEO Female رزڈ صوابی)۔

درخواست برائے جبری ریٹائرمنٹ آرڈر۔

عنوان:-

جناب عالی!

گزارش ہے کہ میں مسمی عبدالرشید ولد محمد سلیم خان گورنمنٹ گرلز پرائمری سکول بال بانڈہ میں بطور چوکیدار خدمات سرانجام دے رہا تھا لیکن آخر میں کچھ وجوہات کے بناء پر اپنی ڈیوٹی سے غیر حاضر رہا جسکی وجہ سے ڈسٹرکٹ ایجوکیشن آفیسر صاحبہ (زنانہ) نے مجھے بحکم آرڈر نمبر: 30-3928 مورخہ: 18-10-2018 مجھے ملازمت سے برخاست کر دیا۔

بعد ازاں میں نے سروس ٹریبونل پشاور میں درخواست / اپیل دائر کر دی جسکی تقریباً دو سال تک کارروائی چلتی ہے اور

آخر کار سروس ٹریبونل نے میرے حق میں فیصلہ دے دیا اور میری برخاستگی کی سزا کو جبری ریٹائرمنٹ میں تبدیل کر دیا۔

اسلئے مہربانی کر کے اس فیصلے کی نتیجے میں مورخہ: 31-01-2017 سے میری جبری ریٹائرمنٹ کے احکامات صادر

فرما کر مشکور فرماویں۔

بڑی مہربانی ہوگی۔

A. Malik

مورخہ: 12-07-2021

آپ کے لئے دعا گو عبدالرشید ولد محمد سلیم خان سابق چوکیدار گورنمنٹ گرلز پرائمری سکول بال بانڈہ یعقوبی تحصیل رزڈ صوابی۔

شناختی کارڈ نمبر: 0733383-01-162

پرسنل نمبر: 229942

بعدالت

سروس ٹریڈ یونٹ لکھنؤ

عبدالرشید 2، پنجاب سٹریٹ
عبدالرشید بنام علی محمد

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطہ پیروی کے لئے کاروبار متعلقہ

آن مقام لکھنؤ میں کیلئے ریکورڈنگ ٹرانزیکشنز اور دیگر امور
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
دکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور دکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو دکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا نکالت نامہ لکھ دیا کہ سندر ہے۔

Accepted

Attested
[Signature]

20

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الرقوم

العہدہ
واہ
العہدہ
مقام کے لئے منظور ہے۔

NON-INVOLVEMENT CERTIFICATE

Certified that Mr. Abdur Rasheed Ex-Chowkidar (BPS-4) of GGPS Bal Banda Razzar (Swabi) is not involved in any Departmental, NAB Ehtisaab Commission, Anti-Corruption, Judicial or criminal cases.

It is further certified that he didn't show any slackness in his duty and the undersigned is fully satisfied from his performance during his period of service.

NO DEMAND CERTIFICAT

Certified that nothing is outstanding against Mr. Abdur Rasheed Ex-Chowkidar (BPS-4) of GGPS Bal Banda Razzar Swabi on account of recoveries of moving or immovable properties.

It is further certified no departmental inquiry is/was pending against him.

QUALIFYING SERVICE CERTIFICAT

Certified that Mr. Abdur Rasheed Ex-Chowkidar has been serving in Elementary and secondary education department Govt. of Khyber Pakhtunkhwa since: 28-04-1992 on regular/permanent basis & date of compulsory retirement is 31-01-2017.

He availed extra-ordinary leave without pay w.e.f 13-11-2012 to 28-02-2014 during entire period of service. So, net qualifying service was 23-years, 05-months & 21-days.

01/12/21

01.12.2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 148/2021

In Service Appeal No. 1194/2019

Abdur Rashid Ex-Chowkidar GGPS Ball Banda (Yaqoobi) Tehsil Razzar District Swabi.

PETITIONER

VERSUS

4. The Secretary E&SE Khyber Pakhtunkhwa Peshawar.
5. The Director E&SE Khyber Pakhtunkhwa Peshawar.
6. The District Education Officer (Female) District Swabi.

RESPONDENTS

INDEX

S#	Description of Documents	Annexure	Page
1	Reply with affidavit	--	1-3
2	CP No. 414-P/2021	"A"	4-7
3	Application for suspension of operation	"B"	8-9



DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

District Education Officer
(Female) Swabi

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 148/2021

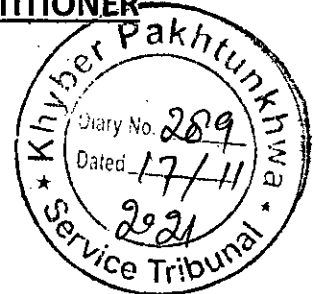
In Service Appeal No. 1194/2019

Abdur Rashid Ex-Chowkidar GGPS Ball Banda (Yaqoobi) Tehsil Razzar District Swabi.

VERSUS

1. The Secretary E&SE Khyber Pakhtunkhwa Peshawar.
2. The Director E&SE Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer (Female) District Swabi.

PETITIONER



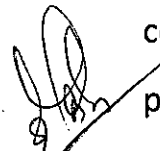
RESPONDENTS

REPLY ON BEHALF OF RESPONDENT NO. 3.

Respectfully Sheweth,

FACTS:

1. Admitted to the extent that the petitioner has filed service appeal No. 1194/2019 against the order dated 25.06.2019, whereby the departmental appeal of the petitioner has been rejected against the order dated 18.10.2018, wherein major penalty of removal from service has been imposed upon the appellant with effect from 31.01.2017 with the prayer that the order dated 18.10.2018 may be modified into compulsory retirement. However, the petitioner was proceeded under rule-9 of the Khyber Pakhtunkhwa Civil Servant (E & D) Rules, 2011 due to his willful absence from duty w.e.f. 14.12.2012 to 31.12.2012, 01.01.2013 to 31.01.2013 etc and one Faqir S/O Akbar Shah was performing duty as his proxy as reported by IMU. The CPLA 414-P/2021 has been filed in the S.A No. 1194/2019. The application for suspension of operation of the impugned judgment of the learned Service Tribunal Peshawar dated 22.06.2021 and to maintain the status-quo till the final decision of the case has also been filed. CP No. 414-P/2021 and Application annexed as (A,B).
2. Admitted to the extent that the Honourable Service Tribunal Peshwar allowed the appeal and converted the penalty of removal from service into compulsory retirement w.e.f. 31.01.2017, the petitioner in CPLA has a good prima facie case and the balance of convenience also lies in maintaining


District Edu. Officer
(Female) Swabi

status-quo of the appellant was not directed to wait till the final decision of the case the very purpose of the subjudice petition would be lost.

3. That the petitioner did not file application to the respondent No.3 for the implementation of judgment of the honourable Service Tribunal.

4. That the answering respondents have all respect for this Honourable Court and cannot even think of disregard. We have utmost respect for Tribunal/Courts and deem them to be on the best of their majesty and justice. The respondents are implementing this Honourable Tribunal's judgment in letter and spirit. The petitioner has neither made the Accountant General Khyber Pakhtunkhwa Peshawar nor the District Accounts Officer Swabi as respondents. Thus he shall face hardships in the implementation of the judgment. Furthermore C.P No. 414-P/2021 is subjudice before the apex court of Pakistan, therefore he may be directed to wait for the final decision of the apex court of Pakistan in the instant case.

August, 2021

5. That the answering respondents have all respect for this honourable Tribunal and cannot even think of disregard of this Honourable Tribunal, we have utmost respect for courts /tribunal and deem them to be on the best of their majesty and justice. So any disobedience of this honourable tribunal has neither been committed, nor even imagined.

6. That the CPLA No. 414-P/2021 in S.A No. 1194/2019 is subjudice before the apex court of Pakistan. The petitioner in CPLA has a good prima facie case and balance of convenience also lies in maintaining status-quo. If the appellant was not directed to wait till the final decision of the case the very purpose of the subjudice petition would be lost. We have utmost respect for honourable tribunal/courts and deem them to be on the best of their majesty and justice. So any disobedience or contempt of this honourable Tribunal has neither been committed nor even imagined.

That the CP No.414-P/2021 in the S.A No. 1194/2019 will fix for hearing because the application for suspension of operation of the impugned judgment of the learned Service Tribunal Khyber Pakhtunkhwa Peshawar dated 22.06.2021 and to maintain the status-quo till the final decision of the case has already been filed. The subjudice CPLA petitioner's has a good

prima facie case and balance of convenience also lies and maintaining status-quo, if the appellant was not directed to wait till the final decision of the case the very purpose of the petition would be lost. The respondents are implementing this Honourable Tribunal's judgment in letter and spirit in due time.

7. That the petitioner has no cause of action to file the instant execution petition for implementation of judgment dated 22.06.2021 of this Honourable Tribunal Pre-maturely.

In view of the above stated submissions it is earnestly requested to direct the appellant to wait till the final decision of the apex court of Pakistan in the petition in the S.A No. 1194/2019.



DISTRICT EDUCATION OFFICER
(Female) SWABI

District Edu. Officer
(Female) Swabi

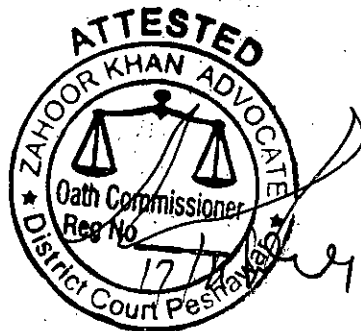
AFFIDAVIT

I Sofia Tabassum District Education Officer Female Swabi do hereby solemnly affirm and declare on oath that the contents of the accompanied reply are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this honorable tribunal.



DISTRICT EDUCATION OFFICER
(Female) SWABI

District Edu. Officer
(Female) Swabi



① Annexure - A

④

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 414-P /2021

1. Secretary Elementary & Secondary Education (E&SE), Government of Khyber Pakhtunkhwa Peshawar
2. Director Elementary & Secondary Education (E&SE) Khyber Pakhtunkhwa, Peshawar
3. District Education Officer (Female) Swabi (Wrongly mention in appeal as Mardan)

VERSUS

PETITIONERS

Abdur Rasheed, Ex-Chowkidar, GGPS
Ball Banda (Yaqubi) Tehsil & District Swabi

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER
ARTICLE 212(3) OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973 AGAINST THE
IMPUGNED JUDGMENT/ ORDER OF LEARNED
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR DATED 22/06/2021 IN SERVICE APPEAL
NO.1194/2019


RESPECTFULLY SHEWETH:

Substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment / order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar does not suffer from material illegality, factually and legally incorrect and requires interference by this august Court?


District Ed. Officer
(Female) Swabi

- (2) (5)
2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has rightly exercised its jurisdiction while allowing the appeal of respondent?
 3. Whether the impugned judgment/ order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar is not in utter violation of Khyber Pakhtunkhwa Civil Servant (E&D) Rules, 2011?
 4. Whether the respondent has not committed gross misconduct by willfully absenting himself from duty and without proper permission of the Competent Authority?
 5. Whether willful absence from duty does not constitute gross misconduct which entails major punishment of removal from service?
 6. Whether the punishment awarded to the respondent does not commensurate with the charge leveled and proved against the respondent?
 7. Whether the respondent service was not properly forfeited due to illegal and willful absence from duty?
 8. Whether the respondent has justified his willful absence from duty before the inquiry committee as well as appellate authority?
 9. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has advanced any legal and lawful reasons/ grounds for modifying the punishment of removal from service into compulsory retirement?
 10. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has not conceded / acknowledged the willful absence of respondent from duty and even then has extended the benefits of compulsory retirement?

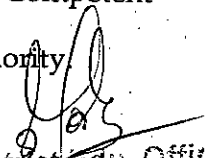

District Edu. Officer
(Female) Swabi

- (2) (6)
11. Whether the appeal of respondent was not barred by time before the Court and the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has not adverted to this important and legal aspect of the case/matter?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

1. That the respondent was serving in Education Department as Chowkidar at Government Girls Primary School Ball Banda (Yaqoobi) Tehsil Razzar, District Swabi and kept himself willfully absent from service.
2. That the respondent remained absent from duty w.e.f. 14/12/2012 to 31/12/2012 (18 days) 01/01/2013 to 31/01/2013/01/02/2013 to 01/12/2013/01/01/2014 to 01/02/2014/02/03/2015 to 03/03/2015/01/12/2015 to 31/12/2015/01/01/2016/31/01/2016 and 15,27,28 May 2016 and one Faqir S/o Akbar Shah was performing duty as his proxy as reported by IMU.
3. That proper show cause notice dated 20/5/2017 was served on the respondent but the respondent not responded so, a final show cause notice was also published in Daily Mashriq on 26/12/2017 and Daily Ajj Peshawar on 25/12/2017, but despite this he failed to attend the office to justify the allegation leveled against him.
4. That proper inquiry committee was constituted vide order dated 1/11/2017 who property conducted inquiry and submitted its recommendations.
5. That vide order/dated 18/10/2018 the major penalty of dismissal from service was imposed on the respondent.
6. That the respondent filed departmental appeal before the Competent Authority which was rejected/ turndown by the Competent Authority


District Edu. Officer
(Female) Swabi

- (4) (7)
7. That being aggrieved the respondent filed service appeal No. 1194 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in which comments were asked from the petitioners which were accordingly filed and denied the stance of the respondent.
 8. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar vide order/Judgment dated 22-06-2021 accepted the appeal of the respondent.
 9. That the petitioners being aggrieved from the impugned judgment/order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 22/06/2021 in service appeal No.1194/ prefers this CPLA.
 10. That the petitioners seek leave of this august court against the judgment/order of this Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 22-06-2021 in Service Appeal No. 1194/2019.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order dated 22/06/2021 in service appeal No.1194/2019 may graciously be granted.

(Moeen-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

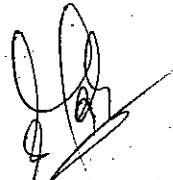
Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record



District Edu. Officer
(Female) Swabi

Annexure B
⑧

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CMA NO. _____/2021

IN

CPLA NO. 414-P /2021

Secretary Elementary & Secondary Education (E&SE), Government of
Khyber Pakhtunkhwa Peshawar

-----**PETITIONERS**

VERSUS

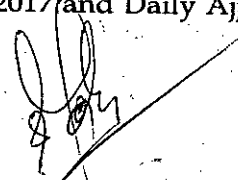
Abdur Rasheed

-----**RESPONDENT**

**APPLICATION UNDER ORDER XX RULE 1 OF THE SUPREME COURT
ORDERS & RULES 1980 FOR SUSPENSION OF OPERATION OF THE
IMPUGNED JUDGMENT OF THE LEARNED SERVICE TRIBUNAL,
PESHAWAR DATED 22/06/2021 IN SERVICE APPEAL NO. NO.1194/2019
AND MAINTAIN THE STATUS-QUO TILL THE FINAL DECISION OF
THE CASE.**

RESPECTFULLY SHEWETH:-

1. That the respondent was serving in Education Department as Chowkidar at Government Girls Primary School Ball Banda (Yaqoobi) Tehsil Razzar, District Swabi and kept himself willfully absent from service.
2. That the respondent remained absent from duty w.e.f. 14/12/2012 to 31/12/2012 (18 days) 01/01/2013 to 31/01/2013/01/02/2013 to 01/12/2013/01/01/2014 to 01/02/2014/02/03/2015 to 03/03/2015/01/12/2015 to 31/12/2015/01/01/2016/31/01/2016 and 15,27,28 May 2016 and one Faqir S/o Akbar Shah was performing duty as his proxy as reported by IMU.
3. That proper show cause notice dated 20/5/2017 was served on the respondent but the respondent not responded so, a final show cause notice was also published in Daily Mashriq on 26/12/2017 and Daily Ajj Peshawar


District Edu. Officer
(Female) Swabi

④

②⑧

⑨

on 25/12/2017, but despite this he failed to attend the office to justify the allegation leveled against him.

4. That proper inquiry committee was constituted vide order dated 1/11/2017 who property conducted inquiry and submitted its recommendations.
5. That vide order/dated 18/10/2018 the major penalty of dismissal from service was imposed on the respondent.
6. That the respondent filed departmental appeal before the Competent Authority which was rejected/ turndown by the Competent Authority.
7. That being aggrieved the respondent filed service appeal No. 1194 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in which comments were asked from the petitioners which were accordingly filed and denied the stance of the respondent.
8. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar vide order/Judgment dated 22-06-2021 accepted the appeal of the respondent.
9. That the petitioner has a good prima facie case and balance of convenience also lies in maintaining status-quo.
10. That if the impugned judgment and order is not suspended and status-quo is not granted the very purpose of this petition would be lost.

It is, therefore, humbly prayed that the operation of the impugned judgment/order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar in service appeal No.1194/2019 Dated 22/06/2021 may graciously be suspended and to maintain status quo till the final decision of the case.



District Ld. Officer
(Female) Swabi

(Moeen-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

E.P No.148/2021

In Service Appeal No.1194/2019.

Abdur Rasheed Ex-Chowkidar, GGPS Ball Banda (Yaqoobi) Tehsil Razzar, District Swabi **Appellant**

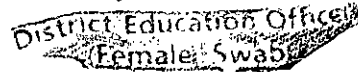
VERSUS

3. The Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
4. The Director E&SE, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female) District Swabi..... **Respondents**

INDEX

S#	Description of Documents	Annexure	Page
1	Implementation and Compliance Report with Affidavit.	-	01
2	Office order	(A)	02


**DISTRICT EDUCATION OFFICER
(FEMALE) SWABI**


District Education Officer
(Female) Swabi

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

E.P No.148/2021

In Service Appeal No.1194/2019.

Abdur Rasheed Ex-Chowkidar, GGPS Ball Banda (Yaqoobi) Tehsil Razzar, District Swabi **Appellant**

VERSUS

1. The Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director E&SE, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female) District Swabi..... **Respondents**

Submission of implementation/compliance report.

Respectfully Sheweth,

Facts.

1. That the petitioner filed the above noticed execution petition before the Honourable Service Tribunal Peshawar.
2. That the petitioner has initiated implementation proceeding before this Honourable Service Tribunal, wherein notice has been issued to the respondents for implementation and compliance report for 10/03/2022.
3. That the conditional implementation and compliance report is hereby submitted for your kind perusal and consideration.

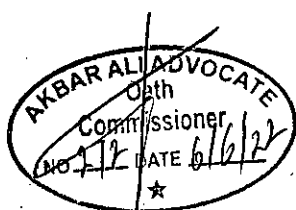
It is, therefore, humbly prayed that the implementation and compliance report may very graciously be accepted.

DISTRICT EDUCATION OFFICER
(FEMALE) SWABI
Respondent No.3

District Education Officer
(Female) Swabi

Affidavit

I do hereby solemnly affirm and declare on oath that the contents of the implementation and compliance report submitted by the respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.



DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

District Education Officer
(Female) Swabi



DISTRICT EDUCATION OFFICE (FEMALE) SWABI

(Office phone & Fax No 0938280339, emisfswabi@yahoo.com)

OFFICE ORDER

In compliance of Service Tribunal Peshawar Judgment passed in Service Appeal No.1194/2019, titled **Abdur Rasheed Ex-Chowkidar GGPS Ball Banda (Yaqoobi), Tehsil Razzar District Swabi**, wherein the appeal was allowed and penalty of removal from service was converted into that of compulsory retirement with effect from the date of his removal i.e. 31/01/2017 and subsequent execution petition No.148/2021 filed by the appellant, wherein notice has been issued to the Department Elementary and Secondary Education for implementation and compliance report for 10/03/2022.

The penalty of removal from service awarded to the appellant is converted into that of compulsory retirement, subject to the condition of the final out come in CPLA No.414-P/2021 in the instant service appeal.

(Sofia Tabassum)
District Education Officer
(Female) Swabi

Endst: No. 1284-87 /Dated Swabi the 30/05 /2022.

Copy forwarded for information to the:-

1. Registrar Service Tribunal Peshawar.
2. P.S Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. P.A to Director Elementary & Secondary Education, KP, Peshawar.
4. District Accounts Officer, Swabi.

District Education Officer
(Female) Swabi

District Education Officer
(Female) Swabi

on 25/12/2017, but despite this he failed to attend the office to justify the allegation leveled against him.

4. That proper inquiry committee was constituted vide order dated 1/11/2017 who properly conducted inquiry and submitted its recommendations.
5. That vide order/dated 18/10/2018 the major penalty of dismissal from service was imposed on the respondent.
6. That the respondent filed departmental appeal before the Competent Authority which was rejected/ turndown by the Competent Authority.
7. That being aggrieved the respondent filed service appeal No. 1194 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in which comments were asked from the petitioners which were accordingly filed and denied the stance of the respondent.
8. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar vide order/Judgment dated 22-06-2021 accepted the appeal of the respondent.
9. That the petitioner has a good prima facie case and balance of convenience also lies in maintaining status-quo.
10. That if the impugned judgment and order is not suspended and status-quo is not granted the very purpose of this petition would be lost.

It is, therefore, humbly prayed that the operation of the impugned judgment/order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar in service appeal No.1194/2019 Dated 22/06/2021 may graciously be suspended and to maintain status quo till the final decision of the case.

(Moeen-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CMA NO. _____/2021

IN

CPLA NO. 414-P /2021

Secretary Elementary & Secondary Education (E&SE), Government of
Khyber Pakhtunkhwa Peshawar

-----**PETITIONERS**

VERSUS

Abdur Rasheed

-----**RESPONDENT**

**APPLICATION UNDER ORDER XX RULE 1 OF THE SUPREME COURT
ORDERS & RULES 1980 FOR SUSPENSION OF OPERATION OF THE
IMPUGNED JUDGMENT OF THE LEARNED SERVICE TRIBUNAL,
PESHAWAR DATED 22/06/2021 IN SERVICE APPEAL NO. NO.1194/2019
AND MAINTAIN THE STATUS-QUO TILL THE FINAL DECISION OF
THE CASE.**

RESPECTFULLY SHEWETH:-

1. That the respondent was serving in Education Department as Chowkidar at Government Girls Primary School Ball Banda (Yaqoobi) Tehsil Razzar, District Swabi and kept himself willfully absent from service.
2. That the respondent remained absent from duty w.e.f. 14/12/2012 to 31/12/2012 (18 days) 01/01/2013 to 31/01/2013/01/02/2013 to 01/12/2013/01/01/2014 to 01/02/2014/02/03/2015 to 03/03/2015/01/12/2015 to 31/12/2015/01/01/2016/31/01/2016 and 15,27,28 May 2016 and one Faqir S/o Akbar Shah was performing duty as his proxy as reported by IMU.
3. That proper show cause notice dated 20/5/2017 was served on the respondent but the respondent not responded so, a final show cause notice was also published in Daily Mashriq on 26/12/2017 and Daily Ajj Peshawar

- (4) (7)
7. That being aggrieved the respondent filed service appeal No. 1194 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in which comments were asked from the petitioners which were accordingly filed and denied the stance of the respondent.
 8. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar vide order/Judgment dated 22-06-2021 accepted the appeal of the respondent.
 9. That the petitioners being aggrieved from the impugned judgment/order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 22/06/2021 in service appeal No.1194/ prefers this CPLA.
 10. That the petitioners seek leave of this august court against the judgment/order of this Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 22-06-2021 in Service Appeal No. 1194/2019.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order dated 22/06/2021 in service appeal No.1194/2019 may graciously be granted.

(Moeen-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

- (3) (6)
11. Whether the appeal of respondent was not barred by time before the Court and the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has not adverted to this important and legal aspect of the case/matter?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

1. That the respondent was serving in Education Department as Chowkidar at Government Girls Primary School Ball Banda (Yaqoobi) Tehsil Razzar, District Swabi and kept himself willfully absent from service.
2. That the respondent remained absent from duty w.e.f. 14/12/2012 to 31/12/2012 (18 days) 01/01/2013 to 31/01/2013/01/02/2013 to 01/12/2013/01/01/2014 to 01/02/2014/02/03/2015 to 03/03/2015/01/12/2015 to 31/12/2015/01/01/2016/31/01/2016 and 15,27,28 May 2016 and one Faqir S/o Akbar Shah was performing duty as his proxy as reported by IMU.
3. That proper show cause notice dated 20/5/2017 was served on the respondent but the respondent not responded so, a final show cause notice was also published in Daily Mashriq on 26/12/2017 and Daily Ajj Peshawar on 25/12/2017, but despite this he failed to attend the office to justify the allegation leveled against him.
4. That proper inquiry committee was constituted vide order dated 1/11/2017 who property conducted inquiry and submitted its recommendations.
5. That vide order/dated 18/10/2018 the major penalty of dismissal from service was imposed on the respondent.
6. That the respondent filed departmental appeal before the Competent Authority which was rejected/ turndown by the Competent Authority.

- (2) (5)
2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has rightly exercised its jurisdiction while allowing the appeal of respondent?
 3. Whether the impugned judgment/ order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar is not in utter violation of Khyber Pakhtunkhwa Civil Servant (E&D) Rules, 2011?
 4. Whether the respondent has not committed gross misconduct by willfully absenting himself from duty and without proper permission of the Competent Authority?
 5. Whether willful absence from duty does not constitute gross misconduct which entails major punishment of removal from service?
 6. Whether the punishment awarded to the respondent does not commensurate with the charge leveled and proved against the respondent?
 7. Whether the respondent service was not properly forfeited due to illegal and willful absence from duty?
 8. Whether the respondent has justified his willful absence from duty before the inquiry committee as well as appellate authority?
 9. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has advanced any legal and lawful reasons/ grounds for modifying the punishment of removal from service into compulsory retirement?
 10. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has not conceded / acknowledged the willful absence of respondent from duty and even then has extended the benefits of compulsory retirement?

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 414-P /2021

1. Secretary Elementary & Secondary Education (E&SE), Government of Khyber Pakhtunkhwa Peshawar
2. Director Elementary & Secondary Education (E&SE) Khyber Pakhtunkhwa, Peshawar
3. District Education Officer (Female) Swabi (Wrongly mention in appeal as Mardan)

PETITIONERS

VERSUS

Abdur Rasheed, Ex-Chowkidar, GGPS
Ball Banda (Yaqubi) Tehsil & District Swabi

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER
ARTICLE 212(3) OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973 AGAINST THE
IMPUGNED JUDGMENT/ ORDER OF LEARNED
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR DATED 22/06/2021 IN SERVICE APPEAL
NO.1194/2019

RESPECTFULLY SHEWETH:

Substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment / order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar does not suffer from material illegality, factually and legally incorrect and requires interference by this august Court?

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Execution Petition No. 148/2021

In Service Appeal No. 1194/2019

Abdur Rashid Ex-Chowkidar GGPS Ball Banda (Yaqoobi) Tehsil Razzar District Swabi.

PETITIONER

VERSUS

4. The Secretary E&SE Khyber Pakhtunkhwa Peshawar.
5. The Director E&SE Khyber Pakhtunkhwa Peshawar.
6. The District Education Officer (Female) District Swabi.

RESPONDENTS

INDEX

S#	Description of Documents	Annexure	Page
1	Reply with affidavit	--	1-3
2	CP No. 414-P/2021	"A"	4-7
3	Application for suspension of operation	"B"	8-9


DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

District Education Officer
(Female) Swabi

(1)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Execution Petition No. 148/2021

In Service Appeal No. 1194/2019

Abdur Rashid Ex-Chowkidar GGPS Ball Banda (Yaqoobi) Tehsil Razzar District Swabi.

PETITIONER

VERSUS

1. The Secretary E&SE Khyber Pakhtunkhwa Peshawar.
2. The Director E&SE Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer (Female) District Swabi.

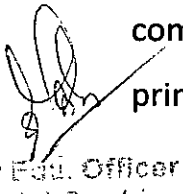
RESPONDENTS

REPLY ON BEHALF OF RESPONDENT NO. 3.

Respectfully Sheweth,

FACTS:

1. Admitted to the extent that the petitioner has filed service appeal No. 1194/2019 against the order dated 25.06.2019, whereby the departmental appeal of the petitioner has been rejected against the order dated 18.10.2018, wherein major penalty of removal from service has been imposed upon the appellant with effect from 31.01.2017 with the prayer that the order dated 18.10.2018 may be modified into compulsory retirement. However, the petitioner was proceeded under rule-9 of the Khyber Pakhtunkhwa Civil Servant (E & D) Rules, 2011 due to his willful absence from duty w.e.f. 14.12.2012 to 31.12.2012, 01.01.2013 to 31.01.2013 etc and one Faqir S/O Akbar Shah was performing duty as his proxy as reported by IMU. The CPLA 414-P/2021 has been filed in the S.A No. 1194/2019. The application for suspension of operation of the impugned judgment of the learned Service Tribunal Peshawar dated 22.06.2021 and to maintain the status-quo till the final decision of the case has also been filed. CP No. 414-P/2021 and Application annexed as (A,B).
2. Admitted to the extent that the Honourable Service Tribunal Peshwar allowed the appeal and converted the penalty of removal from service into compulsory retirement w.e.f. 31.01.2017, the petitioner in CPLA has a good prima facie case and the balance of convenience also lies in maintaining


District Education Officer

status-quo of the appellant was not directed to wait till the final decision of the case the very purpose of the subjudice petition would be lost.

3. That the petitioner did not file application to the respondent No.3 for the implementation of judgment of the honourable Service Tribunal.
4. That the answering respondents have all respect for this Honourable Court and cannot even think of disregard. We have utmost respect for Tribunal/Courts and deem them to be on the best of their majesty and justice. The respondents are implementing this Honourable Tribunal's judgment in letter and spirit. The petitioner has neither made the Accountant General Khyber Pakhtunkhwa Peshawar nor the District Accounts Officer Swabi as respondents. Thus he shall face hardships in the implementation of the judgment. Furthermore C.P No. 414-P/2021 is subjudice before the apex court of Pakistan, therefore he may be directed to wait for the final decision of the apex court of Pakistan in the instant case.
5. That the answering respondents have all respect for this honourable Tribunal and cannot even think of disregard of this Honourable Tribunal, we have utmost respect for courts /tribunal and deem them to be on the best of their majesty and justice. So any disobedience of this honourable tribunal has neither been committed, nor even imagined.
6. That the CPLA No. 414-P/2021 in S.A No. 1194/2019 is subjudice before the apex court of Pakistan. The petitioner in CPLA has a good prima facie case and balance of convenience also lies in maintaining status-quo. If the appellant was not directed to wait till the final decision of the case the very purpose of the subjudice petition would be lost. We have utmost respect for honourable tribunal/courts and deem them to be on the best of their majesty and justice. So any disobedience or contempt of this honourable Tribunal has neither been committed nor even imagined.


That the CP No.414-P/2021 in the S.A No. 1194/2019 will fix for hearing because the application for suspension of operation of the impugned judgment of the learned Service Tribunal Khyber Pakhtunkhwa Peshawar dated 22.06.2021 and to maintain the status-quo till the final decision of the case has already been filed. The subjudice CPLA petitioner's has a good



prima facie case and balance of convenience also lies and maintaining status-quo, if the appellant was not directed to wait till the final decision of the case the very purpose of the petition would be lost. The respondents are implementing this Honourable Tribunal's judgment in letter and spirit in due time.

7. That the petitioner has no cause of action to file the instant execution petition for implementation of judgment dated 22.06.2021 of this Honourable Tribunal Pre-maturely.

In view of the above stated submissions, it is earnestly requested to direct the appellant to wait till the final decision of the apex court of Pakistan in the petition in the S.A No. 1194/2019.


DISTRICT EDUCATION OFFICER
(Female) SWABI

District Edu. Officer
(Female) Swabi

AFFIDAVIT

I Sofia Tabassum District Education Officer Female Swabi do hereby solemnly affirm and declare on oath that the contents of the accompanied reply are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this honorable tribunal.


DISTRICT EDUCATION OFFICER
(Female) SWABI

District Edu. Officer
(Female) Swabi

