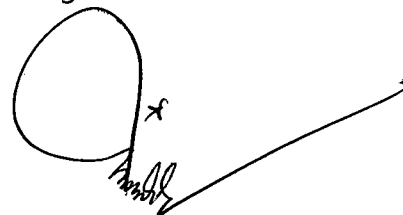


16.08.2022

Petitioner in person present. Mr. Kabirullah Khattak,
Additional Advocate General for the respondents present.

Petitioner produced copy of the Notification dated 11.08.2022 whereby the departmental authority has issued his retirement order on attaining the age of superannuation w.e.f. 03.04.2018. Though the petitioner stated at the bar that he feels satisfied with the said Notification yet he requested for adjournment to seek response of the respondent department to release him pensionary benefits. Request is acceded to and the case is adjourned. To come up for further proceedings before the S.B on 13.10.2022.

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a long horizontal stroke extending to the right.

(Mian Muhammad)
Member (E)

24th June, 2022

Petitioner in person present: Neither the law officer nor anybody is present on behalf of the respondents.

Despite clear directions given on the previous date, respondents have not submitted implementation report. This Tribunal has no other alternative but to take action against respondents. The Accountant General Khyber Pakhtunkhwa is directed to attach salaries of the respondents i.e Secretary Health Department, Peshawar and Director General Health Services Khyber Pakhtunkhwa, Peshawar till further orders by this Tribunal. Show cause notice be also issued to the respondents as to why they should not be proceeded under the Contempt of Court Ordinance 2003.

To come up on 16.08.2022 for further proceedings.

(Faint signature)




(Kalim Arshad Khan)
Chairman

23.05.2022

Learned counsel for the petitioner present. Mr. Naseer-ud-din Shah, Assistant Advocate General alongwith Mr. Zia Ullah, Deputy Secretary (Litigation) and Mr. Safiullah Focal Person for the respondents present.

Representative of the department requested for short adjournment on the ground that the case is under process for implementation of the Service Tribunal judgement dated 06.01.2016. As it is an old case of the year 2016 and implementation is being delayed on one pretext on the other, the exhaustive and well elaborated order sheet dated 09.08.2021 seems to have not been taken into account by the respondent department. An attested copy of the order sheet dated 09.08.2021 be therefore provided to representative of the department with strict direction to submit final and conclusive implementation report on the next date. To come up for implementation report on 24.06.2022 before S.B.


(Mian Muhammad)
Member (E)

13.01.2022

Petitioner present in person.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Former made a request for adjournment. Request is accorded and case is adjourned. To come up for further proceedings on 01.03.2022 before S.B.



(Rozina Rehman)
Member (J)

1-3-2022

Due to retirement of the Honorable Chairman the case is adjourned to come up for the same as before on 23-5-2022


Reader

06.12.2021

Petitioner in person present. Mr. Kabirullah Khattak, Addl:
AG for respondents present.

Petitioner requested that detail arguments of both the sides
have been heard by the Single Bench presided ^{over} by the Hon'able
Chairman and requested that it would be appropriate to fix the
execution petition in hand to the same bench. Request is allowed.
To come up for further proceedings on 15.12.2021 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

15.12.2021

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

Counsel for the petitioner seeks adjournment on the ground
that as per previous order sheet dated 06.12.2021 this case may
be placed before the worthy Chairman. Adjourned. To come up
for further proceedings on 13.01.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER (E)

E.P 122/2016

15.09.2021

Petitioner alongwith counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Safiullah, Litigation Officer for the respondents present.

Petitioner as well as representative of respondents No. 1 & 2 have furnished their detailed reports alongwith supporting documents, which are placed on file and copies whereof handed over to each opposite parties. To come up for arguments on 05.10.2021 before S.B.


Chairman

05.10.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Wisal Ali Shah, Assistant for the respondents present.

Learned AAG seeks short adjournment. Request is accorded. To come up for arguments on 08.11.2021 before the S.B.


Chairman

08.11.2021

Petitioner in person and Mr. Kabirullah Khattak, Addl. AG alongwith Jaffar Ali, Asstt. for the respondents present.

To come up for further proceedings on 06.12.2021 before S.B.


Chairman

09.08.2021

Petitioner alongwith counsel and Mr. Kabirullah Khattak, Addl. AG alongwith Ziaullah, D.S (Litigation) and Latifur Rehman, Section Officer-V for the respondents present.

2. On 28.10.2016, counsel for the petitioner and Mr. Usman Ghani, Sr.G.P for the respondents were present; however, implementation report was not submitted and consequently salaries of respondents No. 2 & 3 were attached followed by adjournment of the matter for 13.01.2017. In the meantime on 17.11.2016, Mr. Tahir Iqbal, Legal Officer, Health Department submitted application for release of salary of the Secretary Health Department (respondent No. 2) and the salary was ordered to be released on consideration of the submission that summary for reinstatement of the appellant had been sent to the competent authority for approval. Again before the date fixed i.e. 13.01.2017, file was requisitioned on 29.11.2016 on application of Director General Health Services for release of the salary. It is mentioned in the order of even date that the order of this Tribunal has been complied with. So it was directed to release his salary. On 17.01.2017 i.e. the date fixed, petitioner was present in person and respondents were represented by Additional AG. Quite contrary to the



observations in order dated 29.11.2016, it was mentioned in the order dated 13.01.2017 that implementation report was not submitted and the matter was adjourned for such report on 24.03.2017. Thereafter, the proceedings were adjourned time and again almost for the similar reason and it was on 11.04.2018 that the representative of the respondents produced notification dated 23.11.2016 through which the petitioner was reinstated in service. Copy of said notification was handed over to learned counsel for the petitioner who informed that on attaining the age of superannuation, the petitioner had retired from service on 04.04.2018. Thereafter, the proceedings were adjourned for production of complete record of enquiry and connected documents. In the proceedings onwards, the adjournments were granted for similar purpose. On last date i.e. 02.08.2021, the matter was thrashed out as to the cause of delay in execution of judgment of this Tribunal. Representative of the respondent department furnished the copy of notification dated 08.01.2021, whereby departmental enquiry committee was reconstituted to conduct preliminary enquiry in delaying the case of disciplinary proceedings against the petitioner. Obviously, the said enquiry is internal matter of the department and they are bound to conduct and conclude the same as far as fixation of responsibility in



the official channel is concerned. However, it has become evident from the facts of letter dated 18.01.2021 that the enquiry as directed by judgment of this Tribunal has so far not been concluded albeit two months time was given for its conclusion.

3. Learned counsel for the petitioner contends that the petitioner after his retirement on superannuation on 04.04.2018 remained no more liable for departmental proceedings. Obviously, this contention of the learned counsel is rebuttable by the respondents and needs proper determination after giving opportunity of hearing to both the parties. There is another question akin to the said contention that who contributed in delay of enquiry and in its timely conclusion. For settlement of this question, the point of communication of the reinstatement order of the petitioner is quite pertinent. Therefore, the parties are given liberty to submit their respective written view/stance on the main point resting in contention of the petitioner's counsel discussed before and also on the connected point. To come up for further proceedings in the given term on 15.09.2021 before S.B.


Chairman

respondents were required to do in letter & spirit of the judgment was issuance of formal order of reinstatement of the petitioner for the purpose of enquiry and to conclude the enquiry having regard to the requirement indicated in the judgment, within two months from the receipt of copy of the judgment.

3. Today the representative of the respondents present before the court, has furnished the copy of notification dated 18.01.2021, whereby, departmental enquiry committee was re-constituted to conduct preliminary enquiry in delaying the case of disciplinary proceedings initiated against Dr. Illa-ud-Din (present petitioner). The TORs of the Committee include among others that why the show cause notice signed by the Chief Minister Khyber Pakhtunkhwa could not be served upon the accused well in time and why the file was sent into dormant. Copy of the said notification has been placed on file for further necessary action.

4. The representative has been directed to produce the original file alongwith note parts, wherein, case for reinstatement of the petitioner was moved in pursuance to judgment of this Tribunal. To come up for further proceedings on 09.08.2021.


Chairman

EP 122/2016

02.08.2021

Petitioner in person. Mr. Kabirullah Khattak, Addl. AG alongwith Latifur Rehman, Section Officer Establishment Health Department for the respondents present.

2. This Execution Petition is pending since 28.07.2016 for execution of judgment dated 06.01.2016 passed in Service Appeal No. 3051/2010. According to operative part of the judgment, the major penalty of removal from service imposed upon the petitioner then appellant was set aside and as a consequence thereof he was reinstated in service for the purpose of enquiry to be conducted under the provisions of Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000, wherein, apart from other factors, the plea of reinstatement of similarly placed employees was also be considered. Inquiry proceedings were deemed pending, under the provisions of sub-section (2) of Section 2 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) (Repeal) Act, 2011 which shall be concluded within a reasonable time but not beyond the period of two months from the date of receipt of the judgment. The appeal was accepted in the given terms. The execution petition was filed on 28.07.2016 in the style of COC petition with simple reason that respondents were time and again requested to implement the judgment in letter & spirit but they were reluctant. What the

04.01.2021

Petitioner alongwith counsel and Addl. AG alongwith Sher Baz Khan, S.O (Litigation) for respondents present.

The representative of respondents requests for time to explain the contents of report submitted on 16.11.2020 and also the stance of respondents.

He is expected to appear before the Tribunal fully prepared and conversant with the facts as well as law involved in the matter.

Adjourned to 16.02.2021 before S.B.


Chairman

16.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 14.04.2021.


Reader

14.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 02.08.2021 for the same as before.


Reader

EP 122/16
24.09.2020

Dr Illaud Din vs Govt

Petitioner in person and Addl. AG alongwith Hazrat Shah, S.O for the respondents present.

Petitioner states that in the light of previous order of this Tribunal the requisite documents alongwith application were handed over to Section Officer-V, Government of Khyber Pakhtunkhwa, Health Department, Peshawar. The representative, on the other hand, states that the matter has not been finalized till date and more time would be required for the purpose.

In the circumstances Section Officer-V, Health Department, Government of Khyber Pakhtunkhwa, Peshawar shall appear on next date alongwith all the relevant record in order to apprise this Tribunal regarding the progress in the matter.

Adjourned to 16.11.2020 before S.B.


Chairman

16.11.2020

Appellant in person and Addl. AG alongwith Asif Kamran, SO-V Health Department for respondents present.

Representative of the respondents has submitted a detail report alongwith supporting documents. Placed on record. To come up for rejoinder/further proceedings on 04.01.2021 before S.B.


Chairman

10.08.2020

Petitioner alongwith counsel and Addl. AG alongwith Muhammad Irfan, Section Officer-V for the respondents present.

The matter was argued by both sides and at the end it was agreed upon that the petitioner would submit a fresh application for issuance of his retirement notification alongwith all the necessary documents to the Section Officer-V within two days, who would process the same at the earliest and would prepare the requisite summary in minimum possible time. The representative of respondents is of the view that a summary for the Chief Minister would be necessary due to issuance of show cause notice to the petitioner by the competent authority (Chief Minister) on 27.03.2017, though not acted upon.

In view of the undertaking by both the parties, as noted herein above, it is believed that the matter would reach its logical end without any further complication and loss of time.

To come up for further proceedings on 24.09.2020 before S.B.



Chairman

Dr. Illaud Din vs Govt

E.P No. 122/2016
21.07.2020

Mr. Bilal Ahmad Kakazai, Advocate for appellant and appellant himself are present. Mr. Kabirullah Khattak, Additional AG alongwith representative of the department Mr. Hazrat Shah, Superintendent are also present.

The perusal of record reveal that the judgment passed by this Tribunal has not been implemented in its letter and spirit and while giving it effect in accordance there with much time has been consumed the learned Additional AG submitted a copy of a letter bearing No. SOH(EV)1-194/2007/Dr. Illa-ud-Din Dated Peshawar the 7th January 2020 wherein the matter has been brought into the notice of Director General Health Services Khyber Pakhtunkhwa, Peshawar, in para-5 of referred to letter while embodying their intention of implementing the judgment of this Tribunal petitioner was required to furnish certain documents so that the issue with respect to his back benefits could be settled in its satisfactory manner. The bare perusal of the list of required documents would reveal that it is available in the office concerned, therefore, representative of the department concerned is directed to implement the judgment of this Tribunal within the shortest possible time by accelerating the process and producing documentary proof to this Tribunal for the steps so taken and the judgment-order implemented on 10.08.2020.

(MUHAMMAD JAMAL KHAN)
MEMBER

18.02.2020

Junior Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith M/S Hazrat Shah, Superintendent on behalf of respondents No. 1 & 2 and Jaffar Shah, Assistant on behalf of respondent No. 3 present. Representative of respondent No. 3 furnished copy of letter dated 7th January 2020 issued by Section Officer Health Department regarding requisitioned of some documents from the Director General Health Service Khyber Pakhtunkhwa Peshawar for further process. Copy of the same is placed on record. To come up for further proceeding on 19.03.2020 before S.B.



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

19.03.2020

Petitioner in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. Petitioner seeks adjournment on the ground that his counsel is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 30.04.2020 for further proceedings before S.B.



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

29.04.2020

Due to COVID19, the case is adjourned to 21.07.2020 for the same as before.



Reader

E.P No. 122/2016

10.12.2019

Junior to counsel for the petitioner and Addl. AG alongwith Hazrat Shah, Superintendent for the respondents present.

Representative of the respondents seeks further time. Due to general strike of the Bar, learned counsel for the petitioner is also not available today. Adjourned to 09.01.2020 for proceedings in the light of order dated 05.11.2019.

Chairman



09.01.2020

Nemo for petitioner. Addl. AG alongwith Hazrat Shah, Superintendent for the respondents present.

Due to general strike of the Bar instant proceedings are adjourned to 18.02.2020 before S.B.

Chairman



05.11.2019

Counsel for the petitioner and Addl. AG alongwith Sher Baz Khan, S.O (Litigation) for the respondents present.

Through the judgment under implementation the impugned order of removal of appellant from service, passed on 03.09.2010, was set aside and the respondents were required to reinstate the petitioner for the purpose of denovo enquiry under the provisions of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. The respondents were further required to keep in consideration the reinstatement of similarly placed employees.

The record, as provided by the respondents to learned AAG, suggests that on 03.11.2016 a notification regarding reinstatement of petitioner was issued while, on 09.02.2017, an enquiry report was submitted which was followed by a show cause notice dated 29.03.2017, whereby the penalty of withholding of four increments for two years was proposed against the petitioner. The record is, however, silent regarding any order issued by competent authority in furtherance to the enquiry and show cause notice. Apparently and in view of the record referred to by learned AAG, after the setting aside of order dated 03.09.2010 no punitive order has been passed against the petitioner till the date of his retirement i.e. 04.04.2018. The representative of respondents, in the circumstances, requests for further time to lay hands on any adverse order issued against the petitioner or, in the alternative, to process the case regarding the payment of retirement benefits/salaries interregnum in favour of petitioner.

Adjourned to 10.12.2019 for further proceedings.


Chairman

EP 122/16

12.09.2019

Counsel for the petitioner and Addl. AG present.

On the last date of hearing the respondents were required to furnish the implementation report while the respondent No. 3 was required to appear in person today.

Despite repeated calls no representative of the respondents is in attendance nor respondent No. 3 has cared to comply with the previous order of this Tribunal. Office shall, therefore, issue warrant of attachment of salary of respondent No. 3 in accordance with law.

To come up for further proceedings on 07.10.2019 before S.B.


Chairman

07.10.2019

Counsel for the petitioner and Addl. AG alongwith Sher Baz, Section Officer for the respondents present.

The representative of respondents states that the case of implementation of judgment will be shortly prepared in the light of directions contained in the judgment and will be processed till next date of hearing.

Adjourned to 05.11.2019 on which date the requisite report shall positively be submitted.

In view of statement on behalf of the respondents the order of attachment of salary of respondent No. 3 is hereby withdrawn.

Chairman 

31.07.2019

Petitioner alongwith his counsel and Mr. Usman Ghani, District Attorney alongwith Mr. Hazrat Shah, Supdt for respondents present.

The representative of the respondents was required to update the Tribunal regarding any development towards the implementation of judgment under execution. He left the court premises in order to obtain the requisite information but did not turn up till now (2:45 PM).

It is gatherable from record that the instant proceedings were initiated on 28.07.2016 while on a number of previous occasions the respondents were required to furnish the implementation report, but in vain. In the circumstances, the respondent No.3 shall appear in person on next date of hearing in order to apprise the Tribunal regarding implementation of judgment under execution.

Adjourned to 12.09.2019 before the S.B. Office is directed to serve a copy of instant order upon the concerned respondents.

[Faint, illegible text]


Chairman

29.05.2019

Counsel for the petitioner and Addl. AG for the respondents present.

Representative of respondents is not in attendance to apprise the Tribunal regarding further developments in the matter. The matter is, therefore, adjourned to 17.06.2019 on which date the implementation report shall positively be submitted.



Chairman

17.06.2019

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Hazrat Shah, Superintendent for the respondents present. Implementation report not submitted. Learned Additional AG requested for further adjournment. Adjourned to 18.07.2019 for Implementation report before S.B.



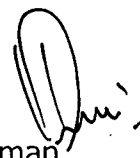
(Muhammad Amin Khan Kundi)
Member

18.07.2019

Counsel for the petitioner and Mr. Muhammad Riaz Khan Paindakhel, Assistant A.G alongwith Hazrat Shah, Superintendent for the respondents present.

At the time of first call the representative of respondents was not available due to appearance before the D.B of the Tribunal. Now learned counsel for the petitioner is not prepared to argue the matter.

Adjourned to 31.07.2019 for further proceedings before S.B.



Chairman

04.03.2019

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Hazrat Shah, Superintendent for the respondents present. Reply not submitted. Learned Additional AG seeks further adjournment. Last opportunity is granted. Adjourned to 08.04.2019 for reply and arguments before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

08.04.2019

Petitioner in person and Addl. AG alongwith Hazrat Shah, Superintendent for the respondents present.

Representative of respondents yet again requests for time to furnish the requisite reply. Adjourned to 18.04.2019 before S.B for the needful.


Chairman

18.04.2019

DBA is on strike. Mr. Kabirullah Khattak learned AAG alongwith Jafar Ali Assisant present. Implementation report not submitted. Adjournment requested. Adjourn. To come up for further proceedings/implementation report on 29.05.2019 before S.B.


Member

EP 122/2016

24.12.2018

Counsel for the petitioner and Addl. AG for the respondents present.

Learned counsel for the petitioner states that through the judgment under implementation, the appellant/petitioner was reinstated in service for the purpose of enquiry required to be conducted within two months. The respondents failed to conduct the requisite enquiry and in the meanwhile the petitioner superannuated and retired on 04.04.2018. In view of the said fact the petitioner needs some time to bring on record through an application, further mode of implementation of the judgment under execution.

May do so within 10 days with a copy to the AAG, where upon, the respondents shall furnish their written reply before next date of hearing.

Adjourned to 13.02.2019 before S.B.



Chairman

13.02.2019

Learned counsel for the petitioner present. Learned AAG alongwith Hazrat Shah Superintendent representative of the respondent department present. Copy of application for allowing pensionary/service benefits to the petitioner already available on file. Copies given to the representative of the respondents and learned AAG. Adjourn. To come up for *reply 4* arguments on 04.03.2019 before S.B.



Member

06.12.2018

Petitioner alongwith counsel and Addl. AG alongwith Hazrat Shah, Superintendent for the respondents present.

It is very unfortunate to note that the representative of the respondent department deputed particularly for the purpose of appearing in this case is point blank regarding the proceedings undertaken by the respondents in the matter.

The instant matter is, ~~be~~ therefore, adjourned to 24.12.2018 on which date the Tribunal shall be apprised exactly about the steps taken by the respondents toward implementation of the judgment.



Chairman

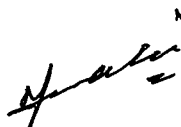
10.09.2018

Neither petitioner nor his counsel present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Case to come up for further proceedings on 22.10.2018 before S.B.



Chairman

22.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 06.12.2018.


Reader

6-11-2018 Due to Retirement of Honorable Chairman the Tribunal is non functional therefore the case is adjourned to come up for the same on 24/12/2018


Reader

11.04.2018

Counsel for the petitioner and Addl: AG alongwith Mr. Hazrat Shah, Supdt for respondents present. Representative of the respondents produced notification dated 23.11.2016 through which the petitioner was reinstated in service. A copy of the same was handed over the learned counsel for the petitioner. Learned counsel for the petitioner informed that on attaining the age of superannuation the petitioner retired from service on 04.04.2018. Respondents are directed to produce complete record of enquiry and connected documents on or before the next date of hearing. To come up for further proceedings on 10.05.2018 before S.B.


(Ahmad Hassan)
Member

10.05.2018

The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 01.08.2018.


Reader


01.08.2018

Petitioner Dr. Illaiddin in person alongwith his counsel Mr. Bilal Ahmad Kakazai, Advocate present. Mr. Hazrat Shah, Supdt alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. The representative of the respondents has not brought the record as directed by this Tribunal. As such, he is given warning to be careful in future with the further direction to produce entire record regarding the case of the petitioner including de-novo enquiry report on 10.09.2018 before S.B.


Chairman

13.12.2017

Counsel for the petitioner and Addl: AG for respondents present. Counsel for the petitioner seeks adjournment. Adjourned. To come up for further proceedings on 18.01.2018 before S.B.


(Ahmad Hassan)
Member (E)

18.01.2018

Clerk of the counsel for petitioner present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Amin, Legal Officer for the respondents also present. Clerk of the counsel for petitioner requested for adjournment on the ground that learned counsel for the petitioner is not available today. Adjourned. To come up for further proceedings on 15.03.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

15.03.2018

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Learned Additional AG requested for adjournment. Adjourned. To come up for further proceedings on 11.04.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

14.07.2017

Clerk of the counsel for petitioner present. Mr. Usman Ghani, District Attorney for the respondents also present. Implementation report not submitted. Requested for further adjournment. Adjourned. To come up for implementation report on 15.09.2017 before S.B.


(Muhammad Amin Khan Kundi)
Member

15.09.2017

Petitioner with counsel present. Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Implementation report not submitted. Learned Additional AG requested for further adjournment. The respondents are directed to implement the judgment of this Tribunal on or before the next date otherwise coercive measure shall be taken against them. Adjourned. To come up for implementation report on 10.11.2017 before S.B.


(Muhammad Amin Khan Kundi)
Member

10.11.2017

Clerk to counsel for the petitioner and Mr. Usman Ghani, DA for respondents present. Clerk to counsel for the petitioner seeks adjournment. Adjourned. To come up for further proceedings on 13.12.2017 before S.B.


(AHMAD HASSAN)
MEMBER

13.01.2017

Petitioner in person and Additional AG for the respondents present. Implementation report not submitted. Last opportunity granted. To come up for implementation report on 24.03.2017 before S.B.


Chairman

24.03.2017

Counsel for the petitioner and Mr. Yar Gul, Senior Clerk alongwith Assistant AG for respondents present. Learned Assistant AG requested for adjournment. Request accepted. Last opportunity granted. To come up for implementation report on 12.05.2017 before S.B.


(AHMAD HASSAN)
MEMBER

12.05.2017

Clerk to counsel for the petitioner and Mr. Kabir Ullah Khattak Assistant: AG for the respondents present. Requested for adjournment. Adjourned. To come up for implementation report on 14.07.2017 before S.B.


(Gul Zeb Khan)
Member

*Execution Petition No. 122/2016
Dr. Illaudin vs Govt*

17.11.2016

Mr. Tahir Iqbal, Legal Officer Health Department submitted application for release of salary of the Secretary Health Department (respondent No. 2) attached on 28.10.2016. Since summary for reinstatement of the appellant has been sent to the competent authority for approval as such salary of Secretary Health Department is released forthwith. To come up for implementation report on the date fixed i.e. 13.01.2017 before S.B


Chairman



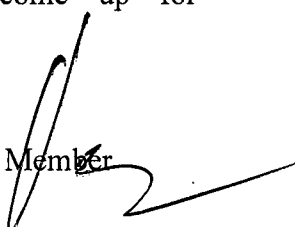

29.11.2016

On application of Director General Health Services for release of his salary file has been requisitioned. Since the order of this Tribunal has been complied with, hence salary of respondent No. 3 (Director General Health Services, Khyber Pakhtunkhwa, Peshawar) is released forthwith. To come up for implementation report on the date fixed i.e. 13.01.2017 before S.B


Chairman

FORM OF ORDER SHEET

Execution Petition No. 122/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28.07.2016	<p>The Execution Petition of Dr. Illauddin submitted to-day by Mr. Bilal Ahmad Kakazai Advocate may be entered in the relevant Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	29-07-2016	<p>This Execution Petition be put up before S. Bench on - <u>11-08-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	11.08.2016	<p>Petitioner in person and Addl. AG respondents present. Notice be issued to the respondents. To come up for implementation report on <u>28-10-2016</u>.</p> <p style="text-align: right;"> Member</p>
	28.10.2016	<p>Agent of counsel for the petitioner and Mr. Usman Ghani, Sr.GP for the respondents present. Implementation report not submitted. Salaries of respondents No. 2 & 3 are attached. To come up for implementation report on 13.01.2017 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 122/2016

Service Appeal No: 3051 / 2010

Date of Decision: 06.01.2016

DR. ILLAUD DIN Versus Government of Khyber Pakhtunkhwa etc.

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<i>Affidavit</i>		<i>3</i>
<i>Addresses Sheet</i>		<i>4</i>
Annexure-A	Judgment dated 06.01.2016 along with Applications.	<i>5-15</i>
Wakalatnama		<i>nil</i>

mauc

Applicant / Appellant

Through,

Bilal Ahmad Kakaizai

BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition no. 122/2016

Service Appeal No: 3051 / 2010

Date of Decision: 06.01.2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 654

Dated 28-7-16

DR. ILLAUD DIN,

SMO, Health Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

..... Applicant / Appellant

VERSUS

1. GOVERNMENT OF KHYBER PAKHTUNKHWA,
Through Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.
2. SECRETARY HEALTH,
Health Department, Peshawar.
3. DIRECTOR GENERAL HEALTH SERVICES,
Khyber Pakhtunkhwa, Peshawar.

..... Respondents

**APPLICATION FOR IMPLEMENTATION OF JUDGMENT DATED 06.01.2016
AND INITIATION OF CONTEMPT OF COURT PROCEEDINGS AGAINST
RESPONDENTS.**

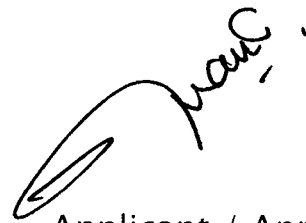
Respectfully Sheweth,

1. That, Applicant / Appellant filed the titled Service Appeal in this Honorable Tribunal, which was decided on 06.01.2016, copies of

the Order dated 06.01.2016 along with Applications are attached as Annexure A.

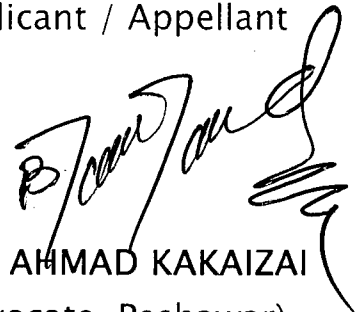
2. That, the Respondents / Government has not filed Appeal before the Honourable Appellate Forum i.e. Supreme Court of Pakistan.
3. That, the Respondents were time and again requested to implement the above said Judgment in its letter & sprit but they were reluctant.
4. That, justice delayed is Justice denied.

In view of the above, it is requested that Respondents be directed to implement the Judgment as per observations and directions given in the same without any further delay with such other relief as may deem fit in the circumstances of the case may also be granted.



Applicant / Appellant

Through:



BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 3051 / 2010

Date of Decision: 06.01.2016

DR. ILLAUD DIN Versus Government of Khyber Pakhtunkhwa etc.

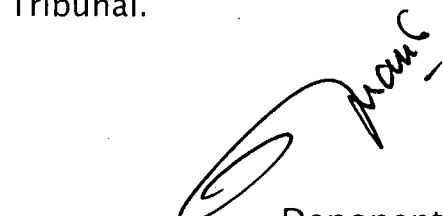
AFFIDAVIT

I, DR. ILLAUD DIN, Ex-SMO, Health Department, Government of Khyber Pakhtunkhwa, Peshawar, Applicant / Appellant / Decree Holder, do hereby on oath affirm and declare that the contents of the Application are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honorable Tribunal.


Identified by:



BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)


Deponent

ATTESTED


28/7/2016

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 3051 / 2010

Date of Decision: 06.01.2016

DR. ILLAUD DIN Versus Government of Khyber Pakhtunkhwa etc.

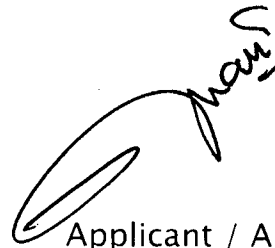
ADDRESSES OF PARTIES.

APPELLANT:

DR. ILLAUD DIN, Ex-SMO, Health Department, Government of Khyber Pakhtunkhwa, Peshawar.

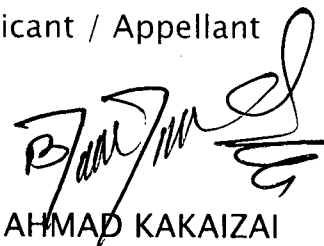
RESPONDENTS:

1. Government of Khyber Pakhtunkhwa, Through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Secretary Health, Health Department, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.



Applicant / Appellant

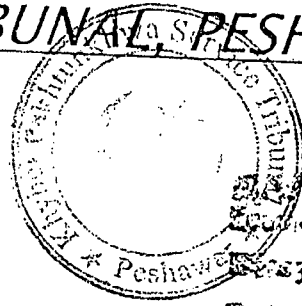
Through,



BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

A
ANNEXURE 5

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.



W. Peshawar
Service Tribunal
Case No. 3129
Dated 30-11-10

Service Appeal No: 3051/2010

DR. ILLAUD DIN,
Ex-SMO, Health Department, Peshawar.
R/o Qutab Colony, Tank'

..... Appellant

VERSUS

Filed in copy
[Signature]
30/11/10

Government of Khyber PK,
Through Chief Secretary,
KPK, Peshawar.

2. Secretary Health,
Health Department, Peshawar
3. Director General Health Services,
KPK, Peshawar

..... Respondents

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974
READ WITH SECTION 10 OF REMOVAL FROM SERVICE (SPECIAL
POWERS) ORDINANCE, 2000 AGAINST NOTIFICATION NO. SOH(EV)4-
23/2010 DATED 03.09.2010 WHEREBY APPELLANT HAS BEEN
REMOVED FROM SERVICE AND DEPARTMENT APPEAL /
REPRESENTATION HAS NOT YET BEEN RESPONDED DESPITE THE
LAPSE OF MANDATORY 60 DAYS PERIOD.

Prayer: That on acceptance of this Service Appeal, the Impugned
Notification whereby Appellant has been removed from
service be declared illegal, unlawful, void and ineffective
and Appellant be reinstated in service with all back

ATTESTED
[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

wages and benefits with such other relief in the circumstances of the case may also be granted.

(6)

Respectfully Sheweth,

Short facts, giving rise to present Service Appeal, are as under:

1. That, Appellant while posted as Senior Medical Officer, applied for the grant of Extra Ordinary Leave for the period of two years to the Respondent No. 2 w.e.f 25.06.2009 i.e. well before the expiry of Deputation Period. It is important to mention here that before filing Application for EOL to the Respondent No 2, the Team Leader of NWFP / FATA also wrote a letter dated 13.06.2009 to the Respondent No. 2 for favorable considerations, copies of the Leave Application dated 15.06.2009 and Letter dated 13.06.2009 are attached as Annexure A & A/I.
2. That, as the request of the Appellant for the grant of EOL was not entertained and was regretted vide letter dated 14.01.2010, therefore, Appellant once again applied / requested for the grant of EOL for 730 days because Appellant has long period of leave balance at his credit, copy of the Letter / Request dated 04.03.2010 is attached as Annexure B.
3. That, without intimating the fate of the 2nd Request / Application Respondent No 3 issued Absence Notice via Newspaper dated 09.06.2010, copy of the Advertisement is attached as Annexure C.
4. That, Appellant submitted his reply to the Absence Notice dated 09.06.2010 vide his letter dated 22.06.2010 in which he categorically denied the charge of unauthorized absence and stated that as his 2nd request for the grant of EOL is pending, therefore, he may not be treated as absent, copy of the Reply to the Absence Notice is attached as Annexure D. It is pertinent to mention here the Country Representative of WHO for Pakistan also wrote a favor letter to the Respondent No 2 for the grant of EOL to the Appellant because, according

to his view, Appellant is contributing effectively in the Polio eradication activities in the Province of Khyber Pakhtunkhwa, copy of the Letter dated 22.06.2010 from WHO Country Representative is attached as Annexure E.

- 5. That, upon receiving the Letters (Annexure D & E) the Respondent No 3 vide his Letter dated 30.06.2010 addressed to the Respondent No 2 requested for necessary decision after mentioning therein the exact pen-picture and situation of the Appellant, copy of the Letter dated 30.06.2010 is attached as Annexure F.
- 6. That, without considering the Reply and Applications of the Appellant or Letters sent by the WHO Officials, the Impugned Order has been issued by the Respondent No. 2, whereby the Appellant, at Serial No. 10, has been Removed from Service, copy of the Impugned Order is attached as Annexure G.
- 7. That, as per law, Appellant submitted his Appeal / Representation, by mail, to the Chief Minister against the Impugned Removal from Service Order on 17.09.2010, copy of the Appeal / Representation is attached as Annexure H and Courier Receipt is attached as Annexure J.
- 8. That, the Chief Minister / Appellate Authority has been failed to communicate the Reply to the said Departmental Representation with in requisite time hence this Appeal on the following amongst other grounds.

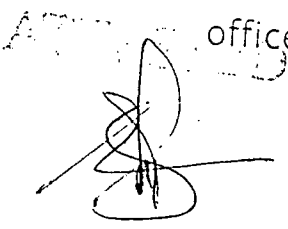
GROUND:

- A. That, the Impugned Order whereby the Appellant has been removed from service is illegal, unlawful, void and ineffective besides being against the principles of Natural Justice, also.
- B. That, Appellant is a regular employee of the Respondents No 2 & 3 Department since 1987 and was on deputation to the World Health Organization in a program for the Polio Eradication Initiative as National Medical Officer for the Southern Khyber Pakhtunkhwa.

ATTESTED

Official stamp and handwritten signature of the attesting authority.

- C. That, the Respondents had failed to communicate the fate of the 2nd Application for the grant of EOL despite the fact that the Application of the Appellant was supported by the letters of the WHO Officials.
- D. That, the Employer (WHO) was unwilling to relieve the Appellant due to his valuable services and according to the WHO Country Representative for Pakistan the Appellant was devoted, experienced and efficient officer and was rendering valuable services to the Public Health especially in the eradication of Polio in Southern Khyber Pakhtunkhwa / FATA.
- E. That, the employer with whom Appellant was on Deputation had never issued the relieving order of the Appellant nor the Respondents ever directed the barrowing Department to relieve the Appellant.
- F. That, one Dr. Sarfraz Khan Afridi, NPO, WHO is working for the last more than 10 years in the same Organization and same program on deputation basis but the Respondents never terminated his Contract, likewise Dr.Saeed Akbar, Operation Officer, Dr. Mehboob, NPO and Dr.Sharif are on deputation like the Appellant but their leave is extended time to time, which reflects the favouritism and nipotism.
- G. That, it was not possible for the Appellant himself to leave the Polio Eradication Program because the said program was at crucial stage of eradication of the Polio Evil and leaving the said program would have an adverse impact on the efforts of WHO, at that time.
- H. That, all the applications for the grant of EOL, as submitted to the Respondents were within time and sent through proper channel, also.
- I. That, even otherwise Appellant has to his credit long period of un-availed leaves which can be availed at any time, as of a right, before retirement.
- J. That, in the Absence Notice as published in the Newspaper there were more than 32 Doctors / Civil Servants but services of only officers of BPS-18 has been targeted while the others have been



pardoned. This discriminatory action on part of the Respondents speaks a lot about nepotism and favoritism.

- K. That, only BPS 18 officer have been removed in order to open the blocked way of promotion of the junior employees.
- L. That, before removing from service no Letter of Charge, Statement of Allegations or Show Cause Notice was ever served upon the Appellant nor any regular inquiry to this effect was ever conducted neither the Appellant has been given the chance of personal hearing as such the Appellant has been condemned unheard.
- M. That, Appellant has to his credit more than 20 years of service in which he was never / ever communicated any Adverse entry nor he was ever charged for misconduct or inefficiency.

It is, therefore, requested that subject Appeal be accepted as prayed for.

[Signature]
Appellant

Through:

[Signature]
WAQAR AHMAD SETH
(Advocate, Peshawar)

[Signature]
BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

Certified true copy
[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Demand: 07-01-2016

No: 2000

C: 12-0

T: 12-0

N: *[Signature]*

Date: 08-01-2016

Date of: 08-01-2016



S.No. of Order or proceedings	Date of Order or proceeding	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3

06.01.2016

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.3051/2010.

(Dr. Illaud Din-vs- Govt. of Khyber Pakhtunkhwa through Chief Secretary and two others)


JUDGMENT.

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:

Counsel for the appellant and Mr. Muhammad Arshed, SO alongwith Mr. Usman Ghani, Senior Government Pleader for respondents present.

Dr. Illaud Din has preferred the instant appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with section-10 of Removal from Service (Special Powers) Ordinance, 2000 against notification dated 3.9.2010 vide which the appellant was removed from service and departmental appeal/representation preferred by the appellant was not responded despite lapse of statutory period of 60 days.

Brief facts of the case of the appellant are that the appellant was serving as Senior Medical Officer when he applied for extraordinary leave for a period of 2 years with effect from 25.6.2009 which was regretted by respondent No. 2 i.e Secretary Health vide letter dated 14.01.2010 where-after the appellant again applied for 730 days. That without intimating the fate of the second request absence notice was issued in the newspaper dated 9.6.2010 which was contested by the appellant but the impugned order in the shape of removal from service was passed on 3.9.2010 where-against appellant submitted departmental

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

appeal/representation which was not responded and hence the instant service appeal.

Learned counsel for the appellant argued that the impugned order in the shape of removal from service on account of wilful absence of the appellant is against facts and law and is not in consonance with the provisions of Removal from Service (Special Powers) Ordinance, 2000. That the competent authority for passing such an order was the Chief Minister while the impugned order was passed by the Secretary Health. That similarly placed employees were reinstated in service and as such appellant also entitled to the same treatment as extended to similarly placed employees including Dr. Ghayas-ud-Din, Dr. Liaqat Hussain Bangash and Dr. Naveed Akhtar whose names are appearing at serial No. 2, 3 and 9 of the impugned notification dated 3.9.2010. That the appellant cannot be treated otherwise and entitled to treatment extended to his colleagues.

Learned Senior Government Pleader argued that prescribed procedure was followed in the case of appellant as proclamation was issued in the newspaper daily "Mashriq" dated 9.6.2010 and due to non-assumption of charge and report for duty the impugned order was passed by the competent authority. He also placed reliance on case-law reported as 2011 SCMR 1429 and argued that the appellant is not entitled to the relief claimed.

We have heard arguments of the learned counsel for the parties and perused the record.

The impugned order dated 3.9.2010 would suggest that the competent authority has considered the charges and evidence on record and has imposed the major penalty of removal from service against 13 Doctors including the appellant under the provisions of section-3 of Khyber Pakhtunkhwa Removal from Service (Special Powers)

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Ordinance, 2000. Perusal of section-3 of the said Ordinance would suggest that the competent authority may pass such orders after inquiry by an inquiry officer or the inquiry committee appointed under section-5 of the said Ordinance and it is also incumbent upon the competent authority that the accused is to be informed of the action to be taken with regard to him and the grounds of such action and would give him a reasonable opportunity of showing cause against the proposed action within seven days or within such extended period as the competent authority may determine.

In the case in hand the prescribed procedure of inquiry under the said Ordinance has not been followed as no inquiry was conducted nor the accused was informed of the proposed action nor opportunity of hearing was afforded to him despite the facts that he was available to the competent authority and the competent authority was in a position to conduct the inquiry in the prescribed manners.

It was also brought in our notice that similarly placed employees including Dr. Ghayas-ud-Din (BS-18), Dr. Liaqat Hussain Bangash (BS-18) and Dr. Naveed Akhtar (BS-18) were reinstated in service. We are not in a position to ascertain from the record that the case of the appellant is identical and at par with those of the afore-stated employees as such we are left with no option but to set-aside the impugned order dated 3.9.2010 for the reasons mentioned above and as a consequence thereof reinstate the appellant in service for the purpose of inquiry to be conducted under the provisions of RSO 2000, wherein, apart from other factors, the plea of reinstatement of similarly placed employees shall also be considered. Inquiry proceedings shall be deemed pending under the provisions of sub-section-2 of section-2 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) (Repeal) Act, 2011 which shall be concluded within a reasonable time but not beyond the period of two months from the date of receipt of this Tribunal.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

The appeal is accepted in the above terms. No order as to costs. File be consigned to the record room.

Announced
06.01.2016

Sd/- M. Azim Khan Afridi,
Chairman

Sd/- Abdul Latif,
Member

Certified to be true copy

EX-1000
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 30-06-16
 Number of Words 1600
 Copying Fee 10/-
 Urgent 2/-
 Total 12/-
 Name of Copyist AWD
 Date of Completion 30-06-16
 Date of Delivery of Copy 30-06-16

656

18/1/2016

(14)

Secretary Health,

Health Department Khyber Pakhtunkhwa

Peshawar.

Subject: Arrival report

Respected sir!

I have the honor to stat that Service Tribunal Khyber Pakhtunkhwa Peshawar has accepted my appeal No. 3051/2010 submitted vide dairy #3129 dated 30-11-2010 and-reinstated me in service for the purpose of inquiry with the terms and conditions mentioned in the court decision. I hereby submit my arrival report for said purpose.

Regards



Dr. Illaud-Din

Ex-SMO, Health Department,

R/O Qutab Colony Tank

Dated: January 18, 2016

13303
11/7/16

15

Secretary Health,

Health Department Khyber Pakhtunkhwa

Peshawar.

Subject: Arrival report

Respected sir!

I have the honor to stat that Service Tribunal Khyber Pakhtunkhwa Peshawar has accepted my appeal No. 3051/2010 submitted vide dairy #3129 dated 30-11-2010 and reinstated me in service for the purpose of inquiry with the terms and conditions mentioned in the court decision. I have submitted my arrival report vide diary # 656 dated January 18, 2016 but no further action taken so far in this respect. It is requested that necessary action may please be taken as per decision of honourable court.

Regards



Dr. Illaud-Din

Ex-SMO, Health Department,

R/O Qutab Colony Tank

Dated: July 01, 2016

بعدالت Service

Tribunal, Peshawar

Appellant/Applicant

Govt. of Pk نام Dr. Ilkuddin

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

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

آن مقام کیلئے Bilal-A-Khalid

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 پر حلف دیئے 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 یکطرفہ 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 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2016

28 ماہ جولائی

المرقوم

العبد گواہ العبد

کے لئے منظور ہے۔

مقام

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

Execution Petition NO. 122/2016

Dr. IllauddinAppellant

Versus

Director General Health Services Khyber Pakhtunkhwa Peshawar

.....Respondents.

**APPLICATION FOR RELEASE OF SALARY OF THE DGHS ATTACHED IN
EXECUTION PETITION NO. 12/2016 IN SERVICE APPEAL NO. 3051/2012**

- 1 That the above mentioned Execution Petition is pending before the Honorable Tribunal and next date of hearing is 13/01/2017.
- 2 That in the instant Execution Petition, salary of DGHS was attached by this honorable Tribunal on 28/10/2016.
- 3 That the Secretary Health in compliance with the judgment of the honorable Tribunal has prepared a summary for reinstatement and de-novo inquiry and submitted the same for approval of the competent authority.
- 4 That the DGHS has complied with the orders of the tribunal in letter and spirit.

Keeping in view the above, salary of the DGHS may kindly be released.

put up to the court with
relevant appeal

[Handwritten signature]

[Handwritten signature]
21/11/16.

[Handwritten signature]
Director General Health Services
Khyber Pakhtunkhwa Peshawar
(Respondent No. 3)

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

Execution Petition NO. 122/2016

Dr. IllauddinAppellant

Versus

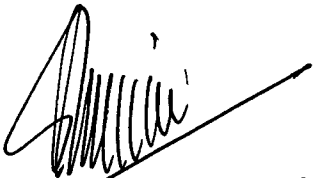
Director General Health Services Khyber Pakhtunkhwa Peshawar

.....Respondents.

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- 4 That the DGHS has complied with the orders of the tribunal in letter and spirit.

Keeping in view the above, salary of the DGHS may kindly be released.


Director General Health Services
Khyber Pakhtunkhwa Peshawar
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 122/2016

Dr. Illud Din

Versus

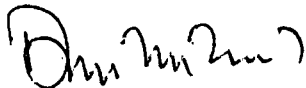
Govt. of Khyber Pakhtunkhwa through Chief Secretary & others.

Application for release of salary of the Secretary Health attached in execution petition No. 122/2016 in Service Appeal No. 3051/2012.

Respectfully Sheweth:

1. That the above mentioned Execution Petition is pending before the Hon'able Tribunal and next date of hearing is 13.01.2017.
2. That in the instant Execution Petition salary of the Secretary Health was attached by this hon'able Tribunal on 28/10/2016.
3. That the Secretary Health in compliance of the judgment of the Hon'able Tribunal has prepared a summary for reinstatement and de-novo inquiry and submitted the same for approval of the competent authority but the response of the competent authority is still awaited.
4. That the Secretary health has complied with the order of the Tribunal in letter and spirit.

Keeping in view the above, salary of the Secretary Health may kindly be released.


Tahir Iqbal Khattak
Legal Officer
Health Department.



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

SUBJECT: REINSTATEMENT OF DR. ILLA-UD-DIN EX-SMO (BS-18) HEALTH DEPARTMENT

Earlier the Director General Health Services Khyber Pakhtunkhwa had intimated the Provincial Health Department that Dr. Illauddin SMO (BS-18) is absent from duty without prior approval from the competent authority. Health Department submitted summary regarding disciplinary proceedings under Section 3 of the Khyber Pakhtunkhwa Removal from Service (Special powers) Ordinance, 2000 to the Chief Minister Khyber Pakhtunkhwa (Annex-I).

2. The Chief Minister Khyber Pakhtunkhwa being competent authority has approved the summary and imposed major penalty of removal from Service upon Dr. Illauddin SMO (BS-18) and others under Section 3 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000. Consequent upon the doctor concerned was removed from service vide Health Department Notification NO.SOH(EV)4-23/2010 dated 3.9.2010 (Annex-II).

3. Dr. Illauddin SMO (BS-18) filed appeal before the Khyber Pakhtunkhwa Service Tribunal. The Khyber Pakhtunkhwa Service Tribunal in its judgment dated 06.01.2016 disposed off the appeal with the following remarks:-

" In the case in hand the prescribed procedure of inquiry under the said Ordinance has not been followed as no inquiry was conducted nor the accused was informed of the proposed action nor opportunity of hearing was afforded to him despite the fact that he was available to the competent authority and the competent authority was in a position to conduct the inquiry in the prescribed manners.

It was also brought in our notice that similarly placed employees including Dr. Ghayas-ud-Din (BS-18), Dr. Liaqat Hussain Bangash (BS-18) and Dr. Naveed Akhtar (BS-18) were reinstated in service. We are not in position to ascertain from the record that the case of the appellant is identical and at par with those of the afore-stated employees as such we are left with no option but to set aside the impugned order dated

3.9.2010 for the reasons mentioned above and as consequence thereof reinstate the appellant in service for the purpose of inquiry to be conducted under the provision of RSO 2000, wherein apart from other factors, the plea of reinstatement of similarly placed employees shall also be considered. Inquiry proceedings shall be deemed pending under the provisions of sub-section 2 of section-2 of the Khyber Pakhtunkhwa Removal From Service (Special powers) (Repeal) Act 2011 which shall be concluded within a reasonable time but no beyond the period of two months from the date of receipt of this Tribunal. The appeal is accepted in the above terms (Annex-III).

Health Department approached the Law Department with regard to the filing of CPLA before the Supreme Court of Pakistan. The Scrutiny Committee of Law Department in its meeting held on 26.8.2016 decided that the case is not fit for CPLA (Annex-IV).

Rule-14 (6) of the Govt of Khyber Pakhtunkhwa provides where the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provision of these rules or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the inquiry to the inquiry officer or the inquiry committee, as the case may be, with such directions as the competent authority may like to give, or may order a de novo inquiry through different inquiry officer or inquiry committee (Annex-V).

Health Department, proposes, that one or more of the following may be appointed as Enquiry Officer/Enquiry Committee in light of the rules as mentioned in para-2 above:-

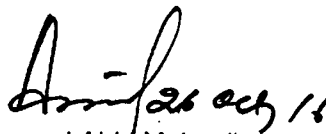
- i. Dr. Tahir Nadeem(BS-20)
Director General
Provincial Health Services Academy,
Peshawar.
- ii. Dr. Muhammad Ayub Rose(BS-20)
Additional DGHS Peshawar.

The Government of Khyber Pakhtunkhwa, Establishment Department may nominate any senior PAS/PCS/SG officer in addition to above panel.

8. In view of the above judgment of Tribunal, Health Department further proposes that Dr. Illa-ud-Din Ex-SMO (BS-18) Health Department may be reinstated into service against the vacant post of SMO (BS-18) DHQ Hospital Tank for the purpose of de novo inquiry with effect from 03.09.2010(Annex-VI).

9. The Chief Minister, Khyber Pakhtunkhwa being competent authority is requested to sign the Charge Sheet/Statement of Allegations in respect of Dr. Illa-ud-Din Ex-SMO (BS-18) Health Department (duly flagged) and may appoint an Enquiry Officer/Enquiry Committee from the Panel at Para-6 by indicating the name(s) in the spaces left blank in the statement of allegations, please.

10. Para-8 and 9 of the summary ^{are} submitted for approval of the Chief Minister Khyber Pakhtunkhwa, please.


(Muhammad Abid Majeed)
Secretary Health

Minister for Health
Khyber Pakhtunkhwa.

Secretary Establishment
Govt of Khyber Pakhtunkhwa.

Chief Secretary
Khyber Pakhtunkhwa.

Chief Minister
Khyber Pakhtunkhwa.

CHARGE SHEET

I, **Pervez Khattak**, Chief Minister Khyber Pakhtunkhwa as competent authority, hereby charge you, Dr. Illa-ud-Din Ex-SMO (BS-18) Health Department as follows:-

"You were willfully absent from duty with effect from 25.9.2009 to 19.7.2010 without prior approval from competent authority.

2. For the above reasons you appear to be guilty of willful absence under Rule-3 of the Khyber Pakhtunkhwa Govt. Servant (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules *ibid*.
3. You are therefore required to submit your written defense within 7 days of the receipt of this charge sheet to the enquiry officer/committee as the case may be.
4. Your written defense, if any, should reach the enquiry officer/ inquiry committee within the specified period. Failing which, it shall be presumed that you have no defense to put in and in that case *ex-parte* action shall follow against you.
5. Intimate as to whether you desire to be heard in person.
6. A statement of allegations is enclosed.

(PERVEZ KHATTAK)
CHIEF MINISTER
KHYBER PAKHTUNKHWA.

Dr. Illa-ud-Din Ex-SMO (BS-18)
Health Department.

DISCIPLINARY ACTION

I, **Pervez Khattak** Chief Minister, Khyber Pakhtunkhwa as competent authority am of the opinion that Dr. Illa-ud-Din Ex-SMO (BS-18) Health Department has rendered himself liable to be proceeded against as he committed the following act/omissions within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

"Dr. Illa-ud-Din Ex-SMO (BS-18) Health Department were absent from duty with effect from 25.9.2009 to 19.7.2010 without prior approval from the competent authority.

2. For the purpose of inquiry against the said accused with reference to the above allegations, an enquiry officer/inquiry committee, consisting of the following is constituted under Rule-10(1) (a) of the **(ibid)** rules.

i.

ii.

3. The enquiry officer/committee shall, in accordance with the provisions of the rules, provide reasonable opportunity of hearing to the accused, record its findings and make within 30 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry Officer/inquiry committee.

(PERVEZ KHATTAK)
CHIEF MINISTER
KHYBER PAKHTUNKHWA.

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 122/2016

Service Appeal No: 3051 / 2010

Date of Decision: 06.01.2016



DR. ILLAUD DIN,

SMO, Health Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Applicant / Appellant

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA,
Through Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

SECRETARY HEALTH,
Health Department, Peshawar.

DIRECTOR GENERAL HEALTH SERVICES,
Khyber Pakhtunkhwa, Peshawar.

Respondents

28.10.2016

Agent of counsel for the petitioner and Mr. Usman Ghani, Sr.GP for the respondents present. Implementation report not submitted. Salaries of respondents No. 2 & 3 are attached. To come up for implementation report on 13.01.2017 before S.B.

Certified to be true copy
BY AMBIEER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Self
Chairman

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 50 /ST

Dated 4 / 1 / 2017

To


The Accountant General,
Government of Khyber Pakhtunkhwa,
Peshawar.


Subject: -

ORDER.

I am directed to forward herewith a certified copy of order dated 29.11.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

Handwritten signature and date 4/1/17


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.



Office of the
Accountant General

Fort Road, Khyber Pakhtunkhwa

Peshawar Pakistan

Phone: 091 9211250-54

No. Lit/S.T/SOP-3/2016-17/ 1250-51

Date.27.12.2016

To,

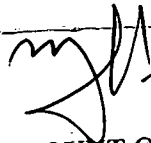
The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Subject: **Execution Petition No122/2016 Dr.IILa-u- Din Vs Govt Of Khyber Pakhtunkhwa & Others.**

Please refer to your office letter No.1934 /ST dated 21.112016, on the above subject.

Salary of the officer mentioned below have been released through computer system of this office in the above referred case as per court orders.

- 1). Secretary to Govt of Khyber Pakhtunkhwa Health Department Peshawar.


28/12/16.
ACCOUNT OFFICER
LIT

Copy for information is forwarded to:

- 1) Secretary to Government of Khyber Pakhtunkhwa Health Department Peshawar.

ACCOUNT OFFICER
LIT

سرکاری دستخط

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1559 /ST

Dated 6 / 9 / 2019

To


The Secretary Health Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

ORDER EXECUTION PETITION NO. 122/20136, DR. ILLA UD DIN.

I am directed to forward herewith a certified copy of order dated 31.07.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR,
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1601-2 /ST

Dated 18 / 9 / 2019

To


1. The Accountant General,
Government of Khyber Pakhtunkhwa,
Peshawar.
2. Director General Health Services,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

ORDER IN EXECUTION PETITION NO. 122/2016, DR. ILLA UD DIN.

I am directed to forward herewith a certified copy of order dated 12.09.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1739 /ST

Dated 14 / 10 / 2019


To

The Accountant General,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - ORDER IN EXECUTION PETITION NO. 122/2016, DR. ILLA UD DIN.

I am directed to forward herewith a certified copy of order dated 07.10.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR,
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

No.SOH(EV)1-194/2007/Dr. Illa-ud-Din
Dated Peshawar the 7th Jan,2020

To

The Director General
Health Services, Khyber Pakhtunkhwa
Peshawar.

Subject:-

**REINSTATEMENT OF DR. ILLA-UD-DIN EX-SMO(BS-18) ATTACHED TO DHQ
HOSPITAL, TANK**

**EXECUTION PETITION NO. 122/2016 IN SERVICE APPEAL NO.3051/2010-
DR. ILLA-UD-DIN VERSUS GOVT: OF KHYBER PAKHTUNKHWA.**

I am directed to refer to the above captioned subjects and to state that Dr. Ill-ud-Din, SMO (BS-18) was removed from service on 03/09/2010. The removal was challenged before August Service Tribunal which set aside the penalty and ordered vide judgment dated 06/01/2016 to re-instate that appellant (Dr. Illa-ud-Din) and conduct proper inquiry. Law department considered the case un-fit for CPLA and accordingly, he was re-instated into service and formal inquiry was conducted.

2. Inquiry conducted and based on the findings / recommendations, the then Chief Minister, Khyber Pakhtunkhwa imposed tentative penalty of "withholding of four increments for two years". On receipt of the file in health department, the Director General Health Services, Khyber Pakhtunkhwa was directed to serve the Show Cause Notice on the accused (Dr. Illa-ud-Din posted at DHQ Hospital Tank) vide letter dated 29/03/2017.

3. On 10th Dec,2018 , health department reminded the case to Director General, Health Services for non-submission of reply by the accused to the show cause notice. The Medical Superintendent DHQ Hospital Tank vide letter No. 5399, dated 11/12/2018, responded that Dr. Illa-ud-Din till date had not submitted arrival. Furthermore, in pursuance of reminder letter, Director General, Health Services responded and enclosed Dr. Ill-ud-Din reply to the show cause notice and further recorded that the said Dr. had submitted his reply directly to Chief Minister, Khyber Pakhtunkhwa.

4. In his reply Dr. Illa-ud-Din (the accused) , stated that "undated show cause notice as served upon the undersigned is time bared because the undersigned has already reached his age of superannuation on 04/04/2018". During the intervening period the appellant filed an execution petition No. 122/ 2016 in service appeal No. 3051/ 2010 which has already been sent by Section Officer (Lit-II) to Directorate General of Health Services.

5. The next date in the instant case is fixed for 09/01/2020 and the August Service Tribunal, Khyber Pakhtunkhwa desires to produce implementation orders. In view thereof, the following documents / information may be provided (within three days) to further process the case till date pending for decision:-

1. His first appointment order
2. Service history
3. Last Pay Certificate
4. Period of absence after his reinstatement, and
5. Action taken by the concerned controlling officer etc.


(MUHAMMAD IRFAN USMAN)
SECTION OFFICER (E-V)
HEALTH DEPARTMENT

Copy of the above is forwarded for information to the:-

1. Section Officer (Lit-II), Health Department w/r to letter No. SOH(Lit-II)13-914/2010, dated 23/12/2019
2. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar Department


SECTION OFFICER(E-V)
HEALTH DEPARTMENT



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

No.SOH(EV)1-194/2007/Dr. Illa-ud-Din
Dated Peshawar the 7th Jan;2020

To

The Director General
Health Services, Khyber Pakhtunkhwa
Peshawar.

Subject:- **REINSTATEMENT OF DR. ILLA-UD-DIN EX-SMO(BS-18) ATTACHED TO DHQ
HOSPITAL TANK**

**EXECUTION PETITION NO. 122/2016 IN SERVICE APPEAL NO.3051/2010-
DR. ILLA-UD-DIN VERSUS GOVT: OF KHYBER PAKHTUNKHWA.**

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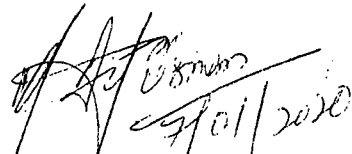
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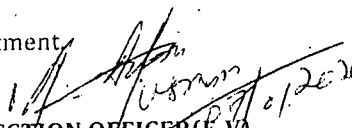
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4. Period of absence after his reinstatement, and
5. Action taken by the concerned controlling officer etc.


(MUHAMMAD IRFAN USMAN)
SECTION OFFICER (E-V)
HEALTH DEPARTMENT

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1. Section Officer (Lit-II), Health Department w/r to letter No. SOH(Lit-II)13-914/2010, dated 23/12/2019
2. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar Department,


SECTION OFFICER (E-V)
HEALTH DEPARTMENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 2845 /ST

Dated 05 / 10 / 2020

To

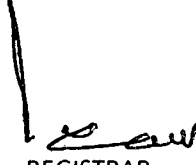
The Secretary Health Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: -

ORDER IN EXECUTION PETITION NO. 122/2016 DR. ILLAUD DIN.

I am directed to forward herewith a certified copy of order dated 24.09.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.