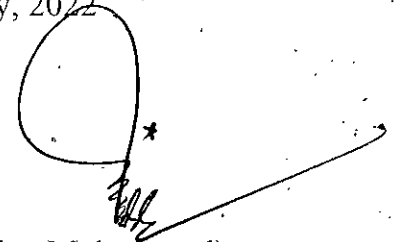


18.07.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Syed Wasiq Shah, A.D for the respondents present.

02. Representative of the department produced office order bearing No. 275-E/499/CEC/C&WD dated 06.06.2022 whereby the Service Tribunal judgement dated 23.09.2021 has been implemented by reinstating the petitioner w.e.f. the date of his termination subject to the outcome of CPLA. Copy of the office order is placed on file as well as provided to learned counsel for the petitioner. As such the instant execution petition stands implemented. Consign.

03. Pronounced in open court at Peshawar and given under my hands and seal of the Tribunal this 18th of July, 2022



(Mian Muhammad)
Member (E)

07.06.2022

Petitioner in person present.

Muhammad Adeel Butt, learned Additional Advocate General is absent. Syed Wasil Shah AD (Litigation) representative of respondents present.

File to come up alongwith connected Execution Petition No.342/2021 titled Sarfaraz Khan Vs. Government of Khyber Pakhtunkhwa on 18.07.2022 before S.B.



(Rozina Rehman)
Member (J)

22.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 27.04.2022 for the same as before.


Reader

27th April, 2022

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

Learned AAG seeks time to implement the judgment. Last opportunity is granted. To come up for implementation report on 24.05.2022 before S.B.



Chairman

24.05.2022

Counsel for the petitioner present. Mr. Kabirullah Khattak, AAG for the respondents present. Mr. Muhammad Zahid, Project Director (respondent No. 3) in person present.

Respondent No. 3 submitted that execution of the judgment was in progress which was likely to be completed within 07 days and sought short adjournment. Let in the interest of justice another 10 days time is given to the respondents. To come up for implementation report on 07.06.2022 before the D.B.

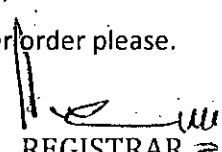




Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

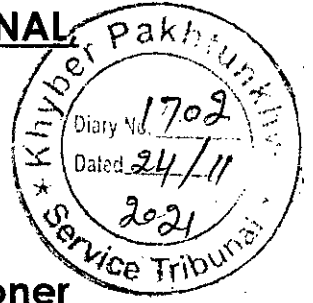
Execution Petition No. 343 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.11.2021	<p>The execution petition submitted by Mr. Mashal Khan through Mr. Umar Ali Shah 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> <p>This execution petition be put up before S. Bench on <u>07/01/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>07.01.2022</p> <p>Counsel for the petitioner present.</p> <p>Notices be issued to the respondents. Case to come up for implementation report on 22.02.2022 before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

EP No: 344/2021



Fayaz Muhammad **Petitioner**

Versus

Govt. of KPK through Secretary Communication & Woks
Department & others..... **Respondents**

**APPLICATION FOR IMPLEMENTATION OF
ORDER OF THIS HON'BLE TRIBUNAL DATED
23.09.2021 WHEREBY THE APPEAL OF THE
PETITIONER WAS ACCEPTED AND HE WAS
REINSTATED WITH ALL BACK BENEFITS**


Respectfully Sheweth:

1. That this Hon'ble Tribunal passed an order whereby the Appeal filed by the petitioner was accepted and he was reinstated with all back benefits. (Copy of the Order dated 23.09.2021 is attached).
2. That the respondents do not act upon the order of this Hon'ble Tribunal, even the petitioner submitted several Applications to them with a request to comply the order of this Hon'ble Tribunal but of no avail.

- 3. That non-compliance of order of this Hon'ble Tribunal, the respondents have not only infringed the rights of the petitioner but they have also committed contempt of this Hon'ble Tribunal, if the respondents are not dealt in accordance to law they will make it a routine to ignore the orders of the Court.
- 4. That the petitioner belongs to poor family who do not have any other source of income except his job and if the respondents do not reinstate the petitioner as a result of court order his children would be the ultimate losers.

It is respectfully submitted that on acceptance of this Application the respondents may be directed to comply with the order of this Hon'ble Tribunal dated 23.09.2021 and reinstate the petitioner with all back benefits.

Fazal
Petitioner

Through 

Umar Ali Shah
Advocate High Court

Dated 24.11.2021

(2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Fayaz Muhammad **Petitioner**

Versus

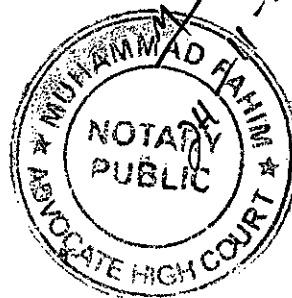
Govt. of KPK through Secretary Communication & Woks
Department & others..... **Respondents**

AFFIDAVIT

I, Fayaz Muhammad Son of Taj Muhammad R/o
Mohallah Sadri Khel, Village Pirpai Tehsil & District
Nowshera, do hereby solemnly affirm and declare on oath
that the contents of the accompanying **Application** are true
and correct to the best of my knowledge and belief and
nothing has been concealed from this Hon'ble Court.

Fayaz Muhammad
DEPONENT

ATTESTED



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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.5371/2020



Date of Institution ... 12.05.2020
Date of Decision ... 23.09.2021

Fayaz Muhammad S/O Taj Muhammad R/O Muhallah Sadrikhel,
Village Pirpai District Nowshera

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary
Communication & Works Department Civil Secretariat, Peshawar
and two others.

... (Respondents)

Umar Ali Shan Utmankhel,
Advocate

... For Appellant.

Fayyaz Khan Chamkani,
Legal Advisor

... For All Respondents.

AHMAD SULTAN TAREEN
ROZINA REHMAN

... CHAIRMAN
... MEMBER (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The concise facts of the case are that appellant was appointed as Naib Qasid. His services were terminated on 31.08.2018. He preferred his departmental appeal which was not responded to, therefore, he filed writ petition which was disposed of with the observation that by virtue of Section-4 of

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

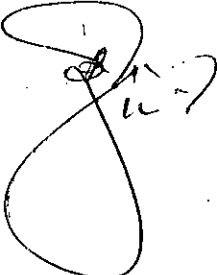
Khyber Pakhtunkhwa Regularization Act No.10 of 2018, services of all

project employees have been regularized and the termination from service in the month of August, 2018 after the commencement of the said Act is to be challenged before the Service Tribunal and the appellant was directed to impugn his termination before the competent forum. He, therefore, filed service appeal No.1489 before this Tribunal which was decided with direction to respondents to decide the departmental appeal through speaking order but to no avail. He, therefore, filed contempt petition before this Tribunal but to the utter surprise of the appellant, impugned order dated 10.03.2020 was passed, whereby, his appeal was rejected, hence, the present service appeal.

2. We have heard Mr. Umar Ali Shah Utmankhel Advocate appearing on behalf of appellant and Mr. Fayyaz Khan Chamkani Legal Advisor for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Mr. Umar Ali Shah Utmankhel, Advocate appearing on behalf of the appellant, inter-alia, contended that the impugned order dated 10.03.2020 is against law and facts because as per Section-4 of the Khyber Pakhtunkhwa Regularization Act, 2018, the appellant was supposed to have been regularized by the respondents but the aforementioned law was not taken into consideration and instead of regularization, the impugned order was passed. He contended that the appellant served the Department for almost 23 years and being overage, he is no longer fit for any other employment but this aspect of the case was not taken into consideration. He argued that the other employees of the same status were regularized but


ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

unfortunately, appellant was treated at par with those employees which discrimination is not permissible in the eye of law. Lastly, he submitted that he was a regular employee of Communication & Works Department and the respondents were not warranted to have terminated the appellant in the mode and manner adopted by them.

4. Conversely Fayyaz Khan Chamkani, Legal Advisor for respondents submitted that the respondents adopted and fulfilled all the requisite codal formalities while terminating the services of the appellant. He submitted that no doubt, the appellant served the Department for last 24 years but his service was no more required and the authority terminated his service by adopting all the codal formalities.

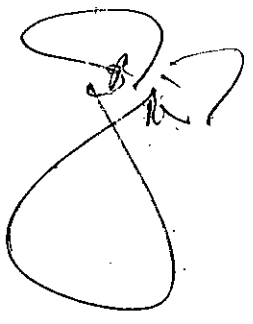
5. From the record, it is evident that appellant was appointed as Naib Qasid in B.P.S-01 vide order dated 12.03.1995. In response to his appointment order and medical fitness certificate, he submitted his arrival report in the office of Director-II (Project Cell) Farm to Market Roads, C&W Department Peshawar. It is also not denied that annual increments and up-gradation from time to time was also recorded in his Service Book and lastly, he was drawing salary in B.P.S-04. He was also a regular subscriber of G.P Fund. Similarly, Benevolent Fund and Group Insurance was being deducted regularly from his pay. It was on 01.08.2018 when order of termination of his service was issued and his services were terminated w.e.f 31.08.2018. Feeling aggrieved, he filed writ petition under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973 and it was held by the august Court that by virtue of Section-4 of Khyber Pakhtunkhwa Act No.10 of

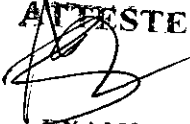

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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2018, services of all the Project employees have been regularized w.e.f the date of commencement of the said Act i.e. 07.03.2018 and thereafter, termination from service in the month of August, 2018 of a regular employee of the Government, is to be challenged before the Service Tribunal. The appellant is no more a project employee, rather his services have been regularized which fact is very much evident from the order of Hon'ble Peshawar High Court, Peshawar. After filing service appeal in this Tribunal, the respondents were directed to decide the departmental appeal within 30 days and vide order dated 10th March, 2020, his appeal was rejected. He has now filed the instant service appeal. Once the august High Court declared the status of appellant to be one of the regular employee, the respondents instead of treating the appellant to be civil servant, passed the impugned order in the light of Project Policy. From the record, it is evident that the present appellant alongwith 8 others were terminated from service w.e.f 31.08.2018. One Gul Nawaz Driver was also terminated on the same date and in this regard, the Project Director vide his letter No. 7139/JICA-5 dated 30.08.2018, addressed to the Project Director, requested for the adjustment of all the nine office staff on humanitarian ground being low paid employees. One Gul Nawaz Driver was accordingly adjusted and his adjustment was not denied. In this regard, relevant documents were produced before this Bench which show that Gul Nawaz Driver is still drawing his salary and has been properly adjusted. The appellant was discriminated for the reasons best known to the respondents. He was not treated in accordance with law as neither show cause notice nor charge sheet




ATTESTED

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

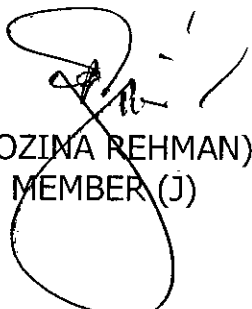
⑧

and statement of allegations were ever issued. He was not given the opportunity of personal hearing and despite request by the Project Director, he was not adjusted like Gul Nawaz, his co-employee. Thus, he succeeded in making out a good case for indulgence of this Tribunal

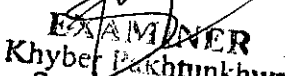
6. For what has been discussed above, this appeal is allowed, impugned order is set aside with direction to respondents to reinstate the appellant from the date of termination from service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
23.09.2021



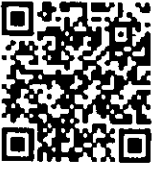

(AHMAD SULTAN TAREEN)
CHAIRMAN


(ROZINA REHMAN)
MEMBER (J)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Date of Completion of Copy 08/10/21
Date of Delivery of Copy 08/10/21

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ایڈووکیٹ: محمد علی شاہ صاحب		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 3553-2-12		رابطہ نمبر: 9808066-0339		


بعدالت جناب: خیرد محسن خواجہ سردار سرسوتی لیسٹ

مخاتب (صاحب محمد اسلم)	دعوی:
	علت نمبر:
	موردہ:
	جرم:
	تھانہ:

باعت تحریر آگہ

محمد علی شاہ صاحب
(Punjab Bar Association)

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقامی کورٹ کے فیصلے کے مطابق، رٹدادہ ایسوسی ایشن کے وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے اجواب دعوی اقبال دعوی اور درخواست از جرم قسم کی تصدیق زریں پر غلطی کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یا طرفہ یا اپیل کی سرکاری اور منسوفی، نیز دائر کرنے اپیل تکراری و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی امور کے لئے ہونے والے اخراجات کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر واضحیہ منظور و قبول ہوگا دوران مقدمہ میں جو کوئی چیز جانے اتوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ میں مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقام: 
مقام: 

نوٹ: اس وکالت نامہ کی کاپی قابل قبول ہوں گی



OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

No. 275-E / 499 / CEC / C&WD

Dated Peshawar the 06/06/2022

OFFICE ORDER

Consequent upon the decision dated 23-09-2021 passed by the Khyber Pakhtunkhwa Service Tribunal in the Service Appeal No.5371 of 2020 (Execution Petition No.344/2021) and in compliance with the C&W Secretariat letter No. SO(Lit.)C&W/3-442/2019, dated 02-06-2022, Mr. Fayaz Muhammad S/O Taj Muhamamd R/O Mohallah Sadri Khel, Village Pir Pai, District, Nowshera who was working as Naib Qasid in BPS-01 with JICA, is hereby re-instated w.e.f the date of his termination subject to final order in the CPLA No.739-P/2021 filed in the Apex Supreme Court of Pakistan.

CHIEF ENGINEER (CENTRE)

Copy to the:

1. Secretary C&W Department, Peshawar w/r to his office letter No.SO(Lit.)/C&W/3-442/2019, dated 02-06-2022.
2. Section Officer (Litigation) C&W Department, Peshawar.
3. Chief Engineer (Foreign Aid) C&W Department, Peshawar for information and further adjustment accordingly.
4. Project Director, PMU, C&W Department, Peshawar.
5. Mr. Fayaz Muhammad S/O Taj Muhamamd R/O Mohallah Sadri Khel, Village Pir Pai, District, Nowshera. He is directed to attend the office of Chief Engineer (Foreign Aid) C&W Department, Peshawar for his further adjustment.

CHIEF ENGINEER (CENTRE)

Attested
mmu
Infrastructure Engineer
Project Management Unit (PMU)
KITE Project C&W Dept. Peshawar