

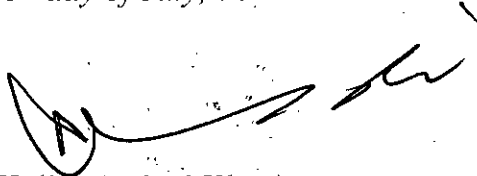
**Execution Petition 239/2022**

6<sup>th</sup> July, 2022

Petitioner alongwith his counsel present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Mr. Sajid Ali, ADEO for respondents present.

In compliance of the judgment of this Tribunal, the respondents/judgment debtors have produced copy of reinstatement order endorsement No. 5435-4/P.F dated 04.07.2022. Learned counsel for the petitioner submits that the judgment was passed on 08.09.2021 while the reinstatement order has been issued with immediate effect. The learned counsel says that the petitioner would be satisfied if the order is given effect from the date judgment. Order accordingly and the execution petition is also disposed of accordingly. Consign.

*Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 6<sup>th</sup> day of July, 2022.*

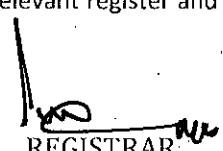
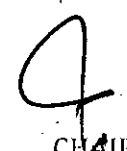

  
(Kalim Arshad Khan)  
Chairman

R

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 239/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.04.2022	<p>The execution petition of Mr. Muhammad Naeem submitted today by Uzma Syed 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 to Single Bench at Peshawar on <u>3-6-2022</u>. Original file be requisitioned. Notices to the appellat and his counsel be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the petitioner present.</p> <p>Respondents be directed to implement the judgment and submit implementation report on 06.07.2022 before S.B. Original file be also requisitioned.</p> <p style="text-align: right;"> Chairman</p>
2-	<p style="text-align: center;"><i>Handwritten notes:</i> 3<sup>rd</sup> June, 2022 26-4-2022 Note</p>	

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHWAR**

Execution petition NO. 239 / 2022  
APPEAL NO.1488/2019

MUHAMMAD NAEEM

V/S

EDUCATION DEPTT:

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Dated: 20-4-2022



Uzma Syed  
Advocate

Syed Noman  
Advocate

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

**PESHAWAR**

Implementation petition No. 239 / 2022



In

**Appeal No 1488/2019**

Muhammad Naeem, (Ex-PST) R/O Baghy Haram, Moti Banda, Mardan,  
P/O Lowand khowr Teshsil Takht Bai District Mardan

..... PETITIONER

**VERSUS**

1- Director (E&SE) Department, KPK , Peshawar. & others

..... RESPONDENTS

**IMPLEMENTATION PETITION FOR DIRECTING THE  
RESPONDENTS TO OBEY THE JUDGMENT DATED  
08-09-2021 IN LETTER AND SPIRIT.**

**R/SHEWETH:**

- 1- That the petitioner filed service appeal bearing No. 1488/2019 before this august service Tribunal for his removal to the post of PST (G) from due that with all back benefits.
- 2- That the appeal of the petitioner was heard and the appellate authority is directed as follows 'appeal in hand is accepted be setting- aside the impugned order dated 21-05-2019 and the appellant is re-instated in service the period of his absence from duty may be treated as extra ordinary leave without pay, Copy of the judgment dated 08-09-2021 is annexure.....A.

That after obtaining copy of the judgment dated 08-09-2021 the petitioner submitted the judgment mention above for its implantation to the Department concerned but the responded Department are not Willing to obey the judgment dated 08-09-2021 in letter and spirit.

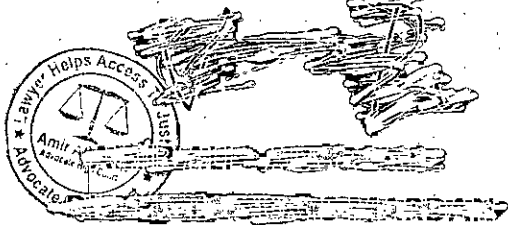
3- That the petitioner has no any remedy but to file this implementation petition.

It is therefore , Most humbly prayed that the respondents may be directed to implement the order dated 08-09-2021 in letter and spirit . Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

*[Handwritten signature]*

PETITIONER  
Muhammad Naeem

THROUGH:



*[Handwritten signature]*  
Uzma Syed

Advocate

# AFFIDAVIT

I, Muhammad Naeem , EX- Primary school Teacher ( BPS-12) , Govt . Primary School , Mardan , do hereby solemnly affirm and declare on oath that the contents of this Execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



DEPONENT

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**



**APPEAL NO. 1488/2019**

**Khyber Pakhtunkhwa  
Service Tribunal**

**Slary No. 2324**

**Dated 26/12/19**

Mr. Muhammad Naeem Ex-PST  
R/o Baghy Haram, Moti Banda,  
P/o Lowand Khot Tehsil Takht Bai

**(Appellant)**

**VERSUS**

1. The Director E&SE KPK Peshawar.
2. The District Education officer Male Mardan.

.....

**APPEAL UNDER SECTION-4 OF THE KP SERVICE TRIBUNAL ACT 1974, AGAINST THE ORDER DATED 21.05.2019 RECEIVED BY THE APPELLANT ON 21.08.2019 WHEREBY THE MAJOR PENALTY OF "REMOVAL FROM SERVICE" WAS IMPOSED UPON THE APPELLANT AND AGAINST THE DEPARTMENTAL APPEAL WHICH WAS NOT RESPONDED WITHIN STATUTORY PERIOD OF 90 DAYS.**

**PRAYER:**

**ON ACCEPTANCE OF THE SERVICE APPEAL THE IMPUGNED ORDER DATED 21.05.2019 RECEIVED BY THE APPELLANT ON 21.08.2019, MAY PLEASE BE SET-ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.**

**ATTESTED**

**EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar.**

**Filed today  
26/12/19  
Registrar**

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



Service Appeal No. 1488/2019

Date of Institution ... 26.12.2019

Date of Decision ... 08.09.2021

Muhammad Naeem, Ex-PST, R/O Baghy Haram, Moti Band,  
P/O Lowand Khot Tehsil Takht Bai.

... (Appellant)

**VERSUS**

The Director E&SE Khyber Pakhtunkhwa Peshawar and another.

... (Respondents)

SYED NOMAN ALI BUKHARI,  
Advocate

--- For appellant.

MR. MUHAMMAD RASHEED,  
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN

---

MEMBER (JUDICIAL)

MR. ATIQ-UR-REHMAN WAZIR

---

MEMBER (EXECUTIVE)

**JUDGMENT:**

**SALAH-UD-DIN, MEMBER:-**

Precise facts forming the background of the instant service appeal are that the appellant joined Education Department as PST in the year 2016 and was regularized on 20.03.2018. Upon getting admission on the basis of Scholarship in Julin University of China in June 2018, the appellant submitted application on 15.08.2018, seeking leave with effect from 03.09.2018 till 31.07.2020. The appellant was, however proceeded against departmentally on the allegations of willful absence and he was removed from service vide order dated 21.05.2019. The

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



departmental appeal of the appellant was not responded within the statutory period of 90 days, therefore, he filed the instant service appeal for redressal of his grievance.

2. Notice was issued to the respondents, who submitted their comments.


3. Learned counsel for the appellant has contended that the appellant had submitted application for study leave and had proceeded abroad for higher education, however he was wrongly and illegally removed from service by the competent Authority. He further argued that the impugned order of removal of the appellant was passed in utter violation of the procedure prescribed in rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He next contended that whole of the proceedings were conducted at the back of the appellant, without providing him any opportunity of personal hearing or self defense. He further argued that the impugned order being wrong and illegal is liable to be set-aside.

4. On the other hand, learned Deputy District Attorney for the respondents has contended that the application submitted by the appellant for leave without pay was rejected by the competent Authority on 06.09.2018 as the length of service of the appellant was less than 10 years, therefore, he was not entitled to avail leave without pay with effect from 03.09.2018 till 31.07.2020. He further contended that another application of the appellant for long leave was also dismissed by the competent Authority vide order dated 13.10.2018. He further argued that the appellant remained absent without any obtaining leave from the competent Authority, therefore, he was proceeded against on the allegations of willful absence and was rightly removed from service. He further argued that all legal and codal formalities were complied with and after conducting of proper inquiry the appellant was removed from service. Reliance was placed on 2009 SCMR 1121.

5. Arguments heard and record perused.

6. A perusal of the record would show that the appellant was proceeded against on the ground of willful absence, therefore, the

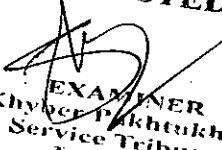
**ATTESTED**  
  
 DEPUTY DISTRICT ATTORNEY  
 KHYBER PAKHTUNKHWA GOVT. SERVICE TRIBUNAL  
 PESHAWAR

authority was required to have followed the procedure as laid down in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, which is reproduced as below:-

**"9. Procedure in case of willful absence:** Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant".

7. In view of the above mentioned reproduced rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the competent Authority was required to have issued notice to the appellant through registered acknowledgement on his home address, however copy of show-cause notice available on the record would show that the same was sent to the appellant on his school address despite the allegations that he was already absent from his duty. Moreover, the show-cause notice would show that copy of the same was forwarded to SDEO (Male) Katiang for issuance of absence notice upon the home address of the appellant, however nothing is available on the record, which could show that notice was issued to the appellant on his home address through registered acknowledgement, therefore, the impugned order of removal of the appellant from service is illegal and void ab-initio, hence not sustainable in the eye of law.

8. Vide admission notice dated 15.06.2018 addressed to the appellant by Jilin University, the appellant was offered admission for Master in Programme of International Relation to be completed in the period from September 2018 to July 2020. The

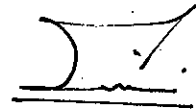
**ATTESTED**  
  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

date of registration was from September 04, 2018 to September 05, 2018, therefore, the appellant submitted an application on 15.08.2018 for obtaining leave with effect from 03.09.2018 till 31.07.2020. The application of the appellant remained pending and was ultimately declined vide order dated 06.09.2018 by District Education Officer (Male) Mardan to ASDEO Circle Baizai. The decision on leave application of the appellant was unnecessarily delayed and nothing is available on the record to show that the outcome of the same was conveyed to the appellant. Moreover, the service of the appellant was though less than ten years, however in view of rule-12 sub-rule (1) of Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981, it is within the competency of the leave sanctioning Authority to grant extra-ordinary leave without pay for maximum period of two years even if the civil servant has not completed ten years of continuous service. The appellant was admittedly proceeding abroad for higher education, therefore, the departmental Authority should have exercised its discretion in granting leave to the appellant but the request of the appellant for leave was declined without any plausible reason.

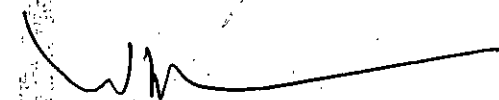
9. As a sequel to the above discussion, the appeal in hand is accepted be setting-aside the impugned order dated 21.05.2019 and the appellant is reinstated in service. The period of his absence from duty may be treated as extra-ordinary leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

08.09.2021



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)



(ATIQ-UR-REHMAN WAZIR) of Presentation of Application 11-10-21  
MEMBER (EXECUTIVE)

Number of Words 1600  
Copying Fee 18/-  
Urgent 4/-  
Total 22/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 11-10-21  
Date of Delivery of Copy 11-10-21

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

خدمت جناب DEO میل مردان

Reimbursement  
into Service

جناب عالی

گزارش ہے کہ سائل کو پروڈی ایل نمبر 1488/2019

لغویں محمد کفیم بیٹا ڈائریکٹریف ایجوکیشن وغیرہ میں

مردف 08-9-2021 کو سروس ٹریبونل کا اپنا

Reimstate کرنے کا حکم صادر فرمایا ہے۔

لہذا اب یہ صورت کی صورت میں گزارش ہے

کہ سائل کو Reimstate کرنے کا حکم صادر فرمایا ہے

میں گزارش ہوگی

شایدہ آدر

المردف 14-12-2021

آغا جان محمد کفیم PSF مانع ایچ علی خان مردان

VAKALATNAMA

NO. \_\_\_\_\_ /20

IN THE COURT OF KP Service Tribunal, Peshawar

----- M. Naeem -----

Appellant  
Petitioner  
Plaintiff

VERSUS

----- Education Deptt -----

Respondent (s)  
Defendants (s)

I/WE Muhammad Naeem

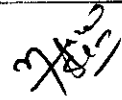
do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and al proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE 20/4 /2029

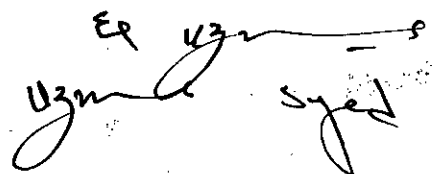


(CLIENT)

ACCEPTED



**SYED NOMAN ALI BUKHARI  
ADVOCATE HIGH COURT**



CELL NO: 0306-5109438

**Execution Petition 239/2022**

D.F.A

6<sup>th</sup> July, 2022

Petitioner alongwith his counsel present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Mr. Sajid, ADEO for respondents present.

In compliance of the judgment of this Tribunal, the respondents/judgment debtors have produced copy of reinstatement order endorsement No. 5435-4/P.F dated 04.07.2022. Learned counsel for the petitioner submits that the judgment was passed on 08.09.2021 while the reinstatement order has been <sup>issued</sup> with immediate effect. The learned counsel says that the petitioner would be satisfied if the order is given effect from the date <sup>of</sup> judgment. Order accordingly and the execution petition is ~~implemented~~ is also disposed of accordingly. Consign.

*Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 30<sup>th</sup> day of May, 2022.*

(Kalim Arshad Khan)  
Chairman

بدوران گشت مسی آزاد ولد امیر خان سکنہ سرگودھا حال اچینی پایان نے من ASI کورپورٹ کی کہ محمد آتہ کی زبانی بشیر کاناظر و نیچر ہوں۔ اور یہ کہ مسی فواد احمد کی دراشتی جائیداد برقبہ 115 مرلے واقع ریگ روڈ اچینی بریکر جسکے گروسال 2010 نے چار دیواری بنا کر تعمیراتی کام پر مظہر علی وغیرہ نے سول کورٹ سے (STAY) حاصل کر کے جو بعدہ بعدالت بلال خان خونی سول صاحب پشاور نے ہمارے حق میں فیصلہ کر کے جو عدالتی فیصلہ کے بعد ہم تعمیراتی کام کر رہے تھے کہ مسیان مظہر علی، نصیر احمد میر ہاشم علی وغیرہ نے مسلح آکر ہمیں قتل کی دھمکیاں دیں اور ہمارے مزدورں کو جائیداد سے نکال کر ہماری جائیداد پر قابض موجود ہیں جسکے رپورٹ پر من ASI کے مراسلہ پر برخلاف نصیر اللہ وغیرہ مقدمہ علت 817 مورخہ 14/06/2020 PPC 447/448/506/148/149 تھانہ پشتخترہ درج رجسٹر ہو کر جو من ASI زیر قیادت SHO صاحب ودیگر نفری پولیس جائیداد آذان محمد فواد اکر واقعی، مظہر علی، نصیر اللہ، حبیب الرحمن ولد حضرت رحمان کو جائیداد میں موجود پا کر جنکو قابو کر کے مظہر علی کے قبضہ سے پستول 30 بور بمبہ سپر میگزین 25 عدد کارتوس جبکہ حبیب الرحمن کے قبضے سے بھی پستول 30 بور بمبہ 08 عدد کارتوس برآمد کر کے اس دوران متذکرہ کسان نے ہم پولیس پارٹی کے ساتھ مزاحمت شروع کر کے ہاتھ پائی کی اور دھمکیاں دیں۔ دوران گرفتاری مسی نصیر وغیرہ کے مزاحمت ہاتھ پائی کے دوران SHO مضروب بھی ہوا۔ حالات واقعات کے متعلق مقدمہ علت 818 مورخہ 17/06/2020 جرم 186/506/15AA تھانہ پشتخترہ درج رجسٹر ہو کر ملزمان کو زیر حراست ہمراہ لا کر بند بجالا لیا گیا چالان عدالت کئے گئے۔ اور SHO صاحب یاد دیگر نفری پولیس نے نصیر وغیرہ پر کسی قسم تشدد وغیرہ نہیں کیا بلکہ ملزمان نصیر وغیرہ نے پولیس پارٹی کے ساتھ مزاحمت ہاتھ پائی کی ہے۔ یہی میرا بیان ہے۔ جو حقیقت پر مبنی ہے۔



ASI تھانہ پشتخترہ

23-07-2020

بشیر کاناظر  
23/7/20



DISTRICT EDUCATION OFFICE (M) MARDAN

Phone & Fax #. 0937933151  
Email: deomalemardan@gmail.com



**REINSTATEMENT ORDER**

Consequent upon the Judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal No.1488/2019 vide Judgment dated 08-09-2021 and Execution Petition No:239/22, Mr. Muhammad Naeem Ex-PST GPS Pirano Banda is hereby reinstated conditionally and adjusted against vacant PST post at GPS Moti Bala Katlang with immediate effect. Moreover the period of his absence from duty is treated as extra ordinary leave without pay.

**Conditions:**

- The order is subject to the final decision of CPLA filed in the Supreme Court of Pakistan.
- He will give an undertaking to be recorded on the stamp paper that in case of any overpayment is made in light of this order; the same will be deposited/recovered.

(Zulfiqar ul Mulk)

DISTRICT EDUCATION OFFICER  
(MALE) MARDAN

Endst:No. 54356 /P.F./Dated: 4-7 /2022

- PS to Secretary E&SED Khyber Pakhtunkhwa Peshawar.
- Director E&SED Khyber Pakhtunkhwa Peshawar.
- Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
- DAO Mardan
- SDEO(M) Mardan
- Official concerned

DISTRICT EDUCATION OFFICER  
(MALE) MARDAN