

3rd June, 2022

Counsel for the petitioner present. Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present.

Respondents are directed to appear in person alongwith implementation report on 06.07.2022 Original appeal be also requisitioned.



Chairman

6th July, 2022

Learned Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Suleman, Law Officer for respondents present.

Learned AAG produced copy of order endorsement No. 3432-34/P.B dated 06.07.2022 whereby in compliance of the judgment of the Tribunal, the petitioner has been reinstated in service. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 06th day of July, 2022.



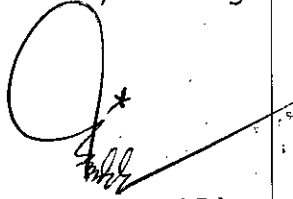


(Kalim Arshad Khan)
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 115/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.02.2022	<p>The execution petition of Mst. Rukhsana submitted today by Naila Jan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<p><i>Noted by Council Naila Jan 15/04/2022</i></p>	<p>This execution petition be put up before to Single Bench at Peshawar on <u>17-05-2022</u>. Original file be requisite. Notices to the appellant and his counsel be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	17.05.2022	<p>Learned counsel for the appellant present and requested for adjournment in order to further prepare the brief. Adjourned. To come up for preliminary hearing on 03.06.2022 before S.B.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (E)</p>



OFFICE OF THE
SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN
E mail. mardanjail@gmail.com
Phone. 0937-843114

No. _____ /PB Dated: 06/07/2022.

OFFICE ORDER.

In compliance of the Honourable Services Tribunal, Khyber Pakhtunkhwa Peshawar Services Appeal No. 12883/2020 and Judgment in itid appeal dated; 03-06-2022, Ex-Female Warder Mst; Rukhsana D/O Muhammad Younis is hereby conditionally reinstated into service at Central Prison Mardan vide Judgment dated; 10-01-2022 with effect from 30-01-2020 subject to the outcome of CPLA already filed in Supreme Court of Pakistan.

**SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN**

Endst. No. 3432-36 P.B.

Copy of the above is forwarded to;

- ✓ 1 The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar with reference his letter No. 21843 dated 06.07.2022 on above cited service appeal for information please.
- 2 The Registrar Service Tribunal, Khyber Pakhtunkhwa Peshawar for information please.
- 3 The Superintendent Central Prison Mardan.
- 4 The District Accounts Officer Mardan.

For information and necessary action please.

- 5 The official/ Ex-Female Warder Mst; Rukhsana D/O Muhammad Younis R/O Village Sulgara Banda, Post office Dargai, Kharki Tehsil Dargai, District Malakand.

**SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN**

[Handwritten Signature]
06/07/2022

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 115 /2022

In

Service Appeal No: 12883/2020

Mst Rukhsana

Versus

I.G.P Prison KPK & Others

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Dated: 16/02/2022

Rukhsana
Petitioner
Through

Naila Jan
Naila Jan
Advocate, High Court
Peshawar

D

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. ____/2022

In

Service Appeal No: 12883/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 303

Dated 16/02/2022

Mst. Rukhsana D/o Muhammad Younas R/o Salgaro
Banda, P.O Dargai, District Malakand.

.....Petitioner

Versus

1. Inspector General of Prison, KP Peshawar.
2. Superintendant Circle Head Quarter, Mardan.

.....Respondents

EXECUTION PETITION FOR
IMPLEMENTATION OF THE
JUDGMENT OF THIS HON'BLE
TRIBUNAL IN APPEAL No.
12883/2020 DECIDED ON
10/01/2022

Respectfully Sheweth,

1. That the above mention appeal was decided by this Hon'ble Tribunal vide Judgment dated 10/01/2022. (Copy of the judgment is annexed as annexure "A")
2. That the relevant portion of the judgment is reproduced "*In view of the foregoing the instant appeal is accepted. The impugned order dated 02-07-2020 and 11-08-2020 is set aside and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room*".
3. That the Petitioner after getting of the attested copy of same approached the Respondents

several time for implementation of the above mention judgment. However they are using delaying tactics and reluctant to implement the judgment of this Hon'ble Tribunal.

- 4. That the Petitioner has no other option but to file the instant petition implementation of the judgment of this Hon'ble Tribunal.
- 5. That there is nothing which may prevent this Hon'ble Tribunal from implementing of its own judgment.

It is, therefore, requested that on acceptance of this petition the Respondents may directed to implement the judgment of this Hon'ble Tribunal by reinstating the Petitioner with all back benefits.

Dated: 16/02/2022

Rukhsana

Petitioner

Through

Naila Jan

Advocate, High Court
Peshawar

Naila Jan

AFFIDAVIT:-

I, Mst. Rukhsana D/o Muhammad Younas R/o Salgaro Banda, P.O Dargai, District Malakand, do hereby solemnly affirm and declare on oath that all the contents of above application are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon'ble Court.

Deponent

16/02/2022 Rukhsana



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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Execution petition No. ____/2022

In

Service Appeal No: 12883/2020

Mst Rukhsana

Versus

I.G.P Prison KPK & Others

ADDRESSES OF PARTIES

PETITIONER

Mst. Rukhsana D/o Muhammad Younas R/o Salgaro
Banda, P.O Dargai, District Malakand

RESPONDENTS

1. Inspector General of Prison, KP Peshawar.
2. Superintendent Circle Head Quarter, Mardan.

Dated: 16/02/2022

Through

Petitioner

Rukhsana
Naila Jan
Naila Jan

Advocate, High Court
Peshawar

S

A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 12883/2020

Date of Institution ... 27.10.2020

Date of Decision ... 10.01.2022



Mst: Rukhsana D/o Muhammad Younas R/o Salgaro Banda, P.O Dargai, District Malakand. ... (Appellant)

VERSUS

Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar and one another. ... (Respondents)

Naila Jan,
Advocate

... For Appellant

Javed Ullah,
Assistant Advocate General

... For respondents

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

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the

case is that the appellant, while serving as warder in prison department, was proceeded on the charges of absence from duty and was ultimately dismissed from service vide order dated 02-07-2020, against which the appellant filed departmental appeal, which was rejected vide order dated 11-08-2020, hence the instant service appeal with prayers that the impugned order dated 02-07-2020 and 11-08-2020 may be set aside and the appellant may be re-instated in-service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, fact and norms of natural justice, therefore are not tenable and liable to be set aside; that the impugned orders had been issued

ATTACHED


without serving any charge sheet/statement of allegations as well as show cause notice upon the appellant; that no regular or fact finding inquiry has been conducted before issuance of the impugned order, hence the impugned orders are void ab initio; that the appellant has been condemned unheard as no opportunity of personal hearing or defense has been provided to the appellant, hence the respondents violated Article 10-A of the Constitution; that absence of the appellant was not willful but due to maternity, which does not amount to misconduct; that the allegation of un-satisfactory work/conduct has never been issued to the appellant, thus the allegations involve factual controversy, which cannot be proved without conducting regular inquiry; that the word termination is nowhere mentioned in E&D Rules, 2011, hence the impugned order is illegal and against law and rule; that the impugned order has been issued with retrospective effect, hence void.

03. Learned Assistant Advocate General for the respondents has contended that the appellant was granted 45 days of maternity leave on 30-01-2020 and accordingly she was required to resume her duty on 16-03-2020, but she remained absent for three months without provision of any medical documents; that the appellant was issued absence notice vide order dated 03-06-2020 at her home address with no response, thereafter she was terminated vide order dated 02-07-2020.

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

05. Record reveals that the appellant was serving as warder in prison department. During the course of her service, the appellant applied for maternity leave, which was granted by the respondent for the period from 30-01-2020 to 15-03-2020. Placed on record is medical prescription, which would suggest that the delivery could not materialize in the mentioned period, hence the appellant was unable to join her duty. As per leave rule, maternity leave for a period of 45

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EXAMINER
Khyber Pakhtunkhwa
Government Employees

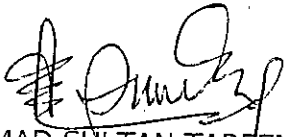
days is granted prior to delivery and 45 days after delivery. In a situation, the respondents were required to grant leave for another 45 days, which was permissible under the rule, but the respondents without taking into consideration her illness, terminated her from service. Even otherwise absence on medical grounds without permission of competent authority does not constitute gross misconduct entailing major penalty of dismissal from service. Reliance is placed on 2008 SCMR 214. Contention of the respondents to the effect that as per clause-7 of her appointment order, the competent authority was empowered to dispense with her service without assigning any reason does not hold force, as the Supreme Court of Pakistan in its judgment reported in 1997 PLC (CS) 885 has held that if employment contract contained stipulation that services could be terminated without assigning any reason even then no order of termination could be passed without assigning any reason, as long as vacancies existed, persons appointed against those vacancies could not be removed from service arbitrarily without cogent reasons for removal of employee must exist in record though such reasons might not be communicated to the employee. To this effect, another judgment reported in 2017 PLC (CS) 587 has held that law did not authorize any authority to cancel an appointment order and remove the employee from service without any reason. In view of the referred judgments and in the context of natural justice, the term "without assigning any reason" is arbitrary in nature and is contrary to the basic human rights as well as norms of natural justice, which needs revision. Moreover the impugned order provided for penalty to the appellant in terms of termination from service, which as rightly argued by the learned counsel for the appellant is not included in the list of penalties provided in the rules applied on the appellant. The order, therefore, having been passed in blatant disregard of law can only be termed as void and no limitation runs against void order. Reliance is placed on 2019 SCMR 648.

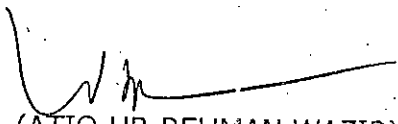
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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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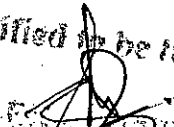
06. In view of the foregoing the instant appeal is accepted. The impugned order dated 02-07-2020 and 11-08-2020 is set aside and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
10.01.2022


(AHMAD SULTAN TAR BEN)
CHAIRMAN


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

Certified to be true copy


REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 15/2/22
Number of Wards 2000
Copying Fee 22/-
Percent 4/-
Total 26/-
Name of Copyist -
Date of Completion of Copy 15/2/22
Date of Delivery of Copy 15/2/22

وکالت نامہ

بعدالت کپرسنل
 رضا بنام صلح و عنبر
 منجانب: مشتعل تاریخ 16/02/2022

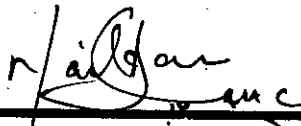
باعث تحریر آنکہ


مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام لٹنار کے لیے ہے۔

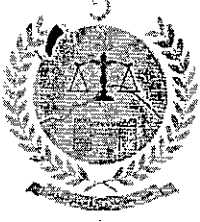
نانکہ جان ایڈوکیٹ ہائی کورٹ

کو بدیں شرط و کیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص رو بروئے عدالت حاضر ہوتا ہوں گا اور ہونگی اور بوقت پکارے جانے مقدمہ و کیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کرونگا اگر پیشی پر من مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے کسی اور جگہ سماعت ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا طرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختیار نامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں نیز ایسے مشیر قانون کو ہر امر میں وہی اور ایسے ہی اختیارات حاصل ہوں گے جیسے کہ صاحب موصوف کو حاصل ہیں اور پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختیار نامہ لکھ دیا تاکہ سند رہے۔ مورخہ 16/02/2022۔ مضمون مختیار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

ATTESTED & ACCEPTED


 نانکہ جان ایڈوکیٹ پشاور ہائی کورٹ پشاور


 رضا بنام صلح و عنبر



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No: 1666-67/ST Dated: 10/6/2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To,

- 1 Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
- 2 Superintendent Circle Head Quarter, Mardan.

Subject: PERSONAL APPEARANCE IN EXECUTION PETITION NO. 115/2022 OF Mst. RUKHSANA VS IGP

I am directed to forward herewith a certified copy of Order dated 03.06.2022 passed by this Tribunal on the above subject for strict compliance .

Encl: As Above.


(WASEEMAKHTAR)

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR