

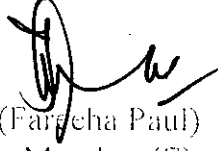
28.06.2022

Petitioner alongwith her counsel present. Mr. Kabir Ullah Khattakk, Additional Advocate General alongwith Mr. Munwar Khan, ADEO Litigation for respondents present.

Representative of the respondent department submitted reinstatement order vide Endst; No 3071-75 dated 27.06.2022 which is placed on file and stated that the department has implemented the judgement of this Tribunal conditionally subject to CPLA in august Supreme Court of Pakistan.

In view of the above. instant petition is disposed off. File be consigned to record room.

Announced.
28.06.2022

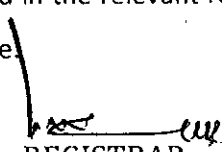



(Farzha Paul)
Member (E)

Announced
28-6-2022

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 214/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.04.2022	<p>The execution petition of Mst. Irum Naz submitted today by M^{rs}. Humera Gul 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>Nateel</i> <i>Humera Gul</i> <i>Humera Gul</i> <i>21/4/22</i></p>	<p>This execution petition be put up before to Single Bench at Peshawar on <u>25-05-2022</u>. Original file be requisitioned. Notices to the appellant and his counsel be also issued for the date fixed. <i>Notices also be issued to respondents for 1/R</i></p> <p style="text-align: right;"> CHAIRMAN</p>
25 th May, 2022		<p>Counsel for the petitioner present. Mr. Kabeer Ullah Khattak, AAG for respondents present.</p> <p>Learned AAG seeks time for implementation report of the judgment. To come up for implementation report on 28.06.2022 before SB.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>



District Education Office (female) District Khyber at Jamrud

RE-INSTATEMENT ORDER;

In compliance with the decision made by the worthy Service Tribunal Peshawar, dated 15.12.2021 vide service appeal No. 1286/2019, Execution Petition No 214/2022, Mst: Iram Naz D/O Zahir Khan is hereby reinstated and posted at GGPS Rahim Shah. The teacher is reinstated with the condition that she will submit affidavit worth Rs.100 dully attested by head of the institution/concerned SDEO where she had drawn her last salary and the same should be countersigned by the undersigned. It should be clearly stated in the affidavit that if the supreme court of Pakistan under CPLA NO 155/P/2022 decides to set aside the decision made by the honorable service tribunal, this reinstatement order will stand cancel and the teacher will not file a departmental appeal in any court of Pakistan against the appointing authority.

TERMS & CONDITIONS:

1. Charge report should be submitted to all concerned.
2. If she fails to assume her duties within 15 days of the issuance of this re instatement order, it will be automatically considered as cancelled.
3. If any technical legal flaw is pointed out, the re-instatement order will stand cancel.

Endst: No. 3071-75

Dated: 27/6/2022

(Dr. Fanoos Jamal)
DISTRICT EDUCATION OFFICER (FEMALE)
DISTRICT KHYBER AT JAMRUD

Copy to the:

1. Director E & SE Khyber Pakhtunkhwa at Peshawar.
2. Deputy Commissioner Khyber at Peshawar.
3. Medical Superintendent Landi Kotal District Khyber.
4. Principals/Head Mistresses/Head Teachers concerned.
5. District Accounts Officer Khyber at Jamrud.
6. SDEOs/ASDEOs and Pay Clerk concerned.
7. ADEO Litigation
8. Deputy Director Litigation Directorate Of E&SED
9. Individuals Concerned.
10. Master File.

DISTRICT EDUCATION OFFICER (FEMALE)
DISTRICT KHYBER AT JAMRUD

خدمت جناب صاحبزادہ امجد علی خان پٹوٹل لکھنؤ

نام بنام امجد علی خان لکھنؤ

قدم نمبر 214/21

درخواست نمبر 1 کے لئے مقدمہ نقول

جناب عالی! سائلہ صاحب ذیل عرض رساں ہے۔

- 1- یہ کہ مقدمہ عنوان بالا زور بخود عدالت چھوڑنے پر جس آئندہ تاریخ پیشی 06/08/22 ہے۔
- 2- یہ کہ سائلہ کو مقدمہ نقول کا ایک فرسٹ لوفی

لینا منظور درخواست میں سب ضابطہ
مقدمہ کلم عطا کی جاوے

06
امرقوم 22/02

سائلہ
محمد امجد علی خان پٹوٹل

Allowed as per
rule Ekhon
2-6-2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Executive Petition No. 214 /2022

In Service Appeal No. 1286/2019

Mst. Irum Naz

VERSUS

Government of Khyber Pakhtunkhwa through Secretary
Education Civil Secretariat Peshawar & others

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S#	Description of Documents	Annex	Pages
1.	Grounds of Execution Petition.		1-2
2.	Affidavit.		3
3.	Copy of the decision dated 15/12/2021	"A"	4
4.	Wakalat Nama		

Dated:- 13/04/2022

Irum Naz

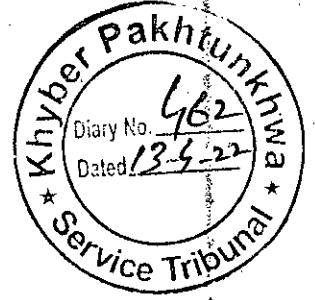
Applicant

Through

Humera Gul
Humera Gul

Advocate, High Court
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR



Executive Petition No. 214 /2022

In Service Appeal No. 1286/2019

Mst. Irum Naz GGHS Zar Faqir Kalay, Kalanga Bara,
Khyber Agency R/o Village Nahaqi, Peshawar District.

.....Petitioner

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Education Civil Secretariat Peshawar.
2. Director of Education Directorate of Education situated at GT Road Peshawar City.
3. District Education Officer, DEO Office, District Khyber.

.....Respondents

EXECUTION PETITION FOR DIRECTING
THE RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 15/12/2021 OF THIS
HON'BLE TRIBUNAL IN LETTER AND
SPIRIT

Respectfully Sheweth,

1. That the applicant/appellant filed Service Appeal No.1286/19 in this August Tribunal which have been accepted on 15.12.2021 (**Copy of Judgment is attached as annexure "A"**).
2. That the appellant submitted the judgment/order dated 15/12/2021 to the respondent department but no action has been taken by the department so far.
3. That this Hon'ble Tribunal gave direction to the respondent which is reproduced as under
"in view of the fore-going discussion, the instant appeal as well as the connected Service Appeal bearing No. 1285/2019 "titled Mst. Faheema Vs Government of Khyber Pakhtunkhwa through Secretary Education Civil Secretariat Peshawar and two others", are accepted. The impugned orders are set aside and the appellant are re-instated in to service with all back benefits. Parties are left to bear their own costs. File be the consigned to record room.
4. That the petitioner has no remedy except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment of this August Tribunal in letter and spirit.

Dated:- 13/04/2022

Samir Ali

Applicant

Through

Humera Gul
Humera Gul

Advocate, High Court
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Executive Petition No. _____/2022

In Service Appeal No. 1286/2019

Mst. Irum Naz

VERSUS

Government of Khyber Pakhtunkhwa through Secretary
Education Civil Secretariat Peshawar & others

AFFIDAVIT

I, Mst. Irum Naz GGHS Zar Faqir Kalay, Kalanga Bara, Khyber Agency R/o Village Nahaqi, Peshawar District, do hereby solemnly affirm and declare on oath that all the contents of the instant **Execution Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

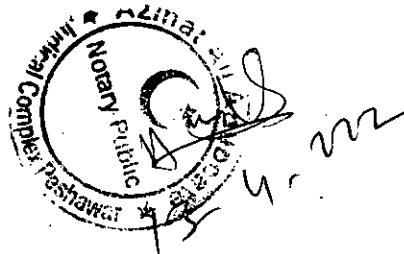
Irum Naz

Deponent

Identified by;

Humera Gul
Humera Gul
Advocate High Court
Peshawar

ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

A

1



Before the Service Tribunal, Khyber Pakhtun khwa, Peshawar

Service Appeal No. 1286 /2019

Iram Naz D/O Zahir Khan GGPS Zar Faqir Kalay, Kalanga Bara, Khyber Agency R/O Village Nahaqi, Peshawar District.

Khyber Pakhtunkhwa
Service Tribunal

...Appellant

Versus

Diary No. 1338

Dated 02/10/2019

- 01 Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat Peshawar
- 02 Director of Education, Directorate of Education situated at GT Road Peshawar City.
- 03 District Education Officer, DEO Office, District Khyber

...Respondents

Appeal, under Section 4 of the Service Tribunal Act, 1974, Against the impugned Order dated 16/11/2017, which was communicated to the Appellant by Peshawar High Court, Peshawar.

Filed today

Registrar

27/10/19

On acceptance of the appeal, this Honorable Tribunal may kindly set-aside the impugned order dated 16/11/2017 and reinstate the appellant with all back benefits.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1286/2019

Date of Institution ... 02.10.2019

Date of Decision ... 15.12.2021



Iram Naz D/O Zahir Khan GGPS Zar Faqir Kalay, Kalanga Bara, Khyber Agency R/O Village Nahagi, Peshawar District.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat Peshawar and two others. ... (Respondents)

Humera Gul,
Advocate

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For Respondents

SALAH-UD-DIN

...

MEMBER (JUDICIAL)

ATIQ-UR-REHMAN WAZIR

...

MEMBER (EXECUTIVE)

JUDGMENT

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

This single judgment

shall dispose of the instant service appeal as well as the connected Service Appeal bearing No. 1285/2019 "titled Mst. Faheema Versus Government of Khyber Pakhtunkhwa through Secretary Education Civil Secretariat Peshawar and two others", as common question of law and facts are involved therein.

TESTED 02.

Brief facts of the case are that the appellants Mst. Faheema and Mst. Iram

Naz were appointed as PTC Teachers on 29-11-2005 and 25-08-2006 respectively

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

in Khyber Agency, now Tribal District Khyber. During the course of their service,

both the appellants were removed from service vide separate orders dated 16-11-

2017. Feeling aggrieved, the appellants filed departmental appeals, which were considered in terms that a committee was constituted for disposal of departmental appeals, where appeals of the appellants were considered and the committee in its meeting held on 22-12-2017 recommended to conduct de-novo inquiry in both the cases. The committee circulated its minutes on 30-05-2018, but neither any de-novo inquiry was conducted nor the appellants were re-instated in service. The appellants filed Writ Petitions No. 3858-P/2019 and 3880-P/2019, which were disposed of vide separate judgments dated 24-07-2019 with observations that since the appellants are civil servants, hence they are required to file appeal before the service Tribunal. The appellants filed the instant service appeals on 08-08-2019 with prayers that the impugned orders dated 16-11-2017 may be set aside and the appellants may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the appellants have not been treated in accordance with law, as services of the appellants were terminated without observing the codal formalities, hence the whole process is void ab initio in the eye of law; that departmental appeals of the appellants were accepted and were formally considered by the committee constituted for the purpose, in a situation, the respondents were under legal obligation to have conduct a de-novo inquiry within the stipulated time, but the respondents failed to conduct any inquiry or to afford opportunity of defense to the appellants, hence the appellants were condemned unheard.

04. Learned Deputy District Attorney for the respondents has contended that appellants after their appointments against the post of PTC, continuously absented themselves from lawful duty and could not prove their attendance in their respective schools; that on the charges of absence, the appellants were proceeded against under the relevant law; that show cause notices were served upon the appellants as well as published in two leading newspapers, but the appellants did not turn up, hence they were proceeded against ex-parte and were terminated

TESTED
 EXAMINER
 Service Tribunal
 Peshawar

from service vide order dated 16-11-2017; that a committee was constituted for disposal of departmental appeals of the appellants, wherein it was decided to conduct de-novo proceedings, but since the appellants had already admitted their absence from duty, hence there was no need to conduct any further inquiry; that the appellants have been treated in accordance with law having no ground to file the instant service appeal.

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

06. Record reveals that the appellants were appointed as PTC back in 2005-06, who served until 16-11-2017 with all perks and privileges. It was in 2017, when the appellants were asked to prove their presence in their respective schools for a certain time period. Record reveals that the appellants had attempted to prove their presence in their respective schools, however as the service book and attendance registers are supposed to be in the custody of the school administration, but the same were also not available with the school administration as well due to the reason that such schools had been destroyed during war on terror, hence no record whatsoever was available either with appellants or with respondents. This Tribunal repeatedly asked the respondents to provide all such record, which pertains to their removal from service, but they failed to provide such record, even salary of respondent No. 2 was attached vide order sheet dated 03-03-2020 for non-provision of the relevant record and after considerable delay, only produced removal from service orders of the appellants and order dated 05-08-2020 purportedly a decision on departmental appeals of the appellants. In such a situation, it would be unjust to penalize the appellants for reasons beyond their control.

ATTESTED

EXAMINER
Kh. Sher Fakhtukhwa
Service Tribunal
Jeshwar

07. We have noted that pre-requisites for imposition of major penalty provided under the law have not been followed. The appellants were removed from service on a simple charge sheet without conducting a regular inquiry and

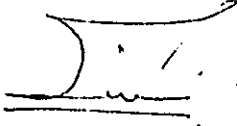
adopting proper procedure. The august Supreme Court of Pakistan in its judgment reported in 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.


08. Departmental appeals of the appellants were, however partially accepted vide minutes dated 30-05-2018 with recommendations to conduct de-novo inquiry, but no such inquiry was conducted within the stipulated timeframe, nor the appellants were re-instated for the purpose of de-novo proceedings, thus compelled the appellants to knock at the door of the court. At a belated stage, respondents have conducted an inquiry with a report submitted on 20-04-2019 with delay of almost one year of the recommendations of the committee, but without involving the appellants, which shows that only a formality is fulfilled. Embarrassment of the respondents can be gauged from the fact that departmental appeals of the appellants had already been decided by the committee constituted for the purpose vide minutes dated 30-05-2018, but the respondents during the course of litigation, tendered another decision rejecting their departmental appeals vide order dated 05-08-2020, which shows the reckless approach of the respondents towards the issue. We have observed that both the appellants were non-local for the post of PTC in the said jurisdiction with obvious reason that no local female opted for such recruitment due to peculiar circumstances during the period in question, hence the respondents were supposed to take a sympathetic view, instead the appellants were removed from service without adopting legal procedure, which was not warranted.

TESTED
 EXAMINER
 Khairpur
 Service Tribunal
 Peshawar


09. In view of the fore-going discussion, the instant appeal as well as the connected Service Appeal bearing No. 1285/2019 "titled Mst. Faheema Versus Government of Khyber Pakhtunkhwa through Secretary Education Civil Secretariat Peshawar and two others", are accepted. The impugned orders are set aside and the appellants are re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
15.12.2021





(SALAH-UD-DIN)
MEMBER (J)


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

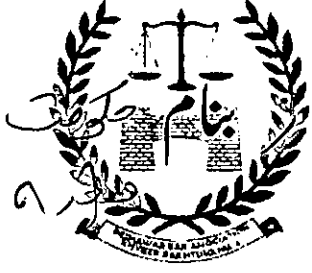
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EX. MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Urgent —
Total 26/-
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Date of Completion of Copy 10-01-22
Date of Delivery of Copy 10-01-22

120864			
ایڈویکٹ: <u>Amended</u>			
بار کونسل/ایسوسی ایشن نمبر: BC-049-025	پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
رابطہ نمبر: 0313-9132664			

بعدالت جناب: دفتر جس کے ٹریبونل کے حوالے سے لیسٹ

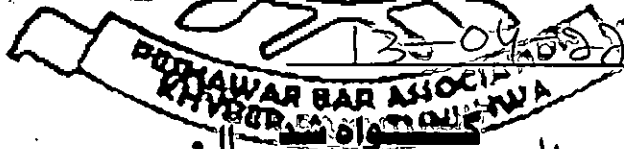
منجانب: <u>ڈپٹی</u>	دعویٰ: <u>Execution Petition</u>
	علت نمبر:
	موردہ:
	جرم:
	تھانہ:

باعت تحریر آنکہ

www.pba.org.pk
 13 Nazimullah Khan
 17301-9169417-25
 Cont. No. 17301-9169417-25

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
 آن مقام لیسٹ میں ایڈووکیٹ کے نام سے ایڈووکیٹ کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرمانے و لٹریچر ٹالٹ و فیصلہ بر حلف دینے جو اہل دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور مستثنیٰ، نیز
 دائر کرنے اپیل انگریزی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے نگران کے ساتھ لے کر اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا پورا پورا اختیار منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دودہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم: 13-04-2025



مقام پشاور کے لیے منظور ہے۔

Accepted
 Amended

نوٹ: اس وکالت نامہ کی فونوگرافی ناقابل قبول ہوگی۔