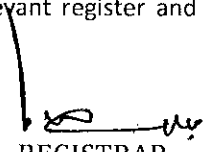

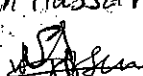


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 272/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.04.2022	<p>The execution petition of Mr. Sahib Zada submitted today by Mr. Yasir Saleem 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	25-5-22	<p>This execution petition be put up before to Single Bench at Peshawar on <u>9-6-22</u>. Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	09.06.2022	<p>Petitioner in person present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Asad-ud-Din Asif Jah, Superintendent for respondents present.</p> <p>Representative of the respondent department submitted Notification No. SOE(AD)21-226/80/Sardar Ali/490 dated 28.03.2022 which is placed on file and stated that the department has implemented the judgement of this Tribunal conditionally subject to CPLA. Therefore, the instant petition is disposed off. File be consigned to record room.</p>

*Noted by clerk
1/6/2022
Shah Hassan
*


(Fareeha Paul)
Member (E)



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.1292/2018 vide Judgment dated 12-01-2022 and Execution Petition No:272/2022, Mr. Sahib Zada s/o Gul Zada is hereby reinstated conditionally and adjusted against vacant PST post at GPS.No.2 Jalala Takht Bhai Mardan with immediate effect with the direction of the Honorable Service Tribunal that the intervening period w.e.f 27-06-2007 to 10-05-2017 is treated as extra ordinary leave without pay, whereas the period from the date of his arrest till date of acquittal i.e 05-06-2018 & onward until his arrival into his post is treated as leave of the kind due.

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 unauthorized payment is made in light of this order; the same will be deposited/recovered.
- Promotion (if any) shall be made after the judgment of CPLA.

(Zulfiqar ul Mulk)

DISTRICT EDUCATION OFFICER
(MALE) MARDAN

Endst:No. 4836-37 P.F/Dated: 08-06 /2022

- PS to Secretary E&SED Khyber Pakhtunkhwa Peshawar.
- Director E&SED Khyber Pakhtunkhwa Peshawar.
- ✓ Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
4. DAO Mardan
5. SDEO(M) Takht Bhai.
6. Official concerned.

DISTRICT EDUCATION OFFICER
(MALE) MARDAN



DISTRICT EDUCATION OFFICE (M) MARDAN

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



REINSTATEMENT ORDER

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(Zulfiqar ul Mulk)

DISTRICT EDUCATION OFFICER
(MALE) MARDAN

Endst.No. 4836-37 P.F./Dated: 08-06 /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) Takht Bhai.
- Official concerned.

DISTRICT EDUCATION OFFICER
(MALE) MARDAN

KEEP NOTHING UNDER THE TABLE, EXCEPT YOUR SHOES & USE THEM TO KICK OUT CORRUPTION

چارنج رپورٹ

من کی صاحب زادہ ولد گل زادہ بحکم DEO میل مردان آرڈر نمبر 37/4836 تاریخ
08/06/2022 جی، پی، ایس نمبر 2 جلالہ میں بعد از دوپہر بتاریخ 08/06/2022
لپے عہدے کا چارج سنبھالا۔

چارنج گہندہ
08/06/2022

دستخط چارج دہندہ
Head Teacher
GPS No II Jalala

چارنج رپورٹ ارسال خدمت ہے۔

**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

Execution Petition no. 272/2022

In the matter of
Appeal No. 1292/2018
Decided on 12.01.2022.

Sahib zada, Ex-PST resident of village Jalala Takht Bhai District Mardan.

(Applicant)

VERSUS

Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa,
Peshawar and others.


(Respondents)

INDEX

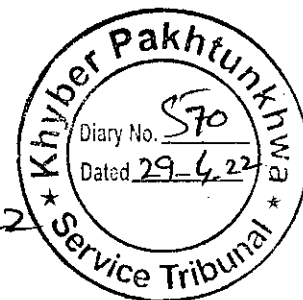
S. No	Description of documents	Annexure	Page No
1.	Memo of Appeal & Affidavit		1-2
2.	Copy of the Judgment and order dated 12.01.2022	A	3-8
3.	Copies of the application and arrival report dated 13.01.2022	B & C	9-11
4.	Vakalatnama		12

Applicant

Through


YASIR SALEEM
Advocate, Peshawar

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR



In the matter of
Appeal No: 1292/2018
Decided on 12.01.200.

Execution petition no. 272/2022

Sahib zada, Ex-PST resident of village Jalala Takht Bhai District Mardan.
(Applicant)

VERSUS

1. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male) Mardan

(Respondents)

Application for the implementation of the Judgment and Order dated 12.01.2022 in captioned service appeal of this Honourable Tribunal.

Respectfully Submitted:

1. That the above noted service appeal was pending adjudication in this Honourable Tribunal and was decided vide judgment and order dated 12.01.2022.
2. That vide judgment and order dated 12.01.2022, this Honorable Tribunal allowed the appeal and reinstated the appellant. *(Copy of the Judgment and order dated 12.01.2022, is attached as Annexure A)*
3. That the judgment and order of this Honourable Tribunal, was duly communicated to the respondent by the applicant vide application for implementation. Thereafter the applicant is continuously approaching the respondents for the implementation of the judgment dated 12.01.2022, however they are reluctant to implement the same. *(Copies of the application and arrival report dated 13.01.2022 are attached as Annexure B & C)*
4. That the respondents are legally bound to implement the judgment of this Honourable Tribunal dated 12.01.2022 in its true letter and spirit without any further delay which has already been delayed due to the malafide intention of the Respondents

It is, therefore, prayed that on acceptance of this application the judgment and order dated 12.01.2022 of this Honourable Tribunal be implemented in its true letter and spirit.



Applicant

Through



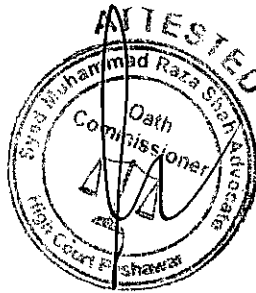
YASIR SALEEM
Advocate, Peshawar

AFFIDAVIT

It is solemnly affirm and declare on oath that the contents of the above implementation petition are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.



DEPONENT

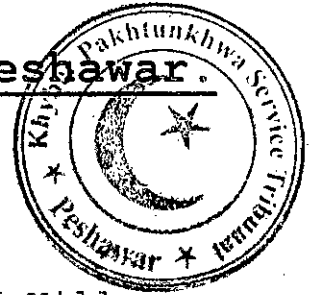


(3)

Annex "A"

Before The Service Tribunal KPK Peshawar.

Service Appeal No. 1292 / 2018.



Sahibzada S/o Gul Zada (Ex-PST) Resident of Village
Jalala Takht Bhai District Mardan.

Appellant.

Versus

Sl. No. 1524
Date 11-10-2018

1. The Secretary, Elementary & Secondary Education
Deptt; KPK Peshawar.
2. The Executive District Officer, E.S & E Deptt;
(Male) Mardan.
3. The Director Elementary & Secondary Education
Deppt; KPK Peshawar.

Respondents.

Appeal under Section-4 of the
Service Tribunal Act, 1974, against the order
of The E.D.O/Respondent No.2 contained in
Letter No.10253/G Dated 23/06/2008, removing
the Appellant from service.

11/10/18


1. That the Appellant was appointed as P.S.T and
posted at the Govt; Primary School No.1 Sher Garh
Mardan, vide order dated 23-06-1997.

(Copy Annexure:- "A").

2. that the Appellant was falsely charged in a murder
case alongwith his other family members vide FIR
No. 517 dated 27-06-2007 of P.s Shergarh District
Mardan.

ATTESTED

(Copy Annexure:- "B").


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1292/2018

Date of Institution ... 11.10.2018

Date of Decision ... 12/01/2022



Sahibzada son of Gul Zada (Ex-PST) resident of village Jalala Takht Bhai District Mardan. ... (Appellant)

VERSUS

The Secretary, Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar and others. ... (Respondents)

Present.

Mr. Adam Khan, Advocate ... For appellant.

Mr. Kabirullah Khattak,
Addl. Advocate General, ... For respondents.

MR. AHMAD SULTAN TAREEN ... CHAIRMAN
MR. ATIQ-UR-REHMAN WAZIR, ... MEMBER(E)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-The appellant named above invoked the jurisdiction of this Tribunal through service appeal described above in the heading with the prayer as copied below:-

“On acceptance of this appeal, the impugned order may be set aside and the appellant may be ordered to be reinstated into service with back service benefits alongwith any other relief, deemed appropriate by this Hon’ble Tribunal with costs.”

2. Facts of appeal in nutshell are that the appellant was appointed as PST and posted in Government Primary School No. 1 Sher Garh Mardan vide order dated 23.06.1997; that he was falsely charged in a murder case alongwith other family members vide FIR No. 517 dated 27.06.2007 P.S Shergarh District

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

5

Mardan. The appellant was acquitted from the said charge vide judgment dated 05.06.2018 and attended the office of D.E.O/respondent No. 2 on 20.06.2018 for resumption of duty, where he learnt that he had been removed from service vide order dated 23.06.2008. Feeling aggrieved, the appellant preferred representation to the Director, E&SE (respondent No. 3) on 26.06.2018, which was not responded within the stipulated period, hence the present appeal on 11.10.2018.

3. After admission of the appeal for regular hearing, the respondents were given notices. They after attending the proceedings have filed their written reply, raising several factual and legal objections, refuting the claim of the appellant and asserted for dismissal of appeal with cost.

4. We have heard the arguments and perused the record

5. The copy of impugned order dated 23.06.2008 as annexed with the appeal discloses that an enquiry committee headed by Mr. Shah Nazar Khan DDO (M/P) Takht Bhai was constituted to conduct enquiry against the accused for the charges levelled against the appellant. The enquiry committee after having examined the charges and evidence on record submitted the report, where-after a show cause notice in the Daily "Mashriq" dated 24.05.2008 was served upon the appellant to explain his absence from duty otherwise *ex-parte* action should be taken against him but he failed. Consequently, major penalty of removal from service w.e.f. 27.06.2007 was imposed upon the appellant in exercise of power conferred by the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000. The appellant preferred departmental appeal on 25.06.2018 wherein, while showing cause of his absence, he stated that his absence was not intentional but because of implication in false case of murder reported vide FIR No. 517 dated 27.06.2007 of P.S Sher Garh District Mardan. He further stated that he was acquitted of the charge of murder on 05.06.2018

[Handwritten signature]

ATTESTED

[Handwritten signature]
MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

by the Additional Sessions Judge-II, Takht Bhai. It was mentioned in the service appeal that the departmental representation remained un-responded. It is there in the grounds of service appeal that the appellant alongwith his family members was falsely charged on malafide intention on account of previous enmity which is evident from judgment dated 27.07.2016 acquitting Mr. Umar Zada, brother of the appellant in the same case. It was also stated as ground of appeal that the material point was not taken into consideration that the appellant could not come out of his house as his life was at risk on account of blood feud enmity. The appellant was acquitted from the criminal charge by competent court of law and the copy of acquittal judgment in favour of the appellant as annexed with the appeal is available on file. It is there in the said judgment that the case was investigated and after completion of investigation, complete challan u/s 512 Cr.P.C was sent for trial against the accused and after completion of proceedings u/s 512 Cr.P.C, accused were declared proclaimed offenders vide order dated 19.06.2008. It appears from the said observations in the acquittal judgment that the appellant remained proclaimed offender because of his having gone into hiding after registration of case against him. According to arrest card of the appellant issued by the police officer, he is shown to have himself surrendered to the police on 10.05.2017 and was properly arrested. The copy of arrest card as produced during arguments is placed on file. Before dilating upon the impact of declaration of the appellant as proclaimed offender since registration of the case till his arrest, it is deemed appropriate to discuss the impact of registration of the criminal case against a government servant on account of occurrence having no nexus with his official position. Article 194 of Civil Service Regulation provides that a Government servant who has been charged for a criminal offence or debt and is committed to prison to be considered as under

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ATTESTED
 BY *[Signature]*
 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

suspension from the date of his arrest. In case such a government servant is not arrested or is released on bail, the competent authority may suspend him, by specific order, if the charge against him is connected with his position as government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. It is a matter of fact that the appellant was not arrested since his nomination in the FIR on 27.06.2007 till 10.05.2017 and during this period he remained into hiding because of threat to his life as admitted by him in his departmental as well as service appeals. This period of absence of the appellant from duty at the most could be considered as willful absence. The procedure for disciplinary action on account of willful absence at the relevant time was governed by Rule 8-A of the NWFP Government Servants (E&D) Rules, 1973. Accordingly, in case of willful absence from duty by a government servant, a notice shall be issued through registered acknowledgment due cover on his home address directing him to resume duty forthwith. If the same is received back as undelivered or no response is received from the absentee within the stipulated time, a notice shall published in at least two leading newspapers directing him to resume duty within 15 days of the publication of that notice, failing which an *ex-parte* decision will be taken against him. On expiry of the stipulated period given in the notice, the authorize officer shall recommend his case to the authority for imposition of major penalty of removal from service. Obviously, the said procedure was not complied with with particular reference to Rule 8-A *ibid* but otherwise show cause notice was published in the newspaper daily "Mashriq" on 24.05.2008 copy whereof has been annexed with the comments of the respondents.

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6. Now the question for determination is whether the appellant is entitled for reinstatement into service after his acquittal from the charge of criminal case excluding at the moment the fact of appellant having remained

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

proclaimed offender for a long period; The acquittal of a government servant from the charge of an offence having no nexus with his position as government servant does entitle him for reinstatement. However, the particular fact that the appellant remained as proclaimed offender since registration of the case on 27.06.2017 till his arrest on 10.05.2017 need to be dealt with a lenient view when according to his arrest card he himself surrendered to the police and also gave explanation of his remaining into hiding as life threat due to blood feud enmity. However, he cannot claim advantage of the financial benefit for such period as his absence for such a long period was unauthorized.

7. For what has gone above, the instant appeal is accepted, the impugned order dated 23.06.2008 as to imposition of major penalty of removal from service upon the appellant is set aside. He is reinstated into service w.e.f. 27.06.2007. The intervening period in-between 27.06.2007 till arrest of the appellant on 10.05.2017 is treated as without pay. The period from the date of his arrest till the date of his acquittal i.e. 05.06.2018 and onward till the date of this judgment is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

[Handwritten Signature]

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

[Handwritten Signature]

(AHMAD SULTAN TAREEN)
Chairman

ANNOUNCED
12.01.2022

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

Date of Presentation of Application 12/01/22
Number of Words 2400
Copying Fee 26/-
Urgent —
Total 26/-
Name of Copyist —
Date of Completion of Copy 01/04/22
Date of Delivery of Copy 01/04/22

گورنمنٹ ہائیڈرو گریڈنگ ڈیپارٹمنٹ (سرگودھا)

9

Annex "B"

سرگودھا ڈیپارٹمنٹ
سرگودھا ڈیپارٹمنٹ
1997ء سے ریگولر آڈیٹ رپورٹ برائے سرگودھا ڈیپارٹمنٹ

پندرہ نومبر 2006ء کو سرگودھا ڈیپارٹمنٹ

اور نو نومبر 2005ء کو ڈیپارٹمنٹ سے برآمد ہوئی ہے

تفصیلاً 2007/05 کو ریگولر وارڈ کی رپورٹ کے تحت

آڈٹ رپورٹ میں کورس 2005/06 کو باغیچہ بریگیڈ

میں کورس 2008/10 کو سرگودھا ڈیپارٹمنٹ کے تحت

اور سرگودھا ڈیپارٹمنٹ کے تحت دوبارہ ریگولر وارڈ کی رپورٹ میں

عدالت کا فیصلہ اور ریگولر وارڈ کے تحت ریگولر وارڈ کے تحت

تفصیلاً عدالت کے فیصلے کے تحت ریگولر وارڈ کے تحت

العارضی

2304023-2310

سرگودھا ڈیپارٹمنٹ / EX-PST GPS

(10)

Annex "C"

To

The D.E.O,
The E.S.E Department,
Mardan.

Subject: - Arrival report for duty

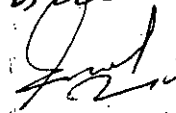
Sir,

It is submitted that the Hon'ble
Service Tribunal (K.P.) Peshawar has accepted
my Service Appeal No. 1292/2018 against the
order of my punishment order dated 23.06.2008
on 12/01/2022.

The copy of judgement will be submitted
in due course, when received from Tribunal.

I hereby report for duty, today P.M.

Dated 13.01.2022

Yours obediently,

(Ghulam Jala),
P.S.
G.P.S, Jala-I
District Mardan.

(11)

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) MARDAN

No. 830 /Dated 26-07-2022

To

Mr. Haji Adam Khan (Advocate)
Mardan Katchehri, Mardan

SUBJECT: ARRIVAL REPORT FOR DUTY

Memo:

Reference to the subject cited above. An application in the name of Sahibzada PST GPS Jalal-1 district Mardan received from your side regarding acceptance of appeal by Service Tribunal Peshawar.

The case will be dealt as and when the Judgment of Honorable court will receive to this office accordingly.


DISTRICT EDUCATION OFFICER
(MALE) MARDAN

POWER OF ATTORNEY

In the Court of Service Tribunal Peshawar

Sahib Zada

- For
- Plaintiff
- Appellant
- Petitioner
- Complainant

VERSUS

Secretary Elementary

- Defendant
- Respondent
- Accused

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____ Fixed for _____

I/We, the undersigned/_____ do hereby nominate and appoint

YASIR SALEEM ADVOCATE HIGH COURT, my true and lawful

attorney, for me in my same and on my behalf to appear at _____ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions, An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc. and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____ the _____ day to _____ the year _____

Executant/Executants _____ Accepted subject to the terms regarding fee _____

YASIR SALEEM

Advocate High Court

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt