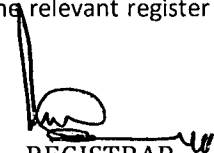



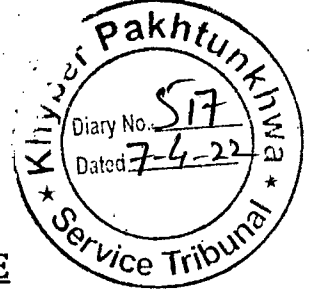


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 181/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.04.2022	<p>The execution petition of Mr. Misbah Akbar submitted today by Mr. Ghulam Habib Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-	31-5-2022  31/5/22	<p>This execution petition be put up before touring Single Bench at A.Abad on <u>14-06-2022</u>. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p> CHAIRMAN</p>
	14.06.2022	<p>None for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General Alongwith Ahmad Yar Khan, AD (Legal) for respondents present.</p> <p>Notice be issued to respondents department for submission of implementation report. To come up for implementation report on 18.08.2022 before S.B at Camp Court Abbottabad.</p> <p> (Fareeha Paul) Member (E) Camp Court A/Abad</p>



**BEFORE THE KHYBER PAKHTOONKHWA SERVICE
TRIBUNAL PESHWAR.**

Execution Petition NO-181/2022

Application No, 181 /2022

Misbah Akbar D/O Muhammd Akbar R/O Sarai Niamat Khan Tehsil
and Distt, Haripur.

..... Petitioner.

1. GOVT of Khyber Pakhtoonkhwa through Secretary Population Welfare Department Peshawar.
2. Director General Population, Welfare Department Peshawar.
3. District Welfare Population officer Haripur.

.....Respondents.

**EXECUTION PETITION FOR IMPLEMENTATION OF JUDGEMENT
DATED, 1-12-2021, IN SERVICE APPEAL No, 1183/19.**

PRAYER:-

On acceptance of this Petition, the instant Order of this honourable Court dated 1-12-2021 may please be executed and Respondents be directed for implementation of said order.

Respectfully sheweth:-

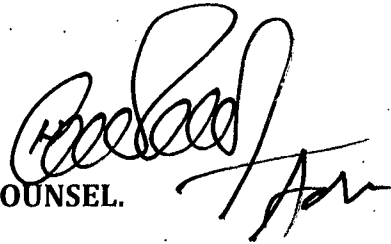
1. That, the petitioner was removed from service, as Family Welfare Assistant (F) in Population Welfare department District Haripur, Thus she has been preferred an appeal before this honourable Court dated 25-9-2019.
2. That, The appeal was accepted by this honourable Court dated 1-12-2021 by setting -aside the dismissal order of Respondents and appellant has reinstated in the service as directing that, the intervening period shall, however be treated as leave of kind due.
3. That, it is pertinent to mentioned here that the petitioner is poor lady thus, is eligible for all back dates benefits as per law.

It is, Therefore, humbly prayed that the instant Order of this honourable Court dated 1-12-2021 in said service appeal may please be executed and Respondents be directed for implementation of said order as reinstating the petitioner in her service with all back date benefits and dues accordingly.

Date 7-4-2022


PETITIONER

Through


COUNSEL.

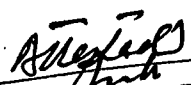

VERIFICATION

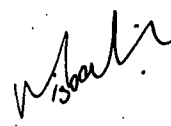
Verified on oath that all contents of this petition are correct and true as per my knowledge and belief.


PETITIONER

AFFIDAVIT

I, Misbah Akbar D/O Muhammd Akbar R/O Sarai Niamat Khan Tehsil and Distt, Haripur, hereby declare on oath that the contents of instant petition are true and correct as per my belief and knowledge and nothing has been concealed by this honourable Court.



7.4.2022
MIAN SIBGHAT ULLAH SHAH
Sr. Advocate Oath Commissioner
Notary Public High Court
Peshawar


DEPONENT



**Government of Khyber Pakhtunkhwa
POPULATION WELFARE DEPARTMENT
DISTRICT POPULATION WELFARE OFFICE HARIPUR**



Mohallah Kund CNG Adda Abbottabad D-Stop Haripur, Ph: 0995-627019

① District Population Welfare Haripur District Population Welfare Haripur dpwoharipur03@gmail.com

F.No 1(1)/2022-23/Admn/4914-15

Dated Haripur the 16/03/2022

To

The Director General,
Population Welfare Department,
Khyber Pakhtunkhwa, Peshawar.

Subject: **COURT JUDGEMENT IN RESPECT OF MISBAH AKBAR, EX-FWA (F)**

Please refer to the above noted subject and enclosed herewith KPK Service Tribunal Judgement dated 01/12/2021 along with an application wherein Mst.Misbah Akbar^{he} requested to be reinstated in service w.e.f 04/07/2017 along with back benefits.

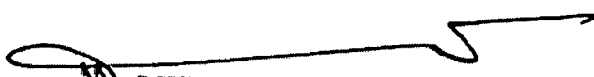
It is to mention that there is no vacant seat of FWA (F) is available in this office.

Encl: As Above

District Population Welfare Officer
Haripur

Copy to the:-

- ✓ 1. Mst.Misbah Akbar for information w.r.t her application dated 31/01/2022 received on 09/03/2022.


MUHAMMAD ISHFAQ
District Population Welfare Officer
Haripur

(1)

BEFORE THE KHYBER PAKHTOONKHWA SERVICE
TRIBUNAL PESHAWAR



Service Appeal No. 1183 /2019

Khyber Pakhtoonkhwa
Service Tribunal

Diary No. 1301

Dated 25/9/2019
Tehsil and

Misbah Akbar D/O Muhammad Akbar R/O Sarai Niamat Khan

District Haripur.

.....Appellant

Versus

1. Government of Khyber Pakhtoonkhwa through Secretary Population Welfare Department Peshawar.
2. Director General Population Welfare Department Khyber Pakhtoonkhwa Peshawar.
3. District Welfare Population Officer Haripur.

.....Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTOONKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION ORDER DATED 30-06-2017 WHEREBY THE APPELLANT HAS BEEN SENTENCED WITH MAJOR PENALTY AS REMOVAL FROM SERVICE, WHICH IS ILLEGAL AND AGAINST THE LAW,

Filed to-day

Registrar

25/9/19

PRAYER:-

On acceptance of instant Appeal the impugned order dated 30-6-2017 may graciously be set a side and by reinstatement of appellant in her service with all the back benefits.

ATTESTED

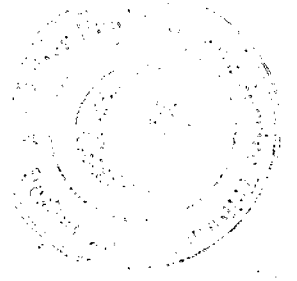
BY
Khyber Pakhtoonkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

Service Appeal No. 1183/2019

Date of Institution ... 25.09.2019

Date of Decision ... 01.12.2021



Misbah Akbar D/O Muhammad Akbar R/O Sarai Niamat Khan Tehsil
and District Haripur.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Population
Welfare Department Peshawar and two others.

... (Respondents)

MR. GHULAM HABIB,
Advocate

For appellant.

MR. RIAZ AHMAD PAINDAKHEL,
Assistant Advocate General

For respondents.

MR. AHMAD SULTAN TAREEN
MR. SALAH-UD-DIN

CHAIRMAN
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts forming the background of the instant service appeal are that the appellant, who was serving as Family Welfare Assistant (Female) District Haripur was issued show-cause notice on the allegation that her Secondary School Certificate was in fact found to be 2nd instead of 1st Division, on the basis of which she was appointed. The appellant submitted reply to the show-cause notice, however vide the impugned order dated

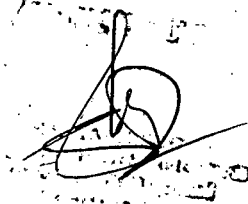
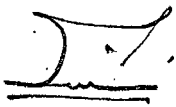
APPELLED

Services Tribunal Peshawar

30.06.2017, she was awarded major penalty of removal from service, which was challenged by the appellant through filing of departmental appeal but the same was not responded, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in her appeal.

3. Learned counsel for the appellant has contended that as per the advertisement floated for the concerned post, the minimum prescribed qualification was Matric with 2nd Division and as the appellant had passed Matric with 2nd Division, therefore, she applied for the post and was appointed vide order dated 25.02.2012 in light of recommendations of Departmental Selection Committee; that the appellant had not at all annexed any certificate or DMC showing her passing of Matric in 1st Division; that the appellant was appointed vide Notification dated 25.02.2012 and after rendering considerable service as Family Welfare Assistant (Female), she was issued show-cause notice on 06.06.2017, whereby a false allegation was leveled against her that she had produced fake certificate of Matric at the time of her appointment; that no reason for dispensing with regular inquiry has been mentioned in the show-cause notice, therefore, the impugned order of removal of the appellant is nullity in the eye of law; that no regular inquiry was conducted in the matter and the appellant was not provided proper opportunity to defend herself; that a similarly placed employee namely Mohsin Ali has been reinstated in service upon acceptance of his Service Appeal bearing No. 1270/2017 vide judgment dated 23.05.2019, therefore, the appellant is also entitled to be treated at par with the aforementioned employee namely Mohsin Ali. In the last he requested that the impugned order may be set-aside



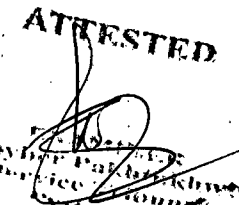
and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant had actually secured 2nd Division in Secondary School Certificate Examination but in order to pave her way for appointment on the concerned post, the appellant had produced fake/bogus Secondary School Certificate showing that she had secured 1st Division; that the Secondary School Certificate so produced by the appellant was sent for verification to BISE Abbottabad, which was found bogus, therefore, departmental action was taken against the appellant and she has been rightly removed from service; that the impugned order passed by the competent Authority may be kept intact and the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have perused the record.


6. A perusal of the record would show that it is an admitted fact that vide order dated 25.02.2012, the appellant was initially appointed as Family Welfare Assistant (Female) in BPS-05 on contract basis under the ADP Scheme and her services were terminated upon completion of the period of aforementioned project on 30.06.2014, however in compliance of judgment of august Peshawar High Court, Peshawar dated 26.06.2014 rendered in Writ Petition No. 1730-P/2014 as well as judgment of august Supreme Court of Pakistan dated 24.02.2016 passed in Civil Petition No. 496-P/2014, the appellant was reinstated in service against the regular post of Family Welfare Assistant (Female) BPS-07. After rendering of more than 05 year service in the department, a show-cause notice dated 06.06.2017 was issued to the

ATTESTED


 Justice (Retd.)
 Service Tribunal

appellant, wherein it was alleged that during the course of verification, it was found that the Secondary School Certificate of the appellant is in fact 2nd Division rather than 1st Division on the basis of which she was appointed. While going through the advertisement floated in the newspaper, it has been observed that the basic educational qualification for the post of Family Welfare Assistant (Female) was Matric 2nd Division and the appellant admittedly possessed the said qualification. Alongwith their comments, the respondents have themselves annexed copies of the Detailed Marks Certificate as well as Provisional/Character Certificate pertaining to Secondary School Examination of the appellant, which would show that the appellant had obtained 472 marks out of 900 marks. Similarly, the respondents have also annexed copy of letter dated 1st November 2016 regarding verification of certificates of the appellant, which would show that the concerned officer of Board of Intermediate and Secondary Education Abbottabad has verified the certificate showing the marks of the appellant as 472 and her placement in Grade-C. The availability of copies of aforementioned Detailed Marks Certificate as well as Provisional/Character Certificate, showing the marks of the appellant as 472, in record of respondents affirms the fact that the same were provided by the appellant at the time of applying for the concerned post. The respondents have been unable to prove that the appellant had submitted any Secondary School Certificate showing her to have obtained 1st Division.

7. Furthermore, it is well settled principle of law that in case of awarding major penalty, a proper inquiry is to be conducted in accordance with law, where a full opportunity of defense is to be provided to the delinquent officer/official. Under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the

ATTESTED

 EXAMINED
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

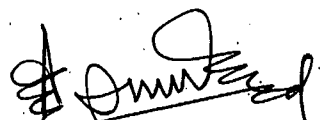
competent Authority can dispense with inquiry, however the competent Authority is required to record reason in this respect. In the instant case, the appellant was straightaway issued show-cause notice without mentioning therein any reason as to why the competent Authority was dispensing with the inquiry. We are of the opinion that the opportunity of fair trial as enshrined in Article 10-A of the Constitution of Islamic Republic of Pakistan 1973 has been denied to the appellant. Moreover, a similarly placed employee namely Mohsin Ali had filed Service Appeal bearing No. 1270/2017, which was allowed by this Tribunal vide judgment dated 23.05.2019 and he has been reinstated in service.

8. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned order and the appellant stands reinstated in service. The intervening period shall, however be treated as leave of kind due. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
01.12.2021



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD



(AHMAD SULTAN TAREEN)
CHAIRMAN
CAMP COURT ABBOTTABAD

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Copy 26/01/22
Number 2400
Cost 26/-
Urgency 4/-
Total 30/-
Name of _____
Date of Copy of Copy 26/01/22
Date of Delivery of Copy 26/01/22

خدمت جناب ڈسٹرکٹ و انفنٹری پابلیکیشن آفیسر، مری پور

جناب عالی - !

مورد بانڈ کنٹریکشن ہے کہ سائلڈ کھلمہ ہنر میں بطور فیملی ویلفیئر اسٹ (F) BPS-5
تعمینات تھی۔ مورخہ 7/17 کو سائلڈ کو برڈ بحوالہ آرڈر/2017 RTI-412, F.No, 575-79
مورخہ 7/2017 سے سروس سے ہرخواست کر دیا گیا تھا۔ جس کے خلاف سائلڈ نے کھانا اپیل
دائری تھی تاہم جس کا حال کوئی فیصلہ نہ ہوا تھا۔ بدیں وجہ سائلڈ نے ایک عدد
اپیل بعدالت سروس ٹریبیونل RPR دائری جوہہ مورخہ 12/02 کو منظور
ہوئی اور سائلڈ کو بحالی سروس کے احکامات صادر کر دیے گئے علاوہ ازیں سائلڈ
کی اخراجگی ٹائم کو بطور تعطیلات شمار ہے جانے کا حکم صادر فرمایا گیا ہے۔
(نقل حکم ہے)

لیکن استرعا ہے کہ سائلڈ حسب احکم عدالت حضور جلد واجبات مع تنخواہ و
الروشنی از مورخہ 7/17 و قبل ازیں ایک سال بقید تنخواہ سائلڈ ادا ہے
جاوین نیز سائلڈ کو حسب احکم عدالت اپنے اسکیل پر بحال فرمایا جاوے۔
عین نوٹیشن ہوئی۔

المرفوعہ - 31/1/2022

سائلڈ
مصباح امیر دسترخوار سائڈ سرائے نعت خان
تھیں و فلو مری پور

Not Received by

Balkhian Khan
Distt Populations officer
7 daku.

2/2/22.

M. Baloch

وکالت نامہ

بعدالت جناب سروس ٹرائیبلز KPK لیسٹ اور

منجانب سائلہ

صباح اکبر
سیکریٹری یا پرنسپل لیسٹ اور نمبر ۴۰

دعویٰ یا جرم درخواست جہرام باعث تحریر آنکہ -

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی مقام لیسٹ اور

ایڈووکیٹ بدیں شرط وکیل مقرر کیا۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص

رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی

پیشی پر مظہر حاضر نہ ہوا۔ اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ

ہونگے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی اور جگہ یا پکھری کے مقرر اوقات سے پہلے یا بروز

تعطیل پیروی کرنے کے مجاز نہ ہونگے۔ اگر مقدمہ مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز پکھری کے اوقات

کے آگیا یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے رابطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے

بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کل ساختہ پرواخت صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب

موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق

کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے

کا ہر قسم کا بیان دینے اور سپروٹاشی و راضی نامہ و فیصلہ برخلاف کرنے اقبال دعوے کا اختیار ہوگا۔ اور بصورت اپیل و

برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا ڈگری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو

بشرط ادا نیگی علیحدہ پیروی مختار نامہ کرینکا مجاز ہوگا۔ اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا پرنسپل

کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہونگے جیسے صاحب

موصوف کو۔ پوری فیس تمارخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ

کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا ہے کہ سزا ہے مضمون

مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

مورخہ: 2022ء

7/22

Ghulam Habib
Advocate High Court
★ Haripur ★

صبح اکبر سائلہ

سائلہ

0301-4897249

13302-2193169-8