25th July, 2022

- 1. Nobody is present on behalf of the petitioner. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Muhammad Shahid Nawaz, ADEO (Litigation) for respondents present.
- 2. Representative of the respondents has again produced copy of a conditional order dated 29.07.2021, which was earlier produced on 26.01.2022, copy of which was handed over to the learned counsel for the petitioner on that date for submission of objection, if any. Since no observations/objections have so far submitted by the petitioner, therefore, it appears that the judgment of the Tribunal has been implemented. The instant execution petition is thus filed. Consign.
- 3. Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 25th day of July, 2022.

Kalim Arshad Khan

Chairman

26.01.2022

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Muhammad Nisar, Focal Person for respondents present.

Respondent-department, in pursuance of the judgement of Service Tribunal dated 29.07.2021, has conditionally reinstated the petitioner in service w.e.f 13.12.2017 with all back benefits subject to the outcome of CPLA by the august Supreme Court of Pakistan. The office order dated 10.12.2021 is placed on file and a copy thereof is also handed over to the learned counsel for the petitioner for submission of observations/objections, if any. Adjourned. To come up for further proceedings on 15.03.2022 before S.B.

(Mian Muhammad) Member(E)

15.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 14.6.2022. for the same as before.

Reader.

14th June, 2022

Clerk of counsel for the petitioner present. Mr. Naseerud Din Shah, Asstt. AG for the respondents present.

Counsel are on strike. To come up for further proceedings on 25.07.2022 before S.B.

(Kalim Arshad Khan) Chairman

Form- A FORM OF ORDER SHEET

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| | Ex | ecution Petition No. 323/2021 |
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| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
| 1 | . 2 | 3 |
| 1 | 05.11.2021 | The execution petition of Mst. Memoona Akhter submitted today by Mr. Zahoor Islam Khattak Advocate may be entered in the relevant register and put up to the Court for proper order please. |
| • | | REGISTRAR |
| 2- | | This execution petition be put up before S. Bench on 26/11/24 |
| | | CHAIRMAN |
| | | |
| • |) 26.11.2021 | Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present. |
| | | Notices be issued to the respondents for submission of implementation report. Adjourned. To come up for implementation report on 26.01.2022 before S.B. |
| | | |
| | | (MIAN MUHAMMAD) MEMBER (E) |
| | | |
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation No. 321 _ of 2021 In Appeal No.154/2019

Mst: Dilshad Begum EX-PST..... Petitioner/Appellant

VERSUS

Director, Education, FATA, Now Khyber Pakhtunkhwa Peshawar and another Respondents

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Dated 02/11/2021

Applicant Dilshad Begum - Through Zahoor Islam Khattak Muneeb ur Rehman Advocates,

High Court Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation No. <u>321</u> *of 2021 In Appeal No.154/2019*

Mst: Dilshad Begum EX-PST at GGPS Guldad Kot North Waziristan Agency (Now District North Waziristan)

..... Petitioner/ Appellant

VERSUS

- 1- Director, Education, FATA, Now Khyber Pakhtunkhwa Peshawar.
- 2- District Education Officer the then Agency Education Officer District North Waziristant at Miran Shah.

... Respondents

APPLICATION FOR IMPLEMENTATION OF JUDGMENT DATED 29/07/2021 IN APPEAL NO.154/2019

Respectfully Sheweth:

- 1- That the above noted appeal was pending adjudication in this Hon'ble Tribunal and was decided vide judgment and order dated 29/07/2019.
- 2- That vide judgment and order dated 29/07/2019, while this Hon'ble Tribunal, while accepting the appeal of the appellant, directed respondents to

reinstated the appellant with all back benefits. (Copy of judgment is annexed herewith).

- 3- That the judgment and order of this Hon'ble Tribunal, was duly communicated to the respondent by the applicant for implementation. Since no response was given to his application for the implementation of the judgment, however, they are reluctant to implement the same. (Copy of application is annexed)
- 4- That instead of implementation the judgment of this

 Hon'ble Tribunal the respondents are bent upon to

 victimize the applicant one way or the other and

 demanded bribe for reinstatement.
- 5- That as per the spirit of the judgment and order dated 29/07/2021 of this Hon, ble Tribunal, the respondents are bound to consider the case of the applicant for reinstatement to his service. However, they have not implemented the judgment and order

of this Hon'ble Tribunal in its true letter and spirit so far.

6- That the respondents are legally bound to implement the judgment of this Hon'ble Tribunal in its true letter and spirit without any further delay.

It is, therefore, prayed that on acceptance of this application the judgment and order dated 29/07/2021 of this Hon'ble Tribunal be implemented in its true and spirit.

Dated 02/11/2021

Dilshad Begun-Applicant

Through

Zahoor Islam Khattak

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Muneeb ur Rehman Advocates, High Court Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation No. ______ of 2021
In Appeal No.154/2019
Mst: Dilshad Begum EX-PST Appellant

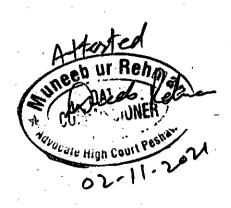
VERSUS

Director, Education, FATA, Now Khyber Pakhtunkhwa Peshawar and another

AFFIDAVIT

I, Mst: Dilshad Begum EX-PST at GGPS Guldad Kot North Waziristan Agency (Now District North Waziristan) do hereby solemnly affirm and declare on oath that the contents of the accompanied application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Dilshad Begum DEPONENT



BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAI

Versus

Diary No. 138

1. Director Education, FATA, now KPK Peshawar

SERVICE APPEAL UNDER SECTION 4 OF THE KPK SERVICE

TRIBUNAL ACT, 1974, AGAINNST THE IMUGNED ORDER

DATED 13.12.2017 PASSED BY RESPONDENT NO. 2

WHEREBY THE DEPARTMENTAL APPEAL DATED (2017)

TO RESPONDENT NO. 1 HAS YET NOT BEEN DISOSED OF.

<u>PRAYER - IN - APPEAL</u>

Fledto-day
Registrat

ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL THE IMPUGNED ORDER DATED 13.12.2017 PASSED BY RESPONDENT NO. 2 MAY VERY GRACIOUSLY BE SET ASIDE AND THE APPELLANT MAY KINDLY BE RE-INSTATED ON THE POST WITH ALL BACK BENEFITS.

Respectfully Sheweth,

- 1. That the appellant consequent upon the approval of Departmental Selection Committee was appointed as PTC (Female) in BPS 09 on . (Copy of the appointment order is attached as annexure A)
- 2. That the appellant thereafter took the charge of her duties and performed her duties during the service whole heartealy and to the quite satisfaction of officials concerned as well as according to the demand and nature of the job.

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King Khamira

<u>ORDER</u> 29.07.2021

Mr. Muhammad Saeed Khattak, Advocate, for the appellant present. Mr. Muhammad Nisar, Focal Person alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file in Service Appeal bearing No. 151/2019 titled "Mst. Rasheeda Bano Versus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other," the appeal in hand is allowed by setting-aside the impugned order dated 13.12.2017 and the appellant is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 29.07.2021

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

(SAŁĄH-UD-DIN) MEMBER (JUDICIAL)

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Oate of Presentation of Application 27402 Service Tribunal,

Number 6 16/2

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No.

BEFORE THE KPK SERVICE TRIBUNAL, RE

Versus

1. Director Education, FATA, now KPK Peshawar

SERVICE APPEAL UNDER SECTION 4 OF THE KPK SERVICE
TRIBUNAL ACT, 1974, AGAINNST THE IMUGNED ORDER

DATED 13.12.2017 PASSED BY RESPONDENT NO. 2
WHEREBY THE DEPARTMENTAL APPEAL DATED
TO RESPONDENT NO. 1 HAS YET NOT BEEN DISOSED OF.

Dates 31-1-2019

PRAYER - IN - APPEAL

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ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL THE

IMPUGNED ORDER DATED 13.12 2017 PASSED BY

RESPONDENT NO. 2 MAY VERY GRACIOUSLY BE SET

ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED ON THE POST WITH ALL BACK BENEFITS.

Respectfully Sheweth,

- 1. That the appellant consequent upon the approval of Departmental Selection Committee was appointed as PTC (Female) in BPS 09 on (Copy of the appointment order is attached as annexure A)
- 2. That the appellant thereafter took the charge of her duties and performed her duties during the service whole heartedly and to the quite satisfaction of officials concerned as well as according to the demand and nature of the job

BEFORE THE KHYBER PAKHTUN CHWA SERVICES TRIBUNAL, PESHAVIAR.

Service Appeal No. 151/2019

Date of Institution

... 31,01,2019

Date of Decision

29.07.2021

Mst. Rasheeda Bano Ex-PST at GGPS Akram Kot North Waziristan Agency (now District North Waziristan)

... (Appellant)

<u>VERSUS</u>

Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other.

(Respondents)

Mr. MUHAMMAD SAEED KHATTAK, Advocate...

For appellant.

MR. KABIRULLAH KHATTAK, Additional Advocate General

For respondents.

MR. SALAH-UD-DIN MR. ATIQ-UR-REHMAN WAZIR MEMBER (JUDICIAL) MEMBER (EXECUTIVE)

JUDGMENT:

Through this single judgment, SALAH-UD-DIN, MEMBER: we intend to dispose of the instant service appeal as well as connected Service Appeal bearing No. 152/2019 titled "Mst. Memoona Akhtar Versus Director Education, FATA, now Khyber Pakitunkhwa Peshawar and one other", Service , Appeal bearing No. 153/2019 titled "Mst. Zahoora Begum Versus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one othe ", Service Appeal bearing No. 154/2019 titled "Mst. Dil Shad Begum \ ersus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other", Service Appeal



bearing No. 155/2019 titled "Mst. Parveen Begum Versus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other", Service Appeal bearing No. 156/2019 titled "Mst. Salma Begum Versus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other", Service Appeal bearing No. 296/2019 titled "Mst. Zeenat Gul Versus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other", Service Appeal bearing No. 593/2019 titled "Mst. Shahida Kalsoom Versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and one other", as similar questions of law and facts are involved in all these appeals.

- 2. Precise facts of the instant appeal as well as connected appeals mentioned above are that the appellants were serving as PSTs in various schools of North Waziristan Agency (now District North Waziristan), when disciplinary action was initiated against them on the ground that they were found willfully absent during the visit of Assistant Agency Education Officer to the concerned schools on 01.09.2017. Vide order dated 13.12.2017, passed by Agency Education Officer North Waziristan Agency, major penalty of removal from service was imposed upon the appellants with retrospective effect on account of their willful absence from duty. The same was challenged by the appellants through filing of separate departmental appeal however the same were not responded, therefore, the appellants approached this Tribunal through filing of the appeals for redressal of their grievance.
- 3. Mr. Saeed Khan Khattak, Advocate, representing the appellants, has contended that according to impugned Notification dated 13.12.2017, Assistant Agency Education Officer had paid monitoring visit to the concerned schools on 01.09.2017, which is quite astonishing for the reasons that according to press release issued by the Government of Pakistan Ministry of Interior, dated ist to 4th September 2017 were declared as public holidays on account of tid-ul-Azha; that in response to the show-cause notice issued in Daily "Mashriq" dated 03.12.2017, regarding the alleged absence of the appellants from their duty, proper replies were submitted by the appellants that although it is mentioned in the publication issued in Daily "Mashriq" that the appellants were earlier issued show-cause notices; however no such

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notice was received by any of the ar pellants; that the appellants were proceeded against on the charges of their willful absence from duty, however the required procedure as prescribed in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was not complied with, therefore, the entire disciplinary proceedings are nullity in the eye of law; that the appellants were assured by the office that the committee constituted for disposal of the departmental appeals has recommended their reinstatement, but later on it came to the knowledge of the appellants that the report of the said committee has been suppressed by the respondents; that it was due to the aforementioned fact that the appeals were filed with some delay and condonation applications were also filed alongwith the appeals, which merits acceptance; that otherwise too, law favours adjudication on merit by avoiding technical knock outs including limitation.

- 4. On the other hand, Mr. Kabirullah Khattak, Additional Advocate General for the respondents has argued that the appellants were in the habit of remaining absent from their duty, therefore, they were proceeded against on account of their willful absence from duty; that show-cause notices were issued to the appellants and publication was issued in Daily "Mashriq" also but despite that, the appellants did not bother to attend their duty, therefore, they have rightly been removed from service after observing of all codal formalities; that the appellants have not preferred departmental appeals, therefore, their appeals filed before the Service Tribunal are not maintainable; that the appeals filed by the appellants are time barred and are liable to be dismissed on this score alone.
- 5. We have heard the arguments of learned counsel for the appellants as well as learned Additional Advocate General for the respondents and have perused the record.
- 6. A perusal of the record would show that disciplinary action was initiated against the appellants on the ground that they were found absent from duty during Monitoring visit of the concerned Assistant Agency Education Officer to the concerned schools on 01.09.2017. The appellants have specifically alleged in ground-B of their appeals that

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according to press release dated 23^{rt} August 2017, it was notified for general information that 1st to 4th September 2017 (Friday, Saturday, Sunday and Monday) shall be public holidays on occasion of religious festival of Eid-ul-Azha. They have also annexed the concerned press release as annexure-E with their respective appeals. In their comments, the respondents have not specifically denied the press release regarding the Eid-ul-Azha holidays from 1st to 4th September 2017. It is thus quite astonishing that the concerned Assistant Agency Education Officer had made Monitoring visit to the concerned schools on a public holiday and was expecting the presence of the appellants on duty in the concerned schools. The aforementioned fact has rendered the entire disciplinary proceedings a nullity in the eye of law.

- 7. Furthermore, the appellants were removed from service on the ground of willful absence, therefore, the 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:-
- 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 or 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".
- 8. Nothing is available on the record, which could show that notices were issued to the appellants through registered acknowledgement. Similarly the Authority was required to have published notice in two leading newspapers, directing the appellants to resume duty but the notice was published in only one newspaper on 03.12.2017, directing the appellants to ensure their presence on duty within fifteen days of

EXAMINER Khyber Pakhtukhwa

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Service Tribunal Peshawer issuance of the publication. The Authority, however did not wait for lapse of lifteen days and issued the removal orders of the appellants vide respective Notifications dated 13.12.2017, therefore, the impugned orders of the appellants from service are illegal, void ab-initio, hence not sustainable in the eye of law.

- 9. This is not a disputed fact that similarly placed PSTs (female) namely Mst. Gulshan Ara, Mst. Saima, Mst. Akhtar Numana, Mst. Nusrat Kalsoom, Mst. Zainab Bibi, Mst. Kousar Shabana, Mst. Mehnaz, Mst. Zartaj Begum and Mst. Baswari Begum, who were removed from service by the Agency Education Officer North Waziristan Agency vide separate orders of the even date i.e. 13.12.2017 had filed Service Appeals bearing No. 519 to 527 of 2018, which were allowed by this Tribunal vide single judgment dated 30.07.2019, while service appeal of similarly placed appellant namely Mst. Shabnam was allowed by this Tribunal vide judgment dated 11.04.2019 and they were reinstated into service by setting-aside the orders of their removal from service. On this score too, the appellants need to be treated at par with the appellants, whose appeals have already been allowed by this Tribunal.
- In view of the above discussion, the appeal in hand as well as 10. connected Service Appeal bearing No. 152/2019 titled "Mst. Memoona Akhtar Versus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other", Service Appeal bearing No. 153/2019 titled "Mst. Zahoora Begum Versus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other", Service Appeal bearing No. 154/2019 titled "Mst. Dil Shad Begum Versus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other", Service Appeal bearing No. 155/2019 titled "Mst. Parveen Begum Versus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other", Service Appeal bearing No. 156/2019 titled "Mst. Salma Begum Versus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other", Service Appeal bearing No. 295/2019 titled "Mst. Zeenat Gul Versus Director Education, FATA, now Khyber Pakhtunkhwa Peshawar and one other", Service Appeal bearing No. 593/2019 titled "Mst. Shahida Kalsoom Versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and one other", are allowed by setting-

ENEMINER Khyber Pakhinkhwa Service Tribuna Peshawaa

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aside the impugned orders dated 13.12.2017 and the appellants are reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 29.07.2021

(SALAH-UD-DIN) MEMBER (JUDICIAL)

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

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E Service Tribunal.

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