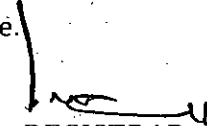




Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 213/2022

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. Faheema submitted today by Ms. 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>Noted Humera Gul Faheema 21/04/22</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 the 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>

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 which is placed on file and stated that the department has implemented the judgement of this Tribunal conditionally subject to outcome of 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


(Fareeha Paul)
Member (E)

Fareeha

28-6-22

D

D

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Executive Petition No. 213 /2022

In Service Appeal No. 1285/2019

Mst. Faheema

VERSUS

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

INDEX

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

Faheema

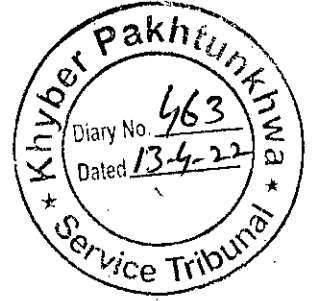
Applicant

Through,

Humera Gul
Humera Gul

Advocate, High Court
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR



Executive Petition No. 213 /2022

In Service Appeal No. 1285/2019

Mst. Faheema GGHS Mawaz Kalay, Aka Khel Bara,
Khyber Agency W/o Falak Naz R/o Village Mohallah
Tanhazai Umar Zai, District Charsadda

.....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.1285/19 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. Irum 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.

Eheema

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. 1285/2019

Mst. Faheema

VERSUS

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

AFFIDAVIT

I, Mst. Faheema GGHS Mawaz Kalay, Aka. Khel Bara, Khyber Agency W/o Falak Naz R/o Village Mohallah Tanhazai Umar Zai, District Charsadda, 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.

Faheema
Deponent

Identified by;

Humera Gul
Humera Gul
Advocate High Court
Peshawar



1
A
Before the Service Tribunal, Khyber Pakhtun khwa, Peshawar
Service Appeal No. 1285 /2019



MST. Faheema GGHS Mawaz kalay, Aka khel Bara, Khyber Agency W/O
Falak Naz R/O Village Mohalla Tanha Zai, Umar Zai, Charsadda District.

Versus

...Appellant
Khyber Pakhtun Khwa
Service Tribunal

Diary No. 1337

1. Government of Khyber Pakhtun Khwa through Secretary Education, 02/10/19
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

Appeal, under Section 4 of the Service
Tribunal Act, 1974, against the impugned
Order dated 16/11/2017

On acceptance of the appeal, this
Honorable Tribunal may kindly set-aside
the impugned order dated 16/11/2017

Filed to-day


Registrar
2/10/19

Respectfully Sheweth,

The Appellant submits as under: -

1. That the Appellant was appointed on 29/11/2005, consequent upon the approval of the then AEO Khyber Agency at Jamrud. (Copy of the Appointment Order is annexed as Annexure "A").

ATTESTED


Registrar
Khyber Pakhtun Khwa
Service Tribunal
Peshawar




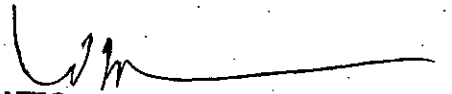
ORDER
15.12.2021

Miss Humera Gul, Advocate for the appellant present. * Mr. Asif
Masood Ali Shah, Deputy District Attorney for respondents present.
Arguments heard and record perused.


Vide our detailed judgment of today, passed in Service Appeal bearing No. 1286/2019 "titled Mst. Iram Naz Versus Government of Khyber Pakhtunkhwa through Secretary Education Civil Secretariat Peshawar and two others", the instant appeal is accepted. The impugned order is set aside and the appellant is 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)

Verified to be true copy


MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of initiation of transcription 07-01-22
Number of Words 8000
Copying fee 10/-
Print 10/-
Total 10/-
Name of Copyist _____
Date of Completion of Copy 10-01-22
Date of Delivery of Copy 10-01-22

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
ATIQU-UR-REHMAN WAZIR

...
...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-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.

ATTESTED

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

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-

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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

ATTESTED

WITNESSES
 1. Mr. J. K. Kulkarni
 2. Mr. S. S. Kulkarni
 3. Mr. S. S. Kulkarni
 4. Mr. S. S. Kulkarni

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.

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

ATTESTED
07
MINER
Kashmir Mukhtarkhwa
Service Tribunal
Peshawar


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.

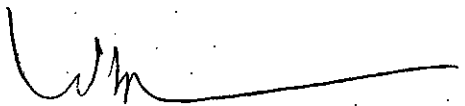
08. Departmental appeals of the appellants were, however partially accepted vide minutes dated 30-05-2018 with recommendations to conduct de-novo inquiry, but no such inquiry was conducted within the stipulated timeframe, nor the appellants were re-instated for the purpose of de-novo proceedings, thus 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.

ATTESTED
 [Signature]
 Member Pakistan
 Service Tribunal
 Islamabad

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)

Certified to be true copy
EX-10
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Disposal of Appeal/Notification 07-01-22
Name of the Member 2020
Copy of the Order 22/-
Name of the Member 22/-
Name of the Member 22/-
Date of the receipt of Copy 10-01-22
Date of the receipt of Copy 10-01-22

64
20
81
69
32
SE
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- 6672


قیمت 50 روپے	120865	  
ایڈوکیٹ: <u>Amreen</u>		
بار کونسل / ایسوسی ایشن نمبر: BC-009-225		
رابطہ نمبر: 0313-9132664		پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: مقام کے ٹریڈ مارک کے حق کے لیے

منجانب: <u>طد بلسن</u>	دعوی: <u>Execution Petition</u>
	علت نمبر: _____
	مورخہ: _____
	جرم: _____
	تھانہ: _____
باعث تحریر آگہ	

فصلہ طرہ سے 0
فصلہ ذبحہ قلم نامہ شہادہ
Fahreena

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
آن مقام لندن کے 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 کرہے و تقریر ثالث و فیصلہ برحلف دینے جو اس دعویٰ اقبال دعویٰ اور درخواست از قلم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل گرانہ 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 اوائلے ہرگز اپنے ہرگز اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سزاخستہ پروا خستہ منظور و قبول ہوگا
دوران مقدمہ میں جو چیز چھہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ 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: 13504


مقام لندن کے لیے منظور ہے۔

Accepted

Amreen

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

مخدمت جناب رجسٹرار سروس ٹریبونل پشاور

منہ
نام انجمن کوکیشن

مقدمہ نمبر 213/EP

درخواست برائے مہدقہ نقولات حکم

جناب عالی!

سائلہ حسب ذیل عرض لسان ہے

- 1۔ یہ کہ مقدمہ عنوان بالا ذیل درخواست عدالت حضور ہے جس میں آئندہ تاریخ پیشی $\frac{28}{22}$ مقرر ہے۔
- 2۔ یہ کہ سائلہ کو مہدقہ نقولات ہی اس قدر ضرورت لاحق ہے

لہذا منظور کیا درخواست صفا حسب ضابطہ
مہدقہ نقولات مطابق ص 5۔

سائلہ محمد اعلیٰ انیسویں

Allowed as
per rule Ekhra
2-6-22



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. 1285/2019, Execution Petition No 213/2022, Mst: Faheema is hereby reinstated and posted at GGPS Tarkho Kas (Khwaja Mir). 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 156/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.

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

Endst: No. _____

Dated: _____/_____/2022

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