17<sup>th</sup> Oct., 2022

Q

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl. AG alongwith Tauseef Ahmad, ADEO for the respondents present.

Learned counsel for the petitioner seeks adjournment in order to further prepare the brief. Adjourned. To come up for further proceedings on 04.11.2022 before S.B.

> (Kalim Arshad Khan) Chairman

15.07.2022

Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Implementation report not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of implementation report. Adjourned. To come up for implementation report on 02.09.2022 before S.B.

(MIAN MUHAMMAD) MEMBER(E)

02.09.2022

. . .

Learned counsel for the petitioner present. Mr. Naseer-Ud-Din Shah, Assistant Advocate General alongwith Mr. Touseef Ahmed, ADEO for the respondents present.

In pursuance of the judgement of Service Tribunal dated 11.11.2021, the respondent department conducted reqular inquiry against the petitioner. In the light of recommendations of the inquiry committee, the petitioner could not be reinstated in service and the earlier impugned order dated 22.11.2017 has been kept intact. Implementation report containing the inquiry report and connected documents placed on file. Copy thereof provided to learned counsel for the petitioner. Learned counsel for the petitioner requested for adjournment so as to gain time to go through the reply/implementation report. Adjourned. To come up for further proceedings on 17.10.2022 before S/B.

(Mian Muhammad) Member (E)

### Form- A

### FORM OF ORDER SHEET

Court of

Execution Petition No. 117/2022

S.No. Date of order Order or other proceedings with signature of judge proceedings 2 3 1 16.02.2022 The execution petition of Mst. Shama Begum submitted today 1 by Naila Jan Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR This execution petition be put up before to Single Bench at 2-Peshawar on 17.05-2022. Original file be requisite. Notices to the appellant and his counsel be also issued for the date fixed. **CHAIRMAN** ) Mar ( 17.05.2022 Learned counsel for the petitioner present. Notice of the present execution petition be issued to the respondents for submission of implementation report on 15.07.2022 before S.B. (MIAN MUHAMMAD) MEMBER (E)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution petition No.117/2022

In

Service Appeal No: 1390/2018

Mst Shama Begum

# $V_{ersus}$

Director E&SE & Others

### **INDEX**

S#	Description of Documents	Annex	Pages
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3.	Copy of Judgment	~A~	5-13
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Dated: 16/02/2022

Petitioner Through

Nailà Jan Advocate, High Court Peshawar

S

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution petition No. <u>177</u>/2022 In Service Appeal No: 1390/2018

r Pakhtukhw ice Tribunal Diary No. 301 12022 6/02

Mst. Shama Begum PST GGPS Pegham Koroona, District Charsadda.

.....Petitioner

# $V_{ersus}$

- 1. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 2. Director Education FATA, Khyber Pakhtunkhwa, Peshawar.
- 3. District Education Officer, Female, Charsadda.
- 4. Agency Education Officer, Khyber Agency at Jamrod.
- 5. District Education Officer (F), Batagram.

.....Respondents

<b>EXECUTION PETITION</b>	FOR			
IMPLEMENTATION OF	THE			
JUDGMENT OF THIS HON	<b>J'BLE</b>			
TRIBUNAL IN APPEAL	No.			
1390/2018 DECIDED ON 11-11-				
<u>2021</u>				

### Respectfully Sheweth,

1. That the above mention appeal was decided by this Hon'ble Tribunal vide Judgment dated 11/11/2021. (Copy of the judgment is annexed as annexure "A")

2. That the relevant portion of the judgment is reproduced "In view of the above discussion, the appeal in hand as well as connected Service Appeal bearing No. 1380/2018 titled "Nighat

Hiledto-day egistra

Seema Versus The Secretary Elementary and Secondary Education Government of Khyber Pakhtunkhwa and three others" and Service Appeal bearing No: 1390/2018 titled "Mst Shama Begum Versus Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar and four others", are allowed by setting-aside the impugned orders and the matter is remitted to the respondents to conduct regular inquiry into the matter within a period of 90 days of receipt of copy of this judgment. Needless to mention that the appellants shall be associated with the inquiry by providing them fair opportunity of defending themselves. Keeping in view the peculiar nature of controversy in question, no order regarding release of salaries of the appellants could be passed at this stage, which of course would be subject to outcome of the inquiry. Findings in this judgment shall have no bearing upon the criminal case registered vide FIR No. 02/2017 Police Station Anti-Corruption Establishment Charsadda. Parties are left to bear their own costs. File be consigned to the record room". (Copy of Judgment is annexed)

K,

- 3. That the Petitioner after getting of the attested copy of same approached the Respondents several time for implementation of the above mention judgment. However they are using delaying tactics and reluctant to implement the judgment of this Hon'ble Tribunal.
- 4. That the Petitioner has no other option but to file the instant petition implementation of the judgment of this Hon'ble Tribunal.
- 5. That there is nothing which may prevent this Hon'ble Tribunal from implementing of its own judgment.

It is, therefore, requested that on acceptance of this petition the Respondents may directed to implement the judgment of this Hon'ble Tribunal by reinstating the Petitioner with all back benefits.

Dated: 16/02/2022

Petitioner

Through

Naila Jan' J Advocate, High Court Peshawar

Depònent

### AFFIDAVIT:-

I, Mst. Shama Begum PST GGPS Pegham Koroona, District Charsadda, do hereby solemnly affirm and declare on oath that all the contents of above application are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon'ble Court.



Execution petition No. \_\_\_\_/2022

In

A.

Service Appeal No: 1390/2018

Mst Shama Begum

# $V_{ersus}$

Director E&SE & Others

## **ADDRESSES OF PARTIES**

PETITIONER

Mst. Shama Begum PST GGPS Pegham Koroona,

**District Charsadda** 

### **RESPONDENTS**

- 1. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 2. Director Education FATA, Khyber Pakhtunkhwa, Peshawar.
- 3. District Education Officer, Female, Charsadda.
- 4. Agency Education Officer, Khyber Agency at Jamrod.
- 5. District Education Officer (F), Batagram.

Dated: 16/02/2022

Petitioner

Through

Naila Jan J Advocate, High Court Peshawar

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

1390\_12018 S.A

Mst. Shama Begum PST GGPS Pegham Koroona district Charsadda.

Appellant

Service Tribunal Dia: 10. 15.85

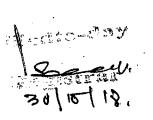
Bared 30/10/2018

#### VERSUS

- A. Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
- 2. Director Education FATA Khyber Pakhtunkhwa Peshawar
- $\checkmark$ 3. District Education officer Female Charsadda.
  - 4. Agency Education Officer Khyber agency at Jamrud.
- √5. District Education Officer Female Batagram.

Respondents

TESTED



OF THE **KHYBER** APPEAL U/S 4 PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE FINAL ORDER DATED: 29/12/2017 COMMUNICATED on 05/10/2018 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORIGINAL WHEREBY ORDER DATED 22/11/2017. WAS SERVICES OF THE APPELLANT DISPENCED, WAS REJECTED WHICH IS AGAINST THE LAW, RULES, PRINCIPLES OF NATURAL JUSTICE, VOID ABINITIO IS Service Appeal No. 1390/2018

11.11.2021

Ms. Naila Jan, Advocate, for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 550/2018 titled "Mst. Zia Gul Versus Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar and three others", the instant appeal is allowed by setting-aside the impugned order and the matter is remitted to the respondents to conduct regular inquiry into the matter within a period of 90 days of receipt of copy of this judgment. Needles to mention that the appellant shall be associated with the inquiry by providing him fair opportunity of defending himself. Keeping in view the peculiar nature of controversy in question, no order regarding release of salary of the appellant could be passed at this stage, which of course would be subject to outcome of the inquiry. Findings in this judgment shall have no bearing upon the criminal case registered vide FIR No. 02/2017 Police Station Anti-Corruption Establishment Charsadda. Parties are left to bear their own costs. File be consigned to the record room.

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ANNOUNCED 11.11.2021

(Atiq-Ur-Rehman Wazir) Member (E)

(Salah-Ud-Din) Member (J)



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### BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 550/2018

Date of Institution ... 17.04.2018

Date of Decision ... 11.11.2021

Mst. Zia Gul (Drawing Master BPS-15) Wife of Hamayoun Abil Rahman Resident of Mohallah Painda Khel Tehsil & District Charsadda.

... (Appellant)

#### <u>VERSUS</u>

Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar and three others. ... (Respondents)

MR. MOHIB JAN SALARZAI, Advocate

MS. NAILA JAN, Advocate

MR. KABIRULLAH KHATTAK, Additional Advocate General (For appellant in Service Appeal No.550/2018).

(For appellants in Service Appeals No. 1380/2018 & 1390/2018).

For respondents.

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

### JUDGMENT:

### SALAH-UD-DIN, MEMBER:-

Through this single judgment we intends to dispose of instant Service Appeal as well as connected Service Appeal bearing No. 1380/2018 titled "Nighat Seema Versus the Secretary Elementary and Secondary Education Government of Khyber Pakhtunkhwa and three others" and Service Appeal bearing No. 1390/2018 titled "Mst. Shama Begum Versus Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar and four others", as common question of law and facts are involved therein.

Brief facts as alleged by the appellant in the instant 2. service appeal are that certain posts of Drawing Masters were advertised through newspaper in the year 2006; that as the appellant was eligible and qualified for the said post, therefore, she applied for the same and was properly appointed vide appointment order dated 14.03.2006 issued upon recommendations of the Departmental Selection Committee after fulfilling of all legal and codal formalities; that the appellant was initially posted at Government Girls Middle School Thakot and was later on transferred to District Charsadda vide order dated 27.10.2011; that the salary of the appellant was astonishingly stopped in the month of January 2017, therefore, she filed Writ Petition in the august Peshawar High Court, Peshawar, seeking release of her salary; that vide order dated 14.09.2017, august Peshawar High Court, Peshawar directed the Director Anti-Corruption Khyber Pakhtunkhwa for probe into the matter and to submit his report in the court; that the Director Anti-Corruption instead of submitting his report in the Worthy High Court, straightaway registered FIR against the appellant as well as others, which has been challenged through filing of Writ Petition before august Peshawar High Court, Peshawar, wherein interim relief has been granted and the matter is still sub-judice; that the District Education Officer (Female) District Charsadda did not conduct any departmental inquiry and straightaway issued the impugned office order dated 22.11.2017, whereby the service of the appellant was dispensed with; that the impugned order dated 22.11.2017 was challenged through filing of departmental appeal, however the same was not responded within the statutory respon period, hence the instant service appeal.

3. Precise facts as alleged by the appellant in Service Appeal No. 1380/2018 are that she was appointed as Arabic Teacher vide order dated 01.09.2009 issued by the

competent Authority and she was posted in Government Girls Middle School Gidri Khairabad District Battagram; that the appellant performed her duty with zeal and zest and was later on transferred to Government Girls Middle School Amir Abad Daki District Charsadda; that vide order dated 04.12.2012 the appellant was posted as Arabic Teacher in Government Girls High School Dadu Kally; that upon transfer of the appellant from District Battagram to District Charsadda, District Education Officer (Female) Battagram issued letter dated 09.01.2013, whereby the service as well as Educational documents of the appellant were verified, where-after District Education Officer (Female) Charsadda issued letter dated 16.01.2013 for release of salary of the appellant; that the appellant was receiving her salary, however all of a sudden, impugned order dated 22.11.2017 was issued, whereby service of the appellant was dispensed with; that the appellant challenged the same through filing of departmental appeal, which was not responded, therefore, the appellant filed the instant service appeal for redressal of her grievance.

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Briefly stated the facts as alleged by the appellant in Service Appeal bearing No. 1390/2018 are that she had successfully completed/passed the required course of PTC Program in the year 1998 and was subsequently appointed as trained PTC vide order dated 07.05.2003 issued by Agency Education Officer Khyber Agency; that the appellant was posted in Government Girls Primary school Akakhel Bara Khyber Agency and was later on transferred to Government Girls Primary School Pemall Sharif Battagram, where she performed her duty with zeal and zest; that the appellant was then transferred to District Charsadda and served in various schools; that the Educational documents as well as appointment order of the appellant were verified by the concerned officer during her transfer from one school to, another; that while serving in Government Girls Primary School Pegham Koroona District Charsadda, impugned order dated 22.11.2017 was issued, whereby the service of the

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appellant was dispensed with; that the same was challenged by the appellant through filing of departmental appeal, which was rejected on 29.02.2017 and communicated to the appellant on 05.10.2018, hence the instant service appeal.

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5. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellants in their appeals.

Mr. Mohib Jan Salarzai, Advocate, representing the 6. appellant in the instant service appeal has contended that the appellant was properly appointed as Drawing Master by the competent Authority upon approval of District Selection Committee; that the appellant has served in various schools and has rendered services in the Education Department for more than 11 years and was also receiving her salary till illegal stoppage of the same by the respondents in the month of January 2017; that the appellant had filed Writ Petition No. 2028-P/2017 in the august Peshawar High Court, Peshawar seeking release of her salary; that during the proceedings in the aforementioned Writ Petition, august Peshawar High Court, Peshawar referred the matter to Anti-Corruption Department with the directions to probe into the matter and submit its report, however instead of submitting its report, Circle Officer Anti-Corruption Establishment Charsadda directly registered FIR against the appellant as well as others, which has been challenged through filing of Writ Petition and interim relief has been granted to the appellant; that the departmental Authority has not conducted any inquiry against the appellant and has directly issued the impugned order, whereby services of the appellant were dispensed with by wrongly and illegally mentioning in the column of remarks that the same was done in light of judgment rendered in Writ Petition No. 2028-P/2017 because the said Writ Petition was dismissed being infructuous; that no regular inquiry was conducted in the matter and the appellant was condemned unheard; that upon transfer of the appellant to various schools, the

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concerned officers have verified the appointment order as well as service record of the appellant through written letters; that the impugned order being wrong and illegal is liable to be set-aside and the appellant is entitled to be reinstated in service with all back benefits. Reliance was placed on 2004 SCMR 303, 2009 SCMR 412, 2009 SCMR 663, 2011 SCMR 1220, 2004 SCMR 468 and 1997 SCMR 1552.

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7. Ms. Naila Jan, Advocate, representing the appellants in connected Service Appeals No. 1380/2018 and 1390/2018 has relied upon the arguments advanced by learned counsel for the appellant in the instant service appeal.

On the other hand, learned Additional Advocate 8. General for the respondents has contended that after a thorough inquiry into the matter, the appointments as well as all record pertaining to the service of the appellants were found fake and bogus; that the appellants were associated in the inquiry and proper opportunity of self defence as well as personal hearing were provided to them; that the inquiry officer has found the appointment orders of the appellants as fake and recommended that FIR may be registered against the appellants and the salaries received by them may be recovered and refunded in the government exchequer; that a proper legal inquiry was conducted into the matter by complying all legal and codal formalities, therefore, the impugned order may be kept intact and the appeals in hand may be dismissed. Reliance was placed on judgments dated 28.01.2019, 09.08.2017 and 13.01.2021 rendered by this Tribunal in Service Appeals No. 540/2014, 161/2014 and 13/2018 respectively.

9. 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.



10. A perusal of the record would show that the appellants have alleged that they were properly appointed upon the

recommendations of Departmental Selection Committee and they had served for so many years in various schools, however vide impugned order dated 22.11.2017, their services were dispensed with without any regular inquiry being conducted by the competent Authority. A bare perusal of the impugned order dated 22.11.2017 would show that the same was not passed in light of any regular inquiry conducted into the matter upon order of the competent Authority. The appellants have allegedly rendered services for considerable long period, therefore, it was incumbent upon the competent Authority to have conducted a proper inquiry into the matter prior to declaring the appointment orders of the appellants as fake. The appellants have not been afforded fair opportunity to defend themselves. The competent Authority has though given reference of court judgments rendered in Writ Petitions No. 2028-P/2017 and 4738-P/2017 in the column of remarks of the impugned orders, however the respondents have failed to produce any such judgments, whereby august Peshawar High Court, Peshawar had ordered for dispensing with the services of the appellants.

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In view of the above discussion, the appeal in hand as 11. well as connected Service Appeal bearing No. 1380/2018 titled "Nighat' Seema Versus The Secretary Elementary and Secondary Education, Government of Khyber Pakhtunkhwa and three others" and Service Appeal bearing No. 1390/2018 titled "Mst. Shama Begum Versus Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar and four others", are allowed by setting-aside the impugned orders and the matter is remitted to the respondents to conduct regular inquiry into the matter within a period of 90 days of receipt of copy of this judgment. Needles to mention that the appellants shall be associated with the inquiry by providing them fair opportunity of defending themselves. Keeping in view the peculiar nature of controversy in question, no order regarding release of salaries of the appellants could be passed at this stage, which of course

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would be subject to outcome of the inquiry. Findings in this judgment shall have no bearing upon the criminal case registered vide FIR No. 02/2017 Police Station Anti-Corruption Establishment Charsadda. Parties are left to bear, their own costs. File be consigned to the record room.

ANNOUNCED 11.11.2021

Certified to balture copy Nam EXAD Khyber Fichtun Twa Service Fribunal. Desert Peshawar

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

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(SALAH-UD-DIN) MEMBER (JUDICIAL)

50رو\_ 110563 ايدوكيك: <u>Aaila Jan</u> بارکوس/ایسوسیایشن نمبر:<u>2\_7</u>77 \_ يشاور بإرايسوسي اليثن، خيبر پختونخواه رابط نمبر: <u>7/ 47/ 2/9/2/0</u> بعدالت جناب: \_\_\_\_ لغار يعتر منجانب: Execution د موکی: علت تمبر **جر**م: تحانه باعث تحرير آنك مقدمه مندرج عنوان بالاميں اپني طرف ہے داسطے پیروی وجواب دہی کار دائی متعلقہ آن مقام / يُترك المليج من من من من المنع على خارج ) ^ كود كل مقرر كركاقراركيا جاتل بحكمة صاحب موصوف كومقده كيكل كارواتي كأكامل اختياز يهوكاء نيز وكمل صاحه راضي نامه كريخ وتقرر آلت وفيصله برحلف دكينے جوالي دعوىٰ اقبال دعوىٰ اور درخواست از جرش كی تصدیق زري پرداين كااختيار بوگا، نيز بصورت عدم پروي ياد كري يطرفه يا بيل كى برآ مرك اور منه وخى، نيز دائر كرب المراني ونظر ثاني و پيردي كرين كامختار بوگااور بصورت ضرورت مقده مذكور ورت كل ياجزوي كارداني يحكحوا ينطحاوز وكيل يتقرر كااختبار بوكا ورصاح ما مخاذقا وفي اوا ں ہوں کے اور ای کا بی خند پر داختہ منظور دبتول ہوگا مقررشده كووبت جمله فدكؤره مب سے ہوگا۔ کوئی تاریخ پیش مقام دورہ یا حد سے ار طانة التوا<u>ئ</u>مقده ک دوران مقدمه مين جوخر مح بام بوتوديل صاحب يابندنه بول لي كريروى مذكوره كرين البذا وكالت نام لكوديا تا كه سندرب المرقوم: lolo so Rul J) للمتمقام فس کے لیے منظور بے Anested Accepted نوٹ :اس وکالت نامہ کی فوٹو کابی نا قابل قبول ہوگی۔

GS&PD.KP-2557/3-RST-5000 Forms-09.07.2018/P4(Z)/F/PHC Jos/Form A&B Ser. Tribunal

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR. APPEAL No. E P. No. 117 22 Mit: Shama Begum No. **Apellant/Petitioner** Versus . Director ERSE. W/W Perhowad. **RESPONDENT(S)** Respondent No. 2 Director Education Notice to Appellant/Petitioner FATA KPh Perhowald. Take notice that your appeal has been fixed for Preliminary hearing,

replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

for Implementation 212/22 Report 212/22

Khyber Pakhtunkhwa Service Tribunal, Peshawar.

GS&PD.KP-2557/3-RST-5000 Forms-09.07.2018/P4(Z)/F/PHC Jos/Form A&B Ser. Tribunal 66 A 99 KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR. E.P. No. 117 APPEAL No. Shama Bogum No. 71 **Apellant/Petitioner** Versus Division ESSE WPK **RESPONDENT(S)** Respondent No. 1 Director ERJE KPK Notice to Appellant/Petitioner

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

for In-planentation R. Dort 577120 👌 Registrar, Khyber Pakhtunkhwa Service Tribunal,

Peshawar.