25.10.2022 Petitioner in person present.

Kabir Ullah Khattak, learned Additional Advocate General alongwith Waqar Khan Section Officer for respondents present who submitted Notification dated 24th October, 2022 vide which the competent authority conditionally changed the nomenclature of the post Horticulturist (BS-17) to Agriculture Officer (BS-17) to the effect of the present petitioner in the office of District Director Agriculture, D.I Khan with retrospective effect i.e. w.e.f. 01.02.1997 subject to the final outcome of CPLA filed by the Provincial Government in the Supreme Court of Pakistan. The notification is silent in respect of back benefits, therefore, representative of respondents is strictly directed to make sure the production of proper implementation report on or before the next date, failing which, coercive measure would be taken against all concerned. To come up for submission of proper implementation report on 23.11.2022 before S.B at Camp Court, D.I Khan.

(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

26th Sept 2022

Petitioner alongwith his counsel present. Mr. Muhammad Adeel Butt, Addl: AG for the respondents present.

Learned AAG has submitted written application that the implementation was in process and will soon be finalized were-after proper report will be submitted. As regard the last order sheet wherein learned AAG had informed the Tribunal that implementation was made, he submitted that that was a misunderstanding as according to his thinking the department had implemented the judgment whereas the implementation was under process and because of some technical issue the implementation might take some time. Let a fair opportunity be granted to the respondents to submit implementation report at the earliest possible. To come up for implementation report on 25.10.2022 before S.B at camp court D.I.Khan.

(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

22.08.2022 Due to summer vacation, tour to Camp Court D.I.Khan has been cancelled. To come up for the same on 26.09.2022 before S.B at camp court, D.I.Khan.

Reader

06th September, 2022 1. Mr. Muhammad Adeel Butt, Addl. AG alongwith Mr. Asad-ud-Din Asif Jah, Superintendent for the respondents present.

2. This case was fixed for 26.09.2022. On the application of the learned Addl. AG for release of salaries of the Secretary Agriculture Department Khyber Pakhtunkhwa Peshawar, Secretary Finance Department Khyber Pakhtunkhwa Peshawar, and the Director General Agriculture Department Khyber Pakhtunkhwa Peshawar, it was requisitioned for today. The ground for release of salary of the respondents is that implementation of the judgment of the Tribunal has been made and report has been submitted. Therefore, let the salaries of the Secretaries Agriculture Department, Peshawar, Finance and Director General Agriculture Department Khyber Pakhtunkhwa, Peshawar be released. To come up on the date fixed i.e. on 26.09.2022 before S.B at Camp Court, D.I.Khan.

(Kalim Arshad Khan)
Chairman

30th June, 2022

Counsel for the petitioner present. Mr. Farhaj Sikandar, District Attorney for respondents present.

Despite clear directions given on the previous date, respondents have not submitted conditional implementation report. This Tribunal has no other alternative but to take action against respondents. Salaries of the respondents i.e Secretary Agriculture, Live stock, fisheries and Co-operative Department, Peshawar, Secretary Finance Department, Khyber Pakhtunkhwa Peshawar and Director General, Khyber Pakhtunkhwa Agriculture Department, Peshawar are attached till further orders by this Tribunal. Copy of this order sheet be sent to the Accountant General Khyber Pakhtunkhwa for compliance and to submit report that salaries of the above officer are attached on order of the Tribunal till further order.

To come up on 22.08.2022 for further proceedings at camp court D.I.Khan.

(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No.37/2022 in service appeal No.1513/2019 Muhammad Aslam v/s Government of Khyber Pakhtunkhwa & Others.

Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Agriculture & Others.

Respondents

IMPLEMENATION REPORT IN LIGHT OF THE KHYBER PAKHTUNKWHA SERVICE TRIBUNAL CAMP COURT D.I KHAN ORDER SHEET DATED 30.06.2022 PASSED IN EXECUTION PETITION NO.37/2022 IN SERVICE APPEAL NO.1513/2019 TITLED MUHAMMAD ASLAM V/S GOVT OF KHYBER PAKHTUNKHWA & OTHERS.

The Khyber Pakhtunkhwa Service Tribunal Camp Court D.I Khan on 30.06.2022 passed the following orders in the above titled case:-

> "Despite clear direction given on the previous date, respondents have not submitted conditional implementation report. This Tribunal has no others alternative but to take action against respondents. Salaries of the respondents i.e Secretary Agriculture, Livestock and Cooperative Department Peshawar, Secretary Finance Department Khyber Pakhtunkhwa Peshawar and Director General Khyber Pakhtunkhwa Agriculture Department, Peshawar are attached till further order by this Tribunal" **(Annex-I)".**

02. The Above order has been passed for non-submission of implementation report of the following order passed in Appeal No.1513/2019 which is reproduced below:-

> "The instant appeal is accepted. The impugned order dated 16.10.2019 is set aside with direction to the respondents to change the nomenclature of the post of the appellant from Horticulturist (BPS-17) to Agriculture Officer (BPS-17) by awarding him all back benefits from 01.02.1997 (the date of posting of appellant as Agriculture Officer in his own pay & scale)".

03. This department has filed CPLA against the judgment/ order dated 27.01.2022 passed of this Tribunal (**Annex-II).** However, now through order dated 30.06.2022 (referred to above) the Hon'ble Service Tribunal has ordered the attachment of salaries of the Secretaries Agriculture, Finance and Director General Khyber Pakhtunkhwa Peshawar.

04. It is pertinent to mention here that on the order of this Hon'ble Tribunal (referred to above), this department moved a note for competent authority i.e (Finance Secretary Khyber Pakhtunkha) regarding conditional change of the nomenclature of the post of the appellant from Horticulturist (BPS-17) to Agriculture Officer (BPS-17) by awarding him all back benefits with retrospective as well as implementation of the orders of the Hon'ble Tribunal vide (**Annex-III**). Therefore, the order of the Service Tribunal is fully implemented in letter in spirit.

05. In view of the above, implementation report duly signed and stamped by the undersigned is submitted with the request that the salaries of the respondents 1,2 & 3 i.e Secretaries Agriculture, Finance and Director General Agriculture (Extension) Khyber Pakhtunkhwa may kindly be released please.

Secretary
Govt of Khyber Pakhtunkhwa,
Agriculture, [illegible] Dept

Secretary to Government of Khyber Pakhtunkhwa
Agriculture, Livestock, Fisheries & Cooperative
Department Peshawar

(**Respondent No.01**)

DG. Agri. Ext.

BEFORE THE KHYBER PAKHTOON KHAWA SERVICE TRIBUNAL
PESHAWAR CAMP AT D.I.KHAN.

Implementation/Execution Petition No. 137 of 2022.

Muhammad Aslam S/O Muhammad Ibrahim R/O New Chora Belot Sharif D.I.Khan serving in District Director Agriculture Extension. D.I.Khan.

VERSUS

1. Secretary Agriculture, Live stock, fisheries and Co-operative Department Peshawar.
2. Secretary Finance Department KP Peshawar.
3. Director General Agriculture Extension Department KP Peshawar.

IMPLEMENTATION PETITION/EXECUTION PETITION OF JUDGMENT DATED; 27-01-2022 REGARDING CHANGING OF NOMENCLATURE OF THE POST OF APPELLANT FROM HORTICULTURIST BPS-17 TO AGRICULTURE OFFICER BPS-17 BY AWARDING HIM ALL BACK BENEFIT FROM 01-02-1997.

That the brief facts of the case are as under:

1. That petitioner initially appointed as Horticulturist BPS-13 on regular basis in Hazara development authority Abbott Abad but after abolishing of post he was deputed to food and vegetable development board Peshawar vide order Dated; 22-01-1996. Consequent upon the abolishing of the board, the petition was adjusted as Agricultural Officer vide order Dated; 25-02-1997 and till now he is working in the Agricultural Department the Petitioner file Writ Petition and there after COC Petition seeking his regular appointment on the post of Agricultural Officer which was disposed off vide Order Dated; 29-01-2013. The Respondent instead of adjusting the Petitioner on the post of Agricultural Officer adjusted him at the post of Horticulturist BPS-17. The Petitioner filed another Writ Petition before High Court which was allowed vide Judgment Dated; 14-03-2016 which was assailed before August Supreme Court of Pakistan but was

Annex-I 164

30th June, 2022

Counsel for the petitioner present. Mr. Farhaj Sikandar, District Attorney for respondents present.

Despite clear directions given on the previous date, respondents have not submitted conditional implementation report. This Tribunal has no other alternative but to take action against respondents. Salaries of the respondents i.e Secretary Agriculture, Live stock, fisheries and Co-operative Department, Peshawar, Secretary Finance Department, Khyber Pakhtunkhwa Peshawar and Director General, Khyber Pakhtunkhwa Agriculture Department, Peshawar are attached till further orders by this Tribunal. Copy of this order sheet be sent to the Accountant General Khyber Pakhtunkhwa for compliance and to submit report that salaries of the above officer are attached on order of the Tribunal till further order.

To come up on 22.08.2022 for further proceedings at camp court D.I.Khan.

(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

Date of Presentation of Application 08-07-22
Number of Words 800
Copying Fee 10/-
Urgent -
Total 10/-
Name of Copyist -
Date of Complection of Copy 13/7/22
Date of Delivery of Copy 13/7/22

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Annex-Y 165 Annexure-(B)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1513/2019

Date of Institution ... 11.11.2019

Date of Decision ... 27.01.2022

Muhammad Aslam son of Muhammad Ibrahim, resident of village new Choora, Post Office Billot Sharif, Tehsil Paharpur, District D.I.Khan; presently serving as Horticulturist BPS-17 in the Office of District Director Agriculture Extension, D.I. Khan.

... (Appellant)

VERSUS

Secretary Agriculture, Livestock, Fisheries and Co-operative Department, Khyber Pakhtunkhwa, Peshawar and one thirty others. ... (Respondents)

Muhammad Anwar Awan,
Advocate ... For Appellant

Muhammad Adeel Butt,
Additional Advocate General ... For official respondents

Mukhtar Ahmad Maneri
Advocate ... For private respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was initially appointed as Horticulturist BPS-13 on regular basis in Hazara Development Authority, Abbottabad, but after abolition of the post of horticulturist, he was deputed to the Fruit & Vegetable Development Board Peshawar vide order dated 22-01-1996 and was posted as FVD Officer (BPS-17) in his Own Pay & Scale [illegible]

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against the post of agriculture officer and respondent No 1 vide letter dated 07-01-2003 informed that no such post exist in BPS-13 in agriculture department, hence he was allowed to continue against the post and apply afresh for the post as and when post is advertised. The appellant filed an application followed by a Writ Petition No. 713/2011 seeking his regular appointment on the post of agriculture officer (BPS-17) with effect from 01-02-1997. The writ petition was disposed of vide order dated 07-04-2011 directing the respondents to decide the matter within two months and upon failure, the appellant filed COC Petition No 275-P/2012, which was also disposed of vide order dated 29-03-2013 on assurance of the respondents that the matter would be resolved within thirty days. in pursuance the respondents submitted a working paper to the relevant forum with the proposal that the post of horticulturist (BPS-13) may be up-graded and re-designated as Agriculture Officer(BPS-17), but post of the appellant as Horticulturist (BPS-13) was up-graded to BPS-14 vide minutes of the meeting dated 08-01-2014. The appellant seeking his adjustment in BPS-17 with effect from 01-02-1997, filed another Writ Petition No. 245-D/2014 before Peshawar High Court D.I.Khan bench, which was allowed vide judgment dated 14-03-2016, against which the respondents filed Civil Petition, which was declined vide order dated 13-10-2017. For implementation of the judgment of Peshawar High Court dated 14-03-2016, the appellant filed COC Petition No 366-D/2016 but in the meanwhile post of the appellant was up-graded as Horticulturist BPS-17 vide order dated 20-03-2017, hence the COC Petition was disposed of vide judgment dated 03-05-2017. The appellant submitted applications dated 04-05-2017 and 13-10-2017 to respondents for grant of BPS-17 with effect from 01-02-1997 on the post of agriculture officer, but respondents did not consider the said applications. Feeling aggrieved of his posting as horticulturist and not changing his nomenclature as agriculture officer,

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respondent No. 3 to decide the same in accordance with law. The respondent No. 3 vide order dated 16-10-2019 rejected such departmental appeal, hence the instant service appeal with prayers that the impugned order dated 16-10-2019 may be set aside with direction to respondents to change the nomenclature of the post of the appellant from Horticulturist (BPS-17) to that of Agriculture Officer (BPS-17) by awarding him all back benefits from 01-02-1997 (the date of posting of appellant as agriculture officer in his Own Pay & Scale).

02. Learned counsel for the appellant has contended that the appellant since 01-02-1997 till 03-05-2017 served on the post of agriculture officer BPS-17 and during the period, performance of the appellant remained up to the mark; that the appellant from 04-05-2017 onward is serving against the post of horticulturist, but performing the duty of agriculture officer; that qualification required for the post of agriculture officer is 2nd Division M.Sc/B.Sc (Hons) Degree in agriculture from a recognized university, whereas the appellant is having M.Sc (Hons), M.Phil and PhD in horticulture, thus the appellant is eligible and entitled for his adjustment on the post of agriculture officer with effect from 01-02-1997, particularly when the appellant has already served on the said post for almost 20 years and proved to be competent enough to hold such post; that grant of BPS-17 with the post of horticulturist with immediate effect to the appellant amount to career assassination of the appellant and thereby his past 20 years service on the post of agriculture officer has not been taken into account, hence a great injustice has been done to the appellant; that previously the appellant applied for the post of agriculture officer but he was dropped from the recruitment process on the ground that appellant is already in service as agriculture officer; that there is no post of Horticulturist in Agriculture Department and the said post has been created only for the appellant as a dying

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on 19-04-2013 forwarded a summery to the Chief Minister for regularization of the service of the appellant, which was approved on 26-06-2013; pursuant to which a notification dated 30-10-2013 was issued, whereby recommendation with respect of up-gradation of the post of horticulturist BPS-13 to Agriculture Officer BPS-17 was accorded, but the respondents has wrongly, malafiedly and illegally deviated from their previous track by awarding up-gradation to appellant on the post of horticulturist BPS-17 with immediate effect; that the order dated 16-10-2019 is illegal void and without lawful authority and action of the respondents are discriminatory and illegal.

03. Learned counsel for private respondents has contended that the appellant was initially appointed as Supervisor BPS-11 in the literacy and mass education commission vide order dated 10-03-1987, late on the appellant was appointed as Horticulturist BPS-13 under provincial urban development board vide order dated 02-08-1994; that due to abolition of post of horticulturist, the appellant was transferred to the fruit and vegetable board with effect from 11-01-1996 on deputation basis on 22-01-1996; that upon winding up of the fruit & vegetable board, the appellant was adjusted against a vacant post of agriculture officer till availability of regular agriculture officer vide order dated 25-02-1997; that appeal of the appellant was turned down due to the reason that no such post of horticulturist was available in Agriculture Department nor any such provision available in rule for promotion of the appellant from BPS-13 to 17 and to this effect the appellant was informed vide order dated 07-11-2003; that post of the appellant was up-graded from BPS-13 to 14 vide order dated 11-04-2014 and later on such post was up-graded to BPS-17 vide order dated 20-03-2017 with immediate effect; that the post has been up-graded personally which will stand abolish upon retirement of the appellant from service; that as per existing service [illegible] the appellant does not qualify the criteria as he has been appointed as

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04. Learned Additional Advocate General for the official respondents has contended that it is correct that the appellant was adjusted against the vacant post of agriculture officer BPS-17 D.I.Khan temporarily in his own pay and scale till availability of a regular Agriculture Officer vide order dated 25-02-1997; that the appellant submitted application for his posting as Agriculture Officer in regular basis which was turned down on the ground that no such post of BPS-13 was available in Agriculture Department, against which services of the appellant could be regularized; that no such provision was available in rules for promotion of the appellant from BPS-13 to 17; that the appellant was permitted to continue his job against the post of Agriculture Officer in his own pay and scale till arrival of regular agriculture officer, but the appellant served against such post for a longer period of time without any disturbance; that the appellant was also permitted to apply afresh for the post of Agriculture Officer as and when the post is advertized; that in compliance with orders of the court, post of the appellant was up-graded from BPS-13 to 14 and again to BPS-17; that departmental appeal of the appellant was rejected being devoid of merit.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that consequent upon abolition of the post of horticulturist, the appellant rendered surplus and was deputed to the Fruit & Vegetable Development Board Peshawar vide order dated 22-01-1996, but the Board also abolished in short span of time and the appellant again rendered surplus, who later on was adjusted as Agriculture officer vide order dated 25-02-1997 in agriculture department, who served against such post until 2017. The appellant filed an application followed by a Writ Petition No. 713/2011 for seeking his regular appointment on the post of agriculture officer (BPS-17) with effect from

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failure, the appellant filed COC Petition No. 275-P/2012, which was also disposed of vide order dated 29-03-2013 on assurance of the respondents that the matter would be resolved within thirty days. In pursuance the respondents submitted a working paper to the relevant forum with the proposal that the post of Horticulturist (BPS-13) may be up-graded and re-designated as Agriculture Officer (BPS-17), but post of the appellant as Horticulturist (BPS-13) was up-graded to BPS-14 vide minutes of the meeting dated 08-01-2014. The appellant seeking his adjustment in BPS-17 with effect from 01-02-1997, filed another Writ Petition No. 245-D/2014 before Peshawar High Court D.I.Khan bench, which was allowed vide judgment dated 14-03-2016, against which the respondents filed Civil Petition, which was declined vide order dated 13-10-2017. For implementation of the judgment of Peshawar High Court dated 14-03-2016, the appellant filed COC Petition No 366-D/2016 but in the meanwhile post of the appellant was up-graded as Horticulturist BPS-17 vide order dated 20-03-2017, hence the COC Petition was disposed of vide judgment dated 03-05-2017. The appellant submitted applications dated 04-05-2017 and 13-10-2017 to respondents for grant of BPS-17 with effect from 01-02-1997 on the post of agriculture officer, but respondents did not consider the said applications. Feeling aggrieved of his posting as horticulturist and not changing his nomenclature as Agriculture Officer, the appellant filed a Writ Petition No 254-D/2018, which was decided on 17-09-2019 by converting the writ petition into departmental appeal and sent to respondent No. 3 to decide the same in accordance with law. The respondent No. 3 vide order dated 16-10-2019 rejected such departmental appeal, hence the instant service appeal.

07. We have observed that the appellant fought a long legal battle for almost 20 years with the contention that the appellant was adjusted against the post of

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professional capabilities, his stance was accepted by the court with direction to the respondents to resolve his issue at the earliest, but the respondents instead of his regularization against the post of agriculture officer, created a post of Horticulturist in Agriculture Department, which in fact was a dying cadre and was abolished in rest of the departments, which was against the spirit of the court directions. The appellant was serving against the post of agriculture officer, but nomenclature of the post was retained as horticulturist and such post was up-graded to BPS-14 vide order dated 11-04-2014 and later on to BPS-17 vide order dated 20-03-2017 with immediate effect.

08. Record would reveal that the appellant also applied for the post of agriculture officer, who was also called for interview vide letter dated 08-02-2008 and his name also reflected at serial No. 81 of the merit list, but he was not considered due to the reason that he was already working against the post of agriculture officer, but upon his repeated requests, his case for regularization of his services against the post of agriculture officer was not taken into consideration. On the contrary, the respondents regularized the services of other ad-hoc agriculture officers vide order dated 04-03-2010 and their names were included in the seniority list of the regular agriculture officers as issued on 01-07-2019. A working paper placed on record would show that the respondents recommended the post of agriculture officer for the appellant and not horticulturist, but on the contrary the post of horticulturist was revived which was detriment to the interest of the appellant. Stance of the appellant throughout, right from High Court up to the Supreme Court of Pakistan was his regularization against the post of agriculture officer, which was accepted by the Superior Courts but was never implemented by the respondents. The august Supreme Court of Pakistan in its judgment dated 23-10-2017 have held that the

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promotion are clear than crystal on the subject and also the practice in vogue, therefore, they should not worry about it.

09. We are of the considered opinion that stance of the appellant to the effect that he was entitled for the benefits of agriculture officer with effect from 01-02-1997 hold force, as post of the appellant was up-graded to BPS-17 on 20-03-2017 with immediate effect, which means that the appellant deserved such treatment on the strength of his professional competency as well as his actual work against the post of agriculture officer for almost 20 years and denial of his right and subsequent grant of his right at a belated stage is unlawful and he must avail the benefits of the post right from the date, when he was adjusted against such post in his own pay and scale. Peshawar High Court D.I.Khan bench vide judgment dated 14-03-2016 allowed such up-gradation in clear term, against which the respondents filed Civil Petition, which was declined vide order dated 13-10-2017, but was not implemented in the mood and manner as prescribed by court.

10. In view of the foregoing, the instant appeal is accepted. The impugned order dated 16.10.2019 is set aside with direction to the respondents to change the nomenclature of the post of the appellant from Horticulturist (BPS-17) to Agriculture Officer (BPS-17) by awarding him all back benefits from 01.02.1997 (the date of posting of appellant as Agriculture Officer in his own pay & scale). Parties are left to bear their own cost. File be consigned to record room.

ANNOUNCED
27.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Annex-III

GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE DEPARTMENT

NOTE FOR SECRETARY FINANCE

Subject: **IMPLEMENTATION OF EXECUTION PETITION NO. 137/2022 IN SERVICE APPEAL NO. 1513/2019 OF JUDGMENT DATED 27.01.2022 REGARDING CHANGE OF NOMENCLATURE OF THE POST OF APPELLANT FROM HORTICULTURIST (BS-17) TO AGRICULTURE OFFICER (BS-17) BY AWARDING HIM ALL BACK BENEFIT**

Muhammad Aslam, Horticulturist (BS-17) office of the District Director Agriculture, D.I Khan has filed Service Appeal No. 1513/2019 in the Khyber Pakhtunkhwa Service Tribunal, Camp Court, D.I Khan which was accepted by the hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar with the direction to the respondents to change the nomenclature of the post of the appellant from Horticulturist (BS-17) to Agricultural Officer (BS-17) by awarding him all back benefits from 01.07.1997 (i.e. from the date of posting of the appellant as Agricultural Officer in his own pay & Scale) vide **(F/A)**.

02. The subject case was placed before the Scrutiny Committee of Law Department and the Scrutiny Committee declared the case fit for CPLA. Accordingly, CPLA has been filed in Supreme Court of Pakistan by Advocate on Record, Khyber Pakhtunkhwa **(F/B)**.

03. Later on, Muhammad Aslam, Horticulturist filed Execution Petition No. 137/2022 in Service Tribunal, Camp Court D.I Khan, wherein the respondents were directed to implement the said judgment or get stay from the Apex Court & submit conditional implementation report as the Court have no other alternative but to take action against the respondents. The salaries of respondents i.e. Secretary Agriculture Department, Secretary Finance Department and Director General, Agriculture (Extension) are attached **(F/C)**.

04. The Finance Department also advised the Agriculture Department for conditional implementation of the judgment dated 27.01.2022 before next date of hearing i.e. 22.08.2022 **(F/D)**.

05. In view of above, Secretary Finance Khyber Pakhtunkhwa is requested to approve the conditional Change of Nomenclature of the post of Horticulturist (BS-17) as Agricultural Officer (BS-17) in the office of District Director Agriculture, D.I Khan with retrospective effect i.e. w.e.f 01.07.1997 subject to final outcome of the CPLA filed by Provincial Government in Supreme Court of Pakistan

06. proposal contained in para-5 is submitted for approval, please.

18-08-2022

(MUHAMMAD ISRAR)
SECRETARY AGRICULTURE

SECRETARY FINANCE
KHYBER PAKHTUNKHWA

GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE DEPARTMENT

NOTE FOR SECRETARY FINANCE

Subject: **IMPLEMENTATION OF EXECUTION PETITION NO. 137/2022 IN SERVICE APPEAL NO. 1513/2019 OF JUDGMENT DATED 27.01.2022 REGARDING CHANGE OF NOMENCLATURE OF THE POST OF APPELLANT FROM HORTICULTURIST (BS-17) TO AGRICULTURE OFFICER (BS-17) BY AWARDING HIM ALL BACK BENEFIT**

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03. Later on, Muhammad Aslam, Horticulturist filed Execution Petition No. 137/2022 in Service Tribunal, Camp Court D.J Khan, wherein the respondents were directed to implement the said judgment or get stay from the Apex Court & submit conditional implementation report as the Court have no other alternative but to take action against the respondents. The salaries of respondents i.e. Secretary Agriculture Department, Secretary Finance Department and Director General, Agriculture (Extension) are attached **(F/C)**.

04. The Finance Department also advised the Agriculture Department for conditional implementation of the judgment dated 27.01.2022 before next date of hearing i.e. 22.08.2022 **(F/D)**.

05. In view of above, Secretary Finance Khyber Pakhtunkhwa is requested to approve the conditional Change of Nomenclature of the post of Horticulturist (BS-17) as Agricultural Officer (BS-17) in the office of District Director Agriculture, D.I Khan with retrospective effect i.e. w.e.f 01.07.1997 subject to final outcome of the CPLA filed by Provincial Government in Supreme Court of Pakistan

06. proposal contained in para-5 is submitted for approval, please.

0333 3333381

18-08-2022

(MUHAMMAD ISRAR)
SECRETARY AGRICULTURE

SECRETARY FINANCE
KHYBER PAKHTUNKHWA

23.05.2022 Petitioner in person present. Mr. Assad-ud-Din Asif Ja, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Representative of the respondents stated at the bar that the judgment under execution has been challenged through filing of CPLA before the august Supreme Court of Pakistan. He further stated that either restraining order or implementation report will be produced on the next date. Adjourned. To come up for implementation report on 30.06.2022 before the S.B at Camp Court D.I.Khan.

(Salah-Ud-Din)
Member (J)
Camp Court D.I.Khan

Form- A

FORM OF ORDER SHEET

Court of

Execution Petition No. 137/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	(M. Hamid Mughal) Chairman Member 3
1	10.03.2022	The execution petition of Mr. Muhammad Aslam submitted today by Mr. Muhammad Anwar Awan Advocate may be entered in the relevant register and put up to the Court for proper order please. (Hussain Shah) Member REGISTRAR
2-		This execution petition be put up before to touring S. Bench at D.I. Khan on 29-03-2022. CHAIRMAN
	29.03.2022	Counsel for the petitioner present. Notice be given to the respondents for the next date. To come up for implementation report on 23.05.2022 before S.B at camp court, D.I.Khan. CHAIRMAN, Camp Court, D.I.Khan

As a corollary, the appeal in hand is posted before a ~~Bench already constituted and has heard the~~ arguments on behalf of the appellant.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: M. Aslam VS Secretary Agriculture etc

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: M. Anwar Awan ASC		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?		No
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On	✓	
26	Whether copies of comments/reply/rejoinder submitted? On	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: M. Anwar Awan ASC

Signature: Anwar Awan Adv

Dated: 03/08/2021

BEFORE THE KHBER PAKHTOON KHAWA SERVICE TRIBUNAL
PESHAWAR CAMP AT D.I.KHAN.

Implementation/Execution Petition No...137... of 2022.

Muhammad Aslam **VERSUS** Secretary Agriculture and others

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Your humble Petitioner

Muhammad Aslam

Dated; 10-03-2022.

Mohammad Anwar Awan
Advocate Supreme Court.

BEFORE THE KHBER PAKHTOON KHAWA SERVICE TRIBUNAL
PESHAWAR CAMP AT D.I.KHAN.

Implementation/Execution Petition No. 137 of 2022.

Muhammad Aslam S/O Muhammad Ibrahim R/O New Chora Belot Sharif D.I.Khan serving in District Director Agriculture Extension. D.I.Khan.

VERSUS

1. Secretary Agriculture, Live stock, fisheries and Co-operative Department Peshawar.
2. Secretary Finance Department KP Peshawar.
3. Director General Agriculture Extension Department KP Peshawar.

IMPLEMENTATION PETITION/EXECUTION PETITION OF JUDGMENT DATED; 27-01-2022 REGARDING CHANGING OF NOMENCLATURE OF THE POST OF APPELLANT FROM HORTICULTURIST BPS-17 TO AGRICULTURE OFFICER BPS-17 BY AWARDING HIM ALL BACK BENEFIT FROM 01-02-1997.

That the brief facts of the case are as under:

1. That petitioner initially appointed as Horticulturist BPS-13 on regular basis in Hazara development authority Abbott Abad but after abolishing of post he was deputed to food and vegetable development board Peshawar vide order Dated; 22-01-1996. Consequent upon the abolishing of the board, the petition was adjusted as Agricultural Officer vide order Dated; 25-02-1997 and till now he is working in the Agricultural Department the Petitioner file Writ Petition and there after COC Petition seeking his regular appointment on the post of Agricultural Officer which was disposed off vide Order Dated; 29-01-2013. The Respondent instead of adjusting the Petitioner on the post of Agricultural Officer adjusted him at the post of Horticulturist BPS-17. The Petitioner filed another Writ Petition before High Court which was allowed vide Judgment Dated; 14-03-2016 which was assailed before August Supreme Court of Pakistan but was

declined. To implement the Judgment the Respondent Up-Graded the post of Petitioner, Horticulturist BPS_17. The Appellant again submitted An Application for Grant of Agricultural Officer by changing the Nomenclature of post but was not consider by the Department so Petitioner filed Writ Petition which was converted into Departmental Appeal and send to Respondent No.03 for Decision. The Respondent No.03 rejected the Appeal hence petitioner file service Appeal before Hon'ble Service Tribunal which was allowed with direction to the Respondents to change the Nomenclature of the post of Appellant from Horticulturist BPS-17 to Agriculture Officer BPS-17 with all back benefit from 01-02-1997. Copy of judgment dated; 27-01-2022 is Annexure A.

2. That after the lapse of considerable time Department is hesitating to implement the Judgment of Hon'ble Service Tribunal dated; 27-01-2021 in Service Appeal No. 1513/2019 so petitioner has no other remedy but to file implementation petition.

In view of the above, it is, therefore, most respectfully prayed that on acceptance this petition, may kindly implement the judgment dated; 27-01-2022 issued in Service Appeal No 1513/2019.

YOUR HUMBLE PETITIONER

Muhammad Aslam
Through Counsel

Dated; 10-03-2022.

Mohammad Anwar Awan
Advocate Supreme Court

AFFIDAVIT

Muhammad Aslam, do hereby solemnly affirm and declare on OATH that the contents of the same are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable court.

Deponant.

Muhammad Kamran Advocate OATH COMMISSIONER

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR
CAMP AT DERA ISMAIL KHAN.

Service Appeal No. 1513 *of 2019*

Muhammad Aslam son of Muhammad Ibrahim, resident of village new Choora, Post Office Billot Sharif, Tehsil Paharpur, District D.I.Khan; presently serving as Horticulturist BPS-17 in the Office of District Director Agriculture Extension, D.I.Khan.

VERSUS

1) **Secretary**, Agriculture, Livestock, Fisheries and Co-operative Department, Khyber Pakhtunkhwa, Peshawar.

2) **Secretary**, Finance Department, Khyber Pakhtunkhwa, Peshawar.

3) **Director General**, Agriculture Extension, Khyber Pakhtunkhwa, Peshawar.

Service Appeal under Section 04 of Khyber Pakhtunkhwa Service Tribunal Act, against the order dated 16/10/2019 passed by Respondent # 03 vide which the appeal of appellant regarding change of nomenclature of post as Horticulturist BPS-17 to Agricultural Officer BPS-17 alongwith all back and future benefits.

Respectfully Sheweth,

1. Brief facts of the present Petition are that the appellant was initially appointed as Horticulturist BPS-13 on regular basis in the Hazara Development authority, Abbottabad; and thereafter, he was deputed in the Fruit &Vegetable Development Board (FVDB) Peshawar vide office Order dated 22.01.996 and was posted as FVD Officer (B-17) in his own pay & Scale i.e.BPS-13 w.e.f. 11.01.1996. Copy of orders are Annexure A.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1513/2019

Date of Institution ... 11.11.2019
Date of Decision ... 27.01.2022

Muhammad Aslam son of Muhammad Ibrahim, resident of village new Choora, Post Office Billot Sharif, Tehsil Paharpur, District D.I.Khan; presently serving as Horticulturist BPS-17 in the Office of District Director Agriculture Extension, D.I. Khan. ... (Appellant)

VERSUS

Secretary Agriculture, Livestock, Fisheries and Co-operative Department, Khyber Pakhtunkhwa, Peshawar and one thirty others. ... (Respondents)

Muhammad Anwar Awan, Advocate ... For Appellant

Muhammad Adeel Butt, Additional Advocate General ... For official respondents

Mukhtar Ahmad Maneri Advocate ... For private respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was initially appointed as Horticulturist BPS-13 on regular basis in Hazara Development Authority, Abbottabad, but after abolition of the post of horticulturist, he was deputed to the Fruit & Vegetable Development Board Peshawar vide order dated 22-01-1996 and was posted as FVD Officer (BPS-17) in his Own Pay & Scale. Consequent upon abolition of the Board, the appellant was adjusted as Agriculture officer vide order dated 25-02-1997. The appellant vide application requested respondent No. 1 for his regularization

against the post of agriculture officer and respondent No 1 vide letter dated 07-01-2003 informed that no such post exist in BPS-13 in agriculture department, hence he was allowed to continue against the post and apply afresh for the post as and when post is advertised. The appellant filed an application followed by a Writ Petition No. 713/2011 seeking his regular appointment on the post of agriculture officer (BPS-17) with effect from 01-02-1997. The writ petition was disposed of vide order dated 07-04-2011 directing the respondents to decide the matter within two months and upon failure, the appellant filed COC Petition No 275-P/2012, which was also disposed of vide order dated 29-03-2013 on assurance of the respondents that the matter would be resolved within thirty days. in pursuance the respondents submitted a working paper to the relevant forum with the proposal that the post of horticulturist (BPS-13) may be up-graded and re-designated as Agriculture Officer(BPS-17), but post of the appellant as Horticulturist (BPS-13) was up-graded to BPS-14 vide minutes of the meeting dated 08-01-2014. The appellant seeking his adjustment in BPS-17 with effect from 01-02-1997, filed another Writ Petition No. 245-D/2014 before Peshawar High Court D.I.Khan bench, which was allowed vide judgment dated 14-03-2016, against which the respondents filed Civil Petition, which was declined vide order dated 13-10-2017. For implementation of the judgment of Peshawar High Court dated 14-03-2016, the appellant filed COC Petition No 366-D/2016 but in the meanwhile post of the appellant was up-graded as Horticulturist BPS-17 vide order dated 20-03-2017, hence the COC Petition was disposed of vide judgment dated 03-05-2017. The appellant submitted applications dated 04-05-2017 and 13-10-2017 to respondents for grant of BPS-17 with effect from 01-02-1997 on the post of agriculture officer, but respondents did not consider the said applications. Feeling aggrieved of his posting as horticulturist and not changing his nomenclature as agriculture officer, the appellant filed a Writ Petition No. 254-D/2018, which was decided on 17-09-2019 by converting the writ petition into departmental appeal and sent to

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respondent No. 3 to decide the same in accordance with law. The respondent No. 3 vide order dated 16-10-2019 rejected such departmental appeal, hence the instant service appeal with prayers that the impugned order dated 16-10-2019 may be set aside with direction to respondents to change the nomenclature of the post of the appellant from Horticulturist (BPS-17) to that of Agriculture Officer (BPS-17) by awarding him all back benefits from 01-02-1997 (the date of posting of appellant as agriculture officer in his Own Pay & Scale).

02. Learned counsel for the appellant has contended that the appellant since 01-02-1997 till 03-05-2017 served on the post of agriculture officer BPS-17 and during the period, performance of the appellant remained up to the mark; that the appellant from 04-05-2017 onward is serving against the post of horticulturist, but performing the duty of agriculture officer; that qualification required for the post of agriculture officer is 2nd Division M.Sc/B.Sc (Hons) Degree in agriculture from a recognized university, whereas the appellant is having M.Sc (Hons), M.Phil and PhD in horticulture, thus the appellant is eligible and entitled for his adjustment on the post of agriculture officer with effect from 01-02-1997, particularly when the appellant has already served on the said post for almost 20 years and proved to be competent enough to hold such post; that grant of BPS-17 with the post of horticulturist with immediate effect to the appellant amount to career assassination of the appellant and thereby his past 20 years service on the post of agriculture officer has not been taken into account, hence a great injustice has been done to the appellant; that previously the appellant applied for the post of agriculture officer but he was dropped from the recruitment process on the ground that appellant is already in service as agriculture officer; that there is no post of Horticulturist in Agriculture Department and the said post has been created only for the appellant as a dying cadre post which shall automatically be abolished upon retirement of the appellant, moreover the post of horticulturist is having no service structure; that malafide on part of the respondents is evident from the fact that the department

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Khyber Pakhtunkhwa Service Tribunal Peshawar

on 19-04-2013 forwarded a summery to the Chief Minister for regularization of the service of the appellant, which was approved on 26-06-2013, pursuant to which a notification dated 30-10-2013 was issued, whereby recommendation with respect of up-gradation of the post of horticulturist BPS-13 to Agriculture Officer BPS-17 was accorded, but the respondents has wrongly, malafiedly and illegally deviated from their previous track by awarding up-gradation to appellant on the post of horticulturist BPS-17 with immediate effect; that the order dated 16-10-2019 is illegal void and without lawful authority and action of the respondents are discriminatory and illegal.

03. Learned counsel for private respondents has contended that the appellant was initially appointed as Supervisor BPS-11 in the literacy and mass education commission vide order dated 10-03-1987, late on the appellant was appointed as Horticulturist BPS-13 under provincial urban development board vide order dated 02-08-1994; that due to abolition of post of horticulturist, the appellant was transferred to the fruit and vegetable board with effect from 11-01-1996 on deputation basis on 22-01-1996; that upon winding up of the fruit & vegetable board, the appellant was adjusted against a vacant post of agriculture officer till availability of regular agriculture officer vide order dated 25-02-1997; that appeal of the appellant was turned down due to the reason that no such post of horticulturist was available in Agriculture Department nor any such provision available in rule for promotion of the appellant from BPS-13 to 17 and to this effect the appellant was informed vide order dated 07-11-2003; that post of the appellant was up-graded from BPS-13 to 14 vide order dated 11-04-2014 and later on such post was up-graded to BPS-17 vide order dated 20-03-2017 with immediate effect; that the post has been up-graded personally which will stand abolish upon retirement of the appellant from service; that as per existing service rules, the appellant does not qualify the criteria as he has been appointed as horticulturist and that too in compliance with judgment of the court.

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Khyber Pakhtunkhwa
Service Tribunal
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04. Learned Additional Advocate General for the official respondents has contended that it is correct that the appellant was adjusted against the vacant post of agriculture officer BPS-17 D.I.Khan temporarily in his own pay and scale till availability of a regular Agriculture Officer vide order dated 25-02-1997; that the appellant submitted application for his posting as Agriculture Officer in regular basis which was turned down on the ground that no such post of BPS-13 was available in Agriculture Department, against which services of the appellant could be regularized; that no such provision was available in rules for promotion of the appellant from BPS-13 to 17; that the appellant was permitted to continue his job against the post of Agriculture Officer in his own pay and scale till arrival of regular agriculture officer, but the appellant served against such post for a longer period of time without any disturbance; that the appellant was also permitted to apply afresh for the post of Agriculture Officer as and when the post is advertized; that in compliance with orders of the court, post of the appellant was up-graded from BPS-13 to 14 and again to BPS-17; that departmental appeal of the appellant was rejected being devoid of merit.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that consequent upon abolition of the post of horticulturist, the appellant rendered surplus and was deputed to the Fruit & Vegetable Development Board Peshawar vide order dated 22-01-1996, but the Board also abolished in short span of time and the appellant again rendered surplus, who later on was adjusted as Agriculture officer vide order dated 25-02-1997 in agriculture department, who served against such post until 2017. The appellant filed an application followed by a Writ Petition No. 713/2011 for seeking his regular appointment on the post of agriculture officer (BPS-17) with effect from 01-02-1997. The writ petition was disposed of vide order dated 07-04-2011 directing the respondents to decide the matter within two months and upon

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Khyber Pakhtunkhwa
Service Tribunal
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failure, the appellant filed COC Petition No. 275-P/2012, which was also disposed of vide order dated 29-03-2013 on assurance of the respondents that the matter would be resolved within thirty days. In pursuance the respondents submitted a working paper to the relevant forum with the proposal that the post of Horticulturist (BPS-13) may be up-graded and re-designated as Agriculture Officer (BPS-17), but post of the appellant as Horticulturist (BPS-13) was up-graded to BPS-14 vide minutes of the meeting dated 08-01-2014. The appellant seeking his adjustment in BPS-17 with effect from 01-02-1997, filed another Writ Petition No. 245-D/2014 before Peshawar High Court D.I.Khan bench, which was allowed vide judgment dated 14-03-2016, against which the respondents filed Civil Petition, which was declined vide order dated 13-10-2017. For implementation of the judgment of Peshawar High Court dated 14-03-2016, the appellant filed COC Petition No 366-D/2016 but in the meanwhile post of the appellant was up-graded as Horticulturist BPS-17 vide order dated 20-03-2017, hence the COC Petition was disposed of vide judgment dated 03-05-2017. The appellant submitted applications dated 04-05-2017 and 13-10-2017 to respondents for grant of BPS-17 with effect from 01-02-1997 on the post of agriculture officer, but respondents did not consider the said applications. Feeling aggrieved of his posting as horticulturist and not changing his nomenclature as Agriculture Officer, the appellant filed a Writ Petition No 254-D/2018, which was decided on 17-09-2019 by converting the writ petition into departmental appeal and sent to respondent No. 3 to decide the same in accordance with law. The respondent No. 3 vide order dated 16-10-2019 rejected such departmental appeal, hence the instant service appeal.

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

07. We have observed that the appellant fought a long legal battle for almost 20 years with the contention that the appellant was adjusted against the post of agriculture officer, who worked against the post for a longer period of time and having qualification more than the rest of Agriculture Officers in the department, hence he is entitled to be regularized against the post. Keeping in view his

professional capabilities, his stance was accepted by the court with direction to the respondents to resolve his issue at the earliest, but the respondents instead of his regularization against the post of agriculture officer, created a post of Horticulturist in Agriculture Department, which in fact was a dying cadre and was abolished in rest of the departments, which was against the spirit of the court directions. The appellant was serving against the post of agriculture officer, but nomenclature of the post was retained as horticulturist and such post was up-graded to BPS-14 vide order dated 11-04-2014 and later on to BPS-17 vide order dated 20-03-2017 with immediate effect.

08. Record would reveal that the appellant also applied for the post of agriculture officer, who was also called for interview vide letter dated 08-02-2008 and his name also reflected at serial No. 81 of the merit list, but he was not considered due to the reason that he was already working against the post of agriculture officer, but upon his repeated requests, his case for regularization of his services against the post of agriculture officer was not taken into consideration. On the contrary, the respondents regularized the services of other ad-hoc agriculture officers vide order dated 04-03-2010 and their names were included in the seniority list of the regular agriculture officers as issued on 01-07-2019. A working paper placed on record would show that the respondents recommended the post of agriculture officer for the appellant and not horticulturist, but on the contrary the post of horticulturist was revived which was detriment to the interest of the appellant. Stance of the appellant throughout, right from High Court up to the Supreme Court of Pakistan was his regularization against the post of agriculture officer, which was accepted by the Superior Courts but was never implemented by the respondents. The august Supreme Court of Pakistan in its judgment dated 23-10-2017 have held that the CPLA No. 1861/2016 petitioner Dr. Murad Ali Khan and others under some misconception and apprehending that they would be placed junior to the respondent Muhammad Aslam. As the rules with regard to seniority cum

ATTESTED

promotion are clear than crystal on the subject and also the practice in vogue, therefore, they should not worry about it.

09. We are of the considered opinion that stance of the appellant to the effect that he was entitled for the benefits of agriculture officer with effect from 01-02-1997 hold force, as post of the appellant was up-graded to BPS-17 on 20-03-2017 with immediate effect, which means that the appellant deserved such treatment on the strength of his professional competency as well as his actual work against the post of agriculture officer for almost 20 years and denial of his right and subsequent grant of his right at a belated stage is unlawful and he must avail the benefits of the post right from the date, when he was adjusted against such post in his own pay and scale. Peshawar High Court D.I.Khan bench vide judgment dated 14-03-2016 allowed such up-gradation in clear term, against which the respondents filed Civil Petition, which was declined vide order dated 13-10-2017, but was not implemented in the mood and manner as prescribed by court.

10. In view of the foregoing, the instant appeal is accepted. The impugned order dated 16.10.2019 is set aside with direction to the respondents to change the nomenclature of the post of the appellant from Horticulturist (BPS-17) to Agriculture Officer (BPS-17) by awarding him all back benefits from 01.02.1997 (the date of posting of appellant as Agriculture Officer in his own pay & scale). Parties are left to bear their own cost. File be consigned to record room.

ANNOUNCED
27.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Certified to be ture copy
Service Tribunal,
Peshawar

Date of Presentation of Application 17-2-22

Number of Words 3600

Copying Fee 384/-

Urgent 96/-

Total 528/-

Name of Copyist

Date of Completion of Copy 17-2-22

Date of Delivery of Copy 17-2-22

VAKALATNAMA

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL

CAMP COURT D.I.KHAN

M. Aslam **VERSUS** Secretary Agriculture etc

TITLE Execution Petition

I/WE Petitioner

The Above Named M. Aslam hereby appoint

MUHAMMAD ANWAR AWAN ADVOCATE SUPREME COURT,

in the above Captioned Cases to all or any of the following Acts Deeds & Things.

- ✓ To Appear, Act & Plead for Me/Us in the above mentioned cases in this Court/Tribunal in which the same may be tried or heard or any other proceedings out of our connected therewith.
- ✓ To Sign, Verify, File OR Withdraw all proceedings, Petitions, Appeals, Affidavits, Applications for Compromise OR Withdrawals OR for the Submission of Arbitration of the said case OR any other Documents may be Deemed Necessary OR Advisable by them by the Conduct, Prosecution OR Defense of the above case at all its stages.
- ✓ To Receive Payments, Issue receipts for all moneys that may be OR become Due & Payable to us during the course on Conclusion of the Proceedings.
- ✓ To do all other Acts & Things, Which may be Deemed Necessary OR Advisable during the course of Proceedings.

AND HEREBY AGREE:

- ➢ To Ratify Whatever Advocates may do the Proceedings.
- ➢ Not to Hold the Advantages Responsibilities if the said case be proceed Ex-parte OR Dismissed in Default in Consequence of their Absence from the Court when it is called for Hearing.
- ➢ That the Advocates shall be entitled to withdraw from the Prosecution of the said case if the Whole or any part of the Agreed Fee Remain Un-Paid.
- ➢ That Advocates may be Permitted to argue any other point at the time of Arguments.

In Witness Whereof I/We have signed this Vakalatnama here under the Contents of which have been Read/Explained to Me/Us which is fully understood by Me/Us.

M. Aslam --- Petitioner

Dated: 9/3/2021

Accepted By:

SIGNATURE OF EXECUTANT (S)

12103-0289375-3

03449899091

MUHAMMAD ANWAR AWAN
ADVOCATE SUPREME COURT
03339962231

GS&PD-444/1-RST-12,000 Forms-22.09.21/PHC Jobs/Form A&B Ser. Tribunal/P2

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

TB DIK

Secretary Agriculture Diary No..... Dated 05/04/22

No. EP No 137/22

Appeal No. 1513 *of 2019*

Mohammad Aslam .....*Appellant/Petitioner*

Versus

Secy: Agri: Pesh: .....*Respondent*

Respondent No. 1

Notice to: — Secretary Agriculture Livestock Fisheries and Cooperative Deptt Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 23-5-2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already ~~been sent to you~~ vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 1 **Day of** 4 **20** 22

at camp Court
D I Khan.

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note:
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

No. EP No 1513/22 TB DIK

Appeal No. 1513 of 20 19

Mohammad Aslam

.....Appellant/Petitioner

Versus

Secy: Agri Peshawar

.....Respondent

Secy: Finance KPK
Dairy No.
Date

Respondent No. 2

Notice to: Secretary Finance Deptt Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on.....at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this.....

Day of 4 22 20 .

At camp Court D I Khan.

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

GS&PD-444/1-RST-12,000 Forms-22.09.21/PHC Jobs/Form A&B Ser. Tribunal/P2

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. EP No 137/22 TB DIK

Appeal No. 1513 *of 20*19

Mohammad Aslam
Appellant/Petitioner

Versus

Secy: Agri: Pesh
Respondent

Respondent No. 3

Notice to: Director General Agriculture
Extension Deptt: Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 23-5-2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this.....

Day of 4 22 **20**

at camp Court
D I Khan

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note:
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BEFORE THE KHBER PAKHTOON KHAWA SERVICE TRIBUNAL

PESHAWAR CAMP AT D.I.KHAN.

Implementation/Execution Petition No. 137 of 2022.

Muhammad Aslam **VERSUS** Secretary Agriculture and others

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Your humble Petitioner

Muhammad Aslam

Dated; 10-03-2022.

Mohammad Anwar Awan
Advocate Supreme Court.

BEFORE THE KHBER PAKHTOON KHAWA SERVICE TRIBUNAL PESHAWAR CAMP AT D.I.KHAN.

Implementation/Execution Petition No..... of 2022.

Muhammad Aslam S/O Muhammad Ibrahim R/O New Chora Belot Sharif D.I.Khan serving in District Director Agriculture Extension. D.I.Khan.

VERSUS

1. Secretary Agriculture, Live stock, fisheries and Co-operative Department Peshawar.
2. Secretary Finance Department KP Peshawar.
3. Director General Agriculture Extension Department KP Peshawar.

IMPLEMENTATION PETITION/EXECUTION PETITION OF JUDGMENT DATED; 27-01-2022 REGARDING CHANGING OF NOMENCLATURE OF THE POST OF APPELLANT FROM HORTICULTURIST BPS-17 TO AGRICULTURE OFFICER BPS-17 BY AWARDING HIM ALL BACK BENEFIT FROM 01-02-1997.

That the brief facts of the case are as under:

1. That petitioner initially appointed as Horticulturist BPS-13 on regular basis in Hazara development authority Abbott Abad but after abolishing of post he was deputed to food and vegetable development board Peshawar vide order Dated; 22-01-1996. Consequent upon the abolishing of the board, the petition was adjusted as Agricultural Officer vide order Dated; 25-02-1997 and till now he is working in the Agricultural Department the Petitioner file Writ Petition and there after COC Petition seeking his regular appointment on the post of Agricultural Officer which was disposed off vide Order Dated; 29-01-2013. The Respondent instead of adjusting the Petitioner on the post of Agricultural Officer adjusted him at the post of Horticulturist BPS-17. The Petitioner filed another Writ Petition before High Court which was allowed vide Judgment Dated; 14-03-2016 which was assailed before August Supreme Court of Pakistan but was

declined. To implement the Judgment the Respondent Up-Graded the post of Petitioner, Horticulturist BPS_17. The Appellant again submitted An Application for Grant of Agricultural Officer by changing the Nomenclature of post but was not consider by the Department so Petitioner filed Writ Petition which was converted into Departmental Appeal and send to Respondent No.03 for Decision. The Respondent No.03 rejected the Appeal hence petitioner file service Appeal before Hon'ble Service Tribunal which was allowed with direction to the Respondents to change the Nomenclature of the post of Appellant from Horticulturist BPS-17 to Agriculture Officer BPS-17 with all back benefit from 01-02-1997. Copy of judgment dated; 27-01-2022 is Annexure A.

2. That after the lapse of considerable time Department is hesitating to implement the Judgment of Hon'ble Service Tribunal dated; 27-01-2021 in Service Appeal No. 1513/2019 so petitioner has no other remedy but to file implementation petition.

In view of the above, it is, therefore, most respectfully prayed that on acceptance this petition, may kindly implement the judgment dated; 27-01-2022 issued in Service Appeal No 1513/2019.

YOUR HUMBLE PETITIONER

Muhammad Aslam
Through Counsel

Dated; 10-03-2022.

Mohammad Anwar Awan
Advocate Supreme Court

AFFIDAVIT

Muhammad Aslam, do hereby solemnly affirm and declare on OATH that the contents of the same are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable court.

Deponant.

OATH COMMISSIONER

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR
CAMP AT DERA ISMAIL KHAN.

Khyber Pakhtunkhwa Service Tribunal
Diary No. 1602
Dated 11-11-2019

Service Appeal No. 1513 *of 2019*

Muhammad Aslam son of Muhammad Ibrahim, resident of village new Choora, Post Office Billot Sharif, Tehsil Paharpur, District D.I.Khan; presently serving as Horticulturist BPS-17 in the Office of District Director Agriculture Extension, D.I.Khan.

VERSUS

1) **Secretary**, Agriculture, Livestock, Fisheries and Co-operative Department, Khyber Pakhtunkhwa, Peshawar.

2) **Secretary**, Finance Department, Khyber Pakhtunkhwa, Peshawar.

3) Director General, Agriculture Extension, Khyber Pakhtunkhwa, Peshawar.

Service Appeal under Section 04 of Khyber Pakhtunkhwa Service Tribunal Act, against the order dated 16/10/2019 passed by Respondent # 03 vide which the appeal of appellant regarding change of nomenclature of post as Horticulturist BPS-17 to Agricultural Officer BPS-17 alongwith all back and future benefits.

Filedto-day
Registrar
11/11/2019

Respectfully Sheweth,

1. Brief facts of the present Petition are that the appellant was initially appointed as Horticulturist BPS-13 on regular basis in the Hazara Development authority, Abbottabad; and thereafter, he was deputed in the Fruit &Vegetable Development Board (FVDB) Peshawar vide office Order dated 22.01.996 and was posted as FVD Officer (B-17) in his own pay & scale i.e.BPS-13 w.e.f. 11.01.1996. Copy of orders are Annexure A.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

against the post of agriculture officer and respondent No 1 vide letter dated 07-01-2003 informed that no such post exist in BPS-13 in agriculture department, hence he was allowed to continue against the post and apply afresh for the post as and when post is advertised. The appellant filed an application followed by a Writ Petition No. 713/2011 seeking his regular appointment on the post of agriculture officer (BPS-17) with effect from 01-02-1997. The writ petition was disposed of vide order dated 07-04-2011 directing the respondents to decide the matter within two months and upon failure, the appellant filed COC Petition No 275-P/2012, which was also disposed of vide order dated 29-03-2013 on assurance of the respondents that the matter would be resolved within thirty days. in pursuance the respondents submitted a working paper to the relevant forum with the proposal that the post of horticulturist (BPS-13) may be up-graded and re-designated as Agriculture Officer(BPS-17), but post of the appellant as Horticulturist (BPS-13) was up-graded to BPS-14 vide minutes of the meeting dated 08-01-2014. The appellant seeking his adjustment in BPS-17 with effect from 01-02-1997, filed another Writ Petition No. 245-D/2014 before Peshawar High Court D.I.Khan bench, which was allowed vide judgment dated 14-03-2016, against which the respondents filed Civil Petition, which was declined vide order dated 13-10-2017. For implementation of the judgment of Peshawar High Court dated 14-03-2016, the appellant filed COC Petition No 366-D/2016 but in the meanwhile post of the appellant was up-graded as Horticulturist BPS-17 vide order dated 20-03-2017, hence the COC Petition was disposed of vide judgment dated 03-05-2017. The appellant submitted applications dated 04-05-2017 and 13-10-2017 to respondents for grant of BPS-17 with effect from 01-02-1997 on the post of agriculture officer, but respondents did not consider the said applications. Feeling aggrieved of his posting as horticulturist and not changing his nomenclature as agriculture officer, the appellant filed a Writ Petition No. 254-D/2018, which was decided on 17-09-2019 by converting the writ petition into departmental appeal and sent to

ATTESTED

respondent No. 3 to decide the same in accordance with law. The respondent No. 3 vide order dated 16-10-2019 rejected such departmental appeal, hence the instant service appeal with prayers that the impugned order dated 16-10-2019 may be set aside with direction to respondents to change the nomenclature of the post of the appellant from Horticulturist (BPS-17) to that of Agriculture Officer (BPS-17) by awarding him all back benefits from 01-02-1997 (the date of posting of appellant as agriculture officer in his Own Pay & Scale).

02. Learned counsel for the appellant has contended that the appellant since 01-02-1997 till 03-05-2017 served on the post of agriculture officer BPS-17 and during the period, performance of the appellant remained up to the mark; that the appellant from 04-05-2017 onward is serving against the post of horticulturist, but performing the duty of agriculture officer; that qualification required for the post of agriculture officer is 2nd Division M.Sc/B.Sc (Hons) Degree in agriculture from a recognized university, whereas the appellant is having M.Sc (Hons), M.Phil and PhD in horticulture, thus the appellant is eligible and entitled for his adjustment on the post of agriculture officer with effect from 01-02-1997, particularly when the appellant has already served on the said post for almost 20 years and proved to be competent enough to hold such post; that grant of BPS-17 with the post of horticulturist with immediate effect to the appellant amount to career assassination of the appellant and thereby his past 20 years service on the post of agriculture officer has not been taken into account, hence a great injustice has been done to the appellant; that previously the appellant applied for the post of agriculture officer but he was dropped from the recruitment process on the ground that appellant is already in service as agriculture officer; that there is no post of Horticulturist in Agriculture Department and the said post has been created only for the appellant as a dying cadre post which shall automatically be abolished upon retirement of the appellant, moreover the post of horticulturist is having no service structure; that malafide on part of the respondents is evident from the fact that the department

ATTESTED

on.19-04-2013 forwarded a summery to the Chief Minister for regularization of the service of the appellant, which was approved on 26-06-2013, pursuant to which a notification dated 30-10-2013 was issued, whereby recommendation with respect of up-gradation of the post of horticulturist BPS-13 to Agriculture Officer BPS-17 was accorded, but the respondents has wrongly, malafiedly and illegally deviated from their previous track by awarding up-gradation to appellant on the post of horticulturist BPS-17 with immediate effect; that the order dated 16-10-2019 is illegal void and without lawful authority and action of the respondents are discriminatory and illegal.

03. Learned counsel for private respondents has contended that the appellant was initially appointed as Supervisor BPS-11 in the literacy and mass education commission vide order dated 10-03-1987, late on the appellant was appointed as Horticulturist BPS-13 under provincial urban development board vide order dated 02-08-1994; that due to abolition of post of horticulturist, the appellant was transferred to the fruit and vegetable board with effect from 11-01-1996 on deputation basis on 22-01-1996; that upon winding up of the fruit & vegetable board, the appellant was adjusted against a vacant post of agriculture officer till availability of regular agriculture officer vide order dated 25-02-1997; that appeal of the appellant was turned down due to the reason that no such post of horticulturist was available in Agriculture Department nor any such provision available in rule for promotion of the appellant from BPS-13 to 17 and to this effect the appellant was informed vide order dated 07-11-2003; that post of the appellant was up-graded from BPS-13 to 14 vide order dated 11-04-2014 and later on such post was up-graded to BPS-17 vide order dated 20-03-2017 with immediate effect; that the post has been up-graded personally which will stand abolish upon retirement of the appellant from service, that as per existing service rules, the appellant does not qualify the criteria as he has been appointed as horticulturist and that too in compliance with judgment of the court.

04. Learned Additional Advocate General for the official respondents has contended that it is correct that the appellant was adjusted against the vacant post of agriculture officer BPS-17 D.I.Khan temporarily in his own pay and scale till availability of a regular Agriculture Officer vide order dated 25-02-1997; that the appellant submitted application for his posting as Agriculture Officer in regular basis which was turned down on the ground that no such post of BPS-13 was available in Agriculture Department, against which services of the appellant could be regularized; that no such provision was available in rules for promotion of the appellant from BPS-13 to 17; that the appellant was permitted to continue his job against the post of Agriculture Officer in his own pay and scale till arrival of regular agriculture officer, but the appellant served against such post for a longer period of time without any disturbance; that the appellant was also permitted to apply afresh for the post of Agriculture Officer as and when the post is advertized; that in compliance with orders of the court, post of the appellant was up-graded from BPS-13 to 14 and again to BPS-17; that departmental appeal of the appellant was rejected being devoid of merit.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that consequent upon abolition of the post of horticulturist, the appellant rendered surplus and was deputed to the Fruit & Vegetable Development Board Peshawar vide order dated 22-01-1996, but the Board also abolished in short span of time and the appellant again rendered surplus, who later on was adjusted as Agriculture officer vide order dated 25-02-1997 in agriculture department, who served against such post until 2017. The appellant filed an application followed by a Writ Petition No. 713/2011 for seeking his regular appointment on the post of agriculture officer (BPS-17) with effect from 01-02-1997. The writ petition was disposed of vide order dated 07-04-2011 directing the respondents to decide the matter within two months and upon

failure, the appellant filed COC Petition No. 275-P/2012, which was also disposed of vide order dated 29-03-2013 on assurance of the respondents that the matter would be resolved within thirty days. In pursuance the respondents submitted a working paper to the relevant forum with the proposal that the post of Horticulturist (BPS-13) may be up-graded and re-designated as Agriculture Officer (BPS-17), but post of the appellant as Horticulturist (BPS-13) was up-graded to BPS-14 vide minutes of the meeting dated 08-01-2014. The appellant seeking his adjustment in BPS-17 with effect from 01-02-1997, filed another Writ Petition No. 245-D/2014 before Peshawar High Court D.I.Khan bench, which was allowed vide judgment dated 14-03-2016, against which the respondents filed Civil Petition, which was declined vide order dated 13-10-2017. For implementation of the judgment of Peshawar High Court dated 14-03-2016, the appellant filed COC Petition No 366-D/2016 but in the meanwhile post of the appellant was up-graded as Horticulturist BPS-17 vide order dated 20-03-2017, hence the COC Petition was disposed of vide judgment dated 03-05-2017. The appellant submitted applications dated 04-05-2017 and 13-10-2017 to respondents for grant of BPS-17 with effect from 01-02-1997 on the post of agriculture officer, but respondents did not consider the said applications. Feeling aggrieved of his posting as horticulturist and not changing his nomenclature as Agriculture Officer, the appellant filed a Writ Petition No 254-D/2018, which was decided on 17-09-2019 by converting the writ petition into departmental appeal and sent to respondent No. 3 to decide the same in accordance with law. The respondent No. 3 vide order dated 16-10-2019 rejected such departmental appeal, hence the instant service appeal.

07. We have observed that the appellant fought a long legal battle for almost 20 years with the contention that the appellant was adjusted against the post of agriculture officer, who worked against the post for a longer period of time and having qualification more than the rest of Agriculture Officers in the department, hence he is entitled to be regularized against the post. Keeping in view his

professional capabilities, his stance was accepted by the court with direction to the respondents to resolve his issue at the earliest, but the respondents instead of his regularization against the post of agriculture officer, created a post of Horticulturist in Agriculture Department, which in fact was a dying cadre and was abolished in rest of the departments, which was against the spirit of the court directions. The appellant was serving against the post of agriculture officer, but nomenclature of the post was retained as horticulturist and such post was up-graded to BPS-14 vide order dated 11-04-2014 and later on to BPS-17 vide order dated 20-03-2017 with immediate effect.

08. Record would reveal that the appellant also applied for the post of agriculture officer, who was also called for interview vide letter dated 08-02-2008 and his name also reflected at serial No. 81 of the merit list, but he was not considered due to the reason that he was already working against the post of agriculture officer, but upon his repeated requests, his case for regularization of his services against the post of agriculture officer was not taken into consideration. On the contrary, the respondents regularized the services of other ad-hoc agriculture officers vide order dated 04-03-2010 and their names were included in the seniority list of the regular agriculture officers as issued on 01-07-2019. A working paper placed on record would show that the respondents recommended the post of agriculture officer for the appellant and not horticulturist, but on the contrary the post of horticulturist was revived which was detriment to the interest of the appellant. Stance of the appellant throughout, right from High Court up to the Supreme Court of Pakistan was his regularization against the post of agriculture officer, which was accepted by the Superior Courts but was never implemented by the respondents. The august Supreme Court of Pakistan in its judgment dated 23-10-2017 have held that the CPLA No. 1861/2016 petitioner Dr. Murad Ali Khan and others under some misconception and apprehending that they would be placed junior to the respondent Muhammad Aslam. As the rules with regard to seniority cum

promotion are clear than crystal on the subject and also the practice in vogue, therefore, they should not worry about it.

09. We are of the considered opinion that stance of the appellant to the effect that he was entitled for the benefits of agriculture officer with effect from 01-02-1997 hold force, as post of the appellant was up-graded to BPS-17 on 20-03-2017 with immediate effect, which means that the appellant deserved such treatment on the strength of his professional competency as well as his actual work against the post of agriculture officer for almost 20 years and denial of his right and subsequent grant of his right at a belated stage is unlawful and he must avail the benefits of the post right from the date, when he was adjusted against such post in his own pay and scale. Peshawar High Court D.I.Khan bench vide judgment dated 14-03-2016 allowed such up-gradation in clear term, against which the respondents filed Civil Petition, which was declined vide order dated 13-10-2017, but was not implemented in the mood and manner as prescribed by court.

10. In view of the foregoing, the instant appeal is accepted. The impugned order dated 16.10.2019 is set aside with direction to the respondents to change the nomenclature of the post of the appellant from Horticulturist (BPS-17) to Agriculture Officer (BPS-17) by awarding him all back benefits from 01.02.1997 (the date of posting of appellant as Agriculture Officer in his own pay & scale). Parties are left to bear their own cost. File be consigned to record room.

ANNOUNCED
27.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Certified to be true copy
Service Tribunal
Peshawar

VAKALATNAMA

BEFORE THE KHYBER PUKHTUNKHAWA SERVICE TRIBUNAL

CAMP COURT D.I.KHAN

M. Aslam **VERSUS** Secretary Agriculture etc

TITLE Execution Petition

I/WE Petitioner

The Above Named M. Aslam hereby appoint

MUHAMMAD ANWAR AWAN ADVOCATE SUPREME COURT,

in the above Captioned Cases to all or any of the following Acts Deeds & Things.

- ✓ To Appear, Act & Plead for Me/Us in the above mentioned cases in this Court/Tribunal in which the same may be tried or heard or any other proceedings out of our connected therewith.
- ✓ To Sign, Verify, File OR Withdraw all proceedings, Petitions, Appeals, Affidavits, Applications for Compromise OR Withdrawals OR for the Submission of Arbitration of the said case OR any other Documents may be Deemed Necessary OR Advisable by them by the Conduct, Prosecution OR Defense of the above case at all its stages.
- ✓ To Receive Payments, Issue receipts for all moneys that may be OR become Due & Payable to us during the course on Conclusion of the Proceedings.
- ✓ To do all other Acts & Things, Which may be Deemed Necessary OR Advisable during the course of Proceedings.

AND HEREBY AGREE:

- ➢ To Ratify Whatever Advocates may do the Proceedings.
- ➢ Not to Hold the Advantages Responsibilities if the said case be proceed Ex-parte OR Dismissed in Default in Consequence of their Absence from the Court when it is called for Hearing.
- ➢ That the Advocates shall be entitled to withdraw from the Prosecution of the said case if the Whole or any part of the Agreed Fee Remain Un-Paid.
- ➢ That Advocates may be Permitted to argue any other point at the time of Arguments.

In Witness Whereof I/We have signed this Vakalatnama here under the Contents of which have been Read/Explained to Me/Us which is fully understood by Me/Us.

M. Aslam --- Petitioner

Dated: 9/3/2021

Accepted By:

Anwar Adv

MUHAMMAD ANWAR AWAN
ADVOCATE SUPREME COURT
03339962231

SIGNATURE OF EXECUTANT (S)
12103-0289375-3
03449899091

KHYBER PAKHTUNKWA

SERVICE TRIBUNAL, PESHAWAR

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

No. 2323-25/ST Dated 3/8/2022

To

1. The Secretary Agriculture, Livestock, Fisheries And Co-Operative Department, Government Of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Finance, Government of Khyber Pakhtunkhwa, Peshawar.
3. The Director General Agriculture, Livestock, Fisheries And Co-Operative Department, Peshawar.

SUBJECT: **SHOWCAUSE NOTICE IN EXECUTION PETITION NO: 137/2022 TITLED MUHAMMAD ASLAM -VS- THE CHIEF SECRETARY, GOVERNMENT OF KHYBER PAKHTUKHWA, PESHAWAR AND OTHERS.**

I am directed to say that execution petition No. 137/2022 was filed in this Tribunal against the respondents for disobedience of the order dated: 27-01-2022 passed by this Tribunal in service appeal No. 1513/2019 titled Mr. Muhammad Aslam VS The Secretary Agriculture, Livestock, Fisheries And Co-Operative Department, Government Of Khyber Pakhtunkhwa, Peshawar and Others.

That when the above execution petition came up for hearing before this Tribunal on 30-06-2022, the following orders were passed:

"Counsel for the petitioner present. Mr. Farhaj Sikandar, District Attorney for the respondents present.

Despite clear directions given on the previous date, respondents have not submitted conditional implementation report. This Tribunal has no other alternative but to take action against respondents. Salaries of the respondents i.e Secretary Agriculture, Livestock, Fisheries and Co-operative Department, Peshawar, Secretary Finance Department, Khyber Pakhtunkhwa Peshawar and Director General, Khyber Pakhtunkhwa Agriculture Department, Peshawar are attached till further orders by this Tribunal. Copy of this order sheet be sent to the Accountant General Khyber Pakhtunkhwa for compliance and to submit that salaries of the above officer are attached on order of teh Tribunal till further order.

To come up on 22-08-2022 for further proceedings at camp court D.I.Khan "

You are, therefore, served with show cause notice to explain as to why appropriate action may not be initiated against you for non-compliance of order of this Tribunal dated 27-01-2022.

ASSISTANT REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

KHYBER PAKHTUNKWA

SERVICE TRIBUNAL, PESHAWAR

No. 2322 /ST Dated 3 / 8 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To:

The Accountant General, Khyber Pakhtunkhwa, Peshawar.

SUBJECT:- **ORDER REGARDING ATTACHMENT OF SALARIES IN EXECUTION PETITION NO. 137/2022, TITLED MUHAMMAD ASLAM–VS–THE SECRETARY AGRICULTURE, LIVESTOCK, FISHERIES AND CO-OPERATIVE DEPARTMENT, GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR AND OTHERS.**

I am directed to forward herewith a certified copy of order dated 30.06.2022, passed by this Tribunal in the above mentioned execution petition for strict compliance.

Encl. As above.

(AAMIR FAROOQ)
ASSISTANT REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR.

KHYBER PAKHTUNKWA

SERVICE TRIBUNAL, PESHAWAR

All communications should be addressed to the Registrar Service Tribunal and not official by name.

Ph:- 091-9212281
Fax:- 091-9213262

No: 2847 /ST Dated 12/09/2022

To:

The Accountant General,
Khyber Pakhtunkhwa.

Subject:- **SALARY RELEASE OF THE RESPONDENTS IN CASE TITLE MUHAMMAD ASLAM VS AGRICULTURE DEPARTMENT IN EXCUTION PETITION 137/2022**

I am directed to forward herewith a certified copy of order dated 06-09-2022 passed by this Tribunal on the above subject for compliance.

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

452

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No.137/2022 in service appeal No.1513/2019 Muhammad Aslam v/s Government of Khyber Pakhtunkhwa & Others.

Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Agriculture & Others.

Respondents

IMPLEMENATION/ PROGRESS REPORT IN LIGHT OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT D.I KHAN ORDER SHEET DATED 30.06.2022 PASSED IN EXECUTION PETITION NO.37/2022 IN SERVICE APPEAL NO.1513/2019 TITLED MUHAMMAD ASLAM V/S GOVT OF KHYBER PAKHTUNKHWA & OTHERS.

The Khyber Pakhtunkhwa Service Tribunal Camp Court D.I Khan on 30.06.2022 passed the following orders in the above titled case:-

> "Despite clear direction given on the previous date, respondents have not submitted conditional implementation report. This Tribunal has no others alternative but to take action against respondents. Salaries of the respondents i.e Secretary Agriculture, Livestock and Cooperative Department Peshawar, Secretary Finance Department Khyber Pakhtunkhwa Peshawar and Director General Khyber Pakhtunkhwa Agriculture Department, Peshawar are attached till further order by this Tribunal" **(Annex-I)".**

02. The Above order has been passed for non-submission of implementation report of the following order passed in Appeal No.1513/2019 which is reproduced below:-

> "The instant appeal is accepted. The impugned order dated 16.10.2019 is set aside with direction to the respondents to change the nomenclature of the post of the appellant from Horticulturist (BPS-17) to Agriculture Officer (BPS-17) by awarding him all back benefits from 01.02.1997 (the date of posting of appellant as Agriculture Officer in his own pay & scale)".

03. This department has filed CPLA against the judgment/ order dated 27.01.2022 passed of this Tribunal **(Annex-II).** However, now through order dated 30.06.2022 (referred to above) the Hon'ble Service Tribunal has ordered the attachment of salaries of the Secretaries Agriculture, Finance and Director General Khyber Pakhtunkhwa Peshawar.

04. It is pertinent to mention here that on the order of this Hon'ble Tribunal (referred to above), this department moved a note for competent authority i.e (Chief Secretary Khyber Pakhtunkha) regarding conditional change of the nomenclature of the post of the appellant from Horticulturist (BPS-17) to Agriculture Officer (BPS-17) by awarding him all back benefits with retrospective as well as implementation of the orders of the Hon'ble Tribunal vide (**Annex-III**). Therefore, the order of the Service Tribunal is fully implemented in letter in spirit.

05. It is further added that the Finance Department has forwarded the same on 26.08.2022 to the Establishment Department for view/comments and the Establishment Department endorsed proposal of Agriculture Department and advised that opinion of Law Department may be obtained being legal matter. The Finance Department has referred the note to Law Department Khyber Pakhtunkhwa on 20.09.2022 for legal opinion.

06. It is important to mention here that the Agriculture Department Khyber Pakhtunkhwa vigorously pursue/ follow up the case to till date i.e 28.09.2022.

05. In view of the above, implementation / latest progress report is submitted please.

Muhammad Adeel Butt

Secretary to Government of Khyber Pakhtunkhwa
Agriculture, Livestock, Fisheries & Cooperative
Department Peshawar

Additional Advocate General
(Respondent No.01)

GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK FISHERIES &
COOPERATIVE DEPARTMENT

Dated Peshawar the 24th October, 2022

NOTIFICATION

No. SOE(AD)General/Nomenclature/Aslam/EW/22: 1239 In pursuance of the Khyber Pakhtunkhwa Service Tribunal, Peshawar Judgment dated 27.01.2022 passed in Service Appeal No. 1513/2019 with subsequent order dated 30.06.2022 passed in Execution Petition No. 137/2022, the Competent Authority is pleased to conditionally change the Nomenclature of the post from Horticulturist (BS-17) to Agricultural Officer (BS-17) to the effect of the present incumbent i.e. Muhammad Aslam S/O Muhammad Ibrahim in the office of District Director Agriculture, D.I Khan with retrospective effect i.e. w.e.f. 01.02.1997 subject to final outcome of the CPLA filed by Provincial Government in Supreme Court of Pakistan.

Sd/-
SECRETARY AGRICULTURE

Endst. No. & Date Even:
Copy for forwarded to: -

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. The Director General, Agriculture (Extension), Khyber Pakhtunkhwa, Peshawar.
3. The District Director Agriculture (Extension). D.I Khan.
4. The District Accounts Officer, D.I Khan.
5. The Section Officer (Litigation), Agriculture, Livestock, Fisheries & Cooperative Department with the request to pursue the case in Advocate General's office, please.
6. P.S to Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
7. P.S to Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
8. P.S to Secretary Law, Parliamentary Affairs & Human Rights Department, Khyber Pakhtunkhwa, Peshawar.
9. P.S to Secretary Agriculture, Livestock, Fisheries & Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
10. P.A to Deputy Secretary (Admn), Agriculture, Livestock, Fisheries & Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
11. Muhammad Aslam, Agricultural Officer (BS-17) office of the District Director Agriculture, D.I Khan.
12. Master File.

24/10/22

SECTION OFFICER-ESTT:
AGRICULTURE DEPARTMENT