Execution Petition 210/2022 Jamshaid Awan

- 17th October, 2022 1. Petitioner present in person. Mr. Muhammad Adeel

 Butt, Additional Advocate General alongwith Mr. Sohail

 Ahmad Zeb, Law Officer for respondents present.
 - 2. Representative of the respondents submitted implementation report alongwith copy of notification bearing Endst: No. 5079-84/EB-III/Jamshed Awan dated 14.07.2022, whereby in compliance of the judgment the petitioner was reinstated in service provisionally subject to the final outcome of CPLA which is said to be pending before the august Supreme Court of Pakistan, Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.
 - 3. Pronounced in open court, in Peshawar and given under my hand and seal of the Tribunal this 17th day of October,

2022.

(Kalim Arshad Khan) Chairman

Form- A

FORM OF ORDER SHEET

Court of	
Execution Petition No	210/2022

	Exec	ution Petition No. 210/2022
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.04.2022	The execution petition of Mr. Jamshed Awan submitted today by him may be entered in the relevant register and put up to the Court for proper order please.
2 -	31-5-2022 Blh 31/8722	This execution petition be put up before touring Single Bench at A.Abad on 15.06-2022. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.
	15.06.2022	Petitioner in person present. Mr. Muhammad Adeel Butt, Additional Advocate General present. Notice be issued to respondents department for
		Notice be issued to respondents department for submission of implementation report. To come up for implementation report on 15.08.2022 before S.B at Camp Court Abbottabad. (Fareeha Paul) Member (E) Camp Court A/Abad

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR AT CAMP COURT ABBOTTABAD.

Execution Petition No. 210/2022

ſn

Service Appeal No. 1058/2018

Jamshed Awan.....Appellant

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR & OTHERS.....RESPONDENTS

IMPLEMENTATION REPORT

INDEX

Sr.No	Description	Page Nos	Annexures
1	Implementation Report alongwith Affidavit	01 to 02	
2	Copy of Notification dated 14-07-2022	03	A
3	Copy of Charge Report	04	В

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT CAMP COURT ABBOTTABAD.

Execution Petition No. 210/2022

Įn

Service Appeal No. 1058/2018

Jamshed Awan......Appellan

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR & OTHERS......RESPONDENTS

IMPLEMENTATION REPORT

Respectfully Sheweth:-

It is submitted as under:

- 1. That the above titled Execution petition is pending adjudication before this Honorable Tribunal and today date is fixed for Implementation Report.
- 2. That the respondents being aggrieved from the impugned judgment / order of this Honorable Tribunal dated 15-11-2021 and filed CPLA before the August Supreme Court of Pakistan.
- 3. That the judgment dated 15-11-2021 of this Honourable Tribunal provisionally implemented subject to the final outcome of CPLA vide Notification Endst: No. 5079-84 dated 14-07-2022 and petitioner has been reinstated in service and he took over the charge against the post of CT on 15-07-2022. (Copy of the Notification dated 14-07-2022 and Charge Report dated 15-07-2022 are annexed herewith as Annexure "A" & "B").

It is, therefore, respectfully prayed that on acceptance of instant Implementation Report the Execution petition in hand may please be dismissed.

RESPONDENT No. 02
District Education Officer (M)
Abbottabad

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT CAMP COURT ABBOTTABAD.

Execution Petition No. 210/2022

In

Service Appeal No. 1058/2018

Jamshed Awan.....Appellant

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR & OTHERS......RESPONDENTS

IMPLEMENTATION REPORT

AFFIDAVIT

I, Mr. Muhammad Tanveer, District Education Officer (M) Abbottabad, declare on oath that the contents of the forgoing Implementation Report are correct and true according to the best of my knowledge and belief and nothing has been suppressed / concealed from this Honorable Tribunal.

DEPONENT

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD

NOTIFICATION

In pursuance of the Judgement of Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar passed in Service Appeal No.1058/2018 dated 15-11-2021, and this office challenged the Judgement before the August Supreme Court of Pakistan and filed CPLA which is subjudice. As the petitioner filed Execution Petition No.210/2022 before the Honorable Khyber Pakhtunkhwa Services Tribunal Peshawar and Honorable Tribunal directed the department to submit the implementation on 15-08-2022. Hence, this office order issued under Endst No. 5091-96 dated 28-04-2018 in r/o Mr. Jamshed Awan CT GMS Tootni Abbottabad is hereby set-aside and re-instated in service and adjusted at GMS Tarhana Abbottabad with immediate effect in the best interest of public service-Provisionally subject to the final outcome of CPLA.

Note.

- This Notification is subject to the final outcome of the CPLA and in case of acceptance of CPLA filed by the department instant Notification shall stand withdrawn automatically.
- 2. Intervening Period w.e.from 28-04-2018 to 06-07-2022 04-Years, 02-Months and 08-Days treated as Extra Ordinary Leave without pay

District Education Officer (M)
Abbottabad

Endst: No 5079 - 84 EB-III/Jamshed Awan

Date 14 7/2022

Copy forwarded to:-

- 1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
- 2. PS to Secretary, Govt of Khyber Pakhtunkhwa Elementary & Secondary Education department Peshawar
- 3. Director Khyber Pakhtunkhwa Peshawar for information
- 4. District Comptroller of Accounts Abbottabad.
- 5. Headmaster GMS Tarhana Abbottabad.
- 6. Candidate concerned.

District Education Officer (M)

Abbottabad

CHARGE REPORT

Certified that Mr. Janished Avan 5/0 Mahammed Jan	ras Mali
Resident of Abballabad Call	
Appointed as CIT a' 8MS Tarkana A	Col.
On the vacant post office order no	on

15.7-2022

Head Master / Principal section of GMS/GHS/GHSS ad Mile Controlled

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 2022

Service Appeal No. 1058/2018

Jamshad Awan S/O Muhammad	Younis R/O Rehmat Al	oad Abbottabad Ex. CT, GMS
Tootni Abbottabad		
	•	Petitioner
		76 - 17 - 17 - 17 - 17 - 17 - 17 - 17 -
	VERSUS	
Government Khyber Pakhtunkhwa	a, through Secretary E&S	ED, Khyber Pakhtunkhwa
Peshawar.		
		Pagnandants

INDEX

Sr.No.	Description	Page Nos	Annexures
1	Execution Petition along with Affidavit	01 to 03	
2	Copy of Judgment dated 15-11-2021	04 to 08	"A"
3	Copy of application dated 15-02-2022	09	"B"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Execution Petition No. 210_{2022}

IN

Service Appeal No. 1058/2018

Jamshad Awan S/O Muhammad Younis R/O Rehmat Abad Abbottabad Ex. CT, GMS Tootni Abbottabad

.....Petitioner

VERSUS

- 1. Government Khyber Pakhtunkhwa, through Secretary E&SED, Khyber Pakhtunkhwa Peshawar.
- 2. District Education Officer (Male) Abbottabad.
- 3. Director Elementary and Secondary Education Peshawar.

..... Respondents

EXECUTION PETITION

EXECUTION PETITION SEEKING FOR IMPLEMENTATION OF JUDGMENT DATED 15/11/2021 PASSED IN SERVICE APPEAL NO. 1058/2018 BY THIS HONOURABLE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Respectfully Sheweth,

- 1. That this Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar accepted the service appeal No. 1058/2018 dated 15-11-2021. (Copy of the judgment is annexed herewith as Annexure "A").
- 2. That the petitioner submitted an application on 15-02-2022 before respondents regarding implementation of the judgment

but vain. (Copy of the application dated 15-02-2022 is annexed herewith as Annexure "B").

3. That the respondents are legally bound to implement the judgment of this Honourable Tribunal with letter & spirit but respondents are reluctant to implement the same.

It is therefore, very humbly prayed that on acceptance of instant execution petition judgment dated 15-11-2021 passed by this Honourable Tribunal may graciously be implemented in its true letter & spirit.

JAMSHAD AWAN
(In Person)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Pet	ition No.	 /20	2	2
	-			

IN

Service Appeal No. 1058/2018

Jamshad Awan S/O Muhammad Younis R/O Rehmat Abad Abbottabad Ex. CT, GMS Tootni Abbottabad

.....Petitioner

VERSUS

Government Khyber Pakhtunkhwa, through Secretary E&SED, Khyber Pakhtunkhwa Peshawar

..... Respondents

AFFIDAVIT

I, Mr. Jamshad Awan S/O Muhammad Younis R/O Rehmat Abad Abbottabad Ex. CT, GMS Tootni Abbottabad do hereby affirm and declare on oath that the contents of forgoing Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Tribunal.

DEPONENT

4

Annexure AU

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHAWA PESHAWAR

Affeal No. 1058/2018

Jamshad Awan s/o Muhammad Yunis r/o Rehmat Abad Abbottabad

Ex. CT, GMS Tootni, Abbottabad

Khyljer Pakhtukhwa - Service Tribunal

Appellant

Diary 140. 1337

Diary No.

marcol 21-8-2018

1. Government of Khyber PakhtunKhawa through Secretary Education Peshawar.

VERSUS

- 2. District Education Officer (M) Abbottabad.
- 3. Director Elementary and Secondary Education Peshawar.

.. Respondents

SERVICE APPEAL AGAINST THE ORDER No. 5091-96

DATED 28-04-2018 PASSED BY THE RESPONDENT NO. 2

WHEREBY RESPONDENT NO. 2 REMOVED THE

APPELLANT FROM SERVICE.

PRAYER:

Fired May Rogistian

ON ACCEPTANCE OF THIS APPEAL THE ORDER No. 5091-96
PASSED BY RESPONDENT NO. 2 DATED 28-04-2018 BE SET
ASIDE AND THE APPELLANT BE REINSTATED IN SERVICE
WITH ALL BACK BENEFITS.

RESPECTFULLY SHEWETH:

1. That appellant joined the Service in Education department as P.T.C on 20-10-1994. Copy of appointment letter is annexed as annexure "A".

Ning Things to the know



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1058/2018

Date of Institution

27.08.2018

Date of Decision

15.11.2021

Jamshad Awan s/o Muhammad Yunis R/O Rehmat Abad, Abbottabad, Ex-CT, GMS Tootni, Abbottabad. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary, Peshawar and two others. ...(Respondents)

Present.

Mr. Sajjad Ahmad Abbasi,

Advocate

For appellant.

Advocate

Mr. Muhammad Riaz Khan Paindakhel,

Asstt. Advocate General

For respondents.

MR. AHMAD SULTAN TAREEN

MR. ROZINA REHMAN,

CHAIRMAN MEMBER(J)

JUDGMENT



AHMAD SULTAN TAREEN, CHAIRMAN:-The appellant named above invoked the jurisdiction of this Tribunal through service appeal described above in the heading challenging thereby the penalty of removal from service imposed upon him in pursuance to the disciplinary proceedings under Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011, purporting the same being against the facts and law on the subject.

2. Brief facts of the case are that the appellant while serving as

C.T Teacher at GMS Tootni, Abbottabad, a criminal case was

registered against him. The appellant was proceeded against



departmentally and was removed from service on 28.04.2018. Feeling aggrieved, the appellant filed departmental appeal on 30.04.2018 which was not decided within the statutory period of ninety days, hence the appeal in hand on 27.08.2018.

- 3. The appeal was admitted for regular hearing on 21.12.2018. Notices were issued to the respondents for submission of written reply/comments. On 15.04.2019, the respondents have submitted written reply/comments refuting the claim of the appellant with several factual and legal objections and asserted for dismissal of appeal with cost.
- 4. We have heard arguments of learned counsel for the parties and have also gone through the available record with their assistance.
- 5. Obviously, the plea which the respondents have tried to establish against the appellant through parawise comments and arguments at the bar is mainly linked with his involvement in the criminal case. It has been asserted on behalf of the respondents that the appellant being member of teaching cadre indulged himself in such a heinous criminal case and earned bad name to the department; that departmental and criminal proceedings are of distinct in nature and can run side by side; and that decision of the criminal court, if any is not binding in the departmental proceedings.
- 6. The Tribunal observes that consequent upon arrest of the appellant in case FIR No. 598 dated 21.11.2017, P.S City Abbottabad, the department should have placed the appellant under suspension as per provision of CSR 194 which provides that a

Sovernment servant when is charged in a criminal offence or debt





and is committed to prison shall be considered as under suspension from the date of his arrest. So, the arrest and committal of a government servant to prison on charge of a criminal offence will be considered automatic suspension from the date of his arrest. CSR 194 also provides that in case, such a Government servant is not arrested or is released on bail, the competent authority may suspend him by specific order, if the charge against him is connected with his position as Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. In any case, the provision of CSR 194 does not necessitate any disciplinary action more than suspension. In the present case of the appellant, the competent authority exercised its power in excess of the said provision of CSR 194. No ground for disciplinary action in the manner as taken by the competent authority in case of the appellant was made out prior to decision of the criminal case against the appellant. We are mindful of the fact that the criminal proceedings and departmental proceedings can go parallel and even acquittal of the bearing upon the departmental disciplinary accused proceedings; but every criminal charge has its different circumstances. In our view, if a Government servant is charged for an offence connected with his position as such, he can be proceeded against simultaneously in departmental proceedings and in criminal proceedings on account of the charge of an offence. Needless to say that on compromise of the parties, the APP representing the State had withdrawn the prosecution case against the appellant and he was discharged from the Case FIR No. 598 dated 01.11.2017 which was taken as ground for disciplinary action against the appellant. When the criminal case taken as ground for disciplinary action against the

appellant was no more, major penalty imposed upon him has become

2 Cumps



reversible. We, therefore, hold that the order of imposition of the penalty of removal from service upon the appellant necessitates setting aside.

6. For what has been discussed above, the appeal at hands is accepted, the impugned order is set aside and the appellant is reinstated into service. However, the period commencing from the date of registration of criminal case against him till passing of this judgment shall be treated as leave of the kind due in accordance with law. Parties are left to bear their respective costs. File be consigned to the record room.

(AHMAD SULTAN TAREEN)
Chairman
(Camp Court, A/Abad)

(ROZINA REHMAN)

Member(J)

(Carry Court A (Abad)

(Camp Court, A/Abad)

<u>ANNOUNCED</u> 15.11.2021

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Khyber Fakhunkhwa

Service Tribunal,

Peshawar

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Date of Delivery of Copy_

28/2/22



بخدمت جناب وسرك المجويش أفيسر (مردانه) ايبك أباد

در خواست برائے بحالی ملازمت بمطابق فیصلہ اپیل نمبر 1058/2018 مورخہ 15/11/2021 -	عثوان!
	جنابعالي!
یہ کہ سائل کوایک بے گناہ مقدمہ میں بدنیتی سے ملوث کیا گیااور جھوٹی FIR درج کی گئی جس بناء پر سائل کو ایک نام نہا دخلاف قانون انکوائری کرتے ہوئے سائل کو مورخہ 28/04/2018 کو ملازمت سے برخاست کیا گیانے نقل آرڈ رلف ہے۔	-1
یہ کہ سائل کوفو جداری عدالت نے نام نہا دمقد مہیں باعزت طور پر بری کیا۔	-2
یہ کہ سائل نے مذکورہ بالا آرڈرمحررہ 28/04/2018 کے خلاف سروس ٹریبونل میں اپیل دائر کی جو کہ مورخہ 15/11/2021 کومنظور ہوئی اور آرڈرمورخہ 28/04/2018 کو Set-Aside کردیا۔ نقل فیصلہ عدالت لف ہے۔جس کی نقل سائل کوکل مورخہ 15/02/2022 کوئی ہے۔	-3 /
یہ کہ فیصلہ مور خد 15/11/2021 کے متعلق پہلے ہی دفتر کو مطلع کیا گیا تھا۔	-4 Mi Putul
ا استدعا ھے کہ سائل کو GMSسلہڈ میں CT کی خالی پوسٹ پرایڈ جسٹ کیا جائے اور فیصلے پر	on rile 180

العارض

الرقوم؛15/02/2022

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جمشيداعوان ولدمحمه يونس ساكندرحمت آباد خصيل وضلع ايبيث آباد

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KHYBER PAKHTUNKHWA	SERVICE TRIBUNAL, PESHAWAR.
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Appeal No	····· of 20
Jamshed	Awan Appellant/Petitioner
11mgh Songo	Versus Respondent
	Respondent No
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	AlAbad
*on	ourt and notice has been ordered to issue. You are etition is fixed for hearing before the Tribuna A.M. If you wish to urge anything against the do so on the date fixed, or any other day to whielerson or by authorised representative or by any of Attorney. You are, therefore, required to file in a date of hearing 4 copies of written statement which you rely. Please also take notice that in a fixed and in the manner aforementioned, the in your absence. The efixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal/petition will be a fixed for hearing of this appeal fixed fixed for hearing fixed fixe
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this appeal/petition.	
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·	Registrar, Khyber Pakhtunkhwa Service Tribunal,
	Peshawar.

Note:

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

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KHYBER PAKHTUNKHWA SERVIO	,
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
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Though Seys (885	127 Respondent
Resi	pondent No2_
Notice to: _ DIStrict Education	office (Male)
A	Abad
WHEREAS an appeal/petition under the p	provision of the Khyber Pakhtunkhwa
Province Service Tribunal Act, 1974, has been prothe above case by the petitioner in this Court and	esented/registered for consideration, in
hereby informed that the said appeal/petition is	fixed for hearing before the Tribuunt
*on	you wish to urge anything against the
appellant/petitioner you are at liberty to do so on the case may be postponed either in person or k	the date fixed, or any other day to which
Advocate, duly supported by your power of Attorn	
this Court at least seven days before the date of	hearing 4 copies of written statement
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Notice of any alteration in the date fixed for	
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KHYBER PAKHTUNKIWA SERVICE TRIBUNAL, PESILAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD. $\int_{\mathcal{O}} d \theta d\theta$ PESHAYVAR.
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Janshed Hwan Spellant Petitioner
Drugh Loyd Fernis Respondent
Respondent No.
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