

Execution Petition 56/2022

3rd August, 2022

1. Learned counsel for the petitioner present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Mr. Zahid Muhammad, DEO(M), Bannu for respondents present.

2. Mr. Zahid Muhammad, DEO (M) Bannu produced a copy of notification bearing endorsement No. 6530-38 dated 02.08.2022 in compliance of the judgment of the Tribunal. Learned counsel for the petitioner objected that although the reinstatement of the petitioner was ordered but with immediate effect whereas it was to be given effect from the date of judgment. The respondents assured that they would modify the order within a week. Since the order of the Tribunal has been complied with and the compliance order has also been assured to be accordingly modified, therefore, the instant execution petition is disposed off in the above terms.

3. In view of the implementation of the judgment, the Accountant General, Khyber Pakhtunkhwa and District Accounts Officer, Bannu are directed to release salaries of the respondents forthwith. Consign.

4. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 3rd day of August, 2022.*



(Kalim Arshad Khan)
Chairman



**DIRECTORATE OF ELEMENTARY &
SECONDARY EDUCATION DEPARTMENT**

Khyber Pakhtunkhwa

Main G.T Road Near Firdos Bus Stop Peshawar Pakistan

No.

Date Pesh: the 02/08/2022.

Notification


In compliance to the Judgment of the Honourable Service Tribunal, Khyber Pakhtunkhwa Peshawar dated 14-12-2021 rendered in Service Appeal No.744/2019 titled Murad Ali VS District Education Officer at Sub Division Wazir, District Bannu & five others, Execution Petition No.56/2022, Mr. Murad Ali is re-instated into service with immediate effect and adjusted at Govt. High School Saidgi Many Khan, Sub-Division Wazir Bannu, District Bannu against the vacant post of Junior Clerk. The intervening period is treated as leave without pay.

**Director
Elementary & Secondary Education
Khyber Pakhtunkhwa**

Endst: No. 6530-38

Copy forwarded to:-


1. Registrar, Honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar.
2. Additional Advocate General, Honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar.
3. Additional Director (Estab), Directorate of E & SE Khyber Pakhtunkhwa.
4. District Education Officer (Male), District Bannu.
5. District Accounts Officer, District Bannu.
6. Deputy Director (Legal), E & SE Khyber Pakhtunkhwa.
7. PA to Director E & SE Khyber Pakhtunkhwa.
8. Principal Govt. High School Saidgi Many Khan, Sub-Division Wazir Bannu, District Bannu
9. Mr. Murad Ali, Junior Clerk, GHS Saidgi Many Khan, Sub-Division Wazir Bannu, District Bannu.


Admin Officer
\$

12.05.2022

Petitioner present through counsel.

Notice of the instant execution petition be issued to respondents for implementation report. To come up for implementation report on 15.06.2022 before S.B.


(Rozina Rehman)
Member (J)

15th June 2022

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

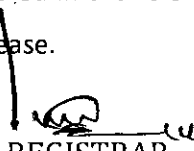


Despite issuing notices, nobody from the respondents has turned up. The Accountant General Khyber Pakhtunkhwa and District Accounts Officer, Bannu, are directed to attach salaries of the respondents till further orders of this Tribunal. The respondents be directed to appear in person alongwith implementation report on 03.08.2022 before S.B.


(Kalim Arshad Khan)
Chairman

Form- A
FORM OF ORDER SHEET

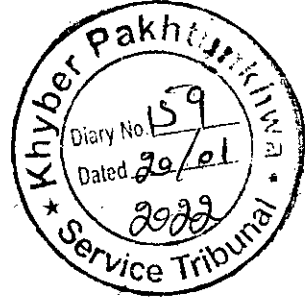
Court of _____

Execution Petition No. _____ 56/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.01.2022	<p>The execution petition of Mr. Murad Ali submitted today by Mr. Taimur Ali Khan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This execution petition be put up before S. Bench at Peshawar on <u>25/02/2022</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 12.05.2022 for the same as before.</p> <p style="text-align: right;"> Reader.</p>
	25.02.2022	

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Execution Petition No. 56 /2029
In Service Appeal No.744/2019



Murad Ali S/O Gul Wali Khan R/O Bannu (FR)- Junior Clerk
GHS Kotka Habib Ullah, Sub Division Wazir Bannu.

PETITIONER

VERSUS

1. District Education Officer at Sub Division Wazir Bannu at near Bannu Township, Bazen Khel Road Bannu.
2. Assistant Director, Directorate of Education Khyber Pakhtunkhwa, Warsak Road Peshawar.
3. Principal Government High School, Habib Ullah FR (Bannu).
4. The Secretary Education (E&SE) Khyber Pakhtunkhwa, Peshawar.
5. Secretary Finance Khyber Pakhtunkhwa, Peshawar.
6. Director of Education (E&SE) Directorate of Education Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 14.12.2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

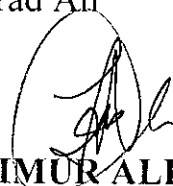
1. That the petitioner has filed service appeal No.744/2019 in the Honourable Tribunal against the order dated 27.02.2019, whereby the petitioner was terminated from service.

2. The said appeal was finally heard by this Honourable Service Tribunal on 14.12.2021. The Honourable Service Tribunal accepted the appeal, set aside the impugned order dated 27.02.2019 and adjusted the petitioner against the post of junior clerk and the intervening period was treated as leave without pay. **(Copy of judgment dated 14.12.2021 is attached as Annexure-A)**
3. That the Honourable Tribunal accepted the appeal and adjusted/reinstated the petitioner on the post of junior clerk on 14.12.2021, but after the lapse of more than one month the petitioner was not adjusted/reinstated by the respondents.
4. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this Honourable Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 14.12.2021 of this Honourable Service Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 14.12.2021 of this Honourable Tribunal.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment dated 14.12.2021 of this Honourable Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

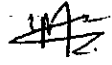

PETITIONER
Murad Ali

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.



DEPONENT



(1)

BEFORE THE K.P.K SERVICE TRIBUNAL PESHAWAR



Appeal No. 744 / 2019.

Murad Ali S/O Gul Wali Khan R/O Bannu (FR), Ex.- Junior Clerk
Government High School, Kotka Habib Ullah, Sub Division Wazir
Bannu.

Appellant.
Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Entry No. 829

Date 31-5-2019

- ✓ 1) ✓ District Education Officer at Sub Division Wazir Bannu, at Near Bannu Township, Bazen Khel Road, Bannu.
- ✓ 2) ✓ Assistant Director, Directorate of Education Khyber Pukhtoonkhwa, Warsk Road, Peshawar.
- 3) ✓ Principal Government High School, Habib Ullah FR (Bannu).
- 4) ✓ The Secretary education (E & SE), Khyber Pukhtoonkhwa, Peshawar.
- 2/1/19 ✓ 5) Secretary Finance Khyber Pukhtoonkhwa, at AG office Peshawar Cantt.
- ✓ 6) ✓ Director (~~Edu.~~), Directorate of Education Khyber Pukhtoonkhwa, (~~E & SE~~) Warsk Road, Peshawar.

.....Respondents.

Filed to-day
31/5/19.
Registrar

APPEAL U/S 4 OF THE K.P.K SERVICES TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED: 27/02/2019, WHEREBY THE APPELLANT WAS TERMINATED/DISPENSED WITH (w.e.f 01-11-1997) WITH RETROSPECTIVE EFFECT FROM SERVICE WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS DISMISSED.

Re-submitted to-day
18/6/19.
Registrar

PRAYER

On acceptance of this appeal, the impugned order dated: 27-02-109 of the respondent No.01 may kindly be set aside and the appellant may graciously be reinstated in service with all back benefits etc, with any other remedy which this August Tribunal deems fit and appropriate may also be awarded in favour of appellant.

ATTESTED

Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 744/2019

Date of Institution ... 31.05.2019

Date of Decision ... 14.12.2021



Murad Ali S/O Gul Wali Khan R/O Bannu (FR), Ex-Junior Clerk Government High School, Kotka Habib Ullah, Sub Division Wazir Bannu.

... (Appellant)

VERSUS

District Education Officer at Sub Division Wazir Bannu, at Near Bannu Township, Bazen Khel Road, Bannu and five others.

... (Respondents)

Taimur Ali Khan,
Advocate

... For Appellant

Kabirullah Khattak,
Additional Advocate General

... For Respondents

SALAH-UD-DIN
ATIQ-UR-REHMAN WAZIR

...
...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the

case are that the appellant was initially appointed as Junior Clerk in Education Department in FR Bannu vide order dated 12-07-1989. The appellant availed earned leave with effect from 02-12-1994 to 27-05-1996 vide order dated 12-12-

1994. His leave was further extended from 28-05-1996 to 31-01-1997 vide order dated 09-06-1996. After expiry of the leave neither the appellant was adjusted

against his post nor any adverse order was issued against him. The appellant filed departmental appeal, which was not responded within the stipulated timeframe.

The appellant filed Service Appeal No. 02/2017 in this Tribunal, which was decided vide judgment dated 15-02-2018 with direction to the appellate authority to

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

examine the case of the appellant and to decide his departmental appeal with speaking orders within a period of three months. The appellate authority in response, issued his termination order dated 27-02-2019 with retrospective effect and his services were dispensed with from 01-11-1997. The appellant filed the instant service appeal with prayers that the impugned order dated 27-02-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned order is against law, facts and norms of natural justice; that the appellant was terminated from service without assigning any reason, which is highly unjust and prejudicial to the rights of the appellant; that the word termination is alien to the disciplinary rules, as Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011 contains the provision of either dismissal or removal from service, hence such illegal order can be termed as void; that the impugned order does not provide any reason for termination from service and the appellant having long service at his credit and being a regular employee could not be thrown out illegally and without any process of law; that termination from service with retrospective effect is totally illegal as no penalty can be imposed with retrospective effect; that orders issued with retrospective effect is void ab initio; that issuance of termination order in 2019 admits the fact that since 1997, no termination/removal from service order in respect of the appellant has been issued until 2019; that the impugned termination order was issued without adhering to the prescribed manner as enshrined in the law; that in case of imposition of major penalty, regular inquiry is must, which however was not done by the respondents; that neither a regular inquiry was conducted nor the appellant was afforded appropriate opportunity to defend his cause; that the impugned termination order was passed in violation of law, rules and principle of natural justice and the same has got no sanctity to remain in field, as it has been held in 1992 SCMR 46 that

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

when law required a thing to be done in a particular manner, the same must be done accordingly and if the prescribed procedure was not followed, it would be presumed that same had not been done in accordance with law, as such illegality has been committed by the respondents, for which the appellant shall not suffer.

03. Learned Additional Advocate General for respondents has contended that as per judgment dated 15-02-2018 of this Tribunal passed in Service Appeal No. 02/2017, case of the appellant was re-examined and a committee to this effect was constituted, which examined his departmental appeal and recommended the appellant for major punishment of termination from service, hence the appellant was terminated vide order dated 27-02-2019; that there was no further need of any inquiry or service of show cause notice, as the appellant remained absent for longer time and guilt of the appellant was proved beyond any shadow of doubt, hence he was awarded with punishment he deserved.

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

05. We have observed that in the first round of litigation, the appellant filed Service Appeal No. 02/2017. The issue under consideration was that the appellant after availing long leave, reported his arrival for his posting, which however was refused by the respondents inspite of the fact that no adverse order was issued except stoppage of his salary, but the appellant was still on the roll of Education Department. The allegations so leveled were absence from duty, but neither the appellant was permitted to join his duty nor any disciplinary proceedings were conducted against him and the issue lingered for years. Service appeal of the appellant was decided vide judgment dated 15-02-2018 and his case was remitted to the respondents with direction to examine his case in accordance with law and decide departmental appeal of the appellant with speaking orders within a period of three months. As per dictates of law, respondents were required to initiate disciplinary proceeding against the appellant, but the respondents failed to frame

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

proper charge and its communication to the civil servant alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken in to consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was mandatory prerequisite, which was to be followed. Reliance is placed on 2000 SCMR 1743. It otherwise is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, which however was not done in case of the appellant and the appellant was condemned unheard. Reliance is placed on 2009 PLC (CS) 650. The Supreme Court of Pakistan in another judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. We have noted that respondents neither conducted any inquiry nor afforded any opportunity to the appellant to defend his cause, rather a committee was constituted and the committee unilaterally and without associating the appellant decided his fate and the impugned order of his termination was issued in sheer violation of law and rule and on this score alone, the impugned order is liable to be set at naught. The impugned order provided for penalty to the appellant in terms of termination from service, which as rightly argued by the learned counsel for the appellant is not included in the list of penalties provided in the rules applied on the appellant. The order, therefore, having been passed in blatant disregard of law can only be termed as void.

ATTESTED

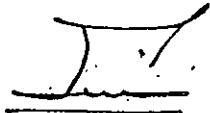
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In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 27-02-2019 is set aside with direction to the respondents to adjust the appellant against the post of Junior Clerk. The intervening period is

EXAMINER
Karachi Pakhtukhwa
Service Tribunal
Karachi

treated as leave without pay. Parties are left to bear their own costs. File be
consigned to record room.

ANNOUNCED
14.12.2021

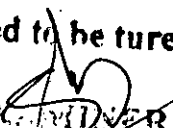


(SALAH-UD-DIN)
MEMBER (J)



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

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 19-01-22
Number of Words 2400
Copying Fee 26/-
Urgent 4/-
Total 30/-
Name of Copyist -
Date of Completion of Copy 19-01-22
Date of Delivery of Copy 19-01-22

VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Musad Ali

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt

(Respondent)
(Defendant)

I/We, Musad Ali

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2021

[Signature]
(CLIENT)

ACCEPTED

[Signature]
TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5
Cell No. 0333-9390916

CE:

FR-8, 4th Floor,
Plaza, Peshawar,
Peshawar



KHYBER PAKHTUNKWA
SERVICE TRIBUNAL, PESHAWAR

No: 2283-88/ST Dated: 28/07/2022

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

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

To,

- 1 DISTRICT EDUCATION OFFICER AT SUB DIVISION WAZIR BANNU AT NEAR BANNU TOWNSHIP, BAZEN KHEL ROAD BANNU
- 2 ASSISTANT DIRECTOR, DIRECTORATE OF EDUCATION KHYBER PAKHTUNKHWA, WARSAK ROAD PESHAWAR.
- 3 PRINCIPAL GOVERNMENT HIGH SCHOOL HABIB ULLAH FR (BANNU)
- 4 THE SECRETARY EDUCATION (E&SE) KHYBER PAKHTUNKHWA PESHAWAR.
- 5 SECRETARY FINANCE KHYBER PAKHTUNKHWA PESHAWAR.
- 6 DIRECTOR OF EDUCATION (E&SE) DIRECTORATE OF EDUCATION KHYBER PAKHTUNKHWA

Subject: PERSONAL APPEARANCE IN EXECUTION PETITION
NO. 56/22 MURAD ALI VS EDUCATION.

I am directed to forward herewith a certified copy of Order dated 15.06.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As Above.


(WASEEM AKHTAR)

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No: 2536-37 /ST Dated: 7/9/2022

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

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


To:

1. The Accountant General,
Khyber Pakhtunkhwa.
2. District Accounts Officer, Bannu.

Subject:- **SALARY RELEASE OF THE RESPONDENTS IN CASE TITLE MURAD ALI VS EDUCATION DEPARTMENT IN EXECUTION PETITION 56/2022**

I am directed to forward herewith a certified copy of order dated 03-08-2022 passed by this Tribunal on the above subject for compliance.

ndic
PD
7/9/22


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.