


11.08.2022

Counsel for the petitioner present. Mr. Kabir Ullah Khattak, Additional AG alongwith Saeed Ullah, Litigation Officer for respondents present.

Representative of the respondent department presented a letter dated 08.06.2022 of SDEO (Male) Karak to DEO (Male) Karak through which the case of the appellant has been taken up with DEO (M) Karak for the needful. Copy of the same has been provided to the counsel of the petitioner also. To come up for further proceedings on 16.09.2022 before S.B.


(Fareeha Paul)
Member (E)

16th Sept, 2022

None present for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Abdullah, ADEO for respondents present.

Learned AAG has produced copy of revised sanction order bearing Endst No. 4037-38/LPR/Pry: Section dated 14.09.2022 whereby the grievance of the petitioner has been redressed, Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 16th day of September, 2022.


(Kalim Arshad Khan)
Chairman

14.02.2022

Due to retirement of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 06.04.2022 for the same as before.


Reader

06.04.2022

Clerk of learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. M. Rafiq, ADEO for respondents present.

Clerk of learned counsel for the petitioner seeks adjournment on the ground that learned counsel is not available today due to general strike of the bar. Adjourned. To come up for further proceedings on 27.06.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER(E)

27.06.2022

Learned Member (Executive), is on leave. Therefore, the case is adjourned to 11.08.2022 for the same as before.


READER

OFFICE OF THE DISTRICT EDUCATION OFFICER MALE KARAK

REVISED SANCTION:

Under the relevant pension provisions and rules, Mr. Niaz Gul PSHT Bps. 15 GPS Azher Khel Karak is hereby allowed to proceed on Superannuation Retirement from service w.e.f. 05-02-2018 (A.N) with full benefits and gratuity whereas in light of Khyber Pakhtunkhwa service tribunal judgment petition No. 84/2018 dated 19-03-2018 the absent period may be treated as mentioned below.

is considered as

Note: Necessary entry in this respect should be made in his Service Book.

S.No	PERIOD FROM	TO	No of Days	Remarks
1.	31-08-2015	28-12-2015	120 Days	On Full Pay
2.	29-12-2015	15-06-2016	170 Days	On Half Average Pay
3.	16-06-2016	28-11-2017	527 Days	Without Pay

Endst: No 4027-38 LPR/Pry: Section

Copy to the:

1. District Accounts Officer Karak.
2. SDEO (Male) Karak alongwith original service book

DISTRICT EDUCATION OFFICER
(MALE) KARAK

Dated Karak the 14/9 /2022

DISTRICT EDUCATION OFFICER
(MALE) KARAK

*ایٹھ عدد مافی
399*

05.10.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Sher Nawab, Superintendent for the respondents present.

Copy of the letter dated 28.09.2021, produced on behalf of respondents today is placed on file. Accordingly, the case for execution of the judgment within the parameter of the order dated 17.06.2021 is in progress. The respondents are directed to come up with final report on 08.11.2021 before S.B.

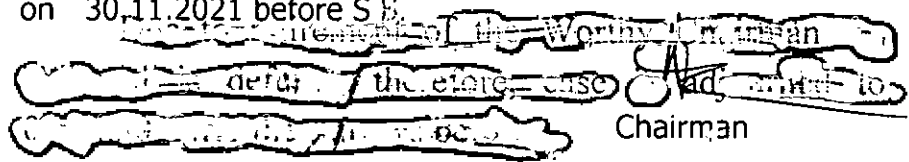

Chairman

08.11.2021

Petitioner in person and Mr. Kabirwah Khattak, Addl. AG alongwith Sher Nawab, B&AO for the respondents present.

Representative of the respondents has produced a copy of DFA for sanction of leave. Placed on file. Representative is directed to come up with sanction/notification strictly in accordance with the guideline given in the order dated 17.06.2021. Case to come up on 30.11.2021 before S.B.




Chairman



30.11.2021

Petitioner alongwith his counsel present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Sher Nawab, B&AO for respondents present.

Representative of the respondents submitted a proper sanction order bearing endorsement No. 5344-45/Leave Case/ADO pry: dated Karak the 30th November 2011 which is placed on file. Copy of the same is handed over to the learned counsel for the petitioner for objection, if any. To come up for further proceedings on 23.12.2021 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

23.12.2021

Petitioner in person and Mr. Muhammad Adeel Butt,

15.02.2022

Addl. AG alongwith Mr. Muhammad Rafiq ADO (Sports) for the Tribunal is defunct, therefore, case is adjourned to the respondents present.

06.04.2022 for the same as before.
Petitioner submitted objection petition on sanction order. Copy handed over to learned AAG. To come up for arguments on 14.02.2022 before S.B.

Reader

Chairman

05.08.2021

Petitioner in person and . Mr. Kabirullah Khattak,
Addl. AG for the respondents present.

Learned AAG states that the matter has been dealt
with by Mr. Muhammad Adeel Butt, Addl. AG who is on
summer vacations. Adjourned to 17.08.2021 before S.B.


Chairman

17.08.2021

Petitioner in person and Mr. Muhammad Adeel Butt,
Addl. AG for the respondents present.

No representative of the respondents is in
attendance. Learned AAG is required to contact the
respondents for issuance of an appropriate notification
towards implementation of the judgment as directed in
order dated 17.06.2021 and submit compliance report on
next date. Case to come up on 22.09.2021 before S.B.


Chairman

22.09.2021

Petitioner in person and Mr. Muhammad Adeel Butt,
AAG for the respondents present.

Learned AAG seeks time to contact the respondents
for submission of compliance report. Respondents are
directed to issue an appropriate notification towards
implementation of the judgment as directed in order
dated 17.06.2021 and submit compliance report on next
date. Case to come up on 05.10.2021 before S.B.


Chairman

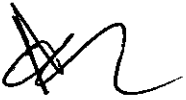
by the respondents does not serve spirit of the judgment under execution. Therefore, in order to bring the things in conformity with the judgment, the periods from 31.08.2015 to 20.02.2016 and from 21.02.2016 to 28.11.2017 be treated as leave with pay in light of leave rules, if the leave account of the petitioner supports that there was sufficient leave at his credit. The period from 29.11.2017 to 04.02.2018 be treated as duty period of the petitioner. The respondents without working on the given line, found an easy way to treat all the three aforementioned periods as leave without pay.

For the foregoing discussion, the respondents are required to issue an appropriate notification towards implementation of the judgment as directed herein above and to submit report in this respect on next date.
Adjourned to 05.08.2021 before S.B.


Chairman

28.11.2017, it may be observed that the petitioner due to effects of the order of compulsory retirement in field, was not able to perform the duty. If the department had conducted the denovo enquiry and as its outcome, it would have found that absence of the appellant before compulsory retirement was willful, then the same could be treated as leave without pay in continuation, the second period could also be linked with the original period of absence. For reasons best known to the departmental authorities, they did not opt for holding the denovo enquiry and they were pleased to set aside the order of compulsory retirement without enquiry. Then, there remains no justification with them to treat the period of absence in between 31.08.2015 and 28.11.2017 as leave without pay. Regarding the third period as noted above, needless to say that the petitioner would be deemed to have been reinstated in service by the judgment dated 29.11.2017; and if the department had failed to pass an administrative order of petitioner's reinstatement, said omission in no way is meant to deprive the petitioner of his right of reinstatement accrued to him under judicial pronouncement. Thus, the third period w.e.f. 29.11.2017 to 04.02.2018 has to be treated on duty. Taking combined view of the discussion herein before based on breakup of the period treated as leave without pay under departmental order dated 05.10.2018, the order so made

the denovo enquiry and found that the petitioner was absent from duty between the period from 31.08.2015 to 20.02.2016, the said period could be treated as such but no denovo enquiry was conducted. So, the petitioner could not be treated adversely for that period when the department itself did not conduct the denovo enquiry. In absence of such enquiry, treating the first period as noted above, as leave without pay is tantamount to condemnation of petitioner unheard. After the date of his compulsory retirement dated 20.02.2016, the petitioner pursued different remedies against the order of his compulsory retirement until his Service Appeal No. 707/2016 was accepted on 29.11.2017. Before discussing the effects of the period from 31.08.2015 onwards till 05.02.2018, let it be clarified that the reinstatement of the appellant has become due on 29.11.2017 when the judgment was passed in his favour. Accordingly, the period from 29.11.2017 to 05.02.2018 was to be treated on duty because reinstatement was delayed by the respondents as much as they passed the order of reinstatement even after eight months of the superannuation age of the petitioner. So, the period from 29.11.2017 to 05.02.2018 treated as leave without pay is contraindicated to the spirit of judgment of this Tribunal and needs correction on the part of departmental authorities. Coming to the period from 21.02.2016 to



service w.e.f 05.02.2018 after attaining the age of superannuation vide pension sanction order No. 4698-4701 dated 02.10.2018. In order to take a viable route for inference about implementation of judgment at petitioner's credit, it is noteworthy that the reinstatement order was given effect from 31.08.2015 while the period in between said date and that of the date of reinstatement order (05.02.2018) was treated as leave without pay. Obviously, the said period having been treated as such carries adverse effects for total length of petitioner's service to be counted for pensionary benefits. Similarly, he has so far not cooperated for finalization of his pension case may on hope of some benefit of the Tribunal's judgment at his credit. With this position in background, a breakup of the period treated as leave without pay and then find out will help in determination whether it befits to implementation of the judgment in letter and spirit. The said period could be divided into three stages as noted below:-

1. First Period: 31.08.2015 to 20.02.2016.
2. Second period: 21.02.2016 to 28.11.2017.
3. Third period: 29.11.2017 to 04.02.2018.

The order dated 05.10.2018 was issued to the effect of cancellation/withdrawal of the compulsory retirement order dated 20.02.2016. If the department had conducted

17.06.2021

Petitioner in person and Mr. Kabirullah Khattak, Addl. AG alongwith Sajid Superintendent for the respondents present.


The petitioner has at his credit the judgment of this Tribunal passed on 29.11.2017 in Service Appeal No. 707/2016. According to operative part in Paragraph-6 thereof, the appeal was accepted and the appellant was reinstated into service with direction to the department to hold de-novo proceedings within a period of two months, after receipt of the judgment. It was further held in the operative part that the issue of back benefits of the appellant/petitioner shall be subject to final outcome of the de-novo proceedings. As evident from the facts discussed in Paragraph-2 of the judgment, the appellant was retired compulsorily from service on 22.02.2016 and on his approaching to the Tribunal with the aforementioned appeal, he was reinstated in service with order of denovo enquiry. After reinstatement of the petitioner, he was not subjected to denovo enquiry and by an order was issued on 05.10.2018 towards implementation of judgment of this Tribunal, the compulsory retirement of Mr. Niaz Gul (present petitioner) was cancelled/withdrawn and he was straightaway reinstated in service w.e.f 31.08.2015 to 05.02.2018; while he was allowed to proceed on retirement from



28.01.2021

Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Saeedullah, Focal Person, for the respondents are also present.

Due to paucity of time, proceeding in the instant execution petition could not be conducted, therefore, adjourned to 23.02.2021 before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

23.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 26.04.2021.


Reader

26.04.2021

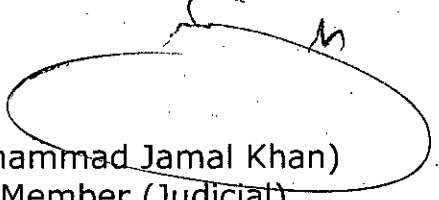
Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 17.06.2021 for the same as before.


Reader

05.11.2020

Nemo for the petitioner. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is present.

Since the Members of the High Court as well as of the District Bar Association, Peshawar, are observing strike today, therefore, learned counsel for petitioner is not available today. Adjourned to 30.12.2020 for further proceedings before S.B.



(Muhammad Jamal Khan)
Member (Judicial)

30.12.2020

Petitioner in person present. Mr. Noor Zaman Khattak, District Attorney for respondents present.

The District Attorney on the directions of court, tried to contact DEO(M) Karak for the purpose to ascertain and confirm the receipt of necessary documents ^{from} the appellant, receipt of which produced ^{before} the court, however, the officer concerned could not be traced and contacted. The DEO(M) Karak is, therefore, directed to appear in person on the next date of hearing.

Adjourned to 28.01.2021 before S.B.


(Mian Muhammad)
Member(E)

EP 401/18.

07.09.2020

Petitioner alongwith counsel and Sheraz Ahmad, D.E.O (Male) Karak (respondent No. 4) alongwith Addl. AG for the respondents present.

It is the stance of D.E.O that the department required certain documents including service book etc. from the petitioner in order to proceed further towards implementation of the judgment. As per procedure requisite documents are to be submitted to the SDEO Karak. The DEO also undertakes to process the case of petitioner as early as possible. The petitioner, in turn, ensures the submission of required documents to the SDEO on 15.09.2020.

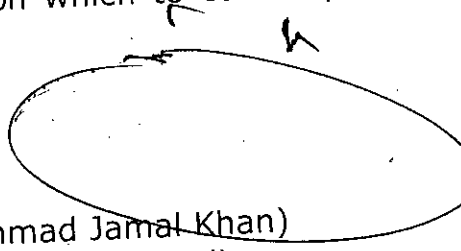
Adjourned to 20.10.2020 for further proceedings.


Chairman

20.10.2020

Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of the department Mr. Sher Nawab, Superintendent, are also present.

The legal fraternity is observing strike today, therefore, the case is adjourned to 05.11.2020 on which to come up for further proceedings before S.B.


(Muhammad Jamal Khan)
Member (Judicial)

22.07.2020

Uzma Syed, Advocate, for appellant and appellant himself are present. Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of the department Mr. Attique-ur-Rehman, Deputy District Education Officer, are also present. Learned counsel for petitioner submitted that the judgment passed by this august Service Tribunal dated 19.11.2017 wherein petitioner was reinstated in service and department was directed to hold de-novo proceedings within a period of two months after receipt of the judgment of the worthy Tribunal. That neither petitioner was reinstated into service nor de-novo inquiry was conducted and during this period petitioner did retired on 05.02.2018 now he claims his pensionary benefits alongwith other emoluments but the respondents are not paying heed to his case despite having been contacted time and again.

2. The learned Additional Advocate General submitted that petitioner is entitled to the gratuity and other pensionary benefits for the period for which he has rendered work however, he is not entitled to receive any benefits where he has not rendered duties, he submitted that according to the judgment of Hon'ble Supreme Court of Pakistan when there is a work there is pay when no work is done it has been held that there is no pay. At this juncture the representative of DEO Karak who is non-else than Deputy District Education Officer (Attiq-ur-Rehman) submitted that they are willing to process the pension case of the petitioner but the documents pertaining the accounts are in custody of petitioner who is not handing it over to their office for the needful.

3. When the petitioner has got retired he is entitled to the gratuity and other pensionary emoluments and benefits without any sort of delay or discrimination. Petitioner has admittedly rendered long services to the Education Department and when he has attained the age of superannuation his respective rights ripens to maturity. The respondents department is directed to sort out the respective entitlement of the petitioner in a statement of account to be duly documented and to be produced to this Tribunal for perusal and other appropriate order. Each and every day intervening between this and the next date of hearing has to be utilized while giving effect to the judgment passed by this Tribunal and the work so done on each and every day has to be furnished to the Tribunal for perusal. No delay in

the payment of pensionary benefits would be tolerated, needless to mention here that an official of no less rank than Primary School Head Teacher do not repose trust on the department by keeping the account documents in his own custody there is a big trust deficit between them which is unfortunate. Petitioner who was reluctant is directed to handover the documents to the official of District Education Officer Karak for its onward process. The DEO who is not present today in this Tribunal has reportedly gone to attend certain course at Islamabad, his representative was reminded that his participation in the course was more important than attending this court, for which he was having no appropriate answer. At this stage it has to be observed with concern when the official at the helm of affairs do not bother or feel any responsibility of submitting his own response or firsthand information regarding an issue which has to be resolved within a reasonable period of time then the chances of the resolution of issues remains meagra. His appearance would not have taken more than half an hour and could have resumed his current assignments. The DEO Karak has to ensure his attendance on the next date alongwith submission of the statement of account on 07.09.2020.



(MUHAMMAD JAMAL KHAN)
MEMBER

24.02.2020

Petitioner in person present. Mr. Kabirullah Khattak, Addl. AG alongwith Sher Nawab, Superintendent for respondents present. Petitioner requested for adjournment due to engagement of his learned counsel before the honourable High Court. To come up for further proceedings on 02.04.2020 before S.B.



(Hussain Shah)
Member

02.04.2020

Due to public holiday on account of COVID-19, the case is adjourned for the same on 25.06.2020 before S.B.



Reader

25.06.2020

Petitioner with counsel present. Addl: AG for respondents present. Representative of the respondents are not present nor implementation report submitted. Respondent No.3 (District Education Officer (M) Karak) be summoned in person alongwith the implementation report positively on the next date of hearing. To come up for further proceedings on 22.07.2020 before S.B.



MEMBER

EP No. 401/2018

06.01.2020

Petitioner alongwith counsel and Addl. AG alongwith Sher Nawab, Superintendent for the respondents present.

The representative of respondents states that a CPLA against the judgment under execution has been preferred before the Apex Court wherein a date of hearing is yet to be fixed. He also states that in order to calculate the emoluments of petitioner by way of outstanding salaries as well as pension the service record is to be provided by the petitioner.

On the other hand, the petitioner maintained mistrust regarding the officers of respondent department and states that he would hand over the requisite record to the representative of respondents before the Tribunal provided some time is given to him.

In order to avoid further complication and delay in implementation of judgment the petitioner is required to make available his service book, pension papers, 8 photographs and list of family members alongwith their respective CNICs on 23.01.2020.

Adjourned.


Chairman

23.01.2020

Petitioner in person and Addl. AG for the respondents present.

Due to non-availability of representative of respondents today as well as general strike of the Bar, the proceedings in hand are adjourned to 24.02.2020. Learned AAG undertakes to ensure the attendance of representative of respondents on next date.


Chairman

25.11.2019

Petitioner in person and Addl. AG alongwith M/S Attiqur Rahman, Dy. DEO, Sultan Khan, Superintendent for the respondents present.

Learned AAG referred to order passed in E.P No. 84/2018 dated 08.10.2018 and stated that as the judgment under implementation was completely executed the matter was ~~consigned~~ consigned. However, the appellant brought instant execution petition but without any rhyme or reason. He also stated that the order dated 10.07.2019 passed by this Tribunal has also been assailed before the Apex Court, wherein, a date of hearing is yet to be fixed. Petitioner, on the other hand, requested for adjournment due to general strike of the Bar.

Adjourned to 06.01.2020 for further proceedings. The office is required to append the record pertaining to E.P No. 84/2018 consigned on 08.10.2018 with the instant file.

Chairman



E.P No. 401/2018

22.10.2019

Petitioner alongwith counsel and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sherullah, ADO for the respondents present.

The representative of respondents has tendered a copy of CPLA submitted before the apex court against the judgment under implementation.

The representative is required to obtain copy of order of this Tribunal passed on 10.07.2019 and submit compliance report on next date of hearing if the judgment under implementation is not suspended or set-aside by the apex court in the meanwhile. In case the requisite implementation report is not submitted on next date, the District Education Officer (Male) Karak/respondent No. 3 shall appear in person in order to explain the position regarding the matter.

Adjourned to 25.11.2019 before S.B.

Chairman 

29.08.2019

Petitioner in person present. Addl: AG for respondents present. Due to paucity of time the case is adjourned to 26.09.2019 for further proceedings before S.B.



(Ahmad Hassan)
Member

26.09.2019

Petitioner with counsel present. Addl: AG for respondents present. Implementation report as per order sheet dated 10.07.2019 was not produce^d by the respondents. They are again directed to submit the same on or before the next date of hearing. To come up for further proceedings on 22.10.2019 before S.B.



Member

10.07.2019

Petitioner alongwith his counsels and Addl: AG alongwith Mr. Sher Islam, ADO for respondents present.

In the instant case a Sanction was issued by District Education Officer (M), Karak on 02.10.2018, whereby the petitioner was allowed to proceed on superannuation retirement w.e.f 05.02.2018 with full benefits of pension and gratuity, in pursuance to the judgment under implementation. The earlier office order of compulsory retirement of petitioner dated 20.02.2016 was also cancelled through the Sanction dated 02.10.2018. On 05.10.2018 another Order was issued wherein the cancellation/withdrawal of order dated 20.02.2016, pertaining to compulsory retirement of the petitioner was reiterated, however, the period from 31.08.2015 to 05.02.2018 was treated as leave without pay. This Office Order appears to be in conflict with previous Sanction dated 02.10.2018, and also the findings handed down in judgment under implementation. In the judgment dated 29.11.2017, the appellant/petitioner was reinstated into service while the order of his compulsory retirement was set aside. The department was directed to hold de-novo proceedings within the period of two months from the date of receipt of copy of the judgment which direction was not complied with by the respondents. De-novo proceedings were never held against the petitioner. As the issue of back benefits of the petitioner was made subject to the final outcome of the de-novo proceedings, therefore, no order adversely affecting the petitioner in respect of award of back benefits could be passed without holding de-novo proceedings.


In the circumstances, when Sanction dated 02.10.2018 was neither superseded nor altered or modified through subsequent Office Order dated 05.10.2018, it remains in field till date. The petitioner is entitled to the benefits as noted in the Sanction dated 02.10.2018, therefore, the respondents are required to calculate the emoluments for the period from 31.08.2015 to 05.02.2018 and allow the same in favour of the petitioner by disregarding the contents of Office Order dated 05.10.2018 wherein the said period is treated s leave without pay.

To come up for further proceedings on 29.08.2019 before S.B.


Chairman

12.06.2019

Petitioner with counsel and Addl: AG alongwith Mr. Sher Islam; ASDEO for respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. Case to come up for further proceedings on 10.07.2019 before S.B.


(Ahmad Hassan)
Member

15.03.2019

Petitioner alongwith counsel present. Mr. Kabirullah Khattak, Additional AG for the respondents present and submitted reply. The same is placed on record. Learned counsel for the petitioner seeks adjournment to examine the same. Adjourned. To come up for further proceedings on 22.03.2019 before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

22.03.2019

Learned counsel for the petitioner and Mr. Kabirullah Khattak learned Addl; AG for the respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. To come up for further proceeding on 22.04.2019 before S.B.


Member

22.04.2019

Petitioner with counsel present. Addl:AG alongwith Mr. Sher Islam, ASDEO for respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. Case to come up for further proceedings on 12.06.2019 before S.B.


(Ahmad Hassan)
Member

09.01.2019

Petitioner with counsel and Addl. AG alongwith Sher Islam ADEO present. Learned AAG requests for time to submit reply to the execution petition. Adjourned to 04.02.2019 for reply and arguments before S.B. The petitioner is directed to provide a copy of the petition to the learned AAG today.


Chairman

04.2.2019

Petitioner with counsel and Addl. AG alongwith Sher Islam, ADO for the respondents present.

Representative of respondents has placed on file office order dated 05.10.2018 issued by respondent No. 3 and also a reply dated 15.01.2019 addressed to the petitioner by the same respondent. Apparently, the said reply is in response to applications of petitioner dated 27.10.2018 and 03.12.2018. The documents are placed on record.

Learned AAG requests for time to submit a comprehensive reply to the Execution Petition in view of the documents submitted today by the representative.

Adjourned to 15.03.2019 for reply and arguments before S.B.



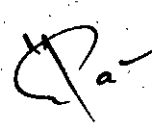

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. _ 401/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.11.2018	<p>The execution petition of Mr. Niaz Gul submitted by him may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 07/11/18</p>
2-	17-11-2018	<p>This execution petition be put up before S. Bench on <u>28-11-18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	28.11.2018	<p>Petitioner absent. Notice of the present execution petition be given to the respondents for 09.01.2019. To come up for implementation report on the date fixed before S.B</p> <p style="text-align: right;"> Member</p>

①

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

Execution Petition No. 40/2018
In Service Appeal No. 707/2016

Niaz Gul
PSHT, GPS Azar Khel, Karak

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2097

Dated 7-11-18

Versus

1. The Government of Khyber Pakhtunkhwa, through Secretary (E&SE), Education Department, Peshawar
2. The Director (E*SE) Education Department, Peshawar
3. The District Education Officer (Male) Karak

Respected Sir,

The theme of submitting this petition is that the Honorable court had decided on my appeal No.707/2016. In their Judgment para6, it was mentioned that the appellant is reinstated in service and the department was directed to hold de-nova proceedings within a period of two months after receipt of the judgment. The issue of back benefits of the appellant was subject to final outcome of the de-nova proceedings.

Sir, since 29/11/2017, the day of the announcement of the judgment till 19/03/2018, the department did not act upon the judgment (copy attached). They neither reinstate me nor given any leftover pay and allowances.

Sir, on 19/03/2018, I submitted execution petition No. 84/2018 for directing the respondents to implement the judgment dated 29/11/2017 of the Honourable court in letter and spicit.

Sir, on 28/03/2018 the court directed the respondents for implementation report for 10/05/2018, the respondents were directed for implementation, but they paid no heed and spoil the time and money of me & the honourable court.

Sir, when the respondents came into known that the Honourable court wants implementation, they seek time to proper implementation on 08/10/2018.

Sir, on 08/10/2018, the respondent produced sanction order No.4698-4701 dated 02/10/2018 (Copy attached) in which the compulsory retirement order No. 1128-33 datd 20/02/2016 was cancelled and was ordered to proceed on superannuation retirement from service w.e.f 05/02/2018 (AN) with full benefits of pension and gratuity.

Now theme and the major reason of their contempt of court is that in the court they produced the order of pension and here at Karak they another letter No. 1036 dated 25/10/2018 (Copy Attached) addressed me with the contents that from 31/08/2015 to 05/02/2018 period has been treated as "Leave without pay".

Sir, the aforesaid period I have been in the court only for it I expended money time and knock the door of Honourable court.


2
Sir, in other words they tried to cheat the Honourable court while issuing order No.4698-4701 dated 02/10/2018, in which the compulsory retirement order was cancelled. How they turned this period into leave without pay.

In the view of above it is requested to your Honour that they have committed on repeated basis the contempt of court. They only want to prolong and waste the time of the court and desire to stuck off the case.

Therefore serious action may please be taken against them. Their pay and allowances may please be stopped, so that they feel the gravity of case.

I shall be very grateful to you for your this act of kindness.

Dated: 07/11/2018

Niaz Gul 
PSHT GPS Azar Khel (Karak)
Resident of Ganderi Khattak
Takht e Nasrati Karak

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE), KARAK.

OFFICE ORDER.

In light of the judgment of Hon'able Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No. 707/2016 dated 29-11-2017, the compulsory retirement order of Mr. Niaz Gul PHST, GPS Azer Khel, Karak vide Endst: No. 1128-23 dated 20-02-2016 is hereby cancelled / withdrawn and he is re-instated in service w.e.f 31-08-2015 whereas the absent period from official duty w.e.f 31-08-2015 to 05-02-2018 is treated as leave without pay and he has been retired from service w.e.f 05-02-2018 (A.N) after attaining the age of superannuation vide pension sanction order No. 4698-4701 dated 02-10-2018.



5/10/2018
District Education Officer (M)
Karak

Endst: No. 4825-30 Dated Karak the 5/10/2018

Copy to the:-

1. Director , Elementary and Secondary Education, Officer Khyber Pakhtunkhwa Peshawar.
2. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar.
3. District Account Officer, Karak.
4. Dy: District Education Officer (M), Karak.
5. Sub Divisional Education Officer (M), Karak.
6. Niaz Gul, PSHT GPS Azer Khel, Karak.

5/10/2018
District Education Officer (M)
Karak

In The Khyber Pakhtunkhwa Service Tribunal, Peshawar



Service Appeal No 707 /2016

Niaz Gul,
PSHT, GPS Azer Khel,
Karak.

.....Appellant

Khyber Pakhtunkhwa
Service Tribunal

Versus

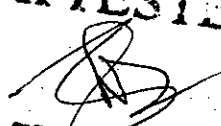
Diary No. 631

Dated 14-6-2016

1. Government of Khyber Pakhtunkhwa through Secretary (Elementary and Secondary) Education Department, Peshawar.
2. Director ((E & S) Education Department, Peshawar
3. District Education Officer (Male), Karak.


.....Respondents

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar
Prayer:

Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against Order dated 06-04-2016 received on 19-05-2016.

Filed on day


14/6/16

On acceptance of this Service Appeal the impugned Order dated 06-04-2016 whereby the Departmental Appeal of the Appellant against the Order dated 20-02-2016 is dismissed and the Appellant is Compulsory Retired from service may kindly be set aside and the Respondents may kindly be directed to reinstate the Appellant in service with all back benefits.

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the Appellant was appointed as PTC Teacher on 01-05-1978 in the respondent Department.

Registrar

Submitted to-day
and filed.

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 707/2016

Date of Institution ... 14.06.2016

Date of Decision ... 29.11.2017



Niaz Gul,
PSHT, GPS Azer Khel, Karak.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary (Elementary and Secondary) Education Department, Peshawar and 2 others.

... (Respondents)

MR. TAJDAR AHMAD KHAN
Advocate

... For appellant

MR. KABIRULLAH KHATTAK,
Additional Advocate General,

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

...

...

CHAIRMAN
MEMBER

JUDGMENTNIAZ MUIHAMMAD KHAN, CHAIRMAN.-


Arguments of the

learned counsel for the parties heard and record perused.

FACTS

2. The appellant is aggrieved from order of compulsory retirement dated 20.02.2016 against which he filed departmental appeal on 22.02.2016 which was

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

5

rejected on 06.04.2016 and communicated to him on 19.05.2016. Thereafter he filed the present service appeal on 14.06.2016.

ARGUMENTS.

3. The learned counsel for the appellant argued that the appellant was transferred to GPS Kaddu Khel on 31.08.2015. That the appellant assumed the charge on 01.09.2015. That the appellant never remained absent from duty. That the attendance register also is a proof of the attendance of the appellant. That the impugned order was passed without any notice to the appellant. That the impugned order was passed retrospectively which is nullity in the eyes of law.

4. On the other hand, the learned Additional Advocate General argued that all the codal formalities were fulfilled by issuing show cause notice. That notice was also published in the news paper. That the appellant remained absent from duty without any leave. That the whole proceedings are lawful. That the appellant did not perform his official duties.

CONCLUSION.

5. Regardless to the factual controversy of absence from duty the very impugned order has been passed retrospectively. In the light of the judgment reported as 1985 SCMR 1178 such order is a void order.

6. In view of the judgment mentioned above this appeal is accepted and the appellant is reinstated in service. The department is directed to hold de-novo proceedings within a period of two months after receipt of this judgment. The issue

ATTESTED

EXAMINER

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

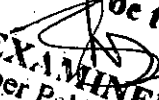
⑥

of back benefits of the appellant shall be subject to final outcome of the *de-novo* proceedings. Parties are left to bear their own costs. File be consigned to the record room.

Announced
29.11.2017

SD/- Niaz Muhammad Khan,
Chairman

SD/- Ahmad Hassan
Member

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 07-11-18
Number of Words 1600
Copying Fee 10.00
Urgent 2.00
Total 12.00
Name of Copyist [Signature]
Date of Completion of Copy 07-11-18
Date of Delivery of Copy 07-11-18

(7)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.



Execution Petition No. 84 /2018
In Service Appeal No.707/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 304

Date 18/03/2018

Niaz Gul,
PSHT, GPS Azer Khel, Karak.


PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa, through, Secretary (E&SE), Education Department, Peshawar.
2. The Director (E&SE) Education Department, Peshawar.
3. The District Education, officer (Male), Karak.

RESPONDENTS

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

.....
EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED: 29.11.2017 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.
.....

RESPECTFULLY SHEWETH:

1. That the applicant/appellant filed Service Appeal No.707/2016 against the impugned order dated 20.02.2016.
2. That the said appeal was finally heard on 29.11.2017. The said appeal was accepted and reinstated the appellant in to service and directed the respondent to conduct denovo-inquiry within period of two months after receipt of this judgment. (Copy of Judgment Dated 29.11.2017 and is attached as Annexure-A).
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 29.11.2017.
4. That in-action and non-implementation of the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.

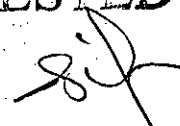


5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
6. That the petitioner has having no other remedy to file this Execution Petition.

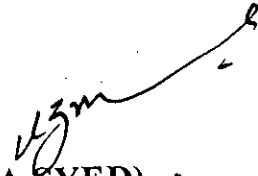

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 29.11.2017 of this august Tribunal in letter and spirit and reinstated the appellant into service. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of applicant/appellant.


APPLICANT/APELLANT
Niaz Gul

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

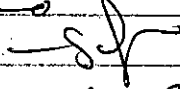
THROUGH:


(UZMA SYED)
& 
(Syed Noman ALI BUKHARI)
ADVOCATES, PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.


DEPONENT

Date of Presentation of Application 2-10-2018
Number of Words 1200
Copying Fee 8-00
Urgent 2-00
Total 10-00
Name of Copyist 
Date of Completion of Copy 2-10-2018
Date of Delivery of Copy 2-10-2018

①

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE), KARAK.

SANCTION

Under the relevant pension provisions and rules, Mr. Niaz Gul, PSHT GPS Azer Khel, Karak is hereby allowed to proceed on superannuation retirement from service w.e.f 05-02-2018 (A.N) with full benefits of pension and gratuity whereas the earlier office order of compulsory retirement order No. 1128-33 dated Karak the 20-02-2016 has been cancelled in light of the judgment of honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No 707/2016 dated 29-11-2017.

District Education Officer (M)
Karak

Endst: No 4698-4701 Date Karak the 2/10/2018

1. Director, Elementary and Secondary Education, Officer Khyber Pakhtunkhwa-Peshawar.
2. District Account Officer, Karak.
3. Dy: District Education Officer (M), Karak.
4. Sub Divisional Education Officer (M), Karak is directed to make necessary entry in his service book and the pension case be forwarded to the Office of the undersigned for further necessary action.
5. Niaz Gul, PSHT GPS Azer Khel, Karak.

TA 2/10/2018
District Education Officer (M)
Karak

(12)

No. 1036 / Dated Karak the 25/10 /2018.
From:-

The Sub-Divisional Edu: Officer
(Male) karak.

To:-

✓ Mr, Niaz Gul, PSHT,
GPS, Azher Kbel.

Subject:- SUPPLY OF PENSION PAPER.
Memo:

Reference District Education Officer (Male) Karak Vide Endst:
No.4825-30 Dated 05-10-2018.

It is to inform of you that the compulsory retirement order Issued by
D.E.O (M) Karak Vide Endst: No.1128-23 Dated 20-02-2016, is hereby
cancelled/ withdrawn and he is reinstated in service W.E.F 31-08-2015 whereas the
absent period from Govt; duty i.e 31-08-2015 to 05-02-2018 treated as leave
without pay and he has been retired of Superannuation W.E.f 05-02-2018, due to
attaining the age of sixty years.

Your Pension Paper alongwith supporting documents as awaited to
this Office So, you are directed in your own interest to submit it Immediately,
Otherwise this Office will have no responsibility of the dealing of the case.

Sub-Divisional Edu: Officer
(Male) karak

1/4

To

The District Education Officer
Male Karak



Copy To: THE SUB DIVISIONAL EDUCATION OFFICER WITH REFERENCE TO
THEIR LETTER NO. 1036 DATED 25 OCTOBER 2018

Subject: SUPPLY OF PENSION PAPERS.

It is submitted for your information that according to the judgment of Honorable court dated 29/11/2017 and execution order dated 08/10/2018, I am fully entitled to draw my service pay and allownces with effect from 01/08/2015 to 05/02/2018 being present in the service. The above said period which you have turned to leave without pay is my presence in the court and the Honorable court has given me my right. Hence the back benefit of pay and allownces is very utmost for me for which I had knocked the door of the court.

Sir, your this act of not giving my back benefits of pay and allownces is totally contra-vent to the court judgment and is totally illegal amount to disobedience and contempt of court also bear and mentioned in execution petition no.84 order dated 08/10/2018.

It is also stated for your information that keeping in view the respect of Education Department, I once again request to your honour to please give me all my Leftover pay and allownces back benefits first if not rather than face the action of Honorable court, because you have committed the contempt of court on repeated bases.

Yours Obediently,

Niaz Gul
Ex-PSHT

GPS Azar Khel Karak 27-10-2018

URGENT COURT MATTER

No 35-36

Dated 15/1/2019

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER
(MALE) PRIMARY KARAK.

To:- Mr. Niaz Gul Khattak, Ex PSHT
GPS Azar Khel, Residents of Village Gandari
Khattak Tehsil Takht-e-Nasrati District, Karak.
Mobile # 03349117285.

Subject:- **REMINDER FOR PROVISION OF PENSION**
PAPERS/ DOCUMENTS ALONGWITH SERVICE
BOOK FOR PREPARING PENSION BENEFITS.

Memo.

It is stated that you have already been informed by the undersigned vide letter No. 1036 dated 25-10-2018 with the directions to provide / supply pension paper in light of your retirement order vide Endst: No. 4825-30 dated Karak the 05-10-2018 & sanction letter No. 4698-470 dated Karak the 02-10-2018 of District Education Officer (Male), Karak but you failed to provide the same within period.

You are once again informed and directed to provide the required pension papers alongwith supporting documents and your own service book which is in your possession so that the undersigned may be able to proceed your pension case as the Execution Petition No. 401 of 2018 in Service Appeal No. 707/2016 filed by you is pending in the honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar and the undersigned may be able to produce a copy of pension in Execution Petition on date of hearing 04-02-2019.


Sub Divisional Educational Officer
(Male), Primary Karak.

Copy to District Education Officer (Male), Karak for information please.

Sub Divisional Educational Officer
(Male), Primary Karak.

URGENT COURT MATTER

No 315

Dated 15-1-19

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)

KARAK.

To:- Mr. Niaz Gul Khattak, Ex PSHT
GPS Azar Khel, Residents of Village Gandari
Khattak Tehsil Takht-e-Nasrati District, Karak.
Mobile # 03349117285.

Subject:- **REPLY**

Reference


- i. Your application dated 27-10-2018 to District Education Officer (Male) Karak under subject titled "Supply of Pension Paper".
- ii. Your application to Director E & SE KP Peshawar dated 03-12-2018 under subject titled payment of pension and left over payment and allowances w.e.f. 31-08-2015 to 05-02-2018".

Memo.

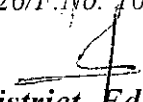
It is stated that this office has imposed major penalty upon you of "**Compulsory Retirement**" vide office order 1128-33 dated Karak the 20-02-2016 under Khyber Pakhtunkhwa Efficiency & Discipline Rules 2011 w.e.f 31-08-2015 and Service Appeal No. 707/2016 was accepted vide judgment dated 29-11-2017 and in light of judgment you were re-instated in service w.e.f 31-08-2015 to 05-02-18 and the absent period from duty as mentioned in Notice No. 788 dated 31-10-2015, Notice No. 2858 dated 17-11-2015 and Notice No. 2911 dated 02-12-2015 has been treated as leave without pay, however, you have been entitled of pension with back benefits vide sanction Endst: No. 4698-470 dated 02-10-2018

It is further stated that SDEO(M) Primary, Karak was directed by the undersigned to recover the salary of absent period from his GP Fund/Pension with intimation to this office if paid to the Ex Official vide office order dated 20-02-2016.

You are not entitled of back benefit rather the salary of absent period from his GP Fund / Pension if paid and get your pension with the directions to provide pension documents and service book to the office of SDEO(Male) Primary, Karak with short possible time so that Execution Petition may be completed.

e/v  15/01/19
District Educational Officer
(Male), Karak.

Copy to Director, Elementary & Secondary Education Department Khyber Pakhtunkhwa with reference letter No. 126/F.No. 162/Vol: 20/appeal of PST (M) General dated Peshawar 01-01-2019.


District Educational Officer
(Male), Karak.

BEFORE THE HON'ABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR. .

Execution Petition No. 401/2018

In

Service Appeal No. 707/2016

Niaz Gul (Appellant)

EDU VERSUS
~~Govt. of KPK~~ & others (Respondents)

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2	Photocopy of letter No. 2071-75/AAG dated 04-12-2017	A	4
3	Photocopy of letter No. 2607/ST dated 05-12-2017 alongwith photocopy of judgment	B	5-8
4	Photocopy of SO (Lit-II) E & SED/1-3/SA#707/16/Niaz Gul dated Peshawar, the 07-12-2017	C	9
5	Photocopy of letter No. 3566 /Lit-II dated Peshawar the 28-12-2017	D	10
6	Photocopy of letter No. 7457-60 dated 26-12-2017	E	11
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10	Photocopy of letter No. 1036 dated 25-10-2018	I	16
11	Photocopy of letter No. 35-36 dated 15-01-2019	J	17
12	Photocopy of Reply No. 315 dated 15-0-8 of letters dated 27-12-2018 and 03-2-2018	K	18-20 ¹⁹

Dated:- 15-03-2019

TA
District Education Officer
(Male), Karak

BEFORE THE HON'ABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR. .

Execution Petition No. 401/2018

In

Service Appeal No. 707/2016

Niaz Gul (Appellant)

VERSUS

EDO
~~Govt. of KP~~ & others (Respondents)

WRITTEN REPLY

Written reply on behalf of District Education Officer (Male), Karak

1. That the judgment in Service Appeal No. 707/2016 was passed on **29-11-2017** by this honourable Service Tribunal and compulsory retirement order dated 20-02-2016 was set aside.
2. That office of the Additional Advocate General KP, Service Tribunal Peshawar vide letter No. 2071-75/AAG dated 04-12-2017 was sent to Secretary to Govt: of KP , Education (E & SE), Dept: Peshawar, Director Education (E & SE) KP Peshawar and District Education Officer (Male), Karak and advised to direct your representative to get attested copies of the judgment dated 29-11-2017. Photocopy of letter No. 2071-75/AAG dated **04-12-2017** is enclosed as **Marked-A**.
3. That Registrar KP Service Tribunal Peshawar vide letter No. 2607/ST dated **05-12-2017** provided attested copy of judgment dated 29-11-2017 of this honourable Tribunal to District Education Officer (Male), Karak which was dispatched on **11-12-2017**. Photocopy of letter No. 2607/ST dated 05-12-2017 alongwith photocopy of judgment is enclosed as **Marked-B**.
4. That Secretary E & SE KP Peshawar vide letter No. SO (Lit-II) E & SED/1-3/SA#707/16/Niaz Gul dated Peshawar, the 07-12-2017 was dispatched on **16-12-2017** to the District Education Officer (Male), Karak with the directions to get attested copies of the said judgment dated 29-11-2017 and sent it to this department alongwith your **suggestion**

immediately. (Photocopy of SO (Lit-II) E & SED/1-3/SA#707/16/Niaz Gul dated Peshawar, the 07-12-2017 is enclosed as **Marked-C**.

5. That Director (E & SE) Department KP Peshawar sent letter vide letter No. 3566 /Lit-II dated Peshawar the **28-12-2017** to District Education Officer (Male), Karak with the directions to your representative to get attested copies of the judgment dated 29-11-2017 and other relevant record & **approach law department for further necessary action**. Photocopy of letter No. 3566 /Lit-II dated Peshawar the 28-12-2017 is enclosed as **Marked-D**.
6. That the District Education Officer (Male), Karak submitted all attested copies of Service Appeal No. 707/2016 vide letter No. 7457-60 dated **26-12-2017** to Director E & SE KP Peshawar for de-novo proceedings. Photocopy of letter No. 7457-60 dated 26-12-2017 is enclosed as **Marked-E**.
7. That the District Education Officer (Male), Karak vide letter No. 7457 dated 26-12-2017 **sought guidance** from the Director Elementary & Secondary Education Department, KP Peshawar regarding conducting den-novo inquiry as per judgment of honourable Tribunal or to file CPLA in august Supreme Court of Pakistan against the above mentioned judgment. Photocopy of letter No. 7457 dated 26-12-2017 is enclosed as **Annexure-F**.
8. That in the light of judgment of this honourable Tribunal dated 29-11-2017, the appellant was re-instated in service vide Endst: No. 4825-30 dated 05-10-2018 w.e.f **31-08-2015** whereas the absent period from official duty w.e.f. 31-08-2015 to 05-02-2018 was treated as leave without pay and he was retired on superannuation from service w.e.f **05-02-2018** vide sanction Endst: No. 4698-4701 dated 02-10-2018. (Photocopy of office order No. 4825-30 dated 05-10-2018 and sanction office order No. 4698-4701 dated 02-10-2018 are enclosed as **Marked-G & H** respectively.
9. That the execution petition No. 84/2018 was filed by the appellant for implementation the judgment of this honourable Service Tribunal dated 29-11-2017.
10. That this honourable Service Tribunal disposed of the execution petition on 08-10-2018 in light of re-instatement order No. 4825-30 dated 05-10-2018 and Pension Sanction Order No. 4698-4701 dated 10-02-2018.

11. That de-novo inquiry was not conducted due to laps of time in official correspondence with the high ups regarding the judgment of this honourable Service Tribunal and in the meanwhile the appellant was reached to age of superannuation hence he was retired on superannuation w.e.f 05-02-2018.
12. That after implementation of the judgment of this honourable Service Tribunal the appellant was directed by the SDEO (Male), Primary Karak vide his letter No. 1036 dated 25-10-2018 to provide pension paper and then issued reminder for provision of pension paper with service book vide letter No. 35-36 dated 15-01-2019. Photocopy of letter No. 1036 dated 25-10-2018 and letter No. 35-36 dated 15-01-2019 are enclosed as **Marked-I & J**.
14. That vide letter No. 315 dated 15-01-2019 the District Education Officer (Male) Karak served reply the application submitted by appellant dated 27-10-2018 and application dated 03-12-2018. (Photocopy of Reply with letters dated 27-12-2018 and 03-2-2018 are enclosed as **Annexure "K"**).

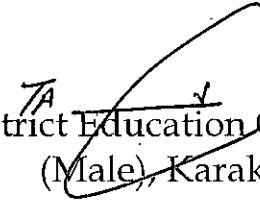
=====

Prayer

So it is, therefore, most humbly and respectfully prayed that this honourable Service Tribunal KP Peshawar may very graciously be pleased to dismiss the execution petition as the judgment of this honourable Service Tribunal has been implemented.

=====

Dated:- 15-03-2019

TA

 District Education Officer
 (Male), Karak.

OFFICE OF
THE ADDITIONAL ADVOCATE GENERAL
KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
PESHAWAR.

NO. 2071-75/AG AG
DATED 4/1/2017.

55 (4)
(Annex-A)

To

1. The Secretary to Government of Khyber Pakhtunkhwa, Education (E& SE) Department, Peshawar.
2. The Director, Khyber Pakhtunkhwa, Education (E&SE) Department, Peshawar.
3. The District Education Officer (Male), Karak.

Subject:- APPEAL NO. 707/2016, "TITLED MR. NIAZ GUL VS EDUCATION".

Sir,

With reference to the subject noted above and to state that the above mentioned case/appeal was pending before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Bench-II Peshawar which was accepted vide judgment dated 29-11-2017.

You are therefore advised to direct your representative to get attested copies of the Judgment dated 29-11-2017 and other relevant record and approach law department for further course of action.

SS 5/12
DCU
AG
05/12

Kabir Ullah Khattak

(KABIR ULLAH KHATTAK)
ADDITIONAL ADVOCATE GENERAL
KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
PESHAWAR

SOLICITOR
6/12

NO. _____

Date: / / 2017

Copy forwarded to:

1. The Deputy Solicitor Law Parliamentary Affairs & Human Rights Department, Peshawar.
2. Appeal File.

329
5/12

678
Sh

ADDITIONAL ADVOCATE GENERAL
KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
PESHAWAR

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

(Annex-B)

5

No 26075/ST

Dated 05/12/2017

7027
11-12-2017

Annex put up on P. file.

[Signature]

To

The District Education Officer (Male),
Govt: of Khyber Pakhutnkhwa,
Karak:

Subject:

JUDGEMENT IN APPEAL NO. 707/16, MR. NIAZ GUL.

I am directed to forward herewith a certified copy of Judgment dated 29/11/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

[Signature]
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

(6)

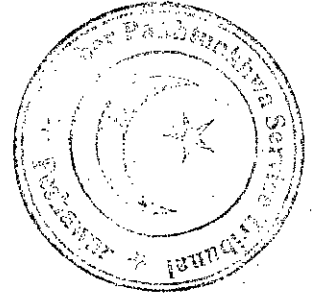
1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 707/2016

Date of Institution ... 14.06.2016

Date of Decision ... 29.11.2017



Niaz Gul,
PSHT, GPS Azer Khel, Karak.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary (Elementary and Secondary) Education Department, Peshawar and 2 others.

... (Respondents)

MR. TAJDAR AHMAD KHAN
Advocate

... For appellant

MR. KABIRULLAH KHATTAK,
Additional Advocate General,

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

...
...

CHAIRMAN
MEMBER

ATTESTED

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.-

Arguments of the

learned counsel for the parties heard and record perused.

FACTS

2. The appellant is aggrieved from order of compulsory retirement dated 20.02.2016 against which he filed departmental appeal on 22.02.2016 which was

rejected on 06.04.2016 and communicated to him on 19.05.2016. Thereafter he filed the present service appeal on 14.06.2016.

ARGUMENTS.

3. The learned counsel for the appellant argued that the appellant was transferred to GPS Kaddu Khel on 31.08.2015. That the appellant assumed the charge on 01.09.2015. That the appellant never remained absent from duty. That the attendance register also is a proof of the attendance of the appellant. That the impugned order was passed without any notice to the appellant. That the impugned order was passed retrospectively which is nullity in the eyes of law.

4. On the other hand, the learned Additional Advocate General argued that all the codal formalities were fulfilled by issuing show cause notice. That notice was also published in the news paper. That the appellant remained absent from duty without any leave. That the whole proceedings are lawful. That the appellant did not perform his official duties.

CONCLUSION.

5. Regardless to the factual controversy of absence from duty the very impugned order has been passed retrospectively. In the light of the judgment reported as 1985 SCMR 1178 such order is a void order.

6. In view of the judgment mentioned above this appeal is accepted and the appellant is reinstated in service. The department is directed to hold de-novo proceedings within a period of two months after receipt of this judgment. The issue


ATTESTED

Signature
 EIA
 Cyber
 Service Tribunal, Peshawar

8

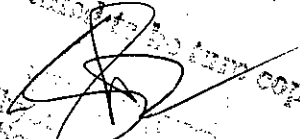
2

of back benefits of the appellant shall be subject to final outcome of the *de-novo* proceedings. Parties are left to bear their own costs. File be consigned to the record room.


(AHMAD HASSAN)
MEMBER


(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
29.11.2017


Certified to be true copy
Secretary
Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-92111

MOST IMMEDIATE / COURT MATTER.

(Annex C) 9

NO. SO (Lit-II) E&SED/1-3/SA # 707/16/Niaz Gul
Dated Peshawar, the 07-12-2017.

7159
16-12-2017

Mr. ~~Abdul Wahid Khan~~
Adv. Sy. ~~...~~ in 19

To

1. The Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa Peshawar.

✓ 2. The District Education Officer (M),
E&SE, Karak.

Subject: SERVICE APPEAL NO. 707/2016 TITLED NIAZ GUL VS
EDUCATION DEPARTMENT.

I am directed to refer to the subject noted above and to enclose herewith a copy of Addl: Advocate General, Khyber Pakhtunkhwa, Peshawar letter No. 2071-75/AAG dated 04-12-2017 and to state that the subject case/appeal was accepted vide Judgment dated 29-11-2017.

It is, therefore, requested to kindly direct your representative to get attested copies of the said Judgment dated 29-11-2017 and send it to this Department alongwith your suggestion immediately.

Enc: as above.

SECTION OFFICER (LIT:II)

Endst: of even No. & date.

Copy is forwarded to:-

1. The Addl: Advocate General, Khyber Pakhtunkhwa, Peshawar w/r to his letter No. & date cited above.
2. P.A to Deputy Secretary (Legal) E&SE Department.

SECTION OFFICER (LIT:II)

Return with remarks that this the case
& pay level so, Superintendent ps
B ps 17 may be directed to
attend the case I am totally
unaware of the case

Most Immediate
Court Matter



7282
21-12--
(Registered)
DIRECTORATE ELEMENTARY & SECONDARY EDUCATION
Khyber Pakhtunkhwa, Peshawar

No 3653 (Lit: II)

Dated Peshawar the 28/12/2017

To

The District Education Officer
(m) District Karak.

Subject :- SERVICE APPEAL No: 707/2016, CASE TITLED NIAZ GUL VS EDUCATION DEPARTMENT.

Memo:

I am directed & to refer the Letter No: SO(Lit: II)E&SED/1-3/16 dated 07/12/2017 alongwith letter Dated 04/12/2017, of the Addl: Advocate General Khyber Pakhtunkhwa, Service Tribunal, Peshawar, received from the Section Officer(Lit: II)E&SE Department, Khyber Pakhtunkhwa, Peshawar, on the subject cited above, as well as addressed to you & to state that the above mentioned case was pending before the Service Tribunal Peshawar, which was accepted vide judgment dated 29/11/2017.

Therefore, you are requested to direct your representative to get attested copies of the judgment dated 29/11/2017 & other relevant record & approach law Department for further necessary action.

Encl: (AA)

[Signature]
Asstt: Director (Lit: II)
(E&SE) Khyber Pakhtunkhwa,
Peshawar. 15/12/17

Endst: No _____

Copy forwarded to :-

1. Section Officer (Lit: II) E&SE Khyber Pakhtunkhwa, Peshawar.
2. PA to Director, local office.

[Signature]
Asstt: Director (Lit: II)
(E&SE) Khyber Pakhtunkhwa,
Peshawar.

a aware of the case
be I am totally
[Signature]



NO. 7457-60

(Annex-E)

(11)

Dated: 26-12-2017

8

Director,
E&SE KPK.

SUBJECT: SERVICE APPEAL NO.707/2016 TITLED NAIZ GUL V/S EDUCATION DEPARTMENT.

MEMO:

Ref: your NO.3655/(Lit) Dated 18.12/2017 all attested copies as desired in the instant case for deno proceedings are submitted for further perusal please.

118

District Education Officer (M)
District Karak

Ends': of Even NO & Date
Copy for information to SO (Lit) E&SED.

5

District Education Officer (M)
District Karak

26/12/2017

(Annex-F) (12)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE),
KARAK.

No 7457

Dated 26/12/2017

To:- Director Elementary & Secondary Education
Department, Khyber Pakhtunkhwa, Peshawar.

Subject:- **SERVICE APPEAL NO. 707 OF 2016 TITLED**
“NIAZ GUL PSHT, GPS AZER KHEL V.S GOVT:
OF KHYBER PAKHTUNKHWA, THROUGH
SECRETARY ELEMENTARY & SECONDARY
EDUCATION DEPARTMENT, PESHAWAR 7
OTHERS” DECIDED ON 29-11-2017 BY SERVICE
TRIBUNAL KP, PESHAWAR.

Respected Sir,

It is humbly stated for your kind notice that the District Education Officer (Male), Karak has issued compulsory retirement order dated 20-02-2016 of Mr. Niaz Gul, PSHT, GPS Azer Khel and after dismissing the departmental appeal on 06-04-2016, the said Niaz Gul filed a Service Appeal No. 707 of 2016 in the honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar.

In light of judgment reported as 1985 SCMR 1178, the honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar accepted the above mentioned service appeal and the appellant is reinstated in service and the department is directed to hold de-novo proceedings within a period of two months after receipt of this judgment. The issue of back benefits of the appellant shall be subject to final outcome of the de-novo proceedings.

Attested photocopy of judgment alongwith ground of service appeal and, compulsory retirement order is annexed.

The above judgment is forwarded to your kind office with the request either de-novo proceedings be initiated against the appellant by the undersigned as per judgment of the honourable Service Tribunal with advance your kind guidance and approval or to file Civil Petition for Leave to Appeal (CPLA) in the apex Supreme Court of Pakistan against the judgment of honourable Service Tribunal passed in the above titled Service Appeal. If so then the case may kindly be pleased to forward to Secretary Law through Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa so that the department may be able to file CPLA well within time. Early necessary guidance will be highly appreciated.


District Education Officer (M)
Karak.

(Annex-9) (14)

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE), KARAK.

OFFICE ORDER.

In light of the judgment of Hon'able Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No. 707/2016 dated 29-11-2017, the compulsory retirement order of Mr. Niaz Gul PHST, GPS Azer Khel, Karak vide Endst: No. 1128-23 dated 20-02-2016 is hereby cancelled / withdrawn and he is re-instated in service w.e.f 31-08-2015 whereas the absent period from official duty w.e.f 31-08-2015 to 05-02-2018 is treated as leave without pay and he has been retired from service w.e.f 05-02-2018 (A.N) after attaining the age of superannuation vide pension sanction order No. 4698-4701 dated 02-10-2018.

 District Education Officer (M)
Karak
5/10/18

Endst: No 4825-30 Dated Karak the 5/10/2018

Copy to the:-

1. Director , Elementary and Secondary Education, Officer Khyber Pakhtunkhwa Peshawar.
2. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar.
3. District Account Officer, Karak
4. Dy: District Education Officer (M), Karak.
5. Sub Divisional Education Officer (M), Karak.
6. Niaz Gul, PSHT GPS Azer Khel, Karak.

 District Education Officer (M)
Karak
5/10/18

(Annex-H) 15

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE), KARAK.

SANCTION

Under the relevant pension provisions and rules, Mr. Niaz Gul, PSHT GPS Azer Khel, Karak is hereby allowed to proceed on superannuation retirement from service w.e.f 05-02-2018 (A.N) with full benefits of pension and gratuity whereas the earlier office order of compulsory retirement order No. 1128-33 dated Karak the 20-02-2016 has been cancelled in light of the judgment of honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No 707/2016 dated 29-11-2017.

4
District Education Officer (M)
Karak

Endst: No 4698-4701 Date Karak the 2/10/2018

1. Director, Elementary and Secondary Education, Officer Khyber Pakhtunkhwa Peshawar.
2. District Account Officer, Karak.
3. Dy: District Education Officer (M), Karak.
4. Sub Divisional Education Officer (M), Karak is directed to make necessary entry in his service book and the pension case be forwarded to the Office of the undersigned for further necessary action.
5. Niaz Gul, PSHT GPS Azer Khel, Karak.

2/10/2018
District Education Officer (M)
Karak

② (Annex-I) ⑩

No. 1036 /
From:-

Dated Karak the 25/10 /2018.

The Sub Divisional Edu: Officer
(Male) karak.

To:-

✓ Mr. Niaz Gul, PSHT,
GPS, Azher Kbel.

Subject:-
Memo:-

SUPPLY OF PENSION PAPER.

Reference District Education Officer, (Male) Karak Vide Endst:

No. 4825-30 Dated 05-10-2018.

It is to inform of you that the compulsory retirement order Issued by
D.E.O (M) Karak Vide Endst: No. 1128-23 Dated 20-02-2016. is hereby
cancelled/ withdrawn and he is reinstated in service W.E.F 31-08-2015 whereas the
absent period from Govt; duty i.e 31-08-2015 to 05-02-2018 treated as leave
without pay and he has been retired of Superannuation W.E.f 05-02-2018. due to
attaining the age of sixty years.

Your Pension Paper alongwith supporting documents as awaited to
this Office So, you are directed in your own interest to submit it immediately.
Otherwise this Office will have no responsibility of the dealing of the case.

Sub Divisional Edu: Officer
(Male) karak

(Annex - J) ①
URGENT COURT MATTER

No 35-36

Dated 15/1/2019

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER
(MALE) PRIMARY KARAK.


To:- Mr. Niaz Gul Khattak, Ex PSHT.
GPS Azar Khel, Residents of Village Gandari
Khattak Tehsil Takht-e-Nasrati District, Karak.
Mobile # 03349117285.

Subject:- **REMINDER FOR PROVISION OF PENSION**
PAPERS/ DOCUMENTS ALONGWITH SERVICE
BOOK FOR PREPARING PENSION BENEFITS.


Memo.

It is stated that you have already been informed by the undersigned vide letter No. 1036 dated 25-10-2018 with the directions to provide / supply pension paper in light of your retirement order vide Endst: No. 4825-30 dated Karak the 05-10-2018 & sanction letter No. 4698-470 dated Karak the 02-10-2018 of District Education Officer (Male), Karak but you failed to provide the same within period.

You are once again informed and directed to provide the required pension papers alongwith supporting documents and your own service book which is in your possession so that the undersigned may be able to proceed your pension case as the Execution Petition No. 401 of 2018 in Service Appeal No. 707/2016 filed by you is pending in the honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar and the undersigned may be able to produce a copy of pension in Execution Petition on date of hearing 04-02-2019.


Sub Divisional Educational Officer
(Male), Primary Karak.

Copy to District Education Officer (Male), Karak for information please.


Sub Divisional Educational Officer
(Male), Primary Karak.

(Annex-10) (18)
URGENT COURT MATTER

No 315 Dated 15-1-19

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
KARAK.

To:- Mr. Niaz Gul Khattak, Ex PSHT
GPS Azar Khel, Residents of Village Gandari
Khattak Tehsil Takht-e-Nasrati District, Karak.
Mobile # 03349117285.

Subject:- **REPLY**

Reference

- i. Your application dated 27-10-2018 to District Education Officer (Male) Karak under subject titled "Supply of Pension Paper".
- ii. Your application to Director E & SE KP Peshawar dated 03-12-2018 under subject titled payment of pension and left over payment and allowances w.e.f. 31-08-2015 to 05-02-2018".

Memo.

It is stated that this office has imposed major penalty upon you of "Compulsory Retirement" vide office order 1128-33 dated Karak on 20-02-2016 under Khyber Pakhtunkhwa Efficiency & Discipline Rules 2011 w.e.f 31-08-2015 and Service Appeal No. 707/2016 was accepted vide judgment dated 29-11-2017 and in light of judgment you were re-instated in service w.e.f 31-08-2015 to 05-02-15 and the absent period from duty as mentioned in Notice No. 788 dated 31-10-2015, Notice No. 2858 dated 17-11-2015 and Notice No. 2911 dated 02-12-2015 has been treated as leave without pay, however, you have been entitled of pension with back benefits vide sanction Endst: No. 4698-470 dated 02-10-2018

It is further stated that SDEO(M) Primary, Karak was directed by the undersigned to recover the salary of absent period from his GP Fund/Pension with intimation to this office if paid to the Ex Official vide office order dated 20-02-2016.

You are not entitled of back benefit rather the salary of absent period from his GP Fund / Pension if paid and get your pension with the directions to provide pension documents and service book to the office of SDEO(Male) Primary, Karak with short possible time so that Execution Petition may be completed.

15/01/2019
e/o District Educational Officer
(Male), Karak.

Copy to Director Elementary & Secondary Education Department Khyber Pakhtunkhwa with reference letter No. 126/F.No. 162/Vol: 20/appeal of PST (M, General dated Peshawar 01-01-2019.

District Educational Officer
(Male), Karak.

(17) (19)

The District Education Officer
Male Karak

Copy To: THE SUB DIVISIONAL EDUCATION OFFICER WITH REFERENCE TO
THEIR LETTER NO. 1036 DATED 25 OCTOBER 2018

Subject: SUPPLY OF PENSION PAPERS.

It is submitted for your information that according to the judgment of Honorable court dated 29/11/2017 and execution order dated 08/10/2018, I am fully entitled to draw my service pay and allowances with effect from 01/08/2015 to 05/02/2018 being present in the service. The above said period which you have turned to leave without pay is my presence in the court and the Honorable court has given me my right. Hence the back benefit of pay and allowances is very utmost for me for which I had knocked the door of the court.

Sir, your this act of not giving my back benefits of pay and allowances is totally contra-vent to the court judgment and is totally illegal amount to disobedience and contempt of court also bear and mentioned in execution petition no. 84 order dated 08/10/2018.

It is also stated for your information that keeping in view the respect of Education Department, I once again request to your honour to please give me all my leftover pay and allowances back benefits first if not rather than face the action of Honorable court, because you have committed the contempt of court on repeated bases.

Yours Obediently,

Niaz Gul

Ex-PSHT

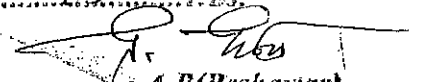
GPS Azar Khel Karak

27-10-2018

①

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Filed on 27-09-2019
By Mian Sardullah Shaukati, A.O.R.
With 03 P.P.s.


A.R.(Peshawar)

CPLA NO. 635-P/2019

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar
2. Director Elementary & Scondary Education, Khyber Pakhtunkhwa, Peshawar
3. District Education Officer (Male) Karak

VERSUS

PETITIONERS

Niaz Gul PSHT, GPS Azar Khel, Karak

RESPONDENT

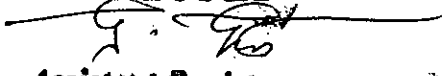
CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLES 212(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE IMPUGNED JUDGMENT/ ORDER OF LEARNED KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR DATED 10/07/2019 IN EXECUTION PETITION NO.401/2018 IN SERVICE APPEAL NO. 707/2016.

RESPECTFULLY SHEWETH

The substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar does suffer from material illegality, factually incorrect and require interference by this august Court?
2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly and legally exercised its jurisdiction in the matter in hand?


ATTESTED


Assistant Registrar
Supreme Court of Pakistan
Peshawar.

3. Whether the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar is in utter violation of law, facts and justice?
4. Whether fresh order was passed by the competent authority in exercise of his power could be set aside in the execution proceeding of previous order wherein the execution proceeding has been completed and consigned by reaching to its logical conclusion and become past and closed chapter?
5. Whether the previous proceeding of execution was past and closed chapter and the instant order was passed on the basis of direction in previous order which constitutes fresh cause of action and could not be set aside in the already completed execution proceeding?
6. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has exceeded in exercise of its jurisdiction by assuming jurisdiction in already completed and filed proceeding?
7. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has not legally erred by culminating the disciplinary proceeding on the pretext of not initiating denovo proceeding within the time stipulated period in the previous judgment?
8. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly construed the record and material in its true perspective?
9. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly applied and interpreted the law on the subject?


FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

ATTESTED

 Assistant Registrar
 Supreme Court of Pakistan
 Peshawar.

That the respondent was serving in Education Department as PSHT in Government Primary School Azar Khel, Karak who absented himself from duty.

2. That on the allegation of absentee, disciplinary proceeding was initiated wherein the respondent was compulsory retired from service on 20/2/2016 and the departmental appeal of respondent was also rejected vide order dated 22/2/2016.
3. That the respondent challenged his punishment before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in service appeal No.707/2016 which was allowed with direction to conduct denovo enquiry vide judgment and order dated 29/11/2017.
4. That the respondent filed execution petition No.84/2018 for implementation of the order and in compliance of the order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar the respondent was reinstated into his service vide order dated 05/02/2018 and execution was consigned.
5. That in the meantime the respondent reached to the age of superannuation and retired from service vide order dated 5/2/2018.
6. That the disciplinary proceeding was pending against the respondent therefore the respondent retirement order was modified and the period of absence from 31/08/2018 to 05/02/2018 was treated as leave without pay on 25/10/2018.
7. That the respondent filed another execution petition No.401/2018 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar for implementation of the judgment/ order in service appeal No.707/2016 dated 29/11/2017 already implemented on 5/10/2018 wherein Para-wise comments were called from the petitioners which was filed.

ATTESTED

Assistant Registrar
Supreme Court of Pakistan
Peshawar.

- 8. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar again directed the petitioners in execution proceeding to restore the order of retirement of respondent vide order dated 05/02/2018 instead of 05/10/2018.
- 9. That the petitioners being aggrieved from the impugned judgment/order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 10/07/2019 in execution petition No.401/2018 prefer this CPLA before this august Court.
- 10. That the petitioners seek leave to appeal against the impugned judgment and order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 10/07/2019 in execution petition No.401/2018.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 10/07/2019 in execution petition No.401/2018 may graciously be granted.

Mian Saadullah Jandoli
 (Mian Saadullah Jandoli)
 Advocate-on-Record
 Supreme Court of Pakistan
 For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

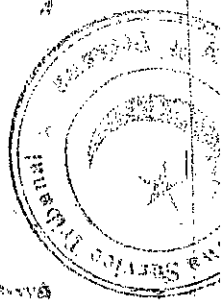
Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Certified to be true copy
[Signature]
Assistant Registrar
Supreme Court of Pakistan
Peshawar.

[Signature]
 Advocate-On-Record

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.



Execution Petition No. 84 /2018
In Service Appeal No:707/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 304

Date 19/03/2018

Nia: Gul,
PSHT, GPS Azer Khel, Karak.

PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary (E&SE), Education Department, Peshawar.
2. The Director (E&SE) Education Department, Peshawar.
3. The District Education, officer (Male), Karak.

RESPONDENTS

.....

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED: 29.11.2017 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.

.....

Certified to be true

Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

RESPECTFULLY SHEWETH:

1. That the applicant/appellant filed Service Appeal No.707/2016 against the impugned order dated 20.02.2016.
2. That the said appeal was finally heard on 29.11.2017. The said appeal was accepted and reinstated the appellant in to service and directed the respondent to conduct denovo-inquiry within period of two months after receipt of this judgment. (Copy of Judgment Dated 29.11.2017 and is attached as Annexure-A).
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 29.11.2017.
4. That in-action and non-implementation of the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.

EP 84/2018



08.10.2018

Petitioner Niaz Gul alongwith his counsel Miss Uzman Syed, Advocate present. M/S Waheedur Rahiman, AD and Sher Islam, ADO for the respondents present. The above named representatives produced implementation report, which is placed on file. Copy handed over to counsel for the appellant.

In view of the above, the petition is disposed off. File be consigned to the record room.

[Signature]
Chairman 08.10.18

ANNOUNCED

08.10.2018

[Signature]
Certified to be true copy
E. M. ANWAR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Filing of Application	28-11-18
Number of Words	800
Copying Fee	6.00
Urgent	2.00
Total	8.00
Name of Copyist	<i>[Signature]</i>
Date of Completion of Copy	28-11-18
Date of Delivery of Copy	28-11-18

No. 176

For Insurance Notices see reverse.
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed
Post Office Guide

Rs. Ps.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Received a registered
addressed to

Insured
Name
address
of sender

Date

No. 1344 /ST

Date 2020

sender of an insured postal
prescribed under the Pakistan
Post Office Guide

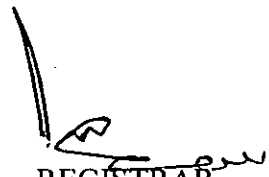
To,

District Education Officer (M),
District Karak.

Subject: Order Sheet dated 25.06.2020 in Execution Petition No. 401/2018, Niaz Gul vs
Education Deptt:

I am directed to forward herewith a certified copy of order sheet dated 25.06.2020
passed by this Tribunal on the above subject case for strict compliance.

Encl: As Above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

To

The District Education Officer
Male Karak

Subject: REPLY TO LETTER NO. 2156 DATED 29/06/2020

R/Sir,

REFERENCE TO YOUR LETTER NO. MENTIONED ABOVE


Your good honor directed me to provide Service Book as well as pension papers to prepare my pension case.

Sir, I have visited your office many times for my pension and left over pay and allowances, but ever time your office try to consent me to receive my pension without getting back benefits. I ask your good honor, how can you calculate my pension without giving me my pay w.e.f 31/08/2015 to 05/02/2018. It is clear that you will calculate my pension without giving me my leftover pay considering the period w.e.f 31/08/2015 to 05/02/2018 as leave without pay. On the other hand Honorable Chairman Service Tribunal has given the decision in my favor and also Director Education has directed you to give me left over pay and allowances.

It is therefore requested that Sanction of my left over pay & allowance may please be issued before calculating my pension benefits. I shall be thankful to your for this act of kindness.

Thanks

Dated: 16/07/2020


Yours Obediently,

Niaz Gul

Ex PSHT GPS Azar Khel

Karak

17 / 7/2020

No 2156

Dated 29-6-2020

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
KARAK.

To:- Mr. Niaz Gul Khattak, Ex PSHT
Residents of Village Gandari
Khattak Tehsil Takht-e-Nasrati District, Karak.
Mobile # 03349117285.

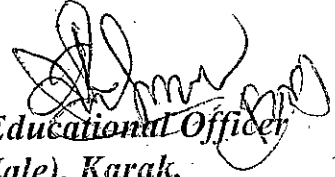
Subject:- **REMINDER FOR PROVISION OF PENSION PAPERS/ DOCUMENTS ALONGWITH SERVICE BOOK FOR PREPARING PENSION BENEFITS.**

Memo.

You have been retired from service w.e.f 05-02-2018 vide retirement order No. 4698-470 dated Karak the 02-10-2018 on attaining the age of 60 years and you have been earlier informed by the Sub Divisional Education Officer (M), Primary Karak vide letter No. 1036 dated 25-10-2018 and vide letter No. 35-36 dated 15-01-2019 and subsequent reminder with the directions to provide / supply pension paper and service book but you failed to provide the same till date. Without service book this office is not in a position to prepare your pension case.

You are once again directed to provide the required pension papers and service book which is in your possession so that the Education Office, Karak may be able to prepare your pension case as early as possible.

Kindly note that your execution petition is pending before the honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar in which next date of hearing 22/07/2020 has been fixed so that pension case may be produced in the next date of hearing.


District Educational Officer
(Male), Karak.

7/10/2020
7/10/2020
22/7/20

Invitation to Participate in Training of Lead Trainers (Pilot Phase - Karak & Malakand districts)

Muzhammad Ayyaz

CEO, Sherazhmadddoo, wagarsharari, Fard, hashmat Imrun, malak786

Jul 19, 2020 9:53 AM

Dear Sir,
Reference is made to the email for your information that NSER Training of Pilot Districts (Karak and Malakand) will commence from July 20-25 (Monday to Friday) at the District Secretariat Islamabad.
The said training is for the Districts Karak and Malakand. The training will be held at the District Secretariat Islamabad.
You are requested to participate in the Training yourself personally along with SDEOs on the date, time and venue mentioned above.

Yours faithfully,
Muzhammad Ayyaz

From: Muzhammad Ayyaz <muhammad.ayyaz@gmail.com>
Date: Tue, 10 Jul 2020, 11:19 PM

Subject: Invitation to Participate in Training of Lead Trainers (Pilot Phase - Karak & Malakand districts)
To: Muzhammad Ayyaz <muhammad.ayyaz@gmail.com> (Iranian Kazim <iranian.kazim@gmail.com>, hashmat ali <hashmat.ali@gmail.com>, Imrun <imrun@gmail.com>)

Dear Sir,

Reference is made to the email for your information that NSER Training of Pilot Districts (Karak and Malakand) will commence from July 20-25 (Monday to Friday) at the District Secretariat Islamabad.
The said training is for the Districts Karak and Malakand. The training will be held at the District Secretariat Islamabad.
You are requested to participate in the Training yourself personally along with SDEOs on the date, time and venue mentioned above.

1988

1988

To

DEO Karak

Subject: MISSION OF SERVICE BOOK, PENSION PAPERS AND PAY BILLS
LEFT OVER PAY AND ALLOWANCES W.E.F 31/08/2015 TO
05/02/2018 (BACK BENEFITS) AND COURT ORDERS.

Service Tribunal, honorable Chairman Order dated 07/09/2020;
The following documents are submitted for your further necessary action please.

1. Service book in original form page No. 01 to 47.
2. Left over pay bills (one copy)
3. Pay slip
4. Pension papers in Quadruplicate each copy containing 19 leaves
5. Service tribunal orders /decisions-
 - a. Judgment against appeal no. 707/2016
 - b. Decision of Execution petition 401/2018 dated 10/07/2019
 - c. Court order of Document Submission dated 07/09/2016. All attested 2020

Including copy of CNIC

Please payment of left over pay and allowances be made 1st and then payment of pension be made on the bases of pay.

Please receive all these documents and receipt may please be shown on my original copy duly stamped and signed.

Dated:14/09/2020

Received by
Imam Ullah
J/c SDEO (M) Karak
today on 14-09-2020

Niaz Gul Ex PSHT
GPS Azar Khel
Karak

Present Address:
Ganderi Khattak Takht e
Nasrati Karak

Sub-Div. Edu. Officer
(M) Karak

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 50/2018
In Service Appeal No. 707/2016



JPS Azar Khel, Karak

Versus

1. The Government of Khyber Pakhtunkhwa, through Secretary (E&SE), Education Department, Peshawar
2. The Director (E*SE) Education Department, Peshawar
3. The District Education Officer (Male) Karak

Respected Sir,

The theme of submitting this petition is that the Honorable court had decided on my appeal No. 707/2016. In their Judgment para 6, it was mentioned that the appellant is reinstated in service and the department was directed to hold de-nova proceedings within a period of two months after receipt of the judgment. The issue of back benefits of the appellant was subject to final outcome of the de-nova proceedings.

Sir, since 29/11/2017, the day of the announcement of the judgment till 19/03/2018, the department did not act upon the judgment (copy attached). They neither reinstate me nor given any leftover pay and allowances.

Sir, on 19/03/2018, I submitted execution petition No. 84/2018 for directing the respondents to implement the judgment dated 29/11/2017 of the Honourable court in letter and spirit.

Sir, on 28/03/2018 the court directed the respondents for implementation report for 10/05/2018, the respondents were directed for implementation, but they paid no heed and spoil the time and money of me & the honourable court.

Sir, when the respondents came into known that the Honourable court wants implementation, they seek time to proper implementation on 08/10/2018.

Sir, on 08/10/2018, the respondent produced sanction order No. 4698-4701 dated 02/10/2018 (Copy attached) in which the compulsory retirement order No. 1128-33 dated 20/02/2016 was cancelled and was ordered to proceed on superannuation retirement from service w.e.f 05/02/2018 (AN) with full benefits of pension and gratuity.

Now theme and the major reason of their contempt of court is that in the court they produced the order of pension and here at Karak they another letter No. 1036 dated 25/10/2018 (Copy Attached) addressed me with the contents that from 31/08/2015 to 05/02/2018 period has been treated as "Leave without pay".

Sir, the aforesaid period I have been in the court only for it I expend money time and knock the door of Honourable court.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Karak

EP 401/18

07.09.2020

Petitioner alongwith counsel and Sheraz Ahmad, D.E.O (Male) Karak. (respondent No. 4) alongwith Addl. AG for the respondents present.

It is the stance of D.E.O that the department required certain documents including service book etc. from the petitioner in order to proceed further towards implementation of the judgment. As per procedure requisite documents are to be submitted to the SDEO Karak. The DEO also undertakes to process the case of petitioner as early as possible. The petitioner, in turn, ensures the submission of required documents to the SDEO on 15.09.2020.

Adjourned to 20.10.2020 for further proceedings.

Certified to be true copy

Chairman

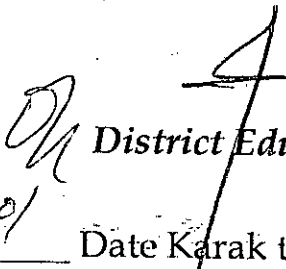
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 8/9/20
Number of Words 1600
Copying Fee 18
Urgent _____
Total 18
Name of Copy Dr
Date of Completion of Copy 8/9/20
Date of Delivery of Copy 8/9/20

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE), KARAK.

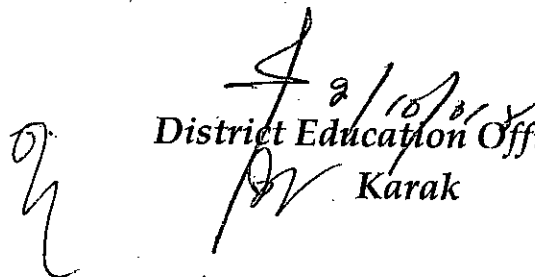
SANCTION

Under the relevant pension provisions and rules, Mr. Niaz Gul, PSHT GPS Azer Khel, Karak is hereby allowed to proceed on superannuation retirement from service w.e.f 05-02-2018 (A.N) with full benefits of pension and gratuity whereas the earlier office order of compulsory retirement order No. 1128-33 dated Karak the 20-02-2016 has been cancelled in light of the judgment of honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No 707/2016 dated 29-11-2017.


District Education Officer (M)
Karak

Endst: No 4698-4701 Date Karak the 2/10/2018

1. Director , Elementary and Secondary Education, Officer Khyber Pakhtunkhwa Peshawar.
2. District Account Officer, Karak.
3. Dy: District Education Officer (M), Karak.
4. Sub Divisional Education Officer (M), Karak is directed to make necessary entry in his service book and the pension case be forwarded to the Office of the undersigned for further necessary action.
5. Niaz Gul, PSHT GPS Azer Khel, Karak.


District Education Officer (M)
Karak

10.07.2019



Petitioner alongwith his counsels and Addl: AG alongwith Mr. Sher Islam, ADO for respondents present.

In the instant case a Sanction was issued by District Education Officer (M), Karak on 02.10.2018, whereby the petitioner was allowed to proceed on superannuation retirement w.e.f 05.02.2018 with full benefits of pension and gratuity, in pursuance to the judgment under implementation. The earlier office order of compulsory retirement of petitioner dated 20.02.2016 was also cancelled through the Sanction dated 02.10.2018. On 05.10.2018 another Order was issued wherein the cancellation/withdrawal of order dated 20.02.2016, pertaining to compulsory retirement of the petitioner was reiterated, however, the period from 31.08.2015 to 05.02.2018 was treated as leave without pay. This Office Order appears to be in conflict with previous Sanction dated 02.10.2018, and also the findings handed down in judgment under implementation. In the judgment dated 29.11.2017, the appellant/petitioner was reinstated into service while the order of his compulsory retirement was set aside. The department was directed to hold de-novo proceedings within the period of two months from the date of receipt of copy of the judgment which direction was not complied with by the respondents. De-novo proceedings were never held against the petitioner. As the issue of back benefits of the petitioner was made subject to the final outcome of the de-novo proceedings, therefore, no order adversely affecting the petitioner in respect of award of back benefits could be passed without holding de-novo proceedings.

In the circumstances, when Sanction dated 02.10.2018 was neither superseded nor altered or modified through subsequent Office Order dated 05.10.2018, it remains in field till date. The petitioner is entitled to the benefits as noted in the Sanction dated 02.10.2018, therefore, the respondents are required to calculate the emoluments for the period from 31.08.2015 to 05.02.2018 and allow the same in favour of the petitioner by disregarding the contents of Office Order dated 05.10.2018 wherein the said period is treated as leave without pay.

To come up for further proceedings on 29.08.2019 before S.B.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Signature]
Chairman

Certified to be true copy


[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 17/6/2021
No. of Copies 800
Date of Completion of Copy 17/6/2021
Date of Delivery of Copy 17/6/2021

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE), KARAK.

OFFICE ORDER.


In light of the judgment of Hon'able Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No. 707/2016 dated 29-11-2017, the compulsory retirement order of Mr. Niaz Gul PHST, GPS Azer Khel, Karak vide Endst: No. 1128-23 dated 20-02-2016 is hereby cancelled / withdrawn and he is re-instated in service w.e.f 31-08-2015 whereas the absent period from official duty w.e.f 31-08-2015 to 05-02-2018 is treated as leave without pay and he has been retired from service w.e.f 05-02-2018 (A.N) after attaining the age of superannuation vide pension sanction order No. 4698-4701 dated 02-10-2018.


District Education Officer (M)
Karak

Endst: No 4825-30 Dated Karak the 5/10/2018

Copy to the:-

1. Director , Elementary and Secondary Education, Officer Khyber Pakhtunkhwa Peshawar.
2. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar.
3. District Account Officer, Karak.
4. Dy: District Education Officer (M), Karak.
5. Sub Divisional Education Officer (M), Karak.
6. Niaz Gul, PSHT GPS Azer Khel, Karak.


District Education Officer (M)
Karak

4

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.



Execution Petition No. 84 /2018
In Service Appeal No.707/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 304

Date 19/03/2018

Niaz Gul,
PSHT, GPS Azer Khel, Karak.

PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary (E&SE), Education Department, Peshawar.
2. The Director (E&SE) Education Department, Peshawar.
3. The District Education, officer (Male), Karak.

RESPONDENTS

ATTESTED

[Signature]
EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED: 29.11.2017 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.

RESPECTFULLY SHEWETH:

1. That the applicant/appellant filed Service Appeal No.707/2016 against the impugned order dated 20.02.2016.
2. That the said appeal was finally heard on 29.11.2017. The said appeal was accepted and reinstated the appellant in to service and directed the respondent to conduct denovo-inquiry within period of two months after receipt of this judgment. (Copy of Judgment Dated 29.11.2017 and is attached as Annexure-A).
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 29.11.2017.
4. That in-action and non-implementation of the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.

05.08.2021

Petitioner in person and Mr. Kabirullah Khattak,
Addl. AG for the respondents present.

Learned AAG states that the matter has been dealt
with by Mr. Muhammad Adeel Butt, Addl. AG who is on
summer vacations. Adjourned to 17.08.2021 before S.B.


Chairman

17.08.2021

Petitioner in person and Mr. Muhammad Adeel Butt,
Addl. AG for the respondents present.

No representative of the respondents is in
attendance. Learned AAG is required to contact the
respondents for issuance of an appropriate notification
towards implementation of the judgment as directed in
order dated 17.06.2021 and submit compliance report on
next date. Case to come up on 22.09.2021 before S.B.


Chairman

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KARAK

SANCTION

Under the provision of revised rules 1981, sanction is hereby accorded to the grant of Earned leaves in favour of the following official as mentioned below as due to and admissible to him under the rules. In light of decision of the Honorable Khyber Pakhtunkhwa Services Tribunal, Peshawar Petition 84/2018 In Service appeal No 707/2016 Mr. Niaz Gul PSHT GPS Azher Khel.

S.NO	Name, Designation and School	Period of Leaves/ Remarks
1.	Mr. Niaz Gul PSHT GPS Azher Khel	(i) Leave for the period w.e.f. 31/08/2015 to 24/12/2015. (ii) 25/12/2015 to 31/12/2015 affix prefix. (iii) 01/01/2016 to 20/02/2016. (iv) 21/02/2016 to 31/03/2016. (v) 01/04/2016 to 07/04/2016. affix prefix. (vi) 08/04/2016 to 31/05/2016. (vii) 01/06/2016 to 31/08/2016. affix prefix. (viii) 01/09/2016 to 24/12/2016. (ix) 25/12/2016 to 31/12/2016. affix prefix. (x) 01/01/2017 to 31/03/2017. (xi) 01/04/2017 to 07/04/2017. affix prefix. (xii) 08/04/2017 to 31/05/2017. (xiii) 01/06/2017 to 31/08/2017. affix prefix. (xiv) 01/09/2017 to 28/11/2017. AND (xv) 29/11/2017 to 04/02/2018. Duty period

Note: - Necessary entry on this effect should be made in his Service Book.

**DISTRICT EDUCATION OFFICER
(MALE) KARAK**

Endst: No _____/Leave Case/ADO Pry:

Dated Karak The ____/____/2021

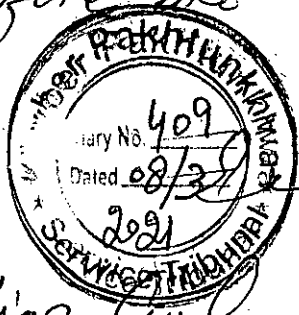
Copy to the:

1. District Accounts Officer.
2. SDEO (M) Karak with his memo No. 22887 Dated 04/10/2021 alongwith original Service Book.

**DISTRICT EDUCATION OFFICER
(MALE) KARAK**



Before the Wyalet palkhachura Seemee Tribunal
perheer



petitioner No. 401/2018.

Migz Cal vs Education Dept.

Put up to the court with
valuable app. for

Application for early hearing in the above

titled execution petition.

Reviewed: 8/5/2021

1) That the above titled execution petition
is pending adjudication and fixed for
hearing on dated 26.04.2021.

2) That the above titled execution petition is
filed for the cessation of the execution
petition.

3) That the date fixed is too far to
meet the end of Justice.

It is therefore most humbly prayed that on
acceptance of this early hearing application in
above titled execution petition may very kindly
fixed an earlier date to meet the end
of Justice.

Dated 8/03/2021 P.T.O / M

8/3/21 Appellant
Migz Cal

The date of next hearing is in the
next month.

shall remain posted to the date
already fixed in the matter.

D
8/3/21.

17.06.2021

Petitioner in person and Mr. Kabirullah Khattak, Addl. AG alongwith Sajid Superintendent for the respondents present.

The petitioner has at his credit the judgment of this Tribunal passed on 29.11.2017 in Service Appeal No. 707/2016. According to operative part in Paragraph-6 thereof, the appeal was accepted and the appellant was reinstated into service with direction to the department to hold de-novo proceedings within a period of two months, after receipt of the judgment. It was further held in the operative part that the issue of back benefits of the appellant/petitioner shall be subject to final outcome of the de-novo proceedings. As evident from the facts discussed in Paragraph-2 of the judgment, the appellant was retired compulsorily from service on 22.02.2016 and on his approaching to the Tribunal with the aforementioned appeal, he was reinstated in service with order of denovo enquiry. After reinstatement of the petitioner, he was not subjected to denovo enquiry and by an order was issued on 05.10.2018 towards implementation of judgment of this Tribunal, the compulsory retirement of Mr. Niaz Gul (present petitioner) was cancelled/withdrawn and he was straightaway reinstated in service w.e.f 31.08.2015 to 05.02.2018; while he was allowed to proceed on retirement from



28.11.2017, it may be observed that the petitioner due to effects of the order of compulsory retirement in field, was not able to perform the duty. If the department had conducted the denovo enquiry and as its outcome, it would have found that absence of the appellant before compulsory retirement was willful, then the same could be treated as leave without pay in continuation, the second period could also be linked with the original period of absence. For reasons best known to the departmental authorities, they did not opt for holding the denovo enquiry and they were pleased to set aside the order of compulsory retirement without enquiry. Then, there remains no justification with them to treat the period of absence in between 31.08.2015 and 28.11.2017 as leave without pay. Regarding the third period as noted above, needless to say that the petitioner would be deemed to have been reinstated in service by the judgment dated 29.11.2017; and if the department had failed to pass administrative order of petitioner's reinstatement, omission in no way is meant to deprive the petitioner his right of reinstatement accrued to him upon pronouncement. Thus, the third period w.e.f. 29.11.2017 to 04.02.2018 has to be treated on-duty. In view of the discussion herein before based on the facts and circumstances, it is held that the period treated as leave without pay in the departmental order dated 05.10.2017 is to be treated as on-duty.

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KARAK

SANCTION:

Under the provision of revised rules 1981, sanction is hereby accorded to the grant of Earned leaves in favour of the following official as mentioned below as due to and admissible to him under the rules. In light of decision of the Honorable Khyber Pakhtunkhwa Services Tribunal, Peshawar Petition 84/2018 in Service Appeal No. 707/2016 Mr. Niaz Gul PSHT GPS Azher Khel.

S.No	Name, Designation and School	Period of Leaves / Remarks
1.	Mr. Niaz Gul PSHT GPS Azher Khel	(i) Leave of Period w.e.f 31/08/2015 to 20/02/2016 (174) days on full pay. (ii) Leave of Period w.e.f 21/02/2016 to 06/08/2016 (168) days on full pay. (iii) Leave of Period w.e.f 07/08/2016 to 28/11/2017 Leave without pay. (iv) Leave of Period w.e.f 29/11/2017 to 04/02/2018 (70) days on Duty Period.

Note: **Necessary entry on this effect should be made in his Service Book.**


DISTRICT EDUCATION OFFICER
(MALE) KARAK

Endst: No 5344-45 /Leave Case / ADO Pry: Dated Karak The 30/11 /2021

Copy to the:

1. District Accounts Officer
2. SDEO(M) Karak with his memo No. 22887, dated 04/10/2021 alongwith original Service Book.


DISTRICT EDUCATION OFFICER
(MALE) KARAK

To

The chairman Service Tribunal

Khyber Pakhtunkhwa Peshawar

Subject: **OBJECTION ON SANCTION ORDER WHICH PRODUCED BEFORE THE SERVICE TRIBUNAL COURT ON HEARING DATE 10/11/2021**

Respected Sir,

Most submissive I beg to say that first the sanction order of the District Education Officer is fake and factitious because Sanction order is always issued and signed by competent authorities. The aforesaid sanction order Endst: No. 5344-45/Leave case/Add Pry dated 30/11/2021 is signed for not by the competent authority in personal i-e District Education Officer name Sheraz Ahmad. Same order is produced by Mr. Sher Nawab , Budget & Account Officer Karak.

Similarly they have already done the same practice vide issued their office order No. 4825-30 dated 05/10/2018 in which they have put the period w.e.f 31/08/2015 to 05/02/2018 leave without pay , which I have objected and the late Chairman set aside that order and declared that when Sanction dated 02/10/2018 was neither superseded nor altered or modified through subsequent office order dated 05/10/2018, it remain in field till date. The petitioner is entitled to the benefits as noted in the Sanction dated 02/10/2018. Therefore the respondents are required to calculate the emoluments for the period form 31/08/2015 to 05/02/2018 and allow the same in favour of the petitioner by disregarding the contents of office order dated 05/10/2018 wherein the said period is treated leave without pay. (Copies of all attached for perusal please)

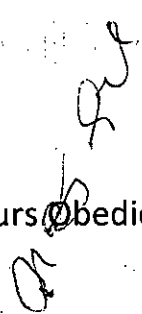
Moreover broadly speaking, they neither understand or not do intentionally the contents of order issued by your Honour dated 17/06/2021 in which you have discussed wholly in my favour and at the some up your Honour has order as follow:-

Therefore in order to being, the things in conformity with the judgement the period from 31/08/2015 to 20/02/2016 and 21/02/2016 and from 21/02/2016 to 28/11/2016 be treated as leave with pay in light of leave rules if the leave account of the petition supports that there was sufficient leave at his credit. The period form 29/11/2017 to 04/02/2018 be treated as duty period of the petitioner. The respondent without working on the given line found an easy way to treat all the three aforementioned periods as leave without pay. Sir, rather this juncture has already been finished by late Chairman order 10/07/2019. (Copy attached)

Sir, they were required to issue proper Sanction Order of three periods as directed in order dated 17/06/2021 and were to allow me for all the three period with pay whereas they showed four periods and given loss of maximum 13 months' pay by quoting no rule and regulation in their sanction order.

In view of the above it is requested that these persons have no fear from the Court that is why that since of 5 years, I am without pay and pension and lead very pitiable, miserable life. Therefore they may please be seriously dealt so that they feel and other people aspect that courts are available for justice, otherwise this practice will prevail dismay in teachers of District Karak. I shall be very grateful to you for your this act of kindness.

Yours Obediently,


23/11/2021
Niaz Gul Ex PSHT
GPS Azar Khel Karak
R/O Ganderi Khattak
Takht-e-Nasrati Karak

65

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) KARAK

SANCTION

Under the relevant pension provisions and rules, Mr. Niaz Gul, PSHT GPS Azer Khel, Karak is hereby allowed to proceed on superannuation retirement from service w.e.f 05-02-2018 (A.N) with full benefits of pension and gratuity whereas the earlier office order of compulsory retirement order No. 1128-33 dated Karak the 20-02-2016 has been cancelled in light of the judgment of honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No 707/2016 dated 29-11-2017.

[Signature]
District Education Officer (M)
Karak

Endst: No 4698-4701 Date Karak the 2/10/2018

1. Director, Elementary and Secondary Education, Officer Khyber Pakhtunkhwa Peshawar.
2. District Account Officer, Karak.
3. Dy. District Education Officer (M), Karak.
4. Sub Divisional Education Officer (M), Karak is directed to make necessary entry in his service book and the pension case be forwarded to the Office of the undersigned for further necessary action.
5. Niaz Gul, PSHT GPS Azer Khel, Karak.

[Signature]
District Education Officer (M)
Karak

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE), KARAK.

OFFICE ORDER.

In light of the judgment of Hon'able Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No. 707/2016 dated 29-11-2017, the compulsory retirement order of Mr. Niaz Gul PHST, GPS Azer Khel, Karak vide Endst: No. 1128-23 dated 20-02-2016 is hereby cancelled / withdrawn and he is re-instated in service w.e.f 31-08-2015 whereas the absent period from official duty w.e.f 31-08-2015 to 05-02-2018 is treated as leave without pay and he has been retired from service w.e.f 05-02-2018 (A.N) after attaining the age of superannuation vide pension sanction order No. 4698-4701 dated 02-10-2018.

District Education Officer (M)
Karak

Endst: No 4825-30 Dated Karak the 5/10/2018

Copy to the:-

1. Director , Elementary and Secondary Education, Officer Khyber Pakhtunkhwa Peshawar.
2. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar.
3. District Account Officer, Karak.
4. Dy: District Education Officer (M), Karak.
5. Sub Divisional Education Officer (M), Karak.
6. Niaz Gul, PSHT GPS Azer Khel, Karak.

5/10/18

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KARAK

SANCTION:

Under the provision of revised rules 1981, sanction is hereby accorded to the grant of Earned leaves in favour of the following official as mentioned below as due to and admissible to him under the rules. In light of decision of the Honorable Khyber Pakhtunkhwa Services Tribunal, Peshawar Petition 84/2018 in Service Appeal No. 707/2016 Mr. Niaz Gul PSHT GPS Azher Khel.

S.No	Name, Designation and School	Period of Leaves / Remarks
1.	Mr. Niaz Gul PSHT GPS Azher Khel	(i) Leave of Period w.e.f 31/08/2015 to 20/02/2016 (174) days on full pay. (ii) Leave of Period w.e.f 21/02/2016 to 06/08/2016 (168) days on full pay. (iii) Leave of Period w.e.f 07/08/2016 to 28/11/2017 Leave without pay. (iv) Leave of Period w.e.f 29/11/2017 to 04/02/2018 (70) days on Duty Period.

Note: Necessary entry on this effect should be made in his Service Book.


DISTRICT EDUCATION OFFICER
(MALE) KARAK

Endst: No 5344-45 /Leave Case / ADO Pry: Dated Karak The 30 /11 /2021

Copy to the:

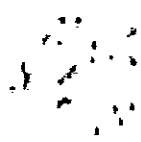
1. District Accounts Officer
2. SDEO(M) Karak with his memo No. 22887, dated 04/10/2021 along with original Service Book.


DISTRICT EDUCATION OFFICER
(MALE) KARAK

**OFFICE OF THE SUB-DIVISIONAL EDUCATION
OFFICER MALE KARAK**

Address: Main KDA Karak P.O. Male Karak, District Male Karak

No 4128



Date: 21/11/2018

Handwritten signature and initials

To:

The District Education Officer
Male Karak

Subject:

Application for Retirement on Superannuation Pension and Sanction of Leaves in respect of Mr. Niaz Gul, P.H.I. C/S Azad Khat Karak.

Ref:

In compliance to Executive Order No. 84/2018 in Service Appeal No. 707/2016 dt 19-08-2018.

Enclosed find herewith an application along with relevant documents in respect of Mr. Niaz Gul, P.H.I. C/S Azad Khat Karak regarding sanction of superannuation pension w.e.f 02-02-2018. Further leaves sanctioned for the absence period w.e.f 31-08-2015 to 28-11-2017 may also be accorded as below, please

S.No	Period of Leaves		No. of Days	Remarks
	From	To		
1	31-08-2015	28-12-2015	121 Days	On Full Pay
2	29-12-2015	15-06-2016	170 Days	On Full Average Pay
3	16-06-2016	28-11-2017	527 Days	Without Pay

Original S/PWA attached

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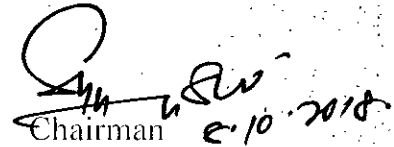
Sub-Divisional Education Officer
Male Karak

EP 84/2018

08.10.2018

Petitioner Niaz Gul alongwith his counsel Miss Uzman Syed, Advocate present. M/S Waheedur Rahman, AD and Sher Islam, ADO for the respondents present. The above named representatives produced implementation report, which is placed on file. Copy handed over to counsel for the appellant.

In view of the above, the petition is disposed off. File be consigned to the record room.


Chairman 8.10.2018

ANNOUNCED

08.10.2018

01.08.2018

Petitioner Niaz Gul alongwith his counsel Miss. Uzma Syed, Advocate present. Mr. Sher Aslam, ADO (Sports) alongwith Mr. Muhammad Riaz Paindakhel, Asst: AG for respondents present. Representative of the respondents stated that CPLA has been filed in the august Supreme Court of Pakistan, however, in the absence of any stay order from august Supreme Court the petitioner cannot be stopped from asking for the implementation of judgment of this Tribunal. Hence, the respondents are directed to submit implementation report on 07.09.2018 before S.B.

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Chairman

Handwritten initials

07.09.2018

Petitioner with counsel and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Mr. Hameed ur Rehman AD for the respondents present. Representative of the respondents seeks time to furnish proper implementation report. Granted. It was also brought to the notice of this Tribunal that the petitioner has already reached to the age of superannuation on 06.02.2018. To come up for reply/implementation report on 08.10.2018 before S.B.

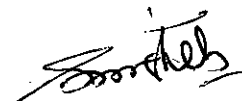



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Member

Handwritten initials

FORM OF ORDER SHEET

Execution Petition No. 84 /2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	19.03.2018	<p>The Execution Petition of Mr. Niaz Gul submitted to-day by Uzma Syed Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	20/03/18.	<p>This Execution Petition be put up before S. Bench on- 20/03/18.</p> <p style="text-align: right;"> MEMBER</p>
28.03.2018		<p>Counsel for the petitioner present. Notice be issued to the respondents for implementation report for 10.05.2018 before S.B.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member</p>
10.05.2018		<p>The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 01.08.2018.</p> <p style="text-align: right;"> Reader</p>

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

Execution Petition No. 84 /2018
In Service Appeal No.707/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 304

Date 19/03/2018

Niaz Gul,
PSHT, GPS Azer Khel, Karak.

PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary (E&SE), Education Department, Peshawar.
2. The Director (E&SE) Education Department, Peshawar.
3. The District Education, Officer (Male), Karak.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED: 29.11.2017 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.**

.....

RESPECTFULLY SHEWETH:

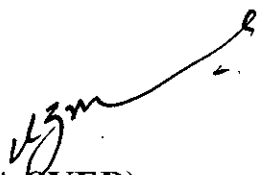

1. That the applicant/appellant filed Service Appeal No.707/2016 against the impugned order dated 20.02.2016.
2. That the said appeal was finally heard on 29.11.2017. The said appeal was accepted and reinstated the appellant in to service and directed the respondent to conduct denovo-inquiry within period of two months after receipt of this judgment. **(Copy of Judgment Dated 29.11.2017 and is attached as Annexure-A).**
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 29.11.2017.
4. That in-action and non-implementation of the judgment of this august 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 respondents are legally bound to pass formal appropriate order.
6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 29.11.2017 of this august Tribunal in letter and spirit and reinstated the appellant into service. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of applicant/appellant.


APPLICANT/APPELLANT
Niaz Gul

THROUGH:


(UZMA SYED)
& 
(Syed Noman ALI BUKHARI)
ADVOCATES, PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.


DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 707/2016

Date of Institution ... 14.06.2016

Date of Decision ... 29.11.2017

Niaz Gul,
PSHT, GPS Azer Khel, Karak.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary (Elementary and Secondary) Education Department, Peshawar and 2 others.

... (Respondents)

MR. TAJDAR AHMAD KHAN
Advocate

... For appellant

MR. KABIRULLAH KHATTAK,
Additional Advocate General,

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,CHAIRMAN
MEMBER**ATTESTED**

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENTNIAZ MUIHAMMAD KHAN, CHAIRMAN.-

Arguments of the

learned counsel for the parties heard and record perused.

FACTS

2. The appellant is aggrieved from order of compulsory retirement dated 20.02.2016 against which he filed departmental appeal on 22.02.2016 which was

rejected on 06.04.2016 and communicated to him on 19.05.2016. Thereafter he filed the present service appeal on 14.06.2016.

ARGUMENTS.

3. The learned counsel for the appellant argued that the appellant was transferred to GPS Kaddu Khel on 31.08.2015. That the appellant assumed the charge on 01.09.2015. That the appellant never remained absent from duty. That the attendance register also is a proof of the attendance of the appellant. That the impugned order was passed without any notice to the appellant. That the impugned order was passed retrospectively which is nullity in the eyes of law.

4. On the other hand, the learned Additional Advocate General argued that all the codal formalities were fulfilled by issuing show cause notice. That notice was also published in the news paper. That the appellant remained absent from duty without any leave. That the whole proceedings are lawful. That the appellant did not perform his official duties.

CONCLUSION.

5. Regardless to the factual controversy of absence from duty the very impugned order has been passed retrospectively. In the light of the judgment reported as 1985 SCMR 1178 such order is a void order.

6. In view of the judgment mentioned above this appeal is accepted and the appellant is reinstated in service. The department is directed to hold *de-novo* proceedings within a period of two months after receipt of this judgment. The issue

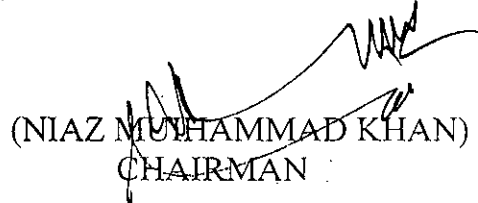
ATTESTED

SYNAHNER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

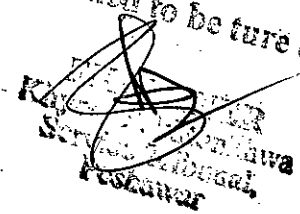
of back benefits of the appellant shall be subject to final outcome of the *de-novo* proceedings. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER


(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
29.11.2017

Certified to be true copy

Secretary

Date of Presentation of Application 08-03-18
Number of Words 1200
Copying Fee 8-
Urgent 2-
Total 10-
Name of Copyist [Signature]
Date of Completion of Copy 08-03-18
Date of Delivery of Copy 08-03-18

2 منجانب
بنام

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آن مقام میں شہر کیلئے عظیمی عدویہ نوٹس مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر صرف دیئے جواب دہی و اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

Attested
by
[Signature]

دفعہ
2102

المرقوم 19 03 2018

الع د گ و اہ الع

مقام Peshawar کے لئے منظور ہے۔

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE), KARAK.

SANCTION

Under the relevant pension provisions and rules, Mr. Niaz Gul, PSHT GPS Azer Khel, Karak is hereby allowed to proceed on superannuation retirement from service w.e.f 05-02-2018 (A.N) with full benefits of pension and gratuity whereas the earlier office order of compulsory retirement order No. 1128-33 dated Karak the 20-02-2016 has been cancelled in light of the judgment of honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No 707/2016 dated 29-11-2017.

District Education Officer (M)

Karak

Endst: No 4698-4701 Date Karak the 2/10/2018

1. Director, Elementary and Secondary Education, Officer Khyber Pakhtunkhwa Peshawar.
2. District Account Officer, Karak.
3. Dy: District Education Officer (M), Karak.
4. Sub Divisional Education Officer (M), Karak is directed to make necessary entry in his service book and the pension case be forwarded to the Office of the undersigned for further necessary action.
5. Niaz Gul, PSHT GPS Azer Khel, Karak.

TA
District Education Officer (M)
Karak

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE), KARAK.

OFFICE ORDER.

In light of the judgment of Hon'able Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No. 707/2016 dated 29-11-2017, the compulsory retirement order of Mr. Niaz Gul PHST, GPS Azer Khel, Karak vide Endst: No. 1128-23 dated 20-02-2016 is hereby cancelled / withdrawn and he is re-instated in service w.e.f 31-08-2015 whereas the absent period from official duty w.e.f 31-08-2015 to 05-02-2018 is treated as leave without pay and he has been retired from service w.e.f 05-02-2018 (A.N) after attaining the age of superannuation vide pension sanction order No. 4698-4701 dated 02-10-2018.

District Education Officer (M)
Karak

Endst: No 4825-30 Dated Karak the 5/10/18

Copy to the:-

1. Director , Elementary and Secondary Education, Officer Khyber Pakhtunkhwa Peshawar.
- ✓ 2. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar.
3. District Account Officer, Karak.
4. Dy: District Education Officer (M), Karak.
5. Sub Divisional Education Officer (M), Karak.
6. Niaz Gul, PSHT GPS Azer Khel, Karak.

TA
5/10/18
District Education Officer (M)
Karak

8/1/8

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