

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. _____/2022
In Service Appeal No.1129/2014


Sajjad Haider

V/S

Edu Deptt:

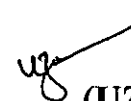
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PETITIONER
Sajjad Haider

THROUGH:


SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT

&

(UZMA SYED)
ADVOCATE, PESHAWAR

Cell No: 0306-5109438

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

1

Execution Petition No. _____/2022
In Service Appeal No.1129/2014

Sajjad ~~Haider~~ S/o Faqir Mohammad
PST Govt, Primary School Aziz Khel,
Mattani, Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2413
Dated 21/12/22

PETITIONER

VERSUS

1. The Govt of Khyber Pakhtunkhwa through Secretary Education, KP civil Secretariat, Peshawar.
2. The Director Education E&SE, KP, Peshawar.
3. The District Education Officer (Male), E&SE, Peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 17/05/2022 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No-1129/2014 against the removal order.

2. That the said appeal was finally heard by the Honorable Tribunal on 17/05/2022. The Honorable Tribunal is kind enough to accept the appeal vide judgment dated 17/05/2022 and reinstated the appellant into service and department are directed to conduct denovo inquiry. **(Copy of judgment is attached as Annexure-A).**
3. That vide order dated 22/06/2022 the appellant was reinstated into service we.from 17/05/2022 for the purpose of denovo inquiry. But neither till date inquiry was conducted/completed nor salaries of the appellant was released and appellant was suffering. **(Copy of order is attached as Annexure-B).**
4. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 17-05-2022.
5. That the respondent totally violated the judgment of Hon'able Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
6. 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 implement the same in letter and spirit.
7. 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 17-05-2022 this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.




PETITIONER
Sajjad Akbar

THROUGH:

(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

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

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BEFORE THE KHYBER PAKHUTUNKHWA SERVICE TRIBUNAL, PESHAWAR



Service Appeal No. 1129 /2014

Sajad Haider S/o Faqir Mohammad
PST Govt. Primary School Aziz Khel,
Mattani, Peshawar.....Appellant

1094
19-8-2014

VERSUS

- 1) Govt. of Khyber Pakhtunkhwa, through Secretary Education KPK, Peshawar.
- 2) Deputy Commissioner, Peshawar.
- 3) Executive District Officer, Elementary and Secondary Education, Peshawar.
- 4) District Education Officer (Male) Peshawar.
- 5) A.D.O Elementary & Secondary Education, Peshawar.

.....respondents

SERVICE APPEAL U/S 4 OF SERVICE

TRIBUNAL ACT, 1974. against the impugned dated

[Signature]
19/8/14

5/3/2014 whereby appellant has been removed from service against which appellant filed an appeal on 12/5/14 with no copy under Respectfully Sheweth:- The mandatory period of 60 days, hence this appeal

Appellant humbly submits as under

- 1) That appellant has been appointed as P.S.T in 1992 in BPS-7.

[Signature]
10/9/14

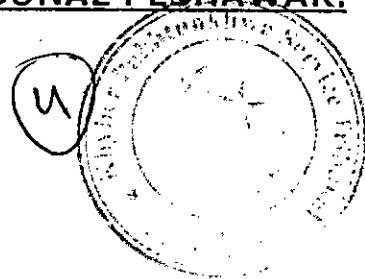
[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1129/2014

Date of Institution ... 19.08.2014

Date of Decision ... 17.05.2022



Sajjad Haider S/O Faqir Mohammad, PST Government Primary School Aziz Khel, Mattani, Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Education Khyber Pakhtunkhwa, Peshawar and four others.

... (Respondents)

SYED NOMAN ALI BUKHARI,
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant was appointed as PST in the year 1992 and performed his duty in various schools. The appellant applied for leave without pay with effect from 01.03.2003 to 12.04.2004, which was allowed. Disciplinary action was taken against the appellant on the allegation of willful absence from duty and he was removed from service vide impugned order dated 05.03.2014. The departmental appeal of the appellant was not responded within the statutory period, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the appellant performed his duty with zeal and zest and is having an

ATTESTED

unblemished record of service; that whole of the proceedings were conducted at the back of the appellant without affording him an opportunity of personal hearing or self defense; that the appellant was admittedly granted leave without pay with effect from 01.03.2003 to 12.04.2004, however it is astonishing that in the impugned removal order dated 05.03.2014, the appellant has been mentioned as absent with effect from 19.01.2014; that no regular inquiry was conducted in the matter and the appellant was wrongly and illegally awarded major punishment, which is against the norms of natural justice as well as various judgments of the worthy apex court; that the impugned order is wrong, illegal and void ab-initio, therefore, the same is liable to be set-aside. Reliance was placed on 2015 PLC (C.S) 381, 2008 PLC (C.S) 77 and 2007 PLC (C.S) 685. §

4. On the other hand, learned Additional Advocate General for the respondents has contended that the appellant had remained in willful absence for considerable long period, therefore, departmental action was taken against him; that all legal and codal formalities as required under the relevant rules were complied with, however the appellant did not attend his duty, therefore, the competent Authority has rightly removed him from service; that the departmental appeal of the appellant was time barred, therefore, the service appeal in hand is not maintainable and is liable to be dismissed on this score alone.

5. Arguments of learned counsel for the appellant as well as learned Additional Advocate General for the respondents have already been heard and record perused.

6. The appellant has alleged in his appeal that he was granted leave without pay with effect from 01.03.2003 to 12.04.2004. The aforementioned assertion of the appellant has been admitted as correct by the respondents in their reply/comments. The appellant was thus on leave till 12.04.2004, however it is astonishing that in the absence notice as well as other correspondence, the appellant has been shown as absent from duty with effect from 19.01.2004. Moreover, while going through the impugned order dated 05.03.2014, it can be observed that the appellant was proceeded against on the ground of willful absence from duty. Procedure require to be adopted in case of willful absence from duty of a government servant has been provided in Rule-9 of Khyber Pakhtunkhwa Government Servants

RECORDED
 2014/03/05
 10:00 AM
 10/03/2014
 10:00 AM

(Efficiency & Discipline) Rules, 2011, which is a self-contained rule and also provides the punishment for willful absence. However, while going through the impugned order dated 05.03.2014, the appellant has been awarded punishment of removal from service in exercise of power conferred under Rule-4 (b) (iii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, which could have been attracted, had the appellant been proceeded against on the ground of habitual absence. Furthermore, Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 prescribes that the absence notice shall be published in at least two leading newspapers, however in the instant case, the same has been published only in one newspaper. (6)

7. It is evident from the record that the competent Authority had issued absence notice to the appellant, which was replied by the appellant through submission of reply on 26.08.2013. Copy of reply of the appellant has been annexed by the respondents alongwith their comments, which bears Diary No. 2517 dated 26.08.2013 as well as the signature of DDEO (Male). It is clearly mentioned in reply so submitted by the appellant that he made his arrival on 26.08.2013 but it is astonishing that he was still considered as absent and notice regarding his absence was published in daily "AAJ" on 19.10.2013 and he was removed from service vide impugned order dated 05.03.2014. In these circumstances, the impugned order dated 05.03.2014 passed by the competent Authority is not sustainable in the eye of law and is liable to be set-aside.

8. The appellant was removed from service by the competent Authority vide impugned order dated 05.03.2014, which was challenged by the appellant through filing of departmental appeal on 12.05.2014; which remained un-responded. The appellant alongwith his appeal has filed an application for condonation of delay duly supported by an affidavit, wherein he has specifically alleged that he got knowledge of the impugned order on 10.05.2014. The aforementioned assertion of the appellant has not been rebutted by the respondents through filing of any counter affidavit. According to Rule-3 of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, a civil servant aggrieved by an order passed or penalty imposed by the competent Authority relating to the terms and condition of his service

[Handwritten signature]
 ASSISTANT SECRETARY
 GOVERNMENT OF KHYBER PAKHTUNKHWA
 ISLAMABAD

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may, within 30 days from the date of communication of the order to him, prefer an appeal to the appellate Authority. Nothing is available on the record, which could show that the impugned order dated 05.03.2014 was communicated to the appellant on any date prior to 10.05.2014, therefore, the departmental appeal filed by the appellant was not hit by limitation.

9. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned order and the appellant is reinstated in service for the purpose of de-novo inquiry with the directions to the respondents to conduct de-novo inquiry strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to defend himself. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
17.05.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(ROZINA REHMAN)
MEMBER (JUDICIAL)

Copy of Judgment
Departmental
25/5
5/6
26/5

13/6/22

13/6/22
13/6/22

B / 8

REGISTERED AD
OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.

RE-INSTATEMENT

In pursuance of Judgment of Services Tribunal Peshawar appeal No.1129/2014 date of Institution 19/08/2014 and date of decision 17/05/2022 the competent authority is pleased to re-instate Mr.Sajjad Haider PST, GPS Aziz Khel Mattani Peshawar for the purpose of de-novo inquiry in r/o the above named teacher , in Govt:Service w.e.f 17/05/2022.

District Education Officer,
(Male) Peshawar.

Endst: No. 7298-739 Dated Peshawar the 25/06 /2022

Copy forwarded to the :-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Sub Divisional Education Officer (Male) Town-IV Peshawar.
3. Assistant District Education Officers Circle Concerned.
4. Officials Concerned.

Deputy District Education Officer,
(Male) Peshawar.

18/6/22

بجرت

Kf Service Tribunal

Sajjad Haidar

بنام

vs

Educator Dux

باعث تحریر آنکہ

مورخہ

مقدمہ

دعویٰ

جرم

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

آن مقام سپر ... کیلئے مسید لٹھان علی خاں علی مسید
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
ذیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور 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 محتاج ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی 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 مذکور با اختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخنتہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے
سب سے وہوگا۔ 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 لکھ دیا کہ سندر ہے۔

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ماہ

المرقوم

واہ العبد

د

العبد