08.12.2020

Nemo for petitioner.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Case was called time and again but none appeared on behalf of petitioner. Consequently the present application is hereby dismissed for non-prosecution. No order as to costs. File be consigned to the record room.

Announced. 08.12.2020

(Rozina Rehman) Member (J) 17.06.2020

present.

Counsel for the petitioner and Asst: AG for respondents

Learned Asst: AG states that he has not been issued notice for hearing, therefore, seeks adjournment. Notices be issued to the respondents for submission of reply on restoration of implementation report on 29.07.2020 before S.B.

MEMBEŔ

29.07.2020

Neither the petitioner nor his counsel nor anyone on behalf of the respondents is present in this Tribunal to pursue the instant restoration application despite having been called time and again and a last call was made on 03:30 P.M. Therefore, the parties and their respective counsel be noticed for 21.10.2020. To come up for further proceedings before S.B.

(MUHAMMAD JAMAL KHAN) MEMBER

21.10.2020

Since the Members of the High Court as well as of the District Bar Association Peshawar are observing strike today, therefore, the case is adjourned to 08.12.2020 on which date to come up for further proceedings before S.B.

(Muhammad Jamal Khan) Member (Judicial)

Form-A FORM OF ORDER SHEET

Court of		
Restoration Application	on No. 24 /2020	•

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
· 1·	. 2	3
1	20.01.2020	The application for restoration of Execution Petition
.1	,	No.202/2018 submitted by Shahzullah Yousafzai Advocate may
		be entered in the relevant register and put up to the Court for
		proper order please.
		REGISTRAR
2		'This restoration application is entrusted to S. Bench to be
	-	put up there on <u>07/02/2020</u>
·		\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\
		CHAIRMAN
	,	
	07.02.2020	Counsel for the petitioner present. Addl: AG f
		respondents present. Notice be issued to t
•		respondents for submission of implementation repo
		To come up for further proceedings on 25.03.20
		before S.B.
		56,676 5151
		Member .
		Member
•		
	0.5 0.3 0.000	The state of the s
	25.03.2020	Due to public holidays on account of Covid-19, the c
		is adjourned. To come up for the same on 17.06.2020 bef
,·		S.B.
,		
		Reader

Before The KP Perrice Tribunal Perhawar

Execution No 202/2018

Execution No 202/2018 Perox When vs Education defet Application For Reopening the above mention execution proceeding R Showeth; is that the above mention execution was Pending in this How ble tribunel. which was consigned on 4.11. 2019
that Copy of order sheet connected; 12) that on 4.11.2019 the defortment Produce a copy order dated 4.10.2019.in Which appelland was reinstated with all back benifide so thatake the appellant consigned the above mention execution. but hatter on the department deind the back benefish at the appellent. and

(copy of order dated 4.11.2019 & 4.10.1019)
is Annual that on acceptance of this

whise workform on the solve the season of the above mention execution and fresh notice may be Issue to sepondents.

through

Shah Zullah Young Zai (Advocate)

Appliant Applicant

Date 20.1.2080

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

R.A. No PESHAWAR
24/2020

Implementation petition No. 202 /2018

In appeal No. 809/2017

Mr. Feroz khan, chowkidar, GGPS Ato khel, District Mohmand.



VERSUS

1- The District education officer, district mohmand at Ghallanai

2- Director education (merged area) secretariat warsak road Peshawar.
Respondents

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENT DEPARTMENT TO IMPLEMENT THE JUDGMENT DATED 26-02-2019 IN APPEAL NO.809/2019 IN LETTER AND SPIRIT.

R/SHEWETH:

- 2- That the Petitioner filed the above mentioned appeal against the impugned order dated 27-04-2016 whereby the petitioner/appellant was prematurely retired from service.

3-That after final arguments this august Service Tribunal decided the appeal in favor of the Petitioner with the directions that:-

"As a sequel to the foregoing, we allow the appeal in hand and reinstate the appellant into service along with back benefits from the of passing of impugned order of retirement dated 27/04/2016.

4- That Petitioner after obtaining the judgment visited the respondent Department and submitted the same along with application for implementation of the above mentioned judgment dated 26-02-2019, but the respondents are not willing to implement the judgment passed by this august Service Tribunal. Copy of the application is attached as annexure.

Khyh htunidawa Service Tribunal. Peshawar 04.11.2019

Petitioner alongwith counsel and Addl. AG alongwith Javed Khan, Focal Person for the respondents present.

The representative of respondents has produced reinstatement order dated 04.10.2019 pertaining to the petitioner. The petitioner, therefore, requests for consigning of instant proceedings to the record.

Order accordingly.

Chairman

Certified to be ture copy

Khybe tribunal.

Service Tribunal.

Date of Presentation of Applica	20-1-2020
Number of Words	800
Captag Feb.	That is tipe and and a second make the second
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70	
Name of Chapters 19	M
Date of Campleolies of Cary.	20-1-2020
Date of Belivery of Capy	2021



OFFICE OF THE DISTRICT EDUCATION OFFICER MOHMAND TRIBAL DISTRICT

Ph. No. 🕮 : 0924-290180

FAX 🥔 0924-290180

- Email 🕿 :- deomohmand@gmail.com



RE-INSTATEMENT ORDER

In compliance of the Judgment in Service Appeal No.809/2017 Dated 26.02.2019 and Execution petition No.202/2019 under Title Feroz Khan VS Director Education, FATA (NMD) and District. Education Officer Mohmand passed by The Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar, Mr. Feroz Khan S/O Muhammad Hassan, is hereby re-instated w.e.f 27/04/2016 with back benefits against the vacant post of Chowkidar at GGPS Sher Afzal Ato Khel under the rules on the existing policy of the provincial Government, in Non-Teaching Cadre on the terms and conditions given below with effect from the date of his

TERMS & CONDITIONS

- This re-instatement order is made subject to the final decision of the CPLA pending before the Supreme Court of Pakistan and a 12(2) application in Service Appeal No 809/2017 against Feroz Khan which is pending before the Khyber Pakhtunkhwa service Tribunal Peshawar. 2. NO TA/DA etc. is allowed.
- Charge reports should be submitted to all concerned in duplicate.

(JADDI KHAN KHALIL)

District Education Officer . Mohmand Tribal District

Endst.No. <u>5/7</u>8-85 Copy to the:-

dated. 4 / 10

1. Director of Education Elementary & Secondary Khyber Pakhtunkhwa Peshawar.

2. Director of Education NMD Secretariat Peshawar.

Deputy Commissioner Mohmand Tribal District.

District Account Officer Mohmand Tribal District.

5. ADEO Female concerned.

6. Teachers Congerned.

7. EMIS Section Local Office.

Office record.

District Editation Officer Monmand Tribal District Mohmand

<u>2</u> ۽ منجانب سا مورخه منیرر رفان سام المحوس ریبار اندا مقدم دعوى 7. ماعث تحريراً نك مقدمه مندرج عنوان بالاميں اپی طرف سے واسطے بیروی وجواب دہی وکل کاروائی متعلقہ آن مقام سيادر كيا مشام رو الله يوسعرى ارد م مقرر کر کے اقر ارکیا جاتا ہے۔ کہ صاحب موصوف کومقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وكيل صاحب كوراضى نامه كرنے وتقرر ثالث وفيصله برحلف ديئے جواب د بى اورا قبال دعوى اور بصورت ڈگری کرنے اجراءاور وصولی چیک وروپیارعرضی دعوی اور درخواست ہرتم کی تقدیق زرایں پردستخط کرانے کا اختیار موگا۔ نیز صورت عدم پیروی یا ڈگری میطرف یا اپیل کی براماگی اورمنسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مخار ہوگا۔ازبصورت ضرورت مقدمه فد کور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مخار قانونی کوایے ہمراہ یا این بجائے تقرر کا اختیار ہوگا۔اورصاحب مقرر شدہ کو بھی وہی جملہ ندکورہ با اختیارات حاصل ہول گے اوراس كاساخته يرداخته منظور وقبول موكادوران مقدمه من جوخرجيه برجانه التوائح مقدمه ك سبب ہے وہوگا کوئی تاریخ بیشی مقام دورہ پر ہو یا حدے باہر ہوتو وکیل صاحب یابند ہول گے۔ کہ بیروی نذکورکریں ۔لہذاوکالت نامہ کھندیا کہ سندرہے۔ 1,in الرقوم الله من المستولموال سردى تريير الله المعظور ب-Accepted

04.11.2019

Petitioner alongwith counsel and Addl. AG alongwith Javed Khan, Focal Person for the respondents present.

The representative of respondents has produced reinstatement order dated 04.10.2019 pertaining to the petitioner. The petitioner, therefore, requests for consigning of instant proceedings to the record.

Order accordingly.

Chairman

12.09.2019

Petitioner alongwith counsel and Addl. AG alongwith Javed Khan, Litigation Officer and Fawad Afzal, Senior Clerk for the respondents present.

The representative of respondents requests for some more time to submit the implementation report.

Adjourned to 07.10.2019 on which date the implementation report shall positively be submitted failing which the respondent No. 1 shall appear in person to appraise regarding the implementation.

Chairmán

07.10.2019

Petitioner alongwith counsel and Addl. AG alongwith Javed Khan, Focal Person for the respondents present.

Representative of the respondents has provided a copy of reinstatement order dated 04.10.2019 whereby the petitioner has been reinstated in service against the vacant post of Chowkidar in GGPS Sher Afzal Ato Khel. Learned counsel sates that the order is not in line with the judgment under implementation wherein the reinstatement of petitioner alongwith back benefits has been required from the date of order of compulsory retirement i.e. 27.04.2016.

In view of the above, the respondents are required to issue a modified reinstatement order in accordance with the judgment under implementation. Adjourned to 04.11.2019 for further proceedings.

Chairman

24.06.2019

None for the petitioner present. Addl: AG for respondents present. Notices be issued to the respondents for submission of implementation report on the next date of hearing. Case to come up for further proceedings on 7.08.2019 before S.B.

(Ahmad Hassan) Member

07.08.2019

Counsel for the petitioner and Mr. Muhammad Jan, DDA alongwith Muhammad Javed, Focal Person for the respondents present.

The representative of respondents states that CPLA against the judgment under implementation has been preferred before the Apex Court, however, no date of hearing has been fixed in the matter so far.

The respondents are required to produce on the next date any order of Apex Court suspending the judgment under execution or its setting aside altogether. Else, the implementation report be submitted positively on next date.

Adjourned to 12.09.2019 before S.B.

Chairman

Form- A FORM OF ORDER SHEET

Court of	· · · · · · · · · · · · · · · · · · ·	
Execution Petition No.	202/2019	

	Court	ot
	Execution	on Petition No. 202/2019
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	30.4.2019	The execution petition of Mr. Feroz Khan submitted today by Mr. Shahzullah Yousafzai Advocate may be entered in the relevant
		register and put up to the Court for proper order please.
		REGISTRAR 30 \ M 19
2-	02/05/19	This execution petition be put up before S. Bench on 24/05/14. CHAIRMAN
	23.05.2019	Petitioner present. Notice of the present execution petition be issued to the respondents for implementation
		report/comments. To come up for implementation
		report/parawise comments on 24.06.2019 before S.B.
		Member
	·	
	·	

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL PESHAWAR

IMPLEMENTATION PETITION 202 /2019 in APPEAL NO 809/2017

FEROZ KHAN

VS

EDUCATION: DEPTT:

<u>INDEX</u>

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Implementation petition		1- 2.
2.	Judgment A		3- 6.
3.	Application	plication B 7.	
4.	Vakalat nama		8.

PETITIONER

THROUGH:

SHAHZULLÁH YOUSAFZAI

ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation petition No. 202 /2018

In appeal No. 809/2017

Mr. Feroz khan, chowkidar,GGPS Ato khel,District Mohmand.

Petitioner



VERSUS

- 1- The District education officer, district mohmand at Ghallanai
- 2- Director education (merged area) secretariat warsak road Peshawar.

.....Respondents

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENT DEPARTMENT TO IMPLEMENT THE JUDGMENT DATED 26-02-2019 IN APPEAL NO.809/2019 IN LETTER AND SPIRIT.

R/SHEWETH:

- **1-** That the above mentioned appeal has been decided by this august Service Tribunal vide judgment dated 26-02-2019 in favor of the Petitioner. Copy of the judgment is attached as annexure.
- 2- That the Petitioner filed the above mentioned appeal against the impugned order dated 27-04-2016 whereby the petitioner/appellant was prematurely retired from service.
- 3-That after final arguments this august Service Tribunal decided the appeal in favor of the Petitioner with the directions that:-

"As a sequel to the foregoing, we allow the appeal in hand and reinstate the appellant into service along with back benefits from the of passing of impugned order of retirement dated 27/04/2016.

4- That Petitioner after obtaining the judgment visited the respondent Department and submitted the same along with application for implementation of the above mentioned judgment dated 26-02-2019, but the respondents are not willing to implement the judgment passed by this august Service Tribunal. Copy of the application is attached as annexure.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may be directed to implement the above mentioned judgment passed by this august Service Tribunal in letter and spirit.

PETITIONER

THROUGH:

SHAHZULLAH YOUSAFZAI

KAMRAN KHAN ADVOCATES

A-3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR

Appeal No. 809/2017

Date of Institution ...

29.05.2017

Date of Decision :

26.02.2019

Feroz Khan son of Muhammad Hassan Chowkidar, GGPS Ato Khel, Mohmand Agency. ... (Appellant)

VERSUS

Agency Education Officer, Mohmand Agency at Ghallanai and two others.
... (Respondents)

Present:

Mr. Muhammad Esa Khan,

Advocate.

For appellant

Mr. Ziaullah,

Deputy District Attorney

For respondents.

MR. HAMID FAROOQ DURRANI,

MR. AHMAD HASSAN,

CHAIRMAN

MEMBER

Peshawar

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

"That the parties are 09 brothers therefore the paternal land will be divided into 09 equal share. 03 out of 09 brothers who are living at Ato Khel Tehsil Halimzai will cultivate the paternal land any will have its produce. However, no one will sell the land other than of his own share.

(ii) 02 Class IVs of GGPS Ato Khel (Sher, Afzal) will be divided between the applicant and respondent and whenever the GGPS is upgraded then the privileges will be divided between the applicant and respondent only.

ATTESTET





(iii) The respondent Musarat Shah s/o Muhammad Afzal will pay Rs. 500000/_ (Five lacs only) to plaintiff in two installments. One of the council of elders namely Malak Duran Bacha Halimzai has dissenting view. The case is thus decided on majority view basis:"

The above reproduction is from the order passed by Assistant Political Agent Mohmand Sub Division against which ultimately a Revision Petition was dismissed by FATA Tribunal Peshawar on 21.12.2015. In pursuance, the impugned order dated 27.4.2016 was passed by Agency Education Officer Mohmand Agency (Respondent No. 1), whereby, the retirement of appellant was effectuated. Pertinently, the appellant having been born on 01.06.1969, is yet to attain the age of superannuation.

2. We have heard learned counsel for the appellant as well as learned District Attorney on behalf of the respondents and have also examined the available record.

It is a matter of record that the dispute culminating into above reproduced order of Political Agent was between Sher Afzal son of Muhammad Hassan and Abidullah son of Sher Afzal, on the one hand, while Muhammad Afzal son of Muhammad Hassan and Musarat Shah son of Muhammad Afzal were the other party. Throughout the record pertaining to proceedings before the Political Agent, Mohmand Agency, the Commissioner FCR Peshawar or the FATA Tribunal Peshawar the appellant did not find any mention. There was a money dispute between the parties before the P.A and cognizance, thereof, was taken under Section-8 of FCR at Tehsil Halimzai,



Mohmand Agency. After the issuance of impugned order the appellant preferred applications before different forums including the office of APA Mohmand Agency but to no avail. Ultimately, a representation/application was preferred before Agency Education Officer Mohmand Agency/respondent No. 1. It was clearly noted in the representation that the appellant was compulsorily retired without any rhyme or reason. The respondent No. 1 endorsed upon the application that he had no objection in case the applicant approached this Tribunal for justice. The said endorsement was made on 5.5.2017 while the service appeal in hand was preferred on 29.07.2017.

3. The record is admittedly silent about the fact that before passing the impugned order any departmental proceedings were undertaken against the appellant. The contents of impugned order clearly suggest that the same was passed upon recommendation of the court of FATA Tribunal Peshawar and council of elders. Besides the said mention, no fault on the part of appellant warranting issuance of impugned order, was ever noted.

It appears that in a dispute involving payment of money between relatives of the appellant the draconian provisions of Frontier Crimes Regulation were invoked and the appellant was made a scapegoat in order to resolve the contention. It is also a fact that the order of APA and that of the FATA Tribunal never required the dislodging of appellant from his service which he was, under the law, entitled to continue till the date of his superannuation in the ordinary course. The impugned order was, therefore,



without any legal mandate and in utter disregard to the provisions of law regulating the service of a civil servant. We are not in agreement with the arguments of learned Deputy District Attorney regarding the incompetency of appeal in hand on the count of delay. As stated above the appellant, in his bewilderment, kept running from pillar to post in the given circumstances and had knocked the door of different authorities under F.C.R.

4. As a sequel to the foregoing, we allow the appeal in hand and reinstate the appellant into service along with back benefits from the date of passing of impugned order of retirement dated 27.04.2016. Parties are left to bear their respective costs. File be consigned to the record room.

(HAMID FAROOQ DURRANI) CHAIRMAN

AHMAD HASSAN) MEMBER

ANNOUNCED 26.02.2019

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Date of Delivery of Cons

To DEO Merged tribal District Momand For report whether the endused decision of KPK service Tribunal Peshawar has further been fixed for CPLA or otherwise Implementation / current in Nedwork D.E.O. listing

decusion may please be reported to

this office

Assistant Commission

Mohmand Til Implementation/current status of the سرارش مع كددرجوات دهدنده جي جي الس الو حيل ميس كينب على سفور مرازم عا - ادرستی سرت شاه جو درخو (ست دهنده کے قسی می سالقه م اور ستی سال می استان می درخو است دهنده کے قسی می سالقه م سے سازباز کرے اپنے ایم فقیہ فریقے سے ستی فروز کے ا) قرانسفر کیا ۔ سام ہے در دستخطی به دفتروالوں نے سائل کو خبر دار کیافیا - سائل رندہ ہے افع کو تسیع مرسانل عساقة اسماق ظله اورنا لنفيافي عمام كالمحس سال روس عامل ك ر بنس ملاح . سام برندائر و منت كرا درخو (ست د با قعا - سام كا با نبحلاكو (محمده می درجه عرالترن میں خرج مو' -کنداز جهامیان استهای سان کی تفواه کا مسی سرت شاه می دنودی کردار به ای کارن که ا مکامات ها درو ناوی -العال مرور عان ولا فرون فلاسور جي جي ال المرون فلاسور جي جي العالي نثر العال المرون فلاسور جي جي العالم المرون فلاسور جي المرون فلاسور جي العالم المرون فلاسور جي العالم المرون فلاسور جي المرون فلاسور المرون

VAKALATNAMA

VAIVIL TITLE
in Honorable service tribune 19
No/2019
(APPELLANT) Feso & Khen (PETITIONER)
VERSUS
(RESPONDENT) Education Department(DEFENDANT)
Do hereby appoint and constitute NOOR MOHAMMAD KHATTAK, Advocate, Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. Dated. 36 / 4 /2019 CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH KHAN YOUSAFZAI

&

MIR ZAMAN SAFI ADVOCATES

OFFICE:

Room No.1, Upper Floor, Islamia Club Building, Khyber Bazar, Peshawar City

Phone: 091-2211391



OFFICE OF THE DISTRICT EDUCATION OFFICER MOHMAND TRIBAL DISTRICT

Ph. No. 22: 0924-290180

FAX 🥝 0924-290180

Email :- deomohmand@gmail.com



RE-INSTATEMENT ORDER

In compliance of the Judgment in Service Appeal No.809/2017 Dated 26.02.2019 and Execution petition No.202/2019 under Title Feroz Khan VS Director Education, FATA (NMD) and District Education Officer Mohmand passed by The Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar, Mr. Feroz Khan S/O Muhammad Hassan, is hereby re-instated w.e.f 27/04/2016 with back benefits against the vacant post of Chowkidar at GGPS Sher Afzal Ato Khel under the rules on the existing policy of the provincial Government, in Non-Teaching Cadre on the terms and conditions given below with effect from the date of his taking over charge.

TERMS & CONDITIONS

- 1. This re-instatement order is made subject to the final decision of the CPLA pending before the Supreme Court of Pakistan and a 12(2) application in Service Appeal No 809/2017 against Feroz Khan which is pending before the Khyber Pakhtunkhwa service Tribunal Peshawar.
- 2. NO TA/DA etc. is allowed.
- 3. Charge reports should be submitted to all concerned in duplicate.

(JADDI KHAN KHALIL)

District Education Officer Mohmand Tribal District

Endst.No. 5/78-85 /

dated. *LI | 10* /2019

Copy to the:-

- 1. Director of Education Elementary & Secondary Khyber Pakhtunkhwa Peshawar.
- 2. Director of Education NMD Secretariat Peshawar.
- 3. Deputy Commissioner Mohmand Tribal District.
- 4. District Account Officer Mohmand Tribal District.
- 5. ADEO Female concerned.
- 6. Teachers Concerned.
- 7. EMIS Section Local Office.
- 8. Office record.

District Edi ation Officer Mohmand †rĭbal ⊅istrict