

EP 103/21

27.07.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Masood Khan, ADO (Litigation) for the respondents present.

The implementation of the order dated 04.06.2021 is still awaited. The respondents are directed to do the needful positively before next date. Case to come up on 06.09.2021 before S.B.


Chairman

06.09.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Masood Khan, Litigation Officer for the respondents present.

Representative of the department produced copy of notification dated 23.08.2021 and placed on file, whereby the order/direction has been complied with. Obviously, CPLA is pending and both the parties shall be at liberty to proceed against each other in light of decision of CPLA in due course of time. For the time-being this petition is consigned to the record room.


Chairman



OFFICE OF THE
DISTRICT EDUCATION OFFICER (MALE)
NOWSHERA

(Office Phone#0923-9220228, Fax#0923-9220228)

NOTIFICATION:-

1. Whereas, Mr. Ashraf Khan Ex-SPST GPS Khairabad was removed from service on imposing major penalty of removal from service vide this office Notification Endst: No. 1404-09 Dated: 15/04/2015.
2. And, whereas, the appellatant (Ashraf Khan) filed service appeal before the Khyber Pakhtunkhwa Service Tribunal vide S.A No 759/2018.
3. And, whereas, the Honorable Tribunal directed the respondents to convert the major penalty of "Removal From Service" into Major Penalty "Compulsory Retirement" vide Order dated 08/03/2021.
4. And, whereas, respondent/department filed CPLA before the Supreme Court of Pakistan in which no date of hearing is fixed yet.
5. And, whereas, appellatant (Ashraf Khan Ex-SPST) filed execution petition before the Khyber Pakhtunkhwa Service Tribunal vide EP No 103/2021.

Now, in compliance of the Khyber Pakhtunkhwa Service Tribunal Order Dated 08/03/2021 and direction passed in Execution Petition No. 103/2021, Dated: 04/06/2021, the Competent Authority is pleased to convert the major penalty of "Removal from Service" into major penalty of "Compulsory Retirement" subject to the final decision of Supreme Court of Pakistan.

(Mr. Shah Jehan)
District Education Officer (Male)
Nowshera

Endst: No. 3034-40 /DEO (M) NSR/Estab: Pry/Judgment Compliance Dated: 23 /08/2021

Copy of the above is forwarded for information to the:-

1. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. P.S to Secretary E&SE Govt of Khyber Pakhtunkhwa Peshawar.
3. Director E&SE Khyber Pakhtunkhwa Peshawar.
4. SDEO (M) Jehangira with the direction to submit the cited case for proper retirement and other related orders/benefits.
5. ASDEO (M) Circle Khairabad: for similar directions.
6. ADEO Legal Local Office.
7. Mr. Ashraf Khan Ex-SPST GPS Khairabad.
8. Office Copy.

District Education Officer (Male),
Nowshera

04.06.2021



Petitioner alongwith counsel present.

Although notice was not issued to the respondents but Mr. Muhammad Adeel Butt, learned AAG is in attendance and his attention has been diverted to the operative part of the judgment, whereby major penalty of removal from service was converted into major penalty of compulsory retirement from service. Obviously, the department will have to clear the position after notice whether any CPLA has been filed to challenge the judgment under implementation or not. If the CPLA has not been filed, the judgment has got finality and requires implementation in letter & spirit, without further delay; but if the CPLA has been filed and the judgment has not been suspended, even then the respondents are under obligation to implement the judgment, subject to decision of CPLA by the August Supreme Court of Pakistan. Learned Addl. AG shall also take up the matter with the respondents for proper order not only in instant case but also in other similar cases to prevent the available recourse of petitioner(s) to this Tribunal, for implementation of the judgment on his/their credit. Copies of this order be sent to the respondents alongwith notice. To come up for implementation report on 27.07.2021 before S.B.


Chairman

FORM OF ORDER SHEET

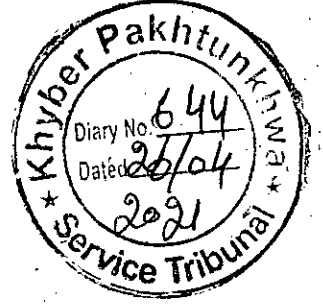
Court of _____
 Execution Petition No. 103 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26.04.2021	<p>The Execution Petition submitted by Mr. Ashraf Khan through Mr. Muhammad Arif Jan 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-	27/05/2021	<p>This Execution Petition be put up before S. Bench on <u>04/6/2021</u></p> <p style="text-align: right;">  CHAIRMAN </p>

[Handwritten signature]

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR



IN Re:

S.Appeal No.759/2018

Ashraf Khan.....Appellant

Versus

District Education Officer (M) Nowshera & ohters

..Respondents

**APPLICATION FOR IMPLEMENTATION
OF JUDGMENT DATED 08.03.2021 OF
THIS HON'BLE TRIBUNAL**

Sir,

Applicant humbly submits as under:-

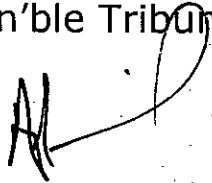
1. That this Hon'ble Tribunal passed judgment dated 08.03.2021 by accepting the appeal of the appellant converted the major penalty of removal from service into major penalty of compulsory retirement from service.
2. That the petitioner himself provided the attested copy of the judgment dated above to the respondents concerned well within time, but the respondents are badly failed comply with the judgment dated 08.03.2021, rather a notice of filing CPLA was provided to petitioner, wherein the respondents have challenged the judgment dated 08.03.2021 before the august Supreme Court of Pakistan, wherein neither any stay order has been granted nor any other directions have been made in respect of judgment dated 08.03.2021.
3. That as there is no stay order, therefore, the respondents are bound to implement the

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judgment dated 08.03.2021 passed by hon'ble
KPK Service Tribunal.

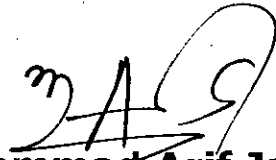
4. That the respondents are duty bound to abide by law and to honor the judgment of this Hon'ble Court in its later and spirit, but even then and despite to clear direction, the respondents intentionally avoiding to hold any inquiry against the appellant for the reason that in fact, there is no prima-facie case of any inquiry is made out.
5. That appellant approaches this Hon'ble Tribunal for implementation of judgment of this Hon'ble Tribunal.

It is therefore, humbly requested to please direct respondents to implement the judgment dated 08.03.2021 of this Hon'ble Tribunal.



Petitioner

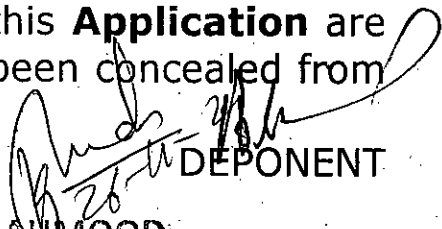
Through



Muhammad Arif Jan
Advocate High Court

AFFIDAVIT

I, do hereby affirm and declare as per instructions of my clients that the contents of this **Application** are true and correct and nothing has been concealed from this honorable court.



DEPONENT

KHALID MAHMOOD
ADVOCATE
Oath Commissioner
Peshawar High Court

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 103 /2021

District Education Officer (Male) Nowshera & Others

-----PETITIONERS

VERSUS

Ashraf Khan

-----RESPONDENT



RGL57443019

NOTICE

To

Ashraf Khan, Ex-SPST, GPS, Khair Abad S/o Khan Gul Afridi R/o Mohallah Bazar, Village Khair Abad, District, Nowshera

Please take notice Registered A/D post to the effect that I am filing CPLA with stay application in the above titled case against the judgment of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 08/03/2021 in service appeal No.759/2018 before the Supreme Court of Pakistan in its Branch Registry at Peshawar.

Dated this

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Govt. /Petitioners

(7)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 759 /2018



1011

30-5-2018

Ashraf Khan, Ex-SPST, GPS, Khair Abad
S/o Khan Gul Afridi R/o Mohallah Bazar, Village Khair
Abad, Distinct Nowshra.

.....Appellant

VERSUS

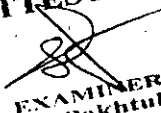
1. District Education Officer (M), Nowshera.
2. Director, Elementary & Secondary Education,
Near Govt. Higher Secondary School, G.T Road,
Peshawar.
3. Secretary Elementary & Secondary (E&SE),
Govt. of Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar.

.....Respondents

Monday

30/5/18

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

**SERVICE APPEAL U/S 4 OF SERVICE
TRIBUNAL ACT, 1974 AGAINST
IMPUGNED ORDER DATED
12.05.2018, PASSED BY
RESPONDENT NO1, WHEREBY HE
MAINTAINED THE ORDER DATED
15.04.2015 IN RESPECT OF
REMOVAL OF THE APPELLANT FROM
SERVICE.**

PRAYER

*On acceptance of the instant appeal,
the impugned orders dated*

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.759/2018

Date of Institution: 30.05.2018

Date of Decision: 08.03.2021



Mr. Ashraf Khan, Ex-SPST, GPS Khari Abad S/O Khan Gul Afridi R/O Mohallah Bazar,
Billage Khair Abad, District Nowshera.

... (Appellant)

VERSUS

Secretary Elementary & Secondary (E&SE), Govt. of Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar and two others.

... (Respondents)

Muhammad Arif Jan
Advocate

... For Appellant

Mr. Kabirullah Khattak
Addl Advocate General

... For Respondents

MR. HAMID FAROOQ DURRANI
MR. ATIQ UR REHMAN WAZIR

... CHAIRMAN
... MEMBER (E)

JUDGEMENT: -

Mr. ATIQ UR REHMAN WAZIR MEMBER (E): - Brief facts of the case are that the appellant while serving as Senior Primary School Teacher (SPST) in Government Primary School Khariabad, Nowshera was charged U/S 377 PPC in an FIR registered against him on 18-03-2015. Simultaneously departmental proceedings were also initiated against him with an inquiry conducted against him and in light thereof, Show Cause Notice served upon the appellant on 28-03-2015, to which he responded and as a result thereof, major penalty of removal from service imposed upon the appellant on 15-04-2015. The Trial Court acquitted the appellant of the charges vide order dated 16-01-2018 giving him benefit of doubt, where after the appellant filed departmental appeal dated 22-02-2018, which was rejected on 12-05-2018, hence the instant service appeal with prayers that the appellant may be re-instated into service with all back benefits.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

02. Written reply/comments were submitted by respondents.

03. Arguments heard and record perused.

04. Learned counsel for the appellant contended that the appellant was proceeded against both departmentally as well as FIR registered against him under same allegations in the same case. That no proper opportunity of defense was afforded to the appellant, as Show Cause Notice was served upon the appellant without conducting proper inquiry. That the appellant having been acquitted of the same charges leveled in FIR lodged to this effect against him by the trial court vide judgment dated 16-01-2018. Learned counsel for the appellant contended that where the criminal charges are not established before a competent court of law and the civil servant is acquitted on those specific charges, the departmental proceedings exactly on the same charges would be wholly irrelevant and unjustified. Learned counsel for the appellant added that every acquittal, whether on merit or on other grounds is honorable. Reliance was placed on 2011 PLC (CS) 1034. On the question of delay in filing departmental appeal, the learned counsel contended that since the impugned order dated 15-04-2015 is void order, as no proper procedure was followed, hence no limitation runs against such order. Reliance was placed on 2016 SCMR 460, 2019 SCMR 648. Learned counsel for the appellant further added that since the appellant was also facing criminal charges in the court of law, hence it was obligatory upon him to wait for the result of the criminal case. Since the appellant was acquitted of the same charges after three years, hence he filed departmental appeal after acquittal, so the delay occurred was not in control of the appellant. Learned counsel for the appellant added that the penalty of removal from service imposed upon the appellant is harsh to the effect that admittedly, the appellant is sinner, but not his dependents, as withholding pensionary benefits would be a punishment for his dependents and not upon him. The learned counsel prayed that the benefits of his 29 years service may be extended to his dependents on humanitarian grounds and penalty of removal from service may be converted into compulsory

retirement.

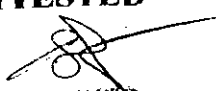
ATTESTED

EXAMINER

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05. Learned AAG vehemently opposed contentions of the appellant to the effect that the appellant deserve no mercy, as the charges of sodomizing two kids of Class-II have been proved against him without any shadow of doubt. Learned AAG contended that the appellant having past history of committing such heinous crime earlier in 2011, but was acquitted due to lack of evidence. That his existence in the school is fatal for the students of tender years. That he was rightly penalized after conducting proper inquiry against him. That he was properly charge sheeted and Show Cause Notice issued, to which he accordingly responded. That every opportunity of defense was afforded to the appellant, but he failed to prove his innocence. Learned AAG further argued that his appeal is also not maintainable being badly time barred, as the appellant filed departmental appeal after three years, which was rejected by the competent authority for being time barred and in a situation the instant appeal is not competent before this Tribunal. Reliance was placed on 2011 SCMR 698, 2015 SCMR 165, 2011 SCMR 676 and 2010 SCMR 1982. That while seeking condonation of delay, the appellant did not raise any plausible reason, whereas the appellant was supposed to justify each day's delay, hence in absence of valid justification, grant of relief does not warrant. Reliance was placed on 2009 SCMR 1435 and 2020 CP No 1894/2018. That acquittal of the appellant by the trial court was because of compromise with the parties, the crime he committed however is evident from the medical report as well as departmental inquiry and statements of the victims. That acquittal of the appellant from criminal charges having no bearing on merits of the case as disciplinary proceedings initiated according to service rules independently, hence seeking relief after acquittal from criminal charges is not sustainable in law. Reliance was placed on 2007 SCMR 562 and 2006 SCMR 554 and 2020 PLC (CS) 948. That the act of appellant fell under the scope of moral turpitude, which is highly undesirable, especially in an educational institution. Reliance was placed on 2002 SCMR 1691. The learned AAG prayed that the instant appeal being devoid of merit may be dismissed.

ATTESTED

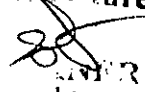

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


06. We have heard learned counsel for the parties and perused the record. We have observed that the appellant was acquitted from the criminal charges giving him benefit of doubt, leaving an edge for the appellant to make him entitled for certain benefits. On the question of limitation/condonation of delay, both the parties put forth pro and contra judgments of the apex court, but arguments of the learned counsel for the appellant hold force, as without acquittal from the same charges, his departmental appeal would have no value. Another justification left with the appellant is his 29 years service and prayers of the learned counsel for the appellant to the effect that depriving his dependents from the pensionary benefits would equate to injustice with his dependents. Stance of the learned counsel is appealing to the effect that real beneficiaries of pensionary benefits are dependents of the appellant and depriving them of such benefits would amount to punishment to his dependents. We are also conscious of the fact that his existence in an educational institution, especially in primary school is not warranted at any cost, but natural justice demands that his 29 years service and resultant benefits belonging to his dependents need to be taken into account. We are satisfied that justice is already done to him.

07. In a situation, we are constrained to convert his major penalty of removal from service into major penalty of compulsory retirement from service with no orders as to costs. File be consigned to record room.

ANNOUNCED.
08.03.2021

Certified to be true copy


E. M. WAZIR
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar


(ATIQ UR REHMAN WAZIR)
MEMBER (E)


(HAMID FAROOQ DURRANI)
CHAIRMAN

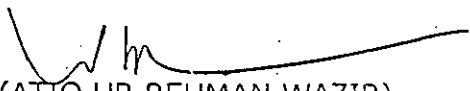
Date of Presentation of Application 22/03/2021
 Number of Pages 2400
 Copying Fee 28-00
 Urgency 4-00
 Total 32-00
 Name of Applicant [Signature]
 Date of Copy 22/03/2021

08.03.2021

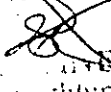
Learned counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG alongwith Muhammad Shoaib, ADO for the respondents present.

Vide detailed judgment of today of this Tribunal placed on file, we are constrained to convert his major penalty of removal from service into major penalty of compulsory retirement from service with no orders as to costs. File be consigned to record room.

ANNOUNCED.
08.03.2021


(ATIQ UR REHMAN WAZIR)
MEMBER (E)


(HAMID FAROOQ DURRANI)
CHAIRMAN

Certified to be true copy

EMANUEL
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 22/03/2021
Number of Words 2400
Copying Fee 2000
Urgent 400
Total 3200
Name of Copyist ST
Date of Completion of Copy 22/03/2021
Date of Delivery of Copy 22/03/2021

بخدمت جناب DEO(Male) صاحب ضلع نوشہرہ

اشرف خان، (EX-SPST, GPS, Khair Abad)

ولد خان گل آفریدی سکنہ محلہ بازار، گاؤں خیر آباد ضلع نوشہرہ۔ (سائل)

درخواست بمراد ضروری کارروائی بابت پیش بر حکم و فیصلہ عدالت سروس ٹریبونل پشاور

محررہ: 08-03-2021

جناب عالی! سائل، حسب ذیل عرض کرتا ہے۔

۱۔ یہ کہ سائل محکمہ تعلیم میں بطور PST سینئر ٹیچر گریڈ 14 تعینات تھا۔

۲۔ یہ کہ سائل کے خلاف جو الزامات ایک فوجداری مقدمہ میں لگائے گئے تھے اس میں ٹرائل کورٹ جناب ایڈیشنل سیشن جج نوشہرہ نے باعزت طریقے سے بری کر دیا ہے۔

۳۔ یہ کہ سائل کے خلاف محکمہ کارروائی عمل میں لائی گئی تھی جس کا باقاعدہ شوکاژ نوٹس جاری ہوا تھا جس کا جواب، وقتی طور پر داخل کیا گیا تھا۔

۴۔ یہ کہ بعد میں سائل کے خلاف محکمہ نے نوکری سے برطرف کرنے کا حکم صادر فرمایا تھا جس کے خلاف سائل نے خیر پختون خواہ سروس ٹریبونل پشاور میں اپیل دائر کر کے جس میں ایجوکیشن ڈیپارٹمنٹ کی طرف سے نمائندے پیش ہوئے اور باقاعدہ مقدمہ ہذا کی قانونی طور پیروی کی۔


۵۔ یہ کہ سائل کے مقدمہ ہذا میں مورخہ: 08-03-21 کو سروس ٹریبونل نے اپنا تفصیلی فیصلہ جاری کرتے ہوئے محکمہ تعلیم کا حکم منسوخ کرتے ہوئے سائل کو پیش کا حقدار ٹھہرایا گیا۔

(نقل فیصلہ لف ہے)

۶۔ یہ کہ اب سائل پینشن اور دیگر واجبات کا وصول کرنے کا بروئے فیصلہ عدالت ہائے سروس ٹریبونل
حقدار ہے۔

لہذا استدعا کی جاتی ہے کہ منظور کی درخواست ہذا سائل کو پینشن و دیگر واجبات بروئے فیصلہ
عدالت ہائے سروس ٹریبونل وصول کرنے کے احکامات صادر فرمایا جائے۔

المرقوم: 24-03-2021

العبد: 

اشرف خان، (EX-SPST, GPS, Khair Abad)

ولد خان گل آفریدی سکینہ محلہ بازار گاؤں خیر آباد ضلع نوشہرہ۔

(12)

WAKALATNAMA

KP Service Tribunal, Peshawar

IN The

Ashraaf Khan

(Petitioner)
(Plaintiff)
(Applicant)
(Complainant)
(Decree Holder)

VERSUS

DEO NSR 30th

(Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

Case implementation

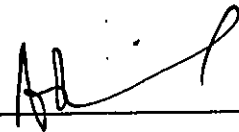
I/We, Ashraaf Khan, do hereby appoint and constitute **Muhammad Arif Jan Advocate** High Court, Peshawar, to appear. Plead, act, compromise, withdraw or refer to arbitration to me/ us as my/ our Counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.

Attested & Accepted

CLIENT/S



Muhammad Arif Jan
Advocate, High Court, Peshawar.
Office No. 6, 1st Floor
Pabbi Medical Centre, G.T. Road
Peshawar.
Mobile: 0333-2212213



محمد ارید جان

Ex SPST