

18.05.2022

Petitioner with counsel present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

2. Learned counsel for the appellant submitted an application for withdrawal of execution petition No. 169/2020 on the ground that in view of the denovo enquiry ordered by the authority vide notification dated 21.03.2019, fresh cause of action has rendered the execution petition infructuous and has accordingly been assailed by the petitioner through a separate service appeal which is pending and yet to be fixed for Preliminary hearing. In view of the formal request by the learned counsel on behalf of the petitioner, the execution petition in hand stands dismissed as withdrawn. Consign.

3. Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 18th day of May, 2022.



(MIAN MUHAMMAD)
MEMBER (E)

Before The Khyber Pakhtunkhwa Service Tribunal
Peshawar

Execution Petition # 169/2020

Jehanzeb

Versus

Mr. Hamid Mehmood (DEO) Malp
Peshawar.

Application for withdrawal of Execution Petition.

Respectfully Sheweth.

Petitioner humbly submit as to the following

1) That respondents have complied with the direction of this Honourable Tribunal vide Order/Judgment of ~~this~~ dated 02-08-2017 in Service Appeal # 961/2015.

2) As per direction of this Honourable Tribunal De novo inquiry has been conducted and order has been passed, which order was handed over to the petitioner vide Order sheet dated 12-01-2022, which order has again been attained by the petitioner through a separate Appeal, which is pending and yet to be fixed for Preliminary hearing.

In view of the above it is humbly requested that Petitioner may be allowed to withdraw his petition and the same may be withdrawn accordingly.

Dated: 18-05-2022.

Through

Petitioner

As → 9.10

Ashraf Ali Khattak
Advocate, Peshawar

12.01.2022

Petitioner alongwith his counsel present. Mr. Arshed Ali, ADEO (Litigation) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present and produced copy of office order dated 21.03.2019 by stating that the same has been passed in light of de-novo inquiry. Copy of the same handed over to learned counsel for the petitioner, who sought time for perusing of the order dated 21.03.2019. Adjourned. To come up for further proceedings before the S.B on 28.02.2022.



(Salah-Ud-Din)
Member (J)

28.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 18.05.2022 for the same as before.



Reader

29.09.2021

Petitioner alongwith his counsel present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Arshad Ali, ADEO(Lit) and Mr. Touseef Ur Rehman, ADEO (Lit) for respondents present.

Representative of the respondents submitted reply to the execution petition which is placed on file. Adjourned. To come up for further proceedings before the S.B on 25.10.2021.


(MIAN MUHAMMAD)
MEMBER (E)

25.10.2021

Mr. Afrasyab Wazir, Advocate is present as proxy on behalf of the learned counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Tauseefur Rehman, ADEO (Litigation) for the respondents present.

Former requests for adjournment due to engagement of learned counsel for the petitioner before the Hon'ble High Court today. Request is accorded. To come up for further proceedings on 24.11.2021 before the S.B.


Chairman

24.11.2021

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Arshad Ali, ADEO for respondents present.

Copy of implementation report which has already been submitted by the respondents is handed over to the learned counsel for the petition today. Learned counsel for the petitioner seeks adjournment. Adjourned. To come up for further proceedings on 12.01.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR

NOTIFICATION:-

- 1 **WHEREAS** Mr. Jehnzaib Khan Ex-Sweeper GMS Garhi Mumtaz Peshawar was re instated in service & adjusted against the vacant post of Sweeper at GMS Garhi Mumtaz Peshawar vide this office Notification issued under endst.No. 7074-81 dated 28-09-2017.in pursuance of Court Judgment dated 02-08-2017 passed by Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal No.962/of 2015 ,with the direction that the issue of back benefits shall be subject to the outcome of the De-novo inquiry.
- 2 **AND WHEREAS** the enquiry committed consisting of Mr.Iqbal Bangush Principal GHS Badaber (Chairman) and Mr. Saïdar Khan Principal GHS Gulshan Rehman Colony Peshawar was constituted to conduct detailed **DE-NOVO** enquiry against the appellatant concerned.
- 3 **AND WHEREAS** an enquiry report submitted by the enquiry committee vide letter No 34 dated 07-11-2017 .The enquiry committee recommended that the official may be reinstated in service without back benefits.
- 4 **NOW THEREFORE**. the DIO(M) Peshawar, being competent authority, is pleased to decide the issue of back benefits in the light of De-Novo enquiry and his intervening /absence period wef 13-12-2013(date of absence) to 02-08-2017 (date of Judgment) is hereby treated as Extra Ordinary Leave without Pay under FR-85.

District Education Officer
(Male) Peshawar.

Endst: No. 3622-28 / SPL-File 21- Shabir & Jehanzaib Dated 21 / 03 / 2019

Copy forwarded to the:-

1. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar in reference with service appeal No.962/of 2015, judgment dated 02-08-2017.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. PS to Secretary E&SED Khyber Pakhtunkhwa Peshawar.
4. PA to Director E&SE Khyber Pakhtunkhwa Peshawar.
5. Cashier Local Office
6. Official Concerned.
7. P/File.

By: District Education Officer
(Male) Peshawar

21/03


25.02.2021

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 29.04.2021.


Reader

29.04.2021

Due to demise of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 22.06.2021 for the same as before.


Reader

22.06.2021

Counsel for the petitioner present and Wakalatnama placed on file. Mr. Kabirullah Khattak, Addl. AG alongwith Arshad Ali, ADO (Lit) for the respondents present.

On previous date, the case was adjourned through Note Reader, therefore, learned AAG seeks time to submit implementation report. To come up for implementation report on 10.08.2021 before S.B.


Chairman

10.08.2021



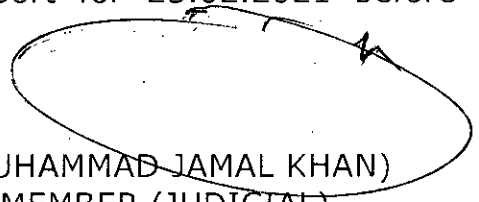
Since 10.08.2021 has been declared public holiday on account of Ist Muharram, therefore, case to come up for the same on 29.09.2021 before S.B.


Reader

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 169 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	07.12.2020	<p>The Execution Petition submitted by Mr. Jehanzeb Khan through Mr. Ashraf Ali Khattak 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-		<p>This Execution Petition be put up before S. Bench on <u>08/01/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>
08.01.2021	S.B.	<p>Counsel for petitioner is present. Notice be issued to the respondents for implementation report for 25.02.2021 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER (JUDICIAL)</p>

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

Execution Petition No. 169 / 2020

IN

Service Appeal No. 961/2015

Jehanzeb Khan,
S/o Mir Akbar, Sweeper,
Govt. Middle School Garhi Mumtaz,
R/o Lalma Delidher,
Village Badaber, District Peshawar.....Applicant.

Versus


Mr. Hamid Mahmood,
The District Education Officer (Male),
Elementary and Secondary Education, Department.
District Peshawar & other.....Respondents.

INDEX

S.No.	Document	Date	Annexure	Page
1.	Execution Petition with Affidavit.			1-3
2.	Copy of the Judgment of this Hon'ble Tribunal in Service Appeal No.961/2015.	02-08-2017	A	4-8
3.	Wakalat Nama.			


Applicant

Through


Ashraf Ali Khattak
Advocate, Peshawar

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

Execution Petition No. 169 / 2020

IN

Service Appeal No. 961/2015

Khyber Pakhtunkhwa
Service Tribunal

Entry No. 1025

Dated 27/12/2020

Jehanzeb Khan,
S/o Mir Akbar, Sweeper,
Govt. Middle School Garhi Mumtaz,
R/o Lalma Delidher,
Village Badaber, District Peshawar.....Applicant.

Versus

1. Mr. Hamid Mahmood,
The District Education Officer (Male),
Elementary and Secondary Education, Department.
District Peshawar.
2. Mr. Hafiz Muhammad Ibrahim,
The Director,
Elementary and Secondary Education, Department.
Khyber Pakhtunkhwa, Peshawar.....Respondents.

**APPLICATION FOR EXECUTION OF ORDER /
JUDGMENT DATED 02-08-2017 PASSED IN
SERVICE APPEAL NO. 961/2015.**

Respectfully Sheweth

1. That applicant / appellant filed service appeal No. 961/2015 before this Hon'ble Tribunal which was disposed of vide Order / Judgment dated 02-08-2017. The operative part of the Judgment is hereby reproduced for kind perusal and consideration of this Hon'ble Tribunal;
6. Perusal of record revealed that no opportunity of personal hearing or self defense during the course of departmental proceedings were provided to the appellant. The respondents could not produced any documentary proof in shape of a letter bearing register acknowledgment due at home address of the appellant which was mandatory under the rules. In view of the above discussion, the impugned order is set aside and the appellant is reinstated in service. The respondents are at liberty to conduct denovo inquiry within a

period of 90 days from receipt of this Judgment, in the mode and manner prescribed in the rules fully associating the appellant with the inquiry proceedings. **The issue of back benefit shall be subject to the outcome of denovo inquiry.**

The copy of Judgment / Order dated 02-08-2017 is attached as **Annexure-A**.

2. That applicant was reinstated in service but the respondents failed to conduct denovo inquiry within specified time.
3. That appellant has been remained out of service since the order of removal from service therefore, he was entitled for back benefits. Section 17 of the Civil Servants Act, 1973 provides that **“a civil servant who is removed from service and later on the removal order is set aside then such civil servant is entitled for the pay during which he remained out of service”**.
4. That applicant submitted application for the back benefits but the same was not responded.
5. That applicant is entitled for back benefits as per Judgment / Order of this Hon'ble Court dated 02-08-2017.

It is therefore, humbly prayed that this Hon'ble Tribunal may graciously be pleased to direct the respondents to grant the applicant back benefits for the time he remained unemployed / out of service till the Order of reinstatement.



Through

Ashraf Ali Khattak
Ashraf Ali Khattak
Advocate, Peshawar

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

Execution Petition No. _____ / 2020

IN

Service Appeal No. 961/2015

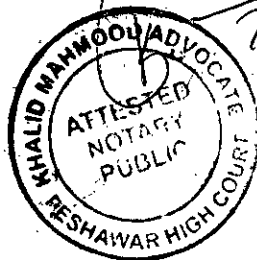
Jehanzeb Khan,
S/o Mir Akbar, Sweeper,
Govt. Middle School Garhi Mumtaz,
R/o Lalma Delidher,
Village Badaber, District Peshawar.....Applicant.

Versus

Mr. Hamid Mahmood,
The District Education Officer (Male),
Elementary and Secondary Education, Department.
District Peshawar & other.....Respondents.

AFFIDAVIT

I, Jehanzeb Khan, S/o Mir Akbar, Sweeper, Govt. Middle School Garhi Mumtaz,
R/o Lalma Delidher, Village Badaber, District Peshawar do hereby solemnly
affirm and declare on oath that the contents of this Execution Petition are true and
correct to the best of my knowledge and nothing has been concealed from this
Hon'ble Tribunal.



Deponent

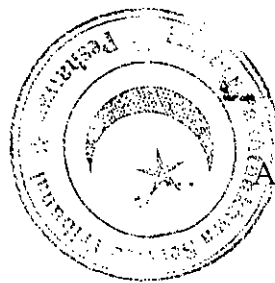
CNIC:

Cell: 0318-9146928

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 962 / of 2015

Jehanzeb Khan,
Son of Mir Akbar, Ex-Sweeper
Government Middle School Garhi Mumtaz
Resident Lalma Delidher
Village Badaber, District Peshawar...



1007
25-8-2015
Appellant

VERSUS

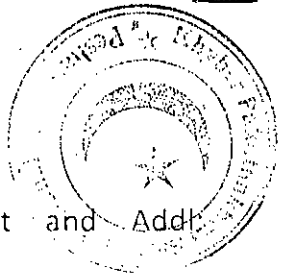
1. The District Education Officer (Male)
Elementary and Secondary Education
Department, Peshawar.
2. The Deputy District Education Officer (Male),
Elementary and Secondary Education
Department, Peshawar.
3. The Director,
Elementary and Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
4. The Secretary,
Government of Khyber Pakhtunkhwa,
Elementary and Secondary Education
Department, Peshawar... .. Respondents

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974 AGAINST THE IMPUGNED ORDER
DATED 24.7.2014 (ANNEX: H) THEREBY
APPELLANT WAS REMOVED FROM
SERVICE AGAINST WHICH HE FILED
DEPARTMENTAL APPEAL ON 15.5.2015
(ANNEX: J) UNDER REGISTERED POST IN
VIEW OF ORDER OF THE HONOURABLE
PESHAWAR HIGH COURT PESHAWAR
VIDE ORDER SHEET DATED 22.4.2015

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Appeal No. 962/2015
Jehanzeb vs Govt



2/8/2017

Counsel for the appellant and Addl.

Advocate General for the respondents present.
Arguments heard and record perused.

Vide our detailed judgment of today placed on connected appeal No.961/2015 titled Muhammad Shabir Versus District Education Officer (Male) Elementary and Secondary Education Department Peshawar and others. The impugned order is set-aside and the appellant is reinstated in service. The respondents are at liberty to conduct denovo inquiry within a period of 90 days from the receipt of this judgment, in the mode and manner prescribed in the rules fully associating the appellant with the inquiry proceedings. The issue of back benefits shall be subject to the outcome of the de-novo inquiry. In case inquiry is not conducted within the stipulated period, the appellant shall be deemed to have been reinstated in service from the date of dismissal from service and the absence period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room. Parties, are however, left to bear their own costs file be consigned to the record.

ANNOUNCED
2/8/2017

(Signature)
(Gul Zeb Khan)
MEMBER

(Signature)
Muhammad Hamid Mughal
MEMBER

Certified to be true copy
EX-100
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

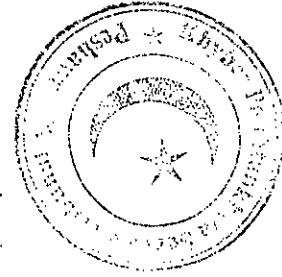
Date of Presentation of Application 12-9-17
Number of Words 880
Copying Fee 6-
Urgent 2-
Total 8-
Name of Copy [Signature]
Date of Completion of Copy 12-9-17
Date of Delivery of Copy 12-9-17

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 961/2015

Date of Institution ... 25.8.2015

Date of Decision ... 02.08.2017



Mr. Muhammad Shabbir Son of Muhammad Nazir.
Ex-Naib Qasid, Govt. Middle School,
Garhi Mumtaz, Peshawar.

(Appellant)

VERSUS

1. The District Education Officer(Male) (E&SE) Department Peshawar.
 2. The Deputy District Education Officer (Male), (E&SE) Department Peshawar.
 3. The Director (E&SE) Department, Khyber Pakhtunkhwa Peshawar.
 4. The Secretary, (E&SE) Department, Khyber Pakhtunkhwa
- ... (Respondents)

MR. KHUSH DIL KHAN,
Advocate

For appellant.

MR. Adeel Butt,
Addl: Advocate General

...

For respondents.

MR. GUL ZEB KHAN
MR. MUHAMMAD HAMID MUGHAL

...

MEMBER
MEMBER

JUDGMENT

GUL ZEB KHAN, MEMBER. - This judgment shall dispose of the aforesaid Appeal as well as the connected Service Appeal No. 962/2015 titled "Jehanzeb Khan Versus District Education Officer (Male) (E&SE) Department Peshawar & Others" as similar question of law and facts are involved in both the appeals.

2. The aforesaid appeal dated 25/8/2015 has been lodged by Mr. Muhammad Shabbir, ex-Naib Qasid hereinafter referred to as appellant, under Section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, wherein he has impugned the order dated 9/6/2014, vide which appellant was awarded major penalty of Removal from Service. The appellant filed departmental appeal against the impugned order on 15/5/2015 which was not disposed of within statutory period of ninety days and hence this appeal.

ATTESTED

(Signature)
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Brief facts of the case giving rise to the instant appeal are that the appellant joined Education Department as Naib Qasid on 5/11/2012. He joined duty after fulfilment of all the requisite formalities. That since then, appellant was performing his duties regularly to the entire satisfaction and during this period, no complaint whatsoever was made about his alleged absence to any quarter by any authority. Similarly, he was regularly paid salary without any break. That all of a sudden, his monthly salary was stopped without any notice and reason, so he submitted applications to higher authorities for release of salary but no action was taken thereon. Thereafter he filed a Writ Petition No. 1511-P/2014 titled "Muhammad Shabbir and others versus The Secretary Govt. of Khyber Pakhtunkhwa Elementary and Secondary Education Peshawar and other", in response to which, the respondents filed parwise comments with document pertaining to disciplinary action and removal of the appellant from service. That for the first time, appellant came to know about the disciplinary proceedings conducted against him by the respondents on false charge of absence culminating, in the impugned order dated 9/6/2014 of removal of the appellant from service, when relevant documents as referred above were filed by respondents in the Peshawar High Court. Hence in view of this scenario, the appellant withdrew his writ petition vide order sheet dated 22/4/2015. Thereafter the appellant filed departmental appeal before the respondent No. 3, but the same was not disposed of within statutory period of ninety days. Hence the instant appeal.

3. Learned counsel for the appellant argued at the bar that mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules. That neither any notice was issued directly to the appellant nor on his proper home address as required under Rule-9 of the E&D Rules 2011 nor any chance of personal hearing/defense was given to him before passing the impugned order and that no regular enquiry was conducted by the respondent-department which was mandatory requirement of the law while awarding such major punishment. That since the impugned order is illegal and without any justification, hence the same be set-aside. In this respect, the learned counsel relied on citation (b) Interpretation of statutes as contained in

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2011 PLC (CS) 771 titled "Abdul Bashir and 9 Others Versus Govt of Baluchistan through Chief Secretary and 3 Others".

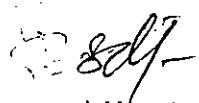
4. In rebuttal, learned Government Pleader argued before the court that since the appellant has willfully absented himself without any leave, hence he was rightly proceeded against and removed from service vide impugned order dated 9/6/2014. Relying on 2002 SCMR 1004 titled "Pakistan International Airlines Corporation versus Captain MSK Lodhi ... Respondents" the learned Government Pleader contended that the instant appeal is badly time barred and without any substance, hence may be dismissed with cost.

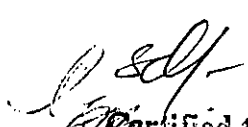
5. We have heard arguments of learned counsel for the appellant and learned Government Pleader for the respondents and have gone through the record available on file.

6. Perusal of record revealed that no opportunity of personal hearing or self-defense during the course of departmental proceedings were provided to the appellant. The respondents could not produce any documentary proof in the shape of a letter bearing registered acknowledgment-due at home address of the appellant which was mandatory under the rules. In view of the above discussion the impugned order is set-aside and the appellant is reinstated in service. The respondents are at liberty to conduct denovo inquiry within a period of 90 days from the receipt of this judgment, in the mode and manner prescribed in the rules fully associating the appellant with the inquiry proceedings. The issue of back benefits shall be subject to the outcome of the de-novo inquiry. In case inquiry is not conducted within the stipulated period, the appellant shall be deemed to have been reinstated in service from the date of dismissal from service and the absence period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be returned to the record room.

ANNOUNCED

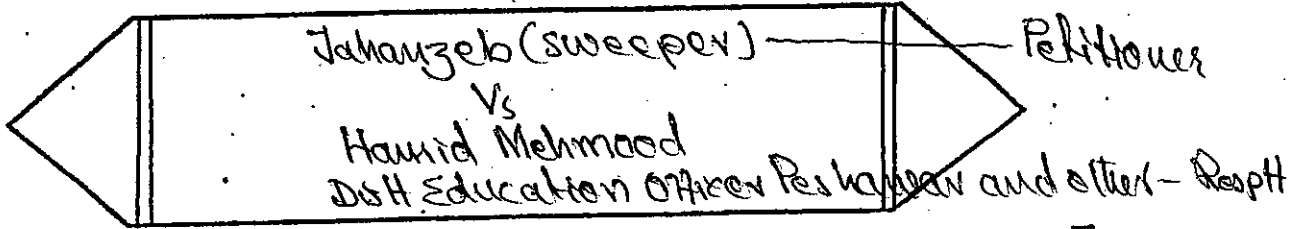
02.08.2017


(Muhammad Hamid Mughal)
MEMBER


(Gul Zeb Khan)
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Certified to be true copy.

Khyber Pakhtunkhwa
Service Tribunal, Peshawar



موزعہ	-----
مقدمہ	-----
دعویٰ	-----
جرم	-----

باعث تحریر آنکد

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے اشرف علی خٹک اڈووکیٹ

مقرر کر کے اتر کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو رضی نامہ کرنے و تقریرات ہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک دروپہ عرضی 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 اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے 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 لکھ دیا کہ سند ہے۔

مہاراجہ صاحب خان
17301-47954-9

Attested & Accepted

المرقوم

30 ماہ 30 2020

Ashraf Ali Khattak

Advocate

BC # 1046-05

کے لئے منظور ہے۔

بمقام

cell # 0332-9931676.

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2021

Place on file

Jehanzeb

(APPELLANT)
(PLAINTIFF)
(PETITIONER)


22/6/2021

VERSUS


Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Jehanzeb

Do hereby appoint and constitute **MIR ZAMAN SAFI, 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. 22/06/2021



CLIENT


ACCEPTED

MIR ZAMAN SAFI
ADVOCATE

OFFICE:

Room No.6-E, 5th Floor,
Rahim Medical Centre, G.T Road,
Hashtnagri, Peshawar.
Mobile No.0323-9295295

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Execution Petition No.169/2020

Jehanzeb Khan.....Petitioner

Vs.

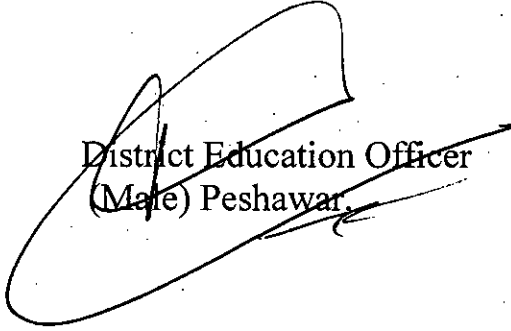
Mr. Hamid Mehmood DEO & OTHERS.....Respondents

**REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENT
DEPARTMENT.**

RESPECTFULLY SHEWETH.

1. That Para No.1 pertains to record.
2. That in reply to Para No.2, it is submitted that the Respondent Department re-instated the Petitioner in light of the judgment of this Hon'ble Service Tribunal and conducted the de veno inquiry.
(Copy of Inquiry is annexed as Annex: A)
3. That in reply to Para No.3, it is submitted that the Respondent Department implemented the judgment of this Hon'ble Tribunal with in true letter and spirit.
4. That Para No.4 is pertains to record.
5. That reply of Para No.5 has already given in the above Para.

It is therefore, prayed that on acceptance of this reply, the execution petition may very kindly be dismissed.


District Education Officer
(Male) Peshawar.

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OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.
TO BE SUBMITTED WITH THIS OFFICE NOTIFICATION BEARING SAME NO. & DATE.
OFFICE ORDER

Consequent upon the approval of the competent authority, the following officials are hereby transferred / adjusted on their own pay and BPS, in the Schools noted against their names in the interest of public service with immediate effect.

S#	Name & Designation	From	To	Remarks
1	Mr. Muhammad Shabir (B2)	GMS Garhi Muntaz Peshawar	GHS Garhi Ghulam Shah Peshawar	Against Vacant Post
2	Mr. Jehanzeb Khan (Ayoverper)	GMS Garhi Muntaz Peshawar	GHS Matani Peshawar	Against Vacant Post

NOTE:

1. No TA/DA is allowed
2. Change Report should be submitted to all concerned

(JADDI KHAN KHALIL)
DISTRICT EDUCATION OFFICER

(MALE) PESHAWAR.

Undst No. 12867/SPL File -21/Shabir & Jehanzeb dated 25 / 01 / 2018.

Copy of the above is forwarded to the -

1. Accountant General F/Byber Palitwal Swa Peshawar
2. Principal GHS Garhi Ghulam Shah Peshawar
3. Principal GHS Matani Peshawar
4. Officials concerned.
5. Master File

[Signature]
DY. DISTRICT EDUCATION OFFICER
(MALE) PESHAWAR

Olc

OFFICE OF THE PRINCIPAL GOVERNMENT HIGH SCHOOL BADABER PESHAWAR

No. 34 Dated: 07/11/2017


DENOVE INQUIRY IN RESPECT OF:

1. Mr. Muhammad Shabeer N/Qasid GMS Garhi Mumtaz Peshawar.
1. Mr. Jahan Zeb Khan Chowkidar GMS Garhi Mumtaz Peshawar.

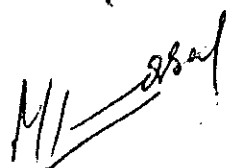
AUTHORITY
DISTRICT EDUCATION OFFICER (MALE)
PESHAWAR

INQUIRY OFFICERS:

1. MR. MUHAMMAD IQBAL
PRINCIPAL G.H.S BADABER PESHAWAR
2. MR. SAFDAR KHAN
PRINCIPAL GOVT. SHAHEED SAAD-UR-RAHMAN HIGH SCHOOL GULSHAN
RAHMAN COLONY PESHAWAR


(SAFDAR KHAN)

PRINCIPAL BPS-18
GOVT. SHAHEED SAAD UR REHMAN HIGH SCHOOL
(GULSHAN REHMAN COLONY PESHAWAR)



(MUHAMMAD IQBAL)
PRINCIPAL BPS-19
GOVT. HIGH SCHOOL

TERMS OF REFERENCE:

The District Education Officer (Male) Peshawar has constituted an enquiry committee vide Notification No.6536-38 dated 25-09-2017 to order a **Denovo Inquiry** in pursuance of the Honorable KP Service Tribunal judgment dated 02/08/2017, in respect of the following class IVs GMS Garhi Mumtaz Peshawar.

- I. Mr. Muhammad Shabeer N/Qasid GMS Garhi Mumtaz Peshawar.
- II. Mr. Jahan Zeb Khan Chowkidar GMS Garhi Mumtaz Peshawar.

HISTORY OF THE INQUIRY:

Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar had been removed from their services vide the District Education Officer (Male) Peshawar Notifications No. 3994-4000 dated 09-06-2013 and 8317-23 dated 24-07-2014, respectively for the charge of their willful absence from their duties.

Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar had filed a case in the Honorable Service Tribunal of Khyber Pakhtunkhwa against the decision of their removal which has passed finally its judgment on 02/08/2017 reproduced as under:

“In view of the above discussions the impugned order is set aside and the appellant is reinstated in service. The respondents are at liberty to conduct Denovo inquiry within a stipulated period of 90 days from the receipt of this judgment in the mode and manner prescribed in the rules fully associating the appellant with the inquiry proceedings. The issue of back benefits shall be subject to outcomes of the Denovo inquiry.”

In pursuance of the Honorable Service Tribunal of Khyber Pakhtunkhwa judgment, the District Education Officer (Male) Peshawar has reinstated Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar in service at GMS Garhi Mumtaz Peshawar vide Endst: No. 7074-81 dated 28-09-2017, therein constituting this inquiry committee vide Notification No. No.6536-38 dated 25-09-2017 for the purpose of back benefits as required in the judgment.

MECHANISIM OF THE INQUIRY:

The following procedure, in line with judgment, associating the appellants, was adopted to conduct this inquiry:

Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar were called to GHS Badhber Peshawar on 23/10/2017 and a questionnaire was served upon both to probe the matter further. (Copies annexed as "A" & "B")

2. Also both the affected class IVs were asked to furnish a written statement at their liberty to the inquiry committee in case the questionnaires don't fully cover their grievances.
3. The inquiry committee visited GMS Garhi Muntaz Peshawar on 02/11/2017 to investigate as to when the school started its proper functioning and whether the affected class IVs have rendered their services there or not. For this purpose the first attendance register of the school was examined and photo copies of its pages were extracted duly signed by the Head Teacher concerned (Copy annexed as "C"). Also the Head Teacher was asked to furnish a written statement regarding the opening of the school and the matter in question regarding the services of Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar.
4. The land owner Mr. Samiullah s/o Rifaqat Khan was investigated/interrogated for his claim of appointments from the members of his family and opinion about adjustment of Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar who had been appointed against the newly created vacancies in the school established on his inherited plot of land.

FINDINGS OF THE INQUIRY:

After thorough examination of the record, statements of both the parties and their informal interviews/personal hearing the inquiry committee record its findings as under.

1. Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar had been appointed against the newly created vacant posts lying at GMS Garhi Muntaz Peshawar which was established on the land of one Mr. Rifaqat Khan and it remained in nonfunctional condition up to 01/05/2014 as evident from the first attendance register of the school.
2. In the written statement obtained from the Head Teacher Mr. Kifayatullah SST (G) (Copy annexed as "D") he has declared that his brother Mr. Latifullah C.T took the charge of the school and thus the school started functioning on 02/05/2014.
3. Both the affected class IVs attended the school on 06/05/2012 to submit their arrival report there to the Head Teacher but the school was closed and they were not allowed by the land owner to take over the charge on ground there, as the land

owner of the said school was demanding the appointment of class IVs from his family members as he deserved per agreement with the Education department.

4. The confession of the land owner Mr. Samiullah in front of the inquiry committee endorsed the narrative and written statement of Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar that they were not allowed to take over the charge on the day of their arrival on 06/11/2012 as the land owner had applied for appointment of class IVs for his own family members.
5. Compellingly both the affected class IVs submitted their arrival reports in paper, to the then S.D.E.O (Male) Primary Peshawar on 06/11/2012 (Copies annexed as "E" & "F") where they were asked to arrange service books, handing them over to the official concerned for further process.
6. On 12/11/2012 both the affected class IVs requested in written to the then S.D.E.O (Male) Primary Peshawar to adjust them at a station where they could perform their duties normally (Copies annexed as "G" & "H") but the authority concerned failed to pay any heed to the significant matter of their indefeasible vested rights and other prerogatives and unfortunately they remained without any station of duty till their removal.
7. After fulfillment of the requisite codal formalities their salaries were started and necessary entries to the effect have been made in their service books but the matter of their place of duty was left undecided and they were told verbally by the then S.D.E.O (Male) Primary Peshawar to wait for their corrigendum/further order thereto.
8. In their written statement, (Copy annexed as "I") they have declared that again they have re-appealed on 15/10/2013 to the then S.D.E.O (Male) Primary Peshawar for their re-adjustment at a station where they could perform their duties normally notwithstanding no step has been taken in this regard by the authority concerned till last.
9. The competent authority, the then DEO (M) Peshawar has proceeded against them a disciplinary action under the Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules 2011, on the charge of willful absence from duty wherewith they were removed from their services but the fact cannot be denied that they have not been provided the opportunity to render their services normally as required, in view of the ground reality that they were unable to perform their duties in the mentioned school because they had been debarred by the land owner.

CONCLUSIONS OF THE INQUIRY

In view of the Denovo inquiry proceedings carried out, it is concluded that:


1. In pursuance of the District Education Officer (Male) Peshawar Endst: No.5708-55 dated 05/11/2012 the affected class IVs attempted to take over the charge at GMS Garhi Muntaz Peshawar but as a matter of fact the school was closed and they were not allowed by the land owner to take over the charge there.
2. The then D.E.O (M) had appointed these two class IVs on the recommendations of Mr. Khushdil Khan, the then deputy speaker provincial assembly Khyber Pakhtunkhwa, in violations of the agreement with the land owner wherein it was committed by the D.E.O (M) Peshawar that class IVs will be employed from among the family members of the land owner.
3. The affected class IVs have duly submitted their arrival reports to the then S.D.E.O (Male) Primary Peshawar and a written request has been made by them simultaneously to redress their grievances of the place of their duty.
4. The then S.D.E.O (Male) Primary Peshawar has proceeded for drawl of their salaries and their salaries were released in due course of time but he has, neither ensured their duties on the disputed station where they were appointed nor they had been provided another place for their posting, in view of their grievances based on facts.
5. The competent authority, the then D.E.O (Male) Peshawar before initiating disciplinary proceedings against them has not ensured a remedial and corrective measure either to persuade the land owner not to hinder the affected class IVs to render their services normally on the disputed station or therefrom transfer and adjust them elsewhere.
6. Though all the codal formalities for removal of the affected class IVs have been duly fulfilled by the competent authority but the inquiry committee on its visit to the D.E.O (Male) Peshawar and a meeting therein with the present D.E.O (Male) Peshawar requested for provision of supporting documents i.e. Inquiry report etc. but nothing was found in this regard to depict the delinquency on the part of the affected class IVs which may tantamount to the instant inefficiency or misconduct liable to disciplinary action under the rules.
7. One Mr. Muhammad Shabeer Naib Qasid has been removed from his services on 09/06/2014 and the other Mr. Jahan Zeb Khan Chowkidar on 24/07/2014 from the same disputed station without redressing their above mentioned grievance and thus the instant case might not speak fully of the inefficiency, omission and

commission based on malafide intentions of the affected class IVs liable to the instant disciplinary action.

8. The appointment of Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar on the school constructed on the land of Mr. Rifaqat Khan, as revealed during the course of the inquiry, on the recommendations of the then Deputy speaker provincial assembly Khyber Pakhtunkhwa, is really an act unbecoming of a competent civil servant and their removal from service without the insurance of a convenient place of their duty, is a gross negligence on the part of the competent authority.

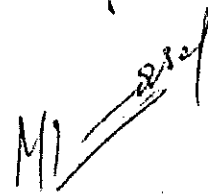
RECOMMENDATIONS OF THE INQUIRY:-

1. The Honorable Khyber Pakhtunkhwa Service Tribunal vide its judgment dated 02/08/2017 has already set aside the removal orders of Mr. Muhammad Shabeer Naib Qasid and Mr. Jahan Zeb Khan Chowkidar conditioning the back benefits with a Denovo inquiry. So this enquiry committee also recommends their reinstatement without back benefits.
2. The then D.E.O (Male) Peshawar may be taken to task, issuing him a letter of explanation under the Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules 2011 for his two fold omissions and commissions, one for illegally appointing both the affected class IVs on a disputed station i.e. a school established on the land of another owner in violation of the agreement with him and afterwards removing these class IVs without redressing their grievance of disputed place of their duty.


(SAQDAR KHAN)

PRINCIPAL BPS-18

GOVT: SHAHEED SAAD UR REHMAN HIGH SCHOOL



(MUHAMMAD IQBAL)

PRINCIPAL BPS-19

GOVT: HIGH SCHOOL