

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

CMA No. 6730 /2022

Kaleem Ullah

..... **Petitioner**

VERSUS

Govt: of KPK through Secretary Elementary & Secondary
Education Civil Secretariat Peshawar etc.

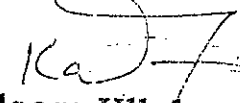
..... **Respondents**

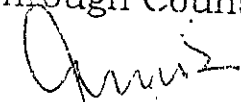
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Dated: ___/12/2022

Your Humble Petitioner


Kaleem Ullah
Through Counsel


GUL TIAZ KHAN MARWAT
Advocate High Court
DIKhan

I

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

CMA No. _____/2022

Kaleem Ullah PST GPS Sultania D.I.Khan **APPELLANT**

VERSUS

1. Govt: of K.P.K through Chief Secretary Civil Secretariat Peshawar.
2. The Secretary Education Govt: of KPK Civil Secretariat Peshawar.
3. The Director Elementary & Secondary Education Govt. Of KPK Peshawar.
4. The District Education Officer (Male) D.I.Khan

..... Respondents

PETITION CONTAINING THE REQUEST FOR IMPLEMENTATION OF JUDGMENT / ORDER OF THIS LEARNED TRIBUNAL CAMP COURT D.I.KHAN DATED 28.09.2022 PASSED IN SERVICE APPEAL NO. 6730/2021 TITLED AS "KALEEM ULLAH V/S GOVT. OF KPK THROUGH SECRETARY EDUCATION AND OTHERS".

Respected Sir,

1. That the Petitioner is serving as PST in the Education Department D.I.Khan.
2. That the Petitioner was deferred from promotion to the post of S.PST vide office order No. 21853-57 dated 27.07.2020 against which the subject cited appeal was filed by the Petitioner in the KPK Service Tribunal Peshawar vide Appeal No. 6730/2021.

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3. That the Appeal came up for hearing before the Honourable Division Bench of KPK Service Tribunal Peshawar Camp Court D.I.Khan on 28.09.2022 and the Honourable Tribunal was pleased to accept the Appeal. Copies of Appeal alongwith Judgment are enclosed as **Annexure - A&B** respectively.
4. That the petitioner approached respondent No. 4 through written application dated 26.11.2022 containing the request to implement the judgment of this honourable Tribunal and to grant promotion to the post of S.PST with effect from 08.12.2020 as per due seniority of Petitioner in the seniority list. Copy of application is enclosed as **Annexure - C**.
5. That the judgment/ order of this honourable Court has not so far been implemented by the respondents, therefore, the Petitioner having no other remedy seeks the indulgence of this learned tribunal for implementation of its judgment / order under its inherent jurisdiction inter alia on the following grounds.

GROUNDS:-


- A. That it is / was the legal, statutory and moral obligations of respondents to implement the judgment / order of this learned Tribunal but they have failed to do so which is shocking for the petitioner and also amounts contempt of Court.

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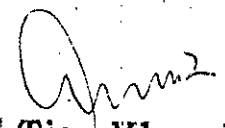
- B. That the actions/in. actions, conduct and modus operandi of Respondents to disobey and violate the judgment/ order is tantamount to abuse and obstruct the process of Court to disobey the order of Court of law/tribunal which is a visible contempt of Court for which he is liable to be proceeded under the law.
- C. That the Petitioner has no other remedy for implementation of judgment of the Honourable Tribunal except to knock the door of this Honourable Tribunal for implementation of judgment.
- J. That the Honourable Tribunal got powers and jurisdiction to take cognizance in the matter and to implement the judgment and order so passed by this Honourable Tribunal.
- K. That counsel for the Petitioner may please be allowed to raise additional ground during the course of arguments.

It is, therefore, humbly prayed on acceptance this Petition, this Honorable Tribunal may very graciously be pleased to issue direction to respondents to implement the judgment/ order of this Honourable Tribunal in letter and sprit so as to meet the ends of justice.

Your humble Petitioner,


Kaleem Ullah
Through Counsel

Dated: ___/12/2022


Gul Tiaz Khan Marwat
Advocate High Court
DIKhan

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BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

CMA No. _____/2022

Kaleem Ullah

.....

Petitioner

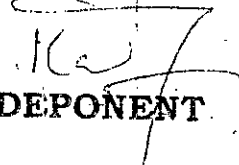
VERSUS

Govt: of KPK through Secretary Elementary & Secondary
Education Civil Secretariat Peshawar etc.

.....**Respondents**

AFFIDAVIT

I, Kaleem Ullah PST GPS Sultania D.I.Khan, do hereby
solemnly affirm and declare on Oath that the contents of
Petition are true and correct to the best of my knowledge
and belief and nothing has been concealed from this
Honorable Tribunal.


DEPONENT

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BEFORE THE KPK SERVICE TRIBUNAL
PESHAWAR

Service Appeal NO 5730 /2021

Kaleem Ullah PST GPS Sultania D.I.KhanAPPELLANT

VERSUS

1. Govt. of K.P.K through Chief Secretary Civil Secretariat Peshawar.
2. The Secretary Education Govt. of KPK Civil Secretariat Peshawar.
3. The Director Elementary & Secondary Education Govt. Of KPK Peshawar.
4. The District Education Officer (Male) D.I.Khan

..... Respondents

APPEAL U/S 4 OF KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER OF WITHHOLDING AND NON-DISPOSAL
OF DEPARTMENTAL APPEAL OF THE APPELLANT DATED
09.11.2020 BY RESPONDENT NO. 3 WITHIN THE STATUTORY
PERIOD AGAINST THE OFFICE ORDER NO. 21853-57 DATED
27.07.2020 ISSUED BY RESPONDENT NO. 4 VIDE WHICH CASE
OF APPELLANT FOR THE PROMOTION TO THE POST OF S.PST
HAS BEEN DEFERRED.

Respectfully Sheweth,

1. That the addresses given in the memo of Appeal are sufficient for the purpose of service of parties.
 2. That the Appellant is a citizen of Islamic Republic of Pakistan and being a citizen of the country, the appellant has the rights and obligations under the constitution.
 3. That the appellant filed a writ petition before the honourable Court bearing W.P No. 586/2014 for the appointment of Appellant as PST which came up for hearing before this
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Honourable Court on 25.09.2018 and this honourable Court was pleased to pass an order/judgment directing the Education Department KPK/ D.I.Khan to appoint the Appellant as PST from the date his other colleagues of low merit was appointed. Copy of judgment is enclosed as **Annexure - A.**

4. That in compliance with the judgment/ order of the honourable High Court, the appellant was appointed as PST vide office order bearing Endst: No. 22269-78 dated 30.08.2019. Copy of Appointment order is enclosed as **Annexure - B.**

5. That the appellant was granted seniority and pay fixation from the year 2014 pursuant to the judgment and order of honourable High Court and this fact is duly mentioned at serial No. 12 of terms and conditions laid down in the appointment order referred to the above.

6. That it is further submitted that after appointment of appellant his pay fixation was also carried out by the District Accounts Officer from the year 2014 and pay of the appellant was also computerized and seniority list was also prepared by the office wherein appellant name is appeared/ figured at serial No. 452 of the seniority list. Copy of seniority list is enclosed as **Annexure - C.**

7. That in spite of eligibility, seniority and fitness for promotion to the post of S.PST, the name of appellant has been listed in the deferred candidates vide office order/list. Copies of order

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and list of deferred candidates / teachers are enclosed as **Annexure - D&E.**

8. That feeling aggrieved from the impugned office order/ list of deferred candidates qua the appellant, the appellant sought the indulgence of the office of Respondent No. 4 by preferring representation dated 02.11.2020 for reconsideration of the case of appellant for promotion to the post of S.PST. Copy of representation is enclosed as **Annexure - F.**
9. That the appellant has been informed by the office of respondent No. 4 verbally that he is not eligible for the promotion to the post of S.PST but no written order has been communicated of disposal of representation of appellant.
10. That the appellant preferred a departmental appeal dated 09.11.2020 before the next higher / departmental Authority i.e. respondent No. 3. Copy of departmental Appeal is enclosed as **Annexure - G.**
11. That when no action was taken by the office of respondent No. 3 in the matter, then the Appellant sought legal remedy of filing constitutional petition before the honourable Peshawar High Court D.I.Khan Bench by filing writ petition No. 946/2020.
12. That the writ petition came for hearing before Division Bench of High Court on 29.06.2021 and the same was dismissed due to lack of jurisdiction with observation that the appellant is at liberty to approach proper forum for his redressal, if he is so advised. Copy of order is enclosed as **Annexure - H.**

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13. That feeling aggrieved from the impugned actions/ inactions of Respondents 3&4 and having no other speedy remedy, is obliged to knock the door of this Honourable Tribunal under its Appellate Jurisdiction inter alia on the following grounds:

GROUNDS:-

- A. That the impugned actions / inactions of office of the respondent No. 3 not to consider the request/ application of appellant for granting of promotion to the appellant as a S.PST inspite of eligibility and seniority cum fitness is against law, arbitrary, malafide, void ab-initio, without lawful authority, without jurisdiction and of no legal effects qua the rights of appellant.
- B. That it is a settled proposition of service law that promotion to the next higher post is to be granted on the basis of seniority cum fitness.
- C. That the appellant is otherwise eligible and fit to be promoted to the post of S.PST on the basis of seniority cum fitness and there is no hurdle in the way of considering the case of appellant for grant of promotion keeping in view the provisions of relevant section of Civil Servants Act-1973 and Rules framed there under.
- D. That the appellant is entitled for the grant of promotion to the post of S.PST but an attempt has been made by the office of respondent No. 4 to deprive the appellant from his vested rights for consideration the case of appellant of promotion.

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- E. That there is no hurdle and hardship in the way of the office of respondent No. 4 to grant promotion to the appellant as appellant is duly eligible and qualified for promotion.
- F. That it is the legal and moral obligations of office of respondent No. 3 to decide the departmental appeal within reasonable time, with reason and to communicate the result of departmental appeal to the appellant but he failed to do so.
- G. That provisions of Article-4 of the constitution provide constitution guarantee to the peoples and citizens that the executive cannot take their rights of life, liberty and property without legal justification but appellant has been deprived by the respondents of his legal and vested rights.
- H. That this Honourable Tribunal has vast powers under the constitution and is the custodian of constitution and fundamental rights of the citizens of the country.
- J. That Counsel for Appellant may please be allowed to raise additional grounds during the course of arguments.

In view of the submissions made above, it is, therefore, humbly prayed that on acceptance this Appeal, this Honourable Tribunal may very graciously be pleased to pass an order declaring the impugned office order No. 21853-57 dated 27.10.2020 deferring the case qua the appellant to be void, illegal, against law, without lawful authority and without jurisdiction and as a consequence thereof, respondent No. 4 may please directed to reconsider the case of appellant for grant of promotion to the post of S.PST so as to meet the ends of justice and fair play.

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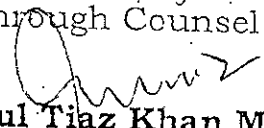
Any other relief deemed appropriate in the prevailing circumstances may also be granted.

Dated: 5/07/2021

Your Humble Appellant,



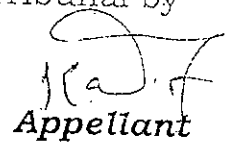
Kaleem Ullah
Through Counsel



Gul Tiaz Khan Marwat
Advocate High Court
D.I.Khan

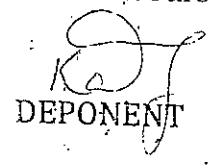
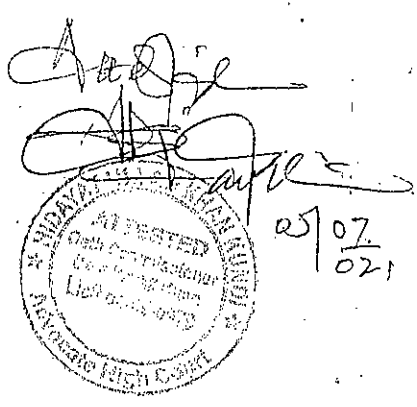
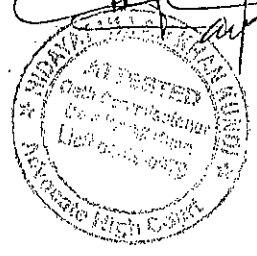
CERTIFICATE:

Certified that it is a first Appeal before this Honourable Tribunal by the appellant on the subject.


Appellant

AFFIDAVIT:

I, Kaleem Ullah PST S/O Azhar Obaidullah R/O Jhoke Qureshi D.I.Khan, the appellant do hereby solemnly affirm and declare on Oath that the contents of the Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.

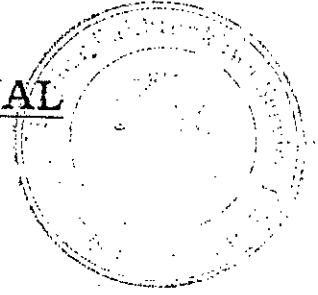

DEPONENT
05/07/2021

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BEFORE THE KPK SERVICE TRIBUNAL
PESHAWAR

Service Appeal NO 6730 /2021



Kaleem Ullah PST GPS Sultania D.I.KhanAPPELLANT

VERSUS

1. Govt: of K.P.K through Chief Secretary Civil Secretariat Peshawar.
2. The Secretary Education Govt: of KPK Civil Secretariat Peshawar.
3. The Director Elementary & Secondary Education Govt. Of KPK Peshawar.
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.....Respondents

APPEAL U/S 4 OF KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER OF WITHHOLDING AND NON-DISPOSAL
OF DEPARTMENTAL APPEAL OF THE APPELLANT DATED
09.11.2020 BY RESPONDENT NO. 3 WITHIN THE STATUTORY
PERIOD AGAINST THE OFFICE ORDER NO. 21853-57 DATED
27.07.2020 ISSUED BY RESPONDENT NO. 4 VIDE WHICH CASE
OF APPELLANT FOR THE PROMOTION TO THE POST OF S.PST
HAS BEEN DEFERRED.

Respectfully Sheweth,

1. That the addresses given in the memo of Appeal are sufficient for the purpose of service of parties.
2. That the Appellant is a citizen of Islamic Republic of Pakistan and being a citizen of the country, the appellant has the rights and obligations under the constitution.
3. That the appellant filed a writ petition before the honourable Court bearing W.P No. 636/2014 for the appointment of Appellant as PST which came up for hearing before this

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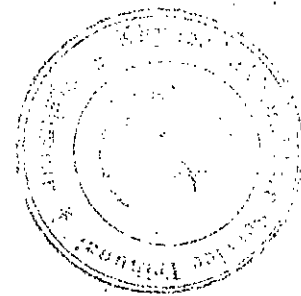
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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT D.I.KHAN.

Service Appeal No. 6730/2021

Date of Institution ... 06.07.2021

Date of Decision ... 28.09.2022.



Kaleem Ullah PST GPS Sultania D.I.Khan.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Civil
Secretariat Peshawar and 03 others.

(Respondents)

MR. GUL TIAZ KHAN MARWAT.

Advocate

For appellant.

MR. MUHAMMAD ADEEL BUTT,

Additional Advocate General

For respondents.

MR. KALIM ARSHAD KHAN

MR. SALAH-UD-DIN

CHAIRMAN

MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts giving rise to filing of the instant appeal are that the appellant was not appointed as PST constraining him to file Writ Petition No. 686-D of 2014 before august Peshawar High Court, challenging the appointment order dated 05.12.2014 as well as the appointment of one Zameer Hussain, who was appointed as PST through the aforementioned appointment order. The Writ Petition of the appellant was allowed vide judgment dated 25.09.2018 passed by august Peshawar High

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SALAH-UD-DIN
MEMBER (JUDICIAL)

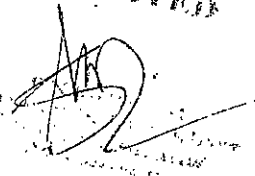
Court, D.I.Khan Bench, with the observations that the appellant shall be entitled to the seniority from the date when his other colleagues were appointed. In consequence of the aforementioned judgment, the appellant was appointed as PST vide office order dated 30.08.2019 and it was mentioned therein that he will be entitled for seniority of PST from the year 2014. The pay fixation of the appellant was also made from the year 2014 and his name was also placed at serial No. 452 of the seniority list of PSTs. While promoting PSTs (BPS-12) to the post of SPSTs (BPS-14), the name of the appellant was included in the list of those PSTs, who were deferred from promotion, constraining the appellant to file departmental appeal, which was not responded within the statutory period, hence the instant appeal.

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

3. We have already heard the arguments of learned counsel for the parties and have perused the record.

4. The appellant had applied for the posts of PSTs advertised in January 2014 and participated in test as well as interview, however he was ignored and one Zameer Hussain, who was having low merit than the appellant, was appointed vide appointment order dated 05.12.2014. The appellant challenged the appointment order as well as appointment of one Zameer Hussain through filing of Writ

APPROVED




petition before worthy Peshawar High Court, which was allowed in terms reproduced as below:-

"9. For stated reasons, the petitioner has made out a case for the indulgence of this court. We thus allow this petition to the extent that the petitioner shall be allowed appointment against first available vacancy. He shall also be entitled to the seniority from the date when his other colleagues were appointed pursuant to the same advertisement. It is however, clarified that he shall not be entitled to arrears of salaries, except fixation of pay."

5. It is crystal clear from the judgment dated 25.09.2018 passed by worthy Peshawar High Court, D.I.Khan Bench that seniority of the appellant was to be considered along with his colleagues appointed vide order dated 05.12.2014. According to serial No. 12 of terms and conditions mentioned in appointment order of the appellant dated 30.08.2019, the seniority of the appellant was to be considered from the year 2014. It is, however, astonishing that in their reply/comments, the respondents have alleged that the seniority of the appellant shall be considered from the date of his appointment i.e 30.08.2019, which runs counter to serial No. 12 of terms and conditions of service of the appellant as mentioned in the appointment order dated 30.08.2019. The appellant was wrongly deprived of his due right of appointment in the year 2014, which fact has been affirmed through judgment dated 25.09.2018 passed by august Peshawar High Court, D.I.Khar Bench. The respondents were required to have considered the case of promotion of the appellant in

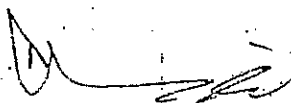
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D. I. KHAN
JUDGE
PESHAWAR HIGH COURT

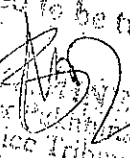
light of judgment dated 25.09.2018 passed by august Peshawar High Court, D.I.Khan Bench, however it appears that respondents have considered the appellant as freshly recruited vide appointment order dated 30.08.2019, which approach of the respondents is legally incorrect.

6. Consequently, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.09.2022


(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT D.I.KHAN


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 17-10-22
Number of Words 2070
Copying Fee 22/-
Urgent -
Total 22/-
Name of City Peshawar
Date of Completion of Copy 25/11/22
Date of Delivery of Copy 25/11/22

To,

The District Education Officer (M)
D.I.Khan.

Subject: IMPLEMENTATION OF JUDGMENT
DATED 28.09.2022 PASSED BY KPK
SERVICE TRIBUNAL CAMP COURT
D.I.KHAN IN SERVICE APPEAL NO.
6730/2021.

Sir,

The Applicant submits the following few lines for your sympathetic consideration please:-

- (1) That the Applicant was deferred from promotion to the post of S.PST vide office order No. 21853-57 dated 27.07.2020 against which the subject cited appeal was filed by the applicant in the KPK Service Tribunal Peshawar.
- (2) That the Appeal came up for hearing before the Honourable Division Bench of KPK Service Tribunal Peshawar Camp Court D.I.Khan on 28.09.2022 and the Honourable Tribunal was pleased to accept the Appeal. Copies of Appeal alongwith Judgment is enclosed for kind perusal.

In view of the above submission, it is therefore, humbly prayed that the subject cited judgment of the Honourable Tribunal may please be implemented in letter and spirit and the Applicant may please be granted promotion to the post of S.PST as per due seniority of the applicant in the seniority list with effect from 27.07.2020.

Dated: 26/11/2022

Your Humble Applicant,

Kaleem Ullah
Kaleem Ullah
PST
GPS Sultania D.I.Khan

NO: 162/E Dated: 26/11/2022
Forwarded in original to D.I.Khan for
further action please
[Signature]