### Form-A

## FORM OF ORDER SHEET

	Exe	ecution Petition No. 03/2023
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.01.2023	The execution petition of Mr. Ihsanul Hac
		submitted today by Mr. Nasir Mehmood Advocate. It is
		fixed for implementation report before Single Bench at
		Peshawar on Original file be
		requisitioned. AAG has noted the next date. The
		respondents be issued notices to submit
		compliance/implementation report on the date fixed.
		By the order of Chairman
		REGISTRAR
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### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition NO 03, 12073-

CM No. \_\_\_\_/2022 In

Service Appeal No. 748/2019

Ihsan Ul Haq

..... Petitioner

Versus

Director Elementary & Secondary Education and others

..... Respondents

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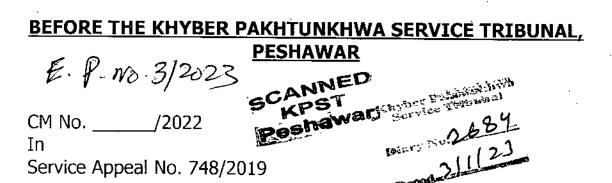
S.No	Description of Documents	Annexure	Pages
• 1.	Application for implementation of order with affidavit	,	1-2
2.	Copy of Order dated 11.04.2019	Α	3-7
3.	Wakalat Nama	•	8

Through

Applicant/Petitioner Nasir

Advocate Supreme Court.

Dated: 21.09.2022



Ihsan Ul Haq SCT Teacher, GHSS, Drosh Chitral.

.... Petitioner

#### Versus

- 1. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar
- 2. Secretary Elementary & Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
- 3. District Education Officer (DEO) (Male) Chitage

...... Respondents

# APPLICATION FOR EXECUTION / IMPLEMENTATION OF THE JUDGMENT DATED 11.04.2019 PASSED IN SERVICE APPEAL NO. 748/2019 TITLED AS "IHSAN UL HAQ VS DIRECTOR E&SE KP AND OTHERS"

#### **Respectfully Sheweth:**

- 1. That the above mentioned Service Appeal, was decided by this Hon'ble Tribunal vide judgment dated 11.04.2019 whereby the Service Appeal filed by the petitioner was allowed. (**Copy of Order dated 11.04.2019 is attached as annexure "A"**).
- 2. That this Hon'ble Tribunal allowed the Appeal of the petitioner in the following terms:



"As a sequel to the above, the impugned notification dated 30.01.2019 suffering from legal infirmity, is set aside. The appellant is entitled to be restored to his original post of SCT (BS-16) with consequential benefits. The respondent department would however be at liberty to conduct de-nono enquiry in the mode and manner under the law and rules, if they so desire. In case of de-nono enquiry, the issue of back benefits shall be subject to outcome of the de-nono enquiry.

It is, therefore, humbly prayed that on acceptance of this Application, the respondents may please be directed to implement the order dated 11.04.2019 passed in above titled Service Appeal No. 748/2019, in the interest of justice.

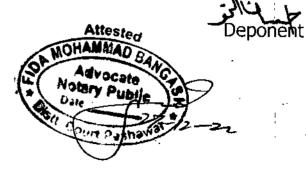
Applicant Hetitioner Through

Nasir Melimood Advocate Supreme Court.

Dated: 21.09.2022

#### <u>AFFIDAVIT</u>

I, do hereby solemnly affirm and declare on Oath that the contents of the Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Annert A (3)

#### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL. PESHAWAR.

#### Service Appeal No. 748/2019

BEFORE:	SALAH UD DIN		MEMBER(J)
	MIAN MUHAMMAD		MEMBER(E)

#### Insan Ul Haq SCT Teacher, GHSS Drosh Chitral...... (Appellant)

#### <u>VERSUS</u>

- Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
- 2. Secretary Education, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.

#### Present:

NASIR MAHMOOD.Advocate---For Appellant.

## SYED NASEER UD DIN SHAH,

Assistant Advocate General --- For official respondents.

Date of Institution	19.09.2019
Date of Hearing	
Date of Decision	

#### JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The service appeal has been instituted against the impugned notification dated 30.01.2019 whereby the appellant was downgraded from SCT (BS-16) to CT (BS-15) and his departmental appeal dated 20.02.2019 was not responded within the statutory period. Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 has therefore been invoked and the case is under scrutiny for adjudication before this Bench.

02. Brief facts, as per contents of the memorandum of appeal, are that the appellant while posted at GHSS Darosh was charge sheeted



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for submission of ACR for the year 2012 signed by another reporting officer and that of the year 2013 having fake signature of the reporting officer. An enquiry committee was constituted and in the light of findings of enquiry committee, the impugned notification imposing the penalty of downgrading the appellant from SCT (BS-16) to CT (BS-15) was issued on 30.01.2019. His departmental appeal submitted on 20.02.2019 against the impugned notification, was however, not responded within the statutory period where-after the service appeal was instituted in the Service Tribunal on 19.06.2019.

03. Notices were issued to the parties to submit reply/para wise comments alongwith connected documents. Respondents having failed to submit written replies/comments even during extended period, their right of defense was struck off vide order sheet dated 16.09.2021. We have heard learned counsel for the appellant as well as Assistant Advocate General and perused the case file with connected documents thoroughly.

04. Learned counsel for the appellant contended that respondent No.3 had personal grudges against the appellant. First, an explanation of appellant was sought on 03.09.2018 that he had submitted fake ACR for 2012 because at that time respondent No.3 was himself the Principal GHSS Darosh and the signature of reporting officer on ACR for the year 2013 was also fake. His reply dated 19.09.2018 was not considered and an Inquiry Committee was constituted on 29.09.2018 when charge sheet/statement of allegations was issued by respondent No.3. On the submission of enquiry report on 22.10.2018, the

rested

impugned notification was issued by respondent No.1. It was further argued that Competent Authority in respect of the appellant was respondent No.1 as per "Job Description and Competencics (November, 2014)" whereas the enquiry was initiated against the appellant by respondent No.3 who had been declared Competent Authority for officials in BS-01 to 15 whereas the appellant was SCT in BS-16 and as such respondent No.3 was not Competent Authority for the appellant. Only the impugned notification was issued by respondent No.1 who was neither privy to the initiation of enquiry nor

associated with the entire enquiry proceedings including appointment of the members of enquiry committee and issuance of charge sheet/statement of allegations. He relied on 2018 PLC (CS) 475.

05. It was vehemently argued that the penalty of downgrading from SCT (BS-16) to CT (BS-15) was imposed for indefinite period as there is no specific period mentioned in the impugned notification. To strengthen his arguments, learned counsel for appellant relied on 2017 PLC (C.S) Note-2. While concluding his arguments, learned counsel for appellant contended that the appellant has not been treated in accordance with law and the whole proceedings initiated against the appellant are illegal, unlawful and in violation of the rights guaranteed under Article-25 of the constitution. The impugned notification dated 30.01.2019 being arbitrary, malafide, discriminatory and whimsical is therefore liable to be set aside and the appellant be restored in original pay scale of SCT (BS-16).



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06. Learned Assu: AG conversely argued that all codal formalities have been fulfilled before imposition of the impugned penalty. Notification has legal firmity as it has been issued after due process and recourse to the relevant law and rules. He therefore requested that the appeal may graciously be dismissed.

It transpires from record that respondent No.1 was the 07. declared Competent Authority for the appellant whereas the inquiry proceedings were initiated by respondent No.3. The Inquiry Committee was constituted by respondent No.3 on 29.09.2018. Similarly, charge sheet/statement of allegations was issued by respondent No.3. Only the final impugned order dated 30.01.2019 was issued by respondent No.1. The entire enquiry proceedings have been initiated and conducted by "corum non judice". Interestingly, on submission of the enquiry report, no show cause notice was issued to the appellant under Rule-14(4) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Moreover, Rule-4(b)(i) of the Rules ibid puts a restriction of maximum 05 years in case the major penalty of reduction to a lower post or pay scale or a lower stage in a time scale, is imposed on a government servant, however, no such period is mentioned in the impugned order dated 30.01.2019. Imposing of such a penalty for indefinite period is also in violation and total disregard to the spirit and logic behind F.R-29.

08. As a sequel to the above, the impugned notification dated 30.01.2019 suffering from legal infirmity, is set aside. The appellant is



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entitled to be restored to his original post of SCT (BS-16) with consequential benefits. The respondent -department would however be at liberty to conduct de-novo enquiry in the mode and manner under the law and rules, if they so desire. In case of de-novo enquiry, the issue of back benefits shall be subject to outcome of the de-novo enquiry. Costs shall follow the event. Consign.

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09. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11<sup>th</sup> day of April, 2022.

(SALAH UD DIN) nkhwa Ser MEMBER Reshaway (MIAN MUHAMMAD) MEMBER(E) Certified to be ture copy khtunkhW8 rvice Tribunal. Peakawar 14-9-22

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تكارن مقدم دعونى BC= 3298 CNIC= 17301-2970715-4 جرم nisin manand hay 3 @ gmai باعث محرآ نكر 6333-9176275 مقدمه مندرجة عنوان باللهين اين طرف سے واسطے بيردي وجواب دہي دکل کاردائي متعلقه أن مقام سيتسلو سيلي فالم محمد الله في محمد الله الله weighter مقرر کر بے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ، وگا۔ نیز المرجلكر و میل صاحب کوراضی نامه کرنے وتقرر دثالت ہ فیصلہ برحلف دیتے جواب دہی اورا قبال دعوی اور بهسورت ذكرى كرفي اجراءا درصولى جيك درويسا رعرضى دعوى ادردرخواست برتشم كي تفيديق o ist زرایں بردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم ہیروی یا ڈگری کیطرفہ یا ہیل کی مرامدگ ادرمنسوخی Acception نیز دائر کرنے اپبل نکرانی دنظر ثانی دبیروی کرنے کا اختیار ہوگا۔از بصورت ضرورت مقدمہ مذکور کے کل پاجزوی کا روائی کے داسطے اوروکیل پامختار قانونی کواپنے ہمراہ پااپنے بجائے تقرر کا اختیار ہوگا۔اور میا جب مقرر شدہ کوہمی وہی جملہ مذکورہ یا اختیارات حاصل ہوں کے ادرال کا سا برواخته منظور قبول بنوكا به دوران مقدمه ميس جوخر جيد مرجانه التواية يترتقده کوئی تاریخ پیشی مقام دورہ پر ہویا حد سے باہر ہوتو دلیل ص فدكؤر كمرس لبهذاوكالت نامة كمحديا كمهسندر کے لئے منظور ہے بمقام