Form-A

FORM OF ORDER SHEET

Court of _____

Execution 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 Haq 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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 03/2023

CM No. _____/2022
In
Service Appeal No. 748/2019

Ihsan Ul Haq ..... Petitioner

Versus

Director Elementary & Secondary Education and others

..... Respondents

I N D E X

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**	A	3-7
3.	Wakalat Nama		8

احسان الحق

Applicant/Petitioner

Through

Nasir Mehmood
Advocate Supreme Court.

Dated: 21.09.2022

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

E. P. No. 3/2023

CM No. _____/2022
In
Service Appeal No. 748/2019

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) Chitral

..... 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:

(2)

"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/Petitioner

Through

Nasir Mehmood
Advocate Supreme Court.

Dated: 21.09.2022

AFFIDAVIT

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.

Deponent

Attested
FIDA MOHAMMAD BANGASH
Advocate
Notary Public
Date
Distt. Court Peshawar

Annex A (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 748/2019

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

Ihsan Ul Haq SCT Teacher, GHSS Drosh Chitral..... (*Appellant*)

VERSUS

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

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.....11.04.2022
Date of Decision.....11.04.2022

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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Service Tribunal
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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

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(5)

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 Competencies (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 Asst: 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.

07. It transpires from record that respondent No.1 was the 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.

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

(SALAH UD DIN)
MEMBER(J)

(MIAN MUHAMMAD)
MEMBER(E)

Khyber Pakhtunkhwa Service Tribunal Peshawar

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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منجانب 2022

بنام ڈائریکٹر ایلمنٹری

احسان الحق

مورخہ
مقدمہ
دعویٰ
جرم

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باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے ناصر محمود ایڈوکیٹ مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث و فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

Accepted

المرقوم ____ 20 22

العبد ____ گواہ ____ العبد

بمقام پشاور کے لئے منظور ہے۔