BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

IMPLEMENTATION PETITION NO._____/2023

IN

APPEAL NO 299/2016

MUHAMMAD SAEED VS EDUCATION DEPTT:

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Petitioner

Through:

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

IMPLEMENTATION PETITION NO._____/2022

IN

APPEAL NO 299/2016

Mr. Muhammad Saeed, Ex: CT, District Kurram.

.....**PETITIONER**

VERSUS

1- The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
2- The Director Education Newly Merged Areas, Khyber Pakhtunkhwa, Peshawar.
3- The District Education Officer (M) District Kurram.
4- The District Accounts Officer, District Kurram.

..... **RESPONDENTS**

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENTS TO OBEY THE JUDGMENT DATED 31-05-2018 IN LETTER AND SPIRIT.

R/SHEWETH:

1- That the petitioner filed service appeal bearing No. 299/2016 before this august Service Tribunal for his re-instatement into service with all back benefits.

2- That the appeal of the petitioner was heard and the appellate authority is directed as follows*" In light of above discussion this Tribunal is constrained to issue direction to the respondent department to adjust /reinstate the appellants at the posts C.T with immediate effect without back benefits. This present Service Appeals bearing No. 298/2016, 294/2016, 299/2016, 300/2016 and 302/2016 are accepted in the above terms."* Copy of the judgment dated 31.05.2018 is attached as annexure ..... **A.**

3- That after obtaining copy of the judgment dated 31.05.2018 the petitioner submitted the judgment mentioned above for its implementation to the Department

concerned but the respondents department are not willing to obey the judgment dated 31.05.2018 in letter and spirit.

4- That the respondent department challenged the ibid Judgment of this Hon`ble Tribunal in Civil Petition No. 689-P to 693-P of 2018 before the Hon`ble Supreme Court of Pakistan and during the pendency of said CPLA, the respondent department conditionally reinstated the petitioner vide Notification dated 22-11-2018 subject to the outcome of CPLA but with immediate effect instead of date of Judgment i.e. 31-05-2018. Copy of Notification dated 22-11-2018 is attached is annexure.....**B.**

5- That it is worth mentioning that the said CPLA filed by the respondent department was dismissed vide order 06-10-2020. Copy of the Judgment dated 06-10-2020 of Hon`ble Supreme Court is attached is annexure.....**C.**

6- That the petitioner has no any other remedy but to file the instant Implementation petition.

It is therefore, most humbly prayed that the respondents may kindly be directed to implement the order/Judgment dated 31-05-2018 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Petitioner

Through:

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I, Muhammad Saeed, Ex: CT, District Kurram, do hereby solemnly affirm on oath that the contents of the above **Implementation Petition** re true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.

DEPONENT

31.05.2018

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

-3-

Vide separate common judgment of today placed on file of service appeal bearing No.298/2016, this Tribunal is constrained to issue direction to the respondent department to adjust/reinstate the appellant at the post C.T with immediate effect without back benefits. The present service appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
31.05.2018

Sd/-
Ahmad Hassan
Member

Sd/-
Muhammad Hamid Mughal
Member

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 298/2016

Date of Institution ... 28.03.2016
Date of Decision ... 31.05.2018

Mr. Wahid Zaman Ex: CT, Kurram Agency.

Appellant

Versus

1. The Additional Chief Secretary FATA, FATA Secretariat Warsak Road Peshawar.
2. The Director of Education FATA, FATA Secretariat Warsak Road Peshawar.
3. The Additional Agency Education Officer, Lower and Central Kurram Agency at Sadda.
4. The Agency Account Officer, Kurram Agency.

Respondents

JUDGMENT

31.05.2018

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned counsel for the appellants and Mr. Kabir Ullah Khattak, Additional Advocate General for the respondents present.

2. This single/common judgment shall dispose of the above captioned Appeal filed by (1) Wahid Zaman (Ex. CT) as well as (2) Service appeal No.294/2016 filed by Muhammad Siddique (Ex. CT). (3) Service appeal bearing No.299/2016 filed by Muhammad Saeed (Ex. CT), (4) Service appeal bearing No. 300/2016 filed by Aqib Zaman (Ex. CT). (5) Service appeal bearing No.302/2016 filed by Lateef Hussain (Ex.CT), being identical in nature.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

3. The appellants (Ex-CTs), have filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 11.12.2015 whereby the appellants were terminated w.e.f the date of their appointments.

4. Learned counsel for the appellants argued that the respondent No.3 through advertisement published in the newspaper advertised various posts in Education Department Kurram Agency including the posts of CT and the appellant having the requisite qualification for the posts of CT applied for the same; that after participation in the test and interview the appellants were declared successful in the selection process and consequently the appellants were offered the said post through issuance of appointment order. Further argued that in response to the appointment of the appellants they started performing their duties at the stations/schools concerned. Further argued that astonishingly the respondent No. 3 issued the impugned order dated 11.12.2015 whereby the services of the appellants were terminated with retrospective effect. Further argued that the appellants have not been treated in accordance with law. Further argued that the appellants were appointed in the light of Appointment, Promotion & Transfer Rules. Further argued that the appellants were terminated without any regular inquiry and issuance of show cause notice. Further argued that no chance of personal hearing was given to the appellants before the issuance of impugned order. Learned counsel for the appellants strenuously argued that the impugned order is against the law, facts and norms of natural justice

hence liable to be set aside.

5. As against that learned Additional Advocate General while opposing the present appeal argued that the respondent department inquired the anomalies carried out in the recruitment process in Kurram Agency and for that purpose constituted oversight committee to trace out illegal appointees; that the committee submitted its report and thereby clearly picked out those candidates who had applied through fake and bogus degrees and were appointed illegally.

6. Arguments heard. File perused.

7. It is not disputed that the posts of C.T were advertised through advertisement in the newspaper and that the appellants having been fully qualified and eligible to apply for the same, participated in the recruitment process. Perusal of the impugned order dated 11.12.2015 would show that the appellants were terminated not for the reason that they were not eligible or duly qualified for posts of C.T rather their services were terminated simply on the ground that appointments of appellants Wahid Zaman (Ex. CT), Muhammad Siddique (Ex. CT), Muhammad Saeed (Ex. CT) and Aqib Zaman (Ex. CT) were found in excess to Sub Divisional quota and appellant Lateef Hussain (Ex. CT) is domicile holder of upper Kurram. In the written reply submitted by the respondent department is has not been explained that indeed for the posts of C.T there was a Sub Divisional quota, similarly in the written reply there is no mention of number of vacant posts of C.T

in each Sub Division neither the total number of candidates posted against the posts of C.T in each Sub Division was given. It may also be mentioned that in the advertisement available on file it was simply mentioned that the candidate should be the permanent resident of Kurram Agency hence no distinction of upper Kurram or lower Kurram was there in the advertisement. Similarly the respondent department has not furnished any report of the committee declaring the appointments of the appellants as illegal. During the course of arguments learned Additional Advocate General failed to bring to the notice of this Tribunal any record/report justifying the issuance of the impugned order.

8. In the light of above discussion this Tribunal is constrained to issue direction to the respondent department to adjust/reinstate the appellants at the posts C.T with immediate effect without back benefits. The present service appeals bearing No.298/2016, 294/2016, 299/2016, 300/2016 and 302/2016 are accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room after its completion.

Certified to be true copy

Sd/-
Ahmed Hassan
Member

Sd/-
Muhammad Hamid Mughal
Member

Date of Presentation of Application 7-6-18
Number of Words 2400
Copying Fee 14
Urgent 2
Total 16
Name of Co... Hanif
Date of Co... 7-6-18
Date of Delivery of Co... 7-6-18

"B"
-8-

Add: District Education Office
Lower & Central Kurram Sadda
Phone No 0926-520674
No._____/Edu: Dated ___/___/2018
Email: educationsadda@gmail.com

NOTIFICATION.

Consequent upon the approval of Director Elementary & Secondary Education of Khyber Pakhtunkhwa, Peshawar No 10024/(Lit:I) dated Peshawar the 29-10-2018 and Judgment of Khyber Pakhtunkhwa Service Tribunal ,Peshawar Judicial Complex in Execution No 291/18 in Service Appeal No 300/2016 MR. Aqib Zaman CT is hereby conditionally reinstated without back benefit at GHS Makhizai Lower Kurram with immediate effect subject to final decision filed against the impugned in supreme Court of Pakistan subject to provision of his providing surety on judicial stamp paper in case the CPLA turned out to be in favour of the department the amount if any paid to the petitioner will be recovered in cash or coin.

Terms Conditions.

1. The reinstatement order and release of running pay will only be effective on furnishing surety on judicial stamp papers by petitioner.
2. If they failed to take over charge within 15 days, his appointment will automatically be considered as cancelled.
3. Charge report should be submitted to this office.

Addl: District Education Officer
Lower & Central Kurram Sadda

No 6626-30/Edu Dated 22/11/2018

Copy for information to the. -

1. Director of Education NMD Districts Peshawar
2. Deputy Commissioner Kurram.
3. Asstt: DEO Local Office.
4. Official Concerned.
5. Office file.

Addl: District Education Officer
Lower & Central Kurram Sadda

Attested

Head Master
G.H.S. Shah Ibrahim
Distt: Kurram

"C" -9-

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITION NO.689-P TO 693-P OF 2018
(Against the judgment dated 31.05.2018 of the KPK Service Tribunal, Peshawar passed in Service Appeal No.298/2016, 299/2016, 300/2016 & 302/2016).

Additional Chief Secretary FATA, FATA Secretariat, Warsat Road, Peshawar and others

...**Petitioner(s)**
(In all cases)

VERSUS

Muhammad Siddique	In C.P.689-P/2018
Wahid Zaman	In C.P.690-P/2018
Muhammad Saeed	In C.P.691-P/2018
Aaqib Zaman	In C.P.692-P/2018
Laiq ul Hussain	In C.P.693-P/2018

...**Respondent(s)**

For the Petitioner(s): Barrister Qasim Wadood, Addl.A.G. KPK
Mian Saadullah Jandoli, AOR

For the Respondents: Not represented

Date of hearing: 06.10.2020

ORDER

GULZAR AHMED, CJ.- Civil Petitions No.689-P to 691-P/2018 are barred by 35 and Civil Petitions No.692-P and 693-P/2018 are barred by 61 days. The applications for condonation of delay have been filed. The reasons assigned in the same are late supply of documents, process of completion of attested copies of the impugned judgment and lengthy correspondence. Such reasons are not accepted by this Court as sufficient cause for condoning the delay. Further, each day's delay has not been explained in the applications and no affidavit of

ATTESTED

-10-

official of petitioners has been filed except that of an AOR. The applications thus merit no consideration. The same are, therefore, dismissed with the result that the main petitions are dismissed as time barred.

Sd- Gulzar Ahmed, HCJ
Sd- Faisal Arab, J
Sd- Ijaz ul Ahsan, J

Certified to be true copy
Assistant Registrar
Supreme Court of Pakistan
Peshawar.
15/10/2020

Peshawar, the
6th of October, 2020
Not Approved For Reporting
Waqas Naseer/*

7/10/2020

-11-

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Education

~~APPEAL~~ NO: _____ OF 2023

M. Saeed _____ (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education _____ (RESPONDENT)
(DEFENDANT)

I/We Appellant _____

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** 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._____/_____/2022

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT
(BC-10-0853)
(15401-0705985-5)

UMAR FAROOQ MOHMAND

WALEED ADNAN

&

MUHAMMAD AYUB
ADVOCATES

OFFICE:
Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)