

07.06.2021

Nemo for the petitioner. Mr. Muhammad Adeel Butt,
Addl. AG for the respondents present.

Fresh notice be issued to petitioner/counsel. To come
up for further proceedings on 28.07.2021 before S.B.



(Rozina Rehman)
Member(J)

28.07.2021

Counsel for the petitioner and Mr. Muhammad Adeel Butt,
Addl. AG alongwith Habibullah, S.O for the
respondents present.

Learned counsel for the petitioner submitted an
application for withdrawal of the execution petition on
the ground that the dispute of the petitioner has been
solved by the department.

In view of the above, instant execution petition is
filed and consigned to the record room.

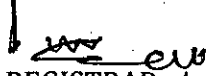




Chairman

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 83 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11.03.2021	<p>The Execution Petition submitted by Mr. Pirzada Muhammad Ismail through Miss. Roeeda Khan 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> <p>This Execution Petition be put up before S. Bench on <u>02/04/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-	01.04.2021	<p>Counsel for the petitioner present. Notice be issued to respondents for submission of implementation report on 07.06.2021 before S.B.</p> <p style="text-align: right;"> (Atiq Ur Rehman Wazir) Member (E)</p>

Before the court of Chairman Service Tribunal

Lepe Peshawar

Prozada Muhammad
Ismail -vs- Health

Application for withdrawal
of the above noted Enclosure
Petition No 83/21

Respectfully sheweth:

① That the above noted case is pending
before this honorable Court which
is fixed for today.

② That the dispute of the appellant
has been solved by the Department.

It is therefore most humbly
prayed that case may kindly
be withdrawn.

^{Signature}
Appellant
through
Sund

28 $\frac{7}{2021}$

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Executive Petition No. _____/2021

In Service Appeal No. 810/18

Pir Zada Muhammad Ismail

VERSUS

District Health Officer & others


INDEX

S#	Description of Documents	Annex	Pages
1.	Grounds of Execution Petition.		1-2
2.	Affidavit.		3
3.	Copy of the decision dated 22/01/2021	"A"	4 to 7
4.	Copies of applications	"B, C, & D"	
5.	Wakalat Nama		

Dated:- 11/03/2021


APPELLANT

Through

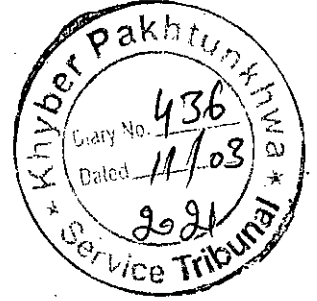

Roeda Khan
Advocate, High Court
Peshawar

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Executive Petition No. 83 /2021

In Service Appeal No. 810/18



Pirzada Muhammad Ismail S/o Pir Muhammad Sufiad
Computer Operator type-D Hospital Shehbaz Garhi
Mardan.

.....Petitioner

VERSUS

1. District Health Officer Mardan
2. Director General Health services Khyber Pakhtunkhwa
3. Secretary Health Khyber Pakhtunkhwa

.....Respondents

EXECUTION PETITION FOR DIRECTING
THE RESPONDENTS TO IMPLEMENT THE
JUDGMENT dated 22/01/2021 OF THIS
HON'BLE TRIBUNAL IN LETTER AND
SPIRIT

Respectfully Sheweth,

1. That the applicant/appellant filed Service Appeal No.810/18 in this August Tribunal which have been accepted on 22.01.2021 (Copy of Judgment is attached as annexure "A").

(2)

2. That the appellant submitted the judgment/order dated 22/01/2021 to the respondent department but no action has been taken by the department so far.
3. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the judgment of this August Tribunal in its true sense.
4. That the petitioner moved so many applications for the implementation of the judgment of this Hon'ble Court but in vain (Copy of application are attached as annexure "B", "C" & "D").
5. That the petitioner has no remedy except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment of this August Tribunal in letter and spirit.

Dated:- 11/03/2021

(Prt)

Applicant

Through


ROEEDA KHAN

Advocate, High Court
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Executive Petition No. _____/2021

In Service Appeal No. 810/18


Pir Zada Muhammad Ismail

VERSUS


District Health Officer & others

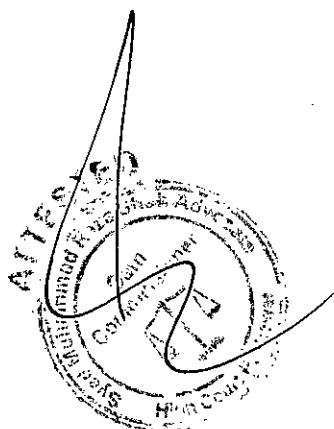
AFFIDAVIT

I, Pirzada Muhammad Ismail S/o Pir Muhammad Sufiad
Computer Operator type-D Hospital Shehbaz Garhi Mardan,
do hereby solemnly affirm and declare on oath that all the
contents of the instant **Execution Petition** are true and correct
to the best of my knowledge and belief and nothing has been
concealed from this Hon'ble Court.


Deponent

Identified by:


Roeeda Khan
Advocate High Court
Peshawar



Amn ('A')

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No.810/2018

Date of Institution: 21.06.2018

Date of Decision: 22.01.2021

Pirzada Muhammad Ismail S/o Pir Muhammad Sufaid Ex-Computer Operator type-D
Hospital Shahbaz Ghari Mardan.

... (Appellant)

VERSUS

District Health Officer Mardan and two other.

... (Respondents)

Rozeeda Khan and Taimour Ali Khan
Advocate

... For Appellant

Riaz Ahmed Painsa Khel
Assistant Advocate General

... For Respondents

MUHAMMAD JAMAL KHAN
ATIQ UR REHMAN-WAZIR

... MEMBER (J)

... MEMBER (E)

JUDGEMENT: -

ATIQ UR REHMAN WAZIR: - Brief facts of the case are that while serving as Junior Clerk (BPS-7) in the office of District Health Officer Mardan, post of the appellant was converted to that of Computer Operator (BPS-12), but was again withdrawn dated 07-04-2014, against which the appellant filed departmental appeal dated 10-04-2014, which was rejected at a belated stage dated 22-05-2018. Against the rejection order, the appellant filed the instant service appeal dated 21-06-2018 with prayers that the both the impugned orders dated 07-04-2014 and 22-05-2018 may be set aside and position of the appellant may be restored to his original post i.e. Computer Operator with all back benefits.

02. Written reply/comments were submitted by respondents.

03. Arguments heard and record perused.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

04. Learned counsel for the appellant contended that post of the appellant was converted from Junior Clerk to that of Computer Operator by the competent authority, but was illegally withdrawn without assigning any reason. That such order cannot be withdrawn or rescinded once it has taken legal effect and created certain rights in favor of the appellant. Reliance was placed on PLD 1991 SC 973. That no opportunity of defense was afforded to the appellant, nor he was consulted before withdrawal of his conversion order, he however, was a civil servant and was required to be dealt with under the provisions of law and rules. That the apex court vide judgment in 1997 SCMR 8852 has held that even if the person is employed as temporary or on contract basis or even probationer, he is entitled to a fair opportunity to clear his position. The learned counsel added that the appellant was condemned unheard and without observing the mandatory provisions of law. That order passed in violation of mandatory provisions of law is void and no limitation would run for challenging such order. Reliance was placed on 2007 SCMR 834. That where a civil servant is not afforded a chance of personal hearing before passing an order, such order would be void ab initio. Reliance was placed on 2003 PLC (CS) 365. On the question of limitation, the learned counsel added that the appellant preferred departmental appeal well within time, but such appeal was rejected at a belated stage on 22-05-2018, which created a fresh cause of action for the appellant and on the basis of which the appellant filed the instant service appeal within the statutory period of thirty days. That where within the stipulated period of ninety days, decision of departmental authority was not communicated to the civil servant, he had an option to either file appeal without waiting for decision of departmental authority within stipulated period or he could wait till the date of communication of decision of departmental authority and from said date he could file appeal within the next thirty days. The appellant did the same in light of such proposition. Reliance was placed on 2013 SCMR 1053 and 1995 SCMR 16. That the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(6)

respondent had no case, then limitation would not be a hurdle in the way of appellant for getting justice, further observed that the court should not be reluctant in condoning the delay depending upon facts of the case under consideration. That the apex court vide judgment in 1999 SCMR 880 has held that condonation of delay being in the discretion of the Tribunal, the findings cannot be set aside on technical grounds alone, where nothing contrary to the contention for condonation of delay was produced before the Tribunal, Supreme Court refrained from disturbing the findings of the Tribunal on the question of limitation as well. The learned counsel prayed that since the appellant was condemned unheard without observing the mandatory provisions of law, hence both the impugned orders dated 07-04-2014 and 22-05-2018 may be set aside and position of the appellant may be restored to that of computer operator.

05. Learned Assistant Advocate General appeared on behalf of official respondents contended that the instant service appeal is time barred by four years and two months in the first place as the impugned order was issued on 07-04-2014, whereas he filed the instant service appeal on 21-06-2018. He further added that conversion of post of the appellant to that of computer operator as well as its withdrawal was done by the orders of Chief Minister, which was not a legitimate order and in a situation, besides proceedings against the beneficiary of illegal appointments, the officers who were responsible for implementing such order should also be held equally responsible. Reliance was placed on S.A No 289/2016. The learned Assistant Advocate General added that the instant appeal being devoid of merit may be dismissed.

06. We have heard learned counsel for the parties and perused the record. Record reveals that the appellant was initially appointed as Junior Clerk on the express orders of Chief Minister Khyber Pakhtunkhwa by the District Health Officer Mardan, which was again cancelled by the same authority on the grounds of validity of the directives of the Chief Minister. This Tribunal however, re-instated the appellant vide judgment dated 04/04/2017 in SA No 638/2016 on the grounds that the appellant was condemned

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

71

unheard without conducting any inquiry, which has established a proposition that order issued in any manner by a competent authority cannot be undone without adopting the legal course. Similarly, the order of conversion of his post to that of computer operator was also issued by the competent authority on the directives of Chief Minister, which was again withdrawn without affording opportunity of defense to the appellant and without observing the legal course. We are conscious of the fact that the order of conversion of his post to that of computer operator issued in any manner has taken a legal effect and created vested rights in favor of the appellant, which cannot be withdrawn out rightly without assuming legal course. The question of limitation as pointed out by the learned attorney was thoroughly examined and it was found that the appellant filed departmental appeal against the impugned order dated 07-04-2014 well in time, but the same was rejected after lapse of four years on 22-05-2018, which however created a fresh cause of action for the appellant and on the basis of such rejection, the appellant filed the instant appeal within statutory period of thirty days, which is in consonance with Judgment of the Supreme contained in 2013 SCMR 1053 and 1995 SCMR 16. The learned attorney when confronted with the proposition was also unable to defend his stance.

07. In a situation, we are left with no option, but to set aside the impugned orders dated 07-04-2014/22-05-2014 and accept the instant appeal as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
22.01.2021

Handwritten signature and scribbles

Date of Presentation of Application 01-09-2021
 Number of Words 2000
 Copying Fee 24-
 Urgent 4
 Total 26
 Name of Applicant [Signature]
 Date of Completion of Copy 01-09-2021
01-10-2021

certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(B)

(8)

To

The District Health Officer,
Mardan.

Caption. Restoration to the post of Computer operator in the light of Khyber Pakthunkhwa service Tribunal Peshawar judgment, dated 22/01/2021.

R/Sir,

Most respectfully stated that I was serving as junior Clerk in your esteemed office. Latter on my post was converted to the post of Computer Operator but unfortunately due to some misunderstandings, the order was withdrawn on 07-04-2014. Against which, I preferred departmental appeal on 10/04/2014 which was rejected at belated stage on 22/05/2018.

Against the rejection order, I filed appeal before Khyber Pakthunkhwa service Tribunal Peshawar with the prayer that both the impugned order dated 07-04-2014 and 22/05/2018 may be set aside and position of the appellant may be restored to his original post i-e Computer Operator with all back benefits.

Honourable Court set aside the impugned orders dated 07-04-2014 and 22/05/2018 and accepts my appeal as prayed for on dated 22/01/2021. Copy of the judgment attached with application.

It is therefore requested that I may please be restored to my original post i-e Computer Operator with all back benefits. I shall be highly obliged for this act of kindness.

DAIRY CLERK
DHO OFFICE MARDAN
NO 234
DATE 02/02/2021

Dated. 01/02/2021

Received (Signature)
02/02/2021

Thanks

(Signature)

Pirzada Muhammad Ismail,

Ex-Computer Operator Type D Hospital,

Shahbaz Garhi, Mardan.

Presently working as J/C DHO Office, Mardan.

(Signature)

To

The DG Health,
Khyber Pakhtunkhwa Peshawar.

8/23
04/03/4

Caption: Restoration to the post of Computer Operator in light of Khyber Pakhtunkhwa Service Tribunal Peshawar judgment, dated 22-01-2021

R/Sir,

Most respectfully stated that I was serving as Junior Clerk in your esteemed office. Later on my post was converted to the post of Computer Operator but unfortunately due to some misunderstandings, the order was withdrawn on 07-04-2014. Against which, I preferred departmental appeal on 10-04-2014 which was rejected at belated stage on 22-05-2018.

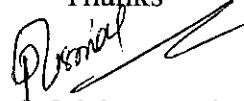
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Honorable court set aside the impugned orders dated 07-04-2014 and 22-05-2018 and accepts my appeal as prayed for on dated 22-01-2021. Copy of the judgment attached with application.

It is therefore requested that I may please be restored to my original post i.e Computer Operator with all back benefits. I shall be highly obliged for this act of kindness.

Dated: 01-02-2021

Thanks



Pirzada Muhammad Ismail

Ex-Computer Operator Type D Hospital,

Shahbaz Garhi, Mardan.

Presently working as J/C DHO Officer, Mardan.



To

The Secretary Health,
Khyber Pakhtunkhwa Peshawar.

4140
23.2.21
DATE
HEALTH DEPARTMENT

Caption: Restoration to the post of Computer Operator in light of Khyber Pakhtunkhwa Service Tribunal Peshawar judgment, dated 22-01-2021

R/Sir,

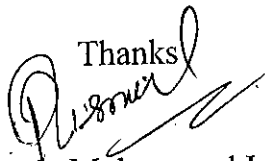
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Dated: 01-02-2021

Thanks

Pirzada Muhammad Ismail

Ex-Computer Operator Type D Hospital,
Shahbaz Garhi, Mardan.

Presently working as J/C DHO Officer, Mardan.



بعد الت جواب لاج سندھ بعد
طرا سیدو بلکہ



مورخہ

مقدمہ

دعویٰ

جرم

السلامت

۲۰۲۱ء پنجاب

سیدنا محمد مصطفیٰ بنام

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کے لئے روئے حاکم الی

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 و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار 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 باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دوزہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

۲۰۲۱

ماہ سال

۸

المرقوم

العبد

کے لئے منظور ہے۔

مقام

Accept
RM

سید