

E. P. No. 164/2020
Rafiq Ahmad vs Govt

11.11.2021

Nemo for the petitioner. Mr. Kabirullah Khattak, Addl. AG alongwith Aizazul Hassan, Assistant for the respondents present.

The copy of order dated 15.10.2021 of august Supreme Court of Pakistan directing to maintain has been produced which pertains to the present execution petition is placed on file. This execution petition is adjourned sine-die. The petitioner would be at liberty to seek the restoration of the execution petition if judgment of this Tribunal is maintained by the august Supreme Court of Pakistan and not implemented by the department voluntarily. File be consigned to the record room.


Chairman

02.09.2021 Nemo for the petitioner present. Mr. Muhammad Adeel Butt,
Additional Advocate General for respondents present.

Notices be issued to the petitioner and his counsel.
Adjourned. To come up for further proceedings before the S.B on
05.10.2021.


(MIAN MUHAMMAD)
MEMBER (E)

05.10.2021 Counsel for the petitioner and Mr. Muhammad
Adeel Butt, Addl. AG alongwith Aizazul Hasan, Asstt for
the respondents present.

Learned AAG seeks one week time with assurance
that the matter of execution will be resolved hopefully in
the said period. Request is accorded. To come up for
implementation report on 27.10.2021 before the S.B.


Chairman

21.10.2021. Petitioner in person and Mr. Muhammad Adeel Butt,
Addl. AG for the respondents present.

Learned AAG seeks time to contact the respondents
and facilitate the implementation report on next date. On
assurance of learned AAG, another chance is given to the
respondents to implement the judgment in letter & spirit
and submit report on next date. Case to come up; on
11.11.2021 before S.B.


Chairman

23.02.2021 The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 22.04.2021.


Reader

22.04.2021 Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 16.06.2021 for the same as before.


Reader


16.06.2021 Nemo for the petitioner. Notices be issued to the parties. To come up for implementation report on 26.07.2021 before S.B.


Chairman

26.07.2021 Nemo for petitioner.

Muhammad Adeel Butt learned Additional Advocate General alongwith Muhammad Zain A.D for respondents present.




Implementation report was not submitted. Representative of the respondents is directed to furnish proper implementation report on 02.09.2021 before S.B.


(Rozina Rehman)
Member (J)

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 164 /2020

S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23.11.2020	<p>The Execution Petition of Mr. Rafiq Ahmad submitted by him 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>01/01/2021</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-	01.01.2021	<p>Nemo for petitioner.</p> <p>Notice be issued to petitioner/counsel and respondents for 23.02.2021 before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>

BEFORE THE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

In Re:

S.A. No.167/2016

Rafiq Ahmad. **APPLICANT**

VERSUS

Govt. of Khyber Pakhtunkhwa & others. **RESPONDENTS**

I N D E X

S.#	Description of Documents	Annex	Pages
1.	Application		1-2
2.	Affidavit		3
3.	Copy of Judgment dated 13.12.2019	A	4-8
4.	Copies of Applications	B	9-12

Applicant


Rafiq Ahmad

BEFORE THE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

In Re:

E.P.No. 164/2020

S.A. No.167/2016



Rafiq Ahmad S/o Abdur Rasheed, Office Assistant L.G and
 RDD Bacha Khan Chowk, Peshawar. **APPLICANT**

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Local Govt. & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Rural Development Department, Khyber Pakhtunkhwa, near C&W Office, Civil Secretariat, Peshawar.
3. Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. Accounts Officer, Directorate General of Local Govt. & Rural Development Department, Khyber Pakhtunkhwa, Peshawar. **RESPONDENTS**

APPLICATION FOR IMPLEMENTATION

OF THE JUDGMENT DATED 13.12.2019

PASSED BY THIS HON'BLE TRIBUNAL.

Respectfully Sheweth:

1. That the applicant filed the above titled Service Appeal No.167/2016 before this Hon'ble Tribunal, which was partially accepted in favour of applicant.

2. That Hon'ble Tribunal by accepting the appeal entitled for pensionary benefit up till 06.09.2001. (Copy of Judgment is attached).
3. That the applicant time and again requested for implementation of the judgment of this Hon'ble Tribunal, but the respondents turned down request of the applicant with dear ear. (Copy of the Applications are attached).
4. That for sake of dispensation of justice this Hon'ble Tribunal may direct the respondents to ensure the payment to the applicant in light of the judgment passed.

It is, therefore, humbly prayed that on acceptance of this application, this Hon'ble Tribunal may be pleased to issue direction to implement the judgment and order passed by this Hon'ble Tribunal in its letter and spirit.

Applicant


Rafiq Ahmad

BEFORE THE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

In Re:

S.A. No.167/2016

Rafiq Ahmad. **APPLICANT**

VERSUS

Govt. of Khyber Pakhtunkhwa & others. **RESPONDENTS**

AFFIDAVIT

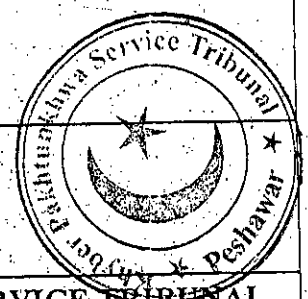
I, Rafiq Ahmad S/o Abdur Rasheed, Office Assistant L.G and RDD Bacha Khan Chowk, Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.

Rafiq Ahmad
DEPONENT



79/11
24/11/2020

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



BEFORE THE YBER PAKHTUNKHWA SERVICE TRIBUNAL
Service Appeal No. 167/2016

Date of Institution 26.02.2016
Date of Decision 13.12.2019

Rafique Ahmad son of Abdur Rashid Office Assistant
LG&RDD Bacha Khan Chowk, Peshawar
Appellant

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Local Government & Rural Development Department Khyber Pakhtunkhwa, Peshawar.
2. Director General Rural Development Department Khyber Pakhtunkhwa, Near C&W Office Civil Secretariat Peshawar.
3. Accountant General Khyber Pakhtunkhwa Peshawar.
4. Accounts Officer, Directorate General of Local Government & Rural Development Department Khyber Pakhtunkhwa, Peshawar.

Respondents

13.12.2019

Mr. Muhammad Hamid Mughal-----Member(J)
Mr. Hussain Shah -----Member(E)

JUDGMENT
MUHAMMAD HAMID MUGHAL, MEMBER: Clerk of

counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General present.

2. The appellant has filed the present service appeal against the office letters dated 29.10.2015/06.11.2015 whereby request

Handwritten signature and date:
13.12.2019

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

of the appellant for pensionary/retirement benefit etc. was not acceded to.

3. Learned counsel for the appellant argued that the appellant was appointed as Peon in the Office of Director General Rural Development Department Khyber Pakhtunkhwa, Peshawar vide order dated 03.09.1974 and lastly promoted to the post of Assistant; that due to some domestic affairs and enmity, the appellant alongwith his parents and other family members shifted to Karachi and he applied for fifteen days leave with station leave from TMO Town-I Peshawar on 01.07.2007; that he was verbally permitted through Cell Phone to proceed Karachi accordingly and after that the appellant became ill but regularly submitted leave applications to TMO Town-I up till 17.06.2014; that on 31.05.2015 the appellant attained the age of superannuation; that the appellant submitted applications for pensionary benefits and payment of GP Fund, however, the request of the appellant was not acceded to; that the appellant has considerable length of service at his credit hence he has every right to all the pensionary benefits.

4. As against that learned AAG argued that the appellant abandoned the government service in the year 2001; that upon having been declared surplus, the appellant was adjusted in Union Council Asia in the year 2001 but he did not report for duty, and abandoned his government service and later on in the year 2014/2015 the appellant submitted applications for

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

13.12.2019

pensionary benefits, hence he was rightly found not entitled to claim pensionary benefits.

5. Arguments of learned counsel for the appellant and learned AAG heard and record perused with their assistance.

6. The appellant initially appointed as Peon was lastly promoted as Assistant. The appellant while posted as Assistant (BS-11), was awarded major penalty of reduction to lower post for a period of three years with cumulative effect and as such he was reinstated in service vide order dated 05.09.2001. Consequent upon the imposition of major penalty of reduction to the lower post i.e. Senior Clerk (BS-07), the appellant was declared as Surplus and was adjusted against the vacant post of Secretary Union Council (BS-06), Asia Peshawar vide order dated 15.09.2001. Thereafter, vide order dated 01.02.2002 the appellant was surrendered to his parent office.

7. Plea of the appellant is that due to genuine reasons, he went to Karachi and then owing to his illness he could not attend to his duties and that in view of his length of service he is entitled to all the pensionary benefits.

8. It may be mentioned that vide letter dated 21.05.2014 the appellant through his brother in law/attorney namely Shamim Akhtar applied for the grant of retirement from services while stating that appellant has 27 years qualifying service and now he wants to be retired from service. In the letter dated 18.03.2015 of the appellant addressed to respondent No.2, in

13.12.2017
 ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

connection with his request for preparation of pension case and final payment of GP Fund, the appellant stated that his original Service Book confirms his 27 years of service till 06.09.2001. The appellant vide another letter dated 24.04.2015 addressed to respondent No.2 requested that he may kindly be retired from 06.09.2001. In response, the respondent No.2 vide office letter dated 07.08.2015 sought advice from the Secretary Local Government, Election & Rural Development Department (respondent No.1) that the appellant requests for the grant of retirement on the basis of 27 qualifying years on September, 2001 on which date there is no interruption in his service but since that date, he is absent for 13 years and 8 months, therefore, advice may be given to him to grant retirement benefit U/S-23 of Civil Servants Act-VIII, 1973 or how to proceed in the instant case. In response to the said letter, respondent No.1 vide office letter dated 29.10.2015 replied that when a person/official has not reported for duty, how can he claim retirement benefits and then too through third person.

9. Case of the respondents is that the appellant was adjusted in Union Council Asia vide order dated 15.09.2001 but he did not report for duty, remained absent and abandoned the government service.


10. In view of the given circumstances of the case, when the appellant joined the government department as Peon in the year 1974 and there is no dispute regarding his service till

ATTESTED

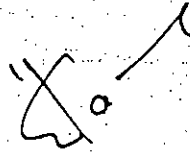
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

13.12.2019

September 2001, the canons of justice demand that he is entitled to the pensionary benefits up till 06.09.2001 as requested by the appellant. Consequently the present service appeal is partially accepted and the appellant shall be deemed retired from service w.e.f 06.09.2001 and as such he is held entitled for all pensionary/retirement benefits accordingly up till 06.09.2001. Parties are left to bear their own costs. File be consigned to the record room.



(Hussain Shah)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED
13.12.2019

Certified to be true copy


Khyber Pakhtunkhwa
Service Commission
Peshawar

Date of Presentation of Application 8-1-2020
Number of Words 2000
Copying Fee 22
Urgent 4-
Total 26-
Name of Applicant [Signature]
Date of Completion of Copy 8-1-2020
Date of Delivery of Copy 8-1-2020

20-02-2020

To

The Secretary,
LG&RD Department
Peshawar.

Subject: GP Fund and Pension Benefits


Respected Sir,

Referring to the decision of Honorable Service Tribunal regarding on my appeal 13-12-2019 (copy attached), the undersigned is still waiting for the implementation of the decision regarding my GP Fund payment and pensionary benefits an on 6-9-2001.

Sir, currently I am in very miserable health and financial condition, it is therefore, requested to release my GP Fund and start my pension to clear my debts and get my proper treatment.

Thanking you

Sincerely Yours,


(Rafique Ahmed)

Copy forwarded to Director General LG&RDD, Peshawar.

25-03-2020

To

The Secretary,
LG&RD Department
Peshawar.

Subject: GP Fund and Pension Benefits

Respected Sir,

Referring to my application on 20-2-2020 on the subject noted above regarding the implementation of the decision of Honorable Service Tribunal regarding on my appeal 13-12-2019, the undersigned is still waiting for the implementation of the decision regarding my GP Fund payment and pensionary benefits an on 6-9-2001.

Sir, It is once again requested to consider my miserable health and financial condition, and release my GP Fund and start my pension to clear my debts and get my proper treatment.

Thanking you

Sincerely Yours,


(Rafique Ahmed) ...

Copy forwarded to Director General LG&RDD, Peshawar.

29-05-2020

To

The Secretary,
LG&RD Department
Peshawar.

Subject: GP Fund and Pension Benefits

Respected Sir,

Referring to my application on 20-2-2020 and 25-03-2020 on the subject noted above regarding the implementation of the decision of Honorable Service Tribunal regarding on my appeal 13-12-2019, the undersigned is still waiting for the implementation of the decision regarding my GP Fund payment and pensionary benefits an on 6-9-2001.

Sir, It is once again requested to consider my miserable health and financial condition, and release my GP Fund and start my pension to clear my debts and get my proper treatment.

Thanking you

Sincerely Yours,


(Rafique Ahmed)

Copy forwarded to Director General LG&RDD, Peshawar.

07-09-2020

To

The Secretary,
LG&RD Department
Peshawar.

Subject: GP Fund and Pension Benefits

Respected Sir,

Referring to my repeated application on 20-2-2020, 25-03-2020 and 29-05-2020 on the subject noted above regarding the implementation of the decision of Honorable Service Tribunal regarding on my appeal 13-12-2019, the undersigned is still waiting for the implementation of the decision regarding my GP Fund payment and pensionary benefits an on 6-9-2001.

Sir, It is once again requested to consider my miserable health and financial condition, and release my GP Fund and start my pension to clear my debts and get my proper treatment.

Thanking you

Sincerely Yours,


(Rafique Ahmed)

Copy forwarded to Director General LG&RDD, Peshawar.

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Mazhar Alam Khan Miankhel

CIVIL PETITION NO.115-P OF 2020

[Against the judgment dated 13.12.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.167 of 2016]

Government of Khyber Pakhtunkhwa through Secretary, Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar and others.

...Petitioner(s)

Versus

Rafique Ahmad.

...Respondent(s)

For the Petitioner(s) : Mr. Shumail Aziz, Additional Advocate General, KP
Fazal-e-Subhan, Section Officer, Local Government, KP

Respondent(s) : N.R.

Date of Hearing : 15.10.2021

ORDER

GULZAR AHMED, CJ.- Learned Additional Advocate

General, KP relies upon Rule 2.11 of the West Pakistan Civil Services Pension Rules, 1963 to contend that the respondent having remained absent from duty without leave since 2001, could not claim pension as by his own conduct he has forfeited his past service resulting that no pension will be approved and become payable to him. Further, we note that the respondent has remained absent from the year 2001 but apparently, no action has been taken against him by the department and what is the effect of such conduct of the department in the matter. The respondent

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

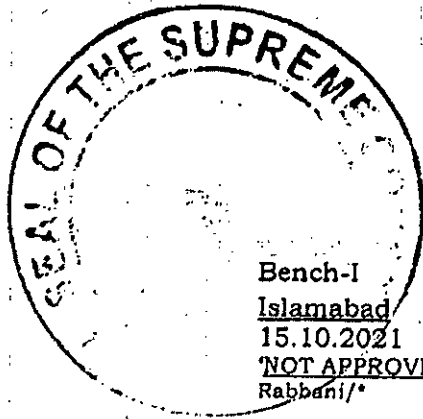
[Signature]

seems to have applied for grant of retirement vide his letter dated 21.05.2014 and petitioners having not passed any order on such letter of the respondent whether at all the respondent can be denied the retirement as asked by him vide his above letter.

2. The submission made by the learned Additional Advocate General, KP requires consideration. Leave to appeal is granted to consider the above question. The appeal shall be heard on the available record but the parties are allowed to file additional documents, if any, within a period of one month. As the matter relates to service, the office is directed to fix the same, expeditiously, preferably, after three months.

C.M.A.No.220-Pj of 2020

3. Status quo be maintained.



Sd/-HCJ
Sd/-J

Certified to be True Copy

Senior Counsel Associate
Supreme Court of Pakistan
Islamabad

16407/21

GR No.:	16407/21	Civil/Criminal
Date of Presentation:	15.10.21	
No of Words:	6	
No of Pages:	520	
Requ:	3	
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Court Fee St:	8	
Date of Compil:	20/10/21	
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