BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CoC application No. ____/2023

1. Jamal Uddin, Chowkidar, office of the District Education Officer, District Khyber at Jamrud.

PETITIONER

VERSUS

1. The Secretary Elementary and Secondary Education (Merged Areas) Khyber Pakhtunkhwa Peshawar etc

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Contempt of Court Petition	—	1-4
2	Affidavit	—	5
3	Copy of judgment dated 13-01-2022	"A"	6-12
4	Copy of office order dated 03-01-2023	"B"	13
5	Copy of order of this Tribunal dated 04-01-2023	"C"	14-15
6	Wakalatnama	–	–

Petitioner

Through

Dated: 02-02-2023

Rizwanullah
Advocate High Court, Peshawar.

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CoC application No. ____/2023

1. Jamal uddin, Chowkidar, office of the District Education Officer, District Khyber at Jamrud.

PETITIONER

VERSUS

1. The Secretary Elementary and Secondary Education (Merged Areas) Khyber Pakhtunkhwa Peshawar.
2. The Director Elementary and Secondary Education (Merged Areas) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, District Khyber.

RESPONDENTS

APPLICATION FOR INITIATING CONTEMPT OF COURT PROCEEDINGS AGAINST THE RESPONDENTS FOR DISOBEDIENCE OF THE JUDGMENT DATED 13-01-2022 AND ORDER DATED 04-01-2023 PASSED BY THIS HON'BLE TRIBUNAL IN SERVICE APPEAL NO. 856/2019 AND EXECUTION PETITION NO. 569/2022 RESPECTIVELY TO THE EXTENT OF PAYMENT OF BACK BENEFITS AND MONTHLY SALARIES TO THE PETITIONER.

Respectfully Sheweth,

Short facts giving rise to the present application are as under:-

1. That the petitioner was serving as Chowkidar in the Education Department at the relevant time. He was awarded major penalty of dismissal from service on

25-01-2019 in utter violation of law. He after exhausting departmental remedy, invoked the jurisdiction of this Hon'ble Tribunal by way of filing service appeal No.856/2019 praying therein that the impugned order may graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

2. That this Hon'ble Tribunal vide judgment dated 13-01-2022 accepted the appeal, set aside the impugned order and reinstated the petitioner with all back benefits. However, the respondents were left at liberty to conduct inquiry if they so desired. It would be advantageous to reproduce herein the relevant portion of the judgment for facility of reference:-

> **"In view of the foregoing discussion, the instant appeal as well as the connected service appeals are accepted. The impugned orders are set aside and the appellants are re-instated in service with all back benefits. Respondents however are at liberty to conduct inquiry if they so desire. Parties are left to bear their own costs. File be consigned to record room.**

(Copy of judgment is appended as Annex-A)

3. That the respondents were under statutory obligation to have complied with the said order/judgment in letter and spirit but they did not bother for the same and as such, the petitioner was constrained to invoke the jurisdiction of this Hon'ble Tribunal through filing execution petitioner No. 569/2022.

4. That the above petition came up for hearing before this Hon'ble Tribunal on 04-01-2023, the representative of the respondents produced a copy of office order dated

03-01-2023 whereby, the petitioner was reinstated in service with all back benefits. Consequently, the execution petition was filed with the following observations: -

> **"Representative of the respondents submitted order bearing Endst: No. 117-25 dated 03-01-2023, whereby in compliance with the judgment of this Tribunal, grievance of the petitioner has been redressed. This petition is filed. The petitioner if feels that any part of the judgment is not yet complied with, he may come again in the court within thirty days. Consign.**
>
> **(Copy of office order dated 03-01-2023 and order of this Tribunal dated 04-01-2023 are appended as Annex- B & C)**

5. That it was not only shocking but also ironic that the petitioner was only reinstated and neither the back benefits nor monthly salaries from reinstatement until now were paid to him. Thus, the judgment of this Hon'ble Tribunal was not implemented in its true perspective/spirit.

6. That the defiant and adamant conduct of the respondents clearly amounts to willful disobedience of the order/judgment of this Hon'ble Tribunal and therefore requires to be dealt with iron hands by awarding them exemplary punishment under the relevant law. Reliance in this respect can be placed on the judgment of august Supreme Court of Pakistan reported in **PLD-2012-SC-923 (citation-ff).** The relevant citation of the judgment is as under:

P L D 2012 Supreme Court 923
(ff) Contempt of court—

----Court order, implementation of---Contempt through disobedience of court order ("disobedience contempt") by executive and its functionaries---Effect---Responsibility for implementation (of court's orders) had been made obligatory on other organs of the State, primarily the executive-When a functionary of the executive refused to discharge its constitutional duty, the court was empowered to punish it for contempt.

In view of the above narrated facts, it is, therefore, humbly prayed that contempt of court proceedings may graciously be initiated against the respondents for disobedience of order/judgment of this Hon'ble Tribunal and they may also be awarded exemplary punishment under the relevant law.

It is further prayed that the respondents may kindly be compelled to comply with the judgment and order of this Hon'ble Tribunal by disbursing all back benefits and monthly salaries from the date of reinstatement till now so as to secure the ends of justice.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.

Petitioner

Through

Dated: 02-02-2023

Rizwanullah
M.A LL.B
Advocate High Court, Peshawar.

B

(5)

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CoC application No. ____/2023

1. Jamal Uddin, Chowkidar, office of the District Education Officer, District Khyber at Jamrud.

PETITIONER

VERSUS

1. The Secretary Elementary and Secondary Education (Merged Areas) Khyber Pakhtunkhwa Peshawar etc.

RESPONDENTS

AFFIDAVIT

I, Jamal Uddin, Chowkidar, office of the District Education Officer, District Khyber at Jamrud, do hereby solemnly affirm and declare that the contents of the accompanied execution petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

جمال الدین

Deponent

FEB 2023

Annex-H

(1)

(6)

Khyber Pakhtunkhwa Service Tribunal Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 759 /2019

Khyber Pakhtunkhwa Service Tribunal
Diary No. 816
Dated 28/5/2019

Jamal uddin, Ex-Chowkidar Government Primary School Shin Pokh Loi Shalman Landi Kotal District Khyber

(Appellant)

VERSUS

1. The Secretary Elementary and Secondary Education (Merged Areas) Khyber Pkhtunkhwa Peshawar.
2. The Director Elementary and Secondary Education (Merged Areas) Khyber Pkhtunkhwa Peshawar.
3. District Education Officer, District Khyber.

(Respondents)

Filedto-day
Registrar
28/5/19

Re-submitted to-day and filed.
Registrar
6/6/19

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED 28.01.2019, WHEREBY THE APPELLANT HAS BEEN AWARDED THE MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE, AGAINST WHICH HIS DEPARTMENTAL APPEAL DATED 29.01.2019 HAS NOT BEEN RESPONDENT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

ATTESTED
Examiner
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Prayer in Appeal: -

On acceptance of this appeal the impugned order dated 28.01.2019, may kindly be set aside and the appellant may be re-instated into service with all back benefits and wages of service.

ORDER
13.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in Service Appeal bearing No. 856/2019 titled Islam uddin Versus The Secretary Elementary and Secondary Education (Merged Areas) Khyber Pakhtunkhwa Peshawar and others", the instant service appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Respondents however are at liberty to conducted inquiry if they so desire. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
13.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 21-4-22
Number of Words 800
Copying Fee 10/-
Urgent 4/-
Total 14/-
Name of Copyist —
Date of Completion of Copy 21-4-22
Date of Delivery of Copy 21-4-22

(8)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 856/2019

Date of Institution ... 20.06.2019

Date of Decision ... 13.01.2022

Islam uddin, Ex-Chowkidar Government Primary School Ilamgudar Bara District Khyber. ... (Appellant)

VERSUS

The Secretary Elementary and Secondary Education (Merged Areas) Khyber Pakhtunkhwa Peshawar and others. ... (Respondents)

Yasir Saleem,
Advocate ... For Appellant

Muhammad Adeel But,
Additional Advocate General. ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

1. Service Appeal bearing No. 759/2019 titled Jamal uddin
2. Service Appeal bearing No. 760/2019 titled Wajiuddin

02. Brief facts of the case are that the appellant was appointed as Chowkidar in Education Department vide order dated 31-08-1999 after observing all the codal formalities. The appellant performed his duty for almost 20 years. It was in 2017, when salary of the appellant was stopped and later on was dismissed from service vide order dated 25-01-2019. Feeling aggrieved, the appellant filed

9

departmental appeal dated 20-02-2019, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 25-01-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the law has badly been violated; that the impugned order is against law, facts and norms of natural justice, therefore, not tenable, hence liable to be set aside; that neither any inquiry was conducted nor the appellant was afforded opportunity of defense; that no charge sheet/statement of allegation or any show cause notice was served upon the appellant and the appellant was condemned unheard; that the appellant has not been afforded opportunity of personal hearing before awarding major punishment of dismissal from service; that valuable rights have been accrued in his favor, which cannot be snatched away through such impugned order; that the inquiry officer suggested penalty of compulsory retirement from service, as is evident from the impugned order, but the appellant was awarded with major punishment of dismissal from service without giving any reason, so the impugned order is defective and liable to be set aside; that the appellant has at his credit a spotless service, who never committed any act of misconduct and was appointed through a legal process and received salaries for almost 19 years and the principle of locus poenitentiae strongly favors the case of the appellant; that it would be un-just and illegal to remove an official from service without observing the formalities as prescribed in law; that the appellant was illegally and un-lawfully dismissed from service, hence needs interference of this tribunal.

04. Respondents were given several opportunities to submit reply, but they failed to submit reply, failing which, their right of defense was struck off, but the impugned order alone would suffice resolving the riddle. The impugned order would suggest that appointment of the appellant as Chowkidar is not disputed nor

(10)
(8)

is declared as fake. It is also not disputed that the appellant served for almost 20 years against the post, receiving perquisites and privileges of the post for the entire period. The issue surfaced during checking of Master Payroll, when the assistant district education officer came to know that the appellant holding personal number 00412704 is drawing pay with effect from 31-08-1999 at Government Primary School Illamgudar Bara, District Khyber, where there is no sanctioned post of chowkidar occupied by the appellant, hence pay of the appellant was stopped and his name alongwith personal number was published in leading news papers dated 27-05-2018. The impugned order further reveals that the competent authority constituted an inquiry committee on 28-09-2018 and the committee recommended compulsory retirement but not agreeing with suggestion of the committee, the competent authority himself conducted inquiry dated 22-01-2019 and dismissed the appellant from service vide order dated 25-01-2019 within three days.

05. We have observed that personal number is issued by the Account Office against a regular sanctioned post. Similarly, pay is also released against a sanctioned post and as rightly argued by counsel for the appellant that as per practice in vogue in Education Department, an employee is appointed against a sanctioned post and is deputed to serve in anther station in exigency of service, but is supposed to draw his salary against his original post. It never happens that any of the employees could draw salary without sanctioned post for long 20 years. Same is the case with the appellant that he was appointed against a sanctioned post after observing all the codal formalities and being an illiterate individual, he served, where he was deputed to serve and once he was allotted personal number by Account Office against a sanctioned post, he started performing his duty and started receiving his salary. It was not fault of the appellant, if he was deputed to serve in a school, where sanctioned post of chowkidar was not available, nor was it an act of misconduct, rather it was due to

ATTESTED

reckless approach of the respondents finding an irregularity after 20 years, for which the appellant shall not suffer. The impugned order would suggest that the appellant was dismissed from service without affording him opportunity of defense, as no charge sheet/statement of allegation or any showcause notice is mentioned to be served upon the appellant, nor any regular inquiry is mentioned in the impugned order. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

06. Record would suggest that the appellant was appointed against a sanctioned post after fulfilling the codal formalities back in 1999, which is not disputed but his dismissal through a summary trial is against law as well as norms of natural justice. Since the appellant served against the post for almost 20 years and developed vested rights over the post, which cannot be taken away with a single stroke of pen for no fault of the appellant. The Supreme Court of Pakistan in its judgment reported as 1996 SCMR 1350 has held that authority having itself appointed civil servant could not be allowed to take benefit of its lapses in order to terminate service of civil servant merely because it had itself committed an irregularity in violating procedure governing appointment and an employee could not be blamed or punished for the laxities on part of the respondents. The order affecting the rights of a person had to be made in accordance with the principle of natural justice, order taking away the rights of a person without complying with the principles of natural justice had been held to be illegal. Government was not vested with the authority to withdraw or rescind an order if the same had taken

12

legal effect and created certain legal rights in favor of the appellant. Reliance is place on 2017-PLC (CS) 585.

07. We are of the considered opinion that the appellant has not been treated in accordance with law and was dismissed from service for no fault of him. The appellant served for almost 20 years with the respondents and now is reaching his age of superannuation and at such a belated stage, penalizing him for a fault, which has not been committed by the appellant would result in manifest injustice. The order of dismissal appears to be arbitrary and without lawful authority, which is liable to be set aside. We did not notice any irregularity in appointment of the appellant as chowkidar nor any of the allegations of inefficiency or misconduct were found against him. The appellant was charged only for the fault that he has drawn salary in a school, where no post of chowkidar was available, which was not his fault, rather it was responsibility of the respondents to post him in a station, where regular sanctioned post was available. The correct course in case of the appellant would have been to transfer him back to the school, where he was initially appointed, instead he was dismissed, which however was not warranted.

08. In view of the foregoing discussion, the instant appeal as well as the connected service appeals are accepted. The impugned orders are set aside and the appellant are re-instated in service with all back benefits. Respondents however are at liberty to conducted inquiry if they so desire. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
13.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

NO _____ /EDU DATED _____ 2022

Email.DEOKHYBER7777@gmail.com

(13)

Annex-B

RE- INSTATEMENT ORDER(CONDITIONALLY)

In compliance with the Judgements of the Khyber Pakhtunkhawa Service Tribunal Peshawar, Service Appeals vide Nos. mentioned below, the following Ex – Class IV are hereby re-instated in service with all back benefits on the condition that an inquiry will be conducted to determine the final status of their services as per direction of Service Tribunal.

S.NO.	Name/Designation	Station	Service Appeal No.	Judgements dates,	Remarks
1	Islam Uddin Chowkidar	SDEO Jamrud	856/2019	13/01/2022	Re-Instated
2	Jamal Uddin Chowkidar	SDEO Bara	759/2019	13/01/2022	Re-Instated
3	Wajih Uddin Chowkidar	SDEO Landi Kotal	760/2019	13/01/2022	Re-Instated

(MUHAMMAD UZAIR ALI)
DISTRICT EDUCATION OFFICER
DISTRICT KHYBER AT JAMRUD

Endst:No. 117-25
Dated 03/01/2022

Copy of the above is forwarded to the;

1. *Director Elementary & S E D Khyber Pakhtunkhawa.*
2. *Registrar Khyber Pakhtunkhawa Service Tribunal Peshawar*
3. *Deputy Commissioner Khyber at Peshawar House.*
4. *District Accounts Officer Khyber at Jamrud.*
5. *DMO(EMA) Khyber*
6. *SDEOs Concerned.*
7. *ADEO Primary Local Office.*
8. *Class IVs Concerned.*
9. *Office Copy.*

Attested
Petitioner

DISTRICT EDUCATION OFFICER
DISTRICT KHYBER AT JAMRUD

Annex-C

124

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 759(P) CS-2019.

Jamal uddin Ex- Chowkidar Government Primary School Shin Pokh Loi Shalman Landi Kotal District Khyber..... .....**(Appellant)**

VERSUS

1. Secretary Elementary & Secondary Education (Merged Areas), Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education (Merged Areas), Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) District Khyber.

(Respondents)

Application for the implementation of the Judgment and Order dated 13.01.2022 of this Honourable Tribunal.

Respectfully Submitted:

1. That the above noted service appeal was pending adjudication in this Honourable Tribunal and was decided vide judgment and order dated 13.01.2022.

2. That vide judgment and order dated 27.3.2017 this Honourable Tribunal accepted appeal of the appellant in the following terms:

> *"8. In view of the foregoing discussion, the instant appeal as well as the connected service appeals are accepted. The impugned orders are set aside and the appellant are re-instated in service with all back benefits. Respondents however are tat liberty to conducted inquiry if they so desire. Parties are left to bear their own costs. File be consigned to the record."*

(Copy of the Judgment and order dated 13.01.2022 is Attached as annexure B)

3. That the judgment of this Honourable Tribunal was duly communicated to the respondents, however the respondent department has not re-instated nor has his salary been released up till now, which is against the spirit of the judgment and order dated 27.03.2017 of this Honourable Tribunal.

4th Jan, 2023

1. Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Bahramand Khan, Assistant Director for the respondents present.

02. Representative of the respondents submitted order bearing Endst: No. 117-25 dated 03.01.2023, whereby in compliance with the judgment of this Tribunal, grievance of the petitioner has been redressed. This petition is filed. The petitioner if feels that any part of the judgment is not yet complied with, he may come again in the court within thirty days. Consign.

03. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 4th day of January, 2023.*

(Kalim Arshad Khan)
Chairman

Date of presentation of application 09-1-23
Number of words 2-p
Copying fee 10/-
Urgent 5/-
Total 15/-
Name of copyist
Date of completion of copy 09-1-23
Date of delivery of copy 09-1-23

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar