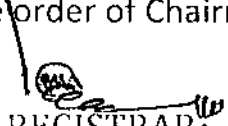


Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 58/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	2.02.2023	<p>The execution petition of Mst. Nabeela Afridi submitted today by Mr. Mir Zaman Safi 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.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 58 /2023
In
Appeal No. 875/2019

AA9

NABEELA AFRIDI

VS

EDUCATION DEPTT

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S.NO.	DOCUMENTS	ANNEXURE	PAGE NO.
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3-	Judgment	A	4- 8.
4-	Wakalat nama	9.

PETITIONER/APPLICANT

THROUGH:


MIR ZAMAN SAFI
ADVOCATE

MOBILE NO.0333-9991564

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 58 /2023
In
Appeal No. 875/2019

Mst: Nabeela Afridi, PST (BPS-12),
GGPS Mari Kor, Pandiali, District Mohmand.

..... PETITIONER

VERSUS

- 1- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The District Education Officer (F), District Mohmand.
- 3- The District Education Officer (F), District Kohat.

.....PETITIONERS

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
OF THIS AUGUST TRIBUNAL DATED 22.09.2021 IN
LETTER AND SPIRIT

R/SHEWETH:

- 1- That the petitioner filed Service appeal bearing No. 875/2019 before this august Service Tribunal against the impugned order dated 18.10.2013.
- 2- That appeal of the petitioner was finally heard by this august Tribunal on 22.09.2021 and was decided in favor of the petitioner vide judgment dated 22.09.2021 with the view that *“For what has been discussed above, the appeal in hand is allowed, the impugned order dated 18.10.2013 is set aside and the appellant is re-instated into service. The respondents shall be at liberty to hold regular/proper enquiry against the appellant and pass order a fresh strictly in accordance with law. De-novo exercise shall be completed by the respondents within a period of ninety days from the receipt of copy of instant judgment, also allowing the appellant to participate therein and bring forth her defense. She shall be allowed to cross examine witnesses appearing against her, if any. The issue of back benefits in favor of the appellant shall be subject to the outcome of de-novo proceedings”*. Copy of the judgment is attached as annexure.....A.
- 3- That after obtaining attested copy of the judgment dated 22.09.2021 the petitioner submitted the same before the respondents for implementation but till date the judgment of this

august Tribunal has not been implemented by the respondent in letter and spirit.

- 4- That the petitioner has no other remedy but to file this implementation petition before this august Tribunal.

It is, therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to implement the judgment dated 22.09.2021 in letter and spirit. Any other relief which this august Tribunal deems fit that may also be awarded in favor of the petitioner.


PETITIONER

NABEELA AFRIDI

THROUGH:


MIR ZAMAN SAFI
ADVOCATE.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2023

In
Appeal No. 875/2019

NABEELA AFRIDI

VS

EDUCATION DEPTT:

AFFIDAVIT

I Mir Zaman Safi, Advocate on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



02/02/2023


MIR ZAMAN SAFI
ADVOCATE

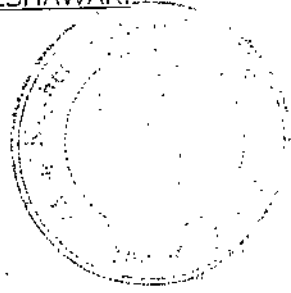
A - 4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 875/2019

Date of Institution ... 03.07.2019

Date of Decision ... 22.09.2021



Mst. Nabeela Afridi, PST, GGPS Mari Kor, Pandiali, District Mohmand
... (Appellant)

VERSUS

The Director (E&SE) Government of Khyber Pakhtunkhwa, Peshawar and
two others. ... (Respondents)

Present.

Mr. Noor Muhammad Khattak,
Advocate. ... For appellant.

Mr. Muhammad Adeel Butt,
Addl. Advocate General ... For respondents.

MR. AHMAD SULTAN TAREEN ... CHAIRMAN
MRS. ROZINA REHMAN, ... MEMBER(J)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-The appellant named above invoked the jurisdiction of this Tribunal through service appeal described above in the heading challenging thereby her removal from service dated 18.10.2013, communicated to her on 04.03.2019 during proceedings before this Tribunal in Service Appeal No. 1172/2018.

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2. The factual account as given in the memorandum of appeal is summed up as hereinafter follows. The appellant was appointed as PST in the respondent department in the year, 1993. She while serving at GPS

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

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Tarkho Bajaur Agency was transferred and posted at GFCS Spinki Tangi Mohmand Agency, vide order date 06.08.2007. The appellant assumed charge at her new assignment and started performing her duty. LPC was also issued in her favour by the concerned authority. The appellant was then transferred to GGPS Mari Kor District Mohmand Agency. The appellant being bonafide resident of FR Kohat submitted application to the Director, E&SE Department, Khyber Pakhtunkhwa Peshawar on 17.09.2013 under Section 3 of the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011 for her permanent transfer to home District. In response to the said application, the District Education Officer, Kohat was directed to adjust the appellant against the post of PST at FR Kohat. Vide order dated 05.05.2014, the appellant was adjusted against the post of PST at GGMS Feroz Mela, FR Kohat. The appellant assumed the charge on 27.05.2014 and started performing her duty. After serving for some time in the said school, respondent No. 3 relieved her and directed to report back to her previous assignment. The appellant went to GGPS Mari Kor District Mohmand for submitting arrival report which was refused by the Headmistress. Since then the appellant agitated her grievance before the concerned authorities but in vain. Lastly, she filed departmental appeal on 11.06.2018 before respondent No. 1 which elicited no response. Ultimately, the appellant approached this Tribunal through Service Appeal at hands. After admission of the appeal for regular hearing, the respondents were given notices. They after attending the proceedings have filed the written reply refuting the claim of the appellant.

3. We have heard the arguments and perused the record.

ATTESTED

ATTESTED

4. The appointment of the appellant in the respondent department in the year, 1993 and her continuous service thereafter has not been specifically denied in parawise comments filed on behalf of the respondents No. 1 & 2. Similarly account of her transfers given by the appellant that she was transferred to GFCS Spinki Tangi Mohmand Agency from GGPS Tarkho, Bajaur Agency followed by issuing of LPC is also not denied. The fact of rendering service by the appellant at Mohmand Agency is also not disputed. The dispute relates to the version of the appellant that she being bonafide resident of Kohat, submitted application for her transfer to her home Agency/District in the light of Section 3 of the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011 and the respondent No. 1 directed the respondent No. 3 to adjust the appellant against the post of PST at FR Kohat. There is note of "no objection" recorded by A.E.O Mohmand Agency on application of the appellant as available on record. The copy of office order dated 05.05.2014 issued by Agency Education Officer, FR Kohat is also available on file as annexed with the Memorandum of Appeal. According to the order dated 05.05.2014, the appellant was adjusted in GGMS Feroz Mela FR Kohat on temporary basis with immediate effect till further order, in pursuance to direction of the Director of Education FATA Warsak Road, Peshawar. However, the respondent No. 1 and 2 in their Parawise comments did not admit the correctness of facts stated in Para-4 of the Memorandum of Appeal and denied the same. It was added on behalf of the said respondents that the duration, during which the appellant claims that she submitted application for her transfer, she was already removed from service and her salary was also stopped w.e.f. 01.07.2012. The copy of

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 KHYBER PAKHTUNKHWA
 BOARD OF EXAMINERS
 PESHAWAR

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(7)

the order showing removal of the appellant from service has been annexed with the Parawise comments. The order dated 18.10.2013 as to removal of the appellant as referred before is in the style of Memorandum addressed to her by Agency Education Officer, Mohmand Agency at Ghalanai. It is stated in the said Memo. that consequent upon her absence from duty, she i.e. the appellant was asked to explain her absence but no reply was received in the office and again she was given show cause notice to show the reasons of absence but in vain. Therefore, she was informed that she by the said Memo. was removed from service with immediate effect. On the other hand, respondent No. 3 in his separate comments, submitted that the appellant was transferred to Mohmand Agency from Bajaur Agency and there at Mohmand Agency, she served till April, 2014. She was deputed from Mohmand Agency to F.R Kohat at the direction of Director of Education FATA on 24.04.2014 and the deputation order was issued for duty vide order dated 05.05.2014 at GGMS Feroz Mela, FR Kohat. It is also an admitted position on behalf of respondent No. 3 that she performed her duty in FR Kohat till October, 2014 and there-after she was relieved with direction to join her service in the previous station i.e. Mari Kor at Mohmand Agency. If version of the respondent No. 3 is kept in view, proceedings as to absence as reflected in the Memo. dated 18.10.2013 addressed to the appellant about her removal becomes questionable, when she was on duty till October, 2014 as per version of respondent No. 3. Obviously, the available parawise comments of respondents No. 1 and 2 with the copies of supporting record are short to provide the material for determination of the question of conflict between versions of respondents No. 1 & 2 and that of the respondent No. 3. There is yet another aspect of case in hand. The impugned order dated 18.10.2013 suggests that departmental proceedings

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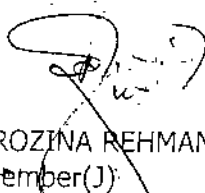
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 CHAIRMAN
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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against the appellant were taken ex-parte due to her non-participation. The relevant Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 provides that in case of non-availability/absence of a civil servant, he/she has to be served with notice through registered post at her residential address and, in case of failure of appearance, the notice is required to be published in two leading Newspapers. But no such notice was published before the impugned order. In the circumstances, the appellant remained at loss in defending her cause in accordance with law.

5. For what has been discussed above, the appeal in hand is allowed, the impugned order dated 18.10.2013 is set aside and the appellant is reinstated into service. The respondents shall be at liberty to hold regular/proper enquiry against the appellant and pass order afresh strictly in accordance with law. De-novo exercise shall be completed by the respondents within a period of ninety days from the receipt of copy of instant judgment, also allowing the appellant to participate therein and bring forth her defense. She shall be allowed to cross examine witnesses appearing against her, if any. The issue of back benefits in favour of the appellant shall be subject to the outcome of de-novo proceedings. Parties are, however, left to bear their respective costs. File be consigned to the record room.

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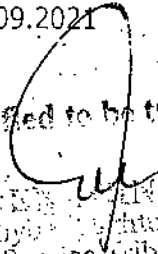

 (ROZINA REHMAN)
 Member(J)




 (AHMAD SULTAN TAREEN)
 Chairman

ANNOUNCED
 22.09.2021

Certified to be true copy


 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Date of Commencement 9/11/2021

No. of Pages 26 - 2400

No. of Exhibits 4 - 0

Date of Disposal 9/11/2021

Date of Receipt of Copy 9/11/2021

WAKALAT NAMA

BEFORE THE Khyber Pakhtunkhwa Service Tribunal, Peshawar

OF 2023

Nabeela Afridi

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

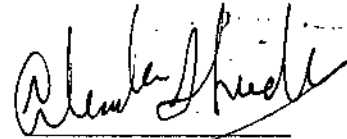
Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Nabeela Afridi

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, High Court, Peshawar** 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. / /2023



CLIENT



ACCEPTED
MIR ZAMAN SAFI
ADVOCATE

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Rahim Medical Centre, G.T Road,
Hashtnagri, Peshawar.

Mobile No.0333-9991564

0317-9743003