Form-A

FORM OF ORDER SHEET

| { | Court of | | |
|---|------------------------|---------|--|
| • | Execution Petition No. | 55/2023 | |

Order or other proceedings with signature of judge

З

The execution petition of Mst. Bilgees received

S.No. Date of order proceedings 2 î 31.01.2023 1 today by registered post through Sheikh Iftikharul Haq

Advocate. It is fixed for implementation report before touring Single Bench at D.I.Khan 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. By the order of Chairman

REGISTRAR

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA

Implementation Petition No. ______ of 2023

In Service Appeal No. 4760/2021 Decided on 28/10/2022

Mst. Bilgees

Versus

Govt. of KPK etc

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Date: <u>28</u>/01/2023

Yours Humble Petitioner

44r Mst. Bagees

Through Counsel

Sheike Iftikhar ul Haq. Advocate Supreme Court

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT DERA ISMAIL KHAN

Implementation Petition No. _______ of 2023

In Service Appeal No. 4760/2021 Decided on 28/10/2022

> Mst. Bilgees daughter of Mashal Khan r/o village Masha-Mansoor Tehsil & District Lakki Marwat, Ex-Caller GGCMS Masha Mansoor Lakki Marwat.

VERSUS

- 1. Government of KPK, Through Secretary Elementary & Secondary Education Peshawar.
- 2. The Director (E&S) Education Khyber Pakhtunkhwa Peshawar.
- 3. District Education Officer (Female) Lakki Marwat.

Petitioner

IMPLEMENTATION PETITION UNDER KHYBER PAKHUNKHWA SERVICE TRIBUNAL ACT 1974 READ WITH KPK SERVICE TRIBUNAL SERVICE TRIBUNAL RULES 1974 AS AMENDED FOR IMPLEMENTATION OF THE ORDER/JUDGMENT IN SERVICE APPEAL NO. 4761/2021 DECIDED ON 28/10/2022 BY THIS HONOURABLE TRIBUNAL.

Respectfully Sheweth:-

The Petitioner most respectfully submits as under:-

- 1. That the appellant was appointed as Caller in GGCMS Masha Mansoor Lakki Marwat and on 01/04/2004.
- 2. That the appellant was performing her duties to the entire satisfaction of her high-ups and never absented herself throughout her service career. In this respect attendance register of the school is very much clear.
- 3. That on 30/12/2020, the appellant was removed from service against which the appellant submitted departmental appeal which was not accepted and after that the service appeal No. 4761/2021 was preferred by the appellant before this Honourable Tribunal and the learned Tribunal was pleased to accept the service appeal by setting aside the impugned order vide judgment dated 28/10/2022. Copies of the appeal and judgment are annexed as <u>Annexure-A & B</u>.
- 4. That now the respondents are not implementing the order dated 28/10/2022, hence, the instant implementation petition is being filed before this Honourable Tribunal.

GROUNDS

- A. That the acts and omissions of the respondents authorities to not obeyed/implement the order of this honourable tribunal in its true letter and spirit are clear cut violation of law, statutes and constitution.
- B. That lame excuses on behalf of respondents/authorities are not maintainable and respondents are required to implement the judgment of this honourable Tribunal in its true letter and spirit.

C. That the Counsel for the Petitioner may kindly be allowed to raise further legal grounds during the course of arguments.

It is therefore, humbly requested that the respondents be directed to fully implement the judgment/order of this honourable tribunal dated 28/10/2022.

Date: <u>28</u>/01/2023

Yours Humble Petitioner

uda, יצב Mst. Bilgees

Through Counsel

Sheikh Iftikhar u Haq Advocate Supreme Court

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT DERA ISMAIL KHAN

Implementation Petition No. _____ of 2023

In Service Appeal No. 4760/2021 Decided on 28/10/2022

Mst. Bilgees

Versus

Govt. of KPK etc

AFFIDAVIT

I, **Mst. Bilgees** daughter of Mashal Khan r/o village Masha Mansoor Tehsil & District Lakki Marwat, do hereby solemnly affirm and declare on oath that contents of above Petition are true & correct to the best of my knowledge and that nothing has been concealed from this Honourable Court.

Dated: $\frac{2-8}{01/2023}$

Identified by:

Shéikh Iftikhar ul Haq Advocate Supreme Court





BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR

___/2021

Service Appeal No.

Mst. Bilgees daughter of Mashal Khan r/o village Masha Mansoor Tehsil & District Lakki Marwat, Ex-Caller GGCMS Masha Mansoor Lakki Marwat. 93449345312

VERSUS

1. Government of KPK, Through Secretary Elementary & Secondary Education Peshawar.

2. The Director (E&S) Education Khyber Pakhtunkhwa Peshawar,

3. District Education Officer (Female) Lakki Marwat.

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TR BUNAL ACT, 1974.

<u>PRAYER</u>

On acceptance of the instant appeal the impugned office order bearing No. 5079-84 dated 30/12/2020 issued by the respondent#3 may kindly be set aside vide which by imposing the major penalty of removal from service the appellant was removed from services with immediate effect and also against the appellate order qua the departmental appeal wherein the respondent#2 remained silent/not taken any action by not deciding the departmental appeal of the appellant meaning thereby rejection of departmental appeal of the appellant within stipulated period and thus the service of the appellant be restored with all back benefits by setting aside the impugned office orders mentioned above.

Respected Sig,

5.

Appellant humbly submits as under;

- 1. That the appellant was appointed as Caller in GGCMS Masha Mansoor Lakki Marwat and on 01/04/2004. Copy of the appointment order is annexed as <u>Annexure-A</u>.
- That the appellant was performing her duties to the entire satisfaction of her high-ups and never absented herself throughout her service career. In this respect attendance register of the school is very much clear. Copies of the attendance register are annexed as <u>Annexure-B</u>.
- 3. That in the month of November 2020, due to crucial and critical conditions of the COVID-19, the school was closed to some extents and conditions, in spite of this the appellant performed her duties and remained punctual and never absented herself as evident from the attendance register.
- 4. That the appellant was performing duties and on the instructions of political vendetta in spite of on duty, the appellant was marked absent on 18/12/2020 in his presence due to personal grudges and instructions of political vendetta because some of the family members of appellant are having/belonging with political rivals of the ruling party. Thus, the appellant was on duty on the eventful day i.e. 18/12/2020. In spite of this, ironically, the respondent#3 issued the impugned office order No. 5079-84 dated 30/12/2020 vide which the service of the appellant was removed by imposing major penalty. Copy of the impugned order dated 30/12/2020 is annexed as <u>Annexure-C</u>.
 - That, the appellant feeling aggrieved, preferred a departmental appeal vide dairy No. 232 dated 06/01/2021 to the respondent#2 being appellate autnority, which was not accepted within stipulated period. It is also pertinent to mention that later on 20/01/2021 the respondent#2 called the detailed report/comments from the respondent#3 vide letter No. 2850 dated 20/01/2021. Copies of the

departmental appeal and letter dated 20/01/2021 are annexed as <u>Annexure-D & D/1</u>.

6. That appellant feeling aggrieved by the impugned order dated 30/12/2020, hence, the instant appeal on the following grounds.

<u>GROUNDS</u>

1 11 1.1.

- a. That the impugned order is against law, fact and circumstance of the case, hence, is not tenable in the eye of law but liable to be set aside.
- b. That the impugned order has been passed with mala-fide and hasty:manner as, no charge sheet, statement of allegations, opportunity of replication, hearing, first show cause notice, final show cause notice, in short no inquiry has been conducted whatsoever, thus the impugned order is against the principle of law, service rules, policy and is not in the commence of EASTA Code.
- c. That the appellant is punctual and was on duty and never remained absent from duty and the alleged proceeding is on the bases of political pressure and victimization.
- **d.** That this honourable Tribunal has got vast and ample powers to entertain the instant appeal.
- e. That counsel for the appellant may graciously be allowed to raise additional grounds at the time of arguments.

It is therefore humbly prayed that On acceptance of the instant appeal the impugned office order bearing No. 5079-84 dated 30/12/2020 issued by the respondent#3 may kindly be set aside vide which by imposing the

major penalty of removal from service the appellant was removed from services with immediate effect and also against the appellate order qua the departmental appeal wherein the respondent#2 remained silent/not taken any action by not deciding the departmental appeal of the appellant meaning thereby rejection of departmental appeal of the appellant within stipulated period and thus the service of the appellant be restored with all back benefits by setting aside the impugned office orders mentioned above.

Dated <u>•7</u>/0**2**/2021

Your humble appellant,

Sheikh Iftikhar ul'Haq Advocate High Court District Bar Dera Ismail Khar BEFORE THE KPK SERVICES TRIBUNAL PESHAWAR

In Service Appeal No._

_/2021

Bilgees Bibi (Appellant) Govt Of KPK, etc (<u>Respondents</u>)

31-1 y ec

Deponent

B L 1

<u>AFFIDAVIT</u>

Versus

I, Bilgees, appellant herein, do hereby solemnly affirm on oath that all parawise contents of the accompanying appeal are true and correct to the best of my knowledge, belief and information; that nothing has been concealed or kept secret from this worthy Tribunal, nor anything contained therein is based on exaggeration or distortion of facts.

Dated <u>•7</u>/02/2021

VERIFICATION

Dated <u>°7</u>/0**2**/2021

Verified on oath at DIKhan, this 27 day of 400 2021, that all contents of the above appeal are true and correct.

Souries Appendi Au 47(1) 2021 titled "Mar Bilgeev vis Government of Knyber Pakiminkhise through Secretary "Amentary and Secretariasy Education Postavitir and others" and connected Append No. 4761/2021 titled "Embed Ultub vis- Covernation of Knyber Pakhtnekhiset theory Secretary Elementary and Secondary Pashtrane "Electron P. Shawar and others" deculed on 26.10.2022 by Division Bench comprising Kalim Arstave Khan Channess on Review Roman Member, Judicial, Knyber Pakhtnikhise Secret Problemal, Camp Court & Theory" and

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR CAMP COURT D.I.KHAN.

BEFORE:

*Service Appeal No.4750/2021

Mst. Bilgees daughter of Mashal Khan v/o Village Masha Mansoor Tehsil & District Lakki Marwat, Ex-Caller GGCMS Masha Mansoor Lakki Marwat.

(Appellant)

<u>Versus</u>

 Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education, Peshawar.
Director (E&SE), Education Department Khyber Pakhtunkhwa, Peshawar.

3. District Education Officer(F), Lakki Marwat. (Respondents)

Present:

A26.

Sheikh Hikhar Ul Haq, Advocate......For appellant.

Kabirullah Khattak, Additional Advocate General......For respondents.

| Date of Institution | |
|---------------------|--|
| Dates of Hearing | |
| Date of Decision | |

Service Appeal No.47(1/2021

Farhad Ullah son of Mashal Khan caste Marwat r/o Village Masha Mansoor Tehsil & District Lakki Marwat, Ex-Chowkidar GGCMS Masha Mansoor Lakki Marwat.

..(Appellant)

27.0Thenterson ien Difformat "shawee

Service Appent No. 2700/2021 utled "Mst. Bilgees As-Gasera, ear of Khyber Fakhtwakhwa through Secretary Elementary and Secretary Education, Peshowar, and others" and connected Appeal No. 4761/2021 diled Fathad & Ilain Ass. Givernment of Khyber Pakhtunkhwa viriaigh Secretary Elementary and Secondary Education, Peshavar and others" decided on 28 10 2022 by Environ Bench comprising Kalon Arshod Khan, Chanakar, and Revia Reaman. Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court D I Khan, ~ Versus 1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshavar. 2. Director (E&SE), Education Department Khyber Pakhtunkhwa, Peshawar. 3. District Education Officer(F), Lakki Marwat.(Respondents) Present: Sheikh Iftikhar Ul Haq_{es} Kabirullah Khauak, APPEAL UNDER. SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

CONSOLIDATED JL DGMENT

KALIM ARSHAD KHAN CHAIRMAN: 'hrough this single judgment this appeal and the connected Service Appeal No. 4761/2021 titled "Farhad Ullah-vs-Government of Khyber Pakhtunkhwa through Secretary' Elementary & Secondary Education, Peshawar and others", are decided as both are against the same allegations.

2. These appeals are against order dated 30.12.2020, whereby the appellants were removed from service on the allegations that during VTTFST is

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Service (p) of Na Frith 2921 mled "Mst. Bilgees systemation of Klipber Pakhuakhwa through Servitary Elementary and Sciencluss Education, Peshawar, and others' and connected Appeal No. 47617021 mled "Farboot Utidi syste Covernment of Klipber Pakhuakhwa theough Secretary Elementary and Secondary Falcontian Peshawan and others, devided on 28-10/2022 by Division Bench comprising Kallin Arshad Khan, Charman, and Restan Relation Member, Judicial Klipber Pakhuathwa Service Tribunal, Camp Court D.J.Khan

surprise visit of GGCMS Masha Mansoor by the DEO(F) accompanied by SDEO (F), Lakki Marwat, the school was found closed and the Caller was also found absent who was stated to be leaving in Peshawar as per report of SDEO (F) Lakki Marwat vide No. 857/SDEOF/LM dated 1311.2020. Against the impugned order the appellant filed appeals but awaiting ninety waiting period when no reply was received the appellant filed this appeal.

3. It is alleged in the appeal that the appellants were performing duties and in the month of November 2020, due to crucial and critical conditions of Covid-19 the school was closed but even then the appellants performed her duties and remained punctual; that on 18.12.2020, the appellants were present but were marked absent by the respondents because of personal grudges and on political grounds.

4. On receipt of the appeals and ad tission to full hearing, the respondents were summoned, who, on put ng appearance, contested the appeals by filing written reply and while supporting the impugned order submitted that the appellants remained absent that is why they were proceeded against.

5. We have heard learned counsel for the appellants and learned Additional Advocate General for the respondents.

ATTESTED SE:R khtukhwg Tribungt With the Walt

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Service Append Vo. 7760-2021 mied "Mst. Bilgees sws-Government of, Klyber Pakhunkhwa through Sevretary Ekstemature and Secondax Education. Perhawar: and others' and vanascied Append No. 4761/2021 miled "Farhad Edish wes vincernaria of Khyber Pakhunkhwa tasaugh Secretary Ekstenatury and Secondary Ethesition, Peshawar and others' decided on 28-10,2022 by Ly ision Bench comprising Kalun Arshad Khya, Churman and Rezusa Robusta Momber, Judicial, Khyber Pakhuad hwa Service Pethanal, Camp Court D.J.Khan.

6. The learned counsel for the appellant's reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Additional Advocate General controverted the same by supporting the impugned order.

7. In case of absence of a civil servant from the duty, the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provide a specific provision and procedure for proceeding against such a civil servant and that is Rule-9 of the above sules. Rule-9 is reproduced as under:-

> "Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government servant for seven of more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading ne-vspapers directing him to resume duty within fifthen days of the publication of that notice, failing which an ex-parte decision shall be taken against the at sentee. On expiry of the stipulated period given in the notice, major penalty of removal from service stay be imposed upon such Government servant.

8. The respondents were bound to follow die procedure prescribed and provided in Rule-9 of the rules ibid but it appears that they have not proceeded in accordance with the provisions of the above rules, therefore, the impugned action is not in accordance with the provisions of the above rules and, hence, not sustainable. While allowing these appeals we set

ESTED ER kh.

Service Append No 1700-2021 Inted 1 Mar. Hilgers -w-Gowernment of Kligher Pakhtunkhwa through Secretary Elementary cant be conduct Education Dechawin and others" and connected Appeal No 4761/2021 ided Fashad Villah see Generation of Klipber Pakhtankhwa through Secretary Flomentary and Secondary Education, Peshware and others," decided on 28.10 2022 by Dression Bench comprising Kalim Arshad Khan Charman, and Rezina Relation Member Indicial, Khyber Pakhuenkhwa Service Tribunat, Camp Court D.I.Khan,

aside the impugned order and direct that the appellants be reinstated in service. The respondents are at liberty to proceed against the appellants in accordance with the provision of the Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 within a period of sixty days after the date of receipt of this judgment under intimation to the Registrar of this Tribunal: The respondents shall also intimate the date of receipt of the judgment to the Registrar office. Intervening period shall be treated as leave of the kind due. Copy of this judgment be placed in the connected file. Costs shall follow the event. Consign.

Pronounced in open Court at D.I.Khun and given under our hands 9.

and the seal of the Tribunal on this 28th day of October, 2022.

KALIM ARSHAD KHAN Chairman Camp court D.I.Klian

ROZIN **& REHMÄN** Mémber (Judicie))

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Camp court D.I.Khan ertified to be ture copy NER whitenknwo Service Tribunal Peshawar

Iffikhar-Ul-Haq وكالمعت فا Advocate Supreme Court 12201-0316740-9 انك زوهيم -13618 دعوى ياجرم تنصيل دحوي ياجرم متدر مدورة بالموان عرابي طرف داسي : ٤ وجواب وأى برائ يوشي التعفير متدر بد بالم معران في مقد معد مد بالم كمليح م CIC To Contrate Contration (2) 17 كو حسب ذيل شرائلا ير وكمل مقرر كما ب كم عن فيشي يرخود يا ذار ... رود يرو عدالت مأمر بوتا رمون كم ادر بر دت يكار عباف مقدمه ولكن ما حس مرصوف کو اطار کا دے کر حاضر ندالت کرون کا اگر بیٹی پر مظیر م 👘 بو اور مندر میری غیر خاضری کا دیر ہے کمی طور میرے خلاف ہو محیا تو ساحب ، موموف س کے سی طرح ور داد نہ موں کے نیز وکل ماخب مرد ، مدد نقام کچری کے علادہ یا کچرا کے اداکت سے پہلے یا بینے یا بردر تعلیل المردل كرن ك ذم دار ند اول ك اور اقدم مدر كجرى ك الدر ، مركد احت اوت الم يردن مطل يا جورى ك ادتات ك أك يا يجي بين اون پر اظمر کوئی نتصان آ بینی تو اس رکم ذمه داریا اسط محلی معادضه 🚽 ادا کرنے یا محنت نه دالی کرنے کے بھی صاحب موصوف ذمه دار نه اول کے بھ كوكل سافت ير داخت مناحب وموف مثل وكرده ذات خود منظور قول ، كا اور صاحب موصوف كو مرض دوكا و جاب دوني يا درخواست اجراء اساف وكرى تطرال المل محرالي و برسم درخواست برسم م يان دين ادر ير الى إ راش نامه و فيعله برطف كرف البل دوى كالمجى العيار موم ادر بعورت مترر مو تاريخ بيني مقدمه طركور اجردك الديجمري مندر بيردي مقدمه تركور نظر ثلاً اللي وتحماني وابرآ مدكم مقدمه إستوفي ذكري يك طرفه با ارتخاصت تحكم التلاق با قرتني 🚬 با مرداد، قل از قعله اجرائ ، وكرى محى ماحب موموف كو بشرط ا. . أن عليمه، فتاميردى كا اختيار بوكا اد قام ساخت بداخت ماحب موموف مش كرده از خود منظور و تول مو كا ادر بعودت ضرورت ماحب موصوف كو يديم ، القيار مو كه معدمه مركوره يا اس مح كن جزوك كاردال يا بعورت درخواست نظر عال انیل محرانی با دیگر معالمه و تذمه تدکوره کمی دوسرے وکل یا بیر سر کو این بجائے نا این امراه مترو کریں اور ایس مشر قانون کو بھی بر امر میں وای اور دیسے المتيارات مامل ذون م ي ي ماحب موسوف كو خاصل إن ادر .. ان متدم من جو كم مرجات الواد بز - كا ود ماحب موسوف كا حق اد كا مر ماحب موموف کو پوری قین ، ورج بیش سے پہلے اوا ند محدول کا ت ماحب موموف کو پودا اختیار ہو کا کہ متدسر کی پردی ند مری اور الی مورت میں در؛ کوئی مطالبہ می قسم کا ساحب موموف کے برطاف سیس ہو · لہٰذاد کالت نامہ ککھردیا ۔ بے تا کہ سندر ہے _ .1 مضمون دکالت نامه ^{بن ا} به ادراجی طرح سمجد کما به ادر^{منظ} Attesta JAC Accepte حسن کا بیم سنشرا ندرون میں زر مار کرٹ بالقاعل جائز ہوکی ڈیر واسا میک خال اُول : *