

22.11.2019

Petitioner in person and Addl. AG alongwith Waheed Gul,
Legal Representative for the respondents present.

Representative of respondents requests for time to
submit a reply to the execution petition.

May do so on or before next date of hearing. Adjourned
to 01.01.2020 before S.B.


Chairman

01.01.2020

Counsel for the petitioner and Mr. Muhammad Riaz
Khan Pindakhel, Asstt. AG alongwith Wahid Gul, legal
representative for the respondents present.

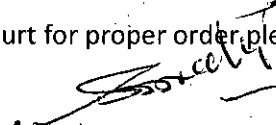


The representative of respondents has produced
copy of order dated 16.12.2019 passed in C.P No. 631-
P/2019, whereby inter-alia, Apex Court has been
pleased to suspend operation of judgment under
implementation.

In view of the development, instant proceedings are
consigned to record. The petitioner may, however, apply
for restoration of the proceedings after final decision by
the August Supreme Court of Pakistan, if need be.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 369 /2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.10.2019	<p>The execution petition of Mr. Riaz Ahmad submitted today by Mr. Noor Muhammad Khattak 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>
2	10-10-19	<p>This execution petition be put up before S. Bench on 18-10-2019</p> <p style="text-align: right;"> CHAIRMAN</p>
18.10.2019		<p>Counsel for the petitioner present.</p> <p>Notices be issued to the respondents for submission of implementation report on 22.11.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation petition No. 369 /2018

In appeal No. 690/2018

RIAZ AHMAD

VS

EDUCATION DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of petition	1- 2.
2.	Affidavit	3.
4.	Judgment	A	4- 7.
5.	Wakalat nama	8.

PETITIONER

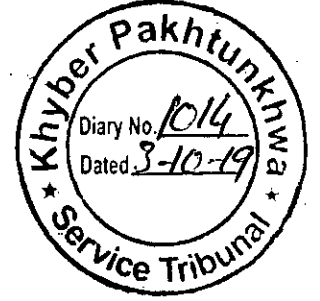
THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation petition No. 369 /2018

In appeal No. 690/2018



Mr. Riaz Ahmad, Ex-PST (BPS-07) Now (BPS-12),
GPS Darmalak, District Kohat.....**Petitioner**

VERSUS

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

.....**Respondents**

IMPLEMENTATION PETITION FOR DIRECTING THE
RESPONDENT DEPARTMENT TO IMPLEMENT THE
JUDGMENT DATED 16-07-2019 IN APPEAL
NO.690/2018 IN LETTER AND SPIRIT

R/SHEWETH:

- 1- That the above mentioned appeal has been decided by this august Service Tribunal vide judgment dated 16-07-2019 in favor of the Petitioner. Copy of the judgment is attached as annexure.....**A.**
- 2- That the Petitioner filed the above mentioned appeal against the impugned order dated 13.03.2018 whereby major penalty of removal from service was imposed on the appellant.
- 3- That after final arguments this august Service Tribunal decided the appeal in favor of the Petitioner and converted the major punishment of removal from into compulsory retirement from the date his removal from service i.e. 20.08.2015.
- 4- That Petitioner after obtaining the judgment visited the respondent Department and submitted the same before the respondents for implementation of the above mentioned judgment dated 16.07.2019, but the respondents are not willing to implement the judgment passed by this august Service Tribunal.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may be directed to implement the above mentioned judgment passed by this august Service Tribunal in letter and spirit.

PETITIONER


RIAZ AHMAD

THROUGH:


NOOR MOHAMMAD KHATTAK

&


MIR ZAMAN SAFI
ADVOCATES

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation petition No. _____/2018

In appeal No. 690/2018

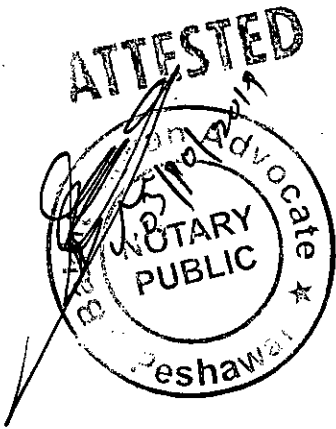
RIAZ AHMAD

VS

EDUCATION DEPTT:

AFFIDAVIT

I Noor Mohammad Khattak Advocate on the instruction and on behalf of my client 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 Court.




NOOR MOHAMMAD KHATTAK
ADVOCATE

A - 4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 690/2018

Date of institution ... 18.05.2018

Date of judgment ... 16.07.2019

Riaz Ahmed, Ex:PST (BPS-7) Now (BPS-12),
GPS Darmalak, District Kohat.



VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male), District Kohat.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 13.03.2018 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED ON THE APPELLANT WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST THE APPELLATE IMPUGNED ORDER DATED 19.04.2018 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT HAS BEEN REGRETTEED ON NO GOOD GROUNDS.

ATTESTED

EXAMINER

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Mr. Mir Zaman Safi, Advocate.

Mr. Muhammad Jan, Deputy District Attorney

.. For appellant
.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

MR. HUSSAIN SHAH

.. MEMBER (JUDICIAL)

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the

appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Education Department as Primary School Teacher. He was imposed major penalty of removal from service with effect from 31.07.1998

Mr. Amin
16.7.2019

(5)

vide order dated 20.08.2015 on the allegation of his involvement in case FIR No. 130 dated 31.07.1998 under section 302/324/34 PPC Police Station Lachi Kohat. The appellant filed departmental appeal on 25.08.2015 which was not responded thereafter, the appellant filed service appeal before this Tribunal, the service appeal of the appellant was partially accepted, the department was directed to hold de-novo proceeding in accordance with law within a period of 90 days from the date of receipt of judgment. The issue of back benefits including pay during suspension shall be decided by the department in accordance with law on the subject vide judgment dated 20.12.2017. On the basis of aforesaid judgment dated 20.12.2017 de-novo inquiry was conducted and again the appellant was imposed major penalty of removal from service vide order dated 13.03.2018. The appellant filed departmental appeal on 19.03.2018 which was rejected on 19.04.2018 hence, the present service appeal on 18.05.2018.

ATTESTED

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

[Signature]
EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

4. Learned counsel for the appellant contended that the appellant was appointed as Primary School Teacher (BPS-7) in Education Department vide order dated 26.04.1984. It was further contended that the respondent-department imposed major penalty of removal from service upon the appellant on the allegation of absence from duty due to his involvement in the aforesaid criminal case. It was further contended that the appellant was honorable acquitted by the competent court vide judgment dated 28.11.2013. It was further contended that when the appellant reported for duty, the respondent-department did not allow him to perform duty rather imposed major penalty of removal from service vide order dated 20.08.2015. It was further contended that the appellant challenged the same through service appeal before this Tribunal which was partially accepted and the respondent-department was directed to

M. Anam
 16.7.2019

conduct de-novo inquiry but again the respondent-department without fulfilling the codal formalities imposed major penalty of removal from service therefore, the appellant was condemned unheard. It was further contended that the appellant was having 14 years service in his credit but the respondent-department has not taken the same into consideration while imposing the major penalty of removal from service therefore, it was vehemently contended that the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving as Primary School Teacher in Education Department. It was further contended that the appellant was involved in case FIR No. 130 dated 31.07.1998 under section 302/324/34 PPC Police Station Lachi Kohat. It was further contended that the appellant remained absconder for sufficient time and was arrested on 10.10.2013, ultimately he was acquitted by the Trial Court vide judgment dated 28.11.2013. it was further contended that the appellant remained absent from duty due to aforesaid criminal case for a long period of 15 years. It was further contended that the respondent-department also conducted de-novo inquiry as per judgment dated 20.12.2017 passed by this Tribunal and again imposed major penalty of removal from service on the basis of inquiry report after fulfilling all the codal formalities. It was further contended that the appellant remained absent from duty without permission of the lawful authority therefore, the appellant was rightly imposed major penalty of removal from service and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Education Department. He was involved in the aforesaid criminal case and due to the aforesaid criminal case he remained absent from duty. After his arrest he was acquitted by the Trial Court vide judgment dated 28.11.2013. After acquittal

ATTESTED

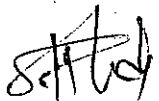
EXAMINER
Khyber Pakhtunkhwa
Tribunal
Peshawar


M. J. Khan
16.7.2019


(7)

when he reported for performing his duty he was removed from service vide order dated 20.08.2015. No doubt the appellant remained absent from duty without permission of the lawful authority for a long period but it is also an admitted fact that the appellant was appointed as Primary School Teacher vide order dated 26.04.1984 and was having 14 years service in his credit till his involvement in the aforesaid criminal case but the respondent-department has not taken into consideration the aforesaid 14 years service of the appellant while imposing the major penalty of removal from service. In the presence of 14 years service, the major penalty of removal from service appear to be harsh therefore, we partially accept the appeal, set-aside the impugned order and convert the major penalty of removal from service into compulsory retirement from the date of his removal from service order i.e 20.08.2015. The absence period as well as intervening period will be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.07.2019


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 29-7-2019
Number of Words 1600
Copying Fee 2000
Urgent 400
Total 2400
Name of Copyist sf
Date of Completion of Copy 29-7-2019
Date of Delivery of Copy 29-7-2019

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

OF 2019

Riaz Ahmad

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Department

(RESPONDENT)
(DEFENDANT)

I/We Riaz Ahmad

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, 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. 03 / 10 / 2019

Riaz Ahmad
CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

KAMRAN KHAN

&

Mir Zaman Safi
MIR ZAMAN SAFI
ADVOCATES

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Mobile No.0345-9383141

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Maqbool Baqar

7 C.P.No.631-P of 2019

[Against the judgment dated 16.07.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.690 of 2018]

Govt. of KP through Secretary Elementary & Secondary Education, Peshawar & others. ...Petitioner(s)

Versus

Riaz Ahmed. ...Respondent(s)

For the Petitioner(s) : Barrister Qasim Wadood,
Addl.A.G.KP

For the Respondent(s) : N.R.

Date of Hearing : 16.12.2019

ORDER

Gulzar Ahmed, J:- Learned Additional Advocate General, KP has contended that the respondent was employed as Primary School Teacher (BPS-7) in the Education Department on 26.04.1984. He was implicated in the criminal case on 31.07.1998 and thus absented from service. He contends that the respondent remained absent from duty for almost 18 years and after seeking his acquittal from the criminal Court, applied for joining. However, having already stood dismissed from service on 20.08.2015, he was not allowed joining, which was challenged by the respondent by filing of service appeal in which *de novo* enquiry was ordered and after the *de novo* enquiry, he was again dismissed from service on 13.03.2018 with effect from the date he remained absent from duty. Learned Addl.A.G. contends that though the penalty has

ATTESTED

Senior Counsel

7-C.P.No.631-P of 2019

been maintained by the Tribunal in its impugned judgment but it has reduced it from dismissal to that of compulsory retirement, on the basis that he has to his credit 14 years' service. He contends that where an employee, who has remained absent for 18 years, he could not be given any benefit, not even the retirement dues and thus, the Tribunal has wrongly interfered with the awarding of the penalty to the respondent.

2. Points raised by the learned Addl.A.G. require consideration. Leave to appeal is granted to consider, *inter alia*, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, office is directed to fix the same preferably after three months.

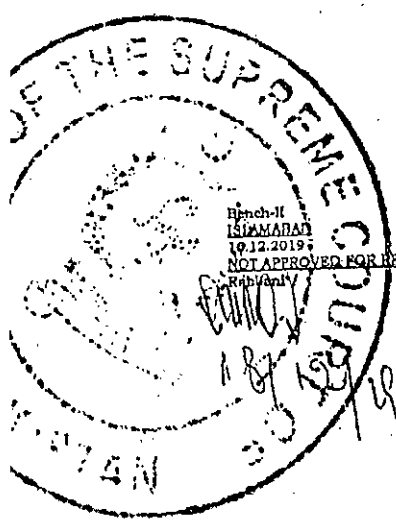
C.M.A.No.1393-P/2019

4. The operation of the impugned judgment is suspended.

Sd/-, J
Sd/-, J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



GR No: 25685/19

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Maqbool Baqar

7 C.P.No.631-P of 2019

[Against the judgment dated 16.07.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.690 of 2018]

Govt. of KP through Secretary Elementary & Secondary Education, Peshawar & others. ...Petitioner(s)

Versus

Riaz Ahmed. ...Respondent(s)

For the Petitioner(s) : Barrister Qasim Wadood,
Addl.A.G.KP

For the Respondent(s) : N.R.

Date of Hearing : 16.12.2019

ORDER

Gulzar Ahmed, J.- Learned Additional Advocate

General, KP has contended that the respondent was employed as Primary School Teacher (EPS-7) in the Education Department on 26.04.1984. He was implicated in the criminal case on 31.07.1998 and thus absented from service. He contends that the respondent remained absent from duty for almost 18 years and after seeking his acquittal from the criminal Court, applied for joining. However, having already stood dismissed from service on 20.08.2015, he was not allowed joining, which was challenged by the respondent by filing of service appeal in which *de novo* enquiry was ordered and after the *de novo* enquiry, he was again dismissed from service on 13.03.2018 with effect from the date he remained absent from duty. Learned Addl.A.G. contends that though the penalty has

ATTESTED

Senior Clerk

7-C.P.No.631-P of 2019

been maintained by the Tribunal in its impugned judgment but it has reduced it from dismissal to that of compulsory retirement, on the basis that he has to his credit 14 years' service. He contends that where an employee, who has remained absent for 18 years, he could not be given any benefit, not even the retirement dues and thus, the Tribunal has wrongly interfered with the awarding of the penalty to the respondent.

2. Points raised by the learned Addl.A.G. require consideration. Leave to appeal is granted to consider, *inter alia*, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, office is directed to fix the same preferably after three months.

C.M.A.No.1393-P/2019

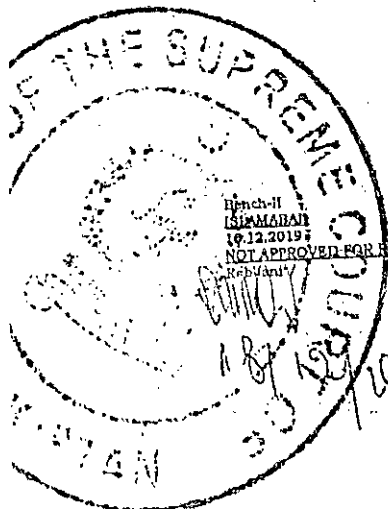
4. The operation of the impugned judgment is suspended.

Sd/-, J

Sd/-, J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



GR No:

25685/19