

EP 263/19

04.11.2019

Counsel for the petitioner and Addl. AG alongwith Muhammad Nawaz, respondent No. 1 in person and Muhammad Salman, Sub Accountant for the respondents present.

Respondent No. 1 has produced copy of office order dated 12.10.2019 whereby the petitioner has been reinstated in service conditionally for the purpose of denovo enquiry.

In view of the development learned counsel for petitioner requests for consigning the proceedings with the reservation of right of petitioner to seek legal remedy after the outcome of denovo enquiry, if need be.

Consigned to record.


Chairman

12.09.2019

Petitioner alongwith counsel present.

Notices to respondents be issued for submission of implementation report on 07.10.2019 before S.B.


Chairman

07.10.2019

Counsel for the petitioner and Addl. AG alongwith Muhammad Nawaz, ADEO and Aftab Khan, Record Keeper for the respondents present.

The representative of the respondents states that a CPLA has been moved before the Apex Court against the judgment under implementation in which date of hearing is yet to be fixed.

The respondents are required to produce on next date any order of suspension of judgment under implementation or its setting aside altogether by the Apex Court. Else, the implementation report shall be submitted.

Adjourned to 04.11.2019 before S.B.

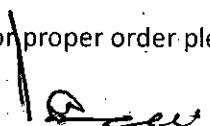



Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 263/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09.07.2019	<p>The execution petition of Mr. Muhammad Nazir submitted today by Mr. Muhammad Arif 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 9/7/19</p>
2-	10/07/19	<p>This execution petition be put up before S. Bench on <u>15/08/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	16.08.2019	<p>Since 15.08.2019 has been declared as public holiday on account of Eid-ul-Azha, therefore, case to come up for the same on 12.09.2019 before S.B.</p> <p style="text-align: right;"> Reader</p>

**OFFICE OF THE DISTRICT EDUCATION OFFICER (M)
KOHISTAN LOWER**



Email: deokohistan1@gmail.com

Face Book: DEO Male Kohistan Lower

OFFICE ORDER.

Where as Mr. Muhammad Nazir Ex-AT GMS Sheshal Kayal Tehsil Pattan District Kohistan Lower was proceeded under E&D Rule 2011, due to fake appointment order by the then District Education Officer(M) Kohistan as per show cause notice issued vide No.13373 dated 14-12-2015, and also given a chance for personal hearing but could not defend himself. As a result he was removed from service vide No. 12593-95 dated 17/2/2016.

Whereas the appellant submitted his service appeal No.700/2016 Dated 30-06-2016 before Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar. The Honorable Service Tribunal Peshawar accepted his appeal, and the case was returned to Department for reinstatement of the appellant in to the service and to conduct de-novo proceeding/enquiry in accordance with rules as per judgment announced on 22-03-2019.

Whereas the department submitted the case to Law Department for getting opinion for filing CPLA in August supreme court of Pakistan.

Whereas the meeting of the scrutiny committee was held on 29-05-2019 in the office of Secretary Law Parliamentary Affairs & Human Rights Department. It was decided with consensus by the scrutiny committee that the subject case was a fit case for filing of appeal/ CPLA in the August Supreme Court of Pakistan.

In view of the above facts, Mr. Muhammad Nazir Ex-AT is hereby Re-Instated in to service conditionally for the purpose of denovo enquiry at GMS Yazai against vacant post of AT on his own pay and grade in the light of judgment of Honorable Service Tribunal announced on 22-03-2019 with immediate effect.

Note:

1. No TA /DA is Allowed.
2. Charge Report should be submitted to all concerned.

sd
**District Education Officer
(Male) Kohistan Lower**

Endst: No. 1784-91 /DEO (M) KH-L Dated Pattan the 12/10 /2019

Copy of the above is forwarded to the:-

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. Advocate General Khyber Pakhtunkhwa Peshawar.
3. Deputy Commissioner Lower.
4. Deputy District Education Officer (M) Kohistan.
5. District Accounts Officer, Kohistan.
6. ADEO (Litigation) Local Office:
7. PA to DEO (M) Kohistan.
8. Official Concerned

[Signature]
**District Education Officer
(Male) Kohistan Lower**

1

BEFORE THE HON'BLE SERVICE TRIBUNAL K.P PESHAWAR

B. **Petition No. 263 /2019**

IN

Service Appeal No.700/2106

Muhammad Nazir S/o Mirza Khan Ex-Arabic Teacher at GMS Sheshal
Keyal Kohistan lower.....Petitioner



VERSUS

1. District Education Officer Kohistan Lower
2. Director Elementary and Secondary Education Directorate Khyber Pakhtunkhwa, Peshawar.
3. District Accounts Officer Kohistan Lower
4. Govt. of Khyber Pakhtunkhwa through Secretary Education Peshawar

.....Respondents

**PETITION FOR IMPLEMENTATION/ INITIATING CONTEMPT OF
COURT PROCEEDINGS AGAINST THE RESPONDENTS IN
RESPECT OF NOT HONORING /IMPLEMENTING THE
ORDER/JUDGMENT DATED 22-3-2019 PASSED BY THIS
HON'BLE TRIBUNAL IN THE TITLED APPEAL.**

Respectfully Sheweth;

1. That the petitioner filed appeal mentioned above before this Honorable Tribunal which was allowed vide order/ judgment dated 22-3-2019 with the direction to reinstate the petitioner and conduct de-novo inquiry, with in a period of 90 days. (Copy of order/judgment is attached as ANNEX-A).
2. That the petitioner himself provided the attested copy of the judgment dated above to the respondents concerned well within time but the respondents are badly failed to hold inquiry into the matter, hence laps to so called period mentioned in the judgment ibid, hence the present petition.
3. That the clear cut direction made in the judgment passed by this Hon'ble Tribunal, wherein appellant was reinstated into his service and this Hon'ble Tribunal was also pleased and placed the respondents at their liberty to hold any enquiry if do so within a period of 90 days. The disinterest of respondents is even established from the non-holding of inquiry nor implementing / honoring the judgment

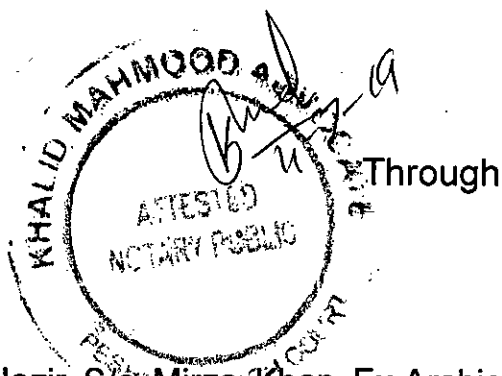
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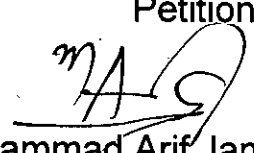
in favor of appellant till date, hence invites consideration of this Hon'ble Tribunal.

4. That during the visit to the office of respondent, the petitioner was verbally conveyed with the innocent excuse of submission of CPLA to impugned the order / judgment date 22-3-2019 before the August Supreme Court of Pakistan which has neither challenged nor any stay order have been shown to the petitioner, hence the respondents left no way except implement the order judgment dated 22-3-2019.
5. That the answering respondents are duty bound under the law to follow the rule/regulation governing the subject matter but in the present they have followed the policy might is right which is against the law and they have deserve for not only severe punishment but also to hold departmental proceeding against them.
6. That the respondent have violated the manifest order/judgment of this Hon'ble Tribunal, which shows to low the authority of this Hon'ble Tribunal in the eyes of the general public for which the respondents are needed to booked under the contempt of court.
7. That the violation of the above said order/judgment of this Hon'ble Tribunal by the respondents would certainly bring the authority of the Tribunal into disrespect and disrepute, which by all means tantamount to the contempt of this Tribunal, attracting the mischief of Art-204 of the Constitution, 1973 and all other enabling provisions of law on the subject.
8. That any other ground which has not been mentioned may also be permitted to raise at the time of hearing.

It is, therefore, most humbly prayed that on acceptance of the instant petition the respondent may very graciously be directed to implement/honor the order/judgment dated 22-3-2019 of this Hon'ble Tribunal in letter in spirit without any further delay, reason and justification.

Further this Hon'ble Tribunal may also initiate contempt of court proceeding against the respondents concerned and to award punishment according to law.



Petitioner

Muhammad Arif Jan
Advocate Peshawar

Affidavit:

Muhammad Nazir S/o Mirza Khan Ex-Arabic Teacher at GMS Sheshal Keyal Kohistan lower do hereby solemnly affirm and declare on oath, that the contents of the petition are true and correct.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 700/2016

Diary No. 682

Muhammad Nazir S/o Mirza Khan

Dated 30-6-2016

(Arabic Teacher) GMS Sheshal Keyal Kohistan.....Appellant

VERSUS

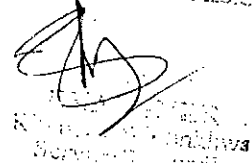
1. District Education Officer (M) Kohistan.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa G.T Road Peshawar.
3. District Accounts Officer District Kohistan.
4. Govt, of Khyber Pakhtunkhwa through Secretary Education E&S Secretariats Peshawar..... Respondents.
5. Deputy Commissioner, Kohistan.

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 17-02-2016 PASSED BY RESPONDENT NO-1 VIDE WHICH THE APPELLANT WAS REMOVED FROM HIS SERVICE.

PRAYER IN APPEAL:

On acceptance of the instant appeal, the impugned order dated 17-02-2016 in respect of removal of the appellant from his service passed by respondent No-1 may graciously be set-aside and the appellant may kindly be reinstated in his service with all back benefits.

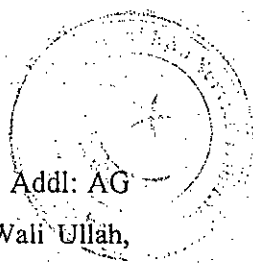
ATTESTED



Filed to-day


Registrar
30/6/16.

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Order

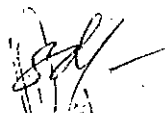
22.03.2019

Counsel for the appellant present. Mr, Kabirullah, Addl: AG alongwith Mr. Muhammad Ali, ADEO and Mr. Shah Wali Ullah, Computer Operator for respondents present. Arguments heard and record perused.

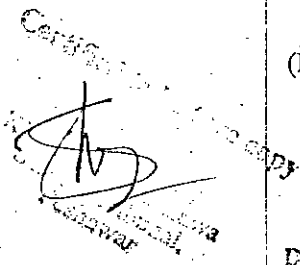
This application is also accepted as per detailed judgment of today placed on file in service appeal No. 620/2016 titled "Kifayatullah -vs- District Education officer (M) Kohistan and four others." Parties are left to bear their own cost. File be consigned to the record room.

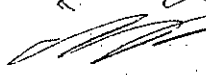
Announced:
22.03.2019


(Ahmad Hassan)
Member



(Hamid Farooq Durrani)
Chairman



Date of receipt	03-4-18
No. of copies	800
Copy fee	6-00
Updation	2-00
Total	8-00
Name of	
Date of	03-04-18
Date of delivery	03-04-18

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 620 /2016

Khyber Pakhtunkhwa Service Tribunal

Diary No. 604

Dated 9-6-2016

Kifayatullah S/o Molve Abdul Raziq



TT GHS Pattan Kohistan.....Appellant

VERSUS

1. District Education Officer (M) Kohistan.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa G.T Road Peshawar.
3. District Accounts Officer District Kohistan.
4. Govt, of Khyber Pakhtunkhwa through Secretary Education E&S Secretariats Peshawar..... Respondents.

Vide order 8/1/16 S. Deputy Commissioner, Kohistan.

Filed to-day
Registrar
9/6/16

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 17-05-2016 PASSED BY RESPONDENT NO-2 WHEREBY HE REJECTED THE APPEAL OF THE APPELLANT AND MAINTAINED THE OFFICE ORDER BEARING NO-12589-92 DATED 17-02-2016 OF RESPONDENT NO-1 IN RESPECT OF REMOVAL FROM SERVICE OF THE APPELLANT

ATTESTED

Registrar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 620/2016

Date of Institution ... 09.06.2016

Date of Decision ... 22.03.2019



Kifayatullah S/o Maulvi Abdul Raziq, T.T GHS Pattan Kohistan.

... (Appellant)

VERSUS

District Education Officer (M) Kohistan and four others.

... (Respondents)

MR. MUHAMMAD ARIF JAN,
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

--- For respondents.

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURRANI

--- MEMBER(Executive)
--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 621/2016 titled Abdul Saboor and appeal no. 700/2016 titled Muhammad Nazir as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

3. Learned counsel for the appellant argued that initially he joined the Education Department as Arabic Teacher on 26.04.2008. That he was declared surplus and thereafter adjusted through order dated 02.03.2009 and posted at GMS, Dag Pattan, Kohistan. Subsequently, on the allegations of being appointed

ATTESTED

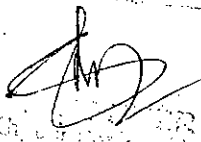
Ahmad Hassan
Member (Executive)
Peshawar

in violation of prescribed procedure, a show cause notice was served on him vide endorsement dated 14.12.2015 to which he replied. Allegedly, his appointment was declared fake and major penalty of removal from service was imposed on him vide impugned order dated 17.02.2016. To safeguard his service interests, a departmental appeal dated 27.02.2016 was filed and rejected vide order dated 18.05.2016.

4. He further argued that his appointment was made in the prescribed manner. Major penalty was awarded without holding proper inquiry and opportunity of defense/ hearing also denied, which goes against the principles of natural justice.

5. Learned Additional Advocate General argued that appointment of the appellant as Arabic Teacher in the respondent-department was fake/bogus. Posting order of the appellant bearing no. 2529-34 dated 26.08.2008 at GHS, Harigah, Kohistan, was bogus as post of Arabic Teacher was not vacant, hence, the appellant could not assume the charge. The DCO, Kohistan denied unequivocally about issuance of any such order from his office. After a gap eight months, he was readjusted through fake appointment order by the EDO, Kohistan through order dated 20.03.2009, at GHS Bada Kot thereafter at GMS, Dag Pattan. His appointment was made without proper advertisement and other codal formalities. Recruitment process was not carried out in 2007, by the Education Department in Kohistan.

APPROVED


 Director
 Service Tribunal,
 Peshawar

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CONCLUSION

6. The appointment of the appellant was declared fake and bogus. Departmental proceedings were conducted by issuing chow cause notice dated 14.12.2015 and thereafter he was removed from service vide impugned order dated 17.02.2016. According to the E&D Rules 2011 the respondents were bound to record reasons for dispensing with regular enquiry, however, no such justification is available on the case file. Major penalty without holding regular enquiry has been repeatedly held illegal and unlawful by the superior courts in its numerous judgments. Respondents failed to abide by the respondents procedure and resultantly the impugned order lost backing of law. Order being a void/illegal is nothing more than a mere piece of paper.

07. As a sequel to above, the appeal is accepted, impugned order dated 17.02.2016 and 17.05.2016 are set aside and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry within a period of ninety days after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. The appeal is disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.

[Signature]

(HAMID FAROOQ DURRQNI)
CHAIRMAN

[Signature]

(AHMAD HASSAN)
MEMBER

ANNOUNCED
22.03.2019
Certified true copy
[Signature]
Secretary

1600
10-00
2-00
12-00
03-04-18
03-04-18
Date of delivery

9

WAKALAT NAMA

Before the CP Service Tribunal Peshawar

No _____ / 20

Muhammad Nazir (Petitioner)

VERSUS

DEO Galin (Respondent)


I / We, M. Nazir the above named Rebi do hereby appointed and constitute **MUHAMMAD ARIF JAN Advocate, Peshawar** as counsel in the above mentioned case, to do all or any of the following acts, deeds and things;

1. To appear, act and plead for me/us in the above mentioned case in this court/tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file Plaint/Written statement or withdraw all proceedings, petitions, suit, appeal, revision, review, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for proper conduct, prosecution or defence of the said case at any stage.
3. To receive payment of and issue receipts for all money that may become due and payable to us during the course or on the conclusion of the proceedings. To do and perform all other acts which may be deemed necessary or advisable during the course of the proceedings;

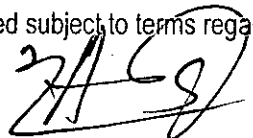
AND HEREBY AGREE:-

- a) To ratify what over the said Advocate may do in the proceedings in my interest.
- b) Not to hold the Advocate responsible if the said case is proceeded ex-parte or dismissed in default in consequence of their absence from the court/tribunal when it is called for hearing or is decided against me/us.
- c) That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I /We have signed this power of attorney / Wakalat nama here under the contents of which have been read/explained to me/us and fully understood by me/us this _____ day of _____, 20 at Peshawar.


Signature of Executant.

Accepted subject to terms regarding payment of fee.



MUHAMMAD ARIF JAN

Advocate High Court, Peshawar
Office No.210, 2nd Floor
Al-Mumtaz Hotel, Hashtnagari G.T Road Peshawar Mobile: 0333-221 2213