(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Civil Miscellaneous No._____/ 2023
IN
Implementation Petition No.360/2021
IN
Appeal No.15182/2020

Mr. Zahoor Khan..... **...VERSUS.....** Inspector General of Police & 2 others

APPLICATION FOR RESTORATION OF THE TITLED IMPLEMENTATION PETITION.

Respectfully Sheweth:

1. That the titled above titled implementation petition was pending adjudication before this Hon'ble Tribunal, which the respondents produce order dated: 14.01.2022, in response to the implementation petition of the applicant.
   (Copy of order dated: 14.01.2022 is attached as Annexure "A")

2. That on production of the order, this Hon'ble Tribunal, vide order dated: 17.01.2022 disposed of the said implementation petition and consigned the same. **(Copy of order dated: 17.01.2022 is attached as Annexure "B")**

3. That the implementation order of respondents the appellant/applicant was directed to perform his duty as Constable, while the Respondent does not comply the order passed by this Hon'ble Court dated: 15.09.2021 in favour of applicant, however, the applicant was conditionally reinstated in service.

4. That valuable rights of appellant/applicant are involved into the matter and will suffer irreparable loss if the subject relief has not been granted.

It is therefore, most humbly prayed that on acceptance of instant application, the above titled implementation petition may kindly be restored, in the best interest of justice and equity.

Applicant / Appellant

Through

Khalid Khan Mohmand

&

Haider Ali Khan
Advocates, Peshawar.

Dated: 22.02.2023

AFFIDAVIT

I, do hereby solemnly affirm declare on oath that the contents of instant **application** are true and correct to the best of my knowledge, belief and nothing has been kept concealed from this Hon'ble Tribunal.

Deponent

ATTESTED
MUHAMMAD AKBAR KHAN MARWAT
OATH COMMISSIONER
Advocate High Court Peshawar

24/02/23

Annex "A" (8)

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

ORDER.

In acceptance of the pray filed by Ex-Constable Zahoor Khan No. 2560 by Honorable KP Service Tribunal in Service appeal No. 151/2021 in its order announced on 15.09.2021, Ex Head Constable Zahoor Khan No. 2560 is hereby provisionally/conditionally reinstated in to service from the date of decision i.e 15.09.2021, subject to the outcome of CPLA filed against the above mentioned orders

OB No. 164

Date 14/01/2022.

District Police Officer
Mardan

No. 70-72/PA, dated 14/1/2022.

Copy for information to:-

1. Deputy Inspector General of Police Mardan Region-I, Mardan
2. Superintendent of Police Operations, Mardan
3. DSP/Legal
4. DSP/HQrs
5. Pay Officer
6. OSI
7. PA

(2) A

(1)

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

Misc. Application No. 360 of 2021
IN
Service Appeal No. 15182/2020

Mr. Zahoor Khan ..... **VERSUS**..... Inspector General of Police & 2 others

APPLICATION U/S 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT, 1974 (KP ACT NO.I OF 1974), READ WITH ALL ENABLING PROVISIONS OF LAW GOVERNING THE SUBJECT, FOR EXECUTION/IMPLEMENTATION OF JUDGMENT DTAED 15.09.2021 IN THE TITLED APPEAL.

= = = = = = = = =

Khyber Pakhtunkhwa Service Tribunal
Diary No. 1738
Dated 2/12/2021

Respectfully Sheweth;

1. That Applicant/Appellant approached this Hon'ble Tribunal through Service Appeal Nos.15182/2020, which was allowed, vide Judgment dated: 15.09.2021
   (Copy of Judgment dated: 15.09.2021 alongwith Service Appeal No.15182/2020 is attached as Annexure "A").

2. That Judgment dated: 15.09.2021 supra was announced by this Hon'ble Tribunal in open Court, in presence of the representatives of the Respondent Department, however, the same has not been implemented so far, although applicant/appellant has also communicated the Judgment ibid alongwith application dated: 11.10.2021, but to no avail so far, hence the instant application.
   (Copy of application dated: 11.10.2021 is attached as Annexure "B").

3. That more than 50 days time has been elapsed, however, Respondent Department is reluctant to implement Judgment dated: 15.09.2021 of this Hon'ble Tribunal in letter and spirit, which has caused grave miscarriage of justice, moreover, this Hon'ble Tribunal has got ample jurisdiction to implement the Judgment ibid, by issuing appropriate directions to the delinquents for the desired relief.

4. That any other ground with the permission of this Hon'ble Tribunal will be taken at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of instant application, Judgment dated: 15.09.2021 of this Hon'ble Tribunal may be ordered to be implemented in letter and spirit, so as to avoid untoward situation and further complications.

Applicant / Appellant
Through

Khalid Khan Mohmand

Muhammad Kareem Afridi

Haider Ali
Advocates, Peshawar

AFFIDAVIT

Stated on oath that contents of instant **Application** are true and correct to the best of knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

Dated: 01.12.2021

KHALID MAHMOOD ADVOCATE HIGH COURT PESHAWAR
ATTESTED NOTARY PUBLIC

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

E.P. No. 360/2021 (3) Annex "B"
Zahoor Khan Vs Govt

04.01.2022 Petitioner in person present.

Respondent department is directed to submit implementation order, if the department has filed CPLA before the august Supreme Court of Pakistan then they are directed to furnish conditional order or suspension order from august Supreme Court of Pakistan.

Notice of the instant execution petition alongwith copy of this order be issued to the respondents for submission of implementation report. To come up for implementation report on 17.01.2022 before S.B

(Atiq-Ur-Rehman Wazir)
Member (E)

17.01.2022 Petitioner alongwith counsel and Mr. Muhammad Adeel Buitt, Addl. AG alongwith Noor Daraz Khan, S.I (Legal) for the respondents present.

Representative of the respondents has produced copy of order dated 14.01.2022, whereby judgment under execution has been conditionally implemented till final decision on CPLA by the August Supreme Court of Pakistan. Copy of order is placed on file.

In view of the above, the execution petition in hands is consigned to the record room.

Chairman

Date of Presentation of Application 22/02/2023
Number of ~~Words~~ Pages 2
Copying Fee 10/-
Urgent 5/-
Total 15/-
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Date of Completion
Date of Delivery of Copy 22/02/2023

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15782 /2020

Mr. Zahoor
Ex-HC,
District Police, Mardan ..... **Appellant**

VERSUS

1. **The Inspector General of Police**
   Khyber Pakhtunkhwa, Peshawar
2. **The Regional Police Officer,**
   Mardan Region, Mardan.
3. **The District Police Officer,**
   District Mardan ..... **Respondents**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 17.09.2020 WHEREBY MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT AGAINST WHICH HE PREFERRED DEPARTMENTAL APPEAL TO RESPONDENT NO.2 ON 22.09.2020 BUT THE SAME WAS UNLAWFULLY REJECTED VIDE IMPUGNED APPELLATE ORDER DATED 12.10.2020.

PRAYER:

On acceptance of the instant appeal, the impugned order dated 17.09.2020 passed by Respondent No.3 and impugned appellate order dated 12.10.2020 passed by Respondent No.2 may graciously be set aside/modified and appellant may be re-instated into service w.e.f. 17.09.2020 with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That the appellant was employed in the Police Force as Constable way back in the year 2009 and has rendered meritorious service for the Department.

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.15182/2020

Date of Institution ... 09.11.2020
Date of Decision ... 15.09.2021

Mr. Zahoor Ex-H.C District Police, Mardan.

... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunhwa Peshawar and two others.

... (Respondents)

Muhammad Amin Ayub, Advocate ... For Appellant.

Asif Masood Ali Shah, Deputy District Attorney ... For Respondents.

AHMAD SULTAN TAREEN ... CHAIRMAN
ROZINA REHMAN ... MEMBER (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): Brief facts of the case are that appellant was inducted in the Police Force as Constable. While performing duties at Special Squad Police Lines Mardan, he was suspended from service on account of departmental proceedings. He was charge sheeted and an inquiry was conducted into the matter, where-after, major penalty of dismissal from service was imposed upon appellant. He filed departmental appeal which was rejected, hence, the present service appeal.

2. We have heard Muhammad Amin Ayub Advocate appearing on behalf of appellant and Asif Masood Ali Shah learned Deputy District

Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Learned counsel for appellant contended that the appellant was not treated in accordance with law, rules and policy and that the respondents acted in violation of Article-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He contended that the appellant neither misused his official authority nor entered into the house of Khaista Rehman which is evident from the record and that complainant of case admitted the presence of appellant outside his house. That a false and concocted F.I.R was registered against the appellant and his wife. That mandatory requirement of law in shape of issuance of show cause notice was violated as no show cause notice was ever issued to the appellant and that in utter violation of law and principles of natural justice, after the first inquiry report, the second inquiry was clandestinely conducted at the back of the appellant and he was recommended for major punishment. That no notice was served upon the appellant nor reasons were shown as to how the first inquiry report was rejected and second inquiry was conducted and as to who was the Inquiry Officer as copy of the Inquiry report was not provided to the appellant. He submitted that neither regular inquiry was conducted nor any evidence was recorded in presence of appellant and that proper opportunity of defense was not given to the appellant. Lastly, he submitted that he was proceeded against departmentally on the allegations that he was involved in case F.I.R No.589 dated 12.07.2020 and that was the only stigma but the appellant was acquitted by competent court of Law, therefore, the impugned orders may kindly be set aside.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

4. Conversely learned Deputy District Attorney submitted that appellant while posted at Special Squad, Police Lines Mardan, was placed under suspension on account of involvement in case F.I.R No.589 dated 1207.2020 at Police Station Saddar, Mardan. On account of the aforementioned allegations, he was issued charge sheet with statement of allegations and inquiry was entrusted to D.S.P Headquarter, Mardan. He contended that Inquiry Officer during the course of inquiry, provided all lawful opportunities to the appellant to produce evidence in his defense but fiasco and that after fulfillment of all codal formalities, report was submitted and appellant was rightly dismissed from service.

5. From the record, it is evident that appellant Zahoor khan Ex-Head Constable of Mardan Police was proceeded against departmentally on the allegations that he while posted at Special Squad, Police Lines, Mardan was involved in F.I.R No.589 dated 12.07.2020 U/S 452, 354, 506/34 P.P.C Police Station Saddar, Mardan. The impugned order of District Police Officer Mardan is available on file which clearly shows that appellant was proceeded against departmentally through Mr. Gulshad Khan D.S.P Headquarter, Mardan and accordingly he was awarded major punishment of dismissal from service vide O.B No.1599 dated 17.09.2020. The inquiry report submitted by D.S.P Headquarter, Mardan is available on file as "Annexure-C" and this inquiry was conducted vide office No.318/PA dated 13.07.2020. The Inquiry Officer recommended temporary reinstatement of appellant till the Court decision. The entire record is silent as to why this inquiry report was not taken into consideration and as to how another order was passed for second

ATTESTED

inquiry. The statement of allegations available on file bearing No.318/PA dated 13.07.2020 shows that one Shakeel Ahmad D.S.P Headquarter was also nominated as Inquiry Officer. The respondents miserably failed to prove the service of charge sheet and statement of allegations upon the appellant and his association in the inquiry proceedings conducted by Shakeel Ahmad D.S.P.

6. As discussed earlier that the only allegation against the appellant was his involvement in the criminal case but the appellant was acquitted in the criminal case registered against him vide F.I.R No.589 by the competent court of Law on 06.04.2021.

7. It has been held by the superior fora that all the acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Involvement of the appellant in the criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared, therefore, his acquittal, made him re-emerge as fit and proper person entitled him to continue with his service.

8. For what has been discussed above, we allow this appeal as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED:
15.09.2021

(Ahmad Sultan Tareen)
Chairman

(Rozina Rehman)
Member (J)

Date of Presentation of Application 22/2/23

Number of Pages 5

Copying Fee 25/-

Urgent 5/-

Total 30/-

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Date of Completion 22/2/23

Date of Delivery of Copy 22/2/23

(9)

وکالت نامہ

بعدالت سروس ٹریبونل پشاور

ظہور خان بنام KP

منجانب Petitioner دعویٰ/جرم

تھانہ ــــ ایف آئی آر ــــ تاریخ ــــ

باعث تحریر آنکہ

مقدمہ مندرجہ بالاعنوان میں اپنی طرف سے واسطے پیروی وجوابدہی بمقام پشاور کے لئے

خالد خان مہمند ایڈوکیٹ ہائی کورٹ، پشاور کو بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص روبرو عدالت حاضر ہوتا رہونگا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کرونگا اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہوگیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختارنامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعوی و جواب دعوی اور درخواست اجرائے ڈگری ونظر ثانی اپیل ونگرانی ہر قسم کی درخواست پر دستخط وتصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرانے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی وراضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعوی دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختارنامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ مین جو کچھ ہرجانہ التواء پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختارنامہ لکھ دیا کہ سند رہے مورخہ ــــ مضمون مختارنامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

ظہور خان

ATTESTED & ACCEPTED:

Khalid Khan Mohmand
Advocate High Court
Peshawar
B.C. No. 18-1115
CNIC No. 16101-8191351-1
Mobile No. 0342-9101124