


24.02.2020

Counsel for the petitioner and Mr. Ziaullah, Deputy District Attorney for the respondents present.

It was stated before the court by learned counsel for the petitioner that the petitioner was not paid salary by the respondent-department on the allegation of absence. The petitioner filed service appeal which was disposed of and the departmental authority was directed to decide the departmental appeal within the stipulated period vide judgment dated 28.03.2016. It was further contended that now the departmental authority has decided the departmental appeal and rejected the same on 14.03.2019. Since the respondent-department has decided the departmental appeal of the petitioner, therefore, the present execution petition is disposed of being infructuous. File be consigned to the record room.

ANNOUNCED

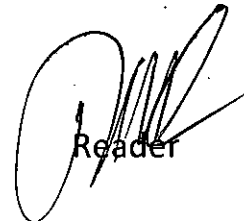
24.02.2020



(M. Amin Khan Kundi)  
Member  
Camp Court D.I.Khan

22/10/2019

Since tour to D.I.Khan has been cancelled .To come for the same on 25/11/2019.



Reader

25.11.2019

Petitioner in person and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Kamran, ADO (Litigation) for the respondents present. Petitioner seeks adjournment on the ground that his counsel is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 27.01.2020 for further proceeding/arguments before S.B at Camp Court D.I.Khan.



(Muhammad Amin Khan Kundi)  
Member  
Camp Court D.I.Khan

27.01.2020

Petitioner in person and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Kamran, ADO (Litigation)for the respondents present. Petitioner requested for adjournment on the ground that his counsel is not available today. Adjourned to 24.02.2020 for further proceeding/arguments before S.B at Camp Court D.I.Khan.




(M. Amin Khan Kundi)  
Member  
Camp Court D.I.Khan

E.P No. 125/2018


25.06.2019

Petitioner in person and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Mehmood Azam, ADO for the respondents present. Service appeal of the petitioner was remitted to the departmental authority to decide the departmental appeal of the petitioner <sup>after</sup> After going through the record vide judgment dated 28.03.2016, the implementation report has not been furnished so far therefore, respondent-department is strictly directed to submit implementation report otherwise coercive method will be adopted against the respondents. Case to come up for implementation report on 23.09.2019 before S.B at Camp Court D.I.Khan.

  
(Muhammad Arif Khan Kundi)  
Member  
Camp Court D.I.Khan


23.09.2019

Petitioner in person present. Mr. Farhaj Sikandar learned Deputy District Attorney alongwith Kamran ADEO present and submitted office order dated 14.03.2019 regarding rejection of departmental appeal. Petitioner seeks adjournment on the ground that his counsel is not available due to general strike of the Bar. Adjourn. To come up for further proceedings/arguments on 22.10.2019 before S.B at Camp Court, D.I.Khan.

  
Member  
Camp Court, D.I.Khan.

26.11.2018

Petitioner in person present. Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Kamran, ADO for the respondents present. Implementation report not submitted. Learned District Attorney requested for further adjournment. Adjourned. To come up for implementation report on 19.12.2018 before S.B at Camp Court D.I.Khan.

  
(Muhammad Amin Khan Kundi)  
Member  
Camp Court D.I.Khan


19.12.2018

As per direction of the worthy Chairman Khyber Pakhtunkhwa Service Tribunal, D.I.Khan tour dated 19.12.2018 has been rescheduled and the case is re-fixed for 28.12.2018.

Reader


28.12.2018

Counsel for the petitioner present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Kamran, ADO for the respondent present. Implementation report not submitted. Learned District Attorney requested for further adjournment. Adjourned. To come up for implementation report on 26.03.2019 before S.B at Camp Court D.I.Khan.

  
(Muhammad Amin Khan Kundi)  
Member  
Camp Court D.I. Khan

26.03.2019

Counsel for the petitioner and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Mehmood, ADO for the respondents present. Implementation report not submitted. Requested for further adjournment. Adjourned. Case to come up for implementation report on 25.06.2019 before the S.B at camp court, D.I.Khan.

  
Member  
Camp Court, D.I.Khan

FORM OF ORDER SHEET

Execution Petition No. 125 /2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	20.04.2018	<p>The Execution Petition of Mr. Muhammad Sharif submitted to-day by Mr. Gul Tiaz Marwat Advocate through registered post, may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;">REGISTRAR 20/4/18</p>
2-	13.09.2018	<p>This Execution Petition be put up before Touring S. Bench at D. I.Khan on <u>13-9-18</u>.</p> <p style="text-align: right;">MA MEMBER</p> <p>Counsel for the petitioner present. Notice be issued to the respondents for implementation report for 26.11.2018 before S.B at Camp Court D.I.Khan.</p> <p style="text-align: right;">MA (Muhammad Amin Khan Kundi) Member Camp Court D.I.Khan</p>

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

*Execution Petition No. 185/2018*

CMA No. \_\_\_\_\_/2018

Muhammad Sharif

.....

**Petitioner**

**VERSUS**

Govt: of KPK through Secretary Elementary & Secondary  
Education Civil Secretariat Peshawar etc.

.....**Respondents**

**INDEX**

<b>S.No</b>	<b>Description</b>	<b>Annexure</b>	<b>Page No</b>
1	Grounds of Petition		1-4
2	Copy of Judgment / order	A	5-6
3	Copy of Order of Retirement	B	7
4	Vakalatnama		8

Dated: 19/04/2018

**Your Humble Petitioner**

**Muhammad Sharif  
Through Counsel**

  
**GUL TIAZ KHAN MARWAT  
Advocate High Court DIKhan**

03009092488

I

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

*Exception Petition No. 125/2018*

CMA No. \_\_\_\_\_/2018

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 451

Dated 20/04/2018

Muhammad Sharif Ex-PST S/O Muhammad Ayaz Caste

Kundi R/O Nandoor Tehsil & Distt: Tank

*03458843967*

..... **Petitioner**

**VERSUS**

1. Govt: of KPK through Secretary Elementary & Secondary Education Civil Secretariat Peshawar.
2. The Director Elementary & Secondary Education Govt. of KPK Peshawar.
3. The District Education Officer (M) Tank.

.....**Respondents**

**PETITION CONTAINING THE REQUEST FOR IMPLEMENTATION OF JUDGMENT / ORDER OF THIS LEARNED TRIBUNAL CAMP COURT D.I.KHAN DATED 28.03.2016 PASSED IN SERVICE APPEAL NO. 526/2012 TITLED AS "MUHAMMAD SHARIF V/S GOVT. OF KPK THROUGH SECRETARY EDUCATION AND OTHERS".**

**Respected Sir,**

1. That the Petitioner was appointed as PST (PTC) in the year 1984.

*Govt*

2. That on the basis of FIR No. 84 dated 22.07.2009, the Petitioner was not paid the salary / pay from 01.07.2009 to 15.12.2010 due to alleged abscondence.
3. That the Petitioner preferred departmental Appeal to Respondent No. 2 on 23.01.2012 which was not decided within the statutory period of 90 days, therefore the Petitioner then filed Service Appeal No. 526/2012 which came up for hearing before this Learned Tribunal on 28.03.2016 and the case was remitted to the departmental Authority with the direction to decide appeal of the Petitioner/ Appellant strictly on merit. Copy of order dated 23.03.2016 is enclosed as Annexure "A".
4. That after decision of this Honourable Tribunal referred to above, the Petitioner anxiously waited for the decision of the departmental Appeal by Respondent No. 2 but inspite of lapse of sufficient long period of two years, no action has so far been taken by the Appellate authority.
5. That the Petitioner has been retired from service with effect from 04.12.2017 vide office order No. 11516-19 dated 23.12.2017. Copy of order is enclosed as Annexure "B".
6. That the Petitioner having no other remedy seeks the indulgence of this learned tribunal for implementation of its judgment / order under its inherent jurisdiction inter alia on the following grounds.

*Annex 2*



3  
GROUNDS:-

- A. That it is / was the legal, statutory and moral obligations of departmental Authority to implement the judgment / order of this learned Tribunal but they have failed to do so which is shocking for the petitioner and also amounts contempt of Court.
- B. That the actions/in actions, conduct and modus operandi of Respondents to disobey and violate the judgment/ order is tantamount to abuse and obstruct the process of Court to disobey the order of Court of law/tribunal which is a visible contempt of Court for which he is liable to be proceeded under the law.
- C. That the Petitioner has no other remedy for implementation of judgment of the Honourable Tribunal except to knock the door of this Honourable Tribunal for implementation of judgment.
- J. That the Honourable Tribunal got powers and jurisdiction to take cognizance in the matter and to implement the judgment and order so passed by this Honourable Tribunal.
- K. That counsel for the Petitioner may please be allowed to raise additional ground during the course of arguments.

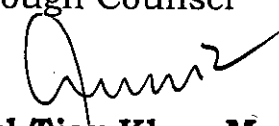
*Amr*

It is, therefore, humbly prayed on acceptance this Petition, this Honorable Tribunal may very graciously be pleased to issue direction to respondents to implement the judgment/ order of this Honourable Tribunal in letter and sprit so as to meet the ends of justice.

Your humble Petitioner,

  
Muhammad Sharif

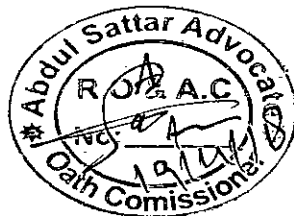
Through Counsel

  
Gul Tiaz Khan Marwat  
Advocate High Court  
DIKhan

Dated: 19/04/2018

### AFFIDAVIT

I, Muhammad Sharif Ex-PST S/O Muhammad Ayaz Caste Kundi R/O Amma Khel Tehsil & Distt: Tank do hereby solemnly affirm and declare on Oath that the contents of Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



  
DEPONENT

## Enquiry Report

The Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar vide Endst: No. 7426-29/ F No.KC/IT/AT/Qari Division Dated Peshawar the 24-08-2006 notified Mr. Abdur Rashid Baloch, Principal(BPS 19) GHSS NO.3 D.I.Khan as Inquiry Officer to conduct facts finding enquiry against Muhammad Sharif PST District Tank.

(Annex-A)

### Purpose of the Enquiry:

Muhammad Sharif PST Tank remained absconder w.e.f 22-07-2009 to 15-12-2010. Whether he is entitled for pay of mentioned period or not.

### Brief the Complaint:

The FIR No. 84 dated 22-07-2009 was registered against Muhammad Sharif PST GPS Manjhi District Tank. The applicant became absconder from 22-07-2009 to 15-12-2010. He joined his duties properly on 24-12-2010. He considers himself entitle for pay.

### Enquiry Proceeding:

As per Notification of the competent authority, the Inquiry Officer visited the office of DEO (M) District Tank on 06 & 07-09-2016. The Inquiry Officer decided to serve a Questionnaires to I/e DEO(M) Tank and Sub-Divisional Education Officer Tank in order to find facts from the office record.

Both above-mentioned officers submitted written reply.

(Annex-B)

### General Observations/Findings:

Mr. Musrat Hussain I/e DEO Tank stated in his black and white reply that Muhammad Sharif was PST at GPS Manjhi District Tank. The FIR against said Teacher was registered on 02-07-2009. (Copy Attach)

The absconder/accused appealed for BBA on 11-12-2010. (Copy Attach)

The pre-arrest bail of the accused was confirmed by the Session Judge Tank on 15-12-2010.

**Fact Finding Enquiry Report- Muhammad Sharif PST District Tank**

The Executive District Officer Tank directed the concerned teacher to resume his duties on 23-12-2010. (Copy Attach) 40

He joined his duties on 24-12-2010 properly.

I/c DEO(M) Tank further added that he is not entitled for pay of said period. As he was remained absconder during the period and absconder period pay is not admissible to him under the rules.

Muhammad Nawaz SDEO (M) District Tank provided reply of Questionnaire.

His remarks were the same as I/c DEO (M), that FIR against Muhammad Sharif PST on 22-07-2009, became absconder on 22-07-2009, applied for BBA on 11-12-2010, the bail confirmed on 15-12-2010 and EDO Tank ordered to resume his duties on 23-12-2010.

He further added that he was absconder from 22-07-2009 to 15-10-2010. Absconder is not entitled for pay under the rules/law. The prayer in his application dated 11-12-2010 is very clear.


**Conclusion:-**

The statement of both officer I/c DEO (M) and SDEO (M) Tank in black and white is very clear that Muhammad Sharif became absconder after chalking out FIR against him on 22-07-2009. The absconder/accused applied for BBA on 11-12-2010, which was confirmed on 15-12-2010. He remained absconder from 22-07-2009 to 15-12-2010. So he is not entitled for pay under the rules.

**Recommendations:**

Muhammad Sharif PST remained absconder w.e.f 22-07-2009 to 15-12-2010. EDO District Tank issued order for release his pay w.e.f 16-12-2010, directing him to resume his duties at his school.

So the entire office record is an ample proof of this fact that he is not entitled for pay from 22-07-2009 to 15-10-2010, that is his absconder period.

  
**ABDUR RASHID BALOCH**  
**INQUIRY OFFICE**  
Principal GHSS NO.3 D.I.Khan.

OFFICE OF THE DISTRICT EDUCATION OFFICER  
(MALE) TANK



No. 815 / ADEO Litigation Dated Tank the 11/102 /2019

To

The Director,  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar

**SUBJECT: TO DECIDE THE DEPARTMENTAL APPEAL OF MR. MUHAMMAD SHARIF PST ON THE DIRECTION OF HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Memo:

It is stated that One Muhammad Sharif PST has been performed his duties at GPS Manjhi Tank till 21/07/2009 but on 22/07/2009 FIR No. 84 on Section 302 / 324 / 34 PPC was register against him in Police Station Mullazai District Tank (Copy of FIR is enclosed as **Annexure-A** ). The District Education Officer (Male) Tank has stopped the salary of accused Teacher from 01/07/2009 To 15/12/2010 i-e (ascendance period of accused) and released the pay after his bail was confirmed on 15/12/2010.

The appellant (Muhammad Sharif) presented departmental appeal before honorable Director Elementary & Secondary Education on 23/01/2012 (Copy of departmental appeal is enclosed as **Annexure-B**). The departmental appeal was not decided within the time and appellant filled Service Appeal No. 526 /2012 before the Khyber Pakhtunkhwa Service Tribunal. The honorable Service Tribunal announced his Judgment on 28/03/2016 and direct the respondents to decide the departmental appeal of appellant strictly on merit. (Copy of Judgment is enclosed as **Annexure-C**)

The D.E.O (Male) Tank has referred the Judgment dated 28/03/2016 passed by Khyber Pakhtunkhwa Service Tribunal to the worthy Directorate E&SE Peshawar through letter No. 2502 Dated 20/07/2016, in order to decide the departmental appeal of appellant as directed by Service Tribunal.

The worthy Director E&SE initiate Inquiry and nominate Mr. Abdur Rasheed Baloch Principal GHSS No.3 D.I.Khan as Inquiry Officer. (Copy of Inquiry Report is enclosed as **Annexure-D**)

The Petitioner filled execution Petition before Khyber Pakhtunkhwa Service Tribunal on 19/04/2018, the representative of the respondents officials submitted the Inquiry report before the honorable Service Tribunal but the honorable judge was not satisfied with the Inquiry report and directed that the departmental appeal of appellant may be decided before 20/03/2019 in the light of the Judgment dated 28/03/2016.

Therefore, the departmental appeal along with relevant record and Judgment dated 28/03/2016 is submitted for the early disposal of departmental appeal of appellant please.

*87 Recd*  
*11-2-19*

*[Signature]*  
District Education Officer  
(Male) Tank

A

S



S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	28.03.2016	<p data-bbox="831 324 854 358">3</p> <p data-bbox="517 358 1168 436"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> <u>CAMP COURT D.I KHAN.</u></p> <p data-bbox="697 492 980 526">APPEAL NO.526/2012</p> <p data-bbox="509 582 1168 660">(Mohammad Sharif-vs-Govt. of KPK through Secretary, Elementary &amp; Secondary Education, Peshawar others.)</p> <p data-bbox="525 739 697 772"><u>JUDGMENT</u></p> <p data-bbox="525 851 932 884"><u>PIR BAKHSH SHAH, MEMBER:</u></p> <p data-bbox="431 974 1223 1108">Counsel for the appellant(Mr. Muhammad Abu Bakar Usman, Advocate) and Mr. Farhaj Sikandar, GP for respondents present</p> <p data-bbox="423 1209 1215 1635">2. Learned counsel for the appellant submitted that despite the fact that the appellant performed duty w.e.f 01.07.2009 to 15.12.2010, no salary was paid to him for the said period. Contention of the respondent-department is that while charged in FIR No. 84 dated 22.07.2009 at Police Station Mulazai Tehsil and District Tank, appellant was absconder and he did not perform duty.</p> <p data-bbox="415 1724 1207 1825">3. The departmental appeal of the appellant was stated to have not yet been decided.</p> <p data-bbox="415 1926 1199 1971">4. After hearing pro &amp; contra arguments and perusal of the</p>

*[Handwritten signature]*

*[Handwritten signature]*  
Attest  
Judge  
Adm

record, the factual controversy is about performing of duty or absent from duty of the appellant about, which no authentic materials is available on record. In the stated situation it is the considering opinion of the Tribunal that since entire record is always with the department who can decide whether appellant was on duty or he was absent from duty, hence we are constrained to remit the case to the departmental authority with the direction to decide appeal of the appellant strictly on merits after going through also the criminal case(which is not available before us) and to give a conclusive finding and decision on departmental appeal of the appellant. Appeal disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

*Handwritten signature*

Sd

(ABDUL LATIF)  
MEMBER

Sd

(PIR BAKTISH SHAIK)  
MEMBER

ANNOUNCED  
28.03.2016

*Handwritten signature*  
Gunt  
Saw



**OFFICE OF THE DISTRICT EDUCATION OFFICER(M)**  
**DISTRICT TANK.**

B

7

**SANCTION:-**

Sanction is hereby accorded to the grant of 365 days Leave encashment in lieu of LPR of R/O Mr. Muhammad Sharif SPST GPS, No.1 Amakhel District Tank as admissible to him under the rules

He is also allowed to retire from Govt. Service with effect from 04-12-2017 (A.N. premature) basis on his own request.

Note: - Necessary entry to this effect should be made in his service book

--Sd/--

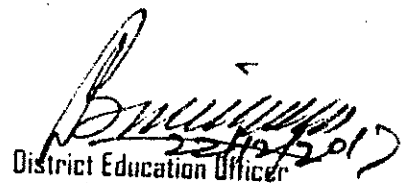
District Education Officer  
(Male), Tank.

Endst No 11576-13/1

Dated 23/12/2017

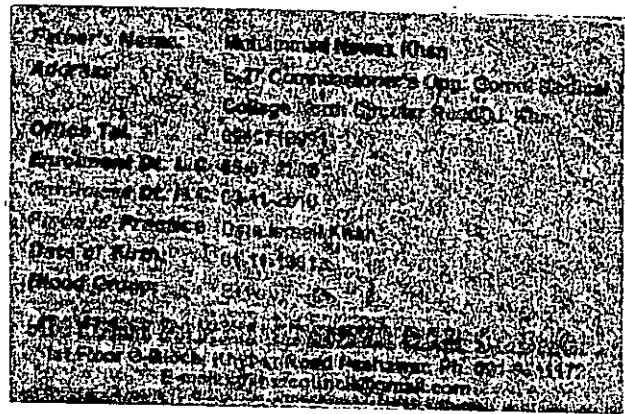
Copy of the above is forwarded for information & necessary action to the

1. District Accounts Officer, Tank
2. SBEO (M) with reference to his No.722 dated 06-12-2017
3. Head Teacher/Official Concerned School.
4. District Monitoring Officer (MII), Tank

  
District Education Officer  
(Male), Tank

Attended  
Jun 2  
2017





**VAKALATNAMA**

IN THE COURT OF Service Tribunal KPK Peshawar

Sharif Shmael VERSUS Govt of KPK etc.

Title Petition for implementation

I/we Sharif Shmael

The above named Petitioner herby appoint Gul Tiaz Khan Marwat Advocate High Court D.I.Khan, in the above mentioned case to 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 in which the same may be tried or heard or any other proceedings out of our connected therewith.
  - 2. To sign and verify and file or withdraw all proceedings, petitions, appeals, affidavits, and applications for compromise or withdrawal, or for the submission to arbitration of the said case or any other documents, may be deemed necessary or advisable by them, by the conduct, prosecution or defense of the said case at all its stages.
  - 3. To receive payments of and issue receipts for all moneys that may be or become due and payable to us during the course on conclusion of the proceeding.  
To do all other acts and things, which may deemed necessary or advisable during the course of proceedings.
- AND hereby agree:
- a. To ratify whatever advocates may do the proceedings.
  - b. Not to hold the advocates responsible if the said case be proceed ex-parte or dismissed in default in consequence of their absence from the court when it is called for hearing.
  - c. That the advocates shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains un-paid.
  - d. That advocates may be permitted to argue any other point at the time of arguments.

In witness whereof I/we have signed this vakalatnama here under the contents of which have been read/explained to me/us which is fully understood by me/us.

9/4/2018

M Sharif  
Signature of Executants (s)

(Sharif Shmael)

[Signature]  
Marwat  
Court D.I.Khan (KPK)  
092488 / 0345-9853488



DIRECTORATE OF ELEMENTARY & SECONDARY  
EDUCATION KHYBER PAKHTUNKHWA,  
PESHAWAR

No. 382 /F.No. 14/PST Male Tank.  
Dated: 12/3 /2019.

To

The District Education Officer  
(Male) Tank.

Subject: - DEPARTMENTAL APPEAL

I am directed to refer to your letter No. 615 dated 11/02/2019 on the subject cited above and to ask you that the case/appeal in respect of Muhammad Sharif PST GPS Manjhi District Tank has been examined/analyzed by this office. Hence inform the appellant concerned that his appeal has been rejected by the competent authority.

Endst No. 3822  
Copy of the above is forwarded to: -

1. Muhammad Sharif PST GPS Manjhi District Tank
2. PA to Director E&SE local Office.
3. Master File.

12/3/2019  
Deputy Director Estab (Male)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

12/3/2019  
Deputy Director Estab (Male)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar