

02.10.2019

Petitioner alongwith his counsel present. Addl: AG alongwith Mr. Iftikhar Bangash, Supdt for respondents present.

The representative of respondent has produced copy of order dated 16.09.2019 handed down by a bench of the Apex court in C.Ps No. 86-87-P/2019. The Hon'able court has been pleased to order the suspension of operation of order dated 30.11.2018 passed by this Tribunal in the present proceedings.

In view of the development, instant execution petition is consigned to record room. The petitioner may apply for restoration of proceedings in accordance with law as and when deemed necessary.

Announced:
02.10.2019


Chairman /

29.07.2019

Counsel for the petitioner and Mr. Usman Ghani,
District Attorney for respondents present.

The record shows that the respondents were not represented on at least two dates of hearing i.e 15.05.2019 and 27.06.2019. They should, therefore, be put on notice for submission of compliance report in pursuance of order of this Tribunal dated 15.01.2019.

Adjourned to 04.09.2019 before S.B.


Chairman


04.09.2019

Counsel for the petitioner and Mr. Usman Ghani District Attorney alongwith Iftikhar Bangash, Superintendent for the respondents present.

The representative of respondents states that an application for early hearing of CPLA has though been moved but the date of hearing has not been fixed before the Apex Court as yet.

The respondents shall submit an order requiring the suspension of judgment under implementation or its setting aside altogether. Else, the implementation report shall positively be submitted on the next date of hearing.

Adjourned to 02.10.2019 before S.B.


Chairman

26.04.2019

Petitioner in person and Addl. AG for the respondents present.

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the petitioner is not available, therefore, instant matter is adjourned to 15.05.2019 for further proceedings before S.B.


Chairman

15.05.2019

Petitioner with counsel present. Learned counsel for the petitioner stated that due to divergence in the opinion of this Tribunal, the present execution petition may be referred to the learned Chairman of this Tribunal for hearing. Adjourn. The present case file be put up before learned Chairman. Parties to appear before learned Chairman on 27.06.2019.


Member


27.06.2019

Petitioner with counsel present. Learned counsel for the petitioner seeks adjournment. Adjourned to 29.07.2019 before S.B. The present case file be put up before learned Chairman as per request of Learned counsel for the petitioner.


Member

25.02.2019

Petitioner in person present. Mr. Kabirullah Khattak, Addl. AG for respondents present. Petitioner seeks adjournment as his counsel is not available today. Adjourned. Case to come up for further proceedings on 27.03.2019 before S.B.


Member
(Ahmad Hassan)

27.03.2019

Learned counsel for the petitioner present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Iftikhar Bangash Superintendent present.

Judgment under implementation was passed on 11.04.2017. Thereafter as a result of de-novo inquiry major penalty of compulsory retirement from service was imposed upon the petitioner vide order dated 29.12.2017.

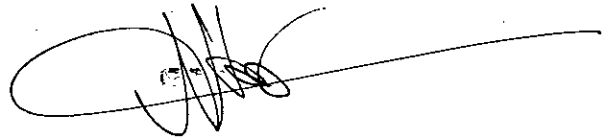
In majority of cases the time given to the authority for completion of de-novo inquiry is not observed either due to genuine reasons or otherwise i.e. due to negligence or due to manipulation with the inquiry officer or the authority for which the public interest, government exchequer and the government institutions should not be made to suffer and particularly without any punishment to the inquiry officer or the authority responsible for the delay.

Due to some delay in the conclusion of de-novo inquiry, the executing court cannot simply sit over the order issued in the de-novo inquiry without advertng to the attending circumstances of the case. The consequences of non-observance of the time period for the de-novo inquiry is to be looked into by the competent forums and not by the executing court.

Learned Additional Advocate General seeks adjournment. Adjourn. To come up for further proceedings on 26.04.2019 before S.B


Member

for delay is not worth consideration. Consequently, the impugned order dated 29.12.2017 is set aside and judgment of this Tribunal referred to above would be implemented in letter in spirit. The petitioner shall be deemed to have been reinstated in service in accordance with the directions contained in judgment dated 11.04.2017. Case to come up for implementation report on 15.01.2019 before S.B.



(AHMAD HASSAN)
MEMBER

15.1.2019

Counsel for the petitioner and Addl. AG alongwith Mr. Muhammad Saeed, Deputy Secretary Public Service Commission on behalf of the respondents present.

The representative of respondents has produced copy of minutes of Scrutiny Committee meeting held on 09.01.2019 and stated that it was decided to question the judgment under implementation as well as order dated 30.11.2018 passed in the execution proceedings before the Apex Court.

The respondents are directed to produce copy of an order by the Apex Court requiring suspension of instant proceedings or setting aside of the judgment under execution on the next date, else to submit the implementation report. Adjourned to 27.02.2019 before S.B.



Chairman

30.11.2018

E.P. No. 116/2018
Amir Ilyas vs Govt

Counsel for the petitioner present. Mr. Kabirullah, Addl: AG for respondents present.

Learned counsel for the petitioner argued that vide judgment of this Tribunal dated 11.04.2017, this case was remitted to the respondents for conducting de-novo enquiry within a period of three months from the date of receipt of the judgment, failing which the appellant shall be deemed to have been reinstated from the date of removal from service. On the strength of the said judgment the appellant submitted arrival report on 02.05.2017. The respondents were bound to conclude de-novo proceedings by 02.08.2017. As the impugned order was passed on 29.12.2017, thus deadline given in the aforementioned judgment was not met. In view of the lapse/laxity on the part of the respondents only option left with them was to reinstate the appellant as per directions given in the judgment dated 11.04.2017.

In addition to this attention was also invited to execution petition no. 67/2017, 132/2017 and 253/2017 and directions contained in order sheet dated 29.03.2018, 15.02.2018 and 11.04.2018 respectively.

On the other hand learned Addl: AG argued that judgment of this Tribunal dated 11.04.2017 was received by the respondents on 08.05.2017, while de-novo enquiry was concluded on 07.08.2017. As various formalities were involved in concluding the proceedings entailed time which was unavoidable. Delay, if any, occurred in finalization of the case was not intentional, deliberate or willful but circumstances were beyond the control of the respondents.

It is well established from the record that respondents failed to meet the deadline for concluding of de-novo enquiry within the time span given in the judgment of this Tribunal dated 11.04.2017. The justification

13/8/2018

Counsel for the petitioner and Mr. Riaz Painsa Khel, Assistant Advocate General for official respondents present. Assistant AG requested for adjournment. Adjourned. To come up for further proceedings on 10/10/2018 before SB.


(Muhammad Amin Khan Kundi)
MEMBER

10.10.2018

Mr. Rizwanullah, Advocate for petitioner present. Mr. Kabirullah Khattak, Addl. AG for the respondents present and submitted before the court that he contacted the respondents but their whole staff is busy in conducting PMS examination. He requested for short adjournment. Granted. To come up for further proceedings on 16.10.2018 before S.B.


Chairman

16.10.2018

Counsel for the petitioner present. Mr. Muhammad Saeed, Assistant Director alongwith Mr. Kabirullah Khattak, Addl. AG for respondents present. Representative of the respondents submitted report which is placed on file. A copy of the same was also handed over to the learned counsel for the petitioner. Case to come up for further proceedings on 30.11.2018 before S.B.


(Ahmad Hassan)
Member

27.06.2018

Petitioner in person present. Notice be issued to the respondents for implementation report for 02.08.2018 before S.B.

MA

(Muhammad Amin Khan Kundi)
Member

02.08.2018




Petitioner Amir Ilyas in person alongwith his counsel Mr. Rizwanullah, Advocate present. Mr. Iftikhar, Supdt alongwith Mr. Kabirullah Khattak, Addl. AG for respondents present. The above name representative stated that similar connected petition is pending in this Tribunal which is fixed on 13.08.2018 and on that very date he will be produced the implementation report in this case as well. In the circumstances, the case is adjourned for further proceedings on 13.08.2018 before S.B.

Q

Chairman

FORM OF ORDER SHEET

Execution Petition No. 116/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	16.04.2018	<p>The Execution Petition of Mr. Amir Ilyas submitted to-day by Mr. Rizwan Ullah 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	18/04/18.	<p>This Execution Petition be put up before S. Bench on- <u>30/04/18.</u></p> <p style="text-align: right;"> MEMBER</p>
	30.04.2018	<p>Counsel for the petitioner and Addl: AG for the respondents present. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 27.06.2018 before S.B.</p> <p style="text-align: right;"> Reader</p>

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

Execution Petition No. 116 /2018

1. Amir Ilyas Ex-Superintendent, Khyber Pakhtunkhwa Public Service Commission, Peshawar.

PETITIONER

VERSUS

1. The Governor through Chief Secretary Khyber Pakhtunkhwa Peshawar etc.

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Execution Petition	—	1-5
2	Affidavit	—	6
3	Copy of service appeal	"A"	7-10
4	Copy of judgment of this Tribunal dated 11/04/2017	"B"	11-16
5	Copy of application dated 02-05-2017	"C"	17
6	Copy of inquiry report dated 07-08-2017	"D"	18-22
7	Copy of show cause notice dated 09-10-2017	"E"	23-24
8	Copy of impugned order dated 29-12-2017	"F"	25
9	Copy of order of this Hon'ble Tribunal dated 29-03-2018	"G"	26-27
11	Wakalatnama	—	—

Petitioner

Through

Dated: 16-04-2018

Rizwanullah

Advocate High Court, Peshawar.

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

Khyber Pakhtunkhwa
Service Tribunal

Execution Petition No 116 /2018

Diary No. 435

Dated 16/04/2018

1. Amir Ilyas Ex-Superintendent, Khyber Pakhtunkhwa Public Service Commission, Peshawar.

PETITIONER

VERSUS

1. The Governor through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. The Chairman Khyber Pakhtunkhwa Public Service Commission, Peshawar.
3. The Secretary Khyber Pakhtunkhwa Public Service Commission, Peshawar.
4. Registrar Examination, Khyber Pakhtunkhwa Public Service Commission, Peshawar.

RESPONDENTS

**APPLICATION UNDER SECTION 7 (2)
(D) OF THE KHYBER
PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 READ WITH
RULE 27 OF THE KHYBER
PAKHTUNKHWA PROVINCE
SERVICE TRIBUNAL RULES 1974
FOR INITIATING CONTEMPT OF
COURT PROCEEDINGS AGAINST
THE RESPONDENTS FOR
DISOBEDIENCE OF THE
ORDER/JUDGMENT DATED
11-04-2017 PASSED BY THIS
HON'BLE TRIBUNAL IN SERVICE
APPEAL NO.524/2016.**

As

Respectfully Sheweth,

Short facts giving rise to the present execution petition are as under:-

1. That the petitioner was serving as Superintendent in the office of Khyber Pakhtunkhwa Public Service Commission, Peshawar at the relevant time. He was awarded major penalty of removal from service in utter violation of law. He after exhausting departmental remedy, invoked the jurisdiction of this Hon'ble Tribunal by way of filing service appeal No.524/2016 praying therein that the impugned order may graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

(Copy of service appeal is appended as Annex-A)

2. That this Hon'ble Tribunal vide judgment dated 11/04/2017 accepted the appeal filed by the petitioner and reinstated him in service. However, the respondents were directed to conduct de-novo inquiry strictly in accordance with law and rules within a period of three months from the receipt of judgment. It was further ordered that in case the respondents failed to conduct de-novo inquiry within the stipulated period then the petitioner shall be deemed to have been reinstated in service from the date of removal from service. It would be advantageous to reproduce herein the relevant portion of the judgment for facility of reference:-

“In view of the fore-going, we are constrained to accept the instant appeal by setting aside the impugned order dated 15-01-2016 and 18-04-2016 and the appellant is reinstated into service from the date of removal from service and direct to the respondents to conduct de-novo enquiry strictly in accordance with law and rules within a period of three months from the date of receipt of this judgment. Appellant

may be fully associated with the inquiry proceedings. All formalities given in the rules must be observed. If the respondents failed to conduct the de-novo enquiry within the stipulated period, the appellant shall be deemed to have been reinstated in service from the date of removal from service. Issue of back benefits shall be subject to final outcome of the de-novo inquiry.

(Copy of judgment is appended as Annex-B)

3. That the petitioner after obtaining the certified copy of judgment of this Hon'ble Tribunal, requested the respondents for its implementation and also submitted arrival report on 02-05-2017 which was received by the office of respondents on the same date under Diary No.3231.

(Copy of application is appended as Annex-C)

4. That the respondents were under statutory obligation to have complied with the said order/judgment in letter and spirit but they partially implemented it by reinstating the petitioner only and violated the remaining portion of judgment to conclude the de-novo inquiry within the period of three months prescribed by this Hon'ble Tribunal.
5. That when the proceedings were not concluded within the stipulated time till 02-08-2017, the petitioner was deemed to have been reinstated in service with full back wages and benefits by operation of the order passed by this Hon'ble Tribunal dated 11-04-2017. But the respondents failed to do so and flouted the direction made therein. It is worth mentioning at this juncture that the inquiry was finalized on 07-08-2017 and show cause notice was served on the petitioner on 09-10-2017 while the impugned order regarding his compulsory retirement was passed on 29-12-2017 meaning thereby that the

proceedings were concluded beyond the mandatory period of three months in utter violation of the order of this Hon'ble Tribunal and as such the same would have no effect under the law.

(Copy of inquiry report, show cause notice and impugned order are appended as Annex-D, E & F)

6. That after expiry of statutory period of three months, the respondent No.1 was not competent to pass any adverse order against the petitioner. But he did not bother for the same and awarded major penalty of compulsory retirement to the petitioner in utter violation of law.
7. That similar execution petition No.67/2017 came up for hearing before this Hon'ble Tribunal on 29-03-2018 wherein it was held that **“this Tribunal in the judgment dated 04-07-2016 clearly fixed time of 60 days for conclusion of inquiry. The department did not honor the time and regardless of other merits, the said order would have no effect under the law as settled in the above mentioned rulings. Consequently, the impugned order dated 30-03-2017 is set aside and the judgment of this Tribunal dated 04-07-2016 would be implemented and the appellant would be treated as reinstated in accordance with the direction in the order dated 04-07-2016. To come up for implementation report on 25-04-2018 before S.B”.**

Moreover, it is well settled law that equal treatment is the fundamental right of every citizen by virtue of Article 25 of the Constitution of Islamic Republic of Pakistan,1973 and as such the petitioner is also deserved to be treated alike the appellant in the above referred case. Besides, rules of consistency and parity both are attracted in the matter.

(Copy of order is appended as Annex-G)

8. That the defiant and adamant conduct of the respondents clearly amounts to willful disobedience of the order/judgment of this Hon'ble Tribunal and therefore requires to be dealt with iron hands by awarding them exemplary punishment under the relevant law. Reliance in this respect can be placed on the judgment of august Supreme Court of Pakistan reported in **PLD-2012-SC-923** (citation-ff). The relevant citation of the judgment is as under:

P L D 2012 Supreme Court 923
(ff) Contempt of court---

---Court order, implementation of---Contempt through disobedience of court order ("disobedience contempt") by executive and its functionaries--- Effect---Responsibility for implementation (of court's orders) had been made obligatory on other organs of the State, primarily the executive-When a functionary of the executive refused to discharge its constitutional duty, the court was empowered to punish it for contempt.

In view of the above narrated facts, it is, therefore, humbly prayed that contempt of court proceedings may graciously be initiated against the respondents for disobedience of order/judgment of this Hon'ble Tribunal and they may also be awarded exemplary punishment under the relevant law.

It is further prayed that the impugned order dated 29-12-2017 may graciously be set aside and the respondents may kindly be directed to treat the appellant as reinstated in accordance with the direction given by this Hon'ble Tribunal in the order dated 11-04-2017 so as to secure the ends of justice.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.

Through


Petitioner


Rizwanullah
M.A LL.B

Advocate High Court, Peshawar.

Dated: 16-04-2018

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

Execution Petition No. ____/2018

1. Amir Ilyas Ex-Superintendent, Khyber Pakhtunkhwa Public Service Commission, Peshawar.

PETITIONER

VERSUS

1. The Governor through Chief Secretary Khyber Pakhtunkhwa Peshawar etc.

RESPONDENTS

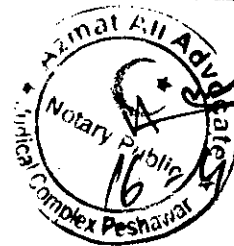
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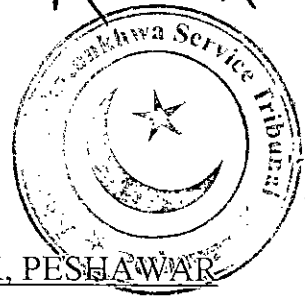
I, Amir Ilyas Ex-Superintendent, Khyber Pakhtunkhwa Public Service Commission, Peshawar, do hereby solemnly affirm and declare that the contents of the accompanied execution petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Amir Ilyas
Deponent

17/01.03006/9-3

ATTESTED





BEFORE THE HON'ABLE SERVICES TRIBUNAL K.P.K, PESHAWAR

Appeal no. 524/2016

Mr. Amir ilyas Ex superintendent Khyber Pakhtunkhwa Public Service Commission PeshawarAppellant

VS

A.W.F PROCEEDS Service Tribunal

Diary No 492

Dated 16-5-2016

Government of Khyber Pakhtunkhwa Through

- 1. Chief Secretary Govt of Khyber pakhtunkhwa Peshawar.
- 2. Chairman Khyber Pakhtunkhwa Public Service Commission Peshawar.
- 3. Secretary pakhtunkhwa public service commission Peshawar.
- 4. Registrar examinations Khyber Pakhtunkhwa Public Service Commission Peshawar.....Respondents

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 (AMENDED UP TO DATE) AGAINST THE ORDER NUMBER KPK/PSC/ADMN/GF-521/978-84 DATED 15/01/2016 OF THE RESPONDENTS WHEREBY THE PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT AND AGAINST THE ORDER DATED 18/04/2016 THROUGH WHICH REVIEW PETITION OF THE APPELLANT WAS ALSO TURNED DOWN IN CURSORY MANNER

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED ORDERS MENTIONED ABOVE MAY KINDLY BE SET ASIDE AND CONSEQUENTLY THE APPELLANT MAY BE REINSTATED TO HIS POST OF SERVICE FROM THE DATE OF REMOVAL FROM SERVICE WITH ALL BACK BENEFITS.

Respectfully Sheweth,

ATTESTED

Brief facts:

- 1. That the appellant is law abiding citizen of Pakistan. (Copy of CNIC is attached)
- 2. That the petitioner/appellant was appointed as junior Clerk on 04/05/1981 at Khyber Pakhtoon Khwa public service commission and performed his duties with due diligence & honesty hence with the passage of time promoted to the post of superintendent.
- 3. That in the year 2010 a task of appointment of ADOs (BPS-16) in elementary and secondary education department through Adv: NO

[Signature]
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Filed to the Registrar
16/5/16

As submitted to the Registrar and filed
16/5/16

05/2009 was given to the respondent No ³, by conducting interviews of candidates which interviews were conducted by the respondent no 3 and the result of selected candidates was announced on 03/02/2011.

4. That in October 2014 a candidate namely Mr. Saqib Ullah who had failed to be selected due to low merit submitted two complaints to respondent no 4 on the basis of irregularities committed in zonal adjustment in the selection of said ADOs.

(Copies of complaints are annexed as annexure A and A/1)

5. That the respondent No³, on receiving the above mentioned complaints, probed into the matter and constituted a probing committee with specific mandate (TORs) to examine the veracity of allegations of the complainant.

(Office order dated 10/03/2015 is annexed as annexure B)

6. That the probing committee, acting beyond its mandate (TORs) and without any solid proof and evidence and on the basis of surmises and conjunctures declared the appellant along with the other staff guilty of irregularities in the process of selection for the posts of ADOs (BPS-16) in Elementary and Secondary Education Department.

(Copy of report is annexed as annexure C)

7. That on the basis of the findings of the probing committee the concerned authority issued a show cause notice to appellant which was duly replied to by the appellant denying the allegation of any involvement in the above mentioned irregularities.

(Copies of show cause notice and reply are annexed as annexure D and D/1)

8. That on 15/01/2016 through impugned order penalty of removal from service was imposed upon the appellant which was assailed by the appellant through review petition but the same was also turned down by the respondents in a cursory manner without any solid reasons.

(Copy of impugned order of removal dated 15/01/2016, review petition and order of rejection are annexed as annexure E, F and G)

9. That the appellant having no adequate remedy to challenge the veracity of both the impugned orders mentioned above prefers the instant appeal on the following grounds, inter alia;

Grounds

A. That the whole procedure of constitution of probing committee conducting inquiry etc by the respondents are against the relevant Law, rules and procedure, hence having no legal effect.

B. That the report of probing committee is beyond its domain (TORs) and based on surmises and conjunctures and against the relevant rules and procedure.

C. That the probing committee failed to collect any piece of evidence supporting the allegation of the complainant against the appellant.

RECEIVED
Khyber Pakhtunkhwa
Government
Peshawar

- D. That the probing committee failed to record the statements of the high ups who had interviewed the candidates and approved the result, similarly it was respondent no: 4 who has issued the final list and not the appellent.
- E. That without regular inquiry, charge sheet etc a major penalty of removal from service was imposed upon the appellent hence on this score alone the impugned order is liable to be set aside.
- F. That the respondents with mala fide intention failed to give an opportunity of personal hearing to the appellent during the course of inquiry and the appellent was condemned unheard, hence the impugned orders are against the relevant rules of Law and natural justice.
- G. That during the whole course of so called illegal inquiry of probing committee neither the complainant nor the other candidates were called up and examined in support of the allegations leveled in the complaints, hence the authority miserably failed to adopt the proper procedure for the purpose of deciding the matter on merits.
- H. That there is no evidence regarding the involvement of the appellent in the allegation of irregularities in the selection process of ADOs and the whole process of selection was adopted and completed with the direction of the then competent authorities i.e member in charge but the probing committee badly failed to record the statements of the above mentioned competent authorities in respect of the allegation of the irregularities.
- I. That the impugned order of the removal of appellent from service is also against the Law and real facts.
- J. That the appellent rendered more then 30 years in the service with the respondents having no previous history regarding his involvement in such like activities.
- K. That any other ground will be raised at the time of argument before the Honorable Tribunal.

It is therefore, humbly requested that on acceptance of this appeal The impugned orders of removal from service of the appellent dated 15/01/2016 along with the impugned order dated 18/04/2016 of rejection of review petition of the appellent may kindly be set aside and consequently the appellent may be reinstated with further direction to allow the appellent all back and consequential benefits. Any other relief not specifically prayed for through this appeal and deemed fit in the interest of justice may kindly be allowed to the appellent.

ATTESTED
 [Signature]
 Member
 Kyber Peshawar
 Service Tribunal

Amer
Appellant

Through
Jehanzeb Khan Khattil
& (Amer)
Aman Durrani
Nasir Khan
Advocates
High Court Peshawar

(Signature)
(Signature)

Interim relief:

That, temporarily, the order of removal from service may kindly be suspended and Respondents may kindly be directed not to fill up the post of the appellant on regular basis till the disposal of the instant appeal.

Verification:

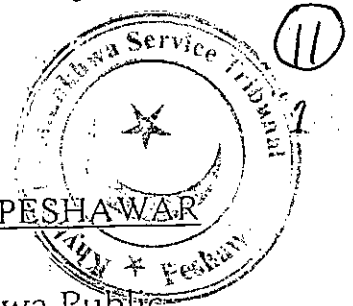
Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Honorable Tribunal.

Amer
Appellant

Certified to be true copy
(Signature)
Khyber Pakhtunkhwa
So. High Court
Peshawar

Date of Presentation of Appeal 12-4-18
Number of Verifications 1600
Copying Charges 100
Urgent 2-
Total 12-
Name of Copyholder (Signature)
Date of Copying 12-4-18
Date of Delivery of Copy 12-4-18

Annex-B



BEFORE THE HON'ABLE SERVICES TRIBUNAL K.P.K. PESHAWAR

Appeal no. 524/2016

Mr. Amir ilyas Ex superintendent Khyber Pakhtunkhwa Public Service Commission PeshawarAppellant

VS

a.w.r. Peshawar
Service Tribunal
Diary No. 492
dated 16-5-20

Government of Khyber Pakhtunkhwa Through

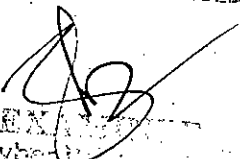
1. Chief Secretary Govt of Khyber pakhtunkhwa Peshawar.
2. Chairman Khyber Pakhtunkhwa Public Service Commission Peshawar.
3. Secretary pakhtunkhwa public service commission Peshawar.
4. Registrar examinations Khyber Pakhtunkhwa Public Service Commission Peshawar.....Respondents

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 (AMENDED UP TO DATE) AGAINST THE ORDER NUMBER KPK/PSC/ADMN/GF-521/978-84 DATED 15/01/2016 OF THE RESPONDENTS WHEREBY THE PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT AND AGAINST THE ORDER DATED 18/04/2016 THROUGH WHICH REVIEW PETITION OF THE APPELLANT WAS ALSO TURNED DOWN IN CURSORY MANNER

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED ORDERS MENTIONED ABOVE MAY KINDLY BE SET ASIDE AND CONSEQUENTLY THE APPELLANT MAY BE REINSTATED TO HIS POST OF SERVICE FROM THE DATE OF REMOVAL FROM SERVICE WITH ALL BACK BENEFITS.

ATTESTED


Registrar
Khyber Pakhtunkhwa
Service Commission
Peshawar

Respectfully Sheweth,

Brief facts:

1. That the appellant is law abiding citizen of Pakistan. (Copy of CNIC is attached)
2. That the petitioner/appellant was appointed as junior Clerk on 04/05/1981 at Khyber Pakhtoon Khwa public service commission and performed his duties with due diligence & honesty hence with the passage of time promoted to the post of superintendent.
3. That in the year 2010 a task of appointment of ADOs (BPS-16) in elementary and secondary education department through Adv: NO

16/5/16
re-submitted to
and filed
Registrar
18/5/16

524/2016

Amin Ilyas vs Govt

11.04.2017

Appellant with counsel and Muhammad Saeed, AD (Lit.)
alongwith Mr. Ziaullah, Government Pleader for the respondents
present.

Vide our detailed judgment of to-day in the connected
service appeal No. 424/2016 titled "Muhammad Sajjad Qureshi-
vs- The Governor through Chief Secretary Khyber Pakhtunkhwa,
Peshawar and others", this appeal is also decided as per detailed
judgment referred above. File be consigned to the record room.

ANNOUNCED
11.04.2017

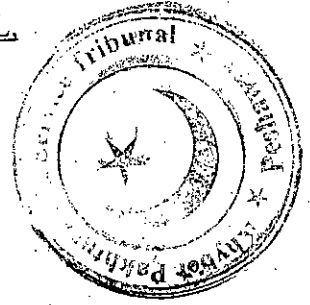
(Signature)
(AHMAD HASSAN)
MEMBER

(Signature)
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Certified to be true copy
(Signature)
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	<u>16-4-18</u>
Number of Words	<u>1200</u>
Copying Fee	<u>8-</u>
Urgent	<u>2-</u>
Total	<u>10-</u>
Name of Copyist	<u>(Signature)</u>
Date of Completion of Copy	<u>16-4-18</u>
Date of Delivery of Copy	<u>16-4-18</u>

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.



SERVICE APPEAL NO. 424/2016

Date of institution ... 20.04.2016
Date of judgment ... 11.04.2017

Muhammad Sajjad Qureshi Ex-Superintendent,
Khyber Pakhtunkhwa Public Service Commission, Peshawar.

... (Appellant)

VERSUS

1. The Governor through Chief Secretary Khyber Pakhtunkhwa.
2. Secretary Establishment Govt: of Khyber Pakhtunkhwa Peshawar.
3. The Chairman Khyber Pakhtunkhwa Public Service Commission Peshawar.
4. The Secretary Khyber Pakhtunkhwa Public Service Commission Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH RULE-19 OF E&D RULES, 2011 AGAINST THE ORDER DATED 15.01.2016 WHEREBY THE PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT AND AGAINST THE ORDER DATED 18.04.2016 WHEREBY THE REVIEW PETITION OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

Mr. Muhammad Asif Yousafzai, Advocate.
Mr. Ziaullah, Government Pleader

.. For appellant.
.. For respondents.

MR. AHMAD HASSAN
MR. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (EXECUTIVE)
.. MEMBER (JUDICIAL)

JUDGMENT

AHMAD HASSAN, MEMBER: Muhammad Sajjad Qureshi, Ex-Superintendent hereinafter referred to as appellant, through the instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 read with Rule-19 of E&D Rules, 2011 against the order dated 15.01.2016 whereby penalty of removal from service was imposed upon him and against the order dated 18.04.2016, whereby review petition of the appellant was rejected, hence the instant service appeal on 20.04.2016.

ATTESTED

(Signature)
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Brief facts of the case giving rise to the instant appeal are that the appellant was appointed as Assistant in the Khyber Pakhtunkhwa Public Service Commission on 26.01.1996. Thereafter promoted to the post of Superintendent (BPS-17) in 2007. That the Public Service Commission advertized 241 posts of Assistant District Officer (ADO BPS-16) in Elementary and Secondary Education vide Advertisement No. 05/2009. Interviews for the said posts were

held in 2010. Some complaints of irregularities were received and a fact finding inquiry was ordered to probe the issue and fix responsibility for lapses, if any. Result was declared and complainant was not selected due to low merit position. There-after disciplinary proceedings under Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules-2011 were initiated against the appellant, & others, which culminated in his removal from service. The appellant preferred departmental appeal, which was rejected on 18.04.2016, hence the instant service appeal.

3. Learned counsel for the appellant argued that after a lapse of about four years, in October 2014, Mr. Saqibullah, submitted two written complaints to the Chairman Khyber Pakhtunkhwa Public Service Commission on 14.10.2014 and 27.10.2014 pointing out some discrepancies in zonal allocation in the selection of ADOs. That the Chairman Public Service Commission (respondent No.3) constituted an inquiry committee to conduct a fact finding inquiry with well defined (TORs) to ascertain veracity of allegations leveled by the complainant and fixing responsibility for lapses, if any. Recommendations made by the enquiry committee were not in in-tandem with the assigned TORs and were without solid evidence against the appellant. Statement of the complainant was not recorded by the enquiry committee. Inquiry was conducted in questionnaire form in violation of superior courts judgments. Mr. Saqibullah and Mr. Masood Zaman did not lodge any complainant regarding involvement of the appellant in this case. As direct show cause notice was served on the appellant in contravention of Sub-Rule(a) of Rule-7, read with Rule-5 (i) (a)... of the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011, where it is clearly mentioned reasons will have to be recorded for dispensing with regular enquiry. It is a well settled principle that in case of imposing of major penalty upon a Civil Servant regular enquiry shall have to be conducted by serving Charge Sheet, Statement of Allegations, recording statement of witnesses and opportunity to the accused to cross examine witnesses, if any, but in this case these formalities were not fulfilled. The appellant was also not afforded opportunity of personal hearing by the Competent Authority being a basic requirement of the rules. Though show cause notice was served by the Governor Khyber Pakhtunkhwa, but the removal order was signed by the Chairman Public Service Commission having no authority under the rules. The appellant has twenty years service at his credit and on acceptance of this appeal the impugned order dated 15.01.2016 and dated 18.04.2016 may be set aside the appellant may be reinstated into service with all back benefits.

4. Learned Government Pleader in his rebuttal invited attention to para-1 of the show cause notice, wherein reasons were recorded for dispensing with regular enquiry, as such show cause notice was served in pursuance of Rule-5(1)-A of Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules-2011. Reliance was laid on 2005 SCMR 1802, wherein the Supreme Court held that inquiry in questionnaire was permissible under the rules.

ATTESTED

CHIEF CLERK
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

He further contended that all codal formalities were fulfilled and the appellant has rightly been removed from service. He requested that appeal being devoid on any merit be dismissed.

5. We have heard arguments of learned counsel for the appellant and learned Government Pleader for the respondents and have gone through the record available on file.

6. After having gone through the record, it transpired that the enquiry committee constituted to carry out fact finding enquiry went beyond the limits of assigned TORs and made recommendations not covered by their mandate. Statement of the complainant was not recorded during the course of above inquiry. The inquiry committee recommended imposition of major penalty of removal from service against the appellant being not part of its assigned mandate and that too without any solid evidence. In Para-16 (v) the inquiry committee talked about nexus between Mr. Sajjad Qureshi, Mr. Saqibullah and Mr. Masood Zaman but failed to bring any solid evidence in black and white to prove the charge. Perhaps their assessment was based on inference drawn on the basis of intuition/super natural power possessed by them. The appellant never worked in the recruitment branch dealing with aforementioned appointments. In the absence of concrete documentary evidence charge of bad reputation leveled against the appellant and others appeared to be the figment of imagination of the inquiry committee. Neither Mr. Saqibullah nor Mr. Masood Zaman, Deputy Secretary gave statements regarding involvement of the appellant in this case. As provided in Rule 5(i)(a) Read with Rule-7 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules-2011, the competent authority failed to record reasons for dispensing with regular enquiry and serving direct show cause notice on the appellant and others. In this case major penalty of removal from service was imposed on the appellant and others without holding regular enquiry by serving the Charge Sheet, Statement of Allegations, recording statements of witnesses, providing opportunity of cross examination to the appellant, personal hearing etc. As such numerous judgments of superior courts were violated. Hence, proper opportunity of defense and fair trial was not afforded to the appellant. Charges mentioned in the Show Cause Notice were altogether different from those mentioned in the removal order. It was Mr. Masood Zaman, Deputy Secretary, while recording his statement during the fact finding voluntarily informed that complainant gave him a cheque of Rs. 750000/- to be considered for appointment. Photocopy was still in his possession, but he did not encash it being not a corrupt person. It is not only a sufficient proof about innocence of Deputy Secretary, but also proves moral courage to speak the truth. Mr. Sajjad Qureshi also flatly refused about any dealing between complainant Deputy Secretary. He only took the complainant to the office of Deputy Secretary to inquire about the date of interview. complainant did not appear for interview on 09.03.2000, so it was rescheduled on 30.06.2010. That result of entire batch was declared on 03.02.2014, but cheque was given to Deputy Secretary on 01.08.2011, six months after the declaration of result. Similarly the appellant referred Mr. Saqibullah to Deputy Secretary in

ATTACHED

Signature
 Deputy Secretary
 Feshawar

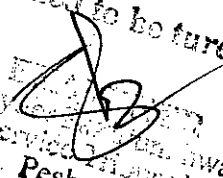
June, 2010, while cheque was given on 01.08.2011 after fourteen months. According to the statement of the Bank Manager, the said account was closed in 2003, while account holder died on 29.11.2006. Departmental appeal of the appellant was disposed of vide order dated 18.04.2016 without assigning reasons, hence, Sec-24-A of the General Clauses Act, 1897 was violated. In the fact finding enquiry, the appellant was not held responsible for the charges leveled against him.

8. In view of the fore-going, we are constrained to accept the instant appeal by setting aside the impugned order dated 15.01.2016 and 18.04.2016 and appellant is reinstated into service from the date of removal from service and direct to the respondents to conduct *de-novo* enquiry strictly in accordance with law and rules within a period of three months from the date of receipt of this judgment. Appellant may be fully associated with the inquiry proceedings. All formalities given in the rules must be observed. If the respondents failed to conduct the *de-novo* enquiry within the stipulated period, the appellant shall be deemed to have been reinstated in service from the date of removal from service. Issue of back benefits shall be subject to final outcome of the *de-novo* inquiry.

9. Our this single judgment will also dispose of in the same manner appeals No. 513/16 titled Muhammad Shahab, No. 514/2016 titled Masood Zaman and No. 524/2016, titled Amir Ilyas where common question of law and facts are involved.

ANNOUNCED
11.04.2017

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 16-4-18
Number of Words 1600
Copying Fee 10
Urgent 2
Total 12
Name of Copyist [Signature]
Date of Completion of Copy 16-4-18
Date of Delivery of Copy 16-4-18

To,

The Secretary,
Public Service Commission Peshawar.

Subject:

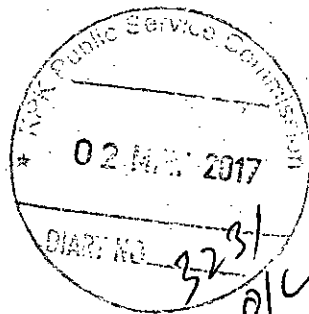
Arrival Report.

Sir. With reference to judgment of Service Tribunal copy attached. I am hereby submitting of charge assumption report tody at 11:30 am. May kindly be excepted Please

Dated. 02.05.2017


Amir Ilyas
Superintendent

Office Copy



REPORT IN THE ENQUIRY AGAINST MR. MASOOD ZAMAN, ASSISTANT DIRECTOR,
PUBLIC SERVICE COMMISSION KHYBER PAKHTUNKHWA AND OTHERS

- 1) **Brief Facts:** Brief facts leading to this enquiry are that in the year 2009, Khyber Pakhtunkhwa Public Service Commission (here-in-after referred to as Commission) advertised 241 posts of Assistant District Officers (BPS-16) on receipt of requisition from Elementary and Secondary Education Department (here-in-after referred to as Department). On conclusion of selection process, the Commission recommended the appointment of successful candidates to the Department. Some complaints were received regarding misplacement of three candidates from Zone-3 into Zone-5 and their selection. These complaints were magnified with institution of writ petitions. As a result of these complaints and litigation, the Commission carried out a fact finding enquiry which concluded that Mr. Masood Zaman, Assistant Director (BPS-17), Mr. Mohammad Sajjad Qureshi, Superintendent (BPS-17), Mr. Amir Ilyas, Assistant (BPS-16) and Mr. Mohammad Shahab, Assistant (BPS-16) all employed in Khyber Pakhtunkhwa Public Service Commission were responsible for omissions and commissions leading to the misallocation and consequent oblique reflections on the selection process in litigation and complaints. During the course of enquiry it was found that one Mr. Saqibullah, a candidate from Zone-5, had been meeting some employees and had maneuvered tampering in official documents and jacking his interview marks from 35 to 38. On the basis of the fact finding enquiry, these employees were served with Show Cause notices and awarded major penalty of dismissal and removal from service on January 15, 2016. They impugned these orders in service appeals before the Service Tribunal. On April 11, 2017, the Tribunal reinstated the respondent officials and directed a de-novo enquiry. As a result this enquiry was commissioned.
- 2) **Charges and Allegations:** Respondents are charged in the following manner:
- Common charges against respondents namely Mr. Masood Zaman, Mr. Amir Ilyas, and Mr. Mohammad Shahab, relate to the commission of gross irregularities in the process of selection of candidates for the posts of Assistant District Officers in the Department, carelessness in checking of eligibility of candidates and declaring their eligibility without approval of the Competent Authority, misallocation of Mr. Mohammad Ajmal, Mr. Srafaraz Khan and Mr. Shafiq ur Rahman to Zone-5 instead of Zone-3 to which they belonged, reflection of one candidate on two different serial numbers in the merit list and carrying bad reputation;
 - Individually Mr. Masood Zaman is also charged to have received a cheque amounting to Rs. 750,000 from Mr. Saqibullah S/O Rafiullah as illegal gratification for assisting him in selection as Assistant District Officer; and
 - Individually Mr. Mohammad Sajjad Qureshi is charged to have taken Mr. Saqibullah to Mr. Masood Zaman and to have played active role in the offer of bribe by him to Mr. Masood Zaman.
- 3) **Proceedings of Enquiry:** On receipt of the case, all respondents were summoned and provided adequate opportunity to submit their written statements and details of other evidence. Written statements of all respondents are at Annexure "A", "B", "C" and "D".

Adms
Petitioner

Record relevant to the enquiry was requisitioned and perused. All respondents were heard in person and in detail.

4) Findings of Enquiry: The enquiry in hand pertains to the record of selection process for the posts of Assistant District Officers in the Department. As such all elements of the charges have been looked through the record and details provided by respondents in their statements. Respondents were also confronted with record and their corresponding averments were heard and duly considered. Keeping in view the record, written statements and personal hearing of the respondents, the following facts stand established:

a. Misallocation of Three Candidates: Mr. Mohammad Ajmal S/O Jamal-ud-Din, Mr. Srafaraz Khan S/O Shahab-ud-Din and Mr. Shafiq ur Rahman S/O Abd-ur-Rahman belonging to Zone-3 were reflected in Zone-5 and subsequently selected on seats reserved for Zone-5. This fact is proved from record maintained in the Commission. Mr. Masood Zaman, then posted as Deputy Secretary, Mr. Amir Ilyas, and Mr. Mohammad Shahab (Assistants) constituted the staff responsible for scrutiny of applications, preparation of descriptive rolls and placement of candidates in their respective zones. They are responsible for this misallocation and wrong selection. This matter was taken to Peshawar High Court in Writ Petition # 357A of 2011 titled "Jehanzeb Khan Versus Public Service Commission and Others" including those selected due to misallocation. This case was decided on May 30, 2016 and orders of the High Court contain details regarding this misallocation and a directive issued to the Commission to examine the case of Jehanzeb (Petitioner) in view of consensus between the Commission and the petitioner. Orders in the Writ Petition are at Annexure "E". The factum of misallocation and subsequent selection of these candidates on seats reserved for Zone-5 is proved and none else but the three respondents are responsible for this irregularity and misallocation which had generated an otherwise avoidable chain reaction. Three candidates genuinely hailing from Zone-5 were deprived of their selection chances. Likewise three candidates who should not have been selected on seats reserved for Zone-3 were selected due to deletion of the above three candidates from this zone. In addition to the case instituted by Mr. Jehanzeb, the matter also echoed in another Writ Petition # 898A of 2014 titled Mr. Saqibullah Khan Versus Public Service Commission and others.:

b. Receipt and retention of Crossed Cheque for Rs.750,000 drawn in the name of Mr. Masood Zaman: In his written statement, Mr. Masood Zaman has given the following narration of this incident:

"...The charge of acceptance the cheque as a bribe is far from reality. In fact, Mr. Saqibullah had offered me a cheque of Rs. 750,000 - as back as on 01/08/2011 for selecting him for the post of ADO. Since I am not in habit of accepting any bribe from candidates throughout my 52 years unblemished record of my career, I plainly refused to accept the cheque and asked him to take it back and leave my office immediately. As some Member had called me for an official work I went to his office. Mr. Saqibullah left the cheque on my table covered in an envelope and left office before my return. I tried my best to find him and return the cheque

*Ajmal's
Petitioner*
ATTESTED

but all in vain. I still understand that he has given this cheque to me with unethical and bad designs so as to keep me under pressure and defame me because the result had already announced on 04/02/2011 and no one could recommend him after announcement of result. I understood his ploy and as such destroyed the original cheque and kept a photostat copy of the said cheque so as to prove my innocence....the cheque was issued on 01/08/2011 whereas the result....was displayed on 03/02/2011 and conveyed to the Department on 04/02/2011....I personally inquired and came to know that the cheque was not that of Saqibullah account but belong to someone Hafiz Munibullah and more astonishingly the said account is closed from 2003 and the account holder has already died on 29/06/2006...the allegations are totally incorrect, wrong and baseless, rather based on malafide. I have not accepted the cheque."

The above narration clearly establishes some facts which include:

- a) That Mr. Saqibullah had visited Masood Zaman (respondent) and offered illegal gratification and had left a cheque on his table;
- b) Respondent is an experienced officer and should have understood the consequences of a cheque crossed in his name and left in his office by a failed candidate;
- c) That the respondent never reported this incident to anyone till the constitution of the fact finding enquiry;
- d) That the respondent retained the cheque despite the fact that he had an opportunity to dispatch it back to Saqibullah on his address given in his candidacy application;
- e) That the respondent even did not feel it necessary to find out the actual details of the cheque and account despite the institution of Writ Petitions and complaints till an enquiry was ordered;
- f) The respondent could not justify his prolonged silence on this incident despite the fact that he had ample opportunities to apprise his superiors and frame Saqibullah for offering illegal gratification; and
- g) The allegation to the extent that he had received and retained a cheque from Saqibullh stands established in view of his own admission and this issue requires no further substantiation.

c) **The Role of Mr. Mohammad Sajjad Querishi:** This respondent is charged to have taken Mr. Saqibullah to Mr. Masood Zaman after which he offered illegal gratification to him. On this count the respondent has offered this version:

".... As far as I remember, during 2010, while interviews of ADCOs were in process a candidate namely Saqibullah of District Mansehra came to my office through reference of an acquaintance Mr. Majid Khan, Head Master at District Mansehra to inquire about his interview date for the post of ADCO due to non receipt of interview letter. Since I was not working in the respective

15/06/11
7/8

Adm
Dist. Mansehra

branch and not dealing with ADOs as such I as a routine matter either referred or took him to the office of concerned officer namely Masood Zaman..... I only neither referred or took the candidate to the office of Masood zaman for inquiring about interview date in 2010. Thereafter, the said candidate never came to my office nor met me nor Masood Zaman said something about him due to which I had no knowledge if some dealing etc had done between them. However I came to know about this when Masood Zaman opened this secret before the highups after lapse of about four years in 2015 and the matter became known to all in the office."

After receipt of this version, Mr. Masood Zaman and Mr. Mohammad Sajjad Querishi were heard together. The former acknowledged that Mr. Qureshi had taken Mr. Saqibullah to his office in 2010 when the interviews were in progress and he wanted rescheduling of his interview. After this the said Saqibullah visited his office on two other occasions i.e once in February, 2011 when the result was announced and then in August, 2011 when he left the cheque on his table. He plainly stated that on both these occasions, Mr. Sajjad Querishi did not accompany him. In view of these facts, there is no evidence to suggest that Mr. Sajjad Querishi has played any role in the offer of illegal gratification or facilitation in this regard:

- d) **Allegations of Bad Reputation:** While enquiring into this charge the committee could not find any proof on the bad reputation of the accused from the record of the commission. It has no evidence to substantiate this allegation;
- e) **Allegation Regarding Reflection of One Candidate at Two Different Serial Numbers:** This charge pertains to the interview of Syed Mehmood-ul-Hasan S/O Syed Sarwar Shah whose name appeared on two different serial numbers in the merit list. The record reveals that the name appeared on two different serial numbers. This is once again collective responsibility of Mr. Masood Zaman, Mr. Amir Ilyas, and Mr. Mohammad Shahab as members of the staff responsible for scrutiny of applications and preparation of papers for interview. This issue was unsuccessfully exploited by Mr. Saqibullah Khan for his adjustment in the merit list. The record reveals that the name appeared at two different serial numbers but this reflection has not resulted in any kind of loss to any other candidate. In ultimate recommendations, the anomaly was corrected when he was recommended against one position. The Commission has reported these facts to the High Court while submitting para-wise comments in writ petition instituted by Saqibullah. Parawise comments are at Annex-"F".

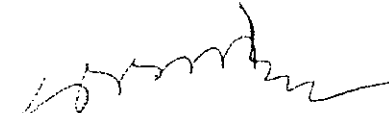
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18

5) **Conclusions of the Enquiry:** Based on the above details the following recommendations are made:

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- ii. Respondents Mr. Masood Zaman, then posted as Deputy Secretary, Mr. Amir Ilyas, and Mr. Mohammad Shahab (Assistants) are guilty of negligence leading to misallocation of three candidates and their selection against vacancies reserved for Zone-5 instead of Zone-3 to which they belonged. All the three respondents are also responsible for duplication of the name of Mr. Mehmood-ul-Hasan at two different serial numbers;

- b. Respondent Mr. Masood Zaman is found guilty of receiving and retaining a cheque amounting to Rs. 750,000 from Mr. Saqibullah a candidate for the position of Assistant District Officer;
 - c. The allegation of carrying bad reputation could not be established against any of the respondents; and
 - d. Respondent Mr. Mohammad Sajjad Querishi could not be connected with any irregularity, connivance or facilitation.
- 6) **Recommendations of the Enquiry:** The Enquiry Committee recommends following actions:
- a. Respondent Mr. Masood Zaman may be awarded the punishment of Compulsory Retirement from Service for his role in misallocation of three candidates from one zone to another zone, their sequential wrong selection, duplication of the name of one candidate at two different serial numbers and receipt of a cheque from a failed candidate;
 - b. Respondents Mr. Amir Ilyas, and Mr. Mohammad Shahab may be awarded the punishment of Compulsory Retirement from Service for their role in misallocation of three candidates from one zone to another zone, their sequential wrong selection and duplication of the name of one candidate at two different serial numbers;
 - c. All the respondents may be exonerated from the charge of carrying bad reputation as it could not be substantiated from the record of the Commission ; and
 - d. Respondents Mr. Mohammad Sajjad Querishi may be exonerated from all charges as he could not be connected with any of the allegations mentioned in (a) and (b) above.


 Manzoor- ul- Haq
 Member


 Hifz-ur-Rahman
 Member 7/2

Dated 7th August, 2017

Abdur
Rahman
ATTESTED

Annex-E

Telephone No: 091-9212962



KHYBER PAKHTUNKWA PUBLIC
SERVICE COMMISSION
2-FORT ROAD PESHAWAR CANTT.

No. KP/PSC/Admn/GF-521/

159327

Date: 09-10-2017

To

Mr. Amir Ilyas,
Address: PO Yaghi Band Miana, Tehsil & Distt: Peshawar.

Subject: **SHOW CAUSE NOTICE**

Refer to the subject noted above and enclosed find herewith show cause notice
alongwith findings of the enquiry committee.

Assistant Director (Admn)

Copy to:

PA to Secretary, Khyber Pakhtunkhwa PSC for information.

Assistant Director (Admn)



24

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

SHOW CAUSE

I, Iqbal Zafar Jhagra, Governor Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 do hereby serve you Mr. Amir Ilyas Superintendent (BPS-17), with Show Cause Notice:-

1. (i) that consequent upon the completion of inquiry conducted against you by the Inquiry Committee comprising Mr. Hifz-ur-Rehman and Mr. Manzoor-ul-Haq Members PSC for which you were given opportunity of personal hearing and recording of your written statement.
- (ii) on going through the findings and recommendations of the Inquiry Committee, the material on record and other connected papers including your defence before the inquiry committee;

I am satisfied that you have committed the following acts / omissions specified in Rule-3 of the said rules.

- (a) Gross irregularities have been committed by you in the process of selection of candidates for the posts of ADOs (Male) BPS-16 in Elementary & Secondary Education Department.
- (b) Legal procedures were not followed in the selection process of ADOs for ulterior motives.
- (c) No care was taken into account in the eligibility of the candidates. Candidates were declared eligible for interview with the approval of the dealing Assistant or Superintendent or Deputy Secretary and order of the competent authority was not obtained.
- (d) Documents / Zones of three candidates namely Mr. Muhammad Ajmal S/O Jamal Uddin, Mr. Sarfaraz Khan S/O Shahab Uddin and Mr. Shafiq-ur-Rehman S/O Abdur Rehman were not properly checked and they were recommended against the seats reserved for Zone-V, although they had clearly mentioned / attached domiciles of Zone-III with their application forms. By doing so, three candidates hailing from Zone-V were deprived from their legitimate right of selection.
- (e) Due to negligence and careless attitude, name of one candidate was reflected twice in the merit list.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Compulsory retirement under Rule 4(1)(b)(ii) of the said rules.

3. You are, therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the Inquiry Committee is enclosed.

A. Iqbal Zafar
Governor

RECEIVED

A. Iqbal Zafar
27/09
GOVERNOR KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY



Annex-F

25

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

NOTIFICATION

WHEREAS, Mr. Amir Ilyas, Superintendent PSC (BPS-17) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for committing gross irregularities in the selection process to fill vacant posts of Assistant District Officers (Male) (BPS-16) in Elementary and Secondary Education Department, Khyber Pakhtunkhwa; and

WHEREAS, in compliance of Khyber Pakhtunkhwa Service Tribunal judgment dated 11.04.2017, a *de-novo* enquiry was conducted by the Inquiry Committee, comprising Mr. Hifz-ur-Rehman and Mr. Manzoor-ul-Haq Members Khyber Pakhtunkhwa Public Service Commission; and

WHEREAS, the Inquiry Committee after having examined the charges, evidence on record and explanation of the accused officer, submitted its report recommending imposition of major penalty of compulsory retirement; and

WHEREAS, Show Cause Notice was accordingly served upon the accused officer under sub rule 4 (a) of Rule-14 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 communicating the decision regarding imposition of the tentative penalty of compulsory retirement; and

WHEREAS, the accused officer was provided an opportunity of personal hearing by the Competent Authority on 27.12.2017 for his defence. The accused officer however, failed to produce any new ground / evidence in his defence; Now

THEREFORE, the Competent Authority, in exercise of powers conferred under sub-rule 5(ii) of Rule-14 is pleased to impose the major penalty of Compulsory Retirement on him as provided under Rule 4(1)(b)(ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

GOVERNOR
KHYBER PAKHTUNKHWA

Dated: 29-12-2017

No.KP/PSC/Admn/GF-521/

01476

Copy forwarded to:-

1. Secretary to Governor Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Accountant General, Khyber Pakhtunkhwa Peshawar.
4. PS to Chief Secretary, Khyber Pakhtunkhwa.
5. PS to Secretary Establishment, Khyber Pakhtunkhwa.
6. Mr. Amir Ilyas Superintendent, Khyber Pakhtunkhwa PSC.
7. Personal file of officer concerned.
8. Office Order file.

SECRETARY

Amir Ilyas
Pakistan

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



Execution Petition No. 67 /2017

1. Syed Shahin Shah, Ex-Primary School Teacher (PST) Government Primary School, Gul Bahar No.2, Peshawar.

PETITIONER

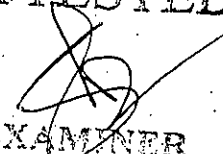
VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education Department, Peshawar.
2. Director Elementary & Secondary Education Government of Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male), Peshawar

RESPONDENTS

APPLICATION UNDER SECTION 7
(2) (D) OF THE KHYBER
PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 READ WITH
RULE 27 OF THE KHYBER
PAKHTUNKHWA PROVINCE
SERVICE TRIBUNAL RULES 1974
FOR INITIATING CONTEMPT OF
COURT PROCEEDINGS AGAINST
THE RESPONDENT NO.3 FOR
DISOBEDIENCE OF THE
ORDER/JUDGMENT DATED
04-07-2016 PASSED BY THIS
HON'BLE TRIBUNAL IN SERVICE
APPEAL NO.928/2013.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

EP 67/17

29.03.2018

Syed Shahin Shah vs Govt



Counsel for the petitioner and Addl. AG along with Hameedur Rehman, AD for the respondents present. The learned counsel for the appellant argued that this Tribunal in the judgment dated 04.07.2016 had ordered specifically for denovo proceedings in accordance with the law within a period of 60 days. That in case of failure to complete the proceedings, the petitioner was to be reinstated with back benefits and the intervening period was to be treated as leave of the kind due. That the department received the judgment of this Tribunal on 23.7.2016 and was bound to conclude the proceedings till 23.09.2016 but the department passed the order on 30.3.2017 which had got no legal force. In this regard, the learned counsel for the petitioner relied upon a judgment reported as 2007-PLC(C.S)959 and followed by this Tribunal vide order dated 09.06.20127 in Execution Petition No. 66/2017 entitled "*Mst. Shahida Perveen Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others*".

On the other hand, the learned AAG argued that the department thoroughly enquired the matter and decided the same in accordance with law and rules. That the delay in the proceedings occurred due to some factual determination which was done in accordance with law and rules. That mere delay would not nullify the order passed after the time given by this Tribunal.

This Tribunal in the judgment dated 04.07.2016 clearly fixed time of 60 days for conclusion of enquiry. The department did not honor the time and regardless of other merits, the said order would have no effect under the law as settled in the above mentioned rulings. Consequently, the impugned order dated 30.03.2017 is set aside and the judgment of this Tribunal dated 04.07.2016 would be implemented and the appellant would be treated as reinstated in accordance with the direction in the order dated 04.07.2016. To come up for implementation report on 25.4.2018 before S.B.

Sd/-Chairman

Certified to be a true copy
EM. ANWAR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Honble Chairman Service بعدالت

Tribunal, Peshawar

2018ء پنجاب

10th April

مورخہ

بنام

Amir Ilyas

مقدمہ

دعویٰ

VS
Govt of KPK through Chief Secretary
and Others.

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب ذہی وکل کاروائی متعلقہ

آن مقام Peshawar کے لیے Rizwan Ullah Adv

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یا ایل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2018 April

10

المرقوم

Attested & accepted

[Signature]

کے لئے منظور ہے۔

Peshawar

مقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 116/2018 in Service Appeal No. 524/2016


Amir Ilyas, Ex Superintendent KP PSC..... **Appellant.**

VERSUS

Govt of KP through Chief Secretary & others **Respondents.**

I N D E X

S.NO.	PARTICULARS	ANNEXURE	PAGE NO
1.	Parawise Comments of the Commission		1-4
2.	Affidavit		5


Assistant Director
Khyber Pakhtunkhwa
Public Service Commission Peshawar
✓ (Respondent)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 116/2018 in Service Appeal No. 524/2016

Amir Ilyas, Ex Superintendent KP PSC..... Appellant.

VERSUS

Govt of KP through Chief Secretary & others Respondents.

JOINT PARA-WISE COMMENTS OF (RESPONDENT NO. 02 to 04)

Respectfully Sheweth,

PRELIMINARY OBJECTIONS


1. That appellant has got no cause of action and / or locus standi to file the instant execution petition.
2. That the allegations of the appellant are baseless and misleading.
3. Appellant is not an 'aggrieved person' under the law. He has not approached this honorable Tribunal with clean hands.
4. That no discrimination / injustice have been done to the appellant.
5. That the execution petition is not based on facts and is unjustified and an illegal demand against the lawful authority of the Commission.
6. That the execution petition is bad in the eyes of Law.
7. That the execution petition is an embodiment of falsehood and misrepresentation / concealment of material facts. It is based on gross misstatement, hence bad in law and facts both.
8. That the appellant is estopped by his own act and / or character. He filed the present execution petition dishonestly, by design / scheme and after thought not only to malign the Commission but to get sympathy /dogged this honorable Tribunal.
9. That all the acts of the replying respondents are in line with the norms and principles of natural justice.
10. That the compulsory retirement from service of the appellant is based on the proper procedure of law and that too on the directions of this honorable tribunal vide order dated 11.04.2017.

ON FACTS

1. Correct to the extent that the petitioner was serving as Superintendent in the office of Khyber Pakhtunkhwa Public Service Commission Peshawar. He was awarded major penalty of removal from service by the competent authority after fulfilling the proper procedure of law. All the codal formalities were observed before imposing major penalty.
2. Incorrect. Judgment of this honorable tribunal has been implemented in letter and spirit. The worthy Governor Khyber Pakhtunkhwa was pleased to award the punishment of compulsory retirement from service upon Mr. Amir Ilyas for his role in misallocation of three candidates from one zone to another zone, their sequential wrong selection and duplication of the name of one candidate at two different serial numbers. All the officials involved were exonerated from the charge of carrying bad reputation as it could not be substantiated. Accused Mohammad Sajjad Qureshi was however exonerated from all charges as he could not be connected with any of the allegations mentioned. All the norms of justice and fairplay have been followed in the case of the appellant. The inquiry committee has acted in accordance with law and provided each and every opportunity to the appellant to prove his innocence but he failed to do so. He was also provided an opportunity of personal hearing by the competent authority. The appellant had not objected and also submitted reply to the Show Cause Notice thus availing himself with a fair chance to defend his stance properly.
3. In the light of decision of the Khyber Pakhtunkhwa Service Tribunal, the Public Service Commission after obtaining attested copy of judgment on 08.05.2017, conducted denovo inquiry. The guilt of the appellant was again proved beyond reasonable doubts by the second inquiry committee. Appellant was provided opportunity of personal hearing by the competent authority. Subsequently major penalty of compulsory retirement from service was imposed, being the most lenient punishment with full pensionary benefits.

4. Incorrect. The petitioner was reinstated however, after the conclusion of denovo inquiry, he was awarded the major penalty of compulsory retirement from service by the competent authority. The appellant is compulsorily retired from service after fulfillment of all necessary codal formalities. He is liable to be taken to task for his misdeeds and serious misconduct. Otherwise confidence of general public in the Public Service Commission will be shaken. The entire record was provided by him for personal gain. Approval of the competent authority was not obtained. Similarly approval of the Member incharge was also not obtained.
5. Incorrect. Reply of the appellant to the Show Cause Notice was unsatisfactory hence the appellant was retired from service compulsorily vide order dated 29.12.2017. The departmental Inquiry Committee comprising the senior most Members and reputable officer was constituted under the lawful authority. Judgment of this honorable Service Tribunal was received on 08.05.2017. Inquiry was completed on 07.08.2017 within time. The summary was submitted to the Governor Khyber Pakhtunkhwa for approval through Establishment Department. It is pertinent to mention here that it was a time consuming process. The Inquiry Committee submitted its impartial findings whereby the illegal act, malafide intention and misconduct of the appellant was proved and established beyond any doubt. One of the accused was exonerated by the inquiry committee.
6. Incorrect. The petitioner has rightly been awarded major penalty of compulsory retirement from service. The order and entire procedure adopted by the inquiry committee is in accordance with the Khyber Pakhtunkhwa Govt. Servants (Efficiency and Discipline) Rules, 2011 hence legal, just, impartial and based on facts and circumstances. Involvement of appellant in corrupt practices was proved beyond any shadow of doubt. The Khyber Pakhtunkhwa Public Service Commission being constitutional body cannot afford and allow such illegal practices.
7. Incorrect. Judgment of the this honorable tribunal has been implemented in letter and spirit. No violation of any Article of the Constitution has been made. Inquiry was completed within ninety days as per judgment.

It is therefore humbly prayed that on acceptance of this reply/submission made herein above the instant Execution petition being void may kindly be dismissed.

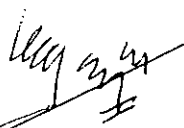


CHAIRMAN
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.02)



SECRETARY
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.03)

Shah



REGISTRAR EXAMINATION
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.04)

AFFIDAVIT

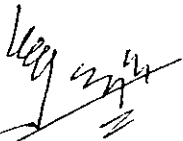
Stated on oath that the contents of this Para wise comments are true and correct & nothing has been concealed from this Honorable tribunal.

DEPONENTS

**CHAIRMAN
KHYBER-PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.02)**



**SECRETARY
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.03)**



**REGISTRAR EXAMINATION
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.04)**

13/8/2018

Counsel for the petitioner and Mr. Riaz Painsa Khel, Assistant Advocate General for official respondents present. Assistant AG requested for adjournment. Adjourned. To come up for further proceedings on 10/10/2018 before SB.


(Muhammad Amin Khan Kundi)
MEMBER

10.10.2018

Mr. Rizwanullah, Advocate for petitioner present. Mr. Kabirullah Khattak, Addl. AG for the respondents present and submitted before the court that he contacted the respondents but their whole staff is busy in conducting PMS examination. He requested for short adjournment. Granted. To come up for further proceedings on 16.10.2018 before S.B.


Chairman

16.10.2018

Counsel for the petitioner present. Mr. Muhammad Saeed, Assistant Director alongwith Mr. Kabirullah Khattak, Addl. AG for respondents present. Representative of the respondents submitted report which is placed on file. A copy of the same was also handed over to the learned counsel for the petitioner. Case to come up for further proceedings on 30.11.2018 before S.B.


(Ahmad Hassan)
Member

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed.
Mr. Justice Sajjad Ali Shah
Mr. Justice Munib Akhtar

C.Ps.No.86-87-P of 2019

[On appeal against the order dated 30.11.2018 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, in Execution Petition Nos.115 & 116 of 2018]

Govt. of KP through Chief Secretary, (in both cases)
Peshawar & others. ...Petitioner (s)

Masood Zaman.
Amir Ilyas.

Versus

(in CP No.86-P)
(in CP No.87-P)
...Respondent(s)

For the Petitioner (s)
[in both cases] : Barrister Qasim Wadood, Addl.A.G.
M/s Muhammad Saeed, D.D.
Litigation and Shahid Iqbal,
Litigation Officer.

For the Respondent(s) : N.R.

Date of Hearing : 16.09.2019

ORDER

GULZAR AHMED, J. — By these petitions, the Government of Khyber Pakhtunkhwa has challenged the order dated 30.11.2018 passed by the Khyber Pakhtunkhwa Service Tribunal (**the Tribunal**) by which the Tribunal has proceeded to reinstate the respondent in service by holding that the period allowed vide its judgment for conducting the *de novo* enquiry had expired.

2. Learned Additional Advocate General contends that the enquiry was completed and fresh penalty was also imposed upon the respondent i.e. compulsory retirement and that the Tribunal has ignored this very aspect of the matter and further the Tribunal has also not correctly appreciated the law as the time period for completion of *de novo* enquiry is merely directory in

ATTESTED

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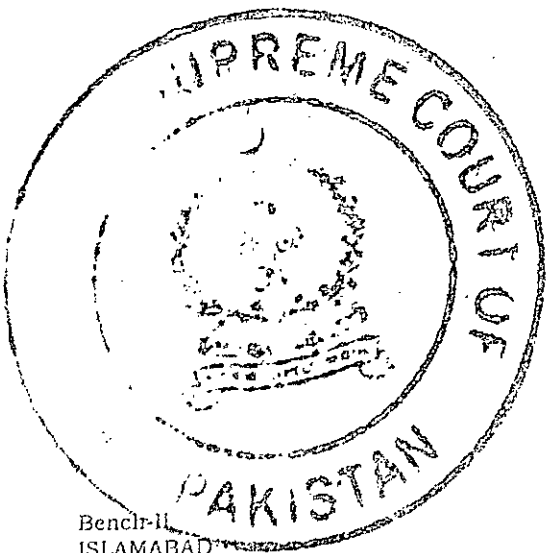
8-C.Ps.No.86-87-P of 2019

nature. Reliance in this regard may be made to a judgment passed by this Court today in the case of Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat, Peshawar & others v. Syed Shahin Shah [C.A.No.1068 of 2018].

3. Leave to appeal is granted to consider, *inter alia*, the above submissions. The appeals will be heard on the available record with permission to parties to file additional documents, if any, within a period of one month. As it is a service matter, the office is directed to fix the same immediately after three months.

CMA Nos.171-P & 172-P of 2019

4. Meanwhile, operation of the impugned order dated 30.11.2018 shall remain suspended.



Bench-II
ISLAMABAD
16.09.2019
NOT APPROVED FOR REPORTING
Hashmi*/

Handwritten signature and date: 16/9/19

Sd/-J
Sd/-J
Sd/-J

Certified to be True Copy

Handwritten signature of Court Associate
Court Associate
Supreme Court of Pakistan
Islamabad