

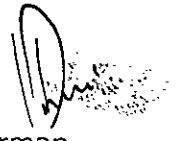
EP 123/18

31.10.2019

Counsel for the petitioner and Addl. AG for the respondents present.

Learned counsel for the petitioner requests for consigning of the proceedings as the petitioner has been reinstated into service.

Order accordingly. The petitioner, may however, apply for restoration of the proceedings in case any portion of relief granted to her remained unsatisfied.



Chairman

29.07.2019

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

Learned counsel for the petitioner once again requests for time to submit written objections. Similar requests were made on previous two occasions, therefore, the instant matter is adjourned to 05.09.2019 but as a last chance for submission of written objections.

Adjourned to 05.09.2019 before S.B.


Chairman

05.09.2019

Counsel for the petitioner present. Mr. Usman Ghani, District Attorney for respondents present. Learned counsel for the petitioner submitted objection on implementation report which is placed on file. To come up for further proceedings on 03.10.2019 before S.B.


(Ahmad Hassan)
Member

03.10.2019

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG for the respondents present.

Adjourned to 31.10.2019 before S.B for further proceeding as no representative of the respondents is in attendance today.


CHAIRMAN

02.05.2019.

Counsel for the petitioner and District Attorney alongwith Majiddullah, Assistant for the respondents present.

Representative of respondents, ^{Produced} copy of office order No. 2894-99 dated 17.09.2018. The same is placed on record and a copy handed over to learned counsel for the petitioner. The petitioner intends to submit objections, however, due to his non-availability, his learned counsel requests for time to do the needful.

Adjourned to 19.06.2019 before the S.B.


Chairman

19.06.2019

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the petitioner requested for adjournment to submit objections on the office order dated 17.09.2018. Adjourned to 29.07.2019 for further proceedings before S.B.


(Muhammad Amin Khan Kundi)
Member

02.04.2019

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Hazrat Wahab, Assistant for respondents present. Counsel for the petitioner requested for adjournment. Adjourned to 02.05.2019 for further proceedings before S.B.

(Ahmad Hassan)
Member

Majority Assistant for the respondent is present.

The petitioner requests for withdrawal of instant appeal in order to submit objection regarding the office order No. 2894-27 dated 17.09.2011 as produced and placed on record in Execution petition No. 113/2012.

Dismissed as withdrawn. File be consigned to the record room.

Chairman.

ANNOUNCED -

02.05.2019

E.P No. 123/2018

11.12.2018

Counsel for the petitioner present. Mr. Ajeebullah, ADO alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present. Representative of the department submitted implementation report. Learned counsel for the petitioner expressed objections on the same. To come up for objection petition and arguments on the same on 24.01.2019 before S.B.


Muhammad Amin Khan Kundi
Member


24.01.2019

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Implementation report has already been submitted by the respondents. Learned counsel for the petitioner has expressed objections on the same. To come up for objection petition and arguments on the implementation report on 27.02.2019 before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

27.02.2019

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Ajeebullah, ADO for respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. Case to come up for further proceedings on 02.04.2019 before S.B.


Member
(Ahmad Hassan)


07.08.2018

Father of the petitioner alongwith M/S Syed Noman Ali Bukhari, Advocate and Asad Mehmood, Advocate counsel for the petitioners present. Mr. Ajeeb Ullah, ADO alongwith Mr. Kabiruallah, Addl: AG for respondents present. The above named representative stated that the department has filed CPLA in the august Supreme Court of Pakistan, however, neither the judgment of this Tribunal has been suspended nor any restraining order has been issued by the Supreme Court so far. In view of the above stated circumstances the respondents are directed to submit conditional implementation report on 19.09.2018 before S.B.


Chairman

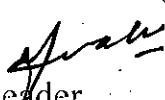
19.09.2018

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG for the respondents present and requested for adjournment. Adjourned. To come up for implementation report on 24.10.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

24.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 11.12.2018.


Reader

FORM OF ORDER SHEET

Execution Petition No. 123 /2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	19.04.2018	<p>The Execution Petition of Mst. Shazia submitted to-day by Syed Nouman Ali Bukhari Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 19/4/18</p>
2-	15/05/18.	<p>This Execution Petition be put up before S. Bench on <u>21/05/18.</u></p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p>
21.05.2018		<p>Counsel for the petitioner present. Notice be issued to the respondents for implementation report for 07.08.2018 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> (Muhammad Amin Khan Kundi) Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 123 /2018
In Service Appeal 1547/2011

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 445

Dated 19/04/2018

Mst, Shazia Daughter Of Ahmad Jan Jamal,
R/O Mohallah Bijli Gar, Darbar Road,
District Dir Bala (upper).

(PETITIONER)

VERSUS

1. The District Coordination officer, Dir Upper.
2. The Education District Officer Elementary & Secondary Education,

~~Dir Upper~~

(RESPONDENTS)

.....

**EXECUTION PETITION FOR DIRECTING
THE RESPONDENTS TO IMPLEMENT
THE JUDGMENT DATED 31.01.2018 OF
THIS HONORABLE TRIBUNAL IN
LETTER AND SPIRIT.**


.....

RESPECTFULLY SHEWETH:

1. That the appellant filed an appeal bearing No.1547/2011 against the order dated 29.07.2011, whereby the appeal for salaries and transfer at a proper school near to parent's home rejected by the appellate authority.
2. That the said appeal was finally heard by the Honorable Tribunal on 31.01.2018 and the Honorable Tribunal was kind enough to accept the appeal and issued direction to the respondent department to adjust the appellant at her post in any suitable School as per law and rules/policy in vogue. Since the appellant has not performed duties hence the reinstatement/adjustment of the appellant shall be without back benefits. (Copy of judgment is attached as Annexure-A).

3. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
4. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
5. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 31.01.2018 of this august Tribunal in letter and spirit and directed the respondent department to adjust the appellant at her post in any suitable School as per law and rules/policy in vogue. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

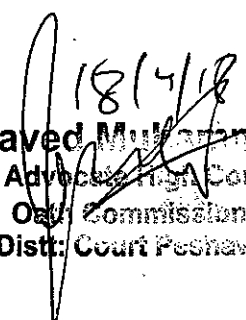

PETITIONER
Shazia

THROUGH:


SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.

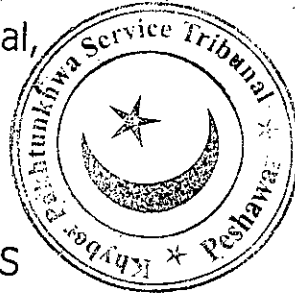

Javed Muhammad
Advocate High Court
Off. Commissioner
Distt: Court Peshawar.


Deponent

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Appeal No. 1547 /2011

Mst. Shazia Daughter of Ahmad Jan Jamal,
R/O Mohallah Bijli Gar, Darbar Road,
District Dir Bala(Upper).



APPELLANT

VERSUS

1. The District Coordination Officer, Dir Upper.
2. The E.D.O. (E&SE), Dir Upper.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974
AGAINST THE FINAL ORDER DATED 29.7.2011
WHEREBY THE APPEAL FOR SALARIES AND
TRANSFER AT A PROPER SCHOOL NEAR TO PARENT'S
HOME REJECTED BY THE APPELLATE AUTHORITY.

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar.

PRAYER:

That on acceptance of this appeal, the order dated 29.7.2011 may be set aside and the respondent may be directed to grant monthly salaries with effect from 25.11.2008 till-date and onward and with further direction to the respondents to adjust the appellant at any school as mentioned in her appeal submitted to DCO. Any other remedy, which his august Tribunal deems fit and proper that may also be awarded in favour of appellant.

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1547/2011

Date of Institution 27.08.2011
Date of Decision 31.01.2018

Mst. Shazia Daughter of Ahmad Jan Jamal, R/O Mohallah Bijli Gar,
Darbar Road, District Dir Bala (Upper)

Appellant

Versus

1. District Coordination Officer, Dir Upper.
2. The E.D.O (E&SE), Dir Upper.

Respondents

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned

31.01.2018

counsel for the appellant present. Mr. Zia Ullah, learned Deputy District Attorney for the respondents present.

1. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 29.07.2011 of respondent No.1.

2. Learned counsel for the appellant argued that the appellant was appointed as PTC teacher vide order dated 19.11.2008. Further argued that the appellant also took over charge of her post, however since the appellant was posted at far flung station from her hometown, she applied for her transfer to the

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

[Handwritten mark]

nearby station. Further argued that no heed was paid to the appellant's request therefore the appellant filed appeal before respondent No.1 for her transfer near her hometown and for the release of her salaries but to no avail. Further argued that according to government instructions the female teacher should be posted at the station near to her hometown. Learned counsel for the appellant stressed for the adjustment of the appellant at any school situated near to her home and that direction be also issued to the respondent department to release monthly salaries of the appellant.

3. As against that learned DDA while opposing the present appeal argued that though the appellant was appointed as PTC teacher on 19.11.2008 however she had not taken over the charge of her post within 15 days of her appointment as per terms and conditions laid down in para 9 of her appointment order. Further argued that since the appellant had not taken over charge of her post within the prescribed time as such her appointment was automatically cancelled and the question of adjustment/transfer of the appellant and release of salary does not arise.

4. Arguments heard. File perused.

5. It is not disputed that the appellant was appointed as PTC teacher in the year 2008 and perusal of copies of letters of respondent No.1 addressed to respondent No.2 dated 02.09.2009 and 07.04.2011 annexed with rejoinder filed by the appellant would show that the appellant had submitted her charge report on 25.11.2008, however after the submission of charge report she did

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

not perform her duty and remained absent. Perusal of the departmental appeal/application coupled with other applications of the appellant available on file would suggest that the appellant had herself impliedly admitted therein that she could not perform her duty due to security situation and for the reason that the school where the appellant was posted was situated in hard and far flung area, more so the appellant in her application dated 21.01.2010 addressed to respondent No.2 expressly mentioned that she could not continue her duty. However this fact also cannot be lost sight off that albeit appellant has not performed her duty, no disciplinary action was initiated against her under the rules. The question of not taking disciplinary action also found mention in the letter dated 02.09.2009 of respondent No.1 addressed to respondent No.2.

6. In the light of above discussion when no disciplinary action has been taken against the appellant, this Tribunal is constrained to issue direction to the respondent department to adjust the appellant at her post in any suitable school as per law and rules/policy in vogue. Since the appellant has not performed duties hence the reinstatement/adjustment of the appellant shall be without back benefits. The present appeal is decided in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

31.01.2018

sd

Muhammad Hamid

Muhammad Amin Kundi

member

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

بعدالت

K.P.O. 14 Service Tribunal
Peshawar

2 منجانب Mst. Shazia

بنام

us

Education Dept

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

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

آن مقام سینئر اور کیلئے مسید منجانب علی بی ربر

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 ارضی دعویٰ اور درخواست ہر قسم کی تصدیق و زرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل 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 با اختیارات 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 ہوگا۔ کوئی تاریخ پیشی مقام دورہ پڑ ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سند ہے۔

Syed Noman Ali Bukhari
Advocate
Attested
&
Accepted

20

ماہ

المرقوم

الع د گ و الع

کے لئے منظور ہے۔

مقام

shazia

OFFICE OF THE DISTRICT EDUCATION OFFICER FEMALE DIR UPPER

OFFICE ORDER.

In the light of the judgment passed by Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No.1547/2011 titled as : "Mst. Shazia Daughter of Ahmad Jan Jamal versus Govt. of KP and others" dated 31.01.2018, Mst. Shazia is hereby re-instated in conditionally against the vacant post of PST BPS-12 in GGPS Mian Banda (Rs. 13320/-960-42120/-) plus usual allowances as admissible under the rules on regular basis with immediate effect in the interest of public service subject to the following terms and conditions:-

Terms & Conditions:-

1. The appointment will be on probation for a period of one year in terms of Rule-15 (1) of KhyberPakhtunkhwa (Appointment, promotion and transfer (Rules, 1989)).
2. The appointee will be governed by such rules, regulation, policies, which may be prescribed by the Govt. from time to time.
3. Her services will be considered on regular basis.
4. The appointee will provide Health & Age Certificate from the Medical Superintendent concerned.
5. Appointment is subject to the condition that her certificate / document must be verified from the concerned authorities and if found bogus, her appointment shall be cancelled and will be reported to the law enforcing agencies for further legal action.
6. Charge report should be submitted to all concerned.
7. If the appointee fail to take over charge within in 15 days her appointment will be deemed automatically cancelled.
8. No pay is allowed before verification of professional and academic documents from the concerned institutions.
9. Appointee will strictly abide by the terms and conditions laid down therein.
10. She shall not claim any back benefits.
11. Her appointment is subject to the conditions of final judgment of the Supreme Court of Pakistan where CPLA has already been lodged.
12. No TA/DA is allowed.

DISTRICT EDUCATION OFFICER
FEMALE DIR UPPER.

Endst: No. ²⁸⁹⁴⁻⁹⁰¹ /F.No.12/Posting, Transfer/DEO(F)/Estb:L Branch Dated Dir Upper the 17/09/2018.

Copy forwarded to the :-

1. Registrar Peshawar High Court Mingora Swat.
2. Director E&SE Khyber Pakhtunkhwa Peshawar.
3. District Accounts Officer Dir Upper.
4. SDEO Female Dir .
5. Official Concerned.
6. AP EMIS Local Office.

DISTRICT EDUCATION OFFICER
FEMALE DIR UPPER.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Execution Petition No. 123 /2018

Shazia **VERSUS** Education Department

OBJECTION ON IMPLEMENTATION REPORT

RESPECTFULLY SHEWETH:-

1. That the petitioner was appointed as PTC on 19/11/2008, however her salaries were not released, therefore she filed service appeal No. 1547/2011 in this august Service Tribunal.
2. That the said appeal was decided on 31/01/2008 in which the Honourable Tribunal said that as no disciplinary action has been taken by the respondent department, therefore directed the respondent department to adjust the petitioner at her post.
3. That in the compliance of direction of this august Tribunal, the petitioner was reinstated on her post on 17/09/2018 with immediate effect instead of her adjustment with effect from of 31/01/2008.
4. That the petitioner has not been terminated / removed or dismissed from service by the respondent department, then how it is possible to reinstate her.

5. That this Honourable Tribunal also directed the respondent department to adjust the petitioner on her post, but instead of her adjustment, she was reinstated with immediate effect, which is also violation of the direction of this august Tribunal.

It is therefore, most humbly prayed that on the basis of above submission, the respondent department may kindly be directed to adjust the petitioner w.e. from 31/01/2008 by revising the order dated 17/09/2018.

Any other remedy which this August Service Tribunal deems fit may also be awarded in the favour of petitioner.

Dated: 05/09/2019

Petitioner

Through



TAIMAR ALI KHAN

Advocate, High Court,

Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Execution Petition No. 123 /2018

Shazia

VERSUS

Education Department

OBJECTION ON IMPLEMENTATION REPORT

RESPECTFULLY SHEWETH:-

1. That the petitioner was appointed as PTC on 19/11/2008, however her salaries were not released, therefore she filed service appeal No. 1547/2011 in this august Service Tribunal.
2. That the said appeal was decided on 31/01/2008 in which the Honourable Tribunal said that as no disciplinary action has been taken by the respondent department, therefore directed the respondent department to adjust the petitioner at her post.
3. That in the compliance of direction of this august Tribunal, the petitioner was reinstated on her post on 17/09/2018 with immediate effect instead of her adjustment with effect from of 31/01/2008.
4. That the petitioner has not been terminated / removed or dismissed from service by the respondent department, then how it is possible to reinstate her.

5. That this Honourable Tribunal also directed the respondent department to adjust the petitioner on her post, but instead of her adjustment, she was reinstated with immediate effect, which is also violation of the direction of this august Tribunal.

It is therefore, most humbly prayed that on the basis of above submission, the respondent department may kindly be directed to adjust the petitioner w.e. from 31/01/2008 by revising the order dated 17/09/2018.

Any other remedy which this August Service Tribunal deems fit may also be awarded in the favour of petitioner.

Dated: 05/09/2019

Petitioner

Through



TAIMAR ALI KHAN

Advocate, High Court,

Peshawar