

Alia Ghafoor Versus Government of Khyber Pakhtunkhwa through
Secretary Education Peshawar and 5 Others

27.12.2018

Brother of the petitioner alongwith counsel present. Mr. Kabir Ullah Khattak learned Additional Advocate General present.

Arguments heard. Files perused.

Perusal of relevant files would show that the petitioner was removed from service due to her illegal and irregular appointment. The petitioner approached this Tribunal and resultantly vide judgment dated 13.12.2017 passed in the service appeal bearing No.252/2016 filed by the petitioner, this Tribunal directed the respondent department to hold regular inquiry against the petitioner within a period of 90 days from the date of receipt of judgment failing which the petitioner shall be reinstated in service.

The respondent department submitted order dated 18.09.2018 whereby the petitioner has been reinstated in service for the purpose of de-novo inquiry.

Plea of the learned counsel for the petitioner is that since the period of 90 days as mentioned in the judgment has elapsed therefore the department has no authority to conduct de-novo inquiry.

In view of peculiar circumstances of the case it is yet to be seen that whether the petitioner was eligible/qualified to hold the post of PST and as to whether her appointment was made in the prescribed manner. In case, upon de-novo inquiry, it is found that the petitioner was not qualified to be appointed as PST, then she shall have no right to take any shelter behind the judgment of this Tribunal as the petitioner cannot be foisted upon public when she is not fit to discharge public duties properly.

In view of above, when the petitioner has been reinstated though for the purpose of de-novo inquiry, the present execution petition be consigned to the record room. In case of grievance of the appellant against the outcome of de-novo inquiry, she may approach proper forum in accordance with law and rules on the subject.


Member

ANNOUNCED.

27.12.2018

18.12.2018

Brother of the petitioner alongwith learned counsel for the petitioner present. Mr. Kabir Ullah Khattak learned AAG present. Learned AAG seeks adjournment. Adjourn. To come up for further proceedings on 27.12.2018 before S.B


Member

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E.P No. 101/2018

28.08.2018

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG present. No one is present on behalf of respondents. Implementation report was not submitted. Salary of DEO (F) Kohistan is attached forthwith. She is further directed to submit implementation report on 24.09.2018 before S.B.


(Ahmad Hassan)
Member

24.09.2018


Mr. Adnan Aman, Advocate, counsel for the petitioner present. Mr. Abdur Rahman, Dy. DEO Kohistan alongwith Mr. Kabirullah Khattak, Addl. AG for the respondents present.

The representative of the respondents submitted reinstatement order of the petitioner for the purpose of denovo enquiry which has been objected by the learned counsel for the petitioner for the reason that it has not been passed within time fixed by the Tribunal. Learned AAG stated that there were some reasons which delayed reinstatement order of the petitioner for the purpose of enquiry. To come up for arguments on this question on 30.10.2018 before S.B.


Chairman

30.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned.

 To come up on ~~17~~12.2018.


Reader

10.07.2018

Learned counsel for the petitioner present. Mr. Sardar Shoukat Hayat, Additional AG for the respondents also present. Representative of the department is not in attendance therefore, notice be issued to the respondents with the direction to direct the representative to attend the court. Adjourned. To come up for implementation report on 30.07.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member




30.07.2018

Mr. Riaz, Brother of the petitioner Mst. Ruqia Begum alongwith Mr. Adnan Aman, Advocate counsel for the petitioner present. Mr. Hameed Ur Rehman, AD (Lit) on behalf of respondents No. 2 and 3 whereas Mr. Kabirullah Khattak, Addl: AG for the remaining respondents present. The above named representative stated that the matter falls in the domain of respondent no.4 i.e DEO(F) Kohistan and he contacted her on phone today. She discussed that the case of the petitioner is under process. As such respondent no.4 is directed to submit implementation report, positively, on 28.08.2018 before S.B.


Chairman

FORM OF ORDER SHEET

Execution Petition No. 101/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	30.03.2018	<p>The Execution Petition of Mst. Alia Ghafoor submitted to-day by Mr. Adnan Aman 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-	09/04/18.	<p>This Execution Petition be put up before S. Bench on- <u>23/04/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
16.04.2018		<p>Counsel for the petitioner present. Notices be issued to the respondents. To come up for implementation report on 10.07.2018 before the S.B.</p> <p style="text-align: right;"> Chairman</p>

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

E.P. No. 101/2018

Service Appeal No.252/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 368

Dated 30/03/2018

Alia Ghafoor D/o Ghafoor Gul,
R/o Bazargi Mohallah, Gujjaran,
Tehsil Lahor District Swabi.....

Applicant/Appellant

V E R S U S

1. Govt. of Khyber Pakhtunkhwa through Secretary Education, Peshawar
2. The Director Education, Elementary & Secondary Education, Civil Secretariat, Peshawar
3. Deputy Director (Establishment) Elementary & Secondary Education, Civil Secretariat, Peshawar, Peshawar
4. District Education Officer (Female), Kohistan
5. Executive District Officer Elementary & Secondary Education, Kohistan
6. District Coordination Officer District Swabi

.....**Respondents**

**PETITION FOR IMPLEMENTATION OF THE
JUDGMENT DATED 13.12.2017 PASSED BY
THIS HON'BLE TRIBUNAL IN SERVICE APPEAL
NO.252/2016**

Respectfully Sheweth:

1. That the titled Service Appeal was pending adjudication before this Hon'ble Tribunal which came up for final hearing before this Hon'ble Tribunal on

13.12.2017 and this Hon'ble Tribunal was pleased to allow the same vide judgment/order dated 13.12.2017. (Copy of the judgment/order is annexed).

2. That this Hon'ble Tribunal was please to allow the appeal of the applicant in following terms

"Consequently, the present appeals are accepted and the department is directed to hold regular enquiry against the appellants within a period of 90 days from the date of receipt of this judgment, failing which the appellants shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room"

3. That the aforesaid judgment was passed in presence of the representatives of the respondents department but even then the applicant/appellant after getting an attested copy of the order/ judgment submitted the same to respondents department for its compliance.
4. That the respondents are intentionally and willfully not obeying the order/judgment of this Hon'ble Tribunal which necessitated the filling of instant petition.
5. That the aforesaid conduct of the respondents has lowered the authority of this Hon'ble Tribunal in the eye of public in General and amongst the employees of Education Department in particular.

It is, therefore prayed that by accepting this petition, this Hon'ble Court may please compel the respondents to implement its judgments/order dated 13.12.2017 passed in service Appeal No.252/2016 and the applicant be reinstated in service as per the judgment of this Hon'ble Tribunal. OR

Any other relief deems fit and appropriate in the circumstances of the case may also be passed.

Alir
Applicant

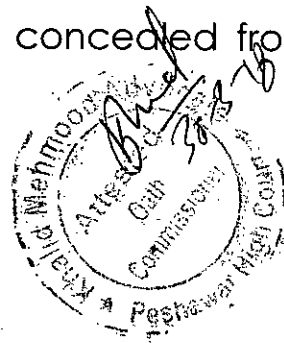
Through

Adnan Aman
Adnan Aman
Advocate,
High Court Peshawar

Dated 30.03.2018

AFFIDAVIT

It is stated on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Alir
DEPONENT

(4)



BEFORE THE COURT OF WORTHY CHAIRMAN SERVICES
TRIBUNAL, PESHAWAR

Service Appeal No. 252/2016

Alia Ghafoor D/o Ghafoor Gul,
R/o Bazargi Mohallah Gujjarn,
Tehsil Lahore District Swabi.....Appellant

N.W.F. Province
Service Tribunal

Diary No 208

Dated 14-03-2016

V E R S U S

1. Government of Khyber Pakhtunkhwa through
Secretary Education, Peshawar
2. The Director Education, Elementary & Secondary
Education Civil Secretariat, Peshawar
3. Deputy Director (Establishment)
Elementary & Secondary Education, Civil
Secretariat Khyber Pakhtunkhwa, Peshawar
4. District Education Officer (Female) Kohistan
5. Execution District Officer Elementary & Secondary
Education Kohistan
6. District Coordination officer.....Respondents

District Swabi

~~Filed to-day~~

Alia Ghafoor
Registrar

14/3/16

re-submitted to-day
and filed.

Alia Ghafoor
Registrar

17/3/16

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 252/2016

Date of Institution ... 14.03.2016

Date of Decision ... 13.12.2017



Mst. Alia Ghafoor D/O Ghafoor Gul, R/O Bazargi Mohallah Gujjarn, Tehsil Lahore
District Swabi. .. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Education, Peshawar.
and 5 others. ... (Respondents)

MR. HIDAYATULLAH KHATTAK, ... For appellant
Advocate

MR. MUHAMMAD JAN, ... For respondents.
Deputy District Attorney,

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD AMIN KHAN KUNDI, ... MEMBER

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- This judgment shall also
dispose of connected service appeal No. 253/2016 of Mst. Ruqia Begum W/O Niaz
Mohallah, as in both the appeals common questions of law and facts are involved.

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

FACTS

3. The appellants were removed from service on 22.10.2015. The order was
communicated to the appellants on 24.11.2015, against which the appellants filed

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departmental appeals on 01.12.2015, which were not responded to and thereafter, the appellants filed the present service appeals on 14.03.2016.

ARGUMENTS.


4. The learned counsel for the appellants argued that the appellants were appointed as PTC Teachers in 2009. That they have been performing their duties and suddenly they received the impugned order. That on the same day a transfer order was also received by the appellants. That in the impugned original order there is mention of an enquiry but the appellants are unaware about any enquiry. That no notice was served upon the appellants. That in view of the judgment reported as 2008-SCMR-1369, no civil servant can be condemned without service of notice and affording opportunity of hearing.

5. On the other hand, the learned Deputy District Attorney argued that an enquiry was conducted. That the enquiry report is available on the file. That in the said enquiry report, the enquiry officer recommended the removal of the appellants alongwith 6 other PTC Teachers. That the enquiry officer reported that the appointments were made in violation of law and rules. That the enquiry officer had also recommended disciplinary action against the appointing authority. The learned Deputy District Attorney relied upon a judgment reported as 2005-SCMR-1040 in order to support his argument that illegal appointments can be withdrawn after conducting enquiry.

CONCLUSION.

6. The defence of the department is that the appointments were not made in accordance with the prescribed procedure. That the appointment orders were illegal, factitious and fraudulent. The judgment relied upon by the learned Deputy District

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Attorney deals with an enquiry under the disciplinary rules wherein proper opportunity of hearing was afforded to the civil servant and thereafter the order was passed. But in the present case no disciplinary proceedings ^{ere} initiated against the appellants. No notice, at all, was served upon the appellants. This judgment is therefore, irrelevant to the present appeals. Under the settled jurisprudential principle no civil servant can be condemned unheard. No order can be passed at the back of a civil servant and the impugned order has got no legal sanctity.

7. Consequently, the present appeals are accepted and the department is directed to hold regular enquiry against the appellants within a period of 90 days from the date of receipt of this judgment, failing which the appellants shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.

Announced
13.12.2017 SD/- Niaz Muhammad Khan,
Chairman

Certified to be true copy
F.A. KHAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

SD/- M. Amin Khan Kundli,
Member

Date of Presentation of Application 14-12-2017
Number of Words 1600
Copying Fee 10.00
Urgent -
Total 10.00
Name of Copyist [Signature]
Date of Completion of 15-12-2017
Date of Delivery of Copy 15-12-2017

WAKALATNAMA

(Power Of Attorney)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Alia Ghafoor (Petitioner)
(Plaintiff)
..... (Applicant)
(Appellant)
(Complainant)
(Decree Holder)

VERSUS

Govt of K.P & others (Respondent)
..... (Defendant)
(Accused)
(Judgment Debtor)

I/ We, _____ The undersigned applicant in the above noted Implementation Petition do hereby appoint **Mr. Nasir Naeem Umar Khaili & Adnan Aman**, Advocates to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my /our counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/Counsel at my/our matter.

Attested & Accepted By.

Alia
Signature of Executants

Nasir Naeem Umar Khaili

Alia Ghafoor
(applicant)

Adnan Aman

Advocates High Court, Peshawar
B-15, Haroon Mansion, Khyber Bazar,
Peshawar Office: 091-2551553

قیمت
50 روپے

00175



[Handwritten Signature]

ایڈوکیٹ:

بار کونسل ایسوسی ایشن نمبر: BC-09-2525

رابطہ نمبر: 0313-9719377

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سردس سٹیجیو نل جنمہر ختمو شوایلک در

مخاتب: <i>[Handwritten Name]</i>	دعوی: <i>[Handwritten Name]</i>
<i>[Handwritten Text]</i>	علت نمبر:
<i>[Handwritten Text]</i>	مورخہ:
<i>[Handwritten Text]</i>	جرم:
<i>[Handwritten Text]</i>	تھانہ:

بابت تحریر آئکہ

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

آن مقام *[Handwritten Name]* کیلئے *[Handwritten Name]* محترمہ *[Handwritten Name]* کو ذریعہ ایسوسی ایشن

کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زیریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا ایپل کی برآمدگی اور منسوخی، نیز دائر کرنے ایپل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 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 یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 18 | 12 | 17

المقام _____ واہ شد _____

[Handwritten Signature]

[Handwritten Note]

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

[Handwritten Signature]



OFFICE OF THE DISTRICT EDUCATION OFFICER (F) KOSHISTAN


Office Order

Whereas Mrs. Alia Gafoor, GGPS Banjar Yanjool, District Koshistan submitted her service appeal No. 252/2016 before Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar. The Honorable service tribunal Peshawar accepted her appeal, the appellant was re – instated into service and the case was returned to department for denovo proceeding/inquiry in according to rules as per judgment announced on 13-12-2017

In view of the above facts, Mrs. Alia Gafoor, GGPS Banjar Yanjool, District Koshistan is hereby re-instated into service, on her own pay and grade, with immediate effect for the purpose of denovo inquiry as per directions of Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar.

Note:

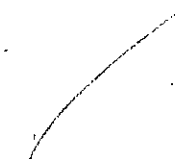
- 1- No TADA is allowed.
- 2- Charge Report should be submitted to all concerned.


District Education Officer
(Female) Koshistan

Endstt : No . 1708-16 DEO (F) KH Dated Dassu the 18/09/2018

Copy of the above is forwarded to the

- 1- Director Elementary & secondary Education Khyber Pakhtunkhwa Peshawar.
- 2- Registrar Khyber Pakhtunkhwa Peshawar.
- 3- District Education of Officer Female Swabi.
- 4- Advocate General Khyber Pakhtunkhwa Peshawar.
- 5- Deputy District Education Officer (F) Koshistan.
- 6- District Account Officer , Swabi
- 7- ADEO (litigation) local office.
- 8- PA to district Education Officer Female Koshistan.
- 9- Official concerned.


District Education Officer
(Female) Koshistan