

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

EXECUTION PETITION NO. 104 /2023

Appeal No. 09 / 2022

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KHYAL MUHAMMAD VS EDUCATION DEPTT:

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PETITIONER

THROUGH:

**AFRASIAB KHAN WAZIR
ADVOCATE HIGH COURT
PESHAWAR**

Afrasiab

BEFORE THE KHYBER PAKHUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution petition No. 109 /2023

Appel No- 09 / 2022

Mr. Khyal Muhammad S/O Muzamil R/O Village Maidan, Tehsil Laddah, District South Waziristan, Deputy District Education Officer (Male), District South Waziristan.

.....PETITIONER.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3897

Dated 27/2/2023

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary, Civil Secretariat, Peshawar.
- 2- Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
- 3- District Education Officer Male, South Waziristan.

.....RESPONDENTS.

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 06.07.2022 IN THE ABOVE TITLED APPEAL IN LETTER AND SPIRIT

R/SHEWETH:

- 1- That the above mentioned appeal has been decided by this August Service Tribunal vides judgment dated 06.07.2022 in favor of the Petitioner.
- 2- That the petitioner filed the appeal against the impugned order 07.12.2021 and thereby it is allowed in favor of the petitioner vide judgment dated 06.07.2022 with direction reproduced as under;
"with the above observation in view, the instant appeal is accepted as prayed for. The impugned order dated 07.12.2021 is set aside and the appellant is allowed to complete his normal tenure as Deputy District Education officer (M) South Waziristan. Copy of Judgment dated 06.07.2022 is attached as annexure.....A.
- 3- That the petitioner repeatedly knocked the door of the respondents for implementation of the aforementioned judgment but they are not paying heed to it nor implementing the same.

It is therefore, most humbly prayed that on acceptance of this execution petition the respondents may please be directed to execute the judgment dated 07.12.2022 in letter and spirit.

Dated: 20.02.2023

PETITIONER

Khyal Muhammad

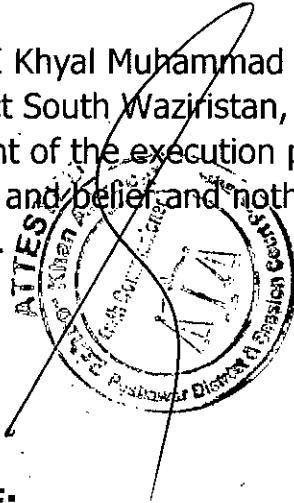
THROUGH:

AFRASIAB KHAN WAZIR

ADVOCATE HIGH COURT

AFFIDAVIT:

I Khyal Muhammad , S/O Muzamil R/O Village Maidan, Tehsil Laddah, District South Waziristan, do hereby solemnly affirm and declare that the content of the execution petition is true and correct to the best of my knowledge and belief and nothing has been concealed from this August Tribunal so far.



[Signature]
DEPONENT.

CERTIFICATE:

That no other execution petition has been filed between the parties before this August tribunal.

[Signature]
DEPONENT.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 09/2022

BEFORE: SALAH-UD-DIN --- MEMBER(I)
MIAN MUHAMMAD --- MEMBER(E)

Khayal Muhammad S/o Muzamil R/o Village Maidan, Tehsil Laddah, District South Waziristan, presently posted as Deputy District Education Officer (Male), District South Waziristan..... (**Appellant**)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.
2. Secretary Elementary & Secondary Education (E&SE), Civil Secretariat, Peshawar.
3. District Education Officer (Male), South Waziristan.
4. Mr. Mehrab Gul, Headmaster, Govt. High School Azam, Warsak South Waziristan. (**Respondents**)

Present:

MR. AFRASIAB KHAN WAZIR,
Advocate. --- For Appellant.


MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General --- For official respondents.

MR. TAIMUR ALI KHAN,
Advocate. --- For private respondent No.4

Date of Institution ... 30.12.2021
Date of hearing ... 06.07.2022
Date of Decision ... 06.07.2022

JUDGEMENT

MIAN MUHAMMAD, MEMBER(E): The service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that "the impugned notification No. SO (SM) E&SED/7-1/2021/PT/GMC/DDEO dated 07.12.2021 may kindly be set aside and notification No. SO (SM) E&SED/7-1/2021/PT/GMC dated 28.10.2021 may kindly be restored."

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

02. Brief facts of the case are that the appellant was posted as Head Master (BS-17) GHS Muhammad Nawaz Kot, South Waziristan when transferred and posted as Deputy District Education Officer (Male) South Waziristan in his own pay and scale vide Notification dated 28.10.2021. However, he was subsequently transferred and reposted as Head Master (BS-17) GHS Muhammad Nawaz Kot South Waziristan and private respondent No. 4 was now posted in his place as Deputy District Education Officer (Male) South Waziristan vide Notification dated 07.12.2021. Feeling aggrieved the appellant submitted departmental appeal on 20.12.2021 which was not decided and thereafter the Service Tribunal was approached on 30.12.2021 pre-maturely.

03. On admission of the appeal, the respondents were put on notice to submit reply/Parawise comments. They submitted reply/Parawise comments denying and rebutting assertions made in the service appeal. We have heard arguments of the learned counsel for the appellant and private respondent No. 4 as well as learned Additional Advocate General for official respondents and have gone through the record with their assistance.

04. Learned counsel for the appellant contended that the appellant had been prematurely transferred from the post of Deputy District Education Officer (Male) South Waziristan where he could only serve for about 40 days. This was a blatant violation of Clause I & IV of the Posting Transfer Policy of the Provincial government. The transfer had neither been made in the public interest nor after completion of normal tenure of posting but issued in an arbitrary manner with total disregard to norms of justice and service laws. The same is, therefore, liable to be set aside being not tenable under the canon of law and justice. To strengthen his arguments on the

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 Khyber Pakhtunkhwa
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point of completion of normal tenure on a post and exercise of power by the competent authority in a just and judicious manner, he relied on PLD 2013 Supreme Court 195.

05. Learned counsel for private respondent No. 4 contended that the impugned order had been issued in public interest and could not be attributed to completion of tenure. If completion of tenure was a question then private respondent No. 4 had also not completed his normal tenure against his previous post i.e. GHS Azam Warsak South Waziristan. The impugned order dated 07.12.2021 had been issued keeping in view the exigency of services from administrative point of view and which was very well in accordance with the spirit of Clause I of the Posting Transfer Policy of the Provincial government. To strengthen his arguments, he relied on 1996 SCMR 1649 and 2021 SCMR 1064.

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06. Learned Assistant Advocate General argued that a civil servant is bound to serve anywhere in the province under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. A civil servant is not entitled to be posted on his choice post and station. The impugned Notification dated 07.12.2021 is therefore legal, passed by the competent authority empowered with such authority as well as jurisdiction and with legal sphere and mandate. In support of his arguments, he relied on this Service Tribunal judgement delivered in service appeal No. 7259/2021 dated 26.01.2022 in the case titled "Noor Hassan, (TC BS-19) District Education Officer Mohmand versus the Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar and others". The impugned order might, therefore, be maintained in favour of the respondent department and the service appeal be graciously dismissed, he concluded.

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07. Perusal of the record revealed that the appellant had been posted as Deputy District Education Officer (M) South Waziristan, in his own pay scale (OPS) vide earlier notification dated 28.10.2021 and he could only serve for about 40 days when re-transferred and posted as Head Master GHS Muhammad Nawaz Kot South Waziristan against the vacant post vide impugned notification dated 07.12.2021. Now, private respondent No. 4 who was earlier posted at GHS Azam Warsak South Waziristan is posted as substitute of the appellant as Deputy District Education Officer (M) South Waziristan vide the impugned notification.

08. It is also a matter of the record that both the appellant as well as private respondent No. 4 are in BS-17 and belonging to the teaching cadre. They were required to be posted on specified posts reserved for teaching cadre as prescribed in their service rules and laid down under the august Peshawar High Court judgement dated 18.11.2009 delivered in Writ Petition no. 2937/2009. When attention of the learned AAG was invited to this fact, he contended that due to shortage of officers in management cadre, the respondents were compelled to resort to such stopgap arrangements in public interest. It is, however, observed that the department could not make up the deficiency of officers in management cadre despite lapse of 13 long years since the judgement of honourable Peshawar High Court. The impugned notification dated 07.12.2021 did mention the word "in the public interest" but did not substantiate to establish as what necessitated respondent No. 2 to re-transfer the appellant after just 40 days? The posting/transfer policy of the provincial government determines and allows 02 years normal tenure to be completed by an officer on a particular post. In the instant case, there was neither complaint nor anything adverse against the appellant and

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EXAMINER
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the respondents were obligated to have observed and honoured sanctity of their own posting/transfer policy by allowing him to complete his normal tenure of 02 years. The respondents are under obligation to address the issue of deficiency of management cadre officers immediately and stop the flood gate of posting of teaching cadre officers against the posts reserved for management cadre under the garb of stopgap management.

09. With the above observations in view, the instant appeal is accepted as prayed for. The impugned notification dated 07.12.2021 is set aside and the appellant is allowed to complete his normal tenure as Deputy District Education Officer (M) South Waziristan.

10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 06th of July, 2022.



Certified to be true copy
EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

[Signature]
 (SALAH-UD-DIN)
 MEMBER (J)

[Signature]
 (MIAN MUHAMMAD)
 MEMBER (E)

Date of Presentation of Application 21-2-23
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VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

_____ OF 2023

SCANNED
KPST
Peshawar

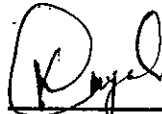
_____ (APPELLANT)
KHYAL MUHAMMAD (PLAINTIFF)
_____ (PETITIONER)

VERSUS


_____ (RESPONDENT)
_____ EDUCATION DEPTT: _____ (DEFENDANT)

I/We _____ KHYAL MUHAMMAD
Do hereby appoint and constitute, **Afrasiab Khan Wazir, Advocate High Court, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2023



CLIENT(S)



ACCEPTED

**AFRASIAB KHAN WAZIR
ADVOCATE HIGH COURT
PESHAWAR**

Office:
Room No.6 Ground Floor, Afridi Tower,
Government College Chowk, Peshawar.
Cell No.0312-9888752