


17.03.2021

petitioner in person present. Mr. Riaz Khan Paindakheil learned Asst. AG alongwith Sohail Ahmed Zeb litigation Officer for respondents present.

Representative of respondent has provided copy of order Endst: No. 7425-29/AE-II/PF Maqsood Ahmed PST dated 14.12.2020 wherein the absent period of Mr. Maqsood Ahmed, PST GPS Muslim Town Abbottabad is converted into leave with pay. In view of the development petitioner does not wish to further pursue the implementation of judgment proceedings in hand. File be consigned to record room.

Announced
17.03.2021


(Atiq ur Rehman Wazir)
Member (E)
Camp Court, A/Abad

21.10.2020

Petitioner in person present.


Usman Ghani learned District Attorney alongwith Sohail Ahmad Zeb Litigation Assistant for respondents present and produced letter dated 24th July, 2020 vide which the department condoned the period of absence by allowing him leave without pay and regularized the absence period. He further informed that the matter is in progress and proper implementation report would be produced on 16.12.2020 before S.B at Camp Court, Abbottabad.

As per record, District Education Officer vide letter dated 02.12.2019 requested for guidance addressed to the Director E&SE KP Peshawar. All the respondents are directed expedite the matter and to submit proper implementation report on the next date fixed.



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

*Due to COVID-19 case is
adjournd to 17-03-2021*



Due to covid ,19 case to come up for the same on / /
at camp court abbottabad.

Reader

Due to summer vacation case to come up for the same on
/ / at camp court abbottabad.

Reader

21.11.2019

Counsel for the petitioner present. Mr. Usman Ghani, District Attorney alongwith Mr. Sohail Ahmad Zeb, Assistant for respondents present.

Learned counsel for the petitioner raised objection on order dated 27.05.2019, through which judgment of this Tribunal dated 24.08.2017 was implemented. He also invited attention to Rule-12 Revised Leave Rules 1981, where-under no provision for recovery was available. Prima-facie recovery of Rs. 368674/- from the petitioner on account of fraudulent drawl of pay appears to be against the spirit of judgment of this Tribunal and relevant rules. Despite provision of adequate opportunity proper assistance was not provided to this Tribunal by the respondents. To come up for further proceedings on 21.01.2020 before SB at camp court Abbottabad.



Member
Camp Court Abbottabad

21.01.2020

Petitioner in person present. Mr. Muhammad Jan, DDA alongwith Mr. Sohail Ahmad Zeb, Assistant for respondents present. Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings on 18.02.2020 before S.B at camp court Abbottabad.



Member
Camp Court A/Abad

19.08.2019

Petitioner with counsel present. Mr. Muhammad Bilal learned Deputy District Attorney alongwith Sohail Ahmad Zeb Litigation Officer present.

Learned counsel for the petitioner submitted written objection in relation to the office order dated 27.05.2017. Adjourn. to come up for reply of the respondent department on said written objection and arguments on 22.10.2019 before S.B at Camp Court, Abbottabad.



Member
Camp Court, A/Abad

22.10.2019

Petitioner absent. Counsel for the petitioner absent. Mr. Usman Ghani, District Attorney present. Syed Hajaj Shah, ADO for the respondents present. Representative of the respondents has submitted reply to the written objections. Placed on record. To come up for further proceedings before S.B on 19.11.2019 at Camp Court, Abbottabad. Notice be issued to petitioner for the date fixed.



Member
Camp court, A/Abad

19.11.2019

Counsel for the petitioner present. Mr. Usman Ghani, District Attorney alongwith Mr. Sohail Ahmad Zeb, Assistant for respondents present. Learned District Attorney seeks adjournment. Adjourn. To come up for arguments on 21.11.2019 before S.B at Camp Court, Abbottabad.




Member
Camp Court Abbottabad

18.06.2019


Petitioner in person and Mr. Muhammad Bilal, DDA alongwith Mr. Muhammad Shamim, SOF and Mr. Sohail Ahmad Zeb, Assistant Litigation for respondents present.

In pursuance to the directions contained in order sheet dated 15.04.2019, representative of respondent no.3 produced implementation report and is placed on record. A copy of the same was also handed over to the petitioner. Attention is also invited to order dated 27.05.2019 through which reportedly grievances of the petitioner have been redressed. However, he expressed reservations on the report referred to above and was directed to submit written objection. Case to come up for written objections of the petitioner/ further proceedings on 10.07.2019 before S.B at camp court Abbottabad.


(Ahmad Hassan)
Member
Camp Court A/Abad

10.07.2019

Petitioner alongwith his counsel and Mr. Zubair Ali, ADO for the respondents present. Learned counsel for the petitioner requested for adjournment for submission of objection petition. He also requested that the respondents may be restrained for taking adverse action in the present matter against the petitioner till further orders. Request of learned counsel for the petitioner seems genuine, therefore, respondent department is restrained for taking adverse action in the present matter against the petitioner till the next date. To come up for objection petition on 19.08.2019 before S.B at Camp Court Abbottabad.

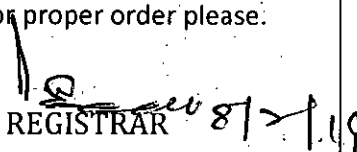



(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 64/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08.2.2019	<p>The execution petition of Mr. Maqsood Ahmad submitted by Mr. Muhammad Awais Khan Qazi 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 8/2/19</p>
2-	15-2-19	<p>This execution petition be put up before touring S. Bench at A.Abad on <u>15-04-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>
15.04.2019		<p>None for the petitioner present. Mr. Muhammad Bilal, DDA for respondents present. Notice be issued to the respondents for submission of implementation report. Case to come up for implementation report on 18.06.2019 before SB at camp court Abbottabad.</p> <p style="text-align: right;"> (Ahmad Hassan) Member Camp Court A/Abad</p>

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA Khyber Pakhtunkhwa
Service Tribunal

SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Diary No. 197

Dated 8-2-2019

Execution Pet No. 66/2019

IN

Service Appeal No.1114/2016

Maqsood Ahmed son of Manzoor Ahmed resident of Kunj Jadeed, Tehsil and District Abbottabad presently PST, GPS Muslim Town, Abbottabad.

...PETITIONER

VERSUS

- 1) Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar
- 2) Director, E&SE, KPK, Peshawar
- 3) DEO (Male), Abbottabad
- 4) SDEO (Male), Abbottabad

...JUDGMENT DEBTORS / RESPONDENTS

EXECUTION PETITION IN RESPECT OF SERVICE

APPEAL NO.1114/2016 DECIDED ON 24-08-2017.

Respectfully Sheweth;

1. That respondents issued an order dated 13-07-2016 whereby the appellant was awarded minor penalty of withholding of promotion for a period of 3 years and recovery of Rs.3,68,674/- for the salary which the appellant received during the period of his alleged absence.
2. That on 26-07-2016, appellant filed departmental appeal against the impugned order dated 13-07-2016 which was not responded by the respondents.
3. That feeling aggrieved, appellant filed the service appeal bearing No.1114/2016 on 26-10-2016.
4. That this Hon'ble Tribunal accepted the appeal and vide judgment and order dated 24.08.2017 held as under:

“Consequently, the impugned order to the extent of awarding minor penalty is set aside and recovery of amount which is also a

part of minor penalty is also set aside, the Department is however, at liberty to consider the issue of leave for the period in which the appellant has been shown absent under the relevant Rules other than the E&D Rules and if the Rules allow the recovery of amount for the period which has been converted into extra-ordinary leave then that can be made by the Department by issuing fresh order in this behalf. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room”.

(Attested copy of judgment & order dated 24.08.2017 is annexed herewith)

5. That the implementation and execution of the above mentioned judgment & order is being solicited before this Hon'ble Tribunal.
6. That further factual as well as legal points shall be raised at the time of arguments before this Hon'ble Tribunal.

PRAYER:

On acceptance of this execution petition, the judgment and order dated 24.08.2017 may kindly be executed in favour of decree holder/ appellant against the respondents as per Law.

[Handwritten Signature]
...PETITIONER

Through:

Dated: 08/02/2019

[Handwritten Signature]
(MUHAMMAD AWAIS KHAN QAZI) ADVOCATE, ABBOTTABAD
MUHAMMAD AWAIS KHAN QAZI
ADVOCATE
0333-5034409
0992-333524
muhammadawais.adv@gmail.com
QAZI LAW FIRM
QAZI GUL FARAZ ADVOCATE (LATE)
Chamber # 01, Hayat Sher Pairo Lawyers Plaza,
District Courts, Abbottabad, Khyber Pakhtunkhwa.

AFFIDAVIT:

I, Maqsood Ahmed son of Manzoor Ahmed resident of Kunj Jadeed, Tehsil and District Abbottabad, presently PST, GPS Muslim Town, Abbottabad *petitioner*, do hereby solemnly affirm and declare on Oath that the contents of instant *execution petition* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Dated: 08/2/2019

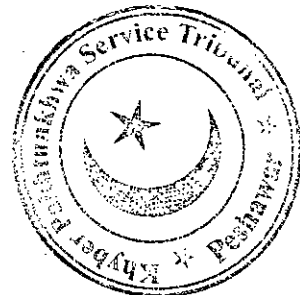
ATTESTED
MUHAMMAD AWAIS KHAN QAZI
ADVOCATE
NOTARY PUBLIC
HIGH COURT PESHAWAR
DEPONENT
[Handwritten Signature]
...PETITIONER
-2-
08-02-19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 1114/2016

Date of Institution... 26.10.2016

Date of decision... 24.08.2017



Maqsood Ahmad (PST) GPS Kamar Bandi, Circle Sherwan, Tehsil and District,
Abbottabad. ... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and
Secondary Education, Peshawar and 4 others. ... (Respondents)

MR. AZIZ KHAN TANOLI,
Advocate

... For appellant.

MR. MUHAMMAD BILAL
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL

... CHAIRMAN
... MEMBER

ATTESTED
JUDGMENT

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. This is an appeal against the impugned order dated 13.07.2016 whereby the appellant was awarded minor penalty of withholding of promotion for a period of 3 years and recovery of Rs. 368674/- for the salary which the appellant received during the period of his absence. Against this order, the appellant filed his departmental appeal on 26.7.2016 which was not responded to and hence the present appeal on 26.10.2016.

(11)

ARGUMENTS

3. The learned counsel for the appellant argued that in the first round, this Tribunal had passed an order dated 16.02.2016 for conducting denovo enquiry expeditiously but not beyond the period of two months from the date of receipt of the judgment. That the department had not concluded the enquiry within the aforesaid period, hence in view of a judgment reported as 2007-PLC(C.S) 959 of the Federal Service Tribunal no enquiry could be conducted by the department. That in the enquiry the department has failed to prove the allegations of absence of the appellant. That no right of defence was afforded to the appellant by the enquiry officer. That despite application of the appellant some important witnesses have not been examined by the enquiry officer. That the confession of the appellant referred to in the enquiry report was not voluntary and under duress. That according to record of the school the appellant was on duty. That during the period in which the appellant has been shown absent, some inspections were conducted and register was duly signed by the Inspection Officer in which the appellant was marked as present. That no show cause notice was issued to the appellant.

4. On the other hand, the learned Deputy District Attorney argued that the enquiry was initiated within two months but could not be completed and that non adherence to the period of two months would not entail any consequences as no consequence had been mentioned in the order of this Tribunal dated 16.02.2016. That in the reported judgment referred to by the learned counsel for the appellant, the circumstances were different as in the said very judgment the consequences of non adherence to the time schedule were mentioned. That the appellant had confessed his guilt on five occasions in written form as mentioned by himself in reply to the charge sheet. That the appellant was served with final show cause notice which is evident from his reply to the final show cause notice but in the said

(4)

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



reply instead of refuting the allegations on facts, the appellant denied to reply the show cause notice on the ground that the time of two months, scheduled by this Tribunal had already ~~been~~ expired and that some Execution Petition was filed and was pending before the Tribunal. That the appellant was given opportunity of defence but he could not produce any defence.

CONCLUSION

5. First of all this Tribunal would like to discuss non honoring the time schedule of two months. In reported judgment referred to by the learned counsel for the appellant, the circumstances were different as the time schedule was followed by the consequences of non adherence but in the present order no consequence has been given.

6. Secondly, this Tribunal on its own observed that in the impugned order, the period of absence has been converted into leave without pay. In the light of a judgment reported as 2006-SCMR-434, the authority converting the period of absence into any kind of leave, makes the charge as redundant and the whole disciplinary proceedings fell to ground as there remains no absence of the delinquent official. Since the whole proceedings have dashed to ground in the light of the afore stated judgment, there is no need of any further discussion on the enquiry proceedings viz-a-viz the objection raised by the

learned counsel for the appellant.

7. Consequently, the impugned order to the extent of awarding minor penalty is set aside and recovery of amount which is also a part of minor penalty is also set aside, The department is however, at liberty to consider the issue of leave for the period in which the appellant has been shown absent

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under the relevant rules other than the E&D Rules and if the rules allow the recovery of amount for the period which has been converted into extraordinary leave then that can be made by the department by issuing fresh order in this behalf. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

Sh. Mad Muhammad Khan
Chairman
Courts of Appeal

Certified to be a true copy

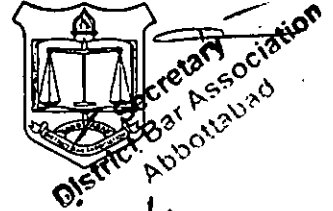
EX-1111/87
Khybr Pakhtunkhwa
Service Tribunal,
Peshawar

Sh. M. Hamid Nighal
Member

Date of Presentation of Application 28-8-77
Number of Words 1600
Copying Fee 10-
Urgent 2-
Total 12-
Name of Copyist [Signature]
Date of Completion of Copy 28-8-77
Date of Delivery of Copy 28-8-77

DBA number 735
 BC No. 1 6 - 6 5 3 8
 Name of Advocate Qazi

S.No 88630



وکالت نامہ

جناب سید بخشو خواجہ سروس شریمنٹل، KPK کیمپ کورٹ ایبٹ آباد بعدالت

مقصود احمد گورنمنٹ آف وٹیرنری عنوان:

Execution Petition نوعیت مقدمہ Petitioner / Decree Holder مخارج

باعث تحریر آنکہ Cell # 0333-5034409
محمد افسان خان قاضی ایبٹ آباد کے لیے

کو سب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں ہر پیشگی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا ہوں گا اور بروقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشگی پر منظر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی جگہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیروی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ پکھری کے علاوہ کسی اور جگہ سماعت ہونے پر یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر منظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار کے واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل ٹھکانی دہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر ثالثی و راضی نامہ و فیصلہ بر حلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے بیرونجات از پکھری صدر اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا ترقی یا گرفتاری قبل از گرفتاری و اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا جنگی علیحدہ مٹانہ بیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکور یا اس کے کسی جزوی کاروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے وکیل کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہر جائنہ التوا پڑے گا وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشگی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے کہ سند ہے۔
 مورخہ: 2019/02/07
 سال _____ ماہ _____ دن _____

مقصود احمد ولد منظر احمد
 Muhammad Awais Khan
 Qazi

Petitioner

MUHAMMAD AWAIS KHAN GAZI
 ADVOCATE
 0333-5034409
 0333-886324
 qazilawais.adv@gmail.com
 QAZI LAW FIRM
 QAZI GUL FARAZ ADVOCATE (LATE)
 Chamber # 81, Hayat Sher Pano Lawyers Plaza,
 District Courts, Abbottabad, Khyber Pakhtunkhwa.

08/08/17

BEFORE THE HONORABLE KHYBERPUKHTUNKHWA
SERVICE TRIBUNAL CAMP ABBOTTABAD

Maqsood Ahmad VERSUS Govt of KPK and others

EXECUTION PETITION IN SERVICE APPEAL # 1114/ 2016 DECIDED
ON 24/ 08/ 2017

=====

WRITTEN OBJECTIONS IN COMPLIANCE OF
THE ORDER OF THIS HONORABLE TRIBUNAL
DATED 18/06/ 2019

=====

Respectfully Sheweth:-

1. That the titled execution petition was moved to make implementation of the order of this Honorable tribunal dated 24/ 8/ 2017 passed in service appeal # 1114/ 2016.
2. That the Honorable tribunal by accepting the appeal of the petitioner had set aside the minor penalty and recovery of amount a part of the penalty was also set aside. leaving the department to consider issue of leave for the period in which the appellant was shown absent under the rules other than the E&D rules and if those allow the recovery of amount for the period which has been converted into extra ordinary leave then that can be made by the department through a fresh order.
Copy attached for kind perusal.

3. That the department, in order to make it prolong, has twisted the reply trying to deceive the Honorable tribunal has produced the so called fresh order dated 27/ 5/ 2019 without complying with the spirit of the order of the Honorable tribunal as the rule quoted # 12 of the revised leave rules 1981 nowhere allow recovery of the amount in case of extra ordinary leave is sanctioned.

4. It is submitted also that the petitioner has 31 years of service in his credit and during the entire service he did not avail any kind of leave and there are plenty of leaves in his account. The order produced in the tribunal is malafide based and an attempt to put the petitioner at a new track of litigation therefore it is very humbly prayed that the petitioner may be rescued from the continuous atrocities of the department whose every action against the petitioner is based on malafide and needs the kind attention of the Tribunal for the safe administration of justice to get implemented the order dated 24/ 8/2017 in letter and spirit.

Maqsood Ahmad

PETITIONER

Dated: 19/08/2019

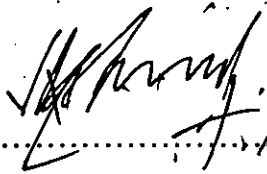
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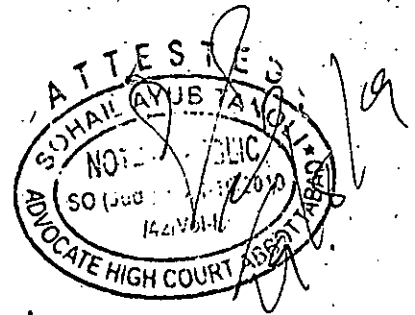
(ZULFIQAR AHMED)

Advocate High Court, Abbottabad.

AFFIDAVIT

I Maqsood Ahmad s/o Manzoor Ahmad PST GPS Muslim town
Abbottabad affirm on oath that the contents of forgoing Objection
petition are true and correct to the best of my knowledge and belief
and that nothing has been suppressed from this Honourable Tribunal.


.....19/8.....Deponent



10

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 1114/2016

Date of Institution... 26.10.2016

Date of decision... 24.08.2017



Maqsood Ahmad (PST) GPS Kamar Bandi, Circle Sherwan, Tehsil and District,
Abbottabad. ... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and
Secondary Education, Peshawar and 4 others. ... (Respondents)

MR. AZIZ KHAN TANOLI,
Advocate

For appellant.

MR. MUHAMMAD BILAL
Deputy District Attorney

For respondents.

MR. NIAZ MUHAMMAD KHAN, ...
MR. MUHAMMAD HAMID MUGHAL ...

CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. This is an appeal against the impugned order dated 13.07.2016 whereby the appellant was awarded minor penalty of withholding of promotion for a period of 3 years and recovery of Rs. 368674/- for the salary which the appellant received during the period of his absence. Against this order, the appellant filed his departmental appeal on 26.7.2016 which was not responded to and hence the present appeal on 26.10.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that in the first round, this Tribunal had passed an order dated 16.02.2016 for conducting denovo enquiry expeditiously but not beyond the period of two months from the date of receipt of the judgment. That the department had not concluded the enquiry within the aforesaid period, hence in view of a judgment reported as 2007-PLC(C.S) 959 of the Federal Service Tribunal no enquiry could be conducted by the department. That in the enquiry the department has failed to prove the allegations of absence of the appellant. That no right of defence was afforded to the appellant by the enquiry officer. That despite application of the appellant some important witnesses have not been examined by the enquiry officer. That the confession of the appellant referred to in the enquiry report was not voluntary and under duress. That according to record of the school the appellant was on duty. That during the period in which the appellant has been shown absent, some inspections were conducted and register was duly signed by the Inspection Officer in which the appellant was marked as present. That no show cause notice was issued to the appellant.

4. On the other hand, the learned Deputy District Attorney argued that the enquiry was initiated within two months but could not be completed and that non adherence to the period of two months would not entail any consequences as no consequence had been mentioned in the order of this Tribunal dated 16.02.2016. That in the reported judgment referred to by the learned counsel for the appellant, the circumstances were different as in the said very judgment the consequences of non adherence to the time schedule were mentioned. That the appellant had confessed his guilt on five occasions in written form as mentioned by himself in reply to the charge sheet. That the appellant was served with final show cause notice which is evident from his reply to the final show cause notice but in the said

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16/02/2016
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reply instead of refuting the allegations on facts, the appellant denied to reply the show cause notice on the ground that the time of two months, scheduled by this Tribunal had already ~~been~~^{was} expired and that some Execution Petition was filed and was pending before the Tribunal. That the appellant was given opportunity of defence but he could not produce any defence.

CONCLUSION

5. First of all this Tribunal would like to discuss non honoring the time schedule of two months. In reported judgment referred to by the learned counsel for the appellant, the circumstances were different as the time schedule was followed by the consequences of non adherence but in the present order no consequence has been given.

6. Secondly, this Tribunal on its own observed that in the impugned order, the period of absence has been converted into leave without pay. In the light of a judgment reported as 2006-SCMR-434, the authority converting the period of absence into any kind of leave, makes the charge as redundant and the whole disciplinary proceedings fell to ground as there remains no absence of the delinquent official. Since the whole proceedings have dashed to ground in the light of the afore stated judgment, there is no need of any further discussion on the enquiry proceedings viz-a-viz the objection raised, by the learned counsel for the appellant.

ATTORNEY
7
K. J. S. S. S.
Served Tribunal,
Peshawar

Consequently, the impugned order to the extent of awarding minor penalty is set aside and recovery of amount which is also a part of minor penalty is also set aside. The department is however, at liberty to consider the issue of leave for the period in which the appellant has been shown absent

under the relevant rules other than the E&D Rules and if the rules allow the recovery of amount for the period which has been converted into extraordinary leave then that can be made by the department by issuing fresh order in this behalf. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

Sd/- Mian Muhammad Khan
Chairman
Appellate Court J/Abad.

Stamp: *Chief Justice J/Abad*
10/11/87
10/11/87

Sd/- M. Hamid Nughal
Member

Date of Receipt of 28-8-77
Number of Copies 1600
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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD.

Execution Petition No. 64/2019

In

Service Appeal No. 1114/2016

Maqsood Ahmed.....Appellant

VERSUS


Government of Khyber Pakhtunkhwa & OthersRespondents

IMPLEMENTATION REPORT ON BEHALF OF RESPONDENT NO. 03

INDEX

Sr. No.	Description	Page Nos.	Annexures
1	Implementation Report alongwith affidavit	01 to 02	
2	Copy of Order dated 27-05-2019	03	"A"

Dated: 30/05/2019


District Education Officer (M)
Abbottabad.
(Respondent No. 03)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD.

. Execution Petition No. 64/2019

In

Service Appeal No. 1114/2016

Maqsood Ahmed.....Appellant

VERSUS

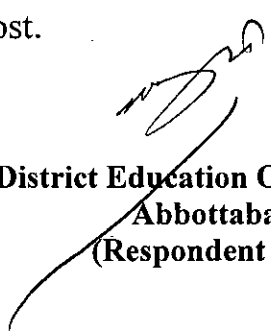
Government of Khyber Pakhtunkhwa & OthersRespondents

IMPLEMENTATION REPORT ON BEHALF OF RESPONDENT NO. 03

Respectfully Sheweth:-

1. In pursuance to the judgment of this Honourable Tribunal dated 24-08-2017, department issued fresh order vide Endst: No. 6164-68 dated 27-05-2019 and implemented the judgment of this Honourable Tribunal in letter & spirit. (Copy of the Order No. 6164-68 dated 27-05-2019 is annexed herewith as Annexure "A").
2. That answering respondent seeks leave of this Honourable Tribunal to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that the instant Execution Petition of the petitioner has become infructuous and same may kindly be dismissed throughout with cost.


District Education Officer (M)
Abbottabad.
(Respondent No. 03)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD.

Execution Petition No. 64/2019

In

Service Appeal No. 1114/2016

Maqsood Ahmed.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa & OthersRespondents

AFFIDAVIT

I, Mr. Qazi Tajjamal Hussain, District Education Officer (M) Abbottabad, declare on oath that the contents of the forgoing Implementation Report are correct and true according to the best of my knowledge and belief and nothing has been suppressed / concealed from this Honorable Tribunal.


DEPONENT

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD

Anx "A"
03

ORDER

WHEREAS you Mr. Maqsood Ahmed, PST GPS Kumar Bandi (Circle Sherwan) Abbottabad was proceeded for having committed the following gross irregularities which constitute inefficiency, misconduct and corruption under Rule-3 Sub Rules (a), (b) & (c) of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.

2. AND WHEREAS, as per findings and recommendation of inquiry report, you have illegally, fraudulently and unlawfully drawn Rs.368764/- as pay for the following absent period inflicting huge financial loss to the Govt: Treasury.

S.#	Absence Period.	Months/Days.	Gross Pay.	Pay Drawn.
1	05-11-2010 to 30-11-2010.	26 days.	22732/-	19701/-
2	01-12-2010 to 20-12-2010.	20 days.	23259/-	15005/-
3	23-12-2010 to 31-12-2010.	09 days.	23259/-	6753/-
4	01-01-2011 to 31-03-2011.	03 Months.	23259/-	69777/-
5	07-05-2011 to 09-05-2011.	03 days.	23259/-	2325/-
6	13-05-2011 to 30-06-2011.	01 Months & 18 days.	23259/-	36764/-
7	01-07-2011 to 30-09-2011.	03 Months.	27866/-	83598/-
8	01-10-2011 to 30-11-2011.	02 Months.	27866/-	55732/-
9	01-12-2011 to 22-02-2012.	02 Months & 22 days.	28366/-	79019/-
		Total Amount:-		Rs.368674/=

3. AND WHEREAS, minor penalty of "withholding of promotion for a period of three years and recovery of Rs.368674/= (Rs. Three lac, sixty eight thousand six hundred seventy four) in installments @ Rs.10000/= PM" upon you and absence period was converted as leave without pay vide this office order issued under Endst: No.5612-18 dated 13.7.2016.

4. AND WHEREAS, in pursuance to the Judgment of Honorable Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad passed in Service Appeal No.1114/2016 dated 24.8.2017, this office order issued under Endst: No.5612-18 dated 13.7.2016 is hereby set-aside. The operative part of the judgment is reproduced as under:

"Consequently, the impugned order to the extent of awarding minor penalty is set aside and recovery of amount which is also a part of minor penalty is also set aside, The department is however, at liberty to consider the issue of leave for the period in which the appellant has been shown absent under the relevant rules other than the F&D Rules and if the rules allow the recovery of amount for the period which has been converted into extra ordinary leave then the can be made by the department by issuing fresh order in this behalf"

NOW THEREFORE, the Competent Authority in exercise of the power conferred upon him hereby convert absent period of Mr. Maqsood Ahmed, PST GPS Kumar Bandi mentioned in Para-2 into Extra Ordinary Leave without pay under Rule-12 of NWFP Civil Servant Revised Leave Rules-1981, and amounting to Rs.368674/- drawn as pay illegally/ fraudulently and unlawfully during the absent period be recovered accordingly.

DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

Dated 27/5/2019.

Endst: No. 6164-68 /AE-II/PF Maqsood Ahmed PST
Copy for information & necessary action to the:-

- Honorable Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to Execution petition No.64/19 in service appeal No. 1114/2016 dated 24.8.2017.
- Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- District Comptroller of Accounts Abbottabad.
- Sub Divisional Education Officer (Male) Abbottabad with the remarks that relevant entry be recorded in his service book and submit compliance report positively.
- Mr. Maqsood Ahmed, PST Govt: Primary School Kumar Bandi (Circle Sherwan) Abbottabad presently posted at GPS Muslim Town Abbottabad.

DISTRICT EDUCATION OFFICER (M)

ABBOTTABAD

بخدمت جناب چیئر مین صاحب عدالت سروس ٹرا بیونل KPK پشاور

Appeal Execution No.113/18

جناب عالی!

- 1- یہ کہ سائل کی Execution No. 113/18 زیر سماعت ہے جس کی سماعت تاریخ آج مورخہ 18-06-2019 مقرر ہے۔
 - 2- یہ کہ محکمہ نے Execution No. 64/19 کی تعمیل میں سائل کے خلاف ریکوری کا آرڈر جاری کر دیا ہے جو کہ معزز عدالت کے فیصلہ مورخہ 24-08-2017 کے صریحاً خلاف ہے۔
 - 3- یہ کہ Execution No. 113/18 میں فیصلہ کی تعمیل کا آرڈر بھی تک جمع نہیں کروایا گیا۔ جبکہ سائل کے خلاف ترقی شاپ کرنے کے تمام آرڈر جو مورخہ 21/05/2013 سے لیکر آج تک ہوئے تھے تمام ٹرا بیونل اپیلز منظور کرتے ہوئے Impuge Order منسوخ کر دیئے تھے۔ جبکہ سائل DPC کے مطابق ضلع میں سینئر ترین تھا اور 21-05-2013 سے سنیارٹی کے حقوق رکھتا تھا۔
- لہذا استدعا ہے کہ محکمہ کو ہدایات جاری کی جائیں کہ وہ تعمیل رپورٹ جمع کروائیں اور سائل کو اس پر بحث کا موقع فراہم کیا جائے۔

المقوم: 18-06-2019

ارض

مقصود احمد

Appeal Execution No. 113/19

محضوړ جناب سیکر یٹری ایجوکیشن (سکولز اینڈ لیٹریسی) خیبر پختونخواہ پشاور۔

درخواست بمردانصاف دلایا جانے من ساکل و حسب ضابطہ انکواری فرمائے جانے ADO جن زیب ایٹ آباد

with Ref Reply Charge Sheet No 3049
Date: 18/03/19

جناب عالی!

گزارش ہے کہ ساکل PST پوسٹ پر عرصہ 30 سال سے احسن طریقہ سے اپنی خدمات سرانجام دے رہا ہے۔

یہ کہ جن زیب ADO صاحب نے مجھے شوکا ز نمبر 5142 مورخہ 16-06-2016 وصول نہیں کروایا بلکہ ہیڈ ٹیچر صاحب کو دیا اور واپس چلے گئے میں تدریسی کام سے فارغ ہوا تو ہیڈ ٹیچر نے مجھے شوکا ز نوٹس وصول کروایا علاوہ ازیں چارج شیٹ میں حوالہ نمبر 5334 مورخہ 23-06-2016 اور حوالہ نمبر 5415-18 مورخہ 27-06-2016 کے دونوں شوکا ز میں نے وصول کئے ہیں اور تینوں شوکا ز میرے پاس اور بجٹل حالت میں میرے پاس موجود ہے اور میں نے وقت کے اندر انکے جوابات بھی دیے ہیں۔ (رپورٹ ہیڈ ٹیچر منسلک ہے)

جناب عالی کوئی بھی شوکا ز بقول انکے میں نے وصول نہیں کیا تو قانون کے مطابق انہیں مجھے وصول کروانا چاہئے تھا اگر میں وصول نہیں کرتا تو اسی وقت مجھ سے وصول نہ کرنے کے بارے میں یہ لکھوانا چاہئے تھا کہ میں شوکا ز نوٹس لینے سے انکاری ہوں میں نے انکار نہیں کیا۔ ADO صاحب ہیڈ ٹیچر کو شوکا ز نوٹس دے کر چلے گئے جبکہ جن زیب صاحب کے بقول کہ میں نے شوکا ز نوٹس رجسٹری کیا ہے جو مجھے دیڑھ ماہ بعد وصول ہوا جب کہ میں نے By Hand وصول کردہ شوکا ز کا جواب دو دن کے اندر دے دیا تھا۔

جناب عالی! جن زیب ADO صاحب میرے ساتھ ذاتی طور پر ریش رکھتے تھے کیونکہ میں گجر موڈ سکول میں انکی مرضی کے خلاف آرڈر لے کر آیا تھا وہ کسی دوسرے بندے کو لانا چاہتے تھے جبکہ مجھے Higher Authority نے Adjust کر دیا تھا لیکن پھر بھی انہوں نے بغیر کسی وجہ سے مجھے کچھ ماہ بعد GPS کہہ کر تبدیل کر دیا جس پر میں نے اپیل کی تو اپیل پر غور کئے بغیر گم کر دی گئی اور مجھے مجبوراً وہاں سے دور کہہ کر تبدیل کرنا پڑا۔

(2) یہ کہ پھر دوسرا ظلم زیادتی جن زیب صاحب نے میرے ساتھ یہ کی کہ میرا Confidential شوکا ز میرے خلاف ٹیچر کو دیا جو کھلا ہوا وصول کرایا گیا جس سے میری Insult کی گئی اور مجھے بے پردہ کرتے ہوئے مجھے رسوا کیا گیا۔

(3) یہ کہ تیسرا ظلم جن زیب ADO صاحب نے اپنے اختیارات کا ناجائز استعمال کرتے ہوئے جھوٹی رپورٹ دے کر دعویٰ توہین داخل کرتے ہوئے میری غیر قانونی طور پر پر دوش رکوائی گئی۔

(4) یہ کہ انکواری میں جن زیب ADO اپنی جھوٹی رپورٹ کو منوانے کیلئے اختیارات اور تعلقات کا ناجائز طور پر استعمال کرتے ہوئے مجھے جھوٹا ثابت کرنے کی کوشش کی گئی۔

لہذا گزارش ہے کہ ان مظالم کے خلاف باریک بینی سے غور کیا جائے اور انصاف فراہم کیا جائے۔ اور حسب ضابطہ جہاں سے ساکل Promotion کے حقوق رکھتا ہے وہاں سے ادائیگی کے احکامات صادر فرمائے جائے، نوازش ہوگی۔

العارض

مقصود احمد GPS مسلم ٹاؤن ایٹ آباد

موبائل نمبر 0310-5820209

NK: 13101-0936474-5

المرقوم: 09-05-2019

9/5

بھنخور جناب DEO صاحب (مردانہ) ایبٹ آباد۔

مضمون: تحریری جواب چارج شیٹ، بحوالہ نمبر 3049 مورخہ 18-03-2019

جناب عالی!

محترم جناب زیب ADO صاحب نے مجھے شوکاژ نمبر 5142 مورخہ 16-06-2016 وصول نہیں کروایا بلکہ ہیڈ ٹیچر صاحب کو دیا اور واپس چلے گئے میں تدریسی کام سے فارغ ہوا تو ہیڈ ٹیچر نے مجھے شوکاژ نوٹس وصول کروایا علاوہ ازیں چارج شیٹ میں حوالہ نمبر 5334 مورخہ 23-06-2016 اور حوالہ نمبر 5415-18 مورخہ 27-06-2016 کے دونوں شوکاژ میں نے وصول کئے ہیں اور تینوں شوکاژ میرے پاس اور بجٹل حالت میں میرے پاس موجود ہے اور میں نے وقت کے اندر انکے جوابات بھی دیے ہیں (Annex A to 4) جناب عالی کوئی بھی شوکاژ بقول انکے میں نے وصول نہیں کیا تو قانون کے مطابق انہیں مجھے وصول کروانا چاہئے تھا اگر میں وصول نہیں کرتا تو اسی وقت مجھ سے وصول نہ کرنے کے بارے میں یہ لکھوانا چاہئے تھا کہ میں شوکاژ نوٹس لینے سے انکاری ہوں میں نے انکار نہیں کیا۔ ADO صاحب ہیڈ ٹیچر کو شوکاژ نوٹس دے کر چلے گئے جبکہ جناب زیب صاحب کے بقول کہ میں نے شوکاژ نوٹس رجسٹری کیا ہے جو مجھے دیر 16 ماہ بعد وصول ہوا جب کہ میں نے By Hand وصول کردہ شوکاژ کا جواب دو دن کے اندر دے دیا تھا۔

جناب عالی! جناب زیب ADO صاحب میرے ساتھ ذاتی طور پر رنجش رکھتے تھے کیونکہ میں گجڑ موز سکول میں آنگی مرضی کے خلاف آرڈر لے کر آیا تھا وہ کسی دوسرے بندے کو لانا چاہتے تھے جبکہ مجھے Higher Authority نے Adjust کر دیا تھا لیکن پھر بھی انہوں نے بغیر کسی وجہ سے مجھے کچھ ماہ بعد GPS کہہ کر بائڈی تبدیل کر دیا جس پر میں نے اپیل کی تو اپیل پر غور کئے بغیر تم کر دی گئی اور مجھے مجبوراً وہاں سے دور کہہ کر بائڈی کام کرنا پڑا۔

Annex B - (1-3) Page.

۲۔ پھر دوسرا ظلم زیادتی جناب زیب صاحب نے میرے ساتھ یہی کی کہ میرا Confidential شوکاژ میرے خلاف ٹیچر کو دیا جو کھلا ہوا وصول کر لیا گیا جس سے میری Insult کی گئی اور مجھے بے پردہ کرتے ہوئے مجھے رسوا کیا گیا۔

۳۔ تیسرا ظلم جناب زیب ADO صاحب نے اپنے اختیارات کا ناجائز استعمال کرتے ہوئے جھوٹی رپورٹ دے کر دعویٰ توہین داخل کرتے ہوئے میری غیر قانونی طور پر پروموشن رکوائی گئی۔

Annex (A) - (1-4)

۴۔ یہ کہ انکوائری میں جناب زیب ADO اپنی جھوٹی رپورٹ کو منوانے کیلئے اختیارات اور تعلقات کا ناجائز طور پر استعمال کرتے ہوئے مجھے جھوٹا ثابت کرنے کی کوشش کی گئی۔

Annex (C) - (1-3)

جناب سے ان مظالم کے خلاف باریک بینی سے غور کی التجا کرتا ہوں اور انصاف کے فیصلے کی امید رکھتا ہوں۔ نوازش ہوگی۔

العارض

الرقوم: 05-05-2019

12 عمر گلستان ٹیوشن سنٹر
20/5/2019

No. 1920
20/5/2019

Handwritten signature and date 20/5/19

مقتصد احمد GPS مسلم ٹاؤن ایبٹ آباد

03105820209

Phno: _____

ADD (E/P)
put up

20/5/19
DEO Kidi

بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر (مرواٹہ) ایبٹ آباد

عنوان: بحوالہ نمبری 5601/14/05/2019 PF Maqsood Ahmed / Rply
Personal hearing No 6394-98-30/5/2019

جناب عالی!

محترم چنیزب صاحب ADO مجھے شوکا ز نمبر 5142/16/06/2016 سکول کے اندر کمرہ جماعت میں وصول کرانے داخل ہونے لگے تو میں نے ہیڈ ٹیچر صاحب کو اشارے سے وصولی کے لئے کہا اور وہ بیٹھے بغیر شوکا ز نمبر 5142/16/06/2016 مورخہ 23/06/2016 ادا کر کے چلے گئے جو میں نے کچھ وقت کے بعد ہیڈ ٹیچر سے وصول کیا نہ کہ انکار کیا اور مورخہ 27/06/2016 کو اس کا جواب بھی دے دیا

(ii)۔ لیٹر نمبر 5334 مورخہ 23/06/2016، جس کی اطلاع فون پر مورخہ 27/06/2016 کو دی گئی، کہ Per/hearing کیلئے آج حاضر ہوں۔ سائل 5142/16/06/2016 کے جواب جمع کرنے دفتر میں ہی تھا کہ پیش ہو گیا جبکہ تیسرا لیٹر شوکا ز نمبر 5415/27/06/2016 مورخہ 28/06/2016 کو ADO صاحب سکول سے باہر ہیڈ ٹیچر کو بلا کر دونوں اکٹھے ادا کرتے ہیں، جو سائل نے مورخہ 29/06/2016 کو نوٹو کاپی پر دستخط دینے کے بعد ہیڈ ٹیچر کے خفیہ بتانے پر 29/06/2016 کو دونوں اکٹھے وصول کر لئے۔ ان کا بھی انکار نہیں کیا اور مورخہ 01/07/2016 کو جواب بھی دے دیا جسکی تصدیق انکواری کے دوران ہیڈ ٹیچر نے کر دی۔ (کاپی منسلک ہے)۔ اور بعد میں 11/07/2016 کار جسٹری کیا ہوا 13/07/2016 کو پوسٹ آفس کے ذریعے ایک رجسٹری ملی وہ بھی وصول کر لی جس کا جواب 01/07/2016 کو ادا کیا ہوا تھا (ڈاکخانہ پر جسٹری کاپی منسلک ہے)۔

جناب عالی! یہ سارا معاملہ چنیزب صاحب ADO کی سائل کی بسلسلہ ٹرانسفر GPS گوجر موڑ، ذاتی رنجش کے ”مورخہ 05/05/19، 20/05/19“ کی آپ کو جامع درخواست عنایت کی پھر مورخہ 24/05/19 کو جناب سیکرٹری صاحب (حسب ضابطہ انکواری ADO چنیزب) عنایت کی۔ (کاپی منسلک ہے)۔ جس کا جواب ابھی نہ ملا۔ ص (11-12)

(iii) یہ کہ ہیڈ ٹیچر گلزار صاحب کی تحریر ”تینوں شوکا ز کا وصول کئے و جواب دیئے“ مخلصانہ اور سچی تھی جس کو انکواری میں Force کرتے ہوئے جھوٹا قرار دینے کی کوشش کی جا رہی ہے جبکہ انہوں نے مجھ سے لکھوا کر خود پڑھا کر دستخط کئے اور مہر لگا کر دی جبکہ انکواری میں انہیں ڈرا دھمکا کر اسے جھوٹا قرار دینے کی کوشش کی گئی تو اس لئے میں ان سے کراس سوال کرنا چاہتا تھا جو انکواری آفیسر نے نہ کرنے دیئے اور نمائندہ دفتر نے اپنی مرضی سے سوال و جواب ان سے کئے اور لکھے جس پر میں نے احتجاجاً التجا کی تو انکواری آفیسر و نمائندہ دفتر (زیر صاحب) نے مجھے زد و کوب کرنے کی کوشش کی اور زیر صاحب کے الفاظ کہ میں ابھی ابھی چند روز جیل سے ہو کر آیا ہوں لہذا مجھے مزید الجھنے پر مجبور نہ کرو۔ سائل مجبوراً ان کی انکواری کی ہر بات ماننے کو تیار ہو گیا۔ ان کا کوئی بھی بیان حلفاً (by oath) نہ لیا گیا۔

(2)

زیر دستخطی نے چیزیں ADO سے انکوائری کی پروسیڈنگ کبھی by hand ہوتی ہے کے بارے میں پوچھا تو انہوں نے مانا کہ میں نے غیر قانونی طور پر by hand پروسیڈنگ کی ہے کہ انکوائری by hand نہیں ہوتی رجسٹری کی شکل میں ہوتی ہے۔ میں نے پوچھا آپ میرے ساتھ by hand کیوں کرتے رہے ہیں آیا مجھے ڈرانے کیلئے ایسا کیا جس پر انہوں نے کوئی جواب نہیں دیا۔ نمائندہ صاحب نے ان کا یہ جواب تحریر کرنے میں بددیانتی کی اور اپنی مرضی سے لکھتے رہے۔

جناب عالی: اگر یہ قانون کے مطابق رجسٹری کی شکل میں قبل از وقت گھریا سکول کے پتہ پر شوکاز بھیجتے تو اتنے الزامات زیر دستخطی پر نہ لگتے اور سرکاری مشینری کا غلط استعمال نہ ہوتا۔

ڈیئر جناب: میں اللہ تعالیٰ کو حاضر و ناظر جان کر کہتا ہوں کہ میں نے تینوں شوکاز وصول کئے، وقت پر لئے صرف ایک شوکاز جس کا کمپلیٹ میں ذکر نہیں 5142/16/06/16 تاخیر سے وصول کیا ہے نہ کہ انکاری ہوا ہوں اور کوئی دھوکہ بازی نہیں کی

میرے تینوں شوکاز کے جوابات دینا آپ کے حکم کی فرمانبرداری ثابت ہوتا ہے۔ میں نے شوکاز وصول کرتے ہوئے اور 27/06/16 کو Per/hearing میں شامل ہو کر آپ کے حکم کو Compliance کیا ہے نہ کہ Mis-conduct اور چیزیں صاحب کی رپورٹ براسر جھوٹ پر مبنی ہے اگر شوکاز چیزیں صاحب ADO، کسی سمجھدار آدمی سے مشورہ کرتے ہوئے پہلے ہی بذریعہ رجسٹری گھریا سکول کے پتہ پر بھیج دیتے تو اتنے الزامات زیر دستخطی پر نہ لگتے اور سرکاری مشینری کا غلط استعمال نہ ہوتا اور زیر دستخطی کا اصل معاملہ Absent from duty بروقت وضاحت انتہائی درستی کے ساتھ کرنے کا موقع ملتا اور مندرجہ بالا اصل چارج کب تک ثابت ہو چکا ہوتا۔ زیر دستخطی بے قصور تھا۔ شاید ADO صاحب نے اپنی کوئی ذاتی رنجش دور کرنے کے لئے تمام سرکاری مشینری کو غلط استعمال کیا اور شوکاز نہ وصول کرنے کا بہانہ رکھ کر زیر دستخطی کو Damage کیا گیا۔

جناب سے التجا ہے کہ دوران انکوائری لگائے گئے الزامات Prosecution اور گواہ، حقائق اور قانوناً ثابت نہ کر سکی اور انکوائری میرٹ پر نہ کی گئی۔ لہذا حقائق، قانون اور میرٹ کو مد نظر رکھتے ہوئے مسائل پر لگائے گئے الزامات کو مسترد کر کے مسائل کو انصاف فراہم کیا جائے۔ اللہ آپ کا حامی و ناصر ہو۔

التحریر: 01/06/2019

العقار خلیل
1/4/2019
مقصود احمد، PST، GPS
03105820209
12/06/2019
(منسک ح)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD.

Execution Petition No. 64/2019

In

Service Appeal No. 1114/2016

Maqsood Ahmed.....Appellant

VERSUS

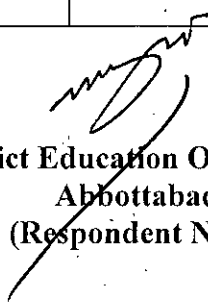
Government of Khyber Pakhtunkhwa & OthersRespondents

REPLY TO OBJECTION ON BEHALF OF RESPONDENT NO. 03

INDEX

Sr. No.	Description	Page Nos.	Annexures
1	Reply alongwith affidavit	01 to 02	
2	Copy of the Order No. 6164-68 dated 27-05-2019	03	"A"
3	Copy of departmental appeal	04 to 05	"B"
4	Copy of letter dated 17-06-2019	06	"C"

Dated: 19/10/2019


District Education Officer (M)
Abbottabad.
(Respondent No. 03)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD.

Execution Petition No. 64/2019
In
Service Appeal No. 1114/2016

Maqsood Ahmed.....Appellant

VERSUS

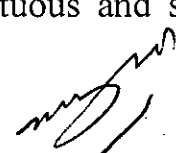
Government of Khyber Pakhtunkhwa & OthersRespondents

REPLY TO OBJECTION ON BEHALF OF RESPONDENT NO. 03

Respectfully Sheweth:-

1. That Para No. 1, of the objection needs no comment.
2. In reply to Para No. 2, of the objection it is submitted that In pursuance to the judgment of this Honourable Tribunal dated 24-08-2017, department issued fresh order vide Endst: No. 6164-68 dated 27-05-2019 and implemented the judgment of this Honourable Tribunal in letter & spirit. (Copy of the Order No. 6164-68 dated 27-05-2019 is annexed herewith as Annexure "A").
3. That Para No. 3, of the objection is correct to the extent of issuance of fresh order dated 27-05-2019 while rest of the para as composed is incorrect hence, denied.
4. That Para No. 4, of the objection as composed is incorrect hence, denied. Petitioner has concealed the material facts from this Honourable Tribunal as he has already challenged the order dated 27-05-2019 and preferred departmental appeal against the order dated 27-05-2019 to answering respondent and petitioner was intimated vide letter No. 6800 dated 17-06-2019 with the direction to approach the next higher authority. (Copy of departmental appeal & letter dated 17-06-2019 is annexed herewith as annexure "B" & "C").

It is therefore, humbly prayed that the instant Execution Petition of the petitioner has become infructuous and same may kindly be dismissed throughout with cost.


District Education Officer (M)
Abbottabad.
(Respondent No. 03)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD.

Execution Petition No. 64/2019

In

Service Appeal No. 1114/2016

Maqsood Ahmed.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa & OthersRespondents

AFFIDAVIT

I, Mr. Qazi Tajamal Hussain, District Education Officer (M) Abbottabad, declare that the contents of the forgoing reply to objections are correct and true according to the best of my knowledge and belief and nothing has been suppressed / concealed from this Honorable Tribunal.


DEPONENT

ORDER

1. WHEREAS you Mr. Maqsood Ahmed, PST GPS Kumar Bandi (Circle Sherwan) Abbottabad was proceeded for having committed the following gross irregularities which constitute inefficiency, misconduct and corruption under Rule-3 Sub Rules (a), (b) & (c) of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.
2. AND WHEREAS, as per findings and recommendation of inquiry report, you have illegally, fraudulently and unlawfully drawn Rs.368764/- as pay for the following absent period inflecting huge financial loss to the Govt: Treasury.

S.#	Absence Period.	Months/Days.	Gross Pay.	Pay Drawn.
1	05-11-2010 to 30-11-2010.	26 days.	22732/-	19701/-
2	01-12-2010 to 20-12-2010.	20 days.	23259/-	15005/-
3	23-12-2010 to 31-12-2010.	09 days.	23259/-	6753/-
4	01-01-2011 to 31-03-2011.	03 Months.	23259/-	69777/-
5	07-05-2011 to 09-05-2011.	03 days.	23259/-	2325/-
6	13-05-2011 to 30-06-2011.	01 Months & 18 days.	23259/-	36764/-
7	01-07-2011 to 30-09-2011.	03 Months.	27866/-	83598/-
8	01-10-2011 to 30-11-2011.	02 Months.	27866/-	55732/-
9	01-12-2011 to 22-02-2012.	02 Months & 22 days.	28366/-	79019/-
		Total Amount:-		Rs.368674/=

3. AND WHEREAS, minor penalty of "withholding of promotion for a period of three years and recovery of Rs.368674/= (Rs. Three lac, sixty eight thousand six hundred seventy four) in installments @ Rs.10000/= PM" upon you and absence period was converted as leave without pay vide this office order issued under Endst: No.5612-18 dated 13.7.2016.
4. AND WHEREAS, in pursuance to the Judgment of Honorable Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad passed in Service Appeal No.1114/2016 dated 24.8.2017, this office order issued under Endst: No.5612-18 dated 13.7.2016 is hereby set-aside. The operative part of the judgment is reproduced as under:

"Consequently, the impugned order to the extent of awarding minor penalty is set aside and recovery of amount which is also a part of minor penalty is also set aside, The department is however, at liberty to consider the issue of leave for the period is which the appellant has been shown absent under the relevant rules other than the E&D Rules and if the rules allow the recovery of amount for the period which has been converted into extra ordinary leave then the can be made by the department by issuing fresh order in this behalf"

NOW THEREFORE, the Competent Authority in exercise of the power conferred upon him hereby convert absent period of Mr. Maqsood Ahmed, PST GPS Kumar Bandi mentioned in Para-2 into Extra Ordinary Leave without pay under Rule-12 of NWFP Civil Servant Revised Leave Rules-1981, and amounting to Rs.368674/- drawn as pay illegally/ fraudulently and unlawfully during the absent period be recovered accordingly.

DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

Dated 27/5/2019.

Endst: No. 6164-68 /AE-II/PF Maqsood Ahmed PST

Copy for information & necessary action to the:-

- Honorable Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to Execution petition No.64/19 in service appeal No. 1114/2016 dated 24.8.2017.
- Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- District Comptroller of Accounts Abbottabad.
- Sub Divisional Education Officer (Male) Abbottabad with the remarks that relevant entry be recorded in his service book and submit compliance report positively.
- Mr. Maqsood Ahmed, PST Govt: Primary School Kumar Bandi (Circle Sherwan) Abbottabad presently posted at GPS Muslim Town Abbottabad.

DISTRICT EDUCATION OFFICER (M)

DEO من مصلح آئی ایل ڈی حضور جناب

22

عنوان 1- اپیل No 6164-68 WR/000 No 28/5/2019
صوبائی 27/5/19 درج ذیل عرض پر ایف ڈی ایف

یہ کہ سرورس اپیل نمبر 1114/16 میں افسس اور نمبر 5612-15 (A) کو
13/7/2016 کو impugne کیا تھا جس کا فیصلہ 24/8/17 کو SIT
نے کیا تھا اس سے impugne کیے جانے والے حکم کو
set aside کر دیا تھا اور حکم کو liberty دیا گیا تھا۔
میں نے یہ عرض کیا ہے کہ اس سے غیر حاضر ہونے پر
نہ پیرڈ کو لے کر لیں کہ کیا اس سے غیر حاضر ہونے پر
بھی زبردستی غیر حاضر بنایا جائے اس سے غیر حاضر ہونے پر
leave Rule کے مطابق / سے مطابق
Extra ordinary leave کے لیے نیا آرڈر جاری کریں (A) Annex.

4880 عدالت از میں فوراً سابقہ انکوائری نمبر 378/13/6/16
Impugned order / NO: 5612-15 / 13/7/16
1114/16 اپیل نمبر

24/08/2017 SET ASIDE کر دیا گیا
مطلوبہ حثیت نہ رہا تھا اور اس سے مذکورہ
مذکورہ مال انکوائری رپورٹ اور 000 No 6164-68 میں
27/5/2019

کیا گیا ہے جس کے کون قانونی حثیت نہ ہے۔
میں نے عرض کیا ہے کہ اس سے آرڈر میں
زبردستی غیر حاضر ہونے پر پیرڈ بنایا گیا ہے جس کی
مطلوبہ سکولوں کے رجسٹر میں سے نہ کی گئی ہے۔
میں نے فوراً 19/3/19 ع 2665 (RTA) کے تحت درخواست
کی گئی ہے جس سے زبردستی غیر حاضر ہونے پر پیرڈ
وضاحت فرماری طور پر کرتا ہوں۔
(Cont No 2)

(24) ماہنامہ پشاور ہجرت و حکم دربار اور حقائق کو بالاطمان رکھنے سے آزاد
کارہا کا کیا جائے جسکی کو حوضاً منع کیا جائے تاکہ زہر دہشلی کو
الضمانہ مراجع ہو سکے۔ نوازین ہوتے

M. M. M. M. M.
30/5/2019

الضمانہ

مفتوحہ ہجرت PST. GPS مستند نادان ایسا بار

سریشن ایچ ایچ ایچ
KPK. 64/19 Execution

Copy: information to

- i) Director Education SBE Peshawar
- ii) Honorable S/T. KPK. Peshawar. S. 1111
Ex. No. 64/19
- iii) Sec: Education SBE KPK.



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD

23

No. 6800 /Litig/ Maqsood

Dated 11/6 /2019

Mr. Maqsood Ahmed, PST
Govt: Primary School Muslim Town
Abbottabad

Subject: **DEPARTMENTAL APPEAL**
Memo:

I am directed to refer to your departmental appeal dated 30.5.2019 against order issued vide this office Endst: No.6164 dated 27.5.2019 on the subject cited above and ask you to approach the next higher authority i.e Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.


DY: DISTRICT EDU: OFFICER (M)
ABBOTTABAD

Endst: of even No. & date

Copy forwarded to the Sub Divisional Education Officer (M) Abbottabad for information and necessary action.


DY: DISTRICT EDU: OFFICER (M)
ABBOTTABAD

Exception Pet No 64/2019
IN

Service Appeal No 1114/2016

Provision of Justice

Sub: Application against following illegal acts

- i) Illegal stoppage of promotion WEF 21/5/2013
- ii) Illegal recovery Rs. 368674/- imposed by forcefully showing the applicant as absent from duty.
- iii) Return of recovery amount of Rs 67000/- which has already been recovered from the applicant illegally.
- iv) Illegal stoppage of salary of the applicant WEF 01/01/2013 to 21/05/2013.

Respectfully sheweth:-

That the promotion of applicant was illegally stopped by the department vide order dated 21/5/2013 & 10/07/2019 by the DEO (M) Atet and applicant challenged the same before the KPK Service Tribunal Peshawar, who set aside the said illegal order but after passing almost eight years, the applicant has not been promoted till now from PST post to SPST & SST post although many juniors from the applicant has been promoted by the department.

ii) That, the department illegally showed the applicant as absent from duty for the period mentioned below due to which the applicant was imposed illegal recovery of Rs, 368,674/- from which Rs, 67,000/- has already been recovered from the applicant.

Absent Period 5/11/10 to 22/02/2012

iii) That, the department has already received the illegal recovery amount of Rs 67,000/- from the total recovery by applicant,

②

Although KPK Service Tribunal set-aside the impugned order. Dated 24/08/2017.

iv) That The Competent Authority stopped the applicant to perform his duty E.E.F 01/01/2013 to 21/05/2013 without issuing any suspension or termination order inspite of that the applicant regularly remained present in the office of Competent Authority and finally the Competent Authority issued adjustment order of applicant on 21/05/2013 but the said illegal absent period i.e. w.e.f 01/01/2013 to 21/05/2013 was treated as "Leave without pay".

It is therefore, very humbly prayed that kindly take notice of the matter mentioned in the heading of the applications and the applicant may kindly be granted the following benefits.

i) applicant may kindly be promoted to next higher post according to the seniority list with all back benefits.

ii) The illegal recovery imposed upon the applicant may kindly be withdrawn and so-called absent period may kindly be treated as duty period in the light of the record.

iii) The amount of illegal recovered of Rs: 67000/- may kindly be returned to the applicant.

iv) The applicant may kindly be granted the salary of said period i.e. W.E.F 01/01/2013 to 21/05/2013.

Dated: 21/10/2020

M. Masood
21/10/2020

APPLICANT

MASOOD-AMMED-SAEKH.
Appel No: 114/16 @ No. 64/18

The Honourable Secretary
Elementary & Secondary Edu. Department
Hyderabad (Karnal Chowk) Pashawar.

Sub: App. for Implementation of Inquiry
report dated 26/11/2019.

Respected Sir

It is submitted that your good office issued direction to Director E & SE KPK, Pashawar and DEO (A/Abad) for implementation of Inquiry report dated 26/11/2019 which lists benefits by the Inquiry officer appointed by your good office. But Director E & SE and DEO (M) A/Abad till now, not made any implementation upon the notice (2) direction of your good office, due to which the Applicant is still a grieved person and the future of my Job Career is suffering badly.

It is humbly requested that order be issued to Director E & SE Pashawar and DEO (A/Abad) for the immediate effect of these said Inquiry reports.

Thanks

[Signature]
20/8/2020

Your Obediently

MAC SOD-AHMAD-SHEIKH.
PST, GPS, Muslim Town Abbottabad
Cont. No 03445019140 - 03105820209

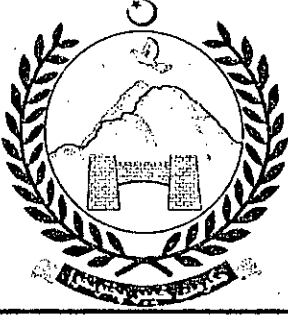
Encl: ISE 3066
No 6/3/2020

08

Date, 30/2020

REGISTERED POST/MOST URGENT BEING COURT MATTER

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) ABBOTTABAD



No. 12559 /ADO (Lit)

Dated: 2 /12/2019



0992-9310102, 0992-330131



EDO.Education.Atd@gmail.com

To

The Director,
E&SE Khyber Pakhtunkhwa,
Peshawar.

Subject:

**REQUEST FOR GUIDANCE AGAINST THE JUDGMENT DATED
24-08-2017, PASSED IN SERVICE APPEAL NO. 1114/2016 TITLED
MAQSOOD AHMAD VS GOVT. OF KPK & OTHERS.**

In continuation to this office letter No. 10158, dated 19-09-2017 this office is once again requesting to your good office regarding the subject cited above, the brief of the case is as under:-

1. That Mr. Maqsood Ahmad filed service appeal No. 1252/2013 titled Maqsood Ahmad VS Govt. of KPK & Others before the Honourable Service Tribunal against the impugned order No. 3728-32 & 3733-36 dated 21-05-2013 whereby, order for recovery of Rs. 3,00,438/- and minor punishment in the shape of withholding of promotion for 3 years was awarded. (Copy of service appeal attached).
2. That the department contested the service appeal and submitted reply before the Honourable Tribunal. (Copy of comments attached).
3. That on 16-02-2016 Honourable Tribunal set aside the impugned order dated 21-05-2013 with the direction to conduct a proper inquiry under E&D Rule, 2011. (Copy of Judgment attached).
4. That in pursuance to the judgment of Honourable Service Tribunal dated 16-02-2016 proper inquiry under E&D Rule, 2011 was conducted and final order under Endst: No. 5612-18 dated 13-07-2016 was issued whereby, withholding of promotion for period of 3 years and recovery of Rs. 3,68,674/- was imposed upon Mr. Maqsood Ahmad. (Copy of order dated 13-07-2016 is attached).
5. That Mr. Maqsood Ahmad once again filed service appeal No. 1114/2016 before the Honourable Service Tribunal against the impugned order No. 5612-18 dated 13-07-2016. Whereby, the appellant was awarded minor penalty of withholding of promotion for a period of 3 years and recovery of Rs. 3,68,674/- for the salary

REGISTERED POST/MOST URGENT BEING COURT MATTER

which the appellant received during the period of his absence. (Copy of the service appeal attached).

6. That the department contested the service appeal and filed Parawise Comments on behalf of respondents No. 01 to 03. (Copy of comments attached).
7. That on 24-08-2017, Honourable Service Tribunal accepted the appeal of appellant as the operative part of the judgment is reproduced as under:-

“Consequently, the impugned order to the extent of awarding minor penalty is set aside and recovery of amount which is also a part of minor penalty is also set aside, The department is however, at liberty to consider the issue of leave for the period in which the appellant has been shown absent under the relevant rules other than the E&D Rules and if the rules allow the recovery of amount for the period which has been converted into extra-ordinary leave then that can be made by the department by issuing fresh order in this behalf. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room. (Copy of the judgment attached).

8. That this office requested to provide the guide lines regarding the above referred rules that the case forwarded to scrutiny committee of Law Department by Directorate and the same was declared unfit case for filing of CPLA. Copy of the minutes of meeting of scrutiny committee attached).
9. Now teacher has filed EP No. 64/2019 before the Honourable Service Tribunal Camp Court Abbottabad for implementation of the judgment dated 24-08-2017.

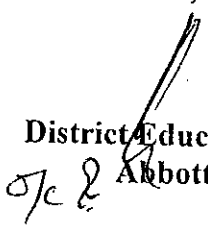
It is therefore, in view of the above referred judgment and in the light of a judgment reported as 2006-SCMR-434 mentioned in the Para No. 06 of the Judgment, this office may please be guided regarding the rules other than the E&D Rules, 2011 which allow the recovery of amount for the period which has been converted into Extra Ordinary Leave. So, that fresh order be passed accordingly.


District Education Officer (M)
Abbottabad.

Endst: No. _____

Dated: _____

1. PS to Deputy Secretary (Legal) E&SED Khyber Pakhtunkhwa, Peshawar.


District Education Officer (M)
Abbottabad.



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. SO(OP-I)/LD/15-2/2012-VOL-VIII
DATED: PESHAWAR THE 24 JULY, 2020.

6459-61

To,

The Secretary to Government of Khyber Pakhtunkhwa,
Elementary and Secondary Education Department.

Attention: Section Officer (Lit-II)

Subject: REQUEST FOR LEGAL GUIDANCE

Dear Sir,

I am directed to refer to your Department's letter No. SO(Lit-II)E&SED/1-3/SA#1114/2016/Maqsood Ahmad PST dated 10.07.2020 on the subject noted above and to state that the Administrative Department has already converted the absence period as leave without pay vide order endorsement No. 5612-18/AE-II/PF Maqsood Ahmad PST dated 13.07.2016, hence, in light of the dictum as laid down in the judgment of Supreme Court of Pakistan reported in 2006 SCMR page 434, the Department has itself condoned the period of absence by allowing him leave without pay and thereby regularized the absence period.

Yours Faithfully,

DSSL
[Signature]
27/7

[Signature]
24.07.2020
Section Officer (Opinion-I)

Endst: of even No. & date.

A copy is forwarded to the:-

1. PS to Secretary Law Department.
2. PA to Additional Secretary (Opinion).

Section Officer (Opinion-I)

[Signature]

1127
27/7



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. SO(OP-I)/LD/15-2/2012-VOL-VIII
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[Signature]
27/7

NK
24.07.2020
Section Officer (Opinion-I)

Endst: of even No. & date.

A copy is forwarded to the:-

1. PS to Secretary Law Department.
2. PA to Additional Secretary (Opinion).

Section Officer (Opinion-I)

Section Officer

1127
27/7

ORDER.

In pursuance to the Judgment of Honorable Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad passed in Service Appeal No.1114/2016 dated 24.8.2017 and in supersession of this office order issued under Endst: No.6164-68 dated 27.05.2019, the absent period of Mr. Maqsood Ahmed, PST GPS Muslim Town Abbottabad as recorded in the order under reference is hereby converted into leave with pay.

sc -
DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

Endst: No. 7425-29 /AE-II/PF Maqsood Ahmed PST

Dated 14/12 /2020

Copy for information & necessary action to the:-

1. Honorable Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to Execution petition No.64/19 in service appeal No. 1114/2016 dated 24.8.2017.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Comptroller of Accounts Abbottabad.
4. Sub Divisional Education Officer (Male) Abbottabad with the remarks that relevant entry be recorded in his service book and submit compliance report positively.
5. Mr. Maqsood Ahmed, PST Govt: Primary School Muslim Town Abbottabad.

[Signature]
DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD
14/12