

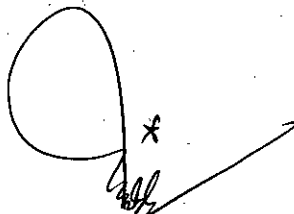
03.03.2020 Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG for respondents present.

01. Learned counsel for the petitioner contended that upon her removal from service from 03.06.2016, she preferred Service Appeal No. 1052/2016 which was decided on 13.09.2017. While granting the relief, it was ordered by the Tribunal that after reinstatement of petitioner, the respondents may hold de-novo inquiry against her while the issue of back benefits was made subject to the outcome of de-novo proceedings. It was also provided in the judgment that in case de-novo proceeding was not concluded within four months, the petitioner would be entitled to the back benefits. She further contended that the respondents have failed to conclude the enquiry within stipulated period of four months from the receipt of the judgment, therefore, the petitioner is entitled to all back benefits in the light of judgment of this Tribunal dated 13.09.2017.

02. On the other hand learned Addl: AG presented counter arguments that as per judgment of this Tribunal dated 13.09.2017, the respondents conducted de-novo enquiry which was concluded on 24.05.2018 and order dated 31.05.2018 was passed wherein the petitioner has been reinstated in service and her intervening period stands treated as Extraordinary leave without pay. He further argued that as the judgment of this Tribunal has been implemented in true letter and spirit, therefore, the instant execution petition has become infructuous being executed. Reliance was also placed on judgment dated 16.09.2019 handed down by the Apex Court in Civil Appeal No. 1086/2018 and CMA No.985-P/2018.

03. In view of the above, the judgment of the Tribunal has been implemented by reinstating the petitioner in service. In case she is still aggrieved of the order, may file fresh service appeal if so advised, subject to all legal objections. File be consigned to the record room.

Announced:
03.03.2020


(Mian Muhammad)
Member

Mst. Mehrun Nisa

18.12.2019

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

Learned counsel for petitioner attempted to distinguish the present matter from facts and circumstances involved in Civil Appeal No. 1086 of 2018 decided by the Apex Court. Her contention was that the petitioner was not associated with the denovo enquiry proceedings, therefore, the period of four months provided through judgment under execution was to be strictly adhered to. As denovo proceedings stepped out of the given period, its recommendation and ensuing order had no bearing upon the issue of back benefits in favour of petitioner.

Learned AAG, on the other hand, referred to relevant portion of the enquiry report and stated that the petitioner duly participated in the proceedings and also got her statement recorded. He also provided a copy of statement of petitioner dated 24.05.2018.

Learned counsel for petitioner when confronted with the position requested for time to further prepare the brief.

Adjourned to 21.01.2020 before S.B.


Chairman

21.01.2020

Nemo for petitioner. Addl. AG for the respondents present.

Adjourned for further proceedings to 03.03.2020 due to general strike of the Bar.


Chairman -

16.10.2019

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

Learned AAG placed on record copy of judgment dated 16.09.2019 handed down by the Apex Court in Civil Appeal No. 1086 of 2018 and CMA No. 985-P of 2018. Copy handed over to learned counsel for the petitioner who requests for time to go through the judgment of Apex Court and further prepare the brief.

Adjourned to 18.11.2019 before S.B.

18.11.2019

Counsel for the petitioner and Addl. AG alongwith Rahim Dad, ADO for the respondents present.


Chairman

Learned counsel requests for further time to prepare the brief, furtherance to the last order dated 16.10.2019.

Adjourned to 18.12.2019 before S.B.


Chairman

03.09.2019 Counsel for the petitioner and Mr. Usman Ghani, District Attorney for the respondents present.

Petitioner, upon her removal from service from 03.06.2016 preferred Service Appeal No. 1052/2016 which was decided on 13.09.2017. By granting the relief. It was ordered by Tribunal that after reinstatement of appellant, the respondents may hold de-novo inquiry against her while the issue of back benefits was made subject to outcome of de-novo proceeding. It was also provided in the judgment that in case de-novo proceeding was not concluded within four months, the appellant was entitled to the back benefits.

The record available before the Tribunal suggests that the de-novo inquiry was concluded on 24.05.2018 which was followed by order dated 31.05.2018, wherein, the intervening period between 03.06.2016 (the date of removal from service) and 12.09.2017 (the date of judgment by the Tribunal) was treated as extraordinary leave without pay.

The issue of back benefits in favour of petitioner was dealt with by this Tribunal in the manner as noted above and in case of non-conclusion of de-novo departmental proceeding against the petitioner within four months, she was declared entitled for back benefits. The date of conclusion of inquiry and passing of office order No. 1191-97 could not be denied by the respondents nor any explanation/justification regarding their over stepping the prescribed period has been provided on the record. It appears that the respondents could not conclude de-novo proceeding against the petitioner within four months from the date of judgment under implementation.

In the circumstances, the respondents are required to issue amended office order of reinstatement of the petitioner also providing for payment of back benefits for the intervening period in favour of the petitioner. The requisite amended/rectified order shall be issued before next date of hearing. Office shall ensure the communication of instant order to respondent No. 3/District Education Officer (Female) Kohistan at the earliest.

Adjourned to 16.10.2019 before S.B.


CHAIRMAN

19.07.2019

Mr. Mir Zaman Safi Advocate and Mr. Muhammad Riaz Khan Pindakhel, Assistant AG for the respondents present.

Request for adjournment is made due to indisposition of learned senior counsel for the petitioner today.

Adjourned to 03.09.2019 before S.B.


Chairman

20.05.2019

Learned counsel for the petitioner and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Upon perusal of copies of documents submitted by the learned counsel for the petitioner today, it transpired that vide order dated 31.05.2018, the petitioner has been reinstated in service and the intervening period has been converted into extraordinary leave without pay. In these circumstances, it appears that the application of the petitioner as mentioned in the order sheet dated 12.02.2019 has become in fructuous. Learned AAG seeks adjournment for proper arguments. Adjourn. To come up for arguments on the application as mentioned in the order sheet dated 12.02.2019 as well as arguments on main execution petition on 26.06.2019 before S.B


Member

26.06.2019

Learned counsel for the petitioner present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Sadiq ADO present, submitted implementation report and seeks adjournment for arguments. Adjourn. To come up for arguments on 19.07.2019 before S.B.


Member

13.09.2018

Mr. Tahir Gul, husband of the petitioner alongwith his counsel Miss. Uzma Syed, Advocate present. M/S Khurshid Ahmad, DEO, Fatal Rahim, ADO and Nawab Khan, SDEO alongwith Mr. Kabirullah Khattak, Addl. AG for respondents present and submitted implementation report, however, it was seriously objected by the learned counsel for the petitioner that the de-novo enquiry was conducted much after the stipulated period fixed by this Tribunal, so the respondents made a request to concern their record and produce before this Tribunal on the next date of hearing on 06.11.2018 before S.B.

6-11-2018

Due to Retirement of Honorable
Chairman the Tribunal is non functional
therefore the case is adjourned to come up
for the same on 24-12-2018

Chairman

Reader

24.12.2018

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

Learned counsel for the petitioner reiterated the objection verbally raised on 13.09.2018. The petitioner is required to bring in black & white her grievance alongwith supporting documents, if any, on the case file.

Adjourned to 13.02.2019 before S.B for the needful. Fresh notices be issued to the respondents for appearance on the said date alongwith all the relevant record.

Chairman

12.02.2019

Learned counsel for the petitioner present and submitted application for restraining the respondents from taking any adverse action against the petitioner. Notice of the said application be given to the respondents No.2 & 3 for 26.03.2019. Adjourn. To come up for reply and arguments on the date fixed before S.B.


Member

26.03.2019

Learned counsel for the petitioner and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned AAG requested for adjournment to furnish reply of the application as mentioned in the preceding order sheet dated 12.02.2019. Adjourn. To come up for reply and arguments on the said application on 12.04.2019 before S.B



Member

12.04.2019

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

Learned counsel for the petitioner requests for adjournment as she is inadvertently not in possession of brief today.

Adjourned to 20.05.2019 before S.B.


Chairman

20.03.2018

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG for the respondents also present and seeks adjournment. Representative of the department is also 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 17.05.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

17.05.2018

Counsel for the petitioner and Addl. A.G for the respondents present. Learned AAG requested for further time as no representative of the respondents is present today. To come up for implementation report on 02.08.2018 before S.B.



Chairman

02.08.2018



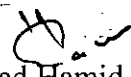
Miss. Uzma Syed, Advocate counsel for the petitioner present. Respondents are not present, however, Mr. Kabirullah Khattak, Addl: AG for respondents present. Fresh notices be issued to the respondents for submission of implementation report on 13.09.2018 before S.B.



Chairman

FORM OF ORDER SHEET

Execution Petition No. 9/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	09.01.2018	<p>The Execution Petition of Mst. Mehrun Nisa submitted to-day by Uzma Syed 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-	11/01/18.	<p>This Execution Petition be put up before S. Bench on <u>22/01/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
22.01.2018		<p>Learned counsel for the petitioner present. Mr. Kabir Ullah Khattak, Learned Additional Advocate General for the respondents present. None present on behalf of the department. Notice be issued to the respondent department for attendance and written reply/comments. Adjourned. To come up for written reply/comments on 20.03.2018 Before S:B</p> <p style="text-align: center;"> (Muhammad Hamid Mughal) MEMBER</p>

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

Execution Petition No. 9 /2018
In Service Appeal No.1052/2016

Khyber Pakhtukhwa
Service Tribunal

Diary No. 46

Dated 9/1/2018

**Mehrun nisa w/O tahir gul street Gul Koroona, Sher Garh, Tehsil
Takht Bhai, District Mardan**

PETITIONER

VERSUS

1. The Secretary Education (E &SE), KPK Peshawar.
2. The Director Education (E&SE), KPK, Peshawar.
3. The District Education Officer, (FeMale) Kohistan.
4. The Sub Divisional Education officer (Female), Palas Kohistan.]
5. The Assistant Sub Divisional Education Officer, Palas Kohistan.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 13.09.2017 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner/ appellant has filed Service Appeal No.1052/2016 in this august Service Tribunal against order dated 03.06.2016, whereby Appellant was Removed from service.
2. That the said appeal was finally heard on 13.09.2017. The Honorable Tribunal was kind enough to accept the appeal and the

impugned orders were set aside and reinstate the appellant in to service and further hold that the department is may to conduct the denovo inquiry in accordance with law and rules within a period of 4 months of receipt of judgment, back benefit shall be subjected outcome of denovo inquiry. If in case Denovo inquiry was not concluded in stipulated period of 4 months, the appellant shall be entitled to all back benefits. **(Copy of Judgment Dated 13.09.2017 is attached).**

3. That as the respondents have failed to concluded within stipulated period of 4 months from the receipt of the judgment, so according to the direction of Tribunal in Judgment, the judgment attained the finality, therefore, the applicant/petitioner is entitled to reinstated in service from the date of dismissal with all back benefits.
4. That the appellant filed application on 10.10.2017 after receipt of judgment for reinstatement and implementation of judgment but despite that the inquiry was not concluded within time. **Copy of application is attached).**
5. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
7. That the petitioner has having no other remedy but to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 13.09.2017 of this august Tribunal in letter and spirit by reinstated the appellant in to service from the date of dismissal with all back benefits .Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of applicant/appellant.

مہرون نسا
APPLICANT/Petitioner
Mehrun Nisa


THROUGH:


(UZMA SYED)
ADVOCATE, PESHAWAR

AFFIDAVIT:

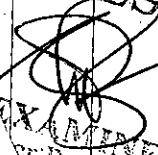
It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.

یسروینا
DEPONENT

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<div style="text-align: right; margin-bottom: 10px;">  </div> <p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;">Service Appeal No. 1052/2016</p> <p style="text-align: center;">Date of Institution ... 13.10.2016 Date of Decision ... 13.09.2017</p> <p>Mehrun Nisa W/O Tahir Gul Street Gul Koroona, Sher Garh, Tehsil Takht Bhai, District Mardan (Terminated as PST, Government Girls Primary School, Gulabad No. 1, Kohistan.</p> <p style="text-align: right;">Appellant</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"> 1. The Secretary to the Government of Khyber Pakhtunkhwa, Elementary and Secondary Education, Civil Secretariat, Peshawar. 2. The Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar. 3. The District Education Officer (Female), Kohistan. 4. The Sub Divisional Education Officer (Female), Palas Kohistan. 5. The Assistant Sub Divisional Education Officer, Palas Kohistan. <p style="text-align: right;">Respondents</p> <p>13.09.2017</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Learned counsel for the appellant and Mr. Muhammad Adeel Butt, Additional Advocate General on behalf of the official respondent present.</p> <ol style="list-style-type: none"> 2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the office order dated 03.06.2016. of respondent No. 3 whereby the appellant was 		

Domicile

ATTESTED



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

awarded major penalty of removal of service under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 (hereinafter referred as E&D Rules, 2011) on the ground of her absence from duties.

3. Learned counsel for the appellant contented that the appellant was condemned unheard. Further argued that penalty was imposed upon the appellant without any inquiry as to probe the charge of absence against her. Further argued that neither any show cause notice was served upon the appellant nor she was granted the opportunity of personal hearing prior to the issuance of impugned order. Learned counsel vehemently stressed that the appellant was not treated in accordance with law and the impugned order is liable to be set aside. On the other hand learned Additional Advocate General argued that holding of regular enquiry is not necessary in each and every case against the delinquent government servant and that the regular enquiry can be dispensed with under Rule 5 (i) of E&D Rules, 2011. In Support of his contention the learned District Attorney relied upon the judgment titled MUHAMMAD ASLAM Versus INSPECTOR GENERAL OF POLICE, PUNJAB, and others (2004 P L C (C.S) 675). Further argued that the appellant willfully remained absent from her duty and as such the penalty imposed upon her vide impugned order does not warrant interference.

4. Arguments heard. Filed perused.

5. There is not cavil to the proposition that the competent

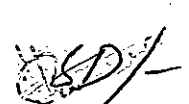
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

authority may dispense with inquiry under rule 5 (1) (a) of E&D Rules, 2011 for the reasons to be recorded in writing. Similarly the competent authority under the proviso of rule 5 (1) (b) of E&D Rules, 2011 shall dispense with inquiry where a government servant is or has been absent from duty without prior approval of leave. However in the present case the appellant was also not served with any show cause against the proposed action nor afforded an opportunity of personal hearing before passing the impugned order as required under rule 7 (b) and rule 7 (c) respectively of the E&D Rules, 2011. It is also not the case of the respondents that the impugned order was passed under rule 9 of E&D Rules, 2011, upon the fulfillment of all the requirements as mentioned in the said rule.

6. In view of the above the impugned order is aside and the appellant is reinstated. The respondent department may hold de-novo proceeding/enquiry against the appellant in accordance with law/rules. The issue of back benefits shall be subject to the outcome of the de-novo proceeding/enquiry. In case the de-novo proceeding/enquiry against the appellant is not concluded within four months of the receipt of this judgment, the appellant shall be deemed entitled to the back benefits. Parties are left to bear their own costs. The present appeal is decided in the above terms. File be consigned to the record room after its completion.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

ANNOUNCED
13.09.2017

Certified to be a true copy
E&D Rules, 2011
Muzibi Tribunal,
Islamabad

Date of Presentation of Application 14-09-17
Number of Words 1200
Copying Fee 8-
Urgent 8-
Total 8-
Name of Copyist [Signature]
Date of Completion of Copy 25-09-17
Date of Delivery of Copy 25-09-17

بخدمت جناب سیکٹری ایجوکیشن پشاور خیبر پختونخواہ

درخواست برائے ایڈجسٹمنٹ

جناب عالی!

مودبانہ گزارش ہے۔ کہ مہر النساء PST پوسٹ پر کوہستان میں تعینات تھی جو کہ اس پوسٹ سے ٹرمینٹ کی گئی تھی اب جو کہ عدالتی کارروائی کے بعد سروس ٹریبونل نے دوبارہ بحالی کیلئے آرڈرز جاری کئے ہوئے تقریباً ڈیڑھ مہینہ ہو چکا ہے لیکن اب تک اس پر DEO کوہستان کی طرف سے کوئی عمل درآمد نہیں ہوا ہے۔

جناب عالی! اسلئے درخواست کی جاتی ہے۔ کہ مہر النساء وائف آف طاہر گل کے بحالی کے احکامات پر عمل درآمد کروا کر مشکورہ فرمادیں

عین نوازش ہوگی

سانکہ

محمد عسکر رضا

محمد عسکر رضا

مہر النساء وائف آف طاہر گل GPS، PST گلاباڈ نمبر 1 کوہستان

Date 10-10-2017

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal, Peshawar

Mehrun Nisa (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education Deptt (Respondent)
(Defendant)

✓
I/We, Mehrun Nisa

Do hereby appoint and constitute **Syed Noman Ali Bukhari and Uzma Syed, Advocates 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

محمد نساء
(CLIENT)

ACCEPTED

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
Advocate, Peshawar.

Uzma Syed
UZMA SYED
Advocate, Peshawar.

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

Execution Petition No. _____/2018
In Appeal No: 1052/2016

Mehrun Nisa

V/S

Education Department

**APPLICATION FOR RESTRAINING THE RESPONDENTS FROM
TAKING ANY ADVERSE ACTION AGAINST THE PETITIONER, AFTER
LAPSE OF PERIOD MENTIONED IN THE JUDGMENT DATED
13.09.2017 TILL THE FINAL DECISION OF THE EXECUTION
PETITION.**

RESPECTFULLY SHEWETH:


1. That the above titled Execution Petition is pending before this august Tribunal.
2. That the appellant filed this execution petition for implementation of judgment dated 13.09.2017 in service appeal no 1052/2016.
3. That now the respondents department conducting inquiry against the appellant after lapse of 4 months t which is total violation of the judgment of this Hon'able Tribunal.
4. That all the conduct of the respondents is based on malafide and against the cause of justice. More so, the respondents legally cannot be allowed to conduct the proceeding after lapse of 4 months which is violation of tribunal judgment and superior court judgment cited as 2017- plc note 20. Further it is added that the in same nature the tribunal granted relief in service appeal no 1015/2015 vide order dated 10.11.2017 so the appellant also entitled to the same relief. Copy of the order is attached.

It is, therefore, most humbly prayed that the respondent may be restrained from taking any adverse action against the appellant/petitioner. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of appellant.

PETITIONER/Applicant

THROUGH:


(UZMA SYED)


(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the above Application are true and correct to the best of my knowledge and belief.


DEPONENT

Provision not completed in stipulated period.

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Application No. 18 /2017

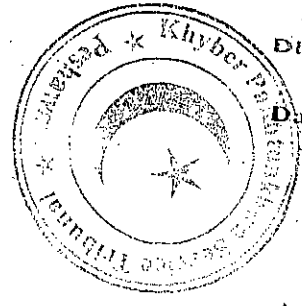
IN

Service Appeal No. 1015/2015

Khyber Pakhtunkhwa
Service Tribunal

Duty No. 75

Dated 3-2-2017



Mrs. Rushda Habib,
Ex-Lecturer in Zoology,
Government Girls Degree College,
Sheikh Maltoon, Mardan,
Higher Education Department,
Khyber Pakhtunkhwa, Peshawar.....Applicant

Versus

1. The Hon'ble Chief Minister,
Khyber Pakhtunkhwa.
2. Mr. Abid Saeed,
Chief Secretary,
Government of Khyber Pakhtunkhwa, Peshawar.
3. Mr. Zafar Ali Shah
The Secretary,
Govt. of Khyber Pakhtunkhwa,
Higher Education Department,
Civil Secretariat, Peshawar.
4. Mr. Muhammad Rooz,
The Director of Higher Education,
Directorate of Higher Education,
Khyber Pakhtunkhwa, Peshawar.....Respondents

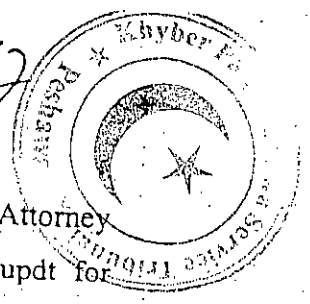
APPLICATION UNDER CLAUSE (d) OF SUB-SECTION 2 OF THE SECTION 7 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR EXECUTION OF THE DECISION DELIVERED BY THE LEARNED BENCH OF THIS TRIBUNAL IN SERVICE APPEAL NO. 1015/2015 ON 15-11-2016 THEREBY IMPUGNED ORDER OF REMOVAL FROM SERVICE WAS SET ASIDE AND APPLICANT WAS REINSTATED IN SERVICE.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,

10.11.2017

Execution Petition No. 18/2017
Ms. Rushda Habib vs Govt



Petitioner with counsel Mr. Usman Ghani, District Attorney alongwith Mr. Naeem Gul, AD(Lit) and Mr. Murad Khan, Supdt for respondents present. Learned counsel for the petitioner argued that Execution Petition no. 18/2017 was filed in service appeal no. 1015/15 as judgment of this Tribunal was not implemented by the respondents within the stipulated period. Vide judgment dated 15.11.2016 the above appeal was accepted and the respondents were placed at liberty to conduct *de-novo* enquiry within^a period of two months from the date of receipt of the said judgment failing which the appellant shall be deemed to have been reinstated in service and period of absence shall then be treated as leave of the kind due. He further contended that petitioner visited the office of respondents many times to inquire about the *de-novo* enquiry proceedings but to no avail. Finally through letter dated 19.01.2017 the respondent no.3 was informed about receipt of judgment etc. but was advised by the concerned officer to wait for further orders. Subsequently, in response to her application she was reinstated for the purpose of conducting *de-novo* enquiry under E&D Rules 2011 vide order dated 22.02.2017. Enquiry was concluded on 24.03.2017. Deadline given by the Tribunal for conducting *de-novo* inquiry expired on 18.01.2017.

As enquiry was not concluded within stipulated period, hence, this Tribunal suspended the operation of letter dated 22.02.2017 vide order sheet dated 19.03.2017 and the respondents were put on notice to clarify why the same was not conducted/concluded within a span of two months? As such fresh inquiry pending against the appellant has no legal value. Furthermore, the appellant informed that despite restraining orders issued by this Tribunal show cause notice was served on her vide 29.09.2017. She submitted written defense on 09.10.2017.

On the other hand learned District Attorney argued that the petitioner submitted an application for reinstatement on 20.01.2017 and was reinstated on 22.02.2017 for the purpose of conducting *de-novo* enquiry. Enquiry was finalized on 24.03.2017 but kept pending due to suspension order issued by this Tribunal vide order sheet dated 09.03.2017. As a result of stay order the respondents may be guided for further course of action. At the end learned District Attorney admitted at the bar that details of show cause notice were not shared by the departmental representative with him, rather he was kept in the dark.

Careful perusal of record would reveal that the respondents flouted the directions contained in judgment dated 15.11.2016 intentionally and deliberately, hence, failed to finalize inquiry proceedings within the

ATTESTED

EXAMINER
Kyber Pakhtunkhwa
Service Tribunal,
Peshawar

stipulated period. Any cogent reason for delay has not been brought forward by the respondents. Proceedings after expiry of deadline given in the aforementioned judgment would be void in the eyes of law. It is further corroborated by a letter submitted by the petitioner dated 19.01.2017. Reliance is placed on case law reported as 2017 PLC (C.S) note 20 and 2007 PLC (C.S) 959 It is regretted that the representative of the respondents did not assist the learned District Attorney by concealing facts and misguiding him. It amounts to unbecoming of an official and also showing dereliction towards official duty, hence, misconduct. He has also become guilty of concealing facts from this Tribunal. Due to the dubious conduct of departmental representative the District Attorney was also put in an embarrassing position. Despite suspension of operation of order dated 22.02.2017 show cause notice was served on her vide letter dated 22.09.2017. She submitted reply to the show cause notice on 09.10.2017. That the respondents willfully violated the directions of this Tribunal and are required to be proceeded under order no. 21 of CPC.

In view of the fore-going the instant execution petition is accepted with following directions to the respondents:

- I. As de-novo inquiry was not completed within the time span specified in the above judgment, hence, it has become void, non-existent and of no legal value. The petitioner stands reinstated in service from the date of her removal from service. The intervening period may be treated as leave of the kind due.
- II. The respondents are directed to take disciplinary action against those responsible for delaying this case as a result of which inquiry proceedings were deliberately delayed.
- III. Disciplinary proceedings be initiated against the departmental representative for concealing facts from this Tribunal and misguiding the learned District Attorney.

File be consigned to the record room.

Announced:
10.11.2017

*SD/- Ahmad Hassan,
Member*

Certified true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

Execution Petition No. _____/2018
In Appeal No: 1052/2016

Mehrun Nisa

V/S

Education Department

.....

**APPLICATION FOR RESTRAINING THE RESPONDENTS FROM
TAKING ANY ADVERSE ACTION AGAINST THE PETITIONER, AFTER
LAPSE OF PERIOD MENTIONED IN THE JUDGMENT DATED
13.09.2017 TILL THE FINAL DECISION OF THE EXECUTION
PETITION.**

RESPECTFULLY SHEWETH:

1. That the above titled Execution Petition is pending before this august Tribunal.
2. That the appellant filed this execution petition for implementation of judgment dated 13.09.2017 in service appeal no 1052/2016.
3. That now the respondents department conducting inquiry against the appellant after lapse of 4 months t which is total violation of the judgment of this Hon'able Tribunal.
4. That all the conduct of the respondents is based on malafide and against the cause of justice. More so, the respondents legally cannot be allowed to conduct the proceeding after lapse of 4 months which is violation of tribunal judgment and superior court judgment cited as 2017- plc note 20. Further it is added that the in same nature the tribunal granted relief in service appeal no 1015/2015 vide order dated 10.11.2017 so the appellant also entitled to the same relief. Copy of the order is attached.

It is, therefore, most humbly prayed that the respondent may be restrained from taking any adverse action against the appellant/petitioner. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of appellant.

PETITIONER/Applicant

THROUGH:

uzma
(UZMA SYED)

Syed
(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the above Application are true and correct to the best of my knowledge and belief.

Go
DEPONENT

copy not completed in stipulated period

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Application No. 18 /2017

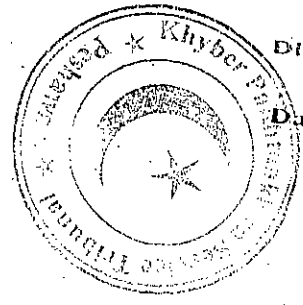
IN

Service Appeal No. 1015/2015

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 75

Dated 3-2-2017



Mrs. Rushda Habib,
Ex-Lecturer in Zoology,
Government Girls Degree College,
Sheikh Maltoon, Mardan,
Higher Education Department,
Khyber Pakhtunkhwa, Peshawar.....

Applicant

Versus

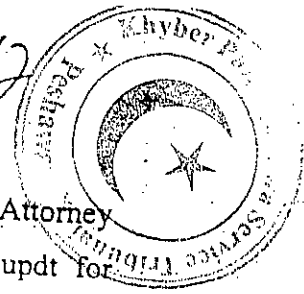
1. The Hon'ble Chief Minister,
Khyber Pakhtunkhwa.
 2. Mr. Abid Saeed,
Chief Secretary,
Government of Khyber Pakhtunkhwa, Peshawar.
 3. Mr. Zafar Ali Shah
The Secretary,
Govt. of Khyber Pakhtunkhwa,
Higher Education Department,
Civil Secretariat, Peshawar.
 4. Mr. Muhammad Rooz,
The Director of Higher Education,
Directorate of Higher Education,
Khyber Pakhtunkhwa, Peshawar.....
- Respondents

APPLICATION UNDER CLAUSE (d) OF SUB-SECTION 2 OF THE SECTION 7 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR EXECUTION OF THE DECISION DELIVERED BY THE LEARNED BENCH OF THIS TRIBUNAL IN SERVICE APPEAL NO. 1015/2015 ON 15-11-2016 THEREBY IMPUGNED ORDER OF REMOVAL FROM SERVICE WAS SET ASIDE AND APPLICANT WAS REINSTATED IN SERVICE.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,

Execution Petition No. 18/2017
Ms. Rushda Habib vs Govt



10.11.2017

Petitioner with counsel Mr. Usman Ghani, District Attorney alongwith Mr. Naeem Gul, AD(Lit) and Mr. Murad Khan, Supdt for respondents present. Learned counsel for the petitioner argued that Execution Petition no. 18/2017 was filed in service appeal no. 1015/15 as judgment of this Tribunal was not implemented by the respondents within the stipulated period. Vide judgment dated 15.11.2016 the above appeal was accepted and the respondents were placed at liberty to conduct *de-novo* enquiry within^a period of two months from the date of receipt of the said judgment failing which the appellants shall be deemed to have been reinstated in service and period of absence shall then be treated as leave of the kind due. He further contended that petitioner visited the office of respondents many times to inquire about the *de-novo* enquiry proceedings but to no avail. Finally through letter dated 19.01.2017 the respondent no.3 was informed about receipt of judgment etc. but was advised by the concerned officer to wait for further orders. Subsequently, in response to her application she was reinstated for the purpose of conducting *de-novo* enquiry under E&D Rules 2011 vide order dated 22.02.2017. Enquiry was concluded on 24.03.2017. Deadline given by the Tribunal for conducting *de-novo* inquiry expired on 18.01.2017.

As enquiry was not concluded within stipulated period, hence, this Tribunal suspended the operation of letter dated 22.02.2017 vide order sheet dated 19.03.2017 and the respondents were put on notice to clarify why the same was not conducted/concluded within a span of two months? As such fresh inquiry pending against the appellants has no legal value. Furthermore, the appellants informed that despite restraining orders issued by this Tribunal show cause notice was served on her vide 29.09.2017. She submitted written defense on 09.10.2017.

On the other hand learned District Attorney argued that the petitioner submitted an application for reinstatement on 20.01.2017 and was reinstated on 22.02.2017 for the purpose of conducting *de-novo* enquiry. Enquiry was finalized on 24.03.2017 but kept pending due to suspension order issued by this Tribunal vide order sheet dated 09.03.2017. As a result of stay order the respondents may be guided for further course of action. At the end learned District Attorney admitted at the bar that details of show cause notice were not shared by the departmental representative with him, rather he was kept in the dark.

Careful perusal of record would reveal that the respondents flouted the directions contained in judgment dated 15.11.2016 intentionally and deliberately, hence, failed to finalize inquiry proceedings within the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

stipulated period. Any cogent reason for delay has not been brought forward by the respondents. Proceedings after expiry of deadline given in the aforementioned judgment would be void in the eyes of law. It is further corroborated by a letter submitted by the petitioner dated 19.01.2017. Reliance is placed on case law reported as 2017 PLC (C.S) note 20 and 2007 PLC (C.S) 959 It is regretted that the representative of the respondents did not assist the learned District Attorney by concealing facts and misleading him. It amounts to unbecoming of an official and also showing dereliction towards official duty, hence, misconduct. He has also become guilty of concealing facts from this Tribunal. Due to the dubious conduct of departmental representative the District Attorney was also put in an embarrassing position. Despite suspension of operation of order dated 22.02.2017 show cause notice was served on her vide letter dated 22.09.2017. She submitted reply to the show cause notice on 09.10.2017. That the respondents willfully violated the directions of this Tribunal and are required to be proceeded under order no. 21 of CPC.

In view of the fore-going the instant execution petition is accepted with following directions to the respondents:

- I. As de-novo inquiry was not completed within the time span specified in the above judgment, hence, it has become void, non-existent and of no legal value. The petitioner stands reinstated in service from the date of her removal from service. The intervening period may be treated as leave of the kind due.
- II. The respondents are directed to take disciplinary action against those responsible for delaying this case as a result of which inquiry proceedings were deliberately delayed.
- III. Disciplinary proceedings be initiated against the departmental representative for concealing facts from this Tribunal and misleading the learned District Attorney.

File be consigned to the record room.

Announced:
10.11.2017

*SD/- Ahmad Hassan,
Member*

Certified true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

BEFORE THE KYBER PAKHTUNKHWA SERVICE
TRIBUNAL, KPK PESHAWAR.

Execution Petition No. 09/2018

MEHR UN NISAAPPELLANT.

IMPLEMENTATION REPORT

1. Para No.1 is correct hence no Comments.
2. Para No.2 of the execution petition is incorrect to the extent that in compliance of the judgment passed by the honorable service Tribunal Peshawar vide dated 13/9/2017 in Service appeal No.1052/16, the appellant was reinstated at GGPS Gulab No.1 Pallas Kohistan for the purpose of Denovo inquiry. The DEO (F) Kohistan nominated Mr. Abdul Rasheed Head Master (BPS-17) GHS Teyal for purpose of denovo inquiry.
3. Para No.3 of the execution petition is incorrect, in accordance to the court order the undersigned constitute denovo inquiry well in time appellant is full aware of that in the light of denovo inquiry appellant has reinstated on her respective services and her intervening period converted into extraordinary leave without pay, which has already mentioned in the reinstatement order.

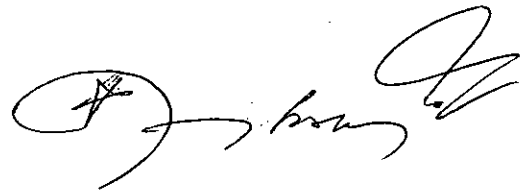
Appointment order is annexed as annexure "A"

4. Para No.4 is incorrect and denied, the appellant did not submit any kind of application with regard to his plea till date nor any such available with the respondent. The DEO (F) Kohistan appointed Mr. Abdul Rasheed Head Master (BPS-17) GHS Teyal as inquiry officer for Denovo inquiry vide DEO (F) office Endstt: No 9595-97 dated 17-03-18 and the officer conducted inquiry and submitted his report.

DENOVO inquiry is annexed as annexure "B"

5. Para No.5 is incorrect and denied, the honorable service Tribunal order has already been executed. The respondent cannot even think of violation of any order of the Honorable service Tribunal.
6. Reply of para 6 is that appellant has already reinstated in abeyance with the Tribunal order and she has treated as per law and rules.
7. Para No.7 is incorrect appellant has already been treated as per law & rules in the light of Tribunal judgment.

It is therefore, in the light of the above stated facts and circumstances, very humbly prayed that the execution petition in hand may please be dismissed with cost.



District Education Officer
(Female) Kohistan



Annexure 'A'

OFFICE OF THE DISTRICT EDUCATION OFFICER (F) KOHISTAN

OFFICE ORDER:

Whereas Mst. Mehrun Nissa Ex PST GGPS Gulab Abad No 1 had submitted her service appeal no 1052/2016 dated 13/10/2016 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 Proceedings /inquiry in accordance with rules as per judgment announced on 13/09/2017.

Whereas District Education officer (F) Kohistan appointed Mr. Abdur Rasheed BPS 17 Head Master GHS Tiyal Kohistan as inquiry officer for denovo inquiry vide DEO (F) office Endstt NO 9595-97 dated 17/03/2018. Inquiry officer submitted his report with the recommendation that the concerned teacher may be re-instated in to service as per judgment of honorable service tribunal, and the period w.e.f. 03/06/2016 (Date of removal) to 13/09/2017 (Date of announcement of re- Instate by honorable service tribunal) may be converted in to Extra ordinary leave without pay.

In view of the above facts Mst. Mehrun Nissa Ex PST GGPS Gulab Abad No 1 is here by re-instated in to service at GGPS Bankhad Village against the vacant post of PST on her own pay and Grade in the light of judgment of honorable service tribunal w.e.f. 13/09/2017; after impose the following minor penalties as recommended by the inquiry officer dated 29/05/2018:

1. The intervening period w.e.f. 03/06/2016 to 12/09/2017 converted in to Extra ordinary leave without pay.
2. She is warned to be resmaind careful in future.

NOTE:-

1. NO TA/DA is Allowed.
2. Charge report should be submitted to all concerned.

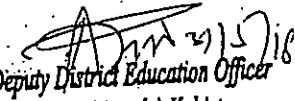
-sd-

District Education Officer
(Female) Kohistan.

Endstt: No. 1191-97
Copy of the above is forwarded to:-

Dated 31/5 /2018

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. Advocate General Khyber Pakhtunkhwa Peshawar.
3. Deputy commissioner Kohistan Lower.
4. Sub Divisional Education Officer (F) Pattan Kohistan.
5. District Account Officer Kohistan.
6. ADEO (Litigation) Local Office
7. Official concerned: ss


Deputy District Education Officer
(Female) Kohistan.

**DE-NOVO INQUIRY REGARDING APPEAL NO 1052/2016 TITLED
MEHRUN NISA VERSUS GOVT: OF KHYBER PAKHTUNKHAWA
PESHAWAR (E&SE) DEPARTMENT.**

References:-

De-novo inquiry was initiated in pursuance of letter no 9595 dated 17/03/018 received from DEO (F) office Kohistan

Short History:-

Mst Mehrun Nisa Begum Was Removed from service by DEO (F) Kohistan Vide Endostt: no 3148-55 dated 03/06/016. She submitted appeal to director (E&SE) Peshawar but no response given to her by the Department, then she lodged an appeal before the honorable service tribunal court Khyber Pakhtunkhawa Peshawar Appeal no 1052/16 dated 13/10/2016 the honor-able court reinstated her in the Govt: service on 11/09/2016 subject to complete the De-novo inquiry within four Months.

Procedure:-

I called the appellant for personal hearing & got her statement
(Annexed).

I examined the record in the office of DEO (F) Kohistan.

Facts and Findings:-

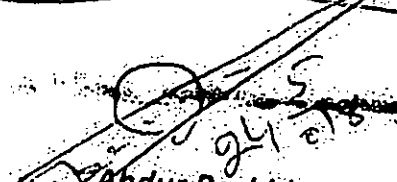
1. The inquiry was conducted in detail By the inquiry officer Mr Abdur Rashid Head Master GHS Tiyal Kohistan.
2. Mst Mehrun Nisa Was appointed as primary school teacher in 2006 by EDO Kohistan.
3. She was posted in GGPS Gulab Aabad in 2016.
4. She removed from service on 03/06/2016 vide DEO (F) Office Endstt no 3148-55 due absences from school duty on one line report of ASDEO Circle Pailas.
5. But the attendance register shows her present during the Month of March 2016 April 2016 & May 2016.

6. Although ASDEO Circle Pallas reported her absent in the, Month of April 2016 and no date of absent shown in his report, no signature of ASDEO circle Pallas was found in attendance Register in April 2016.
7. SDEO (F) Kohistan has visited the school on 23/05/2016 and reported her preset on duty.
8. A showcase was found in the record issued vide 2336-43 dated 29/04/2016 but not handed over to teacher by post or by hand.
9. No any final showcase was served through news papers.
10. No any chance was given to the appellant for personal hearing.
11. According to Head Mistress of GGPS Gulab Abad she was present in school for The Month of 03/206, 04/2016, and 05/2016.
12. No any Detail inquiry was conducted.

Recommendation:-

After perusal of record and statement the teacher, the following recommendations are being given.

1. She may be Reinstated in to service w.e.f. 13/09/2017 (date of decision of Honorable Khyber Pakhtunkhwa court) with all benefits.
2. Her period of removal w.e.f. 03/06/2016 to 12/09/2017 may be treated as extra ordinary leave without pay.


Abdur Rashid
Head Master GHS Tiyal
Inquiry officer.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1614 /ST

Dated 18 / 9 / 2019

To


The District Education Officer Female,
Government of Khyber Pakhtunkhwa,
Kohistan.

SUBJECT: -

ORDER IN EXECUTION PETITION NO. 9/2018, MST. MEHRUN NISA.

I am directed to forward herewith a certified copy of order dated 03.09.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

1917

DE-NOVO INQUIRY REGARDING APPEAL NO 1052/2016 TITLED MEHRUN NISA VERSUS GOVT: OF KHYBER PAKHTUNKHAWA PESHAWAR (E&SE) DEPARTMENT.

References;-

De- novo inquiry was initiated in pursuance of letter no.9595 dated 17/03/018 received from DEO (F) office Kohistan

Short History;-

Mst Mehrun Nisa Begum Was Removed from service by DEO (F) Kohistan Vide Endostt: no 3148-55 dated 03/06/016. She submitted appeal to director (E&SE) Peshawar but no response given to her by the Department, then she lodged an appeal before the honorable service tribunal court Khyber Pakhtunkhawa Peshawar Appeal no 1052/16 dated 13/10/2016 the honor-able court reinstated her in the Govt: service on 11/09/2016 subject to complete the De-novo inquiry within four Months.)

Procedure;-

I called the appellant for personal hearing ^{and} got her statement (Annexed). X

I examined the record in the office of DEO (F) Kohistan.

No Proof

Facts and Findings;-

1. The inquiry was conducted in detail By the inquiry officer Mr Abdur Rashid Head Master GHS Tiyal Kohistan.
2. Mst Mehrun Nisa Was appointed as primary school teacher in 2006 by EDO Kohistan.
3. She was posted in GGPS Gulab Aabad in 2016.
4. She removed from service on 03/06/2016 vide DEO (F) Office Endstt no 3148-55 due absences from school duty on one line report of ASDEO Circle Pallas.
5. But the attendance register shows her present during the Month of March 2016 April 2016 & May 2016.

Imp

6. Although ASDEO Circle Pallas reported her absent in the, Month of April 2016 and no date of absent shown in his report, no signature of ASDEO circle Pallas was found in attendance Register in April 2016.

7. SDEO (F) Kohistan has visited the school on 23/05/2016 and reported her present on duty.

8. A showcase was found in the record issued vide 2336-43 dated 29/04/2016 but not handed over to teacher by post or by hand.

9. No any final showcase was served through news papers.

10. No any chance was given to the appellant for personal hearing.

11. According to Head Mistress of GGPS Gulab Abad she was present in school for The Month of 03/206, 04/2016, and 05/2016.

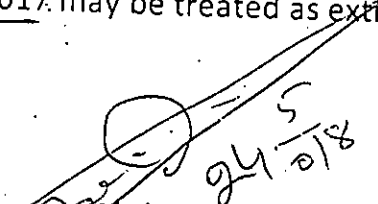
12. No any Detail inquiry was conducted.

Wp

Recommendation:-

After perusal of record and statement the teacher, the following recommendations are being given.

1. She may be Reinstated in to service w.e.f. 13/09/2017 (date of decision of Honorable Khyber Pakhtunkhwa court) with all benefits.
2. Her period of removal w.e.f. 03/06/2016 to 12/09/2017 may be treated as extra ordinary leave without pay.


Abdur Rashid
Head Master GHS Tiyal
Inquiry officer.

w/o any reason
the benefits of the appellant
were denied by department/respondents

Denote majority next
concluding within
prescribed period

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

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

1086
C.A.No.1068 of 2018 and CMA No.985-P of 2018

[Against the order dated 29.03.2018, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Execution Petition No.67/2017]

Govt. of KP through Secretary Elementary & ...Appellant (s)
Secondary Education, Peshawar & others.

VERSUS

Syed Shahin Shah.

...Respondent(s)

For the Appellant (s) : Barrister Qasim Wadood, Addl.A.G. KP

For the Respondent(s) : Rai Muhammad Nawaz-Kharal, ASC
Syed Rifaqat Hussain Shah, AOR

Date of Hearing : 16.09.2019

ORDER:

GULZAR AHMED, J.- The respondent was appointed as a Primary School Teacher in May, 2010. His very appointment order was considered to be unlawful for that he has concealed many facts about his age and previous employment, thus, through order dated 17.01.2013 his service was dispensed. Against his dismissal order, the respondent filed Service Appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar (the Tribunal), which was accepted by the Tribunal vide its judgment dated 04.07.2016 by setting aside the order dated 17.01.2013 and reinstating the respondent in service with direction that an enquiry be conducted in the manner as prescribed by the law, by the competent authority within a period of two months of the receipt of

ATTESTED

judgment and in case, the competent authority fails to conduct and conclude the enquiry within the specified period then the respondent shall be deemed to be reinstated in service with back benefits by treating the period spent out of service w.c.f. 13.01.2013 till date as leave of the kind due. Pursuant to this judgment of the Tribunal, it appears that the appellant-department conducted an enquiry in which the respondent also seems to have participated and, on conclusion of enquiry, the appellant again passed order dated 30.03.2017, by which the respondent was again removed from service. The respondent did not challenge the order of his removal dated 30.03.2017 rather on 18.04.2017, he filed Execution Petition No.67 of 2017 before the Tribunal against the District Education Officer (Male), Peshawar, etc for disobedience of judgment dated 04.07.2016 and awarding of exemplary punishment under the relevant law. After hearing parties, the Tribunal passed the impugned order dated 29.03.2018, the operative para of which is as follows:

"This Tribunal in the judgment dated 04.07.2016 clearly fixed time of 60 days for conclusion of enquiry. The department did not honor the time and regardless of other merits, the said order would have no effect under the law as settled in the above mentioned rulings. Consequently, the impugned order dated 31.03.2017 is set aside and the judgment of this Tribunal dated 04.07.2016 would be implemented and the appellant would be treated as reinstated in accordance with the direction in the order dated 04.07.2016. To come up for implementation report on 24.04.2018 before S.B."

The judgments cited by the Tribunal in the impugned order, are also that of the Tribunal.

2. We have noted that judgment of the Tribunal dated 04.07.2016 was not challenged by any party and pursuant to

ATTESTED

which the appellant also started conducting enquiry but the same could not be concluded within the period of two months, as fixed by the Tribunal by its judgment. However, the fact remains that the respondent continues to participate in the enquiry and on conclusion of the enquiry, the appellant again passed order dated 30.03.2017, by which the respondent was again removed from service. This Court was seized of a similar situation in the case titled as The Divisional Superintendent, Postal Services, Lahore etc v. Muhammad Boota, etc [C.A.No.231-L of 2012], in which order dated 26.10.2017 was passed, where this Court has dealt with the matter as follows:

"2. Learned counsel for the petitioner contends that there is no statutory bar to continue the inquiry and take it to the logical conclusion within a reasonable time and in the instant case, the matter was remanded by the learned Tribunal on 4th January, 2010 to conduct de-novo inquiry within the period of four months. It is urged that large number of witnesses were examined, which consumed considerable time and the inquiry was completed on 10.12.2010, in which the respondent also participated and produced defence evidence. After consideration of all the material, collected by the inquiry committee, the embezzlement amount was directed to be recovered from the petitioner and major penalty was recommended. Based on such inquiry, show cause notice was issued to the respondent on 10.12.2010 followed by 15.12.2010. After hearing the petitioner, he was dismissed from service on 26.1.2011. All such proceedings were set aside in appeal by the Tribunal merely on the ground that since inquiry could not be completed within the given time, therefore, no credibility of law could be given to such inquiry.

3. The conclusion drawn by the learned Tribunal is not backed by any law. Invariably in large number of cases the cases are remanded and directions are made to the authority concerned to conduct de-novo proceedings within given time. On completion of the inquiry, proceedings are invariably considered by the appellate authority looking all the facts and circumstances of the case. In the instant case we have noted that respondent has fully participated in the inquiry, led his evidence even beyond the period prescribed by the Tribunal. No prejudice is shown to have been caused to the respondent, even he participated in the proceedings throughout without any reservation or objection.

4. In this view of the matter, The Federal Service Tribunal was not justified to brush aside the entire inquiry

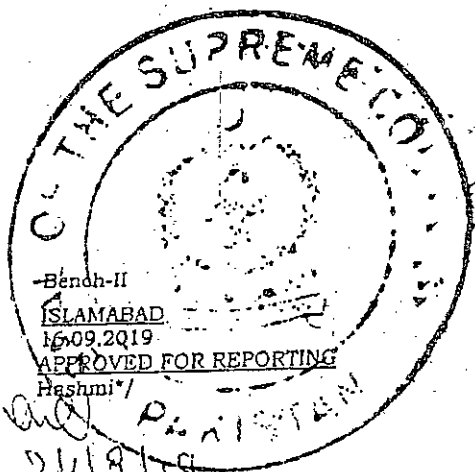
ATTESTED

as, prima facie, substantial embezzlement was established to have been made from the public fund in the hands of the respondent, therefore, appeal is allowed. The impugned judgment is set aside and service appeal shall be deemed to be pending. The Tribunal is directed to hear the parties and decide the appeal preferably within a period of three months.

3. The case in hand being of a similar nature, therefore, we tend to follow the same and find the impugned order dated 29.03.2018 of the Tribunal to be suffering from legal defect and set aside the same. The appeal is, therefore, allowed.

CMA No.985-P of 2018

4. As the main appeal has been allowed, therefore, the CMA stands disposed of.



Sd/-J
Sd/-J
Sd/-J
Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad