

20.03.2018

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Akram, Superintendent for the respondents also present. Representative of the department submitted copy of implementation report. The same is placed on record. Learned counsel for the petitioner seeks adjournment to examine the same. Adjourned. To come up for further proceedings on 17.05.2018 before S.B.

MA

(Muhammad Amin Khan Kundi)
Member

16.04.2018

Petitioner with counsel present. On the request of learned counsel for the petitioner the present execution petition was requisitioned for today as the present execution petition was fixed for 17.05.2018. Learned counsel for the petitioner submitted an application for withdrawal of the present execution petition on the ground that grievances of the petitioner have been redressed. Application is placed on file. In this regard signature of learned counsel for the petitioner also ^{obtained} recorded at the margin of order sheet as a token of proof.

In the light of above, the present execution petition is dismissed as withdrawn. File be consigned to the record room.

ANNOUNCED
16.04.2018

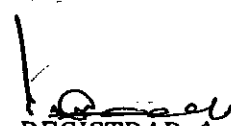


Muhammad Amin
(Muhammad Amin Khan Kundi)
Member

I want to withdraw my present execution because the grievances of the Applicant is addressed.

17.05.18

FORM OF ORDER SHEET

Execution Petition No. 12/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	10.01.2018	<p>The Execution Petition of Mr. Rizwanullah 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: right;"> (Muhammad Hamid Mughal) MEMBER</p>

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

Execution Petition No: _____/2018
Service Appeal No.1515/2013

MR. Rizwanullah V/S Edu Department.

**APPLICATION FOR WITHDRAWAL OF EXECUTION
PETITION.**


RESPECTFULLY SHEWETH:

- 1) That the appellant filed the above titled Execution Petition in this Honourable Tribunal, in which the date has been fixed for 17.05.2018.
- 2) That the appellant filed the above mentioned execution petition for implementation of judgment dated 10.10.2017.
- 3) That now the Respondent Department fulfilled the grievances of the appellant and submitted his report in Hon'able Tribunal, therefore, the appellant wants to withdraw the above titled Execution Petition.

It is therefore humbly prayed that the above titled Execution Petition of the appellant may kindly be withdrawn on the request of the appellant.


Appellant
(Rizwanullah)

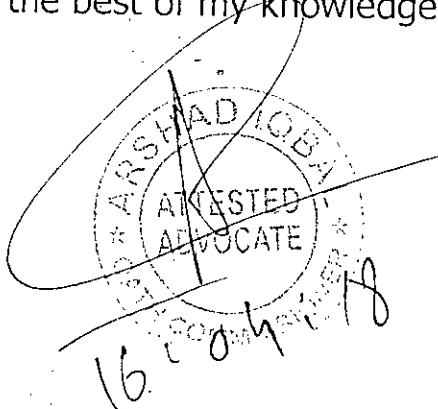
Though


(SYED NOMAN ALI BUKHARI)
Advocate Peshawar High Court
Peshawar.

Verification

The contents of the above application are true and correct to the best of my knowledge.


Deponent



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) LAKKI MARWAT
OFFICE ORDER

THAT, this office has issued removal from service order of Mr, Rizwan Ullah Chowkidar GMS Hayat Khel vide this office No.4972-77 dated. 06-08-2013.

1. WHEREAS, he filed service appeal bearing No.1515/2013 before the Service Tribunal Khyber Pakhtunkhwa Peshawar, regarding re-instatement.
2. WHEREAS, the Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar vide judgment dated.10-10-2017, has decided the case, that impugned order is set-aside and the appellant is re-instated in service.

HOWEVER, the department is at liberty to held de-nova inquiry in accordance to law and rules with in period of three months from the date of receipt of this judgment.

3. WHEREAS, the Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar vide his No.1504-8 dated. 18-10-2017 was directed to this office to approach the Law Department for further course of action.
4. WHEREAS, this office submitted detail of the case to the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar vide No.743 dated. 16-01-2017 for submission the case to the Law Department.
5. WHEREAS, the case was discussed on 13-12-2017 for filing of appeal/CPLA in the proper form and it has been decided by the scrutiny committee that due to lackness in the disciplinary proceeding, the subject case was not fit for filing appeal/CPLA before the August supreme Court of Pakistan.

(b) The representative of the Govt. of Khyber Pakhtunkhwa Elementary & Secondary Education Department was advised that the department may hold De-nova inquiry as per law and rules within three months as per direction of Khyber Pakhtunkhwa Service Tribunal Peshawar from the date of receipt of the Judgment.

(c) The Provincial Directorate Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar vide his Notification No.1392-95 dated. 06-12-2017, Mr, Tawus Khan District Education Officer (M) Karak has been nominated as an inquiry office to conduct De-nova inquiry in the titled case.

6. WHEREAS, the above inquiry officer failed to conduct the inquiry in stipulated period. NOWTHEREFORE, the competent authority is pleased to re-instated the services of the above named appellant from the date of its termination.

(b)The intervening period is considered as Extra leave without pay.

NOTE:- Necessary entry to this effect should be made in his Service Book.

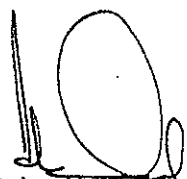
Endst.No. 802-808

Dated. 25/1/2018

District Education Officer
(Male) Lakki Marwat.

Copy to the:-

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to his No.2197/ST dated. 11-10-2017.
2. Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to his No.1504-08 dated. 18-10-2017.
3. Secretary to Govt. of Khyber Pakhtunkhwa Elementary & Secondary Education Department with reference to his No.SO(LIT-II)/E&SED/1-3/SA No.1515/2013 dated.20-12-2017.
4. Deputy District Education Officer (M) Local Office.
5. District Monitoring Officer Lakki Marwat.
6. District Accounts Officer Lakki Marwat.
7. Head Master GMS Hayat Khel.
8. Appellant (Rizwan Ullah).
9. Master file.


District Education Officer
(Male) Lakki Marwat.

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

Execution Petition No: 12 /2018
Service Appeal No.1515/2013

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 438

Dated 16/04/2018

MR. Rizwanullah V/S Edu Department.

**APPLICATION FOR WITHDRAWAL OF EXECUTION
PETITION.**

RESPECTFULLY SHEWETH:

- 1) That the appellant filed the above titled Execution Petition in this Honourable Tribunal, in which the date has been fixed for 17.05.2018.
- 2) That the appellant filed the above mentioned execution petition for implementation of judgment dated 10.10.2017.
- 3) That now the Respondent Department fulfilled the grievances of the appellant and submitted his report in Hon'able Tribunal, therefore, the appellant wants to withdraw the above titled Execution Petition.

It is therefore humbly prayed that the above titled Execution Petition of the appellant may kindly be withdrawn on the request of the appellant.

[Signature]
Appellant
(Rizwanullah)

Though

[Signature]
(SYED NOMAN ALI BUKHARI)
Advocate Peshawar High Court
Peshawar.

Verification

The contents of the above application are true and correct to the best of my knowledge.

[Signature]
Deponent



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OFFICE ORDER

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2. WHEREAS, the Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar vide judgment dated.10-10-2017, has decided the case, that impugned order is set-aside and the appellant is re-instated in service.

HOWEVER, the department is at liberty to held de-nova inquiry in accordance to law and rules with in period of three months from the date of receipt of this judgment.

3. WHEREAS, the Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar vide his No.1504-8 dated. 18-10-2017 was directed to this office to approach the Law Department for further course of action.
4. WHEREAS, this office submitted detail of the case to the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar vide No.743 dated. 16-01-2017 for submission the case to the Law Department.
5. WHEREAS, the case was discussed on 13-12-2017 for filing of appeal/CPLA in the proper form and it has been decided by the scrutiny committee that due to lackness in the disciplinary proceeding, the subject case was not fit for filing appeal/CPLA before the August supreme Court of Pakistan.

(b) The representative of the Govt. of Khyber Pakhtunkhwa Elementary & Secondary Education Department was advised that the department may hold De-nova inquiry as per law and rules within three months as per direction of Khyber Pakhtunkhwa Service Tribunal Peshawar from the date of receipt of the Judgment.

(c) The Provincial Directorate Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar vide his Notification No.1392-95 dated. 06-12-2017, Mr, Tawus Khan District Education Officer (M) Karak has been nominated as an inquiry office to conduct De-nova inquiry in the titled case.

6. WHEREAS, the above inquiry officer failed to conduct the inquiry in stipulated period.

NOWTHEREFORE, the competent authority is pleased to re-instated the services of the above named appellant from the date of its termination.

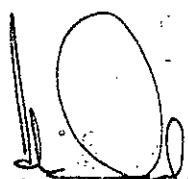
(b)The intervening period is considered as Extra leave without pay.

NOTE:- Necessary entry to this effect should be made in his Service Book.

Endst.No. 802-808 Dated. 25/1/2018
Copy to the:-

District Education Officer
(Male) Lakki Marwat.

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to his No.2197/ST dated. 11-10-2017.
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5. District Monitoring Officer Lakki Marwat.
6. District Accounts Officer Lakki Marwat.
7. Head Master GMS Hayat Khel.
8. Appellant (Rizwan Ullah).
9. Master file.


District Education Officer
(Male) Lakki Marwat.

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) LAKKI MARWAT
OFFICE ORDER

THAT, this office has issued removal from service order of Mr, Rizwan Ullah Chowkidar GMS Hayat Khel vide this office No.4972-77 dated. 06-08-2013.

1. **WHEREAS**, he filed service appeal bearing No.1515/2013 before the Service Tribunal Khyber Pakhtunkhwa Peshawar, regarding re-instatement.
2. **WHEREAS**, the Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar vide judgment dated.10-10-2017, has decided the case, that impugned order is set-aside and the appellatant is re-instated in service.

HOWEVER, the department is at liberty to held de-nova inquiry in accordance to law and rules with in period of three months from the date of receipt of this judgment.

3. **WHEREAS**, the Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar vide his No.1504-8 dated. 18-10-2017 was directed to this office to approach the Law Department for further course of action.
4. **WHEREAS**, this office submitted detail of the case to the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar vide No.743 dated. 16-01-2017 for submission the case to the Law Department.
5. **WHEREAS**, the case was discussed on 13-12-2017 for filing of appeal/CPLA in the proper form and it has been decided by the scrutiny committee that due to lackness in the disciplinary proceeding, the subject case was not fit for filing appeal/CPLA before the August supreme Court of Pakistan.

(b) The representative of the Govt. of Khyber Pakhtunkhwa Elementary & Secondary Education Department was advised that the department may hold De-nova inquiry as per law and rules within three months as per direction of Khyber Pakhtunkhwa Service Tribunal Peshawar from the date of receipt of the Judgment.

(c) The Provincial Directorate Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar vide his Notification No.1392-95 dated. 06-12-2017, Mr, Tawus Khan District Education Officer (M) Karak has been nominated as an inquiry office to conduct De-nova inquiry in the titled case.

6. **WHEREAS**, the above inquiry officer failed to conduct the inquiry in stipulated period.
NOWTHEREFORE, the competent authority is pleased to re-instated the services of the above named appellatant from the date of its termination.
(b)The intervening period is considered as Extra leave without pay.

NOTE:- Necessary entry to this effect should be made in his Service Book.

Endst:No. 800-808

Dated. 25/1/2018

District Education Officer
(Male) Lakki Marwat.

Copy to the:-

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4. Deputy District Education Officer (M) Local Office.
5. District Monitoring Officer Lakki Marwat.
6. District Accounts Officer Lakki Marwat.
7. Head Master GMS Hayat Khel.
8. Appellant (Rizwan Ullah).
9. Master file.


District Education Officer
(Male) Lakki Marwat.

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

**Execution Petition No. 12 /2018
In Service Appeal No.1515/2013**

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 58

Dated 10/01/2018

**Mr: Rizwanullah, S/o Attaullah,
R/o Hayat Khel, Lakki Marwat.**

PETITIONER

VERSUS

1. The Secretary Education (E &SE), KPK Peshawar.
2. The Director Education (E&SE), KPK, Peshawar.
3. The District Education Officer, (Male) Lakki Marwat.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 10.10.2017 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner/ appellant has filed Service Appeal No.1515/2013 in this august Service Tribunal against order dated 16.08.2013, whereby Appellant was Removed from service.
2. That the said appeal was finally heard on 10.10.2017. 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 at liberty to conduct



the denovo inquiry in accordance with law and rules within a period of 3 months of receipt of judgment. (Copy of Judgment Dated 10.10.2017 is attached).

3. That as the respondents have failed to conclude within stipulated period of 3 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 be reinstated in service from the date of dismissal.
4. That the appellant filed application after receipt of judgment for reinstatement and implementation of judgment but despite that the inquiry was not concluded within time.
5. That inaction 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 10.10.2017 of this august Tribunal in letter and spirit by reinstating 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.


APPLICANT/Petitioner
Rizwanullah

THROUGH:

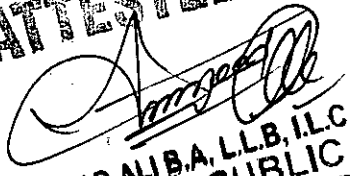

M. ASIF YOUSAFZAI
&

(Syed NOMAN ALI BUKHARI)
ADVOCATES, PESHAWAR.

Contact NO. 0335-8390122

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.

ATTESTED



**AMJAD ALI B.A. LL.B, I.L.C
NOTARY PUBLIC
ADVOCATE TRIBUNAL COURT
PESHAWAR.**

09 JAN 2018



DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1515/2013

Date of Institution ... 21.02.2013

Date of Decision ... 10.10.2017



Rizwanullah son of Attaullah, R/O Hayat Khe, Lakki Marwat ... (Appellant)

VERSUS

1. The Secretary, Education (E&SE) Khyber Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

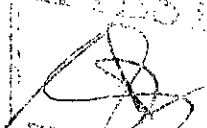
For appellant.

MR. ZIA ULLAH,
Deputy District Attorney

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

CHAIRMAN
MEMBER

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN:-

Arguments of the learned

counsel for the parties heard and record perused.

FACTS

2. The appellant is aggrieved from the impugned order of removal from service dated 16.08.2013 against which he filed a departmental appeal on 04.09.2013 which was not responded to and thereafter the present service appeal was filed by the appellant on 13.11.2013.

ARGUMENTS


3. The learned counsel for the appellant argued that the appellant was appointed on 14.09.2012 and he then reported for duty on 03.10.2012. That another claimant with the

same name Rizwanullah son of Rahmatullah started litigation, challenging the appointment of the appellant on the ground that land for the school was donated by him and that the appellant was not entitled for the appointment. That due to this litigation, law and order situation was created and the DEO (M) Lakki Marwat in his wisdom ordered for the detailment of the appellant in his own office on 08.05.2013. That the appellant was performing his duties in the DEO office when the DEO started enquiry against the appellant on the basis of his alleged absence from duty. Ultimately, the enquiry etc. culminated into the impugned order of removal from service. That the show cause notice (undated) does mention the holding of enquiry but this enquiry is not the regular enquiry as no charge sheet or statement of allegations were issued to the appellant. That the said show cause notice also does not mention the dispensing with of the regular enquiry. That in the preliminary enquiry, some statements were record on two occasions of the persons employed in the office of the DEO who had stated that the appellant had been performing his duty in the office of DEO (M) Lakki Marwat.

4. On the other hand, the learned Deputy District Attorney argued that the appellant never reported for duty and as per para-8 of the terms and conditions of his appointment order, he was obliged to report for duty within 15 days, failing which he was liable to be terminated. He further argued that the appellant was on probation and there was no need even of show cause notice. He added that during the enquiry proceedings, two statements of Headmaster and Principal were recorded and according to these statements, appellant never assumed the charge or performed the duties.

CONCLUSION.

5. This fact has not been denied rather admitted by the DEO that the appellant had been receiving his salary for so many months and the very show cause notice while proposing penalty had added the words that the pay and allowances paid to the appellant also be recovered. It means that the appellant did report for duty and his service book was maintained by the department alongwith his medical fitness certificate which is dated

ATTESTED

 Khwaja...
 Service...
 Peshawar

26.09.2012. The very transfer order dated 08.05.2013 shows that the appellant was working in the office of DEO (M) Lakki Marwat wherefrom he was transferred to GMS Multan Majiwala and then was retained in the office of DEO on detailment basis. Arguments of the learned Deputy District Attorney has got no force regarding probation period because in probation period there is no need of imposing penalty under the disciplinary rules but was simply to be terminated if his work was not found satisfactory and secondly if he had not reported for duty his appointment order should have been cancelled. The holistic scenario emerging from the circumstances is that the appellant did report for duty. He was working in the office of DEO and then he was retained in his office on detailment basis. If he was absent from his duty, the appropriate procedure was to have issued charge sheet and statement of allegations to the appellant and then a regular enquiry should have been conducted but as pointed out by the learned counsel for the appellant that neither charge sheet or statement of allegations have been issued to the appellant nor regular enquiry has been dispensed with. No penalty can be imposed in the manners and in the mode on the basis of some preliminary enquiry and without dispensing with the regular enquiry or conducting a regular enquiry. The whole proceedings are therefore, illegal.

6. In view of the above discussion, the appeal is accepted, the impugned order is set aside and the appellant is reinstated in service. However, the department is at liberty to hold denovo enquiry in accordance with law and rules within a period of three months from the date of receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room

Announced: SD/- Niaz Muhammad Khan,
Chairman

10-10-2017

SD/- Gulzar Khan,
Member

Certified
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

VAKALAT NAMA

NO. _____/20

IN THE COURT OF K.P.L. Service Tribunal, Peshawar

Rizwanullah

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govt of K.P.L.

(Respondent)
(Defendant)

I/We,

Rizwanullah

Do hereby appoint and constitute **Syed Noman Ali Bukhari Advocate 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.

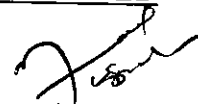
I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20



(CLIENT)

ACCEPTED



SYED NOMAN ALI BUKHARI
Advocate, Peshawar.