

02.05.2019

Counsel for the petitioner and District Attorney for the respondents present.

Learned District Attorney seeks short time to obtain instructions from the respondents regarding implementation of judgment under execution.

Adjourned to 03.05.2019 before S.B.


Chairman

03.05.2019

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

Learned counsel for the petitioner requests for adjournment in order to obtain fresh instructions from her client who is not available today.

Adjourned to 28.05.2019 for further proceedings.


Chairman

28.05.2019

Petitioner alongwith counsel and Addl. AG for the respondents present.

The petitioner states that he has been reinstated in service and has been allowed back benefits by the respondents, therefore, the execution of judgment in his favour has attained finality and requests for consignment of proceedings in hand.



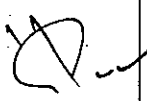
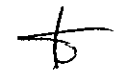
Order accordingly. File be consigned to record room.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 65/2019

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. Muhammad Saeed submitted by Roeeda Khan 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 21/2/19</p>
2-		<p>This execution petition be put up before S. Bench on <u>21-2-19.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	21.02.2019	<p>Learned counsel for the petitioner present. Notice of the present execution petition be issued to the respondents for 01.04.2019. To come up for further proceedings/implementation report on the date fixed before S.B.</p> <p style="text-align: right;"> Member</p>
01.04.2019		<p>Petitioner with counsel present. Mr. Usman Ghani, District Attorney for respondents present. Implementation report not submitted. Requested for adjournment. Adjourned to 02.05.2019 for implementation report before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Executive Petition No. 65 /2019
In Service Appeal No. 798/2014

Muhammad Saeed

VERSUS

The director General Health Government of Khyber
Pakhtunkhwa and others

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S#	Description of Documents	Annex	Pages
1.	Execution Petition Affidavit		1-2
2.	Affidavit		3
3.	Copy of Judgment	"A"	
4.	Copy of Arrival Report	"B"	
5.	Wakalat Nama		


Applicant

Through 
Roeeda Khan

Advocate, High Court
Peshawar

Dated: 07/02/2019

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR

Executive Petition No. 65 /2019
In Service Appeal No. 798/2014

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 195

Dated 8-2-2019

Muhammad Saeed S/o Aqal Shah R/o Sadda Lower
District Kurram.

.....Petitioner

VERSUS

1. The director General Health Government of Khyber Pakhtunkhwa Civil Secretariat Peshawar
2. The Director Health Services FATA, FATA Secretariat, Warsak Road Peshawar.
3. The Additional Agency, Surgeon Lower and Central Kurram Agency Tehsil Head Quarter Hospital Sadda.

.....Respondents

**EXECUTION PETITION FOR
DIRECTING THE RESPONDENTS
TO IMPLEMENT THE JUDGMENT
OF THIS HON'BLE TRIBUNAL IN
LETTER AND SPIRIT**

Respectfully Sheweth,

1. That the applicant/appellant filed Service Appeal No.798/2014 in this August Tribunal against the order dated 24/02/2014 where the appellant has been terminated from service.
2. That this Hon'ble Tribunal was pleased to accept the appeal of the appellant and set aside the impugned order dated 24/02/2014 and to remit the case of the appellant to the Respondent department "as such we partially accept the

appeal the impugned order reinstated the appellant in service however the Respondent department is directed to proceed against the appellant in accordance with law and rules and may pass proper order deemed appropriate". (Copy of judgment is annexed as annexure "A")

3. That the appellant submitted the judgment/order dated 22/06/2018 to the respondent/department that although on response of which the appellant has been reinstated in service and assigned on duty and submitted his arrival on 24/09/2018 on the decision of this Hon'ble Tribunal but the Respondent department not giving salary to the appellant with effect from 24/09/2018 till now. (copy of arrival report attach "B")
4. That so the above situation the Respondent department does not implement the decision of this Hon'ble tribunal in true sense and practical shape to the extents of salary.
5. That the respondent/department is legally bound to implement the judgment and this Hon'ble Tribunal in its true sense.
6. That the petitioner has no remedy except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment of this Hon'ble Tribunal in letter and spirit.



Applicant

Through 

Roeeda Khan

Advocate, High Court
Peshawar

Dated: 07/02/2019

(3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Executive Petition No. _____/2019
In Service Appeal No. 798/2014

Muhammad Saeed

VERSUS

The director General Health Government of Khyber
Pakhtunkhwa and others

Affidavit

I, Muhammad Saeed S/o Aqal Shah R/o Sadda Lower District Kurram, do hereby solemnly affirm and declare on oath that all the contents of the instant Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


Deponent

Identified by:



Roeeda Khan
Advocate High Court
Peshawar



Ann "A" (4)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 798/2014

Date of institution ... 05.06.2014
Date of judgment ... 22.06.2018



Muhammad Saeed S/o Haji Aqal Shah
R/o Saifda Lower Kurrum Agency.

... (Appellant)

VERSUS

1. The Director General Health, Government of KPK, Civil Secretariat, Peshawar.
2. The Director Health Services FATA, FATA Secretariat, Warsak Road, Peshawar.
3. The Additional Agency Surgeon Lower and Central Kurrum Agency Tehsil Head Quarter Hospital, Sadda.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER OF TERMINATION DATED 24.02.2014 PASSED BY RESPONDENT NO. 3 AND AGAINST WHICH APPELLANT FILED DEPARTMENTAL APPEAL WHICH IS STILL PENDING WITHOUT DISPOSAL.

Mr. Javed Iqbal Gulbela, Advocate.

... For appellant.

Mr. Kabirullah Khattak, Additional Advocate General

... For respondents.

MR. MUHAMMAD AMIN KHAN KUNDI
MR. AHMAD HASSAN

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: Appellant with
counsel present. Mr. Kabirullah Khattak, Additional Advocate General for
the respondents also present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the
appellant was appointed as Dental Technician on the recommendation of

Departmental Selection Committee by the competent authority vide order dated 25.06.2013; and during service he was terminated from service vide order dated 24.02.2014. He filed departmental appeal on 07.03.2014 which was not responded hence, the present service appeal on 05.06.2014.

3. Learned counsel for the appellant contended that the appellant was appointed as Dental Technician on the recommendation of Departmental Selection Committee vide order dated 25.06.2013. It was further contended that the appellant remained in service for ten months and performed his duty up to the satisfaction of his superior therefore, the principle of locus poenitentiae is also applicable. It was further contended that there was no complaint against the appellant but the appellant was terminated on the ground that he has got his diploma in Dental Hygienist (Two years course) from Skilled Development Council. It was further contended that Skill Development Course is one of the recognized/notified organization which trains candidates in different fields of life. It was further contended that neither proper inquiry was conducted nor any show-cause notice was issued to the appellant before his termination order and the appellant was condemned unheard therefore, the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal.

4. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was appointed as Dental Technician by the competent authority but during service it came to the notice of the departmental authority that the Skilled Development Council is not a recognized institution for diploma in Health as the same is not registered with Khyber Pakhtunkhwa Medical Faculty therefore, the competent authority has

ALL
Service
Peshawar

rightly terminated him and there was no need to issue any show-cause notice to the appellant and prayed for dismissal of appeal.

5. Perusal of the record reveals that the appellant was appointed as Dental Technician by the competent authority on the recommendation of Departmental Selection Committee vide order dated 25.06.2013. The record further reveals that the appellant performed his duty to the satisfaction of his superior and there is no complaint against the appellant. The record further reveals that the respondent-department neither issued any show-cause notice to the appellant nor opportunity of personal hearing was provided to the appellant before termination order. Although the appellant remained in service for about ten months without any complaint. If any show-cause notice was issued to the appellant, the appellant might have come out with the defence that his appointment was not illegal but the respondent-department did not bother to issue show-cause notice to him before his termination. In the circumstances the appellant was condemned unheard and the impugned order is illegal and liable to be set-aside. As such we partially accept the appeal, set-aside the impugned order and reinstate the appellant in service. However, the respondent-department is directed to proceed against the appellant in accordance with law and rules and may pass proper order as deemed appropriate. The issue of back benefits shall be subject to the outcome of fresh proceedings. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
22.06.2018

Edf. M. Amin Khan Kundli
Member

Edf. Ahmad Hassan
Member



(7)

To,

The Additional Agency Surgeon
Lower of Central Kurram.

Subject: Annual Report.

Sir,

Reference the Director Health
Services FATA office order No. 21991-94/01
dated 13.09.2018.

I have the honor to submit my
annual report on 24.09.2018.

Thank's

Your's obediently

Name: Muhammad Saad
Dental Tech.



Dated
24.09.2018

Accepted
M. J. A.

As per AA's order
JW
24/9/18

قیمت
50 روپے

3358



ایڈویکٹ: Pl

بار کونسل / ایسوسی ایشن نمبر:

رابطہ نمبر: 03330265955

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: محکمہ عدالت پشاور

مخاطب: <u>اسلام آباد</u>	دعویٰ:
	علت نمبر:
<u>محمد سعید بنام نذیر حسین بیگ</u>	مورخہ:
	جرم:
	تھانہ:

باعث تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دی کاروائی متعلقہ سرکار
 کے آن مقام کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف سے یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پروا ختم منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوا سے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سندر ہے
 الرقوم:

مقام پشاور کے لیے منظور ہے۔



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