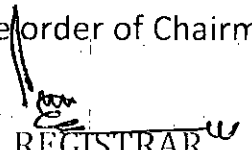


Form- A

FORM OF ORDER SHEET

Court of _____

Emlementation Petition No. 160/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.03.2023	<p>The execution petition Muhammad Aziz Ullah Khan submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution petition No. 160 /2023
In Service Appeal No.917/2018

SCANNED
KPST
Peshawar

P. Ali
10/3/23

Muhammad Aziz Ullah Khan

V/S

Govt. of KP etc

INDEX

S.No.	Documents	Annexure	P. No.
1	Memo of execution petition	-----	01-03
2	Copy of judgment	A	04-07
3	Copy of application	B	08
4	Vakalat Nama	-----	09

THROUGH:

APPELLANT



TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

Cell# 0333-9390916

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Execution petition No. 160/2023
In Service Appeal No.917/2018

~~Khyber Pakhtunkhwa~~
~~Service Tribunal~~

Diary No. 4213

Dated 10/3/2023

Muhammad Aziz Ullah Khan, Retired Principal (BPS-19),
GHS Masha Mansoor District Lakki Marwat.

PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary (E&SE) Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 31.08.2021 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No.917/2018 for directing the respondents to grant advance increments on acquiring additional qualification of M.Ed in this Honorable Service Tribunal.
2. That said appeal was heard and decided by the Honorable Tribunal on 31.08.2021. the Honorable Tribunal allowed the appeal of the petitioner in the terms that the petitioner shall be granted advance increments for acquiring additional qualification with effect from 29.06.2018 the date on which he filed the service appeal. **(Copy of judgment is attached as Annexure-A)**

3. That the Honorable Tribunal accepted the appeal of the petitioner on 31.08.2021, but the respondents did not implement the judgment dated 31.08.2021 by granting advance increments for acquiring additional qualification with effect from 29.06.2018 after the lapse of about more than 01 year.
4. That the petitioner also filed application for implementation of judgment dated 31.08.2021, but no action has also not been taken by the respondents on his application by implementing the judgment dated 31.08.2021 of this Honorable Tribunal. **(Copy of application is attached as Annexure-B)**
5. That the in-action and not fulfilling the formal requirements by the respondents after passing the judgment of this Honorable Service Tribunal, is totally illegal, amount to disobedience and contempt of Court.
6. That the judgment is still in filed and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 31.08.2021 of this Honorable Tribunal in letter and spirit.
7. That the petitioner having no other remedy except to file this execution petition for implementation of judgment dated 31.08.2021 of this Honorable Tribunal.

It is therefore, most humbly prayed that the respondents may kindly be directed to implement to implement the judgment dated 31.08.2021 of this Honorable Service Tribunal in letter and spirit. Any other remedy, which this Honorable Tribunal deems fit and appropriate that, may also be awarded in favour of the petitioner.


PETITIONER

Muhammad Aziz Ullah Khan

THROUGH:


TAIMUR ALI KHAN
ADVOCATE HIGH COURT

AFFIDAVIT

It is affirmed and declared that the contents of this execution petition are true and correct to the best of my knowledge and belief.

Sulaiman
DEPONENT



A 4

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.



Service Appeal No. 917/2018

Date of Institution ... 29.06.2018

Date of Decision ... 31.08.2021

Muhammad Aziz Ullah Khan, Principal (BPS-19),
GHS Masha Mansoor District Lakki Marwat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil
Secretariat, Peshawar and three others.

... (Respondents)

Mr. TAIMUR ALI KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD RASHEED,
Deputy District Attorney

--- For respondents.

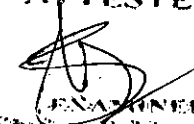
MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts of the case are that the appellant joined Education Department as SET vide order dated 25.01.1981, having the qualification of M.SC and B.Ed. The appellant was promoted to the post of Subject Specialist (BPS-17) and finally promoted to BPS-19 vide order dated 30.01.2018. The appellant had acquired additional qualification of M.Ed in the year 2002, therefore, he was entitled to three advance increments in view of Government Policy, however the same were not granted to him, so he filed departmental appeal on

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

02.03.2018, however the same was not responded within the statutory period of 90 days. The appellant has now approached this Tribunal through filing of the instant service appeal for redressal of his grievance.

2. Notices were issued to the respondents, however they failed to submit their comments despite several opportunities being given to them, therefore, the appeal was fixed for arguments.

3. Learned counsel for the appellant has contended that the appellant is having the additional qualification of M.Ed, therefore, he was entitled to grant of additional increments, however the same were not granted to him; that so many other similarly placed employees have been granted the additional increments, however the respondents treated the appellant with discrimination by not allowing the additional increments to him; that the appellant had already completed the prescribed requirements in semester Spring 2001, however he was awarded the Degree of M.Ed from Allam Iqbal Open University Islamabad in the year 2002, therefore, for the purpose of grant of additional increments, it shall be deemed that the appellant had acquired the concerned qualification in the year 2001, making him entitled to grant of advance increments; that the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 has put clog on grant of advance increments on attaining higher qualification and the said act has been given retrospective effect from 01.12.2001, however vide judgment dated 08.06.2017 passed by the august Peshawar High Court, Peshawar in Writ Petition No. 913-P of 2014, retrospective effect of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 has been declared as null and void. He relied upon unreported judgment of august Supreme Court of Pakistan rendered in Civil Appeal No. 117-P of 2009 titled "Syed Shabir Hussain

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


Shah Versus The Secretary Food and Literacy NWFP (Now KPK) Peshawar and others" as well as judgment of worthy Peshawar High Court, Peshawar in Writ Petition No. 913-P/2014 titled "Muhammad Iqbal and two others Versus Govt. of Khyber Pakhtunkhwa through Secretary to Government, Finance Department Peshawar and three others".

4. Conversely, learned Deputy District Attorney for the respondents has argued that neither any original nor any appellate order has been challenged in the instant appeal, therefore, the same is not maintainable; that the appellant is seeking relief on strength of the degree acquired way back in the year 2002, therefore, the appeal in hand is barred by *laches* and otherwise too, law favours vigilant and not the indolent.

5. Arguments heard and record perused.

6. A perusal of the record would show that M.A/M.SC Degree in the relevant subject was prescribed qualification for appointment of Subject Specialist at the relevant time, while the acquisition of M.Ed Degree was to be considered as additional qualification, entitling a teacher to the grant of advance increments. The appellant had completed the prescribed requirements for awarding of M.Ed Degree in Spring 2001 and he was awarded the degree in the year 2002, therefore, he was entitled to the grant of the concerned additional increments. Although the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 has put clog on grant of advance increments on attaining higher qualification and the said act was given retrospective effect from 01.12.2001, however the appellant has annexed copy of judgment dated 08.06.2017 passed by the august Peshawar High Court, Peshawar in Writ Petition No. 913-P of 2014, whereby the retrospective effect of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on

ATTESTED

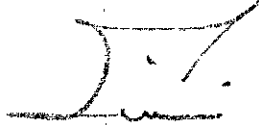

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


Higher Educational Qualification Act, 2012 has been declared as null and void:

7. The issue being one of financial benefits, therefore, being a recurring cause of action, the appeal is not hit by law of limitation. However, sluggish conduct of the appellant in seeking the relief cannot be over looked as he has knocked the door of the Tribunal in the year 2018 for the relief, which accrued to him way back in the year 2002.

8. In light of the above discussion, we allow this appeal in terms that the appellant shall be granted advance increments for acquiring additional qualification with effect from 29.06.2018 the date on which he filed the instant service appeal. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
31.08.2021


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

Certified to be true copy

EX. ATIQ-UR-REHMAN WAZIR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 17-9-21
Number of Words 1600
Copying Fee 18/-
Urgent 4/-
Total 22/-
Name of Copyist _____
Date of Completion of Copy 17-9-21
Date of Delivery of Copy 17-9-21

To

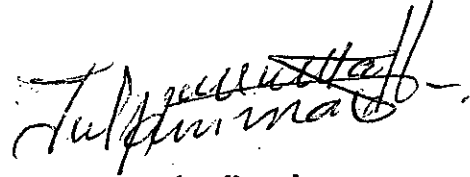
**The Secretary
E & S Education
KPK Peshawar**

Subject: Grant of three adv-Increments from 29-06-2018

Sir,

With due respect it is requested that in the compliance of the decision of Honorable Service tribunal KPK, of my appeal No: **917** dated **29-06-2018** (Copy attached), I may kindly be granted three advance increments from **29-06-2018**, along with the arears and revised pension.

Date: 7/02/2022



**Yours obediently ,
Muhammad Aziz Ullah Khan
Ex- Principal (BPS 19)
GHSS Masha Mansoor
Distt: Lakkii Marwat**

VAKALAT NAMA

NO. _____/202

IN THE COURT OF KP Service Tribunal Peshawar

Muhammad Aziz Ullah Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govt. of KP (Respondent)
(Defendant)

I/We, Muhammad Aziz Ullah Khan

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our 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 _____/202

Taimur Ali Khan
(CLIENT)

ACCEPTED

Taimur Ali Khan
TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar