


FORM OF ORDER SHEET

Court of _____

Case No. - _____

552/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/03/2023	<p>The appeal of Mr. Shabbir Ahmad resubmitted today by Mr. Taimur Ali Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Parcha Peshi is given to appellant/counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

SERVICE APPEAL. 552/2023

Shabbir Ahmed

VS

Secretary (E&SE) & others

**APPLICATION FOR FIXING THE INSTANT APPEAL FOR
PRELIMINARY HEARING AT PRINCIPLE SEAT AT
PESHAWAR OF THIS HONORABLE TRIBUNAL.**

RESPECTFULLY SHEWETH:

1. That the appellant has filed the instant appeal for arrears/back benefits in the shape of salaries in this Honorable Tribunal in which no date has been fixed so for.
2. That the instant appeal is pertain to Camp Court Abbottabad of this Honorable Tribunal.
3. That the counsel for the appellant is practicing at Peshawar and it will be convenient for the counsel to the appellant if the instant appeal is fix for preliminary hearing at principle seat at Peshawar of this Honorable Tribunal.

is therefore, most humbly prayed that acceptance of this application the instant appeal may kindly be fix for preliminary hearing at principle seat Peshawar of this Honorable Tribunal.

APPELLANT
THROUGH:



**TAIMUR ALI KHAN
ADVOCATE HIGH COURT**

The appeal of Mr. Shabir Ahmad CT GMS Shingaldar District Tor Ghar received today i.e. on 27.02.2023 is incomplete on the following score which is returned to the co Counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Memorandum of appeal is not signed by the appellant.
- 3- Affidavit be got signed by the Oath Commissioner.
- 4- Annexures of the appeal may be attested.
- 5- Copy of COC order dated 13.1.2021 mentioned in para-5 of the memo of appeal is not attached with the appeal which may be placed on it.
- 6- Annexures of the appeal are illegible which may be replaced by legible/better one.
- 7- Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 802 /S.T,

Dt. 28/2 /2023


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv.
High Court Peshawar.

Respected Sir

1- Removed

2- Removed

3- Removed

4- Removed

5- Copy of COC is attached at page-21-24

6- Removed

7- Removed

Resubmitted after compliance



14/3/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 552 /2023

Shabbir Ahmad

V/S

Education Deptt:

INDEX

S. No.	Documents	Annexure	P. No.
01	Memo of appeal	-----	01-06
02	Affidavit	-----	07
03	Copies of appointment order dated 09.04.2016 and withdrawal dated 07.09.2016.	A&B	08-10
04	Copy of judgment dated 21.02.2018	C	11-17
05	Copy of notification dated 22.05.2018	D	18
06	Copies of inquiry report and notification dated 04.09.2019	E&F	19-20
07	Copy of C.O.C order dated 13.01.2021	G	21-24
08	Copy of departmental appeal	H	25
09	Copy of affidavit	I	26
10	Copies of judgments	J	27-42
11	Vakalat Nama	-----	43

APPELLANT

THROUGH:



(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

Cell No. 03339390916

Shaukat Gulzar Torani

—Advocate

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 552/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3923

Date 27/2/2023

Mr. Shabbir Ahmed CT (BPS-15),
GMS Shingaldar, District Tor Gahr.

(APPELLANT)

VERSUS

1. The Secretary (Elementary & Secondary Education) Department Khyber Pakhtunkhwa, Peshawar.
2. The Director (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, (Male) Tor Gahr at Mansehra.
4. The Secretary Finance Department Khyber Pakhtunkhwa, Peshawar.
5. The District Account Officer, District Tor Ghar at Mansehra.

(RESPONDENTS)

Monday

Registrar

27/2/23

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR DIRECTING THE RESPONDENTS TO GRANT BACK BENEFITS/ARREARS TO THE APPELLANT IN THE SHAPE OF SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 to 21.05.2018 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY KINDLY BE DIRECTED TO GRANT BACK BENEFITS/ARREARS TO THE APPELLANT IN SHAPE

OF SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 to 21.05.2018 AS ON DOMICILE ON WHICH HIS APPOINTMENT ORDER WAS WITHDRAWN HAS BEEN VERIFIED AND FOUND CORRECT DURING THE DE-NOVO INQUIRY PROCEEDING. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWTH:

FACTS:

1. That the appellant was appointed as CT on 09.04.2016 alongwith other official after fulfilling all codal formalities and has performed his duty till 06.09.2016 and then his appointment order was withdrawn from the date of appointment vide order dated 07.09.2016 on the reason that his domicile has declared unverified by the quarter concerned. **(Copies of appointment order dated 09.04.2016 and withdrawal dated 07.09.2016 are attached as annexure-A&B)**
2. That the appellant has challenged the order dated 07.09.2016 in the Honorable Peshawar High Court Abbottabad Bench in writ petition No. 910-A/2016. The said writ petition was decided on 21.02.2018. The Honorable Court accepted the writ petition of the appellant and declared the impugned notification dated 07.09.2016 as illegal, unlawful and has no legal effect and reinstated the appellant into his service leaving the respondents at liberty to proceed against the appellant if they wish but in accordance with law and rules on the subject. **(Copy of judgment dated 21.02.2018 is attached as Annexure-C)**
3. That in compliance of the judgment dated of Honorable Peshawar High Court Abbottabad Bench dated 21.02.2018 rendered in writ petition No.910-A/2016, the appellant was reinstated into service from the date of his withdrawn order vide notification dated 22.05.2018 and also mentioned in that order that his service arrears of pay and allowance will be decided on the outcome of de-novo inquiry. **(Copy of notification dated 22.05.2018 is attached as Annexure-D)**
4. That inquiry was conducted about the domicile of the appellant by the Assistant Commissioner Judba Torghar in which he gave his finding/recommendation that from the statement of the local representative and examination of document I reached to the

3

conclusion that Mr. Shabbir Ahmed (appellant) is the bonafide resident of the District Torghar and the domicile certificate has rightly been issued to him and the service of the appellant was also regularized along with other officials from the date of his appointment vide notification dated 04.09.2019. **(Copies of inquiry report and notification dated 04.09.2019 are attached as Annexure-E&F)**

5. That in the reinstatement notification dated 22.05.2018 of the appellant, it was clearly mentioned by the competent authority that arrears of pay and allowances of the appellant will be decide on the outcome of de-novo inquiry and the de-novo inquiry also came in the favour of the appellant as on the basis of non verification of domicile of the appellant, his appointment order was withdrawn basis, however, his domicile was verified and found correct by the quarter concerned during de-novo inquiry, but despite that arrears of pay and allowance has not granted to the appellant, therefore the appellant filed C.O.C Petition No. 144-A/2019 in the Honorable Peshawar High Court Abbottabad Branch with the prayer that contempt proceeding be initiated against the respondents for disobeying the order of the Court and exemplary punishment the awarded, respondents may graciously be directed to pay salaries benefits for the period between 07.09.2016 to 03.07.2018. The Honorable Court decided the C.O.C Petition of the appellant on 13.01.2021 in which the Honorable Court hold that as the respondents implemented the judgment dated 21.02.2018 by the reinstating the appellant into service and since there was no direction qua payment of back benefits in the said judgment, therefore, contempt proceeding cannot be initiated against the respondents, hence the C.O.C of the appellant was dismissed. However, the appellant was placed liberty to approach the appropriate forum provide under the law for redressal of his grievance, if any, in accordance with law qua the issue of back benefits. **(Copy of C.O.C order dated 13.01.2021 is attached as Annexure-G)**
6. That the appellant then filed departmental appeal on for grant of back benefits/arrears in the shape salaries for the period with effect from 07.09.2016 to 21.05.2018, which was not responded within the statutory period of ninety days. **(Copy of departmental appeal is attached as Annexure-H)**
7. That the appellant has no other remedy except to file the instant service appeal in this Honorable Tribunal on the following grounds amongst others.

GROUND:

- A. That not taking on the departmental appeal of the appellant within statutory period of ninety days and not granting back benefits/arrears to the appellant in shape of salaries for the period with effect from 07.09.2016 to 21.05.2018 are against the law, facts, norms of justice, material on record, notification dated, 22.05.2018, de-novo inquiry report and superior court judgements, therefore, not tenable and the appellant is entitle to back benefits/arrears in the shape salaries for the period with effect from 07.09.2016 to 21.05.2018.


- B. That the appointment order of the appellant has withdrawn on the reason that domicile of the appellant was unverified, however, de-novo inquiry was conducted on the verification of the domicile in which the inquiry officer his finding/recommendation that from the statement of the local representative and examination of documents I reached to the conclusion that Mr. Shabbir Ahmed (appellant) is the resident of the District Torghar and the domicile certificate has rightly issued to him and it was necessary that before withdrawing the appointment order of the appellant proper inquiry should be conducted to dig out the realty about the domicile of the appellant, but no such action has been taken by the department and his appointment order withdraw in slipshod manner and after de-novo inquiry his domicile was verified and found correct, which means that due to the fault of the department the appellant has restrained to perform his duty with effect from 07.09.2016 to 21.05.20218, therefore, the appellant is entitle for back benefits/arrears in the shape of salaries for that period.

- C. That in reinstatement notification dated 22.05.2018 of the appellant, it was mentioned that arrears of pay and allowance of the appellant will be decide on the outcome of de-novo inquiry and in de-novo inquiry the domicile of the appellant was verified and found correct, but despite that the appellant was deprived from arrears of pay and allowance as per notification dated 22.05.2018, which is against the norms of justice and fair play.

- D. That the reason on which the appointment order of the appellant was withdrawn was that, that the domicile of the appellant had declared unverified by the quarter concerned on which de-novo inquiry was conducted in which it was verified and found correct, therefore, there remain no ground to deprive the appellant from back benefits/arrears in the shape of salaries for the period with effect from 07.09.2016 to 21.05.2018.


- E. That the appellant was regularized from the date of appointment and also granted annual increments of eth year 2017, 2018 and 2019 to the appellant and as such he is also entitle to the salaries for the period with effect from 07.09.2016 to 21.05.2018.
- F. That the appellant did not willfully remained absent from his duty, but the, department restrained him from performing his duty due to withdrawal of his appointment order on wrong presumption of his unverified domicile which was later on verified in the de-novo inquiry and as such the appellant cannot be deprived from his salaries for the period with effect from 07.09.2016 to 21.05.2018 due to the fault of the department.
- G. That as per superior court judgment that once an official was reinstated in service after exoneration of charges leveled against him, the period during which he remained either suspended or dismissed/removed could not be attributed as fault on his part. Absence of official during period of dismissal/removal was not voluntary on his part but it was due to the order of the authority which restrained from attending his job/duty. Therefore, his service record could neither be adversely affected nor could he be denied any benefits to which he would have been entitled had he not been removed/dismissed and as such the appellant is entitle for the salaries for the period with effect from 07.09.2016 to 21.05.2018 on the basis of Apex Court judgment.
- H. That the appellant remained unpaid employees (not remained gainfully employed) for the period from withdrawal of ahis appointment till reinstatement into service which is evident from the affidavit made by the appellant in this respect and as per superior courts judgment, he is entitle for back benefits in the shape of salaries for the period writhe effect from 07.09.2016 to 02,07.2018. **(Copy of affidavit is attached as Annexure-I)**
- I. That similar nature appeals have been allowed by this Honorable Tribunal and the appellant being similarly placed person also entitle the same relief under the rule of consistency. **(Copies of judgments are attached as Annexure-J)**
- J. That the appellant seeks permission of this Honorable Tribunal to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.


APPELLANT
Shabbir Ahmed

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT


Shaukat Ullah Torani

Advocate

②

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2023

Shabbir Ahmed

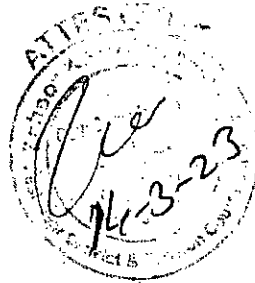
V/S

Education Deptt:

.....

AFFIDAVIT

I, Shabbir Ahmed CT (BPS-15), GMS Shingaldar, District Tor Gahr (Appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this Honorable Tribunal.




DEPONENT

Shabbir Ahmed
(APPELLANT)

**NOTIFICATION**

Consequent upon the recommendations of the Departmental Selection Committee, appointment of the following candidates are hereby ordered against the post of Certified Teacher (CT General) School based in BPS-15 (Rs.10985-905-38135/- @ 10985, fixed plus usual allowances as admissible under the rules on adhoc basis and school basis initially for a period of one year under the existing policy of the Provincial Government, in Teaching Cadre on the terms and conditions given below with effect from the date of their taking over charge :-

S.NO	NAME OF TEACHER	FATHER NAME	SCORE	NAME OF SCHOOL WHERE APPOINTED	REMARKS
1	Kifayat Ullah	Muhammad Tahir	90.58	GMS Kand Dour Mera	Against VIP
2 ✓	Nusrat Shah	Iqbal Shah	92.37	GMS Shadag	--do--
3	Mujeeb Ur Rahman	Sultan Said	99.76	GMS Shagai	--do--
4 ✓	Shabbir Ahmed	Ikhliar Malook	78.13	GMS Shingaldar	--do--
5	Abdul Jalil	Abdul Ghaffar	97.0	GMS Judba	--do--
6	Haleem Zada	Sheheen	93.63	GMS Judba	--do--
7	Shakir Ullah	Ali Muhammad	96.16	GMS Shatal	--do--
8	Bakhti Zar Said	Nawab Said	112.19	GMS Cheer	--do--
9	Sharifur Rahman	Yaqub Khan	95.07	GMS Kotlay	--do--
10	Sham Shair	Asim Khan	94.13	GMS Kotlay	--do--
11	Safi Ullah	Aadur Rauf	91.99	GMS Kand Bala	--do--
12	Meraj Mehmood	Wazir Ur Rehman	106.32	GMS Kotkay	--do--
13	Syed Alam Khan	Syed Munawar Alam Khan	105.82	GMS Darow	--do--

TERMS & CONDITIONS:

1. NO TA/DA etc is allowed.
2. Charge reports should be submitted to all concerned in duplicate.
3. Appointment is purely on temporary & adhoc basis initially for a period of one year.
4. They should not be handed over charge if their age is above 35 years or below 18 years.
5. Their Appointments are subject to the condition that their **CERTIFICATE/DOCUMENTS AND DOMIGILES** be verified from the concerned authorities by the District Education Officer (M), anyone who found producing fake documents will be dismissed from service and the case will further be reported to the law enforcing agencies for action under the relevant law.
6. Their services are liable to termination on one month's notice from either side. In case of resignation without notice his one-month pay/allowances shall be forfeited to the Government treasury.
7. Their Pay will not be activated until and unless pay release order is not issued by the competent authority after verification of their documents by the District Education Officer.
8. They should join their post within 10 days of the issuance of this notification. In case of failure to join the post within 10 days of the issuance of this notification, their appointment will expire automatically and no subsequent appeal etc shall be entertained.

- (9)
9. They should produce Health and Age Certificate from the Medical Superintendent concerned before taking over charge.
 10. They will be governed by such rules and regulations as may be issued from time to time by the Government.
 11. Their services shall be terminated at any time, in case their performance is found unsatisfactory during their contract period. In case of misconduct, they shall be preceded under the rules framed from time to time.
 12. Their appointment is made on School based, they will have to serve at the place of posting, and their services are not transferable to any other station.
 13. The competent Authority reserve the right to rectify the errors and omissions, if any noted/observed at any stage in the instant order issued erroneously.
 14. Before handing over charge their document should be checked by the concerned Head of institutions, if they don't possessed the prescribed qualification of the post they should not be handed over the charge.

--SD--
Abdullah
District Education Officer (M)
E&SE Tor Ghar

Endst: No. 919-28/Dated Tor Ghar 09th April 2016.

Copy forwarded for information and necessary action to the: -

1. Secretary to Government Khyber Pakhtunkhwa E&SE Department Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. PS to Minister E&SE Department Khyber Pakhtunkhwa Peshawar.
4. Deputy Commissioner District Tor Ghar.
5. District Accounts Officer Tor Ghar at Mansehra.
6. District Monitoring Officer (IMU) Tor Ghar.
7. District Education Management Information System (DEMIS) Local Office.
8. Head Masters GMS Concerned.
9. Officials Concerned.
10. Office File.


District Education Officer (M)
E&SE Tor Ghar



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) TOR GHAR

Ph: 0345-6660087 Fax: Nil
Email: torgharemis@gmail.com

No. _____
Dated: ___/___/2016

B

10

NOTIFICATION

Reference to the Deputy Commissioner Tor Ghar letters No. 1223/DC (2016)/TG Dated 09/05/2016, No. 1394/DC (2016) TG Dated 19/05/2016 and Assistant Commissioner Letter No. AC(2016)/TG 2792-93 dated 18/08/2016, in connection with the terms and conditions No. 5 of the Appointment order issued vide this office Notification No.919-28 Dated 09/04/2016, the competent authority E&SE Tor Ghar is pleased to withdraw/denotify the appointment in respect of Shabir Ahmad S/O Ikhlas Malook CT GMS Shingaldar w.e.f the date of his appointment.

—SD—

District Education Officer (M)
E&SE Tor Ghar

Endst: No 2924-31 /Dated 7/9 /2016.

Copy for information to the.

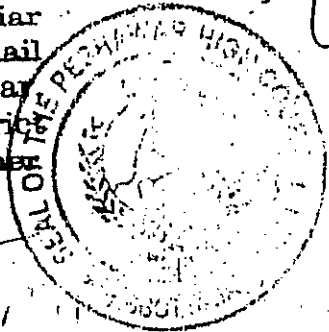
1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Tor Ghar with the remarks that denotification and legal action has been initiated against the teachers as directed.
3. District Police Officer Tor Ghar with request to Lodge FIR as per rules against above mentioned candidate.
4. District Nazim Tor Ghar.
5. District Account Officer Tor Ghar at Mansehra.
6. District Monitoring Officer (IMU) Tor Ghar.
7. District Education Management Information System (DEMIS) Local office.
8. Office File.

Dy: District Education Officer (M)
E&SE Tor Ghar

Note. All employees education department & other interested ones, please Type "Follow torghardeo" in your mobile message & send it to "40404" to get free tweets of DEO Education Torghar on your mobile.

WP 910 A/16 C (11)

Shabbir Ahmed son of Ikhtiar Malook, resident of Diori Kaka Khail Village Council Mangri Kamaisar Tehsil Judbah, District Torghar.....Petitioner



Versus

- 1) Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education Department, Peshawar.
- 2) Director, Elementary & Secondary Education Department, Peshawar
- 3) District Education Officer (Male), Elementary & Secondary Education Department, Torghar.
- 3-A) Deputy District Education Officer (Male), Elementary & Secondary Education Department, Torghar.
- 4) Deputy District Education Officer, Torghar.
- 5) Assistant District Education Officer, Judbah.
- 6) Revenue Officer, Judbah.
- 7) Field Officer, Mangri Kamaisar Tehsil, Judbah.
- 8) Patwar, Kamaisar, District Torghar.

[Signature]

[Signature]

10) Khawas Khan, Nazim, Village
Council Mangri Kamais
Tehsil Jubbah, District
Torghar..... Respondents

WRIT PETITION UNDER ARTICLE
199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN,
1973

Petitioner Respectfully sheweth!

- 1) That, the petitioner in response to respondent No. 3 advertisement to fill vacant certified teachers (CT) posts available at different public sector schools in the district of Torghar, applied for his appointment against one of such posts.

(Copy of advertisement is annexed as Annexure "A")

- 2) That, the petitioner duly qualified the criteria and after passing all the tests and interview and scoring of 78.73 points and being highly educated person and in possession certificate in teaching (CT) and B.Ed Degree from Allama Iqbal Open University,

FILED TODAY

Jhm
Additional Registrar
Peshawar High Court
Abbottabad Bench
26/1/94



13

Date of hearing: 12.02.2018

Petitioner (represented) by Mr. Saeed Ashraf

Respondent: Pakhtunkhwa through Elementary & Secondary Department, Peshawar by Mr. Yasir Zahoor AG.

LAL JAMAL K. J. Petitioner through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has prayed this Court for issuance of a writ to declare the inquiry proceedings and letters dated 11.05.2015, 18.08.2016, 19.05.2016 issued by the respondents as illegal and unlawful. He has also prayed that notification dated 07.03.2016 whereby his appointment order has been withdrawn be also declared as illegal, unlawful, and of no legal effect.

goin

Certified to be a true and correct copy of the original.
01
Per: [Signature]
Authorised Officer

2. Briefly the facts are that

pursuant to advertisement Annexure "A"

to the writ petitioner applied for

his appointment against the post of

Certified Teacher (CT). After going

through the prescribed selection process,

he was appointed as Certified Teacher

vide order dated 09.04.2016, whereafter

he took over charge and started his

teaching career, however, vide

notification dated 07.09.2016, his

appointment order was withdrawn by the

respondents on the ground that the

concerned quarters had found his

domicile certificate unverified. Feeling

aggrieved from the withdrawal of his

appointment order, petitioner has filed the

instant writ petition for annulment

thereof.

3. This Court on 06.12.2016 had

directed the respondents to file their

parawise comments, which have been so

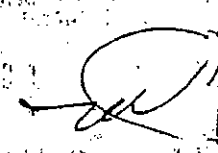
filed, wherein issuance of the desired writ

has been opposed.

gan

Certified Teacher
[Signature]

5. Perusal of the case record would show that upon recommendations of the departmental selection committee, the petitioner was appointed on 9th April 2016 as Certified Teacher, whereafter he had joined the education department. After taking over charge, Deputy Commissioner Torghar initiated an inquiry regarding verification of the petitioner's domicile wherein his domicile was found unverified and consequently the appointing authority withdrew the petitioner's appointment order.

Certified

 Authorized

G. Jais

6. True that the petitioner's appointment order has been withdrawn by the appointing authority in light of the inquiry report whereunder his domicile was found unverified but pronounced aspect of the case is that the petitioner was not associated in the inquiry process so as to get his point of view qua the allegation. No doubt the Patwari Halqa did record statements of some persons of

did not hail from his village council. Be-
that as it may be the petitioner was not
associated at all in the inquiry process and
the impugned order has been passed on
his back despite the fact that he was
available in his village and place of
posting, therefore, the impugned letters
and the notification issued are of no legal
effect as it is cardinal principle of law that
no one shall be condemned unheard.

Certified
[Signature]
As per the order of the Government

gpm

7. Record also shows that the
petitioner was appointed on 09.04.2016
upon the recommendations of a duly
constituted departmental selection
committee, whereafter he performed his
duties till 07.09.2016 and as such he
could not have been shunted out from his
service the way he has been. It is well
settled that whenever a drastic action is
desired to be taken against a person then
he must be given an opportunity to explain his
position and the provisions of law have

17

always deprecated unilateral actions culminated in major penalties.

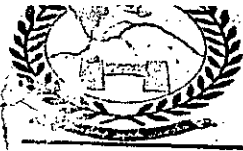
8. For what has been discussed above, we accept this petition, declare the impugned notification dated 07.09.2016 as illegal, unlawful and of no legal effect. Consequently the petitioner is re-instated in his service. However, the respondents would be at liberty to proceed against the petitioner if they so wish but in accordance with law and rules on the subject.

[Handwritten signatures]

Announced
21.02.2018
Tribunal

Certified to be True Copy
Peshawar
Authorized

Hon'ble Justice Lal Jan Khattak
Hon'ble Justice Syed Arshid Ali



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
DISTRICT TOR GHAR

Email: torgharem@gmail.com



NOTIFICATION

In compliance with the Judgment of Honorable Peshawar High Court Bench Abbottabad, dated 21/02/2018, in Writ Petition No. 910-A/2016, the services of Mr. Shabir Ahmed Ex-CT is reinstated as CT at GMS Shingaldar from the date of his withdrawn order.

His arrears of pay and allowances will be decided on the outcome of the de-novo inquiry.

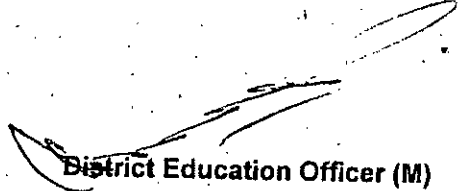
SD

District Education Officer (M)
District Tor Ghar

Endst: No. 4541-47 /Dated 22 1 05 /2018.

Copy for information to the.

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Tor Ghar.
3. District Monitoring Officer IMU Tor Ghar
4. District Accounts Officer Tor Ghar
5. Head Master GMS Concerned.
6. Teacher Concerned.
7. Office File.


District Education Officer (M)
District Tor Ghar



Office of the Assistant Commissioner, Judba
District Torghar.

No. Reader/AC(2018)/TG/ 1970
Dated Torghar the 03/10/2018

Fax# 0997-30188
dctorghar@gmail.com

To

The Deputy Commissioner
Torghar

Subject: **INQUIRY**

In pursuance of the Deputy Commissioner Office Diary No. 1961 dt: 25-06-2018, Wherein, the undersigned was asked to conduct inquiry regarding the domicile verification of Mr. Shabbir Ahmad.

BACKGROUND:-

Mr. Shabbir Ahmad S/o Ikhtiar Malook was appointed as CT by the Education Department Torghar on 09-04-2016. His domicile was sent to Deputy Commissioner Office torghar for verification by the Education Department Torghar which was not verified. Consequent upon non- verification of his domicile certificate, the appointment order of the above mentioned teacher was withdrawn by the Education Department on 07-09-2016 vide notification No. 2924-31. The teacher sought relief from the Peshawar High Court through filing a writ petition No.910-A/2016 (**Annex A**). Peshawar High Court Abbottabad Bench re-instated the above mentioned teacher vide judgment dt: 21-02-2018 (**Annex B**) leaving the respondents at liberty to proceed against him in accordance with law and rules if they so desire.

Education Department Torghar requested Deputy Commissioner to conduct inquiry as per judgment of the Peshawar High Court Abbottabad Bench, as the case is not fit for CPLA in the August Supreme Court of Pakistan.

PROCEEDINGS:-

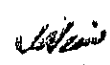
The Undersigned proceeded with the matter and issued notice to the teacher to appear before the undersign alongwith his supporting documents. He was also directed to bring with him village secretary, village Nazim, Tehsil Member, District Member and District Nazim for recording evidence for or against him, as the case may be. Mr. Shabbir Ahmad, alongwith village secretary, village Nazim, Tehsil Member, District Member and District Nazim appeared before the undersigned and recorded their statements (**Annex C**) verifying the residential status of Mr. Shabbir Ahmad. The undersigned have gone through the documents(Domicile Certificate, CNIC, previous appointment letter of Sessions Court Torghar, Parents CNICs and Domicile Certificates, Brothers and sisters domicile certificates and CNICs, Sister's appointment letter of education department and Electoral roll) provided by Shabbir Ahmad.

FINDINGS/ RECOMMENDATIONS

From the above proceedings, statements of the local representatives and examination of the documents I reached to the conclusion that Mr. Shabbir Ahmad is bonafide resident of District Torghar and the domicile certificate has rightly been issued to him.

Report is submitted

DA


Assistant Commissioner
Judba, Torghar

OFFICE OF THE DISTRICT EDUCATION OFFICER (M)
DISTRICT TOR GHAR

Email: torghar_oml@gmail.com

NOTIFICATION

In pursuance of the Section 3 of the Khyber Pakhtunkhwa employees of Elementary & Secondary Education Department (Appointment and Regularization of Service Act, 2017 read with Section 1 Sub-section (2) of the act and Elementary and Secondary Education Department Khyber Pakhtunkhwa Notification No: SO(S/F) E&SED/3-2/2018/SIT/Contract Dated 16/02/2018, Service of the following Teachers CT (BPS-15) appointed on Adhoc basis on Contract, are hereby regularized in BPS-15 on the same post in Teaching Cadre on the terms and condition given below with effect from the date of their appointment on the CT post:

S.No	Roll No	Name	Address	Total Marks (out of 200)	School	Appointment order No. & Dated
1	941100017	Nusrat Shah	Soormal N/K Tor Ghar	92.37	GMS Shadag	No: 919-23 Dated 09.04.2016
2	762700531	Shabbir Ahmad	Dahl Kaka Khail Tor Ghar	78.13	GMS Shingaldar	No: 919-26 Dated 09.04.2016

TERMS & CONDITIONS.

1. Their services shall be governed by the Khyber Pakhtunkhwa Civil Servant Act, 1973 Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teacher, Lecturers, Instructors and Doctors) Regularity Act, 2011 & such rules & regulations as may be issued from time to time by government.
2. Their pay shall be released subject to verification of academic documents testimonials from the concerned Boards/ University by the District Education Officer Male Tor Ghar, anyone with fake documents will be dismissed from service and the case will further be reported to the law enforcing agencies for action under the relevant law.
3. Their services shall be considered regular and they shall be eligible for pension/ deduction of GP Fund as applicable in the Khyber Pakhtunkhwa Civil Service Act, 1973 as amended in 2013.
4. Their services are liable to termination on one month notice from either side. In case of resignation without notice, their one month pay/allowances shall be forfeited to the government treasury.
5. Their regularization is subject to fulfilment of qualification and experience required for a regular post.
6. They shall have not resigned from the services or terminated from services on account of misconduct, inefficiency or any other ground before the commencement of the Act of 1973.
7. Their regularization shall not affect the promotion quota of existing holders of posts in the cadre of CT.
8. They shall rank junior to all other employees belonging to the cadre who are in service on regular basis on the commencement of this act; and shall also rank junior to such other persons if any, who in pursuance of the recommendations of the Khyber Pakhtunkhwa public service commission made before the commencement of this act; or to be appointed to the cadre irrespective of their actual date of appointment.
9. The seniority shall be determined on the basis of their continuous service in cadre provided that if the date of continuous service in the case of two or more employees is the same, the employee older in the age shall be rank senior to the younger one.
10. The competent authority reserves the right to rectify the errors and omission, if any noted/observed at any stage in the instant order issued erroneously.

--Sd--

(Jaffar Mansoor Abbasi)
District Education Officer (M)
E&SE Tor Ghar

Endst: No. 1500-6 / Dated: 04/09/2019

Copy for information to the

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Tor Ghar
3. District Monitoring Officer (IMU) Tor Ghar
4. District Account Officer Tor Ghar
5. Head Master GMS Concerned
6. Teacher Concerned
7. Office File

(Jaffar Mansoor Abbasi)
District Education Officer (M)

Best copy
pag-20

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
DISTRICT TOR GHAR

NOTIFICATION

In the pursuance of section -3 of the Khyber Pakhtunkhwa employees of Elementary & Secondary Education Department (Appointment and Regularization of service Act 2017 read with section -1 of Sub-Section (2) of the act ibid and Elementary and Secondary Education Department Khyber Pakhtunkhwa Notification No. SO (S/F) E&SED/3-2/2018 SITT/Contract dated 16.02.2018 service of the following Teachers CT(BPS-15) appointed on Adhoc basis on Contract are hereby regularized in BPS-15 on the same post of teaching cadre on the terms and condition given below with effect from the date of their appointment on the CT post.

S. No	Roll No	Name	Address	Total marks (out of 200)	School	Appointment order No & dated
1	941100017	Nusrat Shah	Sormal N/K Tor Ghar	92.37	GMS Shadag	No.919-28 dated 09.04.2016
2	762700531	Shabbir Ahmad	Dehri Kaka Khail Tor Ghar	78.13	GMS Shingaldar	No.919-28 dated 09.04.2016

TERMS & CONDITIONS.

1. Their service shall be governed by the Khyber Pakhtunkhwa Civil Servant Act 1973 Khyber Pakhtunkhwa (Appointment, Deputation Posting and transfer of Teachers, Lecturers, Instructors and Doctors) Regularity Act 2011 & such rules & regulations as may be issued from time to time by government.
2. Their pay shall be released subject to verification of academic documents testimonials from the concerned Boards/University by the District Education Officer Male Tor Ghar, anyone with fake documents will be dismissed from service and the case will further be reported to the law enforcing agencies for action the relevant law.
3. Their services shall be considered regular and they shall be eligible for pension/deduction of GP Fund as applicable in Khyber Pakhtunkhwa Civil Servant Act 1973 as amended in 2013.
4. Their services are liable to termination on one-month notice from either side. In case the resignation without notice, their one month pay/allowances shall be forfeited to the Government treasury.
5. Their regularization is subject to fulfilment of qualification and experience required for a regular post.
6. They shall not have resigned from services or terminated from services on account of misconduct, inefficiency or any other ground before the commencement of the Act 1973.
7. Their regularization shall not affect the promotion quota of existing holders of posts in the cadre of CT.
8. They shall rank junior to all other employees belonging to the cadre who are in service on regular basis on the commencement of this act and shall also rank junior to such other person if any, who in the pursuance of the recommendation of the Khyber Pakhtunkhwa Public Service Commission made before the commencement of this act or to be appointed to the cadre irrespective of their actual dates of appointment.
9. The seniority shall be determined on the basis of their continuous service in cadre provided that if the date of continues service in the case of two or more employees is the same, the employee order in the age shall be rank senior to the younger one.
10. The competent authority reserves the right to rectify the errors and omission. If any noted/observed at any stage in the instant issued erroneously.

----Sd----

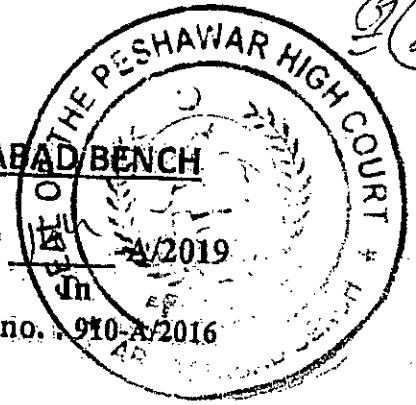
Jaffar Mansoor Abbasi
District Education Officer (M)
E&SE Tor Ghar

Endst No 1500-6/ Dated 04.09.2019.

BEFORE THE PESHAWAR HIGH COURT ABBOTTABAD BENCH

COC 2/2019

WP no. 910-A/2016



Shabbir Ahmed S/o Ikhtair Malook R/o G.M.S Shangaldar District
Torghar.

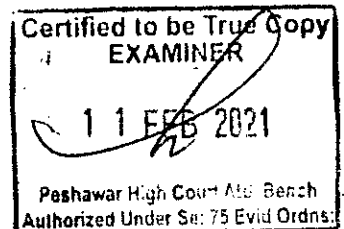
... Petitioner

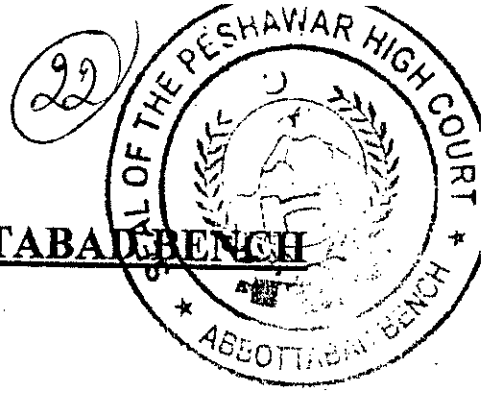
VERSUS

1. Hafiz Muhammad Ibrahim, Director, Elementary & Secondary
Education, Khyber Pakhtunkhawa, Peshawar.
2. Jaffar Mansoor Abbasi, District Education Officer (Male),
Torghar, Judbah.
3. Amanullah, Accounts Officer Torghar, at Mansehra.

... Respondents/Contemnor's

PETITION FOR INITIATING CONTEMPT OF COURT PROCEEDINGS
AGAINST RESPONDENTS FOR DISOBEYING THE ORDERS OF THIS
AUGUST COURT DATED 21-02-2018 IN WP NO: 910-A/16 WHEREBY
RESPONDENTS REFUSED TO PAY BACK BENEFITS I.E.
SALARIES/BENEFITS FOR THE PERIOD BETWEEN 07-09-2016 TO 22-
05-2018 ALONG WITH INCREMENT 2016,2017 &2018 ETC.





PESHAWAR HIGH COURT, ABBOTTABAD BENCH

ORDER SHEET

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge(s).
1	2
13.01.2021	<p><u>C.O.C No.144-A-2019</u></p> <p>Present: Mr. Nazakat Ali Tanoli, Advocate, for the petitioner.</p> <p>Sardar Muhammad Asif, Assistant Advocate General, for the respondents</p> <p>****</p> <p><u>SHAKEEL AHMAD, J:</u> By means of this contempt petition, the petitioner has sought the following relief:</p> <p><i>"It is therefore, most humbly prayed that the contempt proceedings be initiated against the respondents for disobeying the order of this Court and exemplary punishment be awarded, respondents may graciously be directed to pay salaries/ benefits for the period between 07.09.2016 to 22.05.2018 alongwith increment of 2016, 2017 and 2018 etc."</i></p> <p>2. In essence, the grievance of the petitioner is that though he has been reinstated in service by the respondents in view of the order dated 21.02.2018 of this Court, passed in WP No.910-A/2016, however, they have denied payment of back benefits to the petitioner.</p> <p>3. Arguments heard. Record perused.</p> <p>4. Perusal of record reveals that while allowing</p>

Certified to be True Copy
EXAMINER
11 FEB 2021
Peshawar High Court At: Bench
Authorized Under Sec: 75 Evld Ordns.

23/40

the aforesaid writ petition filed by the petitioner, this Court directed the respondents, as under:

"For what has been discussed above, we accept this petition, declare the impugned notification dated 07.09.2016 as illegal, unlawful and of no legal effect. Consequently, the petitioner is re-instated in his service. However, the respondents would be at liberty to proceed against the petitioner if they so wish but in accordance with law and rules on the subject."

The record reflects that the respondents, in compliance with the above referred direction of this Court passed in WP No.910-A/2016, re-instated the petitioner in service vide Notification bearing Endst.No.4541-47 dated 22.05.2018, thus, the judgment of this Court has been implemented by the respondents. Since, there was no direction qua payment of back benefits to the petitioner in the judgment of this Court, the respondents were not under obligation to grant such benefits. Needless to refer that the respondents have already mentioned in the said notification, that the arrears of pay and allowances will be decided on the outcome of the denovo inquiry. As such, contempt of Court proceedings cannot be initiated against the respondents, when they have already complied with the order of this Court dated 21.02.2018.

5. In view of above, this petition is dismissed.

Certified to be True Copy
EXAMINER
1-1 FEB 2021
Peshawar High Court Atd Bench
Authorized Under Sec: 75 Evid Ordns

w

However, the petitioner shall be at liberty to approach the appropriate forum provided under the law for redressal of his grievance, if any, in accordance with law qua the issue of back benefits.

Announced.
Dt.13.01.2021.

 JUDGE

 JUDGE

Certified to be True Copy
EXAMINER
11 FEB 2021
Peshawar High Court At Bench
Authorized Under Sec. 75 Evid Ordns

بخدمت بنانا ہے ڈائریکٹریٹ میں اس کی پیروی کے لئے بنانا ہے۔
عدوانی ڈیپارٹمنٹ میں اس کے لئے ادا کیے جانے والے اخراجات

جناب عالی!

گزارش کی جاتی ہے کہ سائل 10-11-2016-17 کو

میرٹھ کی بنیاد پر منتخب ہوا، اور 16-11-2016-17 کو ڈوس سائل

ریٹریفیکیشن نہ ہونے کی وجہ سے Withdrawn کر دیا گیا۔

سائل 17 Withdrawn آرڈر کو بائیکاٹ میں Challenge

کیا ہو کہ کورٹ کے De-novo انکوائری کی بنیاد پر سائل

کو Re-instated کیا، دوبارہ De-novo انکوائری ہو گی

ہو کہ سائل کے حق میں ہو گا۔

اس لیے آپ کے خدمت اقدس میں عرض ہے

کہ سائل کو Intervening پیروڈ کے بقایا جات کی ادائیگی کا

حکم صادر فرما کر منظور فرمادیا۔

میں لواریشن ہو

آپ کا نامیادار

شیراگد آ-آ

محکم ایس مشری

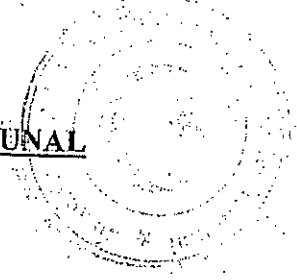
ضلع ٹونڈ

1751
2-11-2016

فرمان: / سلمان

J=27

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



Service Appeal No. 4971/2021

BEFORE: SALAH-UD-DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

Muhammad Minhaj, PST (BPS-12), GPS, Bara Banda District Tor Ghar..... (Appellant)

VERSUS

1. The Secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
 2. The Director (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
 3. The District Education Officer (Male) Tor Ghar.
 4. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
 5. The District Accounts Officer, District Tor Ghar at Mansehra.
-(Respondents)

Present:

MR. TAIMUR ALI KHAN,
Advocate --- For Appellant:

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL
Assistant Advocate General --- For respondents.

Date of Institution	...	26.04.2021
Date of hearing	...	03.06.2022
Date of Decision	...	03.06.2022

JUDGEMENT

MIAN MUHAMMAD, MEMBER(E):- The service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned Notification of respondent No.3 dated 15.11.2016 whereby appointment Notification of the appellant as PST dated 13.01.2016 was withdrawn and another impugned Notification of respondent No. 3 dated 22.05.2018 when he was reinstated in service under the directions of honourable Peshawar High Court, Abbottabad Bench dated 22.02.2018 and subsequently denovo enquiry also held for verification of his

Handwritten signature/initials

Handwritten signature and stamp

domicile but back benefits (salary/arrears) for the period from 15.12.2016 to 22.05.2018 were not paid to the appellant.

02. Brief facts leading to submission of the instant service appeal are that the appellant was appointed as PST (BS-12) GPS Bara Banda vide Notification dated 13.04.2016 in pursuance of which the appellant started performing his duty. However, his credentials i.e. certificate/documents and domicile were subject to verification from the concerned authorities under Clause 5 of the terms and conditions of appointment. On non verification of his domicile certificate, appointment notification of the appellant dated 13.04.2016 was withdrawn vide impugned Notification dated 15.12.2016. Feeling aggrieved, the appellant filed Writ Petition No. 209-A/2017 before the honourable Peshawar High Court, Abbottabad Bench which vide judgement dated 22.02.2018 accepted the Writ Petition, declared the impugned Notification dated 15.12.2016 as illegal, unlawful, of no legal effect and reinstated the appellant in service leaving the respondents at liberty to proceed against him if they so wished but in accordance with law and rules on the subject. In compliance with the directions of honourable Peshawar High Court, Abbottabad Bench, the appellant was reinstated in service vide notification dated 22.05.2018 and his pay & allowances were left to be decided on the outcome of denovo enquiry. In the denovo enquiry, his domicile certificate was found to have been validly issued to the appellant being bonafide resident of district Torghar. The appellant went in COC No. 137-A-2019 before the honourable Peshawar High Court, Abbottabad Bench against the respondents for disobeying order of the court dated 22.02.2018 and denial of back benefits for the period between 15.12.2016 to 22.05.2018. Petition for COC proceedings against the respondents was however dismissed vide order dated 13.01.2021 on the

[Handwritten mark]

[Handwritten signature]

ground that the respondents complied with orders of the court and reinstated the appellant in service whereas there was no direction regarding payment of back benefits to the petitioner in the court judgement and the respondents did mention in Notification of his reinstatement in service dated 22.05.2018 that arrears of pay & allowances will be decided on the outcome of denovo enquiry. The appellant thereafter submitted departmental appeal to respondent No 2 on 22.01.2021 which was not decided within the statutory period hence the instant service appeal was filed on 26.04.2021.

03. On admission of the appeal, the respondents were put on notice to submit reply/parawise comments on the contents and assertions of appeal. They submitted reply/parawise comments repudiating assertions of the appellant. Stance taken by the respondents in their reply/parawise comments was defended by learned AAG on their behalf. We have heard arguments of learned counsel for the appellant as well as learned AAG and gone through the record with their assistance.

04. Learned counsel for the appellant vehemently contended that the appellant though reinstated in service on 22.05.2018 under the judgement of court dated 22.02.2018 but he was denied the back benefits accrued during the period between 15.12.2016 to 22.05.2018 despite the fact that it was clearly mentioned in the reinstatement notification dated 22.05.2018 that arrears of pay and allowances will be decided on the outcome of denovo enquiry. In the denovo enquiry, domicile certificate of the appellant was found and verified as valid being bonafide resident of district Torghar but even then arrears for the said period were not paid to the appellant. It was further argued that the appellant remained out of service w.e.f. 15.12.2016 to 22.05.2018 for no fault attributable on his part therefore he is entitled to pay and allowances for the said period. Moreover, the appellant was granted

Handwritten signature/initials

Handwritten signature/initials

Small stamp or text at the bottom left

annual increments for the year 2016, 2017 and 2018 he is also entitled for the salaries w.e.f 15.12.2016 to 22.05.2018 because the appellant did not remain in a gainful employment during the period and an affidavit to this effect has already been furnished. In support of his arguments, he relied on judgement of this Tribunal dated 29.03.2022 delivered in service appeal No. 4975/2021 titled Abdul Jalil CT (BS-15) GMS Seri Kohani, District Torghar Versus Secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa and four (04) others

05. Learned AAG conversely argued that in compliance with the judgement of honourable Peshawar High Court, Abbottabad Bench dated 22.02.2018, the appellant was reinstated in service subject to the outcome of denovo enquiry regarding verification of his domicile certificate. The denovo enquiry was conducted and the concerned authorities recommended that he is resident of district Torghar and domicile certificate has rightly been issued to him. The appellant has been released pay and arrears for the period of performance of his duty, have also been paid to him. The appellant has been treated in accordance with law and no discrimination has been caused to him. the appeal may therefore be dismissed with costs, he concluded.

06. Perusal of the record reveals that the appellant was appointed as PST (BS-17) vide Notification dated 13.04.2016, however vide Notification dated 15.12.2016, the appointment order of the appellant was withdrawn for the reason that his domicile certificate was not verified as valid from the concerned quarters. The Writ Petition filed by the appellant before the august Peshawar High Court, Abbottabad Bench was accepted and he was reinstated in service vide Notification dated 22.05.2018 wherein it is categorically mentioned that the issue of arrears of pay and allowances will

be decided on the outcome of denovo enquiry. It is an admitted fact that domicile certificate of the appellant was found valid during the course of denovo enquiry, therefore, the period during which the appellant remained out of service cannot be considered as a fault on part of the appellant. August Supreme Court of Pakistan in its judgement reported as 2013 SCMR 752 has laid down the principle which is worth mentioning here as follows:

Once an employee is reinstated in service after his exoneration of the charges leveled against him, the period during which he remained either suspended or dismissed cannot be attributed as a fault on his part. His absence during this period was not voluntary on his part but it was due to order of the appellant that he was restrained not to attend his job/duty because on the basis of charge sheet, he was suspended and later on dismissed. At the moment, his exoneration from the charges would mean that he shall stand restored in service, as if he was never out of service of the appellant. If the absence of the respondent or non-attending the work was not volunteer act on the part of the respondent and was due to steps taken by the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended or dismissed.

07. It is an established fact that the appellant remained out of service w.e.f. 15.12.2016 to 22.05.2018 not by choice but due to the acts of respondents which makes him entitled for pay and allowances particularly when he has furnished an affidavit alongwith service appeal to the effect that he did not remain gainfully employed in any service during the said period of his absence. The affidavit so submitted by the appellant, has neither been denied nor contested by the respondents.

ATTESTED

[Signature]

ATTESTED
 [Stamp/Signature]

08. As a sequel to the preceding Paras, we are of the considered view to allow the instant service appeal on its merit and the appellant is held entitled to the payment of salary w.e.f. 15.12.2016 to 22.05.2018. Parties are left to bear their own costs. File be consigned to the record room.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 3rd of June, 2022.*



(SALAH-UD-DIN)
MEMBER (J)



(MIAN MUHAMMAD)
MEMBER(E)

Page 6

30/1

35/1

23/2/23

23/2/23
23/2/23

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

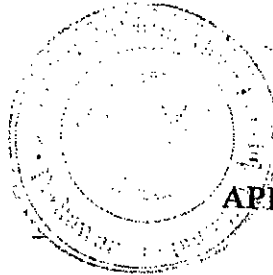
SERVICE APPEAL NO. 4975 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5035

Dated 26/4/2021

Abdul Jalil, CT (BPS-15),
GMS Seri Kohani, District Tor Ghar.



APPELLANT

VERSUS

1. The Secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
 2. The Director (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
 3. The District Education Officer (Male) Tor Ghar.
 4. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
 5. The District Account Officer, District Tor Ghar at Mansehra.
- (RESPONDENTS)**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR DIRECTING THE RESPONDENT TO GRANT BACK BENEFITS TO THE APPELLANT IN SHAPE OF SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 TO 03.07.2018 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Filed today
Registrar
3/4/2021

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO GRANT BACK BENEFITS TO THE APPELLANT IN SHAPE OF SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 TO 03.07.2018 AS ON DOMICILE ON WHICH HIS APPOINTMENT ORDER WAS WITHDRAWN HAS BEEN VERIFIED AND FOUND CORRECT DURING THE DE-NOVO INQUIRY PROCEEDING. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

ATTESTED

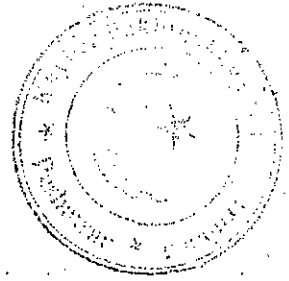
Registrar
Khyber Pakhtunkhwa Service Tribunal

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 4975/2021

Date of Institution ... 26.04.2021

Date of Decision ... 29.03.2022



Abdul Jalil, CT (BPS-15), GMS Seri Kohani, District Tor Ghar.

... (Appellant)

VERSUS

The secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar and four others.

... (Respondents)

MR. TAIMUR ALI KHAN,
Advocate

For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts leading to filing of the instant Service Appeal are that the appellant was appointed as C.T (BPS-15), vide Notification dated 09.04.2016. The appellant performed his duties till 06.09.2016, however vide Notification dated 07.09.2016, issued from the office of District Education Officer (Male) Torghar, his appointment order was withdrawn on the ground that his domicile certificate was declared unverified by the quarter concerned. The appellant challenged the order dated 07.09.2016 through filing of Writ Petition No. 1082-A/2016 before the august Peshawar High Court, Abbottabad Bench, which was allowed by setting-aside the Notification dated 07.09.2016, however the respondents were left

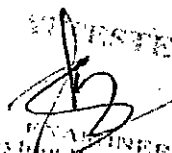
[Handwritten signature]

[Handwritten signature]

at liberty to proceed against the appellant in accordance with law and rules, if they so desire. The appellant was reinstated vide Notification dated 03.07.2018 in light of judgment of august Peshawar High Court, Abbottabad Bench, however the issue of arrears of his pay and allowances was ordered to be decided on the outcome of de-novo inquiry. During the inquiry, the domicile certificate of the appellant was found genuine and Notification dated 29.05.2019 was also issued regarding regularization of his service with effect from the date of his appointment but the arrears of pay and allowances with effect from 07.09.2016 to 03.07.2018 were not granted to the appellant. The appellant agitated the matter before august Peshawar High Court, Abbottabad Bench through filing of COC No. 136-A/2019, which was though dismissed vide judgment dated 13.01.2021, however it was observed that the appellant would be at liberty to approach the appropriate forum provided under the law for redressal of his grievance, if any, in accordance with law qua the issue of back benefits. The appellant then filed departmental appeal, which was not responded within the statutory period, hence the instant service appeal.

02. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

03. Mr. Taimur Ali Khan, Advocate representing the appellant has contended that it was categorically mentioned in the reinstatement order dated 03.07.2018 that the issue of arrears of pay and allowances will be decided upon the outcome of de-novo inquiry, however the arrears were not granted to the appellant despite the fact that his domicile certificate was found genuine during the de-novo inquiry. He next contended that as the appellant remained out of service with effect from 07.09.2016 till 02.07.2018 for no fault on his part, therefore, he is entitled to pay and allowances for the said period. He further argued that that appellant has though been granted annual increments pertaining to the years 2016, 2017 & 2018, therefore, he is entitled to be paid the salaries for the period during which he

REGISTERED

 TAIMUR ALI KHAN
 ADVOCATE

remained out of service due to fault of the respondents. Reliance was placed on 2013 SCMR 752, 2015 PLC (C.S) 215, PLD 1991 Supreme Court 226 and 2018 SCMR 64.

04. On the other hand, learned Additional Advocate General for the respondents has contended that in view of principle of no work no pay, the appellant cannot claim salaries for the period during which he remained out of service. He further argued that the appeal in hand being barred by time is liable to be dismissed on this score alone. He next contended that the appellant has been dealt in accordance with law and no discrimination has been caused to him, therefore, the appeal in hand may be dismissed with costs.

05. We have heard the arguments of learned counsel for the appellant as well as learned Additional Advocate General for the respondents and have perused the record.

06. A perusal of the record would show that the appellant was appointed as C.T (BPS-15) vide Notification dated 09.04.2016, however vide Notification dated 07.09.2016, the appointment order of the appellant was withdrawn for the reason that his domicile certificate was not verified as valid from the concerned quarter. The Writ Petition filed by the appellant before the august Peshawar High Court, Abbottabad Bench was however allowed and he was reinstated in service vide Notification dated 03.07.2018, wherein it is categorically mentioned that the issue of arrears of pay and allowances would be decided upon the outcome of de-novo inquiry. It is an admitted fact that the domicile certificate of the appellant was found valid during the de-novo inquiry, therefore, the period during which the appellant remained out of service could not be considered as a fault on the part of the appellant. August Supreme Court of Pakistan in its judgment reported as 2013 SCMR 752 has graciously observed as below:-

"Once an employee is reinstated in service after his exoneration of the charges leveled against him, the period during which he remained either suspended or dismissed cannot be attributed as a fault on his part. His

[Handwritten mark]

[Signature]
JUDGE
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

absence during this period was not voluntary on his part but it was due to order of the appellant that he was restrained not to attend his job/duty because on the basis of charge sheet, he was suspended and later on dismissed. AT the moment, his exoneration from the charges would mean that he shall stand restored in service, as if he was never out of service of the appellant. If the absence of the respondent or non-attending the work was not volunteer act on the part of the respondent and was due to steps taken by the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended or dismissed."

07. While deriving wisdom from the above mentioned judgment of august Supreme Court of Pakistan, we are of the view that the appellant was entitled to pay and allowances for the period during which he remained out of service, particularly when he has submitted an affidavit alongwith his appeal that he did not remain gainfully employed in any service during the period of his absence. The affidavit so submitted by the appellant has not been denied by the respondents through filing of any counter affidavit. So far as the question of limitation is concerned, the issue being one of financial benefits, therefore, the appeal is not hit by law of limitation.

08. The result of the above discussion is that the appeal in hand is allowed and the appellant is held entitled to payment of salaries with effect from 07.09.2016 to 02.07.2018. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.03.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(ROZINA REHMAN)
MEMBER (JUDICIAL)

Page 5
23/2/23
30/5/23
23/2/23

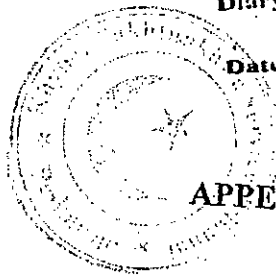
**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

SERVICE APPEAL NO. 4976 /2021 **Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 5034

Dated 26/4/2021

Atta Ullah, PST (BPS-12),
GPS Kopra, Aka Zai District Torghar.



APPELLANT

VERSUS

1. The Secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
 2. The Director (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
 3. The District Education Officer (Male) Tor Ghar.
 4. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
 5. The District Account Officer, District Tor Ghar at Mansehra.
- (RESPONDENTS)**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR DIRECTING THE RESPONDENT TO GRANT BACK BENEFITS TO THE APPELLANT IN SHAPE OF SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 TO 03.07.2018 ALONG WITH ANNUAL INCREMENT OF YEAR 2016, 2017 & 2018 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Filed to-day
Registrar
26/04/2021

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO GRANT BACK BENEFITS TO THE APPELLANT IN SHAPE OF SALARIES FOR THE PERIOD WITH EFFECT FROM 07.09.2016 TO 03.07.2018 ALONG WITH ANNUAL INCREMENT OF YEAR 2016, 2017 & 2018 AS ON DOMICILE ON WHICH HIS APPOINTMENT ORDER WAS WITHDRWAN HAS VERIFIED AND FOUND CORRECT DURING THE DE-NOVO INQUIRY PROCEEDING. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE

[Handwritten signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 4976/2021

Date of Institution ... 26.04.2021

Date of Decision ... 29.03.2022



Atta Ullah, PST (BPS-12), GPS Kopra, Aka Zai District Torghar.

... (Appellant)

VERSUS

The Secretary (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar and four others.

... (Respondents)

MR. TAIMUR ALI KHAN
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

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

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant appeal are that the appellant was appointed as PST (BPS-12), vide Notification dated 09.04.2016. The appellant performed his duties till 06.09.2016, however vide Notification dated 07.09.2016 issued from the office of District Education Officer (Male) Torghar, his appointment order was withdrawn on the ground that his domicile certificate was declared unverified by the quarter concerned. The appellant challenged the order dated 07.09.2016 through filing of Writ Petition No. 48-A/2017 before the august Peshawar High Court, Abbottabad Bench, which was allowed by setting-aside the Notification dated 07.09.2016, however the respondents were left at liberty to

proceed against the appellant in accordance with law and rules, if they so desire. The appellant was reinstated vide Notification dated 03.07.2018 in light of judgment of august Peshawar High Court, Abbottabad Bench, however the issue of arrears of his pay and allowances was ordered to be decided on the outcome of de-novo inquiry. During the inquiry, the domicile certificate of the appellant was found genuine by the concerned quarter. The appellant was removed from service vide order dated 24.11.2018 on the ground of willful absence from duty, which was challenged by the appellant through filing of departmental appeal. The same was allowed vide order dated 11.07.2019 and the appellant was reinstated in service with effect from the date of his removal from service by treating the intervening period as leave without pay. Vide Notification dated 04.11.2020, the service of the appellant was regularized with effect from the date of his appointment but the arrears of pay and allowances with effect from 07.09.2016 to 03.07.2018 were not granted to the appellant. The appellant agitated the matter before august Peshawar High Court, Abbottabad Bench through filing of COC No. 143-A/2019, which was though dismissed vide judgment dated 13.01.2021, however it was observed that the appellant would be at liberty to approach the appropriate forum provided under the law for redressal of his grievance, if any, in accordance with law qua the issue of back benefits. The appellant then filed departmental appeal, which was not responded within the statutory period, hence the instant service appeal.

02. Notices were Issued to the respondents, who contested the appeal by way of submitting joint comments, wherein they refuted the assertions made by the appellant in his appeal.

03. Mr. Taimur Ali Khan, Advocate representing the appellant has contended that it was categorically mentioned in the reinstatement order dated 03.07.2018 that the issue of arrears of pay and allowances will be decided upon the outcome of de-novo inquiry, however the arrears were not granted to the appellant despite the fact that his domicile

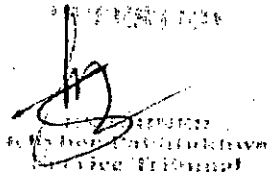
certificate was found genuine during the de-novo inquiry. He next contended that as the appellant remained out of service with effect from 07.09.2016 till 02.07.2018 for no fault on his part, therefore, he is entitled to payment of salaries as well as annual increments for the said period. Reliance was placed on 2013 SCMR 752, 2015 PLC (C.S) 215, PLD 1991 Supreme Court 226 and 2018 SCMR 64.

04. On the other hand, learned Additional Advocate General for the respondents has contended that in view of principle of no work no pay, the appellant cannot claim salaries for the period during which he remained out of service. He further argued that the appeal in hand being barred by time is liable to be dismissed on this score alone. He next contended that the appellant has been dealt in accordance with law and no discrimination has been caused to him, therefore, the appeal in hand may be dismissed with costs.

77

05. We have heard the arguments of learned counsel for the appellant as well as learned Additional Advocate General for the respondents and have perused the record.

06. A perusal of the record would show that the appellant was appointed as PST (BPS-12) vide Notification dated 09.04.2016, however vide Notification dated 07.09.2016, the appointment order of the appellant was withdrawn for the reason that his domicile certificate was not verified as valid from the concerned quarter. The Writ Petition filed by the appellant before the august Peshawar High Court, Abbottabad Bench was however allowed and he was reinstated in service vide Notification dated 03.07.2018, wherein it is categorically mentioned that the issue of arrears of pay and allowances would be decided upon the outcome of de-novo inquiry. It is an admitted fact that the domicile certificate of the appellant was found valid during the de-novo inquiry, therefore, the period during which the appellant remained out of service could not be considered as a fault on the part of the appellant. August Supreme Court of Pakistan in its judgment reported as



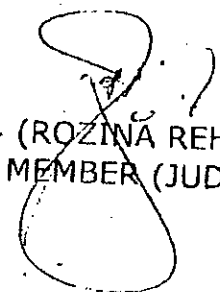
2013 SCMR 752 has graciously observed as below:-

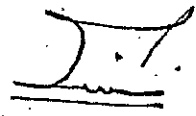
"Once an employee is reinstated in service after his exoneration of the charges leveled against him, the period during which he remained either suspended or dismissed cannot be attributed as a fault on his part. His absence during this period was not voluntary on his part but it was due to order of the appellant that he was restrained not to attend his job/duty because on the basis of charge sheet, he was suspended and later on dismissed. AT the moment, his exoneration from the charges would mean that he shall stand restored in service, as if he was never out of service of the appellant. If the absence of the respondent or non-attending the work was not volunteer act on the part of the respondent and was due to steps taken by the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended or dismissed."

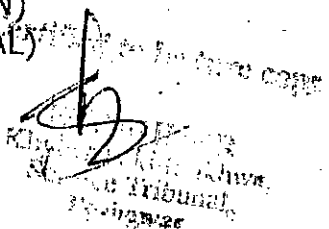
07. While deriving wisdom from the above mentioned judgment of august Supreme Court of Pakistan, we are of the view that the appellant was entitled to pay and allowances for the period during which he remained out of service, particularly when he has submitted an affidavit alongwith his appeal that he did not remain gainfully employed in any service during the period of his absence. The affidavit so submitted by the appellant has not been denied by the respondents through filing of any counter affidavit. So far as the question of limitation is concerned, the issue being one of financial benefits, therefore, the appeal is not hit by law of limitation.

08. In view of the foregoing discussion, the appeal in hand is allowed and the appellant is held entitled to payment of salaries with effect from 07.09.2016 to 02.07.2018 as well as annual increments for the years 2016 to 2018. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.03.2022


(ROZINA REHMAN)
MEMBER (JUDICIAL)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


Tribunal
Karachi

43

VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal Peshawar

Shabbir Ahmed (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education Department (Respondent)
(Defendant)

I/We, Shabbir Ahmed

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 _____/2021

[Signature]
(CLIENT)

ACCEPTED

[Signature]
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

[Signature]
Shahid Ullah Torani
Advocate