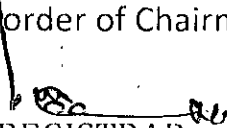


Form- A
FORM OF ORDER SHEET

Court of _____

Emlementation Petition No. 173/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
	16.03.2023	<p>The execution petition Mr. Shahzad Maqsood submitted today by Mr. Muhammad Awais Ajiz Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on _____.</p> <p>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>By the order of Chairman  REGISTRAR</p>

BEFORE THE SERVICE TRIBUNAL
K.P.K PESHAWAR

Execution petition No 173 of 2023

IN
Service appeal No 904 of 2018

Shahzad Maqsood.....Petitioner

VERSUS

Govt of KPK etc.....respondents

EXECUTION PETITION

INDEX

S#	Description of documents	Annexure	Page#
1.	Memo of execution petition	-	01 - 03
2.	Affidavit	-	-04-
3.	Copy of judgment dated 20.04.2022	A	05 - 09
4.	Copy of application.	B	- 10-
5.	Wakalt Nama	-	- 11-

Dated 13.03.2023

Shahzad

Shahzad Maqsood
(Petitioner)

Through:-

Muhammad Awais Ajiz

MUHAMMAD AWAIS AJIZ
Advocate High Court

BEFORE THE SERVICE TRIBUNAL
K.P.K PESHAWAR

Execution petition No 173 of 2023

Khyber Pakhtunkhwa
Service Tribunal

IN

Service appeal No 904 of 2018

Case No. 4398

Date 16/3/2023

Shahzad Maqsood son of Maqsood Ahmed
resident of Mohallah Lohar Banda,
Manserha, Tehsil & District Mansehra.

.....**Petitioner**

VERSUS

- 1) Government of Khyber Pakhtunkhwa through Secretary Education Peshawar.
- 2) Director, Elementary & Secondary Education, Peshawar.
- 3) District Education Officer (Male), Mansehra.
- 4) District Account Officer, Mansehra.

.....**Respondents**

EXECUTION/IMPLEMENTATION OF
THE JUDGMENT/ORDER OF THIS
HONORABLE TRIBUNAL DATED
20.04.2022 PASSED IN THE SERVICE
APPEAL No. 904/2018.

PRAYER:-

On acceptance of the instant execution petition, respondents be directed to implement the judgment dated 20.04.2022, passed in the aforesaid service appeal by this Honorable tribunal in its true letter and spirits.

Respectfully Sheweth:-

1. That, appellant filed the aforesaid service appeal before this Honorable tribunal which was allowed by this tribunal vide judgment dated 20.04.2022.

(Attested copy of judgment dated 20.04.2022 is annexed as Annexure "A")

2. That, after passing of the judgment dated 20.04.2022 appellant/petitioner approached concerned Department/respondent No. 03 for his adjustment but respondent No. 03 did not consider the request/applications of petitioner and the petitioner still not appointed by the respondents.

(copies of applications annexed as annexure "B").

3. That, judgment dated 20.04.2022 is liable to be implemented in its true but

respondents refused to adjust the present petitioner therefore the petitioner approached this Hon'ble court for the implementation of said judgment.

PRAYER:-

On acceptance of the instant execution petition, respondents be directed to implement the judgment dated 20.04.2022, passed by this Hon'ble court in its true letter and spirits.

Dated 13.03.2023

Shahzad

Shahzad Maqsood
(Petitioner)

Through:-

Muhammad Awais Ajiz

MUHAMMAD AWAIS AJIZ
Advocate High Court

Verification

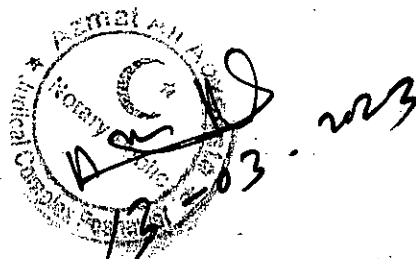
It is certified that the contents of foregoing application are true and correct to the best of my knowledge and nothing has been concealed.

Shahzad

Shahzad Maqsood

13503-0850043-7

ATTESTED



BEFORE THE SERVICE TRIBUNAL
K.P.K PESHAWAR

Shahzad Maqsood.....Petitioner

VERSUS

Govt of KPK etc.....respondents

EXECUTION PETITION

AFFIDAVIT

I, SHAHZAD MAQSOOD SON OF MAQSOOD AHMED, RESIDENT OF MOHALLAH LOHAR BANDA, MANSEHRA, DO HERBY SOLEMNLY AFFIRM AND DECLARE ON OATH THAT THE NO SUCH SUBJECT MATTER EXECUTION PETITION IN THE AFORESAID SERVICE APPEAL HAS EVER BEEN FILED BEFORE THIS HONORABLE COURT NOR PENDING NOR DECIDED. THAT THE CONTENTS OF FORE-GOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL.

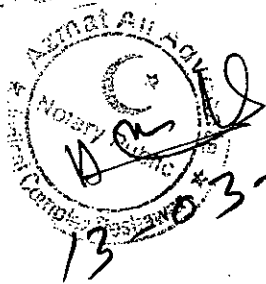
Dated: 11.03.2023

Shahzad

DEPONENT

13503-0650043-7
SHAHZAD MAQSOOD

ATTESTED



Attested & accepted
D. Was

05

Annex: A



BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR CAMP COURT
ABBOTTABAD

Service appeal No. 9069 of 2018

Shahzad Maqsood son of Maqsood Ahmed
resident of Mohallah Lohar Banda, Mansehra,
Tehsil and District MansehraAppellant

Khyber Pakhtunkhwa
Service Tribunal

Duty No. 1173

Dated 17-7-2018

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Education, Peshawar.
2. Director, Elementary & Secondary Education, Peshawar.
3. District Education Officer (Male), Mansehra.
- ✓ 4. District Accounts Officer, Mansehra.
.....Respondents

SERVICE APPEAL UNDER SECTION 40F
KPK ~~Service Tribunal~~ ACT, 1974 FOR
DECLARATION TO THE EFFECT THAT
THE APPELLANT IS STILL IN SERVICE
VIDE ENDST. NO.1911-2074 DATED
24.03.1992 ISSUED BY THE RESPONDENTS
FOR THE APPOINTMENT OF APPELLANT
AS A PTC TEACHER AND HAS NOT BEEN
TERMINATED/DISMISSED TILL DATE
NOR HE RESIGNED FROM THE SERVICE
OF HIS POST. THE ACT OF
RESPONDENTS IN RESPECT OF
DENYING THE SERVICE OF THE
APPELLANT, NON-RENDERING THE

Filed to day

Registrar

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD



Service Appeal No. 904/2018

Date of Institution ... 17.07.2018

Date of Decision ... 20.04.2022

Shahzad Maqsood Son of Maqsood Ahmed, Resident of Mohallah Lohar Banda, Mansehra, Tehsil and District Mansehra.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Education, Peshawar and three others.

... (Respondents)

MR. MUHAMMAD AWAIS

Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,

Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN

MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)

--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked jurisdiction of this Tribunal with the prayer copied as below:-

"on acceptance of the instant service appeal, the respondents may graciously be directed/ordered to restore the appellant on his post i.e PST Teacher and also directions be issued to the respondents to hand over the charge and to release the salaries of the appellant with all back benefits or any other order as this Honourable Tribunal deems fit and appropriate may also be passed."

2. Precise facts as alleged by the appellant in his appeal are that he was appointed as PTC Teacher and was posted in

ATTESTED

SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Government Primary School Lohar Banda vide Endst: No. 1911-2074 dated 24.03.1992. The appellant performed his duty with zeal and zest. On various occasions, the appellant applied for leave, which was sanctioned accordingly by competent Authority. During the course of his service, the appellant was transferred to Government Primary School Bai Paen Battal and he took charge in the said school on 20.09.2008. The appellant applied for leave on 29.09.2008 and in the meanwhile his mother got severely ill, therefore, the appellant remained busy in her look after, who eventually died in the year 2016. The appellant approached the respondents for restoration of his service and submitted application for furnishing of details of his leave, however no action was taken by the respondents, therefore, the appellant filed departmental appeal, which was not responded within the statutory period of 90 days, hence the instant service appeal.

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

4. Learned counsel for the appellant has contended that neither any show-cause notice nor any charge sheet or statement of allegations were issued to the appellant. He next contended that the appellant remained absent from duty due to un-avoidable circumstances and as no departmental action what-so-ever was taken against the appellant regarding his absence from duty, therefore, the service of the appellant is still intact. He next contended that service record of the appellant is available in office of the respondents and as his service is still intact, therefore, respondents are not justified in refusal of handing over of the charge of his post to the appellant. He further argued that in view of in-action on the part of the respondents in resolving the issue, service appeal in hand is maintainable.

5. On the other hand, learned Additional Advocate General for the respondents has argued that the appellant had already

ATTESTED
K. S. SINGH
K. S. SINGH
Service Tribunal
Peshawar

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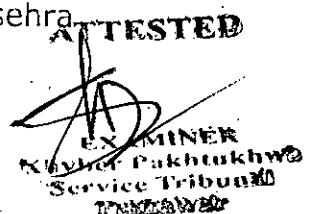
3

availed maximum leave, to which he was entitled and has remained absent from duty for more than 05 years, therefore, in view of FR-18, he has ceased to be a government servant. He next contended that the appellant was not interested in performing of his duty and remained absent for considerable long period without any sanctioned leave or prior permission of the competent Authority. He next argued that the appeal in hand is time barred and is liable to be dismissed with costs.

6. Arguments heard and record perused.

7. A perusal of the record would show that the appellant had submitted an application on 29.09.2008, seeking leave with effect from 06.10.2008, however nothing is available on the record, which could show that the same was allowed or rejected. What could be gathered from the contents of the appeal is that the appellant did not perform his duty with effect from 06.10.2008 and approached the department for his adjustment vide application bearing Diary No. 9351 dated 15.11.2017. It is though an admitted fact that the appellant remained absent from duty, however it is astonishing that the respondents remained in deep slumber and did not initiate any disciplinary action against the appellant on the ground of his absence from duty. While going through the comments so submitted by the respondents in the instant service appeal, they have not mentioned any specific date, from which the appellant had remained absent. The contention of learned Additional Advocate General that as the appellant has continuously remained absent from duty for more than 05 years, therefore, he has ceased to be a government employee, is misconceived for the reason that FR-18 has already been omitted vide Notification No. F.1(11)R.4/89 dated 3rd November 1992. In this scenario, the service of the appellant is still intact.

8. In view of the above discussion, the appeal in hand is partially allowed and respondents are directed to adjust the appellant on his post from 15.11.2017, which is the date on which he submitted application to the DEO (Male) Mansehra.

TESTED

EX-MINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

for his adjustment. The intervening period with effect from 06.10.2008 till 14.11.2017 may be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.04.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

(ROZINA REHMAN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

Certified to be true copy

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 10-2-23

Number of ~~Pages~~ page 5

Copying Fee 29/-

Urgent 5/-

Total 30/-

Name of Copy _____

Date of Completion 10-2-23

Date of Delivery of Copy 10-2-23

10

Annex "B"

Attested & Accepted
Ullah

بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر (M) صاحب ضلع مانسہرہ

درخواست برآمد عمل درآمد بر فیصلہ فاضل عدالت سروس ٹریبونل KPK پشاور مصدرہ

20.04.2022 دراپیل نمبری 904/2018

جناب عالی! درخواست ذیل عرض ہے۔

(۱) یہ کہ سائل محکمہ تعلیم میں بطور PTC ٹیچر تعینات تھا۔ جس نے قبل از سر محکمہ تعلیم میں اپنی Adjustment کی غرض سے مختلف اوقات میں مختلف درخواستیں دیں۔ جن پر عملدرآمد نہ ہونے کی بناء پر سائل کو مجبوراً سروس ٹریبونل رجوع کرنا پڑا۔

(۲) یہ کہ فاضل عدالت سروس ٹریبونل سے سائل کے حق میں اس حد تک فیصلہ صادر ہوا کہ سائل کو 15.11.2017 سے اس کی پوسٹ پر Adjust کیا جائے۔ اسی طرح 06.10.2008 سے لیکر 14.11.2017 تک سائل کا پریڈ Leave without pay تصور کیا جائے جس بابت فیصلہ کے پیرا نمبر 3 میں مفصل تفصیل موجود ہے۔ (نقل فیصلہ لف ہے)۔

(۳) یہ کہ سائل درخواست ہذا کے ذریعے آجنگاب کو فاضل عدالت کے احکامات پر عملدرآمد کے لیے گزارش کر رہا ہے۔

لہذا استدعا ہے کہ بمطابق فیصلہ عدالت سروس ٹریبونل مصدرہ 20.04.2022 سائل کو سروس پر بحال فرمایا جائے اور سائل کو مورخہ 15.11.2017 سے Adjust کرتے ہوئے سابقہ واجبات کی ادا بھی کی جائے۔

جولہ
الرقوم 06 جون 2022

شہزاد مقصود ولد مقصود اجبر، PTC ٹیچر محکمہ تعلیم ضلع مانسہرہ سائل
Shahzad
6/6/2022

Received
06/11/2022
DEC (M) Mansher

وکالت نامہ

بعدالت جناب Service Tribunal K.P.K.

منجانب Petitioner

نام Shazad Maqsood Court of K.P.K. etc

دعویٰ یا جرم Execution Petition

باعث تحریر آنکہ!

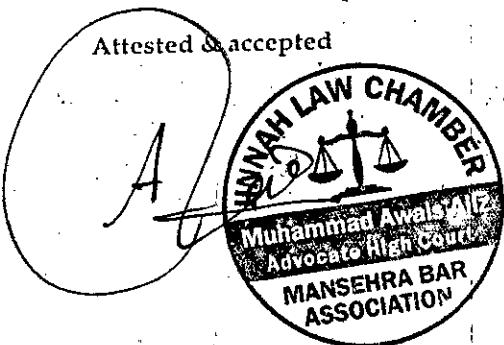
اندریں مقدمہ عنوان بالا اپنی طرف سے برائے پیروی و جواب دہی بمقام Peshawar

Muhammad Awaiz Atiz

کو بدیں شرف وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص زور و عدالت حاضر ہوتا ہوں گا اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دیکر حاضر کروں گا۔ اگر کسی پیشی پر منظر حاضر نہ ہوا اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی اور جگہ سماعت ہو یا کچہری کے اوقات کے آگے پیچھے سماعت ہونے پر منظر کو کوئی نقصان پہنچے تو صاحب موصوف ذمہ دار نہ ہوں گے اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی، اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کارروائی وصول کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپرد ثالثی و راضی نامہ و دستبرداری و اقبال دعویٰ کا اختیار ہوگا اور باسورت اپیل و برآمدگی مقدمہ یا منسوخ ڈگری یکطرفہ درخواست حکم انتہائی یا فیصلہ قبل ازین ڈگری و اجراءے ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ پیروی مختار نامہ کرنے کا مجاز ہوگا۔ بصورت ضرورت بدوران مقدمہ یا اپیل و نگرانی کسی دوسرے وکیل یا بیرسٹر کو بجائے خود یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ مجھے کل ساختہ پرواختہ موصوف مثل ذات خود منظور و قبول ہوگا۔ لہذا وکالت نامہ لکھ دیا ہے تاکہ سندار ہے۔ مضمون وکالت نامہ سن لیا اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

مورخہ 2023

Attested & accepted



Shahzad Maqsood

Shahzad
Petitioner