FORM OF ORDER SHEET

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/03/2023	The appeal of Mr. Abid Gulraiz resubmitted today
		by registered Post through Mr. Muhammad Arshad
		KhanTanoli Advocate. It is fixed for preliminary hearing
		before touring Single Bench—at A.Abad onNotices
	-	be issued to the appellant and his counsel for the date fixed.
		By the order of Chairman
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The appeal of Mr. Abid Gulraiz son of Malik Khalil ur Rehman ward. Orderly C.D. Mangloor Mansehra received today i.e. on 06.03/2023 is incomplete on the following score which is returned to the co Counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of impugned order is not attached with the appeal which may be placed on it.
- 2- Copy of departmental appeal is not attached with the appeal which may be placed
- 3- Copy of Final rejection order of departmental appeal is not attached with the appeal which may be placed on it.

No. 888 /S.T.

Dt. 7/3 /2023

STRAR SERVICE TRIBUNAL

KHYBER PAKHTUNKHWA PESHAWAR.

Mr. Muhammad Arshad Khan Adv. High Court Peshawar Abotabad.

re-submitted duty rectified as required

P-67 to 72 axe attended

Advocate Supreme Court of Pakistan

Office # 33 Jinnah Plaza Adjacent to Distre Bar Abbottabad

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 655 /2023

Abid Gulraiz son of Malik Khalil ur Rehman, Ward Orderly CD Mangloor, District Mansehra.

...APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Health & Health Services KP Peshawar & others.

....RESPONDENTS

SERVICE APPEAL

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2.	Copy of appointment order dated 02/12/1997 is		"A"
i	mentioned in the service book of the appellant	11-30	
3.	Copy of relevant rules of FR	31-32	"B"
4.	Copy of compromise deed dated 15.12.2015	33-35	"C"
5.	Copies of applications	36-37	"D"
6.	Copy of departmental appeal regarding his		"E"
	reinstatement in services	138-39	
7.	Copy of writ petition No. 180-A/2020 and order	-1	"F"
	dated 01.12.2020	40-51	
8.	Copy of re-instatement order -	52-53	"G"
9.	Copy of judgment dated 16.02.2023 in C.O.C	r14 1 a	"H"
	No. 67-A/2021	2-1-00	
10.	Copy of judgment of this Honourable Tribunal	61-66	"I"
11.	Wakalatnama	67	

٠.		APPELLANT
Dated: _	/2023	Through
	•	(Muhammad Arshad Khan Tanoli)
		Advocate Supreme Court of Pakistan

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No.6 /2023

Abid Gulraiz son of Malik Khalil ur Rehman, Ward Orderly CD Mangloor, District Mansehra.

...APPELLANT

VERSUS

- 1. Govt. of Khyber Pakhtunkhwa, through Secretary Health & Health Services KP Peshawar.
- 2. Director General Health and Health Services Khyber Pakhtunkhwa Peshawar.
- 3. District Health Officer District Mansehra.
- 4. District Account Officer District Mansehra.

....RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974, FOR DECLARATION TO THE EFFECT THAT THE APPELLANT WAS APPOINTED AS WARD ORDERLY ON 02/12/1997 AND LATER ON WAS IMPLICATED IN FIR NO. 451 UNDER SECTION 302/324/148/149 PPC DATED 05/12/1999 AT P.S SADDAR DISTRICT

APPELLANT MANSEHRA. THE ARRESTED AND REMAINED IN PRISON TILL 14/12/2015 AND WAS ACQUITTED ON BASIS OF COMPROMISE DATED 15/12/2015. THE APPELLANT RECEIVED HIS SALARY IN PRISON MANSEHRA TILL MARCH. 2002 AND THEREAFTER NO SALARY WAS PAID TO THE APPELLANT W.E.F APRIL 2002 TO 14/12/2015 APPELLANT FILED WRIT PETITION NO. 180-A/2020 BEFORE THE HONOURABLE PESHAWAR HIGH COURT ABBOTTABAD BENCH WHICH WAS **DECIDED** 01/12/2020 VIDE ORDER DATED 01/12/2020, AS A RESULT, THE APPELLANT WAS RE-INSTATED IN SERVICE ON 01/11/2021. NOW, THE HAS APPELLANT ATTAINED THE AGE OF SUPERANNUATION ON 31/12/2022. THE APPELLANT HAS NOT SO FAR BEEN PAID SALARY W.E.F APRIL 2002 TO 14/12/2015 AS WELL AS W.E.F 15/12/2015 TO 30/10/2022 WHICH IS AGAINST THE SETTLED LAW ON THE SUBJECT.

PRAYER: ON ACCEPTANCE THE INSTANT SERVICE APPEAL, RESPONDENTS MAY GRACIOUSLY BE DIRECTED TO PAY SALARY TO THE APPELLANT W.E.F APRIL 2002 TO 14/12/2015 AND 15/12/2015 TO AND THEREAFTER, GRANT 31/10/2022 PENSION AND COMMUTATION TAKING INTO ACCOUNT THE PERIOD MENTIONED ABOVE. ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL **DEEMS** FIT AND **PROPER** IN CIRCUMSTANCES OF THE CASE MAY BE GRANTED TO THE APPELLANT.

Respectfully Sheweth: -

1. That the appellant joined respondents' department as Ward Orderly on 02/12/1997.

Copy of appointment order dated 02/12/1997 is mentioned in the service book of the appellant is annexed as Annexure "A".

- 2. That the appellant served the department with complete devotion and dedication and left no stone unturned in the smooth functioning of the CD Mangloor.
- 3. That the appellant was implicated in case FIR No. 451 dated 15/12/1999 under section 302/324/148/149 PPC P.S Saddar Mansehra alongwith other co-accused.
- 4. That the appellant was paid his monthly salary by the department till March 2002 and thereafter, no payment was paid by the department to the appellant as per the provision of fundamental rules. Copy of relevant rules of FR is annexed as Annexure "B".
- 5. That the petitioner was awarded death sentence by the trial court on 04.03.2002 which was confirmed by the High Court vide judgment dated 28.03.2003 and thereafter, the appeal was also refused by the Honourable Supreme court of Pakistan on 13.04.2005, hence, review petition was also

dismissed by the Supreme Court on 23.01.2007. In the meanwhile, legal heirs of the deceased compromised with the appellant and he was honourably acquitted on the basis of compromise. Copy of compromise deed dated 15.12.2015 is annexed as Annexure "C".

- That after acquittal the appellant approached 6. the respondents department for provision of appointment order, services book and other the documents service related respondents did not provide the same inspite of repeated requests through representations. Copies of applications are annexed as Annexure "D". Besides, the appellant filed departmental appeal for his re-instatement in service but the respondents department did not redress the grievances of the appellant so far. Copy of departmental appeal regarding his reinstatement in services is annexed as Annexure "E".
 - 7. That as a result, the appellant filed writ petition No. 180-A/2020 before the

9:

Honourable Peshawar High Court, Abbottabad Bench, which was decided vide order dated 01.12.2020 by the worthy High Court. Copy of writ petition No. 180-A/2020 and order dated 01.12.2020 are annexed as Annexure "F".

- 8. That following this, respondents re-instated the appellant on 01.11.2021 and the appellant has now attained the age of superannuation on 31.12.2022. Copy of reinstatement order is annexed as Annexure "G".
 - That the matter of back benefits for the period of suspension w.e.f April 2002 to 14.12.2015 as well as the period in which, respondents department did not reinstate the appellant in service w.e.f 15.12.2015 to 31.10.2021 remained subjudice before the Honourable High Court in the shape of contempt of court petition and finally, the last contempt of court petition No. 67-A/2021 was turned down by the Peshawar High Court Abbottabad Bench vide

judgment dated 16.02.2023 due to the reason that the matter of back benefit for which appellant is entitled is to be decided by the department. Copy of judgment dated 16.02.2023 in C.O.C No. 67-A/2021 is annexed as Annexure "H". Hence, the instant service appeal is filed inter-alia on the following grounds;

GROUNDS:-

- towards the act of the respondents towards the appellant is malafide, perverse, against the law and the appellant is bound to make payment of salary to the appellant w.e.f April 2002 to 31.10.2022.
- (b) That the appellant was neither dismissed nor terminated or suspended by the respondents' department during the period the appellant remained in jail, therefore, they are bound to issue salary of the appellant mentioned in para "a" above.

(c)

That the respondents' department on the basis of order dated 01.12.2020 of Peshawar High Court, Abbottabad Bench reinstated the appellant in service on 01.11.2021 but salary of the period spend by the appellant in jail w.e.f April 2002 onwards has not so far been paid as per law on the employee is subject. When an acquitted on the basis of compromise the employee is entitled for receipt of salary he remained in jail. It is further this Honourable submitted that Tribunal has already allowed same benefits in case title "Masood vs. Govt of KPK etc". Copy of judgment this Honourable Tribunal annexed as Annexure "I".

(d) That the matter relates to the terms and condition of service, therefore this Honourable tribunal has jurisdiction to entertain the instant service appeal of the appellant.

Besides, the issue relates to the

payment of salary i.e. financial benefits in such cases, limitation does not run and always considered as recurring cause.

It is, therefore, humbly prayed that on acceptance of the instant service appeal, respondents may graciously be directed to pay salary to the appellant w.e.f April 2002 to 15/12/2015 and 16/12/2015 to 30/12/2022 and thereafter, grant pension and commutation after taking into account the period mentioned above. Any other relief which this Honourable Tribunal deems fit and proper in the circumstances of the case may be granted to the appellant.

..APPELLANT

Dated: /2023

(Muhammad Arshad Khan Tanoli) Advocate Supreme Court of Pakistan

VERIFICATION:-

Verified on oath that the contents of forgoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

Through

.APPELLANT

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. _____/2023

Abid Gulraiz son of Malik Khalil ur Rehman, Ward Orderly CD Mangloor, District Mansehra.

...APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Health & Health Services KP Peshawar & others.

....RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, Abid Gulraiz son of Malik Khalil ur Rehman, Ward Orderly CD Mangloor, District Mansehra, do hereby solemnly affirm and declare that the contents of forgoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.



DEPONENT

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A doubt has been raised as to whether, in the case of a Government servant who has been suspended while on leave the subsistence grant should be calculated with reference to his leave salary or with reference to his pay. Attention in this connection is invited to F.R. 55, which prohibits grant of leave to Government servants under suspension. Such a Government servant, therefore ceases to be on leave as soon as he is placed under suspension, and the subsistence grant in his case also has to be calculated with reference to the pay which was admissible to him on the eve of the commencement of the leave.

These orders take effect from the 1st of December, 1969.

[G.P., M.F., O.M. No. F. 12 (32)-R3/70, dated the 14th February, 1970.]

IF.R. 54.-Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty-

- (a) if he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed, and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or
- (b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribed.

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F.R. 54, substituted by S.R.O. 718(I)/93, 2nd August, 1993. Gaz of Pakistan, Extra, pt. II, p. 1339, Aug. 22, 1993, (Effective from 30th June, 1993.)

The above amendments will be effective from 30th June, 1993.

from duty will be treated as period spent on duty.

In a case under clause (b), it will not be treated as a period spent on duty unless the revising appellate authority so directs.

Explanation.—In this rule, "revising authority" means the "authority" or "authorized Officer" as defined in the Government Servants (Efficiency and Discipline) Rule, 1973, who passes the final order on the case and not the authority who passes an order on appeal.]

²[54A. If a Government servant, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such Government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.]

F.R. 55. Leave may not be granted to a Government servant under suspension.

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F.R. 54A. inserted by S.R.O. 1143 (I)/80, dated 10th Nov. 1980, Gazette of Pakistan, Extraordinary, Part II. Page No. 2215, dated Nov. 20, 1980.

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ORDER: 15.12.2015

O'O'

Miss Ammara Aziz Advocate for the complainant present. Mr.Ghulam Mustafa Khan Swati Advocate for convict namely Guiraiz present. Mr. Saqib Khan Jadoon PP for the State present. Fida Muhammad (guardian of minor Mst.Mah Jabeen) alongwith his counsel namely Saeed Ahmad Shah Mashadi Advocate present.

- Complainant Abdul Hameed (father of deceased 2. Abdul Jamil) has submitted the instant application that compromise has been effected with convict, therefore, the case may be decided on the basis of compromise.
- Convict namely Gulraiz alongwith other co-accused were charged vide case FIR No.451 dated 15.12.1999 u/ss 302/324/148/149 PPC registered at PS Saddar Mansehra for committing Qatl-e-Amd of Abdul Jamil s/o Abdul Hameed and attempting at the lives of Shafiq-ur-Rehman, Faiz-ur-Rehman, Zia-ur-Rehman, Inayat-ur-Rehman, Abdul Hameed. Zakirur Rehman and Abdul Haleem. On conclusion of the trial, the then learned ASJ-I Mansehra convicted Gulraiz and awarded him the sentence of death vide judgment dated 04.03.2002, which was confirmed by Honourable Peshawar High Court, Abbottabad Bench vide judgment dated 28.03.2003. Leave to appeal was refused by august Supreme Court of Pakistan, vide judgment dated 13.04.2005 passed in Cr.L.P No.129. Similarly, his review petition No.24 of 2005 was dismissed by august Supreme Court on 23.01.2007 and his mercy petition was also turned down by President of Pakistan. Black warrant for execution of sentence of death was thus issued by this court on 12.05.2007, however in the meanwhile convict Gulraiz submitted an application in this court for reduction of his sentence on the basis of compromise with Mst.Farzana (widow of deceased), as well as deceased's minor daughter namely Mst.Mah Jabeen, which was dismissed vide order dated 06.12.2007, on the ground that partial compromise cannot be taken into consideration for

Bar Abbottabad

reduction of sentence of convict. The aforementioned sentence remained upheld till the august Supreme Court of Pakistan and ultimately this court issued black warrant for carrying out into execution of the sentence of death of convict on 01.12.2015 but in the meanwhile, the instant application regarding compromise between the parties was submitted by complainant Abdul Hameed.

Parents of the deceased namely Abdul Hameed and 4. Mst.Hussan Jan have produced compromise proforma Ex.PA as well as compromise affidavits Ex.PB and Ex.PC, photo copy of CNIC of complainant Abdul Hameed is Ex.PD, while photo copy of CNIC of Mst. Hussan Jan is Ex.PE. Their joint statement also recorded in respect of the compromise, wherein they stated that they have effected compromise with the convict Gulraiz and have forgiven him in the name of Almighty Allah by waiving their right of Qisas and Diyat and have got no objection upon his acquittal. Joint statement of witnesses of compromise namely Muhammad Farooq s/o Muhammad Shafi and Muhammad Muneer s/o Hameedullah also recorded, wherein they affirmed the factum of compromise between the parties and have also affirmed that Abdul Hameed, Mst.Hussan Jan, Mst.Farzana Bibi and minor Mst.Mah Jabeen are the only surviving legal heirs of the deceased. Photo copy of CNIC is Muhammad Farooq is Ex.PH, photo copy of CNIC of Muhammad Muneer is Ex.PI while compromise affidavits produced by them are Ex.PF and Ex.PG respectively. Besides this, on the direction of the court, SHO concerned has also submitted his report, verifying LRs of the deceased as well as factum of compromise.

It is pertinent to mention herein that widow of the deceased has already effected compromise with the convict on her behalf as well as on behalf of minor Mst.Mah Jabeen, by receiving an amount of Rs.4,60,000/- (four lac & sixty thousand), out of which Rs.2,66000/- has been deposited in the name of minor Mst.Mah Jabeen in shape of Defence Saving Certificates in National Defence Saving Centre Mansehra.

name of minor Mst.Mah Jabeen in shape of Defence Saving Certificates in National Defence Saving Centre Mansehra.

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Photocopies of the aforementioned saving certificates are available on the record of criminal misc; application No.243/4 of 2007 decided on 06.12.2007. The compromise affidavits submitted by Mst.Farzana before the then learned Sessions Judge, Mansehra has also placed on the file of aforementioned criminal miscellaneous application. Mst.Farzana had also appeared before the august Peshawar High Court, Peshawar on 18.12.2007 in proceedings on Cr.R No.197 of 2007 and had affirmed that she had effected compromise with convict Gulraiz. Moreover, Fida Muhammad s/o Atta Muhammad (maternal grand father/guardian of minor Mst.Mah Jabeen) also affirmed before the court that Mst.Farzana had effected compromise with the convict on her behalf as well as on behalf of the minor.

5. The offence under section 302 PPC is compoundable and all legal heirs of the deceased have effected compromise with convict Gulraiz, therefore, on the acceptance of compromise between the parties, the convict namely Gulraiz s/o Khalilur Rehman is acquitted on the basis of compromise. Convict named above is in jail, therefore, he be set at liberty forthwith, if not liable to be detained in any other case/matter. Case property be disposed of in accordance with law after the expiry of period of appeal/revision. Requisitioned record be returned to the quarter concerned, while file of this court be consigned to record room after completion.

Announced: 15.12.2015

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(Salah-Ud-Din) Sessions Judge Mansehra.



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جناب عالی! درخواست ذیل عرض ہے۔

1- بیکرمن سائل کے خلاف FIR زیر دفعہ PPC 302/324/148/149 زیر دفعہ PPC 302/324/148/149 بالم کے خلاف FIR مورخہ 15/15/1999 کو درج رجٹر ہوئی ۔اور سائل بصیغہ راضی نامہ محررہ 15/12/2015 با

2۔ بیرکمن سائل کو محکمہ مذانے مار <u>32002ء تک نخواہ وغیرہ کی ادائیگی کی ہے اوراس کے بعد</u> اپری<u>ل 2002ء سے</u> تا حال کو کی بابت تنخواہ وغیرہ نہ ہوئی ہے۔

3- یک من سائل باعزت بصیغه راضی نامه باعزت طور پر FIR نمبر 491 مورنده 15/12/1999 بری ہو چکا ہے۔

اندرین حالات من سائل کو Appointment Order مورخه 02/12/1997 مورخه 02/12/1997 سروس بک ویگر سروس کاغذات دیئے جا کر سائل کی نخواہ از مورخه اپریل 2002ء تا حال بھی دی جاوے۔اوراس طرح سائل کومحکمہ ہذامیں Adjust کیا جاوے۔

الرتوم:13/01/2016

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ملک عابدگل ریز ولد ملک خلیل الرحمان ، وارژ آ رژ رلی ، CD منگلور ، ژسٹر کٹ مانسمرہ ۔۔۔۔ (سائل)

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بخدمت جناب دُائر بکٹر بیلتھ KPK پٹاور کے میں جناب دُائر بکٹر بیلتھ KPK پٹاور

در خواست حصول Appointment Order محرره 02/12/1997 وسروس بک وادایگی تنخواه از اپریل <u>2002</u>ء تا حال و کئے جانے Adjust محکمہ صحت۔

جناب عالیٰ! درخواست ذیل عرض ہے۔

2۔ کیکہ سائل کے خلاف ایک FIR علت نمبر 491مور ند 15/12/1999 درج ہوئی اور بعدہ بعدہ بعدہ نامہ من سائل مور خد 15/12/2015 کو باعزت بری ہو چکا ہے۔

بدیں حالات استدعاہے کہ ڈسٹر کٹ ہیلتھ آفیسر مانسہرہ کو ہدایت کی جاوے کہ وہ من سائل کو درجات بالا کاغذات و تخواہ کی ادائیگی اور محکمہ میں Adjust کرنے کے احکامات جاری فرمائی جاویں۔

الرقوم:20/05/2016

ملک عابدگل ریز ولدخلیل الرحمان ، وار دُ آر دُ ری ، CD منگلور ، دُسٹر کٹ مانسبرہ ۔۔۔۔۔(سائل)

Carrier Carronabau

Anne M. E بخدمت جناب ڈسٹر کٹ بہلتھ آفیسر، مانسمرہ

از ایریل 2002ء تا حال ودیئے جانے تو ٹو کا پی Appointment Order، دسروس بک دادا نیگی تخواہ از ایریل 2002ء تا حال ودیئے جانے آرڈر بابت Adjust محکمہ صحت۔

جناب عالی! ورخواست ذیل عرض ہے۔

۔ پیکمن سائل RTI ایکٹ 2013ء کے تحت جناب کو درخواست بابت دیئے جانے کاغذات عنوان بالاکی درخواست دے رہا کیونکہ سال 15/12/2015 کو باضابط اور با عزت مقدمہ FIR نمبر 491 بری ہو چکا ہے ۔ لیکن من سائل کو Appointment مورخہ FIR مورخہ 2012/1997 وسروس بک وغیرہ تا حال معیانہ کی گئی۔ جس دجہ سے سائل کسی بھی عدالت مجاز میں مقدمہ برائے حصول شخواہ از ابریل 2002ء تا حال وحسول محکمہ صحت سے قاصر ہے۔

2۔ لیکمن سائل کے بیچے زرتعلیم ہیں اور سائل کوکوئی ذریعہ معاش نہ ہے۔ تبل ازیں سائل نے جناب کو درخواست محررہ 13/01/2016 وجناب ڈائر یکٹر ہیلتھ KPK پٹنا ورکومور خہد کا بیٹا ورکومور خہد کی کا کا درخواست ہائے پرکوئی شنوائی نہ ہوئی۔

استدعاہے کہ سائل کو Appointment Order مروس بک و دیگر کا غذات فالفور دیئے جاویں اور سائل کی تنخواہ مور خدار بل 2002ء تا حال کی ادائیگی کرنے کے ساتھ سائل کو تکمہ صحت میں Adjust کیا جاویں اور سائل کی تنخواہ مور خدار بل

الرقوم:18/10/2018

ملک عابدگل ریز ولد ملک خلیل الرحمان ، وار ژ آر ڈرلی ، CD منگلور ، ڈسٹر کٹ مانسہرہ۔۔۔۔ (سائل)

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عدمت جناب ڈسٹرکٹ بمیلتھ آفیسر، مانسہرہ مانسہرہ مانسہرہ مانسہرہ میں مانسہرہ ما

محکمانها پیل برائے ادائیگی نخواہ از اپریل <u>2002ء تا حال وآرڈ ر</u>Adjustment زمحکمہ صحت_

جناب عالی! محکمانه ایل ذیل عرض ہے۔

1۔ کی کمن سائل قبل ازیں درخواست ہائے بابت کاغذات جو کہ Appointment مردس بک وغیرہ اور حصول تخواہ ،سال اپریل 2002ء تا حال اور Adjustment Order کے متعدد بار درخواست ہائے گزار چکا ہے ۔لیکن محکمہ نے سائل کو ضروری کاغذات فراہم کئے اور نہ ہی سائل کی تخواہ اپریل 2002ء تا حال ادا نہ کی ہیں۔ ہے۔اس طرح سائل کو محکمہ میں Adjust کرنے کے احکامات جاری نہ کئے ہیں۔

2۔ پیکرسائل کوتا حال ملازمت سے برطرف نہ کیا گیا ہے۔ سائل FIR علت نمبر 491زیر دفعہ

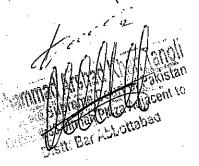
PPC 302/324/148/149 بیار 15/12/1999 کورہ 15/12/1999 بیندرائشی نامہ

15/12/2015 کو بری ہوکر جملہ حقوق ملازمت حاصل کرنے کا حقد ارہے۔ لہذامن سائل

کوتنخواہ ادائیگی و Adjustment Order دینا محکمہ کی ذمہ داری ہے۔

اندرین حالات استدعاہے کہ سائل کے حالات پررخم فرمایا جاوے اور سائل کے جملہ بقایا جات تخواہ وغیرہ، مطلوبہ کا غذات دیتے جا کرملازمت پر Adjust کیا جاوے۔ 18/10/2019 الرقوم؛ 28/10/2019

ملک عابدگل ریز ولد ملک خلیل الرحمان ، وار دُی آر دُر لی ، CD منگلور ، دُسٹر کٹ مانسہرہ۔۔۔۔ (سائل)



Annex A

BEFORE THE PESHAWAR HIGH COURT.
ABBOTTABAD BENCH

W.P.No. 180 A/2029

Abid Gul Raiz son of Malik Khalil ur Rehman, Ward Orderly CD Manglood District Manschyn,

... PETITIONER

ABBOTTABAD

VERSUS

- 1. Govi. of Khyber Pakhtunkhwa through Secretary, Health and Health Services Khyber Pakhtunkhwa, Peshawar.
- 2. Director General Health & Health Servibes Khyber Pakhtunkhwa Fushawat.
- 3. District Health Officer, District Mansehra.

...RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973, FOR DECLARATION TO THE EFFECT THAT THE PETITIONER GOT APPOINTMENT AS WARD ORDERLY ON 02/12/1997 AND LATTER ON AN FIR NO. 451 DATED 15/12/1999; UNDER SECTION 302/324/148/149 PPG POLICE NOTTATE DISTRICT MANSEHRA SADAR AGAINST THE PETITIONER LODGED AMONGST OTHERS. AS A RESULT, THE

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EXAMINER

0 5 DEL 2020

Poshawar High Court Atd. Bench
Authorized Under Se: 75 Evid Ordns:



PETITIONER WAS ARRESTED AND HE REMAINED IMPRISONED TILL 14/12/2015 AND WAS ACQUITTED ON THE BASIS OF COMPROMISE DATED 15/12/2015 THE PETITIONER RECEIVED HIS SALARY IN THE DISTRICT JAIL MANSEHRA TILL MARCH 2002, THEREAFTER, THE PETITIONER WAS NOT PAID HIS SALARY FROM APRIL 2002 TO 15/12/2015. HENCE THE RESPONDENT DID NOT ISSUE ORDER TO CONTINUE HIS SERVICE IN THE DEPARTMENT WHICH IS PERVERSE. DISCRIMINATORY AGAINST THE LAW AND THE RESPONDENTS ARE BOUND TO MAKE PAYMENT TO THE PETITIONER WEF APRIL 2002 TO TILL DATE AND ISSUE ORDER TO JOIN SERVICE IN DEPARTMENT.

PRAYER: ON ACCEPTANCE OF THE INSTAINT WRIT PETITION, RESPONDENTS' MAY GRACIOUSLY, BE DIRECTED TO RELEASE SALARY OF THE PETITIONER.

W.E.F. APRIL 2002 TO 15/12/2015 AND THEREAFTER, ISSUE ORDER OF THE

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Peshawar High Court Atd. Bench
Authorized Under Se: 75 Evid Ordns:

Marianoli Asianoli As

PETITIONER TO SERVICE IN THE DEPARTMENT WITH ALL BACK BENEFITS.

ANY OTHER RELIEF WHICH THIS HONOURABLE COURT' DEEM APPROPRIATE IN THE CIRCUMSTANCES OF THE CASE MAY AUSO BE GRANTED TO THE PETITIONER.

Respectfully Shewelli:-

Brief facts leading to the instant writ petition are arrayed as under;

That the petitioner join respondent's department as Ward orderly on 02/12/1997. Copy of appointment arder dated 02/12/1997 is available in the respondent's office, but in-splie of repeated request and applications regarding provisions of appointment order; service book and other service related documents, the respondent's did not provide the same to the petitioner. However in this regard, attendance roll wherein, the appointment order dated

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EXAMINER

(1911-1917)

Peshawar high Count Aid, Bench
Authorized Under Se: 75 Evid Ordna

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02/12/1997 of the petitioner is mentioned is attached as Annexure "A". The applications submitted to the department for provision of appointment order, Copy of service book and other service related documents are attached as Annexure "B".

- 2. That the petitioner served the department with complete devotion and dedication and left no stone unturned in the smooth functioning of the C.D Mangloor. In this regard, attendance sheets and contingent bill (Qabz-ul-Wasool) are attached as Annexure "C".
- That the petitioner was implicated in case FIR No. 451 dated 15/12/1999 under section 302/324/148/149 PPC Police Station Saddar District Mansehra alongwith other coaccused. Copy of FIR is attached as Annexure "D".
- 4. That the petitioner was arrested and he was paid salary by the department till March 2002 and thereafter, no payment was paid by



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the department to the petitioner. It is further submitted that the petitioner was awarded sentence of death by the trial court on 04/03/2002 which was confirmed by the High Court vide judgment dated 28/03/2003 and appeal was also refused by the Supreme Court of Pakistan on 13/04/2005. As a result, review petition against the refusal of appeal was also dismissed by the Supreme Court of Pakistan on 23/01/2007. However, the petitioner filed mercy petition which was also turned down by the president. In the meanwhile, legal heirs of the deceased compromised with the petitioner and the petitioner was acquitted on the basis of the compromise. Copy of compromise deed dated 15/12/2015 is attached as Annexure "E".

A Section of the sect

5.

That after acquittal, the petitioner approached the respondent's department for provision of appointment order, Service Book and other service related documents but the respondents department did not provide the same so far. Copies of

Annexure "B". Besides, the petitioner filed departmental appeal for his reinstatement in service but the respondent's department did not redress the grievance of the petitioner so far. Copy of departmental appeal/applications regarding reinstatement in service are attached as Annexure "F". Hence, the instant writ petition is filed, inter-alia on the following grounds;-

GROUNDS;-

- the petitioner is malafide, perverse, against the law and the petitioner is bound to make payment of salary to the petitioner w.e.f April 2002 to till date.
- dismissed nor terminated nor suspended by the respondents' department so far, therefore, respondents are bond to issue orders

to the petitioner to serve the department as per law.

- Once an employee is acquitted on the basis of compromise, the employee is eligible and entitle to serve the department. The legal heirs of the deceased compromised with the petitioner on 15/12/2015.

 Therefore, the petitioner is eligible to serve in the department as Ward orderly.
- in oblivion that the petitioner is entitle in all respect for joining service as well as payment of salary w.e.f April, 2002 to till date.
- e) That respondents' department has led the petitioner to the place which is utterly unknown to the principle of jurisprudence, natural justice, and fair play.

Alshad Khan I anoll
Supreme Court of Pakisfan
Dish: C., Libratao

- f) That there is no other prompt and efficacious remedy available to the petitioner, except the invocation of constitutional jurisdiction of this Honourable Court.
- law have been service upon the respondents through registered mail.

 Copy of notice and receipts thereof are attached as Annexure "G".
- h) That court fee stamp paper wroth of Rs. 500/- is annexed.
- i) That other points shall be urged at the time of arguments with the permission of this Honourable Court.

It is, therefore, humbly prayed that on acceptance of the instant writ petition, respondents' may graciously be directed to release salary of the petitioner w.e.f April 2002 to 15/12/2015 and thereafter, issue order of the

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petitioner to service in the department with all back benefits. Any other relief which this Honourable court deem appropriate in the circumstances of the case may also be granted to the petitioner.

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Dated: _____/2020

(Mphammad Arshad Khan Tanoli) Advocate High Court, Abbottabad

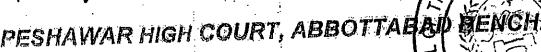
VERIFICATION:-

Verified on oath that the contents of foregoing writ petition are true and correct to the best of our knowledge and belief and nothing has been concealed therein from this Honourable Court.

Through

...PETITIONER

P-49



FORM OF ORDER SHEET

ate of Order of Proceedings	Order or other Proceedings with Signatur	- 2880Th	ABBOTTHS?		
1	Z		<u> </u>		
01.12.2020	W.P.No. 180-A/2020. Present: Mr. Muhammad Arsha Advocate, for the petitione	G Introduction	Tanol		
	Raja Muhammad Zuba respondents		or th		

MOHAMMAD IBRAHIM KHAN. J.: By invoking the jurisdiction of this court within the meaning of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner seeks declaration to the effect that he was appointed as Ward Orderly on 02.12.1997 and was charged in case FIR No. 451 dated 15.12.1999 registered under Sections 302 / 324 / 148 / 149 PPC at Police Station Saddar District Mansehra. Upon his arrest, he was convicted and thereafter on the basis of compromise on 15.12.2015 he was acquitted. He has not received his monthly salary after March 2002 and has, therefore, prayed for acceptance of this petition for release of his salary with effect from April 2002 to 15.12.2015. His further prayer is to render his services in the respondents-department with all back benefits.

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2. While filling the comments, the respondents have submitted that the petitioner was suspended from service by DHO Mansehra vide order beating endorsement



No.11358-61 dated 31.12.1999. This order was further extended till the final decision of the court on 22.02.2001. However, no termination order has so far been passed to debar the petitioner to serve in the department.

While hearing the arguments of learned counsel for the petitioner and learned Additional Advocate General, appearing on behalf of the respondents, it has been crystal clear that the petitioner has been appointed as Orderly in the respondents-department on 02.12.1997 but because of his personal enmity he was later on implicated in case FIR No. 451 dated 15.12:1999 registered under Sections 302 / 324 / 148/ 149 PPC at Police Station Saddar District Mansehra. Initially, he was convicted by the learned trial court but later on between the parties the matter was patched up and he was acquitted on 15.12.2015 / There is no order available on record as to further know whether the office of the respondents has carried out any other order in extension of the suspension of the petitioner except the extension till order dated 22.02.2001. It means that the petitioner is still in service, however, if the respondents were to terminate the services of the petitioner then an order to that effect should have been passed, thus, at all we leave it to the respondents to further consider the petitioner to serve the respondents-department or else terminate him in view of his long absence for years. Since the petitioner has not served the respondents-department for the period for

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which he seeks back benefits in the form of salary, therefore, he is not entitled to back benefits. However, it is still left to the respondents to grant him salary for the period under suspension for which he may be rightly entitled to.

- In view of the disclosure of departmental appeal / representation in Para-5 of the petition under narration of brief facts, this court learnt that the petitioner has filed departmental appeal for his reinstatement in service but the respondents-department has not redressed his grievance, thus, in such a scenario we would like to direct the respondents to take up the departmental appeal for its decision within two (02) months positively from receipt of the order of this court. In case the petitioner prayer is not redressed by the respondents-department, then he may approach to this court.
- With such observations, this petition stands disposed of

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EXAMINER

Peshawan High Court Atd Bench Authorized Under Se: 75 Evid Ordns

SUDGE

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OFFICE OF THE DISTRICT HEALTH OFFICER

MANSEHRA.

Phone # 0997-920160 rax 0997-920166 edolumnite valuoricum.

NO. 48 19 /Dated 01/02 /2021

The Director General Health Services Khyber Pakhtunkhwa Peshawar

Subject:-

WRIT PETITION NO.108-A/2020 OF MR. ABDI GUL RAIZ SON MALIK KHALIL UR REHMAN WARD ORDERLY CD MANGLOOR VS SECRETARY, HEALTH KPK, DGHS & DISTRICT HEALTH OFFICER MANSEHRA.

Memo

It is stated that an application submitted by Mr. Abid Gulraiz S/O Khalil ur Rehman Ex-Ward Orderly CD Mangloor District Mansehra, which is self explanatory regarding his reinstatement into Govt; service.

It is stated that Mr. Abid Gulraiz S/O Khalil ur Rehman was appointed as Ward Orderly on 02/12/1997. An FIR No.451 dated 15/12/1999 under section 302/324/148/149 PPC, Police station Saddar Mansehra was lodged against the above cited official, as a result be was arrested and he remain imprisoned till 14/12/2015. He was suspended from service by this office vide order No.11358-61 dated 31/12/1999. In the year 2015 Mr. Abid Gulraiz acquitted from jail on the basis of compromise. (Copy of court order is attached). He filed an appeal before the Peshawar High Court Abbottabad Bench for his reinstatement into Government Service.

In this connection it is stated that this office received a judgment little Peshawar High Court Abbottabad Bench on writ Petition No.180-A/2020 dated 12/2020 in which the court direct the respondents to take up the departmental aspeal for its decision within (02) months positively from receipt of the order of this court. Incase the petitioner prayer is not redressed by the respondents-department, then he may approach to this court.

Your good self is requested to guide this office in the above matter

please.

DISTRICT HEALTH OFFICER

MANSEHRA.

Minari Arshan Court of Pakistan Supreme Court of Pakistan Sa Jinnah Plaza Adjacent to Satt: Ear Albottabad PARTIE OF THE DISTRICT AND PROFILE THE PROFILE OF T

District Health Olias

NO 7446-48 Dated 61 / 2/ /2021.

Copy to

1) Incharge CD Mangloor,

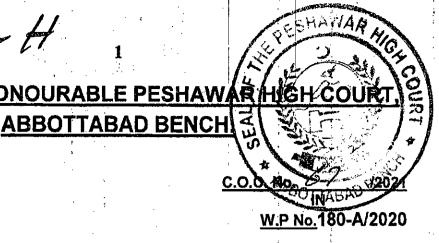
2) Accounts & Service Book section DHO Office Mansehra for information.

[3] Official concerned.

District Health Officer Mansehra.

Junieme Court of Pokistar Subreme Court of Pokistar Sinnah Plaza Adjasem fo Distt. Bar Abbontabad tnner-H

BEFORE THE HONOURABLE PESHAWAR HIGH COL



Abid Gulraiz S/o Malik Khalil-ur-Rehman ward orderly CD Mangloor, Village and Post Office Mor Baffa Kalan District Mansehra.

..PETITIONER

VERSUS

- 1) Dr.Muhammad Niaz Director General Health and Health Services KP, Peshawar.
- 2) Dr.Muhammad Mushtaq Khan, District Health Officer, District Mansehra.

...RESPONDENTS / CONTEMNORS

Certified to be True Copy EXAMINE 28 FEB Peshawar High Court Atd Bench authorized Under Se 75 Evid Ordin APPLICATION FOR INITIATION OF CONTEMPT OF COURT PROCEEDINGS AGAINST CONTEMNORS / RESPONDENTS FOR NON-**IMPLEMENTATION** OF ORDER DATED 01.12.2020 IN WRIT PETITION NO.180-A/2020 OF THIS HONOURABLE COURT.

PRAYER:

ON **ACCEPTANCE** INSTANT CONTEMPT COURT PETITION CONTEMNORS / RESPONDENTS DIRECTED TO IMPLEMENT ORDER DATED

01.12.2020 OF THIS HON'BLE COURT, FAILING WHICH CONTEMPT OF COURT PROCEEDINGS MAY BE INITIATED TO PUNISH THEM.

Respectfully Sheweth,

The facts forming the background of the instant contempt of Court petition are arrayed as under:-

- 1. That, the petitioner filed Writ Petition No.180-A/2020 regarding payment of salary etc. Now the petitioner has attained the age of superannuation on 03.01.2020. (Copy of Writ Petition is attached as Annexure "A")
- 2. That this Hon'ble Court disposed-off the captioned
 Writ Petition vide order dated 01.12.2020.(Copy of
 order dated 01.12.2020 of this Hon'ble Court is
 attached as Annexure "B")
 - That the petitioner approached the respondents through representations for implementation of the order of this Hon'ble Court. (Copies of applications are attached as Annexure "C")

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EXAMINER

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Peshawar High Court Atd Bench
Authorized Under Se 75 Fing Ordns

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P-56

4. That respondent No.2 written a letter dated 01.02.2021 to respondent No.1 but no action regarding the implementation of the order dated 01.12.2020 of this Hon'ble Court has so far been taken which amounts to the Contempt of Court.

PRAYER:

On acceptance of instant Contempt of Court
Petition contemnors / respondents may be directed
to implement order dated 01.12.2020 of this
Hon'ble Court, failing which, Contempt of Court
proceedings may be initiated to punish them.

PETITIONER

Through Counsel:

Dated: 28 /04/2021

(MUHAMMAD ARSHAD KHAN TANOLI)
Advocate High Court, Abbettabad.

VERIFICATION: -

Verified on this day that the contents of instant Contempt Petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Dated:- <u>2874</u>/2021

..PETITIONER

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BEFORE THE HONOURABLE PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

C.O.C. No. 67 /2021 IN W.P No.180-A/2020

Abid Gulraiz

.PETITIONER

VERSUS

Dr.Muhammad Niaz Director General Health and Health Services KP, Peshawar and another

... RESPONDENTS / CONTEMNORS

CONTEMPT OF COURT PETITION

AFFIDAVIT

I. Abid Gulraiz S/o Malik Khalil-ur-Rehman ward orderly CD Mangloor, Village and Post Office Mor Baffa Kalan District Mansehra, Petitioner, do hereby solemnly affirm and declare on oath that the contents of instant Contempt Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

•	
Dated:/2021	13503 -3750610 PETITIONER
IDENTIFIED DV	11300/0-7
IDENTIFIED BY:-	

(MUHAMMAD ARSHAD KHAN-TANOLI)

Advocate High Court, Abbottabad.

FILED TODAY

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2 8 FEB 2023

Peshawar High Court Atd Bench Authorized Under Se 75 E . 3 Graffin P258

Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH JUDICIAL DEPARTMENT

C.O.C No. 67-A/2021

JUDGMENT

Date of hearing......16.02.2023...

Petitioner (Abid Guiraiz) By Mr. Muhammad Arshad Khan Tanoli, Advocate.

Respondents (Dr. Muhammad Niaz & another)

By Mr. Sajid ur Rehman Khan, Asstt:

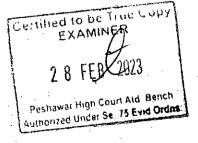
AG.

KAMRAN HAYAT MIANKHEL, J.-. Through instant petition, the petitioner seeks initiation of contempt of court proceedings against the respondents for disobeying the court orders.

2. Facts of the case, in brief, are that in the earlier round of litigation, petitioner brought a constitutional petition No.180-A of 2020, with the following prayer:-

"It is, therefore, humbly prayed that on acceptance of the instant writ petition. respondents may graciously directed to release salarv of petitioner w.e.f April 2002 15.12.2015 and thereafter, issue order of the petitioner to service in the department with all back benefits. Any other relief which this Honourable court deem appropriate in the circumstances of the case may also be granted to the petitioner."

3. This writ petition was finally dispose of vide judgment dated 01.12,2020 in the following terms:-



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of the disclosure departmental appeal/representation in Para-5 of the petition under narration of brief facts, this court learnt that the petitioner has filed departmental appeal for his reinstatement in service but the respondents-department redressed his grievance, thus, in such a scenario we would like to direct the respondents | to take departmental appeal for its decision within two (02) months positively from receipt of the order of this court. In case the petitioner prayer is not redressed by the respondents-department, then he may approach this court."

- 4. Thereafter, the present petitioner filed the instant contempt petition. Notice was issued to the respondents to file their reply and they have filed the same.
- 5. We have heard learned counsel for the parties and have gone through the record with their valuable assistance.
- 6. Perusal of the record would reveal that the petitioner filed the instant contempt petition against the respondents on the ground that they have not complied with the order dated 01.12.2020 passed by this court in constitutional petition bearing No.180-A/2020. On 04.05.2021 notice was issued to the respondents to file their reply which was submitted by them. The learned Assistant Advocate General stated that the order of this court has complied with by the respondents and the petitioner was reinstated in



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EXAMINER

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Peshawar High Court Aid Bench
Authorized Under St. C.F.

P.60

service vide office order dated 01.11.2021. He further submitted that this court in Para No.3 has mentioned that since the petitioner has not served the department for the period for which he seeks back benefits in form of salary, therefore, he is not entitled to back benefits. However, it is still left to the respondents to grant him salary for the period under suspension for which he be rightly entitled to. He further averred that prayer of petitioner for arrears for the period he has not served the department is not accepted by the department. In this regard he produced letter No.11391 dated 24.10.2022, which is placed on file.

7. In our view, the judgment of this court, has been complied with and no case of contempt of court is made out against the respondents. Hence, this petition being bereft of any merit is hereby dismissed.

Peshawai High Court Aid Bench

Announced: 16.02.2023

JUDGE

co Wigas Ahmad

Aftab PS 1

Hon'ble Mr. Justice Wigar Ahmad Hon'ble Mr. Justice Kamran Hayat Miankhel Annex-I

BEFORE THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

service Appeal No. 570/2018

W.P No. 258

Masood Ahmad Khan, Primary School Teacher (PST), resident of District Haripur.

...PETITIONER

VERSUS

- Govt. of Khyber Pakhtunkhwa, through Secretary Education Peshawar.
- 2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- Executive District Officer, Elementary & Secondary Education, Haripur.
- Govt. of Khyber Pakhtunkhwa, Law Parliamentary Affairs & 4. Human Right Department, through Secretary, Peshawar.
- Govt. of Khyber Pakhtunkhwa, Finance Department, through 5. Secretary, Peshawar.

...RESPONDENTS

THAT AFTER

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 FOR THE **ISSUANCE** DIRECTOR TO THE EFFECT

P-62

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR AT CAMP COURT ABBOTTABAD

Service Appeal No. 570/2018

Date of Institution

... 25.04.2018

Date of Decision

... 01.12.2021



Masood Ahmad Khan, Primary School Teacher (PST), R/O District Haripur.

(Appellant)

VERSUS

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

(Respondents)

MR. MUHAMMAD ARSHAD TANOLI,

Advocate

For appellant.

MR. RIAZ AHMED PAINDAKHEL,

Assistant Advocate General

For respondents.

MR. AHMAD SULTAN TAREEN

MR. SALAH-UD-DIN

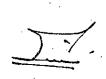
CHAIRMAN

MEMBER (JUDICIAL)

JUDGMENT:

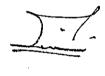
SALAH-UD-DIN, MEMBER:-

Precise facts giving rise to filing off instant service appeal are that the appellant, while serving as Primary School teacher in Government Primary School Sector-4 Khalabat Township Haripur, was charged in a murder case vide FIR registered on 28.08.1996, therefore, he remained absent from duty from the said period till his arrest on 19.02.2001. During the period of his absence from duty, no departmental action whatsoever was taken against the appellant. The appellant remained behind the bar and was convicted by the trial court, however he was ultimately acquitted by the august Supreme Court of Pakistan vide judgment dated 14.10.2011 on the



basis of compromise. The appellant after his acquittal approached the department through various applications and ultimately notification dated 02.06.2012 was issued by Executive District Officer Elementary & Secondary Education Haripur, whereby appellant was adjusted at GPS Gandaf against vacant post of PST in his own pay and grade with effect from 14.10.2011 i.e the date of his acquittal. The appellant preferred departmental appeal seeking recovery of the arrears of salary with effect from 01.09.1996 till the date of his adjustment i.e 14.10.2011, however no favourable action was taken upon the departmental appeal of the appellant, therefore, he approached august Peshawar High Court, Abbottabad Bench through filing of Writ Petition, which was sent by the august Peshawar High Court, Abbottabad Bench to this Tribunal for its decision in accordance with law.

- 2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.
- Learned counsel for the appellant has contended that 3. after charging of appellant in the murder case, departmental action was taken against him and as the appellant has been acquitted in the murder case, therefore, he is entitled to all back benefits; that the appellant has been acquitted in the murder case on the basis of compromise, however there are numerous rulings of august Superior Court, wherein it has been held that all acquittals are honourable and there can be no acquittal which can be termed as dishonourable; that the issue is one of financial nature, therefore, there cannot arise any question of limitation. Reliance was placed on 2001 PLC (C.S) 316, PLJ 2007 Supreme Court 496, 2005 PLC (C.S) 1193 as well as unreported judgment dated 31.10.2013 passed by august Peshawar High Court, Abbottabad Bench in Writ Petition No. 655 of 2012.
- 4. On the other hand, learned Assistant Advocate General for the respondents has argued that the intervening period of



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absence of the appellant from duty is about 15 years and the case of the appellant has already been processed vide letter dated 11.12.2018 for obtaining sanction of EOL from competent forum for bridging of his services for the purpose of further promotion under the relevant law/rules; that the appellant has already been granted BPS-12 and the due benefits from 14.10.2011 have been granted to him; that the appellant has not yet retired, therefore, the question of gratuity and GP Fund are premature at this stage; that the appeal in hand is against law and facts, therefore, the same is liable to be dismissed.

- 5. We have heard the arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have perused the record.
- 6. A perusal of the record would show that the appellant was charged in a murder case vide FIR registered on 28.08.1996 and it is an admitted fact that he remained absent from the said date till his arrest on 20.02.2001, however no departmental action was taken against him. The appellant was convicted by the trial court, however he was ultimately acquitted by the august Supreme Court of Pakistan on 14.10.2011 on the basis of compromise. The appellant was arrested on 20.02.2001, who remained in custody and was ultimately released from jail after his acquittal on 14.10.2011. The appellant shall thus be considered as under suspension from his arrest on 20.02.2001 till his release from custody on 14.10.2011. CSR-194 is reproduced for ready reference as below:-

"A Government Servant who has been charged for a criminal offence or debt and is committed to prison shall be considered as under suspension from the date of his arrest. In case such a Government servant is not arrested or is released on bail, the competent Authority may suspend him, by specific order, if the charge against him is connected with his position as government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. During suspension period the Government servant

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shall be entitled to the subsistence grant as admissible under F.R-53".

Similarly, FR-53 is also relevant for resolving of the controversy, which is reproduced as below:

"F.R.53 A government servant under suspension is entitled to the following payments:-

- (a) In the case of 1 [an employee of the Armed Forces] who is liable to revert to Military duty, to the pay and allowances to which he would have been entitled had he been suspended while in military employment.
- (b) 2[(b) In the case of a government servant under suspension, other than that specified in clause (a), he shall be entitled to full amount of his salary and all other benefits and facilities provided to him under the contract of service, during the period of his suspension.]
- 7. On careful perusal of CSR-194 as well as FR-53 (b), it can safely be concluded that the appellant upon his acquittal in the criminal case is entitled to all back benefits. The appellant has however admittedly remained absent from duty with effect from 28.08.1996 till 19.02.2001, therefore, the said period is treated as extraordinary leave without pay.
- Furthermore, during the course of arguments, representative of the respondents produced copy of letter No. SO(PE)E&SED/5-19/Masood Ahmad Ex-PST/Haripur Peshawar the 23.04.2018 addressed by Section Officer (Primary) Secretary to Government to of Pakhtunkhwa, Finance Department Peshawar, which would show that the department has also initiated process upon the application submitted by the appellant to the competent Authority. The relevant para of the aforementioned letter is reproduced as below:-

"Keeping in view of his long absence from duty an inquiry was conducted by Muhammad Asif Khan, HM, GHS No. 3, Haripur who recommended the following actions to be taken by Finance Department for converting his long absence into EOL without pay:-

ATTESTED

EXAMINER

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Service Contains

- 1. Sanction of EQL of his absent/absconder period (28.08.1996 to 19.02.2001) (04 years, 05 months and 21 days),
- 2. Ex-post facto sanction of suspension/grant of allowance i.e 20.02.2001 to 14.10.2011. (10 years, 07 months and 24 days).
- 3. Up-gradation as per policies in vogue i.e grade 7 to 12 with award of arrears since his re-instatement (policies 2007 & 2012).
- 4. Promotion from grade 12 to 14 and further promotion from grade 14 to grade 15 under Departmental Promotion Committee (DPC) as per policy in vogue.
- 9. In view of the above discussion, the appeal in hand is accepted and the appellant is held entitled to all back benefits. The period of his absence from duty with effect from 28.08.1996 till 19.02.2001 (04 years 05 months and 21 days) shall however be treated as extraordinary leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 01.12.2021

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

(AHMAD SULTAN TAREEN)
CHAIRMAN
CAMP COURT ABBOTTABAD

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باعث تحريآ نكه

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آل مقام

Muhammad Arshad Khan Tanoli

کوویل مقرد کرے اقرار کرتا ہوں المحدود کے المحدود کے المحدود کا المحدود کے المحدود کے افران کا کامل اختیار ہوگا نیز ویل کا کامل اختیار ہوگا اور المحدود تی کرانے اجراء وصولی چیک رو پیدوعنی دعویٰ کی تقد این اور اس پر دستخط کرنے کا اختیار ہوگا اور ابصورت ضرورت مقدمہ فرکوری کل یا کئی جزوی کاروائی کے لئے کئی اور ویل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی جواج کے اختیار اس کا بھی ہوگا ورصاحب مقرر شدہ کو بھی وہی اور ویلی یا مختار ات ہوں کے اور اس کا بھی ہوگا ورصاحب مقرر شدہ کو جو جو ہم جانب التوائے مقدمہ کے سبب ہوگا اس کے مستحق ویل صاحب ہول گے۔ دوران مقدمہ جوخر چدو ہم جانب التوائے مقدمہ کے سبب ہوگا اس کے مستحق ویل صاحب ہول گے۔ نیز بقایار قم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی بیشی مقام دورہ پر ہویا کوئی جزو بقایا ہوئو ویل صاحب موصوف پا بند ہول کے کہ پیروی مقدمہ فرکورہ کریں اورا گرمختار مقرر کردہ میں کوئی جزو بقایا ہوئو ویل صاحب موصوف با بند ہول کے کہ پیروی مقدمہ فرکورہ کریں اورا گرمختار مقرر کرنے اور اس کی بیروی کے پابند نہ ہول گے۔ نیز درخواست بمراد استجارت نائش بھینے مفلس کے دائر کرنے اور اس کی بیروی کا بھی صاحب موصوف کو اختیار ہوگا۔ استجارت نائش بھینے مفلس کی دائر کرنے اور اس کی بیروی کا بھی صاحب موصوف کو اختیار ہوگا۔ استجارت نائش بھینے مفلس کے دائر کرنے اور اس کی بیروی کا بھی صاحب موصوف کو اختیار ہوگا۔ استجارت نائش بھینے مفلس کی دائر کرنے اور اس کی بیروی کا بھی صاحب موصوف کو اختیار ہوگا۔ ان کو سند رہے۔

المرقوم:

Muhanman Arshan Avan Andrews South Andrews South Andrews Additional Plans Adjusters Additional Commence of the Additional Commenc

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