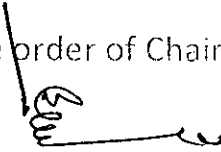


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 258/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge.
1	2	3
1	19.04.2023	<p>The execution petition of Mst. Musarrat Begum submitted today by Mr. Amjad Ali Mardan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____ Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

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

Execution Petition NO 258/2023

In Re:

Service Appeal No.526/2019

Mst. Musarrat BegumAppellant

VERSUS

Secretary Education KPK and othersRespondents

INDEX

S.No.	Description of documents.	Annexure	Page No
1.	Application for implementation		1-3
2.	Copy of judgment dated 22.11.2022		4- /o
3.	Wakalatnama		11

Dated: ¹⁹04.04.2023

Musarrat
Appellant
through *Amjad Ali*
ADVOCATE
SUPREME COURT
Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Execution Petition No 258/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4930
Dated 19/4/2023

In Re:

Service Appeal No.526/2019

Mst. Musarat Begum, PST,
Government Girls Primary School,
Kaddi, Dagai, Tehsil Razzar, Swabi.

.....Appellant

VERSUS

- 1) Secretary Education, KPK, Peshawar.
- 2) Director E&SE, KPK, Peshawar.
- 3) District Education Officer (Female), Swabi.
- 4) Secretary Finance, Govt. of KPK, Peshawar.

...Respondents

**APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED 22.11.2022 OF THIS
HON'BLE TRIBUNAL PASSED IN SERVICE
APPEAL NO.526/2019.**

Sir,

Appellant humbly submits as under:-

1. That appellant filed titled Service Appeal No.526/2019 before this hon'ble Tribunal with the prayer that

"on acceptance of this appeal, the order 02.09.2019 being patently illegal and unlawful may kindly be modified to the

extent that appellant may be reinstated into service with effect from the date of dismissal and may kindly be awarded with all the back benefits in terms of financial and service benefits for the intervening period where she was removed from service"

2. That appeal of the appellant came up for hearing on 22.11.2022, and this Hon'ble Tribunal was pleased to allow the appeal of the appellant with the following order:-

"The order of removal of the appellant dated 22.10.2015 has already been set-aside by this Tribunal vide judgment dated 22.03.2019. The appellant was thus entitled for her reinstatement with effect from 22.10.2015 and she was entitled to all back benefits as nothing is available on the record, which could show that the appellant had remained gainfully employed in any service during the intervening period.

In view of the above discussion, the appeal in hand is allowed. The impugned order dated 02.09.2019 is modified and the appellant stands reinstated in service with effect from 22.10.2015 with all back benefits"

(Copy of order/ judgment dated 22.11.2022 is Annex "A")

3. That after announcement of judgment dated 22.11.2022, the appellant send the attested copy of the said judgment to the respondents, furthermore,


approached the respondents personally time and again for its implementation, but in vain.

(3)

4. That since announcement of judgment/ order dated 22.11.2022 the same has not yet been implemented, nor any steps whatsoever in this respect have been taken by the respondents, despite several request of the appellant, but in vain.
5. That omission of respondents to act upon the order of this Hon'ble Tribunal speaks of the fact that respondents has undermined the authority of this Hon'ble Tribunal and have not moved even an inch for implementation of the same.
6. That this omission/ act of respondents squarely falls within the ambit of contempt of court as respondents have conveniently ignored the time frame provided by this Tribunal Court.

It is therefore, humbly requested to please direct respondents to implement the judgment dated 22.11.2022 in its letter and spirit.

masood

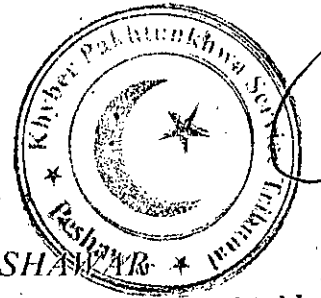
Appellant
through  **Amjad Ali**
ADVOCATE
SUPREME COURT
Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble court.

Musood
Deponent





KHYBER PAKHTUNWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 526 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 188

Mst. Musarrat Begum, PST, Government Girls Primary School, Kaddi, Dagai, Tehsil Razzar, Swabi. Dated 3-1-2020

..... APPELLANT

VERSUS

1. Secretary Education, KPK, Peshawar.
2. Director, E & SE, KPK, Peshawar.
3. District Education Officer (Female), Swabi.
4. Secretary Finance, Govt. of KPK, Peshawar.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST AN IMPUGNED ORDER NO. 4404-G DATED 2nd SEPTEMBER, 2019 WHEREBY THE APPELLANT HAS BEEN RE-INSTATED INTO SERVICE WITH IMMEDIATE EFFECT INSTEAD OF FROM THE DATE OF DISMISSAL AND DENIED THE BACK / CONSEQUENTIAL BENEFITS BY TREATING INTERVENING PERIOD LEAVE WITHOUT PAY IN GROSS VIOLATION OF LAW AND AGAINST DEPARTMENTAL APPEAL NOT RESPONDED WITH IN A STATUTORY PERIOD OF 90 DAYS.

PRAYER:

ON ACCEPTANCE OF THIS APPEAL IMPUGNED ORDER DATED 2nd SEPTEMBER 2019, BEING PATENTLY ILLEGAL AND UNLAWFUL, MAY KINDLY BE MODIFIED TO THE EXTENT THAT APPELLANT MAY BE RE-INSTATED INTO SERVICE WITH EFFECT FROM THE DATE OF DISMISSAL AND MAY KINDLY BE AWARDED WITH ALL THE BACK BENEFITS IN TERMS OF FINANCIAL AND SERVICE BENEFITS FOR THE INTERVENING PERIOD WHERE SHE

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Filed to-day

Registrar

3/01/20

Submitted to-day
and filed.

Registrar

27-01-2020

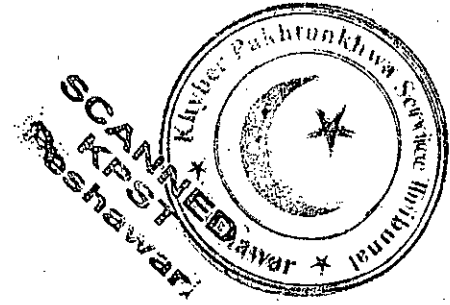
(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 526/2019

Date of Institution ... 03.01.2020

Date of Decision ... 22.11.2022



Mst. Musarrat Begum, PST, Government Girls Primary School, Kaddi, Dagai,
Tehsil Razzar, Swabi.

... (Appellant)

VERSUS

Secretary Education, Khyber Pakhtunkhwa, Peshawar and 03 others.

... (Respondents)

MR. ASAD MAHMOOD,
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

SALAH-UD-DIN
MIAN MUHAMMAD

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

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief averments as raised by the appellant in her appeal are that she was appointed as PTC Teacher vide appointment order dated 01.02.1996 and assumed the charge of her post in Government Girls Primary School Bahadur Sahib District Kohistan. The appellant was then transferred from District Kohistan to District Swabi vide order dated 27.09.2008 and she started performing her duty in District Swabi, however it is

ATTESTED

MEMBER (JUDICIAL)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(6)

astonishing that her transfer order was withdrawn vide order dated 22.10.2015 after a lapse of about 07 years. On the same date i.e 22.10.2015, the appellant was removed from service on the ground that her appointment was fake, constraining the appellant to file Service Appeal No. 117/2016 before this Tribunal, which was allowed vide judgment dated 22.03.2019 with directions to the respondents to conduct de-novo inquiry within a period of 90 days. During the de-novo inquiry, the appointment order of the appellant was found genuine and the inquiry committee recommended that the appellant may be reinstated in service with all back benefits. The appellant was, however reinstated in service with immediate effect by treating the intervening period as extra ordinary leave without pay, constraining the appellant to file departmental appeal, whereby the impugned order dated 02.09.2019 to the extent of reinstatement with immediate effect and treatment of the intervening period as extra ordinary leave without pay, was challenged. The departmental appeal of the appellant remained un-responded, hence the instant service appeal.

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

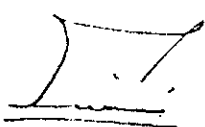
3. Learned counsel for the appellant has contended that during the de-novo inquiry, the appointment order of the appellant was found genuine and the inquiry committee had recommended that the appellant may be reinstated in service with all back

ATTESTED

EXAMINER
Service Tribunal

(7)

benefits, therefore, the impugned order dated 02.09.2019 requires to be modified by reinstating the appellant with effect from 22.10.2015 with all back benefits. He further argued that the order of removal of the appellant from service has already been set-aside by this Tribunal vide judgment dated 22.03.2019, therefore, competent Authority was not justified in treating the intervening period as extra ordinary leave without pay. He also argued that as the appellant had not remained gainfully employed in any service during the intervening period, therefore, she was entitled to all back benefits. Reliance was placed on 2021 SCMR 962, 2015 SCMR 77 and 2007 SCMR 855.

 4. Conversely, learned Assistant Advocate General for the respondents has argued that the very order of appointment of the appellant was fake and as she has been reinstated on technical ground, therefore, she is not entitled to any back benefits. He next contended that the appellant did not perform any duty during the intervening period, therefore, competent Authority has rightly treated the same as extra ordinary leave without pay. Reliance was placed on 2017 PLC (C.S) 177, judgment dated 18.02.2020 passed by this Tribunal in Service Appeal No. 803/2018 and judgment dated 18.01.2021 passed by this Tribunal in Service Appeal No. 603/2018.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

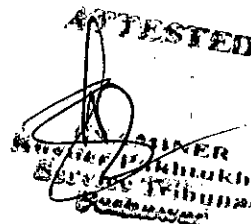
6. A perusal of the record would show that the appellant was removed from service vide order dated 22.10.2015 on the ground

ATTESTED

ATTESTER
Service Tribunal
Lahore

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that her appointment order was illegal/fake. The aforementioned order dated 22.10.2015 was challenged by the appellant through filing of Service Appeal No. 117/2016 before this Tribunal, which was allowed vide judgment dated 22.03.2019 and the respondents were directed to conduct de-novo inquiry within a period of 90 days of receipt of the judgment. In para-5 of her appeal, the appellant has mentioned that de-novo inquiry was conducted in the matter and the inquiry committee recommended the reinstatement of the appellant with all back benefits. In reply to the said para, the respondents have not contradicted the stance of the appellant regarding recommendation of the inquiry committee for her reinstatement in service with all back benefits but have taken the stance that the said inquiry was not a regular inquiry. The order of removal of the appellant dated 22.10.2015 was set-aside by this Tribunal on the ground that the same was the outcome of fact finding inquiry and the matter was remitted to respondent-department for de-novo inquiry against the appellant. It is astonishing that the respondents have alleged that even the de-novo inquiry was not a regular inquiry. In consequence of their own mistake of not conducting of the de-novo inquiry in accordance with Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the respondent-department while passing the impugned order dated 02.09.2019, has reinstated the appellant with immediate effect by treating the intervening period as extra ordinary leave without pay. The appellant

ATTESTED

CHIEF CLERK
Service Tribunal
Khyber Pakhtunkhwa
Government

(9)

has thus been held liable to bear the brunt for the mistake of the respondents, which is unfair.

7. The order of removal of the appellant dated 22.10.2015 has already been set-aside by this Tribunal, vide judgment dated 22.03.2019. The appellant was thus entitled to her reinstatement with effect from 22.10.2015 and she was entitled to all back benefits as nothing is available on the record, which could show that the appellant had remained gainfully employed in any service during the intervening period.

8. In view of the above discussion, the appeal in hand is allowed. The impugned order dated 02.09.2019 is modified and the appellant stands reinstated in service with effect from 22.10.2015 with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
22.11.2022

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 04-04-23
 Number of Pages Page 5
 Copying Fee 25/-
 Urgent 5/-
 Total 30/-
 Name of Applicant _____
 Date of Completion of Copy 04-04-23
 Date of Delivery of Copy 04-04-23



10

DISTRICT EDUCATION OFFICE (FEMALE) SWABI

(Office phone & Fax No 0938280339, emisfswabi@yahoo.com)

OFFICE ORDER

In compliance of Service Tribunal Peshawar judgment in Service Appeal No.526/2019, titled Mst. Musarrat Begum PST, GGCMS Muhib Banda Dagai(Tehsil Razar) Swabi, wherein the appeal is allowed, the impugned order dated 02/09/2019 is modified and the appellant stands re-instated in service with effect from 22.10.2015 with all back benefits.

I, Sofia Tabassum District Education Officer (Female) Swabi, being a competent authority is pleased to modify the impugned order dated 02/09/2019 and the appellant stands re-instated in service with effect from 22/10/2015 with all back benefits.

(SOFIA TABASSUM)
DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

Endst: No. 386-90 /Dated Swabi the 13/2/2023.

Copy forwarded for information to the:-

- 1, Registrar Service Tribunal Peshawar.
- 2 P.S Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. P.A to Director Elementary & Secondary Education, KP, Peshawar.
4. District Accounts Officer, Swabi.
5. Sub-Divisional Education officer (Female) Razzar, Swabi.


DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

بعدالتصالح فی شریعت اسلامیہ کی رو سے

(11)

فی 22 مئی 2023ء منجانب لیسٹ

19/4/23

مورخہ:

مقدمہ:

دعویٰ:

جرم:

بنام: **شاہ مسرت شاہ** **ہنگامہ**

البراء **باجت نہریر (فدک)**

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے بیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام **کیلئے امجد علی ایڈووکیٹ، سپریم کورٹ آف پاکستان** **لسٹ**

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیروی یا ڈگری یا پٹرن یا اپیل کی برادگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و بیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ بیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دینا کہ سنڈ رہے۔

المرقوم: **۱۶** **۱۷** **۱۸**
گواہ
مقام: **لسٹ**
کے لیے منظور ہے۔

Amjad Ali
ADVOCATE
SUPREME COURT

amjadadvsc@com

BC 105506 **امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان، ڈسٹرکٹ کورٹس، مردان**
0321-9882434 0321-9870175