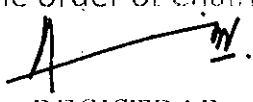


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 306/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.05.2023	<p>The execution petition of Mr. Fazal Wahab submitted today Syed Waqas Naqvi Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on _____. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  For REGISTRAR</p>

BEFORE MEMBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECKLIST

Case Title: Fazal Wahab vs Court of K.P.K

S.#	Contents	Yes	No
1.	This appeal has been presented by: _____		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?		
3.	Whether Appeal is within time?		
4.	Whether the enactment under which the appeal is filed mentioned?		
5.	Whether the enactment under which the appeal is filed is correct?		
	Whether affidavit is appended?		
	Whether affidavit is duly attested by competent oath commissioner?		
	Whether appeal/annexures are properly pagged?		
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?		
10.	Whether annexures are legible?		
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?		
13.	Whether copy of appeal is delivered to A.G/D.A.G?		
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?		
15.	Whether numbers of referred cases given are correct?		
16.	Whether appeal contains cuttings/overwriting?		
17.	Whether list of books has been provided at the end of the appeal?		
18.	Whether case relate to this Court?		
19.	Whether requisite number of spare copies attached?		
20.	Whether complete spare copy is filed in separate file cover?		
21.	Whether addresses of parties given are complete?		
22.	Whether index filed?		
23.	Whether index is correct?		
24.	Whether Security and Process Fee deposited? on _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on _____		
26.	Whether copies of comments/reply/rejoinder submitted? on _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Syed Waqas Naqvi Adv HC

Signature:

Waqas Naqvi

Dated:

17/05/2023

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

E.P. 306 of 2023

Fazal Wahab S/o Rahimullah R/o Rashang, Tehsil and Allai, District Battagram.

..... APPELLANT

V E R S U S

Govt. of KPK through Secretary Elementary & Secondary Education KPK; Peshawar and others

...RESPONDENTS

EXECUTION PETITION

INDEX

S.No.	Description of Document	Annexure	Page No.
1.	Execution Petition alongwith affidavit	--	1-4
2.	Copy of the service appeal	"A"	5-13
3.	Copy of the order / judgment dated 24.02.2023	"B"	14-21
4.	Copy of the application	"C"	22
5.	Wakalatnama	--	23

..... APPELLANT

Through Counsel:

Dated:-17/05/2023

Waqas Naqvi
(SYED WAQAS NAQVI)

Advocate High Court, Abbottabad

Contact No.0345-9550055

Sayedwaqas86@yahoo.com

Syed Waqas Naqvi
Advocate High Court
Off District Courts Abbottabad

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5380

E.P NO. 306 Dated 17-05-23
2023

Fazal Wahab S/o Rahimullah R/o Rashang, Tehsil and Allai, District Battagram.

BEFORE THE HONOURABLE

..... PETITIONER

V E R S U S

1. Govt. of KPK through Secretary Elementary & Secondary Education KPK, Peshawar.
2. Director Elementary & Secondary Education KPK, Peshawar.
3. District Education Officer (Male) Battagram
4. Sub Divisional Education Officer (Male) Allai, District Battagram

...RESPONDENTS

EXECUTION PETITION

PETITION UNDER SECTION 7 OF SERVICE TRIBUNAL ACT
1974 FOR THE EXECUTION / IMPLEMENTATION OF THE
ORDER DATED 24.02.2023 PASSED BY THE
HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA IN SERVICE APPEAL NO.1354 OF 2022.

Respectfully Sheweth,

1. That, through the instant execution petition, petitioner humbly seeks the indulgence of this Honourable tribunal for the execution of the order / judgment dated 24.02.2023 passed in service appeal No.1354 of 2022 whereby the impugned order dated 17.05.2022 passed by

the respondents was set-aside and service appeal of the petitioner was allowed as prayed for. **(Copy of the service appeal is annexed as Annexure "A" while copy of the order / judgment dated 24.02.2023 is annexed as Annexure "B")**

2. That the petitioner moved an application before the respondent No.3 for executing the order passed by this Service tribunal dated 24.02.2023 which was duly received by the respondent against diary No.876. **(Copy of the application is annexed as Annexure "C")**
3. That despite of the fact that service appeal filed by the petitioner was allowed as prayed for in the memo of appeal but respondents in blatant disregard of order / judgment 24.02.2023 passed by this Service Tribunal neither reinstated the petitioner with all the back benefits nor gave any response upon the application of the petitioner.
4. That this Hon'ble tribunal has ample powers under the law for the execution of its decisions hence gracious indulgence of this Hon'ble tribunal is sought to remedy the situation.

- 5. That the respondents have also committed gross contempt by not complying with the order / judgment dated 24.02.2023. The conduct of the respondents is highly contemptuous, contumacious and regrettable who despite clear cut direction / judgment have not executed the same.
- 6. That the valuable rights of the petitioner are involved and the petitioner is the sole bread winner of his entire family having no other source of income.

PRAYER:

It is therefore, the judgment / order dated 24.02.2023 passed in service appeal No.1354-2022 may please be executed and direction may please be given to the respondents to reinstate the petitioner with all the back benefits. Any other relief as deem fit and appropriate in the attending circumstance may also be granted to the petitioner.

..... APPELLANT

Through Counsel:

Dated:-17/05/2023

Syed Waqas Naqvi
(SYED WAQAS NAQVI)
Advocate High Court, Abbottabad
Contact No.0345-9550055

Syed Waqas Naqvi
Advocate High Court
Off. District Courts Abbottabad

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

E.P _____ of 2023

Fazal Wahab S/o Rahimullah R/o Rashang, Tehsil and Allai, District Battagram

..... APPELLANT

V E R S U S

Govt. of KPK through Secretary Elementary & Secondary Education KPK, Peshawar and others

...RESPONDENTS

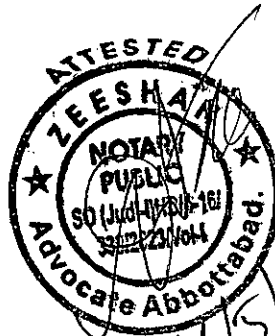
EXECUTION PETITION

AFFIDAVIT

I, Fazal Wahab S/o Rahimullah R/o Rashang, Tehsil and Allai, District Battagram, *Appellant*, do hereby solemnly affirm and declare on Oath that the contents of instant *Execution Petition* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

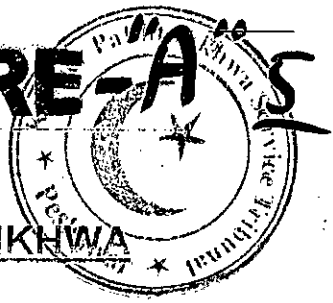
Dated: -17/05 2023

...APPELLANT



16/5/2023

ANNEXURE - A



BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1354 of 2022

Fazal Wahab S/o, Rahimullah R/o Rashang, Tehsil and Allai, District Battagram.

..... APPELLANT.....

VERSUS

Case No. 1332
dated 19-9-2022

1. Govt. of KPK through Secretary Elementary & Secondary Education KPK, Peshawar.
2. Director Elementary & Secondary Education KPK, Peshawar.
3. District Education Officer (Male) Battagram
4. Sub Divisional Education Officer (Male) Allai, District Battagram

...RESPONDENTS

SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974;

Respectfully Sheweth;

1. That the appellant was appointed as Primary School Teacher (PST) on 06-07-2008 in education department at District Battagram. (Copy of the Appointment letter and Service book of the appellant is annexed as Annexure "A" & "A1")

Filed-to-day
Registrar
19/9/22

2. That after serving in the department for more than seven long years, appellant was served with a show cause notice dated 09-08-2016 by the District Education Officer (Male) Battagram on the ground that his appointment order is fake and bogus, appellant

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

replied to the show cause notice dated 09-08-2016. **(Copies of show cause notice dated 09-08-2016 and reply are annexed as Annexure "B" & "B1")**

3. That vide office order dated 09-12-2016, the appointment order of the appellant was declared as fake and bogus. **(Copy of the office order dated 09-12-2016 is annexed as Annexure "C".)**
4. That feeling aggrieved, appellant filed departmental appeal before the appellate authority which was dismissed vide order dated 03-04-2017. **(Copies of departmental appeal and order dated 03-04-2017 are annexed as Annexure "D" & "D1".)**
5. That the appellant filed service appeal before the KPK Service Tribunal against the orders passed by respondent No.2 and 3 which was allowed vide order dated 12-04-2018 with direction to the respondents No.2 and 3 qua denovo inquiry/proceedings within a period of ninety days. **(Copies of Service appeal and order dated 12-04-2018 are is annexed as Annexure "E" & "E1")**
6. That denovo inquiry was conducted by respondent No.2, as result of which, appellant was exonerated from charges / allegation levelled against him and accordingly, was reinstated in service. **(Copies of the inquiry report dated 02-08-2018 and**

reinstatement order dated 28-05-2018 are is annexed as Annexure "F" & "F1".)

7. That it is also pertinent to mention here that in respect of the same allegations i.e of being "Ghost employee" of education department, a reference No. 07/2017 titled "Ayaz Qureshi & others VS State is also pending adjudication before the Hon'able Accountability Court II, Peshawar in which the appellant is at serial No.8 of the list. **(Copy of the list is annexed as Annexure "G".)**
8. That on 08.11.2018 respondents again stopped the salary of the petitioner illegally and malafidely consequently petitioner again filed Writ Petition before the Hon'ble Peshawar High Court Principal Seat which was allowed vide order dated 19.02.2020 and the impugned order dated 08.11.2018 passed by D.E.O male Battagram was declared illegal and as result of undue influence of NAB. **(Copies of the orders dated 08.11.2018 and 19.02.2020 is annexed as Annexure "H"**
9. That after the order of Hon'able Peshawar High Court, respondent No.2 again ordered for the release of pay of the appellant vide order dated 29-04-2020. **(Copy of pay release order dated 29-04-2020 is annexed as Annexure "I")**

10. That after the order of Hon'able Court dated 19-02-2020, respondent No.3 transformed the appellant against the vacant post of SPST BPS-14 at GPS Dumrai, Allai while releasing his salary. Appellant was regularly performing his duties at GPS Dumrai since his transfer when he came to know that respondent No.3 constituted another inquiry committee comprising of respondents No.4 to 6 for action against the appellant as fake employee. The committee without any giving notice to the appellant and without giving any proper opportunity of hearing finalized the report and submitted it to the respondent No.3 on 30-06-2020 whereafter respondent No.3 illegally referred the case to Anti-Corruption establishment vide order dated 11-08-2020 to further probe and initiate inquiry against the appellant and pay / salary of the appellant. **(Copy of the Letter dated 11-08-2020 is annexed as Annexure "J")**
11. That feeling aggrieved of the aforementioned situation, the appellant again filed Writ Petition the Hon'ble Peshawar High Court Abbottabad Bench which was disposed-off while directing the respondents release all the salaries / arrears to the appellant. **(Copy of the order dated 24.11.2022 is annexed as Annexure "K")**
12. That on 26.11.2020, the respondents again served a show cause notice to the appellant on the basis of the previous illegal inquiry

which was duly replied and finally the respondent No.3 illegally and unlawfully again passed office order dated 17.05.2022 and again declared the appointment order of the appellant as null and void. **(Copies of show cause notice and order dated 17.05.2022 are annexed as Annexures "L" & "L-1" respectively)**

13. That feeling aggrieved, appellant filed department appeal but despite the laps of statutory period no order has been passed hence this service is being filed, *inter-alia* on the strength of following grounds amongst others.

GROUND:

- a. That the impugned order dated 17.05.2022 passed by respondent No.3 is illegal, unlawful, arbitrary, hence liable to be set aside.
- b. That the impugned order dated 17.05.2022 is perverse; against the principles of natural justice and the guaranteed rights of the appellant hence liable to be struck down.
- c. That the impugned illegal act of the respondents is against Article 4 & 10 A of Constitution of Islamic Republic of Pakistan hence not tenable in the eyes of law.
- d. That it is also indispensable to submit that the impugned order dated 17.05.2022 issued by the respondent No.3 does not hold any water because the appellant has already

been reinstated by the Hon'able Service Tribunal, Peshawar and upon the directions of the tribunal the denovo inquiry/ proceedings were conducted and the appellant was exonerated from all the charges and was reinstated with all the back benefits. When a person is exonerated from charges and the order of KPK Service Tribunal has attained the finality, the competent authority who issue the order becomes functus officio and he is unauthorise to take back such order but in the present case, the impugned letter dated 17.05.2022 issued by the respondent No.3 is against the mandate of the law and rules and sheer violation of the fundamental rights of the appellant thus liable to be turned down.

- e. That denovo inquiry was conducted upon the directions of the competent court i.e Service Tribunal which has not been challenged by the respondents thus it has attained finality. Respondent No.3 in the utter disregard of the order of the worthy Service Tribunal are again and again exploiting the appellant due to their personal grudges, ill will and ulterior motives which is blatant disregard of the fundamental rights guaranteed by the Constitution hence not sustainable in the eyes of law.
- f. That the appellant has always performed his duties with utmost devotion, dedications, zeal and zest and did not give any complaint to his superiors. Despite this fact appellant is being continuously victimized at the hands of

respondents hence gracious indulgence of this Hon'ble Tribunal is sought is remedy the situation.

- g. That it is also pertinent to mention that already a reference regarding the same matter is pending before the accountability court Peshawar which is yet to be decided. But the respondent No.3 illegally constituted inquiry committee on the same pretext against the appellant which falls under double jeopardy, hence the impugned order is liable to be struck down.
- h. That impugned order was passed in an arbitrary manner and in violation of rules on the subject. Neither charge sheet was framed and served upon the appellant nor appellant was afforded any fair opportunity of hearing. Thus the impugned order is against the provisions of KPK efficiency and discipline rules, 2011. The show cause notice as well as the impugned order dated 17.05.2022 has been passed on the basis of illegal inquiry which has not been conducted in accordance with Efficiency & Disciplinary Rules of 2011 hence the impugned order is liable to be set-aside.
- i. That the impugned letter / order dated 17.05.2022 is against the law rules and policy on the subject and as a result of personal grudges of the respondents with the appellant hence not tenable in the eyes of laws.
- j. That the appellant has unblemished service record and has served the department more than 11 years with utmost

devotion which created vested rights in the favour of appellant and cannot be taken away in harsh manner under the principle of the locus potentiae.

- k. That the impugned illegal act of the respondent No.3 is against the judgments passed by the superior courts on the subject.
- l. That order of the Worthy Service Tribunal dated 12.04.2018 has already attained finality and vested rights have been created in favour of the appellant so victimization of the appellant by the respondents is never warranted under the law and they cannot declare the appellant as fake employee again and again.
- m. That the appellant also filed impleamentation petition which is still pending before this Hon'ble Tribunal. **(Copy of the petition is annexed as Annexure "M")**
- n. That any other legal and factual points shall be agitated at the time of arguments with the prior permission of this Hon'ble Tribunal.
- o. That the instant Service Appeal is well within time.

PRAYER:

It is, therefore, most respectfully prayed that on acceptance of the instant appeal:


- A. That the impugned illegal act of the respondents and order dated 17.05.2022 may please be declared illegal, unlawful, without lawful authority, unconstitutional, void ab-initio, be set aside and further respondents be restrained to act upon it in any mode, manner and form.
- B. And the service of the appellant may please be restored with all back benefits in the best interest of justice.

Any other relief as deem fit and appropriate by this Honourable Tribunal may also be given.

..... APPELLANT

Through Counsel:

Dated:- /2022


(SYED WAQAS NAQVI)
Advocate High Court, Abbottabad
Contact No.0345-9550055

VERIFICATION:-

*Verified that the contents of the instant **Service Appeal** are true and correct to the best of my knowledge and belief and that nothing material has been suppressed from this Honorable Tribunal.*

Dated:- /2022

...APPELLANT

ANNEXURE - "B" 14

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR. AT CAMP COURT ABBOTTABAD.

Service Appeal No. 1354/2022

Date of Institution ... 19.09.2022

Date of Decision ... 24.02.2023



Fazal Wahab S/O Rahimullah, R/O Rashang, Tehsil Allai, District Battagram.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar and 03 others.

... (Respondents)

SYED WAQAS NAQVI,
Advocate

For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

For respondents.

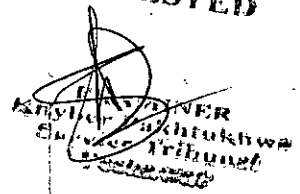
MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

CHAIRMAN
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise averments raised by the appellant in his appeal are that he was appointed as Primary School Teacher vide appointment order dated 06.07.2008; that after serving for more than seven years, the petitioner's appointment order was cancelled by declaring it as fake and bogus vide office order dated 09.12.2016 issued by the District Education Officer (Male) Battagram; that being aggrieved of the aforementioned order dated 09.12.2016, the appellant challenged the same by way of departmental

ATTESTED


CHAIRMAN
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

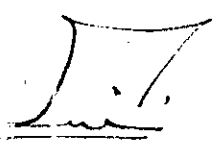
appeal, however the same was dismissed vide order dated 03.04.2017; that the appellant then preferred service appeal before this Tribunal, which was allowed vide judgment dated 12.04.2018 with the directions to the respondent-department to conduct de-novo inquiry within a period of 90 days; that de-novo inquiry was conducted in the matter, which resulted in exoneration of the appellant from the charges/allegations, therefore, he was reinstated in service; that in respect of the same allegations, a reference bearing No. 7/2017 titled "Ayaz Qureshi and others Versus State" has been filed by the NAB Authorities in the learned Accountability Court-II Peshawar, wherein the appellant has also been arrayed as an accused; that salary of the appellant was again stopped vide order dated 08.11.2018, constraining the appellant to file Writ Petition No. 5893-P/2019 before the august Peshawar High Court, Peshawar, which was allowed vide judgment dated 19.02.2020 and the pay of the appellant was thus released vide order dated 29.04.2020; that the appellant was then transferred against the vacant post of SPST (BPS-14) at GPS Dumrai, Allai; that the District Education Officer (Male) Battagram constituted another inquiry committee, which finalized its report without giving any notice or opportunity of personal hearing to the appellant; that in light of the aforesaid report, the District Education Officer (Male) Battagram referred the matter to Anti-Corruption Establishment for further probe in the matter and stoppage of salary of the appellant was also ordered, constraining the appellant to file another Writ Petition No. 1002-A/2020 before the

ATTESTED

 EXAMINER
 Shyfar Khan
 Justice Tribunal
 Peshawar

august Peshawar High Court; that the said writ petition was disposed of vide order dated 24.11.2020, whereby salaries/arrears of the appellant were ordered to be paid to him; that the District Education Officer (Male) Battagram again issued another show-cause notice to the appellant on 26.11.2020 and declared the appointment order of the appellant as null and void vide order dated 17.05.2022; that the aforementioned order was challenged by the appellant through filing of departmental appeal, however the same was not responded within the statutory period, hence the instant service appeal .

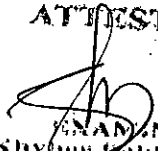
2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of filing of reply, wherein they refuted the assertion raised by the appellant in his appeal.



3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Additional Advocate General for the respondents' has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.


4. Arguments have already been heard and record perused.

5. A perusal of the record would show that previously the appointment order of the appellant was declared as null and void vide order dated 09.12.2016 passed by the District Education Officer (Male) Battagram. The aforementioned order was challenged by the appellant

ATTESTED

 EXAMINER
 Chyhor Likhkhwa
 Service Tribunal
 Peshawar

through filing of Service Appeal No. 572/2017 before this Tribunal, which was accepted vide judgment dated 12.04.2018 by reinstating the appellant in service with directions to the respondents to hold de-novo proceedings within a period of 90 days. The appellant was reinstated vide order dated 28.05.2018 and in light of recommendations put forward by the inquiry committee in the de-novo inquiry proceedings, the salary of the appellant was released with all back benefits with effect from 16.01.2015 vide order dated 04.09.2018 passed by the District Education Officer (Male) Battagram. However, letter dated 08.11.2018 was then addressed by District Education Officer (Male) Battagram to The District Accounts Officer Battagram, whereby he declared his own order dated 04.09.2018 as null and void and requested for stoppage of salary of the appellant on the ground that his case alongwith other ghost employees was under trial in Accountability Court Peshawar. The appellant then filed Writ Petition No. 5893-P/2019 before the august Peshawar High Court, Peshawar, which was allowed vide judgment dated 19.02.2020, whereby the order dated 08.11.2018 passed by the District Education Officer (Male) Battagram was set-aside by declaring the same as illegal without lawful authority and the result of undue influence of the NAB Authority. Para-9 of the aforementioned judgment of august Peshawar High Court, Peshawar is reproduced as below:-

"there is no cavil with the proposition that the Departmental proceedings and criminal proceedings can go side by side, however, direct interference of the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

respondent-NAB Authorities in forcing the District Education Officer (M), Battagram for the removal of petitioner from service, in no way, could be appreciated or sustained. If there is any charges/allegations against the petitioner regarding his misconduct, he, being employee of the Education Department, can only be proceeded under the Khyber Pakhtunkhwa Efficiency & Disciplinary Rules, 2011; while, for the criminal charges, he can be tried before the learned Accountability Court, where the charges are to be proved or otherwise, as the case may be. In the instant case, petitioner has been proceeded Departmentally and already exonerated from the charges, leveled against him, as such, he was rightly reinstated in service by the Education Department. Thus, the direction of the NAB authorities to the Education Department for cancellation of reinstatement order of the petitioner and recovery of his salaries is uncalled for and stands struck down. (Emphasis supplied).

6. In view of the judgment dated 19.02.2020 passed by august Peshawar High Court, Peshawar, the order dated 04.09.2018 passed by District Education Officer (Male) Battagram stood restored and vide order dated 29.04.2020 passed by the District Education Officer (Male) Battagram, the pay of the appellant was released. Despite the fact that the judgment dated 19.02.2020 of the august Peshawar High Court, Peshawar was in field, the District Education Officer (Male) Battagram constituted another inquiry committee Vide Notification bearing Endorsement No. 4681-85/Est:Pry/dated 09.08.2019 for de-novo inquiry in the matter. The said inquiry committee submitted its

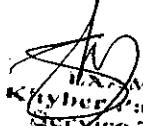
ATTESTED

EXAMINER
KHYBER PAKHTUNKHWA
SERVICE COMMISSION
PESHAWAR

report on 30.06.2020 declaring the appointment order of the appellant as fake and bogus. On the basis of aforementioned inquiry report, show-cause notice bearing Endorsement No. 8401-6 dated 26.11.2020 was issued to the appellant, requiring him to show-cause as to why major penalty of "Removal from service" under Rules 4 (b) (iii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 should not be imposed upon him. However, it is astonishing that while passing the impugned order dated 17.05.2022, the competent Authority instead of awarding the punishment mentioned in the show-cause notice, declared the appointment order of the appellant as null and void. It is evident from the record that proceedings against the appellant were allegedly conducted under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but the show-cause notice dated 26.11.2020 would show that nothing has been mentioned therein that regular inquiry in the matter was dispensed with. In view of Rule-5 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the competent Authority can dispense with inquiry but reasons are required to be recorded in writing for doing so. While deciding previous service appeal No. 572/2017 of the appellant vide judgment dated 12.04.2018, this Tribunal had observed in para-5 of the judgment as below:-

"5. Whatever has been argued by the learned Deputy District Attorney is based on the findings of the enquiry report and similarly the authority has based


ATTESTED


MINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

his findings on the basis of enquiry report which is itself a proof of the fact that the issue involved appreciation of factual controversy which could not be decided without holding of formal enquiry. But the Authority neither opted for holding regular enquiry nor dispensed with the formal enquiry. The authority further initiated the proceedings under the disciplinary rules by issuing show cause and then culminated the proceedings by not awarding the penalty under the disciplinary rules but declared the appointment letter as bogus. Such proceedings in the eyes of law cannot be sustained. The Authority should have been clear regarding the proceedings to be conducted under the disciplinary rules or should have withdrawn the appointment order in exercise of powers on the basis of locus-poenitentiae. In case the authority was to exercise his powers under the latter option then this Tribunal could decide the issue on the basis of the stage at which the same power was exercised. However in any event it was incumbent upon the authority to have given full opportunity to the appellant to participate in the enquiry proceedings by giving all rights of due process which has not been done."



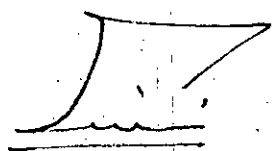
7. Despite the guidance provided to the respondents in above mentioned reproduced para-5 of the judgment dated 12.04.2018 of this Tribunal, the de-novo proceedings against the appellant were conducted in a haphazard manner, which could not in any manner be considered as covered by the relevant provision of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules,

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

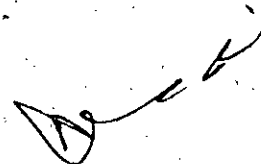
2011. In our opinion, the impugned order dated 17.05.2022 is not sustainable in the eye of law and is liable to be set-aside.

8. In view of the above discussion, the impugned order is set-aside and the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.


ANNOUNCED
24.02.2023



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



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT ABBOTTABAD

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر صاحب (مردانہ) بنگلہرام

22

جناب عالی!

گزارشات ذیل عرض ہے

۱۔ یہ کہ سائل پرائمری سکول ٹیچر ہے جو کہ باقاعدہ طور پر GPS دہرائی آلائی میں بطور SPST اپنے خدمات سرانجام دے رہا تھا اور باقاعدگی ڈیوٹی کر رہا تھا۔

۲۔ یہ کہ مورخہ 17-05-2022 کو سائل کی تقرری کی آرڈر کو کالعدم قرار دے دیا گیا اور باقاعدہ طور پر کنسل کر دیا سائل اس کے بعد میں باقاعدگی سے سکول میں ڈیوٹی سرانجام دیتا رہا بعد ازاں سائل کو سکول میں SDEO آلائی نے ڈیوٹی کرنے سے منع کیا۔

۳۔ یہ کہ آرڈر مورخہ 17-05-2022 کے خلاف سائل نے سروس اپیل معزز سروس ٹریبیونل خیبر پختونخواہ دائر کی جو کہ

مورخہ 24-02-2023 عملی طور پر منظور ہوا اور آفس آرڈر مورخہ 17-05-2022 کو غیر قانونی قرار دیا گیا

(کاپی آرڈر 24-02-2023 لف ہے)

۴۔ یہ سائل کہ آمدن کا اور کوئی ذریعہ نہیں ہے اور اپنے خاندان کا واحد کفیل ہے جو کہ کافی عرصے سے مالی مشکلات سے دوچار ہے

معزز عدالت نے مکمل طور پر سائل کی اپیل منظور فرماتے ہوئے سائل تمام ہتایا جات کے ساتھ بحال کر دیا ہے۔

لہذا استدعا ہے کہ سائل سروس ٹریبیونل کے فیصلے کی روشنی میں تمام ہتایا جات کے ساتھ بحال کی جائے سائل کی تنخواہ ریٹریز کر کے سکول میں ڈیوٹی کرنی کی اجازت دی جائے۔

الحاضر:-

فضل وہاب SPST گورنمنٹ پرائمری سکول دہرائی آلائی ڈسٹرکٹ بنگلہرام

المرقوم 10/4/2023



کورٹ فیس

وکالت نامہ

بعدالت جناب سروسٹریبونل خیبر پختونخواہ پشاور

عنوان: فضل و یادب نام گورنمنٹ آف خیبر پختونخواہ و غیرہ

منجانب: بشش

نوعیت مقدمہ:

باعث تحریر آنکہ

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

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل

صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے اقبال دعویٰ اور بصورت دیگر ڈگری

کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت

ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی

بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا

ساختہ پرداختہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے

مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا

حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں

کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد

استجارت ناش بصیغہ مفلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کیا تاکہ سند ہے۔

فضل و یادب

(Petitioner)

۱۷/۵/۲۰۲۳

المرقوم: ۱۷/۵/۲۰۲۳ ع

Waqar Waqar

Waqar Waqar Waqar
Advocate High Court
Off District Courts Abbottabad

بمقام: