


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 364/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08.06.2023	<p>The execution petition of Mst. Farzana Hassan submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>12-06-2023</u>. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution petition No. 364 /2023
In Service Appeal No. 7760/2021

Farzana Hassan

V/S


Education Department

INDEX

S.No.	Documents	Annexure	P. No.
1	Memo of execution petition	-----	01-03
2	Copy of memo of appeal	A	04-07
3	Copy of judgment dated 21.12.2022	B	08-13
4	Copies of reinstatement order dated 29.05.2023 and charge report	C&D	14-15
5	Vakalat Nama	-----	16

PETITIONER

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
Cell# 0333-9390916

(1)

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

Execution Petition No. 364 /2023
In Service Appeal No. 7760/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5903

Dated 8/6/2023

Mst. Farzana Hassan, PST,
GGPS Akhto Jan Bhattani, Lakki Marwat.

PETITIONER

VERSUS

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, (Female) Lakki Marwat.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 21.12.2022 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No. 7908/2021 in this Honorable Tribunal against the order dated 30.06.2021, whereby major penalty of removal from service along with recovery of all the dues paid to her without performing the government duty if any, has imposed upon the petitioner with the prayer that on the acceptance of the appeal the order dated 30.06.2021 may kindly be set aside and the respondents may kindly be directed to reinstate the petitioner into service with all back and consequential benefits. **(Copy of memo of appeal is attached as Annexure-A)**
2. The appeal was heard and decided by this Honorable Tribunal on 21.12.2022. The Honorable Tribunal allowed the appeal of the petitioner as prayed for. **(Copy of judgment dated 21.12.2022 is attached as Annexure-B)**


3. That on the basis of the judgment dated 21.12.2022 of this Honorable Service Tribunal, the respondent No.3 reinstated the petitioner with immediate effect and her intervening period was treated as leave without pay vide reinstatement order dated 29.05.2023, which is clear violation of the judgment dated 21.12.2022 of this Honorable Tribunal as the petitioner has prayed in his service appeal that the order dated 30.06.2021 may kindly be set aside and the respondents may kindly be directed to reinstate the petitioner into service with all back and consequential benefits which was allowed by the Honorable as prayed for on 21.12.2022 and according to the judgment dated 21.12.2022, the petitioner entitle for reinstatement from the date of removal i.e 30.06.2021 with all back and consequential benefits, but the petitioner was reinstated into service with immediate effect and her intervening period was treated as leave without pay vide order dated 29.05.2023, therefore the reinstatement order dated 29.05.2023 is liable to be rectified to the extent to reinstate the petitioner into service with effect from 30.06.2021 with all back benefits in shape of salaries along with emoluments for the intervening period with effect from 30.06.2021 to 29.05.2023 by issuing corrigendum to this effect in order to implement the judgment dated 21.12.2022 of this Honorable Tribunal in its true letter and spirit and in compliance of order dated 29.05.2023 the appellant also took charge on her post on 31.05.2023. **(Copies of reinstatement order dated 29.05.2023 and charge report are attached as Annexure-C&D)**
4. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 21.12.2022 of this Honorable Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 21.12.2022 in its true letter and spirit.

It is, therefore, most humbly prayed that the respondent No.3 may kindly be directed to rectify the reinstatement order dated 29.05.2023 of the petitioner to reinstate her into service with effect from 30.06.2021 with all back benefits in shape of salaries along with other emoluments for the intervening period with effect from 30.06.2021 to 29.05.2023 by issuing corrigendum to this effect in

order to implement the judgment dated 21.12.2022 of this Honorable Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

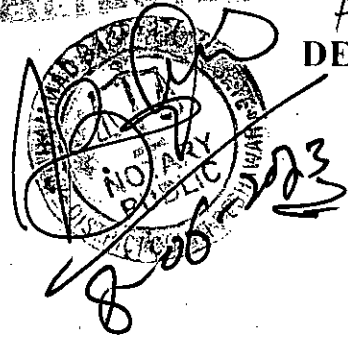
Farzana
PETITIONER
Farzana Hassan

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.

ATTESTED

Farzana
DEPONENT

A (4)

SERVICE APPEAL NO. 7760 /2021

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 7843
Date 01-11-2021

Mst. Farzana Hassan Ex-PST,
GGPS Akhto Jan Bhattani, Lakki Marwat.

(APPELLANT)

VERSUS

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female), Lakki Marwat.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 30.06.2021, WHEREIN MAJOR PENALTY OF REMOVAL FROM SERVICE ALONG WITH THE RECOVERY OF ALL THE DUES PAID TO HER WITHOUT PERFORMING THE GOVERNMENT DUTY IF ANY, HAS IMPOSED UPON THE APPELLANT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Filed to-day
Registrar
01/11/2021

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 30.06.2021 MAY KINDLY BE SET ASIDE AND THE RESPONDENTS MAY KINDLY BE DIRECTED TO REINSTATE THE APPELLANT INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Re-submitted to-day
and filed.

Registrar
16/11/2021

RESPECTFULLY SHEWTH:

FACTS:

1. That the appellant was appointed on the post of PST vide order dated 04.05.2017 and has performed his duty up to the entire satisfaction of his superiors and no complaint has been filed against the appellant regarding her performance.
2. That the appellant was transferred from GGPS Amir Nawaz Tajori to GGPS Akhto Jan Bhattani vide order dated 23.11.2020. The family of the appellant have blood enmity in the location of GGPS Akhto Jan Bhattani, which is evident from the FIR, therefore, she filed application to respondent No.3 for cancellation of her transfer order dated 23.11.2020 and due to that enmity she did not took charge in GGPS Akhto Jan Bhattani and continued to perform her duty at GGPS Amir Nawaz, which is evident from attendance register and Log Book of the concerned school. (Copies of order dated 23.11.2020, FIR, application, attendance register and Log Book are attached as Annexure-A,B,C,D&E)
3. That the appellant was called for personal hearing in which the respondent No.3 verbally directed to the appellant to take charge on the post at GGPS Akhto Jan Bhattani till 25.06.2021, which is evident from the the impugned order dated 30.06.2021 and comments of respondent No.3 filed on the departmental appeal of the appellant and in the compliance of that direction the appellant took over charge at GGPS Akhto Jan Bhattani on 25.06.2021 and performed duty there till her removal which is evident from attendance register and PTC meeting minutes of GGPS Akhto Jan Bhattani. (Copies of comments, charge report, attendance register and PTC meeting minutes are attached as Annexure-F,G,H&I)
4. That without adopting proper procedure, the appellant was removed from service vide order dated 30.06.2021. The appellant filed departmental appeal on 05.07.2021 against the removal order dated 30.06.2021, which was not responded within the statutory of ninety days..(Copies of order dated 30.06.2021 and departmental appeal are attached as Annexure-J&K)
5. That the appellant has no other remedy except to file the instant appeal in this Honourable Tribunal for redressal of her grievance on the following grounds amongst others.

GROUNDS:

- A) That the impugned order dated 30.06.2021 and not taking action on the departmental appeal of the appellant with the stipulated period are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That no proper procedure was adopted by the authority before passing the impugned removal order of the appellant, which is against the law and rules and as such the impugned removal order dated 30.06.2021 is liable to be set aside on this ground alone.
- C) That no inquiry was conducted against the appellant and the appellant was removed in slipshod manner, which is the violation of rules and Superior Courts judgments.
- D) That no charge sheet was issued to the appellant before imposing major punishment of removal from service, which is the violation of law and rules.
- E) That the appellant was transferred to GGPS Akhto Jan Bhattani through an order dated 23.11.2020, but due to blood enmity of the family of the appellant in that location, the appellant did not report in that school and filed application to competent authority for cancellation of her transfer order dated 23.11.2020 and continue to perform her duty at GGPS Amir Nawaz Tajori and when the respondent No.3 verbally directed the appellant to take charge at GGPS Akhto Jan Bhattani till 25.06.2021 during personal hearing she took over charge on 25.06.2021 on that direction, but despite she was removed from service on basis of absence, which is against the norms of justice and fair play.
- F) That the appellant never remained absent from her duty, but due to blood enmity in the location of GGPS Akhto Jan Battahni she did not take over charge there and continuously perform her duty at GGPS Amir Nawaz Tajori, therefore the appellant was compelled to perform her duty at GGPS Amir Nawaz Tajori due to that blood enmity, therefore, needs to be treated with a lenient view.
- G) That the penalty of removal from service is very harsh which is passed in violation of law and rules, therefore, the same is not sustainable in the eyes of law and liable to be set aside.

- H) That the appellant has been condemned unheard and has not been treated according to law and rules.
- I) That the appellant seeks permission of this Honourable Tribunal to advance others grounds and proofs at the time of hearing.

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

Farzana
APPELLANT
Farzana Hassan

THROUGH:

Taimur Ali Khan
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

B (8)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7760/2021

BEFORE: MRS. ROZINA REHMAN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Farzana Hassan Ex-PST, GGPS Akhto Jan Bhattani, Lakki Marwat.
..... (Appellant)

Versus

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female), Lakki Marwat.
..... (Respondents)

Mr. Taimur Ali Khan,
Advocate

For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

For respondents

Date of Institution..... 01.11.2021
Date of Hearing..... 21.12.2022
Date of Decision..... 21.12.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 30.06.2021, whereby major penalty of removal from service alongwith the recovery of all the dues paid to her without performing the government duty, if any, was imposed upon the appellant. It has been prayed that on the acceptance of this appeal, the order

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

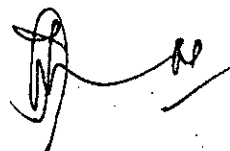
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dated 30.06.2021 might be set aside and the respondents be directed to reinstate the appellant into service with all back and consequential benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed on the post of PST vide order dated 04.05.2017. She was transferred from GGPS Amir Nawaz Tajori to GGPS Akhto Jan Bhattani vide order dated 23.11.2020. The family of the appellant had blood feud enmity in the location of GGPS Akhto Jan Bhattani, which was evident from the FIR annexed with the appeal, therefore, she filed an application to respondent No. 3 for cancellation of her transfer order dated 23.11.2020. Due to the enmity, she did not take charge in GGPS Akhto Jan Bhattani and continued to perform her duty at GGPS Amir Nawaz, which was evident from attendance register and Log Book of the concerned school. The appellant was called for personal hearing in which the respondent, No. 3 verbally directed her to take charge of the post at GGPS Akhto Jan Bhattani till 25.06.2021, which was evident from the impugned order dated 30.06.2021 and comments of respondent No. 3 filed on the departmental appeal of the appellant. In compliance of that direction the appellant took over the charge at GGPS Akhto Jan Bhattani on 25.06.2021. She performed her duty there till her removal, as was evident from attendance register and PTC meeting minutes of GGPS Akhto Jan Bhattani. Without adopting proper procedure, the appellant was removed from service vide order dated 30.06.2021, against which she filed departmental appeal on 05.07.2021 which was not responded within the statutory period of ninety days; hence the instant service appeal.

ATTESTED


EXAMINER
Nayab Dakhilkhwa
Service Tribunal
Peshawar

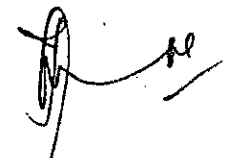


3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail contended that no proper procedure was adopted by the authority before passing the impugned removal order of the appellant, which was against the law and rules. He further contended that no charge sheet was issued to the appellant nor proper inquiry was conducted against her and she was removed from service in a slipshod manner. He further contended that during personal hearing, respondent No. 3 directed the appellant to take charge at GGPS Akhto Jan Bhattani; she complied to those orders and even then she was removed from service on the basis of absence, which was against the norms of justice and fair play. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, contended that the appellant being habitual absentee, was transferred to GGPS Akhto Jan Bhattani vide order dated 23.11.2020 but she never joined her new assignment and absented herself from duty. The SDEO (F) concerned circle vide letter No. 1192 dated 16.03.2021 reported that the appellant did not take over the charge after lapse of more than 176 days, therefore, a show cause notice dated

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



11


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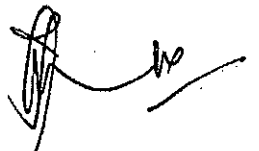
18.05.2021 was issued to the appellant and in reply to the same, she took the plea of her family dispute in that area to justify her absence from her place of duty. He further contended that the appellant did not mention in her reply to show cause notice that she performed duty in her previous school, which clearly proved that the claim of performing duty in previous school was an afterthought and she actually never performed duty there. He argued that the attendance register and log book, on which the appellant relied, were false and fabricated. Learned AAG requested that the appeal might be dismissed.

6. After going through the arguments and record presented before us, it is clear that the appellant joined the government service in 2017 as Primary School Teacher. It is further evident from the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011, presented before the bench by the learned counsel for the appellant, that appointment, posting and transfer of PSTs under its Section 3 is Union Council based. Section 3, sub-section(1) and (3) are reproduced as follows:-

“3. Appointment, posting and transfer of primary school teachers.---

(1) The vacancy of primary school teacher shall be filled in from the candidates belonging to the Union Council of their permanent residence mentioned in their Computerized National Identity Card and domicile, on merit, and if no eligible candidate in that Union Council is available where the school is situated,

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



such appointment shall be made on merit from amongst eligible candidates belonging to the adjacent Union Councils:

Provided that on availability of vacancy, a primary school teacher, appointed from adjacent Union Council, as referred to in this sub-section, shall be transferred against a vacant post in a school of the Union Council of his residence within a period of fifteen days.

(3) The primary school teacher shall be transferred to other school within the Union Council on completion of tenure as may be prescribed or before completion of tenure, subject to the policy of rationalization for maintaining certain students teachers ratio, if any.

7. When asked whether Amir Nawaz Tajori and Akhto Jan Bhattani are in the same Union Council or two different Union Councils, the departmental representative confirmed that they were two different Union Councils. When section 3 of the Act of 2011 is clear, then why the appellant was transferred from Amir Nawaz Tajori, the Union Council in which she was appointed, to Akhto Jan Bhattani, which is a different Union Council? When asked from the learned Deputy District Attorney and the departmental representative, they referred to Para-2 of the removal order dated 30.06.2021 according to which the transfer was meant to functionalize the school in Akhto Jan Bhattani. When confronted that the charge report dated 25.06.2021 annexed with the reply indicates that there was a headmistress in that school who handed over the charge to the appellant which indicates that the school had already been functionalized, the departmental representative disowned the charge report and termed it fake and bogus. Another question was put to him to respond in the light of Act No. XII of 2011, which clearly

ATTESTED

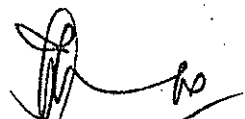
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

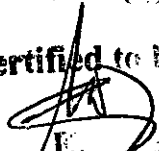
states that appointment of PST is based on the union council of his/her permanent residence and that if no eligible candidate is available for appointment, then it is to be made on merit from amongst eligible candidates belonging to the adjacent UC, whether no candidate from Akhto Jan Bhattani was available at the time of appointment and that if no candidate was available, then why appointment was not made from the adjacent UC and why the post was being filled by transfer of a PST from another UC, which was not covered under the law? The departmental representative as well as the learned DDA could not respond to those queries.

8. From the above discussion, there is no doubt that the appellants were transferred from the Union Council in which they were appointed to another Union Council, which was against the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011 and hence not sustainable and is void and being so, is liable to be set aside. The appeal is, therefore, allowed as prayed for. Parties are left to bear their own costs. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 21st day of December, 2022.


(ROZINA REHMAN)
Member (J)


(FAREEHA PAUL)
Member (E)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 06/06/23
Number of Words Page 7
Copying Fee 35/-
Urgent 5/-
Total 40/-
Name of Counselor Shahid
Date of Completion 06/06/23
Date of Delivery of Copy 06/06/23

14



**OFFICE OF THE DISTRICT EDUCATION OFFICER
(FEMALE) LAKKI MARWAT**

Ph & Fax: (0760) 530000, Email: de-off@kfed.gov.pk

RE-INSTATEMENT ORDER:-

In compliance to the judgment passed by Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar in service appeal No: 7760/2021 and endorsed to this office vide Directorate of E&SE Department letter No. 3658/AD (Lit:II) dated: 10-04-2023, the services of Mst: Farzana Hassan Ex-PST are hereby re-instated with immediate effect (adjusted at G.O's Amir Nawaz Tajori) and her intervening period may be treated as leave without pay.

NOTE:-

1. Necessary entry to this effect should be made in her service book accordingly.

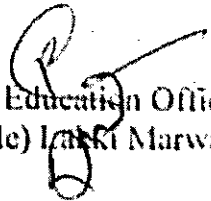
Farzana Sardar
District Education Officer
(Female) Lakki Marwat

Endst: No. 2770-77

Dated. 29-5-2023

Copy to the:-

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar.
3. District Monitoring Officer (EMA) Lakki Marwat.
4. SDEO (F) concerned for strict compliance and necessary action.
5. District Accounts Officer Lakki Marwat.
6. ASDEO (F) circle concerned.
7. Head Teacher Concerned school.
8. Master File.


District Education Officer
(Female) Lakki Marwat

جارج رپورٹ

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2270-77

29-5-2023

مسیحاہ فرزانہ حسن Ex-PST آرڈر نمبر

بڈی ای او فی میں بکپروٹ کے تحت آج مورثہ 5/2023

کو GGPS Amis Nawaz Tajori میں بحیثیت PST

قبل از دوپہر چارج سنبھالا

چارج گیرندہ
Farzana

چارج دہندہ

Shagufta
HEAD MISTRESS
G.G.P.S Kotka Amir Nawaz
Mohala Sand Khol, Tajori,
Distt: Lakki Marwat

Ussan Raw

31-5-2023

A.S.D.E.O (F)
Lakki Marwat

VAKALAT NAMA

NO. _____/2023

IN THE COURT OF KP Service Tribunal, Peshawar

Farzana Hassan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education Department (Respondent)
(Defendant)

I/We, Farzana Hassan


Do hereby appoint and constitute **TAIMUR ALI KHAN, ADVOCATE HIGH COURT**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2023

Farzana
(CLIENT)

ACCEPTED


TAIMUR ALI KHAN
Advocate High Court

BC-10-4240
CNIC: 17101-7395544-5
Cell No. 03339390916