08.05.2023

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Petitioner present through counsel.

Asad Ali Khan, learned Assistant Advocate General alongwith Bahraman Khan ADEO for respondents present.

Conditional pay release order was produced vide which conditional release was ordered w.e.f 22.05.2017 to 14.12.2017 in respect of Mst. Mureeb Haseen.

As the order of this Tribunal has been properly implemented and the grievances of the petitioner have been redressed, therefore, instant execution proceedings stand filed being fully satisfied. No order as to

costs.

Announced **08**.05.2023 *Mitazem Shah*

(Røzina Rehman) Member **(**J)



OITICI, OI'IIII, DISTRICT EDUCATION OITICER (I) BANNU. OUISIDE MIKYAN GATE NIAR GIIS NO.4 BANNU ITIONE.NO.0928-660019

CONDITIONAL PAY RELEASE

In the light of the decision announced on 06/01/2022 hy the Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No, 17/2021 titled Mureeb Haseen Vs Govet of KPK and in pursuance of letter issued vide E&SED, Khyber Pakhtunkhwa, Peshawar No, 4329/F. No (AD-Lite) / SST/17/2012 Dated Peshawar the,28/02/2023 conditionally pay release is hereby ordered with effect from 22/05/2017 to 14/12/2017 in respect of Mst, Mureeb Haseen Ex – SST (M/Phy BPS -16 GGHS Bahader/Mughel Bannu. She hereby legally bound to deposit the said liabilities to the Department in case CPLA/appeal will be decided against her by the supreme court of Pakistan.

DISTRICT EDUCATION OFFICER (FEMALE) BANNU 1 68 Endst: No. Dated Bannu the /2023 Copy for No & Dated. 1. Master File.



DISTRICT EDUCATION OFFICER

31st March, 2023

Junior to counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Bahramand, AD for the respondents present.

Representative of the respondents produced office order dated 16.03.2023 through which isalaries of the petitioner w.e.f. 22.05.2012 to 14.12.2017 have been released subject to the outcome of CPLA filed before the august Supreme Court of Pakistan. Placed on file and a copy whereof handed over to learned counsel for the appellant who sought time to discuss the same with the petitioner and file objections, if any, on the same. Granted. To come up for objection petition/further proceedings on 08.05.2023 before the S.B. Parcha peshi given to the parties.

(Farech: Member(E)

E.P No. 550/2022

16.01.2023

Nemo for the petitioner. Mr. Muhammad Tufail, Assistant alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned Additional Advocate General requested that the implementation process is in progress and implementation report will be positively produced on the next date. Adjourned. To come up for implementation report on 28.02.2023 before the S.B.

> (Salah-Ud-Din) Member (J)

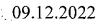
28th Feb, 2023

Learned counsel for the petitioner present. Mr. Umair Azam, Addl: AG for respondents present.

On the previous two dates one Mr. Tufail, Assistant alongwith Mr. Muhammad Adeel Butt, Addl: AG was present and time was being sought but no implementation report was filed, therefore, salaries of the respondents are attached in the manner as prescribed under section60(1)(i) of the Code of Civil Procedure, 1908 till further orders. The Accountant General, Khyber Pakhtunkhwa and District Accounts Officer, Bannu are directed to attach salaries of respondents No.1,2 and 3. Respondents are directed to submit the implementation report on 31.03.2023 before S.B. P.P given to the parties.



(Kalim Arshad Khan) Chairman , tr





Petitioner alongwith her counsel present. Mr. Muhammad Imran, Assistant alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Representative of the respondents sought time for submission of implementation report. Adjourned. To come up for submission of implementation report on 21.12.2022 before the S.B.

(Salah-Ud-Din) Member (J)

21st Dec, 2022



Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Tufail Khan, Assistant for respondents present.

Representative of the respondents submits that the implementation under execution is under process and will be finalized soon. He sought some time to submit implementation report. Last chance is given to the respondents for submission of implementation report on 16.01.2023 before S.B.



(Kalim Arshad Khan) Chairman

Form- A FORM OF ORDER SHEET

Court of_____

Execution Petition No. 550/2022

Order or other proceedings with signature of judge

15.09.2022

KPST Peshawar

07.10.2022

Date of order

proceedings

S.No.

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The execution petition of Mureeb Haseen submitted today by Mr. Tairmur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on $7 \cdot 10 - 37$. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.

3

None for the petitioner present. Mr. Kabir Ullah Khattak, Additional Advocate general for respondents present.

Learned Additional AG seeks time for submission of implementation report. Respondent are directed to submit implementation report on next date positively. To come up for implementation report on 09.11.2022 before S.B.

9-11-22

(Kalim Arshad Khan) Chairman Since 9th November has been

Declared is Puplic Holy Day Therfor case is adjurned to 9-12-22 for The Same is Befor S.B.

Renders

By the order of Chairman

REGISTRAR CL

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. <u>550</u> /2022 In Service Appeal No.17/2021



Mureeb Haseen

VS

Education Department

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2.	Copy of judgment dated 06.01.2022	A	4-9
3.	Vakalat Nama		10

PETITIONER

THROUGH:

(TAIMUR ALI KHAN) ADVOCATE HIGH COURT

Contact No. 03339390916

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. <u>550</u> /2022 In Service Appeal No.17/2021



Mureeb Haseen D/O Umar Hayat Khan, Ex-SST (Maths/Physics) BS-16 GGHS Bahadar Mughal Khel Bannu.

PETITIONER

VERSUS

- The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
 The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3. The District Education Officer, (Female) Bannu.

RESPONDENTS

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 10.01.2022 OF THIS HONOURABLE TRIBUNAL IN LETTER AND SPIRIT.

RESPECTFULLY SHEWETH:

1. That the petitioner was appointed as SST (Maths/Physics) in BPS-16 vide order dated 22.05.2017 which was withdrawn vide order dated 14.12.2017 with immediate effect on the issue of qualification, against which the petitioner filed appeal for restoration of her appointment, which was considered and an inquiry was conducted. The inquiry officer recommended in the favour of the petitioner, but the respondents issued another order dated 18.09.2020, whereby her appointment was withdrawn with effect from the date of appointment, against which the petitioner filed departmental appeal dated 30.09.2020 which was rejected vide order dated 28.12.2020.

2. That the petitioner filed service appeal No.17/2021 in the Honorable Tribunal against the impugned orders dated 18.09.2020 and 28.12.2020 with the prayer that impugned order may be set aside and may be reinstated her in service with all back benefits.

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- 3. The said appeal was heard and decided by this Honorable Service Tribunal on 06.01.2022. The Honorable Service Tribunal mentioned in its judgment dated 06.01.2022 that the impugned order are liable to be set at naught and the petitioner is entitled to be reinstated with all back benefits, but since the appellant is no more interested to re-join education department as she has joined another service in prosecution department in BPS-16, hence she is held entitled to the salaries and ancillary benefits for the period from 22.05.2017 to 14.12.2017 with direction to the respondents to release her salaries as well as ancillary benefits if any, for the mentioned period forthwith. (Copy of judgment dated 06.01.2022 is attached as Annexure-A)
- 4. That the Honorable Tribunal mentioned in its judgment dated 06.01.2022 that the impugned order are liable to be set at naught and the petitioner is entitled to be reinstated with all back benefits, but since the appellant is no more interested to re-join education department as she has joined another service in prosecution department in BPS-16, hence she is held entitled to the salaries and ancillary benefits for the period from 22.05.2017 to 14.12.2017 with direction to the respondents to release her salaries as well as ancillary benefits if any, for the mentioned period forthwith, but after the lapse of more than 08 months the respondents did not release the salaries as well as ancillary benefits if any for the period from 22.05.2017 to 14.12.2017 to 14.12.2017 of the petitioner till date by implementing judgment dated 06.01.2022 of this Honorable Tribunal.
- 5. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this Honourable Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 6. 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 06.01.2022 of this Honourable Service Tribunal in letter and spirit.

7. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 06.01.2022 of this Honourable Tribunal.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment dated 06.01.2022 of this Honorable Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

PETITIONER Mureeb Haseen

THROUGH:

1.

(TAIMUR ALI KHAN) **ADVOCATE HIGH COURT** PESHAWAR

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.

DEPONENT



BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVIC

<u>TRIBUNAL, PESHAWAR</u>

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S.A.No. / /2021

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Mureeb Haseen daughter of Umar Hayat Khan Ex-SST (Maths Phy) (BS-16) GGHS Bahadar Khel Mughal Khel Bannu...... Appellant

Versus

Secretary, Elementary & Secondary (E&S) Education, Khyber Pakhtunkhwa, Peshawar.

Director Elementary & Secondary (E&S) Education, Khyber Pakhtunkhwa, Peshawar.

District Education Officer (Female) Bannu...... Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE SERVICES TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER RECEIVED ON 18.09.2020 WHICH WAS QUESTIONED IN THE DEPARTMENTAL APPEAL DATED 30.09.2020 BEFORE RESPONDENT No.1 i.e. SECRETARY ELEMENTARY AND SECONDARY EDUCATION, KP. HOWEVER. THE SAME WAS DECLINED VIDE FINAL ORDER DATED 28.12.2020. HENCE THE **INSTANT** APPEAL IS BEING FILED WITHIN 30 DAYS, WHICH IS WELL WITHIN TIME.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 17/2021

 Date of Institution ...
 05.01.2021

 Date of Decision ...
 06.01.2022

Mureeba Haseen daughter of Umar Hayat Khan Ex-SST (Maths-Phy) (BS-16) GGHS Bahadar Khel Mughal Khel Bannu. ... (Appellant)

<u>VERSUS</u>

Secretary, Elementary & Secondary (E&SE) Education, Khyber Pakhtunkhwa, Peshawar and two others. (Respondents)

Mureeb₃Haseen, Appellant

Muhammad Rasheed, Deputy District Attorney

AHMAD SULTAN TAREEN ATIQ-UR-REHMAN WAZIR CHAIRMAN MEMBER (EXECUTIVE)

In Person

For respondents

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was appointed as Senior Subject Teacher (SST) Maths-Physics in BPS-16 vide order dated 22-05-2017. In compliance, the appellant assumed charge of her duty and started performing her duty. Appointment order of the appellant was withdrawn vide order dated 14-12-2017 with immediate effect on the issue of her qualification, against which the appellant filed appeal for restoration of her appointment, which was considered and an inquiry was conducted. The inquiry officer recommended in favor of the appellant, but the respondents issued another order dated 18-09-2020, whereby her appointment order was withdrawn with effect from the date of her appointment, against which the appellant filed departmental appeal dated 30-09-2020, which was rejected

vide order dated 28-12-2020, hence the instant service appeal with prayers that impugned orders dated 18-09-2020 and 28-12-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. The appellant herself argued the case and contended that the impugned order dated 18-09-2020 is void ab initio and against the facts and record, as it is a settled law that no order can be passed with retrospective effect; that the impugned order is voilative of section-24 of the General Clauses Act, as the competent authority failed to pass a speaking order with sound reasoning in the light of recommendations recorded by inquiry officer; that the inquiry officer categorically stated that there is negligence on part of the scrutiny committee and the appellant possess the basic qualification for appointment. It was further recommended that the appellant performed duty for a period of seven months, which makes ber entitle for drawl of such salary; that the district education officer also recommended to re-instate her in service, as she fulfilled the requisite qualification; that the impugned order is not tenable in light of recommendations furnished by inquiry officer as well as the district education officer; that the appellant did not commit any irregularity and was rightly appointed after observing all the codal formalities; that the appellant has now joined another job in prosecution department in BPS-16, which she earned by qualifying competitive exam of public service commission, hence the appellant is no more interested to join education department anymore; that the appellant performed duty with effect from 22.5-2017 to 14-12-2017, which is evident from record as well as from comments of the respondents, hence salary for the period may be released with consequential benefits, if any,

03. Learned Deputy District Attorney for the respondents has contended that the appellant is not entitled to be re-instated against the post of SST post, as at the time of recruitment the appellant did not possess the prescribed qualification for the post in question; that the appellant got the prescribed qualification after

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due date; that appointment order of the appellant was withdrawn vide order dated 14-12-2017 with immediate effect and later on vide another order, her appointment order was withdrawn with effect from the date of her appointment i.e. 22-05-2017; that an inquiry to this effect was also conducted, findings of which does not support stance of the appellant; that appointment order of the appellant was rightly withdrawn and case of the appellant being devoid of merit may be dismissed.

04. We have heard both the parties and have perused the record.

05. Record reveals that respondents advertized interalia, posts of SST (Physics-Maths) (BPS-16). Required qualification for the post was bachelor degree in second division with the following two subject I.e. (1) Physics-maths-A OR Physics-maths-B or Physics-statistics and (2) MA Education OR Bachelor in Education. The appellant was holding bachelor degree of BSC in session 2009-12 with statistics-maths-A and obtained physics as an additional subject in session 2016-17. Record would reveal that the appellant was equipped with the required qualification and to this effect; the concerned university has also verified her antecedents. The appellant was appointed as SST with recommendations of the departmental selection committee vide order dated 22-05-2017 and in compliance, the appellant assumed charge of her duty and served for almost seven months, but the respondents without proper inquiry withdrew her appointment order vide order dated 14-12-2017 under the pretext that she had submitted fake DMC for her additional subject of physics. The concerned university at a belated stage vide its letter dated 17-08-2018 verified such DMC to be genuine. Upon appeal submitted by the appellant, an inquiry was conducted and the inquiry officer found that there is negligence on part of the scrutiny committee, as the appellant possessed the required qualification for appointment as SST. The inquiry officer further found that the appellant served for seven months; hence, she is entitled for the salaries, as she had performed her duty

Upon receipt of inquiry report, respondent No. 2 sought comments of respondent No. 3, while respondent No. 3 in her comments had suggested that the appellant may be re-instated in service as she fulfilled the requisite qualification at the time of her appointment and had also performed more than six months duty, but respondent No. 3 also observed that since the inquiry officer recommended her for release of her salary for the period she performed duty, but such step would generate affirmative response to the appellant and after getting salary, she will resort to further litigation, hence her order of appointment may be withdrawn with effect of date of appointment i.e. 22-05-2017. The competent authority ignored recommendations pertaining to her re-instatement, but recommendation pertaining to withdrawal order of her appointment with retrospective effect was accepted and such order was modified and her appointment was withdrawn with effect from the date of her appointment, depriving the appellant from the salaries even for the period she performed duty. With such mindset, the officers sitting at the helm of affairs would be required to be taken to task.

06. We have observed that the appellant has not been treated in accordance with law and her appointment order was illegally withdrawn, for which she suffered for longer for no fault of her. Inspite of the fact that both the inquiry officer as well as respondent No. 3 recommended that the appellant possessed the requisite qualification at the time of her appointment and it was negligence on part of the scrutiny committee wrongly assessing her antecedents, the respondent No. 2 withdrew her appointment order, which however was not warranted. In view of the situation, the impugned orders are liable to be set at naught and the appellant is entitled to be re-instated with all back benefits, but since the appellant is no more interested to re-join education department as she has joined another service in prosecution department in BPS-16, hence she is held entitled to the salaries and ancillary benefits for the period from 22-05-2017 to

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ancillary benefits if any, for the mentioned period forthwith. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED 06.01.2022

(AHMAD SULTAN TAREEN) CHAIRMAN

ture copy Certified 10 unkhw8 6 Tribunal. Peshawar

(ATIQ-UR-REHMAN WAZIR) MEMBER (E)

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بعدالت KP Service Thisman Peshin var -is 2 Musee & Haslen مورخه Mussel Hattan VIS Educatione دعومى جرم باعث تحريراً نكه الم على الم الم الم الم مقدمه مندرج عنوان بالامين الي ظرف سے واسط سير كيليح وسمور الريحال أمر المحد لتران التروك آن مقام كتيرا حرم مقررکر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز و کیل صاحب کوراضی نامہ کرنے وتقرر ثالث و فیصلہ پر حلف دیتے جواب دہی اورا قبال دعو کی اور بصورت ذکری کرنے اجراءاور دصولی چیک وروپ پیار عرضی دعویٰ اور درخواست ہر سم کی تصدیق زرای پرد شخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یاد گری کیطرفہ یا پیل کی براندگ اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا۔از بصورت ضرورت - مقدمہ ندکور کے کل پاجزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کواپنے ہمراہ یا اپنے بیجائے تقرر کا اختیار ہوگا۔اورصاحب مقرر شدہ کوبھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے ادراس کاساختہ پر داختہ منظور وقبول ہوگا دوران مقدمہ میں جوخر چہ ہرجانہ التوائے مقدمہ کے سبب سے وہوگا ۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد بے باہر ہوتو دیل صاحب پابند ہوں Accepted <u> کے کہ بیروی ندکورکریں لہٰ اوکالت نامہ کھدیا کہ سندر ہے۔</u> , ilit المرقوم س لي منظور ب. مقام nats Nouman Mehammad

SUBJECT: CONDITIONAL IMPLEMENTATION OF THE JUDGMENT DATED 06-01-2022 OF HOMOURABLE SERVICE TRIBUNAL, PESHAWAR.

Brief facts forming backgrounds of the case are arrayed as under:

The appellant namely Murceb Haseen was appointed as SST (Math, Phy) in District Bannu. At the time of appointment, she had not posses the prescribed qualification for the SST post rather she passed the subject of physics as additional subject in Bachelor level after appointment she produced fake and forged Bachelor DMC at the time of recruitment.

That vide Notification dated 14/12/2017 the appointment order of the appellant was withdrawn with immediate effect, however, another order dated 07/09/2020 passed by the Department, whereby, the effect of Notification dated 14/12/2017 was extended to the date of first appointment of the appellant.

Feeling aggrieved, the appellant filed Service Appeal No. 17/2021 before Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar which was decided vide judgment dated 06/01/2022, whereby, appeal of the appellant has been allowed by the Honorable court with the direction of the Honorable court rendered in Para-6 of the Judgment ibid & is hereby reproduced as under for ready reference.

In view of the situation the impugned orders are liable to be set at naught and the appellant is entitled to be re-instated with all back benefits, but since the appellant is no more interested to re-join education department as she has joined another service in prosecution department in BPS-16, hence she is held added to the salaries and ancillary benefits for the period from 22-05-2017 to 14-12-2017 with direction to the respondents to release her salaries as well as ancillary benefits if any for the mentioned period forthwith

It is worth to mentioning here, that the Judgment dated 06-01-2022 has already been impugned before the apex Court by the Respondent Department which is still pending adjudication. Now, the appellant has filed Execution Petition No. 550/2022 implementation of the Judgment on the last date of hearing dated 16-12-2022, the Court has granted last opportunity to the Department for conditional implementation of the Judgment dated 06-1-2022.

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18.

For what has been discuss above, it is suggested that the case may be forwarded to the Additional Director (Estab-F) for conditional implementation of the Judgment dated 06-1-2022 with regard to release salaries & ancillary benefits for the period w.e.f. 22-5-2017 to 14-12-217 to the appellant, so that compliance report being submitted to the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar please.

20.

Deputy Director (Legal):

Para-4/N is submitted for perusal & approval please.

16.12.2022 DD (Legal)

AD (Lit-II)

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