


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 490/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.07.2023	<p>The implementation petition of Mr. Niaz Gul submitted today by Mr. Nasie Mehmood 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  REGISTRAR</p>

BEFORE THE KHYBER PAKHTURKIWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 490/2023

In Services Appeal No. 707/2016

Niaz Gul, PSHT GPS Azar Khel, Karak

.....Petitioner

V E R S U S

Government of KPK and others

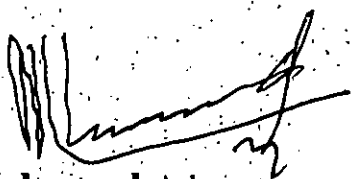
..... Respondents

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service Appeal & Affidavit		1-2
2.	Copy of the Judgment dated 29.11.2017.		3 - 6
3.	Copy of the Execution petition		7 - 8
4.	Copy of the orders of Tribunal in execution petition		9 - 33
5.	Copy of the Endst: No 4698-4701 dated 02.10.2018		34
6.	Copy of the office order dated 05.10.2018		35
7.	Copy of the Endst: No.4037-38 dated 14.09.2022		36
8.	Copy of the reply		37 - 39
	Wakalat Nama		40

Appellant

Through


Nasir Mehmood Advocate
Supreme Court of Pakistan.

(1)

BEFORE THE KHYBER PAKHTURKIWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 490 /2023

In Services Appeal No. 707/2016

Khyber Pakhtunkhwa
Service Tribunal

Dist. No. 6461

Dated 13/07/23

Niaz Gul, PSHT GPS Azer Khel, Karak

.....PETITIONER

V E R S U S

1. The Government of Khyber Pakhtunkhwa, through Secretary (E&SE), Education Department, Peshawar.
2. The Director (E&SE) Education Department, Peshawar.
3. The District Education, Officer (Male), Karak.

.....RESPONDENTS

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS
TO IMPLEMENT THE JUDGMENT DATED 29.11.2017 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND SPIRIT.

RESPECTFULLY SHEWETH

1. That the applicant/appellant filed Service Appeal No.707/2016 against the impugned order dated 20.02.2016.
2. That the said appeal was finally heard on 29.11.2017 and was accepted and the appellant was reinstated into service and directed the respondent to conduct denovo-inquiry within period of two months after receipt of this judgment.
3. That the respondents failed in implementing the Hon'able Tribunal Judgment dated 29.11.2017.
4. That the execution petition No.84/2018 earlier filed for implementation of the judgment dated 29.11.2017 was erroneously disposed off on 22.09.2022 although on the same date neither the petitioner was present nor his counsel and at that time the petitioner was seriously ill and was consigned to record room in the light of

2

sanction order bearing Endst No. 4037-38/LPR/Pry: dated 14.09.2022 which is contradictory to the judgment dated 29.11.2017, and orders dated 17.06.2019 & 10.07.2019 thus the instant execution petition.

- 5. That in-action and non-implementation of the judgment of this august Tribunal, is totally illegal ^{and} 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 respondents are legally bound to pass formal appropriate order.
- 7. That the petitioner has having no other remedy ^{but} to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 29.11.2017 of this august Tribunal in letter and spirit and reinstated the appellant into service. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of applicant/appellant

Applicant/ Appellant

Through

Nasir Mehmood Advocate
Supreme Court Of Pakistan

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.

DEPONENT



3

In The Khyber Pakhtunkhwa Service Tribunal, Peshawar



Service Appeal No 707 /2016

Niaz Gul,
PSHT, GPS Azer Khel,
Karak.

.....Appellant

Khyber Pakhtunkhwa
Service Tribunal

Versus

Diary No. 631

Dated 14-6-2016

1. Government of Khyber Pakhtunkhwa through Secretary (Elementary and Secondary) Education Department, Peshawar.
2. Director ((E & S) Education Department, Peshawar
3. District Education Officer (Male), Karak.

.....Respondents

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar
Prayer:

Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against Order dated 06-04-2016 received on 19-05-2016.

On acceptance of this Service Appeal the impugned Order dated 06-04-2016 whereby the Departmental Appeal of the Appellant against the Order dated 20-02-2016 is dismissed and the Appellant is Compulsory Retired from service may kindly be set aside and the Respondents may kindly be directed to reinstate the Appellant in service with all back benefits.

File day

14/6/16

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the Appellant was appointed as PTC Teacher on 01-05-1978 in the respondent Department.

ATTESTED

paid by
the
dept. of Peshawar

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 707/2016

Date of Institution ... 14.06.2016

Date of Decision ... 29.11.2017



Niaz Gul,
PSHT, GPS Azer Khel, Karak. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary (Elementary and Secondary) Education Department, Peshawar and 2 others.

... (Respondents)

MR. TAJDAR AHMAD KHAN
Advocate

... For appellant

MR. KABIRULLAH KHATTAK,
Additional Advocate General,

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER

JUDGMENTNIAZ MUHAMMAD KHAN, CHAIRMAN.-

Arguments of the

learned counsel for the parties heard and record perused.

FACTS

2. The appellant is aggrieved from order of compulsory retirement dated 20.02.2016 against which he filed departmental appeal on 22.02.2016 which was

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,

ATTESTED

rejected on 06.04.2016 and communicated to him on 19.05.2016. Thereafter he filed the present service appeal on 14.06.2016.

ARGUMENTS.

3. The learned counsel for the appellant argued that the appellant was transferred to GPS Kaddu Khel on 31.08.2015. That the appellant assumed the charge on 01.09.2015. That the appellant never remained absent from duty. That the attendance register also is a proof of the attendance of the appellant. That the impugned order was passed without any notice to the appellant. That the impugned order was passed retrospectively which is nullity in the eyes of law.

4. On the other hand, the learned Additional Advocate General argued that all the codal formalities were fulfilled by issuing show cause notice. That notice was also published in the news paper. That the appellant remained absent from duty without any leave. That the whole proceedings are lawful. That the appellant did not perform his official duties.

CONCLUSION.

5. Regardless to the factual controversy of absence from duty the very impugned order has been passed retrospectively. In the light of the judgment reported as 1985 SCMR 1178 such order is a void order.

6. In view of the judgment mentioned above this appeal is accepted and the appellant is reinstated in service. The department is directed to hold de-novo proceedings within a period of two months after receipt of this judgment. The issue

ATTESTED

ATTESTED

EXAMINER
 Member Pakistana
 Service Tribunal,
 Peshawar

6

of back benefits of the appellant shall be subject to final outcome of the *de-novo* proceedings. Parties are left to bear their own costs. File be consigned to the record room.

Announced
29.11.2017

SD/- *Niaz Muhammad Khan,*
Chairman

SD/- *Ahmad Hassan*
Member

Certified to be true copy
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 07-11-18
Number of Words 1600
Copying Fee 10.00
Urgent 2.00
Total 12.00
Name of Copyist *[Signature]*
Date of Completion of Copy 07-11-18
Date of Delivery of Copy 07-11-18

ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 84 /2018
In Service Appeal No.707/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 304

Date: 18/03/2018

Niaz Gul,
PSHT, GPS Azer Khel, Karak.

PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary (E&SE), Education Department, Peshawar.
2. The Director (E&SE) Education Department, Peshawar.
3. The District Education, officer (Male), Karak.

RESPONDENTS

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

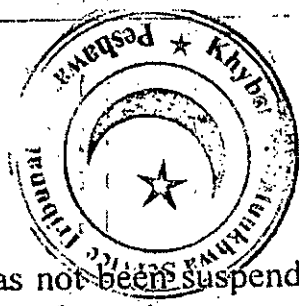
EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED: 29.11.2017 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.

RESPECTFULLY SHEWETH:

1. That the applicant/appellant filed Service Appeal No.707/2016 against the impugned order dated 20.02.2016.
2. That the said appeal was finally heard on 29.11.2017. The said appeal was accepted and reinstated the appellant in to service and directed the respondent to conduct denovo-inquiry within period of two months after receipt of this judgment. (Copy of Judgment Dated 29.11.2017 and is attached as Annexure-A).
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 29.11.2017.
4. That in-action and non-implementation of the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.

~~ATTESTED~~

8



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 respondents are legally bound to pass formal appropriate order.
6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 29.11.2017 of this august Tribunal in letter and spirit and reinstated the appellant into service. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of applicant/appellant.

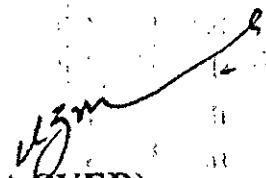


APPLICANT/APPELLANT
 Niaz Gul

ATTESTED



EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

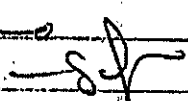
THROUGH:


 (UZMA SYED)
 & 
 (Syed Noman ALI BUKHARI)
 ADVOCATES, PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.


DEPONENT

Date of Presentation of Application 2-10-2018
 Number of Words 1200
 Copying Fee 8-00
 Urgent 2-00
 Total 10-00
 Name of Copyist 
 Date of Completion of Copy 2-10-2018
 Date of Delivery of Copy 2-10-2018

ATTESTED



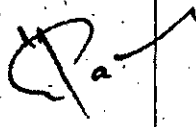
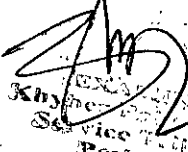
9

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 401/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge:
1	2	3
1	07.11.2018	<p>The execution petition of Mr. Niaz Gul submitted by him may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 07/11/18</p>
2	17-11-2018	<p>This execution petition be put up before S. Bench on <u>28-11-18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
28.11.2018		<p>Petitioner absent. Notice of the present execution petition be given to the respondents for 09.01.2019. To come up for implementation report on the date fixed before S.B</p> <p style="text-align: right;"> Member</p> <p style="text-align: center;">ATTESTED</p> <p style="text-align: center;"> Khyber Pakhtunkhwa Service Tribunal Peshawar</p> <p style="text-align: right;">ATTESTED</p>

09.01.2019

10

Petitioner with counsel and Addl. AG alongwith Sher Islam ADEO present. Learned AAG requests for time to submit reply to the execution petition. Adjourned to 04.02.2019 for reply and arguments before S.B. The petitioner is directed to provide a copy of the petition to the learned AAG today.



Chairman

04.2.2019

Petitioner with counsel and Addl. AG alongwith Sher Islam, ADO for the respondents present.

Representative of respondents has placed on file office order dated 05.10.2018 issued by respondent No. 3 and also a reply dated 15.01.2019 addressed to the petitioner by the same respondent. Apparently, the said reply is in response to applications of petitioner dated 27.10.2018 and 03.12.2018. The documents are placed on record.

Learned AAG requests for time to submit a comprehensive reply to the Execution Petition in view of the documents submitted today by the representative.

Adjourned to 15.03.2019 for reply and arguments before S.B.



Chairman

ATTESTED
BY
Service Tribunal
Responsible

E.P No. 401/2018

15.03.2019

Petitioner alongwith counsel present. Mr. Kabirullah Khattak, Additional AG for the respondents present and submitted reply. The same is placed on record. Learned counsel for the petitioner seeks adjournment to examine the same. Adjourned. To come up for further proceedings on 22.03.2019 before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

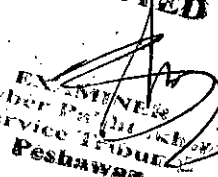
22.03.2019


Learned counsel for the petitioner and Mr. Kabirullah Khattak learned Addl; AG for the respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. To come up for further proceeding on 22.4.2019 before S.B.


Member

22.04.2019

Petitioner with counsel present. Addl:AG alongwith Mr. Sher Islam, ASDEO for respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. Case to come up for further proceedings on 12.06.2019 before S.B.


ATTESTED

EX-MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


(Ahmad Hassan)
Member

12

12.06.2019 Petitioner with counsel and Addl: AG alongwith Mr. Sher-Islam, ASDEO for respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. Case to come up for further proceedings on 10.07.2019 before S.B.


(Ahmad Hassan)
Member


ATTESTED
SECRETARY
10th Floor, 1st Main Building
Service Building
Perth

10.07.2019

Petitioner alongwith his counsels and Addl: AG alongwith Mr. Sher Islam, ADO for respondents present.

In the instant case a Sanction was issued by District Education Officer (M), Karak on 02.10.2018, whereby the petitioner was allowed to proceed on superannuation retirement w.e.f 05.02.2018 with full benefits of pension and gratuity, in pursuance to the judgment under implementation. The earlier office order of compulsory retirement of petitioner dated 20.02.2016 was also cancelled through the Sanction dated 02.10.2018. On 05.10.2018 another Order was issued wherein the cancellation/withdrawal of order dated 20.02.2016, pertaining to compulsory retirement of the petitioner was reiterated, however, the period from 31.08.2015 to 05.02.2018 was treated as leave without pay. This Office/ Order appears to be in conflict with previous Sanction dated 02.10.2018, and also the findings handed down in judgment under implementation. In the judgment dated 29.11.2017, the appellant/petitioner was reinstated into service while the order of his compulsory retirement was set aside. The department was directed to hold de-novo proceedings within the period of two months from the date of receipt of copy of the judgment which direction was not complied with by the respondents. De-novo proceedings were never held against the petitioner. As the issue of back benefits of the petitioner was made subject to the final outcome of the de-novo proceedings, therefore, no order adversely affecting the petitioner in respect of award of back benefits could be passed without holding de-novo proceedings.

In the circumstances, when Sanction dated 02.10.2018 was neither superseded nor altered or modified through subsequent Office Order dated 05.10.2018, it remains in field till date. The petitioner is entitled to the benefits as noted in the Sanction dated 02.10.2018, therefore, the respondents are required to calculate the emoluments for the period from 31.08.2015 to 05.02.2018 and allow the same in favour of the petitioner by disregarding the contents of Office Order dated 05.10.2018 wherein the said period is treated s leave without pay.

To come up for further proceedings on 29.08.2019 before S.B.

ATTESTED
EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


Chairman

14

29.08.2019 Petitioner in person present. Addl: AG for respondents present. Due to paucity of time the case is adjourned to 26.09.2019 for further proceedings before S.B.



(Ahmad Hassan)
Member

26.09.2019 Petitioner with counsel present. Addl: AG for respondents present. Implementation report as per order sheet dated 10.07.2019 was not produce by the respondents. They are again directed to submit the same on or before the next date of hearing. To come up for further proceedings on 22.10.2019 before S.B.



Member

ATTESTED

EXC. MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

E.P No. 401/2018

15

22.10.2019

Petitioner alongwith counsel and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sherullah, ADO for the respondents present.

The representative of respondents has tendered a copy of CPLA submitted before the apex court against the judgment under implementation.

The representative is required to obtain copy of order of this Tribunal passed on 10.07.2019 and submit compliance report on next date of hearing if the judgment under implementation is not suspended or set-aside by the apex court in the meanwhile. In case the requisite implementation report is not submitted on next date, the District Education Officer (Male) Karak/respondent No. 3 shall appear in person in order to explain the position regarding the matter.

Adjourned to 25.11.2019 before S.B.

ATTESTED
Khatun Begum
Service In Charge
Karak

Chairman

16

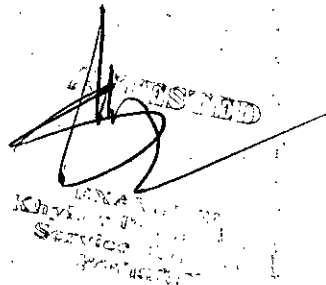
25.11.2019

Petitioner in person and Addl. AG alongwith M/S Attiqur Rahman, Dy. DEO, Sultan Khan, Superintendent for the respondents present.

Learned AAG referred to order passed in E.P No. 84/2018 dated 08.10.2018 and stated that as the judgment under implementation was completely executed the matter was consigned. However, the appellant brought instant execution petition but without any rhyme or reason. He also stated that the order dated 10.07.2019 passed by this Tribunal has also been assailed before the Apex Court, wherein, a date of hearing is yet to be fixed. Petitioner, on the other hand, requested for adjournment due to general strike of the Bar.

Adjourned to 06.01.2020 for further proceedings. The office is required to append the record pertaining to E.P No. 84/2018 consigned on 08.10.2018 with the instant file.

Chairman



Stamp: Khyber Pakhtunkhwa Service Commission

17

06.01.2020

Petitioner alongwith counsel and Addl. AG alongwith Sher Nawab, Superintendent for the respondents present.

The representative of respondents states that a CPLA against the judgment under execution has been preferred before the Apex Court wherein a date of hearing is yet to be fixed. He also states that in order to calculate the emoluments of petitioner by way of outstanding salaries as well as pension the service record is to be provided by the petitioner.

On the other hand, the petitioner maintained mistrust regarding the officers of respondent department and states that he would hand over the requisite record to the representative of respondents before the Tribunal provided some time is given to him.

In order to avoid further complication and delay in implementation of judgment the petitioner is required to make available his service book, pension papers, 8 photographs and list of family members alongwith their respective CNICs on 23.01.2020.

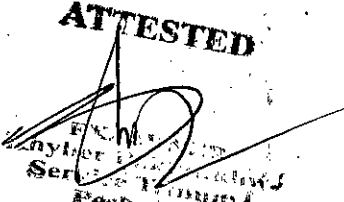
Adjourned.


Chairman

23.01.2020

Petitioner in person and Addl. AG for the respondents present.

Due to non-availability of representative of respondents today as well as general strike of the Bar, the proceedings in hand are adjourned to 24.02.2020. Learned AAG undertakes to ensure the attendance of representative of respondents on next date.

ATTESTED

Secretary


Chairman

18

24.02.2020

Petitioner in person present. Mr. Kabirullah Khattak, Addl. AG alongwith Sher Nawab, Superintendent for respondents present. Petitioner requested for adjournment due to engagement of his learned counsel before the honourable High Court. To come up for further proceedings on 02.04.2020 before S.B.



(Hussain Shah)
Member

02.04.2020

Due to public holiday on account of COVID-19, the case is adjourned for the same on 25.06.2020 before S.B.



Reader

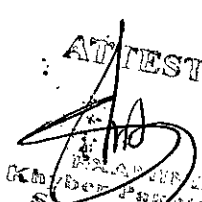
25.06.2020

Petitioner with counsel present. Addl: AG for respondents present. Representative of the respondents are not present nor implementation report submitted. Respondent No.3 (District Education Officer (M) Karak) be summoned in person alongwith the implementation report positively on the next date of hearing. To come up for further proceedings on 22.07.2020 before S.B.



MEMBER

ATTESTED



Attester
Kabirullah Khattak
Service Tribunal
Peshawar

22.07.2020

Uzma Syed, Advocate, for appellant and appellant himself are present. Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of the department Mr. Attique-ur-Rehman, Deputy District Education Officer, are also present. Learned counsel for petitioner submitted that the judgment passed by this august Service Tribunal dated 19.11.2017 wherein petitioner was reinstated in service and department was directed to hold de-novo proceedings within a period of two months after receipt of the judgment of the worthy Tribunal. That neither petitioner was reinstated into service nor de-novo inquiry was conducted and during this period petitioner did retired on 05.02.2018 now he claims his pensionary benefits alongwith other emoluments but the respondents are not paying heed to his case despite having been contacted time and again.

2. The learned Additional Advocate General submitted that petitioner is entitled to the gratuity and other pensionary benefits for the period for which he has rendered work however, he is not entitled to receive any benefits where he has not rendered duties, he submitted that according to the judgment of Hon'ble Supreme Court of Pakistan when there is a work there is pay when no work is done it has been held that there is no pay. At this juncture the representative of DEO Karak who is non-else than Deputy District Education Officer (Attiq-ur-Rehman) submitted that they are willing to process the pension case of the petitioner but the documents pertaining the accounts are in custody of petitioner who is not handing it over to their office for the needful.

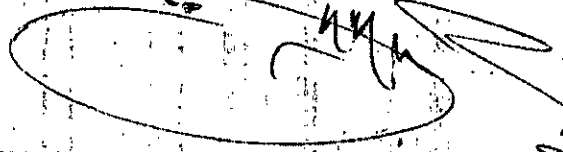
3. When the petitioner has got retired he is entitled to the gratuity and other pensionary emoluments and benefits without any sort of delay or discrimination. Petitioner has admittedly rendered long services to the Education Department and when he has attained the age of superannuation his respective rights ripens to maturity. The respondents department is directed to sort out the respective entitlement of the petitioner in a statement of account to be duly documented and to be produced to this Tribunal for perusal and other appropriate order. Each and every day intervening between this and the next date of hearing has to be utilized while giving effect to the judgment passed by this Tribunal and the work so done on each and every day has to be furnished to the Tribunal for perusal. No delay in

ATTESTED


KARAK
Service
Department

20

the payment of pensionary benefits would be tolerated, needless to mention here that an official of no less rank than Primary School Head Teacher do not repose trust on the department by keeping the account documents in his own custody there is a big trust deficit between them which is unfortunate. Petitioner who was reluctant is directed to handover the documents to the official of District Education Officer Karak for its onward process. The DEO who is not present today in this Tribunal has reportedly gone to attend certain course at Islamabad, his representative was reminded that his participation in the course was more important than attending this court, for which he was having no appropriate answer. At this stage it has to be observed with concern when the official at the helm of affairs do not bother or feel any responsibility of submitting his own response or firsthand information regarding an issue which has to be resolved within a reasonable period of time then the chances of the resolution of issues remains meagre. His appearance would not have taken more than half an hour and could have resumed his current assignments. The DEO Karak has to ensure his attendance on the next date alongwith submission of the statement of account on 07.09.2020.



(MUHAMMAD JAMAL KHAN)
MEMBER

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

EP 401/18

21

07.09.2020

Petitioner alongwith counsel and Sheraz Ahmad, D.E.O (Male) Karak (respondent No. 4) alongwith Addl. AG for the respondents present.

It is the stance of D.E.O that the department required certain documents including service book etc. from the petitioner in order to proceed further towards implementation of the judgment. As per procedure requisite documents are to be submitted to the SDEO Karak. The DEO also undertakes to process the case of petitioner as early as possible. The petitioner, in turn, ensures the submission of required documents to the SDEO on 15.09.2020.

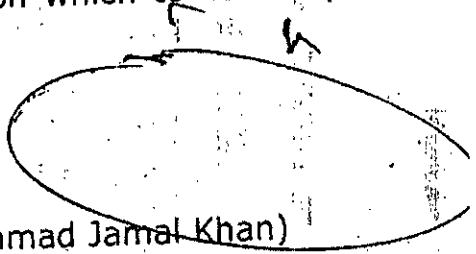
Adjourned to 20.10.2020 for further proceedings.

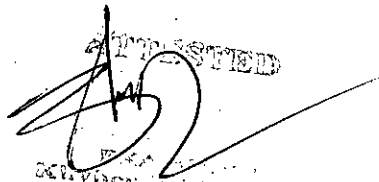

Chairman

20.10.2020

Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of the department Mr. Sher Nawab, Superintendent, are also present.

The legal fraternity is observing strike today, therefore, the case is adjourned to 05.11.2020 on which to come up for further proceedings before S.B.


(Muhammad Jamal Khan)
Member (Judicial)


Service Tribunal
Member

05.11.2020

Nemo for the petitioner. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is present.

Since the Members of the High Court as well as of the District Bar Association, Peshawar, are observing strike today, therefore, learned counsel for petitioner is not available today. Adjourned to 30.12.2020 for further proceedings before S.B.

(Muhammad Jamal Khan)
Member (Judicial)

30.12.2020

Petitioner in person present. Mr. Noor Zaman Khattak, District Attorney for respondents present.

The District Attorney on the directions of court, tried to contact DEO(M) Karak for the purpose to ascertain and confirm the receipt of necessary documents ^{from} the appellant. Receipt of which produced ^{before} the court, However, the officer concerned could not be traced and contacted. The DEO(M) Karak is, therefore, directed to appear in person on the next date of hearing.

Adjourned to 28.01.2021 before S.B.

(Mian Muhammad)
Member(E)

APPEARED

District Attorney
Service
Peshawar

23

28.01.2021

Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Saeedullah, Focal Person, for the respondents are also present.

Due to paucity of time, proceeding in the instant execution petition could not be conducted, therefore, adjourned to 23.02.2021 before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

23.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 26.04.2021.

Reader

26.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 17.06.2021 for the same as before.

Reader

ATTESTED

CHIEF CLERK
Service Tribunal
Islamabad

24

17.06.2021

Petitioner in person and Mr. Kabirullah Khattak, Addl. AG alongwith Sajid Superintendent for the respondents present.

The petitioner has at his credit the judgment of this Tribunal passed on 29.11.2017 in Service Appeal No. 707/2016. According to operative part in Paragraph-6 thereof, the appeal was accepted and the appellant was reinstated into service with direction to the department to hold de-novo proceedings within a period of two months, after receipt of the judgment. It was further held in the operative part that the issue of back benefits of the appellant/petitioner shall be subject to final outcome of the de-novo proceedings. As evident from the facts discussed in Paragraph-2 of the judgment, the appellant was retired compulsorily from service on 22.02.2016 and on his approaching to the Tribunal with the aforementioned appeal, he was reinstated in service with order of denovo enquiry. After reinstatement of the petitioner, he was not subjected to denovo enquiry and by an order was issued on 05.10.2018 towards implementation of judgment of this Tribunal, the compulsory retirement of Mr. Niaz Gul (present petitioner) was cancelled/withdrawn and he was straightaway reinstated in service w.e.f 31.08.2015 to 05.02.2018; while he was allowed to proceed on retirement from



ATTESTED



Service Tribunal
Islamabad


(25)

service w.e.f 05.02.2018 after attaining the age of superannuation vide pension sanction order No. 4698-4701 dated 02.10.2018. In order to take a viable route for inference about implementation of judgment at petitioner's credit, it is noteworthy that the reinstatement order was given effect from 31.08.2015 while the period in between said date and that of the date of reinstatement order (05.02.2018) was treated as leave without pay. Obviously, the said period having been treated as such carries adverse effects for total length of petitioner's service to be counted for pensionary benefits. Similarly, he has so far not cooperated for finalization of his pension case may on hope of some benefit of the Tribunal's judgment at his credit. With this position in background, a breakup of the period treated as leave without pay and then find out will help in determination whether it befits to implementation of the judgment in letter and spirit. The said period could be divided into three stages as noted below:-

1. First Period: 31.08.2015 to 20.02.2016.
2. Second period: 21.02.2016 to 28.11.2017.
3. Third period: 29.11.2017 to 04.02.2018.

The order dated 05.10.2018 was issued to the effect of cancellation/withdrawal of the compulsory retirement order dated 20.02.2016. If the department had conducted

ATTESTED

By: 
Officer in Charge
Service Tribunal
Bhubaneswar

(26)

the denovo enquiry and found that the petitioner was absent from duty between the period from 31.08.2015 to 20.02.2016, the said period could be treated as such but no denovo enquiry was conducted. So, the petitioner could not be treated adversely for that period when the department itself did not conduct the denovo enquiry. In absence of such enquiry, treating the first period as noted above, as leave without pay is tantamount to condemnation of petitioner unheard. After the date of his compulsory retirement dated 20.02.2016, the petitioner pursued different remedies against the order of his compulsory retirement until his Service Appeal No. 707/2016 was accepted on 29.11.2017. Before discussing the effects of the period from 31.08.2015 onwards till 05.02.2018, let it be clarified that the reinstatement of the appellant has become due on 29.11.2017 when the judgment was passed in his favour. Accordingly, the period from 29.11.2017 to 05.02.2018 was to be treated on duty because reinstatement was delayed by the respondents as much as they passed the order of reinstatement even after eight months of the superannuation age of the petitioner. So, the period from 29.11.2017 to 05.02.2018 treated as leave without pay is contraindicated to the spirit of judgment of this Tribunal and needs correction on the part of departmental authorities. Coming to the period from 21.02.2016 to



ATTESTED

Khair P. Kh. Khwaja
Service Tribunal
Peshawar

(27)

28.11.2017, it may be observed that the petitioner, due to effects of the order of compulsory retirement in field, was not able to perform the duty. If the department had conducted the denovo enquiry and as its outcome, it would have found that absence of the appellant before compulsory retirement was willful, then the same could be treated as leave without pay in continuation, the second period could also be linked with the original period of absence. For reasons best known to the departmental authorities, they did not opt for holding the denovo enquiry and they were pleased to set aside the order of compulsory retirement without enquiry. Then, there remains no justification with them to treat the period of absence in between 31.08.2015 and 28.11.2017 as leave without pay. Regarding the third period as noted above, needless to say that the petitioner would be deemed to have been reinstated in service by the judgment dated 29.11.2017; and if the department had failed to pass an administrative order of petitioner's reinstatement, said omission in no way is meant to deprive the petitioner of his right of reinstatement accrued to him under judicial pronouncement. Thus, the third period w.e.f. 29.11.2017 to 04.02.2018 has to be treated on duty. Taking combined view of the discussion herein before based on breakup of the period treated as leave without pay under departmental order dated 05.10.2018, the order so made

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

28

by the respondents does not serve spirit of the judgment under execution. Therefore, in order to bring the things in conformity with the judgment, the periods from 31.08.2015 to 20.02.2016 and from 21.02.2016 to 28.11.2017 be treated as leave with pay in light of leave rules, if the leave account of the petitioner supports that there was sufficient leave at his credit. The period from 29.11.2017 to 04.02.2018 be treated as duty period of the petitioner. The respondents without working on the given line, found an easy way to treat all the three aforementioned periods as leave without pay.

For the foregoing discussion, the respondents are required to issue an appropriate notification towards implementation of the judgment as directed herein above and to submit report in this respect on next date.
 Adjourned to 05.08.2021 before S.B.

ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar


 Chairman

29

05.08.2021

Petitioner in person and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Learned AAG states that the matter has been dealt with by Mr. Muhammad Adeel Butt, Addl. AG who is on summer vacations. Adjourned to 17.08.2021 before S.B.


Chairman

17.08.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

No representative of the respondents is in attendance. Learned AAG is required to contact the respondents for issuance of an appropriate notification towards implementation of the judgment as directed in order dated 17.06.2021 and submit compliance report on next date. Case to come up on 22.09.2021 before S.B.

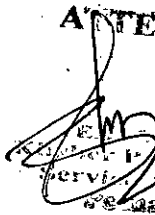

Chairman


22.09.2021

Petitioner in person and Mr. Muhammad Adeel Butt, AAG for the respondents present.

Learned AAG seeks time to contact the respondents for submission of compliance report. Respondents are directed to issue an appropriate notification towards implementation of the judgment as directed in order dated 17.06.2021 and submit compliance report on next date. Case to come up on 05.10.2021 before S.B.

ATTESTED


Attesting Officer
Services Division
Government of Punjab


Chairman

30

05.10.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Sher Nawab, Superintendent for the respondents present.

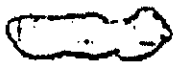
Copy of the letter dated 28.09.2021, produced on behalf of respondents today is placed on file. Accordingly, the case for execution of the judgment within the parameter of the order dated 17.06.2021 is in progress. The respondents are directed to come up with final report on 08.11.2021 before S.B.


Chairman


08.11.2021

Petitioner in person and Mr. Kabirwah Khattak, Addl. AG alongwith Sher Nawab, B&AO for the respondents present.

Representative of the respondents has produced a copy of DFA for sanction of leave. Placed on file. Representative is directed to come up with sanction/notification strictly in accordance with the guideline given in the order dated 17.06.2021. Case to come up on 30.11.2021 before S.B.



~~Chairman of the Working Committee~~
~~for the above case~~
~~Chairman~~
Chairman

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

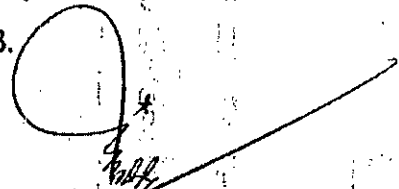


31

30.11.2021

Petitioner alongwith his counsel present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Sher Nawab, B&AO for respondents present.

Representative of the respondents submitted a proper sanction order bearing endorsement No. 5344-45/Leave Case/ADO pry: dated Karak the 30th November 2011 which is placed on file. Copy of the same is handed over to the learned counsel for the petitioner for objection, if any. To come up for further proceedings on 23.12.2021 before S.B.



(MIAN MUHAMMAD)
MEMBER (E)

23.12.2021

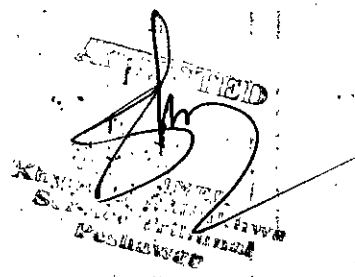
Petitioner in person and Mr. Muhammad Adeel Butt,

15.02.2022

Addl. AG alongwith Muhammad Rafiq ADO (Sports) for the Tribunal is defunct, therefore, case is adjourned to 06.04.2022 for the same as before. Petitioner submitted objection petition on sanction order. Copy handed over to learned AAG. To come up for arguments on 14.022022 before S.B.

Reader

Chairman



32

04.02.2022

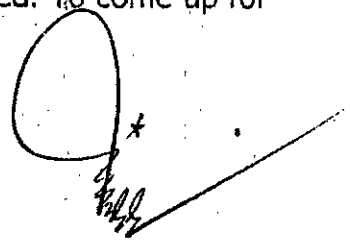
Due to retirement of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 06.04.2022 for the same as before.


Reader

06.04.2022

Clerk of learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. M. Rafiq, ADEO for respondents present.

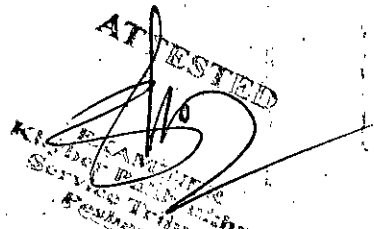
Clerk of learned counsel for the petitioner seeks adjournment on the ground that learned counsel is not available today due to general strike of the bar. Adjourned. To come up for further proceedings on 27.06.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER(E)

27.06.2022

Learned Member (Executive), is on leave. Therefore, the case is adjourned to 11.08.2022 for the same as before.

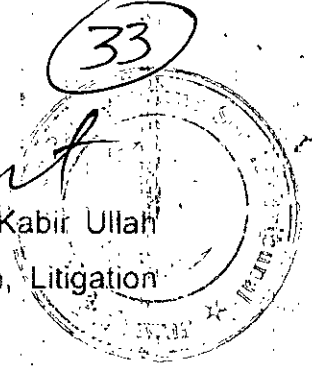

ATTESTED
K. I. DE. P. S. (K. I. DE. P. S.)
Service Tribunal
Faisalabad


READER


11.08.2022

E.P. No. 401/2018 33
Niaz Gul vs Govt

Counsel for the petitioner present: Mr. Kabir Ullah
Khattak, Additional AG alongwith Saeed Ullah, Litigation
Officer for respondents present.



Representative of the respondent department presented a letter dated 08.06.2022 of SDEO (Male) Karak to DEO (Male) Karak through which the case of the appellant has been taken up with DEO (M) Karak for the needful. Copy of the same has been provided to the counsel of the petitioner also. To come up for further proceedings on 16.09.2022 before S.B.


(Fareeha Paul)
Member (E)

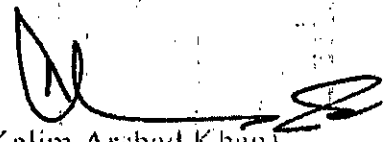
16th Sept, 2022


None present for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Abdullah, ADEO for respondents present.

Learned AAG has produced copy of revised sanction order bearing Endst No. 4037-38/LPR/Pry: Section dated 14.09.2022 whereby the grievance of the petitioner has been redressed, Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 16th day of September, 2022.

Date of Presentation of Application... 11/7/23
Number of Pages... page 23
Copying Fee... 115/-
Total... 120/-
Name of... Shahzad
Date of... 11/7/23
Date of Delivery of... 11/7/23


(Kalim Arshad Khan)
Chairman

Certified (to be true copy)

11/7/23

11

(34)

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE), KARAK.

SANCTION

Under the relevant pension provisions and rules, Mr. Niaz Gul, PSHT GPS Azer Khel, Karak is hereby allowed to proceed on superannuation retirement from service w.e.f 05-02-2018 (A.N) with full benefits of pension and gratuity whereas the earlier office order of compulsory retirement order No. 1128-33 dated Karak the 20-02-2016 has been cancelled in light of the judgment of honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No 707/2016 dated 29-11-2017.

District Education Officer (M)
Karak

Endst: No 4698-472 Date Karak the 2/10/2018

1. Director, Elementary and Secondary Education, Officer Khyber Pakhtunkhwa Peshawar.
2. District Account Officer, Karak.
3. Dy: District Education Officer (M), Karak.
4. Sub Divisional Education Officer (M), Karak is directed to make necessary entry in his service book and the pension case be forwarded to the Office of the undersigned for further necessary action.
5. Niaz Gul, PSHT GPS Azer Khel, Karak.

ATTESTED

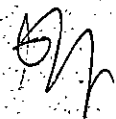
TA 2/10/2018
District Education Officer (M)
Karak

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE), KARAK.

(35)

OFFICE ORDER.

In light of the judgment of Hon'able Service Tribunal Khyber Pakhtunkhwa, Peshawar passed in Service Appeal No. 707/2016 dated 29-11-2017, the compulsory retirement order of Mr. Niaz Gul PHST, GPS Azer Khel, Karak vide Endst: No. 1128-23 dated 20-02-2016 is hereby cancelled / withdrawn and he is re-instated in service w.e.f 31-08-2015 whereas the absent period from official duty w.e.f 31-08-2015 to 05-02-2018 is treated as leave without pay and he has been retired from service w.e.f 05-02-2018 (A.N) after attaining the age of superannuation vide pension sanction order No. 4698-4701 dated 02-10-2018.

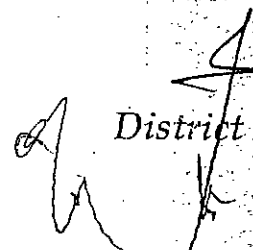

District Education Officer (M)
Karak

Endst: No 4825-30 Dated Karak the 5/10/2018

Copy to the:-

1. Director , Elementary and Secondary Education, Officer Khyber Pakhtunkhwa Peshawar.
2. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar.
3. District Account Officer, Karak.
4. Dy: District Education Officer (M), Karak.
5. Sub Divisional Education Officer (M), Karak.
6. Niaz Gul, PSHT GPS Azer Khel, Karak.

ATTESTED


District Education Officer (M)
Karak

36

OFFICE OF THE DISTRICT EDUCATION OFFICER MALE KARAK

REVISED SANCTION:

Under the relevant pension provisions and rules, Mr. Niaz Gul PSHT Bps. 15 GPS Azher Khel Karak is hereby allowed to proceed on Superannuation Retirement from service w.e.f. 05-02-2018 (A.N) with full benefits and gratuity whereas in light of Khyber Pakhtankhwa service tribunal judgment petition No. 84/2018 dated 19-03-2018 the absent period may be treated as mentioned below.

is considered as

Note: Necessary entry in this respect should be made in his Service Book.

S.No	PERIOD FROM	TO	No of Days	Remarks
1.	31-08-2015	28-12-2015	120 Days	On Full Pay
2.	29-12-2015	15-06-2016	170 Days	On Half Average Pay
3.	16-06-2016	28-11-2017	527 Days	Without Pay

DISTRICT EDUCATION OFFICER
(MALE) KARAK

[Signature]
Dated Karak the 14/9 /2022

Endst: No 4027-38 LPR/Pry: Section

Copy to the:

1. District Accounts Officer Karak.
2. SDEO (Male) Karak alongwith original service book

DISTRICT EDUCATION OFFICER
(MALE) KARAK

[Signature]

ایس اے ڈی جی
3/9/22

ATTESTED

37

**BEFORE THE HON'ABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Execution Petition No. 401/2018

In

Service Appeal No. 707/2016

Niaz Gul (Appellant)

VERSUS

EDD
~~Govt. of KP~~ & others (Respondents)

WRITTEN REPLY

Written reply on behalf of District Education Officer (Male), Karak

1. That the judgment in Service Appeal No. 707/2016 was passed on 29-11-2017 by this honourable Service Tribunal and compulsory retirement order dated 20-02-2016 was set aside.
2. That office of the Additional Advocate General KP, Service Tribunal Peshawar vide letter No. 2071-75/AAG dated 04-12-2017 was sent to Secretary to Govt: of KP , Education (E & SE), Dept: Peshawar, Director Education (E & SE) KP Peshawar and District Education Officer (Male), Karak and advised to direct your representative to get attested copies of the judgment dated 29-11-2017. Photocopy of letter No. 2071-75/AAG dated 04-12-2017 is enclosed as Marked-A.
3. That Registrar KP Service Tribunal Peshawar vide letter No. 2607/ST dated 05-12-2017 provided attested copy of judgment dated 29-11-2017 of this honourable Tribunal to District Education Officer (Male), Karak which was dispatched on 11-12-2017. Photocopy of letter No. 2607/ST dated 05-12-2017 alongwith photocopy of judgment is enclosed as Marked-B.

ATTESTED

4. That Secretary E & SE KP Peshawar vide letter No. SO (Lit-II) E & SED/1-3/SA#707/16/Niaz Gul dated Peshawar, the 07-12-2017 was dispatched on 16-12-2017 to the District Education Officer (Male), Karak with the directions to get attested copies of the said judgment dated 29-11-2017 and sent it to this department alongwith your suggestion

(30)

immediately. (Photocopy of SO (Lit-II) E & SED/1-3/SA#707/16/Niaz Gul dated Peshawar, the 07-12-2017 is enclosed as **Marked-C**.

5. That Director (E & SE) Department KP Peshawar sent letter vide letter No. 3566 /Lit-II dated Peshawar the 28-12-2017 to District Education Officer (Male), Karak with the directions to your representative to get attested copies of the judgment dated 29-11-2017 and other relevant record & **approach law department for further necessary action**. Photocopy of letter No. 3566 /Lit-II dated Peshawar the 28-12-2017 is enclosed as **Marked-D**.
6. That the District Education Officer (Male), Karak submitted all attested copies of Service Appeal No. 707/2016 vide letter No. 7457-60 dated 26-12-2017 to Director E & SE KP Peshawar for de-novo proceedings. Photocopy of letter No. 7457-60 dated 26-12-2017 is enclosed as **Marked-E**.
7. That the District Education Officer (Male), Karak vide letter No. 7457 dated 26-12-2017 **sought guidance** from the Director Elementary & Secondary Education Department, KP Peshawar regarding conducting den-novo inquiry as per judgment of honourable Tribunal or to file CPLA in august Supreme Court of Pakistan against the above mentioned judgment. Photocopy of letter No. 7457 dated 26-12-2017 is enclosed as **Annexure-F**.
8. That in the light of judgment of this honourable Tribunal dated 29-11-2017, the appellant was re-instated in service vide Endst: No. 4825-30 dated 05-10-2018 w.e.f 31-08-2015 whereas the absent period from official duty w.e.f. 31-08-2015 to 05-02-2018 was treated as leave without pay and he was retired on superannuation from service w.e.f 05-02-2018 vide sanction Endst: No. 4698-4701 dated 02-10-2018. (Photocopy of office order No. 4825-30 dated 05-10-2018 and sanction office order No. 4698-4701 dated 02-10-2018 are enclosed as **Marked-G & H** respectively.
9. That the execution petition No. 84/2018 was filed by the appellant for implementation the judgment of this honourable Service Tribunal dated 29-11-2017.
10. That this honourable Service Tribunal disposed of the execution petition on 08-10-2018 in light of re-instatement order No. 4825-30 dated 05-10-2018 and Pension Sanction Order No. 4698-4701 dated 10-02-2018.

TA

ATTESTED

39

11. That de-novo inquiry was not conducted due to laps of time in official correspondence with the high ups regarding the judgment of this honourable Service Tribunal and in the meanwhile the appellant was reached to age of superannuation hence he was retired on superannuation w.e.f 05-02-2018.
12. That after implementation of the judgment of this honourable Service Tribunal the appellant was directed by the SDEO (Male), Primary Karak vide his letter No. 1036 dated 25-10-2018 to provide pension paper and then issued reminder for provision of pension paper with service book vide letter No. 35-36 dated 15-01-2019. Photocopy of letter No. 1036 dated 25-10-2018 and letter No. 35-36 dated 15-01-2019 are enclosed as **Marked-I & J**.
14. That vide letter No. 315 dated 15-01-2019 the District Education Officer (Male) Karak served reply the application submitted by appellant dated 27-10-2018 and application dated 03-12-2018. (Photocopy of Reply with letters dated 27-12-2018 and 03-2-2018 are enclosed as **Annexure "K"**)

=====

Prayer

So it is, therefore, most humbly and respectfully prayed that this honourable Service Tribunal KP Peshawar may very graciously be pleased to dismiss the execution petition as the judgment of this honourable Service Tribunal has been implemented.

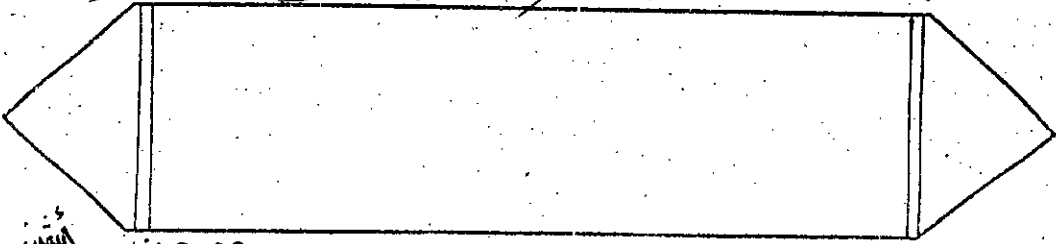
=====

Dated:- 15-03-2019

TA
District Education Officer
(Male), Karak.

ATTESTED

بعد التماس سے درخواستی کی کارروائی



بنام گورنمنٹ آف پاکستان
2023ء منجانب

نیاز

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ
آن مقام کے لئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب مرصوف کو مقدمہ کی کل کارروائی کا کامل اختیار دیا گیا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دینے جو جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صوبی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برادگی اور منسوخی

نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکورہ
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے دہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Accepted

2023

المرقوم

وہ

کے لئے منظور ہے۔

سند

بمقام