

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 604/2023

Original

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | By the order of Chairman |
| 1 | 31.08.2023 | <p>The implementation petition of Mr. Fida Muhammad is submitted today by Mr. Mir Zaman Safi Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman</p> <p>REGISTRAR</p> |

BEFORE THE KHYBER/PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Execution Petition # 604/2023
Implementation Petition No. _____ /2023

In

Appeal No.8636/2020

Khyber Pakhtunkhwa
Dis 7286
Dateu 31/8/23

FIDA MUHAMMAD

VS

EDUCATION DEPTT:

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PETITIONER/APPLICANT

THROUGH:

M. Zaman Safi
MIR ZAMAN SAFI
ADVOCATE

MOBILE NO.0333-9991564
0317-9743003

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition # 604/2023

Implementation Petition No. _____/2023

In

Appeal No.8636/2020

Khyber Pakhtukhwa
Service Tribunal

Diary No. 7286

Dated 31/8/2023

Mr. Fida Muhammad, Ex-DM (BPS-15),
GMS Devil, District Mansehra.

.....PETITIONER

VERSUS

- 1- The Secretary, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (Male), Mansehra.

.....RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
OF THIS AUGUST TRIBUNAL DATED 20.02.2023 IN
LETTER AND SPIRIT

R/SHEWETH:

- 1- That the petitioner filed Service appeal bearing No. 8636/2020 before this august Service Tribunal against the impugned Notification dated 07.11.2019 whereby appointment order of the petitioner was withdrawn.
- 2- That appeal of the petitioner was finally heard by this august Tribunal on 20.02.2023 and was decided in favor of the petitioner vide judgment dated 20.02.2023. Copy of the judgment is attached as annexure.....A.
- 3- That after obtaining attested copy of the judgment dated 20.02.2023 the petitioner submitted the same before the respondents for implementation but till date the judgment of this august Tribunal has not been implemented by the respondents in letter and spirit.
- 4- That the petitioner has no other remedy but to file this implementation petition.

It is, therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to implement the judgment of this august Tribunal dated 20.02.2023 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER


FIDA MUHAMMAD

THROUGH:


**MIR ZAMAN SAFI
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2022

In

Appeal No:8636/2020

FIDA MUHAMMAD

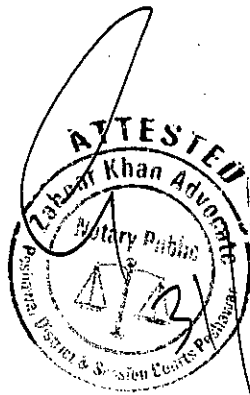
VS

EDUCATION DEPTT:

AFFIDAVIT

I **Mir Zaman Safi, Advocate** on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.


MIR ZAMAN SAFI
ADVOCATE



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A-④

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUN
KHWA PESHAWAR

Service appeal No..... of 2020



Fida Muhammad son of Muhammad Fareed r/o Village Nakkah Post Office Lassan Nawab, Tehsil & District Mansehra, Ex DM GMS Devil MansehraAppellant

Versus

- 1) Secretary, Elementary and Secondary Education Department Peshawar
- 2) Director, Elementary and Secondary Education Department Peshawar.
- 3) District Education Officer (Male) Mansehra.....Respondents

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION NO 17693-96 DATED 07-11-2019 WHEREBY RESPONDENT NO 03 HAS WITHDRAWN THE APPOINTMENT NOTIFICATION OF THE APPELLANT VIDE ENDST NO 10261-67 DATED 20.06.2019 AND WHERE UPON APPELLANT PREFER AND DEPARTMENTAL APPEAL AGAINST SAID ORDER, WHICH WAS REJECTED VIDE DATED 02-07-2020.

PRAYER:-

On acceptance of the appeal, the impugned NOTIFICATION NO. 17693-96 Dated 07-11-2019 may graciously be set-aside being illegal, void, without Lawful authority, of having no legal effect and factually erroneous and appellant be reinstated into service as DM with all back benefits and other admissible allowances as per law on the subject and any other order as may deem fit and appropriate in the fact and circumstances of the case.

Respectfully Sheweth:-

- 1) That, initially, appellant was appointed against vacant post of DM at GMS Ahl Seri, Mansehra vide appointment Order Endst: No.29911-19 Dated 13-11-1996 by Competent Authority (Respondent No 03)

(Copy of appointment order dated 13-11-1996 is annexed as annexure "A").

- 2) That, appellant performed his duties and continued his services, unfortunately the service of appellant

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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SCANNED
KPST
Peshawar

20th Feb, 2023

Learned counsel for the appellant and Mr. Asif Masood Ali Shah,
Deputy District Attorney for the respondents present.



2. At the very outset, it was pointed out that Appeal bearing No. 5793/2020 titled "Khani Zaman Versus Secretary, Elementary & Secondary Education Department Peshawar and 02 others", had been decided by this bench of the Tribunal in the following manner:-

SCANNED
KPST
Peshawar

A perusal of the record would show that a scrutiny committee was constituted for scrutinizing the documents of the appellants as well as others for determining of their eligibility for appointment in light of the Sacked Employees Act, 2012. The scrutiny committee recommended the appellants for their appointment and has mentioned in its report that the scrutiny committee checked the record of all the candidates one by one. A meeting of the District Selection Committee was then held under the Chairmanship of DEO (Male) Mansehra, wherein the appellants were recommended for appointment on their respective posts and thus their appointment Notifications were issued by the competent Authority. The minutes of Departmental Selection Committee are available on the record, wherein it is mentioned that the committee had made thorough deliberations and had perused the record minutely. The appellants were, however later on issued show-cause notices on the ground that upon verification, fake and fabricated documents were found in their service record. Final show-cause notices were then issued to the appellants without mentioning therein that

ATTESTED

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KYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

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regular inquiry was dispensed with. It appears that the main allegations against the appellants were that their names had been inserted in the respective termination orders by way of tempering. The question of tempering being factual in nature was required to have been ascertained through a regular inquiry but the same has not been done. The departmental Authority was required to have adduced evidence in support of the allegations against the appellants by providing them opportunity of cross-examination. Although it is mentioned in the impugned Notifications that proceedings were conducted under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but the mandatory provisions of the same were not complied with. In these circumstances, conducting of de-novo inquiry in the matter is necessary for reaching a just and right conclusion.

In view of the above discussion, the appeal in hand as well as connected Service Appeal bearing No. 5892/2020 titled "Ejaz Ahmad Versus Secretary, Elementary and Secondary Education Department Peshawar and two others", Service Appeal bearing No. 8634/2020 titled "Rafaqat Ali Versus Secretary, Elementary and Secondary Education Department Peshawar and two others" and Service Appeal bearing No. 8635/2020 titled "Zardad Khan Versus Secretary, Elementary and Secondary Education Department Peshawar and two others" are allowed by setting-aside the impugned orders and the appellants are reinstated in service for the purpose of de-novo

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7/02/23

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inquiry. The departmental Authority shall conduct de-novo inquiry strictly in accordance with the relevant law/rules within a period of 90 days of receipt of copy of this judgment and the result be intimated to this Tribunal through Registrar. Needless to mention that the appellants shall be associated with the inquiry proceedings and fair opportunity be provided to them to defend themselves. Keeping in view peculiar facts and circumstances of the cases, the issue of salary and back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

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Peshawar

3. This appeal being no different with the fact of the above stated appeal is also decided in the same manner. Disposed of accordingly. Consign.

4. Pronounced in open court in Abbottabad and given under our hands and seal of the Tribunal on this 20th day of February, 2023.

(Salah Ud Din)
Member (Judicial)
Camp Court Abbottabad

(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

Certified to be true copy

EXHIBIT
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 08/03/23
Number of Page 4
Copying Fee 20/-
Urgent -
Total 20/-
Name of -
Date of Copy 21/3/23
Date of Delivery of Copy 21/3/23

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2023

Fida Muhammad

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

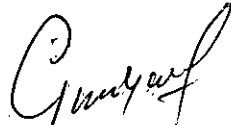
Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Fida Muhammad

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, Peshawar** 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 cost. 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.

Dated. _____ / _____ /2023



CLIENT



ACCEPTED

MIR ZAMAN SAFI
ADVOCATE

OFFICE:

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Hashtnagri, Peshawar.
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