

17.04.2018

Counsel for the petitioner and Adll: AG for respondents present. Counsel for the petitioner seeks adjournment. Adjourned. To come up for further proceedings on 11.07.2018 before S.B.



(Ahmad Hassan)
Member

11.07.2018

Clerk of the counsel for petitioner present. Mr. Sardar Shoukat Hayat, Additional AG for the respondents also present. Implementation report not submitted. Learned Additional AG requested for further adjournment. Adjourned. To come up for implementation report on 09.08.2018 before S.B.



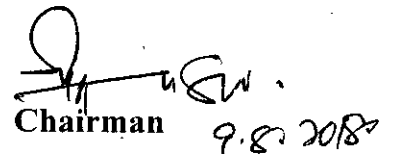
(Muhammad Amin Khan Kundi)
Member

09.08.2018

Mr. Taimur Ali Khan, Advocate counsel for the petitioner present. Mr. Arif Saleem, Stenographer alongwith Mr. Kabirullah Khattak, Adll: AG for respondents present and submitted the judgment of the august Supreme Court of Pakistan wherein de-novo enquiry has been ordered in the present case.

In view of the above judgment which is placed on file, the current execution petition became infructuous, hence disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.

Announced:
09.08.2018



Chairman 9.8.2018

FORM OF ORDER SHEET

Execution Petition No. 242/2017

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	18.12.2017	<p>The Execution Petition of Mr. Ansar Mehmood submitted to-day by Mr. Taimur Ali Khan Advocate may be entered in the relevant Register and put up to the Court for proper order please</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 18/12/17</p>
2-	22/12/17.	<p>This Execution Petition be put up before S. Bench on <u>29/12/17</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
	29.12.2017	<p>Clerk of the counsel for the petitioner present and Adl: AG present. Notice be issued to the respondents for implementation report positively, on 20.02.2018 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> (Gul Zeb Khan) Member (E)</p>
	20.02.2018	<p>Counsel for the petitioner present and Mr. Muhammad Jan, DDA alongwith Mr. Arif Saleem, S.I (Legal) for official respondents present. Implementation report not submitted. Representative of the respondent department seeks adjournment for implementation report on the date fixed. Granted. To come up for implementation report on 17.04.2018 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> (Gul Zeb Khan) Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 242 /2017
In Service Appeal No.63/2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1093

Dated 18/12/2017

Ansar Mehmood, Ex-Constable No.900,
District Kohat.

PETITIONER

VERSUS

1. The Provincial Police officer, KPK, Peshawar.
2. The Inspector General of Police KPK, Peshawar.
3. The Deputy Inspector General Police Kohat Region.
4. The District Police Officer Kohat.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 13.11.2017 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No. 63/2017 against the orders dated 19.09.2014, whereby the appellant was removed from service and against the order dated 13.11.2014 and 8.12.2015 whereby the departmental appeal and revision were rejected..
2. The appeal was finally heard by this august Tribunal on 13.11.2017 and the august Tribunal was kind enough to accept the appeal and reinstate the appellant into service. **(Copy of judgment dated 13.11.2017 is attached as Annexure-A)**
3. That the appellant filed application for the implementation of judgment of this august Tribunal and waited for more than one months to implement the judgment dated 13.11.2017 of this Honourable Tribunal, but the departmental authority did not take any action on the judgment dated 13.11.2017 till date.

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 13.11.2017 of this Honourable Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the department may be directed to implement the judgment dated 13.11.2017 of this august 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.

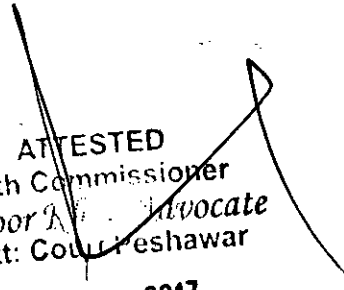

PETITIONER
Ansar Mehmood

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT:

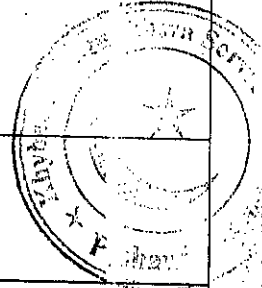
It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.


ATTESTED
Oath Commissioner
Zahoor Ali Advocate
Distt: Court Peshawar

18 DEC 2017


DEPONENT

A 3



Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	13.11.2017	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p align="center">Service Appeal No. 63/2017</p> <p>Date of Institution ... 20.01.2017 Date of Decision ... 13.11.2017</p> <p>Ansar Mehmood, (Ex-Constable # 900 District Kohat)</p> <p align="right">Appellant</p> <p align="center">Versus</p> <ol style="list-style-type: none"> The Provincial Police Officer Khyber Pakhtunkhwa. The Inspector General of Police Khyber Pakhtunkhwa. The Deputy Inspector General Police Kohat Region. The District Police Officer Kohat. <p align="right">Respondents</p> <p align="center"><u>JUDGMENT</u></p> <p><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Learned counsel for the appellant present. Learned Deputy District Attorney on behalf of the respondents present.</p> <p>2. The appellant has filed the present appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act,1974 against the respondents and made impugned order dated 19.09.2014 whereby the appellant was awarded major penalty of Removal from Service on the ground of absence from duty. The appellant has also challenged the orders dated 13.11.2014 & 08.12.2015 whereby the departmental appeal and then Petition under Rule-11A of Khyber Pakhtunkhwa Police Rules 1975 filed by appellant was rejected.</p>

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ATTESTED

Signature and stamp of the Khyber Pakhtunkhwa Service Tribunal, Peshawar.

ATTESTED

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3. Learned counsel for the appellant argued that he impugned order of removal from service is illegal and void. Further argued that the impugned order is also harsh. Further argued that vide the impugned order, the competent authority has also regularized the absence period of appellant as leave without pay hence the impugned order of removal from service is not tenable in the eyes of law hence liable to be set aside.

4. On the other hand learned Deputy District Attorney while opposing the present appeal argued that the appellant remained willfully absent without any application or permission and codal formalities were also completed, as such the impugned order doesn't warrant any interference.

5. Arguments heard. File perused.

6. Perusal of the impugned order dated 19.09.2014 would show that the competent authority while awarding the major punishment of removal from service on the charge of absence from duty, also treated the period of absence of appellant as leave without pay. The relevant portion of the impugned order dated 19.09.2014 is reproduced as under:-

"Since he is habitual absentee and has got no interest in the discharge of his official duty and he is an extra burden on government exchequer, therefore, the undersigned took a departmental action against him and awarded a major punishment i.e Removal from

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 Secretary Tribunal,
 Prathiyar

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Service and his absence period i.e 22 days is treated as leave without pay.

7. The authority while passing the order of removal of the appellant from service treated the period of absence of the appellant as leave without pay and in this way regularized his absence, hence the very ground has vanished on which the appellant had been proceeded against. When appellant was treated on leave without pay then he could not have been considered absent. In this regard judgment of august Supreme Court of Pakistan titled LAHORE DEVELOPMENT AUTHORITY and others---- Petitioners Versus MUHAMMAD NADEEM KACHLOO and another----Respondents (2006 S C M R 434) may be quoted as a reference. Consequently the present appeal is accepted and the impugned orders to the extent of punishment of Removal of appellant from service are set aside and resultantly the appellant is reinstated. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

ATTESTED

Certified true copy
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Announced SD/- M. Hamid Mughal,
 Member

SD/- Ahmad Hassan,
 Member

سروس ٹریڈ سوشل انشور

الف محمد 2 منجانب
الف محمد بنام

اجراء
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لیسٹ انشور کے لیے جہم سولٹی خان امیر سولٹی
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقررات ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری ٹیک طرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی 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 باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخست منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے
سبب سے و ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

Accepted
&
Attested
GA

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ماہ

الرقوم

العبد گواہ العبد

کے لئے منظور ہے۔

مقام



*Pls M
F W
D.S.P.
a*

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. 752 /Legal dated Peshawar, the 02/03/2018

Office of the D.S.P.
Legal, Kohat.

To: - The District Police Officer,
Kohat

Dy: No. 183
Dated 5-3-18

Subject: - APPEAL NO. 63/2017, TITLED EX-FC ANSAR MEHMOOD NO. 900 VS
PROVINCIAL POLICE OFFICER, KP & OTHERS.

Memo:-

Please refer to your office memo No. 4165/L.B dated 26.02.2018, on the subject noted above.

The Service Appeal was accepted by the Service Tribunal Khyber Pakhtunkhwa Peshawar, while Honorable Supreme Court of Pakistan on acceptance of the CPLA lodged by department set aside the judgment of Service Tribunal, and remanded the case to the departmental authority for decision a fresh after holding de-novo enquiry vide order dated 16.02.2018.

In view of the position explained above, appellant may be reinstated in service and enquiry file may be submitted before the Deputy Inspector General of Police E&I CPO, Peshawar for de-novo enquiry proceedings.

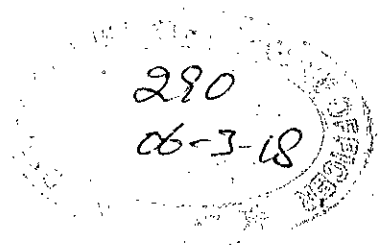
*No 4682
dat 02-3-2018*

*PA
For necessary action
as directed please.*

*J
02/3 02/18*

[Signature]

AG/Legal,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
02.03.2018



Steno

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 567-P OF 2017

(On appeal against the Judgment dated
13.11.2017 passed by KPK Service Tribunal,
Peshawar in Appeal No.63/2017)

Provincial Police Officer Khyber Pakhtunkhwa, Peshawar & others

Petitioners

VERSUS

Ansar Mehmood

... Respondents

For the Petitioners: Barrister Qasim Wadood, Addl.A.G.KPK

For the Respondents: Ms. Misbah Gulnmar Sharif, ASC

Date of Hearing: 16.02.2018.


ORDER

EJAZ AFZAL KAHAN, J. This petition for leave to appeal has arisen out of the judgment dated 13.11.2017 of the Service Tribunal whereby it allowed the appeal filed by the respondent, set aside the order of his removal from service and reinstated him.

2. Learned Additional Advocate General appearing on behalf of the Petitioner contended that the Service Tribunal by relying on the judgment rendered in the case of Lahore Development Authority and others Vs. Muhammad Nadeem and another 2006 SCMR 434 allowed the appeal filed by the respondents without appreciating its ratio which is reflected in para 5 of the said judgment.

3. Learned ASC appearing on behalf of the respondents contended that the respondent was seriously ill, that proof of his illness was fully vouched and documented; that he having informed the Moharrar left the PS and that he as such cannot be said to have committed a misconduct of a magnitude as could call for his removal from service.

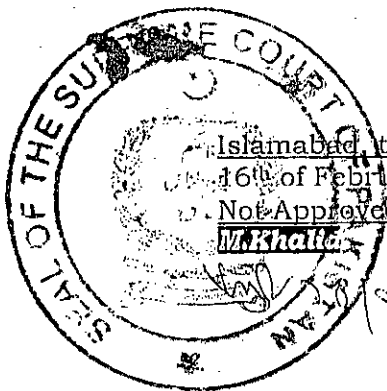
ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

4. We have gone through the record carefully and have considered the submissions made by the parties.

5. A look at the impugned judgment reveals that the Service Tribunal by relying on the judgment of this Court rendered in the case of Lahore Development Authority and others Vs. Muhammad Nadeem and another supra allowed the appeal without appreciating its ratio which is reflected in para five of the judgment. The tribunal did not consider the other circumstances nor did it give any opinion on the merits of the case including the illness of the respondent. In the circumstances it was a case for denovo inquiry and not an outright exoneration of the respondent. Yes, the intervening period was treated as leave of the kind due but it could not be made the sole basis for annulment of the order of the departmental authority. A judgment thus rendered cannot be maintained. We therefore, convert this petition into appeal, allow it, set aside the order of the departmental appeal as well as impugned judgment and send the case back to the Departmental Authority for decision afresh after holding denovo inquiry.

Sd/- Ejaz Afzal Khan, J
Sd/- Faisal Arab, J
Certified to be True Copy



Court Associate
Supreme Court of Pakistan
Islamabad

4370/18

Civil/Criminal

Date of Presentation: 17.2.18

No of Warrants: _____

No of Folios: _____

Requisition for _____

Copy Fee in _____

Court Fee Stamp _____

Date of Completion of Case: 20/2/18

Date of delivery of Copy: 22/2/18

Compared by/Prepared by: _____

Received by: _____