


31<sup>st</sup> July, 2023


1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Original file is not before the court. Let original file be requisitioned. To come up for arguments on 26.09.2023 before D.B. P.P given to parties.

SCANNED  
K73T  
Peehawari

\*KaleemUllah\*

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rashida Bano)  
Member (J)

1<sup>st</sup> June, 2023

1. Learned counsel for appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for respondents present.

2. Learned counsel for appellant made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 05.07.2023 before D.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar



(Salah-Ud-Din)  
Member (J)



(Kalim Arshad Khan)  
Chairman

5<sup>th</sup> July, 2023 \*Mutazem Shah\*

1. Learned counsel for the petitioner present. Mr. Asad Ali Khan, Assistant Advocate General for respondents present.

2. Original file is not before the Court. Let original file be requisitioned. To come up for arguments on 31.07.2023 before D.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar



(Rashida Bano)  
Member (J)



(Kalim Arshad Khan)  
Chairman


\*Mutazem Shah\*

15.02.2023

Appellant in person present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Appellant submitted receipt of an amount of Rs. 10000/- deposited by him with the Registrar of this Tribunal as cost imposed upon him vide order dated 30.11.2022. Appellant also requested for adjournment on the ground that his counsel is not available today due to some domestic engagement. Adjourned. To come up for arguments on 21.03.2023 before the D.B.

  
(Farzana Paul)  
Member (E)


  
(Salah-ud-Din)  
Member (J)


21.03.2023

Junior to counsel for the appellant present.

Fazal Shah Mohmand, Additional Advocate General for the respondents present.

Former made a request for adjournment as senior counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 01.06.2023 before D.B. Parcha Peshi given to the parties.

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rozina Rehman)  
Member (J)

SCANNED  
KPST  
Peshawar


SCANNED  
KPST  
PESHAWAR


30<sup>th</sup> Nov 2022

1. Learned counsel for the appellant present and heard.

2. This application is for restoration of appeal dismissed in default vide order dated 15.03.2019. It appears that on 21.01.2019, the matter was fixed before the Tribunal and was adjourned to 15.03.2019 due to general strike of the bar. On 15.03.2019 the appeal was dismissed in default due to non-appearance of the appellant and his counsel. Learned counsel for the appellant contended that the then counsel for the appellant was not communicated the next date to the appellant. Even then the appellant cannot be absolved as he was also bound to pursue his cause and for the purpose he ought to have inquired about the status of his appeal or the dates to be fixed but he did not, therefore, to secure the ends of justice, this application is allowed but on payment of Rs.10000/- as cost to be paid to the other side. The appeal stands restored to its original number. The appellant is given last chance to argue this appeal failing which the appeal will be decided on the available record without the arguments. To come up for arguments on 15.02.2023 before D.B.

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 30th day of November, 2022.*

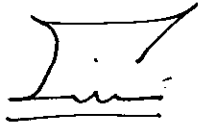
  
(Fareeha Paul)  
Member(E)

  
(Kalim Arshad Khan)  
Chairman

SCANNED  
KPST  
Peshawar

25<sup>th</sup> July 2022 Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not made preparation for arguments. To come up for arguments on 20.10.2022 before the D.B.



(Salah-Ud-Din)  
Member (J)



(Kalim Arshad Khan)  
Chairman

20<sup>th</sup> Oct, 2022 Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. Last opportunity is granted to him to argue the case on the next date failing which the case will be decided on the available record without arguments. To come up for arguments on 30.11.2022 before D.B.



(Fareeha Paul)  
Member(Executive)



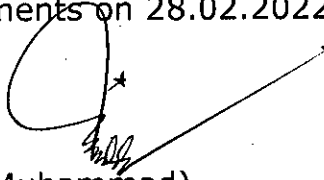
(Kalim Arshad Khan)  
Chairman



27.10.2021

Mr. Umer Farooq, Advocate, as proxy for learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Mr. Umer Farooq, Advocate, stated that he has been informed by learned counsel for the appellant that he would be unable to appear before the bench today, <sup>being</sup> due to out of station, therefore, adjournment may be granted. Adjourned. To come up for arguments on 28.02.2022 before the D.B.



(Mian Muhammad)  
Member (E)



(Salah-Ud-Din)  
Member (J)

28.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 27.05.2022 for the same as before.



Reader

27<sup>th</sup> May, 2022

Clerk of the counsel present. Mr. Muhammad Adil Butt, Addl. AG for respondents present.



Reader

Arguments could not be heard due to general strike of the bar. Case is adjourned. To come up for arguments on 25.07.2022 before D.B.



(Fareeha Paul)  
Member (E)




(Kalim Arshad Khan)  
Chairman

14.01.2021

Junior to counsel for appellant and Kabirullah Khattak learned AAG alongwith Salman Assistant for respondents present.

Due to COVID-19, the case is adjourned to for the same on 01.04.2021 before D.B.

  
READER

01.04.2021

Due to non availability of the concerned D.B, the case is adjourned to 05.07.2021 for the same.

  
Reader

05.07.2021

Appellant present through counsel.

Muhammad Rasheed learned Deputy District Attorney for respondents present.


Former made a request for adjournment. Adjourned. To come up on 27.10.2021 for arguments before D.B.

  
(Rozina Rehman)  
Member(J)

  
Chairman

8-4-2020

Due to COVID19, the case is adjourned to  
6/7 2020 for the same as before.

  
Reader

06.07.2020

Due to COVID19, the case is adjourned to 31.08.2020 for  
the same as before.

  
Reader

31.08.2020

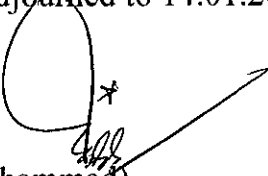
Due to summer vacation, the case is adjourned to  
05.11.2020 for the same as before.

  
Reader

05.11.2020

Junior to counsel for the appellant and Addl: AG for  
respondents present.

The Bar is observing general strike, therefore, the  
matter is adjourned to 14.01.2021 for hearing before the D.B.

  
(Mian Muhammad)  
Member (E)

  
Chairman



15.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, instant appeal is adjourned to 04.03.2020 for further proceedings/arguments before D.B.



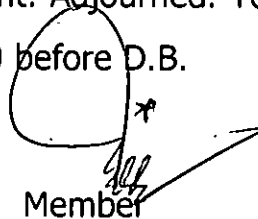
Member



Member

04.03.2020

Petitioner in person present. Mr. Muhammad Jan, DDA alongwith Mr. Salman, Assistant for respondents present. Representative of the respondents submitted written reply on application for restoration of appeal which is placed on file. A copy of the same was also handed over the petitioner. Petitioner seeks adjournment. Adjourned. To come up for arguments on 08.04.2020 before D.B.




Member



Member

05.09.2019

Junior to counsel for the appellant present and seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for further proceedings on 11.10.2019 before D.B.

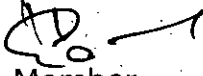
  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

10.10.2019


Petitioner with counsel present. Mr. Ziaullah, DDA for respondents present. Learned counsel for the petitioner seeks adjournment. Adjourn. To come up for arguments on restoration application on 15.11.2019 before D.B. <sup>reply &</sup> Notice be issued to the respondents for reply.

  
Member

  
Member

15.11.2019

Counsel for the applicant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned Assistant AG requested for adjournment to file reply on restoration application. Adjourned to 15.01.2020 for reply and arguments on restoration application before D.B.




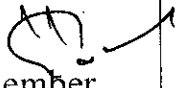
  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

Form-A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Appeal's Restoration Application No. 250/2019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3.
1	21.06.2019	<p>The application for restoration of appeal No.369/2017 submitted by Mr. Muhammad Maaz Madni Advocate, may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 21/6/19</p> <p>This restoration application is entrusted to D. Bench to be put up there on <u>04-7-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2	09.07.2019	<p>Learned counsel for the petitioner present. Notice of the present application be issued to the respondents for reply. Adjourned to 05.09.2019 for reply and arguments before D.B.</p> <p style="text-align: center;"> Member</p> <p style="text-align: right;"> Member</p>

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

*Restoration Appli. No. 250/2019*

CM. NO. \_\_\_\_\_/2019

IN

369/2017

**SYED ZAHID HUSSAIN**

**V/S**

**GOVT. OF KHYBER PAKHTUNKHWA & OTHERS**

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**PETITIONER**

THROUGH:

**MUHAMMAD MAAZ MADNI**

**ADVOCATE**

**HIGH COURT, PESHAWAR**

**Room # 3&4, Islamia Club Building,**

**Khyber Bazar, Peshawar**

**0345-9090737, 0333-9313113**

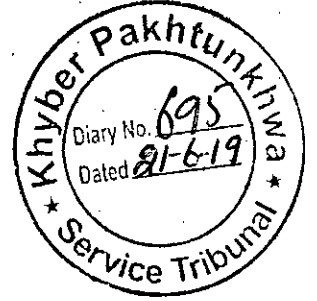
**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

*Restoration Application no. 250/2019*

CM. NO. \_\_\_\_\_/2019

IN

Service Appeal No. 369/2017



**SYED ZAHID HUSSAIN**  
**V/S**  
**GOVT. OF KHYBER PAKHTUNKHWA & OTHERS**

**APPLICATION FOR RESTORATION OF THE ABOVE**  
**MENTIONED SERVICE APPEAL**

**R/SHEWETH:**

- 1- That the above title Service Appeal is pending adjudication before this august Tribunal which was fixed for hearing today on 15.03.2019.
- 2- That due to non appearance of the appellant and Counsel for the petitioner/appellant on the date fixed the above mentioned appeal of the appellant has been dismissed in non-prosecution by this Honourable Tribunal vide order/ judgment dated 15.03.2019.

(Copy of the order sheet is attached ...A).

- 3- That, the appellant is the permanent resident of District Kurram (Upper) and living with his family at Parachinar.
- 4- That, on the previous date of hearing i.e. 21.01.2019 clerk of the counsel telephonically informed me that the case would be adjourned due to strike of the Legal fraternity but did not conveyed the next of hearing.
- 5- That, the appellant contacted time and again contacted with the clerk of then counsel but neither the clerk nor the then counsel himself contacted the appellant or informed about the next date of hearing.
- 6- That, the appellant when contacted the clerk of the counsel, the clerk informed that the case of the appellant is fixed for hearing today on 15.03.2019 and it was too difficult for the appellant to reach well in time from such a far flung area of District Kurram (Upper) Parachinar. That, the appellant also requested the clerk of the counsel to inform me about the next of hearing after attending the court.

- 7- That, later on when the appellant was trying to contact the clerk of then counsel and the then counsel the attitude of both the clerk & also that of the counsel of the appellant was silent and did responded or informed the appellant about the fate of the case.
- 8- That, finally being dishearten from such non-responsive attitude of the then counsel of the appellant, the appellant approached this Honourable Tribunal for to ask/collect information about the next date of his case on 10.06.2019.
- 9- That, on approaching this Honourable Tribunal it came to knowledge of the appellant that the case of the appellant is dismissed in non-prosecution on 15.03.2019.
- 10- That the non appearance of the appellant was neither deliberate nor intentional but caused due to the above mentioned reasons that the appellant was not informed well in time about the fixation of date nor of the dismissal in non-prosecution.
- 11- That, the appellant has always made his appearance assured before this Honourable Tribunal on each and every date fixed only on the previous date i.e 21.01.2019 when there was strike of the Legal fraternity the appellant was informed not to attend the court as the appellant has to travel from District Kurram (Upper) Parachinar.
- 12- That, on the very next date i.e. 15.03.2019 the case of the appellant was dismissed in non-prosecution without issuing any notice for appearance or giving a chance to the appellant.
- 13- That, the decision of non-prosecution have never been communicated nor any notice in this respect have been received to the appellant from any forum.
- 14- That, non-appearance before this Honourable Tribunal on the date fixed i.e. 15.03.2019 was not on part of the appellant rather it was the negligent of the clerk of the then counsel of the appellant that the appellant was not informed about the fate of the instant case.
- 15- That, valuable rights of the appellant are involved in the instant case and the case has also got finality as being fixed in arguments stage.
- 16- That, now the appellant has engaged me as his counsel in the instant case and would definitely assures the presence of the appellant or the presence of counsel on each and every date fixed by this Honourable Tribunal.

It is therefore, most humbly prayed that on acceptance of this application the above mentioned service appeal may very kindly be restored.

Dated: 20.06.2019

PETITIONER/APPLICANT

  
SYED ZAHID HUSSAIN

Through:

  
MUHAMMAD MAAZ MADNI  
Advocate, Peshawar

20/6/2019

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

CM. NO. \_\_\_\_\_/2019

IN

369/2017

SYED ZAHID HUSSAIN

V/S

**GOVT. OF KHYBER PAKHTUNKHWA & OTHERS**

**APPLICATION FOR CONDONATION OF DELAY IN  
FILING THE ABOVE NOTED RESTORATION PETITION**

**R.SHEWETH:**

- 1- That the appellant/petitioner has filed a restoration petitioner along with this application in which no date has been fixed so for.
- 2- That the appellant prays for the condonation of delay in filing the above noted restoration petition inter alia on the following grounds:

**GROUND OF APPLICATION:**

- A- That, the delay involved in filing of the instant restoration application/petitioner is not on the part of the appellant/petitioner rather it came in the knowledge of the appellant/petitioner when he visit this Honourable Tribunal on 10.06.2019 for getting next of date of hearing.
- B- That, the appellant/petitioner belong to the far flung area of District Upper Kurram Merged Area and in many times there is no cellular or any communicative source through which the appellant/petitioner could be informed about the next of hearing.
- C- That, all the time the appellant/petitioner tried his best to contact the then counsel or his clerk but their attitude was not positive.
- D- That, valuable rights of the appellant are involved in the case hence the appeal deserve to decide on merit.
- E- That, the appellant/petitioner has always tried to attend this Honourable Tribunal well in time but only the last time when it was strike and the clerk of the then counsel informed that there would be no proceedings due strike of the legal fraternity and I will inform your about the next of hearing.
- F- That, neither clerk of the then counsel nor the Counsel himself informed me neither the next of hearing nor of instant fate of the case.



G- That it has been the consistent view of the Superior Courts that cases should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is therefore prayed that on acceptance of this application the delay in filing the above noted restoration petitioner may please be condoned.

PETITIONER/APPLICANT

  
SYED ZAHID HUSSAIN

Through:

  
MUHAMMAD MAAZ MADNI

Advocate, Peshawar

20/6/2014

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

CM. NO. \_\_\_\_\_/2019

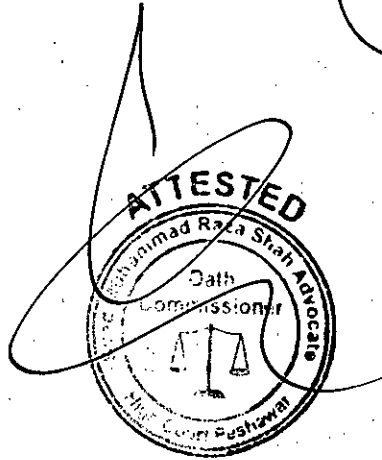
IN

369/2017

**SYED ZAHID HUSSAIN**  
**V/S**  
**GOVT. OF KHYBER PAKHTUNKHWA & OTHERS**

**AFFIDAVIT**

It is solemnly affirmed that as per instruction of the my client (Syed Zahid Hussain) the contents of the instant restoration petition are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honourable Tribunal.



DEPONENT

27/5/2019.

**VAKALATNAMA**

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

APPEAL NO. 369 OF 2017

SYED ZAHID HUSSAIN ..... (APPELLANT)

**VERSUS**


**GOVT. OF KP & other** ..... (RESPONDENTS)

I/We SYED ZAHID HUSSAIN


do hereby appoint and constitute **MUHAMMAD MAAZ MADNI, 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: 20/06/2019

CLIENT(S):

  
\_\_\_\_\_  
(Syed Zahid Hussain)

ACCEPTED

  
\_\_\_\_\_  
MUHAMMAD MAAZ MADNI

Advocate

(BC-11-1460)

17101-9263898-1

OFFICE:

Flat No.3, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.  
Phone: 091-2211391  
Mobile No.0345-9090737, 0333-9313113

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

**PESHAWAR**



Service Appeal No: 369/2017

**Khyber Pakhtunkhwa  
Service Tribunal**

Diary No. 400

Dated 18/4/2017

**Syed Zahid Hussain**

Son of Syed Zulfiqar Hussain  
Lecturer, Government College of Management Sciences,  
Parachinar, Kurram Agency

..... **APPELLANT**

**VERSUS**

**1. Government of Khyber Pakhtunkhwa**

Through Chief Secretary KP  
Peshawar

**2. Government of Khyber Pakhtunkhwa**

Through Additional Chief Secretary  
FATA Secretariat, Peshawar

**3. Government of Khyber Pakhtunkhwa**

Through Secretary Industries, Mineral, Technical Education  
Department, Peshawar

**4. Directorate of Technical Education (FATA)**

Through Director/ Assistant Director  
FDA Building, Near Rehman Hospital  
Phase-V, Hayatabad, Peshawar

**5. Director General**

Technical Education and Manpower Training  
Khyber Pakhtunkhwa, Peshawar

**6. Secretary Higher Education  
KPK**

..... **RESPONDENTS**

**SERVICE APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHAWA**

**ATTESTED**

**SERVICE TRIBUNAL ACT, 1974**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Service Appeal No. 369/2017



21.01.2019

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak,  
Additional AG for the respondents present. Clerk of counsel for the  
appellant requested for adjournment on the ground that learned counsel for  
the appellant is not available today due to strike of Khyber Pakhtunkhwa  
Bar Council. Adjourned to 15.03.2019 for arguments before D.B.

  
(HUSSAIN SHAH)  
MEMBER


  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

15.03.2019

Nemo for appellant. Addl. AG for the respondents  
present.

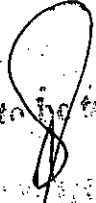
It is already 3.00 P.M and the case has been called  
several times. Despite, the appellant is not represented.

Dismissed for non-prosecution. File be consigned to  
the record room.

  
Member

  
Chairman

Certified to be true copy

  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ANNOUNCED  
15.03.2019

Date of Presentation of Application	12-6-2019
Number of Nos.	800
Copying Fee	8-
Urgent	2-
Total	10-
Name of Applicant	Sy
Date of Completion of Copy	12-6-2019
Date of Delivery of Copy	12-6-2019

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

**CM No. 250/19 IN SA No. 369/17**

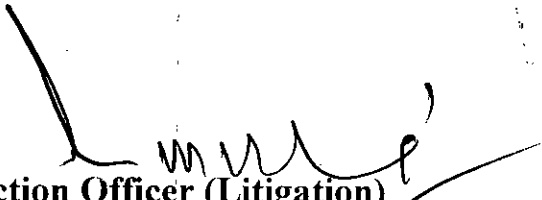
**Syed Zahid Hussain, Lecturer in GCMS, Parachinar.....(Appellant)**

**VERSUS**

**Govt. of Khyber Pakhtunkhwa through Secretary, Higher Education Department &  
Others..... (Respondents)**

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**Section Officer (Litigation)**  
**Higher Education Department,**  
**Khyber Pakhtunkhwa Peshawar**

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

**CM. No.250/2019 in Service Appeal No. 369/2017**

Syed Zahid Hussain, Lecturer, GCMS, Parachinar. ....Appellant

VERSUS

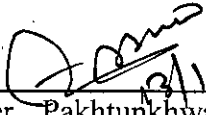
Govt. of KP through Chief Secretary and Others ..... Respondents

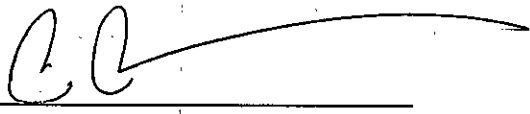
**REPLY TO APPLICATION FOR RESTORATION OF THE ABOVE TITLED SERVICE  
APPEAL ON BEHALF OF RESPONDENTS NO. 1, 5 AND 6**

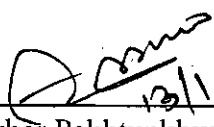
**Respectfully Sheweth:**

- 1- It is correct with further clarification that service appeal of the appellant was dismissed for non-prosecution on 15-03-2019. It is further stated that the appellant was aware of the date of hearing even then he has not attended the court.
- 2- It is correct to the extent that neither the appellant nor his counsel attended the court on 21-01-2019 and 15-03-2019.
- 3- Pertains to record.
- 4- It is incorrect in view of the reply given in para-1 and 2.
- 5- It is incorrect. The appellant himself admitted in para-4 of the application for restoration of the appeal that the clerk of the counsel telephonically informed him about the date of hearing.
- 6- It is incorrect in view of reply given in para-5 above.
- 7- It is solely the failure on the part of appellant and now he tries to put the responsibility on his counsel and his clerk.
- 8- It is incorrect in view of the reply given in the preceding paras.
- 9- It is incorrect in view of the reply given in para 7 above.
- 10- It is incorrect. The application for restoration of the appeal is exaggerated and filed with gross misconceptions.
- 11- It is incorrect. It is further stated that the appellant was aware of the date of hearing as he has admitted this fact in Para-4 of the application even then he has not attended the court.
- 12- It is incorrect. The Tribunal invariably issues notices to the parties.
- 13- It is incorrect in view of the reply given in the preceding paras.
- 14- It is incorrect in view of the reply given in para 7 above.
- 15- It is in correct. This Hon'ble Tribunal has already dismissed the appeal No. 964/2016, 965, 2016, 966/2016 and 967/2016 of the colleagues of the appellant on the same issue on 25-04-2019. **(Copy of Judgment attached as Annexure-A).**
- 16- The restoration application is time barred and it was required under the law to file application for restoration within 30 days but he failed to do so.

It is, therefore, humbly prayed that condonation may not be granted in the instant case. It is further requested that this honorable Tribunal already dismissed the appeals of the colleagues of the appellant on the same issue and the instant appeal may also be dismissed in the public interest.

**Respondent No. 1**   
Government of Khyber Pakhtunkhwa through Chief  
Secretary Khyber Pakhtunkhwa

**Respondent No.5**   
Director General Commerce Education & Management  
Sciences Khyber Pakhtunkhwa Peshawar

**Respondent No.6**   
Secretary to Govt. Khyber Pakhtunkhwa Higher Education  
Department Khyber Pakhtunkhwa



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

**CM No. 250/19 IN SA No. 369/17**

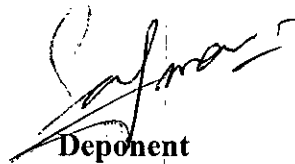
**Syed Zahid Hussain, Lecturer in GCMS, Parachinar.....(Appellant)**

**VERSUS**

**Govt. of Khyber Pakhtunkhwa through Secretary, Higher Education Department & Others..... (Respondents)**

**AFFIDAVIT**

I, Salman Khan (Assistant in Litigation Section), Higher Education, Archives & Libraries Department, Government of Khyber Pakhtunkhwa, on the instructions of respondents do hereby solemnly declare and affirm on oath, that the contents of Reply to application for restoration are correct to the best of my knowledge and belief and that nothing has been concealed therein from this Hon'ble Court.



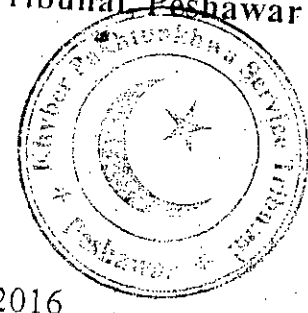
**Deponent**

CNIC No. 16101-4827653-3

41

Annex A

Before The Khyber Pakhtunkhwa Service Tribunal, Peshawar



Service Appeal No 964 /2016

Khyber Pakhtunkhwa Service Tribunal

Diary No. 887

Dated 24-8-2016

Shaban Ali S/o Israr Hussain,  
Lecturer in Commerce,  
Government College of Management Sciences, Hangu

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar.
2. Government of Khyber Pakhtunkhwa, through Additional Chief Secretary, Peshawar (FATA).
3. Government of Khyber Pakhtunkhwa, through Secretary, Industries, Commerce, and Technical Education Department, Peshawar.
- X4. Director General, Technical Education and Manpower Training, KPK, Peshawar.
- X5. Directorate of Technical Education (FATA), through its Director, FATA Secretariat, Warsak Road, Peshawar.
4. Director General, Commerce Education and Management Sciences, Chankani Morr, near Govt Polytechnic Institute, Peshawar, .....Respondents
5. Directorate of Technical Education, 46-A, Sector B, Phase V, near RMI Hospital, Hayatabad, Peshawar.

Service Appeal Under Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974.

2. Secretary to government of KP, Higher Education Department, Civil Secretariat, Peshawar.

Respectfully Sheweth,

ATTESTED

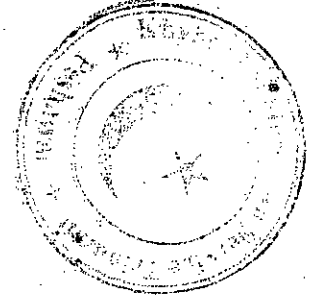
Brief but relevant facts of the case are as follows:

Registrar  
9/9/16

EXAMINER  
Khyber Pakhtunkhwa

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 964/2016



Date of Institution .... 24.08.2016

Date of Decision ... 25.04.2019

Shaban Ali son of Israr Hussain, Lecturer in Commerce, Government College of Management Sciences, Hangu. ....(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others. .... (Respondents)

Present.

Mr. Muhammad Ayub Shinwari, Advocate. ... For appellant

Mr. Ziaullah, Deputy District Attorney ... For official respondents.

Mr. Muhammad Asif Yousafzai, Advocate ... For private respondents.

MR. HAMID FAROOQ DURRANI, MR. HUSSAIN SHAH, ... CHAIRMAN MEMBER

JUDGMENT

ATTESTED

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. This judgment shall also dispose of Appeals No. 965/2016 ( Altaf Hussain Vs. Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar and others), No. 966/2016 (Asmat Ali Vs. Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar and others) and No. 967/2016 (Asghar Abbas Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others) as the grievance of appellants and prayer in all the appeals are similar.

2. The facts, as laid in the memoranda of appeals, are that the appellants were appointed as Instructors in the Directorate of Industries, Mineral and Technical Education, FATA Secretariat Peshawar on 12.12.2009. Their appointment was against fixed pay. The appellants were performing their duties when some of their colleagues approached the Honourable Peshawar High Court through different Writ Petitions seeking directions to respondents to treat them as regular employees. The Petitions were allowed on 08.03.2012 through judgment handed down in Writ Petition No. 1289/2010. Consequently, the service of said colleagues of appellants was regularized, however, the appellants were not extended similar treatment and their services were terminated. The appellants, after remaining unsuccessful at the level of department, filed Writ Petition No. 865-P/2016 before the Honourable Peshawar High Court. The Petition was allowed on 31.3.2015, wherein, the respondents were directed to regularize the service of appellants. A Civil Petition for leave to Appeal No. 251-P/2015 was preferred by respondents before the August Supreme Court of Pakistan against the judgment in favour of the appellants. The Civil Petition was however, dismissed on 08.03.2016. Consequently, a notification was issued by respondents on 04.04.2016, whereby, the service of appellants was regularized but with immediate effect. The departmental appeals were preferred by the appellants with the prayer for regularization of their service from 12.12.2009, with all back benefits but the same remained un-responded.

3. We have heard learned counsel for the appellants, learned Deputy District Attorney on behalf of respondents and have also gone through the available record.

**ATTESTED**  
  
 K...  
 S...  
 Peshawar

It was mainly the argument of learned counsel for the appellant that the colleagues of appellants were granted relief w.e.f. 31.12.2012, in pursuance to the judgment of Honourable Peshawar High Court passed in Writ Petition No. 1289/2010 while, on the other hand, the appellants were regularized w.e.f. 04.04.2016. In his view the appellants were entitled for such regularization under the N.W.F.P Employees (Regularization of Services) Act, 2015 from the date of their appointment i.e. 12.12.2009.

Learned Deputy District Attorney, on the other hand, controverted the stance of appellants and argued that, admittedly, the appellants were appointed against fixed pay on 12.12.2009. The date of appointment of appellants was not covered under Section 3 of the Act 2009 which provided that the employees including recommendees of High Court appointed on contract or ad hoc basis and holding that post on 31<sup>st</sup> December, 2008 or till the commencement of the act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post. In the said regard, he referred to the date of promulgation of the Act ibid i.e. 24.10.2009 and stated that the appointment of appellants against fixed pay was much after the crucial date, therefore, the notification dated 04.04.2016 was not questionable. He further argued that the prayer of appellants was not covered under the provisions of Khyber Pakhtunkhwa Service Tribunal Act, 1974 as they had not challenged any order of respondents. The appeals in hand were, therefore, not competent, it was added.

4. We have considered the arguments on behalf of the parties and are of the view that the contention by learned DDA regarding disqualification of appellants under the Act ibid has force. However, the matter of regularization of service of

appellants has been finally decided by the Honourable High Court in Writ Petition No. 865-P/2014 and the petition there-against has been dismissed by the Apex court, therefore, this Tribunal can, by no means, go beyond the judgment already passed in favour of the appellants.

5. It is also a fact that the appellants consider the relief granted to them by the Honourable High Court was not implemented in letter and spirit. In such circumstance, the implementation of judgment by the High Court may not be sought through the appeal before this Tribunal. In that regard, a reference to the prayer contained in the appeal shall also be necessary. In the said part of memoranda, it is laid that on acceptance of service appeal the respondents may be directed to treat the appellants as regular employees w.e.f. 12.12.2009. The declaration sought by the appellants falls outside the mandate of Tribunal contained in Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

6. The contents, as noted in the memoranda of appeals, are also contradictory in the manner that the appellants after their termination approached the respondents to regularize their service and treat them at par with their other colleagues whose services were regularized vide order dated 31.12.2012. On the other hand, in the prayer part, the appellants have asked for such regularization w.e.f. 12.12.2009. Be that as it may, the notification dated 04.04.2016, as per its contents, has been issued in pursuance to the judgments of Peshawar High Court Peshawar passed on 31.03.2015 and 27.10.2015 in Writ Petition No. 865-P/2014 and Writ Petition No. 1601-P/2015, respectively. The grant of relief and final decision of the cause of appellants has been addressed through the judgment, therefore, this Tribunal under the provisions contained in Rule 23 of Khyber

**ATTESTED**  
*[Signature]*  
Secretary

Pakhtunkhwa Service Tribunal Rules, 1974 is barred to entertain the appeals in hand. The appellants could have sought their remedy before the proper forum in case they were of the view that the judgment in their favour, passed by the Honourable High Court, was yet to be wholly implemented. In the appeals in hand the violation/infringement of any term or condition of service of appellants also carries a question mark.

7. As a result of the above discussion we consider it appropriate to dismiss the appeals in hand. Order accordingly. Parties are left to bear their respective costs. File be consigned to the record room.



(HAMID FAROOQ DURRANI)  
CHAIRMAN



(HUSSAIN SHAH)  
MEMBER

ANNOUNCED  
25.04.2019

Date of Presentation of Application 25-4-18  
 Number of Pages 2400  
 Copying Fee 14  
 Urgent 14  
 Total 14  
 Name of Copy [Signature]  
 Date of Filing of Application 13-05-19  
 Date of Delivery of Copy 13-05-19

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

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL  
PESHAWAR



Services Appeal No. 294 /2017

Diary No. 301

Dated 29-3-2017

Noor Islam Ex-ASI No.1436, R/o Peshawar.

... (APPELLANT)

VERSUS

1. Superintendent of Police Headquarters Peshawar.
2. Capital City Police Khyber Pakhtunkhwa, Peshawar.
3. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

.. RESPONDENTS

APPEAL UNDER SECTION 4 OF THE SERVICES  
TRIBUNAL ACT 1974, AGAINST THE IMPUGNED  
ORDER DATED 20/06/2013 PASSED BY RESPONDENT  
NO.1, WHEREBY THE APPELLANT WAS DISMISSED  
FROM SERVICES, AND AGAINST THE ORDER DATED  
26/08/2016 OF RESPONDENT NO.2 WHEREBY THE  
APPEAL OF THE APPELLANT WAS DISMISSED AND  
AGAINST THE REJECTION ORDER DATED 01/02/2017  
OF RESPONDENT NO.3, WHICH WAS COMMUNICATED  
TO THE APPELLANT ON 03/03/2017

**ACCEPTED**  
 REGISTRAR  
 Khyber Pakhtunkhwa  
 Services Tribunal  
 Peshawar

Filed to-day  
 Registrar  
 29/3/17





Miss. Roeeda Khan, Advocate for appellant is present. Mr. Usman Ghani, District Attorney for the respondents is also present.

14.10.2020

2. Learned counsel for the appellant invited the attention of the bench to the application for restoration of the titled Service Appeal which was dismissed in default and submitted that due to death of his nephew he was unable to attend the court because there was no other male member of his family to attend the court proceedings, therefore, he submitted that on the stated grounds this appeal is restorable.

3. On the other hand, the learned District Attorney submitted that the service appeal of the appellant was dismissed in default on 01.03.2018 and the appellant submitted application for its restoration on 16.09.2019, under the law appellant was required to file application for restoration within 15 days from the date of dismissal in default of service appeal but he has filed the restoration application after a period of more than seventeen months, therefore, the instant restoration application is badly time barred which is liable to be dismissed.

4. It is evident on record that the present service appeal was called on for hearing on 01.03.2018 but no one appeared on behalf of the appellant resulting into its dismissal in default. The application for restoration of appeal was submitted on 16.09.2019 beyond the prescribed period of limitation nevertheless, while keeping in view the arguments of the learned counsel for petitioner/appellant and the law and precedent on the subject which prefer decision on merits rather than looking at technicalities and since valuable rights are involved, therefore, the appeal is restored to the file but for admonition costs of Rs. 2000/- is imposed to be paid to the respondents. On payment of costs receipt to this regard has to be obtained from the duly authorized representative of the respondents to be deposited in the government exchequer and by placing the receipt on file. File to come up for arguments on 01.12.2020 before D.B.

(Atiq-ur-Rehman Wazir)  
Member (Executive)

(Muhammad Jamal Khan)  
Member (Judicial)